

MAR 27 2015

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. NC-14-1336-PaJuTa
)	
TARRA NICHOLE CHRISTOFF,)	Bk. No. 13-10808
)	
Debtor.)	Adv. No. 13-3186
_____)	
)	
INSTITUTE OF IMAGINAL STUDIES)	
dba MERIDIAN UNIVERSITY,)	
)	
Appellant,)	
)	
v.)	O P I N I O N
)	
TARRA NICHOLE CHRISTOFF,)	
)	
Appellee.)	
_____)	

Argued and Submitted on February 19, 2015
at San Francisco, California

Filed - March 27, 2015

Appeal from the United States Bankruptcy Court
for the Northern District of California

Hon. Dennis Montali, U.S. Bankruptcy Judge, Presiding

Appearances: _____
 Scott D. Schwartz of Rust, Armenis & Schwartz, P.C.
 argued for Appellant Institute of Imaginal Studies
 d/b/a Meridian University; Lindsay Torgerson of
 Wine Country Family Law & Bankruptcy Office argued
 for Appellee Tarra Nichole Christoff.

Before: PAPPAS, JURY, and TAYLOR, Bankruptcy Judges.

1 PAPPAS, Bankruptcy Judge:

2

3 This appeal raises an important issue of first impression
4 concerning the scope of the exception to discharge for student
5 debts in bankruptcy. Creditor Institute of Imaginal Studies d/b/a
6 Meridian University ("Meridian") appeals the summary judgment of
7 the bankruptcy court determining that the debt owed to Meridian by
8 chapter 7¹ debtor Tarra Nichole Christoff ("Debtor") was not
9 excepted from discharge pursuant to § 523(a)(8)(A)(ii). Based
10 upon the plain language of the Bankruptcy Code, we AFFIRM.

11

I. FACTS²

12

A. Relationship of the Parties.

13

14 Meridian is a for-profit California corporation which
15 operates a private university licensed under California's Private
16 Post Secondary Education Act of 2009, Cal. Educ. Code § 94800, et
17 seq. If a graduate of Meridian fulfills other post-graduate
18 requirements, the graduate may obtain a license from California to
19 practice as an independent, unsupervised psychologist.

19

20 Debtor applied for admission to Meridian in 2002. Meridian
21 agreed to admit Debtor and offered her \$6,000 in financial aid to
22 pay a portion of the tuition for that school year. Under this
23 arrangement, Debtor did not receive any actual funds from

23

24 ¹ Unless otherwise indicated, all chapter, section and rule
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
26 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.
"Civil Rule" references are to the Federal Rules of Civil
27 Procedure 1-86.

27

28 ² This recitation of the undisputed facts is taken primarily
from the bankruptcy court's decision, which neither of the parties
has challenged.

1 Meridian, but instead she received a tuition credit. Debtor
2 signed an enrollment agreement acknowledging Meridian's offer to
3 "finance" \$6,000 of the tuition, and she signed a promissory note
4 in favor of Meridian evidencing her obligation. The promissory
5 note provided that the debt for the tuition credit was to be paid
6 by Debtor in installments of \$350 per month after Debtor completed
7 her course work or withdrew from Meridian. Interest accrued on
8 the unpaid balance of the note at nine percent per annum,
9 compounded monthly.

10 In 2003, Debtor submitted a similar application, and Meridian
11 granted her a financial aid award of \$5,000 for that school year.
12 As before, Debtor signed a promissory note for \$5,000. Again,
13 Debtor did not receive any funds but instead received a tuition
14 credit. The promissory note contained payment terms identical to
15 those in the prior note.

16 Debtor completed her course work at Meridian, and Debtor's
17 note payments began in October 2005. After making several
18 payments on the notes, in 2009, Debtor sought a deferral of her
19 payments for a period of one year. Meridian granted the
20 extension. Also in 2009, Debtor withdrew from Meridian without
21 completing her dissertation, a requirement for obtaining her
22 degree.

23 After the extension expired, Debtor did not pay the amounts
24 due under the two promissory notes. Thereafter, Meridian
25 unsuccessfully attempted to collect the balance due from Debtor.
26 Eventually, Meridian and Debtor agreed to submit Meridian's claims
27 to arbitration under a provision in the enrollment agreement. In
28 July 2012, an arbitrator ordered Debtor to pay Meridian the unpaid

1 balance due on the promissory notes, \$5,950, plus accrued
2 interest.

