

# Relief on Student Loans — In and Out of Bankruptcy

**Karen L. Rowse-Oberle, Moderator**

*Butler, Butler & Rowse-Oberle, P.L.L.C.; St. Clair Shores, Mich.*

**Julia A. Caroff**

*Assistant U.S. Attorney; Detroit*

**Paula A. Hall**

*Brooks, Wilkins, Sharkey & Turco PLLC; Birmingham, Mich.*

**Patti Turczynski**

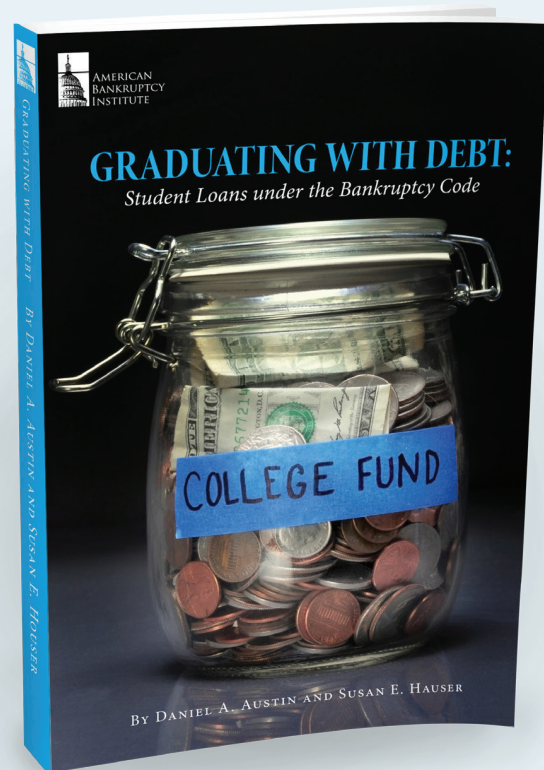
*U.S. Attorney's Office; Detroit*



# Graduating with Debt

## Student Loans under the Bankruptcy Code

Student loan debt in the U.S. exceeds \$1.1 trillion — more than any other type of consumer debt except for mortgage loans — while new education lending continues at an explosive pace. This book will enable bankruptcy and consumer credit professionals to assist clients in dealing with student loan debt. Written with both borrowers and creditors in mind, *Graduating with Debt: Student Loans under the Bankruptcy Code* introduces readers to the basics of student loan debt, including different types of loans and loan-forgiveness programs, delinquency and default, and administrative and nonjudicial remedies for borrowers having trouble repaying their loans. The book also includes extensive appendices replete with sample pleading and discovery forms.



By: Daniel A. Austin and Susan E. Hauser

**Member Price: \$60**

**Non-member Price: \$85**

Product #: 13\_011

**Order  
Your Copy  
Today!**



# AN EDUCATED GUESS – HOW TO DEAL WITH STUDENT LOANS IN AND OUT OF BANKRUPTCY

Julia A Caroff, Esq.  
Assistant U.S. Attorney  
Eastern District of Michigan  
211 W. Fort Street, Suite 2001  
Detroit, MI 48226  
Telephone: (313) 226-9100  
[Julia.Caroff@usdoj.gov](mailto:Julia.Caroff@usdoj.gov)

Paula A. Hall, Esq.  
Brooks Wilkins Sharkey & Turco, PLLC  
401 S. Old Woodward Ave., Suite 400  
Birmingham, MI 48009  
Telephone: (248) 971.1800  
[www.bwst-law.com](http://www.bwst-law.com)

Karen L. Rowse-Oberle, Esq.  
Butler, Butler & Rowse-Oberle, P.L.L.C.  
24525 Harper Avenue  
St. Clair Shores, MI 48080  
Telephone: (586) 777-0770  
[krowse-oberle@butler-butler.com](mailto:krowse-oberle@butler-butler.com)

Patti Turczynski  
Paralegal, U.S. Attorney's Office  
Eastern District of Michigan  
211 W. Fort Street, Suite 2001  
Detroit, Michigan 48226  
Telephone: (313) 226-9144  
[patti.turczynski@usdoj.gov](mailto:patti.turczynski@usdoj.gov)

**VETERANS DAY BANKRUPTCY CONFERENCE  
STUDENT LOAN HARDSHIP DISCHARGE COMPLAINTS  
WHO TO SUE?**

Presented by Assistant U.S. Attorney Julia A Caroff

As the Supreme Court made clear in its *Espinosa* decision, an adversary proceeding is the procedurally required means of obtaining a hardship discharge – no “discharge by declaration.” Adversary proceedings are commenced by the filing of a complaint and proper service of the complaint and summons, as required by Bankruptcy Rule 7004. Identifying who should be named and served as a defendant is first step in resolving student loan debt. But, identifying the proper defendants in a student loan hardship discharge proceeding can be a time-consuming and challenging process. Debtors often have a hodgepodge of loans dating back years. Their recordkeeping may be poor. Moreover, the structure of the student loan lending and servicing is complex, making the identification of proper defendants difficult. Understanding the kinds of loans and the players in the collection of student loans can help debtor’s counsel to identify a client’s student loans and who to serve.

