

Appleseed is pleased to present an update to our 2012

“PROTECTING ASSETS AND CHILD CUSTODY IN THE FACE OF DEPORTATION.”



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As millions of immigrant families face fear and uncertainty, Appleseed is updating its 2012 manual, “Protecting Assets and Child Custody in the Face of Deportation.”

This one-of-a-kind resource is designed for immigrants and those who work with them: the host of attorneys, nurses, social workers, religious workers who are stepping up in challenging times. Appleseed’s Manual will help families develop plans *in advance* to deal with critical financial and family issues in the event of deportation, arrest and other emergencies.

Because the times are so uncertain, and the demand for these updates is growing, we are publishing each chapter as we draft it.

We are grateful for your interest, and for everything you can do to help immigrants and refugees. Please let us know of other topics you’d like to see covered.

To explore new chapters, further updates and additional resources, please visit us at www.appleseednetwork.org/deportationmanual.

Bert Brandenburg
President, Appleseed



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CHAPTER 8:

PAYDAY AND OTHER SHORT-TERM LOANS

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

This section will address these topics:

☹☹ **What happens to your loan debt after you leave the country?** ☹☹ **How to prioritize the repayment of debt** ☹☹ **Working with the lender to extend payments for the loan and/or negotiate the repayment amount** ☹☹ **Protecting accounts from automatic withdrawals or garnishment** ☹☹ **It may not be legal for the debt to be collected** ☹☹

The information in this chapter should be used only as a starting reference and cannot take the place of legal representation. Because the specific details and processes for payday and other short-term loans vary from state to state, always refer to state-specific resources.

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 the immigrant lives. The obligation to repay the debt does not disappear when a person leaves the country. If an immigrant misses a loan payment, the immigrant will likely incur fines and penalties on his or her debt. A lender may or may not try to collect this debt.

Loans Will Continue to Accrue Interest and Fees

The effective annual percentage rates (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 the immigrant in a United States court and wins a favorable judgment against him or her (which can happen even without the immigrant 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 an immigrant's work and family.¹
- 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.
- 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

The immigrant 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 the immigrant or his or her representative should keep track of all communications with the lender, including notes about interactions in person or over the phone. They should also keep any emails or letters received from the lender and the lender's contact information. The immigrant 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.²

¹ In the case of a car title loan which the immigrant cannot pay off, he or she 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.

² 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. The general requirements and conditions of an EPP can be found at this website: <http://cfsaa.com/cfsa-member-best-practices/what-is-an-extended-payment-plan.aspx>. 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

An immigrant can withdraw his or her permission to the lender to take money from the immigrant's 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 the immigrant's 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 the immigrant 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 the immigrant fees and penalties and the bank may charge the immigrant an overdraft fee.

Garnishment and Default Judgements

Garnishment is a court order that allows creditors 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 the immigrant is higher if there is a default judgement. 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 they are a lawyer themselves, they 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 an immigrant to stop payment. A lawyer can provide more information.

CHECKLIST FOR PAYDAY AND OTHER SHORT-TERM LOANS

KEY TAKEAWAY

Your debt is not discharged after you leave the country. Payday and other short-term debt does not go away. But an immigrant can manage debt by discontinuing automatic repayment and working out something he or she 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.

***This is not legal advice. Please see "The Importance of Legal Advice."**