PHASE 3: Unable to Make Student Loan Payments
PHASE 3: Unable to Make Payments

Information included in Phase 3:
I. Options Available
II. Delinquency and Default
III. Getting Out of Default
I. Options Available

If you are having trouble making payments, there are 4 possible options that can help:

A) Deferment
B) Forbearance
C) Loan Forgiveness
D) Cancellation and Discharge
A) Deferment

- **Deferment** is a period where repayment of both principal and interest is temporarily delayed
  - This automatically happens while you are enrolled at least half-time in school
- You can still pay the interest on PLUS and Unsubsidized loans to prevent it from capitalizing to principal
When Can I Get Deferment?

- While you are enrolled at a college/career school at least half-time (this is done automatically for you by your school)
- During a period of study in an approved graduate fellowship program or in an approved rehabilitation training program for the disabled
- During a period of unemployment/inability to find full-time employment
  - Eligible for up to 3 years
- During a period of economic hardship (includes Peace Corps Service)
  - Eligible for up to 3 years
- During a period of activity duty military service during war, military operation, or national emergency
- During the 13 months following conclusion of qualifying active duty military service or until you return to half-time enrollment (if earlier) if:
  - You are in the reserves or National Guard
  - If you were called to active duty while enrolled in college at least half time
B) Forbearance

- Forbearance is a period of up to 12 months where your payments can be reduced or stopped because you cannot make them.
- Your servicer has discretion whether to grant the forbearance if it is for illness or financial hardship.
Forbearance (cont.)

Forbearance **must be granted** by your servicer for certain reasons:

- Serving in medical or dental internship/residency program and you meet specific requirements
- Your monthly payment for all student loans combined is >20% of your total monthly gross income, with additional conditions
- Performing teaching service that qualifies for teacher loan forgiveness
- Serving in national service position for which you received a national service award (i.e. AmeriCorps)
- You qualify for partial repayment under the US Department of Defense Student Loan Repayment Program
- You are activated as a National Guardsman by your governor but are not eligible for a military deferment
C) Loan Forgiveness

There are 3 main loan forgiveness programs:
1) Teacher Loan Forgiveness
2) Public Service Loan Forgiveness
3) State Loan Forgiveness Programs
1) Teacher Loan Forgiveness

• **In order to qualify for this program, you must meet** the following criteria:
  
  1) You are a new borrower (no outstanding loan balances on a Direct Loan or FFEL Program Loan on October 1, 1998)
  
  2) You are teaching full time in a low-income elementary/secondary school or educational service agency for five consecutive years
     • Educational Service Agency-regional public multiservice agency authorized by state law to provide services or programs to public school districts
  
  3) You can have up to $17,500 of your Subsidized or Unsubsidized loans forgiven (**NOT PLUS** loans)

• To apply, you must complete the Teacher Loan Forgiveness Application and return it to your servicer, with your teaching service section certified by the chief administrative officer of your school
  
2) Public Service Loan Forgiveness

- Only Direct loans are eligible

**To obtain forgiveness, you must:**

- 1) Contact your servicer to provide appropriate documentation of these plans.
  

- 2) Make 120 on-time, full, scheduled, monthly payments on your Direct Loans
  
  Only payments made after October 1, 2007 count (and for Direct Consolidation loans, only payments on the new consolidated loan)
  
  Wage garnishments and tax offsets already collected do not count

- 3) Make the payments under a qualifying repayment plan
  
  Plans for maximum forgiveness: IBR, ICR, and Pay As You Earn

- 4) Be working full-time at a qualifying public service organization when you make each payment
3) State Loan Forgiveness Programs

- Many states have programs of their own where certain amounts of student loan debt can be forgiven, in addition to any qualifying federal loan forgiveness.
- American Student Assistance has compiled a nearly comprehensive list of these programs. See https://www.saltmoney.org/Assets/PDFs/60-ways-to-get-rid-of-your-student-loans-without-paying-them.pdf
D) Cancellation and Discharge

