Student Loan Bankruptcy and the Meaning of Educational Benefit

Jason Iuliano

Student loans hold a special status in the Bankruptcy Code. Unlike any other consumer debt, they are not dischargeable through the normal bankruptcy process. Specifically, for any student loan that satisfies one of three statutory criteria, a court may only grant a discharge if the borrower proves "undue hardship." This requirement presents a significant hurdle that discourages the vast majority of bankrupt debtors from ever pursuing a student loan discharge. Given the high deterrent effect of the undue hardship standard, it is, therefore, imperative that courts accurately determine which educational debts are nondischargeable. In this Article, I argue that bankruptcy courts have misinterpreted the statutory criteria. The ultimate consequence of this judicial error has been to misclassify billions of dollars of student loan debt and to prevent many borrowers from obtaining the bankruptcy relief to which they are entitled.

One phrase, in particular, has been the source of this problem: "educational benefit." In their rulings, judges have held that this term includes any debt used for educational purposes. Under any of the prevailing interpretive frameworks, however, that reading is indefensible. The statutory text, legislative history, and policy considerations all indicate that the phrase educational benefit can only be read to refer to a narrow type of debt—namely, conditional educational grants. If courts adopt the interpretation set forth in this Article, they will not only be expressing fidelity to the statute and to congressional intent but also will be acting to provide financial relief to many debtors who have been hit hardest by the student loan crisis.

TABLE OF CONTENTS

Introduction

America is barreling towards a student loan crisis. From politicians[1] and journalists[2] to scholars[3] and judges[4] and even to celebrities,[5] it seems almost everyone is in agreement that educational debt is out of control.[6]

---

[1] Press Release, Dick Durbin United States Senator Illinois, As Student Loan Debt Surpasses $1 Trillion, Senators Introduce Legislation To Address Crisis (Jan. 23, 2013), *available at* https://www.durbin.senate.gov/newsroom/press-releases/as-student-loan-debt-surpasses-1-trillion-senators-introduce-legislation-to-address-crisis (asserting that "one of the biggest threats to millions of working families [is] the growing student loan debt crisis"); Bernie Sanders (@BernieSanders), TWITTER (Dec. 28, 2016, 6:47 AM), https://twitter.com/berniesanders/status/814120585227882496 ("One of the most revolting aspects of the student loan crisis is that the government makes billions in profits off of student loans.").

[2] *See, e.g.*, Kevin Carey, *Student Debt Is Worse Than You Think*, N.Y. TIMES, Oct. 7, 2015, https://www.nytimes.com/2015/10/08/upshot/student-debt-is-worse-than-you-think.html (discussing data from the Department of Education that suggests "that the system is failing and that, at some colleges, the saddling of students with loans they cannot afford to pay down is far more dire than anyone knew"); Editorial Board, *Four Years on Campus Might Be One Too Many*, BLOOMBERG BUSINESSWEEK, Nov. 17, 2017 (proposing that colleges reduce the time it takes to earn a bachelor's degree by one year in order to rein in the "student-loan crisis").

[3] *See, e.g.*, Adam Levitin, *Is There a Student Loan Debt Crisis?*, CREDIT SLIPS, June 23, 2015, http://www.creditslips.org/creditslips/2015/06/is-there-a-student-loan-debt-crisis.html (hesitating "to call student loan debt a crisis, [but observing that] what is clear is that if current trends continue it will become one"); Michael Stratford, *Income-Based Loans Made Simple*, INSIDE HIGHER ED, Oct. 22, 2013, https://www.insidehighered.com/news/2013/10/22/new-report-calls-income-based-repayment-system-operates-payroll-taxes (quoting Susan Dynarski) ("We have a repayment crisis because student loans are due when borrowers have the least capacity to pay."); *but see* SANDY BAUM, STUDENT DEBT RHETORIC AND REALITIES OF HIGHER EDUCATION FINANCING (2016) (noting that "[t]he idea of a student loan crisis has taken hold in the media, in the blogosphere, and in the political arena. But the reality is that borrowing for college is opening doors for many students. It is helping far more people than it is hurting.").

[4] *See, e.g.*, Suesz v. Med-1 Solutions, LLC, 757 F.3d 636, 661, n.3 (7th Cir. 2014) (referring to student debt as "the [second] largest bit of baggage in our nation's consumer inventory"); Cushing v. Student Loan Marketing Association, 2016 WL 5390644 *2 (E.D. Pa. 2016) (observing that the "student debt crisis [could have] potentially devastating impacts . . . . [and is] a situation that calls out for legislative relief"); In re Edwards, 2016 WL 1317421 *5 (Bankr. D. Ariz. 2016) (referencing "the student loan crisis").

[5] *See, e.g.*, Chloe Melas, *Nicki Minaj Pays Off Thousands in Fans' Student Loans, tuition*, CNN, May 15, 2017, http://www.cnn.com/2017/05/15/celebrities/nicki-minaj-pays-students/index.html (discussing how Nicki Minaj paid off student loans for at least eight of her fans); Mark Cuban, *The Coming Meltdown in College Education & Why The Economy Won't Get Better Any Time Soon*, BLOG MAVERICK, May 13, 2012 (comparing the student loan market to the housing bubble).

[6] Some of the most prominent financial institutions have expressed similar views. *See, e.g.*, Chelsey Dulaney, *Student Loan Debt: the Bubble Goldman Thinks You Should Buy*, WALL ST. J., Dec. 5, 2017, https://blogs.wsj.com/moneybeat/2017/12/05/student-loan-debt-the-bubble-goldman-thinks-you-should-buy (noting that Goldman Sachs has described the student loan market as a "bubble").

The widespread concern over this issue is easy to understand. At present, Americans owe more than 1.5 trillion dollars in student loan debt[7]—an amount that has tripled in the last decade and now exceeds both automotive and credit card debt.[8] Despite the troubling increase, however, there is an even more pressing issue: the low repayment rate. Only sixty percent of student loans are in active repayment,[9] and a full eleven percent are in default.[10] All told, these bleak statistics make it impossible to deny that educational debt is a significant problem in the United States.[11] Disagreement arises, however, over the potential remedies.

If student loans were like any other consumer debt, a first-pass solution to the problem would be obvious; individuals in need of relief could simply file for bankruptcy. Student loans, however, are not like any other consumer debts. Instead, they are subject to a number of restrictions that preclude courts from granting discharges through the normal bankruptcy process. Specifically, if a student loan satisfies one of three statutory criteria, a borrower can only discharge it through a showing of "undue hardship."

In reviewing how bankruptcy courts have implemented this statutory scheme, lawyers and scholars alike have advanced two propositions: (1) that the criteria for exemption are so broad as to encompass all educational debts[12] and (2) that virtually no one is able

---

[7] *See Current Student Loan Debt in the United States*, COLLEGE DEBT, http://collegedebt.com (keeping a running tally of the total outstanding student loan debt); *See also* Board of Governors of the Federal Reserve, *Consumer Credit – G.19*, Jan. 8, 2018, https://www.federalreserve.gov/releases/g19/current/default.htm (showing the increasing student loan trend over the past five years).

[8] Total U.S. auto loan debt is around $1.1 trillion. Michael Corkery and Stacy Cowley, "Household Debt Makes a Comeback in the U.S.," The N.Y. Times, last modified May 17, 2017, https://www.nytimes.com/2017/05/17/business/dealbook/household-debt-united-states.html. Total U.S. credit card debt slightly exceeds $1 trillion. "Consumer Credit - G.19," Board of Governors of the Federal Reserve System, accessed December 26, 2017, https://www.federalreserve.gov/releases/g19/hist/cc_hist_sa_levels.html.

[9] Although a substantial portion of loans not in repayment are in deferment or forbearance, it is important to keep in mind that such loans generally continue to accrue interest and ultimately yield significantly heavier debt burdens.

[10] *See* Student Loan Hero, *A Look at the Shocking Student Loan Debt Statistics for* 2018, https://studentloanhero.com/student-loan-debt-statistics.

[11] *See, e.g.*, Rana Foroohar, *The US College Debt Bubble is Becoming Dangerous*, FINANCIAL TIMES, https://www.ft.com/content/a272ee4c-1b83-11e7-bcac-6d03d067f81f (quoting NY Federal Reserve president Bill Dudley as describing educational debt as a "headwind to economic activity").

[12] *See* Steve Rhode, *Here is Why Your Private Student Loan May Able to Be Eliminated in Bankruptcy*, Dec. 29, 2016, https://getoutofdebt.org/100708/private-student-loan-may-able-eliminated-bankruptcy (lamenting "the vast number of people who continue to believe that student loans are not dischargeable in bankruptcy, yet many are. Even large swaths of bankruptcy attorneys continue to believe this urban myth . . . [A] blanket belief that student loans are not dischargeable is just not a true fact."); Michael J. Tremblay, *I Thought All Student Loans could not be Discharged in Bankruptcy*,

to prove undue hardship.[13] Through my research, however, I challenge this prevailing view of the student loan bankruptcy system.

In a previous article, I refuted the second claim by showing that many debtors are able to satisfy the undue hardship standard.[14] Drawing on a nationwide sample of student loan bankruptcy filings, I found that approximately forty percent of those who seek to discharge their student loans through bankruptcy are successful.[15] The central problem, I concluded, is that so few student loan debtors in bankruptcy take the necessary steps to request an undue hardship determination.[16] Many more would be successful if they tried.

In this Article, I shift focus to the first claim—namely, that the student loan discharge exceptions encompass all educational debts. Upon reviewing the cases, I find that this statement does capture the reading advanced by a majority of bankruptcy courts. However, that is not the full story. Drawing upon the textual

---

http://attorneytremblay.com/category/bankruptcy-2 (noting that "[t]here is a common misunderstanding that all student loans are not dischargeable in bankruptcy").

[13] As one consumer bankruptcy attorney wrote:

> Student loans are not dischargeable in bankruptcy under almost any circumstances. There is such a thing as a hardship discharge of student loan debt, but to get one of those you need to be over the age of eighty, have no hearing, and have a serious mental illness that prevents you from ever being able to earn a dime or receive a social security payment, and not have any family that can assist you.

David R. Black, *Successfully Guiding a Client through the Chapter 13 Filing Process*, ASPATORE, Jan. 2014, 2014 WL 10512. Although seemingly hyperbolic, this attorney's view is representative of how lawyers and scholars conceive of the undue hardship standard. *See, e.g.*, Jonathan M. Layman, *Forgiven but not Forgotten: Taxation of Forgiven Student Loans under the Income-Based-Repayment Plan*, 39 CAP. U. L. REV. 131, 136 (2011) (claiming that "federally backed student loans cannot be discharged in bankruptcy except in some rare cases of extreme financial hardship"); Aaron N. Taylora & Daniel J. Sheffner, *Oh, What a Relief it (Sometimes) is: An Analysis of Chapter 7 Bankruptcy Petitions to Discharge Student Loans*, 27 STAN. L. & POL'Y REV. 295, 297 (2016) ("Conventional wisdom dictates that it is all-but-impossible to discharge student loans in bankruptcy.").

[14] *See* Jason Iuliano, *An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard*, 86 AM. BANKR. L.J. 495 (2012).

[15] *See id.* at 523 (concluding that "[t]he data dispel the myth that it is nearly impossible to discharge educational debt. Thirty-nine percent of debtors who filed an adversary proceeding received a full or partial discharge.").

[16] *See id.* (finding that "99.9 percent of student loan debtors in bankruptcy fail to ask for" a student loan discharge). Ultimately, I concluded that "[c]ourts are willing to grant discharges. The problem is that few people are asking for them." *Id.* at 525. To put numbers on the magnitude of the shortfall, consider the following: Each year, approximately two hundred fifty thousand people with student loan debt file for bankruptcy. Of those individuals, only about five hundred file an adversary proceeding—a process that is necessary to request a student loan discharge from the court. This places the filing rate around 0.2%. In other words, more than ninety-nine percent of individuals go through the bankruptcy process without even trying to discharge their student loans. Based on my estimates, tens of thousands of debtors each year could prove undue hardship if they only took the necessary legal steps. *See id.* at 523–24.

language, the provision's legislative history, and the policy consequences, I argue that all the prevailing interpretive methodologies preclude such an interpretation of the statute.

The primary source of the problem is the misreading of one short phrase: "educational benefit." Whereas all factors indicate that this phrase should be understood in a narrow, semi-technical sense, a majority of courts have read it expansively to mean any loan that an individual uses for educational purposes. By adopting this broad reading, courts have done much to prevent honest debtors from utilizing the protections of bankruptcy. All manner of student loans which should have been discharged—such as loans for unaccredited schools, loans for tutoring services, and loans beyond the cost of attendance for college—have been swept up in this interpretation. The magnitude of this problem is, in fact, rather large and has led billions of dollars of student loan debt to be misclassified as nondischargeable.

