U.S. Department of Education
Federal Student Aid
Borrower Services – Collections Group

Options for Financially-Challenged Borrowers in Default

Payment terms, Refinancing, Administrative Discharge Relief

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Overview Of Types Of Student Loans 1
Loan programs not financed by Department of Education: ... 1
Loans made under the programs financed by Department of Education under Title IV of the Higher Education Act (HEA) of 1965: the Basics ... 1
1. Federal Family Education Loan Program (FFELP): ... 1
Institutional actors: ... 1
2. William D. Ford Federal Direct Loan Program (Direct Loan Program) ... 2
3. Perkins Loans ... 3
Repayment Plans: ... 3
Default and consequences: ... 6
Bankruptcy – Who's got the ball? ... 8
ECMC ... 9
Options available only before default or after default has been cured: Deferments & Forbearances ... 10
Options available without regard to default status of loan: ... 12
Disability Discharge ... 12
Administrative Discharge Relief ... 15
Options for Refinancing Student Loan Debt and Curing Default: ... 17
Consolidation Loans ... 17
Rehabilitation of defaulted HEA loans ... 19
Reinstatement Of Eligibility For New Title IV HEA Student Aid ... 21
When push comes to shove: Non-judicial wage garnishment: Repayment options & financial hardship objections to garnishment ... 22
Resources: Forms ... 25
Direct Loan application and ICR calculator: ... 25
http://www.ed.gov/offices/OSFAP/DirectLoan/index.html ... 25
Appendices ... 25

Overview Of Types Of Student Loans

Loan programs not financed by Department of Education:

- HEAL loans: made by banks and other financial institutions, esp. Student Loan Marketing Association (Sallie Mae); guaranteed by U.S. Public Health Service: special non-dischargeability provisions (unconscionability).
- Private loans – made by banks and other financial institutions; may be guaranteed by either for profit guarantors (e.g. HEMAR, a Sallie Mae subsidiary) or non-profit guarantors, e.g. The Educational Resources Institute (TERI). *Note that status of guarantor affects dischargeability under 11 U.S.C. §523(a)(8).*
- Scholarships with potential repayment obligations:

Loans made under the programs financed by Department of Education under Title IV of the Higher Education Act (HEA) of 1965: the Basics

1. Federal Family Education Loan Program (FFELP):

Institutional actors:

- **Lenders**: FFELP loans are made by financial institutions, typically large banks, as well as some State agencies, and – for Consolidation Loans, the Student Loan Marketing Association (Sallie Mae) and other special purpose loan corporations, sometimes through a trustee bank.

- **Secondary Markets**: Most FFELP loans are sold by the originating lenders on the secondary market. Some 70% of outstanding FFELP loans are held by secondary markets. Sallie Mae holds about 40% of all outstanding FFELP loans; other secondary markets include major banks and "student loan authorities," inc. CHELA. The latter typically hold beneficial ownership to the loans, while a trustee bank holds legal title. References in the HEA and FFELP regulations to "lender" include both originating lenders and secondary market purchasers.

- **Loan Servicers**: Loans are typically serviced for the holder by contractors ("loan servicers" or "third party servicers") who handle all billing and other transactions. Sallie Mae, UNIPAC, ACS (which acquired AFSA), and several guaranty agencies service non-defaulted FFELP loans for banks and secondary markets.

- **Guaranty agencies**: FFELP loans are directly guaranteed by State agencies or private non-profit organizations. Currently some 36 guaranty agencies, of greatly varying size; some offer multi-state coverage, others operate mostly in one state. United Student Aid Funds is largest; California Student Aid

Commission (CSAC) and its agent, EDFund is the "designated" guarantor for California.

- **Guarantor servicers**: Contractors who provide data management and other support services for guaranty agencies on defaulted FFELP loans held by the guaranty agency.

- **Collection agencies:** Collection contractors (often referred to as "PCAs" ("private collection agencies") in Federal debt collection parlance who provide dunning, skip-tracing, garnishment support and other services on a contingent fee basis for guarantors and for the Education Department.

- **Credit Bureaus**: Credit Reporting Agencies, usually refers to the three major credit reporting agencies; the HEA requires holders of HEA loans to report the status of each loan to at least one national reporting agencies.

- **Education Department**: reinsures guaranty agencies, pays lenders interest subsidies on need-based FFELP loans, and, when needed to assure "market yield" to the lender, an added interest subsidy (special allowance payments) on all FFELP loans.

Legal authority:

- FFELP was formerly known as Guaranteed Student Loan Program (GSLP)
- Statutory authority: Title IV-B of the Higher Education Act, 20 U.S.C. §§ 1071 et seq.; regulations at 34 C.F.R. Part 682

Types of FFELP Loans

- Subsidized Staffords (made to student borrowers, amount based on needs test)
- Unsubsidized Staffords (formerly Supplemental Loan for Students (SLS) or Auxiliary Loan for Students (ALAS)) (made to student borrowers, not based on financial need of the student)
- Parent Loan for Undergraduate Students (PLUS) (made to parents of dependent undergraduate student, not based on need, but require credit check and no adverse credit history)
- Consolidation Loans (made to all borrowers to pay off PLUS, Stafford, and in some instances other Consolidation loans)

2. William D. Ford Federal Direct Loan Program (Direct Loan Program)

- General Information: loans made directly by Education; terms mirror terms of FFELP loans.
- Statutory authority: Title IV-D of the Higher Education Act, 20 U.S.C. § 1087a et seq.; regulations at 34 C.F.R. Part 685

Types of Direct Loans

- Direct Subsidized Staffords
- Direct Unsubsidized Staffords
- Direct PLUS
- Direct Consolidation Loans
- Direct PLUS Consolidation Loans (Consolidation Loans to parent borrowers)

3. Perkins Loans

- General information: loans made by postsecondary institutions from revolving loan fund capitalized by Federal funds from Education and matching institution contribution; loans repayable to school; may be assigned to Education, usually after protracted period of default and numerous unsuccessful collection efforts by the school.
- formerly known as the National Direct Student Loan Program or the National Defense Student Loan Program (NDSLP)
- loans only to students
- Statutory authority: Title IV-E of the Higher Education Act, 20 U.S.C. 1087aa-1087hh; regulations at 34 C.F.R. Part 674

Annual & Aggregate Limits on borrowing:

- **FFELP & Direct - (34 C.F.R. § 682.204(e) & (h)(FFELP); (34 C.F.R. § 685.203 (e), (f), (g) (Direct):**
    - **Stafford** (Subsidized and Unsubsidized combined): annual limit for dependent undergraduate borrowers: $2625 / $3500 / $5500 for first year/ second year/ third and remaining undergraduate;
    - **Stafford** (Unsubsidized in addition to subsidized): annual limit for independent undergraduate borrowers: $4000 each for first year & second year; $5000 each remaining undergraduate year; annual limit for graduate and professional: $10,000/year
    - **Aggregate**: $46,000 undergraduate, $138,500 graduate or professional
    - **PLUS**: cost of attendance for student less other financial aid
- **Perkins**: annual limit: $4,000/yr for undergraduate, $6000/yr graduate
    - Aggregate: $20,000 for bachelor's degree program; $40,000 for graduate program; $8,000 for any other student. 34 C.F.R. § 674.12

