

PRESENTED AT

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**ABI Consumer Commission Report:
Selected Topics of Interest
in Chapter 13 Cases**

Beverly M. Burden
Chapter 13 Trustee, Eastern District of Kentucky
Lexington, KY

Marcos D. Oliva
Oliva Law
McAllen, TX

Marcos D. Oliva
Oliva Law
McAllen, TX
marcos@oliva.law
956-683-7800

Beverly M. Burden
Chapter 13 Trustee EDKY
Lexington, KY
bburden@ch13edky.com
859-233-1527

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Introduction:

The Final Report of the ABI Commission on Consumer Bankruptcy was made public on April 11, 2019. The full report is available for free at <https://consumercommission.abi.org/commission-report>.

Each of the Commission's recommendations is summarized in the full Report in bold text boxes. Those summaries are set forth in these materials for the following selected topics relating to chapter 13 practice:

§ 1.01 Student Loans

§ 2.05 Repeat Filers

§ 2.07 Improvements to Federal Rule of Bankruptcy Procedure 3002.1 – Payment Change Notices and Notices of Final Cure

§ 3.03 Presumptively Reasonable Attorney's Fees in Chapter 13's

§ 3.04 Attorney Competency & Remediating Lawyer Misconduct

§ 3.10 Debt Limits

§ 4.01 Racial Justice in Bankruptcy

§ 4.03 Reserve Fund in Chapter 13 Cases

§ 4.04 Chapter 13 Transfer of Debtor's Principal Residence Subject to an Underwater Mortgage

Reference should be made to the full Report for discussion and reasons for the Commission's recommendations.

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§ 1.01 Student Loans

(a) Bankruptcy Code Amendments.

(1) Section 523(a)(8) should except from discharge only student loans that

(A) were made, insured, or guaranteed by a governmental unit,

(B) were incurred for the debtor's own education, and

(C) absent a showing of undue hardship, first became payable less than seven years before the bankruptcy case was filed, regardless of any suspension of payments.

(2) Section 507(a) should have a new, eleventh priority for claims excepted from discharge under § 523(a)(8).

(3) Section 1322(a) should allow the plan to provide for less than full payment of all amounts owed for a claim entitled to the student loan priority only if the plan provides that all of the debtor's projected disposable income for a five-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(4) Section 1322(b)(10) should provide that it does not apply to priority unsecured debts.

(b) Promulgation and Interpretation of Regulations. Through regulations or interpretive guidance, the Department of Education should provide the following with respect to governmental student loans:

(1) Bright-line Rules. Creditors should not oppose discharge proceedings where the borrower meets any of a set of the criteria below. These criteria should be set out in federal guidelines that indicate household financial distress and therefore undue hardship:

(A) Disability-based guidelines. The borrower (i) is receiving disability benefits under the Social Security Act or (ii) has either a 100% disability rating or has a determination of individual unemployability under the disability compensation program of the Department of Veterans Affairs.

(B) Poverty-based guidelines.

(i) In the seven years before bankruptcy, the borrower's household income averaged less than 175% of the federal poverty guidelines.

(ii) At the time of bankruptcy, the borrower's household income is less than 200% of the federal poverty guidelines and (I) the borrower's only source of income is from Social Security benefits or a retirement fund or (II) the borrower provides support for an elderly, chronically ill, or disabled household member or member of the borrower's immediate family.

(2) Avoiding Unnecessary Costs. Creditors should accept from the borrower proof of undue hardship based on the above criteria without engaging in formal discovery. [Continued on next page]

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