

**United States Bankruptcy Court
Southern District of Florida**
www.flsb.uscourts.gov

STUDENT LOAN PROGRAM PROCEDURES

Effective May 3, 2021, as provided under [Administrative Order 2021-02](#)

I. PURPOSE

These procedures and forms implement the Student Loan Program (“SLP”) established under [Administrative Order 2021-02](#). This Program is designed to function as a forum to provide individual debtors with the tools necessary to explore feasible repayment options with their student loan lenders and other interested parties under the administrative oversight of the United States Bankruptcy Court for the Southern District of Florida.

II. DEFINITIONS

A. Federal Student Loans

- 1** Definitions: Descriptions of various Federal Student Loan programs and terms applicable to those programs are contained in this section or in Appendix A to these Procedures.
- 2** Direct Loan Program: This refers to the William D. Ford Direct Loan Program. Under the Direct Loan Program, the United States Department of Education (“ED”) makes loans directly from the federal treasury to student and parent borrowers. ED is the lender.
- 3** Consolidation: This is the process of consolidating one or more federal educational loans into one new loan. This also includes consolidating a

previously consolidated FFELP Loan, as defined below in paragraph 6, into a new consolidated Direct Loan. Federal Student Loans may be consolidated prior to the chapter 13 petition date or any time during the pendency of the chapter 13 case.

- 4.** Federal Student Loan: This term refers to loans to a debtor that were made pursuant to the Perkins Loan Program, FFELP or the Direct Loan Program under the Higher Education Act of 1965.
- 5.** Federal Student Loan Holder, also referred to as the Title IV Loan Holder: This is the entity or organization that owns the current legal title to a Direct Loan, FFELP Loan, or Perkins Loan. FFELP Lenders, FFELP Guaranty Agencies, higher education institutions, and ED each may be a holder of a Title IV Loan. A servicer, however, is not a loan holder. If a borrower/debtor does not know who holds his or her federally-backed student loan(s), the borrower can access the information on the NSLDS website described in Paragraph 9 below.
- 6.** FFELP: This refers to the Federal Family Educational Loan Program. Under the FFELP, eligible lenders made guaranteed loans to students or parents to help finance student education. The loans are guaranteed by guaranty agencies (state agencies or private non-profit corporations), which are ultimately reinsured by ED. Effective July 1, 2010, Congress eliminated the FFELP under the Health Care and Education Reconciliation Act of 2010. However, many FFELP loans are still outstanding.
- 7.** Guarantor: Sometimes called a Guaranty Agency, in the Federal Student Loan

context, the term Guarantor refers to a state agency, or a private, non-profit organization, that is in a Program Agreement with ED, which helps ED administer FFELP programs and holds FFELP loans.

- 8.** Income-Driven Repayment Plan: This refers to certain plans offered by ED (“IDR plans”). Information about IDR plans, including a repayment estimator, can be found at

<https://studentaid.ed.gov/sa/repayloans/understand/plans/income-driven>.

- 9.** NSLDS: This refers to the National Student Loan Data System, which is the central database for all Federal Student Loans administered by ED, available at <https://studentaid.gov/fsa-id/sign-in/landing> or

<https://nsls.ed.gov/npas/index.htm>.” These sites allow a borrower/debtor to access information about his or her federal loans, including the amounts, loan status and the current and previous Title IV loan holder(s), Guarantors and Servicers.

- 10.** Recertification: This is the process in which a borrower submits his or her certified annual income to ED and, if applicable, its Servicer in order to calculate the applicable IDR payment for the next 12-month payment period.

- 11.** Servicer: A company that collects payments, responds to customer service inquiries and performs other administrative tasks associated with maintaining a federal student loan on behalf of a lender, including ED.

- B.** Private Student Loans: These are loans provided by lenders such as banks or credit unions. The terms of the educational loans are set by the lenders that underwrite

the loans. Interest rates vary and some loans have variable interest rates. Repayment terms may also vary.

C. Private Student Loan Lender: A private lender may be a bank, credit union, or online lender.

D. SLP Portal and Documentation Preparation Software:

This is a secure online portal (“SLP Portal”) and an on-line program that facilitates the preparation of the debtor’s student loan package (“Document Preparation Software”) otherwise known as (“Student Loanify”) for all student loan lenders and federal student loan holders.

