

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
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In re)
)
ADMINISTRATIVE ORDER) Administrative Order
PRESCRIBING PROCEDURES FOR) FLMB-2019-2
STUDENT LOAN MODIFICATION)
PROGRAM)
_____)

**AMENDED¹ ADMINISTRATIVE ORDER PRESCRIBING
PROCEDURES FOR STUDENT LOAN MODIFICATION PROGRAM**

Over 44 million Americans have unpaid student loans totaling more than \$1.5 trillion. Many student loan borrowers file bankruptcy cases due to financial difficulties they encounter in repaying their student loans. In order to facilitate the resolution of student loan issues for the benefit of debtors and lenders, **effective September 1, 2019**, the United States Bankruptcy Court for the Middle District of Florida prescribes the following district-wide program for debtors and their student loan lenders to seek repayment options through a student loan modification program (“SLM” or “SLM Program”). Accordingly, it is

ORDERED:

1. **Purpose.** The SLM Program creates a forum for debtors and lenders to discuss consensual repayment options for student loans. The goal of SLM is to facilitate communication; exchange information in an efficient and transparent manner; and to encourage the parties to finalize a feasible and beneficial agreement under the administrative oversight of the United States Bankruptcy Court for the Middle District of Florida.

¹ The purpose of this amendment is to change the effective date of this order from August 1, 2019 to September 1, 2019.

2. **Definitions.** These definitions apply to the SLM Program:
- a. **Creditor:** Any holder, servicer, guarantor, governmental unit, or trustee of an Eligible Loan.
 - b. **Debtor:** Any individual debtor or joint debtor in a case filed under Chapter 7, 11, 12, or 13 of the Bankruptcy Code.
 - c. **Document Preparation Software:** A secure online program that facilitates the preparation of the Initial SLM Package by populating the Standard SLM Documents and generates a Creditor-customized checklist of additional required supporting documents that the Creditor requires from the Debtor. Creditors shall specify those documents they require to review any repayment proposal. Using the Document Preparation Software ensures that the initial submission to Creditor is complete and accurate and should expedite Creditor's review.
 - d. **Eligible Loan:** Any educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit or made under any program funded in whole or in part by a governmental unit or any loan that purports to be a student loan on which Debtor is an obligor.
 - e. **IDR Payments:** Payments made to a Creditor under an income-driven repayment plan.
 - f. **IDR Plan:** An income-driven repayment plan (the "IDR").
 - g. **Initial SLM Package:** Standard SLM Documents and supporting documentation as designated by each Creditor to initiate the assessment of Debtor's Student Loan Repayment Options.

- h. **SLM Period:** The period that SLM is in effect before its expiration or termination by court order.
 - i. **Portal:** A secure online service that allows SLM documents and communications to be submitted, retrieved, and tracked between the Required Parties. The Portal must provide access to the Chapter 13 Trustees, if any. Submitting documents to the Portal provides transparency by making information immediately available to all parties through a secure internet website. The Court will list approved Portals on its website.
 - j. **Required Parties:** Debtor, Debtor's attorney (if any), Creditor, and Creditor's attorney (if any).
 - k. **Standard SLM Documents:** Industry-standard forms required by Creditors to initiate a review of Debtor's Student Loan Repayment Options on any Eligible Loan(s).
 - l. **Student Loan Repayment Options:** The full range of solutions available to Debtor on any Eligible Loan(s) including, but not limited to, rehabilitation, consolidation, any IDR Plan, or settlement.
3. **Eligibility.** Any Debtor who has an Eligible Loan and a case pending before the United States Bankruptcy Court for the Middle District of Florida may participate in the SLM Program.
4. **Chapter 13 Trustees.** The Chapter 13 Trustee may participate in SLM if he or she desires and the participation is consistent with the Trustee's duties under the Bankruptcy Code.

5. **Participation in SLM.** Debtor, Creditor, or the Chapter 13 Trustee may initiate SLM at any time after the commencement of the bankruptcy case by filing a Notice of Participation in SLM (the “Notice of SLM”). Before filing the Notice of SLM, Debtors must pay their bankruptcy filing fee in full and complete the required Document Preparation Software.
6. **Service.** Upon filing the Notice of SLM, the initiating party shall serve the Notice of SLM and a copy of this Order on interested parties and file a proof of service.
7. **SLM Duties.** The following duties apply during the SLM Period:
 - a. **Good Faith Requirement:** The Required Parties shall act in good faith throughout the SLM Period. Good faith includes, but is not limited to, promptly responding to all inquiries through the Portal and providing all requested documentation and information. Any party who fails to participate in good faith may be subject to sanctions.
 - b. **Deadlines:** The Required Parties shall comply with all deadlines in the SLM Program.
 - c. **Communication through Portal:** During the SLM Period, all material communications between the Required Parties and the Chapter 13 Trustee, if any, shall occur exclusively through the Portal, unless otherwise permitted by the Court.
8. **Automatic Stay.** The automatic stay under 11 U.S.C. § 362(a) is modified, as necessary, to facilitate the SLM Program and to encourage the Required Parties to explore student loan repayment options and to modify agreements or payment amounts, as needed.

