

# Living With



# Student Loans

The Legal Aid Society of Mid-New York, Inc.  
(Revised 7/27/09)

This booklet gives you general information about student loans. It does not give advice about your particular situation. If you have a specific legal problem, contact your local legal aid office. If you can't get help from legal aid, you can call the Lawyer Referral Hotline at 1-800-342-3661 for a free or low-cost consultation with a private lawyer.

Student loan law is always changing. Check to make sure you have the most up-to-date edition of this booklet.

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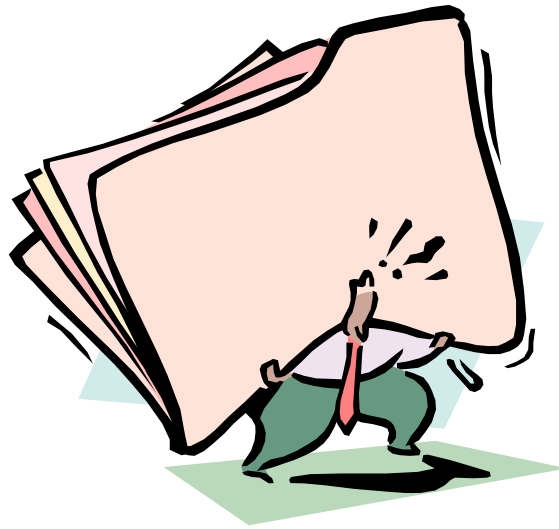
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### BEFORE YOU BORROW...

Most people can't afford an education without help from student loans. However, student loans are a very serious responsibility. In most cases, they are very hard to get rid of. If you borrow too much, you may be looking at a lifetime of payments.



Before you borrow, talk to a financial aid counselor at your school. Ask what your monthly payments will be after you graduate. Don't borrow more than you can afford to pay back. Try working to pay some of your school expenses.

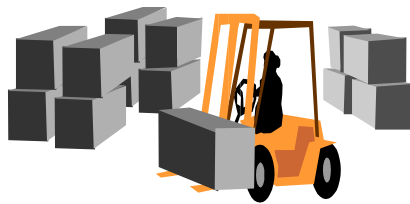
Keep good records! Schools and lenders will not keep your records forever. Keep copies of all your loan paperwork and school records.

## BEWARE OF BAD TRADE SCHOOLS!

“Trade schools” get you ready for a specific career. Some examples are truck driving schools, cosmetology schools and computer schools. Many of these schools are honest, but some are not.

Bad trade schools take your money, but don’t give you a good education. Some even close down before you can finish! You get nothing for your money, except student loans you can’t afford to pay back.

If you decide to go to a trade school, check with the New York State Education Department first at (518) 474-3969, or online at [www.highered.nysed.gov/bpss](http://www.highered.nysed.gov/bpss). Make sure the school is certified and has a good track record.



## STUDENT LOANS 101



There are four different kinds 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 on top.

There are 4 kinds 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 (FFEL) Loans

FFEL loans are part of the federal student loan program. However, they are made by *private* lenders (for example, banks and student loan companies). If the notices you get in the mail don't say "Direct Loans," your loan is probably an FFEL loan.

There are 4 main kinds 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.

Some other kinds of FFEL loans include *Supplemental Loans for Students (SLS)* and *Guaranteed Student Loans (GSL)*.

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*. Since most people don't have private loans, we won't talk about them until later in this booklet.

## I HAVE A PELL GRANT. DO I HAVE TO PAY IT BACK?

Federal grants, such as PELL grants, are *not* loans. You don't have to pay back a federal grant unless you drop out of your classes early.

Also, you don't have to pay back a federal grant if you drop out because:

- you are called to active military duty; OR
- there is a major disaster in your area

If you drop out of your classes early, you might have to pay back the Pell Grant before you can go back to school again. Talk to your school about making a payment plan.



## MY LOANS KEEP CHANGING HANDS. I'M CONFUSED!

To know your rights, you need to find out who owns and handles your loans. Here are some of the “players” you may be dealing with:

- Lender: The lender makes the original loan to you. The lender can be the U.S. Department of Education, a bank, a student loan company or even your school.
- Holder: A “holder” is a company that buys your loan from the lender. The holder then becomes the new owner of the loan. If you default on your loan, the U.S. Department of Education may become your holder.
- Servicer: A “servicer” handles the loan for the lender or holder (for example, sending out bills and taking payments).
- Guarantee Agency: A “guarantee agency” pays off certain loans that are in default, then takes over the loans. In New York, this agency is the Higher Education Services Corporation (HESC).
- Bill Collector: A “bill collector” is a company or a lawyer who tries to get you to pay a defaulted loan.

## I DON'T KNOW WHAT'S GOING ON WITH MY LOANS. HOW CAN I FIND OUT?

You can find out information about your student loans online at [www.nslds.ed.gov](http://www.nslds.ed.gov). First, go to [www.pin.ed.gov](http://www.pin.ed.gov) and sign up for a PIN number. You will get a PIN number in the mail within several weeks. DON'T share your PIN number with anyone.

Then, go back to [www.nslds.ed.gov](http://www.nslds.ed.gov). 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.



For information by phone, call:

1-800-4-FED-AID  
1-800-730-8913 (TDD)  
1-800-848-0979 (for Direct Loans)

## I CAN'T MAKE MY PAYMENTS. WHAT CAN I DO?

*Don't ignore your student loans. They won't go away. In fact, things will only get worse and worse.*



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 don't get up to date on your payments.

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

If your loans go into default:

- Your tax refund may be at risk
- Your paycheck may be at risk
- You can't get any new student loans
- Interest and late fees will keep adding to your loan
- Collection fees can be as high as 25% of your loan amount
- You can be sued and get a court judgment against you for the amount you owe
- Your credit rating will go down

*John took out a \$5,000 student loan in 2000. He couldn't afford the payments, so he ignored letters about his loan. At 8% interest, he owed \$7,000 by 2005. After adding a 25% collection fee, he owed \$8,750. In only five years, John's loan grew from \$5,000 to \$8,750!*

Don't wait until your student loans are in default. If you can't make your payments, talk to whoever is handling your loans right away. There are many ways to stay out of default, including:

- Changing your payment plan
- Deferments and forbearance
- Loan discharge
- Loan cancellation
- Consolidation

## CHANGING YOUR PAYMENT PLAN

If you are not in default yet, changing your payment plan can keep you out of default.

