

Student Loan Debt Collection and Seniors

July 28, 2016

Kate Lang
Justice in Aging

Michael Walters
Center for Elder Rights Advocacy and Pro
Seniors

Persis Yu
National Consumer Law Center



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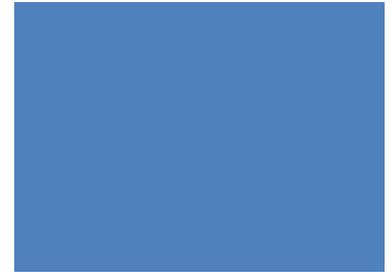
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 **CERA**
Center for Elder Rights Advocacy



Moderator – Christopher Jackson

Christopher Jackson Christopher Jackson is the Communications Coordinator, Project Administrator, and an Attorney at Elder Law of Michigan (ELM), and has been a member of the ELM team since early 2014.

Christopher holds a Bachelor of Arts (Cum Laude) in Political Science and International Relations from the University of Indianapolis, and graduated with his Juris Doctor in 2013 from Michigan State University College of Law. Currently, Christopher is pursuing his Master of Public Affairs with a focus on Nonprofit Management and Policy Analysis from Indiana University's School of Public and Environmental Affairs.

As Communications Coordinator and CERA Project Administrator, Christopher oversees external and internal communications, fund development, and coordinates technical assistance to legal hotlines across the United States. While serving on the Legal Hotline for Michigan Seniors, a program of ELM, he assisted Michigan seniors on a wide-variety of areas, including estate planning, wills and trusts, Medicare/Medicaid, Social Security and veterans benefits, and insurance issues. Prior to joining the ELM team, Christopher served as an intern with the Michigan Department of Agriculture and Rural Development, handling a wide range of issues including farm development, public health, food safety, and state regulations.

Christopher also participates in local community organizations serving as a board member for the Michigan State University College of Law Alumni Association as well as a member of the State Bar of Michigan's Representative Assembly.

Christopher currently lives in Lansing, MI, with his wife, Sara, and son, Clark. In his free time, Christopher is involved in politics, plays an active role on local club hockey teams, enjoys weekly trivia nights, and is an avid fan of his Michigan State Spartans.



Presenter – Kate Lang

Kate Lang joined Justice in Aging (formerly the National Senior Citizens Law Center) in December 2012 in the Washington, DC office as a member of the Economic Security team, working primarily on Social Security and Supplemental Security Income-related issues. Before joining Justice in Aging, she was a staff attorney at the Maryland Legal Aid Bureau where she was an advocate for low-income older adults and persons with disabilities. In previous positions, Ms. Lang worked as an advocate at National Legal Aid and Defender Association and Bread for the City Legal Clinic in Washington, DC as well as an associate at Doherty, Cella, Keane and Associates, LLP. She also served as a staff attorney at Legal Services of Northern California.

Ms. Lang is a member of the California bar. She received her B.A. from Oberlin College and her J.D. from Fordham University School of Law, and also has a master's degree in teaching English to speakers of other languages from the University of Pennsylvania.



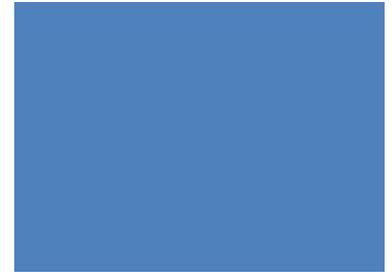
Presenter – Michael Walters

Michael Walters is a Project Manager for the Center for Elder Rights Advocacy. Mike has managed the legal Hotline at Pro Seniors, Inc. in Cincinnati Ohio for the past ten years. Mike has practiced law since 1991, with an emphasis in the area of Social Security law as well as elder law. Mike is admitted to practice law in the state of Ohio and the Commonwealth of Kentucky, the Federal District Courts for the Southern District of Ohio and the Eastern District of Kentucky, as well as the United States Court of Appeals for the Sixth Circuit. Mike is a member of the Cincinnati Bar Association, the Northern Kentucky Bar Association, the American Bar Association, and the National Organization of Social Security Claimants' Representatives.



Presenter – Persis Yu

Persis Yu is a staff attorney at NCLC and is the director of NCLC's Student Loan Borrower Assistance Project. She also works on other consumer advocacy issues. Prior to joining NCLC, Persis was a Hanna S. Cohn Equal Justice Fellow at Empire Justice Center in Rochester, New York. Her fellowship project focused on credit reporting issues facing low-income consumers, specifically in the areas of accuracy, housing and employment. Persis is a graduate of Seattle University School of Law, and holds a Masters of Social Work from the University of Washington, and a Bachelor of Arts from Mount Holyoke College. She is a contributor to NCLC's [*Student Loan Law*](#) and [*Fair Credit Reporting*](#).



