

PROBLEMS BORROWERS FACE WITH PRIVATE LOANS

Problem #1: Limited opportunity to offer flexible repayment options for private loan borrowers prior to default

Students regularly call ASA as a last resort when they have already fallen behind on payment of their private loans. While we can counsel them on the various payment options available to get them back on track with their federal loans, there is little we can do to help with their private loans, and little the lender can do to assist borrowers until the borrower actually defaults. We understand from discussions with lenders that there are regulatory constraints that limit lenders' flexibility to modify repayment terms prior to default; it seems that these regulatory issues should be evaluated in light of current economic realities. In these private loan rules, we see big parallels to the mortgage market. While lenders may want to renegotiate mortgage terms with delinquent home owners, they do not seem to have the ability to do so until owners default on the loan. Similarly, we understand that there are student lenders that would like to intervene before the borrower defaults, but run up against banking regulations that make it hard for them to help borrowers. Since education loans are treated differently in bankruptcy, they should also be treated differently in other regulated areas. Reworking these regulations would go a long way to alleviate some of the strain associated with private education loans.

Most private loan borrowers that come to ASA for help with their education debt start the conversation by saying "I fully intend to repay these loans." We strongly urge private loan lenders to develop multiple repayment options based on interest only and income related factors that can be adjusted as the borrower's income and circumstances change.

Example 1 of case brought to ASA

Dear ASA: I would like to know if you can refer me to someone that can help me with the problem I have with my current student loan situation. I need someone that can help me work out a reasonable payment plan with (private lender) who insists that I do not qualify for a repayment plan, despite my unemployment these past six years. My original loan balance was just over \$36,000, capitalized interest is over \$77,000, and the total amount I owe is now over \$113,000.

Example 2 of case brought to ASA

I have been working with my lender only to get tossed around from one rep to another. No help was really given to me other than being told to pay interest only. This does not help but prolongs the process of escalating costs. Why are we treated this way? I hope I get a response to this question but I know why. It is what I discovered from millions of students in the same position: They are not able to meet the payments and the banks will not work towards reasonable payment, so they find themselves in default before a lender will attempt to work out a realistic payment plan...I can only hope that there is some way that students can win their rights back. I am going to sink with this loan and everything I've worked for to provide for my family if I do not find some resolution. The banks are no help!

Example 3 of case brought to ASA

In 2008 I was diagnosed with cancer and had to have surgery. I have not worked since April due to the chemo treatments. I only receive about \$800 a month from disability and social security but my lender has now raised my payment from \$150 to over \$1,000. My payment is nine days late and (the lender) has called daily asking for payment. Not only have they called me daily, they have called my 85-year-old father daily and told him they would ruin his credit, which I think is unnecessary harassment. In the past I have been told by (XXX) that they didn't care if I dropped dead, they'd just go after my estate. All I have is a car—there is no 401K, and cancer has made me uninsurable. I have nothing for them to take and even if I returned to work I couldn't afford a \$1,000 monthly payment. I need all of my strength to continue to fight cancer not battle about an amount I cannot pay! I am hoping you will have some sort of solution for my problem. I am not trying to get out of my student loans just pay an amount I can afford.

Problem #2: Borrowing too much

According to the Project on Student Loan Debt, students are leaving school with an average debt of \$25,250 each year. We understand that students graduating with over \$100,000 in loans are not the norm, but we have seen it enough to know that it is not an anomaly, either. In addition, students may borrow a seemingly reasonable amount, but we see how quickly those loans can escalate and become unmanageable due to interest rates that were not understood at the time of origination.

Every year ASA's ombudsman office gets dozens of cases of students that have simply borrowed way too much. Borrowers should be given better guidance up front on borrowing beyond the cost of attendance, and borrowing based on career choice and their long-term ability to repay loans. The current gainful employment rules for Title IV student loans are not perfect, but they go a long way to providing a check and balance between what is lent and the expected ability to pay that loan back. Similar regulations should be considered for the private lending market. More must be done than the ineffective self-reporting on private loans that is done now by borrowers. One way to achieve this could be to restrict private education debt lending (as defined under current bankruptcy law) to cost of attendance as defined by federal regulation minus any federal aid the borrower has qualified for. At a minimum, there is opportunity to increase disclosure to potential borrowers regarding their expected repayment obligation and the likelihood of being positioned to manage that obligation.

