

# Clearinghouse REVIEW

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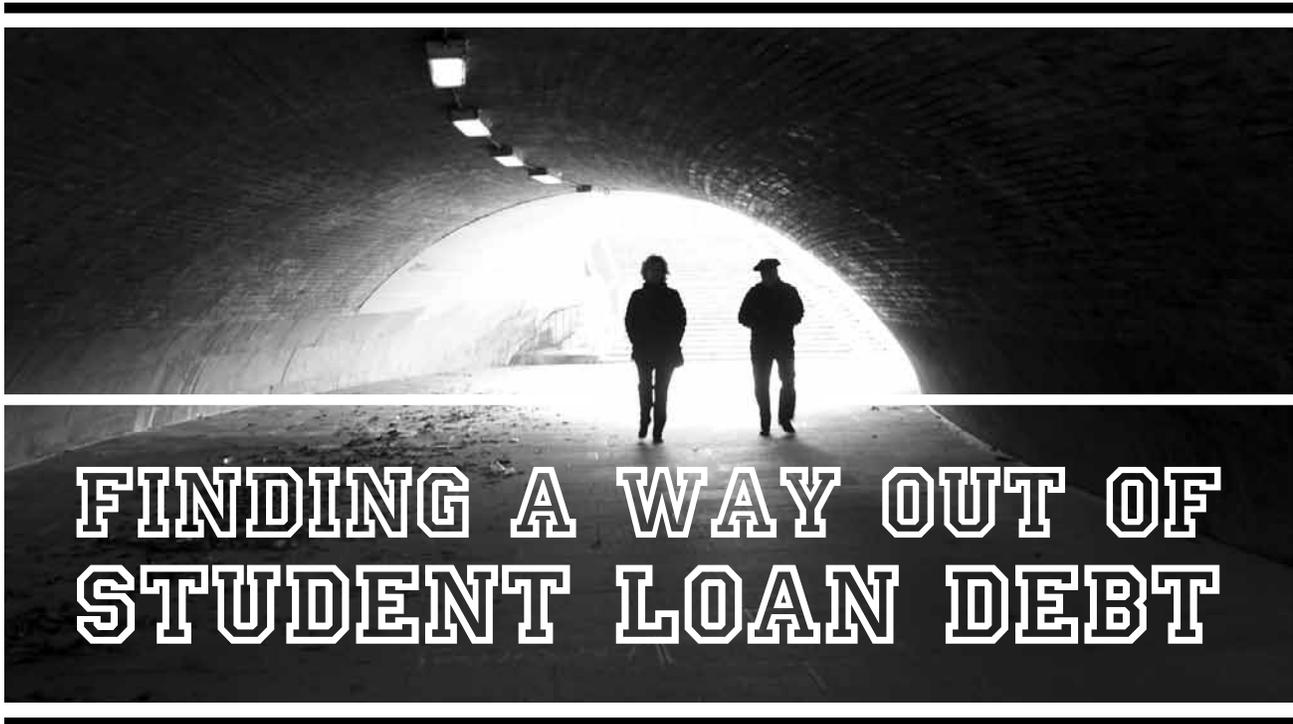
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**T**he New York Federal Reserve Board reported in March 2012 that outstanding student loan debt stands at about \$870 billion, higher than total credit card balances (\$693 billion) and total auto loan balances (\$730 billion).<sup>1</sup> The board noted that student loan balances were expected to continue this upward trend. The amount of outstanding debt is troubling, but so are the growing delinquency and default rates.

Most students borrow to finance higher education through federal loans or private loans or some combination of the two. The borrowing limits in the federal loan programs, the skyrocketing cost of higher education, and aggressive lender marketing have fueled the growth of private student loans, which are almost always more expensive than federal loans.

