



Legal Aid Society of Hawai`i

What You Need To Know About Student Loans

This brochure provides basic information about student loans. It provides information on:

- defaulted student loans,
- delinquent student loans, and
- options for repayment or discharge of student loans.

This brochure applies to loans that are guaranteed by the federal government. If you have a private loan, this information may not apply to your situation. Check with your loan holder for more information.

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FINDING OUT INFORMATION YOU NEED TO KNOW ABOUT YOUR LOAN

Follow the steps listed below to find out information you need about your student loan.

STEP ONE:

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 HI, 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*.

STEP TWO:

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.

BEING IN DEFAULT IS MORE SERIOUS THAN BEING DELINQUENT BECAUSE YOU HAVE NOT PAID FOR A LONGER PERIOD OF TIME.

YOU ARE DELINQUENT IN PAYING YOUR STUDENT LOANS
(not yet in "Default" status)

You have several options to choose from if you are having trouble paying your student loans but have not yet defaulted:

OPTION ONE: 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.
- The total amount you will pay back (including interest), however, will be higher.

To obtain a Direct Consolidation Loan, call 1-800-557-7392.

OPTION TWO: Deferment

This means that your loan 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 and 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.

OPTION THREE: 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 forbear your loans even if you are in default.
- Forbearance will temporarily stop collection actions (such as tax refund intercepts, collection contacts and garnishments) during the forbearance period.

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.
- 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.

YOUR STUDENT LOAN IS IN DEFAULT

The 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 a 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 is 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

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

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 servicer. 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 \$154.50 per week net income (This amount is accurate as of April 2002). 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.

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

There is no statute of limitations. This 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, call:

- (1) Deputy Director of Debt Collection Services for the U.S. DOE. Call at (202) 708-4766. Or fax them your information at: (202) 708-4954. Provide them with your name and your social security number, the name of collection agency, the name of the collector, and the dates of illegal acts.
- (2) Student Loan Ombudsman with the Office of Student Financial Assistance. Toll free: (877) 557-2575

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 To Object To The Garnishment of Your Wages

You can object to the garnishment if:

- You have not been working for a full year after being laid off or fired;
- Your net income is \$154.50 per week or less; or
- It would cause extreme financial hardship

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

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

HOW TO 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,” or
- “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 have a Direct Consolidation Loan, you are not in default if your family income does not exceed \$900 above the Federal poverty guidelines.

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

You can consolidate your defaulted student loans into a Federal Direct Consolidation Loan with an Income Contingent Repayment Plan (ICRP).

Advantage:

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:

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.

To obtain a Direct Consolidation Loan, you can call 1-800-557-7392.

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 DOE 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, court fees)

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 “substantially deteriorated.” You must get certification from your physician stating that the 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 the applicable form at 1-800-621-3115.

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. Some of the closed schools in Hawai`i are:

Cannon’s International Business College
Hawai`i Transportation Systems (truck driving school)
Trendsetters Beauty College
Hilo School of Beauty

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 at (800) 621-3115.

4) The Borrower May File For Bankruptcy

Student loans usually cannot be discharged 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 students loans can be discharged.

Useful Names and Numbers

Legal Aid Society of Hawai`i

<http://www.legalaidhawaii.org>

Legal hotline open Monday to Friday 9:00 - 11:30am & 1:00 - 3:30pm

O`ahu call 536-4302 Hilo call 242-0724 Kaua`i call 245-7580 Moloka`i call 553-3251

Maui call 242-0724 Kona call 329-8331 Lana`i call 565-6089

U.S. Department of Education

Toll free: 1-800-621-3115.

How To Get Information on the Status of Your Loan

<http://www.ed.gov/offices/OPE/DCS/index/siteindex.html>.

1-800-4Fed Aid (1-800-4333-243), open 9a.m. to 8p.m. EST, Monday through Friday.

If the borrower is having serious problems with a debt collector hired by the Department, a borrower may contact the Debt Collection Service, fax number is 202-708-4954

If a borrower has questions about a defaulted loan held by a guaranty agency, a borrower may contact the Department’s Policy Development Division, fax number is 202-205-0786, and telephone number is 202-708-8242.



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