

1 more than seven years before the filing date of the bankruptcy petition. See 11 U.S.C.
2 § 523(a)(8)(A) (1990) (amended 1998)¹. The Debtor and Lender's successor in interest, the
3 United States Department of Education (the "Department"), now request that the Court
4 determine whether the Debtor obtained a discharge of the Student Loans in his chapter 7
5 case or whether, as a result of the applicable version of 11 U.S.C. § 523(a)(8)(A)², the
6 Student Loans are non-dischargeable.

7
8 The Court determines that Debtor provided credible testimony that he ceased
9 attending most SDSU classes in the Spring of 1986. The Court concludes, notwithstanding,
10 that Debtor failed to prove that the Student Loans first became due more than seven years
11 prior to the Petition Date. Thus, the Court finds that the Student Loans were not discharged
12 in Debtor's chapter 7 case.

13 14 BACKGROUND

15
16 In 1985, Lender made the Student Loans to Debtor under the California Student Aid
17 Commission "Guarantor" - Guaranteed Student Loan Program. The Student Loans were
18 evidenced by promissory notes and disclosure statements dated as of January 24, 1985 and
19 September 3, 1985 (collectively, the "Notes"). See Trial Ex. A and B.

20
21 The Notes contain identical language regarding payment. In particular, Debtor
22 promised that he would " . . . repay [these] loan[s] in periodic installments during the
23 repayment period that will begin no later than the number of months allowed in my 'grace
24

25 ¹ In 1998, Congress deleted the seven year rule from section 523(a)(8)(A), leaving "undue
26 hardship" as the sole basis for discharging an educational loan or benefit. The amendment applies
27 to all cases commenced after October 7, 1998. Higher Education Amendments of 1998, Pub. L. No.
28 105-244, § 971(b) (1998).

² Hereinafter, references to code sections refer to Title 11 of the United States Code, also
referred to as the "Bankruptcy Code", unless otherwise specified. References to rules refer to the
Federal Rules of Bankruptcy Procedure, unless otherwise specified. References to the transcript of

1 period' indicated above (in Section IV) after the time I either leave school or cease to carry
2 at least one-half of the normal academic load at a school that is participating in the
3 Guaranteed Student Loan Program (GSLP)." The Notes also provided that Lender would
4 provide the particular terms and conditions of repayment applicable to the Student Loans in
5 a separate "repayment schedule" that the Lender would provide to Debtor before the
6 repayment period began.

7
8 Neither Debtor nor the Department provided the Court with a copy of the repayment
9 schedule. However, the uncontroverted evidence establishes that it was provided and that it
10 stated that payment would commence December 1, 1987.

11
12 Prior to March of 1986, Debtor experienced some financial difficulty. In particular,
13 Debtor and his current spouse were new parents, and Ms. Poynter no longer worked outside
14 the home. Further, Debtor's electrical engineering studies at SDSU limited his ability to
15 support his family financially. As a result, Debtor was already questioning his decision to
16 pursue an engineering degree when an accident involving his daughter brought his situation
17 into sharper focus.

18
19 On the evening of March 12, 1986, Debtor accidentally closed a door on his toddler's
20 finger and amputated her finger tip. The Court heard testimony from both Debtor and
21 Ms. Poynter regarding their reaction to this accident and received into evidence a report
22 from the attending emergency room physician. The Court finds credible Debtor's testimony
23 that as a result of the accident he immediately decided to quit school to pursue full-time
24 employment. The Court also accepts as credible his testimony that he so decided
25 immediately after the accident. The accident was traumatic for the Debtor, and the UCSD
26 emergency room operation report precisely identifies the accident date.

27
28 _____
the trial in this matter, docket ##56 and 58, are abbreviated "Tr. ____:____-____."

1 Debtor testified that he immediately went to SDSU with the intention of speaking to
2 each professor and obtaining their signatures on drop cards allowing him to drop his classes.
3 The evidence establishes that Debtor previously dropped classes, knew the procedures to
4 follow, and knew that he needed his professors' signatures. The Debtor testified that he
5 wanted to formally drop classes in order to avoid an "F" indicating failure on his transcript;
6 while the Debtor had no firm intention to return to college, he wanted to preserve his
7 options as best he could.

