No. 26-1962; 26-1963

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ROBERT NICHOLS AND CORA NICHOLS,
Appellants,

vs.

JAMES LAWRENCE PEARSON,
Appellee

On Appeal from the Bankruptcy Appellate
Panel of the Ninth Circuit,
BAP No. 25-1086
BAP No. 25-1087
(Consolidated Appeals)

BRIEF OF AMICI CURIAE NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER, NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS, AND NATIONAL CONSUMER LAW CENTER IN SUPPORT OF APPELLEES AND SEEKING AFFIRMANCE OF THE BANKRUPTCY APPELLATE PANEL'S DECISION

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CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *amici* the National Consumer Bankruptcy Rights Center, the National Association of Consumer Bankruptcy Attorneys, and the National Consumer Law Center, state that they are each 501(c)(3) not-for-profit organizations with no parent corporations. No publicly owned corporation holds ten percent or more of their stock, as these organizations do not issue stock.

RULE 29 STATEMENT

In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* the National Consumer Bankruptcy Rights Center, the National Association of Consumer Bankruptcy Attorneys, and the National Consumer Law Center state that no counsel for a party authored this brief in whole or in part, and no person or entity, other than *amici* and their counsel, made a monetary contribution to the preparation or submission of the brief.

STATEMENT OF AUTHORITY TO FILE

In accordance with Federal Rule of Appellate Procedure 29(a)(2), *amici* the National Consumer Bankruptcy Rights Center, the National Association of Consumer Bankruptcy Attorneys, and the National Consumer Law Center submit this brief along with a motion for leave to file.

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INTEREST OF AMICI CURIAE

The National Consumer Bankruptcy Rights Center ("NCBRC") is a nonprofit organization dedicated to preserving the bankruptcy rights of consumer debtors and protecting the bankruptcy system's integrity. The Bankruptcy Code grants financially distressed debtors rights that are critical to the bankruptcy system's operation. Yet consumer debtors with limited financial resources and minimal exposure to that system often are ill-equipped to protect their rights in the appellate process. NCBRC files *amicus curiae* briefs in systemically-important cases to ensure that courts have a full understanding of the applicable bankruptcy law, the case, and its implications for consumer debtors. *See, e.g.*, *Keathley v. Buddy Ayers Constr., Inc.*, 146 S. Ct. 1532, 1537 n.1 (2026) (citing NCBRC amicus brief); *Evans v. McCallister* (*In re Evans*), 69 F.4th 1101 (9th Cir. 2023) (adopting reasoning in NCBRC amicus brief).

The National Association of Consumer Bankruptcy Attorneys ("NACBA") is a nonprofit organization of more than 2,500 consumer bankruptcy attorneys nationwide. NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

The National Consumer Law Center ("NCLC") is a nonprofit organization that is recognized nationally as an expert in consumer protection issues. For more than 55 years, NCLC has drawn on this expertise to provide information, legal research, policy analyses, and market insights to federal and state legislatures, administrative agencies, and the courts. NCLC also publishes a twenty-one volume Consumer Credit and Sales Legal Practice Series. Many of these volumes address the intersection of consumer bankruptcy law and student loan law, including Consumer Bankruptcy Law and Practice (14th ed. 2025) and Student Loan Law (7th ed. 2023). A major focus of NCLC's work is to increase knowledge concerning the dischargeability of student loans in bankruptcy. NCLC frequently appears as amicus curiae in consumer law cases before trial and appellate courts throughout the country.

Amici have a vital interest in the outcome of this case. Although the facts of this case are somewhat unusual because the loan in question was not made by a commercial lender, the result will affect the administration of many consumer cases throughout the nation involving loans that are typically made by financial institutions. The applicable bankruptcy laws and regulations make it clear that a private student loan that is not made solely for the purpose of funding qualified educational expenses is fully dischargeable in bankruptcy. There is no provision in the law for partial discharge of a student loan under 11 U.S.C. § 523(a)(8)(B). Second, a loan made to an individual who is attending a program that is not Title IV qualified is not a qualified education loan and is fully dischargeable in bankruptcy. Both of these issues arise with some frequency in bankruptcy cases involving student loans and there are strong policy reasons why the decision of the Bankruptcy Appellate Panel ("B.A.P.") should be affirmed.

STATUTORY FRAMEWORK

This case involves the protection of the debtor's fresh start, which is a foundational cornerstone of the Bankruptcy Code. So that the Court may better understand the context in which this dispute arises, a brief overview of the relevant bankruptcy framework is provided below.

