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JEANNE A. NAUGHTON, CLERK

APR 27 2018

U.S. BANKRUPTCY COURT
NEWARK, N.J.
BY *[Signature]* DEPUTY

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

<p>In Re:</p> <p>SARAH HUNTER,</p> <p style="text-align: right;">Debtor.</p>
<p>SARAH HUNTER,</p> <p style="text-align: right;">Plaintiff,</p> <p>vs.</p> <p>NEW JERSEY HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY,</p> <p style="text-align: right;">Defendant.</p>

Case No.: 15-17329-JKS

Adv. Pro. No.: 15-02052-JKS

Judge: Hon. John K. Sherwood

**DECISION AND ORDER GRANTING PARTIAL DISCHARGE OF DEBTOR'S
STUDENT LOAN DEBT PURSUANT TO 11 U.S.C. § 523(a)(8)**

The relief set forth on the following pages, numbered two (2) through nineteen (19), is hereby **ORDERED**.

[Signature]
HONORABLE JOHN K. SHERWOOD
UNITED STATES BANKRUPTCY JUDGE

Dated: April 27, 2018

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New Jersey Higher Education Student Assistance Authority

From Article at GetOutOfDebt.org

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INTRODUCTION

Debtor Sarah Hunter ("Debtor") filed an adversary complaint against the New Jersey Higher Education Student Assistance Authority ("NJHESAA") seeking to discharge student loan debt in the amount of \$288,911.15 at the time she filed her bankruptcy petition.¹ Ms. Hunter has a master's degree and works in the public interest sector, where she earns \$50,000 per year. She is married with a young daughter and has a second child due later this year. Her husband earns approximately \$74,000 per year. Ms. Hunter asserts that repayment of her student loans would cause undue hardship because their joint income is not enough to make her combined monthly student loan payments of \$2,609.24 after deducting expenses necessary to maintain a minimum standard of living for her family.² Based on the evidence in the record and Ms. Hunter's trial testimony, the Court concludes that requiring Ms. Hunter to repay all of her student loans would cause undue hardship and grants a partial discharge of her student loans as detailed below.

PROCEDURAL HISTORY

On April 22, 2015, the Debtor filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code.³ On July 23, 2015, Ms. Hunter filed an adversary complaint against NJHESAA.⁴ On January 25, 2017, Ms. Hunter filed an amended complaint which contained

¹ Debtor's Am. Compl., ECF No. 13; Debtor's Ex. C-O.

² Test. of Sarah Hunter; Debtor's Ex. Q and O; Although Ex. Q states that Ms. Hunter's monthly student loan payment would be \$2,609.24 as of February 2015, this amount does not include the Navient loan, which is included in the total amount of Ms. Hunter's debt with NJHESAA and for which a proof of claim was filed. The monthly amount of \$2,609.24 is what the Debtor owed as of February 2015 and does not reflect compounding interest or other fees which have since accrued.

³ Chapter 13 Voluntary Pet., *In re Sarah Hunter*, No. 15-17329 (JKS), ECF No. 1.

⁴ Debtor's Adversary Compl., ECF No. 1.

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among its five counts an assertion that repayment of her student loan debt is dischargeable based on undue hardship.⁵ NJHESAA filed an answer to the amended complaint on March 10, 2017.⁶ On January 5, 2018, after oral argument on summary judgment, the Court found that undue hardship was a triable issue of material fact.⁷ Trial took place on February 28, 2018. The Debtor was the only witness.

JURISDICTION

The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334(b), 157(a) and the Standing Order of Reference from the United States District Court for the District of New Jersey dated July 23, 1984, as amended September 18, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). Venue is proper under 28 U.S.C. §§ 1408 and 1409(a).

STATEMENT OF FACTS

Sarah Hunter was a student at Seton Hall University from 2007 through 2013. She graduated with a Bachelor of Science degree in Diplomacy and International Relations and Russian Suburban Studies as well as a Master's in Diplomacy and International Relations. She financed her education with various forms of financial aid, including loan proceeds from NJHESAA.⁸ In addition to her loans with NJHESAA, Ms. Hunter has \$66,000 in federal student loan debt which

⁵ Debtor's Am. Compl., ECF No. 13.

⁶ NJHESAA's Answer to the Am. Compl., ECF No. 16.

