



August 30, 2021

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

AccessLex Institute is pleased to offer its support for S. 2598, the *Fostering Responsible Education Starts with Helping Students Through Accountability, Relief, and Taxpayer Protection (FRESH START) Through Bankruptcy Act*. Introduced on August 4, 2021 by Senators Dick Durbin (D-IL) and John Cornyn (R-TX), this bipartisan bill would allow student loans issued by federal and state governments and nonprofit entities to be discharged in bankruptcy after a 10-year waiting period.

AccessLex Institute, in partnership with its nearly 200 nonprofit and state-affiliated ABA-approved member law schools, has been committed to improving access to legal education and to maximizing the affordability and value of a law degree since 1983. The AccessLex Center for Legal Education Excellence advocates for policies that make legal education work better for students and society alike and conducts research on the most critical issues facing legal education today.

While technically permitted by law, discharging one's student loans in bankruptcy is nearly impossible in practice. Changes made over the last 45 years to the Bankruptcy Code, coupled with the application of stale legal precedent, have resulted in unintended hurdles to the discharge of student loans in bankruptcy. Currently, a debtor must prove that their student loan creates an "undue hardship" before a court may discharge the loan, which results in a virtual

prohibition against discharge. Undue hardship has never been defined by Congress and courts continue to apply a strict standard that considers a borrower's full remaining repayment term, often decades into the future, even though it was intended to apply only during a limited waiting period. Application of the current standard has resulted in arbitrary, random and seemingly unfair results, leading to less than one percent of student loan debtors in bankruptcy cases even seeking to have their educational debts discharged.

Increasing levels of student loan debt along with the current COVID-19 pandemic highlights the urgent need for student loan borrowers to more readily access the "fresh start" offered through bankruptcy. This can be done by realigning federal policy with the intent of bankruptcy protection more generally.

AccessLex has long advocated for [easing the dischargeability](#) of student loans in bankruptcy. Under our proposal, both federal and private student loans would be eligible for discharge without the need to demonstrate undue hardship after a 7-year waiting period. Loans in repayment less than seven years, as well as loans eligible for an income-driven repayment plan, would continue to be subject to the undue hardship requirement. I recently [spoke about](#) our proposal at the Senate Judiciary Committee's hearing on student loans and bankruptcy on August 3, 2021.

While the *FRESH START Through Bankruptcy Act* does not go as far as our proposal, it represents a meaningful step forward for struggling borrowers and a vast improvement over current law. We are also heartened to see the bipartisan support for making substantive changes to the Bankruptcy Code that better reflects the needs of today's borrowers. For those reasons, AccessLex is pleased to offer its support for the bill, and we stand ready to work with the committee on this and any future policy changes to the treatment of student loans in bankruptcy to better support struggling borrowers.

Thank you for your time and attention to this matter. If you have any questions, please do not hesitate to contact me at cchapman@accesslex.org or Nancy Conneely, Managing Director of Policy, at nconneely@accesslex.org

Sincerely,



Christopher P. Chapman
President and Chief Executive Officer