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July 11, 2025

Honorable J. Luis Correa
U.S. House of Representatives
Rayburn House Office Building
Washington, D.C. 20515

Re: Student Loan Bankruptcy Improvement Act

Dear Congressman Correa:

The National Consumer Law Center, on behalf of its low-income clients, writes to support the bill you intend to introduce, the Student Loan Bankruptcy Improvement Act. By removing the requirement that student loans pose not just hardship, but “undue” hardship, the Act would give a meaningful opportunity for financially distressed Americans to discharge student loan debt in bankruptcy and significantly change how bankruptcy courts handle requests for discharge.

Courts have interpreted the phrase “undue hardship” in the current law to require consumers to show that they are experiencing dire financial circumstances that will persist for years into the future, such that there is a “certainty of hopelessness.” Consumer debtors in these cases are faced with the impossible task of proving a negative – that their future is as hopeless as their present.

This harsh undue hardship test was first developed by the courts decades ago at a time when student loans were automatically dischargeable in bankruptcy, without proving any hardship, if debtors simply waited five years after their loans first became due. Thus, the overarching concern then was that debtors might prematurely seek a discharge soon after student loans came due, despite good prospects for future repayment. That concern is no longer a factor because the automatic discharge of student loans after a waiting period was eliminated by Congress in 1998. Also, the nature of student loan debt, the structure of student loan programs, and the Bankruptcy Code itself have all changed significantly since the undue hardship test was adopted.

Overly aggressive litigation tactics that have been used in undue hardship cases by student loan creditors have imposed far greater barriers to justice on debtors than those facing litigants in other civil litigation. One study has shown that student loan creditors are far less likely to resolve undue hardship litigation through settlement than civil litigants in other cases - only 36 percent of debtors' cases in the study were settled or had other pre-trial dispositions whereas about 97 percent of all cases in state and federal courts are resolved by means other than by trial.¹ These results are largely driven by creditors' assessment of the extraordinary burden consumers have in proving undue hardship.

Decades of mounting student loan indebtedness can have a drastic impact on an individual's future access to credit, employment opportunities, and housing. It can impose a substantial emotional burden as well. Providing an opportunity for a bankruptcy discharge can truly transform the lives of people in financial distress who carry student loan debt. However, the extraordinary litigation burden in proving undue hardship has meant that most consumers never even try to discharge student loans, even when seeking discharge of other debts. Our bankruptcy system is intended to help those burdened with debt, and yet we don't allow it to give relief for the debt many consumers struggle with the most — and that, with no statute of limitations, can burden them for life. It is like having a health care system that is not allowed to treat life-threatening and severe illnesses, that turns away those most in need of its services. The Bankruptcy Code's hope for a fresh start currently does not exist for those burdened with student loan debt.

The Student Loan Bankruptcy Improvement Act, if enacted, would give consumers the real possibility of getting relief from their student loan debt. It will compel bankruptcy courts to take a fresh look at student loan dischargeability and develop new legal standards for applying the discharge law that consider ordinary hardship, rather than the heightened "undue hardship" standard with its demand to show "certainty of hopelessness." We urge Congress to pass the Act as a strong first step in broadening the availability of student loan debt relief through bankruptcy.

Sincerely,

/s/ John Rao
Senior Attorney

¹ Iuliano, Jason, "An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard," 86 American Bankruptcy Law Journal 495 (2012).