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Federal Student Loans Under the CARES Act: Borrower and Employer Guidance

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), a sweeping third-wave relief package in response to the COVID-19 pandemic, became law March 27. To read the full overview of the bill, [click here](#).

The CARES Act includes provisions relating to federal student loans which may assist some borrowers as they navigate trying times and which may impact employee's paychecks. Employers should be aware of the changing rules related to student loan garnishment

Loan Forbearance

The CARES Act aid does not apply to private student loans or Federal Family Education Loans ("FFEL" Loans). Borrowers can check their loan types at the [National Student Loan Data System](#).

The government will place federal student loan borrowers in an administrative forbearance. This means that borrowers of these loans may temporarily stop making their monthly loan payment. This payment suspension lasts until Sept. 30. Interest will not accrue on the borrowed amount during the forbearance period. Despite these options to forego payment, borrowers may still make payments towards their federal student loans should they choose to do so.

However, any Direct or Perkins loans that are more than 31 days past due automatically enter administrative forbearance without any action on the part of the borrower. If a borrower is working toward Public Service Loan Forgiveness or Income Driven Repayment, none of the time spent in administrative forbearance counts against those totals.

The federal student loan balance will not change during the time the loan is in forbearance. This program should not be confused with the concept of student loan forgiveness, where some portion of the

borrower's loan balance would be eliminated.

Wage Garnishment, Tax Refunds, and Hardship Requests

Before the enactment of the CARES Act, the U.S. Department of Education announced that they would halt collection actions and wage garnishments to provide financial assistance to borrowers. This "flex" period will last for a period of 60 days from March 13, 2020.

With respect to wage garnishment, the federal government has the authority under the Higher Education Act (HEA) and the Debt Collection Improvement Act (DCIA) to attach a borrower's wages if his or her federal student loans are in default. By utilizing wage garnishment, the federal government can take 15% of a borrower's paycheck. The CARES Act suspends payments under the HEA but does not reference suspension of DCIA student loan garnishments.

If a borrower's wages have been garnished since March 13, 2020 under the HEA, he or she will receive a refund from the department in the amount of the wages garnished. The department must rely on employers to make the change to borrowers' paychecks, so it will monitor an employer's compliance by determining if the employer continues to remit garnished wages to the department through one of its guaranty agencies designated by the department in each state.

For an employer to determine if a federal student loan garnishment falls under the HEA or DCIA, they should look to the source of the garnishment. HEA garnishments are processed through guaranty agencies in each state as described above. DCIA garnishments should be easier for employers to catch as they come from the U.S. Department of Treasury on standardized forms.

Employers should monitor their payroll processes to determine if wages are still being garnished. If employers are still processing federal student loan garnishments under the HEA, they should temporarily stop making these withholdings. Along those lines, a borrower whose wages continue to be garnished should contact their employers' human resources department.

In addition to ceasing wage garnishment, the Department of Education has stopped all requests to the U.S. Treasury to withhold money from defaulted borrowers' federal income tax refunds, social security payments, and other federal payments. These withholdings are permitted by federal law and are applied toward repayment of defaulted federal student loans. The Department of Education is simultaneously refunding approximately \$1.8 billion in withholdings to more than 830,000 borrowers.

If a borrower's tax refund was already offset earlier this year, that borrower will not be able to obtain a refund without specifically asking his or her loan servicer for a hardship exception. When making the hardship request, borrowers will need to provide specifics as to why he or she needs the refund. Hardships typically include pending foreclosure or eviction, loss of a job, whether related to COVID-19 or not, sickness, or cessation of unemployment benefits. A borrower can submit the hardship request after his or her refund, benefits, or wages have been garnished.

For more information please contact [Will Swann](#), [Katie Capito](#) or any attorney in Frost Brown Todd's [Finance](#) practice group.

*To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a **Coronavirus Response Team**. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.*

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