9. **SLM Procedures.** These procedures shall apply to the SLM Program:
 - a. **Duration:** The SLM Period initially shall be 180 days from the Notice of SLM, unless otherwise agreed to by the parties or ordered by the Court.
 - b. **No Dismissal:** Required Parties cannot insist on dismissal of the bankruptcy case as a requirement of an agreement reached through the SLM Program.
10. **Debtor's Duties in SLM.** Debtors' duties in SLM include:
 - a. **Submit Initial SLM Package:** Within seven days after the earlier of filing the Notice of SLM or Creditor registration on the Portal, Debtor shall (i) upload the Debtor's Initial SLM Package using the required Document Preparation Software and a copy of this Order to the Portal; and (ii) pay the Portal submission fee directly to the Portal vendor. Creditor will not receive a notice of the submission until the fee is paid.
 - b. **Document Submissions:** Upon the Creditor's request, Debtor shall promptly provide any additional or corrected documents through the Portal.
 - c. **Conclusion of SLM:** Within 14 days of the date when Creditor and Debtor conclude the SLM process, the Debtor shall file with the Court either a Notice of IDR Plan that includes the payment amount agreed by the parties or a Notice of No Resolution indicating that parties have not reached a consensual Student Loan Repayment Option Plan.
11. **Creditor's Duties in SLM.** Creditors' duties in SLM include:
 - a. **Registration on Portal:** Within 14 days after a Notice of SLM is filed, Creditor and Creditor's counsel (if any) shall register on the Portal. Note:

Creditors and their counsel need register on the Portal only once. Registration is not required each time SLM is sought.

- b. **Acknowledgement of Initial SLM Package:** Within 14 days after Debtor submits a completed Initial SLM Package on the Portal, Creditor shall acknowledge receipt of the Initial SLM Package on the Portal and designate a single point of contact and legal counsel (if any).
 - c. **Process Debtor's Application:** Within 30 days of receipt of the Debtor's Initial SLM Package, Creditor (i) shall determine Debtor's eligibility for any Student Loan Repayment Options, and (ii) notify Debtor if any additional or corrected documentation is needed.
 - d. **Prompt Response to Debtor's Supplementations and Inquiries:** Creditor shall promptly review Debtor's additional or corrected documentation and respond to Debtor's inquiries via the Portal.
12. **IDR Plans in Chapter 13 Cases.** If Debtor seeks SLM in a Chapter 13 case and the parties reach or modify an IDR Plan, the following shall apply:
- a. If Debtor's Chapter 13 Plan has not been confirmed, within 30 days of filing a Notice of IDR Plan indicating an agreement between Debtor and Creditor, Debtor shall file an amended Chapter 13 Plan to include the IDR Payment; the Chapter 13 Plan shall separately classify Eligible Loans **under Non-Standard Provisions.**
 - b. If Debtor's Chapter 13 Plan has been confirmed, Debtor shall file a motion to modify the confirmed Chapter 13 Plan that provides for separate classification of the Eligible Loan(s) and the IDR Payment.

- c. Debtor's Chapter 13 Plan, or modification to the Chapter 13 Plan, shall provide for Debtor to make all IDR Payments to Creditor through the Chapter 13 Plan, subject to any future changes required under the IDR Plan.
 - d. The Chapter 13 Trustee shall distribute IDR Payments to Creditor but shall make no further *pro rata* distributions to Creditor during the Chapter 13 case.
 - e. Debtor may seek enrollment in any IDR Plan at any time without disqualification due to the pending bankruptcy case or approval of the Court, even if the Required Parties already have agreed to an earlier IDR Plan.
 - f. Debtor may seek to consolidate Eligible Loans without separate approval of the Bankruptcy Court.
 - g. Debtor's Chapter 13 Plan shall not provide for the discharge, in whole or part, of any Eligible Loan without further order of the Court.
13. **SLM Fees.** Debtor's counsel may charge or request fees for assisting Debtors in SLM as follows:
- a. **Reasonably Presumptive Fee:** Debtor's counsel may receive reasonable compensation for all work involved in the SLM process and may accept a "no look" fee in a reasonable amount not to exceed \$1,500. This fee shall be paid as an administrative expense in addition to fees and costs incurred in representing Debtor in the bankruptcy case. The \$1,500 fee shall include, at minimum, these tasks:
 - i. Review of payment options with Debtor;
 - ii. Filing the Notice of SLM;
 - iii. Preparation of the Initial SLM Package;
 - iv. Preparation of any additional forms required throughout the SLM Program;

- v. Submission of all documentation through the Portal;
- vi. Filing other required pleadings; and
- vii. Preparation of proposed orders and settlement papers, if applicable.

b. **Annual Recertification Fee:** Debtor's counsel may charge \$250.00 per year to recertify the Debtor's IDR Plan, if applicable.

c. **Additional Compensation.** Debtor's attorney also may seek additional compensation by separate application attaching contemporaneous time records for *extraordinary* services provided during SLM.

DATED: July 31, 2019.



MICHAEL G. WILLIAMSON
Chief United States Bankruptcy Judge