Bankruptcy: Bankruptcy law reflects a balancing act in which Congress has established the rules for adjusting debtor-creditor relationships. The two main purposes of bankruptcy are to provide a fresh start to the debtor and to facilitate the fair and orderly repayment of creditors to the extent possible. *See Burlingham v. Crouse*, 228 U.S. 459, 473 (1913). Individuals seeking bankruptcy relief generally seek liquidation under Chapter 7 of the Bankruptcy Code or propose a plan for repayment of a portion of their debt under chapter 13. Regardless of whether a debtor files under Chapter 7 or Chapter 13, bankruptcy is a collective proceeding, providing a single forum for the resolution of claims against the debtor's property, wherever located. 28 U.S.C. § 1334(e) (granting the court exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of the case, and of property of the estate.).

The Discharge: The central purpose of federal bankruptcy law is to "give the debtor a 'new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.'" *Lines v. Frederick*, 400 U.S. 18, 19 (1921) (quoting *Local Loan Co. v. Hunt*, 292 U.S. 234, 244-45 (1914)). The discharge granted to the debtor and the discharge injunction imposed by 11 U.S.C. § 524(a) serve this purpose by first discharging the debtor from liability for most pre-petition claims and second by prohibiting "the commencement or continuation of an action, the employment of process, or an act, to collect, recover, or offset any [pre-petition] debt as a personal liability of the debtor." *Green Point Credit, LLC v. McLean* (*In re McLean*), 794 F.3d 1313, 1320 (11th Cir. 2015) (quoting 11 U.S.C. § 524(a)(2)). Legislative history demonstrates that the purpose of the modern discharge injunction is to "eliminate any doubt concerning the effect of the discharge as a total prohibition on debt collection efforts." H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 365–66 (1977).

To achieve the Bankruptcy Code's overall "fresh start" aim, the discharge injunction is viewed expansively and accounts for the myriad ways in which prepetition creditors might coerce debtors to pay an otherwise discharged debt. *Hardy v. United States* (*In re Hardy*), 97 F.3d 1384, 1388–89 (11th Cir. 1996). In practice, if the debtor satisfies the conditions of the Bankruptcy Code, the court grants the debtor a discharge, which relieves the debtor of personal liability for any discharged debt. *See* 11 U.S.C. §§ 727, 1328. Section 524 of the Bankruptcy Code further specifies the effects of that federal order. Section 524(a)(2) provides that:

> A discharge in a case under this title ... operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.

Thus, Section 524 provides for injunctive relief to enforce the federal bankruptcy discharge. Section 524 does not specify a remedy for a violation of the discharge injunction. However, the general consensus of bankruptcy and circuit courts around the country is that discharge violations may be remedied under Section 105(a), which allows courts to issue any order necessary or appropriate to carry out the provisions of the Code. *Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439, 442 (1st Cir. 2000).

Student Loans: Pursuant to 11 U.S.C. § 523(a)(8), educational loans are non-dischargeable only if they come within one of three categories:

- (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
- (A)(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)(l) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual.

In the case at bar, there is no claim that the loan was made, guaranteed, or funded by the government or a nonprofit institution to bring it within the terms of § 523(a)(8)(A)(i). Moreover, Section 523(a)(8)(A)(ii) does not apply to student loans. *Kashikar v. Turnstile Cap. Mgmt., LLC* (*In re Kashikar*), 567 B.R. 160, 167 (B.A.P. 9th Cir. 2017); *Homaidan v. Sallie Mae, Inc.* (*In re Homaidan*), 3 F.4th 595 (2d Cir. 2021); *McDaniel v. Navient Sols., LLC* (*In re McDaniel*), 973 F.3d 1083 (10th Cir. 2020); *Crocker v. Navient Sols., L.L.C.* (*In re Crocker*), 941 F.3d 206 (5th Cir. 2019) . Thus, the applicable provision in this appeal is Section 523(a)(8)(B). As is more fully set forth below, Dr. Pearson's loan was not a "qualified education loan" under Section 523(a)(8)(B).

Presumptions in Favor of Discharge: In order to effectuate the Bankruptcy Code's remedial purpose, exceptions to discharge are narrowly construed, confined to their plainly-expressed terms and, where ambiguous, resolved in favor of the debtor. *Quarre v. Saylor* (*In re Saylor*), 108 F.3d 219, 221 (9th Cir. 1997) ("exceptions to discharge are to be narrowly construed"); *Bendetti v. Gunness* (*In re Gunness*), 505 B.R. 1, 8 (B.A.P. 9th Cir. 2014) ("All exceptions to discharge are to be construed narrowly so that they are confined to their plainly-expressed terms.");

