



STUDENT LOAN PROGRAM FOR THE MIDDLE DISTRICT OF FLORIDA

**PRESENTED BY: ROBERT B. BRANSON AND TAMMY BRANSON, BRANSONLAW PLLC**

## STUDENT LOANS OFTEN LEAD TO A FALSE START NOT A FRESH START

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Over 44 million Americans have unpaid student loans totaling more than 1.6 trillion dollars!

Options: Income Driven Repayment plan, Administrative Disability Discharge, adversary proceeding

Brunner “undue hardship” test – very difficult to discharge student loan debt---Stayed tuned In re: Rosenberg in SDNY says Brunner is a myth!

In bankruptcy, Dept. of Ed places loans in administrative forbearance – i.e., no collection activity but interest accrues

## ADMINISTRATIVE FORBEARANCE EXAMPLE

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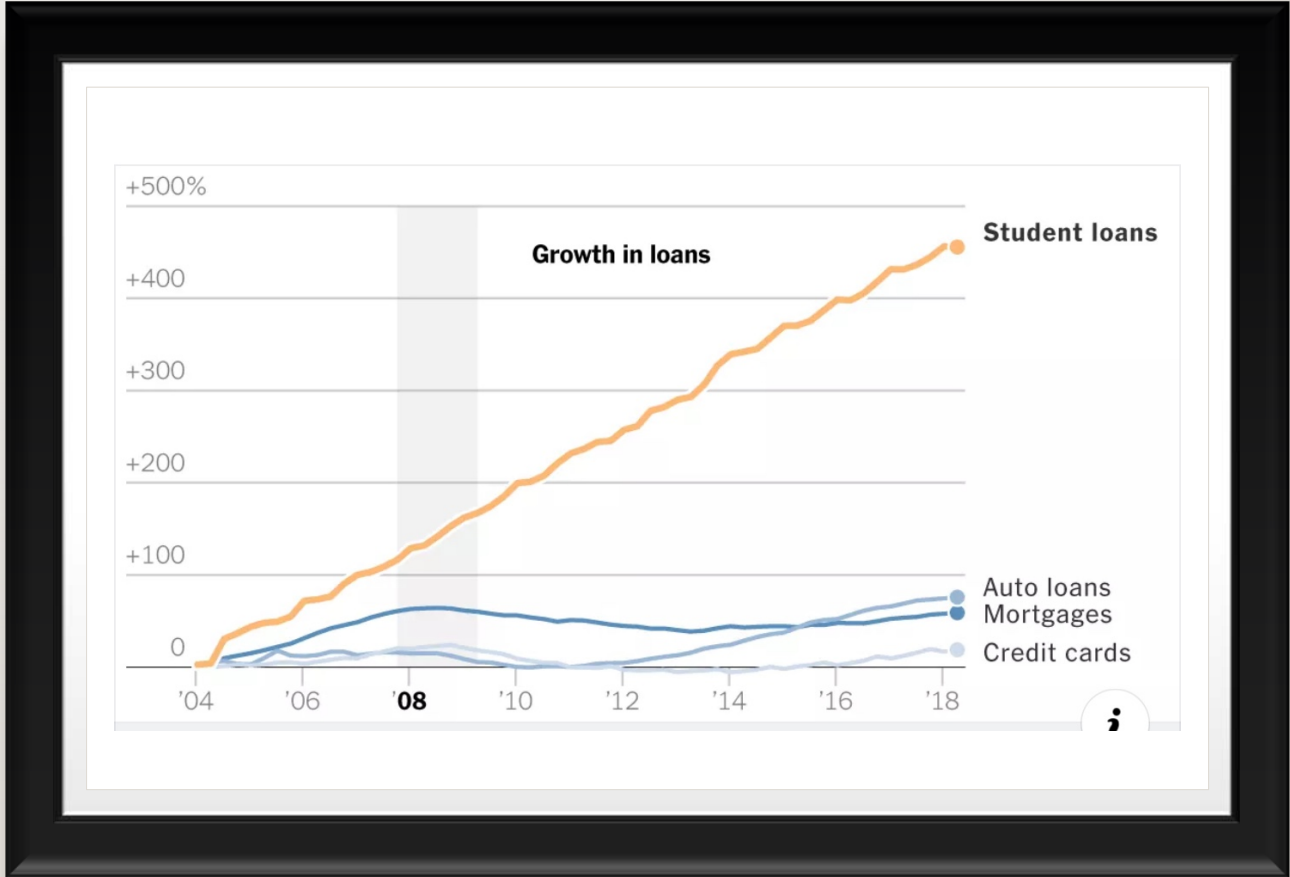
- Debtor owes \$100,000.00 in student loans
- Interest rate at 8%
- Over a five-year Chapter 13 student loan debt increases to over \$148,000.00+!
- False start! Not a fresh start!



