



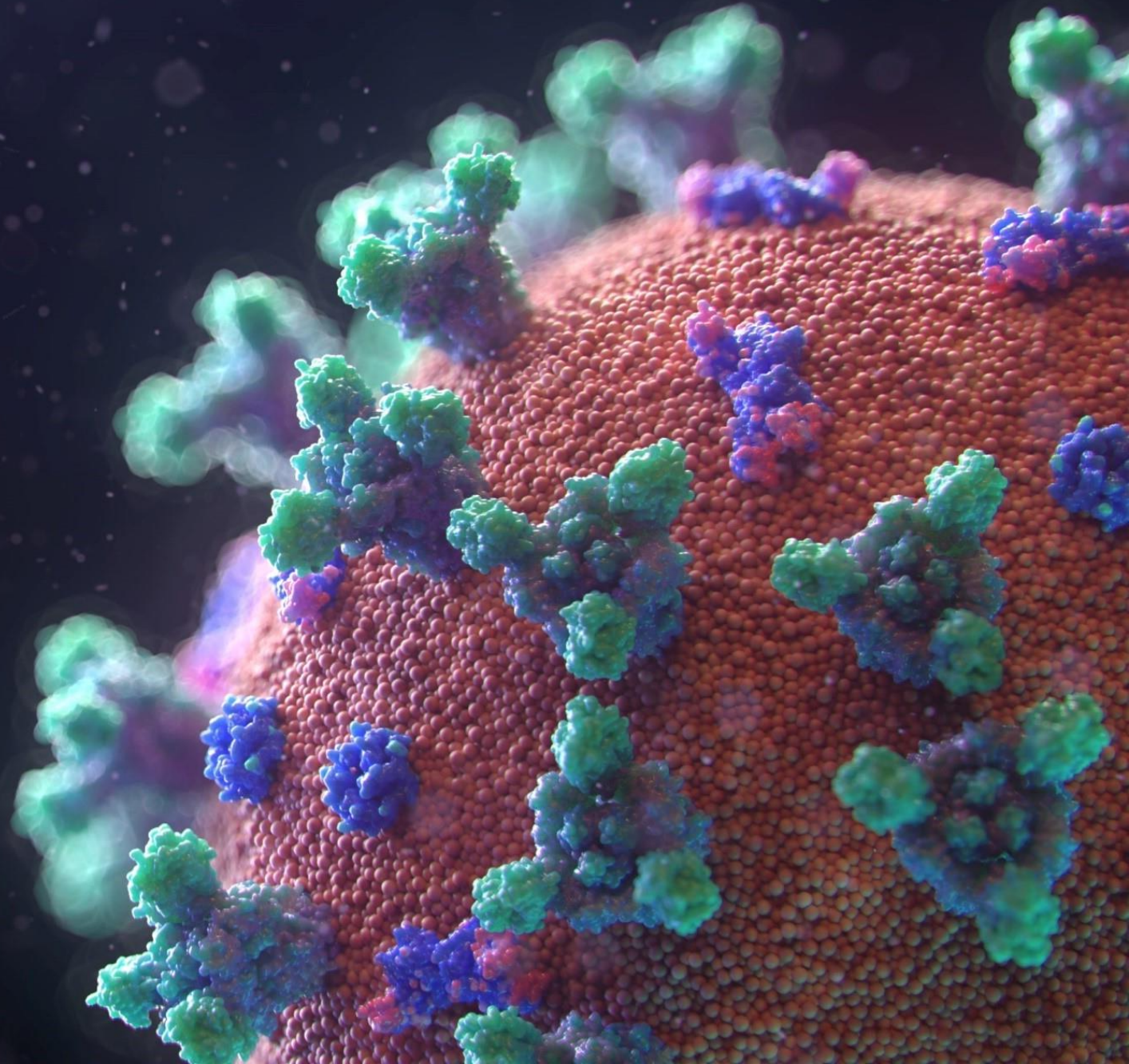
Student Loans and the CARES Act

