

Bankruptcy

YOU SHOULD ALWAYS CHECK WITH YOUR LEGAL COUNSEL FIRST

I. What Happens When You Receive Notification of Bankruptcy?

When an institution receives a notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of Meeting of Creditors, the institution and its agents shall: Immediately suspend any collection efforts, outside the bankruptcy proceeding, against the borrower; or cosigner if they are the ones who declared bankruptcy.

When Campus Partners receives the Order of First Meeting of Creditors, we take these steps immediately:

1. Changes the status code to 84 (Chapter 7 and 11) or 86 (Chapter 13). These codes stop the accrual of interest and prevent bills and notices from being generated;
2. Records the petition date on the loan
3. Enters a history comment to record the receipt of the document
4. Sends the original document to the school; and
5. Files a copy that will be microfilmed for permanent retention

Other documents that indicate the borrower has filed for bankruptcy are:

- Summons to Determine Dischargeability
- Proof of Claim
- Notice of Final Meeting Creditors
- Acknowledgement of Claim
- Notice of Hearing
- Notice of Conversion from Chapter 13 to Chapter 7
- Notice of Appearance
- Discharge of Debtor*
- Order of Dismissal *

NOTE: * Some of the aforementioned documents are received after the bankruptcy has been completed.

II. What Happens When Campus Partners Receives the Forms?

Once Campus Partners receives the forms we separate them into three categories:

- First Meeting
- Others
- Discharge

III. Institutional Duties

Proof of Claim – A "proof of claim" is an official form (Official Form 10) that a creditor files to assert a claim against a debtor. The form is a one-page document (with instructions on the back). Each creditor needs to list the identity of the creditor (name and address), the identity of the debtor, the basis of the claim, the date the claim was incurred, and whether the claim is a priority or secured claim.

The proof of claim must be signed and dated by an individual with authority to sign on behalf of the creditor (if appropriate, a power of attorney must be attached). The creditor should attach supporting documentation. If the supporting documentation is too large, the creditor should attach a summary.

IV. Deadlines for Filing Proof of Claim

There are deadlines for filing proofs of claim in all bankruptcy cases. In Chapter 7 and 13 cases, the proof of claim must be filed within 90 days after the date first set for the meeting of creditors.

- The meeting of creditors in a Chapter 7 is supposed to be scheduled within 20 to 40 days after the bankruptcy petition date.
- In a Chapter 13, the meeting of creditors is supposed to be scheduled within 20 to 50 days after the bankruptcy petition date. Note that the bar date (i.e., proof of claim filing deadline) is calculated using the date that was "first set" for the meeting of creditors -- regardless of when the meeting actually takes place.

Untimely claims are unacceptable (absent a lack of service of the bar date notice upon the creditor as that would give rise to a denial of due process).

The institution must file a proof of claim in the bankruptcy proceeding unless –

- The borrower has no assets, in Chapter 7 cases
- Chapter 7 or 13, where the repayment plan proposes that the borrower repay less than the full amount owed on the loan. If this is the case, only if the institution has been determined to be an agency of the state, are they immune from the suit and does not need to file for proof of claim.

You can find a proof of claim form here: <http://www.uscourts.gov/bankform/formb10new.pdf>

V. What must I do when I receive a borrowers request for Determination of Dischargeability

1. The institution must use due diligence to avoid discharge of the loan.
2. The institution must respond to a complaint for a determination of dischargeability – the repayment of the loan would impose an undue hardship on the borrower and his or her dependents.
3. If the petition for relief 1.) was filed before October 8, 1998 **and** 2.) more than seven years of the repayment period on the loan has passed the institution may not oppose a determination of discharge due to undue hardship.

4. In any other case, the institution must determine whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under Section 674.49 Subpart (b) or (d) of this would impose an undue hardship on the borrower and his or her dependents.

VI. Undue Hardship

The phrase "undue hardship" is employed in Section 523(a)(8) of the Bankruptcy Code, 11 U.S.C. Sec. 523(a)(8). As courts have noted, Congress did not define that phrase in the Bankruptcy Code. Therefore, courts have been left with the task of interpreting that phrase.

In the Third Circuit, the Court has developed the following three (3) part test to determine whether a debtor has demonstrated "undue hardship:"

- 1) The debtor cannot maintain, based on current income and expenses, a minimal standard of living for the debtor and his/her dependents if forced to repay the loans;
- 2) Additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period for student loans; and
- 3) The debtor has made good faith efforts to repay the loans.

A debtor bears the burden of proof by a preponderance of the evidence on each of the three elements of the undue hardship test. If the debtor fails to prove any of those elements, the loans are not dischargeable. The test is strictly construed.

**** FYI – Do Not Need to Discuss** - The leading Third Circuit cases setting forth that test are *In re Faish*, 72 F.3d 298 (3d Cir. 1995) and *In re Brightful*, ___ F.3d ___, 2001 Westlaw 1167263 (3d Cir. Oct. 3, 2001).

V. What Determines Dischargeability?

With bankruptcy petitions filed **before** May 28, 1991, the loan must have been in repayment for five years instead of seven years to be discharged.

Student loans are not dischargeable if the petition was filed on or after October 8, 1998. Unless the borrower seeks relief because of undue hardship.