If you don't choose a plan, you will get the *Standard Repayment Plan*. Under this plan, you will pay your loans off in 5-10 years. However, the payments may be higher than you can afford. There are other plans to choose from. Here are your options:

### Direct Loans

Plan	Time to Repay	Advantages	Drawbacks
Extended	12-30 years	Smaller monthly payments	You will pay more interest in the long run
Graduated	12-30 years. Payments go up slowly, every 2 years.	Smaller monthly payments	You will pay more interest in the long run
Income Contingent Repayment (ICR)	25 years	Payments are based on your income. If you are below the poverty level, payments can be as low as \$0 per month!	You must recertify every year. If your payments are very low, interest will make the total amount of your loan bigger and bigger. However, after 25 years, the loan will cancel. You may have to pay income tax on the amount cancelled, depending on your financial situation at that time. Talk to a tax professional when you are getting close to the end of 25 years. If your income goes up, you may want to switch to another payment plan to avoid tax problems later. NOTE: a new law may pass soon, making the discharged amount non-taxable. Stay tuned!
Income Based Repayment (IBR)	25 years	Payments are based on your income, and are usually lower than ICR. In some cases, payments can be as low as \$0 per month!	You must recertify every year. Interest is suspended, but can be added back into your loan at a later time if your income goes up. However, after 25 years, the loan will cancel. You may have to pay income tax on the amount cancelled, depending on your financial situation at that time. Talk to a tax professional when you are getting close to the end of 25 years. If your income goes up, you may want to switch to another payment plan to avoid tax problems later. NOTE: a new law may pass soon, making the discharged amount non-taxable. Stay tuned!  Married borrowers should be careful about

			the new IBR plan, because both spouse's incomes count in most cases. Ask the lender to help you calculate what your payment would be before you decide.
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FFEL Loans

Plan	Time to Repay	Advantages	Drawbacks
Extended	12-30 years	Smaller monthly payments	Only available if you borrowed on or after 10/7/98 and your FFEL loans total \$30,000 or more. You will pay more interest in the long run.
Graduated	10 years. Payments go up slowly, every 2 years.	Smaller monthly payments	You will pay more interest in the long run.
Income Sensitive (ISRP)	10 years	Payments are based on your income. If you won't be able to pay the loan off in 10 years, you have the right to a 5-year forbearance.	You must recertify every year.
Income Based Repayment (IBR)	25 years	Payments are based on your income, and are usually lower than ISRP. In some cases, payments can be as low as \$0 per month!	<p>You must recertify every year. Interest is suspended, but can be added back into your loan at a later time if your income goes up. However, after 25 years, the loan will cancel. You may have to pay income tax on the amount cancelled, depending on your financial situation at that time. Talk to a tax professional when you are getting close to the end of 25 years. If your income goes up, you may want to switch to another payment plan to avoid tax problems later. NOTE: a new law may pass soon, making the discharged amount non-taxable. Stay tuned!</p> <p>Married borrowers should be careful about the new IBR plan, because both spouse's incomes count in most cases. Ask the lender to help you calculate what your payment would be before you decide.</p>

For Perkins Loans, you can ask for lower payments if you are low-income, if you lose your job, or if you have health problems. The minimum monthly payment is \$30 or \$40, depending on when you took out your loan.

#### HOW DO I CHANGE MY PAYMENT PLAN?

For Direct Loans, you can call 1-800-848-0979 (1-800-848-0983 TTY) or download a “Repayment Plan Selection” form at [www.dlsvicer.ed.gov](http://www.dlsvicer.ed.gov). If you change to ICR or IBR, you can get your payments lowered any time your income goes down—just call 1-800-848-0979 (1-800-848-0983 TTY) or download an “Alternative Documentation of Income” form at [www.dlsvicer.ed.gov](http://www.dlsvicer.ed.gov).

For other loans, contact the lender, holder or servicer for information and forms.

## CAN I GET A DEFERMENT?

If your loan is not in default yet, you may qualify for a *deferment*. During the deferment, you don't have to make payments. You won't pay any interest during the deferment if:

- The loan is a "subsidized" Direct Stafford Loan;
- The loan is a "subsidized" FFEL Stafford Loan; OR
- The loan is a Perkins Loan



There are different kinds of deferments for newer loans and older loans. On the next 2 pages, there are charts showing the deferments you can get.

## HOW DO I GET A DEFERMENT?

For Direct Loans, you can call 1-800-848-0979 (1-800-848-0983 TTY). You can also download application forms online at [www.dlservicer.ed.gov](http://www.dlservicer.ed.gov).

For other loans, check with whoever is handling your loan.

DO NOT stop making payments until you get a notice *in writing* that your deferment is approved. Otherwise, your loan could go into default.

Most deferments have time limits. Make sure you ask how long yours will last. For some deferments, you must recertify every 6-12 months. If you get papers in the mail, make sure you respond right away, or you will lose your deferment.

Deferment Charts for Newer Loans  
(loans made on or after 7/1/93)

Direct and FFEL Deferments

Reasons for Deferment	Time Limit	Special Rules
In school at least half-time	None	
Unemployment	3 years	You must certify that you signed up with a public or private employment agency. You must make 6 tries to find a job every 6 months.
Economic Hardship	3 years	You qualify only if: <ul style="list-style-type: none"> <li>• you get Food Stamps, SSI or welfare;</li> <li>• you are in the Peace Corps; OR</li> <li>• you already have a hardship deferment for another loan; OR</li> <li>• you work full-time but make less than minimum wage OR 150% of the poverty line for your family size (whichever is more)</li> </ul>
You are working with VESID	None	
You are in a graduate school fellowship program	None	
You work for a non-profit organization	3 years	You must earn minimum wage or less.
Military Service	3 years	For loans made after 6/30/01 only.