**I. KINDS OF LOANS: Four categories:**

- Direct Department of Education loans
- Federally Guaranteed Loans – institution or privately originated, but federally guaranteed. This program ended in 2010.
- Private Loans
- Consolidation loans. These loans can be either public or private.

**II. PLAYERS IN THE COLLECTION OF STUDENT LOANS**

- **LOAN ORIGINATORS AND HOLDERS – Own the Loans**
  - United States, on behalf of Department of Education
  - Guaranty Agencies
  - Private lenders
- **SERVICERS – Service the Loans**
  - Servicers collect payments and undertake collection action on delinquent loans, but do not own the loan or have an ownership interest in the loan.
  - SallieMae, Nelnet, AES of PHEAA are examples of loan servicers.
- **GUARANTY AGENCIES – Acquire Defaulted Federal Guaranteed Loans**
  - Guaranty agencies purchase defaulted federally guaranteed student loans from the private loan holders, try to collect the loan, receive reimbursement from the federal government, and then continue to collect the loan.

## AMERICAN BANKRUPTCY INSTITUTE

- ECMC (Educational Credit Management Corporation), MHEAA (Michigan Higher Education Assistance Authority) and PHEAA (Pennsylvania Higher Education Assistance Authority) are guarantors.

NOTE: Many of these entities have multiple roles, servicing and owning loans, or servicing and guaranteeing loans.

### III. WHO TO NAME AND SERVE – Holders and Guarantors, not Servicers.

- Naming and serving the servicer is not effective – must serve both the holder of loan and the guarantor of loan.
- Naming and serving the holder of loan - without service on the guarantor - does not discharge the claim of the guarantor. The obligation to holder of the note and obligation that may arise on payment of guaranty are distinct. See, *In re Wendell*, 329 B.R. 59 (W.D. Wash. 2005).
- Federal Government must be served in compliance with BR 7004(b)(4) and (5).
  - United States Attorney General
  - United States Attorney for the Eastern District of Michigan
  - United States Department of Education
- Loan holders and guarantors have service addresses on websites.
- Service by first class mail is all that is required. BR 7004(b).
- BR 7004(d) provides for nationwide service of process.

### IV. HOW TO FIND OUT WHO HOLDS AND GUARANTEES YOUR CLIENT'S STUDENT LOANS

- A client's federal student loans, either direct or insured, are fairly easy to find. Simply have your client log onto the National Student Loan Data System (NSLDS) website, [www.nsls.gov](http://www.nsls.gov), for these loans.
- Private loans are more difficult, as there is no single, comprehensive national database that a borrower can directly access.
  - Collection notices and credit reports are good starting points, but, not comprehensive.

**DETROIT CONSUMER BANKRUPTCY CONFERENCE 2013**

- Financial aid offices of schools that client attended can be best source of information.
- Contacting the large services, such as SallieMae and NelNet, maybe helpful. Contact information is available at [www.salliemae.com](http://www.salliemae.com), and, [www.Nelnet.com](http://www.Nelnet.com). General information about private, and public student loans, and top lenders is also available at [www.FinAid.org](http://www.FinAid.org).

**V. DESIGNATED ADDRESSES FOR SERVICE UPON THE U.S. DEPARTMENT OF EDUCATION**

**United Sates Attorney**

**Use ONLY the address for the location in which the case is filed.**

U.S. Attorney  
Attn: Civil Division  
211 W. Fort Street, Suite  
2001  
Detroit, MI 48226

U.S. Attorney  
Attn: Civil Division  
210 Federal Building  
600 Church Street  
Flint, MI 48502

U.S. Attorney  
Attn: Civil Division  
101 First Street, Suite 200  
Bay City, MI 48708

**United States Attorney General**

United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

**U.S. Department of Education**

U.S. Department of Education  
Office of General Counsel  
400 Maryland Ave., SW – Room 6E353  
Washington, D.C. 20202-2110

AND

Direct Loans:

Direct Loan Servicing Center  
P.O. Box 4609  
Utica, NY 13504-4609  
and  
U.S. Department of Education  
P.O.Box 4609  
Utica, NY 13504-4609

For all other loans (or when in doubt):

U.S. Department of Education  
Debt Collection Service  
San Francisco Service Center  
50 Beale Street, #8629  
San Francisco, CA 94105  
and  
U.S. Department of Education  
P.O.Box 5609  
Greenville, TX 75403-5609

## PRIVATE STUDENT LOANS

By: KAREN L. ROWSE-OBERLE, ESQ.  
Butler, Butler & Rowse-Oberle, P.L.L.C.