Example 4 of case brought to ASA

At the age of 47 I enrolled in community college. I went on to finish both my undergrad and Masters in Counseling. While in school I ran into some financial difficulties and was advised by financial aid to take private loans. I took three private loans, each for \$30,000, for a total of \$90,000 in loans. In three months I will have to start paying all three loans which will make a monthly payment of \$1,053 and a 10-year total balance of over \$230,000. This does not include my nearly \$90,000 in federal loans. I work as an addictions counselor for a small non-profit and the size of a single payment is a great financial burden. My student loan payments will be more than the mortgage payment on my house and the interest on these private loans seem to accumulate at a ridiculous speed.

Problem #3: Confusion and uncertainty about what is being borrowed

ASA understands that it is a consumer choice to take out a private loan. We feel more needs to be done, however, to ensure that all students know the benefit of taking out a federal loan before resorting to private loan alternatives with limited repayment options. We suggest requiring clear disclosure statements in all private loan applications and on all websites that inform consumers that there is no income limit for federal student loans and provide information on the availability of state and scholarship aid. However, information presented cannot be presented in a laundry list of small print, confusing language and legal jargon, but must be presented in a way that is simple, useful and easy to understand. Disclosures may be helpful for getting large amounts of information out, but disclosures for disclosures' sake do not ensure that consumers *understand* their loan obligations in a way they are able to act on.

Example 5 of case brought to ASA

I am unsure if this is something you would be able to assist with but I would appreciate any advice that you may have. I currently have private loans out with (Lender) and did not take out any federal loans. I currently pay \$650 a month for student loans and it is actually going all to interest at this time. According to (Lender), I am scheduled to pay \$185,000 over the life of the loan which is more than three times the original amount borrowed. I fully intend on paying my loans and was wondering if there was any assistance available to help individuals renegotiate interest rates or payment plans? I am currently working as a social worker so this feels like an unbeatable situation.

Problem # 4: Inability to declare bankruptcy

Bankruptcy protection is outside the Consumer Financial Protection Bureau's ability to regulate as it would take a legislative change, but the issue of bankruptcy protection for private student loans should be reexamined. It is our opinion that a private loan should be treated like any other form of consumer debt and should be afforded rights in bankruptcy unless they are reviewed and approved by the school. There are times when bankruptcy is the appropriate solution for an unreasonable financial hardship associated with student loans.

Problem # 5: No comprehensive central repository for private education loans

The ability to point borrowers with multiple federal loans to the National Student Loan Data System (NSLDS) for a comprehensive look at all their federal loans represents an important tool in preventing federal loan defaults. The absence of such a repository for private loans is an impediment to borrowers seeking to understand and manage all their education debt. With input from lenders, we recommend the creation of a portal to provide private loan data in one place. Much more needs to be done to communicate the availability of the federal NSLDS service, (as evidenced by an internal study conducted by ASA that found 81.5% of borrowers surveyed were not familiar with NSLDS) but a similar product should be developed with the support of the lenders so that a borrower can get a bigger picture of all of their private loan obligations.

Problem # 6: Lender and borrower interest must be better aligned

Another issue that we observe around the intervention on defaults is the fact that lenders typically tend to focus a lot of time and attention into acquiring new customers, but often seem unmotivated to provide assistance to those existing customers who have run into trouble. While

undoubtedly related at least in part to the regulatory restrictions cited above, we believe there must be opportunity to reframe this relationship paradigm to enable a mutually beneficial resolution mindset that serves the shared interests of lenders and borrowers.

Example 6 of case brought to ASA

I am a cosigner on my daughter's loans. My daughter has several private loans and was unable to consolidate them. All together the payment is approximately \$1,800 a month. She is barely making enough money to get by and my situation is similar. She finished school but some of her loans kicked in early due to a brief leave of absence for surgery. That was three years ago. Currently she is behind but has been able to make payments whenever possible. The loan companies call my husband's cell phone several times a day. Yesterday they called my in-laws who are over 80 years old. My son even got a call that came up on his cell phone as an emergency call. If they are calling my in-laws and son, who have no interest in the loan, who else are they calling? My brothers? Total strangers who share my last name?

