PHASE 4: 
Retired, Disabled, or Left the 
Workforce Still Owing 
Student Loans
PHASE 4

Phase 4 includes student loan issues that arise:
1) after you have retired
2) after you become disabled
3) after you have left the work force
4) when you thought you had paid off your student loan debt*
5) when you have not heard from your servicer for several years*

*until the federal government began garnishing your social security benefits or taking your tax refund
PHASE 4

First, check to see if you qualify for any:

I. Cancellation or Discharge options

Getting your student loans out of default:

II. Repayment
III. Rehabilitation
IV. Consolidation
V. Settlement
VI. Bankruptcy

See Phase III Section C
I. Cancellation or Discharge

A) Cancellation or Discharge of a Federal Perkins Loan
B) Cancellation or Discharge of Direct and FFEL Loans
C) Death Discharge
D) School-Related Discharge
E) Tax Consequences of debt that is forgiven, cancelled, or discharged

Also see Phase III Section 5 of this presentation,
A) Cancellation and Discharge of Perkins Loan

- A Perkins Loan can be discharged (cancelled) up to a certain percentage for performing specific jobs or working in certain types of public service.

Less than 100% forgiveness of Perkins loans:

- 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
B) Cancellation and Discharge for Direct and FFEL Loans

- Cancellation and Discharge for Direct and FFEL Loans is only available for Borrower with Total and Permanent Disability which will result in 100% discharge of all these loans.

- Total and permanent disability must be shown in 1 of 3 ways:
  1. If a veteran, submit documentation from the VA determining you are unemployable from a service-connected disability.
  2. If you receive Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits, submit notice of award for benefits from the Social Security Administration.
     - This notice must state your next scheduled disability review is within 5-7 years of the date of the most recent disability determination.
     - Submit certification from a physician that certifies you cannot engage in any substantial gainful activity. This must be the result of a medically determinable physical or mental impairment that:
       - Can be expected to result in death
       - Has lasted a continuous period of at least 60 months
       - Can be expected to last for a continuous period of at least 60 months.
C) Borrower’s Death Discharge

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

There are 3 types of School-Related Discharge:

a) School Closure Discharge
b) Unpaid Refund (Partial) Discharge
c) False Certification Discharge
School-Related Discharge (cont.)

a) School Closure Discharge: Can discharge Direct 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, the loan cannot be discharged

b) Unpaid Refund Discharge:

- 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, this unpaid refund can be deducted from the amount owed
- Only the amount of the refund (partial) is discharged
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 the loan 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 were 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
E) Tax Consequences of Debt That Is Forgiven, Cancelled, or Discharged

- **Discharged/ Forgiven Debt that typically is not taxable:**
  - Debt forgiven under Public Service Loan Forgiveness Program
  - Debt forgiven under the Teacher Loan Forgiveness Program

- **Discharged/ Forgiven Debt that typically is taxable:**
  - Total and Permanent Disability discharge
  - Borrower’s Death discharge
  - Close School, Unpaid Refund, and False Certification discharges
  - Debt forgiven after completion of Income-Contingent (ICR) and Income-Based (IBR) repayment plans
Getting Out of Default

For Federal Loan Default a debtor has the following options:

III. Repayment
VI. Rehabilitation
V. Consolidation
VI. Settlement
VII. Bankruptcy
II. Repayment

- If you are in default, the usual federal loan repayment plans are not available. The only repayment option to get out of default is by paying the loan in full. Otherwise you must obtain rehabilitation, consolidation or settlement to get out of default and obtain a traditional repayment plan.

- Get a written payoff amount from your servicer to make a full repayment.

See Phase II Section 2 for repayment plans once you are out of default.
III. Rehabilitation

- You can only rehabilitate your student loans 1 time
- You will make 9 voluntary on-time payments
- You and either the US Department of Education or the guarantee agency will agree on a payment amount that is reasonable based on your total financial circumstances
  - The guarantee agency will review your disposable income (which includes any welfare benefits, Social Security benefits, child support, VA benefits, and workers compensation) and your reasonable and necessary expenses (which includes food, housing, utilities, medical care, work-related expenses, and dependent care costs)
  - The guarantee agency will want to see documentation of your income and expenses
  - Effective July 1, 2014 there is a new system to assure you are paying only what is reasonable and affordable. Your loan holder must start by using the IBR formula.
III. Rehabilitation (cont.)

