

THE WALL STREET JOURNAL.

TRUMP ADMINISTRATION LOOKING AT BANKRUPTCY OPTIONS FOR STUDENT DEBT

The Education Department could clarify the meaning of 'undue hardship' that is needed to have loans erased

By Josh Mitchell
February 20, 2018

The Trump administration indicated Tuesday it is considering allowing more Americans to erase student debt in bankruptcy.

A decades-old federal law prevents Americans from discharging student debt in bankruptcy court unless they prove to a judge's satisfaction that they face an "undue hardship," such a stringent standard that few borrowers even try.

The Trump administration can't change the law without congressional approval. But it can decide how aggressively to fight a borrower's request to cancel loans in court. The government, the nation's primary student lender, has traditionally fought such efforts, since any failure to repay loans comes at a cost to taxpayers.

The Education Department said Tuesday it would seek public input on whether the government should clarify when borrowers can discharge loans, a sign the government might ease its stance. The agency pointed to concerns that many student borrowers are being "inadvertently discouraged" from requesting cancellations or getting unequal treatment from judges who use two prevailing methods to define hardship.

Student debt more than doubled over the past decade to nearly \$1.4 trillion, and millions of Americans have fallen into default on their loans.

"The department will review the data collected to determine whether there is any need to modify how undue-hardship claims by student loan borrowers in bankruptcy are evaluated," the agency said.

The move on Tuesday is significant because it comes after years of lobbying by student advocates to expand options for bankrupt student borrowers. The administration is taking a stance until now championed mostly by liberal Democrats, and the move could revive efforts in Congress to change bankruptcy law to be more friendly toward borrowers.

It isn't clear whether and how the administration's move could affect private companies involved in student lending. Without broader changes, shifts that make it easier to discharge student loans in bankruptcy could have economic consequences, such as making it harder for others to borrow.

Shares of Navient Corp., a loan servicer for the federal government that also holds private student loans, fell 2.5 percent Tuesday on the Nasdaq. Navient spokeswoman Patricia Christel said the company "supports the administration's action to solicit comments on bankruptcy provisions, and we continue to support reform that would allow federal and

private student loans to be dischargeable in bankruptcy for those who have made a good-faith effort to repay their student loans over a five-to-seven year period and who still experience financial difficulty.”

A 1976 federal law requires borrowers in court to prove an “undue hardship” in repaying their loans before winning a discharge. Congress never defined “undue hardship,” leaving it to bankruptcy judges to decide case by case. Over time, they set a high bar: Very few borrowers have had their loans expunged in bankruptcy, and student-borrower advocates say many others don’t even try.

A Wall Street Journal analysis found that fewer than 500 people attempted to extinguish student debt last year, when roughly 766,000 individuals and couples filed for bankruptcy. The number of cancellation attempts has fallen by 45 percent since 2010 as fewer people filed for bankruptcy and as repayment programs for federal student loans grew in popularity.

Legal experts also point out bankrupt borrowers can rarely afford to hire lawyers to fight lenders with sophisticated counsel. The typical cost ranges from \$3,000 to \$10,000. The lawsuits to win a loan cancellation can also drag on for years.

Officials at two consumer advocacy groups, National Consumer Law Center in Boston and the National Association of Consumer Bankruptcy Attorneys in Washington, began pressuring the Obama administration for guidance on “undue hardship” in 2014. They later pushed Education Department leaders directly, at times with help from federal lawmakers.

Once President Donald Trump took office, the groups backed off to see how his new leaders would handle student-debt issues.

John Rao, a National Consumer Law Center lawyer, said Tuesday’s announcement was a “complete surprise.”

“We’re hopeful that the department will take a fresh look at the issue,” Mr. Rao said.

Several bills in Congress that would make student loans dischargeable in bankruptcy, including one introduced in May, have gained little traction.

The Education Department already struggles to collect on student debt and recent reports suggest that government lending to college and graduate students could soon become an immense drain on federal coffers. As of Sept. 30, 22 percent of Americans with federal student loans hadn’t made a payment in at least a year.