

Proposed Federal Legislation Would Make Private Student Loans Dischargeable in Bankruptcy

On June 7, US Senator Dick Durbin (D-IL) introduced legislation to make private student loans dischargeable in bankruptcy. There is significant likelihood that this bill could be approved by the Senate, perhaps as an amendment to the Higher Education Act Reauthorization (HEA), which is scheduled to be reported by the Senate Health, Education, Labor, and Pensions (HELP) Committee on June 20, 2007.

Prior to the enactment of bankruptcy reform legislation in 2005, private student loans were dischargeable in bankruptcy. The 2005 changes to the bankruptcy code made the treatment of private student loans consistent with the treatment of government-guaranteed student loans, which were not dischargeable. Senator Durbin's bill would reverse the 2005 amendment, so that private student loans again would be dischargeable in bankruptcy.

If the Durbin bill is enacted, it would have an enormous, adverse impact on the private student loan industry. While it is unusual for Congress to revisit an issue that was addressed so recently in legislation, there have been significant changes in Congress since 2005, when Republican members held the majority in both the Senate and the House of Representatives. Further, investigations into the student loan industry initiated by NY Attorney General Andrew Cuomo as well as key members of Congress have created a very hostile climate in Washington, DC for student lenders.

Normally, proposed amendments to the bankruptcy code are reviewed by the Judiciary Committee. In the current environment, the HEA bill is becoming a magnet for legislation to increase regulation of the student loan industry. The HEA will include provisions requiring more reporting by education institutions and student lenders concerning government-guaranteed student loans. Additionally, US Senate Banking Committee Chairman Christopher Dodd (D-CT) has also announced intentions to add new regulatory provisions to the HEA bill concerning private student loans. The HEA bill is a natural target for Senator Durbin's bill to be added as an amendment. A quick response is critical.

Mayer, Brown, Rowe & Maw Resources

At Mayer, Brown, Rowe & Maw, we are very familiar with the issues that have fueled the intense debate in Washington, DC. Our Congressional Oversight Strategy group has been actively involved in many Congressional investigations, including student loans. Our Government practice includes Democratic former senior staff members of the Senate Judiciary and HELP Committees, former senior staff to the House Republican leadership, and a Republican former member of Congress. ■

If you would like more information on this issue, or to discuss an approach to responding to this proposed legislation, please contact:

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