Repayment Plans:

- **Standard Repayment (10 Years) (FFELP Stafford & PLUS, Perkins)**
    - 34 C.F.R. §§ 682.209(a)(7) (FFELP); 674.33)(b)(1)Perkins)
    - Payments can be level or graduated (no payment larger than 3 x any other payment)
        - FFELP: for balances over $30,000, payment period can extend up to 25 years
        - Perkins: limited to 10 years UNLESS low-income borrower, who can extend to 20 years 34 C.F.R. § 674.33(c).
- **Standard Repayment (all Direct Loans)(10 Years)** 34 C.F.R. §685.208(b)(1)

- **FFEL Consolidation Loans: Repayment (up to 30 years)**
    - 34 C.F.R. § 682.209(h)(2) (FFELP)
    - Payments can be level or graduated (no payment larger than 3 x any other payment)
    - Payment Term depends on total loan amount:
        - Less than $7500 – 10 years
        - $7500 - $9999 – 12 years
        - $10,000 - $19,999 - 15 years
        - $20,000 - $39,999 – 20 years
        - $40,000 - $59,000 – 25 years
        - $60,000 or more – 30 years

- **Extended and Graduated Plans (all Direct Loans)** § 685.208(c), (e) (graduated); 34 C.F.R. § 685.208(d), (e) (extended)
    - **Extended** (level payment) and **Graduated** terms generally same as FFELP (above), except minimum term – 12 years.
    - **Graduated:** no payment may be less the 50% or more than 150% of amount required under standard repayment plan

- **Income Contingent Repayment Plan (ICRP) (all Direct except Direct PLUS and Direct PLUS Consolidation)**
    - ICRP is a **formula-based** approach to tailoring repayment burden to financial ability: available – currently – only under Direct Loan Program, not for FFELP. See 20 U.S.C. § 1087e(d)(1)(D).

    - ICRP: borrower's annual repayment amounts are based on the income of the borrower **and, if married, his or her spouse**, and allows for payment over a **term of up to 25 years**. Any amount not paid by end of 25th year is cancelled. Amount cancelled under current view of IRS is taxable income in the year cancelled. HEA § 455(e)(4) directs ED to establish the terms of the income contingent repayment schedules by regulation; the schedules must vary the amount of installment payments required in relation to "the appropriate portion" of the annual income of the borrower and the borrower's spouse. 20 U.S.C. § 1087e(e)(4).

    - ICRP takes into consideration **only the adjusted gross income** of the borrower and his or her spouse. Income included therefore includes both wages and other taxable income (interest, dividends); income **not** included in AGI is not taken into account [e.g., **SSI payments**].

    - Under this option, borrowers provide authorization to ED to secure their adjusted gross income data directly from the Internal Revenue Service annually. 20 U.S.C. § 1087e(e)(1).

    - ICRP's flexibility was designed to make repayment affordable particularly for borrowers who take "lower-paying community service-type jobs." H.R. Rep. No. 111, 103d Cong. 1st Sess. 112, 121 (1993).

- PLUS loan borrowers (parents of dependent undergraduate students) are **not eligible** for income contingent repayment.

- ICRP Regulations: The installment amount depends on both the amount of the loan & the adjusted gross income of the borrower and his or her spouse. The installment amount required under income contingent repayment is set annually, in the following manner: (34 C.F.R. § 685.209(b), (c)).

  To establish the ICRP installment amount for a loan balance: *the practical way: go to ED website and use the **ICRP Calculator**:*

  ED website allows estimate of monthly payments for a Direct Consolidation Loan: http://www.ed.gov/DirectLoan/index.html

ICR - *understanding **the concept***: two steps:

1. Establish the "**Pay Back Rate" amount**:

- Find the installment payment amount needed to pay off the outstanding loan amount under a hypothetical 12-year level-payment amortization schedule.

- Multiply that 12-year payoff installment amount (from step one) by a factor based on the borrower's income. For married borrowers with incomes roughly between $40,000 to $50,000, the factor is 1. The factor increases for borrowers with higher incomes, up to twice the 12-year level-payment amount, for those with incomes over $245,000.

- The factor decreases for borrowers with lower incomes, down to 55% of the 12-year level-payment amount for those with incomes under $13,000.

- The effect of the factor is to require more affluent borrowers to repay faster than a 12- year payback rate, and less affluent borrowers to repay more slowly than that required by a 12- year payback.

2. Determine the **actual monthly payment** under ICRP:

- The monthly amount is based on the "payback rate" amount, but capped at 20 percent of the borrower's "disposable income."
- Disposable income is adjusted gross income less the amount provided for a family of the same size as the borrower's under the HHS Poverty Guidelines.
- The monthly installment payment for the individual borrower is based on the "payback rate" amount or 20% of the borrower's disposable income, whichever is less.
- If payment is required, minimum required payment is $5.00 per month.
- Unpaid accrued interest is capitalized up to 10% of the original loan amount, and then accumulates without capitalizing.

- Amounts that remain unpaid at the end of the 25th year of repayment (excluding any periods of deferment or forbearance) are cancelled; under current rules, this amount is taxable income to the borrower.

Comments on ICRP:

- **Who benefits from ICRP?** Taking the 12-year payback amount as "normal," ICRP demands higher than normal payments from those who have, and less from those who have not. The practical problem for middle-income borrowers is that ICRP identifies as "haves" borrowers with relatively modest income, and demands payback at rates that exceed those required under conventional 10 year level-payment amounts. As borrowers' family income decreases below $40,000, on the other hand, ICRP becomes more attractive option.

- **Any student loan defaulter can arrange to pay off any HEA loan or PHS HEAL student loan debt by a Direct Consolidation Loan with ICRP terms.**

- **Parent borrowers [Direct PLUS loan] cannot obtain ICRP terms.**

- In first two years on ICRP, alternative documentation of income may be required. 34 C.F.R. § 685.209(c)(2).

- **Income Sensitive Repayment Plan (FFELP):** ["ICRP lite"] -

  - Payments **not** based on formula (as in ICR), but set by agreement with the holder of the loan; payments may vary, but no payment may be greater than 3 times any other payment

  - installment amount adjusted annually, based on borrower's expected income;

  - loan must be repaid within otherwise applicable repayment timeframe, but lender can extend that timeframe for up to 5 years by exercise of forbearance. 34 C.F.R. § 682.209(a)(7), (8).

