

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

ADOPTION OF STUDENT LOAN
MEDIATION BEFORE LITIGATION
PROGRAM PROCEDURES

General Order M-536

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By resolution of the Board of Judges of the United States Bankruptcy Court for the Southern District of New York, it is decided that a uniform, comprehensive, court-supervised student loan mediation program will facilitate consensual resolutions of student loan issues for the benefit of debtors and lenders. Accordingly, the "Student Loan Mediation Before Litigation Program Procedures" annexed to this order are adopted.

It is also decided that the Student Loan Mediation before Litigation Program Procedures and forms for requesting student loan mediation shall be available in the clerk's office and on the court's web site. The Court may modify the Student Loan Mediation Program Procedures from time to time by duly adopted General Order, making the revised Student Loan Mediation Program Procedures available in the clerk's office and on the court's web site immediately.

NOW, THEREFORE, IT IS ORDERED that the Student Loan Mediation Before Litigation Program Procedures are adopted, effective January 27, 2020.

Dated: January 27, 2020
New York, New York

/s/ Cecelia G. Morris

Honorable Cecelia G. Morris
Chief United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
STUDENT LOAN MEDIATION BEFORE LITIGATION PROGRAM
PROCEDURES**

Many student loan borrowers file bankruptcy cases based in part on financial difficulties repaying their student loans. Many borrowers are unaware of the available options for student loan modification. To facilitate the resolution of student loan issues for the benefit of debtors and lenders, effective January 27, 2020, the United States Bankruptcy Court for the Southern District of New York prescribes the following district-wide program for debtors and their student loan lenders to seek repayment options through a student loan mediation before litigation program (“SLM” or “SLM Program”).

I. PURPOSE

The SLM Program creates a forum for debtors and lenders to discuss consensual repayment options for any Student Loan (defined below). The SLM Program facilitates two different types of Student Loan negotiations: (1) requests for Student Loan Repayment Option relief, such as a loan modification, and (2) requests for the resolution of disputes over the dischargeability of a Student Loan debt. SLM Parties (defined below) may request SLM with respect to either type of negotiation by filing and serving such a request as provided herein (<http://www.nysb.uscourts.gov/student-loan-mediation-litigation-program>). The goal of SLM is to ensure communication and the exchange of information in an efficient and transparent manner and to encourage the parties to finalize a feasible and beneficial agreement under the administrative oversight of the United States Bankruptcy Court for the Southern District of New York.

For the sake of clarity, the SLM Program is a process to facilitate communication and promote settlement between the SLM Parties. While, the Court may ask a Party (defined below) to participate in SLM, the Court may not compel any SLM Party to offer any specific relief or enter into any agreement or outcome.

II. DEFINITIONS

The following definitions apply to the SLM Program:

A. CREDITOR

The term “Creditor” refers to any holder, guarantor, governmental unit, or trustee of a Student Loan.

B. DEBTOR

The term “Debtor” means any individual debtor in a case filed under Chapter 7, 11, 12 or 13 of the Bankruptcy Code, including joint debtors.

C. DISCHARGEABILITY DISPUTE

The term “Dischargeability Dispute” refers to any dispute, whether raised solely in the context of SLM or in an adversary proceeding, over whether a Student Loan is dischargeable under 11 U.S.C. § 523(a)(8).

D. INITIAL SLM PACKAGE

The term “Initial SLM Package” refers to Standard SLM Documents and supporting documentation as designated by each Creditor/Servicer to initiate the assessment of Debtor’s Student Loan repayment options. In addition, when the Debtor has requested Student Loan Repayment Option relief, the Initial SLM Package shall include the Creditor/Servicer’s reasonably detailed response to the Debtor’s Student Loan Application (defined below) portal report.

