

Legal Services of Northern Virginia Delinquent Student Loans

General Information

Bill Collector

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This material is for a student or his or her parents who have defaulted¹ on a government student loan. It provides information on:

1. how to find the loan documents;
2. how to identify the specific government loan program; and
3. **options** for financially-challenged borrowers in default.

Most of this information applies to government student loans throughout the country.

Defenses and repayment opportunities regarding private loans (non-government) are not covered in this material.

There are links to:

- a [Glossary for Government Student Loans](#);
- how to get your free [credit report](#);
- [Authorization to Release](#) Information to a **Third Party**

¹ The terms of the student loan require the student or parent as the borrower to make regular payments. The borrower is in default when he/she fails to make the agreed regular payments and the holder of the loan concludes that there will be no further payments.

- **Authorization for Release** of Student Loan information or Records to the **Borrower**
- a **Chart** - Government Student Loan Captions;
- a **Letter of Complaint** if you believe you are mistreated or misinformed by collection agency personnel; and
- Office of the Ombudsman – **Privacy Release** Statement.

Most people seek help regarding their defaulted student loan after they receive a communication from a bill collector or they are being sued. Others confirm they have a defaulted loan from other resources such as their **credit report**. They may not have specific knowledge of the loan, or they may know about the loan and have some or no documents.

The first step is to locate which entity has the documents regarding the defaulted loan. These documents are identified below. After you have copies of the documents, you must determine whether the loan was directly from the government, guaranteed by the government or was a private loan. If the loan is directly from the government or guaranteed by the government, there is a chart that provides information that identifies each specific type of loan.

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What Loan Documents Are You Looking For?

Whatever the reason the student or parent of a student is seeking help with a defaulted loan, the first step is to obtain and review at least four documents that pertain to all student loans. They are the:

1. Promissory Note;
2. Disclosure Statement;
3. Collection History; and
4. Payment History.

Together they are often referred to as the "docs." For a defaulted loan they may be in a number of different locations. If a bill collector is trying to collect the debt, then the entity that referred the debt to the collector should have the documents. See **Bill Collector** below.

If the student or parent is being sued, then the entity that is bringing the suit should have the documents. See **Law Suit**.

If there is no bill collector or suit, then go to **No Bill Collector or Suit**. See how to request the records on-line or by telephone. If the borrower desires to request records by mail, go to **Authorization for Release** of Student Loan information or Records to the Borrower.

If the borrower is being assisted by someone else, including a lawyer, go to **D. Authorization to Release** Information to a Third Party.

Bill Collector

Where the borrower is being pursued by a bill collector, contact the collector by telephone and find out where the documents identified above are located. If possible, also get the address of the documents custodian and make the request in writing. Keep in mind that this can take an extended period of time. The borrower should get copies of all four of the documents.

Law Suit

If the student or parent is being sued in Virginia's General District Court, request, on the return date, that the judge order the plaintiff to file a bill of particulars **Motion For Bill Of Particulars On Return Date**. Specifically request copies of the above four documents. You can also motion the court to order the bill of particulars **Notice Of Motion And Motion For Bill Of Particulars** before or after the return date.

If the case is in Virginia's Circuit court you can use the discovery process to request these documents. Also, you may want to consider a subpoena *duces tecum* directed to the custodian of the records.

No Bill Collector or Suit

Go to loan histories on-line at the Website for the **National Student Loan Data System** (NSLDS) <http://www.nsls.ed.gov> to try to locate information regarding the loan.

Provide the following:

- student aid PIN;²
- Social Security Number (SSN);
- the first two digits of your last name;
- and your date of birth.

² Your electronic Personal Identification Number (Also known as EAC). You must enter a valid PIN to use the NSLDS Student Access system.

Also go to the loan-holder by calling **800-4-FED-AID (800-433-3243)** - **Option 3**. Again, you need the student aid PIN and SSN.

The Education Department will not discuss loan data with a borrower's representative, for example an attorney. However, they will allow third parties to be on the telephone at the same time, so you can set up a conference call.

Federal Direct Loan

If the borrower has a Direct Loan, contact the Direct Loan Servicer.

Contact information for Direct Loans is:

U.S. Department of Education

Direct Loan Servicer

501 Bleecker Street

Utica, NY 13501

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

The borrower information telephone number (800) 848-0979. Defaulted borrowers need to call Debt Collection Service, telephone (800) 621-3115, 8 a.m. – 10 p.m. – Eastern time – Monday through Saturday.