Default and consequences:

A. Default

- FFEL and Direct Loans: Failure to make required payment when due, if failure persists for 270 days: FFELP (20 U.S.C. § 1085(l); 34 C.F.R. § 682.200(b), and Direct: 34 C.F.R. § 685.102(b). Holder **always** accelerates the debt promptly after default.

- Perkins: Failure to make a payment when due: Perkins: 34 C.F.R. § 674.2(b); school **may** later accelerate the debt.

B. General comments:

1. **Who determines default?** The party that holds the loan at the time that payments are due is the party that determines whether the borrower is in default. For FFELP, either lender/bank or secondary market; for Direct Loans, ED; for Perkins, the school.

2. **Credit bureau reporting and use of collection contractors:** Holders of loans in all three loan programs must report the debt as delinquent or in default to national credit bureaus, and typically use collection agency contractors to perform collection activity after default.

Note difference between billing and collection activity (see Perkins rules for examples): for the FFELP, real collection activity starts only after loan has been declared in default, accelerated by the lender, and assigned by the lender to guaranty agency with a claim by the lender on the loan guaranty. For Perkins Loan Program, the school holds the loan before and after default; after about one year of delinquency, program rules require the school to change treatment of the loan from "billing" activity (dunning and phone contacts) to traditional collection (including referral to contingent fee contractors). Similarly Direct Loans remain held by Education, but after about one year of delinquency, recovery efforts on the loan are transferred from a servicing component to collections office.

3. **Liability for collection costs**: The HEA makes defaulters liable for "reasonable" collection costs. 20 U.S.C. § 1091a(b)(1). FFELP regulations direct each guarantor to compute "reasonable costs" using a "make-whole" method that computes the charge to each defaulter on the model of a guarantor-specific contingent fee. The charge to each defaulted FFELP debtor is assessed as a percentage of the loan balance, with that rate set to generate funds sufficient to reimburse the guarantor for the costs of collection efforts on its entire defaulted loan portfolio – not just on that individual loan. 34 C.F.R. § 682.410(b)(2). The regulations require the guarantor to offer the defaulter a brief initial opportunity, after the default claim is paid, within which the debtor can agree to repay voluntarily, without liability for costs. (34 C.F.R. § 682.410(b) (5)(ii).

4**. Limits on Collection costs:** The guarantor's collection cost charge is capped at the amount Education would charge if Education rather than the guarantor held the loan – currently 25% of principal and interest. (Note that regulations mandate a lower cap – 18.5% - for payoffs by Consolidation, 34 C.F.R. § 682.401(b)(27) or rehabilitation transfers, 34 C.F.R. § 682.405(b)(1)(iv)).

Bankruptcy – Who's got the ball?

When a borrower files for relief in bankruptcy, how HEA loans are handled, and by whom they are handled, differs depending on the type of loan, the type of bankruptcy filing, who held the loan when the debtor filed, and whether the loan is already in default when the petition for relief is filed. In each case, **follow the money and the identity of the holder will become apparent:**

For FFELP loans:
Chapter 7 and 11: The lender (bank or secondary market) that holds a FFELP loan must file a proof of claim, but retains the loan through the bankruptcy **unless and until the debtor files an adversary seeking a dischargeability determination** under 11 U.S.C. § 523(a)(8). The holder then files a claim with the guarantor on the loan guaranty, and assigns both proof of claim and the loan to the guarantor. Education reimburses the guarantor for the full amount paid to the lender on the claim.

> The FFELP rationale never imposes on lenders any obligation to litigate or deal with litigation of any kind.

Chapter 12 and 13: The lender must suspend collection efforts, file a proof of claim in the bankruptcy, and then promptly claim on the guaranty and assign both the loan, and the proof of claim filed on the loan, to the guarantor. The guarantor pays the lender on the claim. Education reimburses the guarantor for the full amount paid to the lender on the claim.

In all cases, after taking assignment, the guarantor is responsible for defending the debt against discharge. **For State guarantors, this duty may be accomplished by raising sovereign immunity as a defense to adversary proceedings claiming undue hardship.**

Non-defaulted FFELP loans held by guarantor: After the bankruptcy case is closed, either by dismissal or general discharge order, the guarantor must put any **non-defaulted** loans back to the claiming lender, or must sell the loan to another eligible lender, and must repay to Education any amount received from Education as Federal reimbursement for a claim on that loan.

The loan is treated as in forbearance during the stay period by the original lender (if that party holds the loan through the bankruptcy proceeding) or the purchasing lender. 34 C.F.R. § 682.402(f)(5)(ii). Interest accrues during this period and is capitalized unless paid as it accrues. 34 C.F.R. § 682.402(j)(2).

Defaulted FFELP loans held by guarantor: If a FFEL loan is already in default and held by the guarantor when the borrower files in bankruptcy, the guarantor must file a proof of claim that includes, in the amount in the proof of claim, a claim for collection costs, computed by the make-whole method described earlier. When the case is closed, the guarantor resumes collection activity on the loan.

Application of Payments: Payments received by the guarantor during the bankruptcy are generally applied just as they would be outside bankruptcy: first to collection costs (for defaulted loans), then accrued interest, and last to principal. 34 C.F.R. 682.404(f). Although bankruptcy caps the amount that can be allowed on a claim at the amount owed at the filing date, which may not include postpetition interest, the guarantor (and ED) apply payments to interest without regard to whether that interest accrued before or after the petition date. There is little, if any, practical difference for the borrower between this "business as usual" method, and applying payments solely to prepetition interest but carrying, and capitalizing, unpaid postpetition interest.

ECMC

The Educational Credit Management Corporation (ECMC) is a "special purpose" guaranty agency with a unique and growing role in FFELP bankruptcies. ECMC is a non-profit Minnesota corporation formed in 1994 at time when it appeared that a number of guaranty agencies were in imminent danger of financial failure, and that a new guarantor would be needed to step in and assume loan guaranty responsibilities in those locales. To assist in capitalizing ECMC, the Department has since then regularly assigned defaulted FFELP loans Education holds when the borrower files for relief in Chapter 13; ECMC takes title to the loan from Education, and pursues recovery both in the bankruptcy proceeding and, if the debt is not discharged, when the case is closed. ECMC then holds and collects those loans as would any other guaranty agency.

In 1998 amendments to the HEA, Congress reorganized the financial structure of guaranty agencies to divide in two the resources formerly considered to constitute the "reserve fund" of the guaranty agency. As pertinent, the HEA now requires guarantors to cover from their own resources (the "Operating Fund") those costs they incur in defending FFELP loans from discharge in bankruptcy. Rather than absorb these costs, some guarantors, including CSAC, have been routinely assigning to ECMC those FFELP loans they already hold when debtors file for bankruptcy relief, or which they acquire from lenders through payment of bankruptcy claims. On these loans, ECMC takes assignment of the loan and any proof of claim filed on the loan, and thereafter defends the loans in bankruptcy and attempts recovery on those loans not discharged. As with any other recoveries on defaulted Federally-reinsured FFELP loans, ECMC remits to Education, or holds subject to Federal direction, the "Federal share' of its recoveries on these loans. ECMC and Education work closely together.