Perkins Loan Deferments

Reasons for Deferment	Time Limit	Special Rules
In-school	None	
Unemployment	3 years	
Economic Hardship	3 years	
Volunteer service (such as the Peace Corps)		
Full-time teacher in certain areas or Head Start		
Full-time police officers and correction officers		
Military Service	3 years	For loans made after 6/30/01 only.

Deferment Charts for Older Loans  
(loans made before 7/1/93)

FFEL Loan Deferments  
(IMPORTANT: You can also get these for a Direct Loan, as long as you have at least one FFEL loan made before 7/1/93)

Reasons for Deferment	Time Limit	Special Rules
Full-time student	None	
Unemployment	2 years	
You are working with VESID	None	
Active military duty	3 years	
Temporary total disability	3 years	Your disability must last at least 60 days. The disability must begin or get worse <i>after</i> you took out your loan.
Caring for a spouse with a temporary total disability	3 years	The spouse must need your care for at least 90 days.
Parental leave	6 months	You must be pregnant, caring for a newborn, or caring for a newly adopted child. You must not be working full-time or going to school. You qualify only if you were in school at least half-time during the last 6 months.
Working mother	1 year	You must have started working again less than 1 year ago. You must have a pre-school age child. You must be working full-time, earning \$1 above minimum wage (or less).
Public Service	3 years	Some examples are: <ul style="list-style-type: none"> <li>• Peace Corps or Action Programs</li> <li>• Public Health Service</li> <li>• non-profit organizations</li> <li>• teaching in a teacher shortage area</li> </ul>

Perkins Loan Deferments

Reasons for Deferment	Time Limit	Special Rules
Temporary total disability		
Other reasons		

## CAN I GET A FORBEARANCE?

You can get a *forbearance* even if you are in default. A forbearance will stop collection of the debt. However, it will not get you out of default, and interest will keep adding to your loan. You can ask for:

- A temporary stop in payments; OR
- More time to make payments; OR
- Smaller payments



Use the charts on the next page to find out if you can get a forbearance.

## HOW DO I APPLY FOR A FORBEARANCE?

For Direct Loans, you can call 1-800-848-0979 (1-800-848-0983 TTY). You can also download application forms online at [www.dlservicer.ed.gov](http://www.dlservicer.ed.gov).

For other loans, check with whoever is handling your loan.

DO NOT stop making payments until you get a notice *in writing* that your forbearance is approved. Otherwise, your loan could go into default.

Most forbearances have time limits. Make sure you ask how long yours will last. For some forbearances, you must recertify every 6-12 months. If you get papers in the mail, make sure you respond right away, or you will lose your forbearance.

Direct Loan Forbearance Chart

Reasons for Forbearance	Time Limit
Poor health or personal problems	None
Total monthly loan payments are 20% or more of gross monthly income	3 years
Waiting on a request for deferment, forbearance, change of payment plan, or consolidation	60 days
Certain teacher service	
Waiting on a request for discharge or cancellation	
Americorps volunteer	3 years
Military Service	3 months (you can get an extension if you send in proof)
Certain internships	None

FFEL Forbearance Chart

Reasons for Forbearance	Time Limit
Poor health or personal problems	None
Total monthly loan payments are 20% or more of gross monthly income	3 years
Waiting on a request for deferment, forbearance, change of payment plan, or consolidation	60 days
Certain teacher service	
Waiting on a request for discharge or cancellation	
Military Service	3 months (you can get an extension if you send in proof)
Financially unable to repay loan within 10 years	5 years

Perkins Forbearance Chart

Reasons for Forbearance	Time Limit
Poor health or personal problems	3 years
Total monthly loan payments are 20% or more of gross monthly income	3 years
Military Service	1 year at a time + 30-day transition period
You live or work in a federal, state or local disaster area	

### CAN'T I JUST FILE FOR BANKRUPTCY?

It is very hard to get rid of student loans in bankruptcy. You must prove that repaying the loans would be an “undue hardship.” In most cases, the bankruptcy court will discharge student loans only in *extreme circumstances*. If you are filing for bankruptcy, check with your lawyer for more advice about discharging your student loans.



If the bankruptcy court discharges your student loans, you can get new student loans again. Your school also can't refuse to give you copies of your transcripts.

## CAN I DISCHARGE MY LOANS?

You may qualify for a *discharge* of your student loans. If your discharge is approved:

- you will get rid of all or at least part of your loan
- you may get back some or all of the payments you made in the past
- you can get new student loans again
- any bad information about the loan must come off your credit report

Here are the discharges you can apply for:

Type of Discharge	What loans qualify?	Can I apply?
Closed School Discharge	Direct, FFEL and Perkins loans made <i>on or after 1/1/86</i> (some earlier loans may also qualify)	You can apply if the school closed while you were enrolled. You can also apply if you withdrew from the school within 90 days before it closed. In some cases, the 90 days can be extended.
False Certification Discharge	Direct and FFEL loans made <i>on or after 1/1/86</i>	You can apply if: 1) you did not have a high school diploma or GED, and the school lied about whether you could get something out of the program; OR 2) you could not meet the requirements for the job you were being trained for; OR 3) the school forged your loan agreement or loan checks
Unpaid Refund Discharge	Direct, Perkins and most FFEL loans made <i>on or after 1/1/86</i>	You withdrew from school, but never got a refund. You can't apply if you completed 60% or more of the semester. If your discharge is approved, you will get the refund amount, plus any interest and fees, taken off your loans.
Disability Discharge	Direct, FFEL and Perkins. The disability must start or get worse <i>after</i> you take out your loans.	Your doctor must sign a form, stating that you are totally and permanently disabled. You will get a temporary discharge for 3 years, starting on the date you became disabled. During that time, you can work, as long as you don't earn more than the federal poverty level for a family of 2 (your discharge papers will tell you how much you can earn). After 3 years, the discharge is permanent.
Death Discharge	Direct, Perkins and most FFEL loans	You must send in the borrower's original death certificate, or a certified copy.
ID Theft Discharge	Direct, FFEL, Perkins	You need proof from a court that a crime was committed.

