

# Congress of the United States

Washington, DC 20510

May 16, 2014

The Honorable Arne Duncan  
Secretary  
Department of Education  
400 Maryland Ave., SW  
Washington, DC 20202

Dear Secretary Duncan,

To help address the student debt crisis facing our nation, we urge the Department of Education to establish clear standards by which the Department and its contractors would consider student loan repayment by a debtor who is in bankruptcy proceedings to be an “undue hardship” eligible for discharge.

Americans have accumulated \$1.2 trillion in student loan debt, exceeding even the level of credit card debt in our nation. Seven in ten college seniors who graduated in 2012 had student loan debt, with an average of \$29,400 per borrower. Because federal law treats student debt as nondischargeable in bankruptcy proceedings, borrowers can be burdened with this debt for a lifetime even if circumstances make it unlikely that the borrower will ever be able to repay.

Federal law does provide that bankruptcy discharge is available for student loans in cases of “undue hardship,” and while the courts have established a high legal standard for a debtor to show “undue hardship” there are some debtors who should be able to avail themselves of this option. However, the path to an undue hardship discharge is often blocked by Department contractors, such as the Educational Credit Management Corporation (ECMC), which have a practice of aggressively challenging debtors’ efforts to show undue hardship. For example, a recent New York Times article highlighted a case in which ECMC had challenged the undue hardship claim of a debtor who was caring for her bedridden and cancer-stricken husband, including by scrutinizing the debtor’s receipts from McDonald’s. (See Natalie Kitroeff, “Loan Monitor is Accused of Ruthless Tactics on Student Debt,” *The New York Times*, Jan. 1, 2014.) While we recognize the Department’s prerogative to fairly collect on student loan debts owed to it, we do not find it sensible or cost-effective for the Department or its contractors to engage in lengthy legal challenges and appeals against bankrupt student loan borrowers who have demonstrated a clear and legitimate inability to repay their loans.

Accordingly, we request that the Department issue guidance with respect to the collection of a federal student loan owed by a borrower who has filed for relief under chapter 7, 12, or 13 of the federal bankruptcy code and who has requested that the bankruptcy court determine that the loan be discharged under the “undue hardship” exception in 11 U.S.C. §523(a)(8). We believe such guidance would benefit from adherence to the following principles, which we submit for the Department’s consideration:

- The guidance would require a student loan creditor (i.e., the Department, any guaranty agency, eligible lender or holder of a federal student loan, or agent of these parties) to determine, pursuant to specified criteria, whether a borrower's repayment of the student loan debt would impose an undue hardship on the borrower and/or the borrower's dependents.
- For purposes of this guidance, the term "borrower" should include both the original borrower as well as any cosigner, endorser or co-maker of a federal student loan.
- The specified criteria for undue hardship should include, at minimum, situations where:
  - the borrower is receiving disability benefits under the Social Security Act;
  - the borrower has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability;
  - the borrower's income is derived solely from retirement benefits under the Social Security Act or from a retirement fund or account, and the annual household income for the borrower is less than 200 percent of the official poverty guideline, as defined by the Office of Management and Budget, and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (official poverty guideline);
  - the borrower provides for the care and support of an elderly, disabled or chronically ill household member or member of the borrower's immediate family and the annual household income for the borrower is less than 200 percent of the official poverty guideline;
  - the borrower is a family caregiver of an eligible veteran pursuant to 38 U.S.C §1720G;
  - during the five-year period preceding the filing of the bankruptcy petition (exclusive of any applicable suspension of the repayment period), the annual household income for the borrower has been less than 175 percent of the official poverty guidelines.
- Additionally, the guidance should encourage the student loan creditor, to avoid the unnecessary costs of opposing an undue hardship discharge, to accept from the borrower satisfactory proof of undue hardship based on the criteria specified above without engaging in formal litigation discovery. Once the student loan creditor determines that any of these undue hardship criteria has been met by the borrower, the guidance should direct the creditor to promptly enter into a settlement agreement or consent order with the borrower providing for the discharge of the student loan debt.

The need for action with respect to the student loan debt crisis is urgent. The suggested guidance described above would benefit the most vulnerable student loan debtors in our population as well as the overall economy. Such guidance would bring consistency to the application of the undue hardship standard while also enabling the Department to focus its time and collection efforts on cases where there is a more realistic opportunity for meaningful recovery. We look forward to working with you in pursuit of this goal. Should you require any additional information in connection with this matter, please let us know.

Sincerely,

Richard J. Durbin  
United States Senator

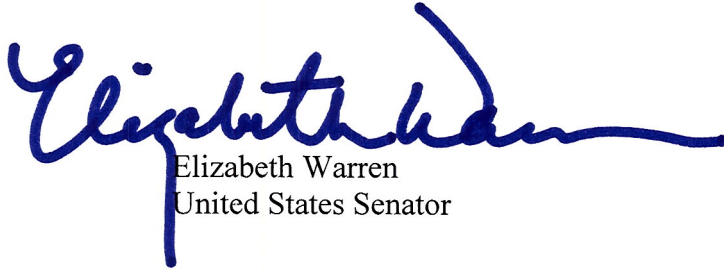
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Hank Johnson

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