



January 18, 2022

The Honorable Richard Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable John Cornyn
Member
Senate Judiciary Committee
517 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Sen. Cornyn:

We appreciate your efforts to provide distressed student and parent borrowers with an additional option under the bankruptcy code to address their student loan obligations during difficult financial times. As a general matter, we believe recent graduates need to repay their student loans, whether federal or private, and that federal law provides struggling borrowers with several repayment options that can reduce the burden of repayment and lead to loan forgiveness. However, we recognize that student loan debt can be a burden for some borrowers and understand that current bankruptcy law may be ineffective in assisting the most disadvantaged borrowers after many years of good faith efforts to pay back money borrowed with those flexible options. The introduction of S. 2598, the *FRESH Start through Bankruptcy Act of 2021*, begins to address, in what we believe is a reasonable manner, the needs of this small group of borrowers. We write to you today with suggestions on how to improve the legislation by requiring better disclosures prior to bankruptcy and, once a bankruptcy action is filed, treating all federal and private student loans the same. We believe these important changes will go a long way to help students and their families make informed choices for their unique situations. The comments we make here are in reference solely to the discharge and disclosure provisions of the legislation, and do not address the provisions related to Sec. 3. Effect of Discharge of Certain Student Loans.

Student loan borrowers may face severe long-term consequences when seeking the discharge of their education debt in bankruptcy. Bankruptcy proceedings can be costly, may fail to cancel the total balance of outstanding debt, and result in tarnished credit reports for years to come. In contrast, existing repayment options for consumers with student loans, current loan forgiveness programs, and rehabilitation pathways may be a better approach because they can assist student and parent borrowers without penalizing them with bankruptcy's negative effects. Student loan borrowers and their families should have complete knowledge of the positive and negative consequences of discharging their liabilities through bankruptcy before making a final decision to pursue that path. We recommend amending S.2598 by adding a disclosure statement to help borrowers understand these outcomes and alternative options.

For those federal student loan borrowers who make the decision to file for bankruptcy, S. 2598 would permit consideration under the general bankruptcy rules after 10 years of repayment, exclusive of applicable suspension periods. We believe this approach goes a long way in addressing concerns over discharging the debt of a recent college graduate who will reap the financial benefit of higher education over time and providing new alternative approaches for those borrowers who have limited means to pay back their student loans. The timeframe also aligns with the current 10-year repayment plan that all student and parent borrowers are enrolled in after leaving postsecondary education.

We also believe that all student loans, whether federal or private, should be treated the same under the provisions of S.2598 – as they have been for many years under the law. Under the bill, borrowers with Federal Direct Loans, Federal Family Education Loan Programs Loans, and private education loans made by state agencies and nonprofits could be discharged after the 10-year waiting period without meeting the undue hardship standard, but private education loans made by commercial lenders would only be dischargeable under the “undue hardship” test for the life of the loan. In our view, this provision will confuse borrowers and create disparate federal policy by treating some education loans differently than others simply because of the tax status of the lender. In many cases, a student or parent borrower has both federal loans made by the federal government and/or by state-based or nonprofit lenders, and private education loans made by commercial lenders. We believe all borrowers deemed eligible for a discharge should have all their education debt considered through the same bankruptcy process. We urge the committee to treat all education loans equally under the law.

We appreciate your efforts to help struggling borrowers, especially those facing extraordinary circumstances, access debt relief through the bankruptcy code. We look forward to working with you as S. 2598 moves through the legislative process to ensure amendments to the bankruptcy code minimize confusion for borrowers and help those intended beneficiaries access the student loan benefits that are in their best interest.

Sincerely,



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cc: The Honorable Chuck Grassley, Ranking Member, Senate Judiciary Committee