

# 11 U.S. Code § 523 - Exceptions to discharge

- (a) A discharge under section [727](#), [1141](#), [1228\(a\)](#), [1228\(b\)](#), or [1328\(b\)](#) of this title does not discharge an individual debtor from any debt—
- (1) for a tax or a customs duty—
    - (A) of the kind and for the periods specified in section [507\(a\)\(3\)](#) or [507\(a\)\(8\)](#) of this title, whether or not a claim for such tax was filed or allowed;
    - (B) with respect to which a return, or equivalent report or notice, if required—
      - (i) was not filed or given; or
      - (ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or
    - (C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;
  - (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—
    - (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;
    - (B) use of a statement in writing—
      - (i) that is materially false;
      - (ii) respecting the debtor's or an insider's financial condition;
      - (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
      - (iv) that the debtor caused to be made or published with intent to deceive; or
    - (C)
      - (i) for purposes of subparagraph (A)—
        - (I) consumer debts owed to a single creditor and aggregating more than \$500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and
        - (II) cash advances aggregating more than \$750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and
      - (ii) for purposes of this subparagraph—
        - (I) the terms “consumer”, “credit”, and “open end credit plan” have the same meanings as in section 103 of the Truth in Lending Act; and
        - (II) the term “luxury goods or services” does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;
  - (3) neither listed nor scheduled under [section 521\(a\)\(1\) of this title](#), with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—
    - (A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or
    - (B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

- (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;
- (5) for a domestic support obligation;
- (6) for willful and malicious injury by the debtor to another entity or to the property of another entity;
- (7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—
- (A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or
- (B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;
- ~~(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—~~
- ~~(A)~~
- ~~(i) 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 **any program for which substantially all of the funds are provided by a** nonprofit institution; or~~
- ~~(ii) (B) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or~~
- ~~(B) 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;~~

### **GORDON WAYNE WATTS' legislative analysis:**

If the Cohen Bill (H.R.1674, e.g., the “Private Student Loan Bankruptcy Fairness Act of 2015”) were inadvertently passed into law **\*\*first\*\*** – “fixing” the problem solely for the 'Private' student loans, and then some Congressman wanted to introduce the Killdee Bill H.R.3451 (e.g., “Student Loan Bankruptcy Parity Act of 2015”) – or even the DeLaney Bill., H.R.449 (which is IDENTICAL in language to HR3451, Rep. Killdee's bill – except for its 'short title'), which are bills to offer a 'fix' for ALL college/student loans, there would not be any problems:

All Rep. Cohen's bill does is alter a small portion of Section 523(a)(8) of TITLE 11, U.S. Code – and, as both the Killdee bill and the DeLaney bill completely remove that whole section, any changes made by Mr. Cohen's bill are moot, and not a problem.

Conclusion: It's mathematically 'impossible' to pass Rep. Cohen's 'private student loan' bill (with the existing language, that is) once a “complete” fix bill (such as those above) pass, but that's OK – it would not be needed anyway. – On the other hand, should Mr. Cohen's bill pass into law first, it would still be possible (and actually helpful) to pass either the Killdee bill or the DeLaney bill.

NOTE: Rep. DeLaney's bill is called the “Discharge Student Loans in Bankruptcy Act of 2015,” whereas Rep. Killdee's bill has a similar, but not identical, short title of: “Student Loan Bankruptcy Parity Act of 2015.” – Both short-titles are good, and both bills are excellent, insofar as they correct an Unconstitutional Law that violates Equal Protection, the Uniformity Clause, and other problems.

~~ Gordon Wayne Watts

- (9) for death or personal injury caused by the debtor’s operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;
- (10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3),

(4), (6), or (7) of such Act;

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;

(13) for any payment of an order of restitution issued under title 18, United States Code;

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

(14B) incurred to pay fines or penalties imposed under Federal election law;

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of [section 1915 of title 28](#) (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in [section 1915\(h\) of title 28](#) (or a similar non-Federal law);

(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of [chapter 84 of title 5](#), that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or

(19) that—

(A) is for—

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

(B) results, before, on, or after the date on which the petition was filed, from—

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

For purposes of this subsection, the term “return” means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A  [1] of the Higher Education Act of 1965, or under section 733(g)  [1] of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)

(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney’s fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

## 11 U.S. Code § 704 - Duties of trustee

(c)

(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall—

(A)

- (i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;
  - (ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and
  - (iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;
- (B)
- (i) provide written notice to such State child support enforcement agency of such claim; and
  - (ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and
- (C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of—
- (i) the granting of the discharge;
  - (ii) the last recent known address of the debtor;
  - (iii) the last recent known name and address of the debtor's employer; and
  - (iv) the name of each creditor that holds a claim that—
    - (I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or
    - (II) was reaffirmed by the debtor under section 524(c).
- (2)
- (A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.
- (B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.

## **11 U.S. Code § 1106 - Duties of trustee and examiner**

- (c)
- (1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall—
- (A)
- (i) provide written notice to the holder of the claim described in subsection (a)(8) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and
  - (ii) include in the notice required by clause (i) the address and telephone number of such State child support enforcement agency;
- (B)
- (i) provide written notice to such State child support enforcement agency of such claim; and
  - (ii) include in the notice required by clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 1141, provide written notice to such holder and to such State child support enforcement agency of—

- (i) the granting of the discharge;
- (ii) the last recent known address of the debtor;
- (iii) the last recent known name and address of the debtor's employer; and
- (iv) the name of each creditor that holds a claim that—
  - (I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or
  - (II) was reaffirmed by the debtor under section 524(c).

(2)

(A) The holder of a claim described in subsection (a)(8) or the State child enforcement support agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.

## 11 U.S. Code § 1202 – Trustee

(c)

(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

(A)

(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

(B)

(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 1228, provide written notice to such holder and to such State child support enforcement agency of—

- (i) the granting of the discharge;
- (ii) the last recent known address of the debtor;
- (iii) the last recent known name and address of the debtor's employer; and
- (iv) the name of each creditor that holds a claim that—
  - (I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or
  - (II) was reaffirmed by the debtor under section 524(c).

(2)

(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.

# 11 U.S. Code § 1328 - Discharge

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under [section 502 of this title](#), except any debt—

- (1) provided for under section 1322(b)(5);
- (2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);
- (3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or
- (4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.