<b>Rank State</b>	<b>Balance (\$ in billions)</b>	<b>Borrowers (millions)</b>
1 California	\$135.0	3.8
2 Texas	\$107.3	3.4
3 Florida	\$90.8	2.5
4 New York	\$87.3	2.4
5 Georgia	\$62.4	1.6
6 Pennsylvania	\$60.2	1.8
7 Ohio	\$58.9	1.8
8 Illinois	\$57.9	1.6
9 Michigan	\$48.4	1.4
10 North Carolina	\$44.4	1.2

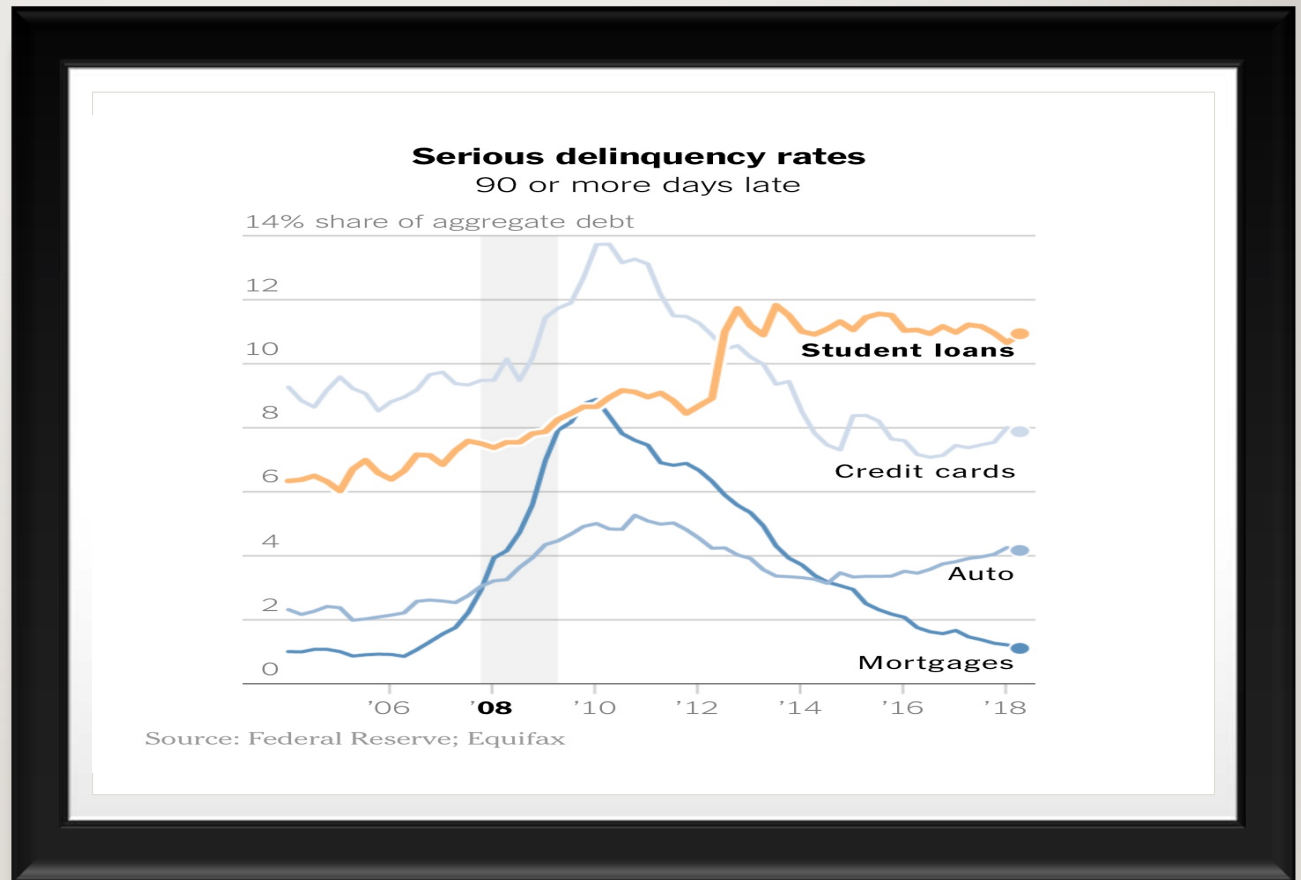
# STUDENT LOAN GROWTH

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# DELINQUENCY RATES

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**61%** OF THE TIME, SERVICERS ARE  
IN NON-COMPLIANCE WITH  
FEDERAL LOAN SERVICING  
REQUIREMENTS REGARDING  
FORBEARANCES, DEFERMENTS,  
INCOME-DRIVEN REPAYMENT,  
INTEREST RATES, DUE  
DILIGENCE, AND CONSUMER  
PROTECTION.

ADDITIONAL ACTIONS NEEDED  
TO MITIGATE THE RISK OF  
SERVICER NONCOMPLIANCE.

FEBRUARY 12, 2019 ED-  
OIG/A05Q0008

# DEPARTMENT OF EDUCATION INSPECTOR GENERAL AUDIT OF FEDERAL STUDENT LOAN SERVICERS



GREAT RECESSION  
MORTGAGE CRISIS SEEMS  
TO MIRROR CURRENT  
STUDENT LOAN CRISIS

FEDERAL PROGRAMS IN  
PLACE TO HELP DEBTORS  
BUT HARD TO NAVIGATE

MORTGAGE  
MODIFICATION  
MEDIATION USING DMM  
PORTAL HAS HAD GREAT  
SUCCESS

DÉJÀ VU





## PROBLEMS OUTSIDE OF PROGRAM

- Applying for an income driven repayment plan outside program options are:
  - Mail
  - or
  - Online application [www.studentloan.gov](http://www.studentloan.gov)
- No ability to send messages or communicate
- All correspondence is sent to debtor NOT counsel for debtor
- Ambiguous correspondence
- Difficulty obtaining authorization for attorney to advocate on behalf of Debtor

# BANKRUPTCY COURT PROGRAMS

- Creates forums for debtors and lenders to discuss consensual repayment options for government student loans and possible workouts for private student loans
- Establishes rules of engagement and standardizes process for debtors and lenders
- Provides tools to facilitate:
  - Debtor understanding repayment options
  - Document preparation
  - Communication between debtor and lender

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## PROGRAM GOALS ARE THREEFOLD

Increase

increase communication which is presently lacking between both federal and private student loan borrowers and their servicers

Raise

raise awareness among borrowers and their counsel of available options

End

end unnecessary and costly forbearance during bankruptcy

# BEFORE STUDENT LOAN PORTAL

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No guidance from  
debtor attorneys

Although student  
loans listed on  
Schedules,  
uncertainty about  
what this means

Confirmation Orders  
vague in stating what  
happened to the  
student loan debt

Forbearance =  
more student loan  
debt

A framed sign with a red background and white text. The sign is mounted on a light gray wall. The text on the sign reads "STOP NEEDLESS FORBEARANCE".