III. DEBTORS ELIGIBLE TO PARTICIPATE

Subject to the implementation provisions in Administrative Order 2021-02, individuals in cases pending under chapter 13 or cases converted to chapter 13 are eligible to participate in SLP. Debtors who seek to participate in SLP must have paid their bankruptcy filing fee in full prior to seeking to participate in SLP and paid any other fees ordered by the Court.

A. Attorney represented debtor:

Any time after the commencement of, or conversion to, a bankruptcy case under chapter 13, a debtor may file the Local Form “Attorney-Represented Debtor’s Notice of Participation in Student Loan Program” (“Notice of Participation”).

B. Self-represented debtor:

A debtor seeking to participate in SLP, who is not represented by an attorney, must file the Local Form “Self-Represented Debtor’s Verified Motion for Referral to SLP” (“Pro Se Motion”), which the court will set for hearing. If the debtor does not have

access to a computer, the debtor must request permission in the Pro Se Motion to exchange documents with the lender by U.S. Mail. If the Pro Se Motion is granted, the court will enter its Local Form "Order Granting Self-Represented Debtor's Verified Motion for Referral to Student Loan Program."

- C. A response to the debtor's Pro Se Motion must be filed within 30 days from the date of service of the motion upon the lender.

IV. SERVICE

For documents or notices for which service or notification outside the SLP Portal is required, including but not limited to, the Notice of Participation, such service or notice shall be pursuant to Fed. R. Bankr. P. 7004.

- A. For Private Student Loans, the debtor shall serve a copy of the Notice of Participation upon the Private Student Loan Lender at the address listed on the Proof of Claim or upon an officer at the address of the entities' headquarters.
- B. For Federal Student Loans not held by ED, the debtor shall serve a copy of the Notice of Participation by first class mail upon (i) the Federal Student Loan Holder to the attention of a named officer at the address of the entity's headquarters, and, if a proof of claim has been filed by a Federal Student Loan Holder or Servicer, at the address listed on the proof of claim, and (ii) on the Guarantor to the attention of a named officer at the address of the entity's headquarters.
- C. For Federal Student Loans held by ED, the debtor shall serve a copy of the Notice of Participation upon ED in the following manner:
 - 1. By first-class mail to:

- a. [Name], United States Attorney for the Southern District of Florida
99 N.E. 4th St.
Miami, Florida 33131
Attn: Civil Division - Bankruptcy
- b. [Name] Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-001
- c. Office of the General Counsel
U.S. Department of Education
Attn: Deputy General Counsel for Postsecondary Education
Lyndon Baines Johnson (LBJ) Department of Education Building
400 Maryland Ave., SW
Washington, DC 20202

AND

- 2 By email to:

FSABankruptcy@ed.gov

With subject line "Bankruptcy SLP Program SD FL" to assist in processing.

V. GENERAL SLP PROCEDURES

- A. SLP shall not extend beyond the term of the plan in a chapter 13 case and will terminate if the case is converted to another chapter, dismissed, or the debtor has been discharged.
- B. A debtor may seek enrollment in SLP at any time without disqualification due to the pending bankruptcy, even if the debtor had entered into a prior governmental repayment plan or an agreement with a Private Student Loan Lender. Any objection to SLP must be filed and noticed for hearing.
- C. Program Options:
 - 1 Federal Student Loans:

- a. Except as provided in subsection (b) of this paragraph, debtors shall utilize the SLP Portal and Documentation Preparation Software (Student Loanify) as described in Paragraph II.D.
- b. **A debtor with a Federal Loan has the option to apply directly to the U.S. Department of Education, either through their servicer or via the U.S. Department of Education’s website at www.studentaid.gov, for free, to determine Student Loan Resolution Options and/or repayment options.**

2 Private Student Loans:

Debtors shall utilize the SLP Portal and Documentation Preparation Software (Student Loanify) as described in Paragraph D below.

D. SLP Portal and Documentation Preparation Software Procedures:

1 Generally:

- a. To expedite the exchange of information between the debtor and student loan lenders, the parties must use the SLP Portal and the Document Preparation Software (Student Loanify). **However, as provided in paragraph C.1.b. above, a Debtor with a Federal Loan has the option to apply directly to the U.S. Department of Education, either through their servicer or via the U.S. Department of Education’s website at www.studentaid.gov, for free, to determine Student Loan Resolution Options and/or repayment options.**
- b. Submitting documents to the SLP Portal provides transparency in the

SLP process by making information immediately available to the parties through a secure internet site. The use of the Document Preparation Software (Student Loanify) further ensures that the initial submission to the private lender is complete and accurate and should expedite the lender's review.

- c.** The use of the SLP Portal and Document Preparation Software (Student Loanify) eliminates the need for multiple submissions of documents and unnecessary delays based upon incomplete documentation.
- d.** The current SLP Portal provider approved by the Court is managed and maintained by Default Mitigation Management LLC ("DMM"). Free training on the use of the SLP Portal shall be available to all parties. The Court's web page on SLP also includes Portal contact information for the portal vendor and information on the Document Preparation Software (Student Loanify).
- e.** If other providers are approved by the Court, those providers will be listed on the Court's website.

2 Debtor Requirements:

- a.** Within seven days after filing the Notice of Participation, the debtor shall upload and submit through the SLP Portal, debtors' initial package, together with any additional forms or documents which lender may post on the SLP Portal, and pay a nonrefundable SLP Portal submission fee in the amount of \$60.00 and a Student Loanify fee of \$60.00.

- b.** If the Court enters an Order excusing the debtor from using the SLP Portal, then within seven days after entry of the Order, the debtor shall mail or fax to the lender and the mediator the Debtor’s Prepared Package, with any additional forms or documents that the lender has, in writing, advised the debtor are required.
- c.** **As provided in paragraph C.1.b. above, a debtor with a Federal Loan has the option to apply directly to the U.S. Department of Education, either through their servicer or via the U.S. Department of Education’s website at www.studentaid.gov, for free, to determine Student Loan Resolution Options and/or repayment options.**

3. Lender Requirements:

- a.** Within seven days after entry of the Notice of Participation or after all motions for reconsideration have been heard and determined, the lender, if not already registered, shall register on the SLP Portal. Lender’s legal counsel, if any, must also be registered. Registration on the SLP Portal is a one-time event. Once registered, the lender will not be required to register in each case.
- b.** Within seven days after the debtor opens the SLP Portal, the lender shall (i) acknowledge receipt of the information provided and advise the debtor of any additional or missing information required for the lender to proceed with its review; and (ii) designate its single point of contact and outside legal counsel, if any.

VI. AUTOMATIC STAY

- A.** The automatic stay under 11 U.S.C. § 362(a) is modified, as necessary, to facilitate SLP and to encourage the parties to explore student loan repayment options even after an agreement is reached or as payment amounts change.
- B.** The debtor acknowledges and affirms that by participating in SLP, it shall not be a violation of the automatic stay or of any other state or federal law for the Private Student Loan Lender, Federal Student Loan Holder, Servicer, or Guarantor to send the debtor normal monthly statements regarding payments due and any other communications, including, without limitation, notices of late payments or delinquency. These communications may expressly include telephone calls and emails if the debtor has agreed to electronic communications under normal processes established by the Private Student Loan Lender, Federal Student Loan Holder, Servicer, or Guarantor.
- C.** Notwithstanding the foregoing, if a debtor alleges that a Private Student Loan Lender, Federal Student Loan Holder, Servicer, or Guarantor has violated the automatic stay during the SLP period, the debtor shall serve notice of the allegation in the manner described in Section IV above, before filing any motion in the case, to provide the Private Student Loan Lender, Federal Student Loan Holder, Servicer, or Guarantor an opportunity to respond. The Private Student Loan lender, Federal Student Loan Holder, Servicer, or Guarantor shall have 21 days to respond before the debtor seeks relief from the court.

VII. NO DELAY

Participation in SLP does not relieve the parties from complying with any other court orders or applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, Administrative Orders, or Local Rules.

VIII. UNDUE HARDSHIP DISCHARGE

Participation in SLP will not discharge any educational loan described in 11 U.S.C. § 23(a)(8). A debtor seeking an undue hardship discharge under § 523(a)(8) must file an adversary complaint as required by Rule 7001(6), Fed. R. Bank. P. and serve it in accordance with Fed. R. Bankr. P. 7004.

