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Adrianna Anderson

THE STUDENT LOAN CRISIS

What Foreclosure Advocates
Need to Know

Today's Presentation

DISCUSSION POINTS

Overview of Student Loan Crisis

- How Student Loan Debt Impacts Homeownership
- COVID-19 Relief and Updates on Payment Resumption

Managing Student Loan Debt

- Repayment Options
- Loan Forgiveness Programs
- Case Scenario

EDCAP Assistance for Borrowers

Reporting Problems

New York

2019 State of Student Debt



12.6%

of borrowers living
in rural New York
owe student
loan debt

X,XXX,XXX
student loan borrowers

\$90.6 billion
in outstanding student debt

4,392

New Yorkers have submitted
complaints about their
student loan company

1-in-5

New Yorkers owe
student loan debt

45%

of young adults (18-35)
living in New York owe
student loan debt

**\$90.6
BILLION
OWED**

IMPACTS ON HOMEOWNERSHIP

Decline in homeownership directly linked to student debt crisis

Between 2005 -2015, student loan debt doubled in the US, while homeownership rates declined, particularly in younger households. Homeownership rates for ages 25-32 dropped 9% compared to 5% overall.

According to a 2015 Federal Reserve study, for every 10 percent in student loan debt a person holds, their chance of home ownership drops 1 to 2 percentage points during their first five years after school.

<https://www.federalreserve.gov/econresdata/feds/2016/files/2016010pap.pdf>

IMPACTS ON HOMEOWNERSHIP

85% of borrowers report that student loan debt has limited their ability to save for homeownership & other financial goals

Student debt limits ability to save for a down payment, and debt-to-income ratio can prevent student loan borrowers from getting a mortgage.

For borrowers in forbearance, deferment, or on income based-repayment plans, HUD previously required FHA lenders to calculate a borrower's monthly student loan payment as 1% of their outstanding student loan balance. This prevented a lot of homebuyers from receiving FHA loans.

IMPACTS ON HOMEOWNERSHIP

2021 FHA policy update for calculating student loan payments should make it easier for borrowers to qualify for FHA loans

HUD now allows for the actual student loan payment amount to be used. For loans in deferment, forbearance, or showing a \$0 payment, 0.5% of the total loan balance will be used.

"These changes seek to further HUD's mission of providing access to credit, while ensuring Borrowers maintain a long-term ability to repay their debt."

<https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-13hsgml.pdf>

IMPACTS ON HOMEOWNERSHIP

Negative credit reporting due to delinquent or defaulted student loans prevents homeownership and mortgage refinancing

Negative information about private and federal student loan debts are reported on credit reports for seven years.

If federal student loans are in default – even if they're not on credit reports, the borrower cannot get a FHA, VA, or USDA Loan.

31 U.S.C. § 3720B bars "delinquent Federal debtors from obtaining Federal loans." These debts are reported by HUD via CAIVRS (Credit Alert Verification Reporting System).

IMPACTS ON HOMEOWNERSHIP

Problems with student loan repayment can lead to other financial difficulties

The average student loan payment is \$395 per month, making even small emergencies difficult to afford while staying on track with loan payments. Enrolling in income-driven repayment plans is challenging, and in some cases, even those payments are unaffordable.

Borrowers are steered into costly deferments and forbearances by loan servicers instead of income-driven plans that could help them get on track.

IMPACTS ON HOMEOWNERSHIP

Racial impact of student loan debt on homeownership

People of color are more affected by the post-housing-crisis tightening of conventional underwriting and are more likely to rely on FHA loans to purchase a home.

Black households also carry more student debt than white households. Black women, acutely feel these disparities, graduating with almost 60 percent more debt than white men.

IMPACTS ON HOMEOWNERSHIP

Student loan debt can impact homeowners facing foreclosure

Defaulted student loan debt makes refinancing mortgages difficult. For loan modifications, if there is a judgment lien on the home related to a student loan lawsuit, the borrower will have to convince the judgment creditor to agree to a lien subordination.

Student loans can also make bankruptcy plans more complicated. Student loans payments can be reorganized in Chapter 13 plan, but generally are difficult to discharge.

