



CENTER FOR SURVIVOR  
AGENCY & JUSTICE

# GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR  
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



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DOMESTIC VIOLENCE ATTORNEYS & LEGAL ADVOCATES

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**The Center for Survivor Agency and Justice** is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence. CSAJ envisions a world where all people have equal access to physical safety, economic security, and human dignity. CSAJ develops and promotes advocacy approaches that remove systemic barriers, enhance organizational responses, and improve professional practices to meet the self-defined needs of domestic and sexual violence survivors.

**The Consumer Rights for Domestic and Sexual Violence Survivors Initiative** (Consumer Rights Initiative) is a national project of CSAJ that seeks to enhance consumer rights for domestic and sexual violence survivors by enhancing the capacity of and partnerships between domestic/sexual violence and consumer law and advocacy. Consumer and other economic civil legal remedies have the potential to provide survivors with the legal tools to address issues such as debt collection, credit discrimination, bankruptcy, damaged credit, tax liability, and foreclosure. To achieve survivors' joint goals of physical and economic safety also requires purposeful cross-training, networking, and sustained partnership building on the local and national levels. Therefore, CSAJ's Consumer Rights Initiative offers technical assistance to lawyers, advocates, programs, and communities across the nation through: advocacy tools and resources, webinar trainings, national conferences, individual technical assistance, and Building Partnerships Demonstration Sites.

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# Six



## Navigating Student Loan Solutions for Survivors

By Persis Yu<sup>1</sup>

### Introduction

Many survivors find themselves dealing with student loan debt. Currently, in the United States, roughly 43 million people owe more than \$1.3 trillion on their student loans. This makes student loan debt the second largest source of debt in the United States, just behind mortgages. Unfortunately, federal data show that more than one in four of these borrowers are delinquent or in default on their federal student loans.

There are extraordinary penalties for borrowers who go into default, and survivors of domestic violence may face particular challenges in repaying their loans and further risks to safety and future economic security once in default or when trying to resolve student loan issues. Thus, helping a survivor avoid default or get out of default may be important to their financial security.

This chapter will provide an overview of the student loan system, summarize student loan problems domestic violence survivors may face, and outline factors and steps advocates should consider when guiding clients to the right solution to access, protect, and repay student loans.

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<sup>1</sup> NCLC intern, Jessica Park, provided substantial work and contributions to this chapter.

## Anne's Story

Consider Anne's story as you think about the connection between abuse and student loans.

*Anne took out a subsidized and an unsubsidized Stafford Loan and a Perkins loan to support her undergraduate education, but dropped out after one year of school when she became pregnant by her then-boyfriend, Ben. They are now married. Ben's abuse started shortly after the birth of their first child. He is their sole source of income, and they now have four children to support. Since leaving school, Anne has not been able to obtain a job due to Ben's abuse and her need to care for the children. After a recent physical assault by Ben, Anne fled to a shelter with her children. While helping her kids adjust she has also begun seeking employment.*

*Since her student loans came due for repayment, Anne has not been able to make consistent payments. Though she is not exactly sure when she made her last payments, Anne does not believe she is in default yet. Ben controls the finances, makes all the tax filings, keeps records of Anne's personal information (social security number, etc.), and has prevented Anne's access to such information in the past. Anne is unfamiliar with her financial or tax information and does not know how to access that information readily. She comes to you, hoping for help in getting a handle on all her finances. To make ends meet, she knows she may need to return to school in the future and so is worried about how to pay for her current loans.*

### Think About It

How are the student loans affecting Anne's financial situation right now? What are her financial priorities to keep her and her children safe? What are her financial goals? What else do you want to know about her and her relationship with Ben to assist your advocacy? Are there any cultural considerations you need to know more about to assist your advocacy?

## Domestic Violence and Student Loan Debt

Student loan debt is one of the largest sources of debt in the U.S. Survivors face unique risks of default, as well as challenges in resolving, paying off, and/or accessing new student loans.

Survivors trying to resolve student loan issues may face unique difficulties because of their abusive partners or because of their vulnerability as survivors. For example, survivors may have trouble accessing income-driven repayment plans not only due to lack of information about the plans, but also due to difficulty obtaining personal information, income information, or necessary documentation from or because of an abusive partner. Partners may also take out loans in survivors' name without their knowledge; when this happens, the survivor may not even know about the loans until they are in default. Survivors who have defaulted on their student loans face further financial hardship because the lender may seek repayment through involuntary collection.

Additionally, survivors may face extra challenges in repaying their loans. Survivors may be targets of predatory for-profit schools that recruit individuals who are vulnerable, unemployed, and/or low-income and that leave students with heavy debts and little improvement in economic mobility. A survivor who did not complete school may have

extra difficulty in repaying these loans without a degree. A survivor may also be unable to repay these loans because the abusive partner withholds financial support and any income must pay for necessities (e.g. housing, food, supporting children).

Survivors may also find that they need to go back to school to support themselves and/or their families, or to escape a dangerous situation. However, borrowers in default on federal student loans are ineligible for federal financial aid, so survivors who want to go back to school may need help avoiding or getting out of default.

In-depth screening questions are provided later in this chapter to help determine the available solutions for a student loan borrower. However, before determining the solution, it is important to find out how the debt is currently impacting the survivor. For example, if the survivor is currently making payments, it is helpful to know whether those payments are affordable. If the survivor is not making payments, have there been any consequences such as harassing phone calls or garnished wages? Finally, what is the survivor's long-term goal? It might be to go back to school. If the borrower is the victim of identity theft, it might be to eliminate the loan. Or the borrower's main goal may be to resolve credit reporting problems caused by a defaulted student loan. The solution will vary depending on the borrower's goal.

