Helping Older Borrowers Navigate the Changing Federal Student Loan System

NATIONAL CENTER ON LAW & ELDER RIGHTS

CHAPTER SUMMARY • March 2023

Kyra Taylor, National Consumer Law Center

National Consumer Law Center

Since 1969, the nonprofit National Consumer Law Center (NCLC) has used its expertise in consumer law to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC authored this chapter summary as part of a contract with the National Center on Law and Elder Rights (NCLER).

Introduction

Today, many student loan borrowers are not able to age out of their loans—they are aging while carrying the burden of that debt. Borrowers age 60 and up are the fastest growing age-segment of student loan borrowers. Today, one in five borrowers are over the age of fifty. Additionally, the average amount of student debt older borrowers owe has grown. Over the last twenty years, student-loan balances increased a whopping 512% for borrowers over fifty. In addition, federal loans do not expire when a borrower reaches a certain age or begins pulling from Social Security. Instead, federal loan debt can destroy older borrowers' financial stability — particularly if they default. When federal loan borrowers default, the government can seize borrowers' tax refunds, wages, and a portion of their Social Security benefits. And unlike private loans, federal loans have no statute of limitations—so collection can continue indefinitely.

The last three years have brought unprecedented amounts of change within the federal loan system and borrowers have lots of questions. Understanding how to help older student loan borrowers requires that advocates understand some basics about the student loan system. First, borrowers must understand whether they have private or federal loans, and if they have a federal loan (which is the majority of student loan borrowers), what type of federal student loan they have. A borrowers' loan type—and whether it is held by the Department of Education or by a third party—may determine what types of relief are available to them. Advocates should closely watch out for borrowers who have Perkins Loans, which stopped being issued in 2018, or Federal Family Education Loans (FFEL), which stopped being issued in 2010, because those loan types can be held by third parties and are excluded from some federal relief programs. Borrowers with Perkins or FFEL loans should consider consolidating those loans into Direct Loans (a loan type that is always held by the Department of Education), a process that is discussed in more detail below.

This Chapter Summary first identifies key relief opportunities traditionally available to federal student loan borrowers. It then describes a number of time-limited federal loan flexibilities that were put in place since the pandemic began in 2020, which are still available in 2023. Finally, it offers a roadmap to helping borrowers prepare for student loan payments to restart when the pandemic-related pause ends.

Relief Opportunities for Federal Student Loan Borrowers

Federal loans have a lot of important benefits not available to private loans. For example:

- Borrowers can apply for an Income-Driven Repayment plan, which determines monthly repayment according to a percentage of the borrower's discretionary income and cancels the borrower's remaining debt after 20 or 25 years of repayment.
- Borrowers can apply to cancel their loans via an administrative program if:

    » They are totally and permanently disabled or they die;
    » Their school closed before they were able to complete their program;
    » Their school committed qualifying misconduct pertaining to the provision of educational services or the making of a federal loan; or
    » The school falsely certified the borrower's eligibility for federal aid.

- Borrowers can request administrative forbearances and deferments if they are unable to pay their loans.

Time-Limited Federal Student Loan Relief Opportunities

A number of time-limited federal loan flexibilities—including initiatives that will cancel millions of borrowers' loans—were put in place during the last three years:

- **The COVID-19 Payment Pause:** Beginning on March 13, 2020, all Department-held loans were put into a payment pause. Interest stopped accruing on those loans, and involuntary collections paused on defaulted loans. These benefits (collectively called the payment pause) have been extended multiple times, but are set to expire on August 30, 2023 or 60 days after the Supreme Court issues a decision on the legality of President Biden's student loan cancellation plan (discussed below).
    » Later, the Department stopped collections for all commercially-held FFEL loans in default. It stated that loans that defaulted after March 13, 2020 would be erased, those loans transferred to the Department, and the Department would retroactively apply payment pause benefits to those loans.

- **The Income-Driven Repayment (IDR) Account Adjustment**: After discovering that millions of borrowers were still in repayment despite having their loans for 20 or 25 years (the points at which borrowers in IDR plans can have their loans canceled), the Department announced that it would adjust borrowers' accounts so that more time in repayment, long deferments and forbearances, and time that accrued prior to consolidating loans would count toward IDR cancellation (*note: time in default is excluded from the adjustment and will not count*). Additionally, borrowers with 20 years (if they only have loans for undergraduate study) or 25 years (if they borrowed loans for graduate school) in repayment will have their loans automatically canceled. More information about the adjustment is available here. Department officials have previously said accounts will be automatically adjusted in 2023 and 2024.

