Managing Student Loans in a Challenging Landscape

Adam S. Minsky, Esq.
Law Office of Adam S. Minsky
Boston, MA

The Numbers

- Total outstanding student loan debt: $1.5 trillion
  - Second-largest type of consumer debt (after mortgages)
- Total number of Americans with student loans: 44 million
  - Approximately 1 in 9
- Percentage of students graduating with debt: 70%
- Average 2016 undergrad student debt: $37,000.
  - 2015 was $35,000. 2014 was $33,000. 2013 was $30,000.
- Percentage of borrowers in delinquency or default: 25%


Key Elements of a Student Loan

- What type of student loan is it?
- What entity is handling the student loan?
- What’s the student loan’s status?
- What are the options for repayment?
**Types of Student Loans**

- **Federal**
  - Stafford
  - PLUS

- **Private**
  - Sub
  - Unsub
  - Grad
  - Parent

**Figuring Out the Type of Loan**

**Private**
- Pull credit report.
- Review note, application, bills, and letters for name of lender, loan program.
- Look for a co-signer or option of one (much more likely to be present).
- * Few options to manage repayment

**Federal**
- Check NSLDS ([https://nslds.ed.gov](https://nslds.ed.gov))
  - Requires FSA ID
- Review note, application, bills, and letters for name of federal loan program (i.e., “Stafford” or “PLUS”)
- *More options to manage repayment

**Key Players**

- **Lender**: The entity that originates the loan.
  - For Direct loans, this is the Dept. of Ed.
  - For FFEL loans, this is a commercial/private lender.
- **Guarantor**: For FFEL and some private loans only, the entity that “insures” the lender.
- **Servicer**: The entity that deals with day-to-day operations of the loan.
- **Collection Agency**: Represents the guarantor or lender when loan is in default (not on NSLDS).
Possible Loan Statuses

- Grace Period
- Repayment / Current
- Deferment
- Forbearance
- Delinquency
- Default

Postponing Repayment

Deferred (federal)
A delay in repayment. Available deferments include:
- Student deferments for at least half-time study
- Graduate fellowship deferments
- Unemployment deferments (for up to three years)
- Economic hardship deferments (granted one year at a time for up to three years)

Forbearances (federal and private)
- The government does not pay interest during the forbearance period (for federal loans)
- Economic hardship forbearances available (up to three years)
- Significant interest consequences due to capitalization
- Can be retroactive to cancel out delinquency
- Private loan forbearance available, but very limited
Balance-Based Repayment (federal)

Monthly payments made based on loan balance and interest rate. The general rule is the longer the repayment term, the lower the monthly payment, but the more you’ll pay in total.

- **Level / Standard**: 10 year, 25 year, 30 year (if consolidated)
- **Graduated**: 10 year, 25 year, 30 year (if consolidated)

*Tip: Be wary of graduated plans!*

Income-Driven Repayment (federal)

If borrower cannot afford balance-based payments on federal loans, consider income-driven repayment options

- Affordable payments even for large federal loan balances
- Better long-term solution than deferments and forbearance (which will run out)
- Poverty exemptions
- Progress towards loan forgiveness
- Interest subsidy on subsidized loans for first 3 years

Income-Contingent Repayment (ICR)

- Direct loans ONLY
- 20% of "discretionary income," which is the difference between AGI and 100% of federal poverty level.
- 25-year repayment term, then remaining balance is forgiven.
  "Taxable?"
- Example: Single borrower, $50,000 federal loan, AGI = $40,000. ICR payment = $445.
- Joint income of married borrowers, unless they file taxes separately
- ICR doesn’t make sense for most borrowers, except certain Parent PLUS borrowers (must first consolidate)
Income-Based Repayment (IBR)

- Direct or FFEL loans. NO PARENT PLUS loans.
- 15% of “discretionary income,” which is the difference between AGI and 150% of federal poverty level.
- 25-year repayment term, then remaining balance is forgiven. *Taxable?
- Example: Single borrower, $50,000 federal loan, AGI = $40,000. IBR payment = $280.
- Joint income of married borrowers, unless they file taxes separately.

Pay-As-You-Earn (PAYE)

- Direct Loans Only. NO PARENT PLUS loans.
- 10% of “discretionary income.”
- 20-year repayment term, then remaining balance is forgiven. *Taxable?
- Example: Single borrower, $50,000 federal loan, AGI = $40,000. PAYE payment = $190.
- Joint income of married borrowers, unless they file taxes separately (like IBR, ICR)
- Interest capitalization limited to 10% of original PAYE loan balance

Revised Pay-As-You-Earn (REPAYE)

- Eliminates “new borrower” restrictions placed on PAYE and “New IBR”
- 10% of “discretionary income” (just like PAYE)
- Some important differences from other plans:
  - Only Direct Loans.
  - Joint income for married borrowers regardless of tax filing
  - 20-year repayment term for undergraduate loans.
  - 25-year repayment term if borrower took out any graduate loans.
  - Interest benefit – 50% of interest waived during negative amortization
Public Service Loan Forgiveness

