

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
www.flmb.uscourts.gov

In re)
)
ADMINISTRATIVE ORDER) Administrative Order
PRESCRIBING PROCEDURES FOR) FLMB-2022-1
STUDENT LOAN MODIFICATION)
PROGRAM)
_____)

**ADMINISTRATIVE ORDER PRESCRIBING
PROCEDURES FOR STUDENT LOAN MANAGEMENT PROGRAM
IN ALL BANKRUPTCY CASES EFFECTIVE FEBRUARY 2, 2022¹**

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 consensual resolution of student loan issues for the benefit of debtors and lenders and to avoid litigation, effective February 2, 2022, 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 management program (“SLM” or “SLM Program”). Accordingly, it is

ORDERED that the following procedures apply to the SLM Program in the Middle District of Florida:

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 and the exchange of information in an efficient and transparent manner, and to encourage the parties to consensually reach a feasible and jointly beneficial agreement under the administrative oversight of the United States Bankruptcy Court for the Middle District of Florida.

2. **Definitions.** These definitions apply to the SLM Program:

a. **Creditor:** A holder, guarantor, governmental unit, or trustee of an Eligible Loan, and the servicer of any Eligible Loan (“Servicer”).

b. **Debtor:** An individual or joint debtor in a case filed under Chapter 7, 11, 12, or 13 of the Bankruptcy Code.

¹ This Administrative Order modifies and clarifies the procedures set forth in prior Administrative Orders Prescribing Procedures for Student Loan Management Program (Admin. Order. Nos. FLMB-2019-1, FLMB-2019-2, FLMB-2019-4, and FLMB-2019-5).

c. **Document Preparation Software:** A secure online program that facilitates the preparation of an Initial SLM Package by completing Standard SLM Documents and generating a checklist of required supporting documents. Creditors may customize the supporting documents, applications, and forms and shall specify their requirements for supporting documentation. Creditors may use forms in current use and may modify, amend, or update forms as desired when participating in the SLM Program. Debtor's use of the Document Preparation Software ensures that the Initial SLM Package to Creditor is complete and accurate and should expedite Creditor's review.

d. **Eligible Loan:** Any educational benefit overpayment or loan (i) made, insured, or guaranteed by a governmental unit; (ii) made under any program funded in whole or in part by a governmental unit; or (iii) any loan that purports to be a student loan on which Debtor is an obligor. Debtor may use the SLM Program to facilitate participation in the U.S. Department of Education's rehabilitation, consolidation, or repayment plans but only as permitted by federal law or regulations promulgated by the U.S. Department of Education.

e. **IDR Payments:** Payments made to Creditor under an IDR Plan.

f. **IDR Plan:** An income-driven repayment plan.

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. Creditors are not required to create new forms to participate in the SLM Program.

h. **Loan Consolidation:** The consolidation of Student Loans made under certain Federal Programs into a new Direct Consolidated Loan under the process established by the U.S. Department of Education as set forth in 34 C.F.R. § 685.220.

i. **Loan Rehabilitation:** The process established by the U.S. Department of Education to remove the default status from a federal student loan as set forth in 34 C.F.R. § 682.405.

j. **Petition Date:** The date on which Debtor's bankruptcy petition is filed.

k. **Portal:** A secure online service that allows Standard SLM Documents and communications to be submitted, retrieved, and tracked between the Required Parties and which Chapter 13 Trustees may access. The submission of documents to the Portal by Debtors and Creditors provides transparency by making information immediately available to all parties through a secure website. The Court lists approved Portals on its website, www.flmb.uscourts.gov.

l. **Recertification:** The requirement that Debtor's eligibility for an IDR Plan be recertified annually or at other specified time periods.

m. **Required Parties:** Debtor, Debtor's attorney (if any), Creditor, and Creditor's attorney (if any).

n. **Standard SLM Documents:** Industry-standard forms required by Creditors to initiate a review of Debtor's Student Loan Repayment Options on any Eligible Loan.

o. **SLM Period:** The period during which SLM is in effect before its expiration or termination by order of the Court.

p. **SLM Program Payment:** A payment made by Debtor to Creditor including an IDR Payment.

q. **Student Loan Repayment Options:** The full range of solutions available to Debtor on any Eligible Loan including, but not limited to, rehabilitation, consolidation, any IDR Plan, or settlement. Any consensual rehabilitation, repayment, IDR Plan, or consolidation of an Eligible Loan must comply with all laws and regulations promulgated by the U.S. Department of Education. Participation in the SLM Program does not require any Creditor to add or modify existing repayment options.