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HOTLINE ADVICE FOR STUDENT LOAN COLLECTION

Mike Walters

CERA Project Specialist

**Legal Hotline Managing Attorney, Pro Seniors,
Cincinnati, OH**

Ms. Z



- Ms. Z calls the Hotline. She receives a Social Security check of \$1000 gross, from which \$150 month is being garnished for collection of a student loan debt.
- Ms. Z is age 84, and just entered a nursing home after admission to a hospital for a broken hip and subsequent surgery. Medicare coverage for her stay may end at any time.
- Ms. Z. is asking questions about Medicaid eligibility for her stay in the facility, which may be lengthy.

*HOW DOES THE STUDENT LOAN COLLECTION IMPACT
MEDICAID?*



PATIENT LIABILITY

- Patient liability (absent special circumstances such as a spouse) is the client's *gross* income minus a personal needs allowance (\$50 in Ohio)
- Medicaid calculates the patient liability without accounting for the deduction from the check.
- Ms. Z's patient liability will thus be \$950.
- Ms. Z's actual income is \$850.
- Ms. Z will thus be unable to pay her full patient liability, resulting in a possible discharge from the facility for non-payment.

How to Fix

- It is literally impossible for Ms. Z to be receiving SSDI benefits. Once a claimant reaches full retirement age, the claimant is converted to RSI benefits.
- This is for purposes of SSA Trust Fund Accounting
- So whatever the history, even if Ms. Z were (e.g.) legally blind since birth, Ms. Z is going to need to submit an application for discharge with a physician's certification in Section 4 of the Discharge Application.

Analysis of Student Loan Cases

- Does the client receive SSDI benefits or SSI benefits based on disability? (If the client receives SSI benefits, this would normally not be an issue because the floor for potential garnishment is \$750 month, slightly more than the SSI Federal Benefit Rate).
- If yes, absent the rare circumstance where the client still has her award letter, and it shows a medical review date between 5-7 years later, or a letter from DoEd showing that the client has met the criteria for discharge....,
- The client will need a “Benefits Planning Query.”
- This is one of the rare circumstances when I would suggest calling the national number, 1-800-772-1213, rather than the servicing field office.

So, what if the client does not receive SSDI benefits or the diary is too short?

DISCHARGE APPLICATION

- [Online Discharge Application](#)
 - [PDF Discharge Application:](#)
 - Return completed application to: U.S. Department of Education TPD Servicing PO Box 87130 Lincoln, NE 68501-7130
 - Fax number is (303) 696-5250
 - If you are going to represent the client, you also need to complete the [Designation of Representative Form:](#)
- 

Student Loan Debt Collection and Seniors

**Kate Lang,
Senior Staff Attorney
Justice in Aging**

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Treasury Offset Program (TOP)

U.S. Department of the Treasury,
Bureau of the Fiscal Service's
Debt Management Services (DMS)

collects delinquent debts owed to federal agencies and states, under authority of

- 26 USC § 6402(d) (collection of debts owed to federal agencies)
- and other statutes

Debts sent to TOP

Debt can be sent to TOP if more than 90 days delinquent

Federal agency (U.S. Department of Education) must first send notices about debt and provide opportunities to resolve or dispute debt before sending to TOP.

Once sent to DMS, debt entered into database and federal payment reduced to pay off debt.

Letter sent by Treasury regarding action taken.

Federal Benefits Eligible for offset under TOP

Social Security benefits:

- Disability
- Retirement
- Survivor

(Title II benefits)

NOT Supplemental Security Income
(SSI; Title XVI)

Offset Amount

LEAST of:

1. Amount of the debt; or
2. 15% of monthly benefits; or
3. Amount by which monthly benefits exceeds \$750

Benefit payments will not be reduced below \$750/month

POMS GN 02410.300

Disability Discharge

Individuals may qualify for total and permanent disability (TPD) discharge of federal student loans

<https://disabilitydischarge.com/>

April 2016: Dept of Ed began sending out letters

<http://www2.ed.gov/documents/press-releases/04122016-sample-ssa-matchletter.pdf>

Categories of Disability (SSA)

Frequency of Continuing Disability Review:

- Medical improvement expected (MIE):
review from 6 to 18 months;
- Medical improvement possible (MIP):
review every 3 years;
- Medical improvement not expected (MINE):
review every 5 to 7 years.