THE CARES ACT

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress on March 27, 2020

RELIEF FOR STUDENT LOAN BORROWERS

On April 6, 2022, President Biden extended the payment suspension on certain federal student loans through August 31, 2022. Borrowers should prepare for repayment now. There is no guarantee that another extension or loan forgiveness is coming.

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/06/statement-by-president-biden-extending-the-pause-on-student-loan-repayment-through-august-31st-2022/>

THE CARES ACT

COLLECTION SUSPENSION

As part of the payment pause, collection efforts have also been suspended for certain defaulted federal loans.

Tax refunds (and child tax credits) will not be withheld. Wages will not be garnished. Social Security payments (including disability benefits) will not be withheld. Collection calls and billing statements will not be sent out. Interest will not accrue.

OPERATION FRESH START

The Department of Education has also announced plans to provide remove borrowers from default status once repayment resumes.

FRESH START FOR BORROWERS IN DEFAULT

Details have yet to be posted, but the relief should include:

- suspension of additional collection efforts,
- removal of the default from credit reports,
- ability for borrowers to enroll in income-driven repayment plans,
- ability to receive additional student financial aid.

PREPARING FOR REPAYMENT

PLAN AHEAD TO AVOID DEFAULT

There is massive confusion regarding student loan repayments, so connecting borrowers with student loan advocates is crucial.

Borrowers should **be on alert for scammers** looking to exploit this confusion.

The 2022-2023 NYS Budget included increased funding to expand **EDCAP statewide** and provide free expert assistance to New Yorkers with student loan issues.

CONSEQUENCES OF DEFAULTING

Defaulting on private loans could lead to **decreased credit rating, accrual of large collection fees, and lawsuits to collect on the debt.** If court judgments are entered, borrowers face wage garnishments, bank account freezes, and liens on real property.

The federal government has even greater powers for collecting on defaulted debts without court orders. There is no statute of limitations for federal student loans, so they can pursue borrowers forever. The federal government can **seize tax refunds; garnish wages and government benefits, including Social Security; deny borrowers additional student financial aid; and add up to 25% in collection fees.**

Info Needed from Borrowers

- 1 WHAT **TYPES OF LOANS** DOES THE BORROWER HAVE?
- 2 WHAT IS THE **STATUS OF THE LOANS**?
- 3 WHAT **REPAYMENT PLAN** ARE THEY ON?
- 4 WHO IS THEIR **LOAN SERVICER**?
- 5 WHAT IS THEIR **JOB, INCOME, SCHOOL HISTORY**?

In order to advise borrowers effectively, you will need some basic information about their student loans. Student loan laws and policies are complicated and are changing frequently. Don't hesitate to refer borrowers to more expert assistance when in doubt.

Loan Types

PRIVATE LOANS

Private student loans are offered by schools and financial institutions (banks, credit unions, etc.) to cover various expenses for higher education.

Terms of the loans will depend on the promissory note and loan agreements. Private student loans are not eligible for federal relief programs.

Borrowers may be able to find information about their private student loans on their credit reports.

Loan Types

FEDERAL LOANS

- **Direct Loans:** Direct Subsidized Loans, Direct Unsubsidized Loans, Direct Plus Loans for Graduates and Professionals, Direct Plus Loans for Parents, Direct Consolidation Loans.
- **FFEL Loans:** Came from banks, guaranteed by the Federal Government. *No longer available.*
- **Perkins Loans:** Subsidized loans offered to students with great financial need directly through the school. *No longer available.*

To find federal student loan information, visit <https://studentaid.gov/>

Loan Status

- **In School Deferment:** While you are in school at least half time. *No payment is required.*
- **Grace Period:** The six months following graduation, leaving school, or dropping below half-time status. *No payment is required.*
- **Deferment or Forbearance:** Provides temporary relief from payment (up to one year at a time). *Generally, no payment is required.*
- **Repayment:** You are enrolled in a repayment plan and a *payment may be required.*
- **Default:** You have been delinquent or have failed to make payments for at least 270 days and your *loans are now payable in full.*

Remember **Operation Fresh Start** should remove borrowers from default status before repayment resumes.