## HOW DO I APPLY FOR A DISCHARGE?

You must apply in writing. To get application forms, check with whoever is handling your loan. For Direct Loans, you can call 1-800-848-0979 (1-800-848-0983 TTY) or download forms online at [www.dlsvicer.ed.gov](http://www.dlsvicer.ed.gov).

You should also apply for a forbearance, so no action will be taken against you while you wait for a decision. In the meantime, keep making your payments, or your loan may go into default.

If you are applying for a *closed school discharge*, *false certification discharge* or *unpaid refund discharge*, send as much information as you can to support your case. Examples include your school records, newspaper articles about the school, and written statements from other students. If you went to a school in New York state that closed, HESC may have your school records. You can also ask for records of other complaints against the school. You can write to:

HESC  
Bureau of Proprietary School Supervision  
Room 974 EBA  
Albany, NY 12234  
(518) 474-3969  
[www.highered.nysed.gov/bpss](http://www.highered.nysed.gov/bpss)

The U.S. Department of Education may also have information about the school. Write to:

U.S. Department of Education  
Office of Postsecondary Education  
1990 K Street, N.W.  
Washington, DC 20006

If you are applying for a *disability discharge*, it may help to send proof that you are getting SSD, SSI, worker's compensation or VA disability benefits. If the VA has determined that you cannot work because of a service connected disability, you automatically qualify, so make sure you send a copy of the VA determination.

Getting a discharge is not always easy, even if you are disabled. In 2010, new rules will go into effect that will make the disability discharge process easier. In the meantime, if your application gets denied, your local legal aid office may be able to help.



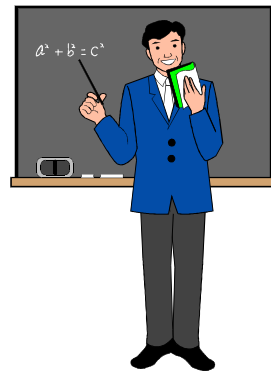
## CAN I CANCEL MY LOANS?

You may be able to cancel all or part of your student loans. If your loans are cancelled:

- you will get rid of all or at least part of your loans
- you may get back some or all of the payments you made in the past
- you can get new student loans again
- any bad information about the loans must come off your credit report

Here are some reasons you can get your loans cancelled:

- certain teaching jobs (Direct, FFEL, Perkins)
- certain military or volunteer service (Perkins)
- certain child care providers (Direct, FFEL)
- certain victims of 9/11 and their relatives (Direct, FFEL, Perkins)



## HOW DO I APPLY FOR CANCELLATION?

You must apply in writing. To get application forms, check with whoever is handling your loan. For Direct Loans, you can call 1-800-848-0979 (1-800-848-0983 TTY) or download forms online at [www.dlservicer.ed.gov](http://www.dlservicer.ed.gov).

You should also apply for a forbearance, so no action will be taken against you while you wait for a decision. In the meantime, keep making your payments, or your loan may go into default.

If your application gets denied, your local legal aid office may be able to help.

## LOAN CANCELLATION FOR PEOPLE IN PUBLIC SERVICE JOBS

If you work full-time in a “public service” job, you may qualify for a new kind of loan cancellation. You are in a “public service” job if you work for the government, the military, a public safety agency, law enforcement, a public health agency, a public school, *any non-profit organization*, and many other types of public service jobs.

Under this new program, your loan will cancel after 120 on-time payments. Only Direct Loans qualify for the program, so if you don’t have Direct Loans, you will have to consolidate your loans with the Direct Loan program (see pages 25-27 of this booklet for help with consolidation). You may be able to consolidate even if you only have one loan, or if you already consolidated before. NOTE: Parent PLUS loans are not eligible, and **SHOULD NOT** be included in your consolidation loan. For Perkins loans, check to see if you can cancel the Perkins loan separately before including it in the consolidation loan.

If you are in default, you must get back into good standing to qualify. See pages 23-27 of this booklet for help getting out of default. Consolidating your loans is the quickest way.

Your 120 payments do not have to be in a row. However, a payment only counts towards the 120 payments if:

- You are in a public service job;
- You are working full-time;
- You are on ICR or IBR (NOTE: if your ICR or IBR payment amount is \$0 per month, each \$0 payment month counts as a payment);
- The payment is on time; AND
- You are not in default.

Payments made all the way back to October 1, 2007 count towards your 120 payments.

We are still waiting for the federal government to come up with procedures and forms. In the meantime, you can get started by getting your loans into the Direct Loan program, and choosing ICR or IBR for your payment plan. We will update this booklet when we have more information, so keep checking back for the most recent version of this booklet.

At this time, we believe the amount cancelled will not count as income for the IRS at the time you finish your 120 payments, but we are not sure. Talk to a tax professional when you are getting close to the end of your 120 payments.

## CAN I “REHABILITATE” MY LOANS?

If you just want to go back to school, you can ask for a “reasonable and affordable” payment plan to make you eligible for student loans again. If you want to get out of default, you can “rehabilitate” your loan.



### Getting back to school

If you have a defaulted Direct or FFEL loan, you can get back to school by making 6 on-time payments in a row. To do this, write to whoever is handling your loans. In your letter, use these magic words: “*I request a reasonable and affordable payment plan to renew eligibility for federal student aid.*” Then call to work out payments. Payments can be as low as \$5 per month or even less if you are very low-income. Get the agreement *in writing* and keep a copy. Don’t agree to payments you can’t afford.

Some loan holders and servicers may ignore you. Others won’t give you payments you can afford. Some may say there is a minimum payment amount, but this is not true. If your loan holder or servicer is giving you a hard time, your local legal aid office may be able to help.

