Student Loans In and Out of Bankruptcy

UTCLE: 16th Annual Consumer Bankruptcy Conference

Julianne M. Parker
Fears Nachawati PLLC

Judge Chris Lopez
Bankr. S.D. Texas

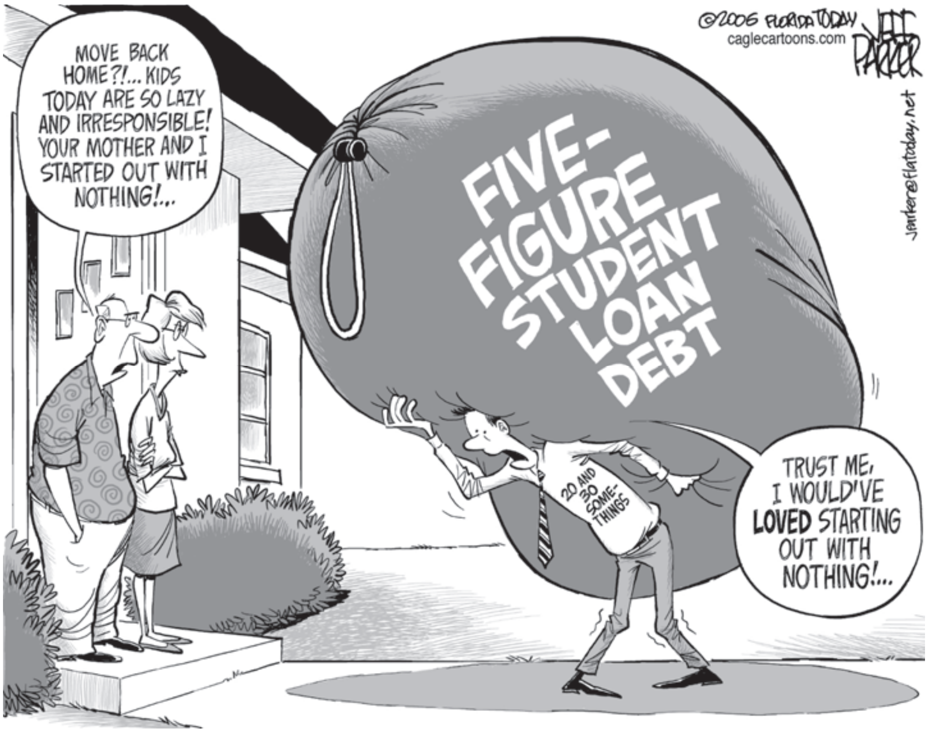
Current State of Student Loans in the U.S.

Student loan debt currently totals about $1.56 trillion

Approximately 45 million borrowers in the U.S.

- Median student loan debt is $17,000
- Average student loan interest rate is 5.8%

Student loan debt is now the second highest consumer debt–behind only mortgage debt–and higher than both credit card and auto loan debts



A Brief History of Student Loans in Bankruptcy Cases

- **Education Amendments Act of 1976**
  - Barred discharge of qualified student loans, absent undue hardship, for a period of five years from the date payments commenced
- **Bankruptcy Code Amendments of 1978**
  - The student loan exception to discharge was moved from the Higher Education Act to the Bankruptcy Code
  - Expanded to include private loans backed by non-profit institutions
  - 5-year period ran from the date the loan "first become due," no tolling period during any suspension

A Brief History of Student Loans in Bankruptcy Cases

- **1990 Bankruptcy Code Amendments**
  - Increased discharge bar period from 5 to 7 years

- **1998 Bankruptcy Code Amendments**
  - Removed 7-year time bar, thereby requiring a showing of undue hardship to discharge a government-backed loan or a private loan backed by a non-profit

- **2005 Bankruptcy Code Amendments**
  - Expanded the type of loans excepted from discharge, absent a showing of undue hardship

  - Absent a showing of undue hardship, all qualified loans, including most private loans, now excepted from discharge

Title search: Student Loans In and Out of Bankruptcy

Also available as part of the eCourse
Hooked on CLE: October 2020

First appeared as part of the conference materials for the
16th Annual Conference on Consumer Bankruptcy Practice session
"Student Loans In and Out of Bankruptcy"