

# Discovery Strategy Guide

*Validation, Not Development*

## Discovery Strategy Guide

Discovery should not change the case. Discovery exposes the cost of improvisation.

If a private student loan adversary is properly engineered before filing, responding to written discovery and preparing for deposition should not require new factual development, new hardship framing, or reactive financial explanation.

The borrower's financial reality, leverage posture, and settlement range should already be documented and internally modeled. Discovery exists to confirm that engineering.

When discovery materially shifts posture, the breakdown occurred during Screening, Modeling, or Complaint Design — not during litigation.

### **Discovery Within the Structural Framework**

Discovery does not exist to develop the case. It exists to confirm that the case was properly engineered before filing.

By the time written discovery is served, five things should already be true:

1. The borrower's financial impossibility has been verified.
2. A realistic settlement band has been internally modeled.
3. The operational burden of the case has been priced.
4. The hardship narrative is documented, not aspirational.
5. The complaint reflects the documentation already assembled.

Discovery tests those assumptions. It does not create them.

### **Financial Impossibility Should Already Be Stable**

Discovery will examine income, expenses, employment history, asset availability, and repayment attempts. None of that should be new territory.

If responding to interrogatories requires reconstructing income history, clarifying inconsistent expense categories, or explaining undocumented hardship claims, the issue is not discovery. The issue is pre-filing discipline.

## **Settlement Modeling Should Not Move Dramatically**

Discovery may narrow uncertainty. It should not radically expand or collapse the modeled settlement range.

If lender posture shifts dramatically after routine financial production, either leverage was overstated or settlement expectations were never realistically modeled. Discovery may refine the resolution band. It should not rewrite it.

## **Operational Burden Should Already Be Priced**

Discovery stress-tests workload in ways that are predictable. Volume, coordination demands, and deposition exposure are not surprises; they are lifecycle variables that should be modeled before filing. Multiple lenders, co-signers, document-heavy financial histories, structural arguments, or anticipated depositions increase the burden. Those variables should have been evaluated before filing.

If discovery response deadlines destabilize the practice, overwhelm staffing, or threaten fee survivability, the breakdown occurred in pre-filing burden assessment. These cases are often underpriced because the long tail of discovery is underestimated.

## **Hardship Must Be Documented, Not Framed**

A structured adversary does not rely on emotional narrative to survive discovery.

Hardship should already be supported by objective financial data, documented income ceilings, medical or vocational limitations (if applicable), payment history, and forbearance patterns.

Discovery will request proof. It should not force invention.

## **The Complaint Must Match the Production**

Discovery exposes inconsistency quickly.

If the complaint alleges chronic underemployment but tax returns reflect increasing income, the problem is structural. If medical limitation is alleged but documentation does not exist, the problem is structural. If structural vulnerability is asserted without review of loan documents, the problem is structural.

Discovery should align with the pleading. When it does not, credibility erodes before settlement posture matures.

## **Identify the Discharge Track Before Filing**

Private student loan adversaries do not all proceed on the same theory. Before filing, determine which functional track the case occupies. Discovery posture flows from that decision.

In practice, most cases fall into one of three tracks:

### **1. Hardship-Based Cases**

These proceed under § 523(a)(8) and require proof of undue hardship under the governing jurisdictional standard. Discovery in these cases focuses heavily on financial condition, future earning capacity, and good faith efforts.

### **2. Classification-Based Cases**

These challenge whether the loan qualifies for § 523(a)(8) protection at all. Issues may include Cost of Attendance limits, school certification, or statutory definition compliance. Discovery here is document-intensive and statutory in nature.

### **3. Enforceability-Based Cases**

These focus on standing, ownership, chain of assignment, acceleration, limitations periods, or custodial record integrity. Discovery is directed toward confirming authority to enforce and identifying procedural or documentary defects.

Some cases combine tracks. That should be done cautiously.

Every additional theory increases operational burden, expands discovery scope, elevates deposition exposure, and compounds cost over time.

Hybrid cases are not linear in effort; they are exponential in coordination and documentation demands. Before filing, determine which track is primary and

whether any secondary theory is necessary. If the track is unclear at filing, discovery will expand to fill that uncertainty.

## **Defensive Discovery Discipline**

Most private student loan adversaries fail in discovery for predictable reasons: incomplete financial assembly, inconsistent hardship framing, and unpriced operational burden. Defensive discipline prevents those failures.

