

**SUPPORTING STATEMENT**  
**FOR PAPERWORK REDUCTION ACT SUBMISSION**  
**Application for Borrower Defense to Loan Repayment Form**

**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.

Section 455(h) of the Higher Education Act of 1965, as amended ([20 U.S.C. 1087e\(h\)](#)) provides that the U.S. Department of Education (“the Department”) defines by regulation which claims against a school constitute defenses to repayment of a loan (“Borrower Defenses” or “Borrower Defenses to Repayment”) under the Federal Direct Loan (Direct Loan) program. Following a negotiated rulemaking process, the Department published amendments to the Direct Loan program regulations on December 1, 1994. These regulations included Borrower Defenses specified in [34 CFR 685.206\(c\)](#). The regulation, in part, states “(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.”

A subsequent negotiated rulemaking process was established for the purpose of developing regulations for Borrower Defenses for both the Direct Loan and the Federal Family Education Loan Program (FFEL) programs. However, during the first session of the negotiations, the non-Federal negotiators recommended to the Department that no additional sessions were warranted and that no further regulatory provisions for Borrower Defenses would be needed. It was determined that Borrower Defenses could be adequately addressed by current regulation and administrative procedures. A further discussion of this is in the [Federal Register, Vol. 60, No. 140, July 21, 1995, 37767-37770](#). Prior to 2015, the Borrower Defense identified above was rarely asserted and no specific method of collecting information was defined or found necessary.

Corinthian Colleges, Inc. (CCI) was the owner of a number of for-profit postsecondary education institutions across the country. In January 2010, CCI purchased Heald College, which had 14 locations in California, Oregon, and Hawaii. At the time of its purchase by CCI, Heald College participated in the federal student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 (HEA), as amended. CCI was also the owner of other Title IV-eligible institutions, including the Everest and WyoTech chains of schools.

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

In January 2014, the Department sent a letter to CCI in which the Department requested that CCI provide a copy of school performance disclosure documents for every CCI location, including Heald College institutions, for the calendar years 2010, 2011, 2012, and, when available, 2013. The Department also asked that CCI provide the evidence upon which CCI relied to derive each of the placement rates cited in the disclosures, including a list of all students either placed or omitted from the placement calculation due to any type of waiver, and the academic, employment, and/or waiver information specified by the Department. In April 2015, the Department issued a notice of intent to fine Heald College \$30 million upon findings that Heald misrepresented placement rates for a number of its programs going back to 2010. Subsequently, in November 2015 and April 2016, the Department also made findings that Everest and WyoTech misrepresented placement rates for a number of its programs going back to 2010.

Former CCI students, supported by various organizations, including non-profit consumer rights groups, have organized a campaign to assert that the Department should discharge their student loan debt pursuant to the Borrower Defense regulations. Over 8,000 students who attended formerly CCI-owned campuses have already submitted Borrower Defense claims to the Department. In addition, the Department has received over 3,000 claims for Borrower Defense from borrowers who attended other Title IV-eligible institutions, many of whom are working with non-profit consumer rights groups. In the 20 years prior, the Department received 5 claims for Borrower Defense. This exponential increase in demand was unexpected and outside of the Department's control.

Because borrowers have a right to submit defense to repayment claims, the Department must set up a process to review and adjudicate them. For that purpose, the Department recently held a negotiated rulemaking process for the purpose of developing regulations for Borrower Defense processes. A further discussion of this is in the Federal Register, Vol. 80, No. 202, October 20, 2015, 63478-63480. The Department recently issued a notice of proposed rulemaking in which it issued proposed regulations regarding Borrower Defense (Federal Register, Vol. 81, No. 116, June 16, 2016, 39330-39422).

While the Department develops the rules governing defense to repayment, it is simultaneously processing borrowers' claims. Our goal is to process claims in a manner that is fair, transparent, and efficient. To that end, we have developed attestation forms specific to programs where the Department has made findings of misrepresented job placement rates, such as Heald (1845-0132 approved by OMB in June 2015), as well as Everest and WyoTech (1845-0132 approved by OMB in March 2016). As the Department makes further findings, we plan to develop additional attestation forms.