This Article proceeds in two parts. In Part I, I lay out the three student loan exceptions contained in the Bankruptcy Code and discuss how they have been interpreted by courts. In Part II, I argue that the broad reading of "educational benefit" is incorrect and present an alternative, narrower reading that is supported by the statutory text, the legislative history, and policy considerations. If courts adopt this narrow reading, they will not only be exhibiting fidelity to the text and congressional intent but will also be providing many individuals the bankruptcy relief to which they are entitled under the law.

I. The Three Exceptions to Student Loan Discharge

The current iteration of the law governing student loan discharges was enacted as part of the 2005 Bankruptcy Abuse and Consumer Protection Act. The relevant statutory language reads as follows:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt
>
> (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
>
> (A)
>
> (i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or

made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual.[17]

There is a lot to parse in this excerpt. For current purposes, however, the most important point is that not all student loans are excepted from discharge. Instead, there are three categories: (1) government and non-profit backed loans and educational benefit overpayments, (2) obligations to repay funds received as an educational benefit, scholarship, or stipend, and (3) qualified education loans.[18] Unless an educational debt falls within one of these classifications, it is dischargeable through the normal bankruptcy process.[19]

I discuss the scope of these exceptions later in this Part, but for now it is worth mentioning two procedural features that bear on the determination of whether a student loan is excepted from discharge. First, at the initial stage, the creditor has the burden of proving both the existence of the debt and that the debt qualifies under one of the statutory exceptions to discharge.[20] Courts uniformly agree that "the initial burden is on the lender to establish the existence of the debt and to demonstrate that the debt is included in one of the . . . categories enumerated in § 523(a)(8)."[21] Not until the creditor has satisfied these burdens does the burden of proving undue hardship fall upon the debtor.[22] Too often, however, debtors simply concede that their student loan debt is nondischargeable absent a showing of undue hardship.[23] This action relieves creditors of a significant burden and, in doing so, exempts many loans from discharge that otherwise are entitled to discharge.

The second issue worth highlighting with respect to the interpretation of this statute is that the exceptions to discharge must be

---

[17] 11 U.S.C. § 523(a)(8) (2005).

[18] Some courts have identified four exempt categories. In these cases, the court merely chose to break the first provision into two separate categories.

[19] *See* In re Corbin, 506 B.R. 287, 291 (Bankr. W.D. Wash. 2014) (noting that "the creditor bears the initial burden of proving the debt exists and that the debt is of the type excepted from discharge under the discharge exception for student loan debt").

[20] *See* In re Roth, 490 B.R. 908, 916–17 (B.A.P. 9th Cir. 2013) ("the lender has the initial burden to establish the existence of the debt and that the debt is an educational loan within the statute's parameters . . . ").

[21] In re Creeger, 2016 WL 3049972 *5 (bankr. N.D. Ohio 2016); *see also* In re Rumer, 469 B.R. 553, 561 (Bankr. M.D. Pa. 2012).

[22] In re Renshaw, 222 F.3d 82, 86 (2d Cir. 2000) (citing Grogan v. Garner, 498 U.S. 279, 287, 291 (1991) (holding that the Bankruptcy Code requires "the creditor to prove by a preponderance of the evidence that its claim is one that is not dischargeable").

[23] U.S. v. Wood, 925 F.2d 1580, 1583 (7th Cir. 1991) (noting that the "burden of challenging th[e] presumption [of nondischargeability] falls on the debtor.")

construed narrowly.[24] Courts have repeatedly held that such a construction of the statute is necessary "in order to preserve the Bankruptcy Act's purpose of giving debtors a fresh start."[25] If judges were to read the exceptions broadly, they would "frustrate this fundamental policy."[26] Therefore, to avoid this problem, "[t]he reasons for denying a discharge . . . must be real and substantial, not merely technical and conjectural."[27] In the remainder of this Part, I explore the manner in which courts have interpreted these three provisions.

A. § 523(a)(8)(A)(i)

Section 523(a)(8)(A)(i) excepts from discharge any "educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution."[28] As you can see, there are two different discharge exceptions in this provision: "loans" that are backed by the government or non-profit institutions and "educational benefit overpayments" that are backed by the government or non-profit institutions.[29]

With regard to the former, courts have held that "[t]his language applies to all situations of student loans funded by the government or nonprofit institutions,"[30] and that "for there to have been a loan 'there must be (i) a contract, whereby (ii) one party transfers a defined quantity of money, goods, or services, to another, and (iii) the other party agrees to pay for the sum or items transferred at a later date.' "[31] This is a straightforward exception and is designed to protect American taxpayers and non-profit organizations from bearing the burden of widespread student loan defaults.

With regard to the second exemption, courts have concluded that the phrase "educational benefit overpayments" applies to benefit payments that an individual receives for schooling but subsequently

[24] *See* In re Bullock, 670 F.3d 1160, 1164 (11th Cir. 2012) (citing In re Mitchell, 633 F.3d 1319, 1327 (11th Cir. 2011) ("exceptions to discharge . . . must be construed narrowly").

[25] In re Jackson, 184 F.3d 1046, 1051 (9th Cir. 1999) (citations omitted).

[26] In re Stone, 91 B.R. 589, 591 (D. Utah 1988).

[27] In re Miller, 39 F.3d 301, 304 (11th Cir. 1994) (internal quotations omitted); *see* In re Corbin, 506 B.R. 287, 291 (Bankr. W.D. Wash. 2014) (noting that "[c]ourts construe exceptions to discharge strictly against a creditor and liberally in favor of the debtor")

[28] 11 U.S.C. § 523(a)(8)(A)(i) (2005).

[29] *See, e.g.*, In re Johnson, 222 B.R. 783, 786 (Bankr. E.D.Va. 1998) (labeling these as two separate categories).

[30] In re Rezendes, 324 B.R. 689, 692 (Bankr. N.D. Ind. 2004).

[31] In re Tucker, 560 B.R. 206, 208 (Bankr. W.D.N.Y. 2016) (quoting In re Renshaw, 222 F.3d 82, 88 (2d Cir. 2000).

uses for alternative purposes.[32] For one example, consider the Servicemen's Readjustment Act of 1944 (colloquially known as the G.I. Bill). This Act provides educational assistance to veterans. Any individuals who participate in this program must use the funds for approved educational purposes, and any funds not used in such a manner must be paid back to the government. By exempting "educational benefit overpayments" from discharge, the Bankruptcy Code ensures that individuals who exploit programs—such as the one in the G.I. Bill—by using the money for unauthorized purposes cannot discharge their debt obligations in bankruptcy.

B. § 523(a)(8)(A)(ii)

Section 523(a)(8)(A)(ii) excepts from discharge "an obligation to repay funds received as an educational benefit, scholarship, or stipend."[33] Most courts to consider the issue have interpreted the clause to include any loans that facilitated a debtor's education.[34] Specifically, they read "obligation to repay funds received" as synonymous with "loan" and "educational benefit" as synonymous with "advancing an individual's education."[35]

By interpreting the clause in this broad manner, courts have swept every loan that is used for any educational purpose within the ambit of the statute. *In re Belforte* presents an illustrative example.[36] In this case, the debtor (Patricia Belforte) took out a general, unsecured loan in the amount of ten thousand dollars from her credit union (Liberty Bay).[37] A number of years later, Patricia submitted a handwritten letter requesting that the credit union "rewrite [her] personal loan to $14,000 . . . for tuition [and] books for [her] children's schools."[38] Liberty Bay agreed and advanced the funds.

Several years passed, and Patricia filed for bankruptcy, seeking to discharge the loan she had obtained from Liberty Bay. The credit union attempted to block the discharge by arguing that the debt was "an obligation to repay funds received as an educational benefit" and, as such,

---

[32] *See, e.g.*, In re Moore, 407 B.R. 855, 859 (Bankr. E.D.Va. 2009) (describing "educational benefit overpayment" as "an overpayment from a program like the GI Bill, where students receive payments even though they are not attending school").

[33] 11 U.S.C. § 523(a)(8)(A)(ii) (2005).

[34] *See, e.g.*, In re Corbin, 506 B.R. 287, 296 (Bankr. W.D. Wash. 2014) (observing that "a majority of courts have held that a loan qualifies as an 'educational benefit' if the stated purpose for the loan is to fund educational expenses." (citing In re Maas, 497 B.R. 863, 869–870 (Bankr. W.D. Mich. 2013).

[35] *See, e.g.*, In re Rumer, 469 B.R. 553, 561 (Bankr. M.D.Pa. 2012) (writing that "loans received as an educational benefit, scholarship, or stipend" are excepted from discharge); In re Beesley, 2013 WL 5134404, at *4 (Bankr.W.D.Pa. 2013) (noting that "courts . . . have interpreted 'funds received as an educational benefit' to include loans").

[36] In re Belforte, 68 Collier Bankr.Cas.2d 829 (Bankr. D. Mass. 2012).

[37] *See id.* at *2

[38] *Id.*

could not be discharged absent a showing of undue hardship.[39] Liberty Bay's primary argument was that Patricia's handwritten note requesting the personal loan increase to pay for her children's tuition and books proved that the loan's purpose was to confer an "educational benefit."[40]

Liberty Bay's position is odd for a number of reasons. First, and most notably, Patricia received no educational benefit from the loan. To the extent any educational benefit was conferred, it was solely upon her children. Second, despite having an educational loan program, the credit union opted to advance the funds under Patricia's existing unsecured personal line of credit. Third, Liberty Bay evinced a conspicuous lack of oversight with regard to the loan. The company made no inquiries into where Patricia's children were enrolled, much less whether such schools were accredited.

Given the credit union's lack of interest in collecting this information before approving the loan, it is hard to believe that the company only lent the money to Patricia because it thought the loan was a nondischargeable educational debt. The only way to maintain this position was for the credit union to argue that the statute exempts from discharge any loan that a debtor professes to use for any educational purpose whatsoever. Unsurprisingly, engaging in a bit of post hoc legal maneuvering, the credit union set forth that exact argument.[41] What is surprising, however, is that the court granted summary judgment in favor of the credit union.[42]

Finding the outcome so obvious as to be unworthy of a full trial, the judge held that the debtor's handwritten note stating that the funds would be used for "tuition [and] books" was sufficient to transform this loan into "an obligation to repay funds received as an educational benefit."[43] The court did not go so far as to explicitly hold that any loan that a debtor professes to use for "educational purposes"—no matter how indirect or unlikely the educational benefit—qualifies as a nondischargeable student loan, but that is the clear implication of the opinion.[44]

Although this outcome is striking, the *Belforte* court is far from alone in adopting such an expansive reading of the statute. As one bankruptcy judge observed, "[t]he Code does not define the term 'educational benefit,' but a majority of courts have held that a loan qualifies as an 'educational benefit' if the stated purpose for the loan is to fund educational expenses."[45] Relying on this broad understanding of the

---

[39] *Id.* at *3–4.

[40] *Id.* at *3.

[41] *Id.* at *3 ("Liberty Bay asserts that the funds were received as an educational benefit because the Debtor asked for money for her children's education, and that the actual use of the funds does not affect the analysis.").

[42] *See id.* at *9.

[43] *Id.* at *8.

[44] *Id.* at *6 (holding that "§523(a)(8)(A)(i) must be read as encompassing a broad[] range of educational benefit obligations, such as those in the instant case").

[45] In re Corbin, 506 B.R. 287, 296 (Bankr. W.D.Wash. 2014) (citing In re Maas, 497 B.R. 863, 869–870 (Bankr. W.D.Mich. 2013).

statute, courts have held that funds borrowed to pay for everything from tutoring services[46] to bar review courses[47] to vocational schools that committed fraud[48] count as an "educational benefit" and are, therefore, nondischargeable. These decisions are not only problematic at the policy level, they are wrong as a matter of law. In Part II, I develop a critique of the prevailing bankruptcy court decisions on the subject. For now, though, I turn to the Bankruptcy Code's third and final student loan discharge exception.

C. § 523(a)(8)(B)

This final provision exempts "any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual."[49] As one might suspect, fully understanding the scope of this exception requires going on a definitional scavenger hunt. Indeed, the Tax Code's definition of "qualified education loan"[50] relies upon another defined term ("qualified higher education expenses"[51]), the definition of which, in turn, references two other

---

[46] *See* In re Roy, 2010 WL 1523996 *1 (Bankr. D.N.J.) (hold that loans for tutoring services for a debtor's child conferred an "educational benefit" and were, therefore, nondischargeable absent a showing of undue hardship).

[47] *See* In re Vuini, 2012 WL 5554406 (Bankr. M.D.Fla.) (holding that the more than fourteen thousand dollars the debtor borrowed to pay for a bar exam review course is a nondischargeable student loan); In re Skipworth, 2010 WL 1417964 *2 (Bankr. N.D.Ala.) (finding that the "debtor's obligation to Citibank is clearly 'an obligation to repay funds received as an educational benefit' for purposes of § 523(a)(8)(A)(ii) in that Citibank loaned funds to the debtor to assist the debtor with his educational expenses i.e. the debtor's bar review course").