Private student loans are usually used to bridge the gap between the actual cost of a college education and the limited amount the government allows you to borrow in its programs. Private loans are offered by private lenders and eligibility for private student loans often depends on the borrower's credit score.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) amended the language at 11 U.S.C. 523(a)(8) to include an exception to discharge for "qualified education loans" (IRC §221(d)(1)) effective October 17, 2005. 11 U.S.C. §523(a)(8) states:

(a) A discharge under section 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from any debt—

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

(A)

(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or  
(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

“Qualified education loan” includes most private student loans. The elements to determine whether a loan is a “qualified education loan” are found in the Internal Revenue Code at 26 U.S.C. §221(d)(1):

(d) Definitions For purposes of this section –

(1) Qualified education loan. The term "qualified education loan" means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses

(A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,

(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

(C) which are attributable to education furnished during a period during which the recipient was an eligible student.

26 U.S.C. §221(d)(1) must be read along with 11 U.S.C. §523(a)(8) to determine whether a private student loan is dischargeable. Specifically, the loan must:

1. Be a debt incurred “by a debtor who is an individual (11 U.S.C. §523(a)(8)).
2. Be “incurred solely to pay qualified higher education expenses” (26 U.S.C. §221(d)(1) and 11 U.S.C. §523(a)(8)(B)).

## AMERICAN BANKRUPTCY INSTITUTE

3. Be incurred on behalf of a student who is either the debtor, the debtor's spouse or the debtor's dependent at the time the debt was incurred (26 U.S.C. §221(d)(1)(A) and 11 U.S.C. §523(a)(8)(B)).
4. Be "paid or incurred within a reasonable period of time before or after the indebtedness is incurred" (26 U.S.C. §221(d)(1)(B) and 11 U.S.C. §523(a)(8)(B)). [See also 26 CFR 1.221-1(e)(3)(ii)(B) – usually 90 days before or after the period to which the expenses relate]
5. Be "attributable to an education furnished during a period of time which the recipient was an eligible student" (26 U.S.C. §221(d)(1)(C) and 11 U.S.C. §523(a)(8)(B)). [See 26 U.S.C. §221(d)(3) and 26 U.S.C. §25A(b)(3) for definition of "eligible student"]
6. Be used to pay "qualified higher education expenses" (26 U.S.C. §221(d)(1) and 11 U.S.C. §523(a)(8)(B)). Qualified higher education expenses are defined as the cost of attendance which is found at 20 U.S.C. §108711 and include but are not limited to tuition and fees, books, supplies, transportation, room and board.

If a loan does not meet the requirements above, it is not a qualified education loan and may be dischargeable in bankruptcy. Additionally, if dischargeability is based upon 11 U.S.C. §523(a)(8)(A)(i), it must be determined that the loan is actually *funded* "in whole or in part by a ... nonprofit institution" as an obligation that is merely guaranteed or insured by a nonprofit institution may be dischargeable.



LITIGATING STUDENT LOAN DISCHARGE UNDER 11 U.S.C. §523

By PAULA A. HALL

Partner

Brooks Wilkins Sharkey & Turco PLLC  
Birmingham, Michigan

The majority of consumer debtors commence their cases under the valid assumption that their student loan debt is a “non-dischargeable” obligation. Generally, that assumption is valid. A brave few will test the waters and file an adversary proceeding seeking to discharge their student loan debt. This essay provides a brief overview of the applicable law in the Sixth Circuit regarding the discharge of student loan obligations.

**A. A Steep Climb Towards Discharge**

A student loan discharge determination must be sought through an adversary proceeding within the debtor’s bankruptcy case. This is a formal litigation proceeding – a lawsuit. *See*, National Consumer Law Center, “The Truth About Student Loans and the Undue Hardship Discharge”, April 2013. As an initial matter, a debtor must be aware that: (i) his prospects of prevailing in a student loan discharge proceeding are slim and worse than in typical civil litigation; (ii) student loan holders and their agents, (e.g., Sallie Mae, and Educational Credit Management Corp.), very aggressively fight discharge cases and are far less likely to settle out of court than in typical civil litigation; (iii) the majority of consumer debtors need representation by an attorney to bring a hardship discharge adversary proceeding; and, (iv) most consumer debtors cannot afford the litigation costs attendant to litigating a hardship discharge adversary proceeding. *Id.* A debtor hoping to achieve an out-of-court settlement of his student loan debt should know that a far greater

percentage of debtors have to proceed to trial and to a verdict in a student loan discharge case than compared to other civil litigation. *Id.*

**B. Applicable Law: Bankruptcy Code Section 523(a)(8) and the *Brunner* Test**

Title 11 United States Code (the “Bankruptcy Code”) Section 523(a)(8) governs exceptions to discharge of debt in a bankruptcy proceeding and allows discharge of student loans only if determined that repayment “will impose an undue hardship on the debtor and the debtor's dependents.” 11 U.S.C. § 523(a)(8).