**STOP NEEDLESS  
FORBEARANCE**

LET'S RETHINK HOW  
WE TREAT STUDENT  
LOANS IN CHAPTER 13  
BANKRUPTCY

# MIDDLE DISTRICT OF FLORIDA PROGRAM

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Middle District of Florida  
first program of its kind  
in the Nation



SDNY started a program  
and other courts are  
exploring the idea



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## PREPARE INITIAL PACKAGE

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Use Student Loanify

[www.studentloanify.com](http://www.studentloanify.com)

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Understand current status of borrower's federal student loans

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Determine repayment options and payment amounts under existing by-right Federal programs

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Prepare complete and accurate applications required to enroll in the various programs

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Determine required income documentation needed such as tax return or pay advices



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## NSLDS – THE NATIONAL STUDENT LOAN DATA SYSTEM



Central database that contains borrower federal loan information



StudentLoanify works with NSLDS to provide accurate information. Must be .txt format

Loan Attending School Name:SOUTH UNIVERSITY  
Loan Attending School OPEID:01303999|  
Loan Date:02/06/2008  
Loan Repayment Begin Date:11/02/2008  
Loan Period Begin Date:01/12/2008  
Loan Period End Date:09/13/2008  
Loan Amount:\$3,588  
Loan Disbursed Amount:\$1,196  
Loan Canceled Amount:\$2,392  
Loan Canceled Date:06/10/2008  
Loan Outstanding Principal Balance:\$4,860  
Loan Outstanding Principal Balance as of Date:12/16/2017  
Loan Outstanding Interest Balance:\$400  
Loan Outstanding Interest Balance as of Date:12/16/2017  
Loan Interest Rate Type:FIXED  
Loan Interest Rate:6.80%  
Loan Repayment Plan Type:  
Loan Repayment Plan Begin Date:  
Loan Repayment Plan Scheduled Amount:  
Loan Repayment Plan IDR Plan Anniversary Date:  
Loan Confirmed Subsidy Status:  
Loan Subsidized Usage in Years:  
Loan Reaffirmation Date:  
Loan Most Recent Payment Effective Date:  
Loan Next Payment Due Date:  
Loan Cumulative Payment Amount:\$0  
Loan PSLF Cumulative Matched Months:0  
Loan Status:DF  
Loan Status Description:DEFAULTED, UNRESOLVED  
Loan Status Effective Date:09/30/2016  
Loan Status:DB  
Loan Status Description:DEFAULTED, THEN BANKRUPT, ACTIVE, CHAPTER 13  
Loan Status Effective Date:09/23/2016

NSLDS DATA FILE HARD  
TO UNDERSTAND

THIS EXAMPLE WAS 17  
PAGES FOR A TEACHER!



## Downloading Your NSLDS File

### Step 1:

Navigate your web browser to [www.nsls.ed.gov](http://www.nsls.ed.gov).

### Step 2:

Click the **My Student Data Download** button.



MyStudentData  
Download

### Step 3:

# LISTS LOANS IN PLAIN ENGLISH

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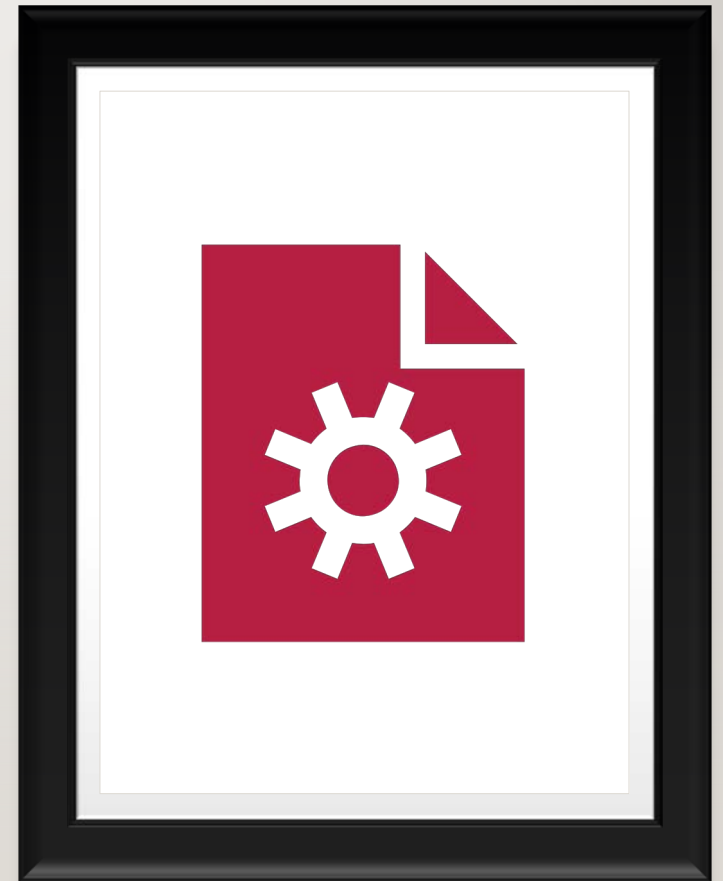
## Current Status of Borrower's Loans:

Right now [REDACTED] has 18 Federal Student Loan(s) totaling \$ 134,299.00.

Loan Type(Loan Holder/Servicer)	Principal Balance	Interest	Interest Rate	Status
FFEL STAFFORD UNSUBSIDIZED (DEPT OF ED/GREAT LAKES)	\$ 7,395.00	\$ 1,569.00	6.8%	BANKRUPTCY CLAIM, ACTIVE
FFEL STAFFORD SUBSIDIZED (DEPT OF ED/GREAT LAKES)	\$ 4,697.00	\$ 997.00	6.8%	BANKRUPTCY CLAIM, ACTIVE
FFEL STAFFORD SUBSIDIZED (DEPT OF ED/GREAT LAKES)	\$ 4,697.00	\$ 997.00	6.8%	BANKRUPTCY CLAIM, ACTIVE
FFEL STAFFORD UNSUBSIDIZED (DEPT OF ED/GREAT LAKES)	\$ 7,550.00	\$ 1,603.00	6.8%	BANKRUPTCY CLAIM, ACTIVE
FFEL STAFFORD UNSUBSIDIZED (DEPT OF ED/GREAT LAKES)	\$ 7,716.00	\$ 1,637.00	6.8%	BANKRUPTCY CLAIM, ACTIVE

# LISTS REPAYMENT PLAN OPTIONS

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Plan	Details
<p><b>Standard</b></p> <p>\$ 1,547.00 /mo</p> <p>120 months</p> <p><b>Not Eligible</b></p>	<p>Pay off full balance of loan - not eligible for loan forgiveness</p> <p><b>Fixed monthly payments</b></p> <p>Usually highest payment but pay least interest</p>
<p><b>Graduated</b></p> <p>\$ 885.00 /mo</p> <p>*First 2 years only</p> <p>120 months</p> <p><b>Not Eligible</b></p>	<p>Pay off full balance of loan – not eligible for loan forgiveness</p> <p><b>Payment increases every 2 years</b></p> <p>Payment must cover accrued interest but will never be more than three times greater than any other payment</p>
<p><b>Extended Fixed</b></p> <p>\$ 898.00 /mo</p> <p>300 months</p> <p><b>Not Eligible</b></p>	<p>Pay off full balance of loan – not eligible for loan forgiveness</p> <p><b>Fixed monthly payments</b></p> <p>Balance must be at least \$30,000</p>

**Pay As You Earn  
(PAYE)**

\$ 13.00 /mo

\*Based on current income  
240 months

**Not Eligible**

Repayment based on income and family size (must recertify each year)

Monthly payment set at **10% of discretionary income** (may be as low as \$0.00)

Eligible for **loan forgiveness (20 years)**

Must be a new borrower as of 10/1/2007

**Income-Based  
Repayment (IBR)**

\$ 19.00 /mo

\*Based on current income  
300 months

**Not Eligible**

Repayment based on income and family size (must recertify each year)

Monthly payment set at **15% of discretionary income** (may be as low as \$0.00)

Eligible for **loan forgiveness (25 years)**

**IBR for New Borrowers**

\$ 13.00 /mo

\*Based on current income  
240 months

Repayment based on income and family size (must recertify each year)

