Private Student Loans—By Angelique Craybill, Esquire

Private loans may offer more flexibility in terms of dischargeability.

Unlike federal loans, they are NOT automatically considered non-dischargeable. Many private student loans can be treated as regular consumer debt if they do not meet the legal definition of a "qualified education loan."

To be "qualified" the student must attend an eligible educational institution AND the loan must fund only qualified higher education expenses. 26 U.S.C. §221(d)(1)

Examples of potentially dischargeable private loans:

- The loan was used for non-educational expenses,

- The loan was higher than the cost of attendance (such as tuition, books, room and board), which can occur when the loan is paid directly to the consumer,

- The borrower attended a non-Title IV or unaccredited institution (such as an unaccredited college, a school in a foreign country, or unaccredited training and trade certificate programs)

- Loan amounts exceed the cost of education or bar/medical residency preparation.

Growing Trend in Cases Holding that Private Student Loans are Dischargeable in Bankruptcy WITHOUT A HIGHER STANDARD AND WITHOUT FILING AND ADVERSARY COMPLAINT

Section 523(a)(8) of the Bankruptcy Code has been interpreted differently across various circuits. Courts have focused on the specific language of the statute, which outlines three categories of nondischargeable educational debt: (1) loans and benefit overpayments backed by the government or a nonprofit (§ 523(a)(8)(A)(i)); (2) obligations to repay funds received as an educational benefit, scholarship, or stipend (§ 523(a)(8)(A)(ii)); and (3) qualified private educational loans (§ 523(a)(8)(B)) . Golden v. Discover Bank (In re Golden), 630 B.R. 896, Mazloom v. Navient Sols., LLC (In re Mazloom), 648 B.R. 1.

Some circuits adopt a narrow interpretation of § 523(a)(8)(A)(ii), limiting its application to conditional grants, scholarships, or stipends, rather than broadly including all loans used for educational purposes. For example, the Second Circuit in Homaidan v. Sallie Mae, Inc., 3 F.4th 595. held that private student loans do not qualify as "educational benefits" under § 523(a)(8)(A)(ii) because Congress intended each subsection of § 523(a)(8) to target distinct types of debt . Homaidan v. Sallie Mae, Inc., 3 F.4th 595, Golden v. Nat'l Collegiate Student Loan Trust 2006-4 (In re Golden), 671 B.R. 544. Similarly, the Ninth Circuit in Inst. of Imaginal Studies v. Christoff (In re Christoff), 527 B.R. 624. emphasized that § 523(a)(8)(A)(ii) should not

be interpreted to encompass loans, as doing so would render other subsections redundant . Inst. of Imaginal Studies v. Christoff (In re Christoff), 527 B.R. 624, Wiley v. Wells Fargo Bank, N.A. (In re Wiley), 579 B.R. 1.

In contrast, some courts have taken a broader view, interpreting § 523(a)(8)(A)(ii) to include loans used for educational purposes. For instance, in *In re Beesley*, the court found that loans could qualify as "funds received as an educational benefit" under § 523(a)(8)(A)(ii) . Benson v. Corbin (In re Corbin), 506 B.R. 287. However, this broader interpretation has been criticized for potentially subsuming other subsections of § 523(a)(8), as noted in . Nypaver v. Nypaver (In re Nypaver), 581 B.R. 431.

The Fifth Circuit has also addressed the issue, emphasizing the importance of statutory construction and avoiding interpretations that create surplusage. In *Thomas v. Dep't of Educ.*, the court highlighted that § 523(a)(8)(B) was added to address private loans specifically, suggesting that private loans were not already covered under § 523(a)(8)(A)(ii) . Homaidan v. Sallie Mae, Inc., 3 F.4th 595.

Overall, the interpretation of § 523(a)(8) varies significantly among circuits, with some courts favoring a narrow, text-based approach and others adopting a broader interpretation that includes a wider range of educational debts. These differences underscore the importance of analyzing the statutory language and legislative intent in each case.

***Homaidan v. Sallie Mae, Inc.*, 3 F.4th 595 (2d Cir. 2021)**

-Holding that private student loans are not explicitly exempt from the discharge in a chapter 7 bankruptcy

The Debtor received a Chapter 7 discharge in 2009. Included in his schedules were private student loans owed to Navient used for his education at Emerson college. Navient pursued repayment after discharge. The Debtor actually complied, paid the loans in full and then reopened his bankruptcy case to commence this adversary proceeding against Navient seeking, among other things, actual damages for Navient's alleged violation of the discharge order. The District Court for the Eastern District of New York determined that the Navient loans were not excepted from discharge under 11 §523(a)(8)(A)(2) and therefore denied Navient's Motion to dismiss.

An interlocutory appeal was filed and the U.S. Court of Appeals for the 2nd Circuit affirmed the bankruptcy courts ruling.

