

NANCY C. DREHER LECTURE ON BANKRUPTCY LAW AND PRACTICE

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STUDENT LOANS: Bad Policy Makes Bad Law



The Flying McCoys Comic Strip, August 19, 2015
GoComics.com

Introduction

40 million individuals have student loan debt estimated at \$1.3 trillion

Student loans represent the second highest amount of debt owed after mortgage debt

Approximately 7 million individuals are in default on their federal student loan debt, which represents a 6% increase from the prior year. Default is defined as not having made a payment for 360 days. Delinquent accounts have not met this threshold and are not included in these totals.

Discharge of student loans for undue hardship is granted in 4 out of 10 cases, but only 0.1% of debtors seek such relief.¹

Policy Background

To further opportunities for higher education for the populace, the federal government encourages availability of loans to finance the costs of post-secondary education.

The viability of this broad policy requires not only the availability of higher education but that the financial benefits of a degree justify the cost to obtain it. Moreover, it requires fostering conditions that encourage lenders and guaranteeing agencies to participate in the student loan market with appropriate underwriting standards. Policies favoring collectability, including restricting conditions for forgiveness or discharge of student loan debt figure prominently in these equations.

It is not surprising that fundamental policies regarding student loans – those addressing wide availability and necessary repayment – can work at cross purposes:

The federal student-loan program was implemented in 1965 for the purpose of “keeping the college door open to all students of ability” regardless of socioeconomic background. Consequently, student loans have been easy to obtain and have featured low interest rates, minimum monthly payments, economic hardship deferments, and, more recently, income-based repayment plans. Because the student-loan program lends money to applicants without assessing their risk of default, students who are poor credit risks have received federal loans to pursue postsecondary educational opportunities.

¹ Iuliano, *An Empirical Assessment of Student Loan Discharges and Undue Hardship Standard*, 86 Am. Bank. L. J. 495 (2012).

The consequences of these altruistic and well-intentioned policies were predictable--heavy student debt and unacceptably high default rates. Clearly, there is now a troubling disconnect between the original purpose of the student-loan program to democratize American higher education and the fiscal policies that are necessary to ensure program solvency and protect borrowers from enslaving debt and inevitable default.

Cloud & Fosen, "Facing the Student Debt Crisis: Restoring the Integrity of the Federal Student Loan Program," 40 U. C. & U. L. 467, 495-96. (2014) (providing a summary of existing federal programs).

To meet these policy goals, the government began making student loans available through federal and state insured programs. The operation and purpose of these various loan programs have evolved over the years.

The exception to discharge for student loan obligations based upon undue hardship first appeared in the bankruptcy code in 1978. A number of subsequent amendments have been added since that time. A legislative and statutory history involving the discharge of student loans is contained in "*The Student Loan Exception to Discharge: A Statutory History*" by Judge Robert Kressel. (Appendix 1).

Problems in the Student Loan Industry

Boom cycle in private student loans spawned lax underwriting standards, but subsequent market forces led to bust and stricter standards, including increased percentage of loans requiring co-signers. Borrower ignorance and misunderstanding are concerns regarding private student loans. CFPB 2012 Report on Private Student Loans.

http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf

Private student loans generate numerous complaints regarding collection and servicing practices: CFPB 2014 Mid-Year Report on Student Loan Companies. http://files.consumerfinance.gov/f/201404_cfpb_midyear-report_private-student-loans-2014.pdf

Student loan debt, and particularly private student loan debt can have deleterious effects on other areas of the economy. CFPB 2013 Report on Student Debt Affordability.

http://files.consumerfinance.gov/f/201305_cfpb_rfi-report_student-loans.pdf

The CFPB reports widespread failures and abuses among entities servicing both government and private student loan collections. CFPB 2015 Student Loan Servicing Report.
http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf

Bankruptcy and Student Loans

Discharge of student loans in bankruptcy is governed by 11 U.S.C. §523(a)(8) which states:

- (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
- (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
- (A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
- (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
- (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual.

Application of this code provision has been problematic because the term “undue hardship” is not defined in the bankruptcy code. Two primary tests have emerged to guide a determination of whether an undue hardship exists.

1. Brunner test

The majority of circuits follow the standard adopted by in *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395 (2nd Cir. 1987). To establish an undue hardship under *Brunner* three elements must be met:

- (1) the debtor cannot maintain, based on current income and expenses, a minimal standard of living for herself and her dependents if forced to repay the loan;
- (2) additional circumstances exist that indicate that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
- (3) the debtor has made good faith efforts to repay the loans.

One circuit has adopted a modified version of the Brunner test. *Johnson v. Sallie Mae, et al. (In re Johnson)*, 2015 WL 795830 (Bankr. D. Kansas 2015), citing to *Educ. Credit Mgmt. Corp. v. Polleys (In re Polleys)*, 356 F.3d 1302, 1309 (10th Cir.2004).

[A]n overly restrictive interpretation of the Brunner test fails to further the Bankruptcy Code's goal of providing a 'fresh start' for the honest but unfortunate debtor. The Polleys court refrained from adopting wholesale the "totality of the circumstances test" employed by the Eighth Circuit. As noted above, the good faith portion of the Brunner framework requires the bankruptcy court to consider whether a debtor is acting in good faith if she seeks to discharge a student loan or whether she is intentionally creating her hardship. Courts should not impose their own values on a debtor's life choices when considering good faith. Courts should also consider undue hardship within the context of economic realities faced by debtors.

2. Totality of the Circumstances Test

The Eighth Circuit and some courts in the First Circuit follow what has been described as a less restrictive and flexible approach to evaluate undue hardship under the totality of the circumstances test. *Long v. Educ. Credit Mgmt. Corp. (In re Long)*, 322 F.3d 549, 554 (8th Cir. 2003). The totality of circumstances test has been "adopted" by the First Circuit's Bankruptcy Appellate Panel, though the circuit itself has not yet spoken as to which test, if any, it will endorse. See *Bronsdon v. Educ. Credit Mgmt. Corp. (In re Bronsdon)*, 435 B.R. 791 (BAP 1st Cir. 2010). Under this standard courts may consider:

- (1) the debtor's past, present, and reasonably reliable future financial resources;
- (2) a calculation of the debtor's and her dependent's reasonable necessary living expenses; and
- (3) any other relevant facts and circumstances surrounding each particular bankruptcy case.

Application of these three factors is subject to this direction provided in *Long*: [I]f the debtor's reasonable future financial resources will sufficiently cover payment of the student loan debt – while still allowing for a minimal standard of living – then the debt should not be discharged. Certainly, this determination will require a special consideration of the debtor's present employment and financial situation – including assets, expenses, and earnings – along with the prospect of future changes – positive or adverse – in the debtor's financial position." *Id.* at 554-55. Bankruptcy courts have further identified what constitute relevant facts and circumstances under the third prong of the test. These may include: (1) total present and future incapacity to pay debts for reasons not within the control of the debtor; (2) whether the debtor has made a good faith effort to negotiate a deferment or forbearance of payment; (3) whether the hardship will be long-term; (4) whether the debtor has

made payments on the student loan; (5) whether there is permanent or long-term disability of the debtor; (6) the ability of the debtor to obtain gainful employment in the area of the study; (7) whether the debtor has made a good faith effort to maximize income and minimize expenses; (8) whether the dominant purpose of the bankruptcy petition was to discharge the student loan; and (9) the ratio of student loan debt to total indebtedness. *Brown v. American Education Services, Inc., et al (In re Brown)*, 378 B.R. at 626-27 (citing *VerMaas v. Student Loans of N.D. (In re VerMaas)*, 302 B.R. 650, 656-57 (Bankr. D. Neb. 2003); *Morris v. Univ. of Ark. (In re Morris)*, 277 B.R. 910, 914 (Bankr. W.D. Ark. 2002)).

3. Application of these tests

It is widely recognized, that under either test, a debtor must demonstrate that income has been maximized, and expenses have been minimized and that a minimal standard of living cannot be maintained while repaying student loan debt. Proof of these conditions generally rests upon detailed information of a debtor's monthly living expenses. In response, the lender (or servicer) may question whether higher income can be achieved. The nature and amount of monthly expenses may also be explored with a focus on the reasonableness and necessity of specific items such as internet service, cell phone plans, costs for children's school expenses and extra-curricular activities, dining out, gift purchases, contribution to retirement funds, car loans and pet expenses.

A showing of more than a tight budget is required to establish undue hardship. *Davis v. National Collegiate Trust, (In re Davis)*, 526 B.R. 136, 144 (Bankr. W.D. Penn. 2015). The concept of a minimal standard of living is also a term that is subject to multiple interpretations. There are a number of perceptions that might influence a determination of a minimal standard of living, but "[m]inimal" . . . does not mean comfortable". *Educ. Credit Mgmt. Corp. v. Stanley (In re Stanley)*, 300 B.R. 813, 817(N.D. Fla. 2003)

There is no precise formula for, or statutory definition of, what constitutes a "minimal standard of living." On one end of the spectrum, it is clearly not enough for a debtor simply to demonstrate that payment of a student loan would require a readjustment of his financial situation or a diminution in lifestyle. A debtor is therefore not entitled to maintain the standard of living enjoyed before the filing of the petition. On the other hand, it is not necessary that a debtor live in abject poverty in order to demonstrate undue hardship and obtain a discharge of student loans. A minimal standard of living requires that the debtor have sufficient financial resources to satisfy needs for food, shelter, clothing and medical treatment.

