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Why Do We Need the Student Loan Management Program?

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To ensure debtors receive a "fresh start" and not a "false start," the Bankruptcy Court for the Middle District of Florida (MDFL) has implemented a Student Loan Management Program (SLMP), which utilizes a transparent portal to obtain relief from federal and private student loans. The SLMP, which started on October 1, 2019, attempts to tackle the $1.5 trillion student loan debt currently owed by forty-four million Americans. The goals of SLMP are threefold: 1) increase communication presently lacking between both federal and private student loan borrowers and their servicers; 2) raise awareness among borrowers and their counsel of available options; and 3) end unnecessary and costly forbearance during bankruptcy.

Rather than simply leaving these loans on hold to accrue capitalizing interest in a Chapter 13, the SLMP enhances communication, raises awareness of available options, and ends needless forbearance that causes larger loan balances. For instance, a debtor who owes $100,000 in student loans with an interest rate of eight percent will owe over $148,000 after a five-year plan if the loan is simply put on hold. The portal is also designed to accommodate settlements of private student loans via mediation. The automatic stay will be lifted on matters addressed via the portal.

In a similar vein, in 2010, the MDFL implemented a Mortgage Modification Mediation (MMM) Program to assist debtors in seeking mortgage modification. It has been a great success, has reduced litigation, and is recommended by mortgage creditors as a "model" for bankruptcy loss mitigation programs. It has been duplicated in many bankruptcy courts across the country and has saved thousands of borrowers from homelessness.

The MMM program uses a portal to exchange documentation and to communicate with mortgage servicers. The secure portal provided by DMM Portal at https://www.dclmwp.com has added a dropdown menu for student loan options now available in the Middle District of Florida. The debtor files a Notice of Participation and uploads the appropriate documents using the portal.

Neither the MMM program nor the SLMP program REQUIRES servicers to modify these loans. They merely encourage the parties to communicate effectively using a portal for transparency. Our experience has been that when a debtor files bankruptcy, they cannot submit the applications through the student loan servicer's website, and only the debtor receives notifications of the progress of the process. Without an advocate on their side, loan balances continue to rise, as debtors fail to take advantage of various forgiveness programs or inadvertently default, which adds an additional 25 percent in collection costs to the often already high balance.

Why is there a need for such a program?

In 2017, the Consumer Financial Protection Bureau (CFPB) and five State Attorneys General sued the largest of the Department of Education's (ED) servicers, Navient, in which they alleged that Navient misallocated payments, steered borrowers away from Income Driven Repayment Program Plans (IDR), and failed to provide clear information on how to re-enroll in IDR plans.

According to an Inspector General's Audit of Federal Student Loan Servicers, it was found that 61 percent of the time student loan servicers are non-compliant with Federal Loan Servicing Requirements regarding forbearances, deferments, income driven repayment plans, etc. (February 12, 2019 ED-OIG/A05Q0008). We believe it would be beneficial for debtors to have their own advocate to review their options with them and then apply for the appropriate programs.

The report states that one of Federal Student Aid's (FSA) objectives is to include the implementation of processes, tools, and methods that protect the interests of students and to support FSA in making service providers accountable. The objective further states that FSA would ensure that its processes for resolving student issues are simple for customers to use and sophisticated enough to capture insights that can be used to refine student aid operations. SLMP has all these ideas wrapped into one program.

To us, this is a replay of the mortgage crisis: there are affordable student loan repayment plans available from the government, but student loan servicers have not been able to properly assist borrowers, just as the mortgage servicers could not. And there are multiple student loan repayment plans that often are confusing to borrowers. This led to the idea that we could use the same MMM process when debtors have student loan debt.

The SLMP is needed as Congress' intent is for debtors in bankruptcy to receive a "fresh start." Since most student loans are non-dischargeable, this is not the result when debtors have student loan debt. We believe a process is needed that works for all parties to assist debtors in enrolling in an available IDR. This would ultimately provide a greater income stream for the government as student loans are abated during bankruptcy and receive little pro-rata distribution from the trustee. This program will encourage debtors to sign repayment plans, which will cause increased distribution from the trustee, and such repayment will match the lender's requirements in the Department of Education's process.

We all agree there are significant problems that debtors face when they are in a bankruptcy case that has federally guaranteed student loans. Leaving this to the debtors to figure it out on their own, from the government's website is not working. Leaving it to the servicers, who do not represent the borrowers, is not working. Leaving Chapter 13 borrowers in forbearance for five years is not working. We should stop abating these loans and make progress towards a "fresh start" and not a "false start" with student loans. As acknowledged, ED and its servicers place these loans on a "HOLD" while in bankruptcy. This needs to change. A debtor who owes $100,000 in student loans with an interest rate of eight percent will owe over $148,000 after a five-year plan. This is a sad state of affairs that needs to be fixed.

Just lifting the bankruptcy automatic stay alone will not work. The court and the trustee must supervise the debtor's Chapter 13 plan payments, considering many factors such as disposable income, unfair class treatment, and feasibility, to name a few. The government and the debtor cannot resolve these issues by themselves; it must be within the confines of the bankruptcy process.

SLMP is the best way to achieve this goal.