

The Department of Education (the Department) amends 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 final regulations are a result of negotiated rulemaking and will add new requirements to the current regulations.

These final regulations in §685.222 will 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 will follow for borrower defenses for a group. The final regulations will 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 final regulation will 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.

§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 final regulations will 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 final §685.222(g)(1), a hearing official will 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 will 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 will 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.

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 will represent a single institution. We estimate that there will be four potential groups involving closed schools.

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

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
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.

Final §685.222(h) will 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 will resolve the borrower defense and determine any liability of the school through a fact-finding process. As part of the process, the hearing official will 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 will issue a written decision. If the hearing official approves the borrower defense, that decision will 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 will 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 will inform the borrowers that their loans will return to their statuses prior to the group borrower defense process. It also will notify the school of any liability to the Secretary for any amounts discharged. The Secretary will provide copies of the written decision to the members of the group, the Department official and the school.

The hearing official's decision will 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 will not take effect pending the appeal. The Secretary will 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.

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 will represent claims from a single institution.

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

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

TOTALS

Respondents	6
Responses	9
Burden Hours	450