E. SERVICE

The term “Service” shall have the same meaning as under the Federal Rules of Bankruptcy Procedure, except that:

- i. If the Debtor is requesting SLM with the United States, the request must be served at the following addresses:

General Counsel or Deputy General Counsel
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

United States Attorney General
Attention: Tax and Bankruptcy Unit
86 Chambers Street, 3rd Floor
New York, NY 10007

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

- ii. If a Creditor is a domestic or foreign corporation, partnership, or other unincorporated association, service must be made by mailing a copy of the plan to a physical address and to the attention of an officer and to its Servicer at a physical address.

F. SLM PARTIES or PARTY

The terms “SLM Parties” or “Party” refers to the Debtor, Debtor’s attorney (if any), Creditor/Servicer, and Creditor/Servicer’s attorney (if any).

G. STUDENT LOAN

The term “Student Loan” shall have the same meaning as a debt that may be excepted from discharge under 11 U.S.C. § 523(a)(8) as “an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or an obligation to repay funds received as an educational benefit, scholarship, or stipend; or any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual,” or as such provision of 11 U.S.C. § 523(a)(8) may be further amended.

H. STUDENT LOAN REPAYMENT OPTION relief

The term “Student Loan Repayment Option relief” refers to the full range of solutions available to the Debtor on the Student Loan, including, but not limited to, deferment, forbearance, rehabilitation, consolidation, and income-based repayment plans, but not settlement of a Dischargeability Dispute.

I. STUDENT LOAN APPLICATIONS

The term “Student Loan Applications” refers to platforms that help Debtors choose repayment options, one of which can be found at <https://www.studentloanify.com>.

III. ELIGIBILITY

- A. Any Debtor who has a Student Loan and a case pending before the United States Bankruptcy Court for the Southern District of New York may participate in the SLM Program.
- B. To be eligible to request SLM for Student Loan Repayment Option relief, a Debtor must [certify](#):
- i. That, during the pendency of the bankruptcy case, an application for Student Loan Repayment Option relief was made through a Student Loan Application by mailing such package to the Creditor and the Servicer, if any; and that no response was received for at least 45 days after such mailing, or a response was received but was inconsistent with the results provided by the Student Loan Application. Any communications by a Creditor or Servicer in response to a debtor's application under this paragraph, including any explanation of available loss mitigation programs and any offer of settlement by the Creditor or Servicer, provided that it is made in the context of SLM and is not accompanied by any act to collect, assess, or recover a claim against the Debtor or property of the estate that is not subject to Court approval, does not constitute a violation of the automatic stay; or
 - ii. That the Student Loan is dischargeable under § 523(a)(8) and that Student Loan Repayment Option relief is not being sought at this time.
- C. If a Debtor chooses to proceed under III.B.i., the Debtor must also certify that Creditor/Servicer received notification that a failure to respond to the Student Loan Repayment Option application within 45 days of the application would trigger the Debtor’s request for SLM.

IV. ADDITIONAL PARTIES

A. ADDITIONAL CREDITORS

Where it may be necessary or desirable to obtain a global resolution, any Party may request, or the Bankruptcy Court may direct, that multiple Creditors participate in the SLM Program.

B. CO-DEBTORS AND THIRD PARTIES

Where the participation of a co-debtor or other third party may be necessary or desirable, any Party may request, or the Bankruptcy Court may direct, that such party participate in the SLM Program, to the extent that the Bankruptcy Court has jurisdiction over the party, or if the party consents to participation in SLM.

C. MEDIATOR

At any time, a Party may request, or the Bankruptcy Court may order, the appointment of a mediator from the United States Bankruptcy Court for the Southern District of New York's [Register of Mediators](#).

