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**\$1.3 Trillion in Student Loan Debt: Long-Term  
Income-Based Repayment Plans Are Not the  
Solution to the Student Loan Crisis; Easing  
Restrictions on Discharging Student Loan Debt in  
Bankruptcy is the Solution**

**Richard Fossey**

**\$1.3 Trillion in Student Loan Debt:  
Long-Term Income-Based Repayment Plans Are Not the Solution  
to the Student Loan Crisis;  
Easing Restrictions on Discharging Student Loan Debt in Bankruptcy is the Solution**

Richard Fossey\*

**INTRODUCTION**

Data from multiple sources make clear that the federal student loan program is in crisis. As the *Wall Street Journal* noted in article published in August of this year, total outstanding student-loan indebtedness has grown fivefold in just 20 years, and about one in four student-loan debtors is either behind on making student-loan payments or in default.<sup>1</sup> The Consumer Financial Protection Bureau (CFPB) released its annual report on the federal student loan program in October, stating that 8 million people are in default on their student loans.<sup>2</sup>

The U.S. Department of Education has responded to this crisis primarily by encouraging student-loan borrowers to rehabilitate their loans by enrolling in income-driven repayment plans (IDRs) that lower borrowers' monthly payments while lengthening the repayment period to as long as 20 or 25 years.<sup>3</sup> But this strategy is not going well. The CFPB estimates that 45 percent

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\* Richard Fossey is the Paul Burdin Endowed Professor of Education at the University of Louisiana. He received his J.D. degree from the University of Texas School of Law and his Ed.D. degree from Harvard University. Parts of this paper are based on the following co-authored publications: Robert C. Cloud & Richard Fossey, *Facing the Student-Debt Crisis: Restoring the Integrity of the Federal Student Loan Programs*, 40 J.C.& U.L. 467 (2014); Richard Fossey & Robert C. Cloud, *The U.S. Department of Education's 2015 Letter Outlining Guidelines for When Creditors Should Not Oppose Bankruptcy Discharge for Student-Loan Debtors Under the "Undue Hardship" Rule: What Does It Mean for Distressed Student-Loan Debtors?*, 329 Ed.Law Rep. 595 (2016); Richard Fossey, Robert C. Cloud, & Neal Hutchens, *Easing the Path to Bankruptcy Relief for Distressed Student-Loan Debtors: An Idaho Bankruptcy Judge Shows Us the Way*, TEACHERS COLL. REC. (July 18, 2016) (ID No. 21467). In addition, parts of the paper previously appeared on the author blog site: [condemnedtodebt.org](http://condemnedtodebt.org). The author wishes to express his appreciation for the collaboration and support I have received from my colleagues, Professors Cloud and Hutchens.

of loan defaulters who rehabilitate their loans with IDRs default again shortly after curing their previous default.<sup>4</sup>

This presentation is in three parts. First, the article explains the current status of the federal student loan program, which is in crisis. Second, the article discusses the federal government's effort to increase the number of borrowers in various long-term income-based repayment plans (IBRPs) as a way of addressing the student loan crisis and the severe problems this approach presents.

Third, this paper will briefly summarize a recent trend by the federal bankruptcy courts to rule more sympathetically toward student-loan debtors who seek to discharge their student loans under the Bankruptcy Code's "undue hardship rule"<sup>5</sup> and will examine the arguments presented by Judge Jim Pappas in favor of relaxing the harsh *Brunner* standards for determining when debtors may discharge their student loans in bankruptcy under the U.S. Bankruptcy Code's undue hardship standard.<sup>6</sup>

This article concludes by arguing that the U.S. Department of Education's reliance on long-term income-based repayment plans is the wrong approach to addressing the student-loan crisis. Rather, bankruptcy relief is the only way to provide relief to millions of unfortunate Americans who are burdened with massive levels of student loan debt.

## **I. THE FEDERAL STUDENT LOAN PROGRAM: IN CRISIS**

The federal student loan program is in crisis. As has been widely reported in the media, approximately 43 million Americans now hold around \$1.3 trillion in outstanding student loans.<sup>7</sup> About 16 percent of borrowers are in default, and the government has stepped up garnishment

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"The Student Loan Crisis and Bankruptcy Relief for Student Loan Debtors Under the Bankruptcy Code's "Undue Hardship" Standard: Are the Courts Ruling More Compassionately Toward Distressed College Loan Debtors?"