My daughter was able to make two payments toward two of the loans. We were told the calls would stop and they agreed to work with my daughter and call only her. And yet the calls continue. If they would work with her to work out an affordable payment, none of this would happen. I believe this is bullying pure and simple. Is there anything we can do? She wants to pay, we just need help to make it reasonable.

In addition to the letters we receive from borrowers looking for assistance, American Student Assistance provides an online forum for borrowers to ask any question they would like about their loans. These are examples of some of the more common types of private student loan questions posed to "Ask ASA," many of which highlight the fundamental misunderstanding that borrowers have about what they have agreed to when they sign for a private education loan.

1. My payment is too high and my lender won't work with me. What can I do to work out a reasonable payment plan?
2. I missed a few payments but I now have the ability to pay. However, the collection agency won't work in good faith to work out a solution. Why can't I work with the original lender to find a solution that works for both of us?
3. I am out of work and can't pay my loan. Why can the lender charge \$150 to put the loan in forbearance and can interest still accrue?
4. How can I lower my interest rate?
5. I signed on as a co-signer to a loan but my financial situation has changed. How do I get out of being a co-signer (or how can I get my parents off as co-signers)?

ADDITIONAL RECOMMENDATIONS FOR CFPB

1. *Create one ombudsman service that has the ability to counsel the **borrower holistically**, not just advise on specific loans.* Student loan borrowers should have one place to turn to get impartial advice on all of their loan repayment options. The current system of having the Department of Education and Consumer Financial Protection Bureau provide guidance on different types of loans will likely cause more confusion and frustration about where to turn for assistance. One agency should be designated to help borrowers

deal with all of their student loan issues without any additional bureaucratic complications.

2. *Create and effectively communicate a document that outlines the “Rights and Responsibilities for Private Loan Borrowers.”* Borrowers should have accurate information about their private loans to understand what they are agreeing to, what it will mean for their long-term finances, and what recourses and resources are available to them if problems arise.
3. *Support programs that provide holistic financial education that include student loans, both federal and private, as part of the equation.* Whether it is educating borrowers about the benefits of federal loans over private, ensuring borrowers understand their debt obligations before they borrow, helping borrowers better understand their loan repayment options, educating borrowers about consequences of delinquency and default, or simply working with borrowers to manage student loan payments in a tight monthly budget, more support must be given to programs that help borrowers manage the process of paying for higher education. The reality is that student loans are becoming more of a financial stumbling block than the means to academic and economic success for which they were created. In the push to ensure better financial literacy nationwide, little emphasis has been placed on the financial competencies of student borrowers who are often awarded a student loan as their first major financial obligation. Borrowers are then expected to successfully pay that loan back with little direction, support, guidance or relief if missteps occur. In your role as consumer advocate, the CFPB must ensure that borrowers have the tools and supports they need to succeed in student loan repayment.

BEST PRACTICES AND LESSONS LEARNED FROM FEDERAL LOANS

When working to address these and other issues, we believe that the CFPB can apply best practices developed for managing federal loans to the student private loan world, and take steps to ensure that the best possible protection for *borrowers* are in place rather than the industry practice of ensuring the best possible protections for loans. ASA has worked on behalf of the Department of Education for many years and we see the protection of assets in the loan program as an important responsibility. But we also understand that federal assets are best protected when we are able to ensure the borrower’s long-term success. For over a decade ASA has focused primarily on helping borrowers manage their federal student loan debt. However, our ability to counsel borrowers has never existed in a vacuum. As advocates for student loan borrowers we know that, while our primary responsibility has been assisting borrowers with federal loans, the challenges that borrowers experience must be looked at in a holistic way—a borrower can’t choose to pay only one type of loan, and we cannot and should not counsel them as if only their federal loans exist. To do so would fail to recognize the scope of the borrower’s repayment needs.