Monthly payment set at **10% of discretionary income** (may be as low as \$0.00)

Eligible for **loan forgiveness (20 years)**



	PSLF	Teacher Loan Forgiveness
<b>Loans Eligible</b>	Direct Only	Direct or FFEL
<b>Teachers Eligible</b>	Full-time teachers at any public or non-profit school	Full-time teachers at qualifying Title 1 school
<b>Amount Forgiven</b>	Entire remaining unpaid loan balance	\$5,000 or \$17,500 depending on grade level and subject taught
<b>Payment Plan Requirement</b>	Income Driven Repayment Plan or 10-year standard	N/A
<b>Service Requirement</b>	120 on-time payments	5 complete and consecutive academic years

# ADMINISTRATIVE DISCHARGE

- Simple process if debtor has been determined disabled by Social Security Administration and does not have to renew more than every five years or if doctor will sign off that debtor is not gainfully employable
- We discharged over \$700,000.00 for a debtor recently
  - Client will renew annually for three years and then entire amount will be discharged

# UPLOADING TO PORTAL

- After your client has signed the applications
- Go to [www.dmmportal.com](http://www.dmmportal.com)
  - If you already use DMM for loss mitigation use your same user name and password
- Start new borrower (information will be carried over from StudentLoanify)
- Upload applications
- Upload income documents, typically tax return or pay advice

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## SUBMIT, TRACK AND MONITOR PACKAGE

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Using DMM's Portal

[www.dclmwp.com](http://www.dclmwp.com)

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Electronically submit application materials to servicer

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Communicate directly with servicer to track submission

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Provides transparency and allows debtor's attorney visibility into process



LET'S TALK  
CHAPTER 13  
(OR CHAPTER  
11 FOR THAT  
MATTER)

## DO THE MATH FOR CHAPTER 13 PLAN

Unsecureds with student loans	Student Loans	Unsecureds without student loans receiving a pro rata distribution	Distribution of \$220.00 per month to unsecured creditors with student loans included	Distribution of \$207.00 per month (\$220.00 less \$13.00 IBR) to unsecured creditors without student loans
\$120,000.00	\$100,000.00	\$20,000.00	<p>\$13,200.00 over 60-month plan</p> <p>\$13,200.00 divide by \$120,000.00 = 11%</p>	<p>\$12,420.00 over 60-month plan</p> <p>\$12,420.00 divide by \$20,000.00 =62%</p>



UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

[REDACTED]  
Debtor.

Case No.: 6: [REDACTED]  
Chapter 13

NOTICES. AMENDED CHAPTER 13 PLAN

**PLEASE** check one box on each line to state whether or not the Plan includes each of the items. If an item is checked as "Not Included," if both boxes are checked, or if neither box is checked, the provision will be ineffective if set out later in the Plan.

the amount of a secured claim based on a valuation which may result in a partial payment at all to the secured creditor. See Sections C.5(d) and (e). A separate motion will be filed.	<input type="checkbox"/> Included	\$
of a judicial lien or nonpossessory, nonpurchase money security interest under 11 U.S.C. § 542(f). A separate motion will be filed. See Section C.5(e).	<input type="checkbox"/> Included	\$
of provisions, set out in Section E.	<input checked="" type="checkbox"/> Included	

TO DEBTOR: IF YOU ELECT TO MAKE DIRECT PAYMENTS TO A SECURED CREDITOR...

CHECK SPECIAL  
PROVISION BOX

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# SAMPLE SPECIAL PROVISIONS FOR CHAPTER 13 PLAN



1. THE DEBTOR, JOSEPH APPLETON ("JA") IS PROCEEDING TO PARTICIPATE IN THE STUDENT LOAN MANAGEMENT PROGRAM WITH NELNET TO PROCURE AN INCOME DRIVEN REPAYMENT PLAN.

2. JA'S FEDERAL STUDENT LOANS ARE BEING SEPARATELY CLASSIFIED. THE CHAPTER 13 TRUSTEE SHALL NOT MAKE PRO RATA DISTRIBUTIONS ON THE STUDENT LOANS.

3. JA IS SEEKING TO ENTER INTO AN INCOME DRIVEN REPAYMENT PLAN ("IDR") AND ESTIMATES THE PAYMENTS WILL BE IN THE APPROXIMATE AMOUNT OF \$131.12 PER MONTH. JA PROPOSES TO PAY NELNET \$131.12 PER MONTH UNTIL HIS REQUEST TO ENTER INTO AN IDR IS PROCESSED. UPON DETERMINATION BY NELNET OF THE QUALIFICATION FOR ENROLLMENT A REPAYMENT PLAN, JA SHALL, WITHIN 30 DAYS, FILE A NOTICE OF THE RESOLUTION INDICATING WHETHER AN AGREEMENT HAS BEEN REACHED BETWEEN JA AND NELNET. IF THE PAYMENT VARIES FROM THE PROPOSED AMOUNT, JA SHALL PROVIDE FOR THE IDR PAYMENT BY AMENDING THE CHAPTER 13 PLAN OR MODIFYING THE PLAN IF THE PLAN IS ALREADY CONFIRMED.

4. EACH YEAR THE JA SHALL COMPLY WITH RE-CERTIFYING HIS INCOME WITH NELNET.

- 5. The automatic stay under 11 U.S.C. Section 362(a) is modified, as necessary, to facilitate exploration of student loan repayment options and to modify agreements or payment amount, as needed.
- 6. If JA is approved for an income driven plan, Nelnet shall not place the student loans into a deferment or forbearance because of the filing of the Chapter 13 bankruptcy case.
- 7. JA is not providing for a discharge, in whole or part, of his student loans.
- 8. An Attorney fee of \$1,500.00 for services provided in connection with the enrollment and performance under an Income Driven Repayment Plan is requested along with \$250.00 per year for annual re-certification.

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NOTICE OF  
PARTICIPATION  
AND SERVICE

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Debtor files a Notice of  
Participation in SLM

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Properly serving the student  
loan creditors pursuant to R.  
7004. TIP: Notice of  
Additional Creditors

# SERVICE FOR FEDERAL STUDENT LOAN IN MDFL *ORLANDO DIVISION*

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United States Department of Education, Attn. Betsy DeVos, Secretary of Education, Lyndon Baines Johnson Bldg., 400 Maryland Avenue SW, Washington, D.C.



US Department of Education, Office of General Counsel, 400 Maryland Avenue, SW Room 6E300, Washington, DC 20530



US Attorney General, US Dept of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001



US Attorney, Attn. Civil Process Clerk, 400 W. Washington Street, Suite 300, Orlando, FL 32801



Creditor's address from claim, Attn. to person that signed POC and their title (if no claim, Debtor must file one for student loan servicer AFTER bardate has passed)

## GOOD FAITH

- Includes, but is not limited to, promptly responding to all inquires through portal and providing all requested documentation and information

## MDFL DEBTOR TIMELINES & COSTS

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7 days to upload initial package (cost \$40.00 for applications); open portal (cost \$40.00 for portal fee)

30 days to amend or modify plan after Notice of Resolution filed



# CREDITOR TIMELINES

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Register for portal within 30 days (one-time event)



Acknowledge package no later than 30 days after Debtor submits completed initial package



Request any additional documents needed within 30 days of receipt of initial package



Determine eligibility for any Student Loan Repayment Option within 60 days

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**ATTORNEY NO-LOOK FEE  
\$1500.00  
\$250.00 ANNUAL  
RECERTIFICATION**

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**DUTIES ARE TIME CONSUMING AND ESSENTIAL**

1

If client decides to pursue student loan workout, make sure to have them sign a retainer agreement for these services

2

Incorporate the student loan no-look fee of \$1500.00 plus yearly \$250.00 recertification into your retainer agreements

3

Make sure to add your additional fees to both your attorney compensation statement & the Chapter 13 plan in "special provisions"