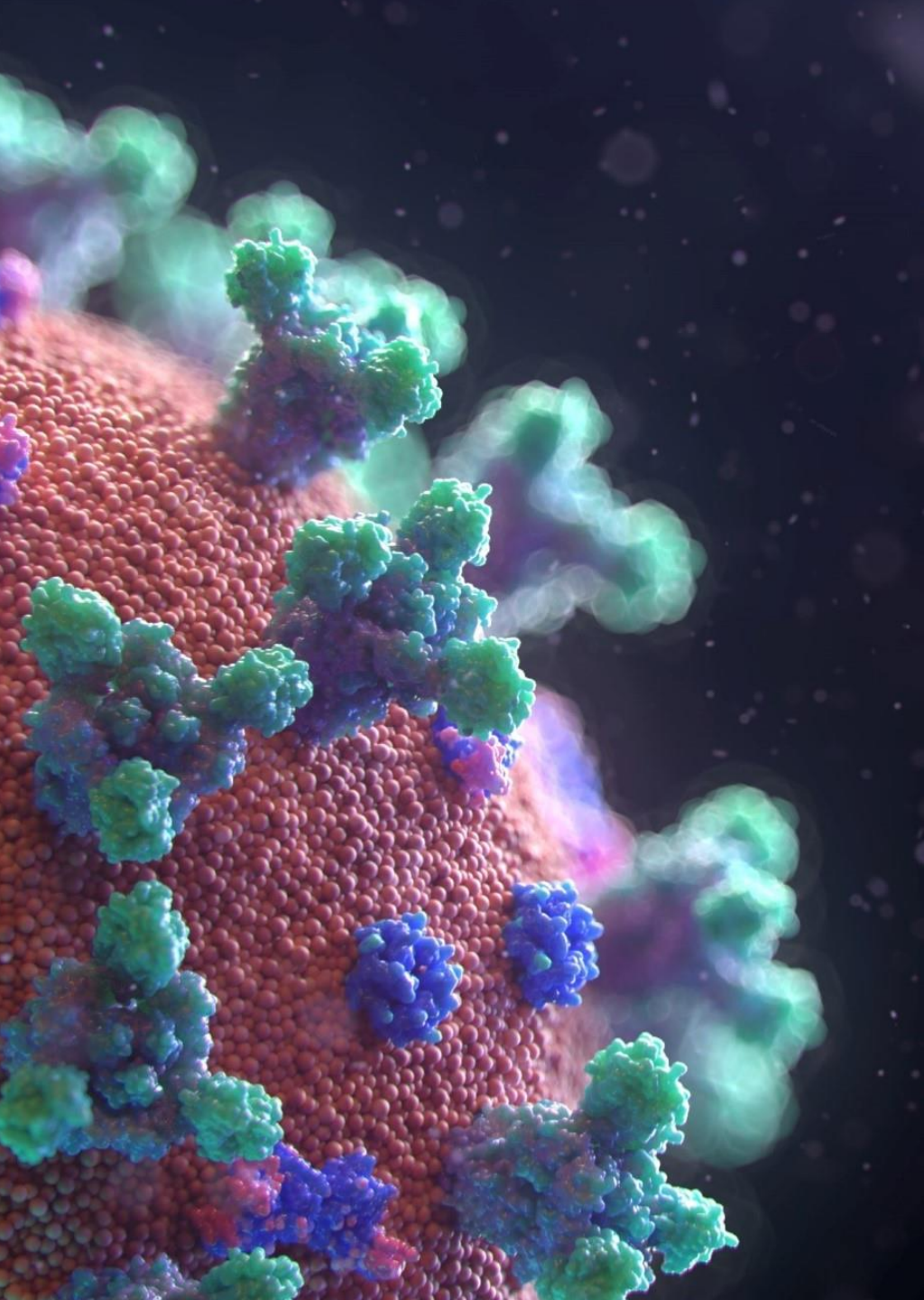
David Bizar
Tonya Esposito
William Hanlon