Every day we deal with borrowers struggling to pay their higher education debt and many have both federal and private loans. Because we are not a lender, we can provide neutral, impartial advice on the options available to the borrower. At ASA we believe that education debt management counseling should employ the most cutting-edge technology, communications techniques and research tools to make contact with borrowers and yet will not be effective unless the providers put the interests of borrowers first. Debt management providers should be

provided by public purpose entities free of potential conflicts of interest, with no financial stake in the loan. This allows counselors to operate as unfettered advocates for the borrower.

As a borrower advocate, ASA has developed numerous best practices for student loan repayment that we believe provide valuable insight and would be replicable for the private lending world.

Best Practices #1: Providing multi-channel education and support services

ASA continues to develop innovative services to help borrowers understand and manage their debt, as well as helping them develop broader financial competencies to serve them for a lifetime. We are effectively using the reality of student debt as a set of teachable moments. One example is ASA's recently launched SALT initiative, an innovative learning and support program that allows schools to enhance students' awareness of their debt loads and ability to understand and manage both their federal and private student loan payments. Through an engaging online learning system, students are taught financial concepts that will help them become financially savvy adults, and learn about the intricacies of their student loan portfolio. This web-based money coach model is coupled with ASA phone counselors who are available to answer any student loan questions a borrower may have.

SALT offers participants an opportunity to keep track of all their federal and private student loans in one place; receive loan advice from expert counselors; get information about different loan payment options; use interactive Web money management tools; and many other valuable benefits. By teaming up with schools, SALT aims to ease the student debt burden by empowering and incentivizing college students and alumni to truly own their finances. The goal of SALT is to make the development of financial competencies rewarding, easy and fun leading to smarter student loan debt management and financial decision making.

Best Practice #2: Proactive education debt management

The education debt management process developed by American Student Assistance for federal student loan borrowers and honed for over a decade is a proactive communication program based on a simple goal: arm borrowers with the right information at the right time to help them avoid repayment problems. Effective education debt management services are designed to help students budget money, meet payment obligations and avoid delinquency as well as default. Such programs can also help troubled borrowers who need assistance getting their loans back into good standing after becoming delinquent or even after defaulting. Impartial advice of this kind should be available to private student loan borrowers to ensure they are getting the information that is best for their particular situation.

Due diligence default prevention, if at all provided by private lenders, often falls short because it is generally performed reactively, after a borrower falls behind on payment. Furthermore, most private loan borrowers default without ever talking to the lender or servicer until after the default occurs. By this time, it may be too late to save a borrower from having their credit affected. We recommend that additional services be provided to

ensure that services are provided to borrowers before they become delinquent on their loans. ASA's research has shown that proactively reaching out to borrowers before delinquency and making them aware of the options that will prevent them from becoming delinquent has a significant impact on delinquency and default rates and saves borrower credit issues before problems arise.

ASA's research has concluded that effective education debt management programs are based on the following principles:

- **Proactive and timely outreach:** Contacting, engaging and building relationships with borrowers early, before payment problems occur.
- **Holistic view:** Considering a borrower's full financial situation including all outstanding debts from student loans, both federal and private, and any consumer loan obligations. Helping borrowers to take a longer-term view of their student loan as it relates to their budget, future plans, and overall financial health is a key to their success.
- **Unbiased, relevant and actionable advice:** Delivering advice from a neutral third party that gives borrowers all possible options, with the borrower's short- and long-term interests in mind.
- **Personalized and ongoing counseling approach:** Creating success one borrower at a time through personalized counseling throughout the loan repayment continuum.
- **Respect:** Respecting the borrower, regardless of payment status and focusing on a solution rather than the problem.

Best Practice #3: Early Intervention

Over the years, ASA has learned that the best way to build a relationship with borrowers is to reach out to them early. We encourage that more of the same be done for private loans.

The reactive nature of beginning default aversion activities three or four months after the problem begins is inadequate to address the real reasons for delinquency and default. For this reason, ASA treats default aversion as a component of its more comprehensive Education Debt Management program that begins repayment conversations with borrowers before the end of the grace period, encourages positive repayment habits, and provides borrowers with useful and objective information, support, and guidance throughout the life of the loan. Early intervention efforts can be greatly enhanced through effective data analysis and segmentation of borrowers according to risk characteristics associated with greater propensity for repayment problems.

