

# The FRESH START Through Bankruptcy Act of 2021<sup>i</sup>

## *Durbin/Cornyn*

The FRESH START Through Bankruptcy Act of 2021 would restore the ability for struggling borrowers to seek a bankruptcy discharge for federal student loans after a waiting period of ten years.

### **The Student Loan Debt Crisis**

- Our nation faces a student debt crisis, with 45 million Americans owing more than \$1.7 trillion in student loan debt.<sup>ii</sup> Of that debt, roughly 92% is backed by the American taxpayers. Cumulative student loan debt is the second largest category of consumer debt after mortgages.
- The average student loan debt per borrower is around \$29,000<sup>iii</sup> and many borrowers carry debts well over \$100,000. Most forms of debt, such as credit card debt and medical debt, can be discharged through the bankruptcy process; only limited types of debts, such as child support payments, alimony, overdue taxes, and criminal fines, are treated as non-dischargeable.
- Under federal law, student loan debt is non-dischargeable in bankruptcy except in rare cases of “undue hardship.”
- Under the existing federal student loan framework, the federal government assumes full repayment plus interest by the student when calculating the impact to the taxpayer of extending a student loan.
  - Currently, when the value the student receives from an Institute of Higher Education (IHE) is poor, and the student defaults on their loans, that repayment and interest never materializes—a loss to the taxpayer. Conversely, if the IHEs were to repay a portion of this loss, the taxpayer would receive partial repayment for their investment in the student.
- The goal of the bill is to improve the integrity of the federal student loan program, and quality of education a student receives without disrupting the vast majority of educational services that do provide real value to their graduates. As education is largely an inelastic good, incentive structures must be taken into account to improve educational outcomes and help ensure students obtain skills necessary for employment.

### **FRESH START would:**

- **Make Federal Student Loans Eligible for Discharge in a Bankruptcy Proceeding** ten years after the first loan payment is due.
  - As part of the bankruptcy proceedings, certain IHEs, who receive a certain amount of federally-backed student loans, would be required to repay a portion of discharged federal student loans to the taxpayer, in a new cost-sharing structure.
- **Retain the Existing Undue Hardship Option** for private student loans and for federal student loans that have been due for less than ten years.
- **Increase Institutional Accountability** by creating provisions that require colleges with more than one-third of their students receiving federal student loans to partially refund the government if a student’s loan is later discharged in bankruptcy.
  - This provision would apply if a school had consistently high student loan default and low repayment rates at the time of a student’s attendance.
- **Provide an Option for Student Borrowers** who have no realistic path to pay back their overwhelming student loan debt by allowing bankruptcy to be an option to help them get back on their feet.
  - Filing for bankruptcy is not a step that student borrowers take lightly, and the strict means test for bankruptcy filing that Congress imposed in 2005 would ensure that borrowers who have the means to repay student debts cannot simply liquidate them in bankruptcy.

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<sup>i</sup> The “Fostering Responsible Education Starts with Helping Students Through Accountability, Relief, and Taxpayer protections Through Bankruptcy Act”

<sup>ii</sup> *Federal Reserve Consumer Credit Report - May 2021*, FEDERAL RESERVE BOARD (accessed July 27, 2021),

<https://www.federalreserve.gov/releases/g19/current/>; Friedman, Zack. *Student Loan Debt Statistics In 2021: A Record \$1.7 Trillion*, FORBES (Feb. 20, 2021), <https://www.forbes.com/sites/zackfriedman/2021/02/20/student-loan-debt-statistics-in-2021-a-record-17-trillion/?sh=5fe41cda1431>.

<sup>iii</sup> <https://ticas.org/affordability-2/student-aid/student-debt-student-aid/student-debt-and-the-class-of-2019/>