The appellate court looked only to the statutory text in determining whether Navient's loans to the debtor were covered by the relevant code sections. It determined only three types of loans are exempt from discharge:

1. Loans and benefit overpayments backed by the government or a non-profit
2. Obligations to repay funds received as an educational benefit, scholarship, or stipend
3. Qualified private educational loans

Navient argued its loans were covered by the second exemption, specifically "obligations to repay funds received as an education benefit".

The Court determined that if Congress had intended that passage to cover private student loans, it would have said so more explicitly in adopting the language of the code section:

"[I]f Congress had intended to except all educational loans from discharge under Section (a)(8)(A)(ii), it would not have done so in such stilted terms…There are educational benefits that students may become more obligated to repay – such as conditional grants – which fit the statutory text more naturally."

The loans at issue do not constitute "an obligation to repay funds received as an educational benefit."

Certain types of private educational loans can be cancelled through the bankruptcy process without a showing of undue hardship. Section 523(a)(8) does not provide a blanket exception to the applicability of a bankruptcy discharge to private loans given to student borrowers.

***In re Crocker*, 941 F.3d (5th Cir. 2019), as revised (Oct. 22, 2019)**

-holding that the term "educational benefit" as used in dischargeability exception, drew meaning from the terms around it and could not be interpreted so broadly as to include private educational loan (private loans are NOT statutorily excepted from discharge absent undue hardship)

The loans in Crocker did not fit under the first scenario of §523(a)(8)(A)(i) because they were private loans that had not been made or guaranteed by a governmental unit or a nonprofit institution. Nor did they qualify as education loans under the Internal Revenue Code under the third scenario of §523(a)(8)(B). The only alternative for the lender was to argue that the loans were excepted from discharge under the second scenario of §523(a)(8)(A)(ii).

The *Crocker* court held that §523(a)(8)(A)(ii) applies "only to education payments that are not initially loans but whose terms will create a reimbursement obligation upon the failure of conditions of the payments" and that the "educational benefit" provided for in that section "is limited to conditional payments with similarities to scholarships and stipends". The obligation in *Crocker* definitely was a "loan" and repayment was unconditional. It did not fit within the §523(a)(8)(A)(ii) exception and thus was discharged.

The case involved two individual chapter 7 bankruptcy filings in different jurisdictions. The first filing involved a debtor who obtained a $15,000 loan from Navient Solutions, a for-profit public corporation lender not part of any governmental loan program. The second filing was by a debtor who had obtained an $11,000 loan from Navient to attend technical school. In both cases, the bankruptcy courts issued standard discharge orders and closed the cases. After the discharges, Navient continued collection efforts on the loans, which prompted one of the debtors to file an adversary proceeding, later filing an amended complaint joining the second debtor as an additional plaintiff and seeking to certify a nationwide class, which had the potential to exponentially increase both the number of plaintiffs in the case as well as Navient's potential liability. The bankruptcy court denied Navient's motion for summary judgment, determining that the particular category of loans was not exempt from discharge under 11 U.S.C. § 523(a)(8). Two issues were addressed on appeal: 1) whether the bankruptcy court had jurisdiction to enforce the discharge injunction from another court (ultimately concluding it did not), and 2) whether these loans are within the category of loans that are non-dischargeable under the Bankruptcy Code.

The Fifth Circuit agreed with the bankruptcy court that private educational loans are subject to discharge.

The court began its analysis by noting that exceptions to discharge should be interpreted narrowly in favor of the debtor. The relevant statutory section ((A)(ii)) did not include the word "loan" in contrast to section (A)(i). Contrary to Navient's assertions, the language in the relevant section "obligation to repay funds received by an educational benefit" should not be construed to apply to private student loans. Instead, the term "educational benefit" is more akin to the other

terms in section (A)(ii), scholarship and stipend, which "signify granting, not borrowing." The court further found that if section (A)(ii) included repaying private student loans as an "educational benefit," section (A)(i) would be redundant and contrary to the canon against surplusage. Absent the narrower reading, "Congress could have just exempted from discharge any 'obligation to repay funds received as an educational benefit' and left it at that." Finally, the court discussed the statutory history of section 523(a)(8) and concluded that the 2005 bankruptcy amendments did not make all private student loans non-dischargeable.