When an ASA counselor has a conversation with a borrower during their grace period, the borrower is far more likely to respond to communications or reach out to ASA when they get into trouble on their loans. Early intervention and communication has proven to be a most effective way to prevent repayment problems.

Best practices for better borrower communication were identified and developed under Voluntary Flexible Agreements (VFAs) between the Department of Education and several guarantors from 2001-2008. The VFAs allowed the participating agencies to experiment with new methods and incentives for preventing repayment problems earlier

on. Data gathered during this time period shows that proper, proactive education debt management does have a positive impact on borrower behavior and repayment success. For instance, one ASA study showed that borrowers who were successfully contacted and provided with education debt management services were *half* as likely to fail in loan repayment compared to those who were not contacted. This data proves that when we work to identify those student borrowers most at-risk for repayment problems, and then successfully engage them by some means, they are more likely to keep their loans in good standing. This is a good outcome for both borrowers and lenders.

Best Practices #4: Targeted Communication Campaigns

At the heart of ASA's success in helping borrowers succeed is our commitment to provide quality "one borrower at a time" counseling. **We believe that no federal borrower acting in good faith should default and that many borrowers can be helped to avoid delinquency and default by providing them with the right information at the right time.** The same should hold true for private loan borrowers.

Our counseling efforts are dedicated to helping borrowers understand and manage their loan repayment obligations. In addition, we engage a team to execute a host of communications campaigns targeted at borrowers with specific information needs. Their proactive efforts, often targeted at borrowers that are not delinquent, or perhaps not even yet in repayment, are an important component of our default prevention strategy.

Our Repayment Assistance team works with borrowers that are currently past due, seeking to educate them regarding the consequences of default and making sure that each borrower understands their repayment options, including the appropriate use of deferments and forbearances to manage short-term periods of difficulty. Our counselors engage directly with servicers to resolve borrower issues, including routinely facilitating a three-way phone conference with the borrower and servicer to resolve a specific matter without risk of handoff or delay.

ASA offers customized versions of the multi-channel borrower communications programs, tailored as appropriate to meet the specific needs of the borrower populations. Communications are sent to targeted borrower segments on a regular basis via direct mail and email. When possible and appropriate, direct mail or email communication is co-branded with the borrower's servicer or, in some cases, school, to increase contact rate and campaign effectiveness. All communications include links to ASA's website, providing access to comprehensive information and tools designed to help borrowers understand and successfully manage their debt.

Examples of effective ASA student loan borrower communications campaigns:

- ASA's *Journeys* communication program introduces ASA to borrowers during their grace period following graduation. This program prepares borrowers for loan repayment and helps them understand their obligations, leading to better management of their loan debt and prevention of delinquency and default. When we engaged these borrowers in communication, we significantly lowered delinquency rates, often by 50 percent or more.

- ASA's *Transitions* program is designed to engage borrowers who withdraw before completing their education program and connect with withdrawn borrowers during their grace period. *Transitions* seeks to decrease the risk of student loan payment delinquency and default within this high risk population. The data gathered from this program shows that delinquency rates for this population were more than 50% lower for those borrowers we were able to contact (engage in communication).
- ASA's *Restarting Success* Program is designed to prepare borrowers to resume repayment as they near the end of a deferment or forbearance period. Using data from servicer partners, ASA sends communications to borrowers approximately one month before they are scheduled to resume repayment to ensure a smooth transition back to payment.
- The *After Cure Follow-Up Support* program is designed to keep recently cured (formerly delinquent) borrowers from falling behind on their payments again. By providing support and encouragement, the After Cure campaign lowers the risk of borrower delinquency recidivism.
- The *Post Rehab Support Program* is designed to provide supplemental information to borrowers that have recently emerged from default through a structured rehabilitation program, seeking to minimize the risk of re-default. ASA works proactively with servicers to provide borrowers personalized, informative communications to help them continue their repayment success. These communications include clear and concise messaging that goes beyond the required loan transfer paperwork, providing positive reinforcement and a clear understanding of how rehabilitation has improved the borrower's credit. This communication series is especially important since borrowers can no longer rehabilitate more than once.
- The *Military Borrower Program* was designed to focus on borrowers who qualify for specific repayment options based on their military service. We find many borrowers who have not taken advantage of the benefits available to them as members of the military, and far too many cases of borrowers whose loans have defaulted while the borrower was serving their country in active services. Many of these issues arise because the borrower was unaware of their choices, and we are able to walk them through the options available to rectify the situation.
- The *Social Security Offset Relief* program is based on calls received by ASA's Ombudsman unit. In this program, a mail campaign reached out to borrowers who were likely candidates for Social Security benefit garnishment by the U.S. Treasury (known as the Treasury Offset Program) and explained the process for removing the attachment on their accounts. The program provides relief to an underserved population by detailing options to avoid Treasury offset.

