Regardless of whether the client is in default, loan cancellation is the first option to consider. Cancellation provides the most complete remedy for student loan borrowers. Advocates should always review all of the various cancellation remedies for all clients. Clients may be eligible for more than one type of cancellation, but they can recover only once. Cancellation options are discussed in detail in Chapter 10 [1], infra.

Before reviewing cancellation options, it is important to know what type of loan the client has. Cancellation and other rights vary depending on the type of loan. After considering these issues, advocates should determine whether the client is eligible for loan cancellation. The following are the main cancellation programs:

I. School-Related.

1. **Closed school.** The closed-school cancellation is available for borrowers unable to complete a program due to a school closure and applies to FFEL Program loans, federal Direct Loans, and Perkins Loans (including NDSLs) received at least in part on or after January 1, 1986. [2] As of July 1, 2012, however, most students without high school diplomas or equivalencies are no longer eligible for federal aid unless they are enrolled in an eligible Career Pathway program. [3]

   The Department recognizes four bases for a false-certification discharge:
   - A. The school falsifies a non-high-school graduate’s ability to benefit from the program. [4] As of July 1, 2012, however, most students without high school diplomas or equivalencies are no longer eligible for federal aid unless they are enrolled in an eligible Career Pathway program. [5]
   - B. The school enrolls a student unable to meet minimum state employment requirements for the job for which the student is being trained; [6]
   - C. The school forges or alters the student loan note or check endorsements; [7] or
   - D. The borrower is a victim of identity theft. [8]

2. **False certification.** Borrowers are entitled to a loan cancellation if they received at least part of an FFEL Program loan or Direct Loan after January 1, 1986, and if their eligibility to borrow was falsely certified by the school. [9] The cancellation does not apply to Perkins Loans, but students should be able to raise the school’s misconduct as a defense to loan repayment because the school is the original lender. [10]

   The Department recognizes four bases for a false-certification discharge:
   - A. The school falsifies a non-high-school graduate’s ability to benefit from the program. [11] As of July 1, 2012, however, most students without high school diplomas or equivalencies are no longer eligible for federal aid unless they are enrolled in an eligible Career Pathway program. [12]
   - B. The school enrolls a student unable to meet minimum state employment requirements for the job for which the student is being trained; [13]
   - C. The school forges or alters the student loan note or check endorsements; [14] or
   - D. The borrower is a victim of identity theft. [15]

3. **Unpaid refund.** Provides for discharge based on the school’s failure to make an owed refund to the student. [16] State tuition recovery funds should also be considered. [17]

4. **Borrower defense to repayment.** Borrowers who have Direct Loans—or are willing and able to consolidate other federal student loans into Direct Consolidation Loans—may submit borrower defense applications seeking full or partial discharges based on certain types of school misconduct, such as deceptive recruiting practices. The Department has also established a separate application form for certain former Corinthian students covered by Department findings of school misconduct. The borrower defense discharge rules have been in flux in recent years. The Department finalized rules in 2016, but the new administration delayed implementation of those regulations. [18] Subsequently, a federal court vacated the regulatory delays as unlawful and the 2016 borrower defense regulations went into effect in October 2018. [19] The Department proposed new regulations in July 2018, [20] but, as of March 2019, has not finalized the proposed rules. [21]

II. Disability cancellation. The borrower’s permanent and total disability is grounds for a student loan discharge. [22]

III. Death. The borrower’s death is a defense to collection actions on Stafford, SLS, Perkins, and Federal Direct loans. [23] The deaths of both parents (assuming both parents are obligated) or the death of the student discharges PLUS loans. [24]

IV. Public service and other job-related cancellations. These cancellations are tied to the borrower’s profession and generally require a minimum number of years of full-time employment in various fields. [25] There are special provisions in some loan programs for military servicemembers as well. [26]

V. Cancellation for repayment. Borrowers may also be able to cancel loan balances after twenty or twenty-five years of repayment through an income-driven repayment plan. [27]

Obtaining a statutory loan cancellation can take a long time. In the meantime, advocates should request administrative forbearances to stop the collection efforts pending a decision. [28] If the client wants to go back to school before a decision on the cancellation is made, advocates should consider reviewing the repayment, loan rehabilitation, and consolidation options discussed in Chapter 7 [2], infra, and summarized below. However, the Department advises against consolidating while a discharge is pending in certain cases, as discussed in detail in Chapter 10 [1], infra. In addition, advocates and borrowers...
should be aware of possible tax consequences associated with some of the statutory discharges.

VI. Bankruptcy. Some student loans may be discharged in bankruptcy.

Footnotes

312 [312] See §§ 10.2 [3], 10.3 [4], infra.

313 [313] See § 10.4 [5], infra.

314 [314] See § 10.6.4.2 [6], infra.

315 [315] See § 10.4.2 [7], infra.

316 [316] See § 1.6.1 [8], supra.

317 [317] See § 10.4.3 [9], infra.

318 [318] See § 10.4.4 [10], infra.

319 [319] See § 10.4.5 [11], infra.

320 [320] See § 10.5 [12], infra.

321 [321] See § 13.4.2 [13], infra.


325 [325] See § 10.6 [14], infra.

326 [326] See § 10.8 [15], infra.

For a PLUS loan on which both parents are obligated, the disability of only one parent does not discharge the loan. See § 10.8.3 [16], infra.

327 [327] See § 10.9 [17], infra.
328 [328] See § 10.9 [17], infra.

Assuming the parents are co-borrowers, the death of only one of the two obligated parents does not discharge a PLUS loan.


331 [331] See § 3.3 [20], infra.

332 [332] See § 4.4 [21], infra.

333 [333] See § 10.15 [22], infra.

334 [334] See Ch. 11 [23], infra.

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