



BANKRUPTCY ATTORNEYS CAN HELP BORROWERS NAVIGATE SAVE LITIGATION CHAOS

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How times have changed. Bankruptcy attorneys, who historically found their hands tied when helping debtors with student loans, now find themselves uniquely positioned to help their clients navigate a particularly complicated time for student loan borrowers based on recent developments—both policy and judicial.

On Oct. 1, 2024, the last vestiges of the COVID-19 relief programs expired. Borrowers are once again facing consequences including negative credit reporting, collection calls, wage garnishments, and the possibility of losing their tax refunds. Borrowers, who for nearly five years sat on the sidelines, are now forced to take action to address their debt.

As these borrowers try to tackle student loans, they face a quickly shifting landscape featuring temporary programs, proposed regulations, and ever-changing rules due to litigation.

Given the complicated landscape, bankruptcy attorneys are well equipped to assist student loan borrowers under almost any circumstance. In particular, they can offer guidance by educating clients about the ongoing Saving for a Valuable Education (SAVE) Plan litigation, the SAVE Plan litigation payment and interest pause, and the opportunity to discharge student loan debt in bankruptcy.

UNDERSTANDING ONGOING LITIGATION

The Biden Administration's plan to forgive up to \$20,000 per borrower received significant media attention before being struck down in a 6-3 Supreme Court ruling in *Nebraska v. Biden*. Their second attempt at mass student loan forgiveness is now being litigated and is currently blocked by a preliminary injunction pending a final resolution. The odds appear stacked against this plan ever becoming a reality.

The new SAVE repayment plan, an income-driven repayment plan, is also being litigated. Under phase one of the SAVE plan, which became effective on Oct. 1, 2023, the amount of income considered non-discretionary was raised and protected from 150% of the poverty line to 225%, thereby lowering repayment amounts. It also subsidized a borrower's unpaid monthly interest so that any unpaid interest would be forgiven and not added to the borrower's balance. Planned to be effective on July 1, 2024, phase two was intended to cut in half the amount of discretionary income that borrowers have to pay each month for undergraduate loans, from 10% to 5%. It also featured a plan to forgive smaller loan balances on an expedited schedule.

On June 24, 2024—a week before phase two was set to take effect—district court judges in Missouri and Kansas each issued preliminary injunctions regarding the SAVE plan. One court prevented forgiveness under SAVE, while the other court blocked the 5% calculation for borrowers with undergraduate debt. On Aug. 9, 2024, the Eighth Circuit blocked all forgiveness, interest subsidies, and discretionary income calculations under SAVE. On Aug. 28, 2024, the Supreme Court declined to intervene, allowing the Eighth Circuit's injunction to remain.

This injunction created quite the mess and confusion just as payments and collections were set to resume. In response, the Department

of Education (DOE), placed all existing SAVE borrowers on a general forbearance while the litigation runs its course.

Interestingly, the DOE is still permitting borrowers to consolidate their loans and enroll in income-driven repayment plans, including SAVE. And, while interest will not accrue during this forbearance, time spent in forbearance will NOT count towards Public Service Loan Forgiveness (PSLF) or Income Driven Repayment plan forgiveness.¹

UNLOCKING THE SAVE LITIGATION PAYMENT AND INTEREST PAUSE

In the midst of all this chaos, bankruptcy attorneys can be a beacon of knowledge and guidance for student loan borrowers. Bankruptcy attorneys can explain the litigation, the implications of an injunction, and help guide borrowers through this uncertain time. One of the best ways of doing this is to help borrowers take advantage of the forbearance announced in response to the SAVE injunction.

Borrowers who are able to make some payments may benefit from enrolling in SAVE and taking advantage of the 0% interest rate during the potentially lengthy litigation. This will allow borrowers to apply their entire payment to principal balances resulting in lower balances owed.

Borrowers experiencing financial hardship or uncertainty about their next steps are encouraged to enroll in the SAVE program. This will provide them with additional time to develop a strategy for eliminating their student debt, ensuring they avoid default and its associated negative consequences.

Given the uncertainty surrounding SAVE as well as other programs, having an attorney assist borrowers through this process will ensure that they secure the correct options.

DISCHARGING DEBT IN BANKRUPTCY

In addition to taking advantage of the SAVE forbearance policy, many debtors will

be well-suited to take advantage of the option to discharge federal student loans under the Department of Justice Guidance issued on Nov. 17, 2022. At a time when student loan confusion is at an all-time high for borrowers, a bankruptcy discharge offers permanent resolution to student loan debts.

Data from Stretto, a leading bankruptcy services and technology company, shows that about 80% of debtors using Stretto's software may qualify for a discharge. This matches recent anecdotal reports based on analysis from DOJ that approximately 80% of debtors who file a student loan adversary proceeding are achieving some level of discharge of their student loans.

Whether a discharge or SAVE is the right answer for each borrower will depend on their individual circumstances. Regardless of the choice, borrowers can no longer afford to delay while their debt spirals towards default. Litigation and complicated rules have made it difficult for borrowers to navigate their own path. Now, more than ever, borrowers need qualified bankruptcy attorneys to guide them to a solution. ■

FOOTNOTE

1. Borrowers working toward PSLF have the option of the federal student loan buyback program to make up for the missed payments during the forbearance. <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service/public-service-loan-forgiveness-buyback>

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to refine the program to achieve the best possible outcomes for our Mentors and Mentees.

CDCBAA President Hale Andrew Antico said, "The Mentoring Program has been a success, and aligns with CDCBAA's primary purpose of attorney education. Not all learning happens in the MCLE classroom, and the one-on-one learning process of being a Mentee can provide both personalized help and a valuable safety net, while allowing Mentors the satisfaction to give back, sharing their experiences and wisdom. We're proud of this program and expect it will thrive in the future as filings continue to increase and new practitioners are drawn to our field."

As we move forward, CDCBAA remains committed to our evolving Mentoring Program and continuing to support and guide attorneys as they embark on their journeys in the dynamic field of consumer bankruptcy. ■

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