- **The Public Service Loan Forgiveness (PSLF) Waiver:** The Department waived some requirements of the PSLF program to make it easier for borrowers working in qualifying public service employment to cancel their outstanding loans after 120 qualifying months of repayment. More information about PSLF can be found here and information about the waiver is available here. While the waiver ended on October 31, 2022, many of the flexibilities included in the waiver will continue under the Department of Education's Income-Driven Repayment Account Adjustment.
    » The Department has announced that Parent PLUS borrowers who previously worked in qualifying employment can receive credit towards PSLF under the IDR Account Adjustment.

- **Automatic Total and Permanent Disability Discharges (TPD):** Previously, the Department of Education required that *all* borrowers that were totally and permanently disabled apply for loan cancellation by submitting a TPD discharge application that required them to prove their eligibility by submitting disability documents from Social Security, Veterans Affairs (VA), or by having a physician certify their disability. After being approved for a TPD discharge, borrowers were required to complete three years of income monitoring; if they failed to complete the monitoring, their debts were reinstated. In 2019, the Department announced its plans to remove the application requirement for veterans with a disability determination from the VA and automatically discharge their loans. In August 2021, the Department similarly announced that it would engage in data matching with SSA to *automatically* discharge the debts of borrowers with SSA disability determinations—those with a SSA disability review in 5 or more years—and would **permanently end** the three-year monitoring period (it immediately suspended the three-year income monitoring period and monitoring was eliminated from regulations governing the TPD program that will go into effect on July 1, 2023).

» Note: Borrowers who did not receive the automatic discharge—including borrowers who do not have a SSA disability determination—can still apply for the discharge. Information about applying is here.

- **Fresh Start program for borrowers with defaulted loans:** In December 2022, the Department began implementing its Fresh Start program, a time-limited opportunity for borrowers with eligible loans in default prior to the payment pause to put those defaulted loans back into good standing. This program will be available for one year after repayment restarts. To opt-in to this program, borrowers must call the Default Resolution Group (DRG) at 1-800-621-3115, request a Fresh Start through their online account portal, or may return to school and borrow additional aid. Fresh Start provides borrowers with additional benefits, including restoring their eligibility for federal student aid and other federal benefits like FHA mortgage loans, erasing the notation of default from their credit report, and ensuring collections on those loans will not restart.

  » Note: Borrowers with defaulted commercial FFEL loans must call their guaranty agency to opt into FreshStart.

- **President Biden's Student Loan Cancellation Plan:** In August 2022, President Biden announced that, for borrowers earning less than $125,000 (or $250,000 for spouses filing jointly), the Department would cancel up to $10,000 in federal student loans, and up to $20,000 for Pell grant recipients. In addition to borrowers who took on loans for their own education, Parent PLUS borrowers (i.e. borrowers who took out a federal student loan to pay for their child's education) were included in this plan. The application process to participate in the plan was abruptly halted in November 2022 in response to federal lawsuits. The U.S. Supreme Court is currently considering whether the plan is legal and is expected to issue an opinion sometime around June 2023.

- **Student Loan Cancellation Not Federally Taxable Until January 1, 2026:** The American Rescue Plan Act excluded loan cancellation from the calculation of federal income from 2021 until 2025.

- **Discharging The Debts of Borrowers That Attended Predatory Schools:** Between 2020 and 2023, the Department announced that it would discharge the outstanding debts borrowers took on to attend ITT Tech from 2005-2016, Corinthian Colleges schools (Heald, Everest, and WyoTech schools) from 1995 and 2015, Marinello School of Beauty from 2009-2016, and Westwood College from 2002-2016, even if they did not submit an application for relief. The Department will provide refunds of payments made on those outstanding loans and will erase adverse credit history associated with those loans.

How to Help Older Adults Prepare for Student Loan Repayment To Restart

Step 1:

Help the borrower figure out what kind of federal student loans they have, who their servicer(s) is/are, and update their contact information with the Department of Education and their student loan servicer.

- Borrowers should log in to their loan account at studentaid.gov or call the Department of Education at (800) 433-3243 to determine what kinds of federal loans they have, what the status of their loan is, and to determine who their loan servicer(s) is (*note*: some borrowers, especially those with different types of loans from different periods of enrollment, have multiple student loan servicers). Additionally, via either option, the borrower can update their contact information. During the payment pause, student loan accounts were reassigned to new servicers, so there is a possibility that the servicer who has their account when repayment restarts is different from the company that serviced their loan before the payment pause. Borrowers should also update their contact information with their servicer by logging into their account on the servicer's website or calling.