1) Perkins Loan Cancellation and Discharge
2) Total and Permanent Disability Discharge
3) Death Discharge
4) School-Related Discharge
5) How to Discharge?
1) Perkins Loan Cancellation and Discharge

- A Perkins loan can be discharged (cancelled) up to a certain percentage for performing specific jobs or working in certain types of public service.
- For service in US Armed forces in hostile fire/imminent danger pay area ending before 8/14/2008 – up to 50% can be forgiven.
- For VISTA or Peace Corps Volunteer – up to 70% can be forgiven.
If you have worked in the following Service/Occupation, then your Perkins Student Loans can be forgiven up to 100%

- Service in US Armed forces in hostile fire/ imminent danger pay area for service including or beginning after 8/14/2008
- Full-time firefighter*
- Full-time law enforcement or corrections officer
- Full-time nurse or medical technician
- Librarian w/ Master’s degree working in Title-I eligible school or public library serving Title-I eligible schools*
- Full-time attorney employed by federal public or community defender*
- Full-time staff member in education component of Head Start program
- Full-time employee of public/ non-profit child or family services agency serving high risk children and their families in low income communities
- Full-time qualified professional provider of early intervention services for the disabled
- Full-time speech pathologist w/ Master’s degree working in Title –I eligible school*
- Full-time special education teacher of children with disabilities in public or nonprofit school
- Full-time special education teacher of children with disabilities in an educational service agency*
- Full-time teacher of math, science, foreign language, bilingual education, or other fields designated as teacher shortage areas
- Full-time teacher in a designated educational service agency serving students from low-income families*
- Full-time faculty member at a tribal college or university
2) Total and Permanent Disability Discharge

- This is available for Direct and FFEL loans in limited circumstances
- Can discharge up to 100% for all federal loans
- This discharge process changed as of November 1, 2012 and the changes apply to student loan applications received on or after July 1, 2013.
- Contact your servicer
3) Borrower’s Death Discharge

- Borrower death: Can result in 100% discharge for all federal loans
  - Your representative must submit a certified copy of the death certificate to your servicer
- For a Parent PLUS loan, if you die or the student for whom you took the loan dies, you may also discharge the loan in the same manner as above
4) School-Related Discharges

There are 3 types of School-Related Discharges:

A) School Closure
B) Unpaid Refund
C) False Certification
School-Related Discharge (cont.)

A) **School Closure Discharge**: Can discharge Direct, Perkins or FFEL loans IF your school closes while you are enrolled (preventing completion of your academic program) or the school closes within 120 days of your withdrawal

- If you are completing a comparable educational program at another school, you cannot discharge

B) **Unpaid Refund Discharge**: Only the amount of the refund (partial) is discharged

- If you withdrew from school but the school didn’t pay a refund it owed to the US Department of Education or to the lender
School-Related Discharge (cont.)

C) **False Certification Discharge**: can discharge Direct or FFEL loans **IF** your school:

- Falsely certified your eligibility to receive the loan (you did not meet the ability to benefit eligibility requirements of the school)
- Signed your name on your application or promissory note, endorsed your loan check, or signed your authorization for electronic funds transfer without your knowledge or authorization
  - Unless loan proceeds went to you or applied to charges you owed the school
- Falsely certified your loan because you were a victim of identity theft
- Certified your eligibility but you are not employable in the occupation you are training for due to medical condition, age, criminal record, or other reason
5) How Can I Discharge My Loans?

- You must contact your servicer and request a discharge as well as provide appropriate documentation.
- You must continue to make payments until you hear from your servicer that the discharge has been approved.

**However:**

- If you have Direct Loans, you can request a forbearance until the decision on discharge is made, and no one can collect on the loan until eligibility for the discharge is determined.
- If you have Perkins Loans, the school automatically places you in deferment if you are performing service that can qualify for discharge.
How to Discharge? (cont.)