Homaidan, 3 F.4th at 600 (same); *Bethpage Fed. Credit Union v. Furio* (*In re Furio*), 77 F.3d 622, 624 (2d Cir. 1996) (same); *Kawaauhau v. Geiger*, 523 U.S. 57, 62, 118 S. Ct. 974, 140 L. Ed. 2d 90 (1998) (holding that exceptions to discharge "should be confined to those plainly expressed."); *Bullock v. BankChampaign, N.A.*, 529 U.S. 267, 275 (2013) (same); *Golden v. Nat'l Collegiate Tr. et al.* (*In re Golden*), 596 B.R. 239, 260 (Bankr. E.D.N.Y. 2019) (same). Simply put, "each exception to discharge represents Congress' attempt to balance the debtor's entitlement to a fresh start against strong competing policy concerns." *In re Gunness*, 505 B.R. at 8. To the extent a court "finds that Congress has not adequately balanced the competing policies, Congress will need to amend the discharge exceptions. It is not up to the courts to expand the coverage of the exceptions under the guise of an improper and unwarranted liberal construction of the exceptions." *Id*.

Creditors Bear the Burden of Establishing Nondischargeability: Creditors bear the burden of establishing whether any of their student loans are nondischargeable under the terms of § 523(a)(8). *Grogan v. Garner*, 498 U.S. 279, 283 (1991) (referring to the burden a creditor must meet to avoid dischargeability); *Roth v. Educ. Credit Mgmt. Corp.* (*In re Roth*), 490 B.R. 908, 916 (B.A.P. 9th Cir. 2013) ("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."); *In re Kashikar*, 567 B.R. at 168 (same); *Dufrane v. Navient Solutions, Inc.* (*In re Dufrane*), 566 B.R. 28, 34 (Bankr. C.D. Cal. 2017) (same); *Shells v. U.S. Dep't of Educ.* (*In re Shells*), 530 B.R. 758, 763 (Bankr. E.D. Cal. 2015) (same); *Scott v. U.S. Dep't of Educ.* (*In re Scott*), 417 B.R. 623, 629 (Bankr. W.D. Wash. 2009) (same); *Renshaw v. Renshaw* (*In re Renshaw*), 222 F.3d 82, 86 (2d Cir. 2000) ("creditor [must] prove by a preponderance of the evidence that its claim is one that is not dischargeable."); *Bronsdon v. Educ. Credit Mgmt. Ass'n* (*In re Bronsdon*), 435 B.R. 791, 796 (B.A.P. 1st Cir. 2010) ("creditor bears the initial burden of establishing that the debt is of the type excepted from discharge under § 523(a)(8)"); *In re Haroon*, 313 B.R. 686, 688 (Bankr. E.D. Va. 2004) ("in the case of a student loan, [creditor] bears the initial burden of proving that the debt was incurred for educational purposes."); *In re Adamo*, 560 B.R. 642, 648 (Bankr. E.D.N.Y. 2016) ("[t]he burden of proof in an action to determine dischargeability is on the creditor to prove the elements of its nondischargeability complaint by a preponderance of the evidence."); *In re Guo*, 548 B.R. 396, 401 (Bankr. E.D.N.Y. 2016) ("the creditor objecting to dischargeability bears the burden of proof by a preponderance of the evidence.").

SUMMARY OF ARGUMENT

I. Section 523(a)(8)(B) and the embedded portions of the Internal Revenue Code and the Higher Education Act make it clear that a private student loan is nondischargeable only if the entire loan is used to pay for the cost of attendance at a Title IV-approved program. If the loan is only partially allocated for such use, the loan is fully dischargeable in bankruptcy. Any other holding would violate the clear language of the applicable statute and would encourage excess private lending to students outside of the normal educational financing system. None of Dr. Pearson's loan was Title IV-eligible. But even if a portion of it were Title IV-eligible, the entire amount of the loan was discharged under Section 523(a)(8)(B).

II. A student loan is nondischargeable only if it is used for the payment of the cost of attendance at a Title IV-approved program. A loan for expenses at a non-approved program at a Title IV institution is not a qualified education loan under the terms of Section 523(a)(8)(B) of the Bankruptcy Code. Dr. Pearson did not attend a Title IV-eligible program. Therefore, his loan was fully discharged under Section 523(a)(8)(B).

ARGUMENT

I. A QUALIFIED EDUCATION LOAN MUST BE USED SOLEY FOR QUALIFIED HIGHER EDUCATION EXPENSES.

Appellants suggest that "the legal issues involved in this Appeal are complex and unique," App. Br. at 10. They are not. They are not complex because the relevant laws are clear: a loan that is issued for both qualified higher education expenses and also for other non-qualified expenses can never constitute a "qualified educational loan" under Section 523(a)(8)(B) of the Bankruptcy Code. The issues are not unique because they have arisen in other student loan litigation, and will likely continue to do so.

In order for an educational loan to be nondischargeable under Section 523 (a)(8)(B), it must be a "qualified education loan" as defined in Section 221(d)(1) of the Internal Revenue Code ("I.R.C.") of 1986. Section 221(d)(1), in turn, defines qualified education loan as "any indebtedness incurred by the taxpayer *solely* to pay qualified higher education expenses…" (emphasis added). I.R.C. Section 221(d)(2) defines qualified higher education expenses as the "cost of attendance (as defined in Section 472 of the Higher Education Act of 1965, 20 U.S.C. § 1087ll)" at an "eligible educational institution." Section 472 of the Higher Education Act, 20 U.S.C. § 1087ll, in turn, defines cost of attendance as "tuition and fees normally assessed" at the institution along with proscribed allowances for certain categories of living expenses. *See generally In re Golden*, 596 B.R. at 267–69. While the Higher Education Act sets forth the criteria for federal financial assistance, it is clear that Section 221(d) of the I.R.C. and therefore Section 523 (a)(8)(B) of the Bankruptcy Code, import the criteria of the Higher Education Act to determine whether a private student loan is nondischargeable in bankruptcy.

As noted above, pursuant to I.R.C. § 221(d)(1) the loan must be used "solely" for educational purposes. This is confirmed by Example 6 given by the Internal Revenue Service ("I.R.S.") at 26 C.F.R. § 1.221-1, in which the IRS explains that a loan partially used to repair a residence and partially used for the education of a spouse is not a qualified education loan. 2-ER-120. It is also confirmed by Section

484(a)(4)(A) of the Higher Education Act, 20 U.S.C. § 1091(a)(4)(A), which specifically provides that a student is not eligible for a grant or loan under any of the federal programs unless the student certifies that the funds will be used "*solely* for expenses related to attendance or continued attendance at [a Title IV institution of higher education]" (emphasis added).

Another court has already held that if a portion of a student loan is not a qualified education expense, then the entire loan is dischargeable. *Homaidan v. Sallie Mae, Inc.* (*In re Homaidan*), 650 B.R. 372, 420 (Bankr. E.D.N.Y 2022):

> The Bankruptcy Code does not allow for a partial discharge of student loan debt. As one court explained:
>
> Section 523(a)(8)'s language refers to a debt in its totality, and does not envision only a portion being discharged. This conclusion is strengthened by the observation that Congress knows how to allow a partial discharge when it so desires, and has done so in statutory subsections coexisting with § 523(a)(8). It is a fundamental tenet of statutory interpretation that "where Congress has failed to include language in statutes, it is presumed to be intentional when the phrase is used elsewhere in the code."

650 B.R. at 420 (quoting *Pincus v. Graduate Loan Ctr.* (*In re Pincus*), 280 B.R. 303, 312, (Bankr. S.D.N.Y. 2002) (in turn quoting *United Student Aid Funds, Inc. v. Taylor* (*In re Taylor*), 223 B.R. 747, 753 (B.A.P. 9th Cir. 1998)). Thus, the *Homaidan* court concluded, "if a private student loan exceeds the applicable cost of

attendance, then the entire student loan debt is dischargeable, and collection efforts against the entire debt must be enjoined if the applicable standards are met." *Id.*[1]

As the *Homaidan* Court reasoned, if Congress had intended for only the portion of a loan exceeding the cost of attendance to be dischargeable, they would have used the language "to the extent," which appears in several other sub-sections of 11 U.S.C. § 523, but is notably absent from § 523(a)(8). *See, e.g.*, § 523(a)(2) (excepting from discharge any debt "for money, property, services, or an extension, renewal, or refinancing of credit, *to the extent* obtained by") (emphasis added); § 523(a)(7) (excepting from discharge any debt "*to the extent* such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit") (emphasis added). The fact that Congress used the qualifier "to the extent" in two other subsections of 523 but deliberately chose not to use that language in § 523(a)(8) lends powerful support to Dr. Pearson's position.

[1] Judge Stong relied upon language from *In re Taylor*, 223 B.R. 747, an undue hardship case which has been criticized by several other undue hardship cases. *See, e.g.*, *Great Lakes Higher Education Corp. v. Brown* (*In re Brown*), 239 B.R. 204 (S.D. Cal. 1999). These cases assert that courts have the discretion in the context of undue hardship to discharge a portion of a loan based on the debtor's unique personal financial situation. That issue, of course, is not before this Court, since here, the statute and the implementing regulation are very clear that in order to qualify as a qualified educational loan, a loan must be used *solely* to pay for the student's cost of attendance at a Title IV -qualified program.