8
9 The Debtor alleges that he spoke initially to Professor Abud who refused to sign a
10 drop card. As a result, the Debtor approached Frank Stratton, Assistant Dean of the
11 Engineering Department. Dean Stratton provided a declaration which was accepted into
12 evidence without opposition. In his declaration, he authenticates an earlier declaration
13 which states that he does not remember Debtor or his situation, but does recall similar
14 problems with Professor Abud. He also notes that once Debtor withdrew from his classes he
15 would have been carrying less than half the normal academic load.

16
17 The Debtor candidly testified that with the exception of one other professor with
18 whom he had formed a personal relationship, he did not personally approach any other
19 professor to request a signed drop card for a course. Instead, he relied upon Dean Stratton
20 to orchestrate his withdrawal. Debtor acknowledges that he is unaware what Dean Stratton
21 did after their conversation. Debtor's testimony establishes that he took no other withdrawal
22 action of any type.

23
24 The Department presented testimony from Carol McFeely, a 36 year employee of the
25 records department of the SDSU registrar's office, regarding SDSU's administrative policies
26 and practices during 1986, Debtor's SDSU transcript (the "Transcript"), and the notations on
27 the Transcript. Ms. McFeely testified that in order to obtain a formal mid-semester
28 withdrawal during 1986, a student needed the instructor's signature and approval by the

1 assistant dean of his major following a formal petition for withdrawal. After the approval
2 by the dean of his department, the student would return the approved petition to the office of
3 the registrar for processing. In such a case, the classes would be withdrawn formally as
4 evidenced by a "W" on the student's transcript. Tr. 78:10-11.

5
6 Ms. McFeely also provided testimony as to the process by which grades appeared on
7 transcripts at SDSU during 1986. In each case instructors received grading sheets,
8 completed the grading sheets, and then returned them to the office of registrar. At that time
9 they were scanned onto the transcript. Ms. McFeely explained further that "U" is used when
10 a student "stopped attending." Tr. 84:9-10. Thus, a "U" indicates an informal withdrawal or
11 failure to complete the class.

12
13 Ms. McFeely testified initially that a letter grade told her that the student attended the
14 class from the beginning of the term until the end. Tr. 105:19-22. But later Ms. McFeely
15 qualified that answer somewhat indicating that where the grade was an "F" it could also
16 mean that Debtor stopped attending classes and was receiving failing grades at that time.
17 Tr. 107:8-11.

18
19 Here, Debtor's transcript for Spring 1986 evidences that Debtor did not formally
20 withdraw from classes. Debtor received one "B", one "F", and four "U's" for the semester.
21 Debtor acknowledges that he completed the engineering electronics lab, a one unit course
22 for which he received a "B." Debtor denies that he continued with engineering problem
23 analysis, a two unit course for which he received an "F." In connection with the four
24 remaining courses, which totaled 10 units, Debtor asserts that he withdrew from the classes.
25 Based on Ms. McFeely's testimony, however, the evidence is clear that a formal withdrawal
26 did not occur as these 10 units resulted in "U" grades, not "Ws."

27
28

1 In summary and based on Ms. McFeely's testimony, the Transcript evidences that the
2 professors assigning a "U" either were contacted by Dean Stratton or otherwise determined
3 that the Debtor failed to attend classes and complete the course work, but does not evidence
4 when either event occurred. In connection with the grade of "F" in one class, the Transcript
5 fails to evidence that Dean Stratton approached the professor for that class although the "F"
6 is not conclusive in this regard. Finally, there is no evidence that SDSU received official
7 notice of Debtor's withdrawal from the Debtor, Dean Stratton, or otherwise prior to Spring
8 1986 semester end.

9
10 Debtor failed to properly commence payments as required by the payment schedule
11 and the Notes. As a result, the Lender ultimately sought payment from the government
12 guarantors. It is undisputed that the guarantors paid the Lender, and, as a result, the
13 Department currently is subrogated to the position of the Lender and entitled to collect all
14 amounts owed on account of the Student Loans.

15
16 As a result of mounting financial difficulties, Debtor filed a chapter 7 case on
17 October 28, 1993 (the "Petition Date").

