

Student Loan Debt and Older Adults

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates.

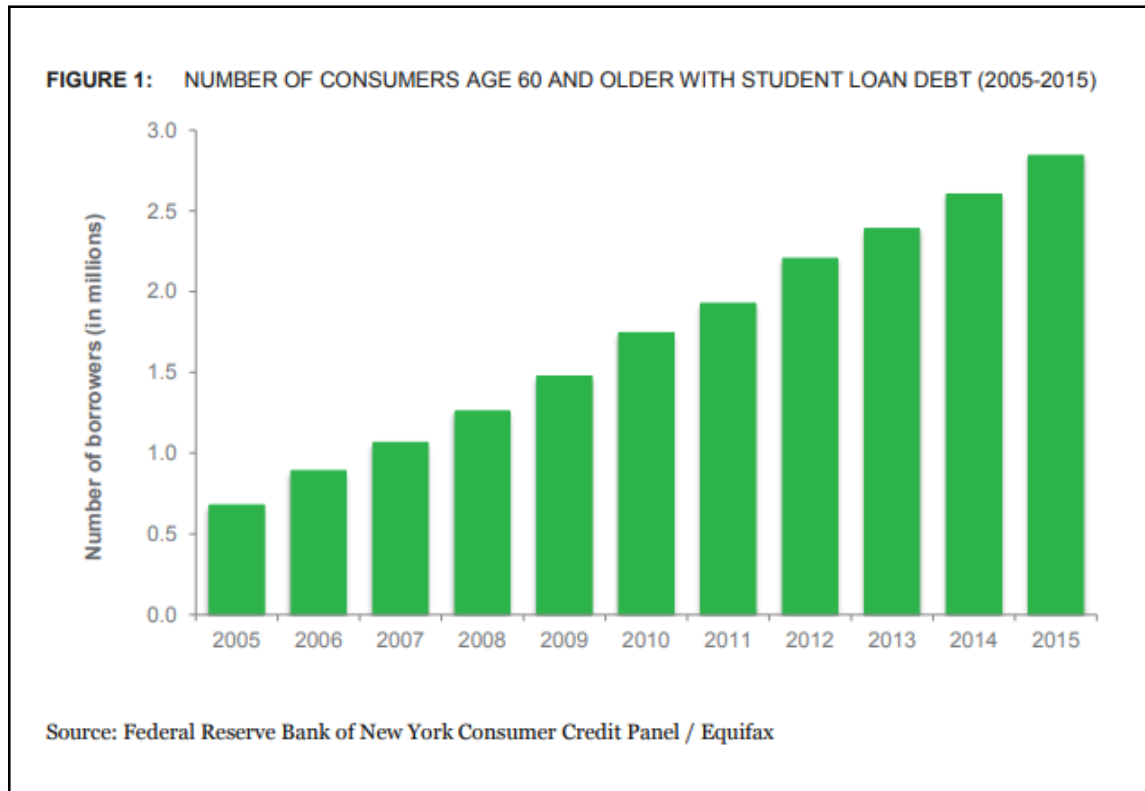
NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

Key Lessons

1. Student loan debt threatens the well-being and financial security of an increasing number of older adults.
2. The student loan type and status matter.
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.
4. Private student loans present different problems and solutions from federal student loans.

Older Adults with Student Loans

“The number of consumers age 60 and older with outstanding student loan debt quadrupled from 2005 to 2015, increasing from about 700,000 to 2.8 million.”



Older Adults with Student Loans

There are no specific protections for older borrowers managing student loan debt.

This does not mean they lack options for managing their student loans.

However, older borrowers are more likely to struggle to repay or have previously defaulted on their loans.

See 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.

What student loan problems do older adults face?

- Unaffordable monthly payments
- Confusion about options to manage loans
- Negative credit reporting upon default
- Loss of access to federal student loans and grants
- Involuntary debt collection activity:
 - Federal Benefits Offset
 - Administrative Wage Garnishment
 - Tax Refund Offset
 - Lawsuits & Judgment Execution

Ultimately, the problems and solutions depend on the **loan type** and **status**.

Framework for Analyzing a Student Loan Case

1. What kind of loan(s) does the borrower have?
Federal or Private
2. What is the status of the loan(s)?
Current, Delinquent, or in Default
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 harm of debt collection?