- If the borrower has a commercially-held FFEL loan or a school-held Perkins loan, or the borrower has loans that have different lengths of time in repayment, the borrower should consider consolidating those loans **before December 31, 2023** so that they can maximize how much time counts towards IDR cancellation once the IDR Account Adjustment has occurred.

Step 2:

If the borrower is in default on their federal loans, help them opt into Fresh Start.

- If their loan is currently in default, borrowers can take advantage of "Fresh Start" and immediately reach out to their customer service representative and request the removal of their loans from default. Borrowers with eligible Direct Loans or other federally-held loans can request removal of their loans from default by contacting the Default Resolution Group (DRG) at 1-800-621-3115 or by making a request through their online account portal. Borrowers with eligible commercial-FFEL loans should contact their respective Guaranty Agency (GA) to have their loans transferred to the DRG, which will then remove their loans from default and assign them to a non-default servicer.

Step 3:

If the borrower is concerned about being able to afford their federal student loan payments, they should consider enrolling in an Income Driven-Repayment Plan (or, if they are not eligible for an IDR plan, consider using a forbearance or deferment).

- **Income-Driven Repayment**: Generally, there are four different income-driven repayment plans: Income-Based Repayment (IBR), Income-Contingent Repayment (ICR), Pay As You Earn (PAYE), and Revised Pay As You Earn (REPAYE). Each of the plans has different terms and different eligibility criteria, but all of the plans allow payments to be set as a percentage of "discretionary income" and promise to cancel any remaining loan balance after 20 to 25 years of qualifying payments. The Department has a repayment estimator to help borrowers determine how much their monthly payments will be. Currently, borrowers with Department-held loans can enroll in an IDR plan over the phone when they call their loan servicer. Borrowers can also apply online on studentaid.gov or via paper applications.
  - Note: "Discretionary income" is defined as adjusted gross income (AGI) above 100% of the Federal Poverty Level (for ICR) and above 150% of the Federal Poverty Level (for all other IDR plans). Borrowers generally are asked to pay 10-15% of their discretionary income. If their income is below the relevant federal poverty threshold, then their required payment will be $0 and their loan will stay in good standing and earn credit toward IDR cancellation. Older borrowers who rely solely or primarily on Social Security may qualify for a $0 payment in IDR, as Social Security income is only taxable for borrowers with substantial additional taxable income. Each of the plans include spousal income when calculating the monthly bill if the spouses file their taxes jointly, but ICR, IBR, and PAYE base repayment on just the borrower's income if they file their taxes separately.
  - Note: Parent PLUS loans are not eligible for IDR plans. However, if Parent PLUS loans are consolidated into a Direct Consolidation Loan, that consolidation loan will be eligible for the ICR plan. Borrowers should be aware that ICR is the least generous IDR plan.
- **Forbearances and Deferments**: Borrowers may temporarily postpone paying back their student loan payments in certain circumstances via deferments and forbearances. Generally, forbearances and deferments are only advisable to borrowers who cannot afford their IDR monthly payments or who cannot enroll in an IDR plan. Deferments allow borrowers to stop payments, and during a deferment, interest will not accrue for subsidized federal loans. Deferment options vary depending on loan-type and date of disbursement, but for most loans, deferments are available to borrowers in financially-limiting personal situations such as economic hardship, unemployment, rehabilitation training, and cancer treatment.

  - » Forbearances allow borrowers to temporarily pause their payment in specific circumstances, but during a forbearance interest continues to accrue. Like deferment, eligibility for forbearance varies by loan type and date of disbursement, but forbearances are generally available to borrowers who are in poor health, are in a disaster zone, or if the borrower is low income and cannot afford payments. For some types of forbearances, borrowers may opt in by calling their servicer.

- For many types of forbearances and deferments, borrowers will need to submit an application form, which borrowers may request from their servicer, find here, or find on the Department's website.

Step 4:

Help the borrower take advantage of current administrative flexibilities and/or assess whether they can get rid of their debt via an administrative discharge or bankruptcy.

- Borrowers should assess whether they are eligible for any of the following administrative discharges or relief program and submit an application for relief, and may consider whether to seek discharge through bankruptcy:

- **President Biden's One-Time Cancellation**: President Biden's student debt cancellation plan is currently on hold while it is reviewed by the Supreme Court. If the program survives the legal challenge, the Biden Administration has said that it will process the 26 million cancellation applications already received and that borrowers who have not yet applied for relief will be given another opportunity to apply. Borrowers and advocates can read more from the Department of Education and can sign up for updates.