As the student loan programs have ballooned and generated lucrative profits to lenders, servicers, and schools, policymakers have steadily eliminated the safety net for borrowers, including bankruptcy rights for federal and private student loan borrowers. For federal student-loan debt, Congress and various administrations have instituted tax-refund intercepts (such as seizures of earned income tax credits), eliminated the statute of limitations on collection actions, initiated administrative wage garnishment and social security offsets, and expanded the use of private collection agencies.

Financing higher education does not have to be this way; nor has it always been this way. The federal student-aid programs began during the 1960s as a way to improve access to education for lower-income individuals. On signing the Higher Education Act in 1965, Pres. Lyndon Johnson said, “[The Higher Education Act] means that a high school senior anywhere in this great land of ours can apply to any college or any university in any of the 50 States and not be turned away because his family is poor.”<sup>2</sup> Pres. Richard Nixon echoed this message in 1970: “No qualified student who wants to go to college should be barred by lack of money.”<sup>3</sup>

<sup>1</sup>Meta Brown et al., *Grading Student Loans*, LIBERTY STREET ECONOMICS (March 5, 2012), <http://bit.ly/KJzm4F>.

<sup>2</sup>Lyndon B. Johnson, Remarks at Southwest Texas State College upon Signing the Higher Education Act of 1965 (Nov. 8, 1965), in 2 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES 1102 (n.d.), <http://bit.ly/LzvVCU>.

<sup>3</sup>Richard M. Nixon, Special Message to the Congress on Higher Education (March 19, 1970), 1 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES 276 (n.d.), <http://bit.ly/JOG1zb>.

Measured by these goals, student-aid policy has failed. College completion rates in the United States have been flat since the 1970s among all sectors of higher education. Lack of completion is a particular problem among lower-income individuals. The shocking reality is that, despite all of the government money spent on financial aid, the difference in college graduation rates between the top and bottom income groups has widened by nearly 50 percent over two decades.<sup>4</sup> As the *New York Times* reported, this growing gap “threatens to dilute education’s leveling effects.”<sup>5</sup>

We see and hear the human toll of the eviscerated student loan safety net every day from the low-income borrowers we represent. Some are so traumatized by collection calls and skyrocketing debt loads that they vow never to try education again. Their choices affect not only their families and themselves but also society as a whole. Beyond the benefits for individuals, a broad range of social gains stems from a more educated population: less reliance on public benefits, better health, and higher voting and volunteering rates.<sup>6</sup>

The good news is that there is almost always something that federal student loan borrowers can do to get relief. Here I present a checklist approach that advocates can use to evaluate remedies for clients.<sup>7</sup> In addition to reviewing the options below, advocates should investigate local educational options, particularly low-cost community colleges and other affordable programs.

## Determining the Type of Student Loan

Before reviewing the various options below, advocates should first determine

- the type of student loan,
- the loan’s origination date,
- whether the client is already in default,
- whether collection has begun (and, if so, the deadlines for responding to the collection action), and
- the client’s goals and financial situation.

Most borrowers are confused about what type of loan they have. For example, a client commonly reports having a “Sallie Mae loan”; this could be a Sallie Mae *private* loan or a federally guaranteed loan, such as a Federal Family Education loan, in which Sallie Mae was the lender.<sup>8</sup> Sallie Mae could also be servicing a loan on behalf of the government and its Direct loan program or collecting on any of these types of loans.

Direct and Federal Family Education Stafford loans are the most common types of federal student loans.<sup>9</sup> These loans are either subsidized or unsubsidized. A subsidized Stafford loan is awarded on the basis of financial need, and borrowers are not charged any interest before the repayment period begins or during authorized periods of deferment. Unsubsidized loans are not awarded on the basis of financial need, and interest is charged from the time the loan is disbursed until it is paid in full.

<sup>4</sup>Tami Luhby, *College Graduation Rates: Income Really Matters*, CNN MONEY (Nov. 28, 2011), <http://cnnmon.ie/JOGamv>.

<sup>5</sup>Sabrina Tavernise, *Poor Dropping Further Behind Rich in School*, NEW YORK TIMES, Feb. 10, 2012, at A1, <http://nyti.ms/JlICZu>.