18
19 Several years later, in 1997, the Department sought a declaratory judgment that the
20 Student Loans were not discharged as the Student Loans first became due less than seven
21 years prior to the Petition Date (the "Initial Action"). Counsel for Debtor provided evidence
22 and argument to the Department's attorney, Assistant United States Attorney Robert O.
23 Nesler. Mr. Nesler ultimately agreed to dismiss the Initial Action without prejudice.

24
25 On two occasions thereafter, the Debtor received correspondence requesting payment
26 of the Student Loans from the Department. In each case, the Debtor took the position that
27 the Student Loans were discharged in his chapter 7 case. On each of these occasions, the
28

1 Department did not take further prompt steps to collect the Student Loans. There is,
2 however, no evidence that the Department otherwise agreed with Debtor's position.
3

4 Finally, on August 15, 2008, the Department took affirmative collection actions in
5 connection with the Student Loans and advised Debtor that it would commence garnishment
6 of Debtor's wages and that it, similarly, would collect the Student Loans through offsets
7 against any federal tax refunds otherwise payable to Debtor. As a result, Debtor reopened
8 his chapter 7 case to obtain a determination regarding dischargeability of the Student Loans.
9

10 STANDARDS

11
12 The burden of proof in dischargeability cases involving student loan claims in a
13 bankruptcy filed in 1993 is split between the parties. The creditor has the burden of proving
14 that a debt exists and was incurred for educational purposes. *See, D'Ettore v. Devry Institute*
15 *of Technology (In re D'Ettore)*, 106 B.R. 715, 717 (Bankr. M.D. Fla. 1989) (citing *In re*
16 *Norman*, 25 B.R. 545, 548 (Bankr. S.D. Cal. 1982)). The debtor has the burden of proving
17 that such debt first became due outside the seven-year period prescribed by the statute. *Cf.*,
18 *Bachner v. People of the State of Illinois, ex rel., Illinois Student Assistance Com'n (In re*
19 *Bachner)* 165 B.R. 875, 880-81 (Bankr. N.D. Ill. 1994). The burden of proof, therefore, is
20 on a debtor to show by a preponderance of the evidence that the debt is subject to discharge
21 and upon the creditor to show the existence of a debt incurred for educational purposes.
22 *Grogan v. Garner*, 498 U.S. 279, 287 (1991).
23

24 DISCUSSION

25
26 In this case, there are three questions that must be answered and explored by the
27 Court prior to rendering a final determination. First, the Court must determine the
28 credibility of the witnesses' testimony and, in particular, the credibility of the Debtor's

1 testimony regarding the actions he took in 1986. Next, the Court must review the language
2 of 11 U.S.C. § 523(a)(8) as it existed on the Petition Date.³ In particular, the Court must
3 interpret the meaning of the words "first became due" as used in the statute. If analysis of
4 the statutory language is not dispositive of the issue before the Court, then the Court must
5 analyze the language of the Notes to determine the meaning of the term "cease to carry at
6 least one-half of the normal academic load" and, based on this analysis, determine whether
7 Debtor meets his burden of proving that the Notes first became due more than seven years
8 prior to the Petition Date.

9
10 **A. Debtor Provides Credible Testimony Regarding His Actions In March Of 1986.**

11
12 The Court determines that the Debtor provides credible testimony in this case and, in
13 particular, acknowledges areas where he lacks personal knowledge even though it would be
14 in his best interest to further embroider his story. In particular, the Debtor candidly admits
15 that he personally spoke with only two professors in connection with his decision to drop

16
17 ³ As of the Petition Date, the statute read as follows:

18 (a) A discharge under section 727, 1141, 1228(a), 1228(b) or 1328(b)
19 of this title does not discharge an individual debtor from any debt –

20 . . .

21 (8) for an educational benefit overpayment or loan made,
22 insured or guaranteed by a governmental unit, or made under
23 any program funded in whole or in part by a governmental unit
24 or nonprofit institution, or for an obligation to repay funds
25 received as an educational benefit, scholarship or stipend, unless

26 –
27 (A) such loan, benefit, scholarship, or stipend
28 overpayment first became due more than 7 years
(exclusive of any applicable suspension of the repayment
period) before the date of the filing of the petition; or
(B) excepting such debt from discharge under this
paragraph will impose an undue hardship on the debtor
and the debtor's dependents.