[48] *See* In re Kidd, 458 B.R. 612, 620–21 (Bankr. N.D.Ga. 2011) (finding the loan nondischargeable even though the school closed before the debtor received her education).

[49] 11 U.S.C. § 523(a)(8)(B) (2005).

[50] *See* 26 U.S.C. § 221(d)(1) (defining "qualified education loan" as follows:
any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses—
(A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,
(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and
(C) which are attributable to education furnished during a period during which the recipient was an eligible student.).

[51] *See* 26 U.S.C. § 221(d)(2) (defining "qualified higher education expenses" as follows:
the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) at an eligible educational institution, reduced by the sum of—
(A) the amount excluded from gross income under section 127, 135, 529, or 530 by reason of such expenses, and

defined terms ("cost of attendance"[52] and "eligible educational institution"[53]) which, yet again, reference other defined terms.

To further complicate matters, the definitions for many of these terms are rather lengthy. Therefore, to avoid reproducing entire pages of the Tax Code and, in light of my more modest goal of providing a broad outline of this exception, I focus only on the general scope of the provision. Condensed down to its most basic form, §523(a)(8)(B) exempts from discharge any loans that are provided for the purpose of paying approved costs of attending an accredited educational institution.

There are four key points to keep in mind with this definition. First, because government-backed loans and non-profit-backed loans are already exempt from discharge under §523(a)(8)(A)(i), this section of the statute only alters the treatment of private student loans. Whereas private educational loans had previously been dischargeable, this provision—added in 2005—exempts those that meet certain criteria from discharge. Second, there must be a lender/borrower relationship. If there is not a contract in which one party advances funds to another in exchange for a promise of future repayment, then the debt does not qualify.[54]

Third, the loans only become nondischargeable if the debtor borrows them to attend an educational institution that is accredited under Title IV of the Higher Education Act of 1965.[55] Although

---

(B) the amount of any scholarship, allowance, or payment described in section 25A(g)(2).

For purposes of the preceding sentence, the term "eligible educational institution" has the same meaning given such term by section 25A(f)(2), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.).

[52] *See* 20 U.S.C. 1087ll §472 (defining "cost of attendance" as follows:

(1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(2) an allowance for books, supplies, transportation, and miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer, for a student attending the institution on at least a halftime basis, as determined by the institution;

(3) an allowance (as determined by the institution) for room and board costs incurred by the student).

[53] *See id.* at 25A(f)(2) (defining "eligible educational institution" as "an institution—(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and (B) which is eligible to participate in a program under title IV of such Act").

[54] *See* In re Oliver, 499 B.R. 617, 625 (Bankr. S.D. Ind. 2013) (holding that, because the debt obligation did not "give rise to a lender/borrower relationship between [the university] and Debtor," the debt was not exempt from discharge under §523(a)(8)(B)).

[55] *See, e.g.*, In re Decena, 549 B.R. 11, 14 (Bankr. E.D.N.Y. 2016) (finding that the

accreditation is by no means a high hurdle, this requirement does ensure that students can discharge their educational debts from some of the worst-performing for-profit institutions. Finally, private loans are only exempt from discharge up to the cost of attendance. This criterion means that, if a school calculates its cost of attendance to be fifty thousand dollars, then any borrowing in excess of that amount is dischargeable absent a showing of undue hardship. A creditor who lends sixty thousand dollars to the student, for example, will only be able to maintain that the first fifty thousand dollars is nondischargeable. Although parsing the Tax Code to uncover which debts are qualified education loans can be time consuming, the actual determinations are not particularly contentious.

II. The Meaning of Educational Benefit

It is a truism to state that there are as many methods of statutory interpretation as there are judges and legal scholars.[56] Despite the vast number of approaches, there are, nonetheless, underlying similarities. In particular, when seeking to discern the meaning of a statute, all judges evaluate the text, the legislative history, and the policy implications.

Without further qualification, this would be a controversial claim. Therefore, let me add a qualification by emphasizing that I do not mean that judges weigh these factors equally or even that they acknowledge these factors in most cases. Instead, I am making two far more modest claims: First, that these three factors guide statutory interpretation and second, that—at least in extreme circumstances—every judge is willing to consider each of these factors.[57] It is, for example, apparent that even the most ardent textualist will look to the legislative history if that is necessary to avoid an absurd result. Likewise, even the most dedicated intentionalist or

---

debtor's loans were not qualified education loans because the foreign medical school—which was unlicensed and unaccredited—was not an eligible educational institution).

[56] *See, e.g.*, Muriel Morisey Spence, *The Sleeping Giant: Textualism as Power Struggle*, 67 S. CAL. L. REV. 585, 586 (1994) ("There are many approaches to statutory interpretation precisely because judges so often must decide how to apply ambiguous statutory provisions to specific cases.").

[57] *See, e.g.*, HENRY J. FRIENDLY, BENCHMARKS 200 (1967) ("Indeed the same judges—even very great ones—give different emphasis at different times to the two souls that dwell within their breasts. Thus Holmes, whom Frankfurter quoted as saying of legislators, 'I don't care what their intention was. I only want to know what the words mean,' wrote also that 'the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down,' and even that 'the meaning of a sentence is to be felt rather than to be proved.'"). Whether all judges will admit to considering each of these factors is a different matter. *See* TOBIAS A. DORSEY, LEGISLATIVE DRAFTER'S DESKBOOK: A PRACTICAL GUIDE 75–76 (2006) ("Courts consider everything they can, including policy," but "[w]hether they admit in writing to doing so is another matter.").

purposivist will give weight to the textual language if the meaning is clear and permits only one interpretation.

Accordingly, the dispute among the different interpretive camps is not over which factors merit examination but rather over the relative weight that the various factors should have in the final determination. For textualists, the statutory text is primary.[58] For intentionalists, legislative intent is worthy of greater deference,[59] and for pragmatists, policy considerations are most important.[60] It is when these factors—text, legislative intent, and policy effects—point towards different legal meanings that conflicts arise.[61]

Fortunately, the present case is not one of these situations. All three factors mandate the same conclusion—namely, a narrow reading of the term "educational benefit." The broad reading of the term that dominates judicial discourse today was borne not out of a differing interpretive methodology but rather out of a fundamental misreading of the text, legislative history, and policy consequences of the statute. In the remainder of this Article, I show where the courts have gone wrong and why a narrow reading of the statute is required regardless of one's preferred interpretive framework.

A. Text

---

[58] For a defense of textualism, see generally ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3–48 (1997); *see also* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (Textualists "look for meaning in the governing text, ascribe to that text the meaning that it has borne from its inception, and reject judicial speculation about both the drafters' extratextually derived purposes and the desirability of the fair reading's anticipated consequences.").

[59] For a defense of intentionalism, see generally KEITH E. WHITTINGTON, CONSTITUTIONAL INTERPRETATION 1–16 (1999). Purposivism is a related—though distinct—theory that places great weight on the purpose of the statute. For a defense of this theory and a discussion of its use in statutory interpretation, see generally STEPHEN BREYER, ACTIVE LIBERTY: INTERPRETING OUR DEMOCRATIC CONSTITUTION 85–101 (2005).

[60] For a defense of pragmatism, see generally RICHARD A. POSNER, HOW JUDGES THINK 93–124 (2010). For another theory that falls under the same umbrella, see generally WILLIAM ESKRIDGE, DYNAMIC STATUTORY INTERPRETATION 9–106 (1994) (defending an account he refers to as "critical pragmatism").

[61] *See* William N. Eskridge, Jr., *Dynamic Statutory Interpretation*, 135 U. PA. L. REV. 1479, 1483 (1987) ("[S]tatutory interpretation involves the present-day interpreter's understanding and reconciliation of three different perspectives, no one of which will always control. These three perspectives relate to (1) the statutory text, which is the formal focus of interpretation and a constraint on the range of interpretive options available (textual perspective); (2) the original legislative expectations surrounding the statute's creation, including compromises reached (historical perspective); and (3) the subsequent evolution of the statute and its present context, especially the ways in which the societal and legal environment of the statute has materially changed over time (evolutive perspective).").

For any issue of statutory interpretation, the starting point is the text of the statute itself.[62] If the language is clear and unambiguous, the inquiry ends there.[63] This approach—known as the "plain meaning rule"—is a hallmark of judicial interpretation and is a fundamental principle for resolving cases in which the meaning of a text is in dispute.[64] With that in mind, I begin my analysis with the statutory text.

This choice, of course, requires defining the scope of the inquiry. Should the investigation be limited to the dictionary definition of the particular terms in dispute? Or is how Congress uses the same language in other sections of the statute relevant? Or perhaps understanding the text requires determining the overall purpose of the statute? In grappling with these questions, the Supreme Court has emphasized that "[s]tatutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law."[65]

Before looking at the entire statute, however, it makes sense to first review the provision in dispute. Only then is it possible to expand outward to evaluate how the possible interpretations fit into the broader statute. The relevant provision reads as follows: "A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt . . . (8) unless excepting such debt from

---

[62] *See* Ross v. Blake, 136 S.Ct. 1850, 1856 (2016) ("Statutory interpretation, as we always say, begins with the text.") (citing Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 251 (2010)). As Justice Frankfurter's "threefold imperative to law students" goes, "(1) Read the statute; (2) read the statute; (3) read the statute!" HENRY J. FRIENDLY, BENCHMARKS 202 (1967) (quoting Justice Frankfurter).

[63] *See* King v. Burwell, 135 S Ct 2480, 2489 (2015) (noting that "[i]f the statutory language is plain, we must enforce it according to its terms."); Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253–54 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'"). In recent years, the Supreme Court has relied in even greater part on the statutory text. *See* John F. Manning, *The New Purposivism*, 2011 SUP. CT. REV. 113, 124–27 (arguing that "except in cases of absurdity, the Court no longer claims the authority to deviate from the clear import of the text").

[64] The plain meaning rule applies in any area of law where the meaning of a text is in dispute. *See, e.g.*, N.L.R.B. v. Enterprise Leasing Co. Southeast, LLC, 722 F.3d 609, 664 (Duncan, J., concurring) ("The first rule of constitutional interpretation is, of course, to apply the plain meaning of the text.") (citing McPherson v. Blacker, 146 U.S. 1, 13 S.Ct. 3, 36 L.Ed. 869 (1892)); Evans v. Stephens, 387 F.3d 1220, 1229 (11th Cir. 2004) ("The first rule of constitutional interpretation is to look to the plain meaning of the Constitution's text.") (citing Solorio v. United States, 483 U.S. 435, 447, 107 S.Ct. 2924, 97 L.Ed.2d 364 (1987)); 5 Margaret N. Kniffin, Corbin on Contracts § 24.7, at 33 (Joseph M. Perillo ed. 1998) ("[I]f a 'clear, unambiguous' meaning is discernible in the language of the contract, no extrinsic evidence of surrounding circumstances may be admitted to challenge this interpretation.").

[65] United Savings Ass'n v. Timbers of Inwood Forest Associates, 484 U.S. 365, 371 (1988) (citations omitted).

discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for . . . (ii) an obligation to repay funds received as an educational benefit . . . ."[66]

The language up until the second ellipsis is straightforward. It states that, absent undue hardship, a bankruptcy discharge does not eliminate the debtor's need to repay certain debts. Courts have read the statutory language in this way, and it seems undeniable that this interpretation is correct. Following that point, however, the standard interpretation falters.

The statute sets forth a number of nondischargeable educational debts and lists among them "an obligation to repay funds received as an educational benefit . . . ."[67] Notably, "educational benefit" is not defined anywhere in the Bankruptcy Code, so determining its meaning requires other interpretive tools.[68] One common tool is to look at the ordinary, everyday meaning of the term. Upon first pass, most people would likely understand the statutory language to include any debt that an individual incurs for the intended purpose of advancing her education. In this reading, "benefit" is taken to be equivalent to "an advantage or profit gained from something."[69] The majority of courts have adopted this interpretation, and I henceforth refer to it as the Broad Reading.

There is something to be said for the Broad Reading. Not only is it consistent with one common usage of the words, but also it reflects the primary dictionary definition of the term "benefit."[70] As *The American Heritage Dictionary* states, the principle meaning of benefit is "[s]omething that promotes or enhances well-being; an advantage."[71] Likewise, the *Merriam-Webster Dictionary* lists the primary definition as "something that produces good or helpful results or effects or that promotes well-being."[72]

Although the dictionary definitions are in line with the Broad Reading, that alone is not sufficient to reveal the plain meaning and conclude the inquiry. As any speaker of English knows, words have multiple meanings and, oftentimes, the most sensible reading of a word in a particular context is not its most common reading.

With that in mind, I turn to the secondary meaning of "benefit." According to the dictionary, "benefit" can also mean "a payment or gift made by an employer, the state, or an insurance company."[73] This phrasing may sound a bit unusual, but it captures a common way in which "benefit"

---

[66] 11 U.S.C. § 523(a)(8) (2005).

