

May 5, 2010

OPPOSITION TO FRANKEN AMENDMENT NO. 3765 – STUDENT LOANS IN BANKRUPTCY

Dear Senator:

We are writing you to express our concern about a well-intentioned but flawed amendment. Specifically, Senator Franken is planning to offer an amendment, number 3765, changing treatment of certain student loans in bankruptcy that would increase their interest costs, reduce their availability and undermine the recovery of financing markets supporting private student loans.

Our concerns with the amendment are not with its intent. We share the goal of providing borrowers facing duress in repaying their student loans with a means of relief. We simply believe this amendment takes the wrong approach.

First, the amendment differentiates the extent of bankruptcy relief available to borrowers based on the characteristics of the lender rather than the situation of the borrower. A borrower of a federal student loan, or a non-federal student loan made by a governmental unit, would have less opportunity for relief than a borrower receiving loans from lenders that are not governmental units. This doesn't make sense. Bankruptcy treatment should be equal for all student loans.

Second, the amendment is retroactive in its coverage. Loans made under current law, in some cases several years ago, would become subject to enhanced credit risk that wasn't reflected in the interest rates and other terms of the loans when they were made.

Third, the amendment does not reflect the reality of private student loans. When the loans are made, the borrowers are expecting little or no income for years, and many times payments are deferred during the in-school period. When borrowers first leave school, they often have no assets or income. This differs from the typical borrower of a consumer loan, whose suitability for a loan is based on current income, assets available for collateral, and other factors.

Because private student loan borrowers often have no income or assets, many would be eligible for bankruptcy discharge of their student loans immediately upon leaving school if current law was changed. Many borrowers will be encouraged to declare bankruptcy simply to eliminate their private student loans. Although they may not realize it at the time, this decision will damage their financial future, making it impossible to obtain credit at reasonable terms to make purchases or even to get federal loans for graduate school.

Rather than the Franken amendment with all its consequences, a workable modification of the bankruptcy code should follow three basic principles: be prospective, affecting loans made after its enactment; apply to all lenders, including the government; and require a good faith effort to repay the loan, such as for seven years, the same period that was required for discharge of federal student loans prior to Congress changing the code several years ago to make federal student loans permanently non-dischargeable except in cases of undue hardship to the borrower.



Unfortunately, this amendment does none of these things. For these reasons, we urge defeat of the Franken amendment and consideration of a workable solution that will not result in diminished loan availability and higher interest rates for future borrowers.

Thank you for considering the views of the Consumer Bankers Association. Please let us know if you would like to discuss the amendment in greater detail.

Sincerely,

Richard Hunt
President