**Case Scenario:** *In Anne's circumstance, we see that she wants to get her finances in order, and that she has missed several payments but is not yet experiencing the consequences of default. This may mean that her payments are unaffordable. Anne also indicated that she might go back to school. Therefore, Anne's goal both short term and long term is likely to stay out of default and make repayment affordable.*

## The impact of student loan debt

The impact of student loan debt cuts across many domains of a survivor's financial and physical well-being. In a recent study, employment instability (reduced hours, changing jobs, trouble finding a job) lasted up to three years after an abusive relationship ended. Advancing educational attainment is often key to securing jobs or promotion that can provide for a family. Having a delinquent or defaulted loan can severely limit the options available to survivors. For example, borrowers in default are not eligible for federal financial aid, and are often targeted for predatory, high-cost lending.

Also, defaulted loans can impact a survivor's credit history. A negative credit history can make a survivor's life more difficult in many ways, negatively impacting applications for an apartment, car, or even a job (see **Debt** and **Credit Reporting & Repair** chapters in this Guidebook).

In the face of economic abuse and other debts, student loan debt presents a tough challenge to survivors' long-term options, with profound implications for their economic security and continued safety.

## Key Terms and Concepts

### Types of loans

Student loan law is riddled with terminology, and it is important to understand the basics. There are a number of types of federal student loans, which, with the exception of Perkins loans, may be either a Direct or FFEL loan. As the name indicates, a **Direct Loan** is a

federal loan in which the federal government directly provides the funds. Direct loans can take the form of a **Stafford**, **Direct PLUS**, or **Direct Consolidation** loan.

Stafford loans are available to undergraduate and graduate students and are subsidized or unsubsidized. Subsidized Stafford loans are awarded based on financial need, and borrowers are not charged interest before the repayment period begins. Unsubsidized Stafford loans are not awarded based on need, and interest is charged at the time the loan is disbursed. PLUS loans can be Parent or Grad PLUS loans, but the student must first be determined to be eligible for a Stafford loan. Parent PLUS loans allow parents to borrow for dependent undergraduate children, while grad PLUS loans allow graduate or professional students to borrow. In both cases, a credit check must be completed, and the borrower cannot have adverse credit history. A consolidation loan is created when a borrower consolidates all, some, or one of their existing student loans. Consolidation loans will be discussed later in the chapter.

One type of student loan, the **FFEL loan**, is no longer offered, but many borrowers took them out in the past and are still repaying them. With FFEL loans, the federal government guaranteed the loan but did not directly provide funding for the loan. Instead, the funds came from a non-governmental financial institution. FFEL loans also took the form of a Stafford, PLUS, or consolidation loan.

A **Perkins loan** is originated and serviced by the participating school, but the federal government provides money to the school to help fund the loans.

## Repayment options

Federal loan borrowers have many different repayment options as well as routes to postpone payment temporarily. **Income-driven repayment plans** are useful options for borrowers to reduce unsustainable monthly payments. These plans calculate monthly payments based on income and family size and forgive any outstanding balances after 20 to 25 years of repayment. There are several different income-driven repayment plans, often referred to by their acronyms: **IBR** (Income-Based Repayment), **PAYE** (Pay As You Earn), **REPAYE** (Revised Pay As You Earn), and **ICR** (Income-Contingent Repayment). Each has different terms and eligibility requirements, as discussed below.

**Forbearance** and **deferment** are options allowing a borrower to postpone or reduce monthly payments. When a subsidized loan is in a deferment, the borrower is not charged interest.

Generally, the most complete remedy a borrower can obtain on a student loan is **discharge** or **loan cancellation**, which

## Key Terms

**Direct Loan:** A loan in which the federal government directly provides the funds. Common forms of direct loans are a Stafford, Direct PLUS, or Direct Consolidation loan.

**FFEL loan:** Loans that the federal government guaranteed but did not directly provide funding for the loan. They are no longer offered, but many borrowers took them out in the past and are still repaying them.

**Income-driven repayment plans:** Loan repayment plans that calculate monthly payments based on income and family size and forgive any outstanding balances after 20 to 25 years of repayment. Common plans include: IBR (Income-Based Repayment), PAYE (Pay As You Earn), REPAYE (Revised Pay As You Earn), and ICR (Income-Contingent Repayment).

**Forbearance and deferment:** Postponing or reducing monthly payments on a loan. When a subsidized loan is in a deferment, the borrower is not charged interest.

**Discharge or loan cancellation:** When the outstanding principal and interest amounts of loans are forgiven, and in some cases allows for refunds of amounts already paid by the borrower.

**Private student loans:** Loans made by banks and other financial institutions without federal guaranty.

**Loan holder or lender:** The entity or person holding the promissory note and has the right to collect on the loan.

**Loan servicer:** The company responsible for collecting payments, responding to customer inquiries, and performing administrative tasks to maintain the loan on behalf of the lender.

**Guaranty agencies:** State or private agencies that administer the federal guaranteed loan program.

**Debt collector:** A third party who pursues a borrower in an attempt to collect on a defaulted loan.

**Delinquent or in default:** When a borrower has missed payments on a student loan.

**Collection:** Methods to collect past due (delinquent) payments on loans, and may include involuntary methods such as seizing tax refunds, garnishing wages, and offsetting social security benefits, to recover unpaid loan amounts.

**Consolidation:** The process by which federal student loans can be combined or converted into a Direct Consolidation loan.

**Rehabilitation:** Taking a loan out of default by making nine on-time payments in agreed-upon amounts within ten consecutive months.

forgives outstanding principal and interest amounts and in some cases allows for refunds of amounts already paid by the borrower. The federal loan program includes several statutory loan cancellation programs, but it is difficult to qualify for a loan discharge.