IX. SLP PROGRAMS

A. Federal Student Loans:

- 1** The debtor may rehabilitate or consolidate student loans, if necessary, in order to participate in an IDR plan. Any rehabilitation or consolidation must be done only as permitted under statutory and/or Regulatory Guidelines promulgated by the Department of Education. *See* 20 U.S.C. § 1078-6(a)(1); 34 C.F.R. § 685.211(f) (Rehabilitation); 20 U.S.C. § 1087(e)(g); 34 C.F.R. § 685.220 (Consolidation); and 34 C.F.R. § 682.405 (FFELP Loan Rehabilitation).
- 2** The debtor may only use applicable ED programs and may not request a mediation conference. **Mediation is available only for Private Student Loans.**
- 3** ED offers standard, extended, and graduated repayment plans for repayment of student debt on an amortized basis.
 - a.** The information, available at <https://studentaid.ed.gov/sa/>, describes

all available options, including repayment plans, consolidation, rehabilitation, forgiveness, cancellation, and administrative discharge of student debt. In addition, ED offers IDR plans. See 34 C.F.R. §§ 685.208; 685.209; and 685.221.

- b. The amount the debtor pays monthly under an IDR plan is based upon the debtor's loan amount, family size, state of residence, discretionary income, and the federal poverty guidelines published by HHS. The payment is typically much lower than the existing payment.
4. Student Loan Forgiveness: A debtor who makes monthly payments under an IDR plan may qualify to have the remaining balance of the student debt forgiven in accordance with statute and/or federal regulations. IDR plans have different required payment periods. ED also offers student debt discharge or forgiveness under other circumstances, including, but not limited to, Public Service Loan Forgiveness. See <https://studentaid.ed.gov/sa/>.
5. If the debtor enters into an IDR plan either before or after the bankruptcy petition, the debtor shall file the Local Form "Debtor's Notice of Income-Driven Repayment Plan" ("Notice of IDR Plan").
6. The debtor shall file a chapter 13 plan which provides for the debtor to pay the monthly payments due under the IDR plan direct and outside of the plan. **The debtor will be solely responsible for ensuring that the direct payments to the Federal Student Loan Holder are received timely according to the terms of the IDR plan.** The debtor shall include the Non-Standard Student Loan

provision contained within the Local Chapter 13 Plan Form. **The monthly IDR payment which is included in the Notice of IDR Plan shall not be included in the chapter 13 plan.**

7. If the debtor enters into an IDR plan post-petition, but after the filing of a prior proposed chapter 13 plan, the debtor shall file an amended plan that conforms to the requirements in sub-paragraph A.6 above.
8. If a previously filed chapter 13 plan was confirmed, and the debtor enters into an IDR plan after confirmation, the debtor shall promptly file and set for hearing a motion to modify the chapter 13 plan, along with a proposed modified plan that conforms to the requirements in sub-paragraph A.6 above.
9. Subject to the resolution of any objection to claim, a timely proof of claim filed by or on behalf of the Federal Student Loan Holder shall be allowed; however, the Federal Student Loan Holder shall not receive any distributions from the chapter 13 trustee under any confirmed chapter 13 plan that includes an IDR plan.
10. If a Federal Student Loan Holder received pro-rata distributions of funds paid to general unsecured creditors under a confirmed chapter 13 plan prior to the debtor entering into an IDR under a proposed modified chapter 13 plan, the Federal Student Loan Holder shall not be entitled to any future distributions from the chapter 13 trustee under the modified plan. The chapter 13 trustee shall not be required to recoup any funds distributed to

the Federal Student Loan Holder under the confirmed chapter 13 plan and before entry of the order confirming the modified plan.

- 11.** The debtor shall also separately classify the Federal Student Loan payment and the IDR in the chapter 13 plan under the following procedures.
 - a.** The debtor shall file the Local Form “Debtor’s Motion to Separately Classify Federal Student Loan and Income-Driven Repayment Plan” (“Motion to Separately Classify”), and serve the Motion to Separately Classify upon all parties in interest, including any party that filed a proof of claim, the Federal Student Loan Holder, and the Guarantor. The Motion to Separately Classify may be served under the negative notice procedures in Local Rule 9013-1(D). The debtor must attach as an exhibit the Local Form “Order Granting Debtor’s Motion to Separately Classify Federal Student Loan and Income-Driven Repayment Plan” and must file a Certificate of Service.
 - b.** The Federal Student Loan Holder, and any other party in interest, shall have 21 days from the date of service of the Motion to Separately Classify to file an objection.
 - c.** Any party properly served with the motion who fails to file a timely objection shall be deemed to have consented to the entry of the Order Granting Debtor’s Motion to Separately Classify Federal Student Loan and Income-Driven Repayment Plan, and except as provided in subsection g. of this paragraph, shall be deemed to have waived any

objection to confirmation based upon alleged unfair discrimination.