One issue the court felt it had to explain was the potential inconsistency of its conclusion with its recent statement in *Thomas v. Dept. of Ed*. that "Section 523(a)(8) as it stands today excepts virtually all student loans from discharge" unless undue hardship is shown. To harmonize *Thomas* and *Crocker*, the court reasoned that *Crocker* addressed a type of loan that, unlike the loan in *Thomas*, was not governed by Section 523(a)(8). The basis of the distinction between the two loans was, according to the court, that "an educational benefit" is limited to **conditional** payments with similarities to scholarships and stipends. In other words, in contrast to the *Thomas* debt, the *Crocker* debt, despite being obtained to pay expenses of education, did not qualify as "an obligation to repay funds received as an educational benefit, scholarship, or stipend" because repayment was **unconditional**. Therefore, in the court's opinion, the *Crocker* debt was not subject to Section 523(a)(8) and therefore was dischargeable without creating any conflict between *Thomas* and *Crocker*.

***In re McDaniel*, 973 F.3d 1083, 1086 (10 Cir. 2020)**

> --holding that the term "educational benefit" as used in dischargeability exception, drew meaning from the terms around it and could not be interpreted so broadly as to include private educational loan

Debtors filed a Chapter 13 petition including six private educational loans held by Navient totaling approximately $107,000. The confirmed plan provided that "student loans are to be treated as an unsecured Class Four claim or as follows: deferred until the end of the plan." The Debtors received their discharge. Two years later, the debtors moved to reopen their bankruptcy, seeking a declaration that the loans had been discharged and claiming that Navient's post-discharge conduct violated the discharge injunction. Navient moved to dismiss the debtors' complaint, arguing that the doctrine of res judicata barred the debtors' assertion that the Loan was discharged, and, in the alternative, that the Loan was nondischargeable under section 523(a)(8).

The bankruptcy court found that the confirmed plan did not establish that the Loan was nondischargeable and, therefore, res judicata did not bar the debtors' motion for declaratory judgment. The court further found that the Loan did not fall under any exception to discharge in section 523(a)(8).

The Tenth Circuit granted leave to appeal.

At issue was whether the Loan was otherwise nondischargeable under the language of section 523(a)(8)(A)(ii), which excepts from discharge "obligations to repay funds received as an educational benefit, scholarship or stipend." The court noted that, unlike section 523(a)(8)(A)(i), which applies to "educational benefit overpayment or loan," (A)(ii) does not mention "loans." The court reasoned that the fact that Congress differentiated between an "education benefit" and a "loan" in (A)(i) by the use of the disjunctive "or," indicates that the two are not the same thing.

With that understanding, the court turned to whether (A)(ii) should be read to incorporate loans such as those extended by Navient in this case. Applying the doctrine of *noscitur a sociis* (construing the meaning of a term based on the company it keeps), the court noted that (A)(ii) applies to "educational benefit, scholarship, or stipend," all of which, unlike student loans, are conditional grants which a student typically does not need to repay. Furthermore, the common understanding of the word "benefit" refers to something given to a recipient without an attached obligation to repay. In fact, if (A)(ii) included student loans, there would be no need for the provision to begin with the words "an obligation to pay," as loans are defined by an obligation to repay.

The court concluded that Congress's failure to include "loan" in (A)(ii), taken in conjunction with the types of benefits specifically excluded in that section, indicated that that provision does not encompass student loans within its exceptions to discharge.

The court made quick work of Navient's argument that the 2005 amendments to the Bankruptcy Code made all private student loans nondischargeable. Citing *Crocker v. Navient Sols., L.L.C.* (*In re Crocker*), 941 F.3d 206, 218–19 (5th Cir. 2019), which rejected the identical argument, the court found that the only change the BAPCPA amendments made to section 523(a)(8)(A)(ii) was to add a comma between scholarship and stipend. BAPCPA did not otherwise change the scope of section 523(a)(8)(A)(ii).

The court was likewise unpersuaded by the contrary holding in *Desormes v. Infilaw Corp.* (*In re Desormes*), 569 F. App'x 42 (2d Cir. 2014) (unpublished), as not having delved into analysis of whether a student loan was an "educational benefit" before finding that section 523(a)(8)(A)(ii) covered private student loans.

Navient argued that the phrase "obligation to repay" in (A)(ii) necessarily incorporates student loans. The court disagreed, finding that had Congress meant to include loans, it could have plainly said so. Furthermore, as the court explained previously, the three listed terms attached to the obligation to repay indicate something other than a loan. If that provision included loans, there would have been no need to use the phrase "obligation to repay." Thus, contrary to Navient's position, the fact that Congress specified an obligation to repay supports the view that the enumerated debts would not typically carry that obligation.

The court likewise rejected Navient's argument that because section 523(a)(8)(B) begins with the phrase "any *other* education loan," the prior subsection must include student loans in both (A)(i) and (A)(ii). The court found that the language in subparagraph (B) simply limited its reference to the prior reference to loans in (A)(i). It did not create references where there were none. Moreover, because section 523(a)(8)(B) was part of BAPCPA, enacted in 2005, while section 523(a)(8)(A)(ii) was enacted in 1990, the court found the former an inappropriate basis for inferring the intent of the latter.