V. COMMENCEMENT OF SLM

A. A Debtor may request SLM before filing an adversary proceeding to determine a Dischargeability Dispute.¹

B. A Creditor may request SLM at any time after the filing of an adversary proceeding to determine a Dischargeability Dispute but no later than the filing of an answer or a motion permitted by Federal Rule of Bankruptcy Procedure 7012.²

C. SLM must be initiated by filing a request for SLM (the "[SLM Request](#)"³). The "[SLM Request](#)" shall be made by the initiating Party, who shall file a proof of service on the Electronic Case Filing System ("ECF"). If the other Party fails to object within fourteen (14) days of service, the initiating Party shall promptly submit an order approving the SLM Request (the "[SLM Order](#)") and the Bankruptcy Court may enter the order. In order to request SLM on a different Student Loan, the Debtor must file a separate *SLM Request*.

D. Where any Party objects to the SLM Request, such objection must be filed on ECF and served upon the requesting party, and a "[SLM Order](#)" shall not be entered until the Bankruptcy Court has held a hearing to consider the objection. At the hearing, a Party objecting to SLM must be prepared to present evidence as to why it believes that SLM would not be successful. If a Party objects on the grounds that SLM has been requested in bad faith, the assertion must be supported by evidence.

¹ Pursuant to this Court's Local Rule 9019-3: "Upon the filing an adversary proceeding to determine the dischargeability of a debt under 11 U.S.C. § 523(a)(8), the Plaintiff must indicate in the Complaint whether SLM was requested."

² Pursuant to this Court's Local Rule 9019-3, "Upon the filing of an answer or a motion filed under Fed. R. Bankr. P. 7012" in a proceeding under 11 U.S.C. § 523(a)(8), "a party must indicate in such pleading whether SLM was requested."

³ Italicized words in quotations indicate that there is a form by the same name on the Bankruptcy Court's website. These forms should be used whenever applicable.

VI. SLM ORDER

- A. Where there is no objection and the notice period has passed or if the Court grants SLM over an objection, an “*SLM Order*” shall be entered.
- B. A separate “*SLM Order*” shall be submitted to the Court for each “*SLM Request*.”
- C. Upon entry of the *SLM Order*, Service of the SLM Order must be made by the initiating Party with proof of service filed on ECF.
- i. The Order must be served upon the following:

General Counsel or Deputy General Counsel
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

United States Attorney General
Attention: Tax and Bankruptcy Unit
86 Chambers Street, 3rd Floor
New York, NY 10007

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
 - ii. If a Creditor is a domestic or foreign corporation, partnership, or other unincorporated association, service must be made by mailing a copy of the Order to a physical address and to the attention of an officer and it’s Servicer, if known.
- D. The entry of a *SLM Order* will stay any motion to lift the automatic stay pertaining to the Student Loan and/or adversary proceeding pertaining to a Dischargeability Dispute regarding the Student Loan.
- E. An “*SLM Order*” shall contain time frames for the following:
- i. The date by which the SLM Parties shall designate contact persons who, unless otherwise ordered by the Court, shall be the Parties’ counsel, if represented by counsel, and disclose contact information.
 - ii. The date by which the Creditor/Servicer must transmit the Initial SLM Package to the Debtor.
 - iii. The date by which the Debtor must transmit any information requested to the Creditor/Servicer.
 - iv. The date by which a written status report must be filed and the date and time set for a status conference at which a verbal report must be provided. Where a written report is required, it should generally be filed not later than seven (7) days before the initial SLM

status conference (“Initial Status Conference”).

F. Whenever a “*SLM Order*” is entered, the following shall apply:

- i. Unless otherwise ordered by the Bankruptcy Court, all communications between SLM Parties represented by counsel shall be made through the designated counsel.
- ii. Any adversary proceeding under § 523(a)(8) filed prior to the entry of the “*SLM Order*” shall be adjourned to a date after entry of the “*Order Terminating SLM and Final Report*.”
- iii. In a Chapter 13 case, the deadline by which a Creditor must object to confirmation of the Chapter 13 plan shall be extended to permit the Creditor/Service an additional fourteen (14) days after entry of the “*Order Terminating SLM and Final Report*.”
- iv. All communications and information exchanged by the SLM Parties during SLM will be inadmissible to the extent set forth by Federal Rule of Evidence 408.
- v. Nothing in these Procedures shall be construed to render dischargeable a debt that would be non-dischargeable under 11 U.S.C. § 523(a)(8), or render non-dischargeable a debt that would be dischargeable under such section.
- vi. The case shall not be closed until at least 14 days after the entry of the *Order Terminating SLM and Final Report*.
- vii. For the duration of SLM, the automatic stay will be lifted solely to permit conversations/communication/proposals about the Student Loan as well as ongoing payments thereof.⁴

