Dealing with Student Loan Debt

Many people cannot afford to pay for schooling out-of-pocket, so they take out loans. If you have debt from student loans that you cannot pay back, you may be put into “default,” and you may have options to seek relief.

There are two main types of loans - private and federal - and the type of loan you have determines what process to follow.

For private loans, you may be put into default as soon as you miss one payment. If you are in default, contact the lender. Ask the lender to modify the loan or repayment agreement. Modification could include an interest rate reduction. Be aware that private lenders are not required to offer flexible repayment, cancellation, or deferment options.

For federal loans, you are often in default if you have not made payments for nine months. The entire loan balance is due once you default.

Note: It’s often hard to tell the difference between private and federal loans. In some cases, the lender may even be the same. If you don’t know what type of loans you have, call the Federal Student Aid Information Center at 1-800-4-FED-AID. They can help you determine what type of loans you have.

Here are some of your options:

If you are in default, you may be able to resolve the loan with an affordable payment. The Higher Education Act says that lenders must set reasonable and affordable payments. If a collection agency is demanding a payment amount that is unaffordable, you have options:

- Ask to speak with a supervisor or agency ombudsman, if they have one.
File a complaint with the loan holder stating that the collector is unwilling to set a reasonable and affordable payment.

- If your problem is with the Department of Education, call their ombudsman at 877-557-2575 for help in obtaining a reasonable and affordable payment.

If you are not in default, you can ask the loan holder to place your loan in “deferment” or “forbearance.”

If you can afford to pay something each month but not the full payment, apply for a more affordable repayment plan.

Frequently Asked Questions:

What is an income-based repayment plan, and how do I know if I qualify?

Income-based repayment plan (IRB) helps determine your student loan payment based on how much income you receive. To qualify, you must show that you have too much debt and too little income.

IRB uses a sliding scale to determine your payment:

- If you earn below 150% of the poverty level for your family size, your payment will be $0.

- If you earn more, your loan payment will be capped at 15% of whatever you earn above 150% of the poverty level. This amount will usually be less than 10% of your total income.

Once you are on an IRB, you will have to verify your income every year, and your payment may be adjusted based on changes in income or family size.

Can I discharge student loan debt through bankruptcy?

In general, student loans cannot be discharged in bankruptcy. There are many repayment plans available for federal loans, which means very few are discharged. However, in circumstances of extreme financial hardship, a student loan may be discharged through bankruptcy. To do so, you must be able to prove that payment of the loan “will impose an undue hardship on your and your dependents.”
Courts use different standards to evaluate whether a borrower has shown undue hardship, and it is very difficult to prove. A bankruptcy attorney can help you examine your options.

Is there another way to discharge student loan debt?

If you fit within one of the categories listed below, you may be able to discharge your student loan debt through the U.S. Department of Education.

- The borrower is now deceased or totally and permanently disabled.
- The borrower’s signature on the loan application was forged.
- You did not have a high school diploma or GED at the time of enrollment, and your student loan is from 1986 or later.
- The school closed while you were enrolled or within 90 days of when you withdrew from the school, and your student loan is from 1986 or later.
- You did not complete the program, and the school did not properly return part of the loan to the lender, and your student loan is from 1986 or later.
- You had a status or condition at the time of enrollment that was a legal barrier to employment in the field, and your student loan is from 1986 or later. Examples include:
  - You were in a security guard program or nursing, early childhood or similar program training to work with children or disabled persons, but had a felony criminal record.
  - You were in a nursing or custodial maintenance program, but you had a physical or mental disability that prevented you from working in those fields.
  - You did not have a high school diploma and a high school diploma is necessary to take a license or certification exam that is required for the job.

Can my wages be garnished if I fail to pay my student loans?

If you fail to pay or make arrangements, the federal government can garnish your wages for federal loans. The government does not need to seek a judgment in court first. Fifteen percent of your after-tax wages can be garnished. However, you must be notified of the
garnishment and have an opportunity for a hearing to challenge the amount of the debt and the terms of repayment, and your pay cannot be reduced below $217.50 per week.

For private loans, the lender must sue in court to obtain a judgment, following state garnishment laws. In Ohio, up to 25% of your after tax wages can be garnished for a student loan. However, you must be notified of the garnishment and have an opportunity for a hearing to challenge the amount of the debt and the terms of repayment, and your pay cannot be reduced below $217.50 per week. To avoid garnishment, contact the private lender or collection agency to work out a payment arrangement.

Can my tax refund be held if I fail to pay my student loans?

The Department of Education may seek to take your federal tax refund if you are in default. You can avoid this by pursuing one of the options above.

For more information, visit: www.studentloanborrowerassistance.org.

For information on Perkins Loans, see: https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/charts#perkins-loan-cancellation

This article is meant to give you general information and not to give you specific legal advice.

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