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Jason Iuliano

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GENDERED OUTCOMES IN STUDENT LOAN BANKRUPTCY

*Jason Iuliano**

ABSTRACT

Women are winning more student loan bankruptcy cases than men, a notable reversal that challenges what we know about gender and legal outcomes. Drawing on hand-coded data from over 1,300 adversary proceedings spanning 2007 to 2023, this Article documents a sharp post-2022 shift. Women now succeed in 89% of cases compared to 82% for men.

The puzzle is that financial metrics cannot explain this gap. Men and women who file these cases look indistinguishable on paper: similar debt loads, comparable assets, and equivalent incomes. Legal representation explains part of the story. Women are slightly more likely to hire attorneys, and lawyers improve outcomes. But even among those debtors representing themselves, women prevail more frequently. Caregiving responsibilities, though more common among women, also fail to explain the disparity.

The Article situates these findings in adjacent literatures on credit-as-social-provision and economic abuse, arguing that the attestation process translates certain structural disadvantages that are more commonly borne by women into persuasive, documentable claims of “undue hardship.”

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INTRODUCTION

Bankruptcy's promise of a fresh start has an asterisk: student loans. Whereas most unsecured debts are wiped away in a standard discharge, student loans sit behind a gate marked "undue hardship." In practice, the rule has long made relief rare and time consuming to obtain. In late 2022, the Department of Justice ("DOJ") and the Department of Education ("ED") rolled out new internal guidance and an attestation process intended to make case evaluation more consistent and easier to administer.¹ This Article examines a peculiar empirical result flowing from this new discharge process.

The puzzle is simple to state but difficult to unravel. Women are now significantly more likely than men to obtain student loan discharges in bankruptcy. This finding is striking for two reasons. First, it runs counter to many civil litigation settings, where men reliably outperform women. Second, the data show no obvious gender differences in the financial profiles of those seeking discharge.

Legal representation explains part of the story. Debtors with lawyers are far more likely to succeed than those who go at it alone, and women in the sample are somewhat more likely to retain counsel. But that is not the whole story. Even among the set of debtors filing pro se, women succeed more often. This pattern raises questions about who chooses to litigate, which facts the current process recognizes as hardship, and how those facts are translated into outcomes.

Using hand-coded data from three distinct periods between 2007 and 2023, this Article compares results across time and across litigant characteristics. Two clarifications are worth mentioning at the outset. First, this is a study of litigation outcomes among borrowers who filed adversary proceedings seeking to discharge student loans under 11 U.S.C. § 523(a)(8). The data do not describe the universe of borrowers or speak to broader repayment programs. And second, while the 2022 guidance provides relevant context, this Article does not evaluate the policy itself.² Instead, it uses the policy change as a temporal marker for comparing outcomes across periods and as a way to understand what kind of evidence the current process rewards.

¹ See *Guidance for Department Attorneys Regarding Student Loan Bankruptcy Litigation*, U.S. DEP'T OF JUST., (Nov. 17, 2022), https://www.justice.gov/d9/pages/attachments/2022/11/17/student_loan_discharge_guidance_-_guidance_text_0.pdf.

² For an evaluation of the policy, see Jason Iuliano, *Bridging the Student Loan Bankruptcy Gap*, 99 AM. BANKR. L.J. 414 (2025).

This Article proceeds as follows. Part I surveys the empirical and doctrinal literature on gendered legal outcomes across civil and criminal domains, revealing that while women typically face disadvantages in civil litigation—from tort damages to property disputes to bankruptcy proceedings—the criminal justice system often treats women more leniently. Part II presents empirical data from three periods between 2007 and 2023 documenting women’s higher success rates in recent student loan discharge proceedings, the effect of legal representation, and the absence of meaningful financial differences between male and female filers that might otherwise explain the disparity. Part III explores potential explanations for these gendered outcomes, discussing structural mechanisms that may advantage women under the attestation framework. It then traces the policy history of women’s access to higher education and student loans that has produced today’s gendered debt burdens.

I. GENDERED LEGAL OUTCOMES

The American legal system aspires to gender neutrality, yet scholarly analysis consistently reveals that laws, their interpretation, and their application produce disparate outcomes for men and women.³ This Part examines how gender differences manifest within ostensibly gender-neutral legal frameworks, noting the subtle and overt biases that lead to differential impacts across legal domains.⁴ Although laws may be formally neutral, underlying societal stereotypes, implicit biases within judicial decision making, and the institutionalization of existing socio-economic inequalities contribute to chronic differences in the treatment of men and women under the law.

This Part proceeds in two sections. The first focuses on civil law. Specific areas explored include tort law, where the valuation of harms and calculation of damages often reflect a gendered bias; property law, where women face

³ See Lynn Hecht Schafran, *Overwhelming Evidence: Reports on Gender Bias in the Courts*, 26 TRIAL 28, 28 (1990) (reporting on the findings of nine task forces that examined varied areas of the law and found gender bias and quoting the New York Task Force on Women in the Courts, which concluded: “Gender bias against women litigants, lawyers and court employees is a pervasive problem with grave consequences. Women are often denied equal justice, equal treatment and equal opportunity.”) (quoting STATE OF N.Y. UNIFIED CT. SYS., OFF. OF CT. ADMIN., REPORT OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS at i (1986)).

⁴ A large number of states have commissioned task forces to investigate potential gender bias in the legal system. See, e.g., WASH. STATE TASK FORCE ON GENDER & JUST. IN THE CTS., GENDER & JUSTICE IN THE COURTS 2 (1989), <https://www.courts.wa.gov/committee/pdf/Gender%20and%20Justice%20in%20the%20Courts—Final%20Report,%201989.pdf> (noting that “task forces [across dozens of states have] noted that gender bias sometimes works against men, but most often and most negatively impacts women”).

systematic disadvantages in civil adjudications involving their homes; benefits claims, where women are denied social security and workers compensation at higher rates; and bankruptcy law, where women, despite experiencing greater financial distress, have a lower likelihood of discharging their debts. The second section focuses on criminal law. As opposed to the civil justice system, the criminal justice system tends to favor women, yielding more lenient outcomes across the process, from arrest and pretrial detention through conviction and sentencing.⁵ Notably, this Part does not aim to be comprehensive. Instead, it seeks merely to highlight a subset of legal domains where gender differences exist.

A. *Civil Law*

Civil litigation in the United States presents a complex empirical picture with respect to gender. Although patterns vary by domain, the prevailing trend is that female litigants fare worse than male litigants in adjudicated outcomes, whether measured by win rates, the size of monetary remedies, or the quality of other forms of relief.⁶ This section reviews four areas of civil law—torts, property disputes, benefits claims, and bankruptcy—and synthesizes national and state-level empirical studies.

1. *Tort Law*

Empirical research on tort adjudications has repeatedly documented gender disparities in outcomes.⁷ In wrongful-death litigation, robust data from a governmental study of Washington state cases found that plaintiffs in cases involving female decedents prevailed 63% of the time, compared to only 47%

⁵ See Carlos Berdejó, *Gender Disparities in Plea Bargaining*, 94 IND. L.J. 1247, 1249 (2019) (observing that “[t]he criminal justice system is one area in which gender disparities have traditionally favored women relative to men”).

⁶ See Shannon Kilpatrick, Robert Mead & Sierra Rotakhina, *Gender Impacts in Civil Proceedings as They Relate to Economic Consequences Including Fee Awards and Wrongful Death*, in WASH. STATE SUP. CT. GENDER & JUST. COMM’N, HOW GENDER AND RACE AFFECT JUSTICE NOW—FINAL REPORT 244, 261 (2021) (discussing gendered outcomes in a variety of domains, such as in the context of lost earnings, where “jurors . . . awarded female plaintiffs 59% of what they awarded male plaintiffs” or in the tort context, where there exists a “‘his’ and ‘her’ tort world . . . with significantly different outcomes in awards [and] victory rates at trial”).

⁷ See generally *Gender Bias in the Civil Justice System*, MASS TORT INST. (Feb. 5, 2021), <https://www.masstortinstitute.com/blog/gender-bias-in-the-civil-justice-system> (discussing the ways in which “[d]iscrimination in women’s damages awards has historically been explicit”).

for cases involving male decedents.⁸ Despite this higher success rate, awards in male-decedent cases were, on average, more than 50% higher than in female-decedent cases.⁹ In one particularly notable instance, a male fetus was awarded 84% more than a six-year-old girl in a settlement, despite both having been killed in the same car crash.¹⁰

Experimental data illustrates this gender disparity as well. In one study, researchers presented mock jurors with a vignette involving a fatal accident.¹¹ The decedent was described as a forty-one-year-old married individual who was self-employed and earning \$30,000 annually.¹² The researchers manipulated the gender of the individual and found that jurors awarded 20% more in lost income to male decedents than to female decedents, further reinforcing the perception that the law assigns a lower monetary value to the loss of women's lives.¹³

A substantial strand of doctrinal and policy literature documents how damages experts and courts have historically used sex-specific wage, work-life, and life-expectancy tables to project future losses in a manner that reduces awards to female plaintiffs (and to survivors of female decedents) relative to similarly injured men.¹⁴ The California State Legislature found the practice so widespread and inequity-perpetuating that it enacted a statutory prohibition on

⁸ See WASH. STATE TASK FORCE ON GENDER AND JUST. IN THE CTS., *supra* note 3, at 89 (finding that, “[a]lthough more than twice as many cases involved male decedents as female decedents, a higher percentage of the cases for female decedents . . . than for male decedents . . . won verdict awards for the plaintiffs”).

⁹ See *id.* at 90 (\$332,166 for men versus \$214,923 for women); but see Herbert M. Kritzer, Guangya Liu & Neil Vidmar, *An Exploration of “Noneconomic” Damages in Civil Jury Awards*, 55 WM. & MARY L. REV. 971, 996–97 (2014) (evaluating whether men and women are awarded different levels of noneconomic damages in tort injury cases and finding no statistically significant difference).

¹⁰ Kim Soffen, *In One Corner of the Law, Minorities and Women Are Often Valued Less*, WASH. POST (Oct. 25, 2016), <https://www.washingtonpost.com/graphics/business/wonk/settlements>.

¹¹ See Jane Goodman et al., *Money, Sex, and Death: Gender Bias in Wrongful Death Damage Awards*, 25 L. & SOC’Y REV. 263, 276 (1991).

¹² *Id.* at 276–77.

¹³ See *id.* at 277 (finding that “[w]hen the decedent was male, most lost income awards exceeded the median of all income awards. Conversely, when the decedent was female, most lost income awards were less than the median. The difference in mean wages awarded for male and female decedents was significant”).

¹⁴ See Martha Chamallas, *Civil Rights in Ordinary Tort Cases: Race, Gender, and the Calculation of Economic Loss*, 38 LOY. L.A. L. REV. 1435, 1439 (2005) (discussing how the prominent use of gender-based income tables in tort damages calculations results in lower awards for women and reinforces “historical patterns of discrimination in the labor market”); MASS TORT INST., *supra* note 7 (observing that the “use of gender-based actuarial tables to determine loss of future earnings in personal injury and wrongful death cases has had pervasive negative consequences in civil litigation”).

reducing tort lost-earnings damages based on gender.¹⁵ Critiques in the scholarly literature likewise argue for abandoning sex-specific tables in favor of “blended” or uniform metrics to avoid reproducing structural labor-market inequalities in the tort system.¹⁶

2. *Property Disputes*

Women face systemic disadvantages in civil adjudications involving their homes. This pattern emerges clearly from large-scale empirical studies examining hundreds of thousands of cases across multiple jurisdictions. One particular area of note is eviction proceedings, where national court data reveals striking gender disparities.¹⁷ Analysis of court dockets from 1,195 counties nationwide covering more than a decade-long period (2000–2016) shows that women face higher eviction judgment rates than men, with particularly severe gaps for minority women.¹⁸ Translating these rates into raw numbers, researchers estimate that approximately 341,756 women are evicted annually compared to 294,908 men, meaning that roughly 16% more women than men lose their homes through court judgments.¹⁹ These findings align with extensive city-level evidence documenting that poor women, especially Black women, face heightened eviction risk, confirming that gendered loss rates reflect systemic dynamics rather than local anomalies.²⁰

¹⁵ See CAL. CIV. CODE § 3361 (West 2025) (“Estimations, measures, or calculations of past, present, or future damages for lost earnings or impaired earning capacity resulting from personal injury or wrongful death shall not be reduced based on race, ethnicity, or gender.”).

¹⁶ See Ronen Avraham & Kimberly Yuracko, *Torts and Discrimination*, 78 OHIO ST. L.J. 661, 666–67 (2017) (proposing that court end the practice of using tables that incorporate race or gender in calculating damages, and instead adopt “blended” tables “that do not delineate on racial or gender lines”).