ECMC uses a network of local counsel to represent its interests in bankruptcy proceedings.

Direct Loans: The Department retains Direct Loans owed by individuals who file for relief in bankruptcy, and generally suspends collection action and files proofs of claim directly. Education relies on the assistance of the local U.S. Attorney's office in defending against discharge attempts, including objectionable plan language.

Service of process note: Bankr. R. 7001 and 7004 make F. R. Civ. P. 4 service requirements apply to adversary proceedings and to contested matters (e.g., motions for stay violations, preference recoveries, etc.).
This requires service of a complaint or motion on the U.S. Attorney and the Attorney General, Bankr. R. 7004(4), **as well as on the Secretary of Education. Bankr. R. 7004(5). Service on an Education contractor is not adequate service, nor is service on a regional Education office. The return address on most bills from Education is a contractor address, not an Education office. Per Federal regulations, See 34 C.F.R. 4.1, the only proper office for service of process on the Secretary of Education is**

Office of the General Counsel,
400 Maryland Ave. SW
Washington DC 20202.

Perkins Loans: The school similarly retains Perkins loans through the bankruptcy process, and like a FFELP guarantor, is responsible for defending the debt against discharge. **For State postsecondary institutions, this duty may be accomplished by resisting undue hardship claims on sovereign immunity grounds.** After the case is closed, either by dismissal or general discharge order, the school resumes collection action. The loan is treated as in forbearance during the stay period. Interest accrues during this period and is capitalized unless paid as it accrues.

Options available only before default or after default has been cured: Deferments & Forbearances

Borrowers facing financial difficulty in meeting repayment obligations can switch to another repayment plan available for their kind of loan, or suspend or modify that repayment schedule by means of deferments or forbearances.

- **Deferment** is a **suspension** for specific causes of the obligation to repay; the borrower is entitled to a deferment upon demonstrating that qualifications are met.

- **Forbearance** is a temporary **modification** of an established repayment schedule either for inability to meet the existing repayment obligations or other specified grounds. Forbearances can suspend all repayment, or can temporarily reduce the required installment amount. Generally, forbearances are within the discretion of the lender and are not a right of the borrower.

A. General comments on deferments and forbearances

- Deferments and forbearances are available prior to default and after rehabilitation, (which cures default – see below), but not while the loan is in default.
- Deferments: for those **FFEL and Direct** loans based on financial need, government will pay the interest accruing during deferments. Other FFEL and Direct, borrower is liable for accruing interest (can be paid as accrued or capitalized).

- Forbearances: debtor must pay the interest prior to end of forbearance or it is capitalized (added to principal balance)
- Whether particular type of deferment or forbearance is available depends upon many factors, including when the loan was taken out and if borrower had prior loans
- In general, borrower is limited to up to maximum of three years per type of deferment. Forbearances may be granted for up to one year at a time, but FFELP regulations do not limit the cumulative amount of forbearance periods.

Deferments. Regulations:
Authority: FFELP - 34 C.F.R. § 682.210; Direct - 34 C.F.R. § 685.204; Perkins/NDSLP – 34 C.F.R. § 674.34 et seq. Each program has a variety of deferment grounds; several are focused on financial hardship, including unemployment deferment and economic hardship deferment.

1. **Economic Hardship Deferment**: available under all Title IV Loan Programs; 34 C.F.R. § 682.210(s)(6) (FFEL); 34 C.F.R. §685.204(b)(3) (Direct); 34 C.F.R. § 674.34(e)(Perkins). Borrower must be --
a. receiving **public assistance**, **or**
b. **working full-time** (**30 hrs/wk** or more) with low income - at or below the HHS Poverty Guideline amount for family of two [**for 2004, $1040.80 per month**][1], **or**
c. **working full-time, with high debt/income ration:** (monthly income - student loan debt is less than $2289 (220% of amount in (b), **or**
d. **not working full-time,** with low income [less than $2020 (2004)] and monthly income net of student loan payments lower than $1040.80 [amount in (b)].

[Note: (b), (c), and (d) formally require the qualifying income to be below the greater of the HHS Guideline amount or the minimum wage; the HHS Guideline amount now produces a larger amount than the minimum wage.]

2. **Unemployment deferment** available to borrower who is registered with unemployment agency if within 50-mile radius and has made at least 6 attempts during preceding 6 month period to secure full time work. 34 C.F.R. § 682.210(h)(FFEL); 34 C.F.R. §685.204(b)(2) (Direct); 34 C.F.R. § 674.34(d)(Perkins).

Forbearances:
FFELP 34 C.F.R. § 682.211; **Direct Loan**: 34 C.F.R. § 685.205; **Perkins** 34 C.F.R. § 674.33(d) --
a. **Generally** available where lender believes borrower intends to repay, but is unable to make scheduled payments because of poor health or other acceptable reasons.
b. **Loan Debt Burden Forbearance** Required where student loan debt burden equals at least 20% of monthly income; limited to total of 3 years. 34 C.F.R. §682.211(h)(2); 34 C.F.R. § 685.205(a)(6).

[1] Regulations state either minimum wage or poverty guideline amount; since minimum wage is lower (currently $892 @ $5.15/hr) the regulation defaults to the larger poverty guideline amount).

c. **Military mobilization or national emergency:** Required where Education Department determines that military mobilization or national emergency affects borrower.

Service-based cancellation:
Partial cancellation for teaching and other public service work: Perkins, National Direct, and National Defense Loans may be partially or wholly canceled in return for qualifying teaching or other specific kinds of public service work. See 34 C.F.R. §§ 674. Cancellation rates and types of qualifying employment vary considerably depending on the type of loan and the period during which the loan was made.

> Borrowers whose loans are in default and have been accelerated may still qualify for cancellation, **but only for service performed prior to acceleration of the loan**. 34 C.F.R. § 674.52(c)(2). A borrower may obtain a cancellation only by written request to the holder of the loan together with documentation supporting the claim, typically a certification from the employer of the borrower. 34 C.F.R. § 674.52(a).

FFELP and Direct Loan borrowers may obtain limited cancellation for loans obtained no earlier than 1998, after five consecutive years of full-time teaching performed at least in part after 1997-98 school year. 20 U.S.C. §1078-10; 34 C.F.R. § 682.215 (FFELP); 34 C.F.R. § 685.215 (Direct). Borrowers who claim this relief should be referred to ED Service Center staff.