<sup>6</sup>Sandy Baum et al., *College Board Advocacy and Policy Center, Education Pays 2010: The Benefits of Higher Education for Individuals and Society* (2010), <http://bit.ly/JA4zWp>.

<sup>7</sup>For additional information about each topic in the checklist, see my NATIONAL CONSUMER LAW CENTER, *STUDENT LOAN LAW* (4th ed. 2010 & Supp. 2011). The National Consumer Law Center also has a website, [www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org), with a number of self-help packets that borrowers and advocates can use to learn more about particular options.

<sup>8</sup>The Federal Family Education loan program was eliminated as of 2010, but many borrowers still hold Federal Family Education loans.

<sup>9</sup>Direct loans are originated directly by the federal government, whereas the government reinsures Federal Family Education loans made by private lenders (see National Consumer Law Center, *Student Loan Borrower Assistance, Federal Loans*, (2012), <http://bit.ly/L7impf>). The other types of Federal Family Education loans and Direct loans other than Stafford loans are PLUS loans and consolidation loans. PLUS loans are only for parent borrowers and graduate or professional students. Consolidation loans allow borrowers to combine one or more loans into a new loan. The smaller federal Perkins loan program allows schools to lend directly to students with exceptional financial need.

The most reliable way to figure out whether a loan is federal is to check the U.S. Department of Education's National Student Loan Data System.<sup>10</sup> Only federal student loans are listed in this database.

Although there is no comprehensive database of private student loans, other clues can help borrowers figure out whether a loan is private. The first clue is if the loan is not listed in the National Student Loan Data System. In most cases, advocates can feel confident that loans not listed in the database are *not* federal loans. The Consumer Financial Protection Bureau has also created a tool to help borrowers navigate student loan debt and determine the types of loans they have.<sup>11</sup>

A high interest rate is another sign that the loan is private. Federal student loan interest rates are fixed and capped. The highest rate under current law is 7.9 percent for Direct PLUS loans. Another clue is if the loan has a cosigner. Most federal loans do not have cosigners. Parents may take out federal PLUS loans on behalf of their children, but the parents are the primary obligors on these loans. Many private lenders, by contrast, require cosigners. If a borrower is a cosigner or knows that a cosigner is on the loan, the loan is most likely a private student loan.

Advocates should also check to see if clients received Truth in Lending Act disclosures because the Act applies only to private student loans.<sup>12</sup> Federal loans have different disclosure requirements.<sup>13</sup>

The steps I discuss here apply only to federal student loans. No comprehensive law requires private lenders to students to offer relief to borrowers. In private-loan cases, borrowers should request copies of their loan agreements to determine whether lenders promised particular benefits; borrowers then should try to

negotiate with the lenders unless the borrowers have legal claims or defenses.

### Step One: May the Borrower Cancel the Loan?

Whether or not the federal student loan is in default, loan cancellation (also known as "discharge" or in some cases "forgiveness") is the first option to consider. Cancellation is the complete remedy for student loan borrowers. Not only will the client's loan, if eligible, be cancelled, but also all payments made to date, including monies seized, will be returned and the client's credit report cleared for most cancellations.

**School-Related Cancellations and Claims Against Fraudulent Schools.** Unfair and deceptive for-profit school practices are a tremendous source of financial loss, frustration, and loss of opportunity for students, particularly low-income students hoping to break out of poverty. The abuses have grown over time. The for-profit school industry is larger than ever, now consisting mainly of public companies competing to create profits for their owners and shareholders.

The booming for-profit educational market is increasingly dominated by regional and even national franchises, many with stock shares traded on Wall Street. The for-profit, publicly traded education companies in the United States have tripled enrollment to 1.4 million students in the past decade and increased revenues to about \$26 billion.<sup>14</sup> This is an increase from just fewer than 200,000 students in 1998.<sup>15</sup> However, these annual enrollment measures fail to show that these schools also have very high withdrawal rates. According to the U.S. Senate Committee on Health, Education, Labor and Pensions, the high withdrawal rates mean that

<sup>10</sup>See U.S. Department of Education, National Student Loan Data System (n.d.), [www.nsls.ed.gov](http://www.nsls.ed.gov).