3 **B. The Bankruptcy Case and Adversary Proceeding.**

4 Debtor filed a chapter 7 bankruptcy petition on August 19,
5 2013. Debtor listed Meridian in schedule F as an unsecured,
6 nonpriority creditor. Meridian commenced an adversary proceeding
7 against Debtor seeking a determination by the bankruptcy court
8 that the debt owed by Debtor to Meridian was excepted from
9 discharge pursuant to § 523(a)(8).

10 On April 30, 2014, Meridian filed a motion for summary
11 judgment. In its motion, Meridian conceded that Debtor's debt did
12 not qualify for an exception to discharge under either
13 § 523(a)(8)(A)(i) or (a)(8)(B).³ However, it argued that the debt
14 was excepted from discharge under § 523(a)(8)(A)(ii). Debtor
15 disputed that this Code provision applied to her debt to
16 Meridian.⁴ The parties appeared at a motion hearing on May 30,
17 2014, presented their arguments, and the bankruptcy court took the
18 issues under advisement.

19 On June 11, 2014, the bankruptcy court entered a Memorandum
20 Decision in which it held that Debtor's debt to Meridian did not
21

22
23 ³ We agree that Meridian cannot take advantage of these
24 discharge exceptions because it was neither a governmental unit
25 nor a nonprofit institution as required for an exception under
26 § 523(a)(8)(A)(i), nor was the debt in this case a "qualified
27 education loan" as defined by the Internal Revenue Code, a
28 condition for an exception to discharge under § 523(a)(8)(B).

26 ⁴ The parties agreed that if the bankruptcy court determined
27 that the Meridian debt qualified for an exception to discharge
28 under § 523(a)(8)(A)(ii), Debtor would be allowed to amend her
answer and plead that she could not repay the debt without an
"undue hardship".

1 qualify for an exception to discharge under § 523(a)(8)(A)(ii).
2 Inst. of Imaginal Studies dba Meridian Univ. v. Christoff (In re
3 Christoff), 510 B.R. 876, 884 (Bankr. N.D. Ca. 2014). In making
4 this ruling, the bankruptcy court noted that the question raised
5 by the motion was an issue of first impression in the Ninth
6 Circuit following enactment of the Bankruptcy Abuse Prevention and
7 Consumer Protection Act of 2005 (BAPCPA).⁵ After a thorough
8 review of amended § 523(a)(8) and the cases addressing the issue,
9 the bankruptcy court concluded:

10 [b]ecause Debtor's obligations under
11 applicable documents were to pay the amount
12 under the [p]romissory [n]otes, and thereafter
13 the arbitration award, but did not flow from
14 'funds received' either by her as the student
or by Meridian from any other source, the debt
is not covered by [§ 523(a)(8)(A)(ii)] and is
therefore eligible for discharge in Debtor's
discharge.

15 In re Christoff, 510 B.R. at 884.

16 Interpreting the "funds received" requirement in
17 § 523(a)(8)(A)(ii), the bankruptcy court explained that "Meridian
18 simply agreed to be paid the tuition later . . . [i]t did not
19 receive any funds, such as from a third party financing source."
20 Id. at 879. The bankruptcy court therefore concluded that, while
21 the transactions between Debtor and Meridian were clearly loans,
22 § 523(a)(8)(A)(ii) does not extend to loans but, instead, grants
23 an exception to discharge for "an obligation to repay funds
24 received." Id. at 879. The bankruptcy court observed that BAPCPA
25 had amended the prior version of § 523(a)(8) and had created a
26 "newly separated [§ 523(a)(8)(A)(ii), which] refers to an

27

28 ⁵ Pub. L. No. 109-8, 119 Stat. 23.

1 'obligation to repay funds received as an educational benefit,
2 scholarship[,] or stipend,' without reference to educational loans
3 or any other kind of loan." Id.

4 Meridian filed a notice of appeal concerning the Memorandum
5 Decision on June 26, 2014. The bankruptcy court, on July 2, 2014,
6 entered an order granting summary judgment in favor of Debtor and
7 denying Meridian's motion for summary judgment; it also entered a
8 judgment incorporating these rulings. On July 11, 2014, Meridian
9 filed an amended notice of appeal to include the order and
10 judgment entered by the bankruptcy court.

11 **II. JURISDICTION**

12 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
13 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C. § 158.

14 **III. ISSUE**

15 Whether the bankruptcy court erred in holding that the
16 Meridian debt was not excepted from discharge under
17 § 523(a)(8)(A)(ii) because it was not an obligation for "funds
18 received."

