



July 15, 2025

The Honorable Scott Fitzgerald  
Chair  
House Judiciary Subcommittee on the  
the Administrative State, Regulatory  
Reform and Antitrust  
House of Representatives  
2138 Rayburn House Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
Ranking Member  
House Judiciary Subcommittee on  
the Administrative State, Regulatory  
Reform and Antitrust  
House of Representatives  
2138 Rayburn House Building  
Washington, DC 20515

Dear Chairman Fitzgerald, Ranking Member Nadler, and Members of the Subcommittee,

Thank you for convening the hearing entitled “Bankruptcy Law: Overview and Legislative Reforms,” to discuss the urgent need to reform our bankruptcy system and shine a spotlight on how our bankruptcy system unjustly fails to protect millions of student loan borrowers.

Today, more than 42 million Americans owe more than \$1.6 trillion in student loan debt.<sup>1</sup> Millions are struggling to stay current on their student loans while keeping up with the rising costs of everyday goods like groceries, rent, childcare, and medication. Making matters even worse, over the last several months, instead of working to bring down college costs and make higher education more affordable for working families, the Trump Administration has restarted involuntary collection against the most vulnerable student loan borrowers.<sup>2</sup> Additionally, in just a few short weeks, the Trump Administration plans to resume charging interest to 8 million borrowers, as borrowers wait in an historic backlog of 1.5 million unprocessed applications to access critical affordable repayment options.<sup>3</sup> Meanwhile Republicans’ “One Big Beautiful Bill”

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<sup>1</sup> U.S. Department of Education, Office of Federal Student Aid, *Federal Student Aid Portfolio Summary* (Mar. 31, 2025), <https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls>.

<sup>2</sup> Zachary Schermele, *Collection of defaulted student loans to restart May 5 for first time since pandemic*, USA Today, (Apr. 21, 2025), <https://www.usatoday.com/story/news/education/2025/04/21/student-loan-payments-collections-restarting-trump-may/83199039007/>.

<sup>3</sup> Student Borrower Protection Center, *Trump Administration to Restart Student Loan Interest Charges for Nearly 8 Million Borrowers, Borrowers Will Face More than \$3500 Per Year in New Charges*, (Jul. 9, 2025), <https://protectborrowers.org/trump-to-restart-student-loan-interest-charges-for-8-million-borrowers-and-add-3500-per-year-in-new-charges/>.

will dramatically increase monthly student loan payments for millions of Americans and limit relief options for struggling borrowers.<sup>4</sup>

From 2011 to 2019, more than 99.8 percent of borrowers who filed for bankruptcy could not get their student loans discharged.<sup>5</sup> Unlike medical, credit card, and other household debts, both federal and private student loans are only dischargeable in bankruptcy if the debtor pursues a discharge through an “adversarial proceeding”—a cumbersome, expensive process that requires an individualized determination by a bankruptcy judge separate from any order discharging other types of consumer debts. To discharge a student loan through this special, separate process, a borrower must make a heightened showing of “undue hardship.” To demonstrate undue hardship, some jurisdictions subject borrowers to the *Brunner* test, a three-pronged analysis created by judges that requires proof of extraordinary circumstances and is notoriously difficult to pass.<sup>6</sup> Procedural hurdles, the undue hardship requirement, and the resulting *Brunner* test imposed by the courts, combine to effectively block vulnerable and struggling student loan borrowers from the promise of a fresh start that the Bankruptcy Code was meant to offer.

**For these reasons, it is critical that Congress restore broad access to bankruptcy discharge for all student loan borrowers with all types of student loans.**

Importantly, even though the limit on the dischargeability of student debt only applies to “qualified education loans,”<sup>7</sup> few borrowers are aware of this distinction or have sophisticated

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<sup>4</sup> Student Borrower Protection Center, *Letter to the Senate HELP Committee: Preliminary Economic Analysis of Senate Proposal on Student Loan Repayment*, (Jun. 11, 2025), <https://protectborrowers.org/letter-preliminary-economic-analysis-of-senate-proposal-on-student-loan-repayment/>.

<sup>5</sup> Jason Luliano, *The Student Loan Bankruptcy Gap*, 70 Duke Law Journal 3 (Dec. 2020), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4046&context=dlj>.

<sup>6</sup> The *Brunner* test requires a showing that: (1) the borrower cannot presently maintain a minimal standard of living if required to repay the student loan; (2) circumstances indicate the borrower’s financial struggles are likely to persist into the future for a significant portion of the loan repayment period; and (3) the borrower has made good faith efforts to repay the loan in the past. See *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395 (2d Cir. 1987); U.S. Department of Justice, *Guidance for Department Attorneys Regarding Student Loan Bankruptcy Litigation*, (Nov. 17, 2022), [https://www.justice.gov/d9/pages/attachments/2022/11/17/student\\_loan\\_discharge\\_guidance\\_-\\_guidance\\_text\\_0.pdf](https://www.justice.gov/d9/pages/attachments/2022/11/17/student_loan_discharge_guidance_-_guidance_text_0.pdf).

For a summary of some critiques of the *Brunner* test presented in a joint amicus brief by the National Association of Consumer Bankruptcy Attorneys, National Consumer Bankruptcy Rights Center, and National Consumer Law Center, see National Consumer Bankruptcy Rights Center, *NACBA and the NCLC Seek Rejection of Brunner Test*, (Sep. 1, 2016), <https://www.ncbrc.org/uncategorized/2016/09/01/nacba-and-the-nclc-seek-rejection-of-brunner-test/>.