11 U.S.C. § 523(a)(8) (1990) (amended 1998).

1 classes, that he decided to continue with one class, that after speaking with Dean Stratton he
2 took no other actions to formally drop his classes, and that he has no idea what steps Dean
3 Stratton took following their discussion.
4

5 True, as the Department suggests, the Debtor's testimony regarding the underlying
6 details is inconsistent. Given that the Debtor testified more than 20 years after the fact, this
7 is far from surprising. The Court finds highly credible, however, the Debtor's testimony that
8 as of a mid-March date he determined to drop classes and took some steps immediately
9 thereafter. It is understandable that he would recall the events with certainty given the
10 traumatic injury to his child, an injury he caused, albeit clearly by accident. Given that he
11 has a copy of the emergency room report, his recollection of the precise date of the accident
12 is also believable. It is also understandable that he would generally remember with great
13 clarity his reasoning.
14

15 His confusion regarding what grade Prof. Abud ultimately gave him and regarding
16 his apparent decision to register for a few classes for the next semester – classes which he
17 immediately dropped – strike the Court as insignificant memory lapses and certainly fail to
18 prove that the Debtor lied to the Court. The fact that it is in the Debtor's financial best
19 interest to lie, a point emphasized by the Department, is insufficient to alter this Court's
20 opinion as to Debtor's truthfulness. The Court carefully reviewed the demeanor of the
21 Debtor and his wife on the witness stand, found no indication that they were not being
22 truthful, and finds that this conclusion is underscored by their limited testimony as to the
23 details of the Debtor's decision and as to the process related to dropping his classes.
24

25 The Court also finds Ms. McFeely a highly credible witness given her long and
26 continuous employment at SDSU and the nature of her employment.
27
28

1 Having determined that the Debtor decided to drop his classes in mid-March 1986
2 and spoke with two professors and Dean Stratton regarding this decision, the Court must
3 now determine whether as a result of these actions the Notes first became due more than
4 seven years prior to the Petition Date. As it is uncontroverted that the Notes were not due
5 until, at the earliest, six months after Debtor was no longer at least a half-time student and as
6 the parties agree that he attained this status no earlier than mid-March of 1986 the relevant
7 time period is narrow. In short, if Debtor no longer carried at least a half time academic
8 load prior to April 28, 1986, the Student Loans are discharged. If, on the other hand, he
9 ceased carrying at least one-half the normal academic load on or after April 28, 1986 then
10 the Student Loans were not discharged in his bankruptcy case.

11
12 **B. As Used In Section 523(a)(8)(A), The Notes First Became Due When Matured**
13 **And Enforceable.**

14
15 Prior to analyzing the Notes, the Court must first look to the statute which provides
16 for discharge of student loan debt that first becomes due more than seven years prior to the
17 petition date. The word "due" is susceptible of two possible meanings in this context. First,
18 it may mean owed or owing, as distinguished from payable. *Black's Law Dictionary* 448
19 (5th ed. 1979). If this is the case, then the payment date is irrelevant as the Student Loans
20 were made and the underlying Notes were executed well outside the seven years prior to the
21 Petition Date.

22
23 Such an argument, however, is not advanced by the Debtor and clearly lacks merit.
24 If Congress desired the loan origination date to be the relevant starting point, it could have
25 unambiguously so stated. And the decision not to use the origination date makes perfect
26 sense given the fact that a student does not have any obligation to repay interest until well
27 after the origination date when a student ceases school or significantly reduces his academic
28 load. Thus, use of the origination date would lead to the anomalous result where a portion

1 of an obligation could be dischargeable while all or a portion of the interest accruing thereon
2 would not. Such a result borders on the ridiculous, and a court should not adopt such an
3 interpretation where there is another that is equally consistent with the plain language of the
4 statute and that avoids such an anomalous result.

5
6 Here such an interpretation exists because "due" also can correctly be interpreted to
7 mean the point in time when a debt is: "presently or immediately matured and enforceable."
8 *Id.* Indeed, *Black's* suggests that in the absence of any qualifying expressions this is the
9 appropriate meaning when, as here, the statute most correctly is read to refer to the time for
10 payment. And, thus, the term "due" is best read to refer to the date on which the Notes first
11 became matured and enforceable.

