

**SUPPORTING STATEMENT  
FOR PAPERWORK REDUCTION ACT SUBMISSION  
Information on Borrower Defense to Repayment Loan Discharge Claims**

**A. Justification**

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a hard copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information, or you may provide a valid URL link or paste the applicable section<sup>1</sup>. Specify the review type of the collection (new, revision, extension, reinstatement with change, reinstatement without change). If revised, briefly specify the changes. If a rulemaking is involved, make note of the sections or changed sections, if applicable.

This is a request to for an extension of the emergency clearance that was granted on this collection on June 5, 2015 to facilitate the continued collection of information from borrowers who believe they have cause to invoke the borrower defenses against repayment of a student loan as noted in regulation.

The regulations for borrower defenses are specified in 34 CFR 685.206(c). The regulation states, in part, “(c)(1) [i]n any proceeding to collect on a Direct Loan, the borrower may assert as a defense against repayment, an act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law.”

Prior to 2015, the borrower defense identified above was rarely asserted by any borrowers and no specific methods of collecting information was defined or found necessary.

To respond to and protect harmed borrowers, the Department seeks to continue to provide assistance to allow:

- Student borrowers who attended the Heald College programs that the Department has found made misrepresentations to have their loans discharged if they complete the attached attestation. These borrowers need not prove that Heald College’s actions violated State law as the Department’s findings show a State law violation. The Department continues to estimate that there are potentially 50,000 borrowers in this category.
- The information process that was established to notify other potentially eligible borrowers of an interim process for accepting borrower defense claims. Thus, while the Department continues to develop this process, it will post on its website the attached language, which will direct borrowers who choose not to wait for development of the

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<sup>1</sup> Please limit pasted text to no longer than 3 paragraphs.

review process, to send their claims to the address provided and to include a short list of information in support of their claim. The Department continues to estimate that there are potentially 100,000 borrowers who may exercise this defense. It is important to note that borrowers from other schools could also submit borrower defense claims if they believe that their school has engaged in a State law violation related to their education that has harmed them.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The Department will continue to utilize the information provided by the borrower to confirm eligibility for the borrower defense against repayment. The information will be provided through a paper request with a borrower signature and attachments evidencing enrollment in a Heald College, as well as the information provided by non-Heald College borrowers who can provide evidence that their school has engaged in a State law violation related to their education that has harmed them.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision of adopting this means of collection. Also describe any consideration given to using technology to reduce burden.

The collection of information can be submitted to U.S. Department of Education, P.O. Box 194407, San Francisco, CA 94119, or [FSAOperations@ed.gov](mailto:FSAOperations@ed.gov).

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The information requested of the borrower is needed for processing the borrower defense claim request. While borrower and loan information is held by the Department, there is no other mechanism for the Department to investigate or apply the discharge except for the borrower to make the voluntary request. This request must be initiated by the borrower.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction, which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

This information collection does not impact any small businesses or other small entities.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the Department did not collect the information on either the specific form or through the website, we would not have the information needed to apply the discharge and could not provide borrowers with allowable recourse to loan repayment.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- in connection with a statistical survey, that is not designed to produce valid and reliable results than can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or that unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

This application is consistent with all of the guidelines in 5 CFR 1320.5(d)(2).

8. As applicable, state that the Department has published the 60 and 30 Federal Register notices as required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instruction and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

This is the request for an extension of the current clearance of the process for gathering information from Heald College borrowers to submit a borrower defense against repayment claim and the gathering of information from any federal student loan borrower who believes they have met the circumstances under the borrower defense against repayment claim allowed by regulation.

The Department received 20 unique comments to the 60-day comment period for this extension request. See the attached file for the responses provided to those entities or individuals who submitted a comment with an email address. No changes were made to the forms or formats based on these comments.

The Department is undertaking public hearings and is planning on holding negotiated rulemaking on this topic. See [Federal Register dated August 20, 2015](#) for further details.

This is the 30-day comment period.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees with meaningful justification.

There are no payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If personally identifiable information (PII) is being collected, a Privacy Act statement should be included on the instrument. Please provide a citation for the Systems of Record Notice and the date a Privacy Impact Assessment was completed as indicated on the IC Data Form. A confidentiality statement with a legal citation that authorizes the pledge of confidentiality should be provided.<sup>2</sup> If the collection is subject to the Privacy Act, the Privacy Act statement is deemed sufficient with respect to confidentiality. If there is no expectation of confidentiality, simply state that the Department makes no pledge about the confidentiality of the data.