- d.** Within 7 days after the expiration of the 21-day response deadlines, if no objections were filed, the debtor shall submit the Local Form “Order Granting Debtor’s Motion to Separately Classify Federal Student Loan and Income-Driven Repayment Plan.”
- e.** If any party, including the Federal Student Loan Holder, files a timely objection to the Motion to Separately Classify, the Court will schedule a hearing in accordance with the procedures set forth in Local Rule 9073-1.
- f.** The debtor may not separately classify student loans that unfairly discriminate against any creditors pursuant to 11 U.S.C. § 1322(a)(3).
- g.** Failure to object to the Motion to Separately Classify will not constitute a waiver of the right of the chapter 13 trustee or any interested party to object to confirmation of an amended plan based upon alleged unfair discrimination if the debtor files an amended plan after the Court grants the Motion to Separately Classify.

12. Recertification and Notice of Payment Change

- a.** The IDR monthly payment amount is adjusted annually based upon the debtor’s certified annual income. If annual income, family size, or poverty guideline amounts change, the monthly IDR plan payment will change accordingly.
- b.** No later than the end of the annual payment period of the IDR plan,

the debtor shall recertify the debtor's family size and income online at www.studentloans.gov. The information provided by the debtor shall be in compliance with any notification sent to the debtor by ED (or its Servicer).

- c. The debtor's annual recertification obligation shall continue until such time as ED establishes the automatic certification of income for IDR borrowers as allowed under Section 3 of the Fostering Undergraduate Talent by Unlocking Resources for Education Act ("FUTURE Act") PL 116-91, December 19, 2019, 133 Stat 1189. ED will notify the debtor when annual recertification is no longer required.
- d. **Failure to timely recertify income until ED no longer requires recertification may result in a substantial increase in student loan payments.**
- e. The debtor shall file the Local Form "Debtor's Verified Certification of Payment and Recertification of Income" until recertification is no longer required.
- f. If the IDR payment changes after recertification or after receipt of the ED annual certification, then, no later than 14 days after receiving notice of the payment change, the debtor must file the Local Form "Notice of Income-Driven Repayment Plan Change."

B. Private Student Loans:

- 1** Private Student Loans are not subject to the rules governing Federal Student

Loans and are subject to statute of limitations and other legal defenses.

- 2.** These SLP Procedures provide for mediation between a debtor and a Private Student Loan Lender (the “lender”) to facilitate a settlement regarding payment terms or to explore other available options.
- 3.** All written communications between the parties regarding the mediation must be sent through the SLP Portal only unless otherwise ordered by the Court.
- 4.** Any litigated matters incidental to mediation shall be considered as separate matters and not subject to the portal communications requirement. For example, a motion to compel mediation or motions related to discovery must be filed in the main bankruptcy case, not through the portal. Additionally, any complaint seeking a hardship discharge under 11 U.S.C. §523(a)(8) must be filed as an adversary complaint and served pursuant to Fed.R.Bankr.P. 7004.
- 5.** Selection of Mediator: The parties shall confer and select a mediator within 14 days of the Notice of Participation (“Mediator Selection Period”).
 - a.** If the parties agree upon the selection of a mediator during the Mediator Selection Period, the debtor shall file the Local Form “Debtor’s Notice of Selection of Private Student Loan Mediator” (Check Box 1 and insert mediator name and contact information), serve a copy of the Notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F).
 - b.** If the lender fails to communicate with the debtor during the

Mediator Selection Period, the debtor shall, within seven days, independently select a mediator and file the Local Form “Debtor’s Notice of Selection of Private Student Loan Mediator” (Check Box 2 and insert mediator name and contact information), serve a copy of the Notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F). In this instance, it shall be deemed that the lender has waived the right to challenge debtor’s selection of a mediator.