[67] 11 U.S.C. § 523(a)(8) (2005).

[68] *See* In re Vasa, 2014 WL 6607512 *3 (Bankr. S.D. 2014) ("The term 'educational benefit' is not defined in § 523(a)(8)(A)(ii) or in any other provision of the bankruptcy code.").

[69] *Benefit*, OXFORD ENGLISH DICTIONARY, https://en.oxforddictionaries.com/definition/benefit.

[70] *See id.*

[71] *Benefit*, THE AMERICAN HERITAGE DICTIONARY, https://ahdictionary.com/word/search.html?q=benefit.

[72] *Benefit*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/benefit.

[73] *Benefit*, DICTIONARY.COM, http://www.dictionary.com/browse/benefit?s=t.

is used. Consider, for instance, the terms "unemployment benefits," "insurance benefits," "social security benefits," "retirement benefits," and "welfare benefits." The core feature behind these types of benefits is not that they promote an individual's well-being (although they do) but rather that they provide monetary assistance that the beneficiary is entitled to receive.[74] The payment may come from the state, an employer, or an insurance company, but in each instance, the payer is distributing guaranteed benefits.[75]

Although most Americans are more familiar with the aforementioned types of benefits, such distributions also occur in the educational context and are, in those circumstances, referred to as "educational benefits." To be more precise, this term denotes conditional educational grants—i.e., educational funds that a student receives in exchange for agreeing to perform services in the future.

A salient example of this type of educational benefit is the Reserve Officer Training Corps program. This program covers the cost of college for students who meet certain qualifications and agree to serve in the military for a given number of years (generally four to ten) following graduation.[76] Another example is the federally funded National Health Service Corps scholarship, a program which pays the tuition for medical school students who agree to spend a fixed period of time working in underserved areas after graduation.[77] Notably, these programs are not loaning money but rather offering conditional educational grants. They are, in other words, providing educational benefits under the second definition of the term. I refer to this interpretation of the provision as the Narrow Reading.

Thus far, it seems that the dictionary analysis yields two plausible readings of the term "educational benefit." The Broad Reading encompasses any funds that are used to provide an educational advantage, while the Narrow Reading is limited to conditional educational grants. Given the existence of competing interpretations, some method for selecting between these possibilities is necessary. Fortunately, textualists have a strategy for resolving statutory ambiguities such as this. They pull back the lens to see whether the surrounding clauses or the broader statute provide any clues as to the appropriate meaning.

The initial step in this analysis is to look at the words that surround

---

[74] *See* OXFORD ENGLISH DICTIONARY, *supra* note 69 ("A payment made by the state or an insurance scheme to someone entitled to receive it.").

[75] *See* MERRIAM-WEBSTER DICTIONARY, *supra* note 72 (offering one definition of "benefit" as "financial help in time of sickness, old age, or unemployment . . . a payment or service provided for under an annuity, pension plan, or insurance policy . . . a service (such as health insurance) or right (as to take vacation time) provided by an employer in addition to wages or salary").

[76] Scholarship America, *Get Money for College Through ROTC Programs*, U.S. NEWS & WORLD REPORT July 25, 2013, https://www.usnews.com/education/blogs/the-scholarship-coach/2013/07/25/get-money-for-college-through-rotc-programs.

[77] National Health Service Corps, *Scholarship Program Overview*, https://nhsc.hrsa.gov/scholarships/overview/index.html.

"educational benefit." Specifically, the statute excepts from discharge "an obligation to repay funds received as an educational benefit, scholarship, or stipend." The phrase "obligation to repay funds received" stands out as notable. This word choice, in particular, is extremely unusual—a characteristic that suggests the phrase has a specialized or nuanced meaning.

Despite this indication, a majority of courts have declined to comment on the odd nature of the phrase. Instead, they have opted to read "obligation to repay funds received" out of the statute and to insert the word "loan" in its place.[78] In doing so, these courts endorsed the Broad Reading of "educational benefit" and thereby shifted the inquiry away from the question of whether a debt was an educational benefit and to the question of whether a debt was a loan that conferred an educational benefit. Although similar sounding, there is a stark difference in these two categories, as the definitional examination above highlighted.

Strikingly, many courts that have taken this approach have failed to acknowledge their substitution,[79] instead simply assuming the change to be so unobjectionable as to be unworthy of mention.[80] As one Pennsylvania bankruptcy court declared without explanation, "Section 523(a)(8) protects . . . from discharge . . . *loans* received as an educational benefit, scholarship, or stipend."[81]

A substitution of this sort conflicts with a basic principle of statutory interpretation: where Congress has shown that it knows how to use a term, the absence of that term in the same or a related section of a statute should be taken as meaningful and deliberate.[82] As the Supreme Court has held in numerous cases, "where Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the

---

[78] *See, e.g.*, In re Beesley, 2013 WL 5134404, *4 (Bankr. W.D.Pa. 2013) (holding that loans could be "funds received as an educational benefit"); In re Belforte, 68 Collier Bankr.Cas.2d 829 *8 (Bankr. D. Mass. 2012) (holding that "under the plain language of 11 U.S.C. § 523(a)(8)(ii), the August 2007 Agreement is a loan for an educational benefit"); *see also* In re Rust, 510 B.R. 562, 567 (Bankr. E.D.Ky. 2014) (noting that "a majority of courts determine whether a loan qualifies as an 'educational benefit' by focusing on the stated purpose for the loan when it was obtained").

[79] *See* In re Christoff, 527 B.R. 624, 635 (9th Cir. BAP 2015) (observing that "those bankruptcy cases [in the majority], perhaps inadvertently, imprecisely quote the provisions of the discharge exception statute as applying to 'loans received,' as opposed to the 'obligation to repay funds received' ").

[80] *See e.g.*, In re Campbell, 547 B.R. 49, 54 (Bankr. E.D.N.Y. 2016) (noting that "[s]ome courts have decided without explanation, or assumed, that 'educational benefit,' as used in § 523(a)(8)(A)(ii), encompasses any loan which relates in some way to education").

[81] In re Rumer, 469 B.R. 553, 561 (Bankr. M.D.Pa. 2012) (emphasis added).

[82] *See, e.g.*, Duncan v. Walker, 533 U.S. 167, 173 (2001) (observing that "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion") (internal quotations omitted); Keene Corp. v. United States, 508 U.S. 200, 208 (1993).

disparate inclusion or exclusion."[83] Accordingly, when a term is ambiguous, courts should should disfavor a reading that is clearly and directly captured by a different term that Congress has already proven it knows how to use.[84]

The key question, then, is as follows: if Congress meant "loan," why did it not simply say "loan" rather than enact the clunky circumlocution "obligation to repay funds received." After all, Congress used the word "loan" three times in section 523(a), so this is not an instance of ignorance. To the contrary, the evidence suggests that Congress' choice to forego the term "loan" in this portion of the statute represented a considered decision. Therefore, if we are to take the Supreme Court's interpretative principle seriously, there is no option but to conclude that "obligation to repay funds received" refers to something other than a loan. Recently, a small number of courts have endorsed precisely this argument.[85]

The case of *In re Christoff* is the most prominent.[86] Focusing on Congress' word choice, the Ninth Circuit Bankruptcy Appellate Panel emphasized that §523(a)(8)(A)(ii) "excepts from discharge only those debts that arise from 'an obligation to repay funds received as an educational benefit,' and must therefore be read as a separate exception to discharge as compared to that provided in § 523(a)(8)(A)(i) for a debt for an 'educational overpayment or loan' made by a governmental unit or nonprofit institution or, in § 523(a)(8)(B), for a 'qualified education loan.'"[87] The court went on to explain that

> [The appellant's] arguments conflating "loan" as used in § 523(a)(8)(A)(i) and (a)(8)(B) . . . with "an obligation to repay funds received" as provided in § 523(a)(8)(A)(ii) are unconvincing. According to [the appellant], "[t]here is no reason why the word 'funds' should not be interpreted in the same light that 'loans' has been interpreted in prior cases in the Ninth Circuit . . . " In effect, [the appellant] argues that we should read § 523(a)(8)(A)(ii) to say "loans received" as opposed to "funds received." But this we must not do . . . . Instead, we must presume that, in organizing the provisions of § 523(a)(8) as it did in BAPCPA, Congress intended

[83] Keene Corp. v. United States, 508 U.S. 200, 208 (1993) (quoting Rusello v. United States, 464 U.S. 16, 23 (1983)). *See* Bailey v. United States, 516 U.S. 137, 146 (1995) (concluding that the term "used" does not encompass intended uses of a firearm because Congress had used the phrase "intended to be used" in a parallel provision of the statute and, therefore, the absence of the words "intended to be" should be understood as meaningful and intentional).

[84] *See* Keene Corp., 508 U.S. at 208 (contrasting Congress' use of "jurisdiction to render judgment" with "jurisdiction" and emphasizing the Court's "duty to refrain from reading a phrase into the statute when Congress has left it out").

[85] *See, e.g.*, In re Essangui, 573 B.R. 614, 625 (Bankr. D. Md. 2017) ("the Court is not persuaded by the Defendant's argument that an 'obligation to repay funds' is equivalent to a loan").

[86] *See* In re Christoff, 527 B.R. 624 (9th Cir. B.A.P. 2015).

[87] *Id.* at 634.

> each subsection to have a distinct function and to target different kinds of debts.[88]

Based on this analysis, the Bankruptcy Appellate Panel rejected the argument that "educational benefit" refers to all debts incurred to advance one's education.[89] Adopting the Narrow Reading, the court concluded that the phrase only excepts from discharge conditional educational grants.[90]

Although significant, Congress' use of the phrase "obligation to repay funds received" is not the only textualist consideration that favors the Narrow Reading of "educational benefit." Recall that "educational benefit" is only one of three categories of obligations that Congress excepted from discharge in this subsection—scholarships and stipends being the other two. By including these two additional terms, Congress provided an important clue regarding the meaning of "educational benefit." Specifically, the fact these three terms are grouped together suggests that they have similar features and should be interpreted in relation to each other. As the Supreme Court has written, "a word is known by the company it keeps."[91]

This interpretative principle derives from *noscitur a sociis*, a fundamental rule of statutory construction holding "that the meaning of an unclear word or phrase, esp. one in a list, should be determined by the words immediately surrounding it."[92] In practice, the Supreme Court invokes this canon "where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress."[93]

The case of *Gustafson v. Alloyd Co.* provides an excellent illustration

---

[88] *Id.*

[89] *See id.* ; *see also* In re Kashikar, 567 B.R. 160, 167 (9th Cir. B.A.P. 2017) (holding that "a 'loan' is not an 'educational benefit' within § 523(a)(8)(A)(ii)").

[90] In re Christoff, 527 B.R. at 634 n.9 ("§ 523(a)(8)(A)(ii) is not a 'catch-all' provision designed to include every type of credit transaction that bestows an educational benefit on a debtor. Instead, this subsection includes a condition, distinct from those in the other subsections of § 523(a)(8), that must be fulfilled . . . .[T]his unique requirement, that "funds [be] received" by the debtor, mandates that cash be advanced to or on behalf of the debtor. In light of the many programs available to students which provide cash benefits to students, like veteran's educational benefits, stipends for teaching assignments, and cash scholarships, it is not absurd to assume that Congress intended the scope of § 523(a)(8)(A)(ii) to target obligations other than those arising from traditional student loans."); *see also* In re Decena, 549 B.R. 11, 19 (Bankr. E.D.N.Y. 2016) ("Because loans are specifically mentioned in subsection 523(a)(8)(A)(i) and are not mentioned in subsection 523(a)(8)(A)(ii), and because 'educational benefit' refers to funds not required to be repaid, the Court finds that Congress intended subsection 523(a)(8)(A)(ii) to refer to educational debts other than loans.").

[91] McDonnell v. U.S., 136 S.Ct. 2355, 2368 (2016) (internal quotations omitted).

[92] BLACK'S LAW DICTIONARY (10th ed. 2014) (translating the Latin as "it is known by its associates"); *see* Maracich v. Spears, 133 S.Ct. 2191, 2201 (2016) (noting that "the canon of noscitur a sociis 'counsels that a word is given more precise content by the neighboring words with which it is associated'") (quoting United States v. Williams, 553 U.S. 285, 294 (2008)).

[93] McDonnell, 136 S.Ct. at 2368 (internal quotations omitted).

of how the Court applies the doctrine of *noscitur a sociis*.[94] Central to this case was the meaning of the word "communication."[95] Rejecting the appellee's argument that "communication" should be read to refer to any written transmission of information, the Court emphasized that "communication" appears in a list of words and must, therefore, be read in conjunction with those surrounding words.[96] Observing that the accompanying terms of "prospectus, notice, circular, advertisement, [and] letter" refer to "documents of wide dissemination," the Court held that "communication" must, likewise, refer only to public transmissions of information and cannot be read to include private writings between two—or a small number of—parties.[97] In support of its decision, the Court wrote, "we rely upon [the canon of *noscitur a sociis*] to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words."[98]

The parallels between the statute in *Gustafson* and the student loan statute are too strong to ignore. There is a disputed term that is capable of two meanings.[99] One of these meanings is extremely broad; the other is narrow. And there are two accompanying terms in the list that suggest a narrow reading of the disputed term.[100] These factors suggest that the student loan provision is an ideal candidate for the canon of *noscitur a sociis*.