<sup>7</sup> Qualified education loans, which are harder to discharge, are defined in both the Tax Code and Higher Education Act as debts incurred solely to pay for (1) qualified higher education expenses (which are defined as the “cost of attendance” and a sum determined by the institution to cover tuition, fees, room and board, and books), (2) at an accredited institution (which is eligible for Title IV funding), (3) by an eligible student (in most circumstances enrolled at least half-time, or 6 credits per semester or more). See Austin Smith, *Not All Student Loans Are Non-Dischargeable in Bankruptcy and Creditors Know This*, Student Borrower Protection Center, (Mar. 18, 2019), <https://protectborrowers.org/not-all-student-loans-are-non-dischargeable-in-bankruptcy-and-creditors-know-this/>.

knowledge to understand whether their loan is dischargeable. Many borrowers are under the mistaken belief that all student loans are simply not dischargeable. As the attached 2022 Student Borrower Protection Center (SBPC) investigation reveals, private student lenders have taken advantage of consumer confusion to cheat borrowers out of their right to bankruptcy.<sup>8</sup>

Based on a comprehensive review of securities filings, student loan promissory notes, and government data, **SBPC estimated that \$50 billion in so-called private student loans taken on by more than 2.6 million borrowers are, in fact, eligible to be discharged in a typical consumer bankruptcy, despite representations to the contrary by lenders and loan servicers.** SBPC's investigation also outlines the audacious tactics that some of the largest players in the private student loan market, such as Sallie Mae and Navient, undertook to convince struggling borrowers and the public that their customers did not have the right to bankruptcy. These tactics included lying to borrowers in advertisements and contracts, sending harassing collections messages to borrowers who had already undergone bankruptcy proceedings, and telling borrowers that loans were not dischargeable. At the same time, student loan companies were honest with Wall Street investors—warning that these same loans could, in fact, be discharged in bankruptcy.<sup>9</sup>

Following SBPC's investigation, the Consumer Financial Protection Bureau (CFPB) released a bulletin demanding student loan servicers halt and return unlawfully collected debts on loans discharged through bankruptcy.<sup>10</sup> In May 2024, the CFPB sued the Pennsylvania Higher Education Assistance Agency (PHEAA) for “illegally collecting on student loans that have been discharged in bankruptcy and sending false information about consumers to credit reporting companies.”<sup>11</sup> The CFPB alleged that PHEAA illegally collected on and furnished inaccurate information about loans that had already been discharged in bankruptcy, lied to borrowers about whether they could access relief through bankruptcy, and more.<sup>12</sup>

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<sup>8</sup> Student Borrower Protection Center, *Morally Bankrupt: How the Student Loan Industry Stole a Generation's Right to Debt Relief*, (Jan. 2022), [https://protectborrowers.org/wp-content/uploads/2022/01/SBPC\\_Morally-Bankrupt.pdf](https://protectborrowers.org/wp-content/uploads/2022/01/SBPC_Morally-Bankrupt.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> Consumer Financial Protection Bureau, *CFPB Heightens Scrutiny of Unlawful Collection of Payments on Discharged Student Loans*, (Mar. 16, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-heightens-scrutiny-of-unlawful-collection-of-payments-on-discharged-student-loans/>; Consumer Financial Protection Bureau, *Bulletin 2021-01: Unfair Billing and Collection Practices After Bankruptcy Discharges of Certain Student Loan Debts*, (Mar. 16, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_unfair-billing-collection-bankruptcy-student-loan-debt\\_2023-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_unfair-billing-collection-bankruptcy-student-loan-debt_2023-01.pdf).

<sup>11</sup> Consumer Financial Protection Bureau, *CFPB Sues Student Loan Servicer PHEAA for Pursuing Borrowers for Loans Discharged in Bankruptcy*, (May 31, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-student-loan-servicer-pheaa-for-pursuing-borrowers-for-loans-discharged-in-bankruptcy/>.

<sup>12</sup> *Id.*

The Trump Administration subsequently let PHEAA off the hook by handing them a corporate pardon in February 2025.<sup>13</sup>

For too long, student loan borrowers have been denied the clean slate that bankruptcy promises to people and companies who can no longer make ends meet—a right which is extended across almost every other type of debt. Complex procedural requirements and prohibitions on student loan discharges have also allowed predatory lenders and servicers to take advantage of millions of borrowers, who may not have the time or legal expertise to understand these restrictions, and deprive them of the bankruptcy benefits to which they are legally entitled. For these reasons and more, the disparate treatment of student loan debt in the bankruptcy code is both harmful and unnecessary. We call on Congress to eliminate the undue hardship requirement and restore full bankruptcy protections for all borrowers and all types of student loans.

We appreciate the opportunity to share our insights with the Committee and thank you for your consideration.

Sincerely,

Student Borrower Protection Center

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<sup>13</sup> Student Borrower Protection Center, *CFPB Drops Enforcement Action Against Predatory Student Loan Company*, (Feb. 27, 2025), <https://protectborrowers.org/cfpb-drops-enforcement-action-against-predatory-student-loan-company/>.

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