

7. Payday and Other Short-Term Loans

Payday and other short-term debts, such as car title loans, do not go away. However, you can manage debt by prioritizing which debts are paid first, discontinuing automatic repayments and potentially working out a payment arrangement with the lender that you can afford. This section will address these topics:

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Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

What Happens to Your Loan Debt After You Leave the Country?

The debt for a payday loan (sometimes also called cash advance loans) and other short-term loans exists regardless of where you live. The obligation to repay the debt does not disappear when a person leaves the country. If you miss a loan payment, you will likely incur fees and penalties on your debt. A lender may or may not try to collect this debt depending on the existence of collateral or co-signers and the borrower's location.

Loans Will Continue to Accrue Interest and Fees

The effective annual percentage rate (APR) on payday and other short-term loans is far greater than most other forms of debt, such as credit card debt. Payday loans often have an effective APR of 400% to 600% or higher. By comparison, APRs on credit cards can range from about 12% to 30%. Some states have rules related to how much interest a payday lender can charge; however, other states, such as Texas, allow payday lenders to charge unlimited interest and fees for nonpayment.

The Lender May Seek to Recover the Unpaid Debt

Debt collectors have a limited time during which they can sue debtors for nonpayment (see below under “The debt may no longer be legal”). If a lender sues you in a United States court and wins a favorable judgment against you (which can happen even without you present, in which case it is called a “default judgment”), it will only be able to enforce the judgment in a country outside of the United States if that country has an agreement with the United States that U.S. judgments are enforceable in that country.

How to Prioritize the Repayment of Debt

The National Consumer Law Center advises debtors to prioritize their debts and decide which bills they must pay first, usually household expenses (home, apartment, food and medicine), cell phone and other utilities, car and appliances such as refrigerator or washing machine.

These are some of the key steps they recommend:

- Always pay family necessities and housing-related bills;
- Pay the minimum required to keep essential utility services;
- Pay car loans if a car is essential for your work and family;²
- Pay child support debts and income taxes;
- Do not move a debt up in priority because the creditor threatens to sue you or continually calls your home; and
- Some debts may not be legally binding. See below under “It may not be legal for the debt to be collected.”

Working with the Lender to Extend Payments for the Loan and/or Negotiate the Repayment Amount

You may be able to make an alternative payment arrangement directly with the lender, such as an extended payment period or change in repayment amount. Any new terms agreed with the lender should be in writing and you and your representative should keep track of all communications with the lender, including notes about interactions in person or over the phone. You should also keep any emails or letters received from the lender and the lender’s contact information. You may also be able to get more time to repay a payday loan without being charged extra fees through an Extended Payment Plan (EPP), if permitted by state law.³

² In the case of a car title loan which you cannot pay off, you can either find someone willing to buy the car and use that money to pay off the loan, or just turn the car in to the lender, especially if the debt is more than the value of the vehicle.

³ EPPs are offered by payday lenders that are members of the Consumer Financial Services Association of America (CFSA). Under an EPP, a customer may pay the transaction balance in four equal payments coinciding with the periodic payment dates. You can find out whether a payday lender is a member of the CFSA through this website: <http://cfsaa.com/about-cfsa/2017-cfsa-corporate-members.aspx>. There is no charge to enter into an EPP.

Protecting Accounts from Automatic Withdrawals or Garnishment

Payday Loans Tied to Bank Accounts

You can withdraw your permission to the lender to take money from your bank account. Some payday and other short-term loans require a written Automated Clearing House (ACH) authorization, which gives the lender permission to electronically take money from the customer's checking or savings account when payment is due. Cancellation or revocation of an ACH authorization will prevent such withdrawals from being made from your account or stop payment on checks. However, it will not prevent the lender from applying fees and penalties on overdue payments or from seeking civil remedies. For example, if you gave the lender a post-dated check and there is not enough money in the account to pay the check when the lender submits it to the bank, the lender will charge you fees and penalties and the bank may charge an overdraft fee.

Garnishment and Default Judgements

Garnishment is a court order that allows creditors to take repayment directly from a debtor's paycheck or bank account. Garnishment varies significantly from state to state, so risks are higher for someone with assets who is in a more permissive garnishment state. The likelihood that a court will order a garnishment against you is higher if there is a default judgment. If the debt is taken to court for collection and you have granted someone your power of attorney, that person may engage a lawyer for you and make legal decisions on your behalf to avoid a default judgment (but unless the person is a lawyer s/he cannot represent you in court).

It May Not Be Legal for the Debt to Be Collected

Debt collectors have a limited time during which they can sue debtors for nonpayment. Such time limits differ by state and are set by each state's statute of limitations. For example, in Texas, after four years the debt is time-barred and the debtor can no longer pursue a court judgment for collections. In some states where there is a 36% or lower rate cap in place and the loan is online, the loan could be illegal and thus not be required to be repaid because legally it is not collectible. Other states have limits on rollovers or other protections that may apply and allow you to stop payment. A local lawyer can provide more information.

The Military Lending Act (MLA) is a Federal law that provides special protections for active duty servicemembers, like capping interest rates and fees on many loan products. The MLA prevents a servicemember from being charged an interest rate more than a 36 percent Military APR, which includes certain fees, on most types of consumer loans. The MLA applies to active-duty servicemembers, including those on active Guard or active Reserve duty, and covered dependents. Payday loans are covered under MLA.

Checklist: Payday and Other Short-Term Loans

Your debt is not discharged after you leave the country. Payday and other short-term debt do not go away. But you can manage debt by discontinuing automatic repayment and working out something you can afford. It is important to prioritize how you want to spend your money.

- If you have time before leaving the country, you should contact your lenders, notify them of the situation and provide a forwarding address in your home country. Be sure to contact them both by phone and by mail, and send your notification by certified mail, return receipt requested.
- If you are subject to immediate deportation, you should keep a record of each of your lender's contact information accessible and, if you can, send a payment to the lender upon arriving in your home country. You should also attempt to contact the lender after being deported to provide an updated mailing address.
- If you have granted a lender an ACH authorization to allow them to automatically withdraw money from your bank account, you may want to cancel the authorization.
- You may be eligible for an Extended Payment Plan (EPP) for your loan, if your loan meets certain requirements described above. You may also be able to work with your lender to extend your payment schedule or renegotiate your payment amount. Any changes to your loan should be in writing
- You cannot be arrested solely for failing to repay a payday loan. However, if you are sued or a court judgment has been entered against you and you ignore a court order to appear, a judge may issue a warrant for your arrest.
- Beware of scams. Do not share sensitive information, including account information or credit card numbers, with people you do not know. Fraudsters may pose as law firms or debt collectors to attempt to collect the debt.