Dealing with Your Private Student Loans. Private student loan payments are lower priority than paying your mortgage, rent, utilities, car loan, or even your federal student loans. Private student loans should be treated like your credit card or medical debt—the only difference being that, as with federal student loans, it is very difficult to discharge most private student loans in bankruptcy.

Private student loan lenders or collectors may be willing to negotiate because they do not have as many collection tools as the federal government. They cannot intercept your taxes, seize your Social Security benefits, seize your wages before going to court, or deny you future government loans. A defaulted private loan may, however, show up on your credit report.

Private lenders often hire collection agencies. You have the same rights as with any other debt to fight back against any collection harassment or abuse. See Chapter 2[1].

If a number of years have passed since you last made a payment or requested a deferment or forbearance, consult an attorney before you contact the lender or start making payments again. A “statute of limitations” may have already expired on the loan, meaning the lender can no longer sue you on the debt. Payment now or even a new promise to pay may suddenly give the lender the right to sue you for years into the future.

It can be complicated to determine the number of years before the statute of limitations prevents suit on a debt, hence the need for legal help. In many places, the number of years is six after your default, but in some states and for certain loans it may be only three or four years, or even as long as twenty. The attorney will want to see a copy of the loan agreement or a court record. If you reach out to the lender, avoid making payments or promises to repay, and don’t contact the lender unless you are prepared for them to follow up with collection efforts.

Private student loans do not have the same flexible repayment, loan cancellation, and other borrower protections that federal student loans have, but there may be steps you can take to help. See if the loan agreement says anything about relief if you are having trouble making payments. If the statute of limitations has not expired, you may choose to negotiate for lower payments or even principal reduction.

The borrower or the borrower’s estate will generally be liable for the loan even if the borrower becomes permanently disabled or dies, but some private student loan lenders voluntarily cancel the debt in these circumstances. For loans extended after November 20, 2018, the lender cannot declare a default and ask for the immediate payment of the full loan amount from either the student or a co-signer just because the student has declared bankruptcy or dies. For loans extended after that date, a co-signer’s legal obligation is also released upon the student’s death. Even for loans extended before November 20, 2018, lenders may voluntarily implement the same protections.

You cannot consolidate private loans into federal loans. You should not consolidate federal loans into private ones. But you can look into consolidating higher interest private loans into a lower interest private loan. Also, if your private student loan’s interest rate is more than 6%, and you go on military active duty after taking out the loan, you have a right to reduce the interest rate to 6% while you are on active duty. If the lender does not adjust your rate automatically, notify it of your active duty status.

In general, the ability to discharge private student loans in bankruptcy is subject to the same difficult standard as applies to federal student loans. But there is an important exception. If the school you attended (such as an unlicensed vocational school) is not eligible to participate in one of the federal student financial assistance programs, then you can discharge the private student loan in bankruptcy just like any other unsecured debt.

Defending Against a Private Student Loan Collection Lawsuit. Private student loan lenders do not have the collection tools available to the government, so that they are more likely to sue on an unpaid debt. But you have a number of defenses to such lawsuits.

If the school itself initially gave you the loan or referred you to a private lender, then you can raise as a defense to the collection law suit any claim or defense you have against the school. A viable defense might be that the school misrepresented graduates’ employment prospects or the overall quality of the program, or engaged in other serious misconduct, but not that the math teacher was too tough.

Look carefully at any collection fees the private lender is seeking. The right to those fees must be stated in the loan agreement, and state law may further limit collection fees.
If you have a dispute or questions, it is prudent first to contact the lender. Private student loan lenders may have an ombudsman or other customer advocate unit. The Consumer Financial Protection Bureau has a complaint system for borrowers experiencing problems with private student loans. To ask a question or file a complaint, go to https://consumerfinance.gov/complaint [2] or call toll-free 855-411-CFPB. You can also contact your state or local consumer protection agency to make a complaint or seek assistance.

Source: National Consumer Law Center, Surviving Debt [50th NCLC Anniversary Edition], updated at www.nclc.org/library
Source URL: https://library.nclc.org/sd/1308

Links
[1] https://library.nclc.org/nclc/link/SD.02