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.** Consistent with the duties of Chapter 13 trustees under the United States Bankruptcy Code, the Chapter 13 Trustee may participate in SLM if he or she desires.

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, Debtor must pay any unpaid bankruptcy filing fees in full and complete the required Document Preparation Software.

6. **Service of Notices.** Except for SLM Program documents and/or notices that are exchanged by the parties within the Portal, Debtor shall serve all notices that are filed with the Court, including the Notice of SLM, and any Notice of Resolution, as set forth in Fed. R. Bankr. P. 7004(b)(5) as follows:

a. Debtor shall serve a copy of the Notice of SLM and any Notice of Resolution by first class mail postage prepaid on Creditor's (and, if applicable, Servicer's) named officer(s) at Creditor's (and, if applicable Servicer's) headquarters' address.

b. For Federal Loans held by the U.S. Department of Education, Debtor shall serve copies of the Notice of SLM and any Notice of Resolution on the U.S. Department of Education by first class mail as follows:

i. For cases filed in Tampa and Fort Myers Divisions:

United States Attorney's Office, MDFL
400 North Tampa Street, Suite 3200
Tampa, FL 33602
Attn.: Civil Division – Bankruptcy

ii. For cases filed in Orlando Division:

United States Attorney's Office, MDFL
400 West Washington Street, Suite 3100
Orlando, FL 32801
Attn.: Civil Division – Bankruptcy

iii. For cases filed in Jacksonville Division:

United States Attorney's Office, MDFL
300 North Hogan Street, Suite 700
Jacksonville, FL 32202
Attn.: Civil Division – Bankruptcy

iv. For cases filed in Middle District of Florida, all Divisions:

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-001

Office of the General Counsel
U.S. Department of Education
ATTN: Deputy General Counsel
Lyndon Baines Johnson (LBJ) Department of Education Building
400 Maryland Ave., SW
Washington, DC 20202

And, to assist in processing, by email to:

FSABankruptcy@ed.gov

With subject line "Bankruptcy SLM Program MDFL."

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.

b. **Deadlines.** The Required Parties shall comply with all deadlines in the SLM Program.

c. **Communication Through the Portal.** During the SLM Period, all material communications between the Required Parties and the Chapter 13 Trustee regarding SLM, 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 to (a) facilitate the SLM Program and (b) encourage the Required Parties to explore consensual Student Loan Repayment Options and execute the required documents for any option selected. By participating in the SLM Program, Debtor acknowledges that it shall not be a violation of the automatic stay or other state or federal laws for Creditor to send Debtor normal monthly statements regarding payments due and any other communications, including, without limitation, notices of late payments or delinquency. These communications expressly may include telephone calls and emails if Debtor has agreed to electronic communications under normal processes established by Creditor. If Debtor contends that Creditor has violated the automatic stay while the SLM Period is in effect, Debtor may serve a motion asserting a violation of the automatic stay on Creditor under Fed. R. Bankr. P. 7004(b)(5) and Paragraph 6 of this Order. However, Debtor may not file the motion until 21 days (plus three days for mailing) from the date of service of the motion in order to provide Creditor the opportunity to address and/or correct the allegations in the motion.

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. **Dismissal of bankruptcy case may not be required.** Required Parties may not require the dismissal of Debtor's bankruptcy case as a condition precedent to an agreement reached through the SLM Program.

10. **Debtor's Duties in SLM.** Debtor's duties in SLM include the following:

a. **Submit Initial SLM Package.** Within seven days after the earlier of filing the Notice of SLM or Creditor's registration on the Portal, Debtor shall (i) upload 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. **Submit requested additional or corrected documents.** Upon Creditor's request, Debtor shall promptly provide 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, Debtor shall file with the Court a Notice of Resolution, that includes the payment amount or other terms agreed by the parties, or a Notice of No Resolution stating that the parties have not reached a consensus.