¹⁷ See Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649, 659 (2020).

¹⁸ See *id.* at 657 (finding that “black and Latinx female renters faced higher eviction rates than their male counterparts”).

¹⁹ Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), <https://evictionlab.org/demographics-of-eviction> (reporting that “[a]cross all renters, the risk of eviction was approximately 2% higher for women than for men” and estimating that “341,756 women were evicted annually, approximately 16% more than the 294,908 evicted men”).

²⁰ See Matthew Desmond & Adam Gershenson, *Who Gets Evicted? Assessing Individual, Neighborhood, and Network Factors*, 62 SOC. SCI. RSCH. 362, 363 (2017) (documenting that “low-income women . . . are at heightened risk of eviction and foreclosure because (in the case of eviction) they are disadvantaged when it comes to making payments and repaying their debts or (in the case of foreclosure) they are disproportionately targeted by the subprime lending industry”); Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MACARTHUR FOUND. 1, 1 (2014) (observing that “[l]ow-income women are evicted at much higher rates than men” and arguing that a significant reason for the disparity owes to “women’s nonconfrontational approach with landlords”).

The mechanisms driving these disparities are becoming clearer through recent research linking thirty-eight million court cases to Census data. This work reveals that Black women are more likely than Black men to be named as defendants in eviction filings, a critical exposure point that leads directly to judgments and lasting harm through credit and tenant-screening systems.²¹ Serial-filing practices compound these effects, as landlords repeatedly file against the same tenants, accumulating fees and default risks that culminate in eviction judgments.²² Thus, women's overrepresentation as named defendants translates directly into excess judgments entered against them.

Similar patterns emerge when women seek to challenge property tax assessments. A comprehensive study of over 100,000 property tax appeals, incorporating 2.7 years of audio from administrative hearings, found that female homeowners systematically obtain smaller assessment reductions than male homeowners.²³ The disadvantage appears particularly acute in its relationship to panel composition. While male appellants' outcomes remain consistent regardless of panel gender, female appellants receive lesser reductions from female panels and greater reductions from male panels.²⁴ This asymmetric pattern suggests that women face unique vulnerabilities in these proceedings that men do not experience.

The disparities extend beyond formal hearings. Field-experimental evidence demonstrates that tax assessors treat female homeowners unequally even before appeals are filed.²⁵ The multimodal analysis of hearing transcripts and audio

²¹ See Nick Graetz et al., *A Comprehensive Demographic Profile of the US Evicted Population*, 120 PROCS. NAT'L ACAD. SCIS., Oct. 2023, at 1, 5 (Nov. 27, 2023), <https://www.pnas.org/doi/10.1073/pnas.2305860120> (arguing that the "gender gap [is] . . . largely driven by the higher likelihood that Black women are listed in eviction filings" and noting that "being listed on an eviction case can have negative consequences above and beyond living in a household threatened with removal, including through credit and screening systems that make securing future housing difficult").

²² See generally Hepburn, Louis & Desmond, *supra* note 19 (documenting that Black and Latinx women are "most likely to be repeatedly filed against at the same address").

²³ See Gordon Burch & Alejandro Zentner, *Gender Bias and Property Taxes 1* (Feb. 4, 2025) (unpublished manuscript), <https://arxiv.org/abs/2412.12610> (observing that "female appellants fare systematically worse than male appellants in their hearings").

²⁴ See *id.* at 38 (finding that "female homeowners are systematically less likely to secure reductions in their assessed property values, particularly when they appear before female-dominated appraisal review board . . . panels").

²⁵ See Justin Holz, David Novgorodsky & Andrew Simon, *Racial Inequality in Property Tax Appeals: Evidence from Field Experiments with Homeowners and Assessors* 36–38 (July 2024) (unpublished manuscript), https://law.nd.edu/assets/584978/justin_holz_propertyappeals_holz_novgorodsky_simon_2.pdf (conducting an experiment which revealed that "female homeowners receive 10% . . . fewer responses than male homeowners" from county tax assessors and that the "same assessors who responded to emails from white or

suggests these outcomes stem from gender bias among panelists rather than differences in how women present their cases.²⁶

Together, these studies paint a consistent picture. Women lose more often than men in civil proceedings concerning their homes. Whether facing eviction or seeking property tax relief, women encounter systematic disadvantages that cannot be explained by case characteristics alone. The evidence points to evaluator bias and procedural design as key mechanisms, factors that are both measurable and potentially remediable through institutional reforms.

3. *Benefits Claims*

Empirical evidence shows that women face disadvantages in the Social Security disability benefits process. One comprehensive national study found that work-disabled women are approximately thirteen percentage points more likely to be denied benefits than otherwise comparable men, even after controlling for relevant factors.²⁷ Administrative reviews confirm the existence of gender differences across demographic groups, with women over fifty-five facing especially high rejection rates.²⁸

While these studies establish the existence of gender disparities in Social Security disability determinations, they leave open the critical question of causation: why do women face higher rejection rates? Research from the workers' compensation context, where medical evaluations similarly drive benefit decisions, offers compelling evidence that evaluator bias may be a key mechanism behind these disparities.

male homeowners chose not to respond to similar emails from Black or female homeowners"); *but see* Keith Ihlanfeldt & Luke P. Rodgers, *Beyond Assessment: Racial and Gender Disparities in Property Taxation* (Oct. 7, 2022) (unpublished manuscript), https://www.lincolnst.edu/app/uploads/legacy-files/sources/events/ihlanfeldtrodders_beyond_assessment.pdf (stating "female homeowners['] . . . lower tax bills stem primarily from larger tax relief benefits").

²⁶ See Burch & Zentner, *supra* note 23, at 38 (concluding that "the differential hearing outcomes are largely attributable to unvoiced perceptions or beliefs among . . . [appraisal review board] panelists").

²⁷ Hamish Low & Luigi Pistaferri, *Disability Insurance: Error Rates and Gender Differences 1* (Nat'l Bureau of Econ. Rsch., Working Paper No. 26513, 2024) ("Work-disabled women are 12.8 percentage points more likely to be rejected than work-disabled men, controlling for health conditions and demographics.").

²⁸ See U.S. GEN. ACCOUNTING OFF., HEHS-94-94, *SOCIAL SECURITY DISABILITY: MOST OF GENDER DIFFERENCE EXPLAINED 5-8* (1994) (reviewing SSA administrative data and finding that women ages 55-64 are allowed disability benefits at lower rates than men); Yang Wang & Muzhe Yang, *Disparities by Race and Gender in SS(D)I Applications and Awards*, RET. AND DISABILITY RSCH. CTR. (2023) (reviewing literature on racial and gender disparities in social security disability benefit programs).

A groundbreaking Texas study examining over 70,000 workers' compensation claims provides particularly compelling evidence of this evaluator effect.²⁹ This research stands out because it eliminates potential bias through random assignment, a methodology that was possible due to a procedural choice by the Texas Department of Insurance. Specifically, when a worker files a claim, the Department randomly selects a doctor from a pool of qualified physicians to evaluate the worker's ongoing disability from their injury. The worker's cash benefits are then determined based on this medical assessment. This random assignment ensures that any differences in awards between men and women cannot be attributed to factors like doctor selection or case complexity.³⁰

The study revealed a striking pattern. When female claimants were randomly assigned to female doctors, they were 3.1% more likely to be classified as disabled and received 8.6% higher benefits compared to similar women who were evaluated by male doctors.³⁰ Men, by contrast, saw no boost from being matched with male doctors, pointing to a disadvantage specific to women under male evaluators.³¹ The researchers further reported that assignment to a female doctor almost completely closes the gender gap observed under male evaluators.³² This finding directly ties who does the evaluation to women's workers' compensation awards. And the conclusion is clear. Women generally receive less in workers' compensation unless they have female evaluators.³³

4. Bankruptcy

As the core of this Article focuses on gender differences in student loan bankruptcy outcomes, it is important to discuss gender differences in bankruptcy more generally. Notably, bankruptcy outcomes offer a particularly clear view of gender disadvantages in civil adjudication. Given that cases resolve in a binary

²⁹ See Marika Cabral & Marcus Dillender, *Gender Differences in Medical Evaluations: Evidence from Randomly Assigned Doctors*, 114 AM. ECON. REV. 462, 472 (2024) (detailing the data used in the study).

³⁰ See *id.* at 479 (finding that the “estimated differential effect of being evaluated by a female doctor (instead of a male doctor) for female patients relative to male patients is 3.1 percentage points”) and “the [cash benefit] effect of being assigned a female doctor rather than a male doctor for female patients is sizable at 8.6 percent”).

³¹ See *id.* (“There is no analogous gender-match effect for male patients.”).

³² See *id.* at 465 (“The estimated 3.1 percentage point increase in the likelihood of being evaluated as disabled is nearly large enough to offset the entire observed gender gap in this outcome when male doctors evaluate claimants.”).

³³ See Kimberly Blanton, *Women Get Less from Workers' Comp*, CTR. FOR RET. RSCH. AT BOS. COLL.: SQUARED AWAY BLOG (Sep. 6, 2022), <https://crr.bc.edu/women-get-less-from-workers-comp/> (noting that the study's “findings are consistent with male doctors evaluating female patients against a stricter standard than male patients, while female doctors apply similar standards to all their patients”).

fashion—either a discharge is granted or the case is dismissed—success is easier to quantify than in some other legal domains. Although nearly all chapter 7 filers obtain discharge (97% in one major study), only about one-third of chapter 13 cases end successfully after years of required payments.³⁴ Against this backdrop, women consistently fare worse than men in obtaining the debt relief they seek, with the gap most pronounced in chapter 13 proceedings.

Multiple studies document that female debtors in chapter 13 face systematically lower discharge rates than their male counterparts.³⁵ After controlling for relevant factors, women’s discharge rates run approximately four percentage points lower than men’s, a gap that persists across districts despite varying local court policies.³⁶

The reasons for this disadvantage are becoming clearer through recent research that examined over 100,000 cases across sixty-four districts.³⁷ Caregiving responsibilities emerge as a critical factor.³⁸ Debtors with dependents are about eight percentage points more likely to have their chapter 13 cases dismissed within three years.³⁹ Notably, the caregiving burden falls disproportionately on women. Female filers with dependents face dismissal rates 10.2 percentage points higher than women without children, while the

³⁴ See Pamela Foohey et al., “No Money Down” *Bankruptcy*, 90 S. CAL. L. REV. 1055, 1093 tbl. 5 (2017) (reporting the Chapter 7 discharge and dismissal rates); Sara S. Greene, Parina Patel & Katherine Porter, *Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes*, 101 MINN. L. REV. 1031, 1042 (2017) (noting that “the ‘one-third’ statistic . . . has endured for decades”); Pamela Foohey et al., *Life in the Sweatbox*, 94 NOTRE DAME L. REV. 219, 226–29 (2018) (discussing discharge rates); Hülya Eraslan, Wenli Li & Pierre-Daniel Sarte, *The Realities of U.S. Personal Bankruptcy Under Chapter 13*, at 16 (Feb. 14, 2007) (unpublished manuscript) (on file with Emory Bankruptcy Developments Journal) (observing that, with respect to chapter 13, “less than 40 percent of the plans are carried out to completion”).

³⁵ See Jacelly Cespedes, Carlos Parra & Clemens Sialm, *The Effect of Principal Reduction on Household Distress: Evidence from Mortgage Cramdown 3* (Nat’l Bureau of Econ. Rsch., Working Paper No. 28900, 2021), https://www.nber.org/system/files/working_papers/w28900/w28900.pdf (discussing the lower discharge rate among female filers and hypothesizing that the difference “may be due to systematic patterns of ‘in-group’ tolerance”); Belisa Pang & Katherine Fang, *Parental Obligations in Bankruptcy*, 99 AM. BANKR. L.J. 187, 187 (2025) (finding that debtors with dependents are “eight percentage points more likely to have a bankruptcy court dismiss their cases without the discharge of their debt within three years” and that women are more likely to have dependents).

³⁶ See Cespedes, Parra & Sialm, *supra* note 35, at 3 (observing that “the discharge rate for female filers is 4 to 5 percentage points lower than for male filers after controlling for other filer characteristics and court fixed effects”).

³⁷ See Pang & Fang, *supra* note 35, at 188 (noting that the study used “a novel dataset containing detailed information for 102,952 bankruptcy cases across sixty-four districts”).

³⁸ See *id.* at 205 (discussing their statistical findings and observing that the “regressions show that having a dependent significantly increases one’s chances of dismissal without discharge”).