If the institution concludes that repayment would not impose an undue hardship, they shall determine whether the costs reasonably expected to be incurred to oppose discharge, will exceed one-third of the total amount owed on the loan, including principal, interest, late charges and collection costs.

If the expected cost of opposing discharge does not exceed one-third of the total amount owed on the loan, the institution shall:

- Oppose the borrowers request
 - Seek a judgement for the amount owed on the loan, if the borrower is in default.
- If the request is opposed – the institution may compromise a portion of the amount owed on the loan if it reasonably determines that the compromise is necessary in order to obtain a judgement on the loan.

VI. How Does Campus Partners Assist after the Discharge is Complete?

- When the petition date and bankruptcy status are removed, the Automatic Reprocessing features in System III will automatically recalculate the correct accrued interest and all amounts due.
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- To eliminate the amounts that became due during the period of stay, other than the accrued interest, we process a customer adjustment type “Y,” plan “4.”
- Regular billing is then resumed.
- When the discharge document is received and the debt is deemed dischargeable, AMS Servicing will process a bankruptcy cancellation and close the loan.

VIII. How a School Should Handle the Request for Determination of Non-dischargeability?

The institution may file a complaint for a determination that a loan obligation is not dischargeable and for judgement on the loan if the institution would have been required to oppose a request for a determination of dischargeability with regard to that loan.

CHAPTER 13 PREPAYMENT PLAN

The institution shall follow the procedures in response to a repayment plan proposed by a borrower who has filed for relief under Chapter 13 of the Bankruptcy Code.

The institution is not required to respond to a proposed repayment plan, if –

- The borrower proposes to repay all principal, interest, late charges and collection costs on the loan
- The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims

If the borrower proposes under the repayment plan to repay less than the total amount owed, the institution shall determine from its own records and court documents:

- The amount of the loan obligation dischargeable. You determine this by deducting the total payments on the loan proposed under the plan from the total amount owed;

Total Amount Owed	-	Total Payments	=	Amount Dischargeable
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- Whether the plan, or the proposed plan, meets the requirements of section 1325 of the Code; and
- Whether grounds exist under 11 USC 1307 to move for conversion or dismissal of the Chapter 13 case.

If the institution reasonably expects that costs of the appropriate actions will not exceed one-third of the dischargeable loan debt, the institution shall –

- Object to confirmation of a proposed plan that does not meet the requirements of 11 USC 1325; and
- Move to dismiss or convert a case where grounds can be established under 11 USC 1307.

IX. How Do You Monitor the Chapter 13 Process for Borrower Compliance?

The institution must monitor a borrower compliance with the decision made by the courts.

- If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a “hardship discharge”, the institution must determine from its own records and information derived from documents filed with the court ;
 - Whether grounds exist under 11 USC 1307 to convert or dismiss the case; and
 - Whether the borrower has demonstrated entitlement to the “hardship discharge” by meeting the requirements of 11 USC 1328.

X. How Does Campus Partners Assist in Monitoring for the Borrowers Compliance?

To monitor the borrower’s compliance with a Chapter 13 plan, you may use the Loan Monitoring Flag on each loan with an approved repayment plan. These loans are printed on the *Loan Monitoring Report*. If you do not currently receive this report and would like to, please contact your School Relations Coordinator.

When the petition date and bankruptcy status are removed, the Automatic Reprocessing features in System III automatically recalculate the correct accrued interest and all amounts due. To eliminate the amounts that become due during the period of stay, other than the accrued interest, we process a customer adjustment type “Y”, plan “4”. Regular billing is then resumed.

When the discharge document is received and the debt is deemed dischargeable, Campus Partners again will again process a bankruptcy cancellation and close the loan.

XI. What Should the School Do in Regards to the Cost of Appropriate Actions?

If the institution reasonably expects that costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will not exceed one-third of the dischargeable loan debt, the institution shall –

1. Move to dismiss or convert under 11 USC 1307, which concerns the dismissal of a Chapter 13 case or the conversion of a case filed under Chapter 13 to a Chapter 7 proceeding; or
2. Oppose the requested discharge where the debtor has not demonstrated that the requirements in 11 USC 1328(b), which concerns the discharge of debts, have been met.

XII. Resumption of Collection from the Borrower

The institution shall resume billing and collection action prescribed in this subpart after

1. The borrowers petition has been dismissed;
2. The borrower has received a discharge under 11 USC 727, 11 USC 1141 or 11 USC 1228 unless –
 - The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or
 - The petition was filed before October 8, 1998; and prior to the bankruptcy proceeding
 - The loan entered the repayment period more than seven years (excluding any applicable suspension of the repayment period), and
 - The loan is not excepted from discharge under other applicable provisions of the Code; or

The borrower has received a discharge under 11 USC 1328(a) or 1328(b), unless –

1. The petition was filed before October 8, 1998; and
2. Been in repayment 7 years; and
3. The borrower's plan approved in the bankruptcy proceeding made some provision with regard to either the loan or obligation or unsecured debts in general.

XIII. Termination of Collection and Write Off

An institution must terminate all collection action and write off a loan if it receives a general order of discharge -

1. Borrower filed for relief before October 8, 1998
2. If the loan entered repayment period more than seven years from the date on which a petition was filed
3. A judgement that repayment of the debt would constitute an undue hardship and is therefore dischargeable.

If an institution received a payment from a borrower after a loan has been discharged, it must deposit that payment in it's Fund.