April 22, 2020

Seyfarth Shaw LLP

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Speakers



David Bizar
Litigation Partner
BOSTON

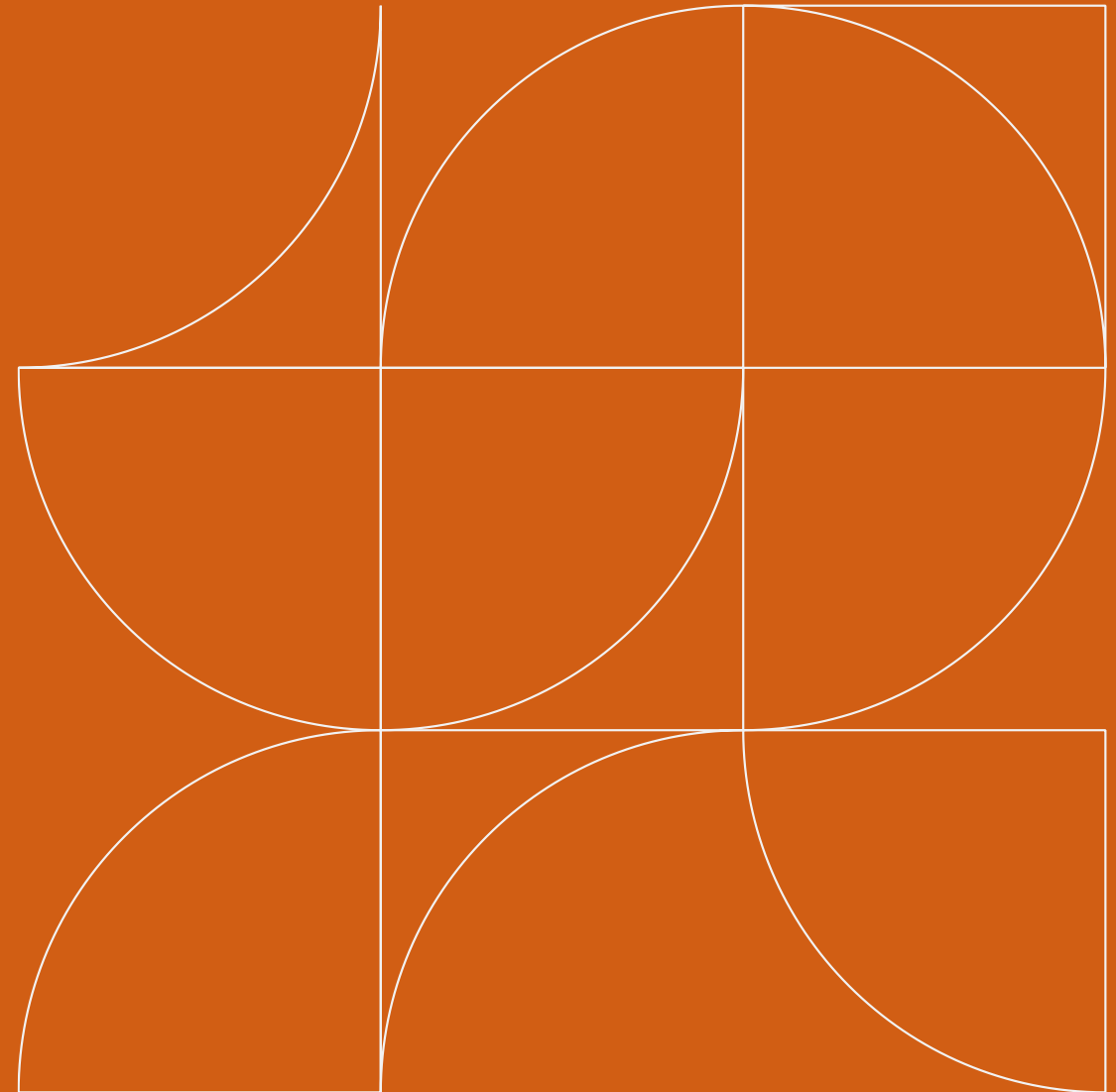


Tonya Esposito
Litigation Partner
WASHINGTON, DC



William Hanlon
Litigation Partner
BOSTON

CARES Act Relief to Student Borrowers



Student borrower relief under CARES Act



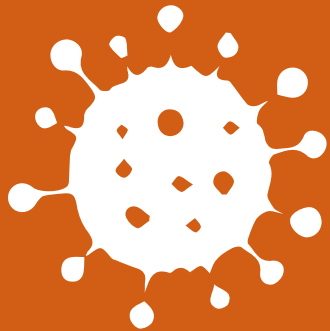
- The CARES Act allows for the following relief to federal student borrowers:
 - Deferral of loan payments until September 30, 2020.
 - Suspension of the accrual of interest until September 30, 2020.
 - Suspension of involuntary collection until September 30, 2020.
 - Suspended payments under the CARES Act may not be reported as a missed payment.
 - Allows employers to contribute up to \$5,250 through the end of the year to each worker's student loan debt, tax free.
 - Stafford loans and Pell grants received for an incomplete semester do not count towards the total number of loans or grants the student is eligible for.

Private student loans



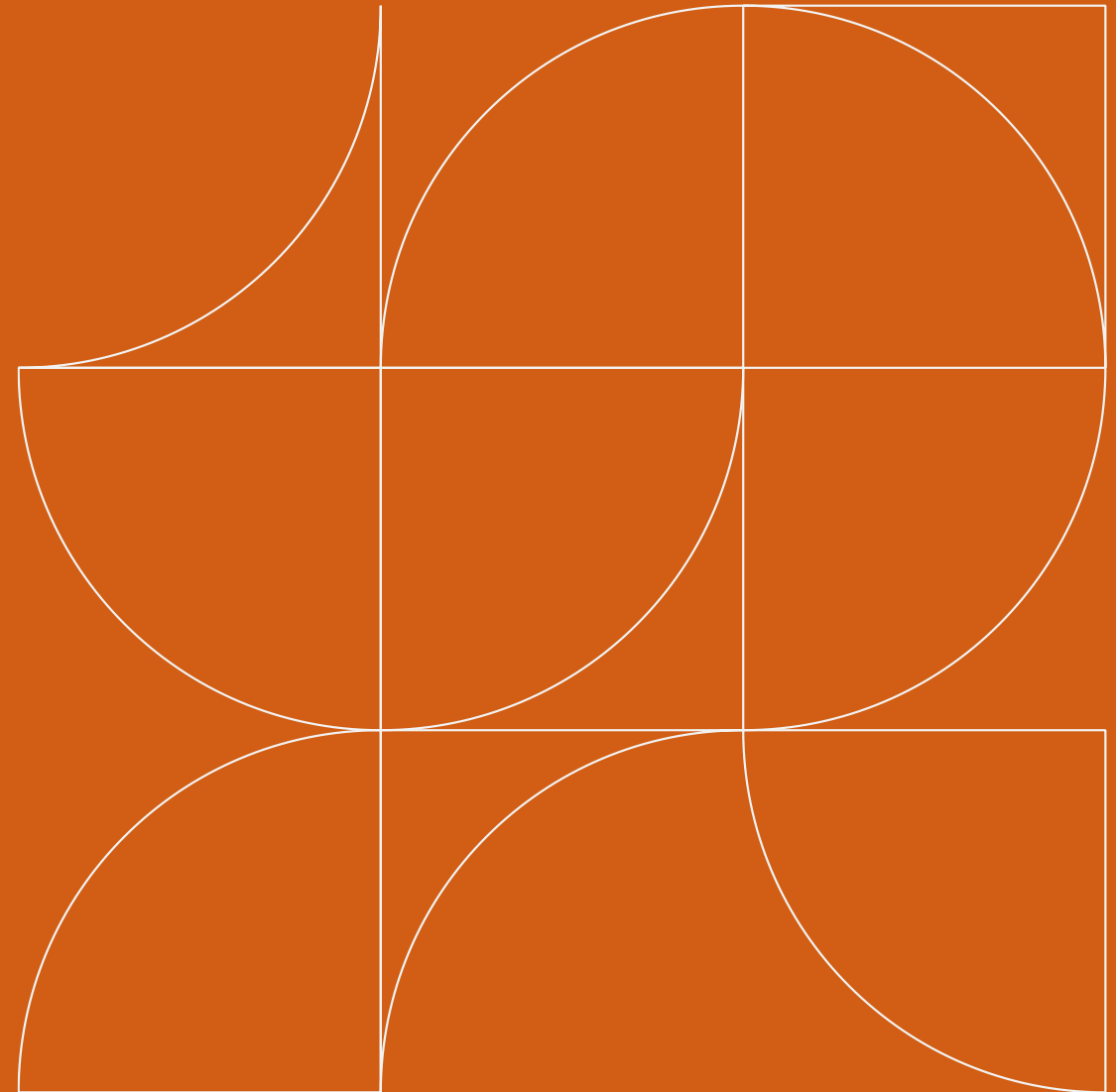
- The CARES Act does not apply to private student loan debtors.
- The CARES Act does amend the Fair Credit Reporting Act (FCRA) to require private furnishers offering accommodations such as deferred payments to report accounts as current, until 120 days after the expiration of the national emergency.
 - Allows pre-existing delinquent accounts to be continued to be reported as delinquent.
- The CFPB is encouraging all private lenders to work with borrowers on forbearance options or other benefits.
- Senators Warren and Brown asked private lenders to:
 - allow borrowers to suspend payments without fees or consequences.
 - suspend interest accrual.
 - halt involuntary collection.
 - discharge debt of distressed borrowers.
 - expand affordable repayment and loan modification options.

Private student loans

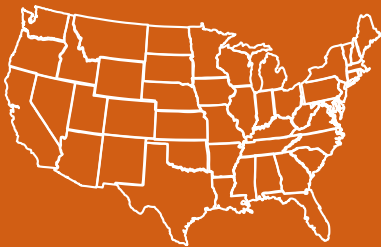


- Many private lenders are offering relief either generally, or to people with demonstrated hardships as a result of COVID-19.
- Business Insider reports at least 25 major private loan servicers are assisting debtors by:
 - Engaging in a case-by-case analysis.
 - 90 day forbearance.
 - Forbearance for the duration of the national emergency.
 - Waiving late fees.
 - Rate reduction program to decrease interest rate and monthly payment.
- Most servicers are continuing to allow interest to accrue.