As noted above, this issue is not unique because it has already arisen in the context of student loan dischargeability. Many student lenders (typically, unlike in this case, financial institutions) submit, on behalf of the borrower, their loan proceeds directly to the intended institution of higher education. The educational institution, as matter of federal law, cannot accept funds on behalf of the student borrower that exceed the cost of attendance as determined by the school.[2] Higher Education Act § 487(a)(6), 20 U.S.C. § 1094(a)(6). Thus, the institution ensures that the loan, when considering all other scholarships, loans and grants received by the student, is within the cost of attendance. Other lenders choose to disperse the loan proceeds to the borrower but nonetheless seek certification from the institution that the loan, less other scholarships, loans, and grants does not exceed the cost of attendance. The institution must truthfully advise the lender if the loan proceeds, in fact, exceed the amount the student is authorized to borrow. *Id*. This is important because, under Section 523(a)(8)(B) and Internal Revenue Code Section 221(d), a private student loan, i.e., a loan not funded or guaranteed by a governmental entity or a nonprofit, is nondischargeable only if it meets the conditions for a qualified

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[2] *See*, *e.g.*, the Federal Student Loan Handbook at 4-43, 7-ER-1818: "An over-award exists when a student's aid package exceeds his or her need….when an over-award situation arises, you may be required to adjust the federal student aid (FSA) in the student's package in order to eliminate the over-award." "An over award exists whenever…a student's award exceeds his or her cost of attendance (COA)."

education loan, including that the loan is within the cost of attendance at a Title IV-eligible institution.

Other student lenders, in contrast, intentionally choose not to pay the funds to the educational institution or to seek certification from the institution that the loan is within the cost of attendance. Instead, they make a business decision to offer loans directly to students knowing that their loans may well exceed the cost of attendance. They do this because they are in the business of offering what are essentially consumer loans that are *above and beyond* the amount needed to meet the student's educational needs and expected living expenses while at school. Obviously, these loans, when they exceed the cost of attendance, are not being made "*solely*" for an educational purpose. These lenders, when faced with a possible determination that their loan is fully dischargeable typically make the argument that only that portion of the loan that exceeds the cost of attendance should be dischargeable, and the rest of the loan should be determined to be nondischargeable. *See, e.g.*, *In re Homaidan*, 650 B.R. at 420 (rejecting Navient's argument that a portion of the loan is nondischargeable).

There is absolutely no authority for this position in the law, and as a matter of policy, it would be extremely unwise to adopt such a position. Allowing lenders to freely solicit loan applications from students without the safeguard of a certification from the school as to the cost of attendance would encourage widespread over-borrowing, which often results in horrendous debt obligations[3] at exorbitant interest rates.[4] Graduates are often ill-prepared to repay these loans and their rapidly accumulating interest. Ensuring that loans are, in fact, within the cost of attendance dramatically reduces the likelihood of over-borrowing, while imposing important accountability on lenders and borrowers alike.

Simply put, Congress did not intend to give lenders a carte blanche to offer exorbitant loans to students and then to obtain the protection of nondischargeability under the Bankruptcy Code. By encouraging lenders to pay loans directly to the institutions and also providing a mechanism to seek certification from the institutions of higher education, the Code has mechanisms in place to significantly reduce future litigation; loans already certified by the applicable institution as within the cost of attendance are much more likely to be nondischargable.

The bankruptcy court below concluded that not all of the loan provided to Dr. Pearson was used for qualified education expenses.[5] 2-ER-254-64. The court

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[3] *See, e.g.*, *In re Dufrane*, 566 B.R. at 31, in which the debtor incurred over $1 million in debt to attend law school, including over $500,000 from private student loans.

[4] Private educational loans typically carry higher interest than federally-funded or guaranteed educational loans. Consumer Financial Protection Bureau, *Choosing a Loan That's Right for You*, https://www.consumerfinance.gov/paying-for-college/choose-a-student-loan/ (last accessed August 17, 2026).

[5] The court, however, erred in concluding that *any* of the tuition for Dr. Pearson's medical school was a qualified education expense. *See* Point II *infra*.

rejected the approach taken in *Homaidan* and held that the portion of the loan that was used for qualified education expenses was nondischargable. 2-ER-264-67. The court felt that requiring the entire loan to be within the cost of attendance at a Title IV institution is harsh, noting that if a lender loaned $500,000, where $495,000 was for educational purposes, and $5,000 was to buy a car, all of the $500,000 would be dischargeable. Said the court "That cannot be right." 2-ER-267, n.80. That conclusion was error. Holding that the entire loan was discharged is not only required by the clear language of Section 221(d)(1), but also makes perfect sense from a policy perspective. Those lenders who choose not to seek certification from the school and who provide their loans directly to the student rather than paying the loan directly to the institution knowingly bear the risk that their loan will be fully dischargeable in bankruptcy. Any other result would encourage student lenders to avoid contact with the institution and make the loans directly to the student, secure in the knowledge that at least some of their loan may be nondischargeable. Such conduct is not to be encouraged in a society that is burdened by trillions of dollars in unpaid and unpayable student debt. Thus, while the facts of this particular case are somewhat, although not entirely, unique,[6] the implications of this Court's decision will reverberate throughout the student loan industry.