Options available <u>without regard to default status</u> of loan:

<u>Disability Discharge</u>

A. **Authority**: FFELP: 20 U.S.C. § 1087(a), 34 C.F.R. § 682.402(c)(1); Direct: 34 C.F.R. § 685.213; Perkins/NDSL: 20 U.S.C. § 1087dd, 34 C.F.R. § 674.61

B. **Definition of Total and Permanent Disability**

An individual is considered totally and permanently disabled for student loan purposes only if the individual is **<u>unable to work and earn money</u>** because of an **<u>injury or illness that is expected to continue indefinitely or result in death</u>**. 34 C.F.R. §§ 674.51(s) (Perkins), 682.200 (b) (FFELP), 685.102(a)(3) (Direct Loan Program). A borrower **cannot** be considered totally and permanently disabled based on a condition that existed before he or she received the loan, **unless** that condition has substantially deteriorated since the submission of the loan application and has rendered the borrower totally and permanently disabled.

> **For FFELP and Direct Consolidation loans**, this means that the Consolidation loan may be discharged only if the borrower would qualify for discharge of each and every one of the loans paid off by the Consolidation Loan.

Different Standard than for Social Security: The Social Security Act defines disability as inability to perform substantial gainful activity because of an impairment expected to last at least 12 months. 42 U.S.C. § 423(d)(1)(A). Because the student loan standard of disability is stricter than the disability standard in the Social Security Act, the fact that an individual may be receiving Social Security disability benefits does not necessarily qualify that borrower for total and permanent disability cancellation under the HEA.

Current Disability Discharge Regulations and Procedures:

1. Under pre-July 1, 2002 rules, a borrower could receive a disability discharge based solely on a physician's certification that the borrower was totally and permanently disabled.

2. **Under current regulations**, the physician's certification only qualifies the borrower for a "conditional discharge." A borrower receives a final discharge only if the borrower demonstrates that he or she is disabled through a conditional discharge period, which may last up to three years. During this conditional discharge period, the borrower's repayment obligation is suspended and no interest accrues. ED monitors the borrower's status during the conditional discharge period. If the borrower meets regulatory requirements through the conditional discharge period, ED grants a final discharge at the end of that period.

- The three year conditional discharge period runs from the date on which the borrower's condition, in the opinion of the physician, became severe enough to render the borrower unable to work, not from the date the borrower or the physician signed the form.
- For many borrowers, the three-year conditional discharge period is completed by the time the application is submitted; in that case - if all other eligibility criteria are met - ED gives the borrower a conditional discharge, but very shortly thereafter approves permanent discharge.

3. Requirements for Permanent Disability Discharge: a borrower meets the requirements for a final discharge if, during and at the end of the conditional discharge period,

(a) the borrower receives no new Title IV loans, and
(b) the borrower's annual earnings from employment do not exceed the HHS Poverty Guideline amounts for a family of two.

- ED reviews the disability application in two steps:

1. **Medical** review: ED reviews the medical judgment stated on the application. If ED considers the disability statement by the physician to be acceptable, ED notifies the borrower that a conditional discharge is granted.

2. **Earnings** review: ED promptly secures and reviews earnings information. Earnings records may show that the borrower earned amounts <u>in</u> the conditional discharge period that exceed the earnings limits in the regulations (see below). Those

earnings disqualify the borrower from discharge**. In these circumstances, ED may revoke a conditional discharge very shortly after the notice granting conditional discharge**.

- If at any time during or at the end of the conditional discharge period, the borrower fails either the earnings or the borrowing test, the conditional discharge period ends and the borrower becomes once again responsible for repaying the loan. The loan is then held and owed to Education, but reverts to the status it reached when the application was approved – current, delinquent, or defaulted.

4. **Reaffirmation of Loans Discharged for Disability**

- Borrowers who received a disability discharge between July 1, 2001 and June 30, 2002, may qualify for a new loan within three years of the date of that disability only if they reaffirm the discharged loans.
- Discharges on or after July 1, 2002: Borrowers are no longer required to reaffirm debts previously cancelled due to total and permanent disability in order to qualify for new Title IV student loans.

5. **To borrow again after disability discharge of Title IV Loans**: borrowers who wish to borrow after a loan discharge must (a) submit a physician's statement that the individual is able to engage in substantial gainful activity and (b) sign and submit a statement acknowledging that the new loan they now apply for cannot be discharged in the future on the basis of any present impairment, unless that condition substantially deteriorates in the future.

6. **Applying for a TPD Loan Discharge**

- How to apply: Applications are available from the current holder of the loan, and should be returned to holder to initiate processing of TPD application. Applications can be downloaded from http://www.ed.gov/offices/OSFAP/DCS/forms/disable.pdf.

- Both Borrower and Physician must complete appropriate sections of application.

- **Physician Must Provide**:
- **State License Number**: Doctors certifying a disability on a student loan must reside or be licensed to practice within the continental United States, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States. Doctors from outside the US cannot certify a total and permanent disability for purposes of discharging a student loan debt, even if the borrower lives outside the United States.

- **Clear and Complete Diagnosis**, in laymen's terms, of borrower's condition, including, as necessary, clarification (nature, severity and duration) of the diagnosis and how it will impact borrower's ability to work because of a medically determinable impairment that is expected to continue indefinitely or result in death.

- **Upon request, Additional documentation** to support a borrower's application for loan discharge in cases where the information provided in the initial application is not definitive, is illegible or is incomplete.

Administrative Discharge Relief

A. Background of discharge relief under HEA § 437(c), 20 U.S.C. §1087(c).
In the early 1990's, a series of class actions were brought against holders of FFELP loans seeking relief on a variety of theories from loan liability by reason of school misconduct. In 1992 amendments to the HEA, Congress, unwilling to close off resolution of the pending lawsuits, yet reluctant to avoid any relief for borrowers injured by school misfeasance recently documented in the Nunn committee hearings, adopted the "loan discharge" provisions in HEA § 437(c). 20 U.S.C. § 1087(c). These discharge provisions, subsequently expanded in the 1998 HEA reauthorization, implicitly recognize that borrowers affected by school misconduct or non-performance (closure, failure to pay refunds, false certification of eligibility to borrow) were still legally obligated to repay the FFELP loans they had received to attend these schools.