Like the Education Department, the Direct Loan Servicer will not discuss loans data with borrowers' representatives.

Student Loan Ombudsman

U.S. Department of Education

FSA Ombudsman

830 First Street, NE

Fourth Floor

Washington, DC 20202-5144

Telephone 877-557-2575

Fax 202-275-0549

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

Federal Family Education Loan Program (FFELP) Loans

Most government student loans are FFELP loans. The loan is made by a financial institution and guaranteed by the government. Most FFELP holders will honor the borrower's written request to discuss loan information with a third party.

If the loan was guarantied by the Virginia guaranty agency

Contact: Education Credit Management Corporation,

Boulders, Building VII, 7325 Beaufort Springs Drive,

Suite 200, Richmond, VA 23225

Telephone 888-775-3262

http://www.ecmc.org/main/about_us.html

Authorization for Release of student Loan Information or Records

Click here for an example of an [Authorization to Release](#) Information to a **Third Party**. Fax this completed form to numbers (319) 665-7646 or 665-7647.

If you are making an inquiry with Student Loan [Ombudsman](#), you will have to use their form for this purpose - Office of the Ombudsman – [Privacy Release Statement](#).

Which Government Loan Program Made the Loan?

After you get the above-described documents, use the information below to determine which government agency made the loan.

Programs

- Direct Loans or William D. Ford Loans (The loan comes directly from the U.S. Treasury)
- Federal Family Education Loan Program (FFELP) (Here there is both a lender and guarantee agency)
- Perkins Loans

Under the Direct Loan or the Federal Family Education Loan Program (FFELP) there are three types of loans:

1. Stafford Loans (for the student)
2. Plus Loans (Parental Loans for Students) (parent loans for undergraduates)
3. Consolidation Loans

To assist you in determining whether the loan is a Stafford, a Plus or Consolidation, go to the [Chart - Government Student Loan Captions](#).

If the loan is not made or guaranteed by the government, then it is a private loan, and this material does not cover these types of loans.

Options for Financially-Challenged Borrowers in Default

First review the Department of Education – Options for Financially-Challenged Borrowers in Default.

Next select the form or forms to apply for the option that best addresses your situation:

- [Options for Financially-Challenged Borrowers in Default](#)
- [W-9 Request for Taxpayer Identification Number and Certification](#)

- **Statement of Financial Status** (for determining Affordable Monthly Payment Amount)
- **Statement of Financial Status For Wage Garnishment Hearings Only**
- **Loan Discharge Application: School Closure**
- **Loan Discharge Application: False Certification of Ability to Benefit**
- **Loan Discharge Application: False Certification (Disqualifying Status)**
- **Loan Discharge Application: Unauthorized Signature/Unauthorized Payment**
- **Total and Permanent Disability Cancellation Request**
- **Loan Discharge Application: Unpaid Refund**
- **Teacher Loan Forgiveness**
- **Teacher Loan Forgiveness Forbearance Form**
- **Declaration of Caregiver Services**
- **Administrative Wage Garnishment Request For Hearing**
- **Example Third Party Disclosure Authorization Form**

Conditions for Cancellation

Four circumstances will allow you to cancel a government student loan:

1. bankruptcy (with special showing of undue hardship);
2. death;
3. school closure;
4. school fraud; or
5. **total, permanent disability**.

Bankruptcy

In *Educ. Credit Mgmt. Corp. v. Frushour (In re Frushour)*, No. 04-2553, United States Court of Appeals for the Fourth Circuit, 2005 U.S. App. LEXIS 29018, September 20, 2005, the 4th Circuit officially adopted the *Brunner* test for determining whether a debtor has demonstrated that payment of the student loan debt will impose an undue hardship on the debtor and the debtor's dependents. 11 USC § 532 (a)(8). The *Brunner* test was devised by the 2nd Circuit, and has been adopted by most of the other federal circuits. In *Brunner v. New York Higher Education Services Corp*, 831 F.2d 395 (2d. Cir 1987) there are three factors:

1. the debtor cannot maintain a minimal standard of living, based on the debtor's current income, if the debtor is forced to repay the student loan;
2. there are factors present which indicate that this condition is likely to persist for a significant portion of the repayment period; and

3. the debtor has made a good faith effort to repay the student loan.