19 **IV. STANDARDS OF REVIEW**

20 We review a bankruptcy court's grant of summary judgment de
21 novo. The President & Bd. of Ohio Univ. v. Hawkins (In re
22 Hawkins), 317 B.R. 104, 108 (9th Cir. BAP 2004), aff'd, 469 F.3d
23 1316 (9th Cir. 2006); Thorson v. Cal. Student Aid Comm'n (In re
24 Thorson), 195 B.R. 101, 103 (9th Cir. BAP 1996) (citing Jones v.
25 Union Pac. R.R. Co., 968 F.2d 937, 940 (9th Cir. 1992)).
26 According to Civil Rule 56, made applicable to adversary
27 proceedings in Rule 7056, summary judgment is appropriate if there
28 is a showing "that there is no genuine dispute as to any material

1 fact and the movant is entitled to judgment as a matter of law.”
2 Civil Rule 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322
3 (1986). A trial court, in the exercise of its discretion, may
4 grant a summary judgment for a nonmovant pursuant to Civil Rule
5 56(f)(1).

6 “We review de novo the bankruptcy court’s application of the
7 legal standard in determining whether a student loan debt is
8 dischargeable.” Educ. Credit Mgmt. Corp. v. Jorgensen (In re
9 Jorgensen), 479 B.R. 79, 85 (9th Cir. BAP 2012) (citing Rifino v.
10 United States (In re Rifino), 245 F.3d 1083, 1087 (9th Cir.
11 2001)). “To the extent the bankruptcy court interpreted statutory
12 law, we review the issues of law de novo.” In re Thorson, 195
13 B.R. at 103.

14 V. DISCUSSION

15 A. Arguments of the Parties.

16 Meridian argues that the bankruptcy court erred when it
17 interpreted § 523(a)(8)(A)(ii) to require that actual funds be
18 received by a debtor in order for a debt to qualify for an
19 exception to discharge under that provision. According to
20 Meridian, “funds received,” as that language is used in
21 § 523(a)(8)(A)(ii), is the equivalent to “loans” received by the
22 debtor, as described in the other provisions of § 523(a)(8). To
23 support this argument, Meridian cites to McKay v. Ingleson, 558
24 F.3d 888 (9th Cir. 2009), and to Johnson v. Mo. Baptist Coll. (In
25 re Johnson), 218 B.R. 449 (8th Cir. BAP 1998), a decision cited
26 and relied upon by the Ninth Circuit in McKay. Meridian argues
27 that the bankruptcy court erred in distinguishing these cases
28 because those decisions determined that a “loan” under § 523(a)(8)

1 required no funds to be transferred to a debtor. Meridian argues
2 that since the terms "loan" and "funds received" are synonymous as
3 used in § 523(a)(8), McKay and In re Johnson control the outcome
4 in this case.

5 Debtor points to the difference in the language employed by
6 Congress to delineate what types of student debts are excepted
7 from discharge under § 523(a)(8). While § 523(a)(8)(A)(i) and (B)
8 indeed make "loans" nondischargeable in bankruptcy, absent undue
9 hardship, § 523(a)(8)(A)(ii) applies to a different type of debt:
10 a debtor's "obligation to repay funds received as an educational
11 benefit, scholarship, or stipend [.]" Because Congress did not
12 refer to "loans" in this subsection of the Code, Debtor urges that
13 it was intended to apply to a distinctly different type of debt,
14 an obligation to repay the creditor for "funds received."
15 Therefore, Debtor argues, it is inappropriate to borrow from the
16 logic of the cases construing the "loan" language used in the
17 other student debt exceptions to construe the meaning of "funds
18 received" in § 523(a)(8)(A)(ii).

19 We agree with Debtor.

20 **B. Statutory Interpretation and Exceptions to Discharge.**

21 Any analysis of the Bankruptcy Code begins with the text of
22 the statute. Ransom v. FIA Card Servs., N.A., 562 U.S. 61, 69
23 (2011); Danielson v. Flores (In re Flores), 735 F.3d 855, 859 (9th
24 Cir. 2013) (en banc) (citing Miranda v. Anchondo, 684 F.3d 844,
25 849 (9th Cir. 2011). "Furthermore, 'the words of [the Code] must
26 be read in their context and with a view to their place in the
27 overall statutory scheme.'" In re Flores, 735 F.3d at 859
28 (quoting Gale v. First Franklin Loan Servs., 701 F.3d 1240, 1244

1 (9th Cir. 2012)). "If the statutory language is unambiguous and
2 the statutory scheme is coherent and consistent, judicial inquiry
3 must cease." Fireman's Fund Ins. Co. v. Plant Insulation Co. (In
4 re Plant Insulation Co.), 734 F.3d 900, 910 (9th Cir. 2013)
5 (citations and internal quotation marks omitted).

