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**Comment submitted by  
The National Consumer Law Center**

**To the U.S. Department of Education**

**Re: Comments on Agency Information Collection Activities;  
Comment Request; Loan Discharge Application: Forgery (82 Fed. Reg. 7812)**

**Docket No.: ED-2017-ICCD-0005**

**March 24, 2017**

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 on student loan issues. 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.<sup>1</sup>

We are encouraged by the Department of Education's (ED's) desire to streamline and standardize the application process for people who seek relief, and who claim that student loans were obtained in their names by means of forgery. In our experience working with low-income clients and other advocates, the lack of a standard process for victims of identity theft and other forms of forgery has impaired their ability to get appropriate relief.

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<sup>1</sup> See the Project's web site at [www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org). NCLC also publishes and annually updates practice treatises that describe the law currently applicable to all types of consumer transactions, including *Student Loan Law* (5<sup>th</sup> ed. 2015).

This new form is a good first step in clarifying and standardizing the process for seeking relief.

We suggest that ED also explain (in this form or other guidance, such as on its website and in a Dear Colleague Letter) the process and timeline that applicants should expect following submission of their application, along with the standards by which the submitted applications and supporting documentation will be evaluated. Such clarity is essential to ensure that low-income applicants and their advocates know how best to support their applications, what to expect through the process, how to monitor their applications, when follow-up is appropriate, and how to follow up productively. Clear guidance will also improve consistency and transparency of the process among various loan holders.

We offer the following comments to ensure that this new form is as straightforward and streamlined as possible.

**Section 2: Declarations**

- We suggest reordering the questions to improve flow and comprehension while reducing confusion for applicants. The following table shows our suggested order for the questions, along with some suggestions for the text of the questions.

Suggested Order for Questions

New #	Original #	Additional Comments
1	1	Consider providing guidance to applicants about how they can learn more about the loans they are disputing. An NSLDS report could provide the loan amount, date, and school, for instance. Otherwise, applicants might not necessarily have that information on hand.
2	14	Rephrase: “Did you give anyone permission to use your personal information to take out the loan(s) you are seeking to discharge?”
3	4	
4	3	
5	10	When this question follows question 9 and precedes question 11, it is not clear whether the applicant should provide an address where they were living (1) when they intentionally borrowed loans for their own education or (2) when student loans were issued in their name because of the forgery they are reporting.

6	5	<ul style="list-style-type: none"> <li>• “Don’t know” should be an additional option. ED may discover that some applicants’ signatures were forged by school personnel or affiliates.</li> <li>• Consider combining this form with the existing form entitled “Loan Discharge Application: False Certification (Unauthorized Signature/Payment).”</li> </ul>
7	NEW	<p>“Have you seen a copy of any of the following original loan documents? Check any that apply.”</p> <ul style="list-style-type: none"> <li>• The answers should include the list of options that appear in question 16.</li> <li>• “Don’t know” should be an additional option.</li> </ul>
8	16	Begin with “If so.”
9	15	
10	26	
11	27	
12	12	
13	13	
14	19	
15	20	
16	21	
17	22	<p>This question should give applicants the opportunity to explain the absence of the police report if they do not have a copy to attach. Some applicants may not have filed police reports due to safety concerns, such as in the case of domestic violence. Some applicants who made police reports may not have a copy of their police reports. In some jurisdictions, copies of police reports are not immediately available. In those instances, the applicant may only be provided with a report number before leaving the police station. Additionally, there may be fees associated with obtaining a copy of the full report. Those fees are prohibitive to some applicants. Finally, some police departments do not issue full reports for identity theft and other complaints.</p>
18	23	
19	24	To be consistent with language used in earlier questions, replace “in ink” with “by hand.”

20	25	Begin with “If so” (if eliminating the skip logic and reformatting to indicate follow-up questions).
21	11	<ul style="list-style-type: none"> <li>• The form does not define or explain what “under protest” means. A more colloquial expression might include the word “dispute.” Making payments while maintaining a dispute is a common practice in consumer finance, in general.</li> <li>• In practice, people who have more than one student loan often take actions that have an impact on all of their loans. Those actions include submitting payments, requesting temporary relief (deferments and forbearances), and even consolidating. It is likely that many applicants could respond to this question by explaining that they had other loans they actually borrowed (as contemplated by question 9) and that they inadvertently made payments or failed to protest the forged loans because they believed that the servicer or debt collection agency was seeking payment for the other loans that the applicant believes they owe. The form should have a response option that clearly captures this reality.</li> </ul>
22-28	28-34	<ul style="list-style-type: none"> <li>• It would help to set these off as a separate section under a heading called “Third Party Claims and Refunds.”</li> <li>• It would be helpful to provide more information and context for the word “claim.” For example, the regulations provide a list of entities with which the applicant may have filed such a claim, including “the holder of a performance bond or a tuition recovery program.” 34 CFR 682.402(e)(3)(i) and 34 CFR 685.215(c)(5).</li> </ul>
29-31	7-9	Moving these questions helps, but a separate section and heading could also help to distinguish these questions about valid loans from the more in-depth inquiry about forged ones.
32	35	<ul style="list-style-type: none"> <li>• Consider converting this question (to which a lengthy narrative response is expected) into a separate section under a heading called “Statement of Facts about Forged Loans.”</li> <li>• To the extent that applicants are able to provide detailed documents (including a police report or a completed Identity Theft Report from the FTC), this question might not elicit new information. Make it clear that this space is intended for information that requires further explanation or information that is not readily presented elsewhere in the application.</li> </ul>