⁷ Decision and Order Regarding Pl.'s Mot. for Summ. J. to Discharge Student Loan Debt Pursuant to 11 U.S.C. § 523(a)(8) and Def.'s Cross-Mot. for Summ. J., ECF No. 31.

⁸ Test. of Sarah Hunter.

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may be eligible for income-based and income-contingent repayment plans.⁹ Ms. Hunter's employment with the Global Center for Responsibility may also qualify her student loans for forgiveness under the federal Public Service Loan Forgiveness Program ("PSLF").¹⁰ The Debtor's federal loans are not at issue in this proceeding but are relevant to the discussion of her ability to pay NJHESAA.

On April 22, 2015, Ms. Hunter filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code.¹¹ Between May 14, 2015 and May 28, 2015, NJHESAA filed thirteen claims totaling \$288,911.15, twelve under New Jersey College Loans to Assist State Students ("NJCLASS"), a loan program administered by NJHESAA,¹² and the last through Navient Solutions, Inc. on behalf of NJHESAA.¹³ Ms. Hunter's chapter 13 plan was confirmed by Order dated July 27, 2015 and amended on August 5, 2015.¹⁴ As part of the confirmed plan, Ms. Hunter made payments of \$400 per month for the first five months and is making ongoing payments for the remaining 55 months of \$100 per month to the chapter 13 trustee through May 1, 2020.

⁹ *Id.*; see 34 C.F.R. §§ 685.221 (LEXIS through the Apr. 25, 2018 issue of the Fed. Reg. Title 3 is current through Apr. 6, 2018) (Income-based Repayment Plan) and 685.209 (LEXIS through the Apr. 25, 2018 issue of the Fed. Reg. Title 3 is current through Apr. 6, 2018) (Income-contingent Repayment Plan).

¹⁰ Test. of Sarah Hunter; Pub. Serv. Loan Forgiveness Program, 34 C.F.R. § 685.219 (LEXIS through the Apr. 25, 2018 issue of the Fed. Reg. Title 3 is current through Apr. 6, 2018). A qualifying employer under the PSLF includes governmental entities at any level and not-for-profits that are tax-exempt under § 501(c)(3) of the Internal Revenue Code. The PSLF allows for loan forgiveness if the borrower makes 120 qualifying payments and is not in default on her loans, in addition to other requirements. *See id.* at (c).

¹¹ Chapter 13 Voluntary Pet., *In re Sarah Hunter*, No. 15-17329 (JKS), ECF No. 1.

¹² N.J.S.A. § 18A:71C-21 (LEXIS through N.J. 218th First Ann. Sess., L. 2018, c. 4 and J.R. 4).

¹³ Debtor's Ex. C-O.

¹⁴ Order Confirming Plan, *In re Sarah Hunter*, No. 15-17329 (JKS), ECF No. 31; Am. Order Confirming Plan, *In re Sarah Hunter*, No. 15-17329 (JKS), ECF No. 33.

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Through the end of 2017, \$1,368.85 of the plan payments have been disbursed to NJCLASS and NJHESAA.¹⁵

Ms. Hunter is employed as a research analyst in New York City at the City University of New York (CUNY) Global Center for Responsibility and earns approximately \$50,000 a year.¹⁶

At the time she filed her bankruptcy petition, she lived with her boyfriend and daughter in a rented townhouse in Jamesburg, New Jersey. She and her boyfriend have since married. They continue to live in the Jamesburg townhouse and are expecting a second child in September 2018.¹⁷

Ms. Hunter testified at trial that her husband works full time as a project manager at an audio-visual installation company and once a week as a bartender. His gross income is about \$74,000 per year.¹⁸ Although both contribute toward their living expenses, Ms. Hunter and her husband

maintain separate checking accounts from which they pay their household expenses. Ms. Hunter estimated that she takes home \$2,000 per month.¹⁹ She testified that she spends \$900 for groceries, \$293 for clothing, \$77 for personal care items, and \$385 for her New Jersey Transit train pass.

The Debtor also pays \$100 per month to the Chapter 13 trustee. Comparing these expenses to Ms. Hunter's take-home pay of \$2,000 per month, she has about \$245 of discretionary income at the end of each month. Her husband pays for all other expenses, including rent of \$1,500 per month, condominium fees of \$185 per month, car payment of \$440 per month, car insurance of \$85 per

¹⁵ Chapter 13 Trustee Ann. Rep., No. 15-17329 (JKS), ECF No. 48.