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## RETAINER AGREEMENT

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- Best Case shows cost of education for many institutions
  - Or go to [www.nces.ed.gov/ipeds/use-the-data](http://www.nces.ed.gov/ipeds/use-the-data) to get historical cost of education

Please verify the following data is correct:

Loan Information		Institution	
Type:	Federal	Institution:	Nova Southeastern University <input type="button" value="Look Up"/>
Creditor:	DEPT OF ED/GREAT LAKES	City, State:	Fort Lauderdale FL
Status:	Bankruptcy claim—active	Cost of Attendance:	On Campus 17,286.00
Original Amount:	4,250.00	Title IV Accredited:	Fully Accredited
Attended:	Fall Semester 2009 to 2009	<input type="checkbox"/> In-State Tuition	
Monthly Payment:	57.00	<input type="checkbox"/> Graduated	
Last Payment Date:	03/16/2018	<input type="checkbox"/> Withdrew Before Completing the Term	
<input type="checkbox"/> Graduate School (non-Professional programs)			
		<input type="button" value="OK"/> <input type="button" value="Cancel"/> <input type="button" value="Help"/>	

# CHAPTER 13 DUTIES

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- Run numerous calculations to see if the treatment of the student loans in the debtor's Chapter 13 plan renders fair treatment to the remaining unsecured creditors.
- Prepare Chapter 13 plans with special provisions.
- Prepare pleadings including Notice of Participation, as required, amended plans, modifications, plan maintenance.
- Assist, on an annual basis, recertification of the Debtor's income.
- Updating the Chapter 13 trustee as to income certification results.

# BREAKING NEWS!

IN RE ROSENBERG, 2020 WL 130302 (BANKR. S.D.N.Y.  
JANUARY 7, 2020)

- The harsh results that often are associated with *Brunner* are actually the result of cases interpreting *Brunner*. Over the past 32 years, many cases have pinned on *Brunner* punitive standards that are not contained therein.
- The Court determined that the Petitioner had satisfied the *Brunner* test and discharged the student loans because they imposed an undue hardship

## ROSENBERG BACKGROUND

- From 1993 until 1996 borrowed money to pay for his undergraduate education at University of Arizona
- After Bachelor of Arts degree in history, served in the United States Navy
- After tour of duty attended law school from 2001 through 2004
- In 2005 consolidated loans in original amount of \$116,464.75
- As of November 19, 2019 balance was \$221,385.49 with interest at 3.38%



# COURT FOUND

- The *Brunner test* has created a quasi-standard of mythic proportions so much so that most people (bankruptcy professionals as well as lay individuals) believe it impossible to discharge student loans.
- This Court will not participate in perpetuating these myths.

## *BRUNNER FIRST* PRONG MET

- 1) He has no money available to repay his Student Loan and maintain a “minimal” standard of living. Current monthly income of -\$1,548.74; ECMC did not challenge Debtor’s schedules.

# BRUNNER SECOND PRONG MET

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- 2) The Court need only consider whether the Petitioner's present state of affairs is likely to persist "for a significant portion of the repayment period of the [current contractual] student loans."
  - See ABI Commission on Consumer Bankruptcy, Final Report of the ABI Commission on Consumer Bankruptcy 2017-2019 Final Report and Recommendations, at 12 Robert M. Lawless (2019) (recommending that "the court consider 'the debt' and not some different contract the debtor and the creditor might have made under different circumstances.").
- Here, the repayment period has ended. Petitioner is in default and his loan was accelerated. As of November 19, 2019, Petitioner is responsible for the repayment of the full amount of \$221,385.49. His circumstances will certainly exist for the remainder of the repayment period as the repayment period has ended and the loan is due and payable in the full amount. The second prong of the *Brunner* test is, therefore, satisfied.

## BRUNNER THIRD PRONG MET

- Turning to the third and final prong, the Court must determine whether “the debtor **has made** good faith efforts to repay the loans.”
- In and out of forbearance, repayment plans; made some payments over the years
- Student loans are discharged!

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LET’S MAKE A  
DIFFERENCE  
TOGETHER  
WITH STUDENT  
LOANS!