VII. GOOD FAITH

The SLM Parties shall negotiate in good faith. Good faith includes a duty by the Creditor to accept a Debtor’s postpetition Student Loan payments as provided by the SLM Program and Local Rule 9019-3. A Party that fails to participate in SLM in good faith may be subject to sanctions.

VIII. CONTACT INFORMATION

Unless a SLM Party has already done so as part of a SLM Request, each SLM Party shall provide written notice to the others by serving its affidavit on the other SLM Parties in which it identifies: (1) the name, address and direct telephone number of the contact person who has full settlement authority; and (2) the name of the attorney representing it in the SLM, if any.

IX. STATUS REPORTS

The SLM Parties shall file and provide a written report to the Bankruptcy Court regarding the status of SLM within the timeframe set by the Bankruptcy Court in the “*SLM Order*.”

⁴ The Parties should understand that if the Student Loan was current prepetition, the commencement of the bankruptcy case should not result in a default thereunder if such payments continue postpetition. See 11 U.S.C. §§ 1124, 1222(b)(2), and 1322(b)(2). See also *In re Sokolowski*, 205 F.3d 523 (2d Cir. 2000); *In re Boodrow*, 126 F.3d 43 (2d Cir. 1997), cert., denied, 522 U.S. 1117 (1998).

X. STATUS CONFERENCES WITH THE BANKRUPTCY COURT

The Initial Status Conference shall be set by the Bankruptcy Court in the “*SLM Order*” and may be adjourned at the discretion of the Bankruptcy Court. At any time during the pendency of SLM, a SLM Party may request a settlement conference or status conference with the Bankruptcy Court.

XI. SETTLEMENT

- A. A settlement may be noticed and implemented in any manner permitted by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), including, but not limited to, a stipulation, sale, plan of reorganization or amended plan of reorganization, and a motion to approve SLM settlement.
- B. Fees, Costs or Charges: If a settlement provides for a Creditor to receive payment or reimbursement of any fee, cost or charge that arose from SLM, such fees, costs or charges shall be disclosed to the Debtor and to the Bankruptcy Court in the relevant pleading for approval of the settlement.
- C. Signatures: Consent to the settlement shall be acknowledged in writing by: (1) the Creditor representative who participated in SLM, (2) the Creditor’s attorney, if applicable. (3) the Debtor, and (4) the Debtor’s attorney, if applicable.
- D. Hearing: Where a Debtor is represented by counsel, no hearing to approve a SLM settlement is required and may be sought on presentment, pursuant to Local Rule 9074-1. Where a Debtor is not represented by counsel, a request for approval of a SLM settlement shall not be granted until after the Bankruptcy Court has conducted a hearing at which the Debtor shall appear in person.
- E. Dismissal Not Required: A Debtor is not required to request dismissal of the bankruptcy case in order to effectuate a SLM settlement.
- F. Any request of Bankruptcy Court for approval of a SLM settlement shall have the Agreement and the proposed order attached as an exhibit.
- G. Any motion to approve a SLM settlement that includes forgiveness of indebtedness must highlight such forgiveness and address its potential tax effects.

XII. ORDER TERMINATING SLM AND FINAL REPORT

- H. Once an SLM Order has been entered by the Bankruptcy Court, it shall remain in effect until an “*Order Terminating SLM and Final Report*” is filed.

I. A Party may request that SLM be terminated by filing a letter stating the reasons for the termination. Except where immediate termination is necessary to prevent irreparable injury, loss or damage, the request shall be made on notice to all other SLM Parties, and the Party requesting termination shall schedule a hearing to consider the termination request.