¹⁶ Debtor's Ex. B.

¹⁷ Test. of Sarah Hunter.

¹⁸ *Id.*

¹⁹ *Id.*

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month, gas at \$200 per month and day care of \$507 per month.²⁰ The sum of these monthly expenses is \$2,917. Assuming her husband's take-home pay is approximately \$3,500 per month, he would have about \$583 remaining per month. Ms. Hunter also testified that her husband has \$2,500 in credit card debt as well as \$4,000 in medical debt of which he pays about \$400 a month as part of a repayment plan.

Ms. Hunter has been employed with the Global Center for five years. The Center is a non-profit organization with approximately eight to ten employees. Ms. Hunter currently receives an annual 2% salary increase but believes that any pay increase resulting from a promotion would be insignificant with respect to her ability to repay her loans. She testified that the individuals in the next two senior positions earn an estimated \$58,000 to \$75,000 per year. However, due to the small size of the organization, someone of seniority must leave the organization for a junior employee to be able to advance. At the top of the non-profit organization, the director makes "above six figures," but also has at least 30 years' experience in the field according to Ms. Hunter's testimony. Ms. Hunter testified that she feels unqualified to advance into a director position and, in general, that higher paying positions and job openings within this specialized field are scarce.²¹

For about six months during 2014, Ms. Hunter looked for work outside of the field of international relations and applied for four general administrative positions near her home with the goal of cutting back on transportation costs, but did not receive any offers of employment.²²

²⁰ *Id.*

²¹ *Id.* Ms. Hunter gave Human Rights Watch and Amnesty International as examples of other organizations that might consider her for employment given her experience and education.

²² *Id.*

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Ms. Hunter has not sought full-time employment outside the field of international relations since 2014 but bartended once a week in addition to her full-time job at the Center until six months into her pregnancy with her first child.²³

Ms. Hunter has \$288,911.15 in student loan debt with NJHESAA,²⁴ \$285,461.63 of which is attributable to NJCLASS loans.²⁵ The remaining \$3,449.52 stems from a Federal Stafford Loan disbursed by NJHESAA and now held by Navient Solutions, Inc. Since the Navient loan is a Federal loan, it would provide for income-based repayment options.²⁶

The table below was prepared based on the proofs of claim filed by NJCLASS and reflects the Debtor's monthly student loan payments due as of February 2015.²⁷

Outstanding Balance ²⁸	Origination Date	Monthly Payment	Maturation Date
\$37,966.05	09/04/2007	\$365.66	09/04/2027
\$57,961.83	09/11/2008	\$571.31	09/11/2028
\$16,258.07	10/06/2008	\$159.72	10/06/2028
\$15,086.96	01/20/2009	\$146.79	01/20/2029
\$43,972.70	09/10/2009	\$417.55	09/10/2029
\$11,428.28	05/21/2010	\$106.09	05/21/2030
\$37,656.57	10/14/2010	\$343.08	10/14/2030
\$10,690.58	01/26/2012	\$84.78	01/26/2037
\$9,283.77	06/22/2012	\$71.57	06/22/2037
\$24,725.05	09/06/2012	\$185.44	09/06/2037
\$10,264.41	05/30/2013	\$76.05	05/30/2038
<u>\$10,167.36</u>	09/04/2013	<u>\$81.20</u>	09/04/2038
\$285,461.63		\$2,609.24	

²³ Test. of Sarah Hunter.

²⁴ See Debtor's Ex. C-O.

²⁵ See Debtor's Ex. C-N.

²⁶ Debtor's Ex. O.

²⁷ Debtor's Ex. C-N; Q.

²⁸ Outstanding balance includes outstanding principal and interest at the time the bankruptcy petition was filed.

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The maturity dates for the NJCLASS loans range from 2027 to 2038. NJHESAA granted the Debtor a post-undergraduate deferment on her loans from May 2011 through December 2011. Deferment was extended throughout her graduate studies and six months immediately thereafter, from January 2012 through July 2014. Interest continued to accrue on the loans during the deferment period.²⁹ Although no payments were due during this period, Ms. Hunter did make payments on her NJCLASS loans totaling \$21,690.06.³⁰ In July 2014, at the end of her deferment period, Ms. Hunter was granted forbearance on her student loans. The terms of the forbearance still obligated Ms. Hunter to make interest-only payments on her loans through January 2015 that totaled \$3,983.82, of which Ms. Hunter paid \$1,218.80.³¹ NJHESAA also warned that “the monthly principal and interest payment will increase after the expiration of the deferment or forbearance period.”³² In other words, although forbearance would provide short-term relief from payment, it would result in higher future monthly payments due to the accumulation of deferred principal against a maturity date that cannot be extended.