In contrast to federal student loans, **private student loans** are ones made by banks and other financial institutions without federal guaranty. As previously mentioned, private loans provide fewer protections and are not required to provide income-driven repayment plans, deferments, or discharges.

Borrowers will need to know the different entities responsible for their loans. The **loan holder** or **lender** is the entity or person holding the promissory note and has the right to collect on the loan. A **loan servicer** is a company responsible for collecting payments, responding to customer inquiries, and performing administrative tasks to maintain the loan on behalf of the lender. **Guaranty agencies** are state or private agencies that administer the federal guaranteed loan program. A **debt collector** is a third party who pursues a borrower in an attempt to collect on a defaulted loan.

## Key Legal Concepts

Student loan law can seem complicated, but understanding some of the key legal concepts can help advocates familiarize themselves with the system and better advise clients.

### Loan type and related protections

Figuring out the type(s) of student loan(s) the survivor has is the most important piece of information to obtain. Student loans for higher education can come in the form of federal or private loans, but federal loans are the most common. The most common types of federal loans are Stafford loans (which may be either subsidized or unsubsidized), PLUS loans (grad and parent), Perkins loans, and consolidation loans. Except for Perkins loans, these loans can be Direct Loans (made directly by the federal government) or Federal Family Education Loan (“FFEL”) Program loans (made by private lenders but guaranteed by the federal government). FFEL origination was eliminated as of July 1, 2010, but FFEL regulations continue to apply to outstanding FFEL loans many of which are still serviced and held by FFEL lenders or guaranty agencies. Private loans are often made by banks or other financial institutions without financial backing by the federal government, and often require a co-signer.

**Joint Consolidation Loans** were created when married borrowers consolidated their loans with their spouses’ loans, leaving both spouses jointly and severally liable for repayment of the total. The ability to jointly consolidate loans was eliminated in July 2006, but some borrowers still have joint consolidation loans. These loans pose special difficulties for domestic violence survivors because both spouses must cooperate to obtain relief—even if they have divorced and maintain separate finances and tax filings. For example, borrowers may repay joint consolidation loans under income-driven repayment plans, but both spouses must qualify for and request the same plan. Further, the loan servicer will determine eligibility and monthly payment amounts based on both spouses’ combined income and eligible federal loans—again, even if they have divorced. A survivor who successfully discharges the portion of the joint consolidation loan they incurred for their education will still be liable for the remaining balance, incurred by a spouse. Unfortunately, there is no way to split a joint consolidation loan, but the [Department of Education](#) has encouraged borrowers facing domestic violence issues to contact the FSA Ombudsman to explore options in confidence.

**Federal loans** come with important protections for borrowers, including programs to repay the loans based on a percentage of the borrower's income, programs allowing the borrower to delay payment temporarily, and, in limited circumstances, programs to discharge the loans. These protections are crucial and generally make federal loans safer for borrowers than private loans. Unfortunately, federal loans are hard to escape. If a borrower defaults, the government may then utilize extraordinary powers to collect. The options for a federal loan borrower who is unable to repay differ based on both the type of loans and whether it is in default.

Since private loans are not subject to the rules governing federal loans, private loans provide fewer protections to borrowers. Additionally, private loans may have higher interest rates than federal loans, and the rates may be variable. Financially distressed borrowers are generally at the mercy of the creditor, and private lenders are generally inflexible in accommodating borrowers. Private lenders do not have the same range of collection tools as the government and will usually hire third-party debt collectors to pressure borrowers for repayment.

### Loan status and consequences of default

A key to understanding the borrower's options is to know the status of the loans. As will be discussed in this chapter, survivors in good standing on their loans should consider various repayment options. If a borrower has missed payments on a student loan, the loan may be either **delinquent** or in **default**. A borrower is delinquent after missing the scheduled loan payments by the stipulated due dates. Once the borrower is delinquent for a certain period of time, the loan will be in default, and the entire loan balance becomes due at that time. For most federal loans, the period between delinquency and default is 270 days. For private loans, default will be determined by the terms of the promissory note.

Becoming delinquent on a student loan will negatively impact the borrower's credit history. Defaulting on a federal loan, however, has more serious consequences, and avoiding or getting out of default should be a top priority. Once a borrower defaults on a federal loan, the loan will likely be transferred to a private debt collection agency, at which point the borrower may be subjected to aggressive and sometimes illegal collection tactics. The government is also able to use involuntary **collection** methods, such as seizing tax refunds, garnishing wages, and offsetting social security benefits, to recover unpaid loan amounts. Furthermore, the borrower is ineligible for additional financial aid while in default, which is a problem for borrowers who need financial aid to continue their education. As will be discussed in further detail, some borrowers may be eligible to get out of default and into an affordable repayment plan.

## Understanding the Client's Situation

Though many student loan borrowers face similar issues, it is important to take an individualized approach to understanding the client's situation to find the best solution that weighs both physical and economic safety risks.

The National Student Loan Data System ("NSDLS") is a database run by the US Department of Education compiling data from schools and various loan programs and can help identify what kind of federal loan a borrower has. Borrowers can access their federal student loan information online at [www.nslds.ed.gov/](http://www.nslds.ed.gov/).

## Assessing student loan debt

Because of the complicated experiences and feelings surrounding debt for many survivors, advocacy to address student loan debt requires an open, honest, and sensitive assessment. The screening and assessment questions presented here are for issue spotting (often called, intake questions), are not meant to be prescriptive, and conversations around student loans should not be limited to these questions. For a fuller description of a survivor centered approach to economic assessment, see the **Introductory** chapter in this Guidebook (pg. 11).

