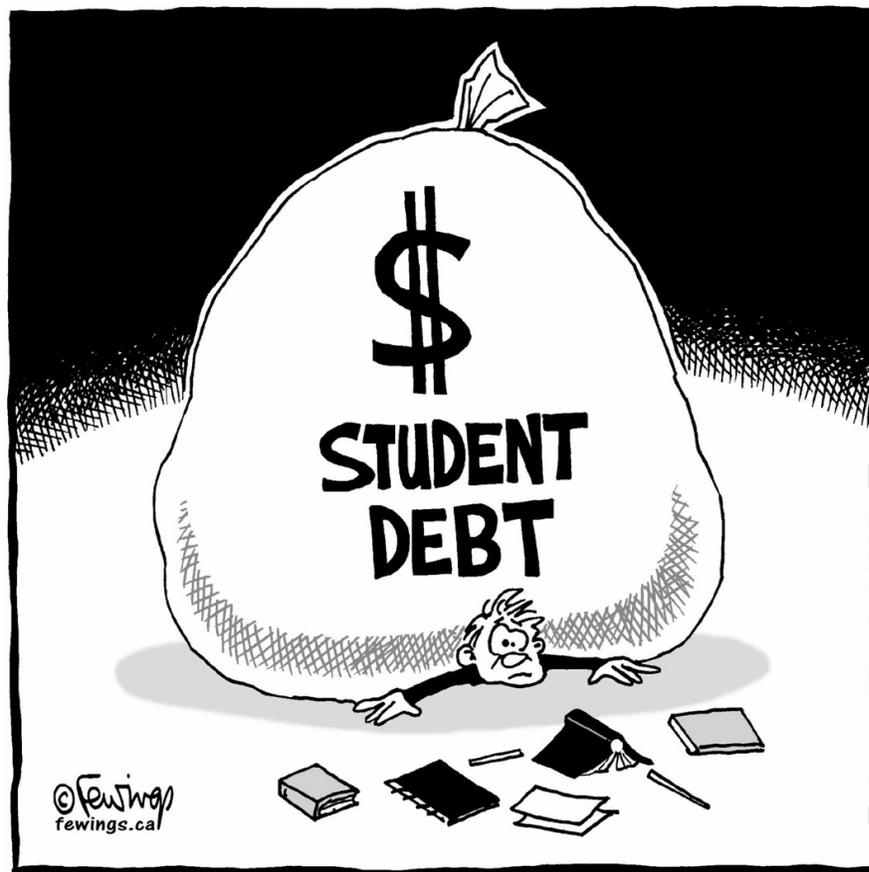


OREGON STUDENT DEBT

**How to wipe out student loans
in Oregon bankruptcy courts**



By Michael Fuller, Esq.

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Oregon Student Debt

How to wipe out student loans in Oregon bankruptcy courts

www.OregonStudentDebt.com

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HOW TO USE THIS GUIDE

First, take the 60-second undue hardship quiz at OregonStudentDebt.com/Quiz.

Next, use this guide to improve your odds of wiping out your student loans. The more quiz boxes you can honestly check, the more likely your bankruptcy judge is to forgive your student loans.

Finally, call Oregon legal aid at 503-224-4086 and apply for the bankruptcy clinic. Your pro bono attorney can use your quiz results to help draft a complaint to discharge your student loans.

I wrote this guide to help people wipe out student loans in Oregon bankruptcy courts. But these materials are not legal advice and not a substitute for an experienced local pro bono attorney.

Chapter 1 reviews the general rule that student loans can't be wiped out in bankruptcy. It also explores the two categories of student loans subject to the general rule, and summarizes the undue hardship exception to the general rule. Chapters 2, 3, and 4 analyze the separate prongs of the Brunner undue hardship test.

Visit OregonStudentDebt.com/Samples to download sample complaints, motions, and discovery requests to help wipe out student loans in Oregon bankruptcy court.

Visit OregonStudentDebt.com/Cases to view full legal citations to every case referenced in this guide and every published and unpublished undue hardship opinion from the Ninth Circuit Court of Appeals, Ninth Circuit Bankruptcy Appellate Panel, Oregon district court, and Oregon bankruptcy court.

