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POLICY REGARDING REPAYMENT OF STUDENT LOANS

February 15, 2017

1. When student loan debt is listed in Schedule F, the Trustee will require that repayment be made through the plan pro rata with other general unsecured creditors except in very limited circumstances. Student loan creditors generally file claims and expect to be paid in the Chapter 13 plan. Thus, these are allowed claims unless challenged by the Trustee (timeliness) or Debtor. Claims are generally filed for the entire balance due at the time of filing and never list any arrears. Exhibits to claims generally include statements of an account with dates of origination/disbursement of the loans and repayment history on the accounts. An assessment can be made from the exhibits if there has ever been a default on the loan payments. Student Loan creditors automatically place all loans into “administrative forbearance” while Debtors are in bankruptcy. This is not a deferment and interest continues to accumulate on the loans.

While the debt is considered long term, non-dischargeable debt, which repayment will exceed the length of the plan term in most cases, public policy dictates that some repayment over the 3 to 5 year plan term is desirable in order to defray capitalized interest from accumulating. Most debtors’ budgets simply have no room for payments on student loans while in Chapter 13, and there is no way to track if debtors are actually going to make the payments once the plan is confirmed. Allowing student loans to go unpaid during the plan term inhibits the debtors’ ability to rehabilitate their finances and receive the fresh start they desire by filing chapter 13.

The Trustee will never make the argument that the other general unsecured creditors are disparaged by the large pro rata share being paid to student loan creditors. When a plan states it is paying 100% to general unsecured creditors, with student loans outside the plan, this argument holds no sway for the Trustee.

2. If there is no student loan payment listed on Schedule F, or separate classification in the plan, there is no need to discuss the repayment of student loans with the debtor. It is assumed that everyone agrees to repay student loans pro rata through the plan.
3. If student loan payments are listed on Schedule J, the following questions must be asked and proof is required to support the debtor’s desire to repay loans outside the plan: (current statement with payment history for 1 year prior to filing and proof of ongoing post-petition payments being made)
 - a. Are the student loans in true deferment? (debtor is in school and no payments are currently required to be made, loans have never come due) The debtor must provide proof that the loans have been placed into deferment.

- b. Have student loans ever been in default? (debtor's loan became due in the past, were not paid and are not being paid now; debtor may or may not be enrolled in school. If enrolled in school, loans may be in deferment)
 - c. Has the debtor been making monthly, on time, student loan payments since prior to and after the bankruptcy case was filed, and there has never been a default?
4. Under the scenario above, only if the answer to either a. or c. is YES, can student loans be placed outside the plan after sufficient proof has been provided the Trustee. The Trustee needs to be reasonably assured that the debtor will begin repayment of student loans once the deferment ends, and will continue to repay the student loans while the case is pending. The budget must allow for this and show feasibility to be able to make these payments without jeopardizing plan payments.

If all requirements are met, the debtor must list the student loans as being paid outside in paragraph 2.f of the plan, as a separate class of creditors. **The debtor must give proper notice of the plan to the student loan creditor pursuant to FRBP 7004.** Service of the plan must be made as follows:

- a. Claimant, addressed to the person who signed the proof of claim. This may be the servicer for the US Dept of Education such as AES, Sallie Mae, etc.
- b. Attorney for Claimant, if notice of appearance and request has been filed in the case
- c. If Federal loan, the Attorney General and civil process clerk (see, 7004 (b)(4))

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A plan with repayment of Student Loans outside will not be confirmed without proof of service to the student loan creditors.

5. Once the Trustee determines the status of the student loan debt and how claims should be treated in the plan, the debtor may disagree with the Trustee's policy on student loan repayment. The case will be called for confirmation hearing and issues presented to the Court.