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[6] Student loan adversary proceedings involving loans by related parties are not uncommon. *See, e.g.*, *Nypaver v. Nypaver* (*In re Nypaver*), 581 B.R. 431 (Bankr.

II. AN EDUCATIONAL LOAN MADE TO A STUDENT ATTENDING A NON-ACCREDITED PROGRAM IS NOT A "QUALIFIED EDUCATION LOAN."

The bankruptcy court found that of the $331,500 loaned by the Nichols to Dr. Pearson, $266,876.81 were qualified higher education expenses. 2-ER-260.. The BAP accepted this conclusion as a finding of fact as to which neither party objected. 1-ER-7-8. But this conclusion is based on a fundamental error of law. The bankruptcy court came to this conclusion because it found that the first year of Dr. Pearson's coursework was at St. George's University and not at St. George's University School of Medicine. The court found that the Nichols had failed to establish that St. George's University was a Title IV qualified institution. 2-ER-253. The court also found, however, that the tuition Dr. Pearson paid during a study abroad program at Northumbria University in Great Britian was a qualified education expense, even though the Northumbria program was not a Title IV-eligible program. The bankruptcy court held that it did not matter whether the program was Title IV-eligible because St. George's University School of Medicine itself was an institution eligible for Title IV status and was listed on the list of Title IV institutions promulgated by the United States Department of Education. 2-ER-249-52. "In short, the *institution* must be eligible, and the Plaintiffs have demonstrated that St.

W.D. Pa. 2018) (holding that loan from father to daughter for college attendance was discharged in bankruptcy because it was not an "educational benefit").

George's was an eligible institution to the satisfaction of this Court." 2-ER-252 (emphasis in original).

That conclusion was incorrect because each program offered by a Title IV institution must be determined to be Title IV-eligible. This conclusion follows from the wording of the Higher Education Act and the regulations promulgated thereunder. "Institution of higher education" is defined in the Act, *inter alia*, as an educational institution that provides a bachelor's degree or a program of study of not less than two years "that is acceptable for full credit toward such a degree" and which is accredited by a nationally-recognized accrediting agency or association. 20 U.S.C. § 1001(a)(3).[7]

Section 484 of Title IV of the Higher Education Act, Section 20 U.S.C. § 1091, provides that, in order to receive any assistance under the Act the student must "be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which such student is enrolled) leading to a recognized educational credential at

[7] I.R.C. Section 221(d)(2) refers to 26 U.S.C. § 25A(f)(2) for the definition of eligible institution. That Section, in turn, refers to 20 U.S.C. § 1088. However, the definition of institution of higher education was later moved to 20 U.S.C. §§ 1001, 1002. Section 1001 contains the basic definition of institution of higher education and Section 1002 adds additional institutions that are eligible for student aid programs under Title IV. Section 1002 states that those institutions are the ones listed in Section 1001 plus those specifically-mentioned in Section 1002. Those additional institutions are not at issue here.

an institution of higher education that is an eligible institution in accordance with the provisions of Section 1094 of this title…" (emphasis added). Further, Section 481 of the Act, 20 U.S.C. § 1088(b)(2)(B) provides that any new "program" at an institution must be approved by the Secretary of Education as "eligible" before it is considered to have satisfied the requirements of Section 1088(b), which defines "eligible programs."

These provisions have been interpreted to mean that the program itself must be an accredited and approved Title IV program:

> To qualify as an eligible institution for Title IV participation, an institution must offer at least one eligible program. Not all of an institution's programs must meet program eligibility requirements for a [institution of higher education] to participate in Title IV, but in general, students enrolled solely in ineligible programs cannot receive Title IV student aid. To be Title IV eligible, a program must lead to a degree, (e.g., an associate's, bachelor's, or graduate degree), or certificate, or prepare students for gainful employment in a recognized occupation.
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> Before awarding Title IV aid to students, [an institution of higher education] must determine that the program in which a student is enrolled is Title IV eligible, ensure that the program is included in its accreditation notice, and ensure that it is authorized by the appropriate state to offer the program.

Congressional Research Service, Eligibility for Participation in Title IV Student Financial Aid Programs (October 16, 2024, at 5-6).