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CHAPTER 1:

THE GENERAL RULE

∞

Q: Can I wipe out my student loan in Oregon bankruptcy court?

A: It depends on the type of loan and your individual income and expenses.

∞

As a general rule, student loans can't be wiped out in bankruptcy.

In [Riso](#), the Ninth Circuit stated that the general rule is to be strictly construed in favor of debtors (people who file bankruptcy) and against student loan creditors.

The text of the general rule is found in [section 523\(a\)\(8\)](#) of title 11 of the Bankruptcy Code, as revised in 2005. The section states that a bankruptcy discharge does not apply to any debt:

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.

∞

Q: Is my debt considered a non-dischargeable student loan?

A: It depends who made the loan and for what purpose.

∞

Not all educational debts are subject to the general rule of non-dischargeability. The general rule only applies to two debt categories:

(A) obligations incurred for an educational benefit, scholarship, stipend or loan, incurred to the government or a nonprofit institution, and

(B) qualified educational loans incurred to attend an educational institution eligible for aid under the Higher Education Act.

In [Rosen](#), the Oregon bankruptcy court determined that category (A) includes debts incurred to attend apprenticeship programs funded by nonprofit institutions.

In [Garelli](#), the Oregon bankruptcy court determined that category (A) includes student loans guaranteed by non-profit institutions incurred by co-signors who received no direct educational benefit.

In [Nunez](#), the Oregon bankruptcy court determined that category (B) does not include private student loans to attend schools that are not listed on the Department of Education's Federal School Codes Lists.

∞

Q: Do I qualify for the Brunner undue hardship exception?

A: Only if you have no disposable income, no potential to increase your income in the future, and have made prior good faith efforts to repay your loans.

∞

The general rule contains an exception: student loans that would impose an undue hardship on a debtor and a debtor's dependents can be discharged.

To qualify for the undue hardship exception in Oregon, you must meet each of the three Brunner test prongs by proving: **(1)** you cannot, based on your current income and expenses, maintain a minimal standard of living for yourself or your dependents if required to

repay your student loans, **(2)** additional circumstances exist which make it likely that your state of affairs satisfying the first prong will persist for a significant portion of the repayment period, and **(3)** you have made good faith efforts to repay your student loans.

∞

Q: What is the Brunner undue hardship test?

A: The Brunner test is the exclusive method used in Oregon to qualify for the undue hardship exception.

∞

In 1983, Marie Brunner filed bankruptcy to discharge her student loans under the undue hardship exception. Based on her testimony that she couldn't find work as a social worker in New York, her bankruptcy judge granted her a hardship discharge. When the student

loan company appealed to district court, Brunner couldn't afford to hire an attorney to represent herself. Brunner ultimately lost twice on appeal, resulting in a widely followed Second Circuit opinion called [Brunner](#).

In a 1987 case called [Pena](#), the Ninth Circuit (which covers Alaska, Washington, Oregon, California, Montana, Idaho, Nevada, and Arizona) adopted the three prong Brunner test as the exclusive analysis to determine the undue hardship exception.

CHAPTER 2: INCOME AND EXPENSES

∞

Q: How do I meet the first prong of the Brunner test?

A: You must prove that you can't maintain a minimal standard of living if you're required to repay your student loans.

∞

The first Brunner prong is met only if a debtor (a person filing bankruptcy) cannot repay their student loans after maximizing their income and reducing their budget down to a minimal standard of living.

In [Nascimento](#), the Ninth Circuit Bankruptcy Appellate Panel (the “BAP”) ruled that the first

Brunner prong requires more than a showing of tight finances. The first Brunner prong is satisfied only if it would be unconscionable to require a debtor to increase their income or reduce their expenses.

In [Pena](#), the Ninth Circuit determined that the first Brunner prong is satisfied if a debtor's expenses exceed their earnings, resulting in no monthly disposable income to repay their student loans.

∞

Q: Can I save for retirement and still meet the first Brunner prong?

A: Possibly, depending on your age and circumstances.

∞

In [Craig](#), the Ninth Circuit ruled that 401(k) plan contributions may be allowed, depending on a debtor's age, income, target retirement date, existing retirement savings, and the needs of the debtor's dependents, among other factors.

