

**SUPPORTING STATEMENT  
FOR PAPERWORK REDUCTION ACT SUBMISSION  
Borrower Defenses Regulations**

**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.

The Department of Education (the Department) proposes to amend the William D. Ford Federal Direct Loan Program regulations issued under the Higher Education Act of 1965, as amended (HEA), to implement changes made to the regulations in §685.222. These proposed regulations are a result of negotiated rulemaking and would add new requirements to the current regulations.

These proposed regulations in §685.222 would provide a framework for the borrower defense individual and group process, including descriptions of the circumstances under which group borrower defense claims could be considered, and the process the Department would follow for borrower defenses for a group. The proposed regulations would establish a process for review and determination of a borrower defense for groups identified by the Secretary for which the borrower defense is made with respect to Direct Loans for attendance at a school that has closed and has provided no financial protection currently available to the Secretary from which to recover any losses based on borrower defense claims, and for which there is no appropriate entity from which the Secretary can otherwise practicably recover such losses. The proposed regulation would establish the process for groups identified by the Secretary for which the borrower defense is asserted with respect to Direct Loans to attend an open school.

This request is a new information collection to include these new regulatory requirements.

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 process information in §685.222 will be used by borrowers, lenders, guaranty agencies and the Secretary to aid in identifying borrowers who are eligible under the proposed borrower defenses regulations and to aid in identifying relief under the regulations to eligible borrowers.

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

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.

There are no prohibitions to the use of technology in providing the required forms or information to a borrower, lender or guaranty agency.

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.

This information is not duplicated on any other information collection.

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.

Using data from the Integrated Postsecondary Education Data System, the Department estimates that approximately 4,365 institutions qualify as small entities--1,891 are not-for-profit institutions, 2,474 are for-profit institutions. While most institutions will provide the required information via electronic means, there will be some smaller institutions that will choose to provide the warnings and promotional materials to students using paper documents. The use of the electronic means will mitigate the burden of these warnings.

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.

The proposed regulations require a process to be established regarding borrower defense claims to be shared with borrowers, lenders, guaranty agencies and the Secretary. Not providing the information keeps a borrower from having information about all of the repayment relief options available through the regulations, as well as preventing lenders and guaranty agencies from performing required borrower contacts. These proposed regulations allow for remedial actions on the part of the Secretary to collect losses arising from successful borrower defense claims from institutions to provide for the Department's fiduciary responsibility to the Government and taxpayer.

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 information collection does not require any special circumstances.

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.

The Department developed these regulations after conducting negotiated rulemaking with the affected entities and other parties. The comment period for this information collection package will run concurrently with the Notice of Proposed Rulemaking.

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.

There is no assurance of confidentiality provided to institutions for the submission of this information.

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.

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)

<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)

- 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.

§685.222(e) - Process for individual borrowers.

Under proposed §685.222(e)(1) the steps an individual borrower must take to initiate a borrower defense claim would be described. First, an individual borrower would submit an application to the Secretary, on a form approved by the Secretary. In the application, the borrower would certify that he or she received the proceeds of a loan to attend a school; may provide evidence that supports the borrower defense; and would indicate whether he or she has made a claim with respect to the information underlying the borrower defense with any third party, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation. The borrower would also be required to provide any other information or supporting documentation reasonably requested by the Secretary.

While the decision of the Department official would be final as to the merits of the claim and any relief that may be warranted on the claim, if the borrower defense is denied in full or in part, the borrower would be permitted to request that the Secretary reconsider the borrower defense upon the identification of new evidence in support of the borrower's claim. "New evidence" would be defined as relevant evidence that the borrower did not previously provide and that was not identified by the Department official as evidence that was relied upon for the final decision.

**AFFECTED ENTITIES AND BURDEN:**

There will be burden associated with the filing of the Departmental form by the borrower asserting a borrower defense claim. We are conducting a separate information collection review process for the proposed form to provide for public comment on the form as well as the estimated burden. A separate information collection review package will be published in the Federal Register and available through Regulations.gov for review and comment.

Additionally there will be burden on any borrower whose borrower defense claim is denied, if they elect to request reconsideration from the Secretary based on new evidence in support of the borrower's claim. We estimate that two percent of borrower defense claims received would be denied and those borrowers would then request reconsideration by presenting new evidence to support their claim. As of April 27, 2016, 18,688 borrower defense claims had been received. Of that number, we estimate that 467 borrowers, including those that opt out of a successful borrower defense group relief, would require .5 hours (30 minutes) to submit the request for reconsideration to the Secretary for a total of 234 burden hours (467 x .5 hours). This burden will be assessed under OMB Control Number 1845-NEW.

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
Individuals	467	467	x .5 hours	234

§685.222(f) - Group process for borrower defenses-generally.

Proposed §685.222(f) would provide a framework for the borrower defense group process, including descriptions of the circumstances under which group borrower defense claims could be considered, and the process the Department would follow for borrower defenses for a group.

Once a group of borrowers with common facts and claims has been identified, the Secretary would designate a Department official to present the group's common borrower defense in the fact-finding process, and would provide each identified member of the group with notice that allows the borrower to opt out of the proceeding.

**AFFECTED ENTITIES AND BURDEN:**

There will be burden on any borrower who elects to opt out of the group process after the Secretary has identified them as a member of a group for purposes of borrower defense. We estimate that one percent of borrowers who are identified as part of a group process for borrower defense claims would opt out of the group claim process. As of April 27, 2016, 18,688 borrower defense claims had been received. Of that number, we estimate that 187 borrowers would require .08 hours (5 minutes) to submit the request to opt out of the group process to the Secretary for a total of 15 burden hours (187 x .08 hours). This burden will be assessed under OMB Control Number 1845-NEW.