- **IF** the discharge is **approved**, you are no longer obligated to make further payments and the discharge may award you refunds, delete defaults from your credit report, and stop garnishments/tax offsets.
- **IF** the discharge is **denied**, you normally cannot appeal (except in false certification and forged signature discharges) and you remain obligated to repay the loan.
  - If your school closes, you still have options:
    - Investigate if there is a tuition recovery fund or performance bond that will refund damages from school closure.
    - File a claim for your loss if the school filed for bankruptcy, and discuss with an attorney any other potential options.
Is Any Debt that Is Discharged, Cancelled, or Forgiven Taxable?

• Discharged/Forgiven Debt that is not taxable:
  ➢ Debt Forgiven under Public Service Loan Forgiveness Program
  ➢ Debt Forgiven under Teacher Loan Forgiveness Program

• Discharged/Forgiven Debt that is taxable:
  ➢ Death and Total Disability Discharges
  ➢ Closed School, False Certification, and Unpaid Refund Discharges
  ➢ Debt forgiven after completion of Income-Contingent and Income-Based Repayment Plans (ICR and IBR)
II. Delinquency and Default

A) Delinquency
B) Default
C) Could my Placement in Default Status Be in Error?
A) Delinquency

- **IF** you **miss a loan payment**, you are declared to be **delinquent**. This label applies until all payments are made that bring the loan current
  - For private loans, your interest rate may spike if you are even one day delinquent, and your lender may charge a collection fee
- **IF** you are **delinquent for 90 days**, loan servicers report this delinquency to the 3 major credit bureaus, which will have a negative impact on your credit report
- Interest continues accruing on the loan even if you don’t make the payments
Consequences of Delinquency for More than 90 Days

- Your credit score is negatively affected. This can be problematic if you try to:
  - Borrow money to start a business
  - Borrow money to buy a car
  - Try to apply for a mortgage
- If you are approved to borrow money, you may be charged higher interest rates
- Your poorer credit score could even affect your ability to:
  - Sign up for utilities
  - Get home owners’ insurance
  - Sign up for a cell phone plan
  - Get approval to rent an apartment (landlords normally check your credit score)
  - Get a job! (this can be checked by employers as well)
B) Default

- You can be **declared in default** (failure to pay your loan in accordance with the Master Promissory Note) when:
  - For monthly payments, you fail to pay for **270 days**
  - For payments less than once a month, you fail to pay for **330 days**
- If you are declared in default, **you should immediately**:
  - Contact the one of the resources listed at the beginning of this presentation
  - Explain your situation and that you want to avoid default
  - Ask what options are available to get out of default and how they can assist you
Consequences of Federal Loan Default

- **Most important consequence**: The entire unpaid balance of the loan and any interest is IMMEDIATELY DUE AND PAYABLE
- You also lose eligibility for:
  - Deferment
  - Forbearance
  - Other repayment plans
  - Additional federal student aid
- Your loan account will be assigned to a collection agency.

But see Section III on Rehabilitating your loans,
Other Consequences of Default

- The default will be reported to credit bureaus and will affect your credit score. This information can remain on your credit report for up to 7 years.
- The IRS can withhold your federal and state tax refunds [tax offset] and use the balance to collect loan debt.
- The loan holder (the federal government, a servicer, or a collection agency) can take legal action against you.
- The federal government can request your employer to withhold a portion of your pay and use it to pay loan debt [wage garnishment]. For federal employees, the Federal Salary Offset allows the government to garnish 15% of disposable pay.
- If you are disabled or retired, the government can garnish your Social Security or Disability checks to pay loan debt. Supplemental Security Income cannot be garnished. They cannot leave with you with less than $750 per month in your benefits check.
C) Could my Default Status Be in Error?