In addition, the Department must develop a form to efficiently process claims submitted by borrowers who did not attend programs for which the Department has issued findings. To date, the Department has received almost 3,000 applications from borrowers who attended schools without findings. These applications vary greatly in terms of the type and level of detail of information that the applicants provided to the Department in support of their claim.

To ensure that all borrowers have a consistent platform to petition for relief, and to facilitate the Department's receipt of clear and complete information necessary to process applications efficiently, the Department requests approval of this new collection of an Application for Borrower Defense to Loan Repayment form ("Universal Borrower Defense Form"). This form will facilitate processing claims from student borrowers who believe that they have a Borrower Defense claim regarding their Federal Loans. The form will provide borrowers with an easily accessible and clear method to provide the information necessary for the Department to review and process claim applications efficiently. The Universal Borrower Defense Form will set forth examples of the types of activities that could form the basis of borrowers' claims for Borrower Defense relief. A successful Borrower Defense claim would provide a full or partial discharge of a borrower's loans, as well as reimbursement of amounts previously paid (if appropriate). The Department estimates that there are potentially 10,000 borrowers in this category.

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 utilize the information provided by the borrower on the Universal Borrower Defense Form to determine eligibility for Borrower Defense. The form will be available through both a paper and electronic request requiring a borrower signature and attachments evidencing enrollment in an institution receiving Title IV funds.

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.

To ensure the widest possible access to affected borrowers, the Department will provide the form in both paper and electronic formats. The Universal Borrower Defense Form can be submitted by mail to U.S. Department of Education, P.O. Box 194407, San Francisco, CA 94119. The electronic form can be submitted to [FSAOperations@ed.gov](mailto:FSAOperations@ed.gov). The Department will also provide an online attestation form to facilitate online submission.

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 borrower must initiate this request. The information requested of the borrower is needed for processing the Borrower Defense claim request. While certain borrower and loan information is held by the Department, the Department requires additional information from the borrower to determine the reason for the individual request for discharge and whether a discharge under the Borrower Defense regulations is appropriate.

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 the Universal Borrower Defense Form, we would not have the information needed to determine whether individual borrowers were eligible for Borrower Defense discharge and could not provide borrowers with statutory or regulatory 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.

The 60 day public comment period request was published in the Federal Register (Federal Register, Vol. 81, No. 123, June 27, 2016, 41530). Multiple comments were received. Please see attached table for Departmental responses. This is the 30 day public comment period request.

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 will be included on the Universal Borrower Defense Form 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,

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<sup>2</sup> Requests for this information are in accordance with the following Department of Education 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)

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)
- 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.

This is a new information collection.

The Department estimates an average of 60 minutes (1 hour) per respondent to complete the Universal Borrower Defense Form for Borrower Defense loan discharge request. This time includes reviewing the instructions for completing the form on the [studentaid.ed.gov](http://studentaid.ed.gov) website, locating and providing any supporting documents (such as evidence of enrollment and of a state law violation), and submission to the Department.

	Respondents	Responses		Burden Hours
Application	10,000	10,000	x 1 hour	10,000
Totals	10,000	10,000		10,000

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 : Not applicable.

Total Annual Costs (O&M) : Not applicable.

Total Annualized Costs Requested : Not applicable.

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 has hired additional personnel to review attestations/applications, refine the intake process, build the infrastructure to make the Borrower Defense claim review efficient and sustainable, and make determinations regarding Borrower Defense applications. The additional staff salaries amount to a total annual cost of approximately \$1 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 a new information collection. There is no change to current statutory or regulatory requirements. We estimate a total of 10,000 responses, resulting in a total of 10,000 new burden hours for 10,000 borrowers. This new program change burden is necessary to ensure borrowers who wish to invoke the Borrower Defense can do so in a uniform and efficient 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.