Relief is available for student borrowers, for parent borrowers if a student meets the eligibility standards, and for Consolidation Loan borrowers if a loan paid off by the Consolidation Loan would have qualified for discharge were it still outstanding. For unexplained reasons, the statute itself provided this relief only for loans made after January 1, 1986. Relief includes the following:

B. Closed school discharge Borrowers who received FFELP, Perkins or Direct loans on or after January 1, 1986 may qualify for a discharge of their obligation on those loans if they were unable to complete their education because the school in which they (or, for parent borrowers, the students for whom the loans were received) were enrolled closed or if they withdrew during a 90-day period of "constructive closure" preceding the closing date. HEA § 437(c), 20 U.S.C. § 1087(c) (FFELP); §464(g), 20 U.S.C. § 1087dd(g) (Perkins); and 34 C.F.R. § 685.213 (Direct). Relief is available upon satisfactory showing of eligibility by application to ED, or, for loans not held by ED, to the cognizant guaranty agency. Eligibility and procedures are set forth at 34 C.F.R. § 682.402(d). Relief includes refund of any payments made on the loan, reinstatement of eligibility for future Title IV, HEA student assistance, and expunging of adverse information disseminated on the loan to credit bureaus. Older (pre-January 1986) FFELP loans may qualify for pro-rated relief.

C. False certification discharge Borrowers who received FFELP loans after January 1, 1986 may obtain a discharge of their obligation if the school for which the loans were received falsely certified their eligibility to borrow. 20 U.S.C. § 1087(c). Relief is available by application to ED, or, for loans not held by ED, to the cognizant guaranty agency through procedures set forth at 34 C.F.R. § 682.402(e). Relief includes refund of

any payments made on the loan, reinstatement of eligibility for future Title IV, HEA student assistance, and expunging of adverse information disseminated on the loan to credit bureaus. The same relief is available for Federal Direct Loan borrowers. 34 C.F.R. § 685.214.

D. Ability to benefit: ED applies the false certification discharge provision first to those determinations of student eligibility made by the school attended by the borrowers (or, for parent borrowers, the student for whom the loan was received) that the student, although lacking a high school diploma or GED, was nevertheless an "eligible student" under the FFELP because the student nevertheless had the ability to benefit from the training offered from the school. 34 C.F.R. § 682.402(e). A borrower qualifies for loan discharge if the school's determination that the student had the ability to benefit was improperly made.

E. False signature: Relief under §437(c) is also available, under ED regulations, for a FFELP or Direct loan borrower whose loan application or promissory note was signed by the school without the borrower's authorization, upon satisfactory application to ED or the guarantor. 34 C.F.R. §§ 682.402(e); 685.214(c)(2).

F. Forgery of disbursement check: Loan relief is available under the False Certification procedure for forgeries on disbursement instruments. This includes claims that the school forged the FFELP or Direct loan borrower's endorsement on a loan disbursement check or on an authorization for the loan funds to be disbursed electronically. Relief is not given if the borrower received the proceeds of that loan either directly or by credit satisfying a tuition obligation owed to the school. 34 C.F.R. § 682.402(e)(1)(ii); § 685.214(c)(3).

G. Unpaid refunds: Borrowers who received FFELP or Direct loans on or after January 1, 1986 may, under § 437(c), obtain a partial discharge of their loan obligation if the school they attended failed to make a refund that would have been applied to reduce their loan balance. 20 U.S.C. § 1087(c). As with other discharge relief, the borrower must file an application with ED or the cognizant guaranty agency for discharge relief. 34 C.F.R. § 682.402(l)(FFELP); 34 C.F.R.R 685.212(f) (Direct).

I. Administrative Relief only:
No relief available by suit:
Discharge relief claims of any kind **must** be presented **through the administrative process** created by ED regulations and cannot be obtained by a suit brought for affirmative relief or asserted as a defense to a collection claim in litigation. *In re Schol*, 239 B.R. 345 (Bankr. N.D. Iowa 2001)(closed school claim); *U.S. v. Wright,* 87 F.Supp.2d 464 (D. Md. 2000); *U.S. v. Bertucci*, C.A. No. 00-0078, 2000 U.S. Dist. LEXIS 12877 (E.D. La., Aug. 30, 2000) (unpaid refund claim); *In re Bega*, 180 B.R. 642 (Bankr. D. Kan. 1995).

Discharge available even after judgment entered on debt:
There is no limitation period for such a claim, and **no prohibition on relief even if the loan has been reduced to judgment;** raising a claim for discharge relief is therefore no basis for delay in entry of judgment on the debt. *U.S. v. Green*, No. 1:99 CV 53-C, 2000 U.S. Dist. LEXIS 3297 (W.D. N.C. Feb. 9, 2000).

To download application forms for these discharges, go to ED site at http://www.ed.gov/offices/OSFAP/DCS, **select Forms, then select the application described for that discharge relief.**

Options for Refinancing Student Loan Debt and Curing Default:

Consolidation Loans

A. The Basics:

- Borrowers can obtain a Consolidation Loan from a FFEL lender or from the Department to pay off qualifying education loans, usually over substantially longer terms, based on loan amount, than were available on the original loans (see above). 20 U.S.C. §1078-3(c)(4). Interest rate on the Consolidation Loan is the weighted average of the rates on the outstanding loans at the time the Consolidation Loan is made.

- **Some** Non-HEA Title IV loans may be consolidated into a Direct Consolidation Loan; e.g., HEAL Loans. 34 C.F.R. § 685.220(b)(19). **Private loans** (loans from TERI *et al.*) **cannot** be paid off by a FFEL or Direct Consolidation loan.

- Borrowers with an outstanding Direct Loan are eligible for a Direct consolidation loan. Other borrowers - those who do not have a Direct Loan - must first attempt to obtain a FFEL Consolidation Loan from a FFELP lender, but can obtain Direct Consolidation Loan if they are unable to obtain an FFELP Consolidation Loan, or - for all but PLUS borrowers - if they would qualify for income contingent repayment on a Direct Loan, but cannot obtain a FFELP Consolidation Loan with income-sensitive repayment terms. 34 C.F.R. §§ 685.208(a), 685.215(d)(1)(I).

B. Special considerations for Defaulters:

- Applicants for FFEL Consolidation cannot be subject to a judgment on a Title IV loan or an administrative wage garnishment order under HEA § 488A. 20 U.S.C. §1078-3(a)(3).

- A defaulted borrower who makes satisfactory arrangements to repay the defaulted loan can obtain a FFELP or Direct Consolidation Loan. 34 C.F.R. § 682.201(c)(1) (iii)(C) (FFELP); 34 C.F.R. 685.215(d)(1) (ii)(E) (Direct).

- One may obtain a (new) Direct Consolidation Loan to repay a (prior) Direct Consolidation Loan that is currently in default, in exceptional circumstances and at the discretion of the Department. 34 C.F.R. §685.220(d)(1)(vi). Exceptional circumstances include the situation in which a borrower is in bankruptcy and is seeking to discharge the outstanding (defaulted) Direct Consolidation Loan. [**note** that ED website has in the past erroneously stated that a defaulter cannot re-consolidate a defaulted Direct Consolidation Loan.]

- A defaulted borrower may become eligible for a Direct Consolidation Loan without first making the series of payments otherwise required if the borrower agrees to pay the loan under the income contingent repayment plan. 34 C.F.R. § 685.215(d)(1) (ii)(F).