12
13 **C. Ascertaining The Maturity Date For The Notes Requires Analysis Of Their**
14 **Language.**

15
16 In order to determine the date on which the Notes first became matured and
17 enforceable, the Court must analyze the language of the Notes. Here, the Notes were
18 entered into in California⁴ and must be interpreted under California law. Cal. Civ. Code
19 § 1646. Under California law, courts must interpret contracts: "to give effect to the mutual
20 intention of the parties as it existed at the time of contracting." Cal. Code Civ. P. § 1636.
21 Further, when the contract is reduced to writing, a court must interpret the parties' intent
22 from the plain language of the written contract itself. Cal. Code Civ. P. §§ 1638 & 1639.

23
24 The Court's pre-trial review of the Notes was significantly impeded by the fact that
25 the only copies of the Notes were largely illegible due to a series of stamps apparently
26 placed thereon by the Lender, officials of the California Education Loan Commission, or the

27
28 ⁴ The Notes do not contain a governing law provision, nor indicate place of performance.

1 Department at some time after execution. The Court noted in connection with a previous
2 motion for summary judgment that its inability to fully review the Notes was a factor in its
3 determination to deny summary judgment to either party. At trial, the Department produced
4 without objection by the Debtor a "form" for the Notes that the parties agree mirrors the
5 terms of the Notes. This document, while also lacking complete clarity, is significantly
6 more legible and allows the Court to fully review the Notes. See Trial Ex. 27.

7
8 **1. The Notes Became Matured And Enforceable Prior to December 1, 1987.**

9
10 The Department argues that it has unfettered discretion to alter the provisions of the
11 Notes and that, as a result, it appropriately determined that the Notes first became due on
12 December 1, 1987. After careful review, however, the Court finds no provision in the Notes
13 conclusively supporting the Department's broad statement.

14
15 Here, there is a conflict in the payment terms of the Notes that injects an element of
16 ambiguity. At one point, the Notes state that payment will be made **during** the repayment
17 period that will begin no later than: "the number of months allowed [by the grace period
18 indicated in the Notes to be six months] after **I either leave school or cease to carry at**
19 **least one half the normal academic workload....**" (emphasis added). Later, however, the
20 Notes also state that: "The particular terms and conditions of repayment that apply to this
21 loan will be set forth in a separate document known as a repayment schedule, that the lender
22 **will provide to me before the repayment period begins.**" The Department appears to
23 argue that the second section is controlling and that the Notes were not matured and
24 enforceable (i.e. due) until the first date set forth in the repayment schedule - a date in 1987
25 and less than seven years prior to the Petition Date. Debtor, in essence, argues in response
26 that the initial payment language is controlling, that the Student Loans became due six
27 months after he left his classes, and that the Lender's failure to require that payments
28 commence at an earlier date is inapposite.

1 The Court concludes that in this case, the repayment period clearly began prior to the
2 late 1987 date argued by the Department. As discussed below, there is no question that
3 Debtor ceased to be at least a half-time student as of the end of the Spring 1986 semester at
4 the latest. Similarly, however, there is no question that Debtor failed to advise Lender of
5 this decision as required by the Notes.

6
7 Debtor relies on *Chisari v. Florida Dep't of Educ. (In re Chisari)*, 183 B.R. 963
8 (Bankr. M.D. Fla. 1995) for the proposition that his failure to give notice and the Lender's
9 resultant failure to timely demand repayment in 1986 is not dispositive in this case. *Chisari*
10 provides some assistance to Debtor in his argument, but it is far from dispositive.

11
12 In *Chisari*, the parties agreed that the debtor carried less than one-half the normal
13 academic load on November 26, 1986 – a date certain. Thereafter, the facts more closely
14 resemble this case as the Lender first learned of this withdrawal much later and only then
15 provided a repayment schedule. The Lender argued that the seven-year time period ran
16 from the first payment date set forth in its new payment schedule – a schedule based on
17 receipt of a notice of withdrawal – while the student argued that the repayment schedule ran
18 from May 26, 1987, the date six months after she ceased being at least a half-time student
19 notwithstanding her failure to give notice. *Id.* at 966. The *Chisari* court agreed with the
20 Debtor. In particular, the court noted that while the lender's inability to schedule an earlier
21 repayment date occurred as a result of the debtor's default in her obligation to provide the
22 lender with express notice of her date of withdrawal, under the note this default did not alter
23 the other note terms which clearly provided that the debtor's payment obligation
24 commenced six months after she ceased at least part-time student status. *Id.* at 968.