³⁹ *Id.* at 203 (2025) (“[W]e estimate that having a dependent increases the risk of dismissal within three years by about eight percentage points.”).

comparable penalty for men is only 3.9 percentage points.⁴⁰ Moreover, unmarried mothers are significantly more likely to end up in chapter 13 in the first place.⁴¹

The Consumer Bankruptcy Project reveals the structural features of the bankruptcy system that compound these disadvantages. A particularly harmful practice involves “no money down” chapter 13 filings, where attorneys steer cash-strapped clients into chapter 13 to finance their legal fees through the repayment plan.⁴² These fee-financed filers pay approximately \$2,000 more than chapter 7 filers and see their cases dismissed at eighteen times the rate they would have faced in chapter 7.⁴³ Given that women, especially single mothers, disproportionately seek bankruptcy relief following divorce and other family-linked financial shocks, this fee-driven channeling systematically pushes them toward chapter 13 with worse outcomes.⁴⁴

The disadvantage intensifies for those attempting to navigate bankruptcy without counsel. Among pro se chapter 13 filers, only 19% make it past the repayment plan proposal stage, and virtually none achieve discharge.⁴⁵ By contrast, attorney representation dramatically improves outcomes, highlighting how financial barriers to legal services translate directly into failed cases.⁴⁶

These findings reveal a troubling reality. The bankruptcy system that is designed to provide a fresh start instead perpetuates gender inequality. Women with the greatest caregiving responsibilities and the least financial flexibility are funneled into chapter 13, where they must maintain payments for three to five

⁴⁰ *Id.* at 209 (noting that the statistical results “imply that having a dependent increases an individual woman’s chances of having her case dismissed in the first three years by 10.2 percentage points, compared to 3.9 percentage points for individual men and 5.5 percentage points for couples filing jointly”).

⁴¹ *Id.* at 212 (observing that “debtors with a dependent are about 2.5 percentage points more likely to file under chapter 13 . . . [a] difference [that is] . . . primarily driven by unmarried female parents”).

⁴² See “No Money Down” *Bankruptcy*, *supra* note 34, at 1058 (presenting data showing that “chapter choice is powerfully shaped by when debtors must pay their attorneys and how attorneys can receive payments” and arguing that “[t]hese financial considerations have nothing to do with the substantive law that governs chapter 7 and chapter 13 bankruptcies”).

⁴³ See *id.* at 1094 (noting that chapter 13 debtors “pay almost \$2,000 more in attorneys’ fees” and that the “dismissal rate for ‘no money down’ chapter 13 cases is eighteen times higher than chapter 7 cases”).

⁴⁴ See Pamela Foohey, Robert M. Lawless & Deborah Thorne, *Portraits of Bankruptcy Filers*, 56 GA. L. REV. 573, 578 (2022) (emphasizing that “bankruptcy remains a women’s issue” and linking bankruptcy filing to divorce and other family-related financial shocks).

⁴⁵ See *id.* at 633 (reporting “only a 19% chance that their case will make it past the repayment plan proposal stage” and observing that “only one pro se chapter 13 case had achieved discharge”).

⁴⁶ See *id.* at 589 (finding that “[b]ankruptcy judges dismiss pro se filings at much higher rates than attorney-represented cases” and “[c]onsequently, pro se debtors are less likely to receive a discharge of debts”).

years to obtain discharge. When they predictably struggle to complete these marathon repayment plans while managing childcare and work obligations, they emerge from bankruptcy with no debt relief, having paid thousands in fees for nothing.

B. Criminal Law

In contrast with civil law, criminal law tends to yield more favorable outcomes for women. This section surveys gender differences that manifest during the core steps of a criminal prosecution, from arrest through sentencing.

1. Arrest and Pretrial Detention

The initial point of contact with the criminal justice system reveals distinct gender-based patterns. Over the past several decades, women's engagement with the criminal justice system has notably increased, contrasting with a general decline in comparable figures for men.⁴⁷ For instance, the female arrest rate in 2019 was 41% higher than in 1980.⁴⁸ Consequently, women's share of all arrests rose from 14% to 26% over that time period.⁴⁹

This rise in female arrests is partly attributable to significant increases in arrest rates for specific offense types. In 2019, women's arrest rates for violent crimes were 63% higher, and for drug crimes, they were a staggering 317% higher than in 1980.⁵⁰ Across all major offense categories, the arrest share for women increased substantially over the previous four decades.⁵¹ Although overall arrest rates for both sexes saw a decrease during the COVID-19 pandemic (female jail incarceration rates dropped 36% from 2019 to 2020), the subsequent rebound from 2020 to 2022 saw female jail incarceration rates increase faster (31%) than male rates (18%).⁵²

⁴⁷ *Women's Justice: By the Numbers*, COUNCIL ON CRIM. JUST. (July 2024), <https://counciloncj.org/womens-justice-by-the-numbers> (noting that “[w]omen's contact with the criminal justice system has trended upward over the last several decades, while comparable figures for men have trended downward”).

⁴⁸ *Id.*

⁴⁹ *See id.*

⁵⁰ *Id.*

⁵¹ *See id.*

⁵² *See id.* (discussing incarceration rates by gender).

Despite the increase in women's overall arrest rates, research indicates that underlying gender biases in police discretion exist.⁵³ One study examined more than 500,000 criminal incidents across seven violent offenses and found that women were significantly less likely to be arrested than men in four of the seven crime types: kidnapping (28% lower likelihood), forcible fondling (48% lower), simple assault (9% lower), and intimidation (27% lower).⁵⁴ There was no significant gender difference in arrest likelihood for two of the crime types (forcible rape and robbery). Women were slightly more likely to be arrested in only one area (aggravated assault), though the difference was minimal (5%).⁵⁵ Another study, which used a matched sample of more than 20,000 reported sexual-offense incidents, found that women were 42% less likely to be arrested for sexual offenses.⁵⁶ Although the overall number of female arrests is rising due to broader societal changes and shifts in offending patterns, the discretionary processes at the arrest stage reflect gendered treatment that appears to benefit women.

Gender differences also manifest in pretrial releases and bail decisions. Studies have found that women are significantly more likely than men to be released prior to trial.⁵⁷ They are also more likely to receive lower bail amounts when bail is set, and to spend shorter periods in jail before trial.⁵⁸

⁵³ See generally K.B. Turner & James B. Johnson, *The Effect of Gender on the Judicial Pretrial Decision of Bail Amount Set*, 70 FED. PROB., June 2006, at 1, 1–2, https://www.uscourts.gov/sites/default/files/70_1_8_0.pdf.

⁵⁴ Lisa Stolzenberg & Stewart J. D'Alessio, *Sex Differences in the Likelihood of Arrest*, 32 J. CRIM. JUST. 443, 449 (2004).

⁵⁵ See *id.* (describing the relationship as “relatively weak given the large sample size”).

⁵⁶ Callie Dara Shaw, Tyler J. Vaughan & Donna M. Vandiver, *Reported Sexual-offense Incidents in the United States: Arrest Disparities Between Women and Men*, 37 J. INTERPERSONAL VIOLENCE NP4315, NP4331 (2022). Notably, the leniency at this arrest stage appears to be conditioned on conformity with gender norms. Women who deviate from stereotypical gender expectations, such as acting aggressively, tend to lose preferential treatment. See Turner & Johnson, *supra* note 53, at 1 (“Women defendants who conform to traditional gender role stereotypes are likely to be treated more leniently than men who are suspected of the same offenses. Women who violate gender role expectations, however, do not receive preferential treatment.”).

⁵⁷ See Charles M. Katz & Cassia C. Spohn, *The Effect of Race and Gender on Bail Outcomes: A Test of an Interactive Model*, 19 AM. J. CRIM. JUST. 161, 161 (1995) (finding that women had a significantly higher likelihood of being granted pretrial release compared to men).

⁵⁸ See Stuart S. Nagel & Lenore J. Weitzman, *Women as Litigants*, 23 HASTINGS L.J. 171, 197 (1971) (finding that “women are much less likely to be jailed before or after conviction . . . than are men charged with the same crime”); Ellen Hochstedler Steury & Nancy Frank, *Gender Bias and Pretrial Release: More Pieces of the Puzzle*, 18 J. CRIM. JUST. 417, 417 (1990) (analyzing a weighted dataset of close to 2,000 felony cases from Milwaukee County, Wisconsin and finding that women were granted more favorable pretrial release conditions, such as reduced bail amounts and shorter pretrial detentions).

2. Prosecution

Prosecutorial discretion is another critical stage in the criminal justice system that exhibits gendered patterns. One recent study found that prosecutors are 18% more likely to accept initial charges against male defendants, indicating a tendency for female defendants to receive more lenient treatment at this stage.⁵⁹ This disparity may stem from societal beliefs that women are less likely to be convicted or would require more resources for prosecution, making prosecutors less willing to pursue charges against them.⁶⁰

Gender also plays a significant role in charge reductions and plea bargaining outcomes.⁶¹ Female defendants are approximately 20% more likely than male defendants to have their principal initial charge dropped or reduced.⁶² This gap is particularly pronounced in misdemeanor cases and low-level felonies.⁶³ For instance, in misdemeanor cases, female defendants receive a charge reduction approximately 48% of the time, a rate that is ten percentage points greater than for males.⁶⁴ However, this disparity diminishes significantly in serious felony cases, where the difference between male and female defendants is only two percentage points.⁶⁵ The defendant's criminal history also lessens these gender differences: female defendants with no prior convictions receive charge reductions significantly more often than male defendants without prior convictions, but those with prior convictions receive similar treatment regardless of gender.⁶⁶

⁵⁹ See Daniel Brice Baker & Shahidul Hassan, *Gender and Prosecutorial Discretion: An Empirical Assessment*, 31 J. PUB. ADMIN. RSCH. AND THEORY 73, 82 (2021) (finding the effect to be statistically significant ($p < 0.01$)).

⁶⁰ See *id.* at 76 (hypothesizing that “[p]rosecutors might be less willing to pursue charges against women because they believe that conviction against women is less likely or will require more resources due to societal beliefs related to gender and criminal behavior”).

⁶¹ See Berdejó, *supra* note 5, at 1250 (finding “striking gender disparities in the plea-bargaining process” based on analysis of Wisconsin court data).

⁶² See *id.* at 1272 (finding that “female defendants see their top charge dropped or amended to a lesser charge in 47.48% of the cases, while the charge reduction rate for male defendants is considerably lower, 39.91%. That is, female defendants are approximately 20% more likely to have their top charge dropped or reduced than male defendants”).

⁶³ See *id.* at 1279 (2019) (observing that “the gender disparities in charge reduction rates . . . are mainly driven by cases in which a misdemeanor crime was the top charge”).

⁶⁴ See *id.*

⁶⁵ See *id.* (noting that for felony offenses, “the difference in charge reduction rates between male and female defendants, 2.15 percentage points, represents just 4.82% of the charge reduction rate for male defendants”).

⁶⁶ See *id.* at 1283 (finding that “female defendants with no prior convictions are 11.16% more likely than male defendants to receive a charge reduction. On the other hand, female defendants with at least one prior

These patterns indicate that prosecutorial discretion—particularly in “low information” cases involving misdemeanors, low-level felonies, or defendants with no prior criminal record—is a key point where gender bias in favor of women is most evident. In the absence of clear aggravating factors or a serious criminal history, prosecutors may rely on gendered assumptions as a proxy for assessing a defendant’s perceived dangerousness or likelihood of reoffending.⁶⁷ As a result, societal stereotypes about gender roles can implicitly shape charging decisions, producing different outcomes based on gender.

3. Sentencing

Lastly, the sentencing process reveals pronounced gender disparities. The most significant differences occur at two crucial stages. First, during the “in/out decision”—whether a criminal sentence entails incarceration or an alternative sanction like probation—men are significantly more likely to be incarcerated.⁶⁸ An expansive literature estimates that women are between 12 and 23% less likely to receive prison or jail time.⁶⁹ The second stage where notable differences exist is sentence length. Men receive 63% longer sentences.⁷⁰ This effect is observed after controlling for arrest offense and pre-arrest variables. On average, this gap amounts to twenty-three months of additional prison time for men.⁷¹

conviction are 1.29 percentage points *less* likely than male defendants with at least one prior conviction to receive a charge reduction”).

⁶⁷ See *id.* at 1296 (observing that the data “suggest that prosecutors may be using gender as a proxy for a defendant’s latent criminality and recidivism risk in ‘low information’ cases”).

⁶⁸ See, e.g., Margaret Farnworth & Raymond H. C. Teske, Jr., *Gender Differences in Felony Court Processing: Three Hypotheses of Disparity*, 6 *WOMEN & CRIM. JUST.* 23, 23 (1995) (finding that “females with no prior record were more likely than similar males to receive charge reductions, and this enhanced females’ chances for probation”); David B. Mustard, *Racial, Ethnic, and Gender Disparities in Sentencing: Evidence from the U.S. Federal Courts*, 44 *J. L. & ECON.* 285, 312 (2001) (analyzing convicted federal offenders and finding gender differences for bank robbery and drug trafficking, with women being sentenced to significantly shorter terms).

⁶⁹ S. Fernando Rodriguez, Theodore R. Curry & Gang Lee, *Gender Differences in Criminal Sentencing: Do Effects Vary Across Violent, Property, and Drug Offenses?*, 87 *SOC. SCI. Q.* 318, 319–20 (2006) (compiling and discussing studies on the topic).

⁷⁰ See Sonja B. Starr, *Estimating Gender Disparities in Federal Criminal Cases*, 17 *AM. L. & ECON. REV.* 127, 154 (2015) (finding that “[c]onditional on arrest offense, criminal history, and other pre-charge observables, men receive 63% longer sentences on average than women do; women are also significantly likelier to avoid charges and convictions, and twice as likely to avoid incarceration if convicted”).

⁷¹ See *id.* at 138 (finding that the “overall average disparity . . . is 23 months”); Kristin F. Butcher, Kyung H. Park & Anne M. Piehl, *Comparing Apples to Oranges: Differences in Women’s and Men’s Incarceration and Sentencing Outcomes* 1 (Nat’l Bureau of Econ. Rsch., Working Paper No. 23079, 2017) (finding that “roughly 30% of the gender differences in incarceration cannot be explained by the observed criminal characteristics of offense and offender”).

The observed gender disparities in the criminal justice system are often explained through three interconnected theoretical frameworks that highlight the influence of societal gender roles and expectations on legal outcomes. These are the “chivalry hypothesis,” the “paternalism hypothesis,” and the “evil woman hypothesis.”

The chivalry hypothesis posits that women receive more lenient treatment than men within the criminal justice system due to enduring cultural norms that cast women as passive, morally superior, and in need of male protection.⁷² Rooted in traditional gender roles, this hypothesis suggests that judges, juries, and law enforcement officers—most of whom are male—are influenced by paternalistic instincts and are more inclined to view female defendants as less culpable, less dangerous, and more reformable than their male counterparts. As a result, women may be less likely to be arrested, charged, or harshly sentenced for the same offenses committed by men.

Importantly, the chivalry hypothesis does not require conscious bias. Rather, it assumes that decisionmakers internalize and act on gendered assumptions, particularly in low-level or discretionary contexts such as misdemeanor arrests or pretrial release decisions. The leniency is most evident when women conform to normative expectations, such as appearing deferential, maternal, or remorseful. Thus, the hypothesis frames leniency not as a reflection of true equity, but as a byproduct of traditional gender ideology embedded in legal institutions.

Closely related to the chivalry hypothesis, the paternalism hypothesis asserts that leniency toward women in the criminal legal system arises not from admiration or reverence but from a protective instinct grounded in perceived female vulnerability.⁷³ It suggests that legal authorities treat women more leniently because they are seen as emotionally weaker, less rational, and more susceptible to external influence. Rather than being granted mercy as equals,

⁷² See Turner & Johnson, *supra* note 53, at 4 (noting that “[t]he ‘chivalry’ hypothesis that emerged a half century ago advances the thesis that predominantly male-dominated actors in key positions of the criminal justice system have a traditional, chivalrous attitude toward women defendants, and therefore treat them with more leniency than male defendants”); see generally Steven F. Shatz & Naomi R. Shatz, *Chivalry Is Not Dead: Murder, Gender, and the Death Penalty*, 27 BERKELEY J. GENDER L. & JUST. 64 (2012) (discussing the chivalry hypothesis in the context of the death penalty).

⁷³ See Turner & Johnson, *supra* note 53, at 4 (stating “[p]aternalism refers to the attitude held by men that women are childlike and are not fully responsible for their behavior, criminal or otherwise, and therefore need protection. Paternalism, like chivalry, advances that judges and other court officials try to protect women as the ‘weaker sex’ from the stigma of a criminal record or the harshness of incarceration”).

women are spared punishment because they are viewed as childlike or dependent, incapable of full autonomy and thus less morally culpable.

This hypothesis underscores the infantilizing aspect of gender-based disparities in criminal justice outcomes. It frames the differential treatment not as favoritism, but as control cloaked in benevolence. In doing so, it helps explain why women are more likely to be diverted into treatment rather than incarceration and why judicial decisions often focus on rehabilitation over retribution for female offenders. Yet, like chivalry, paternalism is contingent on conformity. Women who defy traditional expectations may forfeit the protections they afford.

In contrast to the chivalry and paternalism theories, the evil woman hypothesis predicts that women who commit crimes may be punished more harshly than men because they violate both legal norms and entrenched gender norms.⁷⁴ A female offender is seen as doubly deviant. She has broken the law and transgressed social expectations of femininity, such as docility, nurturance, or passivity. This perceived dual violation can provoke especially punitive responses, particularly when women commit violent or sexual offenses or exhibit behaviors coded as aggressive, unrepentant, or unfeminine.

The evil woman hypothesis thus offers a critical rejoinder to the assumption of leniency in all cases. It helps explain why certain female defendants, especially those who are perceived as hardened, promiscuous, or neglectful mothers, may be treated more severely than similarly situated men. By highlighting the punitive backlash against women who defy gender stereotypes, the hypothesis reveals how gendered norms structure not just leniency but also severity in legal decision making.

The interplay among these hypotheses reveals that gender bias in the criminal justice system is not a simple, linear application of leniency or harshness. Instead, it is a highly conditional and context-dependent process, reflecting prevailing societal expectations of gender roles. This means that the “justice” dispensed is not solely based on legal factors but is profoundly

⁷⁴ *Id.* (noting that the “evil woman hypothesis contends that women who violate gender-role expectations and behave in an ‘unlady like’ fashion are punished harshly for the double violation of gender and legal norms and, therefore, are denied the chivalrous (and lighter) dispositions reserved for ‘normal’ women”); Joni Hersch & Beverly Moran, *Coitus and Consequences in the Legal System: An Experimental Study*, 68 SMU L. REV. 927, 940 (2015) (using the “evil woman” lens to discuss when female sexual conduct is sanctioned more harshly and observing that the “evil woman theory predicts that the more a female engages in unfeminine behavior, the more likely that she will be punished”).

influenced by social constructions of gender. The application of these theories suggests that the criminal justice system, despite its formal neutrality, implicitly reinforces traditional gender roles and actively punishes deviations from them, effectively importing broader societal norms into legal outcomes.

II. GENDERED STUDENT LOAN OUTCOMES

A. *The Student Loan Bankruptcy Process*

Student loans hold an unusual position in the consumer bankruptcy system. While most unsecured debts are ordinarily discharged through the successful operation of chapters 7 or 13, student loans are presumptively nondischargeable unless the debtor proves “undue hardship” in a separate adversary proceeding.⁷⁵ This structure transforms the student-loan discharge from a routine consequence of bankruptcy filing into a full-blown trial within the bankruptcy case.⁷⁶

Section 523(a)(8) of the Bankruptcy Code codifies the student-loan exception to discharge, providing that certain educational debts are not dischargeable unless excepting the debt would impose an “undue hardship on the debtor and the debtor’s dependents.”⁷⁷ The provision covers federal student loans, loans made or guaranteed by governmental units or nonprofits, and “qualified education loans” as defined in the Internal Revenue Code.⁷⁸ Although section 523(a)(8) covers most loans that are colloquially considered to be student loans, it does exclude some significant categories.⁷⁹ Loans above and beyond the official cost of attendance at Title IV accredited educational institutions and loans for non-accredited educational institutions are two such notable categories.⁸⁰ Nevertheless, any loans that do meet the definition can only be discharged in instances of “undue hardship.”

⁷⁵ 11 U.S.C. § 523(a)(8).

⁷⁶ See FED. R. BANKR. P. 7001(f); *Bankruptcy Courts and Cases – Journalist’s Guide*, U.S. CTS., <https://www.uscourts.gov/data-news/reports/handbooks-manuals/a-journalists-guide-federal-courts/bankruptcy-courts-and-cases-journalists-guide> (discussing the basics of an adversary proceeding) (last visited Sep. 20, 2025).

⁷⁷ 11 U.S.C. § 523(a)(8).

⁷⁸ See *id.* (defining “qualified education loan” under 26 U.S.C. § 221(d)(1)).

⁷⁹ See *In re Crocker*, 941 F.3d 206, 217–24 (5th Cir. 2019) (endorsing a narrow reading of section 523(a)(8) and holding that “that ‘educational benefit’ is limited to conditional payments with similarities to scholarships and stipends”); *Homaidan v. Sallie Mae, Inc.*, 3 F.4th 595 (2d Cir. 2021) (adopting a similar narrow reading of the statute); *McDaniel v. Navient Solutions, LLC*, 973 F.3d 1083 (10th Cir. 2020) (same).

⁸⁰ See Jason Iuliano, *Student Loan Bankruptcy and the Meaning of Educational Benefit*, 93 AM. BANKR. L.J. 277, 281–89 (2019) (discussing the scope of § 523(a)(8)).

Unfortunately, Congress failed to define “undue hardship.” This lack of guidance forced courts to develop standards to fill the void. Two judicial tests dominate. The primary one is the Second Circuit’s three-part *Brunner* test, which requires debtors to demonstrate: (1) an inability to maintain a minimal standard of living if forced to repay; (2) that additional circumstances make this state of affairs likely to persist; and (3) good-faith efforts to repay.⁸¹

By contrast, the Eighth Circuit’s “totality of the circumstances” test takes a more holistic approach, considering the debtor’s past, present, and reasonably reliable future financial resources; reasonably necessary living expenses; and any other relevant facts.⁸² Although the tests purport to differ, earlier work of mine found no difference in real-world application of the tests.⁸³

Under both tests, the debtor bears the burden of proof by a preponderance of the evidence.⁸⁴ The current framework reflects significant statutory evolution through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), which broadened the provision to cover “qualified education loans” and removed earlier time-based dischargeability rules.⁸⁵

Regarding the actual procedure, the adversary proceeding requires filing a complaint against the lender, which is typically the Department of Education, its guaranty agent, or a private creditor. The adversary proceeding functions as a full lawsuit within the bankruptcy case, complete with its own docket number, summons, service requirements, pleadings, discovery, and trial before the bankruptcy judge.⁸⁶ Procedural deadlines mirror ordinary civil practice. For instance, the United States or a federal agency typically has thirty-five days to

⁸¹ See *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987).

⁸² See *In re Long*, 322 F.3d 549, 554 (8th Cir. 2003).

⁸³ Jason Iuliano, *An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard*, 86 AM. BANKR. L.J. 495, 497 (2012) (observing that “my analyses did not find any statistically significant differences between outcomes in *Brunner* circuits and the Eighth Circuit” and concluding that “[i]dentical debtors filing in a *Brunner* circuit and a totality of the circumstances circuit should expect similar outcomes”).

⁸⁴ See *Grogan v. Garner*, 498 U.S. 279, 286 (1991) (holding that the preponderance of the evidence standard should be used in bankruptcy proceedings involving challenges to discharge exceptions under § 523(a)(8)).

⁸⁵ See Bankruptcy Abuse Prevention and Consumer Protection Act, Pub. L. No. 109-8, 119 Stat. 23 (2005) (amending 11 U.S.C. § 523(a)(8)).

⁸⁶ See generally Hon. Julia Brand & Kathleen J. Campbell, *Bankruptcy Case vs. Adversary Proceeding. What is the Difference?*, U.S. BANKR. C.D. CAL., <https://www.cacb.uscourts.gov/faq/bankruptcy-case-vs-adversary-proceeding-what-difference> (discussing the basics of an adversary proceeding) (last visited Sep. 20, 2025).

answer a complaint.⁸⁷ Courts often describe the adversarial hearing as a “mini-trial” within the broader bankruptcy case.⁸⁸

Court-imposed costs remain modest relative to attorney time. Many bankruptcy courts charge a standard adversary proceeding filing fee (commonly \$350), though a growing number of districts waive such fees.⁸⁹ The primary expenses are attorney time, including drafting the complaint, preparing and serving financial documentation, conducting discovery, and preparing for trial, along with any third-party costs such as transcript or service fees. Timelines vary by district and case complexity, with answer periods measured in weeks, scheduling orders establishing discovery deadlines over subsequent months, and trials occurring if cases do not settle.⁹⁰

Bankruptcy judges apply the governing test to the evidentiary record developed during the adversary proceeding. Possible outcomes include denial of discharge, full discharge, and, in many jurisdictions, partial discharge or other tailored relief consistent with section 523(a)(8) and the court’s equitable authority.⁹¹ Results typically turn on the debtor’s showing regarding current ability to maintain a minimal standard of living, the likely persistence of financial constraints, and good-faith efforts to engage with available repayment options.⁹²

The landscape changed significantly with the November 2022 DOJ Guidance, issued in coordination with the ED to promote transparent, equitable, and streamlined handling of student-loan discharge cases.⁹³ This Guidance directs Department attorneys to evaluate the same three factors underlying the

⁸⁷ See, e.g., Hon. Daniel S. Opperman & Todd M. Stickle, *Adversary Proceedings*, U.S. BANKR. E.D. MICH., <https://www.mieb.uscourts.gov/adversary-proceedings> (noting timelines for various filings related to an adversary proceeding) (citing Fed. R. Bankr. P. 7012(a)(5)) (last visited Sep. 20, 2025).

