



LEGAL AID
SOCIETY OF HAWAI'I



What You Need To Know About Student Loans*

© Copyright April 2002, Legal Aid Society of Hawai'i

All rights reserved. These materials may not be reproduced without written permission of the Legal Aid Society of Hawai'i. These materials may be reproduced. However, under no circumstances are persons receiving these brochures to be charged for copies. This is meant to be an informational brochure, and is not intended to take the place of legal counsel. The distribution of this brochure by the Legal Aid Society of Hawai'i does not imply that an attorney-client relationship has been formed. This brochure is not intended to be a complete statement of law nor intended to fully describe or evaluate your options. Revised 6/16/2011. C18. Student Loans: What you need to know.



This brochure was created
through the AmeriCorps
Project Lailima at the
Legal Aid Society of Hawaii



* This brochure applies to loans that are guaranteed by the federal government and only gives general information. This brochure does not provide legal advice on your particular situation. If you have a private loan, this information may not apply to you. Check with your loan holder for more information. Student loan law is always changing, so make sure you have the up to date version of this brochure.

I. THINGS TO THINK ABOUT BEFORE YOU BORROW.

Attending school is expensive and many people cannot afford the costs without getting a loan. Student loans are a huge responsibility and they are very hard to get rid of. Make sure to look at your finances and see how many loans you should take out, and if you can afford to pay it back in the long run. Just remember that if you borrow too much, then it'll take a longer time to pay off your loans. Talk to your financial aid counselor at your school and see if they can provide any suggestions on how to finance your education. Also, make sure to keep records of all the information regarding your student loans, because your school and lenders will not keep your records forever.

II. WHAT KIND OF STUDENT LOAN(S) DO I HAVE?

Before you take a loan or if you are deciding your options if you can't pay your loan, you first need to figure out what kind of loan you have. The following are common types of student loans.

1. Direct Loans

Direct loans come directly from the U.S. Department of Education. If you have a Direct Loan, the notices you get in the mail will say "Direct Loans" in big black letters at the top. There are four types of Direct Loans: Direct Stafford Loans, Direct Consolidation Loans, Direct Grad PLUS Loans and Direct Parent PLUS Loans. Direct Parent PLUS Loans are for parents of students.

2. Federal Family Education Loans (FFEL)

These are loans made by private lenders that the government subsidizes. If you default on FFEL loans, then the government guarantees them. If your loan notices in the mail don't say "Direct Loans," your loan is probably an FFEL loan.

There are four main types of FFEL loans: FFEL Stafford Loans, FFEL Consolidation Loans, FFEL Grad PLUS Loans and FFEL Parent PLUS Loans. FFEL Parent PLUS Loans are for parents of students.

***The FFEL loan program was eliminated as of June 30, 2010.**

Starting July 1, 2010, federally-guaranteed loans issued by private banks (FFELs) will not be available. Students will be able to get direct loans – loans made directly by the federal government rather than by a bank or other lender. (For more information, go to the NOLO website and read the section on "New Student Loan Changes." The web address is: www.nolo.com/legal-update/33000.html)

***Since the FFEL loan program was eliminated, the government created the William D. Ford Federal Direct Loan Program.**

The William D. Ford Federal Direct Loan Program is where loans are made directly from the Department of Education to students without the participation of private lenders. (Go to the Federal Student Aid website for more information on the Federal Direct Loan Program: <http://www.direct.ed.gov/>)

3. Perkins Loans

Perkins Loans are small, low-interest federal loans made by your school.

4. Private Loans

Private loans are made by private lenders outside of the federal student loan program. This brochure does not have any information on private loans.

* To find out what kind of federal loan you have, go to the National Student Loan Data System's website (http://www.nslds.ed.gov/nslds_SA/).

What if I have a Pell Grant?

Federal grants like Pell Grants are not loans, so you don't need to pay them back unless you drop out of your classes early. However, if you drop out of classes early, then you won't have to pay back your federal grant if you fall into either of these categories: (1) you are called to active military duty; or (2) there is a major disaster in your area.

III. INFORMATION YOU NEED IF YOU HAVE TROUBLE PAYING YOUR LOANS

Follow the steps below to find information on your student loan.

STEP 1: You must figure out who holds your student loan. There are three categories of student loan holders:

1. *Guarantee Agency*: Acts like an insurance company; pays off the holder if you do not pay, and then will try to collect from you. Usually, the Department of Education (DOE) is the guarantee agency.
2. *Holder*: Owner of your loan, such as the DOE or a collection agency working for the Department of Education. In Hawaii, the holder is usually USA Group.
3. *Lender*: The institution from which you obtain your loan, such as your school, the federal government, or a bank. Private lenders are usually banks. To find out who holds your federal loans, contact the Department of Education's Debt Collection Services for Student Loans at 1-800-621-3115.