As one bankruptcy court that relied on this principle wrote, what "educational benefits," "scholarships," and "stipends" have in common is that "[u]nlike loans, [they] are conditional educational grants, which are not generally required to be repaid."[101] Viewed from this perspective, Congress'

---

[94] Gustafson v. Alloyd Co., Inc., 513 U.S. 561, 573–76 (1995). For other examples of how the Supreme Court has employed the canon of *noscitur a sociis*, see McDonnell v. U.S., 136 S.Ct. 2355, 2368–69 (2016) (adopting a narrow definition for the terms "question" and "matter" because such a reading is "similar in nature" to the other words that complete the statutory list); Jarecki v. G. D. Searle & Co., 367 U.S. 303, 306 (1961) (Interpreting "discovery" in a "precise and narrow" manner on the ground that such a reading is required by the doctrine of *noscitur a sociis*).

[95] Gustafson, 513 U.S. at 573–76.

[96] *See id.* at 574 ("The word "communication," however, on which Alloyd's entire argument rests, is but one word in a list, a word Alloyd reads altogether out of context.").

[97] *Id.* at 575.

[98] *Id.*; *see* Yates v. U.S., 135 S.Ct. 1074, 1087 (2015) (internal quotation marks omitted) ("[W]e rely on the principle of *noscitur a sociis*—a word is known by the company it keeps—to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.").

[99] *See, e.g.*, McDonnell v. U.S., 136 S.Ct. 2355, 2368 (2016) ("To choose between . . . competing definitions, we look to the context in which the words appear [as required by] the familiar interpretive canon *noscitur a sociis* . . . .").

[100] *See, e.g.*, Dole v. United Steelworkers of America, 494 U.S. 26, 36 (1990) (noting that "words grouped in a list should be given related meaning").

[101] In re Decena, 549 B.R. 11, 19 (Bankr. E.D.N.Y. 2016); *see* In re Campbell, 547 B.R. 49, 55 (Bankr. E.D.N.Y. 2016) ("[T]he canon of statutory construction known as *noscitur a sociis* instructs that when a statute contains a list, each word in that list presumptively has a similar meaning. To the extent that educational benefit (defined nowhere in the Bankruptcy Code) is ambiguous, it should be presumed to have a meaning similar to the other items in the list set forth in § 523(a)(8)(A)(ii). Scholarship and stipend

decision to group these terms together and preface them with the phrase "obligation to repay funds received" makes complete sense. The subsection was designed to except from discharge grants of money that are tied to service obligations—a category wholly distinct from loans.[102] In other words, the canon of *noscitur a sociis* provides further support for the Narrow Reading.[103]

Another core interpretive principle that bears on this case is the canon against surplusage .[104] As its name suggests, this canon holds that courts must "give effect, if possible, to every clause and word of a statute."[105] This mandate creates a strong presumption against reading statutory terms or phrases in a manner that duplicates other terms or renders entire clauses superfluous.[106] To do otherwise, the canon holds, would cast Congress as an inarticulate drafter who deploys redundant language. Emphasizing the canon's importance, the Supreme Court has—on numerous occasions—described it as a "cardinal principle of statutory construction."[107]

---

both refer to funds which are not generally required to be repaid by the recipient. Therefore, in the absence of plain meaning to the contrary, or compelling legislative history, educational benefit must be understood to refer to something other than a loan, especially given that Congress uses the word loan elsewhere in § 523(a)(8). The concept which unites the three separate terms in the list in § 523(a)(8)(A)(ii) is that they all refer to types of conditional grants.").

[102] *See id.* (concluding that, based on this analysis, "[i]t follows that 'educational benefit' does not encompass loans").

[103] *See* Austin Smith, *Where a Student Loan is Not Really a Student Loan*, GET OUT OF DEBT Guy, Dec. 29, 2016, https://getoutofdebt.org/100708/private-student-loan-may-able-eliminated-bankruptcy (applying the canon of *noscitur a sociis* to § 523(a)(8)(A)(ii) and arguing that it supports a narrow reading of "educational benefit").

[104] This canon is frequently discussed in conjunction with *noscitur a sociis* and, like that canon, supports the Narrow Reading of "educational benefit." *See, e.g.*, McDonnell v. U.S., 136 S.Ct. 2355, 2369 (2016) (observing that the "more limited reading [required by the canon of *noscitur a sociis*] also comports with the presumption 'that statutory language is not superfluous'") (quoting Arlington Central School Dist. Bd. of Ed. v. Murphy, 548 U.S. 291, 299, n.1 (2006); Bullock v. BankChampaign, N.A., 569 U.S. 267, 274 (2013) (discussing the canon of *noscitur a sociis* and the canon of surplusage and finding that they both favor the same reading of the disputed term).

[105] N.L.R.B. v. SW General, Inc., 137 S.Ct. 929, 941 (2017) (internal quotation marks omitted); *see* TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (noting that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant") (internal quotation marks omitted); Mackey v. Lanier Collection Agency & Serv., Inc., 486 U.S. 825, 836 (1988) ("As our cases have noted in the past, we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.").

[106] *See* Corley v. United States, 556 U.S. 303, 314 (2009) (explaining that "one of the most basic interpretative canons" is that " '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant' ") (quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004)). Matthew R. Christianson & William N. Eskridge, Jr., *Congressional Overrides of Supreme Court Statutory Interpretation Decisions*, 92 TEX. L. REV. 1317, 1447 (2014) (noting that the "presumption against surplusage . . . presumes each term or phrase in a statute adds something and does not duplicate another term or phrase")

[107] *See, e.g.*, N.L.R.B., 137 S.Ct. at 941; Kirtsaeng v. John Wiley & Sons, Inc., 568 U.S.

On this dimension, the Broad Reading again fares poorly. To begin, it renders all the accompanying terms within § 523(a)(8)(A)(ii) irrelevant. Because scholarships and stipends both provide educational benefits, Congress would have had no reason to include them in the statute if the Broad Reading were correct. Although this is a point in favor of the Narrow Reading, there is a more compelling one.

To fully appreciate the extent to which the Broad Reading violates the canon against surplusage, it is necessary to step back even further and look at all of § 523a(8). Recall that this section of the statute contains three clauses, each of which excepts distinct educational debts from discharge. In addition to the provision excepting scholarships and stipends, there is a clause that excepts any "educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution"[108] and a third clause that excludes "any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual."[109]

Under the Broad Reading, these additional clauses are superfluous.[110] Debt obligations backed by the federal government or non profit institutions and qualified educational loans both fall under the broad interpretation of educational benefit. These exceptions are undeniably funds that recipients use to advance their educations. Therefore, when courts adopt the Broad Reading, they render irrelevant every other exception that Congress set forth in these three clauses. This is a clear violation of the canon against surplusage,[111] particularly given the existence of an alternative reading that preserves meaning for all three sections of the statute.[112] As the Supreme Court has held in similar contexts, it is

519, 567 (2013); Alaska Dept. of Environmental Conservation v. E.P.A., 540 U.S. 461, 489 n.13 (2004); TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001); Duncan v. Walker, 533 U.S. 167, 174 (2001).

[108] 11 U.S.C. § 523(a)(8)(A)(i) (2005).

[109] *Id.* at § 523(a)(8)(B).

[110] *See* In re Scott, 287 B.R. 470, 474 (Bankr. E.D. Mo. 2002) ("If the third provision of section 523(a)(8) were interpreted to mean that all educational loans were excepted from discharge then the first two categories . . . would certainly be rendered meaningless and superfluous . . . . The third category would subsume the first two provisions and make them completely unnecessary. Such an interpretation is contrary to statutory interpretation and to common sense.").

[111] *See* Chevron Mining Inc. v. United States, 863 F.3d 1261, 1283 n.15 (10th Cir. 2017) (citing Marx v. Gen. Revenue Corp., 568 U.S. 371, 133 S.Ct. 1166, 1178, 185 L.Ed.2d 242 (2013)) ("The canon against surplusage indicates that we generally must give effect to all statutory provisions, so that no part will be inoperative or superfluous—each phrase must have distinct meaning.").

[112] *See* Microsoft Corp. v. I4I Ltd. Partnership, 564 U.S. 91, 106 (2011) (quoting Duncan v. Walker, 533 U.S. 167, 174 (2001) ("The canon against superfluity assists only where a competing interpretation gives effect 'to every clause and word of a statute.' "); Yates v. U.S., 135 S.Ct. 1074, 1085 (2015) (quoting Marx v. General Revenue Corp., 568 U.S. 371, 386 (2013)) ("'[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.'").

imperative to "resist a reading of [a term] that would render superfluous an entire provision passed in proximity as part of the same Act."[113]

Although the vast majority of courts have continued to adhere to the Broad Reading, in the past couple of years, a small number of bankruptcy judges have embraced the Narrow Reading on the basis of this argument.[114] As one such court wrote, the Broad Interpretation "would render § 523(a)(8)(B) . . . superfluous and makes no sense. After all, if any educational loans of any kind are excepted from discharge by § 523(a)(8)(A)(ii), what addition does excepting qualified educational loans under the Internal Revenue Code make to the discharge exception? [Those loans] would be no more than a subset of such loans already excepted from discharge under § 523(a)(8)(A)(ii)"[115]

Similarly, another court observed that the Broad Reading "effectively find[s] that subsection 523(a)(8)(A)(i) is subsumed by subsection 523(a)(8)(A)(ii). Such an interpretation also results in subsection 523(a)(8)(B) being subsumed by subsection 523(a)(8)(A)(ii), and renders subsection 523(a)(8)(B) superfluous. It defies logic to suggest that Congress added subsection 523(a)(8)(B) in 2005 to encompass a subset of loans already covered under subsection 523(a)(8)(A)(ii)."[116] Ultimately, this court endorsed the Narrow Reading, finding "that section 523(a)(8)(A)(ii) is not a 'catch-all' provision designed to encompass any educational claim arising out of any transaction that bestows an educational benefit on a debtor."[117]

Before this section concludes, it is necessary to discuss one final textualist principle—the whole act canon. This rule of statutory construction instructs that provisions of a statute must be read in the context of the entire statute.[118] One of the key corollaries of this canon is

---

[113] Yates v. U.S., 135 S.Ct. 1074, 1085 (2015); *see also* ("'As our cases have noted in the past, we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law'") U S. v. Jicarilla Apache Nation, 564 U.S. 162, 185 (2011) (quoting Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825, 837, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988)))

[114] *See, e.g.*, In re Christoff, 527 B.R. 634 (9th Cir. B.A.P. 2015) ("[W]e must presume that, in organizing the provisions of § 523(a)(8) as it did in BAPCPA, Congress intended each subsection to have a distinct function and to target different kinds of debts.").

[115] In re Nunez, 527 B.R. 410, 415 (Bankr. D. Ore. 2015); *see* In re Schultz, 2016 WL 8808073 *3 (Bankr. D.Minn.) (reaching the same conclusion).

[116] In re Decena, 549 B.R. 11, 19 (Bankr. E.D.N.Y. 2016).

[117] *Id. See also* In re Scott, 287 B.R. 470, 474 (Bankr. E.D. Mo. 2002) (Educational benefit "clearly has a plain meaning. It does not need to be construed broadly to except all loans for educational benefits from discharge . . . An example of such an obligation would be for funds provided as grants that must be repaid only under certain conditions (like the failure of a medical student grant recipient to practice in a physician shortage area after graduation).").

[118] *See* U.S. v. Cooper, 396 F.3d 308, 313 (3rd Cir. 2005) (writing that the "Whole Act Rule instructs that subsections of a statute must be interpreted in the context of the whole enactment"); WILLIAM N. ESKRIDGE, JR. & PHILLIP P. FRICKEY, LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY 646 ("The key to the whole act approach is, therefore, that all provisions and other features of the enactment must be given force, and provisions must be interpreted so as not to derogate from the force of other provisions and features of the whole statute.").

that "identical words used in different parts of the same statute carry the same meaning."[119] Therefore, to understand the meaning of "educational benefit" in this context, it is worth looking at how the term is used elsewhere in the statute.[120]

As you may recall, the phrase "educational benefit" does appear in an earlier provision—namely, § 523(a)(8)(A)(i).[121] In that instance, it takes the following form: "an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution."[122] Notably, the phrase has not been a subject of controversy in this context. Even more interestingly, though, in interpreting this provision, courts have consistently adopted a meaning that tracks the Narrow Reading. They have, in other words, concluded that "educational benefit overpayments" are excess payments made as part of conditional educational grants. An opinion by a New Mexico district court provides a clear, representative explanation: "Educational benefit overpayment occurs in programs like the GI Bill, where students receive periodic payments upon their certification that they are attending school. When a student receives funds but is not in school, this is a [sic] educational benefit overpayment."[123]

To use "educational benefit" in completely different ways in related sections of the same statute would be to disregard the whole act canon. The whole act canon provides an imperative to choose a consistent interpretation, and the other textualist considerations show that the Narrow Reading in the only plausible option. Quite simply, on the textualist front, the evidence is overwhelming. From the canon against surplusage to the canon of *noscitur a sociis* to the whole act canon, the principle tools in the textualist toolkit all favor the Narrow Reading.