J. The Bankruptcy Court may terminate SLM *sua sponte* at any time for failure to comply with the SLM Program Procedures.

K. The SLM Parties are responsible for the submission of a proposed “*Order Terminating SLM and Final Report*” to the Court promptly after termination of SLM by the Bankruptcy Court or when the Bankruptcy Court approves a SLM settlement that has been presented to the Court.

L. Where a case has two or more requests for SLM, a separate “*Order Terminating SLM and Final Report*” must be filed for each request.

XII. FORMS

All SLM forms may be found on the Bankruptcy Court’s website on the “[Student Loan Mediation Program](#)” page. These forms must be used. The Bankruptcy Court may revise the forms from time to time without the need to update these SLM Program Procedures.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: _____

Chapter _____

Case No. _____ - _____ (____)

Debtor(s).
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SLM REQUEST

_____ hereby requests SLM under the Student Loan Mediation Before Litigation Program Procedures of the United States Bankruptcy Court for the Southern District of New York (“SLM Program Procedures”) with respect to *[Identify the last four (4) digits of account number and Creditor for which you are requesting SLM]*:

I have reviewed the SLM Program Procedures, and I understand that if the Court orders SLM in this case, I will be bound by the SLM Program Procedures.

I agree to comply with the SLM Program Procedures, and I will participate in SLM in good faith.

I understand that SLM is voluntary for all parties, and that no party is required to enter into any agreement or settlement with any other party as part of this SLM.

I understand that the Debtor is not required to request dismissal of this case as part of any resolution or settlement that is offered or agreed to during the time that the SLM is pending.

I hereby certify that

Debtor has made an application on _____, for Student Loan Repayment Option relief by using a Student Loan Application portal and mailing the application to the Creditor and has not received a response from the Creditor within 45 days, or Creditor has responded in a way that is not consistent with the Student Loan Application portal’s results , and that Creditor was notified in such request that its failure to respond timely to the application could lead to this request; or

Debtor contends that the Student Loan is dischargeable under 11 U.S.C. § 523(a)(8); but does not seek Student Loan Repayment Option relief at this time;

An adversary proceeding has been filed seeking a declaration that the Student Loan is dischargeable.

The primary contact for the requesting party is _____, _____, _____.

Sign: _____

Date: _____, 20_____

<p>UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</p> <p>-----X</p> <p>In re:</p> <p style="text-align: center;">Debtor(s).</p> <p>-----X</p>		<p>Case No. - ()</p> <p>Chapter</p>
<u>SLM ORDER</u>		

A SLM Request was filed on *[Date]* _____, 20__;

Pursuant to the SLM Program Procedures, the parties have had notice and an opportunity to object, and [there has been no objection] [the objection to the request has been denied]. Upon the foregoing, it is hereby

ORDERED, that the following SLM Parties are directed to participate in SLM on the Loan ending in *[last four (4) digits of account number]*:

1. The Debtor, *[name of Debtor]*;
2. The Creditor, *[name of Creditor]*, The Servicer, *[Name of Servicer]* with respect to *[borrower/obligor's name]*; and
3. Any additional non-SLM Parties (as applicable).

ORDERED, that the SLM Parties shall comply with the Southern District of New York SLM Program Procedures; and it is further

ORDERED, that the SLM Parties are required to communicate but nothing in this Order should be construed as compelling any SLM Party to offer or accept any settlement terms except on a voluntary basis; and it is

ORDERED, that the SLM Parties shall observe the following deadlines:

- **Within 7 days of the entry of this Order:** this Order must be served pursuant to the SLM Program Procedures and an affidavit of service must be filed on the Court's Electronic Case Filing System ("ECF").

If the Debtor seeks Student Loan Repayment Option relief, the Debtor's Student Loan Application portal results must be included with the service of this Order.