Here are other "players" that you may be dealing with:

Servicer: A servicer handles the loan for the lender or holder (for example, someone you call regarding your student loan or sending you bills and taking payments).

Bill Collector: A bill collector is a company or a lawyer who tries to get you to pay a defaulted loan.

STEP 2: You need to figure out if you are delinquent or have defaulted.

Delinquent means that you:

- Missed 1 or 2 payments;
- The holder of loan may still contact you to make payment arrangements;

- If you don't make payment arrangements after you have been contacted by the loan holder, you will go into default.

Default means that you:

- You haven't made any payments for 9 months (270 days) or more and you did not make any type of payment arrangements;
- The holder of loan has decided that you do not intend to pay the loan back.

* If you have a Direct or FFEL loan, your loans are *delinquent* if you miss a payment. However, the loan will only go into *default* if you are behind on your payments for 270 days. You must get notices first, warning you that your loans will go into default if you're not current on your payments.

* For Perkins loans, you are in default as soon as you miss a payment.

* The Higher Education Act authorizes the DOE's guaranty agencies to garnish up to 10% of disposable earnings to repay defaulted federal student loans.

* Being in *default* is more serious than being delinquent, because you have not paid for a longer period of time.

Where do I go to find more information about my student loans?

To find out information about your student loans, go to the National Student Loan Data System for Students' website at www.nsls.ed.gov. First, go to www.pin.ed.gov and sign up for a PIN number. You will get a PIN number in the mail within several weeks. Do not share your PIN number with anyone.

After receiving your PIN, go back to the National Student Loan Data System for Students' website and click on "Financial Aid Review." You will see information about the type of loans you have, the amounts you owe, who is handling the loans, and whether the loans are in default yet.

IV. OPTIONS TO CONSIDER IF YOU ARE DELINQUENT BUT NOT YET IN DEFAULT

If you are having trouble paying your student loans, but have not yet defaulted, here are some suggestions to consider:

Option 1: Consolidation

This is when you combine several loans into one new loan or where you refinance your loan.

- Your monthly payment will be lower, because the repayment period is for a longer period.
- However, the total amount you pay back (including interest) will be higher.

To obtain a direct consolidation loan, contact the Loan Consolidation Center at 1-800-557-7392.

Option 2: Deferment

This means that your loans payments are temporarily postponed, but you will still have to pay them back after the deferment period is over. Deferment periods depend on your situation with your loan holder.

- There will be no added interest during the deferment period.
- For more information about the deferment provisions of your student loan, you should check with your school's financial aid office or the holder of your loan.

*If you haven't defaulted on your loan yet, then you might qualify for a deferment.

Common Situations Where You May Defer Your Student Loans:

- Enrollment in school at least half time; or
- You, your spouse or one of your dependents is "temporarily totally disabled." This means that the person cannot go to school or work for at least 60 days; or
- Unemployed but looking for work; or
- Economic hardship (if you receive public assistance); or
- Enrollment in a rehabilitation program for the disabled; or
- You are a parent on parental leave from work with preschool-age children; or
- You have recently entered the workforce, and earn no more than \$1 per hour above the federal minimum wage; or
- Your loan hasn't defaulted yet.

If you're interested in getting your loans deferred and you have direct loans, contact the Federal Direct Loan Servicing department at 1-800-848-0979 or download an application form online at www.dlservicer.ed.gov. For all other loans, check with whomever is handling your loan.

Most deferments have time limits, so make sure you ask how long your deferment will last.

Option 3: Forbearance

This means that you may temporarily postpone, reduce, or extend the time to repay your loan.

- Interest continues to "accrue." This means that your loan balance will continue to increase during the forbearance period as interest is added to the balance.
- Easier to obtain than a deferment.
- You can get forbearance even if you defaulted on your loans.
- Forbearance will temporarily stop collection actions (such as tax refund intercepts, collections contact and garnishments) during the forbearance period.

There are three main types of forbearance

1. *Discretionary Forbearance*: Lenders are encouraged to grant forbearance for borrowers in poor health or other personal problems affecting the ability of the borrower to make the scheduled payments. This type of forbearance is granted up to one year at a time, but there are no limits to the number of years for this type of forbearance.
2. *Mandatory Forbearance*: This right to forbearance is available even if a borrower is in default on the student loan. You may obtain a mandatory forbearance if your student loan

payments are over 20% of your gross monthly income, or if there is a local or national disaster.

3. *Disability Forbearance*: Under some loan agreements, borrowers may request up to three years forbearance in the event of a temporary disability of the borrower or the borrower's spouse or dependents.

To find out the maximum forbearance period for your loan, ask your loan holder.

V. WHAT HAPPENS IF MY STUDENT LOAN IS IN DEFAULT?

You should expect to receive letters immediately (as soon as 10 days after a payment is past due) from your lender or servicers. The Department of Education must contact you in writing to demand payment.