Shadwick v. U.S. Dept. of Educ. et al. (In re Shadwick), 341 B.R. 6, 10–11 (Bankr. W.D. Mo. 2006) (citations omitted). One court has described a minimal standard of living in “modern American society” by identifying the following components:

1. People need shelter, shelter that must be furnished, maintained, kept clean, and free of pests. In most climates it also must be heated and cooled.
2. People need basic utilities such as electricity, water, and natural gas. People need to operate electrical lights, to cook, and to refrigerate. People need water for drinking, bathing, washing, cooking, and sewer. They need telephones to communicate.
3. People need food and personal hygiene products. They need decent clothing and footwear and the ability to clean those items when those items are dirty. They need the ability to replace them when they are worn.
4. People need vehicles to go to work, to go to stores, and to go to doctors. They must have insurance for and the ability to buy tags for those vehicles. They must pay for gasoline. They must have the ability to pay for routine maintenance such as oil changes and tire replacements and they must be able to pay for unexpected repairs.
5. People must have health insurance or have the ability to pay for medical and dental expenses when they arise. People must have at least small amounts of life insurance or other financial savings for burials and other final expenses.
6. People must have the ability to pay for some small diversion or source of recreation, even if it is just watching television or keeping a pet.

Ivory v. U.S. Dept. of Educ. (In re Ivory), 269 B.R. 890, 899 (Bankr. N.D. Ala. 2001). Courts continue to apply similar parameters to determine whether a debtor meets a minimal standard of living. *Jones v. Educ. Credit Mgmt. Corp. (In re Jones)*, 495 B.R. 674, 685 (Bankr. E.D. Penn. 2013), citing *In re Ivory*, 269 B.R. 890 (Bankr. N.D. Ala. 2001).

The forward looking aspects of the tests are subject to varied application. To demonstrate that circumstances creating hardship must endure, some courts require the debtor to demonstrate a “certainty of hopelessness,” while others consider that formulation may be too demanding. *Krieger v. Educ. Credit Mgmt. Corp. (In re Krieger)*, 713 F.3d 882 (7th Cir. 2013) (Easterbrook, J.) (dictum); *Roth v. Educ. Credit Mgmt. Corp. (In re Roth)*, 490 B.R. 908, 920 (BAP 9th Cir. 2013 (Pappas, J., concurring)).

The good faith standard required by *Brunner* is frequently the most difficult for debtors to achieve. [I]t involves “an inquiry into whether the debtor has consciously or irresponsibly disregarded his or her repayment obligation—or, instead, whether there is some justification for the debtor’s default and ongoing inability to repay the loan.” *Jones v. Educ. Credit Mgmt. Corp. (In re Jones)*, 495 B.R. 674, 690 (Bankr. E.D. Penn. 2013). In many cases a debtor’s failure to make any voluntary repayments or to participate in loan consolidation or income based repayment options forms the

basis for a finding of a lack of good faith under *Brunner*. See *In re Roth*, at 919; see also, *In re Bronsdon*, at 805 (Haines, J., concurring)).

Certain benchmarks are utilized by courts to evaluate the specific facts of individual cases, all of which are different. The varied outcomes in student loan cases may be attributable to the long standing legal principle: “I know it when I see it”.

For a discussion of underlying the policy and discharge of educational debt, see Raphael I. Pardo & Michelle R. Lacey, “Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt,” 74 U. Cin. L. R. 405, 413-432 (2005); Raphael I. Pardo & Michelle R. Lacey, “The Real Student-Loan Scandal: Undue Hardship Litigation,” 83 Am. Bankr. L.J. 179 (2009).

Non-bankruptcy Options

Borrowers retain the ability to bring actions or raise affirmative defenses against lenders or servicers based upon statutory or common law related to the enforcement or collection of the obligations. See *Morgan v. Markerdowne Corp., et al*, 976 F. Supp. 301 (D. N. J. 1997) (fraud defenses available against educational loan obligation; state law defenses available); *Kilgore v. KeyBank, Nat. Ass’n*, 718 F.3d 1052 (9th Cir. 2013) (putative class action related to student loan debt enforcement were subject to arbitration clauses in loan contract). See also, *Mott v. Sallie Mae Services (In re Mott)*, 492 B.R. 218 (Bankr. E.D. Penn. 2013) (bankruptcy court does not have jurisdiction to determine issues alleging fraud and breach of contract issues).

Many loans permit consolidation, forbearance, deferment or income based repayment options. A comprehensive discussion of these issues and other collection procedures can be found in Rendleman and Weingart, “*Collection of Student Loans: A Critical Examination*” 20 Wash. & Lee J. Civil Rts. & Soc. Just. 215 (2015). The Department of Education has a section on its website that provides information on whether cancellation or forgiveness is available for specific loan types under its programs. The site also provides a link to repayment options. <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation>

Prospects for Change

1. Legislative Change²

The Bipartisan Student Loan Certainty Act of 2013 became public law on August 9, 2013. The Act amends the Higher Education Act of 1965 to establish interest rates for direct student loans made on or after July 1, 2013. The interest for all direct student loans is set at the rate on 10-year Treasury notes plus 2.05%. Interest for

² Appendix 2 contains full listing of all bills proposed during the time period of 2013-15. Acknowledgement and thanks to judicial intern Danielle Scimeca for preparing this summary.

undergraduate loans is capped at 8.25%. Interest for graduate loans is capped at 9.5%.

In 2013, the proposed legislation regarding student loans was spread pretty evenly between topics. Tax related called for both gross income exclusions and deductions. The Student Loan Employment Benefits Act proposed excluding up to \$5k from gross income for student loan payments made by an employer pursuant to a written agreement. (2013 Cong US HR 395). The Student Loan Interest Deduction Act proposed allowing a borrower to deduct \$5k (\$10k if married) of interest paid on student loans. (2013 Cong US HR 1527). There was also an attempt to allow service members to either achieve set interest rates through refinancing or defer payments and stop the accrual of interest while, or prior to, serving in the armed forces.

A common trend in the 2013 proposed legislation highlighted the differences between Federal loans and private loans. Several proposals looked to create awareness of the consequences of borrowing from private lenders and required more favorable refinance and repayment options for such loans. Emphasis was also placed on the disclosures made to student borrowers. The Understanding the True Cost of College Act would require disclosure that Federal student loans generally offer more favorable terms than private loans. (2013 Cong US S 1156). The Student Loan Borrower Bill of Rights would require private lenders to disclose minimum payments required to be made in order to avoid collection, alternative repayment plans, and loan history. (2013 Cong US S 1803).

Refinancing and repayment was another topic among the suggested legislative changes. The Federal Student Loan Refinancing Act would require the Secretary of Education to automatically consolidate Federal Direct Loans and set the interest rate on such loans at 4% or lower. (2013 Cong US S 1066). The Student Loan Fairness Act called for the consolidation of both Federal and private student loans. (2013 Cong US HR 1330). Another notable proposed bill in 2013 is the Protect Student Borrowers Act. (2013 Cong US S 1873). This bill would require institutions of higher education to assume some of the risk of default for Federal student loans. Institutions of higher education would be required to make risk-sharing payments based on the percentage of defaulted loans if 25% of their student body participates in the Direct Loan program.

In 2014, the proposed legislation regarding student loans covered similar topic areas to the 2013 legislation, but unlike 2013 no proposed legislation was eventually enacted.

In 2015 there have been three proposed bills directly addressing student loans issues in bankruptcy. These include the Discharge Student Loans in Bankruptcy Act (2015 Cong US HR 449), the Student Loan Bankruptcy Parity Act (2015 Cong US HR 3451), and the Student Loan Borrowers' Bill of Rights Act (2015 Cong US HR 1352). Each of these bills calls for allowing the discharge of student loans in a bankruptcy

proceeding without satisfying the undue hardship standard of 11 U.S.C. § 523(a)(8). None of them have moved past committee.

Other proposed legislation this year continues to focus on disclosure requirements. The Understanding the True Cost of College Act was proposed again in 2015. (2015 Cong US S 2149). The Access to Fair Financial Options for Repaying Debt Act. (2015 Cong US S 1948). This bill would expand the “income-based” requirements to allow more students to use beneficial income-based repayment plans. It would also require institutions to encourage financial counseling for student borrowers. On August 5, 2015, the bill was referred to the Senate Committee on Health, Education, Labor, and Pensions. The bill has not left committee.

2. Political Winds of Change.

President Obama’s 2015 Budget includes some changes to how income based repayments may be calculated and caps the amount of debt that can be forgiven for involvement in public service.

Presidential candidates’ positions on the student loan issues include: creating more jobs to enable re-payment, more complete and detailed disclosures of the loan costs by lenders, requiring institutions to provide information on realistic job prospects and salary, to making education at public universities free of charge.

3. Changes in the Courts.

Requests for higher court review are currently pending in three cases involving the discharge of student loan debt under the *Brunner* test. *Tetzlaff v. Educ. Credit Mgmt. Corp. (In re Murphy)*, 794 F.3d 756 (7th Cir. 2015) (petition for cert. pending). *Murphy v. U.S. Dept. of Education, et al. (In re Murphy)*, 511 B.R. 1 (D. Mass. 2014) (appeal pending to First Circuit 14-1691). *Stitt v. U.S. Dept. of Education (In re Stitt)*, 532 B.R. 638 (D. Md. 2015) (appeal pending to Fourth Circuit 15-1761).