- The length of this section of the form will deter some from completing it, and will stymie others. Items, including any that appear in the chart above, that are not essential (or not essential at the time of the initial application) should be indicated as such (perhaps marked “optional”) or removed. We recommend that ED omit the following questions that are unnecessary or confusing:
  - 2
    - The wording of this question (“intend to take the loans”) is unclear and, therefore, confusing. The remaining questions are sufficient to determine whether the applicant truly borrowed or benefited from the loans.
  - 6
    - Redundant: included in question 18, which we suggest moving to Section 3 (“Documentation”).
  - 17
    - Redundant: should be folded into question 4. This is also a question of fact, the answer to which should be apparent from documents that ED should have in its possession.
  - 18
    - We suggest moving this question into Section 3 (“Documentation”).
    - The list of “evidence” should be updated to reflect the fact that the FTC has changed its procedures for documenting identity theft: <https://www.consumer.ftc.gov/articles/pdf-0094-identity-theft-affidavit.pdf>.
- Skip the skip logic. It isn’t logical or necessary. For instance, see question 11 for which applicants are instructed to “Continue to Item 12”--which is the next question in the series--regardless of which of the three responses they select. Instead of relying on skip logic, use formatting (increased indentations with letters or bullets rather than numbers) to indicate follow up questions. Using formatting for this purpose, would also reduce the total number of questions, and that could make the form feel shorter and more manageable for applicants.

### **Section 3: Documentation**

- Just as some applicants may be daunted by the length of Section 2, this section’s documentation requirements may overwhelm applicants. Some applicants who have strong claims for relief may have few records and may experience difficulty gathering documentation on their own.
- We recommend that ED give applicants the opportunity to explain the absence of any documentation and why it might be unreasonable to expect that particular applicant to provide it.
- As we noted above, we suggest moving question 18 into this section, as that question asks applicants about what evidence (in the form of documentation) is available to them.
- ED should consider presenting this whole section in the form of a checklist, just as question 18 is currently presented.

- Item 3 in this section (“Documentation of your signature”) should be edited for clarity and to fix double words. In particular, ED should clarify this sentence: “At least two of these samples must show that your your signature was more one year before or one year after the date of the alleged forgery.” If requesting two signature samples from within one year before or one year after the date of the alleged forgery, consider rewriting this sentence for ease of comprehension.

#### **Section 4: Applicant Certifications, Assignment, and Authorization**

- Important terms and conditions appear in Section 7 of the form. These “terms and conditions” impose future affirmative obligations on applicants--such as the requirement to cooperate with any enforcement action--which could potentially lead applicants to decide not apply. For example, victims of domestic violence may choose to wait to seek relief from forged loans if participating in an investigation or enforcement action now could still place them at risk of further harm. Therefore, the “agreement to cooperate” condition should not be buried among the other disclosures in Section 7 and should instead appear in Section 4 above the signature line with the other certifications and acknowledgements.
- When moving any requisite terms from Section 7 to Section 4, consider rewording all items to avoid repetition, preserve clarity, and save space.
- Forms like this one should never include a mandatory requirement for applicants to allow robocalling and autodialing. Seeking relief from forged loans should not come at the cost of waiving important consumer protections. At most, the form should include “yes” and “no” check boxes in which applicants have the option of providing consent. If used, the sentence should be reworded so that it is clear that applicants are authorizing robocalling and autodialing. As written, that critical component is buried at the bottom of a three line long run-on sentence.

#### **Section 7: Terms and Conditions**

- As noted above, the “agreement to cooperate” condition should appear in Section 4 above the signature line. Other items that appear in this section, which are all variants on a theme, should also be moved to Section 4 and reworded to avoid repetition, preserve clarity, and save space.

Thank you for considering these comments. Please feel free to contact Joanna Darcus at [jdarcus@nclc.org](mailto:jdarcus@nclc.org) or 617-542-8010 with any questions or comments.