POMS DI 28001.020

Not included in data match:

Those currently receiving Retirement, Survivors or SSI benefits from Social Security

Can still apply for TPD:

- Certification from doctor
- Unable to engage in substantial gainful activity due to physical or mental impairment that
 - Is expected to result in death, and
 - Has lasted for at least 60 months, or is expected to last for at least 60 months.

To be aware of with TPD

- Three-year monitoring period
- Discharged loan balances are generally considered income for tax purposes
- Discharged loan balances are NOT treated as income by SSA for Title II or Title XVI benefits
- Discharge could affect eligibility for health insurance/premiums

Stop Taxing Death and Disability Act

- S. 2800
- HR 5204

Would amend tax code to exclude from gross income discharge of student loans due to death or disability of student

Would also extend TPD discharge to parents' liability if student becomes disabled

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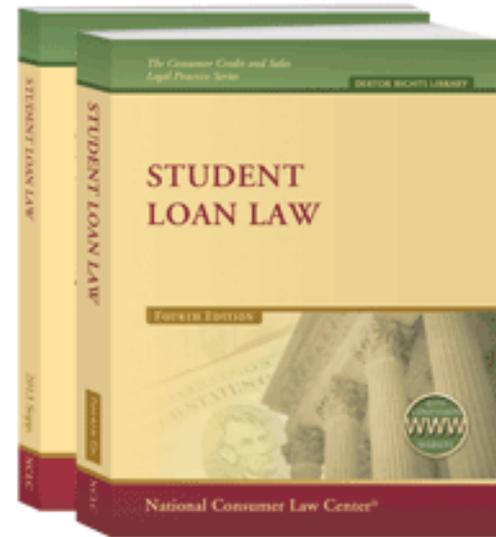


Persis Yu

Student Loan Borrower Assistance Project

National Consumer Law Center's Student Loan Borrower Assistance Project

- Listserve
- Student Loan Borrower Assistance
 - www.studentloanborrowerassistance.org/
- Manual and other publications
 - Companion website
- Case consultations
- Policy advocacy
- Consumer Rights Conference
 - Oct. 20-22
 - Anaheim, CA





BORROWERS WHO DO NOT QUALIFY FOR DISABILITY DISCHARGE

Government Collection Powers

- Can pursue borrowers forever
- Extraordinary collection powers (without a court order!)
 - Tax Refund Offset
 - Administrative Wage Garnishment
 - Federal Benefits Offset
- Debt collectors
 - Borrowers often subject to aggressive and, sometimes, illegal collection tactics
- Excessive collection fees – up to 25%
- Default reported to credit reporting agencies
- Litigation (rare)

Types of Loans

A basic understanding of the different types of loans is critical because the programs have different rules and regulations.

- Government vs. Private Loans
- Different Types of Government Loans

Go here first!

https://www.nsls.ed.gov/nsls_SA/



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GO FURTHER
FEDERAL STUDENT AID

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National Student Loan Data System (NSLDS) for Students

[Financial Aid Review](#) [Exit Counseling](#) [Glossary of Terms](#) [Browser Info/Setup](#) [FAQs](#) [Contact Us](#)



NSLDS STUDENT ACCESS

National Student Loan Data System

Retrieve Your Loan Information

The National Student Loan Data System (NSLDS) is the U.S. Department of Education's (ED's) central database for student aid. NSLDS receives data from schools, guaranty agencies, the Direct Loan program, and other Department of ED programs. NSLDS Student Access provides a centralized, integrated view of Title IV loans and grants so that recipients of Title IV Aid can access and inquire about their Title IV loans and/or grant data.

[Financial Aid Review](#)

[Exit Counseling](#)

CHECKLIST for Federal Student Loans

Key Options—In order of most complete remedy

1. Cancellation
2. Affordable repayment (get out of default first)
3. Deferment or other postponement
4. Compromise or settlement
5. Challenge collection

Loan Cancellation

- School-Related
- Death and Disability
- Profession-Related (such as Public Service Loan Forgiveness)
- Bankruptcy (difficult but not impossible)

Why Get Out of Default?