∞

Q: Can I take a vacation and still meet the first Brunner prong?

A: Potentially, so long as you travel on a budget.

∞

In [Jorgensen](#), the Ninth Circuit BAP allowed a debtor \$50 in monthly travel expenses to visit family once a year.

In [Degroot](#), the Oregon district court allowed a debtor to vacation in Europe based on evidence that she used travel points and spent very little on incidentals.

In [Birrane](#), a Ninth Circuit bankruptcy court reasoned that a debtor met the first Brunner prong, in part, because she “takes no vacations.”

∞

Q: Can I meet the first Brunner prong if my budget includes support to family members?

A: Yes, if the support is reasonable.

∞

In [Sequeira](#), the Oregon bankruptcy court allowed a debtor to financially support her elderly parent as part of her minimal standard of living because her parent reasonable relied on the debtor for support and the debtor did in fact provide her parent necessary financial support.

∞

Q: Can I own or lease a new car and still meet the first Brunner prong?

A: Probably, so long as your new car is necessary, economical, and not a luxury brand.

∞

In [Jorgensen](#), the Ninth Circuit BAP allowed a debtor to make payments on a new car under the first Brunner prong because her old car was not reliable and her new car was an inexpensive subcompact with a warranty.

In [Hedlund](#), an Oregon bankruptcy court allowed a debtor to make payments on a new car as part of his minimal standard of living.

∞

Q: Can my budget include entertainment expenses and still meet the first Brunner prong?

A: Yes, within reason.

∞

In [Hedlund](#), the Oregon district court allowed monthly expenses for cable, internet, cell phones, and a gym membership as part of a debtor's minimal standard of living. In [Birrane](#), the Ninth Circuit BAP allowed monthly charitable contributions, dining out expenses, book club purchases, and gifts. In [Rosen](#), the Oregon bankruptcy court allowed entertainment, clothing, child support, family law attorney fees, health insurance for children, and a DUI fine.

However, in [Nascimento](#), the Ninth Circuit BAP ruled that a debtor did not meet the first Brunner prong because she failed to engage in appropriate "short-term

belt-tightening". The debtor's monthly budget included \$65 for a hairdresser, a \$325 car payment, a \$100 phone bill, a \$120 new clothing budget, weekly \$100 chiropractor appointments, and \$400 in projected child support payments.

∞

Q: Can my budget include new clothing expenses under the first Brunner prong?

A: Yes, if new clothes are reasonable under the circumstances.

∞

In [Jorgensen](#), the Ninth Circuit BAP allowed new clothes and dry cleaning expenses as within a debtor's minimal budget, reasoning that the debtor's clothing expense was a result of her fluctuating weight after cancer.

∞

Q: Can I meet the first Brunner prong even though my budget includes medical expenses?

A: Yes.

∞

In [Jorgensen](#), the Ninth Circuit BAP allowed an \$800 monthly expense resulting from documented health problems as within a debtor's minimal budget.

∞

Q: Do I need to take on a roommate to meet the first Brunner prong?

A: Yes, if possible.

∞

In [Degroot](#), the Oregon district court ruled that a debtor failed to meet the first Brunner prong because she lived alone in a three bedroom house and failed to take on roommates for additional income.

In [Williams](#), the Ninth Circuit determined a debtor did not meet the first Brunner prong because he lived alone in a two-bedroom apartment and failed to take on an additional roommate or downsize to a one-bedroom apartment.

∞

Q: Can I meet the first Brunner prong even though my income fluctuates?

A: Yes.

∞

In [Mason](#), the Ninth Circuit affirmed the discretion of bankruptcy courts to determine the proper method to average a debtor's fluctuating income and expenses.

In [Pena](#), the Ninth Circuit did not disrupt a bankruptcy court's decision to average the debtors' expenses incurred at the time of filing, during discovery, and at the time of trial.

∞

Q: Can I meet the first Brunner prong if my income is above the poverty guidelines?

A: Yes.

∞

In [Howe](#), the Ninth Circuit BAP ruled that the first prong of the Brunner test requires analysis of a debtor's actual monthly budgets, regardless of whether their income meets or exceeds the federal poverty guidelines or IRS non-collectability standards.

In [Carter](#), the Ninth Circuit BAP determined that a debtor who worked at a gas station did not pass the first Brunner prong because despite his low earnings, his disposable monthly income could repay his student loans.

∞

Q: Can I meet the first Brunner prong if mental health issues prevent me from working?

A: Yes.

∞

In Gray, the Oregon bankruptcy court determined that a debtor who lived in an old trailer and survived on disability and food stamps met the first Brunner prong based on a psychologist's report that his personality disorders prevented him from working. The court determined the debtor's income was barely sufficient to sustain even a marginal lifestyle, let alone make his student loan payments.

∞

Q: Do I need to look for a higher paying job to meet the first Brunner prong?

A: To avoid issues at trial, yes.

∞

In [Blackbird](#), the Ninth Circuit BAP narrowly rejected the argument that the debtor failed the first prong of the Brunner test because he did not maximize his efforts to find a better job in light of his degrees and good health.

In [Degroot](#), the Oregon district court was not persuaded by the argument that a debtor failed to meet the first Brunner prong because she let her accounting degrees lapse to open a struggling yarn store in Portland.

∞

Q: Do I need to work overtime or take on a second job to meet the first Brunner prong?

A: Not necessarily but you should work at least 40 hours per week if possible.

∞

In Williams, the Ninth Circuit determined a debtor did not meet the first Brunner prong because he worked only ten months out of the year, and testified he would work even less if his student loans were discharged.

∞

Q: Can I own a home and still meet the first Brunner prong?

A: Yes, so long as your equity is not excessive and all bedrooms are occupied.

∞

In [Degroot](#), the Oregon district court was not persuaded by the argument that a debtor failed to meet the first Brunner prong because she should have sold her home to cash in her equity. However, the court ultimately denied the debtor a discharge because she failed to find roommates for her two unoccupied rooms.

∞

Q: Can I meet the first Brunner prong if my income will soon decrease?

A: Probably, depending on your age and health.

∞

In [Sequeira](#), the Oregon bankruptcy court considered a debtor's age and medical difficulties in determining that she satisfied the first Brunner prong. The court reasoned that although the debtor had \$176 disposable income to repay her student loans each month, she wouldn't be able to sustain those payments for more than another seven and a half years. Accordingly, the court granted her a partial discharge of her student loans.

∞

Q: Do I meet the first Brunner prong if my student loan payments are so large I could never pay them off?

A: Yes, so long as you've taken all efforts to maximize your income, reduce expenses, and you still could never realistically payoff your loan balance.

∞

In [Blackbird](#), a Ninth Circuit bankruptcy court determined a debtor met the first prong of the Brunner test because even though his restaurant meals, skydiving expenses, and cable television expenses were not reasonably necessary, his disposable income was so low, he could not realistically repay his entire debt amount. Despite his multiple degrees and good health, the debtor owed over \$217,000 in student loans and

earned \$1,661 net income as a customer service representative at Lowe's.

In [Carnduff](#), the Ninth Circuit BAP ruled that debtors satisfied the first Brunner prong because even the modest reductions in expenses proposed by the Department of Education would be inadequate to fully amortize the entire amount of their student loan debt.

In [Rifino](#), the Ninth Circuit overlooked a debtor's tanning, cable television, and monthly new car payments because she wouldn't have been able to pay her student loans even if she had removed these expenses from her budget.

∞

Q: Can I meet the first Brunner prong if my student loans are from graduate school?

A: Yes.

∞

In [Blackbird](#), the Ninth Circuit BAP allowed a debtor with over \$217,000 in medical school student loans earning \$1,661 per month to pass the first Brunner prong.

In [Hedlund](#), the Ninth Circuit allowed a former law school student who couldn't pass the bar to discharge most of his \$85,000 student loan debts.

∞

Q: Do I have to apply for an income-based repayment plan to meet the first Brunner prong?

A: Generally, yes; Oregon courts want to see whether you can afford an income-based repayment plan payment after deducting your monthly expenses from your monthly income.