25
26 *Chisari*, thus, aids the Debtor in that it suggests that Debtor's failure to directly
27 contact the Lender as required by the Notes is not dispositive. And this Court agrees that
28 the plain language of the Notes provides that the Notes first become due, that is matured and

1 enforceable, six months after the Debtor leaves school or carries less than half-time
2 academic load notwithstanding such a default. True, the Lender is obligated to send a
3 repayment schedule prior to this date, but where the Debtor failed in his notice obligations
4 he cannot cry default if the Lender is late in noticing payment dates.

5
6 This construction also is consistent with the Notes' language stating that payment
7 must be made *within* the repayment period and not commencing at the beginning of the
8 repayment period. And it is also consistent with a central provision of the Notes – that the
9 interest burden shifts to Debtor when he ceases to carry at least half the normal academic
10 load. Here Lender had every right to require payment at a date prior to December 1, 1987
11 and the right to shift the interest payment burden prior to that date. Lender's failure to
12 exercise this contractual right does not change the fact that this right existed and entitled
13 Lender to payment at an earlier date.

14
15 Unfortunately for the Debtor, however, *Chisari* is not dispositive in the case because,
16 unlike the situation in *Chisari*, the parties here do not agree on the date on which Debtor
17 ceased carrying at least a half of the normal academic load. This remains the central
18 question that must be answered in this case.

19
20 Because the Court determines that in the normal course the Notes would come due
21 not when the Lender demanded payment, but rather when the Lender had the right to
22 demand payment, the Court must now determine the meaning of the term "carrying at least
23 one-half of the normal academic workload."

24
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1 **2. Debtor Fails To Meet His Burden Of Establishing That The Notes First**
2 **Became Due Prior To October 28, 1986.**

3
4 The Notes state that payment begins six months after the Debtor either ceases to
5 attend school or ceases to carry at least one-half of the normal academic load. Here, the
6 parties agree that the "ceases to attend school" language is inapplicable. There is no dispute
7 that he continued to take at least one unit during the entirety of the 1986 Spring term.
8 Tr. 93:18-20.

9
10 Also, the parties agree that Debtor needed to carry fewer than six course units to
11 carry less than a half academic load and that a normal academic load is twelve units. Finally
12 the parties also agree that Debtor carried at least one unit as he continued to take the
13 Engineering Electronics Lab by his own admission.

14
15 The term "carry" as used in connection with an academic load, is best understood to
16 mean "to support or sustain the responsibility of." *The American Heritage Dictionary* 243
17 (1982 Houghton Mifflin Company, 2nd ed.). An academic load is an intangible concept that
18 cannot be physically borne. And the concept of bearing the responsibility for this intangible
19 is by far the best and, indeed, the only relevant definition identified after recourse to
20 standard dictionaries. The concept of responsibility is also consistent with the need for
21 some appropriate accountability from a student as well as appropriate leniency for a student.
22 A student who becomes ill and is unable to attend classes for even an extended period of
23 time may reach accommodation with the educational institution such that responsibility for
24 the academic load, enrollment therein, and the opportunity for course credit continue.
25 Similarly, given that the student loan lender cannot directly monitor the student, the student
26 loan lender must rely on the educational institution to advise as to changes in the student's
27 status if the student fails in his contractual obligation to provide notice. And for the
28 educational institution to do so, it must know what that status is. This means that a student

1 must do more than decide to drop out. He must divest himself of responsibility for the
2 courses through the procedures established by the university.

