UNITED STATES BANKRUPTCY COURT**Error! Bookmark not defined.**
For the Southern District of Iowa

In the Matter of	:	
	:	Case No. 91-2910-D H
JUDITH ANNE STADER,	:	
	:	Chapter 7
Debtor.	:	
- - - - - - - - - - - - - - - -	:	
JUDITH ANNE STADER,	:	Adv. No. 92-92002
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MERCHANT'S FIRSTAR, LOAN SERVICING CENTER, UNITED STATES DEPARTMENT OF EDUCATION and IOWA COLLEGE STUDENT AID COMMISSION,	:	
	:	
Defendants.	:	

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ORDER--DISCHARGEABILITY OF STUDENT LOAN DEBTS

At the pretrial conference on complaint to determine dischargeability and counterclaim held March 12, 1992 the parties agreed there were no issues of fact in dispute and this matter could be submitted by stipulation. Martha Easter Wells represented the Plaintiff-Debtor (Debtor) and James S. Wisby, Assistant Attorney General, represented the Iowa College Student Aid Commission. The parties filed a stipulation of facts and, after a short extension of the period for filing briefs, both parties have briefs on file.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Findings of fact and conclusions are now entered pursuant to Fed.R.Bankr.P. 7052.

FINDINGS

1. The Debtor obtained three parent-plus loans to finance the education of her daughter.

2. Defendant, Iowa College Student Aid Commission, now holds the loans by assignment.

3. The Debtor's daughter is not liable on the loans.

4. The Debtor was not in default on the loans at the time the case was filed.

5. The Debtor filed her petition in bankruptcy within seven (7) years of the time the loans came due.

DISCUSSION

At issue is whether a Parent-Plus loan signed by the Debtor-parent to finance the education of a student-daughter who is not liable on the loan is nondischargeable under 11 U.S.C. § 523(a)(8) in the bankruptcy case of the Debtor. Section 523(a)(8) in relevant part provides:

> (a) A discharge under section 727 . . . does not discharge an individual debtor from any debt--
>
> (8) for 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 for an obligation to repay funds received as an educational benefit, scholarship, or stipend . . . .

11 U.S.C. § 523(a)(8). This provision is clear and unambiguous on its face. Section 523(a)(8) concerns educational loans guaranteed by a governmental unit. Debtor admits that the loan she signed was used for her daughter's education and that the loan is now held by the Iowa College Student Aid Commission, a governmental unit. This loan clearly falls within the literal terms of the statute.

This case was taken under advisement because of the large number of courts that have disagreed on whether a non-student's debt for a government insured loan is excepted from discharge in bankruptcy pursuant to § 523(a)(8). A number of courts, relying mainly on legislative history, have held such debts dischargeable. Kirkish v. Meritor Sav. Bank (In re Kirkish), 144 B.R. 367 (Bankr. W.D. Mich. 1992); Pelkowski v. Ohio Student Loan Comm'n (In re Pelkowski), 135 B.R. 254 (Bankr. W.D. Pa. 1992); Bartsch v. Wisconsin Higher Educ. Corp. (In re Meier), 85 B.R. 805 (Bankr. W.D. Wis. 1986); Northwestern Univ. Student Loan Office v. Behr (In re Behr), 80 B.R. 124 (Bankr. N.D. Iowa 1987); Zobel v. Iowa College Aid Comm'n (In re Zobel), 80 B.R. 950 (Bankr. N.D. Iowa 1986); Bawden v. First S. Fed. Sav. & Loan Ass'n (In re Bawden), 55 B.R. 459 (Bankr. M.D. Ala. 1985); Washington v. Virginia State Educ. Assistance Auth. (In re Washington), 41 B.R. 211 (Bankr. E.D. Va. 1984); Boylen v. First Nat'l Bank (In re Boylen), 29 B.R. 924 (Bankr. N.D. Ohio 1983). Other courts, citing the