Restrictions on Collections



Additional Collection Restrictions beyond the CARES Act

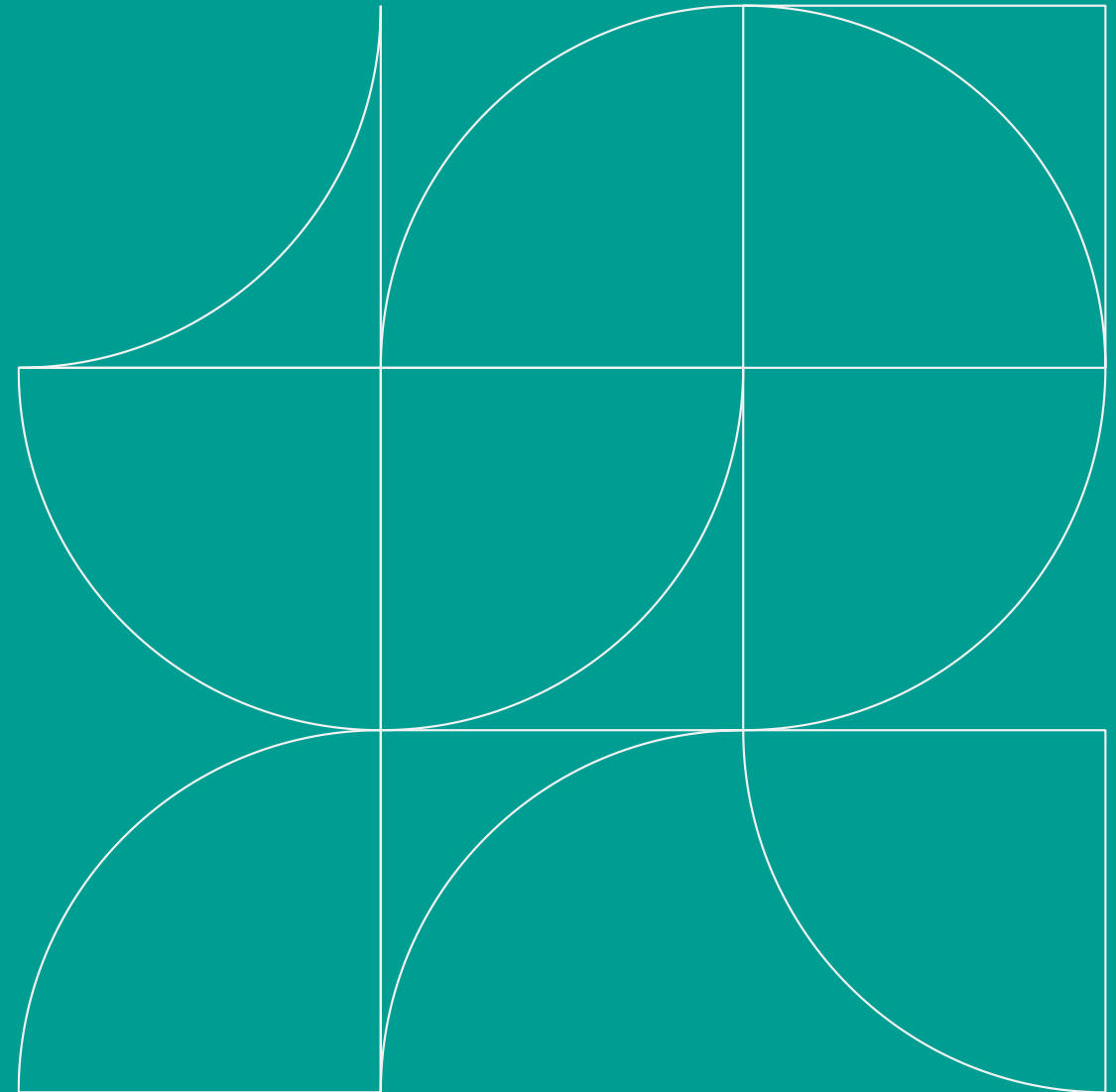


- States have limited or outright prohibited debt collection:
 - WI: published guidance on ordinarily appropriate debt collection activities that may be considered unfair or harassing during the pandemic.
 - NV: Nevada based collection agencies must close; out of state agencies licensed in the state must cease collection.
 - IL: monitoring inconvenient contact times and places changed by the nature of the pandemic; suspension of Illinois Civil Procedure provisions that allow service of garnishment or wage deduction summons, or citations to discover assets.
 - Washington D.C.: no collection lawsuits, garnishments, seizures, attachments, or repossessions during the national emergency and an additional 60 days; debt collectors cannot engage in any communication.
 - NY: banks and debt collectors cannot seize stimulus payments under the CARES act.
 - MA: prohibits debt collection calls, lawsuits, garnishment, or other collection activity during the state of emergency.
 - MN: debt collection workers cannot report to work, but can operate remotely.
 - TX: outlaws wage garnishments.
- Many states outlawing evictions and/or foreclosures.

But....