The difficulty in expecting substantial change, such as abandoning Brunner, or any of its elements, could in large part be a result of circuit court precedent, binding the lower courts and requiring en banc action to effect a change of circuit law. Thus, case law change may have to await Supreme Court action.

The standard(s) for undue hardship and the types of relief granted have been evolving in the courts.

Partial discharge of student loan obligations is a growing trend.

Kelly v. Sallie Mae, Inc. (In re Kelly), 594 Fed. Appx. 413 (2015)

Hedlund v. Educational Resources Institute, Inc. (In re Hedlund), 718 F.3d 848 (9th Cir. 2013)

Educ. Credit Mgmt. Corp. v. Beattie (In re Beattie), 490 B.R. 581 (W.D. Wa. 2012)

Bumps v. Wells Fargo Educ. Fin. Svcs, et al. (In re Bumps), 2014 WL 185336 (2014)

Fecek v. Sallie Mae, Inc. (In re Fecek), 2014 WL 1329414 (2014).

Requiring income based payments but discharging balance of loan prior to administrative action to forgive the debt (in an apparent attempt to preclude income tax consequences).

Erbschloe v. U.S. Dept. of Education (In re Erbschloe), 502 B.R. 470 (Bankr. W.D. Va. 2013)

Reasonable expenses for phone, internet and cable services are necessary and may be considered as part of a minimal standard of living.

Jones v. Educ. Credit Mgmt. (In re Jones), 495 B.R. 674 (Bankr. E.D. Penn. 2013)

The undue hardship analysis must be applied to individual loans or groups of consolidated loans.

Conway v. National Collegiate Trust (In re Conway), 495 B.R. 416 (B.A.P. 8th Cir. 2013).

See also Shaffer v. U.S. Dept. of Educ. (In re Shaffer), 481 B.R. 15 (B.A.P. 8th Cir. 2013).

Expert testimony related to medical condition not required.

Trudel v. U.S. Dept. of Educ. (In re Trudel), 514 B.R. 219 (B.A.P. 6th Cir. 2014).

Shaffer v. U.S. Dept. of Educ. (In re Shaffer), 481 B.R. 15 (B.A.P. 8th Cir. 2013).

Obligation must meet qualify under 11 U.S.C. §523(a)(8) to be excepted from discharge.

Nunez v. Key Educational Resources/GLESI (In re Nunez), 527 B.R. 410 (Bankr. D. Ore. 2015).

D'Youville College v. Girdlestone (In re Girdlestone), 525 B.R. 208 (Bankr. W.D.N.Y. 2015) *but, compare D'Youville College v. Hardy*, 535 B.R.528 (Bankr. W.D.N.Y. 2015).

Vuini v. Zions Bank, et al. (In re Vuini), 2012 WL 5554406 (Bankr. M.D. Fla.)

Institute of Imaginal Studies dba Meridian University v. Christoff (In re Chirstoff), 510 B.R. 876 (Bankr. N.D. Ca. 2014).

Chicago Patrolmen's Federal Credit Union v. Daymon (In re Daymon), 490 B.R. 331 (Bankr. N.D. Ill. 2013).

Conclusion

In addition to the legislative and legal issues surrounding student loans and the exception to discharge in bankruptcy are there other considerations, practical or philosophical, that are relevant to the discussion.

Are we where we want to be or where we should be?

Should others share in proposing solutions to broader issues related to education and the economics of higher education?

For example, the escalating cost of obtaining a degree with annual increases that regularly outpace inflation; insolvent educational providers and the current economy related to realistic job prospects and salaries.

APPENDIX 1

THE STUDENT LOAN
EXCEPTION TO DISCHARGE:
A STATUTORY HISTORY

ROBERT J. KRESSEL
UNITED STATES BANKRUPTCY JUDGE
DISTRICT OF MINNESOTA

NOTE: The sections on the 1998 and 2005 amendments are new. The balance of the materials are from my opinion in *Johnson v. Missouri Baptist College*, 218 B.R. 449, 451-454 (B.A.P. 8th Cir. 1998).

History of 11 U.S.C. § 523(a)(8)

The Debate

The student loan exception to discharge has a fairly short, but interesting, history. Congress first established the Guaranteed Student Loan Program under the auspices of the Higher Education Act of 1965. Designed to meet “[t]he challenge of keeping the college door open to all students of ability. . . .”, the Program guaranteed federally-backed, low-interest loans to qualifying students. S. Rep. No. 89-673 (1965), *reprinted in* 1965 U.S.C.C.A.N. 4027, 4055.

Reports of students discharging their educational obligations first emerged in the early 70's. Neither the Bankruptcy Act nor the provisions governing the student loan programs specifically prohibited the discharge of student loans.¹ Stories proliferated of students discharging their educational obligations on the eve of lucrative careers. Notwithstanding the

¹Section 430 of the Act provided: "Upon default by the student borrower on any loan covered by Federal loan insurance . . . the insurance beneficiary shall promptly notify the Commissioner, and the Commissioner shall . . . pay to the beneficiary the amount of the loss sustained by the insured. . . ." Higher Education Act of 1965, Pub. L. No. 89-329, § 430(a), 79 Stat. 1219, 1260 (1965).

isolated and inflammatory nature of these incidents, the popular portrayal of the “deadbeat” student debtor proved both compelling and enduring.²

In 1970, Congress created the Commission on the Bankruptcy Laws of the United States to propose changes to then-existing bankruptcy laws. Among other items on its agenda, the Commission addressed the treatment of educational

²The legislative record is replete with incendiary accounts of “solvent” students filing bankruptcy to discharge their educational obligations. Robert P. Zeigler, Executive Director, Oklahoma State Regents for Higher Education, provided the following account of a psychology student who declared bankruptcy in order to discharge \$4,100 in student loans:

The girl (sic) graduated from a state university in March, 1972 and she owed \$4,100 (principal) on four loans. She subsequently married, the son of a “wealthy” New York businessman and petitioned for bankruptcy on August 9, 1973 under her married name. . . . She went to work and prior to her petition, had enough money in a second bank to pay off her student loans. She used the entire sum to make a downpayment on a house in her husband’s name, and then she blew the student loan debt which constituted her only debt. In August, 1973 she informed the original bank that she had no intention of repaying the loans. . . . Then, she hit the second bank in July, 1975 for a \$1,400 student loan for graduate study before we could close the circuit. . . . She also received G.I. Benefits and can safely look out the window of her house and thumb her nose at the U.S. Congress and the taxpayers, as she reads the latest profound thoughts about psychology.

Letter from Robert P. Zeigler, Executive Director, Oklahoma State Regents for Higher Education to Hon. Edwin D. Eshleman (October 16, 1975).

Tales of professional students discharging their educational obligations through bankruptcy provoked special public attention and animus. One story repeatedly referred to in the legislative history involved a lawyer who, along with his wife, sought to discharge some \$18,000 in joint student loans upon graduating. At the time of their filing, the husband was employed with a legal aid bureau and his wife was a state employee. The parties’ filing and discharge headlined local papers and occasioned much criticism, including the withdrawal of contributions to the legal aid bureau. The husband was subsequently indicted for bankruptcy fraud.

Letter from Student Loan Guarantee Foundation of Arkansas to M. Adams (October 15, 1975).

loans under the Bankruptcy Act. In 1973, recognizing the “threat to the continuance of educational loan programs,” the Commission issued a report recommending limitations on the dischargeability of student loans. Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, 93d Cong., 1st Sess., pts. 1 & 11 (1973). The Commission’s proposal prohibited any discharge of educational obligations during the first five years of repayment unless the debtor demonstrated hardship: “The Commission . . . recommends that, in the absence of hardship, educational loans be nondischargeable unless the first payment falls due more than five years prior to the petition.” Id.

Educational Amendments of 1976

Three years later, Congress visited the dischargeability issue. Congressional testimony emphasized the role of federal funding in facilitating postsecondary education:

The Committee recognizes the massive contribution to financing postsecondary educational opportunity made in the ten years of operation of the GSLP. No other program of the Federal Government has been as successful in expanding financial resources to support educational expenses of our citizens. As roughly one in every fifty American citizens has benefited from this program, its massive success in serving its purposes should not be diminished. However, such high levels of participation and the need to expand educational opportunity have created both program

growth and opportunity for abuse which have threatened to destroy this fine record of success.

S. Rep. No. 94-882, at 19 (1976), *reprinted in* 1976
U.S.C.C.A.N. 4713, 4731.

Unlike the house and Commission proposals which incorporated a hardship provision for students seeking to discharge their educational obligations inside the five-year period, the Senate advocated absolute nondischargeability during the first five years of repayment:

The Committee bill seeks to eliminate the defense of bankruptcy for a five-year period, to avoid the situation where a student, upon graduation, files for a discharge of his loan obligation in bankruptcy, then enters upon his working career free of the debt he rightfully owes. After a five-year period, an individual who has been faithfully repaying his loan may really become bankrupt. He should not be denied this right. . . .

