Managing Your Student Loan Debt

Staying on top of your student loans can be a daunting task, especially when you have so much else going on. It is important, however, that you do not let your student loan debt become overwhelming. There are several things you can do to avoid the harsh consequences of default.

What is Default?

Default means that you have not paid, or attempted to pay, your loans for a period of time set by your lender. For Stafford and PLUS loans, you will default on your loans if you do not make a payment for 270 days (if you pay on a monthly basis) or 330 days (if you pay less often than every month). For Perkins loans, this period is 180 days. For private loans, the holder of your loan sets this period of time.

The consequences of default can be severe. The holder will assign your loan to a collection agency, which will charge you hefty fees to collect. Your loan will likely be accelerated, meaning that the entire balance due of your loan will become due at once. The default will be listed on your credit report and may affect your ability to get new credit, rent an apartment, or get a job. Your paycheck may even be garnished (10% of your take-home pay seized each paycheck to pay your debt *without first obtaining a court judgment*) or your tax return taken to go toward paying your federal loan. You may also even be subject to a lawsuit to collect your defaulted loan.

How Do I Get Out of Default on My Student Loans?

If your loans have gone into default, you will not be eligible for most of the options designed to ease your financial burden when you cannot make your payments. There are ways, however, to fix the problem. Federal and some private lenders will allow you to **rehabilitate** your loan, where you will again be eligible for the repayment options. **Rehabilitation** involves agreeing upon a payment schedule with the holder of your loan in which you must make a certain number of consecutive payments on time and abide by the other terms of your agreement. Once you have satisfied your rehabilitation obligation, your credit rating will also improve, and you will again be eligible for additional student loans. Although your payments after rehabilitation will be higher than before you defaulted, you can then pursue other repayment or cancellation options that are not available when a loan is in default.

What if I am Behind on Payments, but not in Default Yet?

If your loans have not gone into default, it is important that you **keep them out of default**, even if you are trying to arrange another payment schedule, a postponement of your payments, or a cancellation. First, you should inform the holder of your loans whenever there is a change in your name, address, phone number, social security number, or school enrollment. Also, if you cannot make your minimum monthly payment, negotiate with the holder of your loan for a lower payment. Federal loan holders will take into account your income and your expenses when making this determination. You may want to consider **consolidating** your loans. **Consolidation** will enable you to have as few as one loan with one payment. The monthly payment on a consolidation loan is often lower than all of your payments combined, but you will pay more overall for your loan had you not consolidated. This will, however, ease your immediate financial hardship.

One option that is available to a person with non-defaulted student loans is **deferment**. You will not have to make payments on your loan for a set period of time (this will depend on the conditions which make you eligible for deferment). Interest will not continue to accrue on your loan while in deferment unless you have an unsubsidized loan, for which you can choose to pay the interest or *capitalize* it (attach it to the remainder of the loan to be paid back once you resume making payments; often more expensive overall than just paying the interest). If you have a federal loan, you can get a deferment if you are enrolled in school at least half-time, unable to find full-time employment (3 years maximum), or suffering from economic hardship (for periods of 12 months at a time, for up to 3 years total). You may also be eligible for a deferment if you have temporary total disability (for federal loans made before 01/01/93). The temporary and total disability deferment requires that you are disabled for 60 days and cannot hold a job, or that your spouse or dependent requires your care-giving for at least three months such that you cannot hold a job. You may have other deferment options depending on the type of your loan. No deferment plan is automatic – you must apply with the holder of your loan to receive one. You will be entitled to a deferment if you satisfy its requirements. You should make payments on your loan until you have been notified that your deferment has been awarded.

The second option for loans not in default is **forbearance**. With forbearance, your payments are suspended for a period of time set by your lender. Interest will accrue, however, regardless of the type of loan you have. As with deferment, you have the option of paying your interest or capitalizing it. You can get forbearance for poor health or unforeseen personal problems, service in a medical or dental residency, or other criteria set by the loan holder. You must apply with the loan holder to receive forbearance. Forbearance is discretionary: *even if you satisfy the conditions for forbearance, your loan holder may choose not to give it to you*. The holder might be willing to negotiate lower payments on your loan, however.