Loan Status: Defining Default

Private

Requires review of the promissory note, as “default” is defined by the terms of each individual loan.

Federal

“The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for **270 days.**”

34 C.F.R. § 685.102 (Direct)

Default Prevention Options

Private

- Limited to the specific terms of each individual loan, but may include:
 - Grace period
 - Cancellation or discharge (limited or partial relief)
 - Co-signer release
 - Deferment
 - Forbearance (may require a fee to apply)

*Statute of limitations applies.

Federal

- Grace period
- Cancellation or discharge
- Flexible repayment plans:
 - **Income-Driven Repayment**
 - Income-Contingent Repayment (ICR)
 - Income-Based Repayment (IBR)
 - Pay As You Earn (PAYE)
 - Revised Pay As You Earn (REPAYE)
- Deferment
- Forbearance

Considering Bankruptcy

No automatic “fresh start” for student loan borrowers:

most student loans are excepted from discharge in bankruptcy.

Nonetheless, there are three primary ways to seek discharge:

1. Negotiate with the lender to obtain a stipulation to discharge,
2. Demonstrate that the debt is not covered by 11 U.S.C. § 523(a)(8), or
3. Satisfy the limited conditions under 11 U.S.C. § 523(a)(8) that allow for discharge when the restriction on discharge would cause an “undue hardship” for the debtor and her dependents.

Assisting with Federal Loans

Common Collection Activity #1

Federal Benefits Offset

- In general, notice is required prior to the first offset.
- Conducted through the Treasury Offset Program (TOP).
- Supplemental Security Income (SSI) cannot be offset. Ever.
- Can take up to 15% of other benefits, including SSRI & SSD.
 - Must leave borrower with at least \$750.

Assisting with Federal Loans

Federal Benefits Offset

- Examples:
 - **Bob** receives a monthly benefit payment of \$850.
 - The amount offset is the lesser of \$127.50 (15% of \$850) *or* \$100 (the amount by which \$850 exceeds \$750).
 - In this example, \$100 would be offset.*
 - **Maria** receives a monthly benefit of \$1250.
 - The amount offset is the lesser of \$187.50 (15% of \$1250) *or* \$500 (the amount by which \$1,250 exceeds \$750).
 - In this example, \$187.50 would be offset.*
 - **Susan** receives a monthly benefit of \$750.
 - In this example, nothing will be offset.

*As long as the debt owed is this amount or more. (The offset amount cannot exceed the total outstanding balance.)

Assisting with Federal Loans

Federal Benefits Offset—Solutions

- Solutions:
 - Temporary:
 - Request review: raise defenses or financial hardship.
 - Permanent:
 - Cure the default through loan discharge, consolidation, rehabilitation, settlement & compromise, or payment in full.

Assisting with Federal Loans

Common Collection Activity #2

Administrative Wage Garnishment

- In general, notice is required.
- Can take up to 15% of gross wages if borrower works more than 30 hours a week and earns at least the federal minimum wage (\$7.25).
 - This means the first \$217.50 of income is protected each week.
- Not allowed if borrower was involuntarily separated from past employment and has not been continuously re-employed for at least 12 months.

Assisting with Federal Loans

Administrative Wage Garnishment

- Example:
 - **Joe has weekly disposable pay of \$300.**
 - Based on the minimum wage calculation, he definitely gets to keep \$217.50.
 - The government can then take the lesser of
 - the amount by which his income exceeds \$217.50
($\$300 - \$217.50 = \$82.50$) *or*
 - 15% of his income (15% of \$300 = \$45.00).
 - In this example, \$45.00 could be garnished each week from Joe's wages.

Assisting with Federal Loans

Administrative Wage Garnishment – Solutions:

- Temporary:
 - Provide proof of involuntary separation from prior employment.
 - Request review: raise defenses or financial hardship.
 - Note: Garnishments must be suspended if no decision is rendered after 60 days.
- Permanent:
 - Cure the default through loan discharge, rehabilitation, settlement & compromise, or payment in full.