The following information can help guide interactions with the survivor:

- Do you know what kind of loan(s) you have (and use the National Student Loan Data System (NSLDS) to confirm)?  
**Note:** The difference between federal and private loans is not always clear because the same lender may make both kinds of loans. Since the NSLDS only lists federal loans, determining that a loan is listed in the NSLDS is a way of verifying that it is a federal loan. The borrower's promissory note will also state the federal loan program under which the loan was extended if it is a federal loan.
- What is the status of your loans (e.g., current, delinquent, default, in forbearance or deferment)? If the loan is a federal loan, the NSLDS will show its current status.
- How much do you still owe? What are the monthly payments? Do you remember the date of the last payment?
- [If the survivor is married] Do or did you and your spouse file taxes jointly or separately? Who controls the household finances, tax filings, etc.?
- What is your current income, family size, and financial ability?
- Has the lender tried to seek repayment from you?
- Where and when did you go to school? Did you finish or have problems with the school?
- Are you trying to go back to school? Would you need more loans to do so? If so, then avoiding or getting out of default is critical.
- Have you ever filed for bankruptcy?
- Are you a veteran or have a disability?

### Practice Tip

For survivors who have changed their name, especially those who have not engaged with their loans since being in school, many loan documents will be in the name used when the survivor was in school. Depending on the reason for the name change, this can be a sensitive issue for survivors.

Because private loans operate on the terms of their individual promissory notes, some of these general considerations may not be relevant, and advocates should closely read the loan agreement to determine next steps. Private loans will not show up on the borrower's NSLDS report. Though there is no official database of private loans, many will appear on the borrower's credit report.

**Case Scenario:** *For Anne, because she is not certain of the status of her loan, reviewing the NSLDS report will be critical. It will also ensure that she knows about all of the federal loans in her name. Assuming that the NSLDS report confirms that her loans are not yet in default, it will help determine approximately how much time she has to resolve the loan situation.*

## Remedies and Solutions for Federal Loans

### Loan discharge or cancellation

Regardless of whether the borrower is in default, loan discharge should be considered first because it is the best option and provides the most complete remedy for borrowers. The primary discharge programs are related to school closure and certain school conduct, disability or death, profession, or repayment plan. School-related discharges are available in some limited circumstances, such as if the borrower was unable to complete an

educational program because the school closed, or if the school falsely certified the borrower's eligibility for federal aid.

#### Practice Tip

The Department of Education maintains a detailed online chart of discharge programs on the Federal Student Aid [website](#). For more information on loan discharge, see the [Federal Student Loan Cancellation](#) page on NCLC's Student Loan Borrower Assistance site.

The National Consumer Law Center ("NCLC") established the Student Loan Borrower Assistance Project, a free online resource for information about student loan borrower rights and relief. The Project is not associated with the federal government.

Additionally, a borrower may be able to raise a borrower defense to repayment premised on misconduct by the school that harmed the borrower—for example, if the school breached a contract with the borrower, or misrepresented job placement rates and the borrower relied on those placement rates when deciding to attend. A successful

borrower defense may result in full or partial cancellation of the loan. As of this writing, the Department of Education is developing new rules governing borrower defenses, so this area is in flux. For more information, see the [borrower defense page](#) on NCLC's Student Loan Borrower Assistance site.

Applying for a federal loan discharge or borrower defense is free, and application forms are available through the Department of Education website or the borrower's loan servicer.

#### Practice Tip

The borrower may also consider seeking a discharge through bankruptcy. Declaring bankruptcy can protect borrower against collection actions on all debt for a period of time, but bankruptcy can have additional costs and remain part of the borrower's credit history. Furthermore, discharging student loans through bankruptcy is much more difficult than discharging other debt. For more information on discharging loans under bankruptcy, see Chapter 11 in National Consumer Law Center, [Student Loan Law](#) (5<sup>th</sup> ed. 2015). Also, see the Bankruptcy chapter in this Guidebook.

### Pre-default repayment

If the client is not yet in default, the next step is to consider pre-default repayment options, including income-driven repayment plans, which are often a desirable alternative to standard, graduated, or extended repayment plans for borrowers facing difficulty with their payments. Borrowers may also want to consider forbearance or deferment.

## Standard, graduated, and extended repayment plans

Under the standard repayment plan, monthly payments will be the same amount for each installment period and will only change if there is a variable interest rate. Standard plans carry the highest monthly payments, and generally, borrowers must pay within five to ten years. Borrowers who do not select a different repayment plan within the allotted time period will be automatically assigned the standard repayment plan. Under the graduated repayment plan, monthly payments start out low and increase over the course of the repayment period. For most borrowers, income-driven repayment plans are a safer option because they base payments on actual income, rather than an expectation of reliable raises, and they reduce payments if income drops. The extended repayment plan applies to borrowers with a loan exceeding \$30,000. Under this plan, the borrower may repay on either a fixed or graduated scale for longer than ten years, but no more than 30 years.

### Practice Tip

Beware of “Student Loan Relief” companies. Predatory companies have targeted borrowers, particularly low-income and vulnerable borrowers, by claiming to provide a service to aid borrowers in applying for reduced loan payments. These companies often charge excessive fees and may falsely hold themselves out to be authorized agents of the federal government. Applying for reduced loan payments on a federal student loan is free, and can be done online using the Department of Education’s website or with help from the borrower’s loan servicer. Similarly, applying for a federal loan discharge is free. Be wary of any company your client may have paid to aid in applying for relief.

## Income-driven repayment plans

In order to stay out of default while also being able to afford her monthly payments, Anne will want to explore one of the income-driven repayment plans. Income-driven repayment plans calculate the borrower’s monthly loan repayment using income and family size. Though lower payments under income-driven repayment plans mean borrowers may take longer to pay off loans, this is preferable to the consequences of default. There are currently four main income-driven repayment options: Income Based Repayment (“IBR”), Pay As You Earn (“PAYE”), Revised Pay As You Earn (“REPAYE”) and Income Contingent Repayment (“ICR”) plans.