S. Rep. No. 94-882, at 32 (1976), *reprinted in* 1976
U.S.C.C.A.N. 4713, 4744.

The Senate eventually receded from its position and Congress adopted the Commission's recommendations in

section 439A of the Education Amendments of 1976. Section 439A (a) provided that:

A debt which is a loan insured or guaranteed under the authority of this part may be released by a discharge in bankruptcy under the Bankruptcy Act only if such discharge is granted after the five-year period (exclusive of any applicable suspension of the repayment period) beginning on the date of commencement of the repayment period of such loan, except that prior to the expiration of that five-year period, such loan may be released only if the court in which the proceeding is pending determines that payment from future income or other wealth will impose an undue hardship on the debtor or his dependents.

Education Amendments of 1976, Pub. L. No. 94-482, § 439A(a), 90 Stat. 2081, 2141 (codified at 20 U.S.C. § 1087-3 (1976) (repealed 1978)).

Bankruptcy Reform Act of 1978

Congress was again called upon to address the dischargeability of student loans when it passed the Bankruptcy Reform Act of 1978. The Act fostered considerable debate and even produced a bicameral split. Although the original Senate bill codified the Commission's recommendation limiting the dischargeability of student loans, the House bill advocated dischargeability. In endorsing the equal treatment of student loans, the House noted the exaggerated and anecdotal evidence on which the Commission's original proposal was based:

The rate of educational loans discharged in bankruptcy has risen dramatically in recent years. However, the rise appears not to be disproportionate to the rise in the amount of loans becoming due or to the default rate generally on educational loans. The rise has been slightly higher than the rise in the bankruptcy rate overall. The sentiment for an exception to discharge for educational [loans] does not derive solely from the increase in the number of bankruptcies. Instead, a few serious abuses of the bankruptcy laws by debtors with large amounts of educational loans, few other debts, and well-paying jobs, who have filed bankruptcy shortly after leaving school and before any loans became due, have generated the movement for an exception to discharge.

H.R. Rep. No. 95-595, at 133 (1978), *reprinted in* 1978
U.S.C.C.A.N. 5963, 6094.

Notwithstanding the controversy, Congress adopted the Senate bill, enacting Public Law 95-598 and creating a new Title 11 of the United States Code. Under the new provision, debtors were not discharged from any debt:

(8) to a governmental unit, or a nonprofit institution of higher education, for an educational loan, unless--

(A) such loan first became due before five years before the date of the filing of the petition; or

(B) excepting such debt from discharge . . . will impose an undue hardship on the debtor and the debtor's dependents. . . .

11 U.S.C. § 523(a)(8) (1978).

1979 Stop-Gap

The repeal of § 439A and its replacement by 11 U.S.C. § 523(a)(8) created a gap in the student loan exception to discharge. Although § 439A was repealed on November 6, 1978, 11U.S.C. § 523(a)(8) did not take effect until October 1, 1979, creating nearly an eleven-month period during which

student loans were, at least in theory, dischargeable. On August 14, 1979, Congress enacted Public Law 96-56 to fill the gap. Public Law 96-56 effectively resurrected 439A by amending § 17a of the Bankruptcy Act and applying its provisions “to any proceeding commenced under the Bankruptcy Act during the period beginning on the date of enactment of this Act and ending October 1, 1979.” Act of Aug. 14, 1979, Pub. L. No. 96-56, 93 Stat. 387. As amended, § 17a provided an exception to discharge for:

a loan insured or guaranteed under the authority of part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) unless (a) the discharge is granted after the five-year period (exclusive of any applicable suspension of the repayment period) beginning on the date of commencement of the repayment period of such loan, or (b) the discharge is granted prior to the expiration of such five-year period and the court determines that payment from future income or wealth will impose an undue hardship on the bankrupt or his dependents.

11 U.S.C. § 35(a)(9) (repealed Oct. 1, 1979). The committee report accompanying the bill emphasized Congress’ continuing commitment to impose limitations on the dischargeability of student loans:

Section 1 of the bill closes the inadvertent “gap” created when the applicable section of the Higher Education Act of 1965 prohibiting discharge of student loans was repealed as of November 6, 1978, and its replacement section in title 11 was not made effective until October 1, 1979. Congress obviously did not mean to create a gap and at all times held to the principle of nondischargeability of student loans as was found in section 439A of the Higher Education Act of 1965.

S. Rep. No. 96-230, at 3 (1979), *reprinted in* 1979 U.S.C.C.A.N. 936, 938.

Amendments to 11 U.S.C. § 523(a)(8)

In the years following its enactment, amendments to 11 U.S.C. § 523(a)(8) have clearly reflected a congressional design to further limit the dischargeability of educational obligations.

1979 Amendment

In addition to closing the gap created by the early repeal of § 439A, in 1979 Congress also expanded the types of loans protected from dischargeability under 11 U.S.C. § 523(a)(8). Pub. L. No. 96-56, § 3(1) (1979). In particular, the new amendment corrected the different treatment of profit-making and nonprofit institutions of higher education under § 523(a)(8):

Because new 11 U.S.C. 523(a)(8) applies only to debts for educational loans owing to a governmental unit or to a nonprofit institution of higher education, it has a very uneven effect upon the student loan programs administered by the Department of Health, Education, and Welfare. For example, National Direct Student Loan (NDSL) funds are administered by both nonprofit and profit-making institutions of higher education. Under the new law, a student who obtained an NDSL loan from a profit-making institution of higher education would be free to have that loan discharged in bankruptcy. In contrast, a student who obtained an NDSL loan from a nonprofit institution of higher education would be subject to the prohibitions contained in the new law.

S. Rep. No. 96-230, at 1-2 (1979), *reprinted in* 1979 U.S.C.C.A.N. 936, 936-37.

Furthermore, the 1979 amendment excluded deferment periods from calculation of the repayment period. Pub. L. No. 96-56, § 3(2) (1979). Congress enacted the amendment primarily to prohibit debtors from deferring payments for the nondischargeability period:

Loan programs typically provide periods of deferment during which a borrower's obligation to repay his loan is suspended. Using the Guaranteed Student Loan Program as an example, a student may defer repayment for an unlimited time if the student resumes study, for up to three years if the student serves in the Armed Forces, the Peace Corps or VISTA, and for up to one year if the student is unemployed. Therefore, it is possible for the first five years of the repayment period on a student's loan to run without the student having an actual repayment obligation during all of that period.

S. Rep. No. 96-230, at 3 (1979), *reprinted in* 1979 U.S.C.C.A.N. 936, 938.

1984 Amendments

In 1984, Congress again expanded the scope of 11 U.S.C. § 523(a)(8) by deleting language limiting dischargeability protections to loans issued by nonprofit institutions *of higher*

education. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 454 (a)(2), 98 Stat. 375.³

1990 Amendments

In 1990, Congress expanded the period of repayment from five to seven years. Federal Debt Collection Procedures Act of 1990, Pub. L. No. 101-647, § 3621(2), 104 Stat. 4933.⁴ Finally, the Student Loan Default Prevention Initiative Act of 1990 applied § 523(a)(8) to Chapter 13 cases.⁵

³Section 523(a) of title 11 of the United States Code is amended--
(2) by striking out ‘of higher education’ in paragraph 8.” Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 454(a)(2), 98 Stat. 375-76.

⁴Section 523(a)(8) of title 11, United States Code, is amended--
(2) by amending subparagraph (A) to read as follows:
‘(A) such loan, benefit, scholarship, or stipend overpayment first became due
more than 7 years (exclusive of any applicable suspension of the repayment period)
before the date of the filing of the petition. . . .’
Federal Debt Collection Procedures Act of 1990, Pub. L. No. 101-647, § 3621, 104 Stat. 4964-65
(emphasis added).

⁵Section 1328(a)(2) of title 11, United States Code, is amended by striking ‘section 523(a)(5)’ and inserting ‘paragraph (5) or (8) of section 523(a).’” Student Loan Default Prevention Initiative Act of 1990, Pub. L. No. 101-508, § 3007(b), 104 Stat. 1388-28 (emphasis added).

The Debate Continues

In 1994, Congress again created a commission to review bankruptcy laws. In its October 20, 1997 report, the National Bankruptcy Review Commission recommended to Congress that the exception to discharge for student loans be eliminated:

The Commission recommends that Congress eliminate section 523(a)(8) so that most student loans are treated like all other unsecured debts. In so doing, the dischargeability provisions would be consistent with federal policy to encourage educational endeavors. The Recommendation would also address the numerous application problems that have resulted from the current nondischargeability provision. No longer would Chapter 13 debtors who made diligent efforts to repay be penalized after completing a plan with thousands and thousands in compounded back due interest. Litigation over “undue hardship” would be eliminated, so that the discharge of student loans no longer would be denied to those who need it most.

Report of the National Bankruptcy Review Commission, § 1.4.5 (October 20, 1997).

1998 Amendment

In perhaps the most dramatic change, in 1998, Congress deleted subdivision (A) which allowed student loans to be dischargeable if sufficient time has passed, leaving only “undue hardship” as the basis for a student loan debt to be dischargeable.⁶

2005 Amendment

Most recently, as part of BAPCPA, Congress expanded even further the exception to discharge to include educational loans as defined by § 221(d)(1) of the Internal Revenue Code.⁷

⁶ Effective October 7, 1998, Congress amended § 523(a)(8) by “striking ‘unless—’ and all that follows through ‘(B) excepting such debt’ and inserting ‘unless excepting such debt.’” Higher Education Amendments of 1998, Pub. L. No. 105-244, § 971(a), 112 Stat. 1581, 1837 (1998).