- Eligibility for affordable repayment plans, deferment, etc.
- Improvements to credit report
- No longer subject to garnishment of wage or social security benefits or to tax refund seizures
- Eligibility for new loans or grants

Two Options for Getting Out of Default

Loan
Rehabilitation

Direct Loan
Consolidation

Should I Consolidate or Rehabilitate My Federal Student Loan?

Consolidation	Rehabilitation
Consolidates previous loan(s) into one new loan.	You must rehabilitate each individual loan. After the rehabilitation process is over, you still have the same loan, but it is now current.
Allows you to get out of default quickly without making any preliminary payments.	Requires nine payments in a ten month period to get out of default.
No resale requirement.	For federally guaranteed loans, the rehabilitation process is not complete until the loan is sold.
No need to negotiate "reasonable and affordable" payments with collectors.	Must negotiate "reasonable and affordable" payments with collectors to get out of default. Collectors may try to pressure you into paying higher amounts than what is "reasonable and affordable". This should be much easier for borrowers as of July 1, 2014 because collectors are now required to use the 15% IBR formula to determine reasonable and affordable payments.
One time deal. With either of these options, you only get 1 chance to get out of default.	
Fees of up to 18.5% may be added to the balance.	Fees of up to 16% may be added to the balance.
Collectors cannot come after you once the consolidation or rehabilitation process is complete, as long as you stay current.	
Allows you to have access to flexible repayment plans which calculate your payment based on your income. If you stay current with your payments, any remaining balance on the loans will be forgiven after a certain period of time (20 or 25 years depending on the program).	
Slightly worse for your credit report because the notation indicating that you were in default will remain on your credit report for 7 years.	Slightly better for your credit report because the notation indicating that you were in default will be erased. Other negative information remains.
You might lose some legal rights and defenses.	You retain your prior legal rights and defenses.

Repayment Calculator - Estimate your monthly payments:

<https://studentloans.gov/myDirectLoan/mobile/repayment/repaymentEstimator.action>

For more information about student loan consolidation, rehabilitation, and repayment, visit

<http://www.studentloanborrowerassistance.org>.

Borrower's Out of Default: Repayment Options

- Borrowers typically have a standard (10 year) repayment plan
 - Longer for consolidated loans
- Extended Repayment
- Graduated Repayment
- Income-Driven: IBR, ICR, PAYE, REPAYE
 - Payments can be as little as \$0 per month
 - Parent PLUS loans have special rules

Some Cannot Get Out of Default

- Due to Judgments or Already Rehabbed and Consolidated
- Options
 - Settle the debt
 - Requires large lump sum payment
 - Challenge collection
 - Raise defenses to enforceability due to fraud, due process, etc.
 - FDCPA

Administrative Wage Garnishment (AWG)

- How much can they take?
 - Up to 15% of disposable pay.
 - BUT 30 x minimum wage is protected
 - The federal minimum wage as of July 24, 2009 is \$7.25/hour. $30 \times 7.25 = \$217.50$ per week.
- An individual who has been reemployed within 12 months after having been involuntarily separated from employment may not be garnished for the first 12 months.

Challenging AWG

- Garnishment will not go forward if borrower requests a hearing within 15 (FFEL loans) or 30 (Direct loans) days of receipt of the notice.
- After that period, borrower may still request a hearing but garnishment will go forward.

Avoiding a Tax Refund Seizure

- Borrower will receive a written notice.
 - Can stop offset by establishing a repayment plan
 - Unfortunately, no requirement that it be reasonable and affordable
 - Can request hearing and raise defenses
 - May raise “extreme hardship”
- However, borrower may receive only one written notice – which means tax refunds can be seized every year once borrower is in default without additional notice.

Challenging Social Security Offsets

- How much can they take?
 - No more than 15% of total benefit.
 - The government must leave borrower \$9,000/year or \$750/month.
- Borrower may request a review within 20 days of receipt of the notice.
 - If claiming financial hardship, borrower should do so within 10 days to stop first offset.
- Can get prior payments returned, including tax refund intercepts.

Most Common Defense – Financial Hardship

Should be granted if income is less than or equal to expenses, and expenses are within the applicable regional or national standards (based on the IRS standards for housing, utility, transportation, food, clothing, services, etc.)

- Dept. will not consider for 6 mos. if garnishment order is issued (except in extraordinary circumstances)

Questions and Answers

Contact Information for our Speakers:

Kate Lang, klang@justiceinaging.org
Justice in Aging

Mike Walters, mwalters@proseniors.org
Center For Elder Rights Advocacy

Persis Yu, pyu@nclc.org
National Consumer Law Center
(617) 542-8010

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