<sup>11</sup>See Consumer Financial Protection Bureau, Student Debt Repayment Assistant (n.d.), <http://1.usa.gov/K9IYa6>.

<sup>12</sup>15 U.S.C. § 1638(e) (2006); 12 C.F.R. § 226.46 (2012).

<sup>13</sup>See STUDENT LOAN LAW, *supra* note 7, ch. 2 (discussing in detail federal student loan disclosures).

<sup>14</sup>Daniel Golden, *Your Taxes Support For-Profits as They Buy Colleges (Update 3)*, BLOOMBERG (March 4, 2010), <http://bloom.bg/KdWx8m>.

<sup>15</sup>U.S. Senate Committee on Health, Education, Labor and Pensions, *Emerging Risk?: An Overview of Growth, Spending, Student Debt and Unanswered Questions in For-Profit Higher Education 2* (June 24, 2010), <http://1.usa.gov/9y3ZOr>.

schools must recruit large numbers of new students each year to maintain or grow their enrollment levels.<sup>16</sup>

The three school-related cancellations are (1) closed school, (2) false certification, and (3) unpaid refund. Each cancellation offers relief for a narrow set of circumstances. For example, a school may routinely pay admissions officers by commission in violation of incentive-compensation rules, fail to provide educational materials or qualified teachers, and admit unqualified students on a regular basis, but none of these violations is a ground for cancellation. Advocates should therefore consider raising these types of school-related claims as defenses to collection or affirmatively for borrowers who do not qualify for loan cancellations.<sup>17</sup> Advocates should also review state-specific relief programs, such as state tuition recovery funds.<sup>18</sup>

*Closed School.* The closed school cancellation is for borrowers who were unable to complete the educational program due to the school's closure.<sup>19</sup> The closed-school cancellation applies to Federal Family Education loans, federal Direct loans, and Perkins loans received at least in part on or after January 1, 1986. Borrowers must have been enrolled at the time of the school's closure or have withdrawn not more than ninety days before the school's closure. The ninety-day window may be extended if the Department of Education agrees that exceptional circumstances apply.

*False Certification.* Borrowers are entitled to a loan cancellation if they received at

least part of a Federal Family Education loan or Direct loan after January 1, 1986, and if their eligibility to borrow was falsely certified by the school.<sup>20</sup>

Four bases can support a false-certification discharge:

- The school falsifies a non-high-school graduate's ability to benefit from the program.<sup>21</sup>
- The school enrolls a student unable to meet minimum state employment requirements for the job for which the student is being trained.
- The school forges or alters the student loan note or check endorsements.
- The borrower is a victim of identity theft. This category requires the borrower to submit a copy of a local, state, or federal court verdict or judgment that conclusively determines that the borrower is a victim of the crime of identity theft by a perpetrator named in the verdict or judgment.

*Unpaid Refund.* A student loan may be discharged for the school's failure to make an owed refund to the student.<sup>22</sup>

**Disability and Death Cancellations.** The borrower's permanent and total disability is grounds for a student loan discharge.<sup>23</sup> Another discharge program applies if the borrower dies.<sup>24</sup> The death of both parents (assuming both parents are obligated) or the death of the student discharges PLUS loans.<sup>25</sup>

<sup>16</sup>U.S. Senate Committee on Health, Education, Labor and Pensions, *The Return on the Federal Investment in For-Profit Education: Debt Without a Diploma 1* (Sept. 30, 2010), <http://1.usa.gov/Mo45Gr>.

<sup>17</sup>See *STUDENT LOAN LAW*, *supra* note 7, ch. 12 (extensive discussion of claims against for-profit schools).