⁷ On April 20, 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 220, 119 Stat. 23, 59 (2005), which, effective October 17, 2005, amended § 523(a)(8).

APPENDIX 2

STUDENT LOAN LEGISLATION

2013

ENACTED

TITLE	SUMMARY	EFFECT	HISTORY
PL 113-28 Bipartisan Student Loan Certainty Act of 2013	To amend the Higher Education Act of 1965 (HEA) to establish interest rates for new loans made on or after July 1, 2013	The annual interest rate on direct loans issued to undergrads is set at the rate on high-yield 10-yr Treasury notes plus 2.05%, capped at 8.25%. The annual interest rate on direct loans issued to graduate students is set at the rate on high-yield 10-yr Treasury notes plus 3.6, capped at 9.5%	Introduced in House 05.09.2013 Passed in House 05.23.2013 Passed in Senate 07.24.2013 Signed by Pres. 08.09.2013

PROPOSED

Tax Related

TITLE	SUMMARY	EFFECT	HISTORY
2013 Cong US HR 2573 Student Loan Opportunity Act	To amend IRC § 150(d) to allow qualified scholarship funding corporations to access tax-exempt financing for alternative private student loans	Would allow nonprofits to acquire student loans incurred under the HEA or private lending and maintain their tax-exempt	Referred to the House Committee on Ways and Means 06.23.2013
2013 Cong US HR 395 Student Loan Employment Benefits Act	To amend IRC to exclude from gross income amounts paid by an employer on an employee's student loans	Would allow an employee to exclude \$5k of student loan payments made by their employer as part of a written plan. Currently, the employee would be taxed on the employer's payments	Referred to the House Committee on Ways and Means 01.23.2013
2013 Cong US HR 2006 Helping Families Save for Education Act	To amend the IRC to expand access to Coverdell education savings accounts (tax-deferred)	Would increase the age limit of the beneficiary on the account from 18 to 22 and would increase the dollar limitation on contributions from \$2k to \$10k	Referred to Committee on Ways and Means 05.15.2013
2013 Cong US S 1238 Keep Student Loans Affordable Act (2013 Cong US HR 2574)	To amend the HEA to extend the current reduced interest rate for undergraduate Fed. Direct Stafford Loans for 1 year	Would extend the currently reduced interest rate (3.4%) for a year	<u>Senate</u> Cloture motion not invoked 07.10.2013 Motion to Reconsider the vote

			07.10.2013 Motion to proceed to consideration of measure. 07.17.2013 <u>House</u> Referred to Committee on Ways and Means 06.28.2013
2013 Cong US HR 1527 Student Loan Interest Deduction Act of 2013	To amend IRC § 221 to increase the deduction allowed for student loan interest and to repeal the limitation based upon modified adjusted gross income	Would allow a deduction of \$5k (\$10k for marriage) which would double the allowance. The repeal would allow the deduction regardless of income. As of now, an individual with income in excess of \$65,000 does not receive a deduction	Referred to Committee on Ways and Means 04.12.2013
2013 Cong US S 553 Veterinary Medicine Loan Repayment Program Enhancement (2013 Cong US HR 1125)	To amend IRC to provide for an exclusion for assistance provided to participants in certain veterinary student loan repayment or forgiveness programs	Excludes from gross income payments under any loan repayment or forgiveness program that is intended to provide for increased access to veterinary services	<u>Senate</u> Referred to Committee on Finance 03.31.2013 <u>House</u> Referred to Committee on Ways and Means 03.13.2013

Military Related

TITLE	SUMMARY	EFFECT	HISTORY
2013 Cong US S 1399 (2013 Cong US HR 2859)	To amend the Service members Civil Relief Act to extend the interest rate limitation on debt entered into during military service to debt incurred during military service to consolidate or refinance student loans incurred before military service	Would allow military service members to refinance the loans they incurred prior to servicing to limit the interest rate on those obligations to 6%	<u>Senate</u> Referred to Committee on Veterans' Affairs. 07.30.2013 Hearings held in Committee 10.30.2013 <u>House</u> Referred to Committee on Veterans' Affairs 07.30.2013

2013 Cong US HR 1631 Accessing Military Education Benefits Act	To amend title 37 of the US Code to ensure that service members serving in a combat zone automatically receive the education benefits they are entitled	Would ensure that the direct student loans of service members receiving imminent danger pay per title 37 do not accrue interest (in accordance with HEA, section 455(o))	Referred to Committee on Armed Services 04.18.2013 Subcommittee 04.23.2013
2013 Cong US S 634 Service Members Student Loan Relief Act	To allow service members to defer principal on Federal student loans for a certain period in connection with receipt of orders for mobilization for war or national emergency	Would allow a deferment on Federal student loan principals for the shorter of (1) the call moment and service or (2) 180 days	Referred to Committee on Health, Education, Labor, and Pensions 03.21.2013

Loan Contract

TITLE	SUMMARY	EFFECT	HISTORY
2013 Cong US S 1873 Protect Student Borrowers Act of 2013	To protect student borrowers by requiring institutions of higher education to assume some of the risk of default for federal student loans by amending Title IV of HEA	Requires institutions participating in the William D. Ford Fed. Direct Loan Program to make risk-sharing payments based on percentage of defaulted loans (Only applies to institutions in which 25% of the student body is participating in the Direct loan program)	Referred to Committee on Health, Education, Labor, and Pensions. 12.19.2013
2013 Cong US S 1803 Student Loan Borrower Bill of Rights	To require certain protections for student borrowers by amending the Truth in Lending Act	Will require private educational lenders to make a number of disclosures to borrowers including: minimum payments to avoid collection, alternative repayment plan options, loan history if requested	Referred to Committee on Health, Education, Labor, and Pensions. 12.11.2013 Hearings held in Subcommittee 06.04.2014
2013 Cong US HR 2961 "Christopher's Law"	To amend the Truth in Lending Act and HEA to require additional disclosures and protections for students and cosigners with respect to student loans	Require a private lender to clearly outline the responsibilities of a cosigner in the event the borrower becomes disabled, incapacitated, or dies	Referred to Committees 08.01.2013 Referred to Subcommittee 09.13.2013
2013 Cong US S 1773 "Andrew's Law"	To amend the Truth in Lending Act to provide for the discharge of student loan obligations upon the death or total and permanent disability of the	Would discharge the repayment obligation of the borrower's estate and any cosigner if the borrower dies or is totally and permanently disabled	Referred to Committee on Health, Education, Labor, and Pensions. 11.21.2013

	student borrower		
2013 Cong US S 1156 Understanding the True Cost of College Act	To amend the Higher Education Opportunity Act (HEOA) to add disclosure requirements to the institution's financial aid offer form and make the form mandatory	Would require disclosure that Federal student loans offer generally more favorable terms and repayment options than private loans and any other information that allows both parents and children to make informed borrowing decisions	Referred to Committee on Health, Education, Labor, and Pensions 06.13.2013
2013 Cong US S 1884 Pay it Forward College Affordability Act	To establish a Pay It Forward model for funding postsecondary education	Would require the Sec. of Education, the State, or the institution to pay the student's cost of attendance (or part of). The student would sign a contract agreeing to pay back the contributor a certain percentage (not to exceed 5%) of their annual income, for a specific amount of years (not to exceed 25)	Referred to Committee on Health, Education, Labor, and Pensions 12.20.2013
2013 Cong US S 897 Bank on Students Loan Fairness Act (2013 Cong US HR 1979)	To prevent the doubling of interest rates for Federal subsidized student loans for the 2013-2014 academic year by providing funds for such loans through the Federal Reserve System	Would ensure that such loans, for undergraduate students, are available at interest rates equivalent to the rates the Fed. gov. provides to banks	<u>Senate</u> Referred to Committee on Health, Education, Labor, and Pensions 05.08.2013 <u>House</u> Referred to Committee on Education and the Workforce 05.14.2013

Refinance and Repayment

TITLE	SUMMARY	EFFECT	HISTORY
2013 Cong US S 1066 Federal Student Loan Refinancing Act	To allow certain borrowers to refinance federal student loans	Direct the Sec. of Ed. To consolidate Federal Direct Loans automatically and to send a completed consolidation application to Federal Family Education Loans. The Act would also set the interest rate on the Direct Consolidation Loans to 4% or, if lower, the average of the interest rates of the consolidated loans	Referred to Committee on Health, Education, Labor, and Pensions 05.23.2013
2013 Cong US HR 1330	To establish a loan	Would cap the interest rate on	Referred to

Student Loan Fairness Act	forgiveness program for a wider range of borrowers. Establishes consolidation of federal and private loans. Caps interest rates on direct loans and direct consolidated loans	Direct Loans and Direct Consolidated Loans, which could include private loans, at 3.4%. Would allow forgiveness to borrowers who have made 120 monthly payments under the Repayment Plan	Committees 03.21.2013 Referred to Subcommittee 04.23.2013
2013 Cong US HR 1716 Earnings Contingent Education Loans Act	To simplify and improve the Federal student loan program through income-contingent repayment to provide stronger protections for borrowers, encourage responsible borrowing, and save money for taxpayers	Would establish an Income Dependent Education Assistance (IDEA) loan, making more federal funds available to borrowers. Sets the annual repayment at an amount equal to 15% of taxable income over the sum of: (1) an exemption amount equal to 150% of the federal poverty level; and (2) the lesser \$3k or specified income other employee compensation. If you don't file a tax return, you have no annual repayment obligation	Referred to Committee of House Education and the Workforce 04.24.2013 Referred to Subcommittee on Higher Education and Workforce Training 07.08.2013
2013 Cong US S 1266 Refinancing Education Funding to Invest for the Future Act	To provide for the establishment of a mechanism to allow borrowers of private education loans to refinance their loans	Would direct the Sec. of the Treasury to establish credit facilities to accommodate reasonable loan adjustments and to ensure that borrowers pay lower interest rates so they can pursue more beneficial economic activities	Referred to Committee on Health, Education, Labor, and Pensions 06.27.2013
2013 Cong US HR 702 Access to Frontline Health Care Act	To amend the Public Health Service Act to establish and carry out a Frontline Providers Loan Repayment Program	Sec. of Health and Human Services will make student loan repayments for a health professional providing frontline care (general) for two years in a frontline care scarcity area	Referred to Committee on Energy and Commerce 02.14.2013 Subcommittee 02.15.2013

Misc.