B. Legislative Intent

Although certain strains of textualism maintain that the text is the only relevant consideration,[124] most judges are open to the possibility that

---

119 Henson v. Santander Consumer USA Inc., 137 S.Ct. 1718, 1723 (2017).

120 *See* U.S. v. Ticklenberg, 563 U.S. 647, 666 (2011) (noting that "[i]dentical words used in different parts of a statute are presumed to have the same meaning absent indication to the contrary").

121 *See supra* Part I.A.

122 11 U.S.C. § 523(a)(8)(A)(i).

123 In re Coole, 202 B.R. 518, 519 (Bankr. D. N.M. 1996); *see also* In re Alibatya, 178 B.R. 335, 338 (Bankr. E.D. N.Y. 1995) ("Clearly, Plaintiff's failure to pay his student housing obligations cannot be deemed debt for 'an educational benefit overpayment.' Defendant paid nothing to Plaintiff. NYU merely allowed Plaintiff to live at school facilities in consideration for certain charges which were not paid. No linguistic gyration can twist a no payment or underpayment by Plaintiff to an overpayment by Defendant.").

124 *See, e.g.*, Harbison v. Bell, 556 U.S. 180, 198 (2009) ("Congress' intent is found in the words it has chosen to use.") (Thomas, J., concurring); Felix Frankfurter, *Some*

legislative history can illuminate the meaning of a statute.[125] Even among those who fall into this latter camp, however, there is disagreement over the appropriate use of legislative history. Some judges maintain that it is only relevant when the statutory language is ambiguous,[126] but others are willing to look to legislative history even in circumstances where the plain meaning is apparent from the text alone.[127] Fortunately, regardless of how much weight one places on legislative history, the best reading of the student loan discharge statute remains unchanged. The legislative history—just like the statutory text—demands the Narrow Reading of "educational benefit."

To understand legislative intent in this context, one must understand the evolution of § 523(a)(8). Accordingly, I start the discussion in 1976. Prior to that year, educational debt held no special status in the Bankruptcy Code. It could be discharged via the normal bankruptcy process in the same manner as other unsecured claims.[128] With the passage of the Higher Education Amendments of 1976, however, the situation changed.[129] That legislation excepted federally guaranteed student loans from discharge for a period of five years after first becoming due.[130] To

---

Reflections on the Reading of Statutes, 47 COLUM. L. REV. 527, 538 (1947) (quoting Oliver Wendell Holmes) ("I don't care what [Congress'] intention was. I only want to know what the words mean."). *See also* ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3–48 (1997).

125 *See, e.g.*, Milner v. Dep't of Navy, 562 U.S. 562, 572 (2011) ("Those of us who make use of legislative history believe that clear evidence of congressional intent may illuminate ambiguous text."); Bruesewitz v. Wyeth LLC, 562 U.S. 223, 242 (2011) ("[L]egislative history is persuasive to some because it is thought to shed light on what legislators understood an ambiguous statutory text to mean when they voted to enact it into law."); Stephen Breyer, *On the Uses of Legislative History in Interpreting Statutes*, 65 S. CAL. L. REV. 845, 848 (1992) ("Using legislative history to help interpret unclear statutory language seems natural. Legislative history helps a court understand the context and purpose of a statute.");

126 *See* United States v. Woods, 134 S Ct 557, 567 n.5 (2013) ("Whether or not legislative history is ever relevant, it need not be consulted when, as here, the statutory text is unambiguous.").

127 *See* Darby v. Cisneros, 509 U.S. 137, 147 (1993) (observing that "[r]ecourse to the legislative history . . . is unnecessary in light of the plain meaning of the statutory text," but nonetheless choosing to review the legislative history and finding that it is consistent with the Court's interpretation of the statute).

128 *See* 11 U.S.C. § 35(a) (1976) (omitting student loans from the list of nondischargeable debts); Jean Braucher, *Mortgaging Human Capital: Federally Funded Subprime Higher Education*, 69 WASH. & LEE L. REV. 439, 473 (2012) (noting that "[s]tudent loans were dischargeable until 1976").

129 See Higher Education Amendments of 1976, Pub. L. No. 94-482, §127(a), 90 Stat. 2081, 2141 (codified at 20 U.S.C. §1087-3 (1976)).

130 The restriction was inserted in the Bankrutpcy Code at 11 U.S.C. § 523(a)(8) (1978) ("A discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt—,

> (8) to a governmental unit, or a nonprofit institution of higher education, for an educational loan, unless—,
>
> (A) such loan first became due before five years before the date of the filing of the petition; or
>
> (B) excepting such debt from discharge under this paragraph will impose an undue

discharge student loan debt during the five-year period, a debtor would have to prove undue hardship.

Congress mandated this waiting period to prevent abuse and protect the integrity of the federal student loan system.[131] The alleged fear was that recent graduates were exploiting the system by taking on publicly guaranteed debts and then discharging them through bankruptcy once they received their university degrees.[132] Because recent graduates generally have little in the way of assets, such a strategy would permit unscrupulous debtors to foist the entire cost of their education upon taxpayers.[133]

Over the years, Congress has carved out additional exceptions under the guise of protecting the student loan market from such unscrupulous debtors. For instance, in 1979, Congress amended the Bankruptcy Code so that the five-year waiting period would toll during loan deferment and forbearance periods.[134] And in 1984, they expanded the set of nondischargeable student loans to include those that are funded by any nonprofit institutions.[135]

Even greater changes came in 1990. That year, Congress extended the waiting period from five years to seven years and—more importantly for our purposes—added to the list of nondischargeable debts any "obligation to repay funds received as an educational benefit, scholarship or stipend."[136] During the congressional hearings there was only one exchange that mentioned this addition to the statute. It transpired when

---

hardship on the debtor and the debtor's dependents;").

131 *See, e.g.*, Roundtree–Crawley v. Educ. Credit Mgmt. Corp., (In re Crawley), 460 B.R. 421, 432 (Bankr. E.D.Pa. 2011) (citing In re Pelkowski, 990 F.2d 737, 743 (3rd Cir. 1993)). ("Section 523(a)(8) is intended to prevent abuse of the bankruptcy process as well as to preserve the integrity of the student loan program by protecting it from fiscal doom."); In re Segal, 57 F.3d 342, 348 (3rd Cir.1995) (citing 124 Cong.Rec. 1791–98 (1978)) ("Although limited, the legislative history of section 523(a)(8) teaches that the exclusion of educational loans from the discharge provisions was designed to remedy abuses of the educational loan system by restricting the ability of a student to discharge an educational loan by filing for bankruptcy shortly after graduation, and to safeguard the financial integrity of educational loan programs.").

132 *See, e.g.*, Corso v. Walker, 449 B.R. 838, 846 (W.D. Pa. 2011) (quoting Pelkowski, 990 F.2d at 744) ("Congress sought to help 'preserve the integrity of the student loan program' and, thus, protect creditors from the 'legal loophole' which permitted the practice of students receiving the benefit of higher education and then discharging their student loans before they became 'wage-earning members of the community.'").

133 *See, e.g.*, "In re Renshaw, 222 F.3d 82, 86–87 (2d Cir. 2000) (observing that "because student loans are generally unsecured and recent graduates often have few or no assets, these debtors have an incentive to try to discharge their educational loans in bankruptcy. If successful, they can then enjoy the higher earning power the loans have made possible without the financial burden that repayment entails."); H.R. Rep. No. 95-595, 536 (1977) (statement of Rep. Ertel) (arguing that dischargeable student loans "encourage fraud").

134 *See* Pub. L. No. 96-56, 93 Stat. 387, 387 (1979) (modifying the waiting period so that it is "exclusive of any applicable suspension of the repayment period").

135 *See* Pub. L. No. 98-353, 98 Stat. 333, 376 (1984) (striking out "of higher education" in the phrase "nonprofit institution of higher education").

136 *See* The Crime Control Act of 1990, Pub. L. No. 101-647, § 3621(1), 104 Stat. 4789, 4965 (1990).

the chairman of the Subcommittee on Economic and Commercial Law asked the U.S. attorney for the Eastern District of Texas to explain "[t]he specific problem [the provision] is designed to address."[137]

The response to the question was as follows:

> This section adds to the list of non-dischargeable debts, obligations to repay educational funds received in the form of benefits (such as VA benefits), scholarships (such as medical service corps scholarships) and stipends. These obligations are often very sizeable and should receive the same treatment as a "student loan" with regard to restrictions on dischargeability in bankruptcy.[138]

This answer precisely aligns with the Narrow Reading. It states that educational benefits are not loans but rather "educational funds received in the form of benefits."[139] They are, in other words, conditional educational grants. In addition to giving VA benefits as an example, the U.S. attorney provided further evidence of the meaning of educational benefit by citing the Eighth Circuit case of U.S. Department of Health and Human Services v. Smith.[140]

Smith was a 1986 case that centered on a medical student who had been awarded approximately fourteen thousand dollars in tuition assistance from the Physician Shortage Area Scholarship Program—a federal program designed to encourage physicians to work in underserved areas.[141] As a condition of receiving the award, Smith agreed to practice medicine in an area with a physician shortage for three years following the completion of his medical training.[142] After graduation, however, Smith declined to work in an area that satisfied the terms of the agreement.[143] In response to Smith's breach, the U.S. Department of Health and Human Services sought to collect from him approximately twenty-eight thousand dollars—an amount that included the principal of the original award plus interest.[144] Shortly thereafter, Smith filed for bankruptcy.[145]

The question before the court was whether the tuition assistance qualified as a nondischargeable loan. At the time, §523(a)(8) only excepted from discharge debts " 'for an educational loan made . . . by a governmental unit, or made under any program funded . . . by a governmental unit.' "[146] Both the bankruptcy court and district court found

---

[137] Federal Debt Collection Procedures of 1990: Hearing on P.L. 101–647 Before the H. Subcomm. on Econ. and Commercial Law, H. Judiciary Committee 101st Cong. 42 (June 14, 1990) (Mr. Brooks' Questions for the Record for Mr. Wortham).

[138] *Id.* at 74–75.

[139] *Id.* at 74.

[140] *Id.* at 75.

[141] U.S. Dep't of Health & Human Servs. v. Smith, 807 F.2d 122, 123 (8th Cir.1986).

[142] *Id.*

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] *Id.* at 124 (quoting 11 U.S.C. § 523(a)(8)).

that Smith's debt was not a "loan" and was, therefore, dischargeable.

On appeal, however, the eighth circuit reversed, holding that "loan" could be read to include contingent "obligation[s] to repay."[147] The Court based its decision, not on the language of the statute, but rather on the congressional purpose underlying the provision—namely, to prevent debtors from abusing the student loan system.[148] As the Court observed, "[a]lthough we recognize that the language of PSASP . . . arguably may give rise to certain ambiguities . . . the circumstances which led to the enactment . . . compels the conclusion that Congress intended § 523(a)(8) of the Bankruptcy Code to except from dischargeability debts incurred under scholarship programs such as PSASP." When Congress added the "educational benefit" language to § 523(a)(8) in 1990, it did so to codify the ruling in Smith and thereby eliminate the aforementioned ambiguity.[149]

In addition to Congress' awareness of *Smith*, another factor indicating that Congress intended the Narrow Reading is the absence of any discussion or debate over the provision. As mentioned, the sole reference to the meaning of "educational benefit" was the U.S. attorney's response to the congressman's question. If Congress had intended the clause to except from discharge all debts that advanced a debtor's education, surely it would have engendered substantial debate and public opposition from at least some legislators. The fact that none of them discussed the provision, much less objected to its inclusion, strongly suggests that Congress intended the Narrow Reading. This is particularly true given that the congressional debate over the original 1978 student loan discharge exception was both extensive and contentious.[150]

Despite this strong evidence, in the nearly thirty years since Congress added the "educational benefit" language to § 523(a)(8), only a handful of courts have looked to the legislative history of the provision. To their credit, though, those courts have concluded that the Narrow Reading provides the correct interpretation of educational benefit. As one bankruptcy court held, the "legislative history unambiguously indicates that Congress added the phrase 'educational benefit' to section 523(a)(8) in order to" exempt from discharge conditional educational grants.[151]

---

147 *Id.* at 125–27.