⁸⁸ See U.S. CTS., *supra* note 76 (describing an AP hearing as a “mini-trial”).

⁸⁹ See, e.g., Hon. Alan Trust & Paul Dickson, *Adversary Proceedings*, U.S. BANKR. E.D.N.Y., <https://www.nyeb.uscourts.gov/adversary-proceedings> (last visited Sep. 20, 2025) (noting a \$350 fee and the debtor-plaintiff exemption); Hon. Erika Kimball & Joseph Falzone, *Adversary Proceeding*, U.S. BANKR. S.D. FLA., <https://www.flsb.uscourts.gov/adversary-proceeding> (last visited Sep. 20, 2025).

⁹⁰ See FED. R. BANKR. P. pt. VII (detailing adversary proceeding rules); see generally Opperman & Stickle, *supra* note 87 (providing filing timelines).

⁹¹ See, e.g., *In re Saxman*, 325 F.3d 1168, 1173–75 (9th Cir. 2003) (permitting partial discharge of student loans under the court’s equitable authority).

⁹² See *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987).

⁹³ See generally U.S. DEP’T OF JUST., *supra* note 1.

Brunner test and, where facts warrant, to stipulate to those facts and recommend discharge to the court.⁹⁴

The Guidance operationalizes each factor. Department attorneys use the IRS Collection Financial Standards as a reference point for evaluating present ability to pay.⁹⁵ They consider circumstances like long-term disability or advanced age as supporting presumptions of future persistence while examining each person's complete financial trajectory.⁹⁶ And they assess good faith through debtors' efforts throughout the loan's life, clarifying that non-enrollment in particular repayment plans is not dispositive where other evidence of good faith exists.⁹⁷ The Department provides a standardized attestation form to organize proof and reduce litigation burdens.⁹⁸ While the bankruptcy judge retains ultimate responsibility for the undue-hardship determination, the Guidance frontloads information exchange and encourages stipulated resolutions.

In a companion empirical analysis, I examine how the post-November 2022 framework has changed the student loan bankruptcy process.⁹⁹ The evidence reveals both the promise and limitations of the post-2022 framework. Adversary proceeding filings have increased since the Guidance took effect, rising to roughly 600–700 per year in 2023 and 2024.¹⁰⁰ Yet this uptick must be understood in context. Over the entire 2011–2024 period, only about 7,300 borrowers—approximately two-tenths of 1% of bankruptcy filers with student debt—ever filed an adversary proceeding.¹⁰¹ The recent increase appears more

⁹⁴ See *id.* at 1 (“[T]he Guidance advises Department attorneys to stipulate to the facts demonstrating that a debt would impose an undue hardship and recommend to the court that a debtor’s student loan be discharged if three conditions [mirroring the Brunner test] are satisfied.”).

⁹⁵ See *id.* at 4–9 (detailing which factors DOJ attorneys should evaluate when assessing a debtor’s *present* inability to repay).

⁹⁶ See *id.* at 9–10 (detailing which factors DOJ attorneys should evaluate when assessing a debtor’s *future* inability to repay).

⁹⁷ See *id.* at 10–13 (detailing which factors DOJ attorneys should evaluate when assessing a debtor’s good faith efforts to repay).

⁹⁸ See *Attestation In Support Of Request For Stipulation Conceding Dischargeability Of Student Loans*, U.S. DEP’T OF JUST. (May 2025), <https://www.justice.gov/d9/2024-05/StudentLoanAttestationFillableForm.pdf>. Many courts post the form on their website to help pro se debtors and counsel. See, e.g., Latife Neu, *Navigating the New Student Loan Discharge Process: Overview and Additional Resources*, U.S. BANKR. W.D. WASH., <https://www.wawb.uscourts.gov/content/navigating-new-student-loan-discharge-process-overview-and-additional-resources> (introducing the post-2022 student loan discharge process and linking to the attestation form at the bottom of the webpage) (last visited Sep. 20, 2025).

⁹⁹ See Iuliano, *supra* note 2; Belisa Pang, Dalié Jiménez & Matthew Adam Bruckner, *Full Discharge Ahead? An Empirical First Look at the New Student Loan Discharge Process in Bankruptcy*, 41 EMORY BANKR. DEV. J. 259 (2025) (another recent article on the 2022 attestation process).

¹⁰⁰ See Iuliano, *supra* note 2, at 457–58.

¹⁰¹ See *id.*

like a rebound from the pre-2022 trough, likely dampened by the federal repayment moratorium, than evidence that the fundamental access-to-justice gap has closed.¹⁰²

The outcomes within adversary proceedings, however, tell a more encouraging story. In the post-reform period, approximately 87% percent of cases have produced debtor relief through full or partial discharge, with the overwhelming majority resolved by settlement rather than trial.¹⁰³ Only about 1% of cases ended in outright denial, while roughly 12% concluded in neutral dispositions such as dismissals without prejudice.¹⁰⁴ Case duration has also improved substantially, with median resolution time falling to about eight months and similar improvements at both the mean and upper tail.¹⁰⁵ This finding is consistent with a more front-loaded, documentation-driven process.

Legal representation remains crucial. Represented debtors succeeded at rates in the low nineties compared to roughly 60% for pro se filers, with most pro se losses reflecting failure to prosecute rather than adverse merits rulings.¹⁰⁶ Perhaps most notably, relief appears less tightly tethered to formal satisfaction of all three *Brunner* factors than traditional doctrine might suggest. Many cases have resolved favorably where two factors were established. Overall, the Department's introduction of the attestation process has facilitated faster resolutions that are more favorable for debtors. The primary failing remains the low adoption rate among bankrupt student loan debtors.¹⁰⁷

B. The Data

1. Methodology

This Article draws upon three distinct datasets spanning sixteen years of student loan bankruptcy cases, originally collected for separate empirical studies.¹⁰⁸ The longitudinal nature of these datasets enables both trend analysis

¹⁰² See *id.* at 436, 456.

¹⁰³ See *id.* at 460.

¹⁰⁴ See *id.* at 460, 462.

¹⁰⁵ See *id.* at 464.

¹⁰⁶ It is worth emphasizing that, although pro se debtors fared worse than their represented counterparts, a sixty percent success rate is extremely high compared to the success rate of pro se debtors in other legal domains. See Iuliano, *supra* note 2.

¹⁰⁷ See *id.* at 458–59.

¹⁰⁸ See *id.* at 440–41 (detailing the 2022–23 data collection process); see also Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L.J. 497, 523–24 (2020) (detailing the 2017 data collection process); Iuliano, *supra* note 83, at 501–03 (detailing the 2007 data collection process).

of student loan bankruptcy outcomes and specific evaluation of recent policy reforms, providing the empirical foundation for assessing how the DOJ and ED's 2022 guidance impacted the student loan bankruptcy process. Each dataset employed different collection methodologies reflecting the evolution of available research tools and the specific analytical requirements for each time period.¹⁰⁹

The earliest dataset analyzed student loan adversary proceedings filed in 2007 and was collected in 2010 using PACER's Case Locator system.¹¹⁰ Due to PACER's limited filtering capabilities for adversary proceedings at that time, cases were identified through party-name searches targeting the ten largest education loan holders and Educational Credit Management Corporation. This approach captured proceedings involving the major players in the student loan market, who collectively held 71.2% of outstanding student loans in 2007.¹¹¹ Cases were included only where the docket's Nature of Suit designation reflected a student loan discharge claim under section 523(a)(8). The dataset was coded for financial, demographic, and outcome variables drawn from the adversary complaint and associated bankruptcy case documents, including Schedules A through J. Cases lacking usable schedules and one matter still pending at the time of collection were excluded, producing a final sample of 207 observations.

The second dataset captures student loan adversary proceedings filed nationally in 2017. That collection effort utilized Bloomberg Law's enhanced Bankruptcy Docket search functionality, which became available between the first and second data collection periods. Cases were identified using the student loan Nature of Suit tag (Code 63: "Dischargeability—§ 523(a)(8), student loan"), enabling broader national coverage than the lender-specific approach required for the 2007 dataset. This methodology yielded 448 adversary proceedings. Coding emphasized party arguments and case dispositions, supplemented by basic demographic data extracted from pleadings. Because the study goals emphasized understanding case outcomes and litigation strategies

¹⁰⁹ The unit of analysis differs slightly between datasets. The 2007 study consolidated multiple filings by the same debtor into single observations, while the later datasets treat each adversary proceeding as a separate observation. Only a small number of debtors filed multiple proceedings in the 2017 and 2022–23 datasets, making this methodological difference negligible for comparative purposes.

¹¹⁰ See Iuliano, *supra* note 83, at 501–02.

¹¹¹ See Iuliano, *supra* note 83, at 404–05.

rather than debtor financial profiles, no financial data was collected for this dataset.¹¹²

The most recent dataset was designed specifically to evaluate outcomes under the DOJ and ED’s November 2022 Guidance. Cases were identified using the same Bloomberg Law Nature of Suit methodology, covering filings from mid-October 2022 through mid-November 2023. Although Bloomberg Law advertises “complete federal coverage,”¹¹³ its docket search capabilities do not capture every student-loan adversary proceeding, specifically missing those where the relevant Nature of Suit code is not reported or is reported inaccurately. Accordingly, the analyses emphasize within-case outcomes and proportions, and any raw filing counts should be understood as lower-bound estimates. Even allowing for potential undercounting, the observed volume of filings remains strikingly small relative to the population of distressed student-loan borrowers.

The mid-October 2022 through mid-November 2023 timeframe was selected to capture sufficient resolved cases while minimizing the inclusion of pending matters at the time of analysis.¹¹⁴ After excluding fourteen cases involving definitional disputes about whether specific loans qualified as “student loans” under the Bankruptcy Code and one case that was dismissed due to a clerical error that incorrectly linked the adversary proceeding to the wrong bankruptcy case, the final sample included 652 adversary proceedings. Data collection drew from multiple sources including the adversary complaint, judicial orders resolving cases, voluntary petitions, and bankruptcy schedules. Final data collection was completed in January 2025.

2. Results

The empirical analysis reveals two striking findings relating to gender. First, women comprised a substantial majority of the sample (73%). This statistic is at odds with bankruptcy filings overall, where women constitute only a slight majority (52%) of consumer filings. Second, there has been a notable shift in gender outcomes in recent years. Table 1 presents success rates in student loan

¹¹² See generally Iuliano, *supra* note 108 (The 2017 dataset is, therefore, not used for financial comparisons in this Article, but provides valuable data on legal arguments and case outcomes during the pre-reform period).

¹¹³ See Bloomberg Law, *Court Dockets Search*, <https://pro.bloomberglaw.com/products/court-dockets-search> (last visited Feb. 13, 2026).

¹¹⁴ See Iuliano, *supra* note 2, at 440 (The guidance letter applied retroactively to pending cases, making the October 2022 start date appropriate for measuring reform impacts. And the specific window was selected to maximize the number of resolved cases available for analysis while minimizing the inclusion of pending matters that could not provide definitive outcome data.).

bankruptcy proceedings by gender for the three time periods: 2007, 2017, and 2022-23. The most recent data show women achieving an 89% success rate compared to 82% for men, a statistically significant difference ($p < 0.05$) that departs from historical patterns.¹¹⁵

In 2007, success rates were virtually identical, with men succeeding in 40% of cases and women in 39%. By 2017, a modest male advantage had emerged (64% versus 59%), though this difference did not reach statistical significance. The 2022–23 reversal thus marks a sharp break from precedent. Women not only closed a five-percentage-point gap but opened a seven-point advantage of their own.

The timing of this shift coincides with the DOJ and ED’s November 2022 reforms, which transformed student loan bankruptcy from an adversarial litigation process into a settlement-oriented administrative review. Under the new framework, 86% of successful outcomes are now achieved through negotiated settlements rather than judicial determinations. This procedural transformation provides context for understanding the gender dynamics at play.