11. **Creditor's Duties in SLM.** Creditor's duties in SLM include:

a. **Register on the Portal.** No later than 30 days after a Notice of SLM is filed, Creditor and Creditor's counsel (if any) shall register on the Portal. Note: A single registration on the Portal by Creditors and their counsel is effective as to all Notices of SLM.

b. **Acknowledge receipt of Initial SLM Package.** No later than 30 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 Debtor's Initial SLM Package, Creditor shall notify Debtor if any additional or corrected documentation is needed. Creditor shall determine Debtor's eligibility for any Student Loan Repayment Option within 60 days of receipt of the Initial SLM Package or, if timely requested, receipt of any additional or corrected documentation.

d. **Promptly respond 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. **SLM Procedures in Chapter 13 Cases.** The following SLM procedures apply in Chapter 13 cases:

a. **If Debtor is current on Student Loan(s) as of the Petition Date.** If a Chapter 13 Debtor is current on a federal Student Loan(s) as of the Petition Date,

i. Debtor may propose a Chapter 13 plan that separately classifies the Student Loan(s) (subject to Paragraph 12.f. below) and provides for Debtor to pay Creditor (a) directly, or (b) through Chapter 13 plan payments made to the Chapter 13 Trustee (the "Trustee"); and

ii. Debtor may, in addition, seek SLM. If Debtor and Creditor reach an agreement, Debtor shall pay all SLM Program Payments through Debtor's Chapter 13 plan payments.

b. **If Debtor is in default on Student Loan(s) as of the Petition Date.** A Chapter 13 Debtor who is in default on more than one federal Student Loan as of the Petition Date and who has not previously obtained a Loan Consolidation may seek SLM for the purpose of obtaining a Loan Rehabilitation or a Loan Consolidation.

i. **Loan Rehabilitation.**

(a) If Debtor pays the Trustee nine monthly Chapter 13 plan payments within 20 days of each payment's due date during a period of ten consecutive months, Debtor will be deemed to have made Student Loan Payments on time, and Debtor will be eligible for an IDR Plan;

(b) Creditor shall promptly calculate the amount of the rehabilitation payment upon Creditor's receipt of Debtor's income and expense information. Within 15 business days of Creditor's calculation of the Loan Rehabilitation amount, Creditor shall send Debtor a Loan Rehabilitation agreement stating the amount of the calculated rehabilitation monthly payment. Debtor must sign the Loan Rehabilitation agreement and send copies to Creditor and to the Trustee;

(c) Debtor shall make payments during the Loan Rehabilitation period and IDR Payments under any IDR Plan through the Plan with the Trustee disbursing payments to Creditor; and

(d) If Debtor and Creditor reach an agreement for an IDR Plan (i) prior to confirmation of Debtor's Chapter 13 plan, Debtor shall file an amended Chapter 13 plan that provides for IDR Payments to be paid through the Chapter 13 plan; or (ii) after confirmation, Debtor shall file a motion to modify the confirmed Chapter 13 plan that provides for the IDR Payments to be paid through the Chapter 13 plan.

ii. **Loan Consolidation.** If Debtor and Creditor reach an agreement for Loan Consolidation and for Debtor to repay the Direct Loan Consolidation Loan under an IDR Plan, Debtor shall make those payments directly to Creditor.

c. **If Debtor is in default on a consolidated Direct Federal Student Loan and has obtained a Loan Rehabilitation after August 14, 2008.** If Debtor is in default as of the Petition Date on a consolidated Direct Federal Student Loan, Debtor's only remedy is to cure the prepetition default in the Chapter 13 plan.

i. Debtor may seek SLM and either Creditor or Debtor may file a proof of claim; Debtor may file a Chapter 13 plan that separately classifies Creditor (subject to provides Paragraph 12.f. below) to cure arrearages through the Chapter 13 plan; and

ii. During the time that the Student Loan is in default, Debtor shall not receive forgiveness credit toward an IDR Plan, and the Student Loan will continue to accrue interest at the contract rate; and

iii. When Debtor has completed Chapter 13 plan payments, Debtor may file a motion for an order determining that payments on the Student Loan are current as of the date of the motion. Debtor may serve the motion using the negative notice procedures of Local Rule 2002-4 and shall serve the motion and any resulting Court order on Creditor as provided for in Paragraph 6.b. of this Administrative Order.

d. **Debtor must file a Notice of Resolution.** If Debtor and Creditor reach a resolution, Debtor must file a Notice of Resolution within 30 days. If Debtor's Chapter 13 plan has been confirmed, and the Trustee is paying the SLM Program Payment through the Chapter 13 plan, the Trustee may treat the Notice of Resolution as a Notice of Payment Change under the provisions of the Court's Order Confirming Plan.

