



Student Loans

I cannot make my student loan payments. Is there anything I can do to get out of paying them?

- There are a few conditions under which your student loan may be totally **cancelled or forgiven**:
 - You are totally and permanently disabled and can provide medical evidence to support that, such as a physician's statement. (call DOE 1-800-621-3115).
 - Upon your death.
 - The school you were attending, for which you borrowed the money, closed while you were enrolled. (call 1-800-621-3115).
 - The school falsely certified to the Department of Education (DOE) that you could benefit from its instruction. (call 1-800-621-3115).
 - If you dropped out of school in time to meet the refund conditions, but the school refused to refund your loan.
- Depending on the kind of student loan you received (e.g., Perkins, FFELs, and Direct Loans may be forgiven if you participate in certain **civic activities**:
 - Service in a "hostile military zone"
 - Service in a Head Start Program
 - Over five years teaching in a low-income school
- If your total balance owing is less than \$1,000, you may request, in writing, that DOE write off the balance.

Have you received a written notice about your student loan?

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- If your notice says you are **delinquent** (behind only a payment or two) you still have time to make special payment arrangements, get a consolidation loan, get a deferment, or you may even be eligible for total loan forgiveness.
- If your notice says you are in **default** it means that the government is about to start collecting from you and you have only a few remedies.

Did you sign for your loan before 1993?

- The deferment of payment provisions are much more liberal if you signed for your loan before July, 1993.
- The pre-1993 deferments may even result in your never needing to repay your loan (call DOE 1-800-621-3115).

Can I get rid of my student loan by filing bankruptcy?

- Only if you can show that payment of the debt “will impose an undue hardship on you and your dependents” (11 U.S.C. 523(a)(8)). Usually this means:
 - You have made a good faith effort to repay the loan.
 - You can no longer maintain a minimal standard of living if you repay the loan, and,
 - Your financial situation is not likely to change during the loan repayment period.
- If you think you can meet these requirements, you should see a Bankruptcy lawyer.

How can I get a new payment agreement to lower my monthly payments?

- You might be able to get one of three types of assistance with your loan payments:
 - **Loan Consolidation:** you can combine several student loans into one loan to be repaid over a longer period of time. This will lower your monthly payment. Call 1-800-557-7392.
 - **Deferment:** You may be able to get your loan temporarily postponed with no added interest. Talk to the loan “holder” who sends you the bill.
 - **Forbearance:** You can almost always get a forbearance (temporary postponement) of your loan payments.
 - Interest will continue to be added to the total amount due during the forbearance.
 - Forbearance will stop collection actions for the time allowed.
 - You should be able to get a forbearance even if your loan is in default and collection actions have begun IF your loan payment is over 20% of your gross monthly income.

Can I get sued if I don’t pay back my student loan, or if I am behind in payments?

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Yes, you can be sued by the Department of Education for unpaid or delinquent student loans. Unlike other debts, there is essentially no statute of limitations for bringing such a lawsuit against you. A “statute of limitations” means the creditor has only so many years to bring the lawsuit; this does not apply to student loans. So until the loan is fully paid or otherwise discharged, you can be sued. If you do receive lawsuit papers, you are encouraged to call the legal aid office or another law office for possible assistance. The laws and procedures involved tend to be complicated and sometimes overwhelming.

My wages are being garnished for my student loan and I never got notice of a Court hearing.

For other debts that you fall behind on, the creditor has to first sue you to get a judgment (court order) before they can garnish your wages. However, this is not true for student loans; your wages can be garnished even without a lawsuit and judgment.

- Up to fifteen percent of your disposable wages (wages minus deductions required by law, e.g., taxes) can be garnished by the guaranty agency or the DOE without a Court Order, **however:**
 - You must first be offered the opportunity for a repayment agreement.
 - You have the right to a hearing if you request one within 15 days of receiving the garnishment notice (**always request a hearing**; it can be withdrawn later if necessary).
 - The hearing is held by an “independent official” within the guaranty agency and may be held by telephone.
- The first \$217.50 of your weekly take-home pay is protected, i.e., that amount cannot be taken in a garnishment. (Note: this amount changes from time to time. It is based on the formula of 30 times the federal minimum hourly wage, which is currently \$7.25.)

What other money can they take from me to collect on my student loan?

The DOE can take (“intercept”) your **income tax refund**, including any Earned Income Tax Credit you’re entitled to. They do not need a court order to be able to do this. However, they must give you advance notice so you have the opportunity to contest it. For example, if the debt has been paid or otherwise discharged, or if they got the wrong Social Security Number (mistaken identity), etc., then you should object to the intercept.

They may take some of the **Social Security benefits** you’re receiving, but not Supplemental Security Income (SSI). Some **Railroad Retirement** and **Veteran’s Benefits** may also be taken. This can likewise be done without a court order. This process is referred to as “offset.” The amount of your benefits they are allowed to offset is limited to 15% of the benefits, and you must be left with at least \$750 per month (\$9,000 per year) in benefits.

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Do Student Loan servicers have to be licensed companies in Virginia?

Yes. Student Loan Service companies must be licensed and regulated by the State of Virginia. If a company is not abiding by this, they can be sued for violating the VA Consumer Protection Act.

THIS INFORMATION IS NOT LEGAL ADVICE. Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.

Free Legal information by Web and Phone: www.vlas.org and
1-866-LeglAid (534-5243)

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