6 Courts must limit the provisions granting exceptions to
7 discharge to those plainly expressed in § 523(a). Bullock v.
8 BankChampaign, N.A., 133 S. Ct. 1754, 1760 (2013) (noting the
9 "long-standing principle that exceptions to discharge should be
10 confined to those plainly expressed") (internal quotations marks
11 and citations omitted); Hawkins v. Franchise Tax Bd. of Cal., 769
12 F.3d 662, 666 (9th Cir. 2014) (reminding that "the Supreme Court
13 has interpreted exceptions to the broad presumption of discharge
14 narrowly"); Sachan v. Huh (In re Huh), 506 B.R. 257, 263 (9th Cir.
15 BAP 2014) (en banc) (stating "the exception to discharge
16 provisions of the Bankruptcy Code are interpreted strictly in
17 favor of debtors"); Benson v. Corbin (In re Corbin), 506 B.R. 287,
18 291 (Bankr. W.D. Wa. 2014) (observing, in a § 523(a)(8) case, that
19 "[c]ourts construe exceptions to discharge strictly against a
20 creditor and liberally in favor of the debtor").

21 **B. The Pre-BAPCPA § 523(a)(8).**

22 The student debt exception to discharge, embodied in
23 § 523(a)(8), has been amended several times over the years, most
24 recently by BAPCPA in 2005.

25 Prior to BAPCPA, § 523(a)(8) provided that a bankruptcy
26 discharge would not apply to a debt for:

27 an educational benefit overpayment or loan
28 made, insured or guaranteed by a governmental
unit, or made under any program funded in

1 whole or in part by a governmental unit, or
2 nonprofit institution, or for an obligation to
3 repay funds received as an educational
4 benefit, scholarship, or stipend, unless
5 excepting such debt from discharge under this
6 paragraph will impose an undue hardship on the
7 debtor and the debtor's dependents.

8 In re Hawkins, 317 B.R. at 108 (quoting § 523(a)(8)).

9 Interpreting this version of § 523(a)(8), the Panel stated,

10 [g]enerally speaking, debts that are potentially
11 nondischargeable under § 523(a)(8) fall into two
12 categories: 1) debts for educational benefit
13 overpayments or loans made, insured, or guaranteed by a
14 governmental unit or nonprofit institution; or 2) debts
15 for obligations to repay funds received as an
16 educational benefit, scholarship[,] or stipend.

17 Id. at 109 (citing Mehlman v. N.Y. City Bd. of Educ. (In re
18 Mehlman), 268 B.R. 379, 383 (Bankr. S.D.N.Y. 2001)).

19 In In re Hawkins, the Panel examined an agreement between the
20 debtor and Ohio University wherein the debtor agreed, in exchange
21 for admission to the University's medical school, that when she
22 completed her studies she would practice medicine in Ohio for at
23 least five years after licensure. 317 B.R. at 107. If she failed
24 to do this, the agreement provided that she would pay liquidated
25 damages to the University. Id. The debtor graduated but promptly
26 moved to a different state. Id. The University sued the debtor
27 in state court and obtained a money judgment for the liquidated
28 damages specified in the agreement. Id. The debtor filed for
chapter 7 relief, and the University sought a determination from
the bankruptcy court that the judgment debt was excepted from
discharge under § 523(a)(8). Id. at 108. Applying § 523(a)(8) to
these facts, the Panel addressed both categories of debt covered
by the discharge exception. Id. at 110-11.

First, the Panel concluded that the agreement between the

1 debtor and the University was not an "educational loan" because
2 "while an educational loan need not include an actual transfer of
3 money . . . to [the d]ebtor, in order for it to fall within the
4 definition of . . . § 523(a)(8), the loan instrument must
5 sufficiently articulate definite repayment terms and the repayment
6 obligation must reflect the value of the benefit actually received
7 [by the debtor], rather than some other ill defined measure of
8 damages or penalty." Id. at 110 (emphasis deleted).