The provisions of N.J.A.C. § 9A:10-6.11 restrict NJHESAA's ability to provide flexible repayment options, as the regulation requires that student loans “be paid in full within the amount of years from the date of disbursement as specified in the NJCLASS Application, Promissory Note, and disclosures.”³³ In response to Ms. Hunter's inquiry into any long-term lower monthly payment options, NJHESAA informed the Debtor that “the only long term option HESAA has for lowering

²⁹ Debtor's Ex. Q.

³⁰ Debtor's Ex. C-N.

³¹ Debtor's Ex. Q.

³² *Id.*

³³ N.J.A.C. § 9A:10-6.11(e) (LEXIS through the N.J. Reg., Vol. 50 No. 8, Apr. 16, 2018).

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monthly payments is through the NJCLASS Consolidation program” and advised that she could also seek consolidation through a private lender. Furthermore, due to NJHESAA’s inability to modify the loans, one representative advised Ms. Hunter that her options were to make more money and reduce her expenses.³⁴

Ultimately, Ms. Hunter chose not to seek an additional forbearance because she could not afford to make the resulting interest payment. She also decided not to consolidate because it would not have resulted in an affordable payment.³⁵ Without any other options, Ms. Hunter seeks to discharge these loans in bankruptcy.

DISCUSSION

The Third Circuit has adopted the *Brunner* test to measure whether a debtor has suffered “undue hardship” and may be eligible for a discharge of student loan debt.³⁶ Under the *Brunner* test, the debtor must prove by a preponderance of the evidence: “(1) that the debtor cannot maintain, based on current income and expenses, a “minimal” standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period for student loans; and (3) that the debtor has made good faith efforts to repay the loans.”³⁷ The debtor must satisfy all three elements. If one element is not sufficiently proven the inquiry cannot continue

³⁴ Test. of Sarah Hunter.

³⁵ *Id.*

³⁶ *Pa. Higher Educ. Assistance Agency v. Faish (In re Faish)*, 72 F.3d 298, 306 (3d Cir. 1995).

³⁷ *Id.* at 304-05.

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and discharge shall be denied without consideration of “equitable concerns or other extraneous factors.”³⁸

A. UNDUE HARDSHIP UNDER THE *BRUNNER* TEST

1. The Debtor Cannot Maintain a Minimal Standard of Living Based on Current Income and Expenses

The first prong of the *Brunner* test requires that a debtor prove, based on her current income and expenses, that she cannot “maintain a ‘minimal’ standard of living for herself and her dependents if forced to repay the loans.”³⁹ Although the Third Circuit has not defined the term “minimal standard,” it has established that a debtor seeking to prove undue hardship must show that undue hardship would mean more than a mere tightening of finances.⁴⁰ However, a debtor is not required to live in poverty to satisfy the first prong.⁴¹ Rather, “the proper inquiry is whether it would be ‘unconscionable’ to require [the debtor] to take any available steps to earn more income or to reduce her expenses.”⁴²

Based on the Debtor's testimony, and without considering adjustments, she has \$245 available monthly after payment of expenses and her husband has \$583. The Debtor's total monthly student loan bill was \$2,609.24 as of February 2015.⁴³ Based on these numbers, the Debtor and her husband are (and were) operating at a deficit of almost \$2,000 per month. The

³⁸ *Id.* at 306.

³⁹ *Id.* at 304-05.

⁴⁰ *Id.* at 306.

⁴¹ *Hoyle v. Pa. Higher Educ. Assistance Agency (In re Hoyle)*, 199 B.R. 518, 523 (Bankr. E.D. Pa. 1996); *McCormack v. Educ. Credit Mgmt. Corp. (In re McCormack)*, 2000 WL 33710278, at *4 (Bankr. D.S.C. July 3, 2000); *In re Vasilyeva*, 2008 WL 5954678 at *3 (Bankr. D.N.J. Dec. 12, 2008).