3
4 Here, the Department provided the testimony of Ms. McFeely who detailed the
5 process for officially withdrawing from a course after the first three weeks of class. A
6 student who does so receives a "W." Here it is clear that the Debtor did not complete the
7 process of formally dropping any classes. His transcript from Spring 1986 contains not a
8 single "W." It is also clear that Debtor has not met his burden of establishing that he
9 divested himself for responsibility for these courses through some less formal but still
10 appropriate means on a date certain that causes the Notes to first become due more than
11 seven years prior to the Petition Date (i.e. prior to April 28, 1986). The student who
12 withdraws after the early weeks of the semester must obtain the signature of each professor
13 on a drop card. Here, there is no evidence that Debtor obtained the signature of his
14 Engineering Problem Analysis Professor as he received an "F" in the class. Ms. McFeely
15 testified that the receipt of an "F" could indicate that the student did not withdraw from the
16 class. In four courses involving ten units, however, Debtor received a "U." This transcript
17 notation is ambiguous and again, fails to evidence that these professors were aware of
18 Debtor's March decision to withdraw. The "U" indicates either that Debtor withdrew from
19 the classes somewhat informally after the three week drop period or that he simply stopped
20 attending classes and failed to take the final. Thus, this evidence is not consistent with
21 appropriate withdrawal from some or all of these courses.

22
23 Debtor's evidence also falls short in another regard. It is clear that Debtor decided to
24 drop out. It is believable that Debtor attempted to talk to one of the professors for a course
25 in which he received a "U." It is believable that the Debtor approached Dean Stratton and
26 asked him to handle the process for him. What is not clear is what the Dean did. First,
27 Debtor candidly testified that: ". . . But all my other classes I never officially – as far as I
28 know, Dr. Stratton – I don't know what happened next." Tr. 18:3-5. The Dean admits that

1 he remembers nothing specific about the Debtor or his drop request. The "U" grades may
2 mean that he acted on the request, but are not conclusive evidence that he did so. And
3 perhaps most importantly, there is no evidence as to when the Dean took steps to formalize
4 the process – if ever. He may have moved with alacrity. He may have delayed the process
5 with some or all of the involved professors. Indeed, he may have failed entirely to follow
6 up given the assignment of an "F" rather than a "U" by one professor. In short, there is no
7 conclusive evidence that Dean Stratton ever took any steps to complete or further the
8 Debtor's drop process and certainly no evidence that he did so prior to April 28, 1986. And
9 there is no evidence that an informal conversation with Dean Stratton was enough to absolve
10 Debtor from responsibility for these courses such that he was no longer enrolled therein and
11 no longer "carrying" these courses.

12
13 The Court concludes that this case must be decided against the Debtor based on the
14 allocation of the burden of proof. Debtor has the obligation to show that the Notes came
15 due outside the seven-year period prior to the Petition Date. Debtor can establish that he
16 started this process more than seven years prior to the Petition Date, but he cannot establish
17 that he completed the process and withdrew from (i.e. ceased to carry) the classes more than
18 seven years prior to the Petition Date. Had he formalized the process, obtained drop cards
19 himself, and insured that SDSU understood his status at the administrative level, it would be
20 appropriately irrelevant that the Lender delayed in commencing to demand repayment.
21 Because he informally delegated responsibility for his withdrawal to a third party, he cannot
22 meet his burden of establishing when withdrawal occurred. And this is far from unfair
23 given that SDSU and the Lender, as a result, had no method by which to determine that he
24 had decided to drop out in March of 1986.

25
26 The Court recognizes that this is an unusual case. By semester end, Debtor clearly
27 was not at least a half-time student. He enrolled in only a few units for the next semester
28 and dropped even these classes within the three week drop period. SDSU may have had an

1 obligation to alert the Lender to this fact in the fall of 1986. It appears, however, that SDSU
2 may not have done so or that the Lender failed to act appropriately on such information.
3 The Lender sent the repayment schedule well after the appropriate date of the end of the
4 Spring semester, May 30, 1986. Indeed, the Lender appears to utilize the termination of
5 studies date suggested in Debtor's initial loan application. There may be a failure by either
6 the Lender or SDSU in addition to the Debtor's default in his obligation to give notice. But
7 this does not alter the fact that the Debtor cannot establish with certainty that he
8 appropriately ended his responsibility for any Spring 1986 classes prior to April 28, 1986.
9 Thus, the evidence establishes, at best, that Debtor was no longer carrying at least half the
10 normal academic load after the end of the Spring 1986 semester. And this date falls
11 squarely within the seven years prior to the Petition Date.

12
13 The Department is ordered to promptly submit a judgment in its favor.

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15 DATED: February 2, 2010

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17 LAURA S. TAYLOR, JUDGE
18 United States Bankruptcy Court
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