∞

In Freeland, the Oregon bankruptcy court ruled that debtors did not satisfy the first Brunner prong because they could have afforded monthly income-contingent repayment plan (ICRP) payments by reducing their monthly expenses.

In Cianciulli, the Oregon bankruptcy court refused to discharge \$89,000 in student loans under the first Brunner prong because requiring debtors to make a

monthly ICRP payment of \$408 based on net income of \$2,800 was not unconscionable.

CHAPTER 3: ADDITIONAL CIRCUMSTANCES

∞

Q: How do I meet the second prong of the Brunner test?

A: You must prove additional circumstances make it likely your undue hardship will continue in the future.

∞

The first Brunner prong examines whether your current expenses and earnings leave no monthly disposable income to make your student loan payments. Assuming you meet the first prong, the second prong examines your financial future.

In [Mason](#), the Ninth Circuit ruled that the second prong required proof of at least one ‘additional circumstance’ indicating a debtor’s state of affairs was likely to persist in the future.

In [Carnduff](#), the Ninth Circuit BAP determined that the second prong must be proved by a preponderance of the evidence standard (meaning more likely than not).

∞

Q: What types of circumstances satisfy the second Brunner prong?

A: Over a dozen types of circumstances may qualify.

∞

In [Nys](#), the Ninth Circuit listed various circumstances that could satisfy the second Brunner prong, including: **(1)** serious mental or physical disability of a debtor or a debtor's dependents which prevents employment or advancement; **(2)** a debtor's obligations to care for dependents; **(3)** lack of, or severely limited education; **(4)** poor quality of education; **(5)** lack of usable or marketable job skills; **(6)** underemployment; **(7)** maximized income potential in the chosen educational field, and no other more lucrative job skills; **(8)** limited number of years remaining in a debtor's work life to

allow payment of the loan; **(9)** age or other factors that prevent retraining or relocation as a means for payment of the loan; **(10)** lack of assets, whether or not exempt, which could be used to pay the loan; **(11)** potentially increasing expenses that outweigh any potential appreciation in the value of a debtor's assets and/or likely increases in a debtor's income; **(12)** lack of better financial options elsewhere.

The [Nys](#) opinion made clear that although a debtor can't purposely choose a lifestyle that prevents her from repaying her student loans, her additional circumstances need not be any more compelling or extreme than that of an ordinary person in debt. The court ruled that the second Brunner prong may be satisfied even in the absence of any serious illness or psychiatric problems.

∞

Q: Can I meet the second Brunner prong if I'm eligible for retraining?

A: It depends whether a new career will allow you to repay your student loans.

∞

In [Rosen](#), the Oregon bankruptcy court ruled that the second Brunner prong was met based on evidence a debtor's financial status was likely to deteriorate in the future. The court reasoned that the debtor was permanently disabled with no college education or specialized skills. Although he was eligible for vocational retraining, the court saw no evidence that retraining would allow him to obtain a better paying job.

∞

Q: Can I satisfy the second Brunner prong if I'm relatively young?

A: Potentially, so long as your student loans are so large you'll never be able to repay them in full.

∞

In [Carnduff](#), the Ninth Circuit BAP held that debtors met the second Brunner prong, even though they were young, educated, and likely to increase their incomes in the future. The court reasoned that although the debtors' incomes were likely to increase, they would need to win the lottery or find a gold mine to repay their student loans in full.

In [Hedlund](#), the Oregon district court determined that a debtor passed the second Brunner prong because despite his youth, education, and good health, even a full time well-paying position in the future wouldn't

allow him to make payments during the repayment period that would ultimately pay off his loans.

∞

Q: Do I satisfy the second Brunner prong if I'm disabled?

A: Probably, so long as your disability is permanent and your benefits don't allow you to repay your student loans in the future.

∞

In [Pena](#), the Ninth Circuit held that a debtor met the second Brunner prong based on her disability. The court was persuaded by her testimony that her mental impairment was permanent, and that she had already qualified for disability benefits.

In [Jorgensen](#), the Ninth Circuit BAP held a debtor passed the second Brunner prong because although her

cancer may have been unlikely to return, she still suffered anemia, hypothyroidism and high blood pressure that limited her ability to work.