⁴² *In re Faish*, 72 F.3d at 307; *Rumer v. Am. Educ. Servs. (In re Rumer)*, 469 B.R. 553, 564 (Bankr. M.D. Pa. 2012).

⁴³ Debtor's Ex. Q.

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evidence indicates that this substantial deficit cannot be made up entirely by cost cutting or that the Debtor and her husband have the capacity to earn enough to cover it.

But certain adjustments to the numbers are warranted. First, Ms. Hunter's itemized monthly expenses include \$900 for groceries, \$293 for clothing and \$77 for personal care products. The Court finds that the Debtor's expenses may be reasonably reduced by \$200 for these items collectively, bringing her available funds up from \$245 to \$445. Otherwise, her budget does not appear to contain any unnecessary or frivolous expenses.⁴⁴ As to the husband's "free funds" after expenses in the amount of \$583, this amount seems overstated. It does not include utilities or payment of his own credit card and medical debt of approximately \$400 per month. And, in September of 2018, the child care expense will probably increase by \$500. These items alone turn the husband's "surplus" into a deficit.

Based on these figures and adjustments, the Court concludes that the Debtor could reasonably afford to pay approximately \$450 per month on her student loan debt. Payment of this reduced amount will require personal sacrifice and strict financial discipline on the part of Ms. Hunter and her husband.⁴⁵

The Debtor's realistic surplus of approximately \$450 per month does not come close to being enough to satisfy her monthly obligation to NJHESAA. Again, the monthly payment was \$2,609 in February 2015 and is probably close to \$3,000 now. The Debtor works in New York

⁴⁴ *In re Hoyle*, 199 B.R. at 523 ("[W]here a family earns a modest income and the family budget, which shows no unnecessary or frivolous expenditures, is still unbalanced, a hardship exists from which a debtor may be discharged of his student loan obligations" (quoting *Correll v. Union Nat'l Bank of Pittsburgh (In re Correll)*, 105 B.R. 302, 306 (Bankr. W.D. Pa. 1989))).

⁴⁵ See *Sperrazza v. Univ. of Md.*, 2008 WL 818616 at *2 (E.D. Pa. Mar. 24, 2008).

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City and lives in New Jersey where the cost of living is high. Ms. Hunter and her husband both already work full time and her husband also works an additional part-time job. They have one child and one on the way. Given the overall reasonableness of their household budget, it would be unrealistic to require Ms. Hunter to further minimize her household expenses or increase her income beyond what has been suggested above. Thus, Ms. Hunter has satisfied the first prong of the *Brunner* test because she cannot maintain a minimal standard of living if required to repay her student loans in full.

2. The Debtor Has Shown that Additional Circumstances Exist Indicating the State of Affairs is Likely to Persist for a Significant Portion of the Repayment Period

To satisfy the second prong of the *Brunner* test, a debtor must prove that additional circumstances exist beyond her control that will prevent her situation from improving for a significant portion of the loan repayment period.⁴⁶ Dischargeability is based on the certainty of hopelessness of repayment, not merely on current inability to repay.⁴⁷ “The second prong of the *Brunner* test recognizes that the borrower’s education should, in most cases, provide increased income that will allow the loan to be repaid, even though immediately after graduation a student borrower’s assets may be dwarfed by the size of the loan.”⁴⁸

Here, Ms. Hunter is in a unique situation where her education is unlikely to materially improve her financial situation over the lifetime of the loan. Ms. Hunter testified at trial that a master’s degree is a minimum qualification to enter the field of international relations. As

⁴⁶ *In re Faish*, 72 F.3d at 305.

⁴⁷ *In re Williams*, 296 B.R. 128, 134 (Bankr. D.N.J. 2003).

⁴⁸ *In re Hoyle*, 199 B.R. at 523 (quoting *Elebrashy v. Student Loan Corp.*, 189 B.R. 922, 927 (Bankr. N.D. Ohio 1995)).

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previously noted, she earns about \$50,000 per year and the two senior staffers directly above her at the Global Center earn approximately \$58,000 and \$75,000. Her employer is a non-profit institution that relies on outside funding for its operations. There are few positions in the field or at the Center that Ms. Hunter may seek to earn more money. A senior employee would have to leave for a junior employee to advance. Her annual 2% salary increase is insufficient to materially improve her financial situation. Even if Ms. Hunter sought and gained employment outside the field of international relations, it is unlikely that the administrative positions that she applied for in 2014 would provide enough of a pay increase to enable her to make her full monthly student loan payment. The work for which Ms. Hunter's advanced degree qualifies her is so specialized that she is unlikely to leverage her education and experience into a higher-paying job outside of the field of international relations.