- **To apply for a Consolidation Loan**, borrowers should contact a FFELP lender or, for a Direct Consolidation Loan, the Direct Loan Servicing Center (800-848-0979), or download a Direct loan application from http://loanconsolidation.ed.gov/forms.html.

- **E-sign loans**: Applicants can apply for a Direct Loan on line, and execute the transaction, including signing the promissory note, electronically – on line. To do so, the applicant must have PIN from Education; the PIN can also be obtained on line.

C. Some considerations about Consolidation:

- **The amount borrowed** under the Consolidation Loan must be large enough to pay off the outstanding loans in full, including all accrued and outstanding interest and – for those in default - any collection costs incurred as a result of that payoff. The costs incurred or that payoff will typically arise from, or are figured as, a contingent fee or commission – as a percentage of the payment from the proceeds of the Consolidation Loan.

- **Collection cost charges for defaulted borrowers**: Regulations cap at 18.5% the Consolidation Loan borrower's liability for collection cost charges on the outstanding defaulted loans being paid off by the Consolidation Loan. This is less than the rate typically charged on those loans if they remained outstanding and collected by the guarantor. The amount borrowed in the new, Consolidation Loan must therefore be sufficient to pay off all outstanding principal and interest, as well as the collection costs incurred for the payoff, of the outstanding defaulted loans. Interest will accrue on that new (larger) balance, not simply on the principal that was owed on the loans paid off by that Consolidation Loan.

- **ED charges**: Note that ED currently charges 12% for collections costs incurred in those instances in which the new Consolidation Loan is arranged by a contractor under circumstances in which ED owes the contractor a commission. No commission is earned if the borrower obtains the new Direct Consolidation loan only by agreement to ICRP, and therefore no collection costs are incurred or added in that instance.

- **Interest rates: I**n all instances, the new Consolidation Loan has a fixed interest rate that is the weighted average of the rates in effect on the loans being paid off.

- **Potential effect on disability claims**: A borrower who consolidates several loans cannot obtain a disability cancellation of the consolidation loan if the borrower would not qualify for discharge on each of those original loans paid off by the Consolidation Loan.

If a borrower and spouse take out a single Consolidation Loan to pay off both their outstanding loans, **both** must sign the new promissory note, and both are individually and jointly liable for the entire new debt. A spouse who subsequently becomes disabled can obtain a disability discharge of his or her respective portion of the Consolidation loan.

Rehabilitation of defaulted HEA loans

A. FFELP Loan Rehabilitation is a repayment process for curing a default by making twelve (12) consecutive (on time) monthly payments **and** by then having the holder of the defaulted loan (the guarantor or the Department) sell the loan to a lender. The guarantor or the Department reinstates the loan guaranty upon sale to the lender, and the borrower then regains all the benefits of the original loan, such as rights to deferment and cancellation, that were lost when the loan defaulted. The loan is rehabilitated only when it has actually been sold. The loan may then be repaid under a new repayment schedule; the borrower may be required to sign a new promissory note.

Authority: Section 428F(a) of the Higher Education Act of 1965, as amended, 20 U.S.C. §1078-6(a); 34 C.F.R. § 682.405

The amount of the installment payments needed to qualify for rehabilitation must be "reasonable and affordable" based on the borrower's "total financial circumstances," as assessed by the guarantor. This is an ad-hoc, financial-statement based evaluation, unlike the formulaic ICRP.

Some payment must be made, but no pre-set minimum amount can be required. Amounts recovered by administrative wage garnishment or any other non-voluntary payment does not count toward these 12 qualifying payments.

Loans reduced to **judgment** are not eligible for rehabilitation unless and until the holder of the judgment: the government (for loans held by ED) or the guarantor, in its discretion, agrees to vacate the judgment and reinstate the loan as the basis of the debtor's obligation.

Separate rules apply for Perkins and Direct loans (see below): neither the school (Perkins) nor the Department (Direct) sells the loan when the qualifying payments have been made, but rather both restore the rehabilitated loan to normal servicing. Pell Grant overpayment debts cannot be rehabilitated.

Credit bureau reference by the guarantor or ED showing the loan as a defaulted student loan is deleted when the rehabilitation is complete; purchasing lender will report loan as current. **However**, the original lender's report of the loan as in default and paid by government guarantee will remain on credit bureau record until seven year limitation period for adverse credit information under Fair Credit Reporting Act lapses as to that lender's report.

Borrower regains eligibility for Title IV HEA student aid.

Interest rate remains same as original promissory note.

B. Direct Loan Rehabilitation

Authority: 34 C.F.R. § 685.211(e) (Direct Loans)

A defaulted Direct Loan is automatically ("rehabilitated") restored to normal servicing, with default status cured, after the debtor has made twelve (12) consecutive (on time) voluntary monthly payments.

Unlike FFELP, Direct Loan rules do **not** require a borrower to specifically request rehabilitation; rehabilitation for Direct Loans occurs **automatically** upon completion of the 12 qualifying payments. Servicing responsibility for the Direct Loan is therefore **automatically transferred to** the Direct Loan servicing system after the qualifying payments have been completed. The borrower **then** regains all benefits that are available to current Direct Loan borrowers, including deferments, forbearances, and choice of repayment plans.

Borrower regains eligibility for Title IV Aid.

ED notifies Credit Bureaus to deleted previous reports of the loan as in default.

The debtor is liable for collection costs on individual qualifying payments (at the normal rate) up to the point at which the loan is rehabilitated, but not thereafter, unless the debtor defaults again.

Borrower continues paying ED until notification received from Direct Loans to send payment to Direct Loan Program again.

Education applies any voluntary payments made after rehabilitation to the loan; Education refunds any involuntary payments it receives after Rehabilitation occurs.

C. Perkins Loan Rehabilitation

Authority: 20 U.S.C. § 1087dd(h), 34 C.F.R. § 674.39.

Same standards as FFELP and Direct: 12 qualifying payments; borrower liable for collection costs of up to 24% of the unpaid balance at time of 12th payment, which amount becomes part of the debt to be repaid thereafter.

D. Comments on Rehabilitation:

Potential increase in required installment payment amount. Borrowers qualify for repayment installments under rehabilitation agreements that are "reasonable and affordable" based on their individual financial ability – not on any required amortization schedule. However, after the loan is sold (FFELP) or transferred in routine servicing (Direct or Perkins), the loan must be repaid under a conventional standard 10-year repayment schedule, or other repayment plan available under program rules (see above). The start of the new repayment term is the date the first of the qualifying 12 payments – leaving 9 years (under standard plans) to repay the loan in full. After rehabilitation, the holder of the loan (for FFELP, the purchasing lender, for Perkins, the school, or, for Direct Loans, the Department) must establish a repayment schedule that will actually amortize the loan over that 9-year term, with limited flexibility (depending on the loan program rules, see above) to extend by means of a forbearance agreement for reduced payments. This may well require substantially larger payments from the borrower after rehabilitation than were permitted for the 12 qualifying payments, and may exceed the borrower's ability to pay.