After you make the 6 payments, you can go back to school. While you are making the payments, collection of the loan must stop. Your payments must stay at the amount you agreed on, unless your financial situation gets better.

*Be careful.* If you get off track again after making the 6 payments, you will not get another chance to get back to school this way.

### “Rehabilitating” your loans

You can “rehabilitate” Direct, FFEL and Perkins loans. To do this, write to whoever is handling your loans. In your letter, use these magic words: *“I request a reasonable and affordable payment plan to renew eligibility for federal student aid AND rehabilitate my loans.”* Then call to work out payments. For Direct and FFEL loans, payments can be as low as \$5 per month, or even less if you are very low-income. Get the agreement *in writing* and keep a copy. Don’t agree to payments you can’t afford.

Some loan holders and servicers may ignore you. Others won’t give you payments you can afford. Some may say there is a minimum payment amount, but this is not true (except for Perkins loans). If your loan holder or servicer is giving you a hard time, your local legal aid office may be able to help. NOTE: if you have a court judgment against you, you can’t “rehabilitate” your loans unless the lender or holder agrees.

If you have a Direct or Perkins loan, your loan will be “rehabilitated” after you make 9 on-time payments in a 10-month period. If you have an FFEL loan, a new lender must also buy your loan. While you are making the payments, collection of the loan must stop.

If you “rehabilitate” your loan, it will be out of default. You won’t have to worry about losing part of your paycheck or your tax refund anymore. You can go back to school. You can get deferments again, and your credit rating will go up. For Direct and FFEL Loans, you will have the right to a payment plan based on your income.

*Be careful.* If you default again, you will not get another chance to “rehabilitate” your loans.

## SHOULD I CONSOLIDATE?

Some lenders may pressure you to consolidate your loans. They often do this by giving you false or misleading information. For example, they may tell you that consolidation is a “limited time offer,” to force you into a quick decision. If you are in default, they may even threaten you with wage garnishment, lawsuits, or sending your loan to a collection agency.

**Limited time offer! Cut  
your payments in half!**

**Lowest interest  
rates ever!**

**FINAL NOTICE...  
CONSOLIDATE NOW!**

Before you consolidate, check out all your options. For example, if you are disabled, you may qualify for a discharge of your loans. You may also qualify for a discharge if you went to a bad trade school. If you are on active military duty or volunteer service, or if you are a disaster victim, a teacher or a child care provider, you may be able to cancel all or part of your loans. Discharging or canceling your loans is better than taking on more debt!

### What's good about consolidating?

If you consolidate all your loans, you have only one payment to worry about. In some cases, you can lock in a low interest rate and get lower payments.

Consolidating your loans also gets you out of default right away. You won't have to worry about losing part of your paycheck or your tax refund anymore. You can go back to school. You can get deferments again, and your credit rating will go up. You will have the right to a payment plan based on your income. Collection fees for consolidating a defaulted loan (up to 18.5%) may be better than if you don't consolidate (up to 25%).

### What's bad about consolidating?

Consolidation may make the total amount of your loans bigger, by rolling interest into the amount you borrowed. If you are in default, consolidation may also add a large collection fee (up to 18.5%) to your loans. In some cases, you may also lose your right to get certain discharges or cancellations.

### Which consolidation program is right for me?

There are 2 kinds of consolidation programs:

- Direct Loan Consolidation. With the Direct Loan Consolidation program, you get your consolidation loan directly from the U.S. Department of Education. To qualify, you must have at least one Direct Loan OR one FFEL loan. You can consolidate any kind of federal loan, including Direct, FFEL and Perkins loans.
- FFEL Consolidation. With FFEL consolidation, you get a federal consolidation loan, but from a private lender. Some lenders will only let you consolidate FFEL loans.

*In most cases, Direct Loan Consolidation is a better choice.* The Direct Loan Program has an Income Contingent Repayment Plan (ICR). Both Direct and FFEL loans have the new Income Based Repayment Plan (IBR). However, only Direct Loans qualify for the new public service job cancellation program.

### Can I consolidate if I am in default?

Under the Direct Loan program, you can consolidate even if you are in default. Sometimes, you can even consolidate if you have a court judgment against you. Most loan holders will agree to lift the judgment so you can consolidate.

For FFEL loans, whether you can consolidate defaulted loans is up to the lender.

### Do I have to make a downpayment to consolidate?

No!!! Often, lenders tell borrowers that they must make a downpayment, or 3 monthly payments, or both. *This is not true.* If you ask for a payment plan based on your income, you don't have to pay anything before you consolidate. If the lender refuses, look for another lender!

### How do I apply for Direct Loan Consolidation?

To apply for a Direct Consolidation Loan, call 1-800-557-7392. You can also apply online at [www.loanconsolidation.ed.gov](http://www.loanconsolidation.ed.gov). The website has a calculator to help you figure out your monthly payments.

NOTE: if you don't already have a Direct loan, you must certify that you can't find a FFEL consolidation loan with affordable payments AND that you qualify for the Income Contingent Repayment Plan (ICR). If you are low-income, this should not be a problem.

*If you default on a consolidation loan, you may not get another chance to consolidate.*  
Don't blow it! If you have trouble making payments again, call the Direct Loan program. Follow these simple rules:

- apply for a deferment or forbearance
- switch to the ICR plan or the IBR plan
- if you are on the ICR or IBR plan already, ask for lower payments if your income goes down, or if you add more people to your household (the Direct Loan income change form, called "Alternative Documentation of Income," is online at [www.dlservicer.ed.gov](http://www.dlservicer.ed.gov))

If you do these things, you never have to default again.



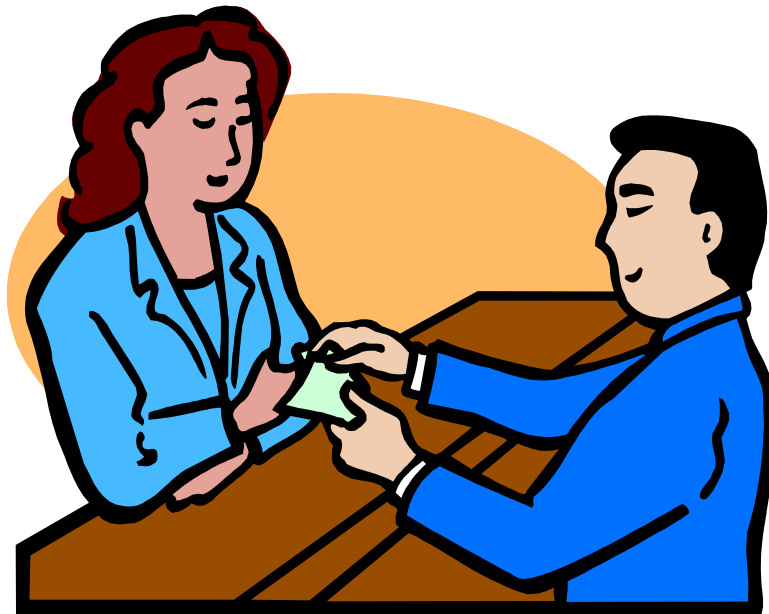
I JUST CAME INTO SOME MONEY. CAN I MAKE A SETTLEMENT OFFER TO  
PAY OFF MY LOANS?

The U.S. Department of Education and HESC can accept settlement offers for student loans. They can agree to:

- Waive collection fees AND
- Settle your account for less than you owe

Get the agreement *in writing*, signed by you and the agency, before you pay. If you are dealing with HESC, make sure the U.S. Department of Education also agrees *in writing* not to come after you for the rest of what you owed.

It is best to have a lawyer handle this for you, if you can. If legal aid can't help, you can get a free or very low-cost consultation with a private lawyer by calling 1-800-342-3661.



## BILL COLLECTORS WON'T LEAVE ME ALONE. WHAT CAN I DO?

Lenders, holders, servicers and guarantee agencies can be very nasty when it comes to defaulted student loans. Often, they will send your loan to a collection agency or a collection lawyer. You may already be getting harassing calls and letters. Even if they work for the government, bill collectors often lie about your rights. For example, they may lie about what payment plans you can choose. They may also lie about your right to a deferment or forbearance, or about consolidation and cancellation rights. Their goal is to mislead you and pressure you into making payments, even though there are other options open to you.

*Maria took out several FFEL loans. She lost her job and missed 2 payments. Her loan servicer told her she could not get an unemployment deferment. She went into default. A bill collector called and said she should take out an FFEL consolidation loan to get out of default. He did not tell her anything about the Direct Loan Consolidation program. He also told her she must put \$2,000 down and make 3 payments of \$50 first. Maria borrowed money from a relative and consolidated, then couldn't make the payments. Maria's FFEL consolidation loan is now in default.*

Under the federal Fair Debt Collection law, you have important rights. Private collection agencies and collection lawyers who get your loan *after it goes into default* CAN'T:

- lie about your rights as a borrower
- contact you at inconvenient times and places (for example, before 8:00 a.m. or after 9:00 p.m.)
- call you at work if your boss does not allow personal calls
- make repeated calls to harass and annoy you
- use bad or abusive language
- contact you if you have a lawyer
- falsely mislead you into thinking they are a government agency or a lawyer (for example, by using government letterhead or papers that look like court documents)
- threaten to have you arrested
- threaten to take legal action if they don't mean to do so
- continue collecting after a debt is cancelled or discharged
- take illegal actions to collect a debt (for example, taking your SSI)
- charge illegal fees
- lie about the amount or status of your loan
- contact your neighbors, employers, friends or relatives about the debt (except your parents if you are under 18, your spouse, or your cosigner). It is OK for the bill collector to ask neighbors, employers, friends or relatives about where to find you, but the bill collector must not say why he/she is calling.

Within five days of the first call or letter to you, the bill collector must send you a written notice telling you:

- what you owe and who owns the loan;
- that you have the right to dispute the debt;
- that you have the right to ask for the name and address of the original creditor;
- that the contact is an attempt to collect a debt.

If you want to dispute the debt, send a letter (certified mail, return receipt requested, if possible) explaining why you think the debt is wrong. Keep a copy. Include copies of any documents that support your case. While you are waiting for a decision, the bill collector can't take any further action against you.

You also have the right to ask, in writing, that the bill collector stop contacting you. Sign and date your letter. Send it by certified mail, return receipt requested, if possible. Keep a copy. Here is a sample letter:

*Mary Smith  
1214 South St.  
Utica, NY 13501*

*ABC Collection Agency  
1325 Broadway  
New York, NY 10001*

*Student loan account# 111-11-1111*

*March 15, 2006*

*To Whom It May Concern:*

*I am writing to ask that you stop contacting me about my student loans, as required by the federal Fair Debt Collection Practices Act. I am unable to make payments at this time.*

*Sincerely,*

*Mary Smith*

If the bill collector ignores your letter, or violates any of your other rights under the federal Fair Debt Collection law, you can sue the bill collector in federal court. The time limit for filing a lawsuit is 1 year. Contact your local legal aid office or the Lawyer Referral Service at 1-800-342-3661. Build your case by saving all letters and messages on your answering machine. Keep a notebook by the phone. Write down the date and time of each call and what the caller said.

The federal Fair Debt Collection law does not apply to government agencies or bill collectors who got your loan before default. However, the bill collector may be violating other federal or state laws. Contact your local legal aid office or the Lawyer Referral Service at 1-800-342-3661 to find out more. You can also complain to:

- The bill collector's supervisor
- The New York State Attorney General (1-800-771-7755)
- The federal Student Loan Ombudsman (1-877-557-2575)

## CAN THEY TAKE MY TAX REFUND?

If you are in default, your tax refund may be at risk. If the holder of your loan is the U.S. Department of Education or HESC, your tax refund can be taken every year until you pay off your loan.

