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*A Voluntary Organization Composed of Persons Interested in the  
Improvement of the Bankruptcy Code and Its Administration*

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February 6, 2008

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Chairman John Conyers, Jr.  
House Committee on the Judiciary  
2138 Rayburn H.O.B.  
Washington, D.C. 20515

Re: Educational Loan Dischargeability Amendment to H.R. 4137

Dear Chairman Conyers:

The National Bankruptcy Conference ("NBC") understands that when H.R. 4137, the College Opportunity and Affordability Act of 2007, is considered by the full House this week, an amendment may be offered to amend Bankruptcy Code section 523(a)(8), which currently makes most educational loans nondischargeable in bankruptcy. The NBC has considered section 523(a)(8) numerous times, before and after its original enactment, and we want to make sure you are aware of the NBC's position on this important matter.

The discharge is a fundamental purpose of bankruptcy for individuals, providing the poor but honest debtor the critically important fresh start. This is good for the individual debtor, and good for our economy. Anything that interferes with or reduces its efficacy should be reviewed carefully to ensure that it is necessary to further other important policies. As you know, exceptions to discharge in bankruptcy have grown since the Bankruptcy Code's carefully crafted exceptions were originally enacted. Some, but unfortunately not all, of the expansion has reflected careful policy considerations, weighing the importance of the fresh start against other important policies.

The educational loan exception to discharge in section 523(a)(8) has grown substantially since its substance was first enacted in 1976. The most recent expansion was enacted by section 220 of the 2005 bankruptcy amendments ("BAPCPA"), Pub. L. 109-8, § 220, 119 Stat. 23, 59 (2005). Before the 2005 amendment, nondischargeability was limited essentially to loans made, insured or guaranteed by a governmental unit or under programs funded in whole or in part by a governmental unit or nonprofit institution. The 2005 amendment added any "qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986," which includes loans that are made, insured or guaranteed only by for-profit entities.

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The NBC opposed the enactment of section 220 of BAPCPA as contrary to sound bankruptcy policy and the important fresh start and as unnecessary to the protection of the educational funding system or the federal fisc. We pointed out that private loans made by for-profit institutions are generally made at market rates and on the same bases as other loans. Hence, we could find no basis on which to afford those claims special treatment in bankruptcy.

We have heard it argued that, if the 2005 amendment to section 523(a)(8) is repealed, students will suffer because loans will be more expensive and less available. There does not appear to be any evidence that, after private student loans became nondischargeable in 2005, they were significantly more available or that interest rates went down appreciably. A recent study related to this issue from Mark Kantrowitz from Finaid.org of pre- and post-BAPCPA availability of credit to student loan borrowers with lower FICO scores concluded that there was “only a slight increase in the availability of private student loans to borrowers with low credit scores after BAPCPA.” See <http://www.finaid.org/educators/20070814psIFICOdistribution.pdf>. The absence of a significant positive effect on availability and rates after BAPCPA indicates, at a minimum, that there will not be a significant adverse effect if the law is returned to its pre-amendment state and private student loans become dischargeable once again.

Thus, there is no or little significant policy reason to impair the fresh start that an individual obtains through bankruptcy to benefit for-profit student loans. Accordingly, the NBC supports repeal of section 220 and urges you, if this issue comes to the Floor in connection with H.R. 4137 or otherwise, to propose an amendment that accomplishes that result.

We remain available to address any questions you may have and to assist in any technical analysis or drafting that you may desire.

With best regards.

Sincerely,

*Richard Levin*

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