Navient next took issue with the court's finding that interpreting (A)(ii) to include student loans would render other provisions in section 523(a)(8) superfluous. Navient argued that, despite some overlap among the provisions, if (A)(ii) were interpreted to include student loans, it would capture some instances of student loan nondischargeability that would otherwise be missed. Navient cited as examples that (a)(8)(A)(i) has a governmental component lacking in (a)(8)(A)(ii), and that (a)(8)(A)(ii) includes certain types of schools not included in (a)(8)(B).

Rejecting this argument, the court pointed out that if section 523(a)(8)(A)(ii) were construed to include and expand the coverage of (a)(8)(A)(i) and (a)(8)(B), it would necessarily render language in the other provisions superfluous.

The court specifically noted that scholarships and stipends are not student loans. The court noted that applying Navient's interpretation under which any funds that assist the student with the cost of education should be deemed "student loans" would be overbroad, encompassing such things as credit card purchases for textbooks.

Roberts v. Firstmark Servs. **(In re Roberts), 2025 Bankr. LEXIS 3153**

Debtor received a Chapter 7 discharge and later reopened the case to file an adversary to recover damages for alleged violations of the discharge injunction arguing that the loans were non-qualified education loans that did not meet the criteria for exemption 11 U.S.C. §523(a)(8) because the loans were not certified by an educational institution, the funds were disbursed directly to the Debtor (not the school), and the loan amounts exceeded the cost of attendance and were used for non-educational expenses.

Here, the court said the Debtor is REQUIRED to file and prevail in an adversary proceeding.

The court reasoned that: (1) student loans are not automatically discharged - the debtor must affirmatively seek a determination of dischargeability; (2) without such determination, the loans remained nondischargeable by operation of law; (3) defendants could not have violated a discharge injunction for debts that were not discharged;

Roberts v. PNC Bank **(In re Roberts), 2025 Bankr. LEXIS 2748**

Again, the court held the Debtor was required to bring an adversary proceeding to determine dischargeability of the student loans. The Debtor was required to do. 11 U.S.C. § **523(a)**(8). As such, the **student loans** were not (and still have not been) discharged. *See In re Irigoyen*, 659 B.R. 1, 4 (B.A.P. 9th Cir. 2024) ("the debtor bears the burden of filing a lawsuit and obtaining a judgment of dischargeability. Otherwise, debts that come within the purview of § **523(a)**(8) are automatically nondischargeable, and the lender is not re)quired to obtain a nondischargeability judgment before collecting on the debt post-discharge.")

Irigoyen v. 1600 W. Invs., LLC **(In re Irigoyen), 659 B.R. 1 (B.A.P. 9th Cir. 2024)**

Holding – the lower court erred in interpreting the "self-executing" nature of 11 U.S.C.S. § 523(a)(8) and determining that the debt to creditors was not discharged until debtor obtained a judgment of dischargeability, thus shielding a creditor from liability for violation of the discharge injunction until that judgment occurred. The words "self-executing" do not mean that a debt that does not meet the statutory criteria of § 523(a)(8) is considered nondischargeable until proven otherwise; [2]-Because the debt here was discharged by the general discharge order in debtor's case, the creditors' post-discharge collection efforts should have been scrutinized under the standard set forth by the Supreme Court in Taggart; thus remand was necessary for the bankruptcy court to make findings regarding whether creditors violated the discharge injunction without a fair ground of doubt.

This case presents a more pointed question: what should the consequence be if a court determines after discharge that a debt is not qualified as the type of educational loan excepted from discharge? Should the debt be presumed nondischargeable until the debtor proves otherwise? And should efforts to collect that presumptively nondischargeable debt be exempt from the consequences of violating the discharge injunction?

Debtor filed a Chapter 7 and received a discharge. The “private student loan lender” continued to attempt collection of the debt owed to them. Debtor and Creditors disputed whether the subject debt was discharged under § 523(a)(8). After trial on the issue, the bankruptcy court held that the debt was dischargeable. That conclusion is not on appeal.

The Court further held that the debt to Creditors was not discharged until Debtor obtained a judgment of dischargeability and, as a result, did not assess whether Creditors should be subject to contempt sanctions for violation of the discharge injunction. The bankruptcy court relied on *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 450, 124 S. Ct. 1905, 158 L. Ed. 2d 764 (2004), for the proposition that § 523(a)(8) is "self-executing" and that therefore the debt is not discharged until the court determines otherwise. We believe the bankruptcy court erroneously [*5] interpreted the Supreme Court's decision and the "self-executing" nature of § 523(a)(8). We, therefore, VACATE the portion of the bankruptcy court's ruling that is

inconsistent with this decision and REMAND with instructions to the bankruptcy court to assess whether Creditors should be held in contempt for a violation of the discharge injunction.