The Sixth Circuit Court of Appeals (and most Circuits) follow a three-part analysis for determining whether an “undue hardship” exists: “(1) that the debtor cannot maintain, based on current income and expenses, a ‘minimal’ standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.” *Brunner v. New York State Higher Educ. Serv. Corp.*, 831 F.2d 395 (2d Cir.1987). The Sixth Circuit formally adopted the *Brunner* test in *In re Oyler*, 397 F.3d 382, 385 (6th Cir. 2005).

To prevail according to the *Brunner*, the debtor must prove **each** of the factors by a preponderance of the evidence. *Goulet v. Educ. Credit Management Corp.*, 284 F. 3d 773, 777 (7<sup>th</sup> Cir. 2003).<sup>1</sup>

**1. Current Income and Expenses and “Minimal Standard of Living”**

---

<sup>1</sup> See also, Mark E. Shure, “You Got an Education, Now Pay the Bill: The Dischargeability of Student Loans” (American Bankruptcy Institute, Central States Bankruptcy Workshop 2013).

Pursuant to the first prong of the *Brunner* test , the debtor must prove that having to repay the loans would cause the standard of living of the debtor and his or her dependents to fall below a “minimal” lifestyle. Under this tough test, many courts begin the analysis of what is a “minimal” standard of living, by examining the debtor’s income compared to the federal poverty guidelines. *See, e.g., O’Hearn v. Educ. Credit Mgmt. Corp.*, 339 F.3d 559, 564 (7<sup>th</sup> Cir. 2003) (in addressing this prong. The analysis will often include the combined income of all the family members - including non-debtors, who may impact the debtor’s lifestyle. *See, e.g., In re Pobiner*, 309 B.R. 405, 416 (Bankr. E.D. N.Y. 2004). Moreover, courts routinely disregard expenses that are not necessary to maintain a “minimal standard of living”. These can even include cell phones, internet and satellite TV. *See, e.g., Educational Credit Management Corp. v. Mosko*, 515 F. 3d 319, 325 (4<sup>th</sup> Cir. 2008); and *Miller v. Pennsylvania Higher Educ. Assistance Agency*, 377 F.3d 616, 623 (6<sup>th</sup> Cir. 2004).

## **2. Additional Circumstances Exist**

In considering the second prong, that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans, the Sixth Circuit has found that “such circumstances must be indicative of a ‘certainty of hopelessness, not merely a present inability to fulfill financial commitment.’” *In re Oyler*, 397 F.3d 382 (6th Cir. 2005)(other citations omitted). These circumstances must also be beyond the debtor's control. *See Fischer v. State Univ. of New York (In re Fischer )*, 23 B.R. 432, 434 (Bankr.W.D.Ky.1982). Choosing a low-paying job cannot merit undue hardship relief. *See Healey v. Massachusetts Higher Educ. (In re Healey )*, 161 B.R. 389, 395 (E.D.Mich.1993) (“A resolute determination to work in one's

field of dreams, no matter how little it pays, cannot be the fundamental standard from which ‘undue hardship’ ... is measured.”)

Consider *Matter of Sands*, 166 B.R. 299, 310 (Bankr. W.D. Mich. 1994) where it was found that the “Debtor has had more than his share of medical problems ... ulcers on both of his feet ... he had undergone six surgeries ... Debtor testified that at the time of trial, he could not see out of his left eye.” *Id.* at 166 B.R. 310-311. It was found that the Debtor had “shown current financial hardship coupled with serious health problems. However, he has failed to prove by a preponderance of the evidence that he has adequately sought employment and that his current financial and physical problems will persist for a significant portion of the loan repayment period.” *Id.* at 314. Thus a discharge of the student loan debt was denied. *Id.*

### 3. Good Faith Effort to Repay

Finally, the debtor must also show that he has made a good faith effort to repay his student loan debt. This consideration includes analysis of the debtor’s efforts to maximize income, minimize expenses and whether the debtor has made consistent efforts to repay the loan debt. See *Goulet v. Educ. Credit. Management Corp.*, 284 F.3d 773, 776 (7<sup>th</sup> Cir. 2003). Several courts have suggested that good faith requires a debtor to enter into long term repayment plans to avoid a discharge. *In re Douglass*, 237 B.R. 652, 657 (Bankr. N.D. Ohio 1999) (Baxter, J.) (The U.S. Department of Education also offers a number of student loan repayment options...The Debtor's attempt to obtain a discharge of her student loans under these circumstances is tantamount to an abuse of the bankruptcy process. She has failed to satisfy the good faith test in repaying her loan”); *In re Wolph*, 479 B.R. 725, 733 (Bankr. N.D. Ohio 2012) (Speer, J.), citing *Tirch v.*

*Pennsylvania Higher Educ. Assis. Agency (In re Tirch)*, 409 F.3d 677, 682 (6th Cir.2005) (“while not a ‘per se indication of a lack of good faith, a debtor's decision not take advantage of one of these programs is probative on the issue of a debtor's intent to repay the student loan obligation”).