e. **Separate classification.** If Debtor's Chapter 13 plan separately classifies Student Loans, (i) the Trustee, the United States Trustee, and other parties in interest are not prohibited from objecting to the separate classification; and (ii) the Trustee shall make no further pro rata distributions to the separately classified Creditor during the Chapter 13 case.

f. **Nonstandard provisions in Chapter 13 plans.** If Debtor's Chapter 13 plan separately classifies a Student Loan, the Chapter 13 plan shall include the following provisions in the Plan's Nonstandard Provisions section:

i. This Plan does not provide for any discharge, in whole or in part, of student loan obligations under 11 U.S.C. §523(a)(8). If Debtor intends to seek the discharge of a student loan obligation, Debtor must file a separate adversary proceeding requesting such relief from the Court.

ii. Debtor may seek enrollment in any IDR Plan for which Debtor is eligible without further Order of the Court.

iii. Debtor's IDR Payments to the Trustee shall constitute payments to the Creditor for purposes of eligibility of forgiveness under any existing federal programs.

iv. Debtor understands that Creditor is not required to allow enrollment in any IDR Plan unless Debtor otherwise qualifies for such plan.

v. Debtor agrees to recertify eligibility in the applicable IDR Plan annually or as otherwise required and shall, within 30 days following Creditor's determination of change in the IDR Payment, Debtor shall file a notice with the Court of the amount such payment. The procedures set forth in Paragraph 12 apply to Recertification.

vi. It shall not be a violation of the automatic stay or other state or federal laws for Creditor to send Debtor normal monthly statements regarding IDR Payments due and any other communications including, without limitation, notices of late payments or delinquency. These communications may expressly include telephone calls and emails if Debtor has agreed to electronic communications under normal processes established by Creditor.

g. **Debtor may seek enrollment in any Student Loan Repayment Option at any time.** Debtor may seek enrollment in any Student Loan Repayment Option at any time and is not disqualified from seeking a Student Loan Repayment Option because of the pending bankruptcy case even if the Required Parties have agreed to a resolution or the Court has approved an earlier Student Loan Repayment Option.

h. **Debtor may seek consolidation of Eligible Loans without Court approval.** Debtor may seek to consolidate Eligible Loans without obtaining the Court's approval. However, Debtor must be otherwise eligible for any Loan Consolidation option sought according to applicable statute and regulations. All consolidated Student Loans obtained postpetition shall be paid directly by Debtor outside of the Chapter 13 plan and not by the Trustee. Debtor must provide proof of any postpetition consolidation of Student Loans to the Trustee.

13. **Debtor's Attorney's Fees.** Debtor's counsel is entitled to reasonable compensation for services rendered in representing Debtor in the SLM process and may request attorney's fees in Chapter 13 cases by filing a fee application or by providing for the payment of fees in Debtor's Chapter 13 plan. If Debtor is a debtor in a Chapter 13 case, the fees shall be paid as an administrative

expense in addition to the fees and costs incurred by Debtor's attorney in representing Debtor in the bankruptcy case.

a. **SLM Program Fees.** The "presumptively reasonable" fee for representing Debtor in the SLM Program is \$1,500.00 and includes, at minimum, the following services:

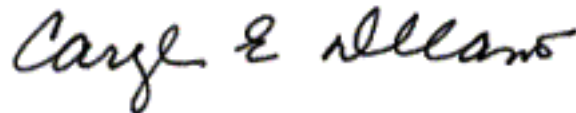
- i. Filing the Notice of SLM;
- ii. Preparation of the Initial SLM Package;
- iii. Preparation of any additional forms required throughout the SLM Program;
- iv. Submission of all documentation through the Portal;
- v. Filing other required motions or papers; and
- vi. Preparation of proposed orders and settlement papers, if applicable.

b. **Annual Recertification Fee.** In addition, Debtor's counsel may charge \$250.00 per year to assist Debtor with recertification of Debtor's IDR Plan and/or the filing of any related notices or amended schedules with the Court, if applicable. In Chapter 13 cases, the Trustee is authorized to disburse \$250.00 to Debtor's counsel upon the filing of a Notice of Recertification with the Court.

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

14. **Notice to Debtors with Federal Student Loans.** Debtors with Federal Student Loans have the option to apply directly to the U.S. Department of Education, either through their loan servicer or the U.S. Department of Education's website at, www.studentaid.gov, free of cost, to determine resolution and/or repayment options.

DATED: February 2, 2022.



CARYL E. DELANO
Chief United States Bankruptcy Judge