

STUDENT LOANS

How to Assist Your Client

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GENERAL INFORMATION

A. Helping your client

1. New Clients
2. Bankruptcy Clients

B. Federal vs Private Student Loans

1. Is there a cosigner ...it is very likely this is a private student loan.
2. Have your Client go to National Student Loan Data Center

You can find all of the clients government loans here and who the servicer is
https://www.nslds.ed.gov/nslds/nslds_SA/

3. Credit Report

- a. www.annualcreditreport.com
- b. Many companies will sell you a credit report
- c. Credit reports changed July 5, 2017 deleting a lot of public record information from them.
- d. You can locate private student loans here
- e. Payment History

C. Federal Loans Know your clients Options

1. Type of Repayment Plan: see chart
2. Resources to use:

- a. https://www.nslds.ed.gov/nslds/nslds_SA/
- b. <https://www.nslds.ed.gov/npas/index.htm>
- c. <https://studentaid.ed.gov/sa/repay-loans/deferment-forbearance>

- d. Corinthian Students Resources:
<http://www.studentloanborrowerassistance.org/loan-cancellation/school-related/closed-school/information-for-borrowers-who-attended-corinthian-colleges/>
- e. ITT Student Resources: <https://studentaid.ed.gov/sa/about/announcements/itt/>
- f. Administrative resources to cancel student loans:
<https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation>
- g. CFPB : <http://www.consumerfinance.gov/paying-for-college/repay-student-debt/>
- h. National Consumer Law Center <http://www.studentloanborrowerassistance.org/>
- i. Repayment Estimators
There are several sites where you can go for to get and use a repayment estimator.

3.Repaying your government student loans

- a. Forbearance
- b. Deferment
- c. Several Types of repayment plans. The best plan to use is based on the type of loan and how you earn your income. Some repayment plans are based on household income and some only on debtor income. Plans are moving towards using household income.

Abbreviations:

IDR Income Driven Repayment

IBR Income Based Repayment

ICR Income Contingent Repayment

d. Application is attached in the material. Link is to online fill in the blank form file:///H:/Downloads/RepaymentPlanRequest.pdf

e. You can also apply on-line

f. The benefits of IDR:

1.Payments based on your income

2.Make all the reduced payments $20 \times 12 = 240$ payments and the balance is administratively terminated.

3.Affordable payments

g. The problems with IDR

1. Negative amortization. Interest is still accumulating so the principal generally increases.

2. If your income will go open significantly in the future, you may end up paying more back. You may make it harder to pay it back in the future.

3.No decision yet if there will be a tax consequence for the administrative elimination of the balance.

4. Consolidation

Limits on how often and when to consolidate. Consolidation can impact your repayment plans. Consolidation involves a blending of interest rates. You can use consolidation so that you learns maybe be eligible for an IDR. Your loan will be consolidated after You rehabilitate.

<https://studentaid.ed.gov/sa/repay-loans/consolidation>

5. Permanent and Total Disability

- a. Form attached link below
 - b. You can send forms in online
 - c. Need doctor's certification **or**
 - d. Social Security Award letter or
 - e. Social Security Benefits Planning Query (BPQY)
 - f. The review has to be more than five years from the date issued
6. Public Service and Teacher Service Forgiveness:
- a. 120 payments while working for the right organization
 - b. Does not have to be continuous
 - c. Status maybe up in the air. Government has indicated it may not honor this.
 - d. American Bar Association lawsuit.
7. There are other defenses to the student loans.

PRIVATE STUDENT LOANS

- A. Most private Student loans do not offer income driven repayment plans, forbearance, deferment or other permanent or total disability discharge.
 - B. Since 2005 most private student loans are not discharged a bankruptcy. The loans are subject the same tests as government loans in bankruptcy. Here is the sixth circuit Brunner
 - C. Cosignors: A lot of these loans have cosignors
 - D. Battle can be waged in State Court. They have to get a judgment to be able to collect. These debts are like unsecured creditors.
 - E. They cannot garnish or attach Social Security benefits
 - F. They can place liens on Real Estate.
 - G. National Collegiate Student Loan Trust
5. Settlement :
- a. Lump sum
 - b. Credit reports

- c. Monthly payments
- d. 0% interest

STUDENT LOANS DISCHARGE IN THE BANKRUPTCY COURT

- A. Can you discharge the loan in bankruptcy
 - 1. 6th Circuit Brunner
 - 2. Argue Brunner
 - 3. Argue Brunner does not apply move to the totality of Circumstance
 - 4. Three prongs of Brunner
 - 5. IDR is not an issue in determining dischargeability
- B. Private Student loan issues
 - 1. Educational benefit
 - 2. Amount of money to attend school vs amount of loan
 - 3. Is it a loan?
- C. Can you reopen a bankruptcy case to file a discharge complaint?
 - a. How long after the closing of the case

MAGICAL POWERS OF CHAPTER 13

A. Hiding :

The Debtor can go into a Chapter 13 for the sole purpose of protecting your clients income and assets from the student loans. Pay the student loan as a general unsecured creditor. The debtor is just paying their disposable income into the plan.

- 1. Protecting the debtor for 36 to 60 months
- 2. Maybe the law will change
- 3. Can still file a motion to discharge at the end of the case.

B. IDR in Chapter 13.

You can file an IDR inside a Chapter 13 plan. The original plan is known as the “BUCHANAN PLAN” . NACBA member Ed Boltz worked with his Chapter 13 trustee to file

a plan with special language that allowed for the debtor to continue to make his monthly IDR Payments while in Chapter 13.

1. The benefit to the debtor is that they are still working towards the goal of completing the IDR and having the benefit of the loan discharged.
2. Can you avoid the trustees and or the courts objection as to discrimination among the unsecured creditors. Be prepared to demonstrate it is not discrimination.
 - a. What would the % to the unsecured creditors be if the student loan was treated as a general unsecured creditor? What would the % to the unsecured creditors be if the student loan is put in a special class?
3. Working with the local AUSA and the Department of Education.
4. Department of Education has been trying to develop National recognized language for an IDR in Chapter 13. Samples in materials
5. Does your trustee insist the IDR payment be inside the plan or direct pay.

HAVE NO FEAR ! THE STUDENT LOAN BORROWERS NEED THE LAWYERS TO HELP SOLVE THIS LARGE PROBLEM.