A Privacy Act statement is included based on the Common Services for Borrowers System of Records Notice, 18-11-16, revised in the Federal Register Volume 79, Number 177, September 12, 2014.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. The justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

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<sup>2</sup> Requests for this information are in accordance with the following ED and OMB policies: Privacy Act of 1974, OMB Circular A-108 – Privacy Act Implementation – Guidelines and Responsibilities, OMB Circular A-130 Appendix I – Federal Agency Responsibilities for Maintaining Records About Individuals, OMB M-03-22 – OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002, OMB M-06-15 – Safeguarding Personally Identifiable Information, OM:6-104 – Privacy Act of 1974 (Collection, Use and Protection of Personally Identifiable Information)

There are no questions of a sensitive nature in this collection.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- Indicate the number of respondents by affected public type (federal government, individuals or households, private sector – businesses or other for-profit, private sector – not-for-profit institutions, farms, state, local or tribal governments), frequency of response, annual hour burden, and an explanation of how the burden was estimated, including identification of burden type: recordkeeping, reporting or third party disclosure. All narrative should be included in item 12. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in the ROCIS IC Burden Analysis Table. (The table should at minimum include Respondent types, IC activity, Respondent and Responses, Hours/Response, and Total Hours)
- Provide estimates of annualized cost to respondents of the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

The Department continues to estimate an average of 60 minutes (1 hour) per respondent to complete the Heald College borrower attestation/application for borrower defense to repayment loan discharge request. This time includes reviewing the instructions for completion of the attestation/application, locating and providing the required evidence of enrollment, and submission to the Department.

	Respondents	Responses		Burden Hours
Application	50,000	50,000	x 1 hour	50,000
Totals	50,000	50,000		50,000

Additionally, the Department continues to estimate an average of 60 minutes (1 hour) per respondent to respond to the minimum requested items identified on the studentloan.ed.gov website for borrowers wishing to assert their claim to the borrower defense against repayment loan discharge. This time includes reviewing the instructions needed for filing a claim, locating and providing the required evidence of enrollment and State law violation and other information, and submission to the Department.

	Respondents	Responses		Burden Hours
Application	100,000	100,000	x 1 hour	100,000
Totals	100,000	100,000		100,000

NEW COLLECTION TOTAL

	Respondents	Responses		Burden Hours
Individuals	150,000	150,000		150,000

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and acquiring and maintaining record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices. Also, these estimates should not include the hourly costs (i.e., the monetization of the hours) captured above in Item 12

Total Annualized Capital/Startup Cost :  
 Total Annual Costs (O&M) :  
 Total Annualized Costs Requested : \_\_\_\_\_

There are no start-up costs for any respondent.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

To begin this new process, the Department will be hiring additional personnel to review the initial applications and refine the intake process. We anticipate hiring additional staff for a total annual cost of approximately \$3.6 million.

15. Explain the reasons for any program changes or adjustments. Generally, adjustments in burden result from re-estimating burden and/or from economic phenomenon outside of an agency's control (e.g., correcting a burden estimate or an organic increase in the size of the reporting universe). Program changes result from a deliberate action that materially changes a collection of information and generally are result of new statute or an agency action (e.g., changing a form, revising regulations, redefining the respondent universe, etc.). Burden changes should be disaggregated by type of change (i.e., adjustment, program change due to new statute, and/or program change due to agency discretion), type of collection (new, revision, extension, reinstatement with change, reinstatement without change) and include totals for changes in burden hours, responses and costs (if applicable).

This is request for an extension of the currently approved information collection. There is no change to statutory or regulatory requirements. We estimate a total of 150,000 responses, resulting in a total of 150,000 new burden hours for 150,000 borrowers. This burden continues to be necessary to ensure Heald College borrowers who wish to invoke the borrower defense against repayment of federal student loans can do so in a uniform and informed manner. It will also allow for the uniform and directed collection of minimum borrower defense information from other federal student loan borrowers who believe they can provide evidence of such a claim for repayment relief.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This information will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The Department is not seeking this approval. The OMB control number and expiration dates will be displayed on any form and website.

18. Explain each exception to the certification statement identified in the Certification of Paperwork Reduction Act.

There are no exceptions to the certification statement.