School Closure

The student will:

- provide testimony, a sworn statement, or other documentation reasonably available to her/him that demonstrates to the satisfaction of the Department that the student meets the qualifications for loan discharge based on school closure, or that supports any representation that the student made on any accompanying documents.
- agree to cooperate with the Department regarding any enforcement actions related to her/his request for loan discharge.
- understands that her/his request for loan discharge may be denied, or the discharge may be revoked if she/he fails to provide testimony, a sworn statement, or documentation upon request, or if she/he provides testimony, a sworn statement, or documentation that does not support the material representations she/he has made, or if she/he completed or is in the process of completing the program of study or a comparable program at another school through transfer of credits or hours from the closed school or by any other means by which she/he benefited from the training provided by the closed school.
- The student further understand that if her/his loan(s) are discharged based on any false, fictitious, or fraudulent statements that she/he knowingly made, she/he may be subject to civil and criminal penalties under applicable federal law.

School Closure [Form](#)

School Fraud

Little has been done about school fraud given some pretty poor performance on the part of some schools in complying with their obligations under the Higher Education Act.³

Total Permanent Disability

Review [Total Permanent Disability](#)

Fax numbers are: (319) 665-7646 or 665-7647 and the telephone number is 1-888-869-4169.

³ See generally <http://www.higher-ed.org/resources/HEA.htm>.

How Can I get out of Default and Repay My Government Student Loan?

There are a number of repayment options (choices), but for most poor debtors, the best will be a Direct Loan Consolidation with an Income Contingent Repayment Plan.

Even though a part of it's name – Income Contingent Repayment Plan – suggests that you have to have an income, this is not always the case.⁴ Under the income contingent plan, what has not been paid at the end of 25 years, is written off.

To qualify for this plan you must first make three monthly payments on your defaulted loan.

If the debtor has enough income to pay going forward, then a graduated or level plan with an extended term may be appropriate. But most of these options are lost after the loan has been in default for a year...that's about when the Department of Education refers the loans out to collection agencies.

The first step in getting a direct loan consolidation is to call the Department of Education at 800-557-7392 or go to <http://www.loanconsolidation.ed.gov/borrower/borrower.shtml>

Conditions for Deferment of a Government Student Loan

When can a borrower have a temporary (short term) excuse not to pay? This is called a deferment. During deferments, interest is paid by the government if the borrower has subsidized loans, so it gives the borrower breathing room. Also, deferments can be applied retroactively for a year or two.

Some common deferments are:

- enrolled in school half time or more;
- temporarily, totally disabled;
- unemployed looking for work; or
- economic hardship.

⁴ 34 CFR 685.209 defines the payment as:

(2) The annual amount payable under the income contingent repayment plan by a borrower is the lesser of--

(i) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's adjusted gross income (AGI) as shown in the income percentage factor table in Appendix A to this part; or

(ii) 20 percent of discretionary income.

Economic hardship is a broad category that covers a large number of situations, such as:

- receiving public assistance;
- earning minimum wage;
- earning too little to support massive student loan payments; or
- active duty military service.

How to Deal with Collections Efforts by a Collection Agency

A collection agency gets paid more for collecting \$\$ than for getting a borrower to consolidate the loan, so they may not tell the borrower about that option. There is a split of opinion in the courts whether federal student loans are subject to Fair Debt Collection Practices Acts. Most collectors follow the rules where they can, but collection activities are highly regulated, so asking them to stop calling may not be fruitful.

Collection agencies do not have much discretion to compromise principal or interest, but they may compromise the post-default collection charge (which can be huge). They are supposed to require payments sufficient to retire the debt in 3 years.

In the event you are contacted by a collection agency, or you contact a collection agency regarding your loan, and you believe you are furnished misinformation or mistreated, a complaint form is available by clicking on [Letter of Complaint](#)

Other Information

Minority Status/Truth-in-Lending Act

Minority status and Truth-in-Lending Act violations are not defenses to repayment.

Primary Author

The primary author of this treatise on *The Defaulted Government Student Loan* is Catherine Mayes, Esquire. Her private law practice is primarily devoted to student-loan matters. Ms. Mayes is a retired Associate General Counsel at Sallie Mae and has extensive experience in this area of the law. She can be reached at mayescd@aol.com. Assisting Ms. Mayes with this treatise was Larry Fann, Esquire, Forms Master, LSNV.