UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	)	CHAPTER 7
	)	
LOUIS ANTHONY NESCI and JULIANA NESCI,	)	Case No. 05-36404 (ASD)
	)	
Debtors.	)	
LOUIS ANTHONY NESCI,	)	
	)	
Plaintiff,	)	Adv. Proc. No. 06-03015 (ASD)
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT of HEALTH and HUMAN SERVICES, et al.,	)	
	)	
Defendants.	)	Re: Doc. I.D. No. 67

ORDER GRANTING SUMMARY JUDGMENT

Before the Court is the above-captioned motion of the Defendant, United States of America, Department of Health and Human Services (hereafter, "HHS"), for summary judgment or, in the alternative, judgment on the pleadings. The Debtor-Plaintiff's First Amended Complaint[1] prays for a declaratory judgment of dischargeability as to two distinct forms of educational loans upon which he is obligated: (i) general student loans eventually assigned to Educational Credit Management Corporation (hereafter, the "ECMC Loans"),[2]

[1] The First Amended Complaint (Doc. I.D. No. 88) was filed with leave of Court on March 5, 2007.

[2] As to the ECMC Loans, the Debtor-Plaintiff seeks a determination of dischargeability on the ground that such loans impose an "undue hardship" within the meaning of Section 523(a)(8) (2006) of the Bankruptcy Code. See, e.g., First Amended Complaint, ¶ 17. The ECMC Loans are not the subject of the matter before the Court at

see First Amended Complaint, ¶ 6, and (ii) a Health Education Assistance Loan (hereafter, the "Consolidated HEAL Loan") that in 2000 consolidated several prior HEAL loans (hereafter, the "Original HEAL Loans") that the Debtor-Plaintiff alleges came due for repayment not later than 1994, see, e.g., First Amended Complaint, ¶ 7.

As to the Consolidated HEAL Loan, the Debtor-Plaintiff seeks a determination of dischargeability on the grounds required by 42 U.S.C. § 292f(g) (2006) (hereafter, "Section 292f(g)"), which provides as follows:

Conditions for discharge of debt in bankruptcy.

> Notwithstanding any other provision of Federal or State law, a debt that is a loan insured under the authority of this subpart may be released by a discharge in bankruptcy under any chapter of Title 11, only if such discharge is granted–
>
> > (1) after the expiration of the seven-year period beginning on the first date when repayment of such loan is required, exclusive of any period after such date in which the obligation to pay installments on the loan is suspended;
> >
> > (2) upon a finding by the Bankruptcy Court that the nondischarge of such debt would be unconscionable; and
> >
> > (3) upon the condition that the Secretary shall not have waived the Secretary's rights to apply subsection (f) of this section to the borrower and the discharged debt.

42 U.S.C. § 292f(g) (2006).

The Debtor-Plaintiff asserts, *inter alia*, that it would be "unconscionable" to require him to repay such loan. See, e.g., ¶ 18 of the First Amended Complaint. However, under the terms of Section 292f(g), the question of unconscionability is not ripe unless the Debtor-

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this time.

Plaintiff's bankruptcy discharge "is granted . . . after the expiration of the seven-year period beginning on the first date when repayment of such loan is required". The Debtor-Plaintiff's discharge in this case entered on January 16, 2006. Thus, no HEAL loan is dischargeable in this case if its applicable repayment period commenced, at the latest, after January 15, 1999.

The Debtor-Plaintiff argues that the seven-year repayment period should begin at the time for repayment of the *Original* HEAL loans, *i.e.* in or about 1994, whereas the Defendant HHS contends that the relevant period commences only with the repayment obligation on the *Consolidated* HEAL loan, *i.e.* not earlier than 2000. This question (hereafter, the "Consolidation Question") is ultimately dispositive of the matter before the Court.

While there is a paucity of authority on the Consolidation Question under Section 292f(g), there is ample and instructive authority under the analogous and parallel provisions of former Section 523(a)(8)(A) (1997) of the Bankruptcy Code, dealing with the period of non-dischargeability of educational obligations in general. See, e.g., Hiatt v. Indiana State Student Assistance Comm'n. (In re Hiatt), 36 F.3d 21, 23-25 (7th Cir. 1994) (holding, *inter alia*, that "the term 'such loan' refers . . . to the consolidation loan"). This Court agrees with Hiatt's construction of former Code Section 523(a)(8)(A), and specifically deems it persuasive, applicable, and conclusive as to current Section 292f(g), which contains similar "such loan" language.

Accordingly, because there exist no material issues of fact in genuine issue as to the

present dischargeability of the Consolidated HEAL Loan, and the Defendant HHS is entitled to judgment as a matter of law on that question, it is hereby

ORDERED that the motion of the Defendant HHS for summary judgment is **GRANTED**. Judgment shall enter in favor of United States of America, Department of Health and Human Services as to the consolidated "HEAL" loan as described in ¶ 7 of the First Amended Complaint. Such loan is hereby **DECLARED** to be **NON-DISCHARGEABLE** in the Debtor-Plaintiff's pending bankruptcy case.[3]

Dated: April 13, 2009

BY THE COURT

Albert S. Dabrowski
Chief United States Bankruptcy Judge

[3] Given this disposition, it is unnecessary for the Court to consider HHS's alternative motion for judgment on the pleadings.