

**Bankruptcy Court for the District of Maryland (J. Teel), applying the three-prong *Brunner* test determined that the Debtor’s student loan debt would not be excepted from her Chapter 7 discharge.**

*Weaver v. Duncan & U.S. Dep’t of Edu. (In re Weaver)*, 2015 Bankr. Lexis 4253 (Bankr. D. Md. Dec. 15, 2015)

Summary by Kristen M. Siracusa, Miles & Stockbridge P.C.

Debtor sought the discharge of student loans held by the Department of Education on the basis of undue hardship. Debtor admitted that the debt was of the kind excepted from discharge under 11 U.S.C. § 523(a)(8), and thus the burden shifted to the Debtor to show by a preponderance of the evidence that excepting the debt from discharge imposed an undue hardship upon her.

Applying the three-part undue hardship test set forth in *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987)<sup>1</sup>, adopted by the Fourth Circuit in *In re Frushour*, 433 F.3d 393, 398 (4th Cir. 2005), Judge Teel determined that although the Debtor satisfied the first prong of the *Brunner* test, she had not satisfied the remaining two prongs. Specifically, as to the second prong the Debtor, who suffers from post-traumatic stress disorder (“PTSD”), was not able to establish that her inability to repay her student loans, due to the PTSD, will persist for a significant portion of her student loan repayment period. The court also noted that the Debtor’s witness, a clinical professional counselor, could not predict how long the Debtor’s condition would prevent her from working.

As to the third *Brunner* prong, the court found that although some efforts were made, the Debtor did not make sufficient efforts to establish the requisite good faith to repay the student loans. As there were still options available for the Debtor to pursue (i.e. income-based repayment plan, disability discharge) which the Debtor had failed to explore, the court concluded that she did not meet the third *Brunner* prong. Accordingly, the Debtor ultimately failed to meet her burden of evidence under Fourth Circuit precedent in order to except the student loan debt from her Chapter 7 discharge.

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<sup>1</sup> The standard for finding of an “undue hardship” under *Brunner* requires a three-part showing: 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 of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.