

# Student Loans In and Out of Bankruptcy

UTCLE: 16<sup>th</sup> Annual Consumer Bankruptcy Conference

**Julianne M. Parker**  
**Fears Nachawati PLLC**

**Judge Chris Lopez**  
**Bankr. S.D. Texas**

1

## Current State of Student Loans in the U.S.

Student loan debt currently totals about \$1.56 trillion

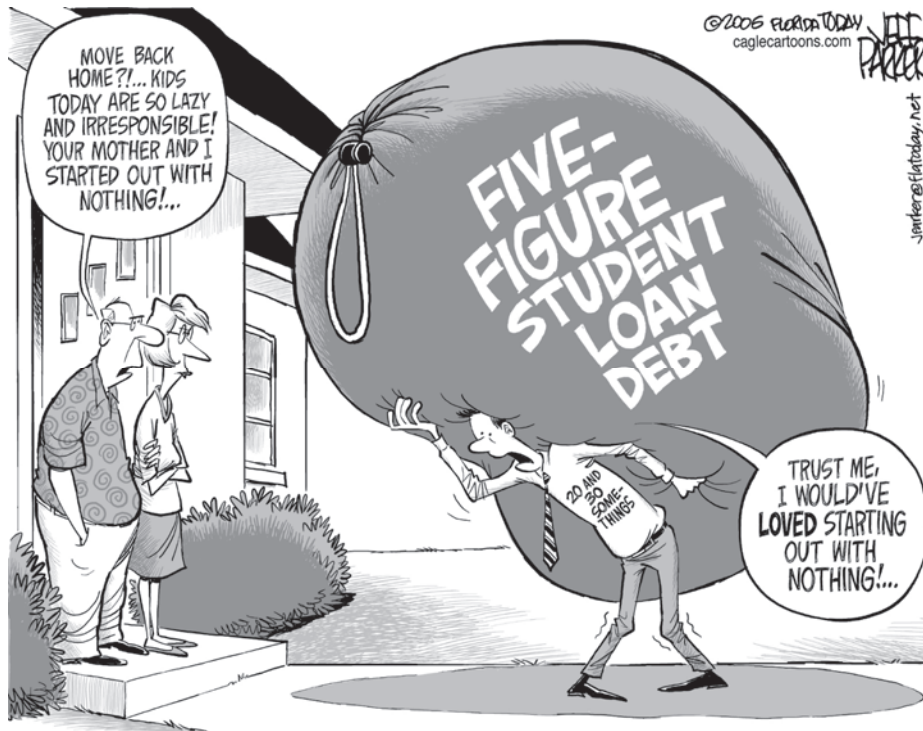
Approximately 45 million borrowers in the U.S.

- Median student loan debt is \$17,000
- Average student loan interest rate is 5.8%

Student loan debt is now the second highest consumer debt—behind only mortgage debt—and higher than both credit card and auto loan debts

2

2



3

## A Brief History of Student Loans in Bankruptcy Cases

### ▪ Education Amendments Act of 1976

- Barred discharge of qualified student loans, absent undue hardship, for a period of five years from the date payments commenced

### ▪ Bankruptcy Code Amendments of 1978

- The student loan exception to discharge was moved from the Higher Education Act to the Bankruptcy Code
- Expanded to include private loans backed by non-profit institutions
- 5-year period ran from the date the loan "first become due," no tolling period during any suspension

4

## A Brief History of Student Loans in Bankruptcy Cases

- **1990 Bankruptcy Code Amendments**
  - Increased discharge bar period from 5 to 7 years
- **1998 Bankruptcy Code Amendments**
  - Removed 7-year time bar, thereby requiring a showing of undue hardship to discharge a government-backed loan or a private loan backed by a non-profit
- **2005 Bankruptcy Code Amendments**
  - Expanded the type of loans excepted from discharge, absent a showing of undue hardship
  - Absent a showing of undue hardship, all qualified loans, including most private loans, now excepted from discharge

5

5



6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Student Loans In and Out of Bankruptcy

Also available as part of the eCourse

[Student Loans In and Out of Bankruptcy](#)

First appeared as part of the conference materials for the  
16<sup>th</sup> Annual Conference on Consumer Bankruptcy Practice session  
"Student Loans In and Out of Bankruptcy"