As discussed above, the Debtor also has \$66,000 in federal student loan debt, which may be eligible for income-based and income-contingent repayment plans.⁴⁹ Under these federal programs, as the Debtor earns more money, more of her income will be directed toward repayment of her federal loans, leaving her in no better financial position. Also, requiring the Debtor to leave the public sector might leave her worse off financially because it may disqualify her from the PSLF, potentially causing her to have to repay her federal loans over a longer period.⁵⁰

In addition, each NJCLASS loan balance and monthly payment will increase every month a full payment is not made, which will further eat into Ms. Hunter's net household income.

⁴⁹ 34 C.F.R. §§ 685.221 (Income-based Repayment Plan) and 685.209 (Income-contingent Repayment Plan).

⁵⁰ Pub. Serv. Loan Forgiveness Program, 34 C.F.R. § 685.219.

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Ms. Hunter has shown that her net household income is unlikely to substantially improve during the 10- to 20-year repayment periods due to circumstances beyond her control and has satisfied the second prong of the *Brunner* test.

3. The Debtor Made a Good Faith Effort to Repay NJHESAA

The final prong of the *Brunner* test requires a debtor to have made a good faith effort to repay her loans. “Undue hardship encompasses a notion that the debtor may not willfully or negligently cause [her] own default, but rather [her] condition must result from ‘factors beyond [her] reasonable control.’”⁵¹ Ms. Hunter applied for administrative positions outside of her chosen field of work and worked a second, part-time job as a bartender until several months into her first pregnancy. Although Ms. Hunter did not apply for many positions outside of her chosen field, her degree is sufficiently specialized that the Court has found it unlikely to lead to higher paying positions outside of the field of international relations. Ms. Hunter made \$21,690.06 in payments on her loans during the deferment period, not an insignificant sum.⁵² She also borrowed money from other people to repay the interest due at the end of her forbearance and asked NJHESAA for repayment assistance.⁵³ However, as stated above, NJHESAA is limited by state regulation to the repayment options available under N.J.A.C. § 9A:10-6.11. Instead of offering payment assistance or an opportunity to modify the loans beyond general consolidation, NJHESAA suggested that Ms. Hunter must lower her expenses or increase her income.⁵⁴

⁵¹ *In re Faish*, 72 F.3d at 304.

⁵² Debtor's Ex. C-N.

⁵³ Test. of Sarah Hunter.

⁵⁴ *Id.*; Debtor's Ex. Q.

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N.J.A.C. § 9A:10-6.11 provides that a borrower may choose from three repayment options when applying for an NJCLASS loan. Ms. Hunter chose to defer payment of the principal and interest until after she graduated.⁵⁵ After the deferment period ended, she was prohibited from making lower monthly payments over a longer period. The regulation provides that the borrower's minimum payment must be "the amount required to fully repay an NJCLASS Loan Program loan in the maximum repayment period," and, as noted above, that "[n]otwithstanding any periods of deferment or forbearance, NJCLASS Loan Program loans shall be paid in full within the amount of years from the date of first disbursement as specified in the NJCLASS Application, Promissory Note, and disclosures. The amount of years in which a loan is to be repaid is determined by the indentures for the bonds or notes whose proceeds are funding the loan."⁵⁶ The regulatory requirement that NJCLASS loans be repaid by the maturation date is a "factor beyond [the Debtor's] reasonable control,"⁵⁷ which works against her efforts to negotiate a way to repay her loans. That Ms. Hunter filed for bankruptcy within two years of completing her master's degree program is not a sign of lack of good faith considering the significant disparity between her income and expenses, her attempts to maximize her income and repay her loans, and NJHESAA's inability to negotiate more affordable repayment terms. The Court finds Ms. Hunter made a good faith effort to repay her loans and has satisfied the third prong of the *Brunner* test.

⁵⁵ Test. of Sarah Hunter.

⁵⁶ N.J.A.C. § 9A:10-6.11(d) and (e).

⁵⁷ *In re Faish*, 72 F.3d at 304.