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
Individuals	187	187	x .08 hours	15

§685.222(g) Procedures for group process for borrower defenses with respect to loans made to attend a closed school.

Section 685.222(g) of the proposed regulations would establish a process for review and determination of a borrower defense for groups identified by the Secretary for which the borrower defense is made with respect to Direct Loans to attend a school that has closed and has provided no financial protection currently available to the Secretary from which to recover any losses based on borrower defense claims, and for which there is no appropriate entity from which the Secretary can otherwise practicably recover such losses.

Under proposed §685.222(g)(1), a hearing official would review the Department official's basis for identifying the group and resolve the claim through a fact-finding process. As part of that process, the hearing official would consider any evidence and

argument presented by the Department official on behalf of the group and on behalf of individual members of the group. The hearing official would consider any additional information the Department official considers necessary, including any Department records or response from the school or a person affiliated with the school as described §668.174(b) as reported to the Department or as recorded in the Department's records if practicable.

#### AFFECTED ENTITIES AND BURDEN:

There will be burden on any school which elects to provide records or response to the hearing official's fact finding. We anticipate that each group would represent a single institution. We estimate that there will be four potential groups involving closed schools.

We estimate that the fact-finding process would require 50 hours from 1 private closed school or persons affiliated with that closed school (1 private institution x 50 hours).

We estimate that the fact-finding process would require 150 hours from 3 proprietary closed schools or persons affiliated with that closed school (3 proprietary institutions x 50 hours).

We estimate the burden to be 200 hours (4 institutions x 50 hours). This burden will be assessed under OMB Control Number 1845-NEW.

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
Private Institutions	1	1	x 50 hours	50
Proprietary Institutions	3	3	x 50 hours	150

#### §685.222(h) Procedures for group process for borrower defenses with respect to loans made to attend an open school.

Proposed §685.222(h) would establish the process for groups identified by the Secretary for which the borrower defense is asserted with respect to Direct Loans to attend an open school.

A hearing official would resolve the borrower defense and determine any liability of the school through a fact-finding process. As part of the process, the hearing official would consider any evidence and argument presented by the school and the Department official on behalf of the group and, as necessary, evidence presented on behalf of individual group members.

The hearing official would issue a written decision. If the hearing official approves the borrower defense, that decision would describe the basis for the determination, notify the members of the group of the relief provided on the basis of the borrower defense, and notify the school of any liability to the Secretary for the amounts discharged and reimbursed.

If the hearing official denies the borrower defense in full or in part, the written decision would state the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, and whether reimbursement of amounts previously collected is granted, and would inform the borrowers that their loans will return to their statuses prior to the group borrower defense process. It also would notify the school of any liability to the Secretary for any amounts discharged. The Secretary would provide copies of the written decision to the members of the group, the Department official and the school.

The hearing official's decision would become final as to the merits of the group borrower defense claim and any relief that may be granted within 30 days after the decision is issued and received by the Department official and the school unless, within that 30-day period, the school or the Department official appeals the decision to the Secretary. A decision of the hearing official would not take effect pending the appeal. The Secretary would render a final decision following consideration of any appeal.

After a final decision has been issued, if relief for the group has been denied in full or in part, a borrower may file an individual claim for relief for amounts not discharged in the group process. In addition, the Secretary may reopen a borrower defense application at any time to consider new evidence, as discussed above.

#### AFFECTED ENTITIES AND BURDEN:

There will be burden on any school that provides evidence and responds to any argument made to the hearing official's fact finding and if the school elects to appeal the final decision of the hearing official regarding the group claim. We anticipate that each group would represent claims from a single institution. We estimate that there will be six potential groups involving open schools.

We estimate that the fact-finding process would require 150 hours from the 3 open private institutions or persons affiliated with that school (3 institutions x 50 hours).

We estimate that the fact-finding process would require 150 hours from the 3 open proprietary institutions or persons affiliated with that school (3 institutions x 50 hours).

We further estimate that the appeal process would require 150 hours from the 3 open private institutions or persons affiliated with that school (3 institutions x 50 hours).

We estimate that the appeal process would require 150 hours from the 3 open proprietary institutions or persons affiliated with that school (3 institutions x 50 hours).

The total estimated burden for this section will be 600 hours assessed under OMB Control Number 1845-NEW.

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
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Private Institutions	3	6	x 50 hours	300
Proprietary Institutions	3	6	x 50 hours	300

**Total of Proposed Burden:**

# of Respondents	# of Responses	Total Burden
664	670	1,049

**Current Burden:**

# of Respondents	# of Responses	Total Burden
0	0	0

**Proposed Revised Burden for Information Collection**

# of Respondents	# of Responses	Total Burden
664	670	1,049

We estimate the cost to institutional respondents, based on \$16.30 for individuals, \$36.55 for institutions per burden hour, will be:

Individuals =	\$ 4,059
Private Institutions =	\$ 12,793
Proprietary Institutions =	<u>\$ 16,448</u>
	\$ 33,300

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 related to this proposed regulation.

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.

There are no additional costs to the Federal government from these proposed regulations.

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 request is for a new information collection. These changes are due to the proposed regulations offered through agency discretion. The increase in burden to this information collection is 1,049 hours.

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.

The information in the proposed rule will not be published by the Department.

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.

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

The Department is not requesting any exceptions to the “certification for Paperwork Reduction Act Submissions” of OMB Form 83-I.