- **Within 14 days of the service of this SLM Order:**
 - **Designation of Contact Persons:** Each SLM Party shall designate contact persons, and disclose contact information, and file such information with the Court. As part of this obligation, the Creditor/Servicer shall furnish each SLM Party with written notice of the name, address and direct telephone number of the person who has **FULL** settlement authority on the loan in question as well as the attorney or law firm representing the Creditor/Servicer in the SLM; and
 - **Creditor/Servicer SLM Affidavit:** The Creditor/Servicer shall serve upon the Debtor and Debtor's attorney an affidavit attaching its Initial SLM Package and file proof of service of same on ECF. The Creditor/Servicer may designate its contact and attorney in the affidavit.

If the Debtor seeks Student Loan Repayment Option relief and has served Debtor's Student Loan Application portal results, the Initial SLM Package shall include the Creditor/Servicer's reasonably detailed response to such analysis.

- **Within 14 days of the service of the Creditor SLM Affidavit:**
 - **Debtor SLM Affidavit:** The Debtor shall serve upon the Creditor/Servicer all documents requested in a response to Creditor/Servicer's request for information and Debtor shall file proof of service of said documents on ECF. All documents shall be sent in one complete package and served upon the Creditor/Servicer's designated contact person and the Creditor/Servicer's attorney; provided that if the Debtor cannot include a requested document in such package, an explanation and timeline for its production shall be included.
- **Within 75 days of service of the SLM Order:**
 - **Status Report:** The SLM Parties shall file a status report in the form of a letter evidencing compliance with this Order and updating the Court on the status of the SLM, including am summary of all communications between the parties. The status report must be filed at least 7 days before any status conference.
 - **Status Conference:** The first status conference shall be held in this case on *[check with chambers or Court's website for a SLM hearing date within 75 days of the service of this Order]* at *[time provided by chambers or Court's website]* at the United States Bankruptcy Court *[include full address?]* (the "Initial Status Conference"). The SLM Parties shall appear at the Status Conference and provide the Court with a verbal status report. ***The Initial Status Conference and any subsequent status conferences cannot be adjourned without permission of the Court, requested on notice to, or based on the consent of the other SLM Parties.***

And it is further

ORDERED, that any matters in the bankruptcy case that are currently pending between the SLM Parties pertaining to the loan in question, may be adjourned by the Court to the date of the Initial Status Conference to the extent those matters concern: (1) relief from the automatic stay, (2) an objection to the allowance of a proof of claim, (3) an adversary proceeding, (4) an objection to confirmation of a plan of reorganization, or (5) any other matter so scheduled by the Court; and it is further

ORDERED, that Creditor and Servicer are authorized and directed to accept postpetition Student Loan payments; provided that in a chapter 11, 12 or 13 case, the Debtor's plan provides for such payments; provided and subject, further, to possible reallocation of such payments if a plan is *not* confirmed that does not provide for such payments; and it is further

ORDERED, that the automatic stay is hereby lifted to permit the foregoing payments as well as the SLM Parties' conversations/communication/proposals about the Student Loan; and it is further

ORDERED, that nothing in this Order shall be construed to render dischargeable a debt that would be non-dischargeable under 11 U.S.C. § 523(a)(8), or render non-dischargeable a debt that would be dischargeable under such section. A discharge in a chapter 7 case shall not be issued and this case shall not be closed until at least 30 days after the entry of the *Order Terminating SLM and Final Report*; and it is further

ORDERED, that the time for each Creditor that is a SLM Party in this case to file an objection to a plan under chapter 11, 12, or 13 of the Bankruptcy Code shall be extended until 14 days after the filing of an *Order Terminating SLM and Final Report*; and it is further

ORDERED, that upon the conclusion of SLM, the SLM Parties shall be responsible to ensure that the proposed *Order Terminating SLM and Final Report* is promptly submitted to the Court for entry.

Dated:

United States Bankruptcy Judge