- c. If the parties attempt to reach an agreement on the selection of a mediator but fail to do so during the Mediator Selection Period, the debtor shall file the Local Form “Debtor’s Notice of Selection of Private Student Loan Mediator” (Check box 3 indicating the impasse), serve a copy of the Notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F). Without the necessity of a hearing, the clerk shall then randomly select a mediator from the Clerk’s Register of Mediators who is registered as a mediator qualified under Section X.D. of these Procedures. The clerk shall serve notice of the mediator selection on the required parties using the Local Form “Notice of Clerk’s Designation of Private Student Loan Mediator.” Local Rule 9019-2(B) shall apply to any challenge to the clerk’s designation of mediator.

6. SLP Mediation Conference:

- a.** The designated mediator shall, within seven days of designation, or within seven days after the debtor has complied with requirements in section above, log onto the SLP Portal to facilitate the exchange of information and documentation between the debtor and the lender in an effort to perfect the documentation needed for the lender to complete its analysis of the debtor's SLP modification options.
- b.** If the debtor has been excused from using the SLP Portal, the mediator shall contact the debtor by phone or mail and contact the lender in whatever manner the lender and mediator agree to communicate.
- c.** The mediator shall schedule the initial SLP conference no later than seven days after the mediator determines that the lender has received and reviewed all the required information through the SLP Portal, or from the debtor if use of the SLP Portal has been excused.
- d.** In the event the mediator cannot determine that the lender has received and reviewed all the required information, the mediator shall schedule the initial SLP conference within 90 days of entry of the Order.
- e.** The mediator shall report the scheduling of any SLP conference on the SLP Portal.
- f.** All parties are required to attend the SLP conference and must be authorized to settle all matters requested in the motion.
- g.** All parties, including the mediator, may participate in the SLP

conference by telephone.

- h.** The debtor must provide a foreign language interpreter, if necessary, at the debtor's own expense.
- i.** All communication and information exchanged during the SLP conference shall remain confidential and shall be inadmissible in any subsequent proceeding pursuant to Federal Rule of Evidence 408 and Chapter 44 of the Florida Statutes.

7. SLP Mediation Procedure:

- a.** The initial SLP conference shall not exceed one hour. In the event the parties are unable to reach an agreement and require a second SLP conference, the mediator shall schedule a final SLP conference, not later than 30 days thereafter.
- b.** The second SLP conference shall not exceed one hour. Notwithstanding, the mediator may continue the SLP conference, if necessary, beyond the two, one-hour conferences upon written agreement of the parties.

8. Procedures After Mediation:

- a.** If the parties reach an agreement or, if no agreement has been reached, the mediator shall report the results of the SLP on the SLP Portal not later than seven days after the conclusion of the final SLP conference. The mediator shall also complete and file the SLP Local Form "Final Report of Private Student Loan Mediator" ("Final Report")

with the Court, either electronically or by conventional filing, not later than two business days following entry of the “Final Report” data on the SLP Portal.

- b.** If the debtor and the lender have reached a resolution through the SLP conference, then within 14 days of the filing of the Final Report, the debtor shall file the Local Form “Debtor’s Ex-Parte Motion to Approve Mediation Agreement with Private Student Loan Lender” and attach as an exhibit the Local Form “Order Granting Debtor’s Ex Parte Motion to Approve Mediation Agreement with Private Student Loan Lender.” The debtor shall serve the ex-parte motion and proposed Order on all required parties and file a certificate of service pursuant to Local Rule 2002-1(F). The debtor shall also submit to the Court the Local Form “Order Granting Debtor’s Ex Parte Motion to Approve Mediation Agreement with Private Student Loan Lender”.
- c.** If an agreement has been reached, the debtor shall file an amended plan, or a motion to modify a previously confirmed plan within 14 days of entry of the Order Granting Motion to Approve SLP Agreement with Lender. The debtor shall pay the Private Student Lender through the plan and shall separately classify the agreed upon SLP payments to the Private Student Lender. The debtor shall file the Local Form “Debtor’s Motion to Separately Classify Private Student Loan” and attach as an exhibit the Local Form “Order Granting

Debtor's Motion to Separately Classify Private Student Loan."