- Borrowers reporting that the Department of Education suspension of collections has not occurred:
 - tax refunds being seized.
 - technical defaults occurring.
 - garnishment continuing.
- However, the Department of Education has contacted employers of over 135,000 borrowers to attempt to stop garnishments; loan servicers will send letters to those employers who could not be reached.
- Department of Education promised that payments will be provided to those who had part of their tax refund or wages seized.

Issues with Repayment of Loans

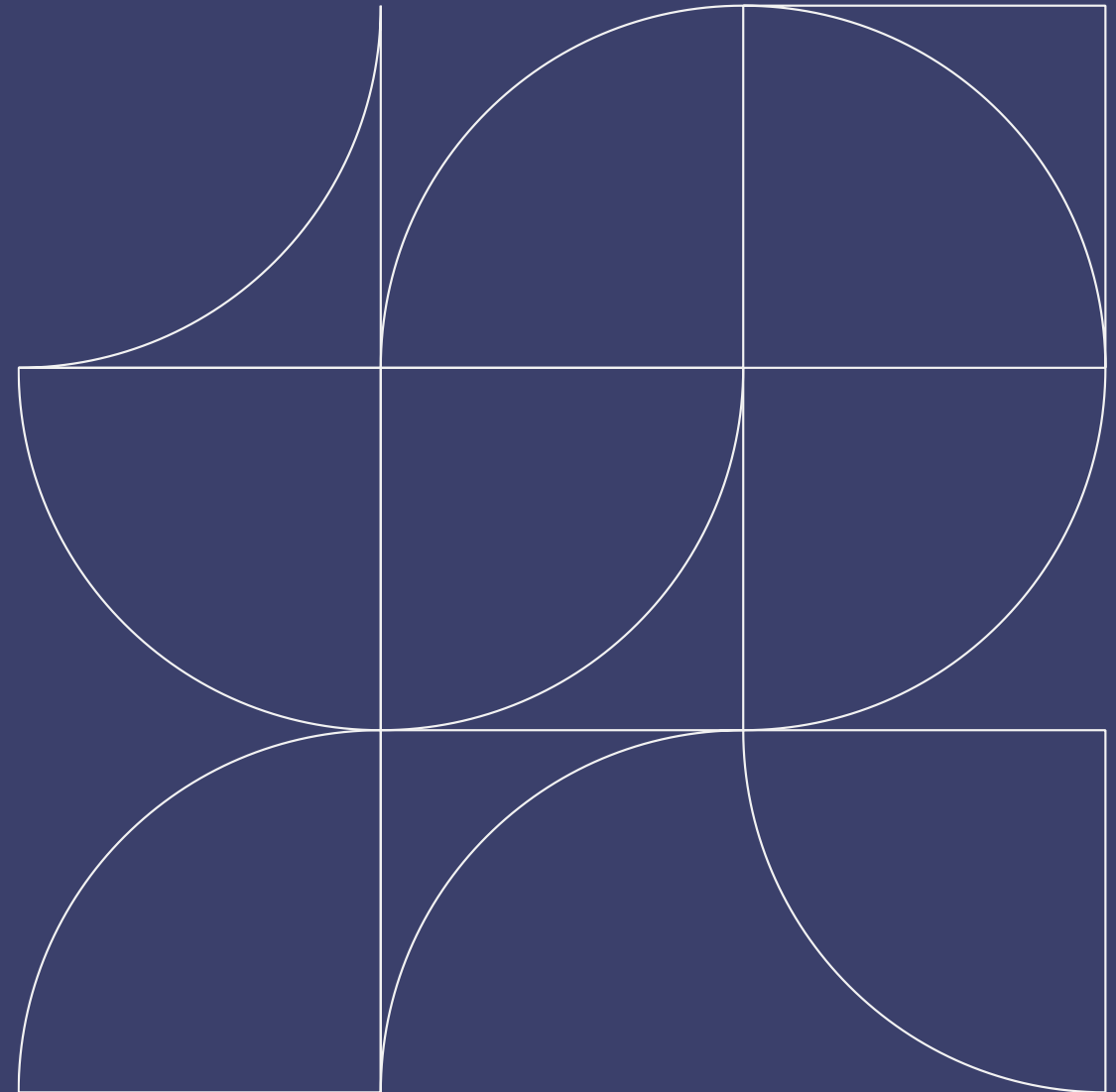


Issues with Student Loan Repayments In the Future



- Students facing costs of being told to leave campus.
- Hiring freezes of many companies.
- Unavailability of traditional summer jobs/internships.
- Restaurants and bars being closed.
- Travel being limited.