Assisting with Federal Loans

Common Collection Activity #3

Tax Refund Offset

- In general, notice is required prior to the first offset.
- Conducted through the Treasury Offset Program (TOP).
 - The IRS provides a toll-free number (1-800-304-3107) to call for information about tax offsets.
- They can take the whole tax refund (up to the amount outstanding on the loan).
 - There is no exception for the Earned Income Tax Credit (EITC). This can be withheld via offset as well.

Assisting with Federal Loans

Tax Refund Offset

- Examples:
 - **Millie** owes \$2,000 on her defaulted federal student loans.
 - Based on the tax return she filed, she is owed a tax refund of \$2,100.
 - In this example, \$2,000 will be offset, extinguishing her outstanding loan obligation. Millie will receive a reduced tax refund of \$100.
 - **Jim** owes \$26,000 on his defaulted federal student loans.
 - Based on the tax return he filed, he is owed a tax refund of \$4000.
 - In this example, \$4,000 will be offset. Jim will receive no portion of his refund.
 - **Karen** owes \$70,000 on her defaulted federal student loans.
 - Based on the tax return she filed, she still owes \$300 toward her taxes.
 - In this example, Karen is not entitled to a refund so no offset will take place. Karen remains responsible for paying the remainder of the taxes she owes.

Assisting with Federal Loans

Tax Refund Offset – Solutions

- Temporary:
 - Request review: raise defenses or financial hardship.
 - Tax refund offsets are almost never reimbursed due to financial hardship. Nonetheless, the current policy is to reimburse borrowers who demonstrate extreme hardship.
 - “...generally limited to borrowers facing eviction or foreclosure”
 - Married borrowers (who are not co-obligors on a joint consolidation loan) may prevent offset by filing taxes separately.
 - Complete a new IRS Form W-4 to reduce tax withheld so that no refund is due in subsequent tax years.
- Permanent:
 - Cure the default through loan discharge, consolidation, rehabilitation, settlement & compromise, or payment in full.

Assisting with Federal Loans

Cure Default

Loan Discharge

These administrative or statutory discharges eliminate the obligation to repay some or all of the student loans.

- Examples:
 - Total and Permanent Disability
 - Death
 - False Certification
 - Ability to Benefit, Disqualifying Status, Unauthorized Signature, Identity Theft
 - Closed School
 - Unpaid Refund
- Forms and instructions are available online.

Assisting with Federal Loans

Cure Default Consolidation

Obtain new federal loan to pay off old one(s).

- Borrower can consolidate defaulted (and/or non-defaulted) federal loans into a new Direct Consolidation Loan.
 - Exercise caution when considering consolidation of Parent PLUS loans. Including them renders the new loan ineligible for most IDR plans.
- Borrower consolidating defaulted loans must make payments or agree to income-driven repayment plan.
- Process usually takes 30-90 days.
- On credit report, old loans are marked “paid in full.”
- Not available to borrowers facing administrative wage garnishment.
- Apply online at studentloans.gov or mail an application.

Assisting with Federal Loans

Cure Default Rehabilitation

Borrower reinstates loan(s) by making 9 on-time monthly payments in a 9- or 10-month period.

- Payments must be “reasonable and affordable.” The minimum payment is \$5.
- Can generally renew eligibility to receive new federal grants and loans within 6 payments.
- If the borrower is experiencing administrative wage garnishment, the garnishments should cease after the 5th rehabilitation payment.
- Default notation removed from credit reports.
- Request by talking with servicer or debt collector and completing enrollment paperwork.

Assisting with Federal Loans

Cure Default

Consolidation & Rehabilitation

Limits

- With a few notable exceptions: one-time deal for each.
- Judgments can be a barriers to obtaining either.
- Up to 16-18.5% collection fees may be included. However, the current practice is to assess much less.

Assisting with Private Loans

- Unlike the federal government, these lenders do not have special collection powers.
 - Similar to personal loans in many ways.
 - But may be more difficult to get rid of them in bankruptcy.

How to resolve them:

1. Identify the lender from statements, collection letters, credit reports.
2. Decide whether to request copies of promissory note, account history.
3. Learn about loan discharge, co-signer release, repayment, and forbearance options.
4. Dispute any amount in question; participate in court process, if sued; protect income and assets, if there is a judgment.
 - File complaints with federal, state, and local regulators.
5. Only after considering the statute of limitations: Decide whether to make payments; obtain written repayment agreements and keep good records.

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Case Consultations

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