

The Department of Education (the Department) proposes to amend the William D. Ford Federal Direct Loan (Direct Loan) Program regulations issued under the Higher Education Act of 1965, as amended (HEA), to implement changes made to the regulations in §685.300. These proposed regulations are a result of negotiated rulemaking and would add new requirements to the current regulations.

These proposed regulations in §685.300 would provide add provisions to schools' Direct Loan program participation agreements that, for claims that may form the basis for borrower defenses:

- Prevent schools from requiring that students first engage in a school's internal complaint process before contacting accrediting and government agencies about the complaint;
- Prohibit the use of mandatory pre-dispute arbitration agreements by schools;
- Prohibit the use of class action lawsuit waivers;
- To the extent schools and borrowers engage in arbitration in a manner consistent with applicable law and regulation, require schools to disclose to and notify the Secretary of arbitration filings and awards.

685.300--Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

Proposed §685.300(e) requires institutions that, after the effective date of the proposed regulations, incorporate pre-dispute arbitration or any other pre-dispute agreement addressing class actions in any agreements with Direct Loan Program borrowers to include specific language regarding a borrower's right to file or be a member of a class action suit against the institution when the class action concerns acts or omissions surrounding the making of the Direct Loan or provision of educational services purchased with the Direct Loan. Additionally, in the case of institutions that, prior to the effective date of the proposed regulations, incorporated pre-dispute arbitration or any other pre-dispute agreement addressing class actions in any agreements with Direct Loan Program borrowers, the proposed regulations would require institutions to provide to borrowers agreements or notices with specific language regarding a borrower's right to file or be a member of a class action suit against the institution when the class action concerns acts or omissions surrounding the making of the Direct Loan or provision of educational services purchased with the Direct Loan. Institutions would be required to provide such notices or agreements to such borrowers no later than at the time of the loan exit counseling for current students or the date the school files an initial response to an arbitration demand or complaint suit from a student who hasn't received such agreement or notice.

Proposed §685.300(f) would require institutions that, after the effective date of the proposed regulations, incorporate pre-dispute arbitration agreements with Direct Loan Program borrowers to include specific language regarding a borrower's right to file a lawsuit against the institution when it concerns acts or omissions surrounding the making of the Direct Loan or provision of educational services purchased with the Direct Loan. Additionally, in the case of institutions that, prior to the effective date of the proposed regulations, incorporated pre-dispute arbitration agreements with Direct Loan Program borrowers, the proposed regulations would require institutions to provide to borrowers agreements or notices with specific language regarding a borrower's right to file a lawsuit against the institution when the class action concerns acts or omissions surrounding the making of the Direct Loan or provision of educational services purchased with the Direct Loan. Institutions would be required to provide such agreements or notices to such borrowers no later than at the time of the loan exit counseling for current students or the date the school files an initial response to an arbitration demand or complaint suit from a student who hasn't received such agreement or notice.

AFFECTED ENTITIES AND BURDEN:

There will be burden on any school that meets the conditions for supplying students with the changes to any agreements. Based on the AY 2014-2015 Direct Loan information available, there were 1,528,714 Unsubsidized Direct Loan recipients at proprietary institutions. Assuming 66 percent of these students would continue to be enrolled at the time these regulations become effective there would be 1,008,951 students who would be required to receive the agreements or notices required by proposed §685.300(e) or (f).

We anticipate that it will take proprietary institutions .17 hours (10 minutes) per student to research who is required to receive these agreements or notices, prepare them, and forward the information accordingly for a total burden of 171,522 hours (1,008,951 students x .17 hours).

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
Proprietary Institutions	1,959	1,008,951	x .17 hours	171,522

Proposed §685.300(g) requires institutions to provide to the Secretary copies of specified records connected to a claim filed in arbitration by or against the school regarding a borrower defense claim. The school must submit any records within 60 days of the filing by the school of such records to an arbitrator or upon receipt by the school of such records that were filed by someone other than the school, such as an arbitrator or student regarding a claim.

Proposed §685.300(h) requires institutions to provide to the Secretary copies of specified records connected to a claim filed in a lawsuit by the school, a student, or any party against the school regarding a borrower defense claim. The school must submit any records within 30 days of the filing or receipt of the complaint by the school or upon receipt by the school of rulings on a dispositive motion or final judgement.

AFFECTED ENTITIES AND BURDEN:

There will be burden on any school that must provide to the Secretary copies of specified records connected to a claim filed in arbitration by or against the school regarding a borrower defense claim.

We estimate that 5 percent of the 1,959 proprietary schools, or 98 schools, would be required to submit documentation to the Secretary to comply with the proposed regulations. We anticipate that each of the 98 schools would have an average of 4 filings, with an average of four submissions for each filing.

Because these are copies of documents required to be submitted to other parties we anticipate 5 burden hours to produce the copies and submit to the Secretary for a total of 7,840 hours (98 institutions x 4 filings x 4 submissions/filing x 5 hours) assessed under OMB Control Number 1845-NEW2.

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
Proprietary Institutions	98*	1,568	x 5 hours	7,840

TOTALS

Respondents	1,959
Responses	1,010,519
Burden Hours	179,362