- d.** With the exception of certain service requirements applicable only to Federal Student Loans, the procedures in paragraph 11 of Section IX.A. above shall apply to the Motion to Separately Classify. If no timely objections are filed as set forth in those procedures, the debtor shall submit to the Court the Local Form "Order Granting Debtor's Motion to Separately Classify Private Student Loan."
- e.** The Private Student Lender will receive the agreed upon SLP payments, as separately classified, but will not receive a *pro rata* distribution of payments provided for unsecured creditors under the plan.
- f.** If the lender and debtor fail to reach an agreement, then no later than 14 days after the mediator's Final Report has been filed, the debtor shall amend the plan or file a motion to modify the previously confirmed plan without limiting the debtor's right to object to the lender's proof of claim ("POC"). Confirmation of the amended or modified plan will be without prejudice to the assertion of any rights the lender has to address payment of its POC.
- g.** Unless the debtor's amended or modified plan includes separate classification of the Private Student Loan, the debtor shall remove the separately classified payments to the Private Student Loan Lender in the amended or modified plan.

- h.** If the amended or modified plan does not separately classify the Private Student Loan, the following provisions shall apply:
 - i.** The lender will receive a pro rata distribution of payments provided to general unsecured creditors under the amended or modified plan commencing the month following the date of the order confirming the amended or modified plan.
 - ii.** The lender shall not be entitled to any share of the distribution paid to general unsecured creditors under a confirmed plan prior to the date of an order confirming a modified plan.
 - iii.** The chapter 13 trustee shall not be required to recoup any funds distributed to any creditors under a prior confirmed plan before entry of an order confirming the modified plan.

X. MEDIATOR

- A.** A mediator shall only be designated for Private Loans.
- B.** A mediator is not an interested party in the case and, therefore, shall not be included on the Service Matrix.
- C.** All communication with the mediator shall be deemed confidential unless otherwise agreed.
- D.** Qualifications:
 - 1.** To qualify as a mediator, an individual must be either (i) an active member of The Florida Bar, who is qualified to practice in this Court, and who has at least five years of experience representing debtors or creditors in chapter 13

cases; or (ii) a retired bankruptcy judge;

2. To qualify as a mediator, an attorney, but not a retired judge, must have completed a minimum of 40 hours in a circuit court mediation training program certified by the Florida Supreme Court within the past 10 years or be currently certified by the Florida Supreme Court as a circuit civil mediator; and must have completed a minimum of 10 hours of Continuing Legal Education (CLE) workshops related to student loan options and programs.
3. Qualified mediators are encouraged, but not required, to request the clerk to include them in the Clerk's Register of Mediators.

E. Compensation: The mediator's fee shall be paid equally by the parties as follows:

1. Unless the debtor's case has been accepted as a *pro bono* case, the debtor shall pay a nonrefundable fee in the amount of \$300.00 directly to the mediator within seven days of the Notice of Participation.
2. A debtor may request a mediator to serve *pro bono* only if debtor's income is less than 150% above the poverty level.
3. The lender shall pay a nonrefundable fee in the amount of \$300.00 directly to the mediator within seven days of the Order.
4. The fee includes the mediator's assistance in determining whether all documentation has been uploaded to the SLP Portal, or, for a debtor with no computer, otherwise exchanged between the debtor and lender, scheduling of the mediation, and participation in a maximum of two, one-hour loss mitigation conferences.

5. For sessions that extend beyond the initial two, one-hour sessions, the mediator shall be compensated in accordance with Local Rule 9019-2(A)(6).
6. Fees for SLP conferences that extend beyond the initial two, one-hour sessions shall be divided equally between the parties, except in the case of a *pro bono* matter, in which case the mediator will be paid half of his or her fee by the lender and the balance will be credited to the mediator's *pro bono* commitment. Payment shall be made by the debtor and the lender prior to the beginning of each successive SLP conference. If the debtor is not represented by an attorney, the debtor shall bring a money order or cashier's check to the SLP conference in an amount equal to the debtor's share of the one-hour session. Any balance owed for a session that extends beyond the pre-paid session shall be paid as soon as possible or within two business days following conclusion of the final session.

XI. COMPENSATION OF DEBTOR'S COUNSEL

- A. Without application to the Court, attorneys for debtors shall be permitted to charge an initial attorney's fee not to exceed \$1,500 and to charge \$25.00 in costs for SLP, subject to the compensation requirements within the "Guidelines for Compensation for Professional Services or Reimbursement of Expense by Attorneys for Chapter 13 Debtors Pursuant to Local Rule 2016-1(B)(2)(a)."
- B. Services covered by the \$1,500 fee shall include, but not be limited to:
 1. reviewing eligibility requirements and payment options with the debtor and filing all required local form notices and motions;