<sup>18</sup>For a current list of state tuition recovery funds, see *id.*; National Consumer Law Center, *Student Loan Borrower Assistance* (2012), [www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org).

<sup>19</sup>20 U.S.C. § 1087(c)(1) (2006); 34 C.F.R. § 682.402(d) (2012) (Federal Family Education loans), § 685.214 (Direct loans).

<sup>20</sup>20 U.S.C. § 1087(c)(1); 34 C.F.R. § 682.402(e) (Federal Family Education loans), § 685.215 (Direct loans).

<sup>21</sup>Before Congress eliminated this "ATB" ground for financial aid eligibility effective July 1, 2012, individuals without a high school diploma or GED (general educational development) could qualify for federal financial aid if they passed an approved ability-to-benefit test or satisfactorily completed six credit hours of coursework (Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, § 5, 125 Stat. 786, 1100 (2011)).

<sup>22</sup>20 U.S.C. § 1087(c)(1); 34 C.F.R. § 682.402(l) (Federal Family Education loans), § 685.216 (Direct loans).

<sup>23</sup>20 U.S.C. § 1087(a); 34 C.F.R. § 682.402(c) (Federal Family Education loans), § 685.213 (Direct loans). For a PLUS loan on which both parents are obligated, the disability of only one parent does not discharge the loan.

<sup>24</sup>20 U.S.C. § 1087(a); 34 C.F.R. § 682.402(b) (Federal Family Education loans), § 685.212(a) (Direct loans).

<sup>25</sup>If the parents are coborrowers, the death of only one of the two obligated parents does not discharge a PLUS loan.

The Department of Education publishes standardized application forms for the school-related, disability, and death cancellations.<sup>26</sup>

**Public Service and Other Job-Related Cancellations.** Tied to the borrower's profession, public service and other job-related cancellations generally require a minimum number of years of employment in various fields. Public service forgiveness is the most comprehensive program.<sup>27</sup> This program is available to Direct loan borrowers working in public service jobs for ten years and repaying their loans through an eligible repayment plan.<sup>28</sup> The remaining balance is then forgiven after the borrower completes the ten years of service.

Only Direct loan borrowers working full-time in public service jobs qualify. Only payments made after October 2007 in the Direct loan program count toward the ten-year forgiveness. Borrowers may consolidate with Direct loans if they have other types of loans and want to seek public service forgiveness. The Department of Education has issued an employment certification package to help borrowers track their progress toward forgiveness.<sup>29</sup>

There is a danger of overselling this program. Many borrowers will not complete ten years of public service. A larger group is likely to pay off their loans before ten years of public service expire.

**Cancellation for Repayment.** Borrowers may also be able to cancel loan balances after twenty-five years of repayment through income-based or income-contingent repayment plans, discussed below. The time limit is twenty years for new borrowers as of 2014.<sup>30</sup> Unlike bal-

ances written off through the public service forgiveness program, these write-off amounts are taxable income under current law.

**Bankruptcy.** While student loans are technically unsecured debts subject to discharge, the Bankruptcy Code limits their dischargeability. Educational loans may be discharged only upon a finding by a court that repayment of the debt "would impose an undue hardship on the debtor and the debtor's dependents."<sup>31</sup> This is a very difficult, but not impossible, standard to meet.

### Step Two: May the Borrower Postpone Payments?

Borrowers who are not yet in default are eligible for deferments. The most relevant deferments for legal aid clients are generally unemployment and economic hardship deferments. Interest does not accrue on subsidized loans during the deferment period.

Advocates should also consider forbearances. Like deferments, forbearances allow borrowers to postpone repayment temporarily. They are less optimal than deferments because interest continues to accrue during the forbearance period.

### Step Three: May the Borrower Obtain a More Affordable Payment?

A range of affordable payment options are available in the federal loan programs. Only borrowers who are not in default may access these plans. Advocates should therefore be prepared to help borrowers get out of default, as discussed below, and then apply for an affordable payment plan.