1 - 45 days after default:

You may receive a notice that your wages will be garnished or that you will be sued.

46 – 180 days after default:

You must be sent 3 notices demanding payment and stating that you will be reported to the national credit bureaus.

You may also have to pay collection fees.

How will the Department of Education collect my loans if I default?

There are different types of collection methods that can be used against you once you have defaulted on your student loans:

1. Your wages may be garnished without going to court.

The Department of Education and guarantee agencies may take the lesser of 10% of your net income (income after taxes) or the amount you make that is over \$217.50 per week net income (as of July 2009). Your wages may be garnished without going to court, but you must first be offered an opportunity to enter into a repayment plan and be notified of the garnishment 30 days before the garnishment occurs.

To object to the garnishment of your wages, contact the Department of Education and ask for the Request for Hearing Form or Exemption Form. You can object to the garnishment if:

- You have not been working for a full year after being laid off or fired, or
- Your net income is \$217.50 per week or less (as of July 2009); or
- It would cause extreme financial hardship.

If you did not request a hearing, or if your objection is denied:

Your employer will be notified to begin garnishment of your paycheck. Your employer is not told the amount to garnish but rather the formula. Check the Math!

Important: You must notify the Department of Education or the guarantee agency if your employment changes (for example, you are fired, you quit, or you do not have steady employment). If your employment changes and you notify them, the law says that your wages cannot be garnished. However, if you fail to notify them, there is a possibility that your paycheck will still be garnished even if it is in violation of the law.

2. The Department of Education may sue you in court at any time.

There is no statute of limitations, which means that the Department of Education has no time limit as to when they can sue you. If you are being harassed, threatened, or lied to by a collection agency working for the Department of Education, contact the Student Loan Ombudsman with the Office of Student Financial Assistance at 1-877-557-2575 or check out the website at <http://www.ombudsman.ed.gov/>.

3. Your income tax refund may be intercepted.

This means that you may not get your tax refund.

4. Some Social Security benefits and VA benefits can be garnished.

How do I get out of default?

1. Renegotiate a reasonable and affordable payment plan.

The law says that you have the right to create a repayment plan, but you must specifically ask for a repayment.

When you request a reasonable and affordable repayment plan, it must be for one of the following three (3) reasons:

- To renew eligibility.
- To obtain a consolidation loan
- To rehabilitate the loan.

If your reasons do not fall under one of the above, you may not be offered an affordable plan. Keep in mind that obtaining a reasonable and affordable payment plan does not stop interest on the loan from accruing and you will remain in default.

2. Loan Consolidation

If you are delinquent in paying your Direct Consolidation Loan or federal student loans for over a year, then you're in default.

If you have at least one Direct Loan or FFEL that is in grace, repayment, deferment, or default status; you might qualify to consolidate most of your defaulted student loans into a Federal Direct Consolidation Loan. To be eligible for a Federal Direct Loan Consolidation Loan, borrowers must make satisfactory repayment arrangements with their current loan holder(s) or agree to pay their new Direct Consolidation Loan under the Income Contingent Repayment Plan.

If you have another type of federal student loan (other than Direct Consolidation Loan), payments are contingent upon your family's income level.

Loans that are in an "in-school" status cannot be included in a Direct Consolidation Loans. For more information on "in-school" status, please go to the Direct Loan Consolidation website at: <http://loanconsolidation.ed.gov/>.

**Note: If your consolidation application was received on or after July 1, 2010 and before July 1, 2011 you may qualify to consolidate loans that are in an "in-school" status into a Direct Consolidation Loan.*

There are various repayment plans offered for a Federal Direct Consolidation Loan:

- *Standard Repayment Plan*
You will pay a fixed amount each month until your loan(s) are paid in full. Your monthly payments will be at least \$50 for up to 10 to 30 years, based on your total education indebtedness.
- *Graduated Repayment Plan*
Your minimum payment amount will be at least equal to the amount of interest accrued monthly. Your payments start out low, and then increase every two years for up to 10 to 30 years, based on your total education indebtedness.
- *Extended Repayment Plan*
To be eligible, your Direct Loan balance must be greater than \$30,000 and you will have up to 25 years to repay your loan(s). You have two payment options:
 - (1) Fixed Monthly Payment Option – You will pay a fixed amount each month until your loans are paid in full. Your monthly payments will be at least \$50.
 - (2) Graduated Monthly Payment Option – Your minimum payment amount will be at least \$50 or the amount of interest accrued monthly, whichever is greater. Your payments start out low, and then increase every two years.
- *Income Contingent Repayment Plan (ICR)*
Your monthly payments will be based on annual income, Direct Loan balance and family size, and are spread over a term of up to 25 years.
- *Income-Based Repayment Plan (IBR)*
Your monthly payments will be based on annual income and family size, and spread over a term of up to 25 years. You must be experiencing a partial financial hardship to initially select this plan and once you select this plan you cannot change to any other plan except the Standard Plan.

