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**Comments on Notice of Proposed Information Collection Requests
Proposed Changes to Discharge Application:
Total and Permanent Disability (78 Fed. Reg. 14083)**

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 to allow some borrowers to use their Social Security Administration (SSA) disability determinations when applying for a total and permanent disability discharge. This change will reduce unnecessary administrative hurdles for a significant number of disabled borrowers.

We understand that the Department intends to implement an online process for completing this application. While we support this endeavor, we encourage the Department to involve consumers and borrowers in the development of the online process. Also, because this population often does not have access to the internet, we want to ensure that a paper application will always be easily available and accessible.

We offer the following comments to best streamline the forms used in the application and monitoring process.

Main Application

1. Use of Social Security Administrative Notice for TPD Determination

We applaud the Department's decision to use SSA notices for TPD Determinations. However, the current language on the form regarding use of SSA notices is unclear. In several places, the form states that SSA determination will be used if: "the Notice of Award states that your next scheduled disability review will be within 5 to 7 years..." However, few borrowers apply for discharge of their student loans immediately after receiving a SSA determination. In our experience, many borrowers receive SSI or SSDI payments for several years before applying for a TPD discharge on their student loans. Therefore, a borrower's next review may be

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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 and Supp.).

in less than 5 years even though they are in the medical improvement not expected category and have a continuing disability review period of 5 to 7 years or more.

To that end, we recommend that this language be amended to read:

“your disability review period is 5 to 7 years or more from the date of your last disability determination...”

Additionally, the application currently requires that borrowers submit a Notice of Award to demonstrate their disability review period. However, in our experience, SSA Notices of Awards do not consistently provide recipients with the disability review period. Therefore, we urge the Department to explore other possible documents for borrowers to provide to the Department to prove their disability review period and to list those documents on the application form.

Finally, it is critical that borrowers get information about how to determine if they are in the eligible SSA category. As already mentioned, the Notice of Award often does not state the disability review period, therefore many recipients do not know when their next medical review will take place. At a minimum, the “Read This First” section of the application should include information about how borrowers can get this information.

2. “Read This First”

In order to streamline this section, we recommend that the form combine the fourth and seventh bullets. Their content is substantively similar and therefore redundant as two separate parts.

Also, the “Read This First” section must contain some mention of the post-discharge monitoring process. Although the application does include information regarding this process on page 6, this is an important process that borrowers should be aware of and may overlook if not placed in the “Read This First” section. To that end, we recommend adding the following language:

- “If you are granted a discharge, the Department will monitor your status for a 3-year post-discharge monitoring period. Your loans may be reinstated if you no longer meet the requirements listed on page 6.”

3. Page 2 of Application Form

This is the only page that the borrower actually needs to complete. However, it is confusing and cluttered. We offer the following suggestions to streamline this page.

- Remove Date of Birth from Section 1. This is not required on any other Department forms and takes up unnecessary space.
- Section 2 is misnamed, includes too many different concepts, and is disorganized. We offer the following suggestions:
 - The very basic instructions (i.e. use dark ink) should be in or above Section 1.
 - The address to send the application is already on the first page and is unnecessary.
 - Section 2 should focus on VA and SSA information exclusively. We recommend that it be changed as follows:

SECTION 2: VETERAN AND SOCIAL SECURITY APPLICANTS

1. Are you a veteran who has received a determination from the VA that you are **unemployable due to a service-connected disability**?

Yes – Attach documentation of the VA determination and complete Section 3.

No

2. Have you received an SSA notice of award for SSDI or SSI benefits stating that **your next scheduled disability review will be within 5 to 7 years**?

Yes – Attach a copy of the SSA notice of award and complete Section 3.

No

- **If you check “Yes” to Items 1 OR 2 above, complete section 3. You do not need to complete Section 4. All other applicants must have a physician who is a doctor of medicine or osteopathy complete and sign Section 4.**

- Section 3 could be much easier to read by removing the representative contact and relationship information. This is redundant since it is also on the required representative form. Rather, there should be a simple instruction for representatives to complete the representative authorization form.

4. Process and Definitions

Section 5 and 6 of the form contain very important information for borrowers. However, due to the large volume of information and the nature of completing forms, it is important to arrange these sections in a way so that information is more easily accessible. We offer the following suggestions to achieve that goal:

- Section 6 (process) should come before section 5 (definitions) because it is more important for a borrower to read.
- Within section 6, some sections should be displayed more prominently. Specifically:
 - The post-discharge monitoring and the reinstatement sections need to be more prominent. Because the consequences for failing to do this process are so high, these sections should come first and their importance should be highlighted.
 - Separate the discharge process for people who use the SSA process from “all other applicants.” Although they are regulated with “other applicants,” their process more closely resembles the VA process. Therefore, its current placement is confusing.
- Remove the notification of intent section. This process is not required and if the borrower has the form, they have likely already done it. Alternatively, frame it so that borrowers know that they can notify the Department of their intent to apply and that if they do, collection efforts will cease and rename it: Ceasing collection while completing application.
- Section 5 states that all references to “you” throughout this application include the representative. This is problematic for two reasons. First, in some places, this reference does not make logical sense. For example, the first question in Section 2 asks “Are *you* a veteran...” The representative’s status in this question is irrelevant. Also, the representative is often not in a position to certify the accuracy of information the borrower submits. As attorneys, for example, we are always careful to ask specific questions and advise our clients about providing truthful information, but only our clients know for sure in many cases if the information is true. Only the borrower should be responsible for certifying the accuracy of information. This is true for information about disability as well as for other information such as address changes and income information for reinstatement purposes. We believe this must be clarified in the representative designation form and on the application.

Applicant Representative Designation Form

This form indicates that representative designation can be revoked by the representative; however, the form only gives the option for the borrower to revoke the representative designation. Therefore, we recommend that a checkbox be added so that the representative can revoke the designation.

Also, in some circumstances a borrower will not be able to physically sign the Applicant Representative Designation Form. This form should explicitly explain the process for borrowers in this circumstance.

Post-Discharge Monitoring Form

We offer the following suggestions to make this form more user friendly for borrowers:

- Remove some or all of the definitions section on page 2. Many of the definitions in this part are irrelevant to the borrower completing the form. Borrowers completing this form have already qualified for a TPD discharge and therefore do not require the

definitions used for the initial application. Deleting this section will provide additional room to make the rest of the form easier to read.

- The directions on where to send the form should be larger, bold, and centered.
- Question 1 will likely be challenging for borrowers to complete. Few borrowers will know the required time period and will complete this question incorrectly. We recommend that the Department prepopulate the time period requested in Question 1 because it is in a better position to determine the relevant time period.
- Question 2 is confusing. We recommend changing it as follows:

Do you have income earned from employment during the period described in Item 1? Income from employment includes: (1) wages, tips, or other taxable employee pay, or (2) earnings generated from self-employment.

Do not include untaxed income such as SSI, child support, or federal or state public assistance or other income, such as income from interest or dividends.

- Yes – You must provide documentation of all income you receive from employment or self-employment. See Acceptable Documentation below.
- No

- Acceptable Documentation
 - Move the “Acceptable Documentation” section to page 2 in the space created by deleting the definitions. This will create more space on page 1 and make it easier to complete.
 - This form currently requires that documentation be less than 90 days old. However, these documents must cover a one year period. A borrower may have had earnings in that period that did not fall within the last 90 days. Therefore, we suggest modifying this requirement to reflect this possibility.

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