However, in Nichols, the Ninth Circuit BAP held debtors did not pass the second Brunner prong because although they had health problems, they did not establish they were disabled and could not work.

∞

Q: Can I satisfy the second Brunner prong if I received no educational benefit from my student loans?

A: Yes, so long as your poor education is keeping you from repaying your loans in the future.

∞

In Pena, the Ninth Circuit held that a debtor met the second Brunner prong based on his lack of job

potential. The court held that whether the debtor received any educational value from his student loans at ITT were relevant to his future ability to repay his debts.

∞

Q: Can I satisfy the second Brunner prong if I have ADD?

A: Yes, so long as your ADD will keep you from repaying your loans in the future.

∞

In [Mason](#), the Ninth Circuit held a debtor passed the second Brunner prong because his life-long learning disability impacted his ability to succeed. Although the debtor attended law school, he received special accommodations, and had difficulty holding positions that require attention to detail. The court dismissed the argument that the debtor's disability should not be

an additional factor because he was disabled prior to receiving his student loans. The debtor was ultimately granted a partial discharge, based on evidence his situation would improve in the future.

In Mendoza, the Ninth Circuit held that a debtor passed the second Brunner prong because his ADD presented a substantial barrier preventing him from improving his state of affairs. The court was persuaded by the fact that the debtor had lived at or below the poverty line and was occasionally homeless. Although he previously attended medical school, the court determined he was unable to afford prescription medication or even dental care that might help improve his situation.

In Gray, the Oregon bankruptcy court ruled that a debtor passed the second Brunner prong because his mental impairments were “the stripes of his coat” and thus would not improve even through psychotherapy.

∞

Q: Can I satisfy the second Brunner prong if I earned a degree and am currently employed?

A: Only if an additional circumstance proves your future income will not be enough to repay your student loans.

∞

In *Williams*, the Ninth Circuit ruled that the second Brunner prong requires “unique” or “exceptional” circumstances. The court held the debtor did not meet the second prong because although he had trouble finding work in the past, he was currently employed as a teacher.

In [Rifino](#), the Ninth Circuit determined that a debtor failed the second Brunner prong because her job as a social worker and her degree would likely allow her to increase her salary over time.

In [Birrane](#), the Ninth Circuit BAP held a debtor failed the second Brunner prong because no additional circumstances limited her road to financial recovery. The court noted the debtor was mentally healthy, educated, and could earn more money if her dance company took off.

In [Carter](#), the Ninth Circuit BAP held a debtor failed the second Brunner prong based on his testimony that he was in line for a promotion at work and expected a decrease in transportation expenses.

∞

Q: Can I satisfy the second Brunner prong if I have current monthly disposable income?

A: Yes, if your age and health make it likely you cannot work much longer.

∞

In [Sequeira](#), the Oregon bankruptcy court held a debtor passed the second Brunner prong because although she currently had \$176 disposable income, she would not be able to sustain that income for more than another seven and a half years, based on her age and medical difficulties.

However, in [Degroot](#), the Oregon district court ruled that where debtors choose to incur educational debt later in life, the fact that they will reach retirement age during the loan repayment period is not enough alone to meet the second Brunner prong. The court reasoned

that the debtor's financial circumstances were of her own choosing because she left her prior profession as a CPA to start a small business.

CHAPTER 4: GOOD FAITH

∞

Q: How do I pass the third ‘good faith’ prong of the Brunner test?

A: You must prove that you’ve made good faith efforts to repay your student loans.

∞

In [Degroot](#), the Oregon district court considered a number of factors relevant to good faith, including **(1)** whether the debtor has worked to maximize income and minimize expenses, **(2)** whether the debtor has made an effort to negotiate a repayment plan, **(3)** whether the debtor has made any payments on the

loan, and (4) the timing of the debtor's attempt to have the student loan discharged.

In [Blackbird](#), the Ninth Circuit BAP acknowledged that a lack of bad faith is not enough to pass the third Brunner prong. Instead, a debtor must provide actual evidence of affirmative good faith efforts.

In [Hedlund](#), the Ninth Circuit held that factual determinations of good faith by a bankruptcy court can only be reversed on appeal in cases of clear error.