<sup>26</sup>For more information about applying for cancellations, see *STUDENT LOAN LAW*, *supra* note 7, ch. 9.

<sup>27</sup>34 C.F.R. § 685.219.

<sup>28</sup>Government jobs and jobs at tax-exempt 501(c)(3) nonprofit organizations qualify as do certain other jobs (34 C.F.R. § 685.219). Military service qualifies as a public service job, but other programs apply specifically to service members, primarily in the Perkins loan program.

<sup>29</sup>See U.S. Department of Education, Public Service Loan Forgiveness, (March 14, 2012), <http://1.usa.gov/1b3kgN>; see generally *STUDENT LOAN LAW*, *supra* note 7, § 9.9.

<sup>30</sup>Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, § 2213, 124 Stat. 1029, 1081 (2010). The twenty-year forgiveness period also applies to a relatively small category of new borrowers taking out loans in 2012 and 2013. The Department of Education will issue regulations on this topic later this year.

<sup>31</sup>11 U.S.C. § 523(a)(8) (2006); see also *STUDENT LOAN LAW*, *supra* note 7, ch. 10.

**Affordable Repayment Plans for Federal Loans.** The most useful affordable repayment plans are those tied to a borrower's income. The newest program, income-based repayment, went into effect for Direct and Federal Family Education loan borrowers on July 1, 2009.<sup>32</sup> The income-contingent plan remains available for Direct loan borrowers. However, because the income-based repayment formula is more favorable for most borrowers, the income-contingent plan will likely become less relevant over time.<sup>33</sup>

Borrowers with Federal Family Education loans or Direct loans may select income-based repayment. The only government loans that are not eligible for income-based repayment are Parent PLUS loans and Perkins loans.<sup>34</sup> Borrowers of Perkins loans may still access the program if they have other loans and can consolidate with Direct loans. Private loan borrowers are not eligible for income-based repayment.

Unlike income-contingent repayment, borrowers must meet a threshold requirement to qualify for income-based repayment. Borrowers must have a "partial financial hardship," which means that a borrower's annual federal student loan payments calculated under a ten-year standard repayment plan are greater than 15 percent of the difference between the borrower's adjusted gross income (and that of a spouse if applicable) and 150 percent of the poverty guideline for the borrower's family size and state.<sup>35</sup>

Borrowers with incomes below 150 percent of the poverty line for their family size have a zero payment. The loan holder evaluates this repayment amount every year, requiring borrowers to submit an-

nual verification of income. Advocates should counsel clients to notify the government or other loan holder if clients move. Clients must understand further that a zero repayment plan does not necessarily last forever if the borrower's income increases. Borrowers must be prepared to certify income every year.

Borrowers making very low or zero payments are rarely able to pay off their loans. The payments may not even cover the monthly accruing interest. The advantage to staying current even with such low payments is that borrowers can avoid draconian government collection powers, such as social security offsets and administrative wage garnishment. Moreover, as noted above, the government forgives any remaining balances after twenty-five years of repayment.

**Getting Out of Default and Into Affordable Repayment.** Because borrowers in default are not eligible for income-based or income-contingent repayment plans, advocates must first assist some clients out of default. Consolidation and rehabilitation are the two main strategies to get out of default through repayment. Few debt collectors neutrally explain the pros and cons of each option to borrowers in default. Among other reasons, the collectors have financial incentives that often discourage them from giving accurate information.<sup>36</sup> Advocates commonly have to assist borrowers who obtained inaccurate information from private collection agencies.

Borrowers may consolidate their defaulted student loans into a new Direct consolidation loan and select one of the income-based repayment plans. After

<sup>32</sup>20 U.S.C. § 1087e(d)(1)(E) (Direct loans), § 1098e (Federal Family Education loans); 34 C.F.R. § 682.215 (Federal Family Education loans), § 685.221 (Direct loans).