- **Public Student Loan Forgiveness (PSLF)**: Borrowers who are currently working in qualifying public service and who previously worked in public service while repaying federal loans that are still outstanding should consider applying for PSLF now to take advantage of the PSLF waiver flexibilities that have continued under the IDR Account Adjustment. In addition, borrowers with commercial-FFEL loans and Perkins loans should consolidate their loans by the end of **2023** to ensure those loans are eligible to benefit from PSLF and the temporary PSLF flexibilities. Borrowers who have Parent PLUS loans and will not reach 120 PSLF-qualifying months under the current flexibilities should consider consolidating their Parent PLUS loans into Direct Consolidation Loans so that they can enroll in an ICR plan and continue to receive PSLF credit after the PSLF waiver and IDR Account Adjustment are complete.

- **Maximizing the IDR Account Adjustment**: Borrowers who have a FFEL, Perkins, or Health Education Assistance Loan (HEAL) loan that is held by a third party must consolidate those loans into a Direct Consolidation loan to ensure that those loans receive credit under the IDR Account Adjustment. Additionally, borrowers who have loans with different amounts of time in repayment can maximize the benefits of the account adjustment by consolidating all of their loans into a Direct Consolidation Loan. That Direct Consolidation loan will be credited with the greatest period of repayment that accrued on the loans before they were consolidated. Borrowers must consolidate their loans by the end of 2023 to get the full benefits of the one-time account adjustment.

- **Total and Permanent Disability**: Borrowers can apply to discharge all of their federal student debt via a total and permanent disability discharge if the borrower is: (1) is totally and permanently disabled; (2) unable to engage in substantially gainful employment activity; and (3) can prove their eligibility based on their Social Security disability category, VA disability, *or through certification from an eligible medical provider*. Many older borrowers who have stopped working may have a medical condition that qualify them for a Total and Permanent Disability Discharge. Borrowers can apply for this discharge here.

- **Closed School Discharge**: Borrowers who received loans after January 1, 1986 and were unable to complete their program because their school closed may be eligible for a closed school discharge. A closed school discharge fully discharges the borrower's federal loans and will provide them with a refund of all amounts paid on those loans. To apply, borrowers should submit a closed school discharge application form to their student loan servicer.

- **Borrower Defense**: Borrowers can discharge federal loans received after 1994 if their school omitted or misrepresented information relating to enrollment, the school's provision of educational services, the earnings or employability of graduates, or engaged in deceptive or aggressive recruitment practices. Borrowers can submit a borrower defense application online by logging into their account on studentaid.gov or can complete a PDF application form here.
- **Bankruptcy**: Although student loans have been difficult to discharge through bankruptcy in the past, a new Guidance from the Department of Justice and Department of Education has the potential to open up bankruptcy as a viable path to federal student debt relief for more borrowers, and for older borrowers in particular. For example, under the new guidance, a presumption of dischargeability will apply if the borrower has made a good faith effort to pay their loans, is currently unable to afford to make payments under the Standard repayment plan, and if they are age 65 or older or entered repayment more than 10 years ago. For a detailed explanation of how borrowers can seek bankruptcy discharge under the new guidance, see NCLC's March 2023 Issue Brief here.

Conclusion

While the current moment provides borrowers with unprecedented opportunity to obtain debt relief, it is also rife with confusion and uncertainty. Advocates can help older borrowers mitigate the stress of the current moment by helping them understand what types of student loan debt they have, decoding what administrative relief programs they are eligible for, and helping them to prepare for when repayment will restart.

Additional Resources

- Studentaid.gov both allows borrowers to log in to their own account and provides the public with a wealth of information about the federal student loan system.
- NCLC publishes a Student Loan Law Treatise that discusses all of the topics raised in this issue brief in depth.
- NCLC operates studentloanborrowerassistance.org, which contains information for student loan borrowers, and publishes *Surviving Debt,* a guide for consumers (Chapter 13 deals with student loans).
- The Federal Student Loan Ombudsman's Office is an excellent resource for borrowers with questions or problems regarding their federal loan debt. Borrowers can call the ombuds office at 1-877-557-2575.

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

This Chapter Summary was supported by contract with the National Center on Law and Elder Rights, contract number HHS75P00121C00033, from the U.S. Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201.