### Income-Driven Repayment Plan

The Department of Education’s income-driven repayment plan selection form includes the option to place the borrower on the plan with the lowest monthly payment of the income-driven plans for which the borrower qualifies.

IBR, PAYE, and REPAYE are the three newest and most generous plans for borrowers. All three plans calculate payments at 10 or 15 percent of the borrower’s discretionary income. (See table below.) For these repayment plans, discretionary income is defined as adjusted gross income in excess of 150 percent of the poverty guidelines. After 20 or 25 years of repayment, any remaining balance will be forgiven. (These forgiven amounts are currently treated as taxable income.) Under each of the three plans, the borrower’s calculated monthly payment will be \$0 if the borrower’s adjusted gross income is below 150 percent of the poverty guideline. Since Anne is not currently working and does not appear to have any taxable income, she is like to qualify for a zero dollar monthly payment. This means that although she will not be making payments on her loans, her

Failure to pay will not be considered default, and she will accrue time in the repayment plan that will count towards forgiveness.

Subtle differences may influence which of these three plans is likely to be best for a given borrower. For more details on the comparison of REPAYE, PAYE, and IBR, see § 3.3.3.9 in National Consumer Law Center, [Student Loan Law](#) (5<sup>th</sup> ed. 2015).

Plan	Repayment Calculation
<b>Pre-July 2014 IBR</b>	Lesser of 15% of discretionary income or monthly payments the borrower would have made under the standard repayment plan as of the date the borrower entered plan
<b>PAYE</b>	Lesser of 10% of discretionary income or monthly payments the borrower would have made under the standard repayment plan as of the date the borrower entered plan
<b>REPAYE</b>	10% of discretionary income

ICR plans are primarily useful for borrowers who had parent PLUS loans and consolidated them into Direct consolidation loans. Monthly payments on ICR are usually higher than the other income-driven repayment plans. Balances are forgiven after 25 years of repayment.

**Practice Tip**

It is important for survivors, especially those who are in a shelter or otherwise in an unstable housing situation, to understand these consequences and to have a plan in place to ensure that they can receive their loan notices. In some circumstances, a survivor's inability to receive loan notices may mean that an income-driven repayment plan is not a viable option.

Eligibility for income-driven repayment plans varies and is based on (i) the type of loan, (ii) when the loan was originated, and (iii) whether the borrower has partial financial hardship. Importantly, parent PLUS loans are not eligible for any of these plans. A summary chart created by the Institute for College Access and Success to help borrowers understand the various income-driven repayment plans is available [online](#).

For all income-driven repayment plans, borrowers must annually recertify their income and family size so the monthly payment amount can be readjusted as necessary each year. Borrowers may also request their loan servicer to recalculate the monthly

payment amount at any time based on a loss of income or increase in family size. Failing to recertify on time annually may lead to negative consequences, including an abrupt increase in monthly payments and capitalization of accrued interest.

Borrowers may apply for income-driven repayment plans on the StudentLoans.gov website or by sending in a paper form that can be obtained from the borrower's loan servicer. Unfortunately, applying for an income-driven repayment plan can be complicated for survivors, especially for survivors like Anne who do not have access to important financial documents. Survivors who are separated from their spouses or file taxes separately should take note of some differences in the repayment

**Public Comments to U.S. Department of Education on Student Loans for Married Borrowers**

CSAJ and NCLC partnered to provide comments to the U.S. Department of Education (DOE) regarding married survivors' experiences with student loan debt when the DOE was formulating the REPAYE plan. This resulted in the exception for survivors to continue filing taxes as "married filing separately" and qualify for the income-based repayment plan. See the [comments here](#).

plans. For married borrowers who file taxes separately from their spouses, under IBR and PAYE, only the borrower's own individual income is be considered. REPAYE generally considers both the borrower's and spouse's income and eligible student

debt, although the Department of Education allows individualized treatment for borrowers who certify that they are either separated from their spouses or are unable to reasonably access their spouses' income information—a common circumstance in domestic violence situations. A borrower whose sole source of income is public assistance can certify that they have no taxable income and will have a \$0 monthly payment.

For more detailed information on the various income-driven repayment plans and how to apply, please see Chapter 3 in National Consumer Law Center, [Student Loan Law](#) (5<sup>th</sup> ed. 2015), or go to NCLC's [Student Loan Borrower Assistance](#) site. The Department of Education also maintains helpful information about federal student loan repayment options, including on the Student Loans.gov website and in a [February 2016 FAQ](#).

### Postponement options

As in Anne's case, a borrower who is not yet in default may also consider postponing repayment as an alternative to a repayment plan. Deferments or forbearances are postponement options, and both carry qualification requirements and different implications for accruing interest.

Deferments, which allow the borrower to postpone loan repayments, are available in limited circumstances. The grounds for deferment that are most likely to be relevant to survivors are that the borrower is currently in school, is unemployed, or faces economic hardship. Deferment is an option only for borrowers not yet in default. Deferment can be particularly useful because interest will not accrue on subsidized loans or Perkins loans during the deferment period. However, interest will still accrue on all other federal loans.

#### Practice Tip

When discussing the repayment options, note the implications of the survivor's tax filing and discuss the option of certifying the survivor's separation or inability to obtain information. For more on tax filing status and tax related issues, see the Tax Advocacy chapter in this Guidebook.

#### Repayment Estimator

The Department of Education [online repayment estimator](#) is a tool allowing borrowers to estimate their monthly payments under different payment plans using their FSA ID (or estimates of their loan balances and rates) and income.

#### Federal Student Aid Identification

Borrowers must use their Federal Student Aid ("FSA") ID to access the Department of Education's FSA online systems, including NSLDS and online applications for income-driven repayment plans and loan consolidation. Borrowers can create or recover their [FSA ID online](#).