<sup>33</sup>This year the Department of Education will publish proposed regulations that will change the income-based repayment and income-contingent repayment programs.

<sup>34</sup>Parent PLUS borrowers, however, may consolidate their loans and select income-contingent repayment.

<sup>35</sup>34 C.F.R. § 685.221(a)(4) (Direct loans). The limit will be 10 percent for loans taken out on or after July 1, 2014. A relatively small category of new borrowers taking out loans in 2012 and 2013 will also qualify for the 10 percent income standard. The Department of Education will issue regulations in 2012 on this topic (§ 2213, 124 Stat. at 1081). The borrower's and spouse's income and federal student loan debt will be considered in the income-based repayment formula if they are married and filing taxes jointly.

<sup>36</sup>See generally *STUDENT LOAN LAW*, *supra* note 7, § 7.4; John Hechinger, *Obama Relies on Debt Collectors Profiting from Student Loan Woe*, *BLOOMBERG* (March 26, 2012), <http://bloom.bg/H4ty4a>.

obtaining a consolidation loan, the borrower gets a fresh start with a new loan. A borrower may also renew eligibility for new loans and grants and cure the loan default by “rehabilitating” the defaulted loan. The borrower may request loan rehabilitation for Federal Family Education loans and Direct loans after making nine payments within twenty days of the due date during ten consecutive months.<sup>37</sup> The rules differ slightly for Perkins loans.

Consolidation should be much faster than rehabilitation mainly because a borrower in default does not have to make any preliminary payments to qualify. Consolidation has no resale requirement as Federal Family Education loan rehabilitation does.<sup>38</sup> The faster way is especially suitable for borrowers seeking to go back to school. In consolidation, borrowers do not have to make preliminary payments and so are not forced to negotiate “reasonable and affordable” payments with a collector. In both options, collection fees of up to 18.5 percent are added to the principal balance.<sup>39</sup>

The main advantage of rehabilitation relates to credit reporting. Consolidation results in a notation on a borrower’s credit report that the defaulted loan was paid in full. By contrast, rehabilitation removes the default notation completely. Some clients may care about this distinction, but the benefit is often oversold. Although the default notation is removed from the credit report after a successful rehabilitation, any other negative history remains until it becomes obsolete. Borrowers can request that the entire trade line be deleted or that all negative history be deleted, but not all loan holders will comply.

Consolidation can also be a disadvantage for certain borrowers who may lose rights by consolidating. For example, Perkins borrowers lose the unique Perkins can-

cellation rights if they consolidate with Direct loans.<sup>40</sup>

Borrowers generally have the option to rehabilitate or consolidate one time per program. Given these restrictions, advocates must counsel clients and attempt to evaluate whether they are likely to follow through with annual income verifications and other requirements after getting out of default. Too many clients get out of default and then redefault. We cannot prevent this result in all cases, but advocates should do their best to discuss ongoing responsibilities with borrowers. Consolidation and rehabilitation help clients avoid the draconian government collection powers, but they do not eliminate the underlying debt.

#### **Step Four: May the Borrower Settle the Loan Account?**

Clients may also want to consider settling the loan account. Bear in mind that the government generally requires a large lump sum to settle a student loan.

#### **Step Five: May the Borrower Challenge the Collection Action?**

Advocates must get a sense of the client’s overall budget to determine whether the client is collection-proof. Clients are collection-proof if they do not have any money or property that can legally be taken to pay the debt.

Completely protecting a client from government student loan collection is difficult, though not impossible. Clients without significant federal benefits, wages, tax refunds, and other significant assets are most likely safe from student loan collection, at least temporarily. However, the elimination of a statute of limitations for student loan collections means that the debt may come back to haunt the client.

<sup>37</sup>See 34 C.F.R. § 682.405(a)(2) (Federal Family Education loans), § 685.211(f)(1) (Direct loans).

<sup>38</sup>Federal Family Education loan lenders must sell the loans after the borrower completes the required nine rehabilitation payments. No similar requirement applies to Direct loans. However, due to processing problems at the Department of Education, there is currently a delay in rehabilitation even for Direct loans.