TITLE	SUMMARY	EFFECT	HISTORY
2013 Cong US S 1522 Comprehensive Dental Reform Act of 2013	To improve access to oral health care for vulnerable and underserved populations	Would amend the Public Health Service Act to provide scholarships and loans for dental therapists and oral health professional students	Referred to Committee on Finance 09.18.2013
2013 Cong US HR 2040 Student Financial Aid	To simplify the process for determining the need and	Would amend the HEA to determine students' need and	Referred to Committee on

Simplification Act	eligibility of students for financial assistance under the HEA	eligibility for title IV assistance by using tax return information from the IRS and supplementary info required by the student. Would require the Secretary of Edu. to provide the tax information to institutions free of charge	Education and the Workforce 05.16.2013
2013 Cong US HR 3568 Training Highly Skilled Americans Act of 2013	To amend the Immigration and Nationality Act to establish the STEM Education and Training Account in order to enhance the economic competitiveness of the US by providing funding for STEM education	Would require employers to submit an application and \$1k fee to be deposited in STEM acct. Sets aside amounts for (1) a low income STEM scholarship program (2) K-12 STEM education, and (3) STEM capacity building at minority-serving institutions	Referred to Committee 11.20.2013
2013 Cong US HR 340 Protecting Financial Aid for Students and Taxpayers Act (2013 Cong US S 528)	To amend the HEA to restrict institutions of higher education from using revenues derived from Federal educational assistance funds for advertising, marketing, or recruiting purposes	Would prohibit institutions from using Federal funds for (1) advertising and promotion; (2) identifying and attracting prospective students; or (3) any other activity the Sec. of Edu. prohibits	<u>House</u> Referred to the Subcommittee on Higher Education and Workforce Training 04.23.2013 <u>Senate</u> Referred to Committee on Health, Education, Labor, and Pensions 03.12.2013

2014

PROPOSED

Bankruptcy

TITLE	SUMMARY	EFFECT	HISTORY
2013 Cong US HR 3892 Student Loan Borrowers' Bill of Rights Act	To establish student loan borrowers' rights to basic consumer protections, reasonable and flexible repayment options, access to earned credentials, and effective loan cancellation in exchange for public service	Would (1) remove educational loans from the list of debts that are non-dischargeable in bankruptcy; (2) prohibit the collection of amounts individuals owe the Dept. of Edu. through offsets of social sec., offsets of tax refunds, or wage garnishments; (3) exclude discharged student loan debt from gross income; (4) prohibit	Referred to Committee on Education and the Workforce 01.15.2014 Subcommittee 03.20.2014

		evidence of loan default from being used in proceeding involving professional license; (5) direct the Sec. to cancel 50% of the loan balance on Direct loans that are not in default for borrowers who are employed in a pub. service job	
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Tax

TITLE	SUMMARY	EFFECT	HISTORY
2013 Cong US S 2429 Employer Participation in Refinancing Act (2013 Cong US HR 5578)	To amend the IRC to extend the exclusion for employer-provided educational assistance to employer payment of interest on certain refinanced student loans	Would allow the student-employee to exclude from gross income payments made by an employer on any indebtedness of the student under a qualified edu. refinance loan or interest related to that loan	<u>Senate</u> Referred to the Committee on Finance 06.04.2014 <u>House</u> Referred to Committee on Ways and Means 09.18.2014
2013 Cong US S 2878 Student Loan Tax Relief Act	To amend the IRC to provide an exclusion from income for student loan forgiveness for students in certain income-based or income-contingent repayment programs who have completed payment obligations	Would exclude from gross income a discharge of student loans based on repayments on an income contingent or based plan or a discharge due to the death or total disability of the student	Referred to Committee on Finance 09.18.2014
2013 Cong US HR 5239	To amend the IRC to exclude from gross income any discharge of student loan indebtedness	Would exclude from gross income a discharge of student loans pursuant to a repayment plan, death or disability of the borrower, or the closing of an institution and would revise "student loan" to include a loan made by any lender, including a loan for refinancing	Referred to Committee on Ways and Means 07.29.2014

Military Related

TITLE	SUMMARY	EFFECT	HISTORY
2013 Cong US HR 3843 Veteran Tax Parity Act	To amend the IRC to exclude from gross income discharges of federal student loans as a result of	Would allow permanently and totally disabled vets to exclude student loan discharge from their gross income	Referred to Committee on Ways and Means 01.10.2014

	veterans' service-connected permanent total disability		
2013 Cong US S 2448 Service member Higher Education Protection Act	To protect service members in higher education	Would allow a service member to defer payments on student loans while performing eligible military service and for the 180-day period following the demobilization date; qualifies recipients of Fed. Perkins Loans for loan forgiveness for eligible military service; sets 6% limitation on the interest rate that can be charged during a service member's service and one year after	Referred to Committee on Veterans' Affairs 06.05.2014
2013 Cong US HR 4560 Service Members Student Loan Relief Act	To allow members of the Armed Forces and National Guard to defer principal on Federal student loans for a certain period in connection with orders for mobilization for war or national emergency	Would allow service members with orders to mobilize to defer payments of principal for up to 180 days beginning on the date they receive the order and ending on their first day of service	Referred to Committee on Education and the Workforce 05.01.2014 Subcommittee 06.13.2014
2013 Cong US HR 4314	To amend title 38, USC, to establish a student loan repayment program for totally disabled veterans	Would direct the Sec. of Veterans Affairs to repay the undergraduate student loan that a totally disabled veteran owes on the date they incur the disability. Only applicable to vets who served after 9/11 and loans made before the veteran entered into the Armed Forces	Referred to Committee on Veterans' Affairs 03.26.2014

Refinance and Repayment

TITLE	SUMMARY	EFFECT	HISTORY
2013 Cong US HR 3926	To amend the HEA to discharge student loans for borrowers who are determined by the Social Sec. Admin. To be under a disability without expectation of med. or functional improvement	Would allow borrowers who are disabled without expectation of improvement to be considered permanently and totally disabled for discharge purposes	Referred to Committee on Education and the Workforce 01.21.2014
2013 Cong US HR 5839 Grow Your Own Teacher Act	To amend title II of the Elementary and Secondary Educ. Act to establish a federal "Grow Your Own	Would allow the Secretary of Edu. to forgive the student loans of teachers who have gone through the program and	Referred to Committee on Education and the Workforce

	Teacher” program	have been staffed at hard-to-staff schools	12.10.2014
2013 Cong US S 2896 Social Security Garnishment Modernization Act	To amend title 31 of the USC to adjust for inflation the amount that is exempt from administrative offsets by the Dept. of Edu. for defaulted student loans	Would exempt \$9k each yr of an individual’s benefits under the SSA from being used to offset the amount owed on defaulted student loans. Currently, a garnishment can take the lesser of 15% or the amount over \$750	Referred to the Committee on Finance 09.18.2014
2013 Cong US HR 4236 Student Loan Fair Prepayment Act	To amend the HEA and the Truth in Lending Act to clarify the application of prepayment amounts on student loans	Would require a holder of a borrower’s loans under the Fed. Family Edu. Loan, Ford Fed. Direct Loan, or a private edu. to first apply a prepayment toward any fees due and then toward the principal due on the loan that bears the highest interest rate	Referred to House Committee on Financial Services 03.13.2014
2013 Cong US HR 4622 Federal Student Loan Refinancing Act	To allow certain student loan borrowers to refinance Federal student loans	Direct the Sec. of Ed. To consolidate Federal Direct Loans automatically and to send a completed consolidation application to Federal Family Education Loans. The Act would also set the interest rate on the Direct Consolidation Loans to 4% or, if lower, the average of the interest rates of the consolidated loans	Referred to Committee on Education and the Workforce 05.09.2014
2013 Cong US S 2612 Dynamic Repayment Act	To simplify and improve the Federal student loan program through income-contingent repayment to provide stronger protections for borrowers, encourage responsible borrowing, and save money for taxpayers	Would make students ineligible to receive Ford Fed. Direct Loans after July 1, 2015 and would establish an Income Dependent Edu. Assist. (IDEA) Loan program, making general funds available for loans to students who have no outstanding balance due on existing federal loans or who consolidate loans into an IDEA loan	Referred to Committee on Finance 07.16.2014
2013 Cong US S 2432 Bank on Students Emergency Loan Refinancing Act (2013 Cong US HR 4582)	To amend the HEA to provide for the refinancing of certain Federal student loans	Would direct the Sec. of Edu. to establish a refinance program for unpaid principal, accrued unpaid interest, and late charges on federal loans; fixes the interest rate on the refinanced loans for the period of such loans; direct Sec. to alert	<u>Senate</u> Cloture on the Motion to Proceed not invoked 06.11.2014 Referred to Committee on

		borrowers who may be eligible for refinancing	Banking, Housing, and Urban Affairs 07.31.2014 Motion to Proceed to Consideration 09.18.2014 <u>House</u> Referred to Committee on Ways and Means 05.06.2014
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Loan Contract