Best Practices # 5: Delinquency and default intervention

ASA uses a highly coordinated, multi-faceted approach with the communication tools listed above to engaging past due borrowers, actively working to manage default risk. Again, the key is to utilize all possible communications channels to engage those

borrowers, with a focus on educating each borrower regarding the consequences of delinquency and default, and how to choose the resolution that best fits his or her situation. Our empathetic, borrower-focused communications strike a very different tone from typical due diligence communications and effectively entice borrowers who have not responded to previous contact from their loan servicer. This respect for borrowers and their individual situation has proven much more effective in getting borrowers back into successful repayment than what borrowers perceive and relay to us as more heavy-handed and intimidating tactics sometimes employed by or on behalf of lenders.

Best Practices #6: Rehabilitation

Our experience confirms that the vast majority of student loan borrowers are working in good faith to manage their loan repayment. For some, default is merely a step in the repayment process. ASA's rehabilitation efforts have proven enormously effective in getting federal student loan borrowers into a payment plan after default that will restore their credit and get them back into good standing on their loans. By treating defaulted student loan borrowers with respect and focusing on resolution rather than blame, ASA has been able to help many thousands of borrowers get back on track for successful loan repayment.

More effort should be made to ensure that a student loan borrower's credit is not irreparably harmed by a private education loan because the borrower had no means to renegotiate or rehabilitate their loan when they experienced repayment difficulties. While not all provisions of the federal rehabilitation program would be applicable to private student loan borrowers, we believe that there is surely opportunity to create parallel success for private loan borrowers working in good faith to find a path to successful repayment of all their education debt. As you know, the rehabilitation program for defaulted loans in the Title IV loan programs requires the loan holder to allow the borrower to make nine consecutive on-time payments of a "reasonable and affordable" amount - a process that will result in the borrower's loan being removed from default and placed in good standing. Opportunities for reasonable and affordable payments should be provided to borrowers trying to get back into good standing on their private loans as well.

We applaud the CFPB's effort to shed light on the struggles borrowers face as they navigate the complicated and sometimes daunting task of student loan repayment. We encourage the CFPB to use the best practices learned from federal student loans to provide borrower protections and support to private loan borrowers and urge you to consider that, for borrowers, private student loans do not exist in a silo—they are a part of a much larger financial picture that a borrower is struggling to manage and systems must be put in place to help borrowers manage their student loans in a holistic way.

ABOUT AMERICAN STUDENT ASSISTANCE

American Student Assistance (ASA) is a nonprofit organization whose mission is to empower college students and their families to successfully manage higher education debt. Through proactive counseling, guidance, and education, ASA provides borrowers with neutral, personalized student loan solutions throughout their entire loan experience.

During the course of our work as a Federal Family Education Loan guarantor, it became abundantly clear that students, parents and former students need unbiased advice and support in understanding student loan repayment options so as to prevent delinquency and default. In the 1990s, of our own accord, we adopted a Wellness, or prevention first, philosophy that emphasizes proactive outreach and education to borrowers starting before the repayment process and downstream problems occur. ASA's philosophy is that, by arming borrowers with the right information at the right time, we can positively impact repayment behavior and borrower success.

ASA has developed a comprehensive data-driven approach to portfolio management, using detailed performance metrics to shape activities and improve borrower outcomes. According to the Department of Education, ASA helped student loan borrowers avert an incremental \$120 million of defaults through its proactive debt management programs for federal student loan borrowers. ASA currently manages a guarantee portfolio of \$38 billion in federal loans in support of approximately 1.4 million borrowers.