Prior to July 1, 2006, married borrowers could choose to consolidate loans from both spouses or jointly consolidate the loans of either spouse. Both borrowers had to agree to be jointly and severally liable for repayment. In addition, the borrowers had to agree to repay the joint loan regardless of any change in marital status. Perhaps because of the dubious advantages of this program, Congress eliminated it as of July 1, 2006.\footnote{79}

There are still many borrowers struggling with joint consolidation loans, often because divorce attorneys generally seem to be unfamiliar with the joint and several liability provisions. There are numerous problems that can arise—for example, if one of the divorced ex-spouses wants to apply for IBR.

Although this is not explicit in the regulations, the Department states on its website that borrowers with joint consolidation loans may repay under an income-driven repayment.\footnote{80} Both spouses are jointly liable for the loan, and both must request the same income-driven repayment plan. Each borrower’s eligibility is determined using the joint income, regardless of tax filing status.\footnote{81}

Another common problem is that partial discharge of a joint consolidation loan under any of the discharge programs (other than death discharge) does not eliminate joint and several liability for the remaining balance. Furthermore, according to the Department, borrowers with joint FFEL Consolidation Loans may not reconsolidate into Direct Loans and therefore are not eligible for public service loan forgiveness.\footnote{82}

There is no way for a borrower to split a valid joint consolidation loan. In response to questions submitted by NCLC in 2015, the Department stated that “[t]he statute does not allow the Department to split joint consolidation loans unless one spouse did not actually have underlying loans in the consolidation and so should not have been included in the loan. Borrowers facing unique circumstances, such as domestic violence, are encouraged to contact the FSA Ombudsman, which offers confidentiality, and can explore with an individual customer the options for mitigating the issues.”\footnote{83}

Footnotes


81 \footnote{81} \textit{Id}.


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