More specifically, the observed gender gap in successful student-loan discharges after November 2022 is consistent with structural explanations developed in adjacent literatures on coerced debt, credit as social provision, and the role of legal complexity.¹¹⁶ The guidance shifted the focus of student-loan discharge litigation toward criteria that are more straightforward to administer, while encouraging stipulations when those criteria are met.

Table 1: Student Loan Bankruptcy Success Rate by Gender

Year	2022–23		2017		2007	
	Male	Female	Male	Female	Male	Female
Win Rate	82%*	89%*	64%	59%	40%	39%

* $p < 0.05$

To determine whether financial differences explain the disparate success rates, I analyzed the economic circumstances of male and female filers using two complementary statistical approaches. The primary analysis employed

¹¹⁵ See *id.* at 450. The analysis employs Fisher’s exact test to identify differences in the success rate data. This statistical approach is particularly well-suited for categorical outcomes like those examined here.

¹¹⁶ See *infra* Part III.A.

quantile regression to compare median financial positions.¹¹⁷ Because the dollar amounts debtors report in bankruptcy cases vary dramatically, with some extremely high values that could skew the results, this method is well suited to the data.

The analysis compared men and women across nine key financial categories: total liabilities, real property, personal property, secured debt, priority unsecured debt, nonpriority unsecured debt, student loans (which is a subset of nonpriority unsecured debt), monthly income, monthly expenses, and current monthly income. For each category, I calculated whether the typical woman's financial position differed meaningfully from the typical man's position.

Tables 2 and 3 present these comparisons for the 2022–23 cohort. At the median, men report \$25,000 in assets versus \$23,000 for women, \$191,000 in total liabilities versus \$149,000, and \$83,000 in student loans versus \$75,000. None of these differences achieve statistical significance. The same pattern holds for income and expense measures. Median monthly income is \$2,200 for men and \$1,700 for women, while median monthly expenses are \$2,400 and \$1,700, respectively. The results showed no statistically significant differences between men and women on any of these financial measures. In other words, when looking at the financial circumstances that bring people to bankruptcy court, men and women appear remarkably similar in their typical debt loads, asset holdings, and cash flow.

Table 2: Assets and Liabilities by Gender of Bankrupt Student Loan Adversary Proceeding Filers 2022–23 (thousands)

Financial Data	Mean		Median	
	Male	Female	Male	Female
Assets	77	73	25	23
• Real Property	42	43	0	0
• Personal Property	35	30	18	17
Liabilities	280**	196**	191	149
• Secured Claims	62	44	10	14
• Priority Unsecured Claims	18	4	0	0

¹¹⁷ See generally Roger Koenker & Kevin F. Hallock, *Quantile Regression*, 15 J. ECON. PERSP. 143 (2001) (discussing quantile regression).

• Nonpriority Unsecured Claims	203***	149***	145	115
• Student Loans	137*	103*	83	75
Net worth	(185)	(149)	(118)	(115)

* $p < 0.01$, ** $p < 0.001$, *** $p < 0.0001$

Table 3: Cash Flow of Student Loan Adversary Proceeding Filers by Gender in 2022–23 (rounded to nearest hundred)

Financial Data	Mean		Median	
	Male	Female	Male	Female
Monthly Income	3,500	3,200	2,200	1,700
Monthly Expenses	3,700	3,400	2,400	1,700
Current Monthly Income	4,000	3,500	3,400	2,400
Net Income	(200)	(100)	1,600	900

This financial parity at the median is not unique to the post-reform period. Table 4 shows similar patterns in the 2007 data, where median assets (\$14,000 for men, \$12,000 for women), liabilities (\$149,000 versus \$125,000), and student loans (\$47,000 versus \$49,000) likewise showed no statistically significant gender differences. The consistency of these findings across fifteen years suggests typical male and female student loan bankruptcy filers face comparable financial distress. Table 5 reports monthly income, monthly expenses, and net income for 2007 filers and similarly fails to reveal any statistically significant differences.

Table 4: Assets and Liabilities by Gender of Bankrupt Student Loan Adversary Proceeding Filers in 2007 (thousands)

Financial Data	Mean		Median	
	Male	Female	Male	Female
Assets	124	57	14	12
• Real Property	112	39	0	0
• Personal Property	12	17	6	7
Liabilities	286	177	149	125
• Secured Claims	134	51	4	3

• Unsecured Claims	153	126	110	88
• Student Loans	85	79	47	49
Net worth	(162)	(120)	(98)	(80)

Table 5: Cash Flow of Student Loan Adversary Proceeding Filers by Gender in 2007 (rounded to nearest hundred)

Financial Data	Mean		Median	
	Male	Female	Male	Female
Monthly Income	1,800	2,000	1,700	1,800
Monthly Expenses	2,400	2,200	2,100	1,900
Net Income	(600)	(200)	(100)	0

To supplement the median analysis, I also examined mean differences in financial obligations between male and female adversary proceeding filers using Welch's t-test.¹¹⁸ This statistical approach compares average dollar amounts between groups while accounting for the reality that men's and women's financial data may have different levels of variability, a key consideration given the skewed nature of bankruptcy financial disclosures. Unlike traditional t-tests that assume equal variance between groups, Welch's test remains valid even when the spread of financial amounts differs substantially between men and women or when group sizes are unequal, which is particularly important for my dataset given that women outnumbered men by a significant margin.

The mean comparison analysis for the 2007 data found no statistically significant differences between men and women along financial dimensions. The mean comparison for 2022–23 tells a different story, revealing statistically significant differences driven by outliers. Men report higher average total liabilities (\$280,000 versus \$196,000, $p < 0.001$), nonpriority unsecured claims (\$203,000 versus \$149,000, $p < 0.0001$), and student loans (\$137,000 versus \$103,000, $p < 0.01$). The divergence between this mean analysis and the previously discussed median analysis highlights the influence of extreme values in bankruptcy data. While the typical man and woman appear to have similar

¹¹⁸ See Marie Delacre, Daniël Lakens & Christophe Leys, *Why Psychologists Should by Default Use Welch's t-test Instead of Student's t-test*, 30 INT'L REV. SOC. PSYCH. 92, 96, 99 (2017) (explaining the benefits of Welch's t-test and arguing that it should be used over Student's t-test); see generally B.L. Welch, *The Generalization of 'Student's' Problem When Several Different Population Variances Are Involved*, 34 BIOMETRIKA 28 (1947) (foundational article presenting Welch's t-test).

financial profiles when filing for bankruptcy, the presence of some men with very high debt loads drives up the male average, creating statistically detectable differences in means. The median analysis, therefore, provides a more representative picture of the typical bankruptcy filer's experience, while the mean analysis captures the effect of outliers that could be legally or policy-relevant in their own right.

Given that the financial characteristics of male and female debtors are remarkably similar and cannot explain the gender disparities in discharge outcomes, it is necessary to explore alternative explanations for women's higher success rates. One particularly salient possibility is differences in caregiving responsibilities. Women in the sample are more likely to report having dependents than men, with 50% of female debtors having dependents compared to 39% of male debtors, a pattern that remained consistent across both the 2007 and 2022–23 datasets.¹¹⁹ This gendered difference in dependent status, combined with the consideration of household composition in both the *Brunner* test and the 2022 administrative framework, suggests that women's higher caregiving burden may be driving their higher success rate.

Specifically, the *Brunner* test requires courts to assess whether debtors can maintain a “minimal standard of living” for themselves and their dependents, while the DOJ/ED attestation process adjusts poverty thresholds based on household size. Beyond these formal considerations, caregiving responsibilities directly affect labor market participation, work hours, and necessary expenses. If decision makers respond to these factors, we would expect debtors with dependents to achieve higher success rates.

Table 6 presents success rates by gender and dependent status for both 2007 and 2022–23. The results reveal a surprising pattern that contradicts expectations about hardship claims. In 2007, men without dependents achieved significantly higher success rates than those with dependents (52% versus 23%, $p < 0.05$), while women showed no statistically significant difference despite a similar directional pattern (43% versus 35%). In 2022–23, women without dependents maintained a slight edge (91% versus 87%), while men showed a modest reversal with those having dependents faring slightly better (84% versus 80%), though neither difference reached statistical significance. The most striking finding is the 2007 result for men, where having dependents, which presumably

¹¹⁹ “Dependents” was not coded as a variable for the 2017 dataset, so that year is excluded from the analysis.

is a marker of greater financial hardship, was actually associated with dramatically lower success rates.

Table 6: Success Rate by Gender and Dependent Status

	Men		Women	
	Dep.	No Dep.	Dep.	No Dep.
2022–23	84%	80%	87%	91%
2007	23%*	52%*	35%	43%

* $p < 0.05$

These findings yield two important insights. First, the gender disparities documented earlier cannot be attributed to differences in parental status. Women's advantage in the post-reform period persists regardless of dependent status. Second, the current settlement-oriented system may already incorporate household composition through its income-expense calculations in ways that neutralize any potential advantage. Selection effects could also play a role. Debtors without dependents may pursue discharge only when they have particularly strong cases or simpler financial profiles, while parents may file under more complex circumstances that do not necessarily strengthen their claims. Regardless of the underlying mechanism, the evidence indicates that dependent status confers neither systematic advantage nor disadvantage in contemporary student loan discharge proceedings.

The final variable examined is attorney representation. Across the entire sample, represented debtors achieved discharge at significantly higher rates than pro se litigants (91% versus 61%). Given this substantial advantage conferred by having an attorney, differences in attorney usage rates could partially explain the observed gender gap in discharge outcomes. Indeed, women in the sample were more likely to retain counsel than men (90% versus 85%, $p < 0.05$).¹²⁰ This five-percentage-point representation gap likely accounts for several percentage points of the overall seven-point gender disparity in discharge rates.

The data reveal an additional notable pattern among pro se litigants. Women representing themselves achieved a 66% discharge rate compared to 52% for self-represented men. While this fourteen-percentage-point difference did not reach statistical significance due to limited sample size, it translates to six additional discharges for women (compared to what one would expect if success

¹²⁰ The analysis employed a two-proportion Z test.

rates were equivalent). These additional discharges, in turn, contribute to the overall gender gap in success rate.

The strong association between legal representation and success aligns with extensive research showing that consumer bankruptcy is a complex legal environment where representation influences outcomes. This framework illuminates both aspects of my findings.

First, women's higher rate of legal representation likely contributes several percentage points to their overall advantage. Second, even among pro se litigants, women achieve higher success rates, which supports a selection and process explanation. Women who proceed without counsel may represent a positively selected group with stronger cases or superior procedural compliance. The post-2022 attestation requirement, which incentivizes careful documentation of present inability to pay, persistence, and good faith, transforms procedural diligence into stipulated relief.

Viewed through this lens, the gendered patterns in counsel retention and pro se success in my sample are not anomalies. Instead, they reflect the logical outcomes of a complexity-driven system that rewards the documentation skills and procedural navigation capabilities in which represented debtors, and some highly organized pro se debtors, are more likely to excel.¹²¹

Taken together, the counsel and pro se patterns, the absence of median financial differences, and the settlement-heavy, attestation-driven process all suggest that outcomes are driven less by individual desert and more by structural features of the system. Part III develops those mechanisms, drawing on Abbye Atkinson's account of "credit as social provision" and Angela Littwin's work on coerced debt and bankruptcy complexity to explain why women prevail at higher rates.

III. EXPLAINING THE GENDER GAP

Part II showed that having a lawyer matters enormously for discharge success. Debtors with attorneys won far more often regardless of gender, and women hired lawyers slightly more frequently than men. But legal representation doesn't tell the whole story. While my data cannot directly test

¹²¹ See generally Angela Littwin, *The Do-It-Yourself Mirage: Complexity in the Bankruptcy System*, in *BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS* (Katherine Porter ed., 2012) (showing how procedural complexity punishes pro se filers and reporting an enormous representation effect).

the other mechanisms behind this pattern, several theoretical frameworks offer plausible explanations consistent with the findings. The post-2022 system for proving “undue hardship” looks at whether borrowers can pay now, whether their constraints will likely continue, and whether they have made good-faith efforts to repay. This framework seems to favor the kinds of structural disadvantages that women face more often and can more easily document. Research by Abbye Atkinson on credit as social policy and Angela Littwin on economic abuse helps explain why.

A. *Structural Mechanisms*

In her work, Atkinson shows that American policy increasingly relies on consumer credit to provide what other countries offer through social programs.¹²² This creates a system whereby those with the least stable incomes and who most need help have the hardest time getting debt relief. Atkinson’s more recent work reveals another contradiction. Policymakers promote borrowing as a path to equality while ignoring that credit, once used, simply becomes debt. This sleight of hand dumps repayment risk onto groups already facing discrimination.¹²³

This analysis helps explain why women win discharge cases more often under the new attestation system, even when their average debt loads and incomes look similar to men’s. The attestation process does not just snapshot current finances, but rather examines whether hardships will persist and how well they are documented. Men and women might have similar median incomes, but women may more often face the kind of lasting constraints that come from filling gaps in social support with borrowed money. The attestation’s standardized checkboxes miss these nuanced realities. But the open-ended questions and settlement negotiations built into the attestation process capture them and may transform complex structural disadvantages into successful discharge applications. This gap between what the forms measure and what the process reveals may explain part of the gender disparity.