You have the right to notice and a hearing before the holder takes your tax refund for the first time. The notice must explain your right to:

- Ask for a copy of your loan file
- Ask for a hearing
- Make a repayment plan

Ask for a repayment plan *in writing*. Mail your letter right away, so it is received within 20 days of the date on your notice. If you make a repayment plan, your tax refund *can't* be taken if you make your payments.

### When should I ask for a hearing?

Here are some reasons to ask for a hearing:

- You already paid off the loan
- The loan was discharged or canceled
- You don't owe the loan
- You made a repayment agreement and you are making your payments
- You have a total, permanent disability
- You filed for bankruptcy
- You qualify for a loan discharge or cancellation
- Forgery or fraud

Ask for your loan file *in writing*. Mail it right away, so it is received within 20 days of the date on your notice.

Ask for your hearing *in writing*. Mail it right away, so it is received within 65 days of the date on your notice. NOTE: if you ask for your loan file, you get an extra 15 days after you get the file to ask for your hearing. Make sure your letter explains the reasons why you want a hearing. In your letter, ask for a phone hearing so you can present witnesses and documents. Include a list of witnesses and what they will say. Enclose witness statements and copies of any important documents.

Send all letters by certified mail, return receipt requested, if possible. Keep copies. If your request for a hearing is denied, call your local legal aid office. Your tax refund *can't* be taken before the holder gives you a hearing and makes a decision.

### What happens at the hearing?

Sometimes, the holder will just look at your file and make a decision. In other cases, you will have a phone hearing. You and your witnesses should be ready to testify over the phone.

If your hearing is with HESC, you can appeal to the U.S. Department of Education if you get denied. You must ask for an appeal *in writing*, within 7 days of the date on your denial letter. Send the letter by certified mail, return receipt requested, if possible. Keep copies. If your request for a hearing is denied, call your local legal aid office.

### What if they are already taking my tax refund?

You may still have the right to ask for a repayment plan, a copy of your file, and a hearing. Do this *in writing*. Send the letter by certified mail, return receipt requested, if possible. Keep copies. If your request is denied, call your local legal aid office.

### Other ways to keep your refund

Here are some other ways to save all or part of your refund:

- Change your W-4 at work so less money is taken out of your paycheck. Fill out form W-5 to get your Earned Income Tax Credit paid to you during the year. Be careful to have enough taxes withheld, however, or you will owe the IRS money. You may want to talk to a tax professional.
- If your spouse is the one with the defaulted loan, file an “injured spouse” claim at your local IRS office. You can get *your* part of the refund back.
- File for bankruptcy (this will stop your refund from being taken, at least temporarily).

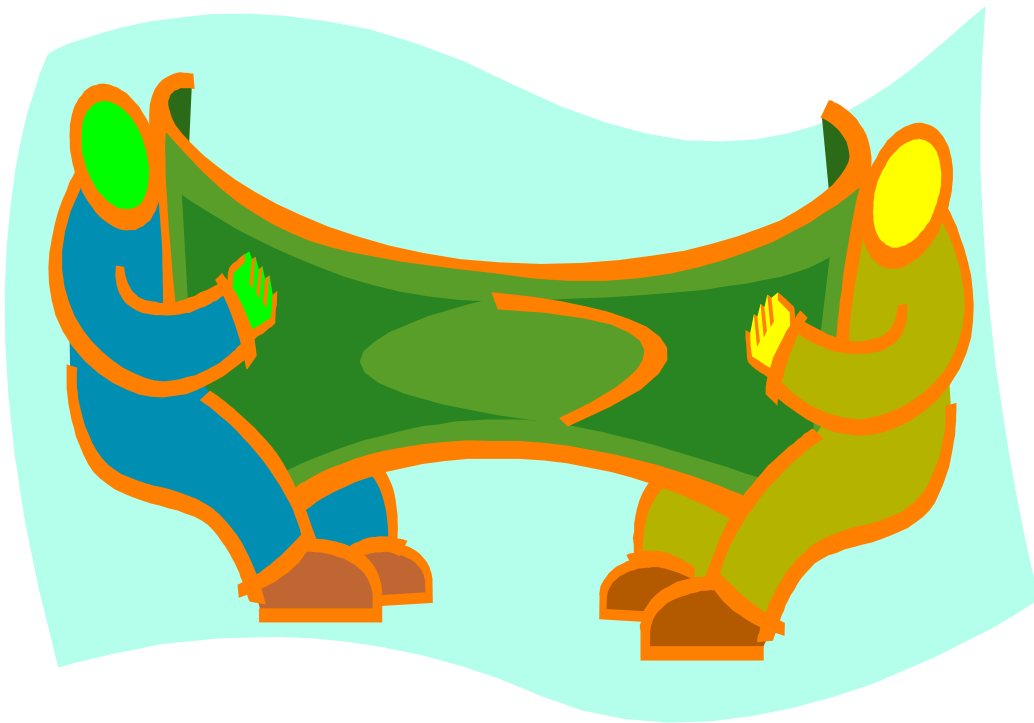
If you want to pay off your loan, you may want to let your tax refund be taken. If you get a big refund, you can pay off your loan very quickly this way. Then, you won't have to worry about it anymore.



## CAN THEY TAKE PART OF MY PAYCHECK?

If you are in default, your paycheck may be at risk. If the holder of your loan is the U.S. Department of Education or HESC, they can take part of your paycheck until your loans are paid off. This is called “wage garnishment.” However, they can’t take more than 15% of your take-home pay.

*IMPORTANT: By law, you always get to keep at least \$217.50 take-home pay every week (30 times the federal minimum wage).*



You have the right to a 30-day notice before your wages are garnished. The notice must explain your right to:

- Ask for a copy of your loan file
- Ask for a hearing or send in a written statement
- Make a repayment plan

Make these requests *in writing*. Usually, the notice will include forms you can use. Send them in by certified mail, return receipt requested, if possible. Keep copies. If your request is received within 15 days after the date you got your notice, garnishment can’t start until your case is decided.