This plan is an alternative to the ICR Plan and is designed to make repaying education loans easier for students who intend to pursue jobs with lower salaries, such as careers in public service. It does this by capping the monthly payments at 15% of your discretionary income (the difference between your Adjusted Gross Income and 150% of the poverty guideline for your family size and state of residence).

Like the ICR Plan, after 25 years of qualifying repayment, any remaining balance on the loan will be forgiven, but you may have to pay taxes on the amount forgiven.

Advantage of getting a loan consolidation:

Loan consolidation will give you a fresh start. This means that you can obtain new loans and you will no longer be subject to tax intercepts, garnishment or other collection actions.

Disadvantage of getting a loan consolidation:

Even though the required payments are made, the minimum payment does not cover the accrued interest. This means that total loan amount owed is higher to include this unpaid interest.

For more information, go to the Direct Consolidation Loans website at <http://loanconsolidation.ed.gov/>.

3. Seek a compromise on your loan.

Ask the Department of Education to accept less than the total amount you owe to satisfy your debt. This is ideal if you are able to pay a substantial lump sum payment. If you can pay the whole principal amount, ask if your payment on the interest can be deducted or reduced from the total amount due.

4. Request a write-off of your loans.

You can ask the Department of Education or guarantee agency to write off your loans if:

- The principal balance on your loan is \$100 or less; or
- The total balance is \$1,000 or less; or
- The balance is not for the principal (only for interest, collection costs, and court fees).

VI. SITUATIONS WHERE YOU MAY CANCEL OR DISCHARGE YOUR LOAN PAYMENTS

1. The borrower of the student loan dies.

2. The borrower becomes totally and permanently disabled.

You may discharge your student loan if you are considered “totally and permanently disabled.” This means that you are unable to go to work or school due to an injury or illness that is to continue indefinitely or result in death. You cannot use an injury or illness you had at the time you applied for the loan, unless your condition has substantially deteriorated. You must get certification from your physician stating that you are totally and permanently disabled.

To request discharge of your loan because of a disability, you should contact the U.S. Department of Education for an application form at 1-800-621-3115.

Getting a discharge is not always easy, even if you are disabled. As of July 1, 2010, a loan discharge for total and permanent disability requires certification from a doctor that you are unable to work and earn money because of an illness or injury that is expected to result in death, last for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months or 5 years (Please check the *Student Loan Borrower Assistance* website for more information: <http://www.studentloanborrowerassistance.org>)

However, veterans who have been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition qualify for the total and permanent disability discharge without having to provide additional documentation from a doctor. If you qualify under this condition, then please check with your local Veterans Affairs office for more info.

If your student loans are private student loans that are not part of the FFEL, then getting a discharge on your loan for total and permanent disability may not apply to you. Check with your lender if they offer any disability discharges.

3. The school the borrower attended has closed or was a fraudulent school.

If you attended a vocational or trade school that has closed, or if the school falsely certified your ability to benefit from its instruction, then you may be eligible for a loan cancellation. *To request discharge of your loan because you attended a school that closed or was fraudulent, you should contact the U.S. Department of Education for the applicable form* Some of the closed schools in Hawaii are: Cannon’s International Business College; Hawaii Transportation Systems (truck driving school); Trendsetters Beauty College; and Hilo School of Beauty.

4. The borrower may file for bankruptcy.

Student loans are difficult to discharge in bankruptcy. However, if you can prove undue hardship, you may be able to have your loan discharged. Keep in mind that this is very hard to prove because there is no exact definition of what “undue hardship” is. The bankruptcy court will look at various factors in deciding whether or not your student loans can be discharged.

If the bankruptcy court discharges your student loans, you can get new student loans again.

Useful Information

Legal Aid Society of Hawai‘i

www.legalaidhawaii.org

Legal hotline opens Monday to Friday (9:00 am to 11:30 am & 1:00 pm to 3:30 pm)

O‘ahu: 536-4302 Hilo: 934-0678 Kaua‘i: 245-7580 Moloka‘i: 553-3251

Maui: 242-0724 Kona: 329-8331 Lana‘i: 565-6089

U.S. Department of Education

Toll free: 1-800-621-3115

Federal Student Aid

<http://www.fafsa.ed.gov>

1-800-4-FED-AID (1-800-433-3243) or 319-337-5665

If you are hearing impaired call the TTY line at 1-800-730-8913.

Hours of Operation:

Monday through Friday (8:00 am - 11:59 pm Eastern Time); Saturdays: (9:00 am - 6:00 pm Eastern Time) not available on Sundays and federal holidays.

REMEMBER: This pamphlet is meant to give you general information and not to give you specific legal advice about your case. The law often changes. Each case is different.