2. preparing, completing and providing all required forms for the lender's review;
 3. providing any additional documentation requested by the lender;
 4. filing and noticing all required pleadings;
 5. preparing proposed orders and settlement agreements, if applicable;
 6. assisting the debtor in preparing all annual recertifications during the pendency of the chapter 13 case; and
 7. timely filing all annual recertifications during the pendency of the chapter 13 case until such time as ED no longer requires annual recertification.
- C.** Until such time as the ED no longer requires annual recertification, Debtor's counsel may charge, and the debtor shall pay outside the plan, an additional \$200.00 for each year in which debtor's counsel has timely filed the Local Form "Debtor's Verified Certification of Payment and Notice of Recertification for Federal Student Loans".
- D.** Whether or not an agreement has been reached with a Private Student Loan Lender, debtor's counsel may not receive any additional attorney's fees unless approved by the Court.
- E.** If modification of a chapter 13 plan after confirmation becomes necessary, the debtor's attorney may charge an additional \$500.00 in fees and \$25.00 in costs in accordance with the "Guidelines for Compensation for Professional Services or Reimbursement of Expenses by Attorneys for Chapter 13 Debtors Pursuant to Local Rule 2016-1(B)(2)(a)."

XII. FORMS

All local forms referred to in these Procedures are posted on the Court's website, www.flsb.uscourts.gov on the Student Loan Program page.

APPENDIX A

Definitions Applicable to Federal Student Loans

- 1.** Defaulted: With respect to a loan made under the FFELP or the Direct Loan Program, a borrower is generally considered in "default" if the borrower has not made his or her scheduled student loan payments for at least 270 days (approximately 9 months). 20 U.S.C. §1085(1); 34 C.F.R. §682.411 (FFELP Loans); and 34 C.F.R. §685.102(b) (Direct Loans).
- 2.** Delinquent: A Federal Student Loan is delinquent when payments are not received by the due dates. A loan remains delinquent until the borrower makes up the missed payment(s) or receives a deferment or forbearance that covers the period when the borrower was delinquent. 34 C.F.R. § 682.411(b) (FFELP Loans).
- 3.** Federal Student Loan Lender: This refers to a lender under Title IV of the HEA.
- 4.** HEA: The Higher Education Act of 1965 (the "HEA") governs four federally backed student loan programs: the Federally Insured Student Loan Program (FISL) (no longer made but some remain outstanding); the Perkins Loan Program (no longer made but some remain outstanding), and formerly known as the National Direct Loan Program or the National Defense Loan Program; the Direct Loan Program and the FFELP. FFELP and Direct Loan Program

loans include Stafford (subsidized and unsubsidized) Loans, parent PLUS Loans, graduate PLUS Loans, and Consolidation Loans.

- 5.** HEAL Loans: This refers to loans made under the Health Education Access Loan program, and specifically, to borrowers engaged in health-related studies. These loans were made by the United States Department of Health and Human Services (“HHS”). This program is no longer active, but there are outstanding HEAL Loans and administration of the HEAL Program loans that remain outstanding was transferred to ED as of July 1, 2014. HEAL Loans are eligible for consolidation along with FFELP Loans in the Direct Loan Program.
- 6.** Non-Defaulted: Any student loan that is not defaulted, including delinquent loans.
- 7.** Graduate PLUS Loan: This is a loan made to graduate or professional students, sometimes called a Graduate PLUS Loan. PLUS Loans were made under both the FFELP and the Direct Loan Program.
- 8.** Parent PLUS Loan: This is a loan made to the parents of a dependent student for which the parent borrower is fully responsible for the debt, not the student. Parent PLUS Loans were made under both the FFELP and the Direct Loan Program.
- 9.** Perkins Loan: This is a federal student loan made by the borrower’s school for undergraduate and graduate students who demonstrate financial need. This program expired on September 30, 2017.
- 10.** Rehabilitation: This is the means by which a borrower can remove a student

loan from Defaulted status. The borrower and the Title IV Loan Holder (either ED or the Guarantor) enter into an agreement that complies with the federal regulations contained in 34 C.F.R. § 682.405 (FFELP Loans) and 34 C.F.R. § 685.211(f) (Direct Loans), and which provides for the borrower to make nine (9) timely monthly payments (as defined by the applicable federal regulation) within a ten (10) month period at an agreed upon amount for each payment, pursuant to the applicable regulations.