### When should I ask for a hearing?

Here are some reasons to ask for a hearing:

- You already paid off the loan
- The loan was discharged or canceled
- You don't owe the loan
- You made a repayment agreement and you are making your payments
- You have a total, permanent disability
- You filed for bankruptcy
- You qualify for a loan discharge or cancellation
- *You were laid off or fired from your last job, and you have not worked 12 months in a row since then*
- *The garnishment would cause financial hardship*

Make sure your letter explains the reasons why you want a hearing. Enclose copies of documents to support your case. If you are claiming hardship, enclose copies of bills and receipts for *all* your income and expenses.

### What if my financial situation gets worse?

Within 6 months of the date on your garnishment order, you can ask for a review if your financial situation gets worse. Do this *in writing*. Send it by certified mail, return receipt requested, if possible. Keep copies. Enclose copies of bills and receipts for *all* your income and expenses.

### My paycheck is already being garnished. How much can they take?

For student loans, they can't take more than 15% of your take-home pay. If you have other types of garnishments (such as court judgments), the total amount must not be more than 25% of your take-home pay. Also, under New York law, total garnishments can't be more than 10% of your gross pay.

*IMPORTANT: By law, you always get to keep at least \$217.50 take-home pay every week (30 times the federal minimum wage).*

EXCEPTION: for child support, both federal and state law allow more of your paycheck to be taken.

## CAN THEY TAKE MY GOVERNMENT BENEFITS?

Most government benefits can't be taken by any creditors, including the federal government. However, if you have a defaulted student loan with the U.S. Department of Education, these monthly benefits are at risk:

- Social Security payments (Social Security Disability, Social Security Retirement and Social Security Survivors benefits)
- Certain Black Lung benefits
- Certain Railroad Retirement Benefits

All other benefits, *including SSI*, can't be taken.

### How much can they take?

*If your monthly benefits are \$750 per month or less, nothing can be taken out of your check. If your monthly benefits are more than \$750 per month, they can't take more than 15%. No matter what, you always get to keep at least \$750 per month. They can't take lump sum payments, either.*

### Can I object?

You have the right to notice before your benefits are taken. You also have the right to:

- Ask for a copy of your loan file
- Ask for a hearing (if you want a phone hearing, state your reasons)
- Ask for a repayment plan
- Ask for a hardship waiver

Make these requests *in writing*. Send your letter by certified mail, return receipt requested, if possible. Keep copies. Your request must be received within 20 days after the date you got your notice.



If your notice does not have an address for hardship waivers, write to:

U.S. Department of Education  
Federal Offset Review Unit  
P.O. Box 618064  
Chicago, IL 60601-8064

For hardship waivers, you must enclose:

- A copy of your notice
- Proof of your monthly benefit amount
- Proof of yearly income
- A letter explaining your situation (include copies of bills and receipts for all household expenses, as well as other important papers such as eviction notices, utility shut-off notices and foreclosure notices)

You will get a financial statement, which you must fill out and return within 10 days.



MY STUDENT LOANS ARE REALLY OLD. ISN'T THERE A TIME LIMIT?

Most debts have a time limit, called a “statute of limitations.” However, there is no time limit on federal loans (Direct, FFEL or Perkins loans). Even very old loans back to the 1970s are still good!

Loans that were not part of a federal program, such as private loans and very old state loans, may have a time limit. In New York, this time limit is 6 years. If you stopped making payments more than 6 years ago, and the lender did not take you to court, the debt may be no good. Even if there is a court judgment against you, the debt may still be no good if it is very old. **WARNING:** admitting in writing that you owe the debt, making a payment, or consolidating may start the 6-year clock running again. Talk to a lawyer before you take any action.



### SHOULD MY SPOUSE SIGN MY STUDENT LOANS?

NO! If your spouse signs your loans, you can't get a deferment or forbearance unless you *both* qualify. You can still get a discharge or cancellation if you qualify. However, your spouse will still be responsible for his/her part of the loans, unless he/she also qualifies. Also, you will both be at risk for wage garnishment, loss of your tax refund, and other problems.



### WHAT ARE MY RIGHTS IF I HAVE PARENT (PLUS) LOANS?

Parent (PLUS) loans may cause problems later on. For example, they may have a higher interest rate than other loans. Your choice of payment plans will be more limited. If you borrowed jointly with the other parent, you are still responsible for the loans if the other parent gets a discharge, unless you also qualify for a discharge. You can't get a deferment or forbearance unless both parents qualify. Also, you will both be at risk for wage garnishment, loss of your tax refund, and other problems. Because the rules for Parent PLUS loans are complicated, talk to a lawyer if you run into problems.

It is best to have your child take out student loans on his/her own. Take out Parent PLUS loans only as a last resort. Instead, you can always help your child out with his/her payments in the future, if you can afford it!

## WHAT ARE MY RIGHTS IF I HAVE A PRIVATE LOAN?

Go to page 8 of this booklet first. Call the U.S. Department of Education, or go online, to see if your loan is in the federal system. *If your loan shows up in the database, it is NOT a private loan.* You may be surprised to learn that your loan is federal, not private.

If you have a private loan, your rights are in your loan contract (called a “promissory note”). If you don’t have a copy, ask for one. Then, check it for information about payment plans, deferments, forbearance, discharge, cancellation and other rights. You should call your lender to talk about your problems. Your lender may also have a website you can visit for information and forms.

Many lenders will agree to lower payments. Make sure you get this *in writing*.

If you have a private loan, federal and state law gives you these rights:

- the lender must get a court order before taking part of your paycheck;
- the lender can’t take your tax refund or federal benefits;
- bill collectors must follow the Fair Debt Collection law (look on page 29 for more information)

If you are having problems with a private loan, it is a good idea to get advice from a lawyer. If legal aid can’t help, you can get a free or very low-cost consultation with a private lawyer by calling 1-800-342-3661.



**The Legal Aid Society of Mid-New York, Inc.**  
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**Utica, New York 13501**  
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**Tel: (315) 793-7000**  
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