<sup>39</sup>The Department of Education, at its discretion, may pay the collection fees owed on Direct loan rehabilitations.

<sup>40</sup>See generally *STUDENT LOAN LAW*, *supra* note 7, § 1.4.1.3.

Borrowers facing specific collection actions such as social security offsets have the right to request hearings and raise defenses. In most cases, borrowers may request reduction or termination of offset based on evidence of hardship. Timing for these challenges is critical; borrowers may generally request hearings after the deadlines to request them have expired, but the collection action is not stayed pending a hearing. Borrowers may raise defenses to collection if the loan holder is seeking amounts beyond those allowed by law.<sup>41</sup>

Advocates also should consider possible violations of federal or state debt collection laws.<sup>42</sup> Student loan debt collection contacts involve a remarkable amount of deceptive, unfair, and illegal conduct. These abusive collection actions occur for several reasons such as that

- remedies available to collect on student loans are often both unique and misunderstood (for example, federal tax refund offsets, federal benefits offsets, and nonjudicial garnishments), and collectors often misrepresent the exact nature of these remedies when they send collection letters, and
- the government delegates to private collection agencies the responsibility for determining the size of a reasonable and affordable payment plan for rehabilitation. These collection agencies help determine if students have defenses to wage garnishments, tax refund offsets, and other collection actions, even though the collection agencies' financial incentive is not to offer reasonable and affordable plans or to acknowledge defenses.

Using fair debt claims to resolve student loan disputes does have its limits. These cases can be useful, but they do not help borrowers get the repayment plans or discharges to which they are entitled. Advocates who bring these cases should try to assist borrowers by directly using the other strategies I discuss here or by referring borrowers to other advocates for assistance.

### Additional Resources

Advocates and clients should consider—besides the National Consumer Law Center's resources, such as *Student Loan Law* and the borrower assistance website—contacting the various ombudsman programs for assistance. The Department of Education student loan ombudsman has a website where borrowers can submit problems online.<sup>43</sup> The department's website contains a great deal of useful information, such as online repayment calculators.<sup>44</sup>

Many guaranty agencies and private lenders have their own customer service or ombudsman programs.<sup>45</sup> The new Consumer Financial Protection Bureau has a private student loan ombudsman office.<sup>46</sup>



Malcolm X stated, "Education is our passport to the future, for tomorrow belongs to the people who prepare for it today."<sup>47</sup> This gateway to the future is closed for many low-income students mired in debt. Legal aid advocates can help clients get relief from these burdens and in many cases go back to pursue their education dreams.

<sup>41</sup>For a discussion of exempted amounts, see *id.* ch. 8.

<sup>42</sup>See generally ROBERT J. HOBBS, NATIONAL CONSUMER LAW CENTER, *FAIR DEBT COLLECTION* (7th ed. 2011).

<sup>43</sup>See U.S. Department of Education, The Ombudsman Group (n.d.), [www.ombudsman.ed.gov](http://www.ombudsman.ed.gov). The toll-free phone number is 877.557.2575.

<sup>44</sup>See U.S. Department of Education, Calculators and Interest Rates (May 11, 2012), <http://1.usa.gov/aeG9zu>. For another online income-based repayment calculator, see Project on Student Debt, IBRinfo, Help Is Here! (n.d.), [www.ibrinfo.org](http://www.ibrinfo.org).

<sup>45</sup>See National Consumer Law Center, *supra* note 18 (list of guaranty agency ombudsmen and customer service offices).

<sup>46</sup>See Consumer Financial Protection Bureau, Submit a Complaint (n.d.), <http://1.usa.gov/y0zjC>.

<sup>47</sup>Malcolm X, *Statement of Basic Aims and Objectives of the Organization of Afro-American Unity*, in *NEW BLACK VOICES* 558, 560 (Abraham Chapman ed., 1972).



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