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Student Loans and the CARES Act

The Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, is a law meant to address the economic fallout of the 2020 coronavirus pandemic in the United States. Signed in to law on March 27, 2020, the CARES Act provides some relief to federal student loan borrowers. Below are some key points regarding what relief is available, restrictions on collections, issues around future repayment, and how bankruptcy proceedings may come into play.

This is a summary only; please contact a Seyfarth attorney for any legal advice or guidance needed.

What Student Loan Relief is Available Under the CARES Act?

The CARES Act provides a deferral of student loan payments, a suspension of accrual of interest, and suspension of involuntary collection of federal student loans until September 30, 2020. It also allows employers to contribute up to $5,250 through the end of the year to each worker's student loan debt, tax free. Additionally, Stafford loans and Pell grants will not count toward the total number of loans or grants the student is eligible for.

For federal student loans, there may be no penalty to the student from the federal lenders, and suspended payments under the CARES Act may not be reported as a missed payment. It is important to note that the Department of Education has reported the forbearance period for the suspension of payments is retroactive to March 13. If a borrower made a payment between March 13 and March 27, he/she can request a refund from the lender and those requests must be honored.

The CARES Act does not apply to private student loan debtors. The Consumer Financial Protection Bureau has, however, encouraged all private lenders to work with borrowers on some accommodations and many are offering relief either generally or to those who demonstrate financial hardship due to the pandemic. Private lenders have worked with borrowers on a case by case basis offering to extend the length of forbearance, waive late fees, or in some cases, afford rate reductions.

Restrictions on Collection Activities

Some States have become very active in limiting or outright prohibiting certain forms of debt collection and this has applied not just to the collection of student loans but more generically across the country. Actions that they have taken include prohibiting debt collection calls, wage garnishment, lawsuits, and debt collection activities that been deemed to be unfair or harassing during the pandemic. Some States have also outlawed evictions and foreclosures.

Borrowers have reported that not all Department of Education collections have been suspended, complaining that some tax refunds have been seized, technical defaults have occurred and garnishments have continued. In response, the Department of Education has contacted employers of over 135,000 borrowers to attempt to stop garnishments and has promised that that payments will be provided to those who had part of their tax refund or wages seized.

How Has COVID-19 Affected Future Loan Repayments?

The economic impact of the national emergency has greatly affected borrowers' ability to repay loans in the future. Many companies have instituted layoffs, furloughs and hiring freezes, and traditional summer jobs and internships have disappeared. With the closing of restaurants and bars, the hospitality industry has received a tremendous blow; one that is likely to be long term. These jobs and seasonal opportunities are often how students make their income so the loss of opportunities will greatly impact a student's ability to repay loans. The growth of unemployment in the country has also impacted co-borrowers' ability to repay loans. Unfortunately, these factors could lead to an increase in bankruptcy filings.

How the CARES Act Impacts Bankruptcy Filings

The CARES Act has introduced some temporary changes to Chapter 7 and Chapter 13 of the US Bankruptcy Code:

- One-time coronavirus-related payments are excluded from the calculation of a debtor's income when determining eligibility for Chapter 7 or Chapter 13.
- These payments are also not considered in determining a debtor's disposable income for a Chapter 13 plan of reorganization.
- The act also allows existing Chapter 13 debtors who have committed to repaying their creditors within a five year period to extend that period to seven years.

These temporary changes will expire one year from the effective date of the act.

The CARES Act did not change the standard for dischargeability. Student loans have not been eligible for discharge in bankruptcy proceedings and "undue hardship" still remains the standard for discharge. We anticipate that there may be an increase in the number of challenges brought by borrowers to dischargeability of student loans, and potentially changes to the judicial interpretation of what constitutes an "undue hardship."

Another possible change on the horizon might be that other districts might add a program similar to the Southern District of New York bankruptcy court's Student Loan Mediation Before Litigation Program. The program is designed to facilitate student loan negotiations and provides a buffer to litigation, giving debtors and lenders and opportunity to talk in an environment designed to help them resolve their differences regarding debt repayment or discharge.

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