¹²² See Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093, 1093, 1104 (2019) (observing that “[c]redit has become a significant institution within the American social safety net” and that “credit is beneficial only to the extent that a borrower can expect to have future cash flow to service the resulting debt”).

¹²³ See Abbye Atkinson, *Borrowing Equality*, 120 COLUM. L. REV. 1403, 1405–06 (2020) (arguing that the “increased ability to borrow money, cast as a mechanism of positive social change, may function in some ways as a Trojan horse, wheeling in the unique dangers of indebtedness to the front gates of marginalized communities and threatening their already tenuous socioeconomic existence”).

Atkinson also exposes problems with how bankruptcy law treats different types of debt. She shows that carving out certain debts from discharge blocks relief for those who need it most.¹²⁴ These carve-outs hit hardest where specific debts concentrate, creating clear winners and losers.¹²⁵ Student loans are the classic example. Women often rely more heavily on education loans to overcome wage gaps and work interruptions from caregiving. Because student loans are not automatically discharged in bankruptcy, more women get funneled into the narrow exception where discharge is still possible, the very space where the attestation process now operates. Seen this way, women's higher success rates are not surprising. They are a predictable result of how the system channels both borrowing and relief.

Angela Littwin's research reveals another piece of the puzzle, which involves economic abuse in violent relationships. She documents how abusers take out credit in victims' names through fraud or coercion, consistently destroying their credit ratings.¹²⁶ Since employers, landlords, and utility companies all check credit scores, this damage traps victims in dangerous situations and blocks their path to financial stability.¹²⁷ Making matters worse, the systems for fixing credit reports are, in Littwin's words, "deeply flawed," making it nearly impossible to clean up the mess without legal help.¹²⁸

In the attestation era, these experiences may become powerful evidence. Protection orders, fraud alerts, and documented histories of disrupted work or education, all more common in women's cases, may help provide evidence of persistent hardship and good faith. The attestation process may transform invisible suffering into visible proof of undue hardship, even when the raw financial numbers look unremarkable.

These structural factors provide possible explanations for this Article's finding regarding gendered outcomes and legal representation. After the 2005

¹²⁴ See Abbye Atkinson, *Consumer Bankruptcy, Nondischargeability, and Penal Debt*, 70 VAND. L. REV. 917, 922, 927 (2017) (arguing that "categorical nondischargeability frustrates the fresh start by subordinating relief for certain overburdened debtors" and the "analytical frames . . . are incoherent as applied").

¹²⁵ See *id.* at 927–29.

¹²⁶ See Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 951, 954 (2012) (defining "coerced debt" as "nonconsensual, credit-related transactions that occur in a violent relationship" and arguing that "in a manner reminiscent of how the law formerly failed to recognize that a husband could physically abuse his wife because she was part of his legal identity, it currently does not recognize that a husband can destroy his wife's credit").

¹²⁷ See Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 366–367 (2013).

¹²⁸ See *id.* at 367 (discussing the "deeply flawed" dispute resolution process).

reforms, bankruptcy became a minefield of technical requirements and procedural traps. Having a lawyer, in many cases, means the difference between success and failure.¹²⁹ Littwin's data shows that "represented debtors were almost ten times more likely to receive a discharge than their pro se counterparts."¹³⁰

The advantages of an attorney notwithstanding, similar structural realities likely benefit women in the pro se context as well. Women more often carry the kinds of burdens the undue hardship test is meant to be sympathetic towards. That includes survival debt from missing social programs, education loans taken to offset wage discrimination, and credit damage from abuse. When these hardships align, even self-representation can succeed. Together, Atkinson's work on credit-as-welfare and Littwin's research on abuse and complexity reveal mechanisms that provide a potential explanation for the gap in gender success rates.

B. Women's Access to Education and Student Loans

While the structural mechanisms help explain how the attestation process might favor women's circumstances today, understanding why women carry disproportionate student debt burdens requires examining the historical intersection of gender, education, and credit policy. Women's path to higher education was neither simple nor linear. It involved overcoming centuries of exclusion, gaining legal rights to both education and credit, and entering a system that shifted from grants to loans just as women became the majority of students.

This timing was consequential. The policy choices that expanded women's educational access simultaneously created the conditions for their disproportionate debt accumulation, as structural wage gaps and caregiving responsibilities collided with a model of education increasingly dependent on debt financing. The following sections trace this evolution from women's early exclusion from higher education through the contemporary student loan crisis, revealing how yesterday's victories in educational access became today's burdens in bankruptcy court.

¹²⁹ See Littwin, *supra* note 120 (discussing post-BAPCPA complexity).

¹³⁰ Angela Littwin, *The Affordability Paradox: How Consumer Bankruptcy's Greatest Weakness May Account for Its Surprising Success*, 52 WM. & MARY L. REV. 1933, 1972 (2011).

1. *Early Reform*

The history of student loans for women begins with a fundamental barrier. Throughout most of the nineteenth century, few colleges would admit women. Women's higher education advanced through institutions created specifically for that purpose. Wesleyan College in Macon, Georgia, chartered in 1836, became the first degree-granting college for women, followed by Mount Holyoke Female Seminary in 1837 (later Mount Holyoke College) and Vassar College, founded in 1861 to offer women an education explicitly "equal to that of the best men's colleges."¹³¹

These institutions (later joined by the other "Seven Sisters") circumvented pervasive exclusion at established men's colleges.¹³² They built intellectual communities for women and incrementally normalized the concept of women as college-educated citizens. Barbara Miller Solomon's classic history of women and higher education captures this deeper social transformation.¹³³ In this era, education financing remained hyper-local. Students relied on family resources, church or community aid, institutional scholarships, or teaching and domestic service arranged by the colleges themselves. Without a national aid architecture or modern consumer-credit regime to support women's independent borrowing, "ability to pay" functioned as an informal but powerful gatekeeper.

2. *Federal Intervention*

The federal government's first major intervention in postsecondary access came not through gender-targeted policy but through veterans' benefits. The Servicemen's Readjustment Act of 1944 (the original GI Bill) financed tuition and living stipends for returning servicemembers, rapidly expanding college

¹³¹ *About Wesleyan*, WESLEYAN COLL., <https://www.wesleyancollege.edu/about> (last visited Sep. 24, 2025) (noting that the school was "the first college in the world chartered to grant degrees to women"); *Mount Holyoke College*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Mount-Holyoke-College> (last visited Sep. 24, 2025); *A History of Vassar College*, VASSAR COLL., <https://www.vassar.edu/about/history> (last visited Sep. 24, 2025).

¹³² See generally *Seven Sisters (Colleges)*, NEW WORLD ENCYC., [https://www.newworldencyclopedia.org/entry/Seven_Sisters_\(colleges\)](https://www.newworldencyclopedia.org/entry/Seven_Sisters_(colleges)) (last visited Sep. 24, 2025) (detailing the founding and evolution of the Seven Sisters colleges).

¹³³ See BARBARA MILLER SOLOMON, *IN THE COMPANY OF EDUCATED WOMEN: A HISTORY OF WOMEN AND HIGHER EDUCATION IN AMERICA* (1985). For an extension of the narrative on the "homecoming" of American college women, see Claudia Goldin, Lawrence F. Katz & Ilyana Kuziemko, *The Homecoming of American College Women: The Reversal of the College Gender Gap*, 20 J. ECON. PERSP. 133, 133 (2006) (documenting the evolving gender gap in American higher education and showing how the equality in enrollment achieved in 1980 marked "a return or a 'homecoming' to the parity of the early twentieth century").

enrollments.¹³⁴ However, because World War II service was overwhelmingly male, the GI Bill's educational dividend accrued primarily to men.¹³⁵

The National Defense Education Act of 1958 created the federal government's first dedicated loan program—the National Defense Student Loan (later “Perkins”) program—signaling Washington's shift from episodic veterans' programs to a continuing civilian aid system.¹³⁶ The watershed moment came in 1965 when Congress passed the Higher Education Act. Title IV of the Higher Education Act established the basic legal architecture for federal grants, work-study, and loans that, in various forms, persists today.¹³⁷

The 1972 Education Amendments strengthened grant aid through the Basic Educational Opportunity Grant (later renamed the Pell Grant) providing direct cash assistance to low-income undergraduates.¹³⁸ While the Pell program became foundational for access, its purchasing power steadily eroded against rising sticker prices, a trend well documented by the College Board.¹³⁹

Two civil rights statutes in the early 1970s fundamentally altered both women's participation in higher education and their ability to access credit markets, transforming how women would interact with student loans. Title IX of the Education Amendments of 1972 prohibited sex discrimination in federally funded education. Although most famous for its impact on athletics, Title IX's

¹³⁴ See *Servicemen's Readjustment Act (1944)*, U.S. NAT'L ARCHIVES (May 3, 2022), <https://www.archives.gov/milestone-documents/servicemens-readjustment-act> (last visited Sep. 24, 2025) (noting that the “act provided tuition, subsistence, books and supplies, equipment, and counseling services for veterans to continue their education in school or college”).

¹³⁵ Notably, recent economic research demonstrates that the act had positive educational impacts on the comparatively small cohort of female veterans. See Conor Lennon, *G.I. Jane Goes to College? Female Educational Attainment, Earnings, and the Servicemen's Readjustment Act of 1944*, 81 J. ECON. HIST. 1223, 1236–49 (2021) (finding that female veterans were more likely to attend and graduate from college and more likely to have higher incomes than their non-veteran counterparts, and attributing these differences to the GI Bill).

¹³⁶ See generally Pamela Ebert Flattau et al., *The National Defense Education Act of 1958: Selected Outcomes*, INST. FOR DEF. ANALYSES (2006), <https://www.ida.org/-/media/feature/publications/t/th/the-national-defense-education-act-of-1958-selected-outcomes/d-3306.ashx> (detailing the student loan program created under the act and exploring its intended goals and actual impact).

¹³⁷ See CASSANDRIA DORTCH, ALEXANDRA HEGJI & RITA R. ZOTA, CONG. RSCH. SERV., IF12780, FEDERAL STUDENT AID AUTHORIZED BY TITLE IV OF THE HIGHER EDUCATION ACT (Oct. 9, 2024) (discussing Title IV student aid programs within the Higher Education Act).

¹³⁸ See BENJAMIN COLLINS & CASSANDRIA DORTCH, CONG. RSCH. SERV., R47647, PELL GRANTS FOR SHORT-TERM PROGRAMS: BACKGROUND AND LEGISLATION IN THE 118TH CONGRESS 2 (Aug. 24, 2023) (detailing the Federal Pell Grant Program).

¹³⁹ See *Trends in Student Aid 2024*, COLL. BD., 26 fig. SA-18 (Oct. 2024), <https://research.collegeboard.org/media/pdf/Trends-Student-Aid-2024-presentation.pdf> (showing university tuition prices increasing at a faster rate than the maximum Pell Grant award).

broader reach cemented women's ability to enroll in programs that had long excluded them.¹⁴⁰ The effects were dramatic. Within a decade, women's undergraduate enrollment share surpassed men's, eventually leading to a complete "reversal" of the college gender gap.¹⁴¹ By fall 2021, women constituted 58% of U.S. undergraduates.¹⁴²

Another important statute was the Equal Credit Opportunity Act ("ECOA") of 1974, which outlawed sex- and marital-status discrimination in credit markets.¹⁴³ Through Regulation B, ECOA barred common practices such as requiring a husband's signature from creditworthy female applicants.¹⁴⁴ Before ECOA, women routinely encountered both formal and informal barriers to credit.¹⁴⁵ For education financing, ECOA's impact was indirect but powerful. As more women pursued degrees post-Title IX, they did so in a credit market that finally recognized their independent legal and financial capacity to borrow.

3. *The Shift from Grants to Loans*

Since the 1980s, federal aid has undergone a fundamental shift from grants toward loans, and from subsidized to unsubsidized credit. Congress authorized unsubsidized Stafford loans in 1992, available regardless of financial need, to supplement the means-tested subsidized Stafford program.¹⁴⁶ Parallel expansions of PLUS lending increased access to parent- and graduate-level

¹⁴⁰ See U.S. DEP'T OF JUST., EQUAL ACCESS TO EDUCATION: FORTY YEARS OF TITLE IX 2 (2012), <https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf> (discussing the impact of Title IX and observing that, "[s]ince 1972, women have made great strides in their educational attainment, benefitting from the protections enacted through Title IX").