- Only Direct Loans
- Payments must be made through eligible payment plans (10-year Standard, ICR, IBR, PAYE, or REPAYE). Can’t be in default.
- Full-time, qualifying public service employment for each payment, and when borrower applies for forgiveness
- Can submit application to “track” payments
- Forgiven amount not taxable income

Perkins Loan Forgiveness

- ONLY available for Perkins loans
  - Be careful about consolidating!
- ONLY available for certain specific full-time professions:
  - Nurse, medical technician, provider of early intervention services for the disabled, speech pathologists and special ed teachers in certain low-income schools or educational service agencies
  - Can provide up to 100% forgiveness over 5 years, with no payments required
  - Complete application through school (lender) or servicer

Repayment Assistance

- National Health Service Corps (NHSC)
  - Competitive application process
  - Must be dedicated primary care provider in medicine (MD, DO, NP, CRNP, PA), dentistry (DMD, DDS, RDH), or mental health (LSP, LCSW, PNS, MFT, LPC)
  - Must serve community in need at an NHSC-approved site with a minimum two-year commitment
  - Be wary of this program’s “dark side”
- AmeriCorps, PeaceCorps
- Employer-based repayment assistance
- School-based repayment assistance
Federal Direct Consolidation

- **Overview**
  - Federal loans only – one combined balance
  - Weighted average interest rate

- **Benefits**
  - Simplified repayment
  - Converts non-Direct loans into a Direct loan
  - Opens up new repayment plan options

- **Drawbacks**
  - New loan, new repayment term
  - Interest capitalization
  - Individual loans cease to exist

Refinancing / Consolidating through a private lender

- **PROS:** Potentially lower interest rate, better repayment terms (especially for high-interest private loans)
- **CONS:** If you refinance federal loans through a private lender, you forever lose out on federal student loan program benefits and consumer protections.
- **Considerations:** Interest rate, repayment terms/conditions, origination fees
- **Rules of Thumb:**
  - Refinancing high-interest private loans = Good idea!
  - Refinancing high-interest federal loans = It Depends.
  - Consider life insurance and LTD insurance to mitigate some risks

SoFi, Earnest, LendKey, Common Bond, DRB, Credible, some banks

Recently Enacted Legislation

- **Temporary Expanded Public Service Loan Forgiveness (TEPSLF)**
  - Addresses borrowers who were on the wrong repayment plan (but not borrowers who have the wrong loan)
  - Discretionary fund established
  - Exceptionally complicated

- **Tax relief for federal discharge due to disability or death**
  - No longer treated as taxable income – no 1099-C
Competing Proposals - 2018

- **PROSPER Act (2017-2018)**
  - Repeals PSLF and eliminates IDR plans
  - Eliminates Stafford and Grad PLUS loan programs
  - Would grandfather in current borrowers
  - Bill is effectively dead

- **Aim Higher Act (2017-2018)**
  - Increase Pell Grants
  - Incentives to states for free college
  - Preserves PSLF program and IDR plans
  - Unlikely to pass

Proposed Legislation - 2019

- **White House budget proposal (2019)**
  - De-fund PSLF and eliminate current IDR plans
  - Would grandfather in current borrowers
  - Was rejected by Congress in 2017-2018

- **Senator Lamar Alexander’s proposal (2019)**
  - Reduce number of repayment plans to: (1) a 10-year Standard plan and (2) an income-driven plan with a 20-year term
  - Mandatory payroll deductions to make student loan payments
  - Unclear whether loan forgiveness would be preserved
  - Unlikely to pass in its current form

Additional Proposals

- Sen. Elizabeth Warren -- massive student debt forgiveness
- Sen. Maggie Hassan -- stop predatory lending
- Sen. Gillibrand -- preserve, simplify, and expand PSLF
- Sen. Rubio -- freeze or eliminate federal loan interest rates
- Sens. Warren and Rubio -- stop licensure suspensions
Pending Litigation

- Commonwealth of Massachusetts v. PHEAA / FedLoan
  - Accuses PHEAA of widespread servicing problems, particularly for borrowers seeking PSLF and IDR plans
- American Bar Association v. PHEAA and Dept. of Ed
  - In response to PHEAA reversing PSLF decisions
  - RECENT DECISION: Victory for borrowers
- CFPB (and State AGO's) v. Navient
  - Alleging widespread systematic servicing problems

Resources:

- https://nslds.ed.gov/
- https://studentloans.gov
- www.nclc.org
- www.ibrinfo.org
- www.nhsc.hrsa.gov

Get to know me:

- Web: www.minsky-law.com
- Blog: www.BostonStudentLoanLawyer.com
- LinkedIn: /AdamSMinsky
- Twitter: @AdamSMinsky
- Fbook: @BostonStudentLoanLawyer