**C. Avoiding an Adversary Proceeding, Discharge by Declaration**

A debate emerged as to whether a debtor can bypass filing an adversary proceeding and achieve a discharge of student loan obligations through express language in a chapter 13 plan. The argument ultimately reached the U.S. Supreme Court in *United Student Aid Funds v. Espinosa*, 130 S.Ct. 1367 (2010). In *Espinosa*, the debtor’s confirmed Chapter 13 plan contained an express provision to pay the principal of a student loan debt and discharge the accrued interest on that debt despite the fact that the debtor had never initiated an adversary proceeding. *Espinosa*, 130 S.Ct. at 1374-75. The creditor had received notice of the plan, but failed to object. *Id.* The bankruptcy court confirmed the plan. The creditor later sought to vacate the confirmation order.

The Supreme Court affirmed the Ninth Circuit's judgment reversing the district court's order in favor of student loan creditor, holding that 1) creditor's actual notice of the filing and contents of the debtor's plan more than satisfied its due process rights, and thus debtor's failure to make the required service did not entitle creditor to relief under Fed. R. Civ. P. 60(b)(4); 2) although the bankruptcy court's failure to find undue hardship in this case was a legal error, the confirmation order was enforceable and binding on creditor because it had actual notice of the error and failed to object or timely appeal; but 3) the Ninth Circuit erred in holding that bankruptcy courts must confirm a plan

proposing the discharge of a student loan debt without an undue hardship determination in an adversary proceeding unless the creditor timely raises a specific objection. FindLaw (a Thomson Reuters business) Staff blog “*United Student Aid Funds, Inc. v. Espinosa*, No. 08-1134” (March 23, 2010, 3:28 PM).

Note that under this narrow ruling, the debtor was successful only because of the lender’s failure to object and the bankruptcy court’s erroneous approval of the plan. Many bankruptcy judges have stated that they would not approve plans that discharge student loans, whether or not the lender objected, because they are clearly contrary to the Bankruptcy Code. *See* Asher Hawkins, “Bankruptcy: New Haven for Student Borrowers?” FORBES (Oct. 20, 2009, 2:25 PM),<sup>2</sup>

Thus, as discussed herein, an adversary proceeding remains the proper – and tenuous – course that a debtor must take in order to pursue discharge of student loan obligations.

---

<sup>2</sup> <http://www.forbes.com/2009/10/20/student-loan-discharge-supremecourt-personalfinanceespinosa.html>

## ADMINISTRATIVE RELIEF FOR FEDERAL STUDENT LOANS

**Patti Turczynski**  
**Paralegal, U.S. Attorney's Office**  
**Eastern District of Michigan**  
**211 W. Fort Street, Suite 2001**  
**Detroit, Michigan 48226**  
**Telephone: (313) 226-9144**  
**E-mail: [patti.turczynski@usdoj.gov](mailto:patti.turczynski@usdoj.gov)**

---

### CONSOLIDATION OF STUDENT LOANS

---

Borrowers should carefully consider whether loan consolidation is the best option. Loan consolidation can simplify loan repayment by centralizing your loans to one bill and can lower monthly payments by giving the borrower up to 30 years to repay their loans. They might also have access to alternative repayment plans that they would not have had before, and will be able to switch a variable interest rate to a fixed interest rate.

Most federal student loans, including the following, are eligible for consolidation:

- Direct Subsidized Loans
- Direct Unsubsidized Loans
- Subsidized Federal Stafford Loans
- Unsubsidized Federal Stafford Loans
- Direct PLUS Loans
- PLUS loans from the Federal Family Education Loan (FFEL) Program
- Supplemental Loans for Students (SLS)
- Federal Perkins Loans
- Federal Nursing Loans
- Health Education Assistance Loans (HEAL)
- some existing consolidation loans

**Private education loans are not eligible for consolidation with federal student loans.**

**AMERICAN BANKRUPTCY INSTITUTE**

There are some things to consider when consolidating. If the length of the repayment period is increased, borrowers will be making more payments and paying more interest. Borrowers should compare their current monthly payments to what monthly payments would be if they consolidated their loans. Borrowers should also consider the impact of losing any benefits offered with the original loans, such as interest rate discounts, principal rebates, or some loan cancellation benefits, which can significantly reduce the cost of repaying the loans. Borrowers may lose those benefits if they consolidate. Once the loans are combined into a Direct Consolidation Loan, they cannot be removed. The loans that were consolidated are paid off and no longer exist. To see if consolidation is the best option, please review the following checklist with the borrower:

<b>Consolidation Checklist</b>		
1	Review your current federal loans	Check your student loan account online, review your loan documents or contact your lender or loan servicer. If you don't know who your loan servicer is, you can find out at <a href="http://www.nslds.ed.gov">www.nslds.ed.gov</a>
2	Determine your current monthly payments	Check your student loan account online, or call your loan servicer to determine exactly how much you are paying each month
3	Determine your monthly payment if you consolidate	Use the Direct Loan Consolidation online calculator or call the Direct Loan Consolidation Center at 1-800-557-7392 to estimate your weighted average interest rate and to see what your loan payments might be under the available repayment plans
4	Decide if you will consolidate	Compare your current monthly payment amount to what your monthly payment amount would be if you consolidated. Would consolidating your loans decrease your monthly payment? How long would you be repaying?

If the borrower decides consolidation is right for them, they should go to [www.loanconsolidation.ed.gov](http://www.loanconsolidation.ed.gov) and complete the application to consolidate their loans. If

they are already in repayment status, they should continue making payments on the loans until consolidation is completed. If they have any questions about consolidation, go to [www.loanconsolidation.ed.gov](http://www.loanconsolidation.ed.gov) or call 1-800-557-7392.

---

### **FEDERAL STUDENT LOAN REPAYMENT PLANS**

---

To make payments more affordable, repayment plans can give borrowers more time to repay their loans or be based on their income. Borrowers should work with their loan servicer to choose a federal student loan repayment that is best for them. Although a payment plan was selected or assigned when the borrower first began repaying their student loan, they can change repayment plans at any time.

There are several repayment plans available to help borrowers manage repayment of their student loans. However, Federal Perkins Loans have different repayment options. The payment depends on the amount borrowed, but the minimum is \$40 per month. Borrowers should check with their school for more information on Perkins Loan repayment plans.

An overview of the repayment plans available for Direct and FFEL Stafford Loans, and PLUS Loans is at the end of this section.

**FORGIVENESS, CANCELLATION AND  
DISCHARGE OF FEDERAL STUDENT LOANS**

Borrowers must repay their loans even if they do not complete their education, cannot find a job related to their program of study, or are unhappy with the education they paid for with their loan. However, certain circumstances might lead to their loans being forgiven, canceled, or discharged. The list below is a quick view of the types of forgiveness, cancellation, and discharge.

<b>Type of Forgiveness, Cancellation or Discharge</b>	<b>Direct Loans</b>	<b>FFEL Program Loans</b>	<b>Perkins Loans</b>
Total and Permanent Disability (TPD) Discharge	x	x	x
Death Discharge	x	x	x
Discharge in Bankruptcy (in rare cases)	x	x	x
Closed School Discharge	x	x	
False Certification of Student Eligibility or Unauthorized Payment Discharge	x	x	
Teacher Loan Forgiveness	x	x	
Public Service Loan Forgiveness	x		
Perkins Loan Cancellation and Discharge (includes Teacher Cancellation)			x

More information on any of the above may be found at <http://studentaid.ed.gov/repay-loans/forgiveness-cancellation>.

**TOTAL AND PERMANENT DISABILITY (TPD) DISCHARGE**

---

A total and permanent disability (TPD) discharge relieves the borrower from having to repay a William D. Ford Federal Direct Loan (Direct Loan) Program loan, Federal Family Education Loan (FFEL) Program loan, and/or Federal Perkins Loan (Perkins Loan) Program loan, or complete a TEACH Grant service obligation on the basis of their total and permanent disability. Before their federal student loans or TEACH Grant service obligation can be discharged, they must provide information to the U.S. Department of Education (ED) to show that they are totally and permanently disabled. ED will evaluate the information and determine if the borrower qualifies for a TPD discharge.

If the borrower thinks they might qualify and wants to apply for a total and permanent disability (TPD) discharge, they must provide the information the U.S. Department of Education needs to make a determination by completing a TPD discharge application and gathering supporting documentation that shows they are totally and permanently disabled. Depending on their situation, they will either attach the supporting documentation to their application or have their physician complete Section 4 of their application. Once everything is complete, they will mail the discharge application and, if required, the supporting documentation to the U.S. Department of Education or the servicer of the loan(s).

Each option for showing that a borrower is totally and permanently disabled has specific requirements for the supporting documentation that must be submitted with the

TPD discharge application. Once you identify the option that applies to the borrower, read the information under Actions to Take to understand what the borrower will need to do to apply.

**1. Veterans Affairs Determination:** If the borrower is a veteran, they will be considered totally and permanently disabled for the purposes of this discharge if they provide documentation from the VA showing the VA has determined:

- They have a service-connected disability, or service-connected disabilities, that are 100% disabling; or
- They are totally disabled based on an individual employability determination.