- Yes, for 3 possible reasons:
  1) You are attending school at least half-time, so your grace period (and subsequent repayment) should not have begun
     - If so, contact all schools you have attended for a copy of documentation of your attendance
     - Update this with your loan servicer
  2) You have a deferment or forbearance
     - Confirm the start and end dates of your deferment or forbearance with your servicer
     - If there is any error, provide documentation of the correct information to your servicer
  3) You made payments, but they weren’t credited to your loan account
     - Ask your servicer for a statement of payments, and see if your payments in question were listed
     - If not, provide proof of payment from your financial institution to your servicer
III. Getting Out of Default

- If you are in default on **private** student loans, you should contact your lender to see if you can work out a repayment plan.
- If you are in default on **federal** Loans, there are 4 potential options:
  A) Repayment
  B) Rehabilitation
  C) Consolidation
  D) Settlement
  E) Bankruptcy
A) Repayment

- Pay the outstanding balance on your loan in full
- This is done by making the full payment amount to your servicer: Check the National Student Loan Data System (http://www.nslds.ed.gov/nslds_SA/) if you aren’t sure whom you should pay

See Phase IV Section III of this presentation
B) Rehabilitation

- To rehabilitate your loan, you must work with the Department of Education to agree on a reasonable and affordable payment plan.
  - A private lender must purchase the loan and they can add outstanding collection costs to the principal balance. These can be up to 16%
  - You must make the agreed-upon payments on time and in full
  - Payments that have already been collected from you through wage garnishment, tax offsets, or legal action DO NOT COUNT as rehabilitation payments
- Once you complete rehabilitation (and get your payments up to date), you then must choose a new repayment plan to finish paying the balance of your loan.
  - The monthly payment may be higher due to accumulated collection costs
  - Even if rehabilitation is successful, the delinquencies reported before the default will not be removed from your credit report
Rehabilitation (cont.)

- Rehabilitation has a **number of important benefits** once you complete it, including:
  - Renewed eligibility for deferment, forbearance, loan forgiveness, and additional federal student aid
  - A new choice of repayment plans
  - Removal of the default status on your loan and removal of the default from your credit report
  - Ending of tax offsets and wage garnishment by the federal government

Also see Phase IV Section 4
C) Consolidation

- You can include a defaulted federal student loan in a Direct Consolidation loan IF you meet the standard eligibility requirements (have one other non-defaulted federal loan to include) AND
  - You make arrangements with your servicer and the Department of Education to approve the consolidation
  - You make several consecutive, voluntary, and on-time payments prior to consolidation. Normally you must make at least 3 payments
  - If your loan has been assigned to a collection or guaranty agency, they may charge collection or late fees up to 16% of the outstanding principal and interest balance, which become part of the Consolidation Loan’s principal balance

Also see Phase IV Section 5 of this presentation.
D) Bankruptcy

• If you have contacted your servicer for help and are ineligible for rehabilitation or consolidation, and you do not have the money to pay your loans and other bills, filing for bankruptcy may be one option.

• While many debts can be discharged in either Chapter 7 or Chapter 13 Bankruptcy, Student Loans generally cannot be discharged without proof of undue hardship!

• Bankruptcy needs to be a last resort. While it may discharge some debts, it remains on your credit report for up to 10 years.
Bankruptcy (cont.)

• Once you have filed for bankruptcy, your loan will be placed on hold.
  ➢ You will not be obligated to make any further payments until the proceedings have closed
• Once in the bankruptcy, in order to get a hardship discharge you must file an adversary proceeding against your servicer to get the debt discharged like your other debts.
• Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 [see 11 U.S.C. § 523(a)(8) (2012)], you must prove that repayment of the student loan debt will impose an undue hardship on you and your dependents.
• If you are able to prove undue hardship, then you may be granted a partial discharge of your student loan debt,
Many bankruptcy courts currently follow the Brunner test to determine undue hardship. You must be able to meet all 3 prongs of the Brunner test:

1) You cannot maintain a “minimal” standard of living for yourself and your dependents if forced to repay the loans, based on your current income and expenses

2) Additional circumstances (illness, disability, etc.) exist suggesting the your current state of affairs will persist for a significant portion of the repayment period of the loans

3) You have made good faith efforts to repay the loans to this point

Also see Phase IV Section 7.