148 *Id.* at 126–27.

149 In re Campbell, 547 B.R. 49, 55 (Bankr. E.D.N.Y. 2016) (reviewing the legislative history and determining that "[t]he phrase 'educational benefit' first appeared in § 523(a)(8) of the Bankruptcy Code in 1990, as codification of the holding in U.S. Dep't of Health & Human Servs. v. Smith").

150 *See* H.R. Rep. No. 95–595, 95th Cong., 1st Sess. 132–162 (1977), U.S. Code Cong. & Admin. News 1978, p. 5787; 124 Cong. Rec. H 466–472 (daily ed. February 1, 1978); S. Rep. No. 95–989, 95th Cong., 2d Sess. 79 (1978); 124 Cong. Rec. H 11096 (daily ed. Sept. 28, 1978); 124 Cong. Rec. S 17412 (daily ed. October 6, 1978); *see also* In re Boylen, 29 B.R. 924, 926 (Bankr. N.D. Ohio 1983).noting that "[w]ith regard to the [1978] exception to discharge for student loans, the legislative history is extensive, providing pages of debate and pages of congressional comments along with letters from individuals both in support of and opposing this exception to discharge").

151 In re Decena, 549 B.R. 11, 20 (Bankr. E.D.N.Y. 2016). The court observed that "Congress intended section 523(a)(8)(A)(ii) to encompass alternatives to the typical

Likewise, in finding that a bar exam loan from a for-profit lender was not an "educational benefit," another court determined that the Narrow Reading "is consistent with legislative history."[152] Like the textual analysis, the legislative history is clear. Congress intended that the phrase "obligation[s] to repay funds received as an educational benefit" refer only to a very small category of educational debt—namely, conditional educational grants.

C. Social Impact

The third major consideration—in addition to the text and legislative history—that many judges weigh when engaging in statutory interpretation is the social impact. William Eskridge, one of the foremost proponents of this policy-based approach to statutory interpretation, maintains that judges should ask " 'not only what the statute means abstractly, or even on the basis of legislative history, but also what it ought to mean in terms of the needs and goals of our present day society.' "[153] This analysis incorporates a normative dimension into statutory interpretation. Whereas the other methods ask what is, this method asks what ought to be.

In defense of this interpretative framework, Eskridge argues that, when ambiguities arise in a statute, "it seems sensible that 'the quest is not properly for the sense originally intended by the statute, [or] for the sense sought originally to be put into it, but rather for the sense which can be quarried out of it in the light of the new situation.' "[154] He goes on to write that "[i]nterpretation is not static, but dynamic. Interpretation is not an archeological discovery, but a dialectical creation. Interpretation is not mere exegesis to pinpoint historical meaning, but hermeneutics to apply that meaning to current problems and circumstances."[155] Judges must, in other words, be mindful of the real-world effects of their decisions.[156] In the present case, this normative analysis requires understanding the broader effect of the Bankruptcy Code and appreciating how the student loan exception fits into that framework.

The former inquiry is straightforward. For more than a century, the

---

debtor–creditor relationship in the education context. These alternatives encompass cash benefit programs, such as veteran educational benefits, stipends for teaching assignments, conditional grants, cash scholarships and other obligations that are distinct from traditional student loans." *Id.*

[152] In re Campbell, 547 B.R. 49, 55–60 (Bankr. E.D.N.Y. 2016).

[153] WILLIAM N. ESKRIDGE, JR., DYNAMIC STATUTORY INTERPRETATION 50 (1994) (quoting Arthur Phelps, *Factors Influencing Judges in Interpreting Statutes*, 3 VAND. L. REV. 456, 469 (1950)).

[154] William N. Eskridge, Jr., *Dynamic Statutory Interpretation*, 135 U. PA. L. REV. 1479, 1480 (1987).

[155] *Id.* at 1482.

[156] Ronald Dworkin envisions a similar, though somewhat more ambitious, framework in which statutory meaning changes as "law's integrity" develops. *See* RONALD DWORKIN, LAW'S EMPIRE 313–54 (1986).

Supreme Court has held that consumer bankruptcy laws exist to give individuals a "new opportunity in life," free and clear from crippling debts.[157] This bestowal of a second chance is referred to as bankruptcy's "fresh start" policy[158] and is what the Supreme Court has described as the "principal purpose of the Bankruptcy Code."[159] Over the decades, courts,[160] Congress,[161] and scholars[162] have repeatedly affirmed the importance of providing debtors with an opportunity to obtain a fresh start.

Notably, the mere fact that such individuals view the fresh start as a laudable policy goal does not mean that it is. Unlike with regard to analyses of legislative history, declarations by government officials are not conclusive determinants of the objective desirability of a given statutory reading. Instead, they merely serve as indirect evidence that can guide a

---

[157] *See* Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) (stating the fresh start policy is a "public as well as private interest, in that it gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt" (emphasis omitted)); Williams v. U.S. Fidelity & Guaranty Co., 236 U.S. 549, 554–55 (1915) ("It is the purpose of the bankrupt act to convert the assets of the bankrupt into cash for distribution among creditors, and then to relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.").

[158] For a discussion of the fresh-start policy*, see generally* Thomas H. Jackson, *The Fresh-Start Policy in Bankruptcy Law*, 98 HARV. L. REV. 1393 (1985).

[159] Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365, 365 (2007). Notably, bankruptcy has not always been tied to the idea of a fresh start, nor has discharge always been an option for American debtors. *See* U.S. v. Kras, 409 U.S. 434, 447 (1973) (noting that discharge is "a legislatively created benefit, not a constitutional one, and . . . [was] withheld, save for three short periods, during the first 110 years of the Nation's life").

[160] *See, e.g.*, Segal v. Rochelle, 382 U.S. 375, 380 (1966) (suggesting that bankrupt individuals have a right to "start[] out on a clean slate"); In re Hudgens, 149 Fed.Appx. 480, 483 (7th Cir. 2005) (quoting In re Chambers, 348 F.3d 650, 653 (7th Cir. 2003)) ("The primary purpose of the bankruptcy discharge is to give the debtor a 'fresh start.'"); In re Seminole Oil & Gas Corp. 963 F.2d 368 (4th Cir. 1992) ("The fundamental goal of bankruptcy is to provide the debtor a 'fresh start' free from . . . the dismembering hands of creditors.")

[161] *See, e.g.*, 151 CONG. REC. H2053 (daily ed. Apr. 14, 2005) (statement of Rep. Goodlatte) (emphasizing the need for "objective standards [to] help ensure that the fresh start provisions of Chapter VII will be granted to those who need them . . . ."); 145 CONG. REC. H2655 (daily ed. May 5, 1999) (statement of Rep. Gekas) ("We, our enlightened forefathers, saw fit to allow the Congress to evolve in a situation in which a fresh start would be accorded to an ordinary citizen who cannot meet his obligations . . . ."); REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, H.R. DOC. NO. 91-137, pt. 1, at 71–80 (1973).

[162] *See, e.g.*, Rafael Efrat, *The Fresh-Start Policy in Bankruptcy in Modern Day Israel*, 7 AM. BANKR. INSTITUTE L. REV. 555, 555 (1999) ("The notion that such individuals should be able to promptly and effectively re-join economic life through an unduly punitive and certain bankruptcy system is an essential component of any progressive and industrialized society."); Karen Gross, *Preserving a Fresh-Start for the Individual Debtor: The Case for Narrow Construction of the Consumer Credit Amendments*, 135 U. PA. L. REV. 59, 60 (1986) ("The opportunity for an individual debtor to obtain relief from indebtedness and begin anew as a productive member of society—commonly termed the "fresh start policy"—has been an essential principle of our bankruptcy laws for more than seventy-five years.").

judge in identifying the social impact of various possible interpretations. For this reason, it is worth looking at the reasons why judges, politicians, and academics have all endorsed the fresh-start policy.

There are two primary justifications: protecting the individual and protecting society.[163] With regard to the former, there exists substantial research showing that people are subject to a number of cognitive biases that cause them to underestimate risks.[164] These deficiencies lead people to overestimate their likelihood of success and consequently miscalculate their likelihood of financial ruin. Bankruptcy offers people a way to recover when such unanticipated financial risks come to pass. In doing so, the fresh-start policy seeks to correct for problems that arise not out of immoral action but rather out of cognitive biases that misguided people who believed they were making sound decisions.

At a society-wide level, the fresh-start policy has a number of other benefits. First, an individual who is unable to get out from under her debts will likely turn to social welfare programs for assistance. This course of action places taxpayers on the hook for debtors' poor financial decisions. Because society was not a party to the original contract, it seems unreasonable to expect taxpayers to shoulder the costs if there are other parties better able to monitor risk. In this situation, the creditor is such a party. A system that permits bankruptcy discharges is one that encourages creditors to be judicious when extending lines of credit. After all, if creditors lend to individuals who are unable to repay the loan, they will bear the loss when a borrower discharges the debt.

A second way in which the fresh-start policy benefits society is by encouraging individuals to be productive. As John Weistart has written, "excessive debt, with its attendant pressure on family and emotional stability and job security [might] so inhibit productivity that there would be a net social gain from terminating costly collection actions, excusing the debts, and giving the poorer-but-wiser debtor a second chance."[165] The argument goes that an individual who is overburdened by his debts will be far less productive than one who receives the benefits of his efforts. After all, as creditors garnish a higher and higher portion of a debtor's wages, the debtor's incentive to work gets weaker and weaker. By substituting leisure for work, the debtor comes out ahead, but everyone else is left worse off. The fresh-start policy mitigates this problem by enabling debtors to reach a position where they are once again incentivized to work and make productive contributions that benefit society.[166]

---

[163] For a thorough discussion of the normative justifications for the fresh-start policy, see Jackson, *supra* note 158, at 1405–24.

[164] For a discussion of the seminal research illustrating these cognitive biases, see RICHARD E. NISBETT & LEE ROSS, HUMAN INFERENCE 17–192 (1980).

[165] John Weistart, *The Costs of Bankruptcy*, 41 L. & CONTEMP. PROB. 107, 111 (1977).

[166] This is not to say that the procedures underlying the fresh-start policy cannot be improved upon. *See* Katherine Porter & Dr. Deborah Thorne, *The Failure of Bankruptcy's Fresh Start*, 92 CORNELL L. REV. 67, 70 (2006) (finding that "many former debtors continue to experience financial hardship that is as bad as or worse than the distress that initially triggered their bankruptcy filings").

To further this goal, the Bankruptcy Code provides debtors with a process to eliminate the burden of their debt obligations. In exchange for surrendering their nonexempt assets or part of their future income, debtors are able to discharge most of their existing debts.[167]

Although the fresh-start policy confers many benefits on society, it is clear that a blanket rule allowing the discharge of any debts would be problematic. There are some actions that are so morally objectionable or that would so severely undermine the functioning of the bankruptcy system that it is reasonable to exclude the associated debts from discharge. The purpose of the Bankruptcy Code is, after all, to give honest debtors a new lease on life so they can become productive members of society once again; the purpose is decidedly not to give unscrupulous debtors a method to cheat the system and force society to carry the cost of their immoral decisions.

On this basis, Congress has enacted two kinds of exceptions to the fresh-start policy. The Bankruptcy Code identifies a number of general activities that, if undertaken by the debtor, preclude a discharge. For instance, debtors are not entitled to a discharge if they transferred or destroyed property with the intent to defraud a creditor,[168] knowingly and fraudulently presented false evidence in connection with the bankruptcy proceeding,[169] unlawfully refused to obey a court order,[170] or filed for bankruptcy fewer than eight years prior.[171]

In addition to these general exceptions that focus on a debtor's conduct, there is a separate section of the Bankruptcy Code that exempts specific debts from discharge.[172] This list of nondischargeable debts includes debts for tax evasion,[173] debts incurred via fraud, false pretenses,[174] embezzlement, or larceny,[175] debts for child support or alimony,[176] debts for willful or malicious injury,[177] debts arising due to injuries or deaths caused while the debtor was driving under the influence of drugs or alcohol,[178] debts for criminal restitution,[179] and finally, student loan debts.[180]

As the listing suggests, both the general and specific carveouts have a common justification.[181] They seek to discourage fraud and abuse of the

---

[167] The precise contours of the debtors' obligations depend upon whether they file under Chapter 7 or Chapter 13 of the Bankruptcy Code. *See* 11 U.S.C. §§ 701–84; *id.* at §§ 1301–30.

[168] *Id.* at § 727(a)(2).

[169] *See id.* at § 727(a)(4).

[170] *See id.* at § 727(a)(6).

[171] *See id.* at § 727(a)(8).

[172] *See id.* at § 523(a)

[173] *See id.* at § 523(a)(1)(c).

[174] *See id.* at § 523(a)(2).

[175] *See id.* at § 523(a)(4).

[176] *See id.* at § 523(a)(5).