Similarly, the I.R.S., which regulates how an institution of higher education can qualify to accept federal financial aid has stated the following:

> To establish eligibility to participate in financial aid programs under the Education Act, an institution generally must apply to the Secretary of Education for a determination that it qualifies as an eligible institution, and may request a certification that it is eligible to participate in financial aid programs under Title IV. *See* 34 C.F.R. § 600.20(a). If the Secretary of Education determines that the entire applicant institution, including all its locations and all its educational programs, satisfies the applicable requirements, then the eligibility determination extends to all educational programs and locations identified on the institution's application. *See* 34 C.F.R. § 600.10(b)(1). *If, however, only certain educational programs or locations satisfy the applicable requirements, then the eligibility determination extends only to those educational programs and locations as identified by the Secretary of Education*. *See* 34 C.F.R. § 600.10(b)(2); *See* also 34 C.F.R. § 600.20(c).
>
> The Secretary of Education issues an eligibility determination at the institution level, *and the determination may extend to some or all programs*, locations, and branch campuses of the institution. Similarly, an "eligible educational institution" for purposes of Section 25A(f)(2) of the Code is determined at the institution level and the "eligible educational institution" may extend to some or all programs, location, and branch campuses of the institution consistent with the Secretary of Education's eligible determination.

Internal Revenue Service, Rev. Proc. 2005-50, 2005 WL 1859238 (Aug. 8, 2005) (emphasis added).

Regulations of the Secretary of Education cited by the I.R.S. make it clear that the Secretary has the power to determine that an entire institution, or only certain programs at the institution, are eligible for participation in Title IV programs. *See* 34 C.F.R. §§ 600.10(b)(1), (2), (6), 600.20(c). An institution that seeks an eligibility determination for a specific educational program that is not included in the already-approved curriculum must obtain such approval from the Secretary of Education.

In addition, the Federal Student Loan Handbook makes it clear that not all programs at an eligible institution are themselves eligible for federal funding. Thus, the Handbook specifies that a person must be enrolled as a regular student "in an eligible program." 6-ER-1399. Further, "[a] school's eligibility does not necessarily extend to all its programs so the school is responsible for ensuring that a program is eligible before awarding FSA [Federal Student Aid] funds to students in that program." 6-ER-1485. The Handbook then goes on in detail to describe the various kinds of educational programs that are generally eligible for federal financial aid. 6-ER-1499.

In addition, the Handbook provides that a school can add certain educational programs without seeking the Department of Education's approval if they meet certain conditions. Most particularly, the school must have received the required state and accrediting agency approvals for such programs. Those programs typically are any associate's, bachelor's, professional, or graduate degrees. In all other cases, the eligibility of a new program must be determined by the Department of Education before federal program funds can be awarded. 6-ER-1569.

With regard to foreign institutions in particular, the Federal Student Loan Handbook makes a clear distinction between eligible and ineligible programs:

- "A program that permits Direct Loan recipients to take an ineligible course for credit, regardless of whether the course is optional or required, is considered ineligible for Direct Loan funds."

- "A foreign institution is ultimately responsible for ensuring that Direct Loan funds are not dispersed to students who enroll in any Direct Loan ineligible courses as a part of their program and should ensure that any students who may be applying for Direct Loan funds are aware of the restrictions on enrollment."

- "An institution must provide to students information on the academic program of the institution. If a foreign institution chooses to offer a Direct Loan-eligible version of a program for Direct Loan recipients, this information must make clear that a student will not be eligible for Direct Loan funds if the student enrolls in the ineligible version."

9-ER-2258.

The regulations promulgated by the Secretary of Education clearly state that a medical education program operated by a foreign institution for the benefit of American students does not receive Title IV credit if the program is operated outside the country in which the Title IV institution has its main campus. 34 C.F.R. § 600.55(h)(2). In this case, the Secretary of Education specifically advised St. George's University that the Northumbria University program was not eligible for Title IV credit because it operates in England and not in Grenada where the St. George's University main campus is located. American students who attend Northumbria therefore are not eligible for Title IV assistance for any portion of their medical education. *See* ER-D at p. 27-28. Thus, none of Dr. Pearson's medical education expenses at either Northumbria or St. George's were Title IV-eligible.

The bankruptcy court drew the opposite conclusion from the Secretary's letter, saying the letter confirmed that St. George's Medical School was a Title IV institution. 2-ER-251-52. But as noted above, it is not just the institution that must be Title IV-eligible.[8]

Thus, the bankruptcy court's conclusion that Dr. Pearson's medical education expenses were a qualified education expense because St. George's Medical School was Title IV-eligible is clearly wrong. Not only must an institution be determined to be Title IV-eligible, but each program that a student attends within that university must be Title IV-eligible in order to receive federal loans or grants under the Higher Education Act. Thus, because Section 523(a)(8)(B) and I.R.C. Section 221(d) require Title IV-eligibility in order for a private loan to be non-dischargeable, the Nichols' loan to Dr. Pearson was dischargeable for the additional reason that Dr. Pearson's medical school education was not a Title IV-eligible program. Because, the Northumbria program was not Title IV-eligible, Dr. Pearson was not eligible to receive federal scholarships, loans or grants for attendance at either that institution