Bankruptcy



Cares Act Changes to Chapter 7 and Chapter 13



TEMPORARY CHANGES TO CHAPTER 7 AND CHAPTER 13 OF THE UNITED STATES BANKRUPTCY CODE

- Coronavirus-related payments from the federal government are excluded from the calculation of a debtor's income when determining eligibility for Chapter 7 or Chapter 13.
- Coronavirus-related payments are not considered in determining a debtor's disposable income for a Chapter 13 plan of reorganization.
- The CARES Act allows Chapter 13 debtors who have already confirmed a plan to modify the plan based on a material financial hardship caused by the pandemic, including extending their payments for seven years after their initial plan payment was due.
- The changes apply in pending Chapter 7 and Chapter 13 cases and will be applicable for one year from the effective date of the CARES Act.

Student Loan Discharge Litigation in Bankruptcy



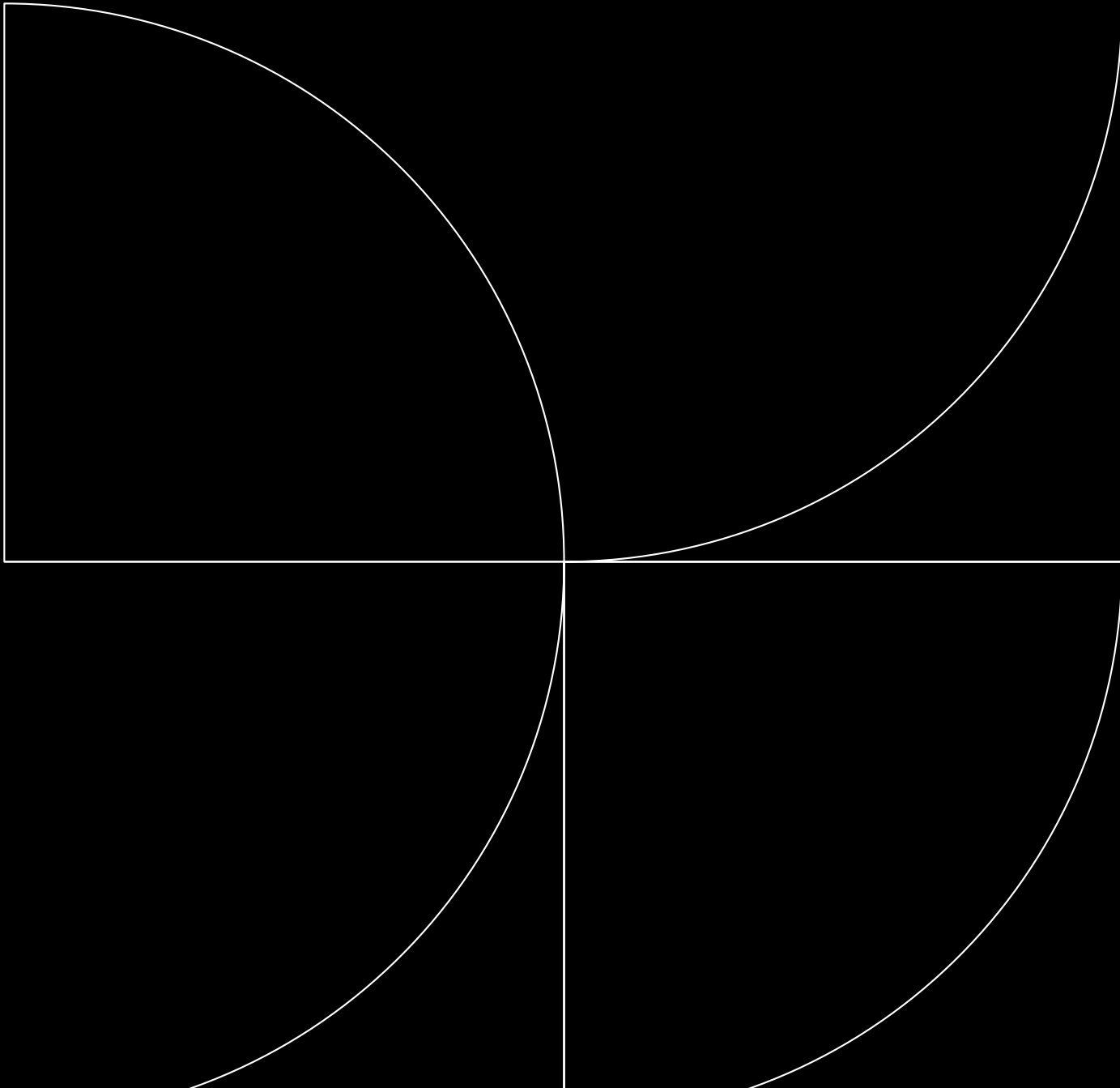
- No changes to dischargeability qualifications under the CARES Act.
- “Undue hardship” remains the standard for discharge.
- Expect challenges to dischargeability to increase. Look for changes in judicial interpretation of undue hardship, increased scrutiny of section 523(a)(8) text and challenges to compliance with servicing requirements.