9 Next, the Panel considered whether the agreement created a
10 debt for "an obligation to repay funds received as an educational
11 benefit." Id. at 112. The Panel quickly concluded that it did
12 not, "because the plain language of this prong of the statute
13 requires that a debtor receive actual funds in order to obtain a
14 nondischargeable educational benefit." Id. (citing Cazenovia
15 Coll. v. Renshaw (In re Renshaw), 229 B.R. 552, 555 n.5 (2d Cir.
16 BAP 1999), aff'd, 222 F.3d 82 (2d Cir. 2000)). The University
17 appealed the BAP's decision and the Ninth Circuit affirmed,
18 adopting the opinion of the BAP as its own. See Ohio Univ. v.
19 Hawkins (In re Hawkins), 469 F.3d 1316, 1317 (9th Cir. 2006) ("We
20 adopt the opinion of the BAP, which is reported at 317 B.R. 104,
21 and affirm its judgment.").

22 A few years later, the Ninth Circuit again addressed whether
23 an agreement between a student and a college constituted a "loan"
24 for purposes of the pre-BAPCPA version of § 523(a)(8). In McKay
25 v. Ingleson, 558 F.3d 888, 889 (9th Cir. 2009), the court reviewed
26 an agreement between the debtor and Vanderbilt University that
27 deferred payment of the debtor's tuition and costs of other
28 "educational services" to monthly bills to be sent to the debtor.

1 Id. If the debtor did not pay the bills as they became due, a
2 late fee would be assessed. Id. The debtor did not pay the bills
3 as agreed and later filed for bankruptcy relief. A couple of
4 years after the debtor received her discharge, the University sued
5 the debtor in state court to recover the amounts owed under the
6 agreement. In response, the debtor commenced an adversary
7 proceeding against the University in the bankruptcy court claiming
8 that the University violated the discharge injunction of § 524(a)
9 by prosecuting the state court action. Id. The bankruptcy court,
10 and later the district court on appeal, concluded that no
11 violation of the discharge injunction occurred because the debt at
12 issue was excepted from discharge under § 523(a)(8). Id. The
13 Ninth Circuit affirmed, reasoning that the agreement between the
14 parties was a nondischargeable "loan" under § 523(a)(8), and that
15 it did not matter that no actual money had changed hands between
16 the parties under their arrangement. Id. at 890. In explaining
17 its decision, the court cited to In re Johnson, 218 B.R. 449 (8th
18 Cir. BAP 1998). Id. The court also cited to the BAP's opinion in
19 In re Hawkins for the proposition that the amount of the loan must
20 be based on the amount of benefit the debtor received; the court
21 concluded that the "loan" in McKay complied with that requirement.
22 Id. at 891.

23 In re Johnson, the decision relied upon by the Ninth
24 Circuit in McKay, addressed what constituted a "loan" under the
25 pre-BAPCPA version of § 523(a)(8): "Since the parties stipulate
26 that the [c]ollege is a non-profit institution and that the credit
27 was extended for educational purposes . . . the only issue
28 presently on appeal is whether the [c]ollege's extension of credit

1 was a loan." In re Johnson, 218 B.R. 450-51. In re Johnson
2 focused on a debt represented by a promissory note, executed to
3 evidence the debtor's obligation to a college to pay for tuition,
4 books, and other expenses. Id. at 450. The debtor defaulted on
5 the note and filed a chapter 13 case. Id. The college filed an
6 adversary proceeding in the debtor's bankruptcy case asking the
7 bankruptcy court to declare that the debt represented by debtor's
8 note was excepted from discharge. Id. The bankruptcy court
9 concluded that the debt was a "loan" for purposes of § 523(a)(8),
10 and the Eighth Circuit BAP agreed. Id. The panel rejected the
11 debtor's argument that the note was not a "loan" because no funds
12 had ever been given to him by the college:

13 [W]e conclude[] that the arrangement between [the
14 debtor] and the [c]ollege constitutes a loan
15 [B]y allowing [the debtor] to attend classes without
16 prepayment, the [c]ollege was, in effect, 'advancing'
17 funds . . . to [the debtor] . . . [and i]t is immaterial
18 that no money actually changed hands.

17 Id. at 457.

18 It is important to note that the BAP in In re Johnson, as
19 relied upon by the Ninth Circuit in McKay, acknowledged that
20 another avenue may have existed for the college to obtain an
21 exception to discharge under § 523(a)(8), characterizing the note
22 as "an obligation to repay funds received as an educational
23 benefit"; however, the panel determined it need not venture down
24 that path because the debt arising from the agreement with the
25 debtor was determined to be an educational benefit "loan" made by
26 a nonprofit or a governmental unit.⁶ 218 B.R. at 450. By

28 ⁶ Of course, the college/creditor in In re Johnson was a
nonprofit organization. See In re Johnson, 218 B.R. 450. (stating
the "parties stipulate that the [c]ollege is a non-profit
institution"). Similarly, Vanderbilt University is a nonprofit
institution.

