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Comments on Notice of Proposed Information Collection Requests, 76 Fed. Reg. 55654 (September 8, 2011) Proposed Changes to Discharge Application: Total and Permanent Disability

The following comments are submitted on behalf of the National Consumer Law Center's low-income clients. The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. NCLC's Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates and provides direct legal representation to student loan borrowers. Most of the clients we represent are low-income borrowers living in Massachusetts. We work with other advocates across the country representing low-income clients. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens and make loan repayment more manageable.¹

We support the Department's recent policy change that eliminated the requirement for an original signature from the discharge applicant on each discharge form that the applicant submits. However, a number of issues remain with the discharge application. In our experience, some of the sections on the current form are confusing and lead to the unnecessary denial of many otherwise qualified applications. These remaining concerns about the loan discharge application form are detailed below.

Confusing Language Leads to Inadvertent Mistakes

1. "Ability to Engage in Substantially Gainful Activity"

Advocates across the county report that the numerous discharge applications are denied because of confusion caused by the first question in Section 4 of the discharge form, the physician's certification section. The question heading reads: "Ability to Engage in Substantial Gainful Employment." This heading suggests that the purpose of this section is to determine whether the applicant can engage in substantial gainful employment. However, the question following the heading actually asks whether the borrower has a medical condition which *prevents* the ability to engage in substantial gainful employment. The difference between the focus of the heading and focus of the question is conceptually confusing. Based upon this section heading, many doctors completing this form answer "no"

¹ See the Project's web site at www.studentloanborrowerassistance.org. NCLC also publishes and annually supplements practice treatises which describe the law currently applicable to all types of consumer transactions, including *Student Loan Law* (4th ed. 2010).

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because the applicant *cannot* engage in substantially gainful activity. Busy physicians often do not read the question carefully enough to realize that the answer should be “yes” – that the applicant has a disabling condition – and those applicants are denied.

We urge the Department to revise the form in order to make the heading and the question consistent. We believe that this will prevent unnecessary reevaluation of qualified borrowers and allow for a quicker and more efficient process for both borrower and the Department.

To that end, we recommend that question 1 of Section 4 of the Discharge Application be amended to read:

1. Medically Determinable Physical or Mental Impairment. Does the applicant have a medically determinable physical or mental impairment (as explained in Item 2 below) that **(a)** prevents the applicant from engaging in any substantial gainful activity, in any field of work, and **(b)** can be expected to result in death, *or* has lasted for a continuous period of not less than 60 months, *or* can be expected to last for a continuous period of not less than 60 months? **Yes** **No**

Substantial gainful activity means a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. *If the applicant is able to engage in any substantial gainful activity, in any field of work, you must answer “No.”*

If the answer to Question 1 is No, do not complete this application.

2. Physician’s Certification Signature Block.

Doctors’ failure to properly complete the signature block section is another common mistake that causes otherwise qualified applications to be rejected. In the current form, doctors are required to complete a sentence regarding the state that he or she practices in, and his or her license number. In our experience, many doctors fail to complete this sentence correctly. Rather, many doctors utilize stamps that include the doctor’s state of practice and license number or place the information directly after his or her name. The doctors either do not believe that they need to include the information on the form twice, or do not read the form carefully enough to realize the information is required.

We urge the Department to accept stamped information in this part of the form (except for the physician’s signature). Also, we urge the Department to revise the form to more efficiently retrieve the relevant information. For that purpose, we recommend the relevant part of the Physician’s Certification be amended to read:

I am a doctor of (check one) medicine osteopathy/osteopathic medicine.

Physician's Signature (a signature stamp is not acceptable)

Date (mm-dd-yyyy)

Printed Name of Physician (first name, middle initial, last name)

Address

City, State, Zip Code

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Telephone

Fax

E-mail Address (Optional)

State Where Licensed

License No.

Accessibility of the Form

This Discharge Application is intended to be used by people with a wide range of disabilities. The form currently utilizes seven (7) point font. This font size is inaccessible to a number of older individuals and other individuals with low-vision. We recommend that the Department consult with the Department of Justice and other disability advocates to increase the font size of the form and ensure compliance with the Americans with Disabilities Act.

Thank you for your consideration of these comments. Please feel free to contact Persis Yu if you have any questions or comments. (Ph: 617-542-8010; E-mail: pyu@nclc.org).