



August 2, 2021

The Honorable Dick Durbin, Chair
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley, Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chair Durbin and Ranking Member Grassley:

On behalf of the members of the Consumer Bankers Association (CBA) Education Funding Committee who make the majority of private student loans to students, we are writing to express caution around significant student loan bankruptcy reform efforts and provide clarity on the role of private student loans as it relates to bankruptcy policy. Overall, private borrowers are overwhelmingly succeeding, current law allows for discharge in bankruptcy, and changes to bankruptcy treatment would increase the cost of credit for future borrowers.

First, it is important to understand the private student loan landscape and performance when compared to the federal portfolio. The student loan market is dominated by the federal government. Private student loan debt makes up less than 8 percent of the \$1.73 trillion in outstanding student loan debt. The rest (92 percent) are U.S. Department of Education loans. Additionally, publicly available data shows that most private student loan borrowers are successfully keeping up with their payments with less than 2 percent of loans defaulting annually and a significant majority of borrowers are already back to making regular payments following the initial impact of the COVID-19 pandemic.

Specific to bankruptcy, student loans, both private and federal, can already be discharged through bankruptcy, contrary to the widely held belief that student loans are never dischargeable. There is an additional legal test for discharge of these loans. Borrowers must demonstrate “undue hardship” to themselves and their dependents for a court to discharge student loan debt. The Courts have a well-established and respected precedent for how borrowers must demonstrate this hardship, and current bankruptcy reform efforts could negatively impact the current process of forgiveness available to borrowers.

Additionally, while changing the bankruptcy treatment for student loans may provide relief to a small number of borrowers currently in repayment, it would increase the cost of credit for new borrowers. Changing bankruptcy rules just for private loans would not address the root cause of the student debt crisis, which is overwhelmingly driven by federal lending.

Finally, current Bankruptcy law was not created overnight. The Bankruptcy Reform Act of 2005 (Public Law 109-8) included a change to the Bankruptcy Code that gave all education loans the same treatment as then applied only to loans made by a government or to private loans insured by a non-profit entity. The bill was passed with strong, bipartisan support in both the House and Senate after



seven years of review and debate. The proposed change for education loans was included in almost identical form in every House and Senate version of the bankruptcy reform legislation from 1999 until final passage in 2005. Any changes to current law must be equally cautious, comprehensive, and bipartisan.

Thank you for your consideration. We would be pleased to discuss any proposals moving forward.

Sincerely,

A handwritten signature in blue ink that reads 'Richard Hunt'.

Richard Hunt
President and CEO