[8] The bankruptcy court also noted that the Department of Education's regulations embodied in 34 C.F.R § 600.55(h)(2) do not in any way restrict whether a student is eligible under the Higher Education Act because the regulation came into effect on July 20, 2011, whereas the Internal Revenue Code, Section 221(d), references the Higher Education Act as in effect in 1997. 2-ER-258. This is a complete *non sequitur*. The date of the regulation is irrelevant. The only relevant question is whether the regulation properly interprets the Higher Education Act as it was written in 1997, which is the applicable statutory framework.

or St. George's, a fact undisputed in the record. 1-ER-7-8. Dr. Pearson, like those who attend non-Title IV schools or programs, was required to obtain a private loan to further his education. As noted, private loans from commercial lenders typically charge much higher interest rates. It would be doubly unfair to the students attending these unaccredited programs to deny them access to federally-guaranteed student loans and, at the same time, subject their private loans to nondischargeability.

In the normal course, educational lenders can protect themselves with regard to the dischargeable status of their loans by simply consulting the index of Title IV schools and contacting the applicable institution to obtain the information as to whether the particular program is a Title IV program. Every school knows which of its programs are Title IV-eligible because they can accept federally-guaranteed or funded loans *only* for Title IV-eligible programs. And the schools must advise students who intend to enroll in non-Title IV programs that they are *not* eligible for federally-funded or guaranteed loans. *See* p. 22, *supra*. Thus, while the Nichols may have been unaware of the legal status of their loan to their former son-in-law, student lenders are completely aware of the limits of Section 523(a)(8)(B) and know that they must obtain confirmation from the school that the program the student is enrolled in is in fact a Title IV program if they wish their loan to be nondischargeable.

Accepting Appellants' argument that the Title IV status of the institution is all that matters would lead to absurd results. Would a two-week computer course at Yale University be Title IV-eligible merely because Yale is a Title IV institution? How about a college board preparatory course for high school students? Title IV schools routinely offer programs that are never intended to be Title IV-eligible. According to Appellants, mere sponsorship by a Title IV institution immediately confers eligibility status on a program the institution offers. But the plain language of the Higher Education Act and the regulations promulgated thereto do not allow it.

Appellants rely upon 26 U.S.C. § 25A(f)(2) which defines an "eligible institution" as one that is "eligible to participate in a *program* under Title IV of [the Higher Education Act of 1965.]" App. Br. at 19. (emphasis added). Appellants seize upon this language as suggesting that any "program" offered by an institution is therefore eligible for qualified educational treatment. That is a fundamental misreading of the statute. The term "program," as referenced in Section 25A(f)(2) refers to the various *loan* programs discussed under Title IV of the Higher Education Act, not educational programs at the particular institution. *See, e.g.*, Section 401(b)(1) of Title IV of the Higher Education Act, 20 U.S.C. § 1070(b)(1) ("The Secretary [of Education] shall, in accordance with subparts 1 through 9 of this part, carry out *programs* to achieve the purposes of this part.") (emphasis added). Title IV then goes on to describe the various federal aid programs, for example, the Byrd

Scholarship Program ("it is the purpose of this subpart to establish a Robert C. Byrd Honors Scholarship *Program* to promote Student excellence and achievement…") Section 419 A of the Higher Education Act, 20 U.S.C. § 1070d-31 (emphasis added); *see also Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1043 (11th Cir. 2015) (listing loan programs that disburse funds under the Higher Education Act to defray the costs of higher education, including the Federal Pell Grant, the Federal Family Educational Loan Program, the William D. Ford Federal Direct Loan Program, and the Federal Perkins Loan).

Because Dr. Pearson's first year of medical school in England was not a Title IV-eligible program, his loan was not used for qualified educational expenses and the loan therefore was discharged in his bankruptcy proceeding.

CONCLUSION

For the foregoing reasons, *Amici Curiae* urge this Court to affirm the decision of the Bankruptcy Appellate Panel below.

Dated: August 17, 2026

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CERTIFICATE OF COMPLIANCE

I, George F. Carpinello, counsel for Amicus, certify:

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) and Cir. R. 32-1(a) because it contains 6,511 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it was prepared in Microsoft Word using the proportionally spaced typeface 14-point Times New Roman.

Dated: August 17, 2026

/s/ George F. Carpinello
George F. Carpinello

CERTIFICATE OF SERVICE

I, George F. Carpinello, counsel for Amici, certify:

I caused this brief to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 17, 2026. All participants in the case are represented by counsel who are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: August 17, 2026

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