### **1. Assemble Before Filing**

If pleading undue hardship, assume production of multi-year tax returns, employment records, bank statements, itemized expenses, payment history, forbearance history, and documentation supporting medical or vocational limitations.

If asserting structural or qualification defects, assume production of loan origination documents, disbursement breakdowns, Cost of Attendance data, school certifications, and enrollment verification.

If these materials are not already organized and reviewed before filing, the case is not ready. Filing first and assembling later converts a predictable workflow into reactive labor.

### **2. Align Financial Narratives Early**

Financial inconsistency is a primary collapse point.

Before filing, reconcile tax returns with current income, budget schedules with bank activity, employment history with hardship allegations, and payment patterns with good faith arguments.

If the financial story cannot be told cleanly from documents alone, it will not improve under oath.

### **3. Treat Depositions as a Foreseeable Variable**

Depositions are not extraordinary events in higher-dollar or contested cases.

Borrowers should be prepared to address efforts to maximize income, career decisions, geographic mobility, lifestyle spending, refinance attempts, and specific expense categories.

Depositions should confirm documentation, not expose improvisation.

#### **4. Control Scope Without Escalation**

Object proportionally. Narrow overbroad requests. Resist irrelevant expansion.

Do not allow discovery disputes to multiply operational burden beyond what was originally priced. Stability matters more than procedural victories over marginal issues.

#### **5. Do Not Expand the Case Mid-Discovery**

Avoid introducing new hardship theories, structural arguments, or financial reframing after production begins. Mid-case expansion signals weak pre-filing engineering.

#### **6. Monitor Operational Tolerance**

If discovery volume, coordination demands, or deposition preparation destabilize the practice rather than simply occupy it, the case was not priced appropriately.

Discovery should feel like workload execution, not capacity crisis. When it becomes crisis-driven, pricing and preparation were misaligned with reality.

#### **Limited Offensive Discovery**

Offensive discovery in a structured private student loan adversary should be narrow and purpose-driven. Its role is to confirm key variables, not expand the case.

#### **1. Undue Hardship Confirmation**

In hardship-based cases, limited interrogatories or requests for admission may confirm that the lender does not offer income-driven repayment, forgiveness programs, or permanent long-term modification options. The purpose is to remove ambiguity, not to create procedural pressure.

## **2. Ownership and Chain Clarity**

Where loan ownership is layered or transferred, targeted discovery should confirm current holder identity, authority to enforce, and chain of assignment. Clarity increases predictability whether ownership is strong or weak.

## **3. Qualification and Structural Variables**

In classification-based cases, discovery may focus on school certification records, disbursement breakdowns, Cost of Attendance data, and enrollment status documentation. Even where burden allocation may favor the borrower, evidentiary sufficiency must be assumed.

Serve discovery that reduces uncertainty and clarifies enforceability. Avoid discovery designed to create drama or artificial leverage. Procedural aggression rarely compensates for weak preparation and often increases cost without improving outcome.

## **Inflection Markers and Collapse Signals**

Discovery reveals whether the case was engineered properly.

## **Settlement Ripening Signals**

Settlement posture may be maturing when financial production aligns cleanly with the complaint, follow-up requests narrow rather than expand, and counteroffers begin to resemble the pre-filing model.

Discovery has reduced uncertainty and confirmed posture.

## **Escalation Signals**

Escalation may be occurring when discovery expands significantly, depositions are insisted upon in marginal cases, expert disclosures appear early, or motion practice intensifies before financial clarity is established.

Escalation requires assessment, not automatic reaction.

## **Modeling Stress Signals**

Stress indicators include financial inconsistencies, unsupported hardship claims, borrower testimony diverging from pleadings, structural arguments lacking documentation, or ownership clarity stronger than anticipated.

These are engineering failures, not litigation surprises.

## **Operational Stress Signals**

Warning signs include production volume exceeding capacity, repeated deadline extensions, deposition preparation overwhelming available resources, or disputes expanding beyond initial modeling.

If discovery destabilizes the practice rather than simply occupying it, burden assessment was flawed.

## **Closing Principle**

Private student loan adversaries are built before filing. Discovery reveals whether that work was done properly. Predictability is the product of disciplined preparation and realistic burden modeling, not optimism.

If discovery changes the case, the case was not ready.