As the cost of financing our nation’s higher education system falls increasingly on students and families, student loan debt is rising at alarming rates. As of mid-2018, more than 42 million borrowers were carrying over $1.4 trillion in federal student loan debt.¹ Sixty-eight percent of students who graduated from public and nonprofit colleges in 2015 had student debt averaging $30,100, which was 4% above the 2014 average of $28,950.² The majority of this debt is from federal student loans, but many private loan borrowers also experience significant problems, including delinquency and default.³ Although student loan debt is a problem that crosses class lines, low-income students are much more likely to borrow—and to borrow more.⁴

It is not just the amount of debt that causes problems, but the degree of financial distress too many borrowers experience as a result of unmanageable student debt, particularly when the education the borrower incurred the debt to pay for has not resulted in sufficient earnings gains to compensate for the debt. On the whole, college graduates earn significantly more money than those without degrees and are more likely to be employed.⁵ There is also evidence of other benefits to a more educated population, such as less reliance on public assistance and better health.⁶

However, not all borrowers find that their investment pays off financially. Some graduates find that their professions are not as lucrative as they hoped or lose their jobs as the economy changes. Others confront unexpected life traumas such as disability, divorce, or death of a family member. Still others choose career paths—such as teaching and social work—where success is not measured in dollars but in satisfaction and promoting social good. For a variety of reasons, a substantial percentage of students do not complete their educational programs, yet they incur significant student loan debt.⁷ There are some schools, particularly in the for-profit sector, that engage in predatory practices in order to boost enrollments, access federal student aid dollars, and maximize profits. These practices are a tremendous source of frustration, financial harm, and loss of opportunity for consumers, particularly low-income consumers hoping to break out of poverty.⁸

The student loan default crisis is discussed in detail in Chapter 6 [1], infra. In general, the consequences of student loan defaults have grown enormously over time as the government’s collection powers have steadily increased. The government has collection powers far beyond those of most unsecured creditors. As discussed in detail in Chapter 9 [2], infra, the government can garnish a borrower’s wages without a judgment, seize the borrower’s tax refund (even an earned income tax credit), seize portions of federal benefits such as Social Security, and deny the borrower eligibility for new education grants or loans. To compound the problem, collectors are allowed to charge fees that create ballooning balances.⁹ Even in bankruptcy, most student loans must be paid.¹⁰ Unlike any other type of debt, there is no statute of limitations.¹¹ The government can pursue borrowers to the grave.

For borrowers in default, education, initially seen as a way out of poverty, instead often leads them into a cycle of endless debt. They find themselves in a trap. Student loan debt from the past keeps them from going back to school and moving into higher-paying jobs. On the other hand, most cannot afford to go back to school and get additional training without some type of financial assistance.

It is critical for advocates to understand how best to counsel and represent student loan borrowers. For advocates who have contact with individuals before they enroll in school, learning about local educational options, particularly low-cost community colleges and other affordable programs, is critical. Advocates should also familiarize themselves with the range of government and private scholarship and grant programs.

Unfortunately, most clients do not seek legal help until long after they take out loans and are having trouble with repayment. This treatise focuses on assisting these clients, reviewing in detail the primary cancellation, repayment, bankruptcy, and other options available to help federal student loan borrowers manage their loans successfully, get out of default, or challenge government collection efforts. Options for private student loan debt are more limited, but there is some relief available for these borrowers, as discussed in Chapter 12 [3], infra.

The good news is that there is almost always something that borrowers can do to challenge federal student loan collection actions and either cancel a loan or set up an affordable monthly payment plan. Understanding borrower cancellation and repayment rights is the key to assisting clients with student loan problems. Resolving these problems is often a critical step in helping clients recover financially.

Footnotes

¹ [1] U.S. Dep’t of Educ., Fed. Student Aid, Federal Student Aid Portfolio Summary [4], available at

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For updated information on debt levels, see the websites for the Consumer Financial Protection Bureau and Department of Education. Other helpful resources include the College Board’s “Trends” reports and reports from the Institute for College Access and Success (TICAS).


For the comparable class of 2016, state averages for debt at the time of graduation varied from a low of $4600 to a high of $59,100. See Inst. for Coll. Access & Success, Student Debt and the Class of 2016 at 1 (Sept. 2017).


5 [5] The College Board issues reports every few years about levels of student loan debt as well as the benefits of higher education for individuals and society. See, e.g., Jennifer Ma, Matea Pender, & Meredith Welch, Coll. Bd., Education Pays 2016: The Benefits of Higher Education for Individuals and Society (2016).

6 [6] Id.

7 [7] The overall national six-year completion rate for the cohort of students entering in fall 2011 was only 56.9 percent, and the completion rate at four-year private for-profit schools was only 35.3 percent. Doug Shapiro, Afet Dundar, Faye Huie, Phoebe K. Wakhungu, Xin Yuan, Angel Nathan & Ayesha Bhimdiwali, Nat’l Student Clearinghouse Research Ctr., Completing College: A National View of Student Completion Rates—Fall 2011 Cohort, Signature Report No. 14 (Dec. 2017).

8 [8] The scope of the problem is discussed in Chapter 13 [5], infra.

9 [9] See § 8.3 [6], infra.

10 [10] See Ch. 11 [7], infra.


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