- Your voluntary payments will not include any payments that have already been collected from you through garnishment or income tax refund offset.
- Rehabilitation generally involves adding collection costs of up to 16% of your unpaid principal balance and accrued interest which will be added to the principal balance after your loan(s) come out of default.
- You can only rehabilitate your loan(s) one time.
- **Benefits** of completing rehabilitation:
  - Renewed eligibility for deferment, forbearance, loan forgiveness, and additional federal student aid.
  - A new choice of repayment plans.
  - Removal of default status on debtor’s loan and from debtor’s credit report.
  - Ending of tax offsets and wage garnishment by the federal government.
IV. 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**

1) You make arrangements with your services and the Department of Education to approve the consolidation

2) You make several consecutive, voluntary and on-time payments (usually 3 payments) prior to consolidation. For payment under ICBR or IBR it is not required that you make 3 payments before applying.

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.

Note: As of May 18, 2014 all borrowers must apply for Direct loan consolidation using the new system found at studentloans.gov
V. Settlement

- A settlement is a lump sum payment you make to satisfy your student loan debt(s) in full
- The Department of Education (DofE) will want to receive the settlement amount within a single fiscal year (the federal government’s fiscal year is from October 1 to September 30)
  - Typically, DofE will want to receive full settlement amount within 90 days of the settlement offer
  - Sometimes the DofE will allow you to pay the settlement amount in monthly installments but this still must be done within a single fiscal year
- Be sure to get the settlement offer in writing and make sure it states that it will satisfy all debts in full
  - Have an attorney review the settlement offer
- After paying the settlement in full, you should receive a “paid in full” statement – keep this for your records
V. Settlement (cont.)

- The DofE will not accept a settlement that is less than the default claim it paid for a FFELP loan or the principal balance on a Direct loan
  - One example of a settlement is to offer to split the difference between the current amount owed and the amount of the original default claim
- If your loan(s) are owned by a private collection agency, then they have authority from the DofE to accept 3 types of standard settlements:
  - Waiver of collection charges (pay only the current principal balance and accrued but unpaid interest)
  - Current principal balance and one-half of accrued but unpaid interest, or
  - At least 90% of the current principal and interest balance

Additional information on standard compromise and write off procedures and guidelines for compromising Direct loans can be found at studentloanborrowerassistance.org/loan-cancellation/settlement/federal-loans/
VI. Bankruptcy

A. Hardship Discharge

• 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 an option.

B. Discharge where there is no undue hardship

• Many debts can be discharged in either Chapter 7 or Chapter 13 Bankruptcy, **Student Loans generally cannot be discharged except in particular circumstances.**

• While bankruptcy may discharge some debts, it remains on your credit report for up to 10 years, even once the court grants discharge.

• Once you have filed for bankruptcy, your loan will be placed on hold.

  ➢ Because of the bankruptcy stay, you will not be obligated to make any further student loan payments until you receive a discharge.

  ➢ If you are already in a repayment plan such as IBR, any payments you make during bankruptcy will not be credited as a payment under your repayment plan, but will be credited toward the outstanding loan balance.
VI. Bankruptcy (cont.)

- Student Loans are treated as nonpriority unsecured debt. In a Chapter 13 bankruptcy, pro rata payments can be made to student loans along with all other unsecured creditors. In some instances you may be able to classify them separately for a higher payment. In Chapter 7, there is not a payment plan, so no payments are required until after discharge.