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B. DISCHARGEABILITY

Having determined that Ms. Hunter has proven that repayment of all her loans would constitute an undue hardship, the Court now turns to the dischargeability of the debt. The Third Circuit has not addressed whether section 523(a)(8) requires complete discharge of student loan debt or permits partial discharge. Other circuits are divided on this issue. Some courts hold that section 523(a)(8) requires either a complete discharge or no discharge at all. Others justify partial discharge of either the aggregate debt or of individual loans on various grounds.⁵⁸ Courts adhering to the so-called “hybrid approach” construe section 523(a)(8) as allowing the discharge of individual student loans on a loan-by-loan basis, thereby harmonizing the statute’s language with its intent to relieve hardship and the Code’s objective of providing a fresh start.⁵⁹ “Partial dischargeability or other modification of a student loan debt accomplishes Congress’ purpose of providing debtors with a ‘fresh start’ while maximizing the repayment of the debt Financial hardship is not all-or-nothing, but is more or less. The load may be made more bearable by reducing, rather than eliminating it.”⁶⁰ At least one court within the Third Circuit has adopted this approach and this Court agrees.⁶¹ Ms. Hunter incurred a massive amount of student loan debt to finance her education. It is fair to request her to repay this debt to the fullest extent possible, even if it means that she will have to endure financial hardship.

⁵⁸ See *In re Lamanna*, 285 B.R. 347, 350-52 (Bankr. D.R.I. 2002) for a discussion of the three approaches to discharge of student loan debt.

⁵⁹ *Grigas v. Sallie Mae Servicing Corp. (In re Grigas)*, 252 B.R. 866, 873-74 (Bankr. D.N.H. 2000).

⁶⁰ *Mosko v. Am. Educ. Servs.*, 2005 WL 2413582 at *9 (Bankr. M.D.N.C. Sept. 29, 2005) (quoting *Educ. Credit Mgmt. Corp. v. Jones*, 1999 WL 1211797 at *3 (E.D. Va. July 14, 1999)).

⁶¹ See *Allen v. Am. Educ. Servs. (In re Allen)*, 329 B.R. 544, 549-50 (Bankr. W.D. Pa. 2005).

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The Debtor unequivocally cannot afford to pay her full monthly student loan bill of \$2,609.24, but she has a monthly surplus of about \$450 and can afford to pay a portion of it. She will also be better able to pay over time, assuming she continues to receive annual pay increases and her husband's earning capacity grows.

Therefore, based on the Debtor's showing of undue hardship, the Court applies the undue hardship test to each loan held by NJHESAA and orders the discharge of loans maturing before June 2037.⁶² The Debtor must repay the last four loans listed in the chart below. This would leave the Debtor with a monthly student loan payment of \$414.26 as of February 2015 plus accrued and unpaid interest on those loans.

Outstanding Balance ⁶³	Origination Date	Monthly Payment	Maturation Date
\$37,966.05	09/04/2007	\$365.66	09/04/2027
\$57,961.83	09/11/2008	\$571.31	09/11/2028
\$16,258.07	10/06/2008	\$159.72	10/06/2028
\$15,086.96	01/20/2009	\$146.79	01/20/2029
\$43,972.70	09/10/2009	\$417.55	09/10/2029
\$11,428.28	05/21/2010	\$106.09	05/21/2030
\$37,656.57	10/14/2010	\$343.08	10/14/2030
\$10,690.58	01/26/2012	\$84.78	01/26/2037
\$9,283.77	06/22/2012	\$71.57	06/22/2037
\$24,725.05	09/06/2012	\$185.44	09/06/2037
\$10,264.41	05/30/2013	\$76.05	05/30/2038
<u>\$10,167.36</u>	09/04/2013	<u>\$81.20</u>	09/04/2038
\$285,461.63		\$2,609.24	

NJHESAA shall provide the Debtor with updated monthly payment amounts for these four loans and repayment shall commence immediately.

⁶² Debtor's Ex. C-N; Q.

⁶³ Outstanding balance includes outstanding principal and interest at the time the bankruptcy petition was filed.

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C. DEBTOR'S REQUEST FOR RELIEF UNDER 11 U.S.C. § 524(m)

Ms. Hunter has also asked this Court to adopt an alternative test for undue hardship set forth under section 524(m). This request is denied as the Court believes that the *Brunner* test is applicable.

CONCLUSION

The Court hereby orders the discharge of loans maturing before June 2037 as set forth above.

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