AACRAO

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May 22, 2018

Jean Didier Gaina
U.S. Department of Education
Office of Postsecondary Education
400 Maryland Avenue SW
Washington, DC 20202–6110

Re: February 21, 2018 Request for Information on Evaluating Undue Hardship Claims in Adversary Actions Seeking Student Loan Discharge in Bankruptcy Proceedings

Docket ID: ED–2017–OPE–0085

On behalf of the American Association of Collegiate Registrars and Admissions Officers (AACRAO), I write to respectfully submit the following comments in response to the U.S. Education Department's request for information on evaluating undue hardship claims in adversary actions seeking student loan discharge in bankruptcy proceedings.

AACRAO is a nonprofit association of more than 11,000 campus enrollment officials who represent approximately 2,600 institutions and agencies in the United States and more than 40 countries worldwide. The vast majority of our individual members are campus officials with direct responsibility for admissions, recruiting, academic records, and registration functions. The campus administrative officials that comprise our membership range from front-line administrative staff to senior administrators with primary responsibility for enrollment planning, records management, financial aid, administrative computing and other important operations central to the smooth and efficient administration of colleges and universities.

Since the mid-1970s, bankruptcy law has restricted the ability of borrowers to discharge their federal student loans. For nearly two decades, federal student loans have been non-dischargeable altogether, except for cases of undue hardship. While this exceptional treatment of federal student loans under bankruptcy law is harsh, federal student loans do provide basic consumer protections, their own specific discharge provisions, and flexible repayment options that serve as meaningful alternatives to bankruptcy discharge for borrowers.

Recent legislative proposals included in H.R. 4508, the Promoting Real Opportunity, Success, and Prosperity through Education Reform (PROSPER) Act would, unfortunately, undo numerous protections currently extended to federal student loan borrowers. The proposed elimination of some Income-Based Repayment plans benefits—including loan forgiveness through income-driven repayment plans and through the Public Service Loan Forgiveness (PSLF) program—would increase the cost of college and decrease consumer protections for students. Additionally, the elimination of the Federal Supplemental Educational Opportunity Grant (FSEOG) and Perkins Loan programs—which provide grants and loans to students with the greatest demonstrated financial need—could force low-income students to take out private loans, which lack many of the protections for borrowers of federal student loans, in order to cover remaining gaps in the cost of attendance after a student is awarded federal aid.

Should Congress ultimately abrogate these programs, the Department may want to consider modifying how undue hardship claims by federal student loan borrowers in bankruptcy are evaluated. However, under the current protections afforded, AACRAO does not believe a change to the treatment of federal student loans in bankruptcy is necessary.

The treatment of private educational loans in bankruptcy, on the other hand, deserves to be reexamined. Beginning in the early 1990s, for reasons that were never articulated or debated, Congress began to extend the bankruptcy code's exceptionally harsh treatment of federal loans to private educational loans. Until the 2005 bankruptcy reform act, this identical treatment was limited to private loans that were funded or guaranteed by states or nonprofits. This ill-advised expansion rendered a large number of non-federal loans non-dischargeable in bankruptcy, even if they had none of the important attributes that justified that treatment for federal loans. In 2005, again without hearings or debate, Congress extended the exceptional bankruptcy treatment initially afforded only to federal loans to all educational loans.

Private student loans are one of the riskiest and most expensive ways to pay for college, yet a significant number of students have private student loans as well as, or instead of, safer federal student loans. They typically have high variable interest rates that are dependent on the credit scores of borrowers and co-signers, commonly saddling the lowest income borrowers with the highest rates and the worst terms. The uncapped interest rates are often two or three times as high as the fixed rate on federal Stafford loans. Unlike federal loans, private loans have no real protections for borrowers who fall on hard times. In cases of unemployment, disability, periods of very low income, and even death, private loan borrowers and their families have few or no options for relief. The same is not true of federal loans, which can be deferred or repaid in amounts based on the borrower's income.

The only relief for struggling private loan borrowers actually plunges them deeper into debt. Lenders often charge fees to grant a forbearance—a temporary postponement of payments—on a private loan. Forbearances are only available for a limited amount of time, during which interest accrues and is added to the principle when payments resume.

Private loans are also nearly impossible to discharge in bankruptcy, unlike other similar forms of consumer debt. The special treatment of private loans in bankruptcy protects lenders' investments at the expense of students and consumers. Lenders that are protected against losses in this way will continue to make risky loans to borrowers without strong prospects for repayment, which is bad for students and the economy.

There is a real, but limited, demand for private student loans. Some students are not eligible to participate in federal loans, including undocumented students, international students, and those who attend schools that do not participate in the federal loan programs. Those students, and the small percentage of others who really do need to borrow more than is available federally—and for whom doing so is a sound investment—need safe and reliable options.

The unconditional extension of non-dischargeability to private loans has created a perverse incentive for risky lending practices that victimize borrowers by facilitating the marketing of sub-prime loans to more vulnerable populations and promoting over-borrowing. We strongly urge the Department to reconsider the treatment of private educational loans and extend better borrower protections by allowing their dischargeability in bankruptcy.

The association would like to thank you for your consideration of our views on this important issue. We appreciate the Department's willingness to work with the higher education community and stand ready to work with you to advance the interests of our nation's students.

Sincerely,

Michael V. Reilly
Executive Director