∞

Q: Can I pass the third Brunner prong if I'm holding out for a job in my chosen profession?

A: Probably not; you need to work as many hours as possible.

∞

In [Mason](#), the Ninth Circuit ruled that a debtor lacked good faith because he only worked part time as a home siding installer and refused to find a second part time job. The court rejected the debtor's argument that working more hours would make it more difficult for him find a full time career. The court was also critical of his refusal to make more than one attempt to pass the bar exam.

In [Ristow](#), the Ninth Circuit BAP found a lack of good faith, in part, based on a debtor's refusal to work for

less than six figures in her chosen field upon graduation.

In [Birrane](#), the Ninth Circuit BAP found a lack of good faith because a debtor was underemployed and no evidence suggested she was willing to take a second job outside her chosen field. The court reasoned that she could have used her knowledge as a dance instructor to teach private lessons but chose not to.

∞

Q: Can I pass the third Brunner prong if my spouse isn't working?

A: Yes, so long as you've made all attempts to maximize your income and reduce expenses.

∞

In [Hedlund](#), the Ninth Circuit ruled that a debtor passed the third Brunner prong because although his wife didn't work full time, he made good faith efforts to increase his income, was "well-placed for his skills", and had unsuccessfully applied for two higher-paying jobs. The court recognized that the debtor's failure to pass the bar exam after three tries was not "within his control."

∞

Q: Do I have to take a higher paying job in another city to pass the third Brunner prong?

A: No, so long as any potential increase in wages would be offset by increased costs of living.

∞

In [Hedlund](#), the Ninth Circuit allowed a debtor to pass the third Brunner prong because although higher paying jobs might have been available outside of Klamath Falls where his family lived, any potential salary increase would be offset by increased living expenses.

∞

Q: Must I request an unemployment deferment to pass the third Brunner prong?

A: Probably.

∞

In [Roth](#), the Ninth Circuit BAP acknowledged that whether a debtor has sought deferments or forbearances may be indicative of good faith.

In [Pena](#), the Ninth Circuit allowed debtors to pass the third Brunner prong, in part, because they requested an unemployment deferment rather than immediately file bankruptcy.

∞

Q: Can I meet the third Brunner prong if I didn't apply for a repayment plan before filing bankruptcy?

A: Possibly, so long as you wouldn't have qualified.

∞

In [Jorgensen](#), the Ninth Circuit BAP ruled that a debtor's failure to accept a repayment plan does not necessarily equate to bad faith.

In [Roth](#), the Ninth Circuit BAP reasoned that a repayment plan's terms, duration, and future tax and credit consequences must be considered in determining whether a debtor's refusal to accept a repayment plan was reasonable. The court allowed the debtor to pass

the third Brunner prong even though she never applied for a repayment plan because she mistakenly believed she would not qualify. Her failure to apply was also mitigated by the fact that her repayment amount would have been zero. The court reasoned that the law doesn't require a party to engage in futile acts, and the debtor could have faced potentially disastrous tax consequences at the end of her 25 year repayment period.

In [Hedlund](#), the Ninth Circuit allowed a debtor to pass the third Brunner prong even though he never applied for an income contingent repayment plan (ICRP). The court based its decision, in part, on the debtor's good faith determination that he didn't qualify for ICRP because his loans were in default.

In [Kelly](#), the Ninth Circuit found that the third Brunner prong was met because although the debtor never applied for loan repayment options, she had a good faith belief that she was ineligible.

In Gray, the Oregon bankruptcy court allowed a debtor to pass the third Brunner prong because although he didn't apply for an ICRP, there was no guarantee his loans would qualify for such a program.

In Mason, the Ninth Circuit found a lack of good faith, in part, because a debtor didn't pursue ICRP options with diligence.

In Cianciulli, the Oregon bankruptcy court found a lack of good faith because a debtor failed to enroll in an ICRP before filing bankruptcy, even though he didn't qualify for ICRP at the time of trial.

∞

Q: Can I meet the third Brunner prong if I reject a repayment option offered just before trial?

A: Potentially, so long as the repayment option was clearly not affordable.