The final option for easing your student loan burden is **cancellation** or **discharge**. A discharge releases you from all obligations to pay your loan. A PLUS loan can be discharged if the conditions for discharge apply to *the student*. Death and total and permanent disability discharges can be granted even if your loan is in default. A ***death*** discharge is granted upon the receipt by the holder of a death certificate or other documentation of death as required by state law. ***Total and permanent disability discharge*** for federal loans requires that the borrower be 100% disabled according to standards **set by the loan holder**. Even your receipt of Social Security Disability Insurance (SSDI) benefits does not automatically qualify you for this type of discharge.

You must be unable to work or earn money due to an illness or injury that is expected to continue indefinitely or result in death. A condition that existed when you made the loan will not satisfy this standard, unless it has since significantly deteriorated. The holder of your loan will make this determination based on evidence submitted in accordance with the holder's requirements.

If you qualify for this type of discharge, the loan holder will periodically review your case over a period of three years. If you do not take out any new federal student loans, and your income does not exceed 100% of the federal poverty level for a family of two ($12,830 annually in 2005, with monthly maximums of $2,835 if you work 30-40 hours per week, and $1,623 if you work less than 30 hours per week – these figures are set regardless of your actual family size) during that period, your loan will be permanently and completely cancelled. Please note that nontaxable income, such as SSI or SSDI, is exempt from this calculation. Private lenders may or may not allow discharge for total and permanent disability. You may also qualify for a total or partial discharge of your loan if you worked in a particular profession or have participated in certain programs, but your loan cannot be in default. You should contact your loan holder for these conditions. Additionally, if you do not qualify for federal discharge, your state may have programs designed to discharge part or all of your student loans (see www.studentaid.ed.gov → Funding → State Aid). The school for which you got the loans might also have a loan forgiveness program.

If you seek a discharge of your student loans, *you should also apply for forbearance* during this time. If you are granted forbearance before a decision regarding cancellation is made, you will not have to make payments on your loan between the granting of the forbearance and the cancellation decision.

Will Filing Bankruptcy Help?

Bankruptcy *will not guarantee* a discharge of your student loans. If you wish to discharge your student loans in bankruptcy, you must file an adversary proceeding in your bankruptcy case and satisfy a difficult *"undue hardship"* standard: 1) if forced to repay the loan, you will be unable to maintain a minimal standard of living; 2) evidence exists that this hardship will continue for a significant portion of the loan's repayment period; and 3) you have made good faith effort to repay the loan prior to filing for bankruptcy discharge (payments/negotiations for at least five years). While this standard currently only applies to federal student loans, and private loans are now subject to discharge in the same way as regular debts through bankruptcy, this will change in October 2005. Private loans will no longer be dischargeable and presumably will be subject to the same harsh standard to qualify as an exception to this rule.

What if I Don't Know Who the Holder of My Loan Is?

For Federal Loans (Stafford, PLUS):

Federal Student Information Center

1-800-4-FED-AID

NSLDS

www.nslds.ed.gov

- ❖ you will need a PIN to access your information
- ❖ you can retrieve your old PIN or get a new one at www.pin.ed.gov

For Perkins Loans/Private Loans:

The school for which you got the Perkins loan is often the holder of your loan, but they may have assigned it to a separate agency. Call your school's financial aid office for more information. If you do not know who the holder of your private loan is, your school's financial aid office should also have this information.

For More Information or To File for Repayment Options, Rehabilitation, or Consolidation

- ❖ www.studentaid.ed.gov
- ❖ Direct Loan (Stafford/PLUS): Direct Loan Servicing Center: 1-800-848-0979
- ❖ FFEL Loan (Stafford/PLUS): Lender or agency holding the loan
- ❖ Perkins Loan: School that made the loan
- ❖ Private Loan: The lender who made the loan

If you have questions about student loan debt, please email Legal Services at legalservices@aac.org with your question or call 617.450.1317.

AIDS ACTION COMMITTEE

Legal Services

Updated June 2005.