TITLE	SUMMARY	EFFECT	HISTORY
2013 Cong US S 2460 "Christopher's Law"	To amend the Truth in Lending Act and the HEA to require additional disclosures and protections for students and cosigners with respect to student loans	Require a private lender to clearly outline the responsibilities of a cosigner in the event the borrower becomes disabled, incapacitated, or dies	Referred to Committee on Banking, Housing, and Urban Affairs 07.31.2014
2013 Cong US HR 5568 B-On-Time Student Loan Relief Act	To amend the HEA to direct the Sec. of Edu. to award interest-free student loans to certain students	Would allow the Sec. of Edu. to award interest-free loans to a student who graduated on or after the 2013-2014 school yr from a secondary school in the US, has not earned a bachelor's degree, has been enrolled on a full-time basis in an IHE undergraduate degree or cert. program, and has completed a FAFSA and met title IV requirements. Would also allow the Sec. to forgive outstanding principal on such loans if the student receives a bachelor's within a set timeframe, maintained a certain grade point average or majored in math, science, or engineering, and meets any other requirements	Referred to the House Committee on Education and the Workforce 09.18.2014 Subcommittee 11.17.2014
2013 Cong US HR 3959 Pay It Forward College Affordability Act	To establish a Pay It Forward model for funding postsecondary education	Would allow the Sec. of Edu, state, or institution to replace a students' need to borrow a Fed. Direct Loan by covering all or part of their cost in exchange for their agreement to	Referred to Committee on Education and the Workforce 01.29.2014

		contribute a certain percentage (not more than 5%) of their annual income for a specific number of years (not more than 25 yrs)	Subcommittee 06.13.2014
2013 Cong US HR 5565 Protect Student Borrowers Act	To protect student borrowers by requiring institutions of higher education to assume some of the risk of default for federal student loans by amending Title IV of HEA	Requires institutions participating in the William D. Ford Fed. Direct Loan Program to make risk-sharing payments based on percentage of defaulted loans (Only applies to institutions in which 25% of the student body is participating in the Direct loan program)	Referred to Committee on Education and the Workforce 09.18.2014 Referred to Subcommittee 11.17.2014
2013 Cong US S 2459 Know Before You Owe Federal Student Loan Act	To revise counseling requirements for certain borrowers of student loans	Would require institutions to provide pre-loan counseling prior to the first disbursement of a new loan under the Ford Fed. Direct Loan program. Currently, counseling is only required for first-time borrowers	Referred to Committee on Health, Education, Labor and Pensions 06.10.2014
2013 Cong US HR 4984 Empowering Students Through Enhanced Financial Counseling Act	To amend the loan counseling requirements under the HEA	Would require institutions to ensure students receiving a Fed. Pell Grant or a Ford Fed. Direct Loan receive counseling for each year they receive it. Currently, counseling is only required for first-time borrowers. Also has wider variety of required counseling topics	Referred to Committee on Education and the Workforce 06.26.2014 Passed House (405-11) Received in Senate and referred to Committee on Health, Education, Labor, and Pensions 07.28.2014

Misc

TITLE	SUMMARY	EFFECT	HISTORY
2013 Cong US HR 5540 America Realizing the Informational Skills and Initiative of New Graduates Act	To establish a grant program for stipends to assist in the cost of compensation paid by employers to certain recent college grads and to provide funding for further education in subjects	Would direct the Sec. of Labor and the Sec. of Edu. to establish a program providing grants to (1) eligible employers to offset the cost of compensation paid to recent grads and (2) to graduates to offset the cost of further postsecondary education	Referred to Committee on Education and the Workforce 09.18.2014 Subcommittee 11.17.2014

	relating to math, science, engineering, and technology	in certain subjects	
2013 Cong US HR 4983 Strengthening Transparency in Higher Education Act	To simplify and streamline the information regarding institutions of higher education made publicly available by the Sec. of Edu.	Would require the Sec. of Edu. to develop and annually update a website available to the public that states various stats and facts regarding each institution of higher education and to provide a function that will allow students to compare the stats of each (including average debt incurred)	Referred to Committee on Education and the Workforce 07.17.2014 Passed House by Motion Received in the Senate and referred to Committee on Health, Education, Labor, and Pensions 07.24.2014

2015

PROPOSED

Bankruptcy

TITLE	SUMMARY	EFFECT	HISTORY
2015 Cong US HR 449 Discharge Student Loans in Bankruptcy Act	To amend title 11 of the USC to make student loans dischargeable	Would allow the discharge of educational loans or an obligation to repay funds received as an education benefit, scholarship, or stipend	Referred to House Committee on the Judiciary 01.21.2015 Subcommittee 02.05.2015
2015 Cong US HR 3451 Student Loan Bankruptcy Parity Act	To amend title 11 of the USC to make student loans dischargeable	Would allow the discharge of student loans in a bankruptcy proceeding	Referred to Committee on the Judiciary 09.08.2015 Subcommittee 09.28.2015
2015 Cong US HR 1352 Student Loan Borrowers' Bill of Rights Act	To establish student loan borrowers' rights to basic consumer protections, reasonable and flexible repayment options, access to earned credentials, and effective loan cancellation in exchange for public service	Would (1) remove educational loans from the list of debts that are non-dischargeable in bankruptcy; (2) prohibit the collection of amounts individuals owe the Dept. of Edu. through offsets of social sec., offsets of tax refunds, or wage garnishments; (3) exclude discharged student loan debt	Referred to Committee on Oversight and Government Reform 03.10.2015 Subcommittee 04.29.2015

		from gross income; (4) prohibit evidence of loan default from being used in proceeding involving professional license; (5) direct the Sec. to cancel 50% of the loan balance on Direct loans that are not in default for borrowers who are employed in a pub. service job	
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Tax

TITLE	SUMMARY	EFFECT	HISTORY
2015 Cong US HR 3170 Student Debt Repayment Fairness Act	To amend the IRC to allow without penalty any 529 plan distributions used for student loans	Would allow penalty-free distributions from qualified tuition programs to pay student loan debt	Referred to Committee on Ways and Means 07.22.2015
2015 Cong US S 1947 Income-Based Repayment Debt Forgiveness Act	To exclude the discharge of certain Federal student loans from gross income	Would exclude from gross income the discharge of student loan debt pursuant to a federal income contingent or income-based program	Referred to Committee on Finance 08.05.2015
2015 Cong US HR 3623 Fairness and Opportunities for Married Households with Student Loans	To amend the IRC to increase the amount allowed as a deduction for interest on education loans paid by married couples	Would increase the deduction from \$2500 to \$5k for taxpayers filing a joint return	Referred to Committee on Ways and Means 09.28.2015

Military Related

TITLE	SUMMARY	EFFECT	HISTORY
2015 Cong US HR 1581 Veterans Education Tax Security Act	To amend the IRC to exclude from gross income the discharge of certain student loans of deceased or disabled veterans	Would exclude discharge of student loans for totally disabled veterans, or a parent or cosigner of a deceased veteran	Referred to Committee on Ways and Means 03.24.2015
2015 Cong US HR 2718 Service member Student Loan Affordability Act (2015 Cong US S 1557)	To amend the Service members Civil Relief Act to extend the interest rate limitation on debt entered into during military service to debt incurred during service to consolidate or refinance student loans incurred before service	Would apply the 6% interest rate limitation to debt incurred in order to consolidate or refinance student loan debt that was incurred before service	<u>House</u> Referred to Committee on Veterans' Affairs 06.10.2015 Subcommittee 06.30.2015 <u>Senate</u> Referred to Committee on Veterans' Affairs

			06.11.2015
2015 Cong US S 895 Service member and Veteran Protection Act	To allow members of the Armed Forces to defer principal on Fed. student loans for a certain period in connection with orders for mobilization for war or national emergency	Would allow a deferment on Federal student loan principals for the shorter of (1) the call moment and service or (2) 180 days	Referred to Committee on Veterans' Affairs 03.27.2015