1 contrast, in In re Hawkins, the Panel was required to decide
2 whether the agreement before it created "an obligation to repay
3 funds received as an educational benefit" because it had concluded
4 the agreement was not a "loan" under the statute. 317 B.R. at
5 112. In addressing this issue, the Panel stated "the plain
6 language of this prong of the statute requires that a debtor
7 receive actual funds in order to obtain a nondischargeable
8 benefit." Id. (citations omitted; emphasis added). The Panel
9 found this requirement was not satisfied because no "actual funds"
10 were received by the debtor in consideration of her admission and
11 education at the medical school. Id.

12 **C. Enter BAPCPA.**

13 As a result of the Code amendments in BAPCPA, since 2005,
14 § 523(a)(8) has provided that a debtor may not discharge a debt:

15 unless excepting such debt from discharge
16 under this paragraph would impose an undue
17 hardship on the debtor and the debtor's
18 dependents, for—

18 (A)(i) an educational benefit overpayment or
19 loan made, insured, or guaranteed by a
20 governmental unit or nonprofit institution; or

20 (ii) an obligation to repay funds received as
21 an educational benefit, scholarship, or
22 stipend; or

22 (B) any other educational loan that is a
23 qualified education loan, as defined in
24 section 221(d)(1) of the Internal Revenue Code
25 of 1986, incurred by a debtor who is an
26 individual.⁷

25 ⁷ Under § 523(a)(8)(B) to be a "qualified education loan"
26 under 26 U.S.C. § 221(d)(1), it must, among other things, be a
27 debt for a "qualified higher education expense," as defined by 26
28 U.S.C. § 221(d)(2), which is the "costs of attendance . . . at an
eligible educational institution." An "eligible educational
institution" is one as defined by 26 U.S.C. § 25A(f)(2), which
provides an "'eligible educational institution' means an

(continued...)

1 As can be seen, many of the statute's former attributes survived
2 BAPCPA's revisions. On the other hand, there were some additions
3 to its text, and there was also a clear restructuring of the
4 statute.

5 Since enactment of BAPCPA, neither the Ninth Circuit nor this
6 Panel has published decisions interpreting § 523(a)(8)(A)(ii).
7 And only one published decision, other than the bankruptcy court's
8 decision at issue in this appeal, was located from bankruptcy
9 courts in the Ninth Circuit interpreting § 523(a)(8)(A)(ii).
10 Benson v. Corbin (In re Corbin), 506 B.R. 287 (Bankr. W.D. Wa.
11 2014).⁸ In In re Corbin, the bankruptcy court explained that,
12 post-BAPCPA, this Code provision:

13 protects four categories of educational claims
14 from discharge: (1) loans made, insured, or
15 guaranteed by a governmental unit; (2) loans
16 made under any program partially or fully
17 funded by a governmental unit or nonprofit
18 institution; (3) claims for funds received as
19 an educational benefit, scholarship, or
20 stipend; and (4) any "qualified educational
21 loan" as that term is defined in the Internal
22 Revenue Code.

19 506 B.R. at 291 (citing Rumer v. Am. Educ. Servs. (In re Rumer),
20 469 B.R. 553 (Bankr. M.D. Pa. 2012)). The bankruptcy court
21 explained that § 523(a)(8)(A)(ii) "was added, covering loans made

22 _____
23 ⁷(...continued)
24 institution - (A) which is described in section 481 of the Higher
25 Education Act of 1965 (20 U.S.C. 1088) . . . (B) which is eligible
to participate in a program under title IV of such Act." An
"eligible program" is further defined at 20 U.S.C. § 1088(b).

26 ⁸ In addition, only one unpublished decision in this circuit
27 has tackled this chore. In a case that involved Meridian, relying
heavily upon the bankruptcy court's decision here, the bankruptcy
28 court declined to grant an exception to discharge. Inst. of
Imaginal Servs. v. Coelho (In re Coelho), No. 13-10975, 2014 WL
3858514 (Bankr. N.D. Ca. Aug. 4, 2014).

1 by nongovernmental and profit-making organizations” Id.
2 at 296. Canvassing the out-of-circuit bankruptcy court decisions,
3 the court noted that they “pay no attention to who the lender is,
4 but focus instead [under § 523(a)(8)(A)(ii)] on whether, in the
5 plain language of the subsection, the obligation is ‘to repay
6 funds received as an educational benefit’ as reflected by the
7 debtor’s agreement and intent to use the funds at the time the
8 obligation arose.” Id. at 296-97 (citing Roy v. Sallie Mae (In re
9 Roy), 2010 WL 1523996 (Bankr. D.N.J. Apr. 15, 2010); Carow v.
10 Chase Student Loan Serv. (In re Carow), 2011 WL 802847 (Bankr.
11 D.N.D. Mar. 2, 2011); Skipworth v. Citibank Student Loan Corp. (In
12 re Skipworth), 2010 WL 1417964 (Bankr. N.D. Ala. Apr. 1, 2010)).

13 Given the lack of case law, the bankruptcy court set out to
14 apply post-BAPCPA § 523(a)(8)(A)(ii) to the facts before it. In
15 re Corbin involved cash advances from a third-party lender to the
16 debtor to attend college made, in part, because the debtor’s co-
17 worker had agreed to co-sign the loan. 506 B.R. at 290. The
18 lender later notified the co-signer that the debtor was not paying
19 the loan. Id. The co-signer paid the loans and sued the debtor
20 in state court to recover the amounts he had paid the lender. Id.
21 The debtor then filed a bankruptcy case, and the co-signer
22 commenced an adversary proceeding against the debtor arguing that
23 the debt owed by the debtor to the co-signer was excepted from
24 discharge under both § 523(a)(8)(A)(i) and (a)(8)(A)(ii). Id.
25 The bankruptcy court declined to hold that this arrangement
26 qualified for an exception from discharge under § 523(a)(8)(A)(i)
27 based upon Ninth Circuit authority on subrogated claims. Id. at
28 295-96 (citing Nat’l Collection Agency v. Trahan, 624 F.2d 906

1 (9th Cir. 1980)). However, the bankruptcy court concluded that
2 the debt was excepted from discharge under § 523(a)(8)(A)(ii),
3 reasoning that because the debtor

4 intended to and did use the funds she received
5 to pay for educational expenses . . . this
6 [c]ourt concludes that the provisions of an
7 accommodation, in order to secure for a
8 student funds for the purpose of paying
9 educational expenses, gives rise to an
obligation on the part of the debtor to repay
funds received as an educational benefit once
the co-signer is required to honor its
obligation to pay the debt.

10 Id. at 297-98.

11 Of course, the In re Corbin debtor actually received funds
12 from the lender to pay for her education; the facts here are
13 different.

14 **D. Application of § 523(a)(8)(A)(ii) to Meridian's Debt**

15 We agree with the bankruptcy court that the language of
16 § 523(a)(8) is plain and that it must be read in context with a
17 view to the overall statutory scheme. Moreover, as instructed by
18 the Supreme Court and Ninth Circuit, we must construe § 523(a)
19 narrowly, limiting this discharge exception to those debts
20 described in the statute. Bullock, 133 S. Ct. at 1760; Hawkins,
21 769 F.3d at 666; In re Huh, 506 B.R. at 263. Finally, we must
22 construe the provisions of § 523(a)(8) that were found in the pre-
23 BAPCPA version of that statute in accord with the Ninth Circuit
24 authorities interpreting them. Doing all this, we conclude that
25 the debt represented by Meridian's arbitration award against
26 Debtor is not excepted from discharge under § 523(a)(8)(A)(ii).
27 As a result, the bankruptcy court did not err in granting summary
28 judgment to Debtor, and denying Meridian's motion for summary

1 judgment.

2 Section 523(a)(8)(A)(ii) plainly provides that a bankruptcy
3 discharge will not impact "an obligation to repay funds received
4 as an educational benefit, scholarship, or stipend." It is
5 undisputed that the agreements between Meridian and Debtor
6 constitute an "obligation to repay" "educational benefits"
7 provided by Meridian to Debtor. However, § 523(a)(8)(A)(ii)
8 requires more. To except a debt from discharge under this
9 subsection, the creditor must demonstrate that the debtor is
10 obliged to repay a debt for "funds received" for the educational
11 benefits. The phrase "funds received" has been interpreted by the
12 BAP, in an opinion which was as adopted by the Ninth Circuit as
13 its own, to require "that a debtor receive actual funds in order
14 to obtain a nondischargeable benefit." In re Hawkins, 317 B.R. at
15 112 (emphasis added); accord In re Oliver, 499 B.R. 617, 625
16 (Bankr. S.D. Ind. 2013) (holding under § 523(a)(8)(A)(ii), "[i]n
17 order to be obligated to repay funds received, [the] [d]ebtor had
18 to have received funds in the first place.") (emphasis in
19 original). Because the In re Hawkins decision construed the very
20 same language of the statute implicated here, we conclude that In
21 re Hawkins controls the outcome in this case notwithstanding that
22 BAPCPA later amended § 523(a)(8). See Ball v. Payco-General Am.
23 Credits, Inc. (In re Ball), 185 B.R. 595, 597 (9th Cir. BAP 1995)
24 ("We will not overrule our prior rulings unless a Ninth Circuit
25 Court of Appeals decision, Supreme Court decision or subsequent
26 legislation has undermined those rulings."). That the arrangement
27 between the parties in In re Hawkins was dissimilar to the
28 agreement in this case is of no consequence, and renders that

1 decision no less binding, concerning the proper construction of
2 § 523(a)(8)(A)(ii). This is so because In re Hawkins construed
3 the very same statutory language implicated here, and because the
4 Panel and the Circuit have concluded that this language requires
5 that "a debtor receive actual funds." Id. at 112.

6 This result is bolstered by the changes made to § 523(a)(8)
7 by Congress in BAPCPA. As noted above, the exact wording used in
8 amended § 523(a)(8)(A)(ii) was formerly a part of § 523(a)(8).
9 However, BAPCPA set off the "obligation to repay funds received"
10 language from the other provisions of § 523(a)(8) in a new
11 subsection. We agree with the bankruptcy court, that in
12 restructuring the discharge exception in this fashion, Congress
13 created "a separate category delinked from the phrases
14 'educational benefit or loan' in § 523(a)(8)(A)(i) and 'any other
15 educational loan' in § 523(a)(8)(B)." In re Christoff, 510 B.R.
16 at 882. Put another way, "new" § 523(a)(8)(A)(ii), now standing
17 alone, excepts from discharge only those debts that arise from "an
18 obligation to repay funds received as an educational benefit," and
19 must therefore be read as a separate exception to discharge as
20 compared to that provided in § 523(a)(8)(A)(i) for a debt for an
21 "educational overpayment or loan" made by a governmental unit or
22 nonprofit institution or, in § 523(a)(8)(B), for a "qualified
23 education loan."

24 Meridian's arguments conflating "loan" as used in
25 § 523(a)(8)(A)(i) and (a)(8)(B), and as interpreted by McKay and
26 In re Johnson with "an obligation to repay funds received" as
27 provided in § 523(a)(8)(A)(ii), are unconvincing. According to
28 Meridian, "[t]here is no reason why the word 'funds' should not be

1 interpreted in the same light that 'loans' has been interpreted in
2 prior cases in the Ninth Circuit" Appellant's Op. Br. at
3 14. In effect, Meridian argues that we should read
4 § 523(a)(8)(A)(ii) to say "loans received" as opposed to "funds
5 received." But this we must not do. See Conn. Nat'l Bank v.
6 Germain, 503 U.S. 249, 253-54 (1992) ("[I]n interpreting a statute
7 a court should always turn first to one, cardinal canon before all
8 others. We have stated time and again that courts must presume
9 that a legislature says in a statute what it means and means in a
10 statute what it says there.") (citations omitted). Instead, we
11 must presume that, in organizing the provisions of § 523(a)(8) as
12 it did in BAPCPA, Congress intended each subsection to have a
13 distinct function and to target different kinds of debts.⁹

14 We are also unpersuaded by Meridian's reliance on those
15 bankruptcy cases that, perhaps inadvertently, imprecisely quote
16 the provisions of the discharge exception statute as applying to
17 "loans received," as opposed to the "obligation to repay funds
18 received" dealt with by § 523(a)(8)(A)(ii). See, e.g., In re
19 Rumer, 469 B.R. at 561 (stating "loans received as an educational
20 benefit, scholarship, or stipend" are excepted from discharge);

21 _____
22 ⁹ On this point, we agree with Debtor's counsel's statement
23 at oral argument that § 523(a)(8)(A)(ii) is not a "catch-all"
24 provision designed to include every type of credit transaction
25 that bestows an educational benefit on a debtor. Instead, this
26 subsection includes a condition, distinct from those in the other
27 subsections of § 523(a)(8), that must be fulfilled. In re Hawkins
28 held that this unique requirement, that "funds [be] received" by
the debtor, mandates that cash be advanced to or on behalf of the
debtor. In light of the many programs available to students which
provide cash benefits to students, like veteran's educational
benefits, stipends for teaching assignments, and cash
scholarships, it is not absurd to assume that Congress intended
the scope of § 523(a)(8)(A)(ii) to target obligations other than
those arising from traditional student loans.