∞

In [Hedlund](#), the Ninth Circuit allowed a debtor to pass the third Brunner prong even though he rejected three pre-trial repayment options offered just before trial. The court reasoned even the 30-year, \$300 per month options offered were still more than he could afford.

However, in [Birrane](#), the Ninth Circuit BAP ruled that a debtor failed the third Brunner prong because she failed to take any steps to renegotiate a repayment schedule under an ICRP before trial. Although she was denied for an ICRP before filing bankruptcy, the court

was persuaded by the fact that she failed to re-apply or make any payments after filing bankruptcy. Based on the student loan company's promise that she would qualify for \$141 payments and receive a discharge after 25 years, the court refused to discharge her debts through bankruptcy.

In [Degroot](#), the Oregon district court recognized that a debtor must continue making good faith efforts to repay student loans, even after a bankruptcy is filed. The court ultimately ruled that the debtor lacked good faith by failing to apply for an ICRP during her bankruptcy proceedings.

In [Ristow](#), the Ninth Circuit BAP held a debtor failed the third prong in part because she rejected applications for ICRP out of fear her husband would become obligated for the payments.

In [Rosen](#), the court recognized that although the good faith requirement may continue up until trial, it does

not go on indefinitely. The court ultimately refused a student loan company's request to abate its decision on dischargeability by six months to avoid infringing on the debtor's fresh start.

∞

Q: Can I meet the third Brunner prong if I haven't made any payments on my student loans?

A: Potentially, so long as your failure to make payments was beyond your control.

∞

In [Jorgensen](#), the Ninth Circuit BAP ruled that good faith requires proof a debtor made efforts to repay her loans, or proof that forces preventing repayment were beyond her control.

In [Birrane](#), the Ninth Circuit BAP held that whether a debtor has a history of making or not making payments is not necessarily dispositive of whether the third Brunner prong is met.

In [Rosen](#), the Oregon bankruptcy court allowed a debtor to pass the good faith prong because although he didn't make any payments on his student loans, his disability limited his ability to work.

In [Hedlund](#), the Ninth Circuit allowed a debtor who made only one voluntary \$950 payment on his student loans to pass the third Brunner prong. Although his voluntary payments were minimal, he had paid 16 months of uncontested wage garnishments prior to filing bankruptcy.

In [Roth](#), the Ninth Circuit BAP held that a debtor's lack of payments was not in bad faith because she was simply unable to pay due to garnishments and tax refund offsets outside of her control.

However, in Williams, the Ninth Circuit ruled that a debtor lacked good faith, largely because he failed to make any student loan payments from the time he took out his loans until the time he filed bankruptcy.

∞

Q: Can I pass the third Brunner prong if I repaid other debts instead of my student loans?

A: Potentially.

∞

In Pena, the Ninth Circuit ruled that debtors acted in good faith even though they used back disability benefits to pay down a large amount of general unsecured debt instead of repaying a relatively smaller amount of student loan debt.

∞

Q: Can I pass the third Brunner prong if my wages were garnished to repay my student loans?

A: Probably, if the garnishment was uncontested.

∞

In [Hedlund](#), the Ninth Circuit allowed a debtor to pass the third Brunner prong, in part, because he allowed his student loan creditor to garnish his wages without objection for 16 months prior to filing bankruptcy.

∞

Q: Can I pass the third Brunner prong if I file bankruptcy shortly after my student loans come due?

A: Probably not.

∞

In [Hedlund](#), the Ninth Circuit allowed a debtor to pass the third Brunner prong, in part, because he had waited four years after receiving his student loans to file bankruptcy. The court compared the debtor to the student in Brunner, who filed bankruptcy in bad faith just one month after her first student loan payment became due.

In [Kelly](#), the Ninth Circuit allowed a debtor to pass the third Brunner prong, in part, because she paid

thousands of dollars toward her student debt over an eight-year period before filing bankruptcy.

In [Roth](#), the Ninth Circuit BAP was persuaded by the fact that the debtor waited over a decade after her loans became due to file bankruptcy.

In [Degroot](#), the Oregon district court found a lack of good faith because the debtor filed bankruptcy shortly after receiving her student loans.

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