***Action to Take:***

- Complete sections 1 through 3 of the TPD discharge application
- Return the application along with a copy of the complete documentation of their VA determination (described above) to the U.S. Department of Education or the servicer of the loan(s).

**2. Social Security Administration Determination:** If the borrower is receiving SSDI or SSI benefits, they will be considered totally and permanently disabled for the purposes of this discharge if they provide an SSA notice of award for SSDI or SSI benefits stating that their next scheduled disability review will be within 5 to 7 years from the date of their most recent SSA disability determination.

If their SSA notice of award does not indicate when their next scheduled disability review will occur, they can obtain this information by calling their local SSA office or by calling (800) 772-1213 and request a Benefits Planning Query. The Benefits Planning Query will show when their next review is scheduled to occur.

***Action to Take:***

- Complete sections 1 through 3 of the TPD discharge application
- Return the application along with a complete copy of their SSA notice of award (as described above) or, if applicable, their Benefits Planning Query, to the U.S. Department of Education or the servicer of the loan(s).

**3. Physician Certification:** Alternatively, to show that a borrower is totally and permanently disabled for the purpose of this discharge, they may submit the TPD discharge application with a certification from a physician that shows they are unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that (1) can be expected to result in death; (2) has lasted for a continuous period of not less than 60 months; or (3) can be expected to last for a continuous period of not less than 60 months. “Substantial gainful activity” is a level of work performed for pay or profit that involves doing significant physical and/or mental activities.

***Action to Take:***

- Complete sections 1 through 3 of the TPD discharge application
- Have a physician who is a licensed doctor of medicine or osteopathy fully complete Section 4 of the application
- Return the completed application to the U.S. Department of Education or the servicer of the loan(s) within **90 days** of the date that the physician signed the TPD discharge application.

WEBSITES AND CONTACT INFORMATION

---

**Student Aid on the Web** – [www.studentaid.ed.gov](http://www.studentaid.ed.gov)

A good source for obtaining information about administrative relief, as well as repayment calculators.

**National Student Loan Data System (“NSLDS”)** – [www.nsls.gov](http://www.nsls.gov)

Borrowers will need to use their Federal Student Aid PIN (PIN) to access their federal student loan records. Borrower may have been issued a PIN when applying for federal loans. If borrower needs a PIN to access the NSLDS, go to: <http://pin.ed.gov/PINWebApp/pinindex.jsp>

**Federal Student Aid Information Center (FSAIC)**

Borrowers can call or write if they have questions on federal student aid.

Telephone: 1-800-4-FED-AID (1-800-433-3243)  
TTY users can call 1-800-730-8913. Callers in locations without access to 1-800 numbers may call 319-337-5665.

Email: [studentaid@ed.gov](mailto:studentaid@ed.gov)

Address: Federal Student Aid Information Center  
P.O. Box 84  
Washington, DC 20044-0084

**OVERVIEW OF REPAYMENT PLANS**

<b>Repayment Plan</b>	<b>Eligible Loans</b>	<b>Monthly Payment and Time Frame</b>	<b>Quick Comparison</b>
Standard Repayment Plan	<ul style="list-style-type: none"> <li>• Direct Subsidized and Unsubsidized Loans</li> <li>• Subsidized and Unsubsidized Federal Stafford Loans</li> <li>• All PLUS loans</li> </ul>	<p>Payments are a fixed amount of at least \$50 per month.</p> <p>Up to 10 years.</p>	<p>You'll pay less interest for your loan over time under this plan than you would under other plans.</p>
Extended Repayment Plan	<ul style="list-style-type: none"> <li>• Direct Subsidized and Unsubsidized Loans</li> <li>• Subsidized and Unsubsidized Federal Stafford Loans</li> <li>• All PLUS loans</li> </ul>	<p>Payments may be fixed or graduated.</p> <p>Up to 25 years.</p>	<ul style="list-style-type: none"> <li>• Your monthly payments would be lower than the 10-year standard plan.</li> <li>• If you are a -                             <ul style="list-style-type: none"> <li>◦ Direct Loan borrower, you must have more than \$30,000 in outstanding Direct Loans.</li> <li>◦ FFEL borrower, you must have more than \$30,000 in outstanding FFEL Program loans.                                     <ul style="list-style-type: none"> <li>▸ For example, if you have \$35,000 in outstanding FFEL Program Loans, and \$10,000 in Direct Loans, you can use the extended repayment plan for your FFEL Program loans, but not for your Direct Loans.</li> </ul> </li> </ul> </li> <li>• For both programs, you must also be a new borrower as of October 7, 1998.</li> <li>• You'll pay more for your loan over time than under the 10-year standard plan.</li> </ul>

**AMERICAN BANKRUPTCY INSTITUTE**

<b>Repayment Plan</b>	<b>Eligible Loans</b>	<b>Monthly Payment and Time Frame</b>	<b>Quick Comparison</b>
Graduated Repayment Plan	<ul style="list-style-type: none"> <li>• Direct Subsidized and Unsubsidized Loans</li> <li>• Subsidized and Unsubsidized Federal Stafford Loans</li> <li>• All PLUS loans</li> </ul>	<p>Payments are lower at first and then increase, usually every two years.</p> <p>Up to 10 years.</p>	<p>You'll pay more for your loan over time than under the 10-year standard plan.</p>
Income-Contingent Repayment Plan	<ul style="list-style-type: none"> <li>• Direct Subsidized and Unsubsidized Loans</li> <li>• Direct PLUS loans made to students</li> <li>• Direct Consolidation Loans</li> </ul>	<ul style="list-style-type: none"> <li>• Payments are calculated each year and are based on your adjusted gross income, family size, and the total amount of your Direct Loans.</li> <li>• Your payments change as your income changes.</li> <li>• Up to 25 years.</li> </ul>	<ul style="list-style-type: none"> <li>• You'll pay more for your loan over time than you would under the 10-year standard plan.</li> <li>• If you have not repaid your loan in full after making the equivalent of 25 years of qualifying monthly payments, any outstanding balance on your loan will be forgiven.</li> <li>• You may have to pay income tax on any amount that is forgiven.</li> </ul>
Income-Based Repayment Plan (IBR)	<ul style="list-style-type: none"> <li>• Direct Subsidized and Unsubsidized Loans</li> <li>• Subsidized and Unsubsidized Federal Stafford Loans</li> <li>• All PLUS loans made to students</li> <li>• Consolidation Loans (Direct or FFEL) that do not include Direct or FFEL PLUS loans made to parents.</li> </ul>	<ul style="list-style-type: none"> <li>• Your maximum monthly payments will be 15 percent of discretionary income, the difference between your adjusted gross income and 150 percent of the poverty guideline for your family size and state of residence (other conditions apply).</li> <li>• Your payments change as your income changes.</li> <li>• Up to 25 years.</li> </ul>	<ul style="list-style-type: none"> <li>• You must have a partial financial hardship.</li> <li>• Your monthly payments will be lower than payments under the 10-year standard plan.</li> <li>• You'll pay more for your loan over time than you would under the 10-year standard plan.</li> <li>• If you have not repaid your loan in full after making the equivalent of 25 years of qualifying monthly payments, any outstanding balance on your loan will be forgiven.</li> <li>• You may have to pay income tax on any amount that is forgiven.</li> </ul>

**DETROIT CONSUMER BANKRUPTCY CONFERENCE 2013**

<b>Repayment Plan</b>	<b>Eligible Loans</b>	<b>Monthly Payment and Time Frame</b>	<b>Quick Comparison</b>
Income-Sensitive Repayment Plan	<ul style="list-style-type: none"> <li>• Subsidized and Unsubsidized Federal Stafford Loans</li> <li>• FFEL PLUS loans</li> <li>• FFEL Consolidation Loans</li> </ul>	<ul style="list-style-type: none"> <li>• Your monthly payment is based on annual income.</li> <li>• Your payments change as your income changes.</li> <li>• Up to 10 years.</li> </ul>	<ul style="list-style-type: none"> <li>• You'll pay more for your loan over time than you would under the 10-year standard plan.</li> <li>• Each lender's formula for determining the monthly payment under this plan can vary.</li> </ul>
Pay As You Earn Repayment Plan	<ul style="list-style-type: none"> <li>• Direct Subsidized and Unsubsidized Loans</li> <li>• Direct PLUS loans made to students</li> <li>• Direct Consolidation Loans that do not include (Direct or FFEL) PLUS loans made to parents</li> </ul>	<ul style="list-style-type: none"> <li>• Your maximum monthly payments will be 10 percent of discretionary income, the difference between your adjusted gross income and 150 percent of the poverty guideline for your family size and state of residence (other conditions apply).</li> <li>• Your payments change as your income changes.</li> <li>• Up to 20 years.</li> </ul>	<ul style="list-style-type: none"> <li>• You must be a new borrower on or after October 1, 2007, and must have received a disbursement of a Direct Loan on or after October 1, 2011.</li> <li>• You must have a partial financial hardship.</li> <li>• Your monthly payments will be lower than payments under the 10-year standard plan.</li> <li>• You'll pay more for your loan over time than you would under the 10-year standard plan.</li> <li>• If you have not repaid your loan in full after making the equivalent of 20 years of qualifying monthly payments, any outstanding balance on your loan will be forgiven.</li> <li>• You may have to pay income tax on any amount that is forgiven.</li> </ul>