S.D.N.Y. Bankruptcy Mediation Program



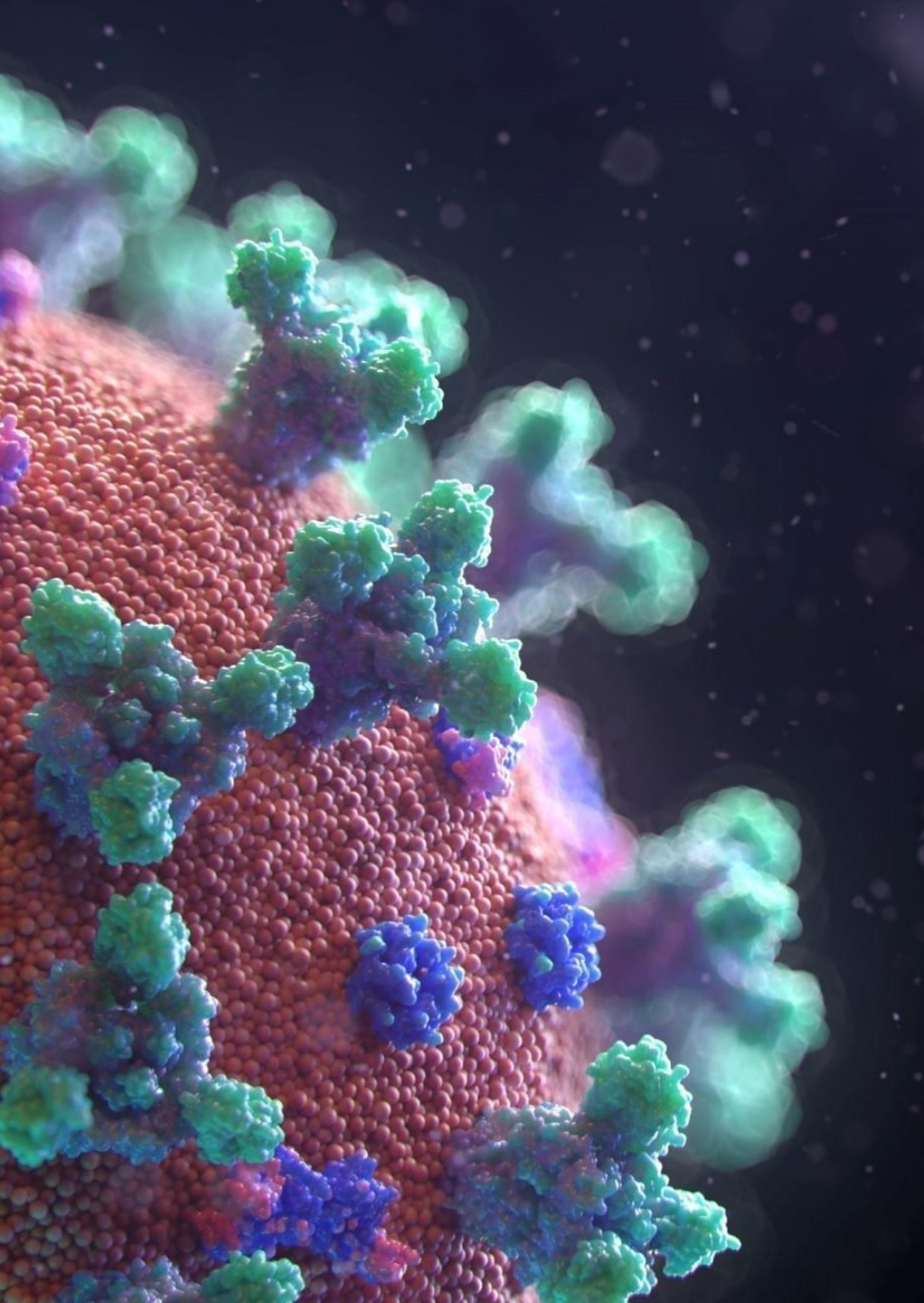
STUDENT LOAN MEDIATION BEFORE LITIGATION PROGRAM

- The S.D.N.Y. bankruptcy “Student Loan Mediation Before Litigation Program” and the Court’s general order extending deadline thereunder to July 7, 2020.
 - Applies to both federal and private student loans.
 - Addresses requests for loan modifications, or assistance in resolving dischargeability disputes.
 - Requires a debtor to certify to have applied for repayment during the bankruptcy but received no response or a response inconsistent with results provided by a third party platform that offers repayment options.
 - Creditors can also request following a debtor’s adversary complaint on dischargeability.
 - Will other districts add something like this?
 - (M.D. Fla.)



Questions?

Thank you



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