Refinance and Repayment

TITLE	SUMMARY	EFFECT	HISTORY
2015 Cong US S 2099 Student Loan Relief Act of 2015	To provide for the establishment of a mechanism to allow borrowers of Fed. Student loans to refinance and to amend the IRC to extend the exclusion for employer-provided edu. assist. to employer payment of interest on certain refinanced student loans	Would direct the Sect. of Edu. to facilitate refinancing in to the private market to ensure borrowers pay lower interest rates and to allow an employee to exclude from gross income payments made by the employer on interest of student loan debt	Referred to Committee on Finance 09.29.2015
2015 Cong US HR 3747 Social Security Garnishment Modernization Act	To amend title 31, USC, to adjust for inflation the amount that is exempt from administrative offsets by the Dept. of Edu. for defaulted student loans	Would exempt \$9k each yr of an individual's benefits under the SSA from being used to offset the amount owed on defaulted student loans. Currently, a garnishment can take the lesser of 15% or the amount over \$750	Referred to Committee on the Judiciary 10.09.2015
2015 Cong US S 1384 "Andrew's Law"	To amend the Truth in Lending Act to provide for the discharge of student loan obligations upon the death of the student borrower	Would discharge the repayment obligations of the estate of a borrower and any cosigner of a private education loan	Referred to Committee on Health, Education, Labor, and Pensions 05.19.2015
2015 Cong US HR 3751 Federal Student Loan Refinancing Act	To allow certain student loan borrowers to refinance Fed. student loans	Direct the Sec. of Ed. to consolidate Federal Direct Loans automatically and to send a completed consolidation application to Federal Family Education Loans. The Act would also set the interest rate on the Direct Consolidation Loans to 4% or, if lower, the average of the interest rates of the consolidated loans.	Referred to Committee on Education and the Workforce 10.09.2015

2015 Cong US S 793 Bank on Students Emergency Loan Refinancing Act (2015 Cong US HR 1434)	To amend the HEA to provide for the refinancing of certain Fed. student loans	Would direct the Sec. of Edu. to establish a refinance program for unpaid principal, accrued unpaid interest, and late charges on federal loans; fixes the interest rate on the refinanced loans for the period of such loans; direct Sec. to alert borrowers who may be eligible for refinancing	<u>Senate</u> Referred to Committee on Finance 03.18.2015 <u>House</u> Referred to Committee on Budget 03.18.2015
2015 Cong US HR 3752 Earnings Contingent Education Loans Act	To simplify and improve the Fed. student loan program through income- contingent repayment to provide stronger protections for borrowers, encourage responsible borrowing, and save money for taxpayers	Would establish an Income Dependent Education Assistance (IDEA) loan, making more federal funds available to borrowers. Sets the annual repayment at an amount equal to 15% of taxable income over the sum of: (1) an exemption amount equal to 150% of the federal poverty level; and (2) the lesser \$3k or specified income other employee compensation. If you don't file a tax return, you have no annual repayment obligation	Referred to Committee on Ways and Means 10.09.2015
2015 Cong US S 1948 Access to Fair Financial Options for Repaying Debt Act	To increase awareness of the Fed. student loan income-based repayment plan	Would require each institution to send a counseling invite to students borrowing fed. loans; expand "income-based" requirements to allow more students to use an income-based repayment plan	Referred to Committee on Health, Education, Labor, and Pensions 08.05.2015
2015 Cong US S 2050 Private Education Loan Modification Act	To provide for the establishment of a mechanism to allow borrowers of private education loans to refinance their loans	Would direct the Sec. of the Treasury to establish credit facilities to accommodate reasonable loan adjustments and to ensure that borrowers pay lower interest rates so they can pursue more beneficial economic activities	Referred to Committee on Health, Education, Labor, and Pensions 09.17.2015

Loan Contract

TITLE	SUMMARY	EFFECT	HISTORY
2015 Cong US HR 3474 "Christopher's Law" (2015 Cong US S 1958)	To establish additional protections and disclosures for students and cosigners with respect to student loans	Require a private lender to clearly outline the responsibilities of a cosigner in the event the borrower becomes disabled, incapacitated, or dies	<u>House</u> Referred to Committee on Education and the Workforce

			09.10.2015 <u>Senate</u> Referred to Committee on Health, Education, Labor and Pensions 08.05.2015
2015 Cong US HR 3675 Student Borrower Fairness Act	To amend the HEA to ensure that student loans are available at interest rates do not exceed the rates the Fed. gov. provides to banks through the discount window operated by the Federal Reserve System	Would lower the interest rate on federal student loans	Referred to Committee on Ways and Means 10.01.2015
2015 Cong US S 2149 Understanding the True Cost of College Act	To amend the HEOA to add disclosure requirements to the institution financial aid offer form and to amend the HEA to make such form mandatory	Would require the institution to include estimated costs and the net price that the student is expected to repay with the financial aid offer	Referred to Committee on Health, Education, Labor, and Pensions 10.07.2015
2015 Cong US S 1102 Protect Student Borrowers Act (2015 Cong US HR 2364)	To provide for institutional risk-sharing in the Federal student loan programs	Requires institutions participating in the William D. Ford Fed. Direct Loan Program to make risk-sharing payments based on percentage of defaulted loans (Only applies to institutions in which 25% of the student body is participating the program)	Referred to Committee on Health, Education, Labor, and Pensions 04.27.2015
2015 Cong US S 2043 Know Before You Owe Federal Student Loan Act	To revise counseling requirements for certain borrowers of student loans	Would require institution to provide pre-loan counseling prior to the first disbursement of a new loan under the Ford Fed. Direct Loan program. Currently, counseling is only required for first-time borrowers	Referred to Committee on Health, Education, Labor, and Pensions 09.16.2015
2015 Cong US S 781 Empowering Student Borrowers Act	To improve knowledge about the best practices for teaching financial literacy, and for other purposes	Would direct the Sec. of Edu. to establish, maintain, and periodically update best practices for institutions in teaching financial literacy skills and providing students with information to assist them in making borrowing decisions	Referred to Committee on Health, Education, Labor, and Pensions 03.18.2015
2015 Cong US HR 3179	To amend the loan	Would require institutions to	Referred to

Empowering Students Through Enhanced Financial Counseling Act	counseling requirements under the HEA	ensure students receiving a Fed. Pell Grant or a Ford Fed. Direct Loan receives counseling for each year they receive it. Currently, counseling is only required for first-time borrowers. Also has wider variety of required counseling topics	Committee on Education and the Workforce 07.23.2015
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Misc

TITLE	SUMMARY	EFFECT	HISTORY
2015 Cong US HR 73 America Realizing the Informational Skills and Initiative of New Graduates Act	To establish a grant program for stipends to assist in the cost of compensation paid by employers to certain recent college graduate and to provide funding for their further education in subjects relating to math, science, engineering, and technology	Would direct the Sec. of Labor and the Sec. of Edu. to establish a program providing grants to (1) eligible employers to defray the cost of compensation paid to recent grads and (2) to graduates to defray the cost of further postsecondary education in certain subjects	Referred to Committee on Education and the Workforce 01.06.2015 Subcommittee 04.29.2015
2015 Cong US HR 3178 Strengthening Transparency in Higher Education Act	To simplify and streamline the information regarding institutions of higher education made publicly available by the Sec. of Edu.	Would require the Sec. of Edu. to develop and annually update a website available to the public that states various stats and facts regarding each institution of higher education and to provide a function that will allow students to compare the stats of each (including average debt incurred)	Referred to Committee on Education and the Workforce 07.23.2015
2015 Cong US HR 3265 Student Financial Aid Simplification Act	To simplify the process for determining the need and eligibility of students for financial assistance under the HEA	Would amend the HEA to determine students' need and eligibility for title IV assistance by using tax return information from the IRS and supplementary info required by the student. Would require the Secretary of Edu. To provide the tax information to institutions free of charge.	Referred to Committee on Ways and Means 07.28.2015
2015 Cong US HR 2681 Training Highly Skilled Americans Act	To amend the Immigration and Nationality Act to establish the STEM Education and Training Account in order to enhance the economic	Would require employers to submit an application and \$1k fee to be deposited in STEM acct. Sets aside amounts for (1) a low income STEM scholarship program (2) K-12	Referred to Committee on Science, Space, and Technology 06.04.2015

	competitiveness of the US by providing funding for STEM education	STEM education, and (3) STEM capacity building at minority-serving institutions.	
2015 Cong US S 1908 Protecting Financial Aid for Students and Taxpayers Act	To amend the HEOA to restrict institutions of higher education from using revenues derived from Fed. educational assistance funds for advertising, marketing, or recruiting purposes	Would prohibit institutions from using Federal funds for (1) advertising and promotion; (2) identifying and attracting prospective students; or (3) any other activity the Sec. of Edu. prohibits	Referred to Committee on Health, Education, Labor, and Pensions 07.30.2015
2015 Cong US S 1373 College for All Act	To amend the HEA to improve higher education programs	Would direct the Dept. of Edu. to award grants to states to eliminate tuition and fees to public institutions of higher edu. and allow student loan borrowers to modify interest rates on outstanding Fed. student loans to the current rate	Referred to Committee on Finance 05.19.2015
2015 Cong US HR 2192 Protections and Regulation for Our Students Act	To improve the HEA	Would prohibit institutions from using federal funds received under the HEA for recruiting and marketing purposes; provide protection to employees of institutions who disclose information; would establish a complaint tracking system; prohibits waiver of borrower rights for debt collection acts by contract; improves disclosures	Referred to Committee on Education and the Workforce 04.30.2015