Increased principal – collection costs capitalized only by guarantors and schools: At the point of rehabilitation, the guarantor (for FFEL loans) typically adds to the principal of the loan any collection costs incurred for the sale, those guarantor costs – capped at 18.5% of the principal and interest owed at the time of sale - are therefore capitalized and incur interest. Similarly, the Perkins school adds an amount capped at 24% of the principal and interest then owed.
(Note that ED currently adds no collection costs or fees on any defaulted loans it holds when they are rehabilitated).

- Consider whether the borrower actually needs the benefits of rehabilitation – chiefly a potentially improved credit record.

Reinstatement Of Eligibility For New Title IV HEA Student Aid

a. 20 U.S.C. § 1078-6(b); 34 C.F.R. § 668.35(a)(2); 682.201(a) (FFELP); 34 C.F.R. § 674.9(a) (Perkins); 34 C.F.R. § 685.200(c) (Direct Loans).

b. Satisfactory repayment arrangements consist of making of six consecutive, voluntary, on-time, full monthly payments on a defaulted loan. See 34 C.F.R. § 682.200 (FFEL); 34 C.F.R. § 674.2 (Perkins); 34 C.F.R. § 685.102 (Direct Loans).

i. Monthly Payment Amount: an amount satisfactory to the loan holder (ED, the guarantor, or the school that made the loan) based on financial documents from debtor; no set minimum amount required.

ii. Voluntary Payments: payments obtained through offset and garnishment are not considered voluntary but those payments can be considered by the loan holder in establishing a monthly payment amount

Two strikes and you're out: A borrower can regain eligibility only one time under this provision. If the borrower defaults again on that loan, reinstatement of eligibility is not available.

When push comes to shove: Non-judicial wage garnishment: Repayment options & financial hardship objections to garnishment

Federal law now authorizes guarantors and the Department to collect defaulted loans they hold by non-judicial, "administrative" wage garnishment. Defaulters who do not come to repayment terms with the guarantor (for FFELP loans) or the Department (for any loan held by the Department) ultimately face enforcement by wage garnishment.

- Section 488A of the HEA, 20 U.S.C. § 1095a authorizes both guarantors and the Department to garnish up to 10 percent of the disposable pay of the debtor by an administrative order, without need for a judgment. Federal regulations require guarantors to use this tool, which is now the primary means of enforcing defaulted FFELP loans. 34 C.F.R. 682.410(b)(9). (Perkins schools do not have this authority.)
- The Debt Collection Improvement Act of 1996 enacted 31 U.S.C. § 3720D, a virtual clone of this HEA garnishment authority, which authorizes Federal agencies, such as Education, to garnish up to 15 percent of disposable pay. Education adopted regulations for this authority, 34 C.F.R. Part 34, 68 FR 8141 (2003), and has recently started relying on this new authority.

Both the HEA and DCIA require that the debtor be given notice of any proposed garnishment action, an opportunity to avoid garnishment by repaying voluntarily, and a hearing, on request, to dispute both the existence and amount of the debt, and whether withholding at the full rate authorized (10 percent under the HEA; 15 percent under the DCIA) would cause financial hardship. These rights are spelled out in the notices sent prior to garnishment.

Guarantors are free to use any method of evaluating hardship claims; some may use an ad hoc, financial statement-based approach; others, and the Department itself, use a method **based on** the standards adopted by the IRS for offers in compromise under IRC §

7122(c)(2). [2] The Department encourages, but does not require, guarantors to use this method.

Under this standards approach, a debtor who claims that garnishment at the full 10 or 15 percent rate of his or her disposable pay would cause financial hardship to him or her and his dependents must document the debtor's household expenses and income. The garnishment order reaches only the debtor's wages, but whether garnishment of the debtor's wages will cause financial hardship to the debtor and his or her dependents requires consideration of both the household income as a whole, as well as the household expenses. The debtor's expenses are then compared by the guarantor or Department with the amounts identified in the IRS standards as the average amounts spent for those same expenses by families of the same size and similar income as the debtor's. Using data from census and other empiric sources, the standards determine average housing expenses on a county-by-county basis; transportation expenses, on a regional basis; and personal expenses, on a national basis. A debtor who claims to need to spend more for a particular kind of expense than the average amount spent by families in his or her cohort of the standards bears the burden of persuasion that the added amount is necessary.

The Department uses the standards method in garnishment proceedings both to determine the terms of voluntary repayment agreements and the amount to be withheld when agreement cannot be reached:

Repayment agreements:

- For those debtors who respond to a garnishment notice by seeking to repay voluntarily <u>and do not claim hardship</u>, the Department generally is willing to accept – without documentation of expenses - an installment payment arrangement under which the debtor agrees to repay in installment amounts equal to amount collectible at the full garnishment rate authorized (now, 15% of disposable pay). Current pay stubs are sufficient to establish the amount of disposable pay of the debtor. The repayment terms are subject to reevaluation periodically.

- For those debtors who respond to a garnishment notice by claiming hardship <u>but</u> indicate a willingness to repay voluntarily, the Department is willing to accept – upon documentation of income and expenses – an installment payment amount based on available income after necessary household expenses, measured against the standards, are met. If no amount appears available after expenses are met, the Department suspends attempts to garnish. Any repayment agreement or suspension of enforcement action is subject to reevaluation periodically, typically at six-month intervals.

Amount to be withheld by garnishment order:

For those debtors who object to garnishment on hardship grounds but do not agree to repay voluntarily, the Department uses the standards in the hearing process to evaluate

[2] Education and the guarantors that employ this method use it <u>only</u> to measure the reasonableness of expense claims, and not to determine the amount of debt that the individual will be required to repay to satisfy his or her obligation.

the hardship claim. Based on that evaluation, the hearing official may order withholding at less than the full amount authorized by statute, or may determine that withholding in any amount will cause hardship, and decide that no garnishment should occur. Again, a partial or complete hardship determination is subject to reevaluation periodically; if Education later determines that the financial circumstances no longer show that repayment would cause hardship, the Department will resume enforcement action, starting with a new notice of proposed garnishment, and an additional opportunity to object to that demand.

Resources: Forms
http://www.ed.gov/offices/OSFAP/DCS/index.html
http://connected1.ed.gov/po/fsacollnet/forms
Direct Loan application and ICR calculator:
http://www.ed.gov/offices/OSFAP/DirectLoan/index.html
To identify loans received by borrower: 1-800-4-FED-AID

Appendices

Total and Permanent Disability Discharge Application

Economic Hardship Deferment Request

Unemployment Deferment Request

Financial Disclosure Statement & Declaration of Caregiver Services