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NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS
★ FROM THE OFFICE OF THE PRESIDENT ★

STATEMENT OF

Justin Draeger
President
National Association of Student Financial Aid Administrators

TO THE SUBCOMMITTEE ON ADMINITRATIVE OVERSIGHT,
AND THE COURTS,
COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE

RE: S.1102, Fairness for Struggling Students Act of 2011

Submitted on behalf of:

The National Association of Student Financial Aid Administrators

March, 19, 2012

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Chairman Durbin, Ranking Member Cornyn, and members of the Subcommittee,

We appreciate the opportunity to offer a statement of support for S.1102, the *Fairness for Struggling Students Act of 2011*. The National Association of Student Financial Aid Administrators (NASFAA) represents more than 18,000 financial aid professionals who serve 16 million students each year at nearly 3,000 colleges and universities throughout the country, and supports the aptly-named legislation to restore fairness and protection to student loan borrowers in the bankruptcy code.

According to a report from the National Consumer Bankruptcy Attorneys (NACBA), annual student loan borrowing reached a record of over $100 billion in 2010, and the aggregate outstanding loan amount reached $1 trillion—surpassing the amount Americans owe on credit cards. While these numbers represent both Federal and private student loans, over the past decade private student loans have grown at a rapid pace, and as a result a greater proportion of borrowers are finding themselves with at least some private student loan debt.

Prior to the enactment of the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, private student loans were unconditionally dischargeable in bankruptcy. However, the 2005 law gave private loans the same treatment as Federal student loans, meaning that they would generally no longer be dischargeable in bankruptcy. NASFAA finds it troublesome that current bankruptcy code treats private education loan debt differently than other consumer debt such as mortgage and credit card debt.

As currently stipulated by bankruptcy law, borrowers that demonstrate an undue hardship may have their loans discharged in bankruptcy. However, NASFAA does not find the “undue hardship” clause to be sufficient protection for private education loan borrowers. The phrase “undue hardship” is not defined in law, making it subject to judicial review, tests, and precedent.

Courts almost always apply a very strict interpretation of this provision, and the NACBA report finds that "most bankruptcy attorneys (95 percent) report that few student loan debtors are seen as having any chance of obtaining a discharge as a result of undue hardship."

Opponents of this bill argue that the ability to discharge private education loans in bankruptcy leads to frequent and capricious filings and, perhaps from a more philosophical standpoint, reduces personal fiscal responsibility. To the first argument, we refer to a 1977 GAO study, which took place during a time when loans *could* be discharged, and found that less than 1 percent of student loans were discharged in bankruptcy. To the second argument, NASFAA has always encouraged responsible borrowing, and is not adverse to exploring options that would require a few years of good-faith efforts at repayment prior to a bankruptcy discharge. Requiring additional steps prior to bankruptcy discharge may also be justified for education loans that are funded by public dollars at the state level, but considered to be private loans.

However, at no time should we put in place the same bankruptcy restrictions for private education loans that we do for federal student loans. While both are used to pay for education, private education loans lack the income-based repayment plans and generous loan forgiveness provisions after many years of economic hardship found in the federal loan programs. Federal student loans also offer other valuable consumer protections including fixed interest rates, multiple repayment options, and deferment and forbearance provisions that can forestall delinquency or default.

Allowing the discharge of private student loan debt in bankruptcy is critical to ensuring fairness for American consumers and to provide a way for some struggling private student loan borrowers to establish financial stability. It is for these reasons that we support efforts to allow private education loans to be discharged in bankruptcy as outlined in the Fairness for Struggling Students Act of 2011, and we urge Congress to support this essential bill.

References:

National Association of Consumer Bankruptcy Attorneys (2012). *Student Loan "Debt Bomb": America's Next Mortgage-Style Economic Crisis.*

U.S. Government Accountability Office (1977). *1978 U.S.C.C.A.N. 5787*