- You can pursue discharge of your student loans in Chapter 7 or 13 bankruptcy through an adversary proceeding—a separate lawsuit within bankruptcy. It is best to have an attorney for this process.
  - See [http://www.studentloanborrowerassistance.org/bankruptcy/](http://www.studentloanborrowerassistance.org/bankruptcy/) for sample court documents to file this type of proceeding

- Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 [see 11 U.S.C. § 523(a)(8) (2012)] student loans cannot be discharged unless you 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 could be granted a full or partial discharge of your student loan debt

- If you fail to prove undue hardship or get approval to discharge your student loans through a Chapter 13 plan payment, your loans will not be discharged and you will still owe the debt.
A. Hardship Discharge

- In order to prove undue hardship, you must be able to prove:
  1) You cannot maintain a “minimal” standard of living for yourself and your dependents if forced to repay the loans, based on current income and expenses
  2) Additional circumstances (illness, disability, etc.) exist suggesting the current state of affairs will persist for a significant portion of the repayment period of the loans
  3) The debtor has made good faith efforts to repay the loans to this point

This is called the *Brunner* test from the case of the same name. The leading case in S.C. outlining the requirements is *In re Marcotte*. 
B. Discharge/repayment without undue hardship

Student loans are treated like credit cards and medical bills in Chapter 13 bankruptcy. They can be paid a pro rata share of the total amount paid to unsecured creditors. No payment is required outside the Chapter 13 plan which lasts 3-5 years until the bankruptcy is over. Some courts prohibit making student loan payments during the bankruptcy on the belief that it unfairly discriminates against other creditors by reducing the amount they get paid.

Chapter 13 Bankruptcy and student loan debt:

- The automatic stay prohibits collection of student loan debt
  During the 3-5 years of a Chapter 13 bankruptcy, you cannot be harassed or otherwise pursued for collection.

- Student loan payments delayed or reduced
  Though you must continue student loan payments after bankruptcy, during the 3-5 years your bankruptcy lasts you may not have to make any payments. However, the interest continues to accrue.

- Monthly debt obligations are reduced
  You only pay back what you can afford during the bankruptcy. This can reduce your monthly debt obligations allowing you time to increase your income to resume payment afterwards.

- In limited circumstances, the Court may approve partial discharge or discharge through separate classification and payment of student loan debt.
Student Loan treatment on your tax return-2014

- American Opportunity Credit
- Lifetime Learning Credit
- Tuition and fees deduction
- Student Loan interest deduction

Check with a tax professional for details on these and other possibilities.
DON’T PAY FOR HELP WITH MANAGING YOUR STUDENT LOANS. CHECK OUT THESE WEBSITES THAT PROVIDE FREE HELP:

- [http://www.saltmoney.org](http://www.saltmoney.org)  American Student Assistance SALT program combines access to financial counselors, information on repayment programs, and information on what to do at each step of the repayment process
- [http://www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org)  Student Loan Borrower Assistance: A program of the National Consumer Law Center, provides Self Help packets, repayment calculators, and is based on a “Get Answers” platform that guides you to information based on your specific questions.
- [https://www.tuition.io](https://www.tuition.io)  Tuition.io: A platform allows you to link your loan information from the NSLDS database (and is encrypted) and to track your payments loan by loan. They also offer a number of helpful videos, guidelines, and overview packets on all types of loan issues.
- [https://help.consumerfinance.gov/app/studentloan/ask](https://help.consumerfinance.gov/app/studentloan/ask) ; [http://www.consumerfinance.gov/paying-for-college](http://www.consumerfinance.gov/paying-for-college)  Consumer Financial Protection Bureau (CFPB) has a number of resources and information on financing college. If you are having issues with your servicer, there are links to file a complaint through the Student Loans Ombudsman.
- [http://sclegal.org](http://sclegal.org) and [www.lawhelp.org/sc](http://www.lawhelp.org/sc)  South Carolina Legal Services has more detailed information about student loan debt, including student loan law, bankruptcy and a summary of current bill status of student loan related legislation.
  - Helps you compare colleges by a number of different search criteria, including area, degree program, occupation, and size
  - Grants access to net cost of attendance information
South Carolina Legal Services

www.sclegal.org
www.lawhelp.org/sc

To apply for legal assistance:
1-888-346-5592
The preceding presentation provides an overview of student loan debt options but is not intended to be a complete and comprehensive presentation of the entire area of student loans.

As evidenced by recent changes in debt consolidation in May 2014 and rehabilitation in July 2014, this area of the law is constantly changing.

YOU SHOULD CHECK THE ONLINE RESOURCES LISTED ON THE SECOND SLIDE FOR THE MOST RECENT UPDATES ON PARTICULAR OPTIONS THAT MAY BE AVAILABLE TO YOU.

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