Repayment Plans

STANDARD REPAYMENT PLANS

- **Standard** (10 -30 years)
- **Graduated** (10 -30 years)
- **Extended Fixed** (Up to 25 years)
- **Extended Graduated** (Up to 25 years)

Based on size of loan, interest rate and pre-determined payback period.

INCOME-DRIVEN REPAYMENT PLANS

- **IBR**: Income-Based Repayment Plan
- **ICR**: Income-Contingent Repayment Plan
- **PAYE**: Pay As You Earn Repayment Plan
- **REPAYE**: Revised Pay As You Earn Repayment Plan

There are different eligibility requirements for each plan, and payment amounts differ.

Loan Servicers

- **Cornerstone**, 1-800-663-1662
- **ECSI**, 1-866-313-3797
- **FedLoan Servicing (PHEAA)**, 1-800-699-2908
- **Granite State-GSMR**, 1-888-556-0022
- **Great Lakes Educational Service**, 1-800-236-4300
- **HESC/Edfinancial**, 1-855-337-6884
- **MOHELA**, 1-888-866-4352
- **Navient**, 1-800-722-1300
- **Nelnet**, 1-888-486-4722
- **OSLA Servicing**, 1-866-264-9762

Loan servicer changes are coming, as many companies are exiting the federal loan servicing program.

EVALUATE REPAYMENT OPTIONS

If a borrower cannot afford federal loan payments, consider income-driven repayment options. These plans offer affordable payments, are better long-term solutions than deferments and forbearance (which will run out), and help borrowers work toward towards loan forgiveness. In some cases, payments may be as low as \$0 per month.

The FSA Loan Simulator is a helpful tool to determine your client's best Repayment Plan: <https://studentaid.gov/loansimulator>.

LOAN FORGIVENESS OPTIONS

While there is no current plan for broad-based loan forgiveness, there are already programs under the Higher Education Act to forgive federal student loans in certain circumstances, including:

- **School closed** while the borrower was still in school;
- **False certification** (forgery and identify theft);
- **Borrower defense to repayment** due to the school's misconduct;
- **Total and permanent disability;**
- **Death** of borrower;
- **Public service** worker (teachers, firefighters, public workers, etc.),

Total and Permanent Disability

If a borrower is unable to work and earn money because of an illness or injury that is expected to result in death, last for a continuous period of not less than 60 months or can be expected to last for a continuous period of not less than 60 months (5 years), they may qualify for TPD discharge of student loans.

There are three ways to prove eligibility for TPD discharge:

- Physician's certification,
- VA Disability Determination,
- Social Security Disability Determination.

www.disabilitydischarge.com

Updates to TPD Process

Applications were often processed incorrectly, and the burden was placed on the disabled borrower to seek out willing and eligible medical providers to complete the forms. More than half of the borrowers who the SSA determined to be potentially eligible for TPD have not applied or been approved for discharge. Loans were also reinstated after discharges were granted due to borrowers failing to complete forms during 3-year post-discharge monitoring period.

Because of the issues with this program, the Biden administration recently announced that they would be making TPD discharges automatically for certain borrowers. The change will apply to borrowers who are identified through an existing data match with the Social Security Administration. The Biden administration is also taking steps to do away with the 3-year post-discharge monitoring period, and change the requirements for physician's certification.

Public Service Loan Forgiveness

- 1 ELIGIBLE LOANS
- 2 QUALIFYING EMPLOYER
- 3 FULL-TIME EMPLOYMENT
- 4 ELIGIBLE REPAYMENT PLAN
- 5 120 QUALIFYING PAYMENTS

If you have met all the requirements of PSLF, you can apply for a **full discharge of your federal Direct Loans**. Because of problems with the PSLF program, there are new updates and waivers to try to fix these issues.

PSLF TOOL

Use the tool annually and any time you switch jobs to ensure you're staying on track.

www.studentaid.gov/articles/using-the-pslf-help-tool/

This tool will help you:

- explain the PSLF requirements;
- help you assess whether your employer qualifies for PSLF;
- help you assess whether your loans qualify for PSLF;
- help you decide which PSLF form to submit;
- generate the Employment Certification Form (ECF);
- explain other steps required for you to receive PSLF.