¹⁴¹ See Goldin, Katz & Kuziemko, *supra* note 133, at 133–34.

¹⁴² *Fast Facts: Enrollment*, NAT'L CTR. FOR EDUC. STATS., <https://nces.ed.gov/fastfacts/display.asp?id=98> (last visited Sep. 28, 2025) (observing that "[i]n fall 2021, female students made up 58 percent of total undergraduate enrollment (8.9 million students), and male students made up 42 percent (6.5 million students)").

¹⁴³ See Equal Credit Opportunity Act, 15 U.S.C. § 1691(a) (2025).

¹⁴⁴ See 12 C.F.R. § 1002.7(d)(1) ("Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person . . .").

¹⁴⁵ See, e.g., Brian Kreiswirth & Anna-Marie Tabor, *What You Need to Know about the Equal Credit Opportunity Act and How it Can Help You: Why It Was Passed and What It Is*, CFPB (Oct. 31, 2016), <https://www.consumerfinance.gov/about-us/blog/what-you-need-know-about-equal-credit-opportunity-act-and-how-it-can-help-you-why-it-was-passed-and-what-it> (noting that "mortgage lenders often discounted a married woman's income, especially if she was of childbearing age").

¹⁴⁶ See Higher Education Amendments of 1992, Pub. L. No. 102-325, 106 Stat. 448 (authorizing unsubsidized Stafford loans).

credit. As the Pell Grant program's purchasing power lagged behind university prices, borrowing became the default for many students.¹⁴⁷

These policy shifts produced predictable gendered effects. Because women became the majority of students and because women's early-career earnings remain systematically lower, women are both more likely to borrow and more likely to carry balances longer.¹⁴⁸ Multiple analyses relying on data from the National Center for Education Statistics and Federal Reserve estimate that women now hold roughly two-thirds of outstanding student loan balances, an imbalance well summarized by American Association of University Women and widely referenced in academic and policy work.¹⁴⁹

The relationship extends beyond the simple mechanics that more students equals more debt. Labor market dynamics mediate these outcomes in crucial ways. Women's earnings trajectories differ from men's in ways that make fixed-amortization loan schedules particularly burdensome. Wage gaps in the years immediately after graduation, lower returns in fields dominated by women, and the empirically robust "motherhood penalty" that depresses earnings at the onset of child-rearing all put women at a disadvantage in loan repayment.¹⁵⁰

To illustrate these disparities, consider three key metrics: women's share of undergraduate enrollment (58%), women's share of outstanding student-loan balances (64%), and the share of women who report ever having defaulted on a student loan (37% versus 30% for men).¹⁵¹ While these metrics are not directly comparable—enrollment share measures students, debt share measures

¹⁴⁷ See Marisha Addison & Margaret Cahalan, *Unequal & Far-Reaching Ripples of the Student Debt Crisis*, INDICATORS HIGHER EDUC. EQUITY IN THE U.S., Winter 2021, at 1, 3, https://www.pellinstitute.org/indicators/downloads/dialogues-2021_essays_Addison_Cahalan.pdf ("After 1980, as college costs rose and Pell purchasing power declined, loans increasingly became the dominant mode of higher education finance."); COLL. BD., *supra* note 139, at 26 fig. SA-18 (noting that in 2024-25, the maximum Pell Grant covers 30% of average tuition, fees, housing, and food at public four-year colleges and universities).

¹⁴⁸ See AM. ASS'N. OF WOMEN, *DEEPER IN DEBT: WOMEN AND STUDENT LOANS 1* (2017), <https://www.aauw.org/app/uploads/2020/03/DeeperinDebt-nsa.pdf>.

¹⁴⁹ *Id.* (noting that "women hold nearly two-thirds of the outstanding student debt in the United States").

¹⁵⁰ See Michelle J. Budig & Paula England, *The Wage Penalty for Motherhood*, 66 AM. SOCIO. REV. 204, 219 (2001) (finding "a wage penalty for motherhood of approximately 7 percent per child among young American women"); see also Henrik Kleven et al., *Child Penalties Across Countries: Evidence and Explanations* 5–7 (Nat'l Bureau of Econ. Rsch., Working Paper No. 25524, 2019).

¹⁵¹ NAT'L CTR. FOR EDUC. STATISTICS, *supra* note 142 (depicting enrollment trends by gender over time through 2021); AM. ASS'N. OF WOMEN, *supra* note 148, at 35–36 ("estimat[ing] that 64 percent of student loan debt is held by women" as of 2017); PEW, *STUDENT LOAN BORROWERS WITH CERTAIN DEMOGRAPHIC CHARACTERISTICS MORE LIKELY TO EXPERIENCE DEFAULT* (2023), <https://www.pew.org/en/research-and-analysis/articles/2023/01/24/student-loan-borrowers-with-certain-demographic-characteristics-more-likely-to-experience-default>.

balances, and default measures borrower-level outcomes—their juxtaposition reveals how women’s movement from under- to over-representation in higher education has been accompanied by a parallel shift in financing risk and repayment strain.

4. *Income-Driven Repayment*

Congress and the ED have responded to rising payment burdens through a series of income-driven repayment (“IDR”) plans, beginning with Income-Contingent Repayment in the 1990s, followed by Income-Based Repayment (“IBR”), Pay as You Earn (“PAYE”), Revised Pay as You Earn, and today’s Saving on a Valuable Education plan.¹⁵² These programs reveal two critical gender dynamics.

First, women enroll in IDR at higher rates, consistent with their lower average earnings, caregiving patterns, and higher loan balances.¹⁵³ Second, while IDR substantially reduces default risk, it can lengthen time in repayment and increase total interest paid for borrowers whose incomes grow only gradually.¹⁵⁴ For women, IDR functions simultaneously as safety net and treadmill, a design compromise with clear gender implications.

5. *Default and Delinquency*

Recent evidence on default patterns comes from surveys linked to administrative data. Pew’s multi-year study found that women are more likely than men to report having defaulted at some point (approximately 37% versus 30%) and to have experienced multiple repayment hardships.¹⁵⁵ Defaults

¹⁵² For a discussion of these income-driven repayment plans, see RITA R. ZOTA, ALEXANDRA HEGJI & KYLE D. SHOHLI, CONG. RSCH. SERV., R47418, THE DEPARTMENT OF EDUCATION’S NOTICE OF PROPOSED RULEMAKING ON IMPROVING INCOME-DRIVEN REPAYMENT FOR THE DIRECT LOAN PROGRAM: FREQUENTLY ASKED QUESTIONS (Feb. 2023), <https://www.congress.gov/crs-product/R47418>.

¹⁵³ See Nadia Karamcheva, Jeffrey Perry & Constantine Yannellis, *Income-Driven Repayment Plans for Student Loans* 11 (CONG. BUDGET OFF., Working Paper No. 2020-02, 2020) (finding that “female borrowers are more likely than male borrowers to pick an income-driven plan”); see also Daniel Collier, Dan Fitzpatrick & Christopher R. Marsicano, *Exploring the Relationship of Enrollment in IDR to Borrower Demographics and Financial Outcomes*, 51 J. STUDENT FIN. AID 1, 10 (2020) (finding that “female borrowers . . . were more likely to enroll in IDR”).

¹⁵⁴ See GAO, GAO-17-22, EDUCATION NEEDS TO IMPROVE ITS INCOME-DRIVEN REPAYMENT PLAN BUDGET ESTIMATES 6 (2016), <https://www.gao.gov/assets/gao-17-22.pdf> (finding that “less than 1 percent of borrowers in the Income-Based Repayment and Pay As You Earn had defaulted on their loan, compared to 14 percent in the Standard repayment plan”).

¹⁵⁵ See PEW, *supra* note 151.

concentrate among familiar populations: those who left without degrees, first-generation students, and borrowers with lower incomes.¹⁵⁶

Race and sex intersect powerfully with gender in these outcomes. Black women, in particular, carry higher average balances and face more persistent repayment trouble.¹⁵⁷ Repayment policy choices, including interest subsidies, capitalization rules, and the generosity of income exemptions, all carry gendered consequences. When Congress expanded unsubsidized lending in 1992, it increased access to credit but shifted more interest accrual risk onto borrowers during school and deferment. And as discussed, these risks compound when early-career earnings are lower or interrupted. While IDR has partially socialized that risk, the program's complexity and historical under-utilization have blunted its equalizing potential.¹⁵⁸

This 150-year arc reveals two fundamental patterns shaping women's relationship with student debt. Access expanded, but affordable access lagged. Title IX and the normalization of coeducation opened institutional doors. ECOA ended formal credit discrimination that had, well into the 1970s, constrained women's ability to borrow independently. Yet as public funding shifted from grants toward loans while tuition outpaced inflation, the median female student entered a system in which borrowing, not grant aid, increasingly covered tuition.

Design details created gendered outcomes. Unsubsidized credit and capitalization rules disproportionately penalize those with lower and slower earnings, statistically more women, while IDR protects against the worst outcomes at the cost of extended repayment periods. The result is a portfolio in which women hold a disproportionate share of balances and are more likely to have experienced default at some point, even as they are also more likely to enroll in the very plans designed to prevent default.¹⁵⁹ Ultimately, the law

¹⁵⁶ *See id.*

¹⁵⁷ *See* AM. ASS'N. OF WOMEN, *supra* note 148, at 2, 20 (finding that "black women take on more student debt on average than do members of any other group" and that "[j]ust over a third—34 percent—of black women who graduated with a bachelor's degree in 2011-12 did so with more than \$40,000 in student debt compared to 16 percent of Hispanic women, 10 percent of white women, and 8 percent of Asian women"); VICTORIA JACKSON & BRITTANI WILLIAMS, *HOW BLACK WOMEN EXPERIENCE STUDENT DEBT* 2 fig. 1, 7 fig. 4 (2022), <https://edtrust.org/wp-content/uploads/2014/09/How-Black-Women-Experience-Student-Debt-April-2022.pdf>.

¹⁵⁸ *See* GAO, GAO-15-663, *EDUCATION COULD DO MORE TO HELP ENSURE BORROWERS ARE AWARE OF REPAYMENT AND FORGIVENESS OPTIONS* 13–18 (2015), <https://www.gao.gov/assets/gao-15-663.pdf> (finding that "[m]any eligible borrowers do not participate in income-driven repayment plans" and exploring factors that contribute to the low participation rate).

¹⁵⁹ *See* AM. ASS'N. OF WOMEN, *supra* note 148, at 35–36; PEW, *supra* note 151; Karamcheva, Perry & Yannellis, *supra* note 153, at 11.

reshaped the admissions queue, the loan balance, and the repayment terms that produced the gendered balance sheets that appear in modern bankruptcy courts.

CONCLUSION

This Article documented a reversal in student loan bankruptcy outcomes. While success rates showed no gender difference in 2007 and a modest male advantage in 2017, women achieved significantly higher discharge rates than men following the 2022 DOJ and ED guidance reforms. This pattern emerges despite remarkably similar financial profiles between male and female filers—comparable debt loads, assets, and income levels—suggesting that something beyond raw economics drives the disparity. Legal representation accounts for part of the story. Women were somewhat more likely to retain counsel and attorneys dramatically improved outcomes for all debtors. Yet even among pro se filers, women succeeded more often, pointing to deeper structural mechanisms at work.

The theoretical frameworks developed by Abbye Atkinson and Angela Littwin offer plausible explanations for these patterns, though the data in this study cannot definitively test these mechanisms. Atkinson's work reveals how American policy uses consumer credit as a substitute for social provision, forcing households to borrow for needs that robust public programs might otherwise fund. When bankruptcy law carves out student loans from discharge, it channels those carrying education debt, whom are disproportionately women seeking to overcome wage gaps and caregiving penalties, into the narrow exception where discharge remains possible. Littwin's research on economic abuse and coerced debt identifies additional hardships that may strengthen women's claims under the attestation framework, while her work on bankruptcy complexity explains the value of legal representation in this context.

The historical picture illuminates how we arrived at this moment. Title IX opened higher education to women just as federal policy shifted from grants to loans, creating a system where women became the majority of students but also the majority of debtors. The ECOA enabled women to borrow independently, but wage gaps, caregiving responsibilities, and the motherhood penalty made repayment particularly burdensome. The result is a portfolio where women hold nearly two-thirds of outstanding student debt and report higher rates of default, even as they disproportionately enroll in income-driven repayment plans designed to prevent such outcomes. Future work should test these structural mechanisms directly with richer measures of caregiving, employment volatility,

and economic abuse, but the present contribution is to highlight the empirical data and map the most plausible routes by which this gender disparity has arisen.

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