Student Loans in Chapter 13

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Rajeev Darolia
John Rao
Mark Redmiles
College is (still) a great investment for the average student

- But college comes with risk
- Returns differ across students, schools, and majors

Source: Avery & Turner (2012).
Student loan debt outstanding is on the rise

Repayment is the key student loan issue

- Default is costly to the debtor
- Default is costly to the lender & servicer
- Default is costly to taxpayers

>95% of student loan debtors have <$100K student loan debt

Debtors with <$5K debt nearly 2X more likely to default than those with >$100K debt

Default & student characteristics vary by college

Default rates

<table>
<thead>
<tr>
<th>College Type</th>
<th>Default Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selective 4yr</td>
<td>7%</td>
</tr>
<tr>
<td>Somewhat Sel 4yr</td>
<td>13%</td>
</tr>
<tr>
<td>Least Selective 4yr</td>
<td>20%</td>
</tr>
<tr>
<td>Comm College</td>
<td>31%</td>
</tr>
<tr>
<td>For-profit</td>
<td>30%</td>
</tr>
</tbody>
</table>

% first generation students

<table>
<thead>
<tr>
<th>College Type</th>
<th>% First Generation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selective 4yr</td>
<td>25%</td>
</tr>
<tr>
<td>Somewhat Sel 4yr</td>
<td>37%</td>
</tr>
<tr>
<td>Least Selective 4yr</td>
<td>43%</td>
</tr>
<tr>
<td>Comm College</td>
<td>51%</td>
</tr>
<tr>
<td>For-profit</td>
<td>57%</td>
</tr>
</tbody>
</table>

Why Separately Classify?

• Reasons for classifying student loan debts separately from other unsecured creditors:
  • Stay current on income driven repayment plans (IBR, PAYE, etc.)
  • Give debtor better chance at fresh start by maximizing payment toward non-dischargeable student loans
  • Avoid accrual of postpetition interest

• Alternative: file “chapter 20?”
Separate Classification

§ 1322. Contents of plan

* * * *

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; …
The Courts Weigh In

• Legal standard: *In re* Leser, 939 F.3d 669 (8th Cir. 1991)

• First Circuit B.A.P. (*In re* Bentley):
  • “… we understand ‘discriminate’ to have no pejorative connotation here … treatment need only be different”
  • “‘fair’ in the abstract is too indefinite, and therefore prohibitively difficult, to define and apply…”

• Confusing multi-part tests often provide little guidance on what is a confirmable plan

• Courts reconsidering tests in student loan context
Can You Treat as Long-Term Debt?

• Is classification for long-term debt under § 1322(b)(5) subject to unfair discrimination test under § 1322(b)(1)?

• What is the impact of the BAPCPA amendment in § 1322(b)(10)?
How About Using Excess Projected Disposable Income?

• Separate classification where funds used for direct payment to student loan creditors are in excess of projected disposable income

  • Above-median debtor pays student loan from “discretionary” income earned in excess of PDI

  • Below-median debtor extends plan to five years
IDR in Chapter 13 Cases

• How to incorporate an Income-Driven Repayment Plans (IDR) into Chapter 13 plans?

• Executive Office for U.S. Attorneys and Dept. of Education have developed template with standard plan language that can be added to Chapter 13 plans or submitted as an agreed order.

• If plan confirmed, the plan language or agreed order permits debtors who are not in default to remain on or enroll in an IDR.
First Steps: Get Information

• Information about debtor’s federal student loans is available on National Student Loan Data System (NSLDS), at www.nslds.ed.gov.
  • To access student loan in NSLDS, debtors must use their FSA ID.
  • Debtor may use the “MyStudentDataDownload” button within NSLDS to download their data into a plain text, readable file.

• Debtors can access information about repayment options on the Federal Student Aid website, www.studentaid.gov.

• Attorneys can also use ED’s online calculator, the “Repayment Estimator,” at: https://studentaid.ed.gov/sa/repay-loans.
First Steps: Get Out of Default

• Determine if loans are in default by having debtor check NSLDS

• If in default, debtor should pursue loan rehabilitation or consolidation before filing Chapter 13 case

• This may depend upon types of student loans, whether debtor is subject to administrative garnishment, or whether debtor has previously rehabilitated or consolidated loans
IDR Chapter 13 Standard Language

• A template prepared by the Executive Office for U.S. Attorneys includes language that may be added in the non-standard provision section of Chapter 13 plan (or used as an agreed order)
  • Information on student loans should also be included in section of plan for separate classification, if applicable

• There are alternative provisions depending upon whether payments will be made directly by debtor or through Trustee, and whether debtor is continuing enrollment in IDR or applying to enroll in IDR
IDR Chapter 13 Standard Language

- Standard language in the template addresses following topics:
  - Identification of federal student loans;
  - Filing of proof of claim;
  - Payment disbursement (trustee or debtor);
  - Timing of payments, pre- and post-confirmation;
  - Notifications to trustee and court;
  - Annual recertification of IDR;
  - Discontinuance of IDR participation;
  - Application of automatic stay.
IDR After Chapter 7

• While Chapter 7 case is pending, debtor’s student loans will be placed in forbearance even if debtor is enrolled in IDR and not in default.

• In order to ensure payments will be counted towards time period for forgiveness, debtor will need to re-enroll in IDR after a Chapter 7 discharge.
What about Private Student Loans?

- Private student loans are subject to claim objections based on statute of limitations and standing defenses.

- Private student loans must satisfy test under section 523(a)(8)(B) to be nondischargeable.
  - any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual.