

Student Loan Debt and Older Adults

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National Consumer Law Center

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

Introduction

Student loans can make higher education attainable for families that cannot otherwise afford it. However, repaying those loans often strains already tight budgets. As more older adults carry student loan debt in increasingly large amounts, it is important to try to prevent or cure default (and its harsh consequences).

The type of student loans borrowed often determines the options that older adults have to manage their debt. Carefully evaluating those options and diligently pursuing them can help older student loan borrowers protect their income and assets.

Key Lessons

1. **Student loan debt threatens the well-being and financial security of an increasing number of older adults.** The number of older student loan borrowers has increased dramatically over the last decade. These borrowers are more likely to struggle to repay or have previously defaulted on their loans.¹ Yet there are no specific protections to which older adults are entitled when confronting student loan debt.
2. **The student loan type and status matter.** This information will determine the potential risks the debt poses to the borrower, as well as the borrower's rights and options for resolving whatever issues arise.
3. **Older adults with federal student loans may have very good options for making their payments affordable or recovering from default and stopping collection activity.** These options have changed significantly in recent years, so reviewing the available loan discharge and affordable repayment plans is paramount.
4. **Private student loans present different problems and solutions from federal student loans.** Older adults may carry private student loans from their own education or they may have co-signed student loans for a loved one. There are no standard terms or options for managing these private student loans, so it is more difficult to predict outcomes.

Determining Student Loan Type and Status

Loan Type

The first step in assisting any student loan borrower is to gather information about the type and status of each of their student loans. As for loan type, the most significant distinction is between *federal loans*² (made or backed by the U.S. Department of Education—these loans are often called Stafford, Direct Consolidation, Perkins, Parent PLUS, etc.) and *private loans* (made by a bank, state, school, or other entity and not backed by the U.S. Department of Education). Some borrowers will have both federal and private loans.

Reviewing documents is important because many borrowers recall incomplete and/or inaccurate information about their loans. The best places to identify the loan type(s) are the borrower's (1) original loan documents, (2) National Student Loan Data System (NSLDS) report listing each federal student loan and Pell Grant received,³ (3) credit report,⁴ (4) copies of notices or letters from student loan servicers and debt collectors, or (5) viewing online records from the website of the borrower's loan servicers.

Practice Tip

Both the NSLDS report and credit reports may underreport outstanding student loan obligations. Some very old federal loans (those borrowed in or before the early 1970's) may not appear on the NSLDS report. Similarly, the borrower's credit reports may not include information about all of the outstanding loans, especially old ones.

The borrower may contact the U.S. Department of Education or their current loan holders to request copies of records pertaining to any outstanding loans. This will help the borrower create a more complete picture of their total student loan obligations.

Loan Status

Along with information about the loan type, the sources listed above may also provide information about the loan status. It is crucial to determine the status of each loan: is the borrower current on payments, delinquent, or already in default? The answer to this question will often determine the borrower's options and the risks they face.

Most federal student loans are delinquent for the first 270 days of missed payments, and they enter default on day 271.⁵ There is no uniform method for calculating or determining default for private student loans. Private loans usually enter default much faster—as quickly as when the borrower misses one monthly payment. However, the precise timeline varies based on the individual loan terms, so it will be helpful to consult payment records (when was the last payment made?), as well as the original loan documents (how is default determined?), if available.

Student Loan Case Analysis Framework

Loan type and status are the first questions to answer when assisting a student loan borrower. Once those questions are answered, the borrower can continue to seek answers to the following questions that make up the basic framework for analyzing a student loan case:

Framework—Asking the Key Questions about Student Loans

1. What kind of loan(s) does the borrower have?
2. What is the status of the loan?
3. Does the borrower have any basis to eliminate the debt?
4. Can the borrower set up affordable debt payments?
5. Does the borrower have any basis to put off payment?
6. How can the borrower minimize the harm of debt collection?

Answer this sequence of questions in this order. The answers will guide the borrower through an exploration of the options that would provide the most relief to those that would offer the least to the borrower.

For instance, if the borrower can repay the loans on an affordable basis, that is generally the better option, as interest will continue to accrue (on most loans⁶) during periods of deferment or forbearance. Interest not paid during the deferment or forbearance will be capitalized. Because capitalization of interest could result in the borrower owing significantly more over the life of the loan, the borrower would likely be better off making payments. Yet, if the borrower qualifies for a loan cancellation, such that the borrower will no longer be required to pay the loan, then that cancellation would result in a better outcome than making lower monthly payments.

Applying the Framework to Federal Student Loans

1. What kind of loan(s) does the borrower have?

- FEDERAL

2. What is the status of the loan?

- Federal loan borrowers have more options for managing their loans prior to default (as discussed above, before reaching day 271 of delinquency). After that point, the loan may shortly be transferred from a servicer to the loan holder or a private collection agency. Collection fees may soon be added to the balance.⁷
- Once in default, borrowers generally must obtain a loan discharge, cure the default (through rehabilitation or consolidation), or pay off the loan (in full or through compromise & settlement) to permanently stop debt collection activity.
- The borrower can view the status of each federal loan by consulting their NSLDS report.

3. Does the borrower have any basis to eliminate the debt?

- **Loan Discharge:** Federal student loan borrowers who meet certain criteria may benefit from administrative or statutory discharges, cancellation, or forgiveness of their loans. Such discharges relieve borrowers of the obligation to repay their applicable loans and may even provide refunds of amounts already paid.⁸ Applications are available online from the Department of Education or from servicers or debt collectors.
- **Legal Defenses:** Federal loan borrowers can assert defenses, including forgery, to challenge the collectability of some or all of their loans. Dispute any amount in question with the servicer, debt collector, loan holder, and credit bureaus. File complaints with the Department of Education, Consumer Financial Protection Bureau, the state attorney general, and any local consumer protection or student loan regulatory agency.
- **Bankruptcy:** Federal student loans are dischargeable in bankruptcy if the borrower establishes that repaying them will cause an undue hardship for the borrower and the borrower's dependents.⁹

4. Can the borrower set up affordable debt payments?

- New flexible repayment plans have been introduced over the past several years. On these “income-driven repayment” (IDR) plans, borrowers pay a small portion of their discretionary income toward their loans. After a certain number of payments or number of years of payments, any remaining loan balance will be forgiven.¹⁰
- Borrowers who are current or delinquent on their loans may contact their servicers or access information and forms online to switch to an income-driven repayment plan that works better for their budgets. To help borrowers choose among the repayment plans, the Department of Education provides a Repayment Estimator tool that helps borrowers visualize their monthly payments, the amount of time they will be required to pay, and the total they will pay toward their loans.¹¹
- Because IDR payments are based on the borrower's income, but not their expenses, some borrowers may still struggle to make ends meet when enrolled in the plan that gives them the lowest monthly payment possible. These borrowers should carefully review their budgets and consult with their loan servicers about alternative repayment plans and options.

5. Does the borrower have any basis to put off payment?

- During periods of short-term financial distress or disturbance, federal loan borrowers may benefit from requesting a deferment or forbearance. These options permit the borrower to suspend their obligation to submit monthly payments on a temporary basis. These should be viewed as a short-term fix for a short-term problem and utilized only when the other options above are unavailable.¹²

6. How can the borrower minimize the harm of debt collection?

- The federal government can file a lawsuit to collect on defaulted student loan debts. In practice, however, it frequently relies on its administrative, pre-litigation collection powers to obtain payments involuntarily.¹³
- Federal loan borrowers in default are more likely to experience non-litigation debt collection methods, including federal benefits offset (including of Social Security benefits), administrative wage garnishment, and tax refund offset.¹⁴
- Some borrowers may assert their financial hardship to temporarily reduce or stop federal benefits offset or administrative wage garnishment. However, the long-term solution is to cure the default.¹⁵ Once out of default, these borrowers can enroll in an IDR plan that makes their monthly payments sustainably affordable.
- Borrowers should pay careful attention to any court notices or documents, seek legal counsel, participate fully in the court process if sued, and take action to protect their income and assets if they have a judgment against them.¹⁶

Applying the Framework to Private Student Loans

1. What kind of loan(s) does the borrower have?

- PRIVATE

2. What is the status of the loan?

- As with federal loans, the borrower may have a different range of options for dealing with a current loan, a delinquent loan, or a defaulted loan.
- Request a copy of the promissory note and account history (payments/credits/fees/interest). The borrower may also request to receive statements going forward or seek to change the delivery method if they are not consistently receiving periodic statements.

3. Does the borrower have any basis to eliminate the debt?

- **Loan Discharge:** Review loan documents and consider asking the lender whether there are circumstances under which the borrower has the right to cancel or seek forgiveness of a loan. Some lenders will consider discharging the loans of a borrower who has become disabled, for instance. Discharges are less readily available for private student loans than for federal ones.
- **Co-signer Release:** In some cases, lenders will release the co-signer from the loan if the primary borrower and the loan meet certain criteria. Usually, the loan must be current and reflect a long history of on-time payments. Upon release, the loan remains outstanding, but the co-signer is no longer obligated to repay it. Request co-signer release by contacting the loan servicer or holder.¹⁷
- **Legal Defenses:** As with federal loans, private loan borrowers can assert defenses, including forgery, to challenge the collectability of some or all of their loans. Dispute any amount in question with the servicer, debt collector, lender, and credit bureaus. File complaints with the Consumer Financial Protection Bureau, as well as the state attorney general and any local consumer protection or student loan regulatory agency.

- **Bankruptcy:** Certain private student loans are automatically discharged in bankruptcy. Though many other student loans (both federal and private) are excepted from discharge, even those loans may still be discharged in bankruptcy if the borrower establishes that repaying them will cause undue hardship for the borrower and the borrower's dependents.¹⁸
- **Statute of Limitations:** Each private student loan is governed by its terms. These terms are contracts that are subject to statutes of limitation. This means that, although the debt may still be owed, the lender or holder may run out of time to sue the borrower to collect on a loan if no payments have been made for an extended period. Attorneys should help borrowers determine which statute of limitations applies and calculate the time remaining, if any.¹⁹ Borrowers should consider this essential information before they resume making payments, as new payments could restart or revive the statute of limitations.

4. Can the borrower set up affordable debt payments?

- Inquire about repayment plans and any options to reduce the current monthly payments. Private loans do not generally offer the option to make payments that are based on the income of the borrower.
- After evaluating all options and considering the statute of limitations, the borrower should decide whether and how to make payments. When negotiating repayment arrangements, the best practice is to obtain a written repayment agreement and maintain good payment and correspondence records.

5. Does the borrower have any basis to put off payment?

- Many private loans offer the opportunity to defer payments under limited circumstances or to enter into forbearances. Inquire about which options are available and their terms. Private lenders often require borrowers to pay a fee to obtain a forbearance, for instance.
- Note that these options are generally only available if the loan is not yet in default, and may be limited to loans on which the borrower's payments are up to date.

6. How can the borrower minimize the harm of debt collection?

- If borrowers are unable to pursue or obtain other relief, then they can seek to manage the debt collection activity associated with their private loans much in the same way that they manage other types of consumer debt, like personal loans.²⁰
- Private lenders and loan holders are more likely to file lawsuits than the Department of Education. Borrowers should pay careful attention to any court notices or documents, seek legal counsel, participate fully in the court process if sued, and take action to protect their income and assets if they have a judgment against them.²¹

Conclusion

Older adults, once equipped with information about their student loans, can pursue critical options to end debt collection activity and ensure that their student loan debt payments are sustainably affordable. Taking action can prevent student loan debt from jeopardizing the financial stability and health of older adults who are carrying more student loan debt longer and longer.

Additional Resources

Selected Federal Statutes & Regulations

- Debt Collection Improvement Act, 31 U.S.C. §§ 3716, 3720A
 - » Regulations: 31 C.F.R. §§ 285.4, 901.3
- Higher Education Act, 20 U.S.C. §§ 1070–1099e
 - » Regulations: 34 C.F.R. § 1 et seq.

- Truth in Lending Act, 15 U.S.C. §§ 1638, 1650
 - » Regulations: Regulation Z, 12 C.F.R. §§ 1026.46–1026.48

Key Federal Agencies

- U.S. Department of Education
 - » [General Federal Grant and Loan Information](#)
 - » [Obtain Borrower-Specific Account Details & Take Action \(includes forms\)](#)
 - » General Glossaries of Terms: [Student Loans](#) and [Federal Student Aid](#)
 - › [National Student Loan Data System \(NSLDS\)](#)
 - » [NSLDS Glossary](#)
 - » [Federal Student Aid Feedback & Complaint System](#)
- Consumer Financial Protection Bureau
 - » [Glossary of Key Student Loan Terms](#)
 - » [General Student Loan Information](#)
 - » [Complaint System](#)
- Federal Trade Commission
 - » [General Student Loan Information \(discusses debt relief scams\)](#)
 - » [Complaint System](#)
- State Agencies
 - » State attorneys general often collect and may mediate complaints. Some assist student loan borrowers who seek help navigating repayment. They may also direct borrowers to other state or local consumer protection agencies.
- Legal Assistance
 - » [Legal Services Corporation, Find Legal Aid](#)
 - » [National Association of Consumer Advocates, Find an Attorney](#)
 - » [Student Loan Borrower Assistance Project, Legal Resources](#)
- National Organizations
 - » [National Consumer Law Center](#)
 - › Resources:
 - [Student Loan Law \(5th ed. 2015\)](#)
 - [Student Loan Borrower Assistance Project](#)
- For more information, contact:
 - » Joanna K. Darcus, Staff Attorney, National Consumer Law Center, jdarcus@nclc.org

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Endnotes

- 1 Persis Yu, National Consumer Law Center, *Pushed Into Poverty: How Student Loan Collections Threaten the Financial Security of Older Americans* (May 2017), http://www.nclc.org/images/pdf/student_loans/student-loan-collections-threaten-fin-sec.pdf. Also see, Consumer Financial Protection Bureau, *Snapshot of Older Consumers and Student Loan Debt* (Jan. 2017), <https://www.consumerfinance.gov/data-research/research-reports/snapshot-older-consumers-and-student-loan-debt>.
- 2 This issue brief will not discuss federal student loans or assistance administered by other federal agencies. Rather, the focus will be on federal loans available through Title IV of the Higher Education Act only.
- 3 The borrower can access this through the U.S. Department of Education's website at <https://nsls.ed.gov>.
- 4 Under federal law requires credit bureaus to provide consumers free copies of their credit reports each year. For ease of access, those copies are available through <https://www.annualcreditreport.com>.
- 5 For more information about federal loan delinquency and default timelines, see <https://studentaid.ed.gov/sa/repay-loans/default>.
- 6 With certain subsidized federal loans, the borrower is not required to repay interest that would ordinarily accrue during periods of deferment. The Department of Education provides more information about these loans on its website: <https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized#subsidized-vs-unsubsidized>.
- 7 See the National Consumer Law Center's Student Loan Borrower Assistance website for a more detailed discussion of collection fees at <https://www.studentloanborrowerassistance.org/collections/collection-agencies/fees>.
- 8 The Department of Education provides general information about administrative and statutory loan relief on its website: <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation>.
- 9 See the Bankruptcy section of the Student Loan Borrower Assistance website at <https://www.studentloanborrowerassistance.org/bankruptcy>. Also see, National Consumer Law Center, *Student Loan Law* § 11 (5th ed. 2015), <https://library.nclc.org/SL>.
- 10 The details of these plans are available from the Department of Education: <https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven>.
- 11 Access the Repayment Estimator at <https://studentloans.gov/myDirectLoan/mobile/repayment/repaymentEstimator.action>.
- 12 For information about deferment and forbearances, see the Department of Education's website: <https://studentaid.ed.gov/sa/repay-loans/deferment-forbearance>.
- 13 The Department of Education provides information about the consequences of default in many places on its website. One explanation of its debt collection methods appears here: <https://studentaid.ed.gov/sa/repay-loans/default/collections#how-debt-collected>.
- 14 Id. The Student Loan Borrower Assistance Project also provides details about the consequences of default at <https://www.studentloanborrowerassistance.org/collections/federal-loans/consequences-of-default-federal>.
- 15 For information about getting out of default, see the Student Loan Borrower Assistance website: <https://www.studentloanborrowerassistance.org/collections/federal-loans/getting-out-of-default-federal>.
- 16 More information for student loan borrowers facing lawsuits or dealing with judgments is available from the Student Loan Borrower Assistance website: <https://www.studentloanborrowerassistance.org/collections/lawsuits>.
- 17 The Consumer Financial Protection Bureau compiled helpful information and sample letters for co-signers in this blog post: <https://www.consumerfinance.gov/about-us/blog/consumer-advisory-co-signers-can-cause-surprise-defaults-on-your-private-student-loans>.
- 18 See the Bankruptcy section of the Student Loan Borrower Assistance website at <https://www.studentloanborrowerassistance.org/bankruptcy>. Also see, National Consumer Law Center, *Student Loan Law* § 11 (5th ed. 2015), <https://library.nclc.org/SL>.
- 19 Detailed analyses of the issues with calculating the statute of limitations appear in National Consumer Law Center, *Collection Actions* § 3.6 (4th ed. 2017), <https://library.nclc.org/CA> and National Consumer Law Center, *Student Loan Law* § 12.8.3 (5th ed. 2015), <https://library.nclc.org/SL>.
- 20 For more information on debt collection protections for older consumers, see: <https://ncler.acl.gov/pdf/Legal%20Basics%20-%20Debt%20Collection.pdf>.
- 21 More information for student loan borrowers facing lawsuits or dealing with judgments is available from the Student Loan Borrower Assistance website: <https://www.studentloanborrowerassistance.org/collections/lawsuits>.

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.
