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Consequences of a Student Loan Default

A student loan default occurs when the borrower fails to stay current with the payments on their student loan. Delinquency begins the first day a borrower misses a payment. If a borrower remains delinquent for nine months, the student loan enters default. Consequently, a borrower may be responsible for collection fees and for the commission charged by the debt collection agency.

The Department of Education can do any of the following to collect the debt:

Take Your Tax Refund

One of the most effective methods that the Department of Education and loan guaranty agencies use to collect defaulted student loan debt is to seize a borrower's tax refund. Every year the IRS receives a report from the Department with a list of student loans in default. Before a tax offset is removed from the refund, the borrower will receive a notification from the Department or the loan guaranty agency with the option of paying the debt or appealing the offset. Unless the borrower makes an appeal, the IRS automatically takes a borrower's federal and/or state tax refund and applies it towards the loan repayment. A borrower may appeal the offset by asserting one of the following defenses:

- The loan has been repaid
- The loan is being paid under a negotiated repayment plan
- The loan is in deferment, forbearance, or has been cancelled
- The borrower is deceased or suffers from permanent and total disability
- The loan does not belong to the borrower
- The loan is unenforceable because of fraud, such as a forged signature
- The school owes the borrower a refund
- The borrower's school closed
- The borrower was falsely certified for loan eligibility
- The borrower has filed for bankruptcy and the case is still pending, or a bankruptcy discharged the loan

The borrower must issue an objection to the offset within 65 days from the date of the notice.

Garnish Your Paycheck

The Department of Education and loan guaranty agencies may also garnish wages to collect a borrower's student loan debt. It is unnecessary to obtain a court judgment prior to garnishment. The Department and the loan guaranty may garnish up to 15 percent of the debtor's disposable income. The amount must be less than 30 times the hourly minimum wage (\$7.25/hour effective July 24, 2009), however. Therefore, the Department or agency may garnish no more than \$217.50 of a debtor's weekly income.

A borrower will receive a notification with information about the garnishment, the opportunity to repay the debt, and the right to request a hearing to dispute the wage garnishment. The borrower can base an objection on the reasons listed above.

If a borrower requests a hearing within the deadline specified in the notice, the borrower's wages are safe from garnishment while the case is under review. If the debtor fails to make such a request by the deadline, however, wage garnishment may proceed, but will terminate if the debtor ultimately prevails in a hearing.

Take Your Federal Benefits

The Debt Collections Improvement Act allows the government to take some social security benefits from a student loan borrower in default. Supplemental Security Income is off limits, but Social Security retirement benefits and Social Security

disability benefits can be set aside to pay loan debt. Only \$9,000 per year, or \$750 per month, can be used, however. If the borrower receives less than this amount, taking Social Security benefits is prohibited. Additionally, the amount cannot exceed 15 percent of the borrower's federal benefit.

The borrower may object to the offset by requesting a review within the time specified by the notice. A borrower can also request a suspension or a modification because of financial hardship. For the review, the borrower will have to provide documentation, such as proof of yearly income, proof of the federal benefit, and a financial statement.

Revoke Your Professional License

Some states allow professional and vocational boards to revoke, suspend, or refuse to certify a license when the member has defaulted on student loan debt. This typically applies to attorneys, medical professionals, teachers, and state officers. The borrower may request a hearing with the board to review the potential action.

Sue You

The Department of Education can sue to collect on a student loan default. Because a statute of limitations is inapplicable, the agency has no time limitations on collecting the debt.

The Department can collect from assets such as bank accounts, valuable property, and can place a lien on the borrower's real property. As the result of such a lien, the borrower may not sell the property until the lien is removed.

If the borrower does not have enough valuable assets or a lawsuit would exceed the amount recovered from the debtor, the Department will most likely decide against suing the borrower.

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