COMMON MISTAKES



99% of applications were rejected for these reasons:

- 80% did not have a loan that entered repayment 10 years ago.
- 15% did not have Direct Loans.
- 12% had the wrong repayment plan.
- 4% tried to count time in deferment or forbearance toward qualifying payments.

**Submit ECF
annually** to avoid these mistakes and make sure payments qualify!

PSLF Waivers & Updates

The 2018 Consolidated Appropriations Act, created the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) Program to address some issues with PSLF.

In October 2021, the Biden Administration also announced a limited one-year PSLF waiver, which allows for borrowers who apply on time to potentially receive credit for payments that previously did not qualify for PSLF or TEPSLF. **Borrowers must apply for this waiver by October 31, 2022.**

[https://studentaid.gov/announcements-events/pslf-limited-waiver.](https://studentaid.gov/announcements-events/pslf-limited-waiver)

CASE STUDY



Issue-spotting
student loans
problems

CRAIG

- Craig is a homeowner who is behind on his mortgage.
- He is a single father of four children.
- He works at a school, making \$48,000 per year.
- He owes \$77,000 in federal loans.
- He has never been on an IDR plan.
- He stopped making payments on his student loans two years prior to the pandemic.
- Prior to the CARES Act, his tax refunds were seized each year by the government.

GETTING HELP FROM EDCAP

edcapny.org

1-888-614-5004

edcap@cssny.org

EDCAP, a program of the Community Service Society, provides a toll-free helpline, workshops, and free one-on-one counseling to guide student loan borrowers through the complex student loan repayment system. Since its inception in 2019, EDCAP has helped hundreds of borrowers, saved consumers more than \$2 million, and managed over \$38 million in student loan debt. Borrowers across New York, can contact EDCAP for free one-on-one assistance with student loans.

DFS COMPLAINTS

Under New York's Student Loan Servicing Act, DFS licenses and supervises student loan servicers. If you have issues with your loan servicer in violation of the Student Borrower's Bill of Rights, file a complaint with DFS at www.dfs.ny.gov.

CFPB COMPLAINTS

The Dodd-Frank Act created the CFPB, a federal bureau charged with overseeing student loan servicers. The Student Loan Ombudsman helps borrowers resolve issues with their servicers. File complaints at www.consumerfinance.gov.

REPORTING PROBLEMS



Questions?

aaanderson@lawny.org

Additional Resources

- The National Consumer Law Center's Student Loan Borrower Assistance Project is a resource for borrowers, their families, and advocates representing student loan borrowers.
 - www.studentloanborrowerassistance.org
- The Department of Education Federal Student Aid Website provides information for borrowers on managing their loans, as well as updates on current federal relief.
 - <https://studentaid.gov/>
- EDCAP provides free help for New Yorkers with student loan issues.
 - www.edcapny.org/

Federal Student Loan Statutes

- 20 U.S.C. § § 1070–1099 e, the Higher Education Act, which provides most of the statutory authority for federal student loan programs and laws.
- Federal Family Education Loan Program starting § 1071.
- Perkins Loan Program in § § 1087aa–1087ii.
- Federal Debt Collection found starting at 31 U.S.C. § 3716.
- Private Loans: 15 U.S.C. § 1638 (transactions other than under and open end credit plan) and § 1650 (preventing unfair and deceptive private educational lending practices and eliminating conflicts of interests).

Federal Student Loan Regulations

- 34 C.F.R. § 685.102
 - §685.200 Borrower eligibility
 - § 685.204 Deferment
 - § 685.205 Forbearance
 - § 685.205 Borrower responsibilities and defenses
 - §685.208 Repayment plans
 - § 685.209 Income-contingent repayment plans
 - § 685.212 Discharge of a loan obligation
 - § 685.219 Public Service Loan Forgiveness Program
 - § 685.220 Consolidation
 - § 685.222 Borrower defenses