#### Practice Tip

Advocates should be aware that borrowers may be steered into a deferment or forbearance. These can be administratively easier for servicers to complete. On the surface, a deferment or forbearance may seem more relevant to the borrower's circumstances. For example, Anne may be tempted to apply for an economic hardship forbearance or an unemployment forbearance. But in many cases, an income-driven repayment plan will be more favorable, especially in the long term. For low-income borrowers, monthly payments may be \$0, and thus will provide the same benefit as a deferment or forbearance, while also allowing the borrower to accrue time towards the 20 or 25 year forgiveness period.

If Anne was to apply and qualify for deferments, her subsidized and Perkins loans would not accrue interest, but her unsubsidized loan would.

Each deferment can be granted for up to six months, and the borrower must reapply to extend the deferment after the deferment period expires. Deferments generally carry maximum time limits. For example, a borrower may not obtain more than three years' worth of economic hardship deferments. The borrower may reach out to the loan servicer to obtain a deferment form or access most of the [forms on NCLC's Student Loan Borrower Assistance](#).

If Anne does not qualify for deferment, she may need to consider forbearance instead. During forbearance, interest will continue to accrue on all loans. Similar to deferment, forbearance is a method of postponing payment, but can also be a means of gaining an extension on payments or making smaller payments. For borrowers not yet in default, forbearance can delay going into default. Forbearance is also available to borrowers even if the 270-day default threshold has been passed, as long as the loan has not been transferred to a guaranty agency or collector. A borrower who was on an income-driven repayment plan but did not recertify in time may be able to obtain a forbearance that will prevent the loan from going into default during the gap while the monthly payment is

recalculated based on the late recertification. A forbearance can also be backdated to cure a delinquency.

#### Practice Tip

Forbearance is a tool for borrowers to postpone or reduce payments if financial distress is not likely to last long. What did your financial evaluation with Anne reveal about her short and long-term economic situation? Does she anticipate needing a short-term reprieve or are other expenses, debts, or bills going to take priority for the foreseeable future? For more information on repayment postponement options, please see Chapter 4 in National Consumer Law Center, [Student Loan Law](#) (5<sup>th</sup> ed. 2015).

### Getting out of default

Assume Anne is not eligible for loan discharge, and she is unable to resolve her student loan issues. More than 270 days pass from Anne's last payment, and she is now in default. The next step is to consider Anne's options to get out of default—specifically, **consolidation** or **rehabilitation**. Once Anne is out of default, she may access the various repayment plan options discussed above.

**Consolidation** is the process by which federal student loans can be combined or converted into a Direct Consolidation loan. The newly

consolidated loan is considered a new loan and offers a fresh start by getting the borrower out of default. Importantly, to be eligible for consolidation, the borrower must have at least one outstanding FFEL or Direct loan. The borrower must also elect to either (a) make three consecutive reasonable and affordable payments (which will be based on the borrower's total financial circumstances), or (b) agree to select an income-driven repayment plan for repayment of the new consolidation loan. Most borrowers will select an income-driven repayment plan and will thus be eligible for a prompt consolidation. If the

loans the borrower wishes to consolidate are subject to judgment or wage garnishment, the judgment or garnishment must be vacated or lifted, respectively, before the borrower can pursue consolidation.

#### Practice Tip

Most forms are available in both English and Spanish. However, Consolidation applications are currently only available in English.

A borrower can also **rehabilitate** a loan out of default by making nine on-time payments in agreed-upon amounts within ten consecutive months. The

borrower will generally need to provide income information to the loan holder to determine the payment amount, generally set at 15 percent of discretionary income (the pre-2014 IBR formula), subject to a minimum payment of \$5 per month. If the payment amount using the 15 percent formula is not affordable, borrowers can request that the amount be based upon their income and expenses. However, the borrowers should be aware that the monthly payment amount after getting out of default will likely be 10 or 15 percent of discretionary income. Notably, loans rehabilitated on or after August 14, 2008, cannot be rehabilitated again. Therefore, before choosing rehabilitation, the borrower should ensure that the repayment plan after getting out of default will be affordable. As with consolidation, loans that are subject to a judgment are not eligible to be rehabilitated.

Consolidation and rehabilitation both offer benefits and drawbacks that borrowers should carefully weigh in light of their circumstances. Consolidation tends to be a faster and more reliable means of getting out of default than rehabilitation.

However, some borrowers will be ineligible to consolidate out of default, for example, if they have already consolidated all of their federal loans into a Direct Consolidation loan. Some borrowers may prefer rehabilitation because, unlike consolidation, rehabilitation removes the loan default from the borrower's credit history (though it does not remove missed payments or other negative history associated with the defaulted loans). A [comparison of rehabilitation and consolidation](#) can be found on the Student Loan Borrower Assistance website.

#### Think About It

If a borrower's wages are being garnished while also making monthly payments on that same loan under a loan rehabilitation agreement, the loan holder must continue collecting the loan by garnishment until the borrower makes five qualifying payments under the rehabilitation agreement. If Anne is experiencing a wage garnishment but also wants to rehabilitate her loans. After the garnishment, she may not be able to afford to pay 15 percent of her discretionary income. To resolve this problem, Anne can request that her rehabilitation payment be based upon her income and expenses. This calculation would consider the garnishment in the calculation of her expenses.

**Case Scenario:** *What does Anne's credit report look like? Is she concerned about improving her credit score (i.e. for housing or employment purposes)? What are her other financial goals? Rehabilitation might be slightly better for her credit score, but consolidation may get her out of default and set her payments at an affordable level more quickly. Which is more important for Anne's current situation? Is anything likely to tip the scales? Weigh all these questions and walk through each option when helping Anne decide if either of these options is workable. And see the Credit Reporting and Repair chapter in this Guidebook for a holistic look at prioritizing debts and repairing credit for survivors.*

Additionally, borrowers with parent PLUS loans should be careful when consolidating because if the borrower consolidates a parent PLUS loan with other federal student loans, the PLUS loan "taints" the entire consolidation loan and renders it ineligible for IBR, PAYE, or REPAYE.

With both consolidation and rehabilitation, collection fees may be added to the principal balance. However, loans held by the government may not be charged collection fees for rehabilitation. For more information on consolidation and rehabilitation, see Chapter 7 in National Consumer Law Center, [Student Loan Law](#) (5<sup>th</sup> ed. 2015) and NCLC's [Student Loan Borrower Assistance site](#).

## Collections

As previously mentioned, the federal government has extraordinary powers to collect on student loans. For example, the government may use administrative wage garnishment or seize tax refunds to collect defaulted federal student loans. Borrowers can challenge these collection actions, but timing is critical. Borrowers should check all notices to determine whether it is possible to request a hearing in time to prevent a collection action. Borrowers can request a hearing at any time, but if the request is made after the deadline on the notice, the collection action will occur until the resolution of the hearing. A borrower who does not have any money or property that can be legally taken to pay the debt is collection-proof. However, the federal government has such extraordinary collection powers—including interception of tax refunds and offset of certain government benefits—that it is rare for a student loan debtor to be completely collection-proof.

### Practice Tip

Note, there is no statute of limitations on the government collecting on defaulted federal loans. Therefore, even if a client is collection-proof, circumstances could change so that they may not be collection proof in the future. If Anne receives a notice indicating that her tax refund is subject to offset, she may be tempted to ignore this notice because Ben claimed the kids on his return and she is not expecting a refund this year. However, next year, she is expecting to work and have custody of the kids and will likely have a sizable refund that includes the Earned Income Tax Credit. The notice for tax offsets applies to future tax years as well, so ignoring the notice will jeopardize that future refund.

The federal government and FFEL loan guarantee agencies rely heavily on private collection agencies, which may also employ more “traditional” collection efforts, including making collection calls and sending collection letters. The involvement of private collection agencies may confuse borrowers as to who to contact regarding their loans and has also been found to foster abusive debt collection practices. Information about which private collection agency is collecting on a federal student loan can be obtained from the Department of Education’s Default Resolution Group (“DRG”) for loans held by the Department or, for FFEL loans, the guaranty agency identified on NSLDS. Borrowers can find contact information for DRG or their guaranty agency on the NSLDS report. When seeking to get out of default on a loan being collected by a private collection agency, borrowers or their advocates will generally need to deal with that agency to enter a rehabilitation agreement. If consolidating out of default, borrowers can apply directly [online](#).

For more information on the collection process, the major collection players, possible defenses to student loan collection lawsuits, and possible fair debt collection claims, see Chapters 8, 9, 12, and 13 in National Consumer Law Center, [Student Loan Law](#) (5<sup>th</sup> ed. 2015). Also, see the Debt chapter of this Guidebook for additional debt collection and defense strategies.

## Private Loans

Private loans can go into default as soon as a borrower misses a payment. The borrower should check what, if any, default conditions and grace periods are specified in the loan contract. Options for the borrower will differ based on the terms of the loan agreement. For example, some lenders may offer forbearance, deferment, or discharge options.

However, borrowers should be aware that private lenders may charge fees if the borrower calls upon any such option.

## Additional and Unique Considerations for Survivors

Domestic violence survivors may face unique complications when trying to address student loan issues. Because abusive partners may have controlled the finances and tax filings, survivors may have limited understanding or knowledge of income information. This can impede or slow the process for a survivor trying to apply for available remedies. Survivors may also face real barriers to accessing documentation or information. A

survivor who is still married to the abusive partner and files taxes jointly may encounter difficulty getting spousal information or signatures for income-driven repayment plan applications or accessing money for payments.

### Practice Tips

- If the borrower is in default, the next step is to try and negotiate with the lender, unless the borrower has a legal claim or defense against the lender or entity collecting on the loan.
- Private loans may not be consolidated into a Direct Consolidation loan.
- The borrower may have claims or defenses against the lender or collector, including claims that the statute of limitations has expired, the entity collecting on the loan has no authority to do so, or the lender is liable for school misconduct. Importantly, making a payment on a loan will reset the statute of limitations in many states.
- If a private collection agency is used, borrowers may have claims under the Fair Debt Collections Practices Act.
- For more on private student loan relief, see Chapter 12 in National Consumer Law Center, [Student Loan Law](#) (5<sup>th</sup> ed. 2015). The Consumer Financial Protection Bureau also provides a [student loan assistance tool](#) to help guide analysis of private loans.

**Case Scenario:** *In Anne's situation, she may also believe the only way to access important documentation and information is to go back home where Ben is, thus exposing herself to harm. Anne may avoid these problems by accessing loan documents online, electronically importing tax information into income-driven repayment application forms, certifying if she is unable to access Ben's financial information reasonably, and recertifying electronically. Given that Ben also has been handling her student loan accounts for many years, he may have sufficient information to hack into her online accounts and may be able to see Anne's application with her current contact information. Borrowers should always assess the risks of putting their current address on any document.*

A survivor experiencing housing instability may also have issues receiving critical information or notifications. Since all the income-driven repayment plans, deferments, and forbearances need to be annually renewed or recertified, it is important for the survivor to stay in contact with the lender. For federal loans, the survivor should contact the loan servicer with updated address information and should consider signing up for electronic communications if appropriate. Some survivors may opt to have their mail sent to friends and family. See the Debt chapter in this Guidebook for tips on setting up confidential mailing addresses for survivors.

Survivors who are in repayment or are delinquent should work hard to stay out of default. Survivors in default, however, need to be realistic about their capacity, especially if they are collection-proof. While there are many options available to borrowers, many of the

affordable repayment plans require a borrower to be proactive for several years in order to stay in good standing on the loan. Failing to follow through can result in re-defaulting. Unfortunately, re-defaulting can be worse than staying in default because consolidation and rehabilitation are only available one time.

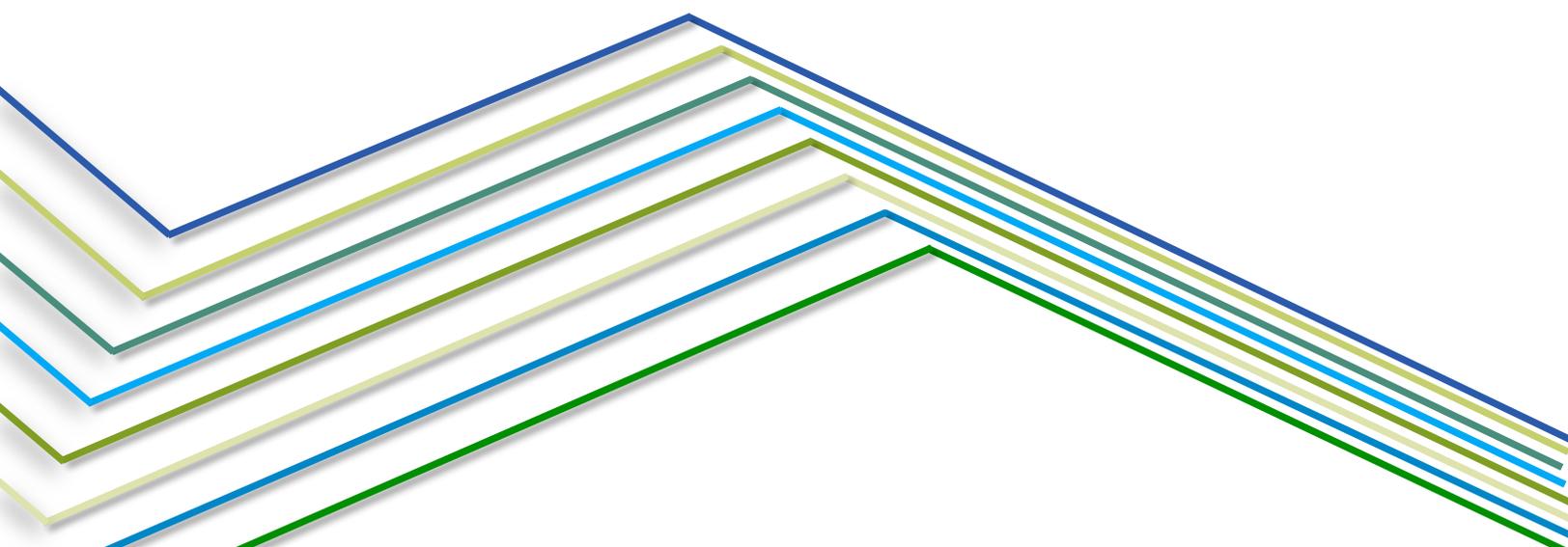
For more referral resources, see NCLC's Student Loan Borrower Assistance [referral page](#) or reference the [contact list](#) maintained by the Department of Education for various service centers. If the client has difficulty understanding English, language assistance services for public information can be reached by emailing [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov) or by calling 1-800-872-5327.

## Conclusion

Because the student loan system can be difficult to understand and navigate, student loan issues can become another burden and keep survivors from moving forward. By helping survivors understand and address the situation, advocates can help survivors tackle the problem and move on.

## Additional Resources

- National Consumer Law Center, Student Loan Law (5<sup>th</sup> ed. 2015), updated available online at [www.library.nclc.org](http://www.library.nclc.org)
- National Consumer Law Center, Student Loan Borrower Assistance (<http://www.studentloanborrowerassistance.org/>)
- Center for Survivor Agency and Justice, [Public Comments to U.S. Department of Education on Student Loans for Married Borrowers](#) (<https://csaj.org/library/view/testimony-to-u.s.-department-of-education-on-student-loans-for-married-borr>)
- Consumer Financial Protection Bureau, Repay Student Debt (<http://www.consumerfinance.gov/paying-for-college/repay-student-debt>)
- U.S. Department of Education, Federal Student Aid, Glossary ([https://studentaid.ed.gov/sa/glossary#Federal\\_Student\\_Aid\\_Programs](https://studentaid.ed.gov/sa/glossary#Federal_Student_Aid_Programs))
- U. S. Department of Education, Federal Student Aid, *Income-Driven Repayment Plans: Questions and Answers*, February 2016 (<https://studentaid.ed.gov/sa/sites/default/files/income-driven-repayment-q-and-a.pdf>)
- U.S. Department of Education, National Student Loan Data System, (<https://www.nslds.ed.gov/>)
- U.S. Department of Education, Repayment Estimator (<https://studentloans.gov/myDirectLoan/mobile/repayment/repaymentEstimator.action>)
- U.S. Department of Education, Consumer Advocate FAQs (<http://ifap.ed.gov/eannouncements/attachments/ConsumerAdvocateFAQs.pdf>)
- U.S. Department of Education, Federal Student Aid ([www.studentloans.gov](http://www.studentloans.gov))
- The Institute for College Access and Success, Summary of Income-Driven Repayment [Plans](#) ([http://ticas.org/sites/default/files/pub\\_files/existing\\_idr\\_options.pdf](http://ticas.org/sites/default/files/pub_files/existing_idr_options.pdf))



# GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR  
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



**CENTER FOR SURVIVOR  
AGENCY & JUSTICE**

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