plain language of § 523(a)(8), have held such debts nondischargeable. Education Resources Inst., Inc. v. Wilcon (In re Wilcon), 143 B.R. 4 (D. Mass. 1992); Dull v. Ohio Student Loan Comm'n (In re Dull), 144 B.R. 370 (Bankr. N.D. Ohio 1992) (indicating that Pelkowski has been reversed by a slip opinion from the district court); Education Resources Inst., Inc. v. Martin (In re Martin), 119 B.R. 259 (Bankr. E.D. Okl. 1990); Hudak v. Union Nat'l Bank (In re Hudak), 113 B.R. 923 (Bankr. W.D. Pa. 1990); Taylor v. Tennessee Student Assistance Corp. (In re Taylor), 95 B.R. 550 (Bankr. E.D. Tenn. 1989); Education Resources Inst., Inc. v. Hammarstrom (In re Hammarstrom), 95 B.R. 160 (Bankr. N.D. Ca. 1989); Educational Resources Inst., Inc. v. Selmonosky (In re Selmonosky), 93 B.R. 785 (Bankr. N.D. Ga. 1988); Barth v. Wisconsin Higher Educ. Corp. (In re Barth), 86 B.R. 146 (Bankr. W.D. Wisc. 1988); Feenstra v. New York State Higher Educ. Servs. Corp. (In re Feenstra), 51 B.R. 107 (Bankr. W.D.N.Y. 1985); Reid v. First Tennessee Bank & Tennessee Student Assistance Corp. (In re Reid), 39 B.R. 24 (Bankr. E.D. Tenn. 1984) (PLUS loan).

The argument that a non-student's debt for an educational loan guaranteed by the government should be dischargeable notwithstanding § 523(a)(8) posits that the exclusion of educational loans from discharge was designed to remedy an abuse by students who, immediately upon graduation, filed for

bankruptcy and obtained a discharge of their educational loans. Kirkish, 144 B.R. at 369. In passing § 523(a)(8) Congress sought to prevent this abuse but made no mention of preventing the benefits of discharge for co-makers or co-debtors. Id. Parents and others who co-sign student loans do not have the same motivations as a student fresh out of college with nothing to lose but student loan debt. Id. Thus, a parent is unlikely to engage in the sort of abuse § 523(a)(8) is meant to deter. Finally, narrowly construing the § 523(a)(8) exception to discharge would effectuate the fresh start principle of the Code. Id.

The argument that a non-student's debt for an educational loan guaranteed by the government should be nondischargeable pursuant to § 523(a)(8) is as follows. The plain language of § 523(a)(8) does not limit its applicability to educational loans on which the student is the obligor. Dull, 144 B.R. at 372. The section does delineate exceptions to nondischargeability of educational loans based on length of time the loan has been due and undue hardship. Id. Section 523(a)(8) and its amendments extending the time a loan must have been due to be dischargeable demonstrate an intent to make discharge of educational loans more difficult. See id. A major purpose in enacting § 523(a)(8) was to preserve the financial integrity of educational loan programs. Id. Thus, the plain language and purpose behind the section support the

conclusion that it should be applicable to non-student as well as student obligors.

While both arguments are highly persuasive, this court will adopt the latter and find the debt in the case at bar nondischargeable. This conclusion is based foremost on the plain language of the statute, which does not delineate between educational loans made to students and non-students. The apparent public policy protecting the financial integrity of the educational loan program system is also an important factor.

The Court concludes that the exception to dischargeability for student loans in 11 U.S.C. § 523(a)(8) does apply to non-student obligors; therefore, the Debtor's obligation thereon is not dischargeable.

ORDER

IT IS ACCORDINGLY ORDERED as follows:

1) The Defendant, Iowa College Student Aid Commission, shall have judgment against the Plaintiff, Judith Anne Stader, dismissing the Complaint.

2) The Defendant, Iowa College Student Aid Commission, shall have judgment against the Plaintiff, Judith Anne Stader, on the counterclaim, in the amount of $13,881.57 plus interest thereon from February 7, 1992, at the rate of 9.34 percent per annum simple interest.

3) This debt is not dischargeable.

Dated this __16th_____ day of November, 1992.

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RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE