



## **New Student Loan Modification Program**

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On June 10, 2019, Chief Judge Michael Williamson entered Administrative Order 2019-1 Prescribing Procedures for Student Loan Modification Program (“SLM”) in the Middle District of Florida, which goes into effect on August 1, 2019. The SLM Program was the result of a district-wide effort, with input from all three divisions of the Middle District. The Order provides for the use of online software to assist debtors with their repayment options. It also prepares repayment applications for federal student loans and provides a portal for submissions of documents and open communication. With the oversight of the Court, we feel confident the process will have a much higher success rate than at present.

There are over 44 million Americans with student loan debt totaling more than \$1.5 trillion. Of that number, 82% of the loans and 90% of the debt are federally guaranteed student loans. The Department of Education (“DOE”) already has multiple repayment options that are based on the borrower’s income, but the process is sometimes difficult to navigate. By the DOE’s own Office of the Inspector General’s report issued February 12, 2019, student loan servicers were found to be giving erroneous information to borrowers 61% of the time. This included servicers misguiding borrowers as to whether they should enter into a repayment plan and instead encouraging forbearance or deferment. Servicers also miscalculated monthly repayment amounts and did not properly apply payments.

This problem mirrors the issues we had with mortgage servicers modifying mortgages at the height of the Great Recession. When the Courts got involved, the process began to work. In 2011, Judge Karen S. Jennemann announced the implementation of the Mortgage Modification Mediation Program (“MMM”) in the FLMB Orlando Division. Since that time, 6,268 mortgages have been modified in the Orlando Division alone! In MMM, we use the DMM Portal to communicate in a format that mortgage companies find useful and efficient to rapidly underwrite mortgage modifications. Likewise, the SLM software prepackages the consolidation and repayment applications for government backed student loans and uses a portal to communicate with DOE and its many servicers. This process uses DOE’s own program to resolve issues with borrowers to the benefit of all constituencies.

This is important because historically we treated student loans pro rata with other unsecured creditors. At the end of a Chapter 13, the debtor would owe more than when the case was filed since interest continues to accrue. This results in a false start instead of the fresh start Congress intended; from a policy perspective, this is a problem that needs to be resolved. Here are some highlights from the Administrative Order:

1. Provides for Chapter 7, 11, 13, and 12 debtors to request repayment or settlement with creditors that hold a claim for any educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit; or made under any program funded in whole or in part by a governmental unit; or any loan that purports to be a student loan on which the debtor is an obligor. We believe the process will be used in Chapter 13 most of the time.
2. Uses Document Preparation Software with DMM's Student Loanify, a secure online program that facilitates the preparation of the Initial SLM Package by populating the Standard SLM Documents and generates a Creditor-customized checklist of additional required supporting documents that the Creditor requires from the Debtor. Using the Document Preparation Software ensures that the initial submission to the Creditor is complete and accurate and should expedite the Creditor's review.
3. Uses a Portal: A secure online service that allows SLM documents and communications to be submitted, retrieved, and tracked between the Required Parties. Submitting documents to the Portal provides transparency by making information immediately available to all parties through a secure internet website. The Court will list approved Portals on its website.

If the Debtor is approved for a repayment plan, the monthly payment will be paid through the Chapter 13 Plan by the Chapter 13 Trustee and will not receive a pro rata division. Generally, if the student loan debt exceeds the amount of other unsecured debt this will increase the pro rata distribution to the other unsecured creditors. Some courts take the position that the student loan debt may be paid in a separate category as long as either the pro rata distribution increases to the other

general unsecured creditors or the best interests of creditors test is being met.

We hope this program will assist debtors through the maze of DOE's repayment options and with possible settlements with private student loan servicers since private student loans do not have repayment plan options. The good news is the SLM program may increase bankruptcy filings, increase Chapter 13 Trustee revenue, increase general unsecured dividends, and produce DOE performing loans. Best of all, the debtor is now on track to earn a forgiveness. The public service forgiveness program is earned over ten years, and non-public service forgiveness programs are earned over twenty to twenty-five years. We thank our FLMB Judges for their efforts in giving us a vehicle to assist Debtors with their student loans. We hope this program is a success and spreads to other bankruptcy courts in the State of Florida and throughout the nation.

Attachments:

[MDFL Administrative Order 2019-1](#)

[U.S. Department of Education, Office of Inspector General report dated February 12, 2019](#)