

Student Loans: Here's the Best Way to Pay Them in a Chapter 13 Plan

by Craig Andresen, Minnesota Bankruptcy Attorney on January 28, 2010

Student loans, unlike most other unsecured debts, are not discharged after the completion of payments under a chapter 13 plan (unless you qualify for a rare finding of undue hardship). This unhappy fact makes careful drafting of the student loan debtor's chapter 13 repayment plan especially important. Don't let your hard-earned dollars be paid out to the "wrong" creditors under a chapter 13 plan — this can easily happen when you have student loans.

Chapter 13 plans are required to pay unsecured creditors equally. This rule leads many debtors to classify student loans along with other unsecured creditors, such as credit cards debts. The problem with this approach is that in a partial payment chapter 13 plan, at the conclusion of the case, the credit cards debts are discharged — but **not** the student loans. If only the student loans could have received all the funds paid out under the chapter 13 plan to the credit card debts! That way, the student loans would have been paid off or at least paid down substantially.

There is a way to avoid the problem of having to treat all unsecured debts equally: by invoking section 1322(b)(5) of the bankruptcy code. This section allows a chapter 13 plan to state that the payments on an unsecured debt, whose last payment is due after the last payment under the chapter 13 plan is due, to be paid "outside the plan" by making the regular monthly payment directly to the creditor, rather than having the debt be paid through the plan.

This usually allows the student loan debt to stay out of default status once the plan is completed. More importantly, it also usually results in much more money being paid to the student loan debt, when compared to the option of having the student loan paid along with credit cards through the plan.

If you live in a jurisdiction that allows this approach, it's fair to say that setting up your chapter 13 plan in any other way is just plain wasteful. Prefer the student loan debt over other debts if you can by using section 1322(b)(5).