[177] *See id.* at § 523(a)(6).

[178] *See id.* at § 523(a)(9).

[179] *See id.* at § 523(a)(13).

[180] *See id.* at § 523(a)(8).

[181] There are a number of other provisions in this portion of the Bankruptcy Code

bankruptcy system.[182] If debtors were free to transfer away their property prior to filing or to fabricate financial records, the bankruptcy system would be unable to function. In addition to promoting efficiency, these exceptions are also designed to penalize debtors for engaging in morally objectionable conduct. From tax evasion to drunk driving to intentionally harming others, each exception is designed to ensure that debtors are held accountable for their unethical actions. Each of these exceptions, that is, save one: the student loan exemption.

Borrowing student loans does not earn one moral condemnation. To the contrary, most people consider it a prudent decision, and the system is even structured to encourage students to borrow money to fund their educations.[183] For this reason, it is surprising that student loan obligations are treated the same as embezzlement and tax evasion. Emphasizing this exact point, one congressman stated that

> the bankruptcy provision . . . visits a special discrimination upon [student loan debtors] . . . it treats educational loans precisely as the law now treats loans incurred by fraud, felony, and alimony-dodging. No other legitimately contracted consumer loan, applied to a legitimate undertaken [sic], is subjected to the assumption of criminality which this provision applies to every educational loan. This [provision], whatever else it may be called, hardly deserves the name of "student assistance." On the contrary, it is a direct, unmitigated, slap in the face of every single student borrower in the nation. It assumes that borrower's bad intentions, and deprives him of a right which every other citizen has available to him if he needs it.[184]

Not all members of Congress, however, agreed with this portrait of well-intentioned student loan debtors. A number argued that student loan debtors who sought discharges were abusing the system, not unlike those individuals who had evaded taxes or committed fraud. Representative

---

that set forth administrative requirements for receipt of a discharge. *See, e.g.*, *id.* at § 727(a)(11) (requiring debtors to complete a financial management course prior to receiving a discharge).

[182] *See, e.g.*, In re Cox, 41 F.3d 1294, 1296 (9th Cir. 1994) ("The purpose of [section 727] is to make the privilege of discharge dependent on a true presentation of the debtor's financial affairs.") (internal quotations omitted); In re Zhang, 463 B.R. 66, 86 (Bankr. S.D. Ohio 2012) ("The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors have accurate information without having to do costly investigations." (internal quotations omitted)); In re Jones, 327 B.R. 297, 303 (Bankr. S.D. Tex. 2005) (citing Meridian Bank v. Alten, 958 F.2d 1226, 1230 (3rd Cir.1992) ("The purpose of 727(a)(3) is to force the Debtor to produce dependable records such that the Chapter 7 Trustee, the creditors, and the Court may rely on these records in tracing the Debtor's financial history and condition.")).

[183] *See, e.g.*, U.S. Dep't of Educ., *Federal Student Loans for College or Career School Are an Investment in Your Future*. https://studentaid.ed.gov/sa/types/loans (discussing the various types of federally subsidized student loan programs).

[184] H.R. Rep. No. 94-1232 (1976).

Allan Ertel's statement is perhaps the most direct in its support for this position:

> [Student loan discharges] encourage fraud . . . . [A]s a student leaves college to find a job, that student would have two options: (1) repay a substantial loan at a time when that student's financial situation is probably at its lowest, or (2) discharge the debt in bankruptcy, having received the benefit of a free education. If Student A elects to repay the loan, honoring the legal and moral obligation that was incurred, he begins his career with a substantial debt and the accompanying financial pressure. Meanwhile, Student B (who chooses to declare bankruptcy) can begin with a clean slate and is free to spend his initial earnings on other items . . . . Student B is rewarded for refusing to honor a legal obligation. The lesson that Students A and B have learned is that it 'does not pay' to honor one's debts or other legal obligations. A valuable educational program should not be destroyed because of a loophole that Congress can easily correct.[185]

If the congressman's fears were warranted, then an expansive discharge exception might be defensible on policy grounds. There is, however, no evidence that any appreciable number of borrowers sought to exploit the system, much less that the federal student loan program was on the verge of being "destroyed" by debtor abuses.[186] Quite the opposite, in fact. The empirical data show that student loan debtors are not cold, calculating decision makers, racing to exploit every legal loophole to gain an advantage.[187] Instead, as a group, they work hard to repay their loan

---

[185] H.R. Rep. No. 95-595, 536 (1977) (statement of Rep. Ertel); *see also* H.R.Rep. No. 595, 95th Cong., 2d Sess. 133, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6094 ("[E]ducational loans are different from most loans. They are made without business considerations, without security, without cosigners, and relying for repayment solely on the debtor's future increased income resulting from the education . . . . In addition, there have been abuses of the system by those seeking freedom from educational debts without ever attempting to repay.") (remarks of Rep. Erlenborn).

[186] *See* Jean Braucher, *Mortgaging Human Capital: Federally Funded Subprime Higher Education*, 69 WASH. & LEE L. REV. 439, 473 (2012) (noting that "[t]he nondischargeability of student loans . . . depended on a theoretical argument that former students might abuse the discharge by going to school and then filing in bankruptcy before getting a lucrative job, despite lack of evidence that this was actually happening").

[187] *See* Oliver B. Pollack & David G. Hicks, *Student Loans, Chapter 13, Classification of Debt, Unfair Discrimination and the Fresh Start after the Student Loan Default Prevention Initiative Act of 1990*, 1993 DET. C.L. REV. 1617, 1621 (arguing that the "concern . . . was more perceived than real"); Kurt Weise, *Discharging Student Loans in Bankruptcy: The Bankruptcy Court Test of "Undue Hardship,"* 26 ARIZ. L. REV. 445, 446 (1984) (citing H.R. Rep. No. 95-595 at 133 (1977)) (noting that "less than one percent of all matured educational loans had been discharged in bankruptcy"); Rafael I. Pardo & Michelle R. Lacey, *The Real Student-Loan Scandal: Undue Hardship Discharge Litigation*, 83 AM. BANKR. L.J. 179, 181 (2009) ("Tragically, Congress disregarded empirical evidence from a General Accounting Office study which found that less than one percent of all federally insured and guaranteed student loans were discharged in bankruptcy."). Upon analyzing student loan bankruptcy

obligations and only turn to bankruptcy after exhausting other options.[188]

Notably, Congress was aware of this fact prior to the floor debate surrounding the original 1978 student loan discharge exception. Earlier that year, the General Accounting Office had released a study finding that only three-tenths of one percent of the amount of federally insured student loans were discharged through bankruptcy.[189] In other words, for every one hundred dollars in student loan debt, only three cents were discharged. Keep in mind that this strikingly low percentage was at a time when there were no barriers to eliminating student loan debt through bankruptcy. As the General Accounting Office's study showed, there was no need to except educational debts from discharge. Contrary to the fear of widespread abuse, few student loan debtors were filing for bankruptcy and even fewer were seeking to game the system. As one congressman observed, the student loan discharge exception is nothing more than "a discriminatory remedy for a 'scandal' which exists primarily in the imagination."[190]

In light of the lack of evidence of abuse, it makes no sense to adopt the Broad Reading of educational benefit. Doing so penalizes all of the debtors who are acting in good faith in order to prevent a nonexistent kind of fraud. Unlike the Broad Reading, the Narrow Reading comports much better with the sound policy goals of the Bankruptcy Code. Specifically, this reading precludes a type of discharge that only arises in situations worthy of moral opprobrium. It effects only those cases where the borrower, due to his own changed preferences, refuses to honor the terms

---

filings surrounding the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, scholars found no evidence "that would indicate widespread opportunistic behavior by private student loan borrowers before the policy change." Rajeev Darolia, *Should Student Loans be Dischargeable in Bankruptcy?*, BROOKINGS, Sep. 29, 2015, https://www.brookings.edu/blog/brown-center-chalkboard/2015/09/29/should-student-loans-be-dischargeable-in-bankruptcy.

[188] One attorney who handles student loan undue hardship cases described the situation as follows: "There is a story about doctors crossing the stage as they graduate medical school with a diploma in one hand and a bankruptcy filing in the other . . . .[But t]here is no data to support this. The average consumer does not want to file bankruptcy." Zack Friedman, *Can Student Loans Be Discharged In Bankruptcy?*, FORBES, May 19, 2017, https://www.forbes.com/sites/zackfriedman/2017/05/19/student-loans-bankruptcy/#69e310cc2ecf (quoting Josh Cohen).

[189] *See* H.R. Rep. No. 95-595, at 148 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6108 (statement of Rep. James O'Hara) (highlighting that only "two-tenths of one percent of the loans made have been discharged in bankruptcy, involving less than three-tenths of one percent of the dollars"); John A.E. Pottow, *The Nondischargeability of Student Loans in Personal Bankruptcy Proceedings: The Search for a Theory*, 44 CAN. BUS. L.J. 245, 249 (2006) (lamenting that the "empirical data, like many empirical data gathered in Washington, fell on deaf ears"). This lack of evidence has, unfortunately, not stopped courts from asserting that a problem existed. *See, e.g.*, In re Renshaw, 222 F.3d 82, 87 (2d Cir. 2000) (asserting that "Congress enacted § 523(a)(8) because there was evidence of an increasing abuse of the bankruptcy process that threatened the viability of educational loan programs and harm to future students as well as taxpayers").

[190] *See* H.R. Rep. No. 94-1232 (1976).

of the agreement.[191] By adopting the Narrow Reading, courts can eliminate a potential loophole without harming upstanding debtors. Whereas the Broad Reading clearly contravenes the Bankruptcy Code's underlying goal of offering debtors a fresh start in the absence of fraud, the Narrow Reading is consistent with this policy.[192]

Conclusion

In the two decades since Congress excepted from discharge "funds received as an educational benefit," courts have interpreted the phrase in a more and more expansive manner. Today, "educational benefit" has come to mean any loan that an individual uses—or professes to use—to advance her education. This interpretation, which I have referred to as the Broad Reading, has led billions of dollars in student loans to be miscategorized as nondischargeable. Such a mistake has, expectedly, been detrimental to a large number of student loan debtors, depriving many individuals of the protections of bankruptcy and forcing them to shoulder burdensome debts they have little hope of repaying.[193]

Fortunately, there is a way to prevent these harms from befalling any other debtors. All courts must do is interpret the student loan exceptions in line with the Narrow Reading. By doing so, not only would courts be furthering a good social policy but also adopting a reading that is required by both the statutory text and the legislative history.

In this Article, I have argued that the Narrow Reading follows from all of the prevailing interpretive methodologies. In light of this assuredness, one may wonder why the Broad Reading has prevailed in the majority of cases. The answer is simple. Debtors have not

---

[191] If the borrower is unable to honor the terms of the agreement due to incapacity or other severe hardship, the undue hardship exception would provide an escape valve.

[192] In discussing the scope of the student loan exception, politicians have noted its incompatibility with the Bankruptcy Code's fresh start policy. *See* Press Release, Dick Durbin United States Senator Illinois, As Student Loan Debt Surpasses $1 Trillion, Senators Introduce Legislation To Address Crisis (Jan. 23, 2013), *available at* https://www.durbin.senate.gov/newsroom/press-releases/as-student-loan-debt-surpasses-1-trillion-senators-introduce-legislation-to-address-crisis ("A basic principle of our country is a fresh start for those who get in over their heads with debt, if they're willing to face the rigors of bankruptcy.") (quoting Senator Sheldon Whitehouse).

[193] *See* Austin C. Smith, *The Misinterpretation of 11 U.S.C. § 523(a)(8)* AM. BANKR. INST., Dec. 28, 2016, https://www.abi.org/committee-post/the-misinterpretation-of-11-usc-%C2%A7-523a8 (noting that the bankruptcy courts' "overbroad interpretations have abrogated the fresh start for thousands of debtors and provided commercial lenders with protections from discharge in circumstances that were never intended by the Bankruptcy Code").

contested that interpretation. Instead, they have allowed creditors' arguments to go unchallenged and given courts no reason to consider—much less adopt—the Narrow Reading. In writing this piece, I hope to provide student loan debtors and their attorneys with a roadmap to push back against the Broad Reading. Courts are willing to endorse the Narrow Reading[194]; they just need borrowers to present the merits of the argument.[195]

* * *

[194] *See infra* notes 114–117 and accompanying text.

[195] Although the majority of courts to consider the Narrow Reading embraced it, those few which rejected it did so purely out of respect for precedent. *See* In re Corbin, 506 B.R. 287, 296 (Bankr. W.D.Wash. 2014) (citing In re Maas, 497 B.R. 863, 869–870 (Bankr. W.D.Mich. 2013) (finding that precedent requires the court to adopt the Broad Reading despite the fact that "courts have interpreted the phrase 'obligation to repay funds received as an educational benefit' so broadly that it seems to this Court that Section 523(a)(8)(A)(i) is almost subsumed by subsection (ii)").