

Borrower Defense to Loan Repayment Form 30 day Public Comment and Departmental Response Table – November 23, 2016 – Docket ED-2016-ICCD-0075

Commenter Name	Comment Number	Company (If Any)	Comment Summary/Comment	Department Response/Change Made (if applicable)
Richard Senese	ED-2016-ICCD-0075-0027	Capella University	<ol style="list-style-type: none"> 1. Page 1 of the application does not define Borrower Defense to Repayment standards for the borrower. Instead, it suggests “if your school misled you or engaged in other misconduct” [emphasis added]. This is broader than BDTR, and will draw in a number of borrowers who are not eligible. Not only will that waste time on the part of the Department and institutions, but it will draw borrowers in under fast pretenses and unfairly elevate expectations for borrowers who are unlikely to fit the requirements for relief. The narrative at the beginning of the application should be clear about under what circumstances a borrower can have their loans discharged. This narrative on the first page should also include the sentence currently contained on page 5 of the application: “For more information about the basis for borrower defense relief, see StudentAid.gov/borrowerdefense.” 2. The proposed application questions are remarkably leading, coaxing borrowers into answering questions geared toward generating bases for repayment, even when they may have none. For example, the application asks “what the school ... failed to tell you,” and “did the school mislead you (or fail to tell you important information about) ...” employment prospects, nature of loans, transferability of credit, etc. Current state, most consumer forms we encounter for government investigations are more open ended, and simply invite students to set forth in their own terms the basis for grievance. By leading the borrower through preset check boxes which by their nature presume an entitlement for relief, the BDTR application unfairly manufactures claims for borrower defense. Capella is wholly in favor of a borrower-friendly form, however the application in its current state unfairly generate bias. 3. As mentioned in our formal comments on the draft Borrower Defense to Repayment regulations, Capella has Due Process concerns regarding schools’ ability to present 	<ol style="list-style-type: none"> 1. The Borrower Defense to Repayment (“Borrower Defense”) regulations with regard to the “misrepresentation” standard encompass activities in addition to those that are misleading. Therefore, the Department’s position is that the description on Page 1 of the Borrower Defense application is appropriate. 2. The subsections within Section III of the Borrower Defense application reflect the Department’s review of a significant amount of evidence demonstrating common misrepresentations by schools that could form the basis for a Borrower Defense. The subsections herein are for the purpose of informing borrowers with regard to possible bases for Borrower Defense. With regard to the commenter’s concern, the form calls for the borrower to provide detailed information in support of any claim asserted. Additionally, each borrower is required to certify that he or she is providing true and complete information within the application. The Department’s position is that this provides borrowers with notice that they must provide accurate information, which addresses the commenter’s concern. 3. This comment is unrelated to the information collection required for borrowers seeking to file a Borrower Defense application, and the requested revision is not necessary or appropriate to include within the certification section of the application form.

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			<p>an adequate defense. Under the proposal’s “fact-finding process,” of the evidence received and considered by the Department, the school is entitled to receive “upon reasonable request” only “records” that the Department “considers relevant to the borrower defense.” Capella recommended that the Department revise its proposal to make clear that schools have a right to access all the materials considered by the Department in adjudicating a borrower’s claim. To this end, it is our recommendation that “Section V. Certification” be revised to include verbiage indicating to the borrower that all materials submitted as part of the BDTR claim may be shared with the institution as part of the investigation.</p>	
Vicki Shipley	ED-2016-ICCD-0075-0028	Association/Organization	<p>On behalf of the Federal Family Education Loan (FFEL) program community, thank you for the opportunity to provide the attached comments to the proposed Application for Borrower Defense to Loan Repayment form. As you review this second round of comments, please take particular note that they include several comments previously provided August 28 because in our view they are substantive and important to ensure clarity, consistency and transparency for borrowers. We respectfully encourage you to reconsider both our current proposed edits and our prior suggestions, which we believe will enhance the understanding of the new form.</p> <p>[The commenter provided a marked up version of the borrower defense application form with a number of suggested edits.]</p>	<p>The Department accepted a number of the commenter’s edits within the marked up version of the Borrower Defense application form that was provided, including within Section III (Basis for Borrower Defense), Section IV (Forbearance/Stopped Collections), and Section V (Certification).</p>
Robyn Smith	ED-2016-ICCD-0075-0029	Legal Aid Foundation of Los Angeles	<p>I have attached comments from a group of non-profit organizations that represent low-income student loan borrowers.</p> <p>The commenter’s comments include the following:</p> <ol style="list-style-type: none"> 1. The revised form does not appear to incorporate plain language tailored to the intended audience – students who were defrauded primarily by unscrupulous for-profit colleges. Following best practices for form design, and The 	<ol style="list-style-type: none"> 1. The Department is aware that it is important to provide plain language within the application form such that borrowers of various educational levels can understand the language within the form. For that reason, we consulted with Department staff with expertise in customer experience issues to ensure that the form is clear and uses plain language. The Department also tested this form with borrowers for usability in order to ensure that

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			<p>Plain Writing Act of 2010, the Department should use plain language on all versions of the form. In addition, the Department should avoid language that requires applicants to interpret complex legal concepts. For the borrower defense application form, the Department should use plain language and clear illustrative examples so that borrowers can complete the application without needing legal advice.</p> <ol style="list-style-type: none"> 2. As far as we are aware, the Department has not tested the form for consumer comprehension and usability, to ensure all students who attend various institutional levels and types are able to comprehend and complete the form. While government forms are often written at an 8th grade reading level to ensure accessibility, according to one readability index, the prompts in this form require up to 24 years of education to understand. 3. Any “yes” or “no” options on the form should be clearly marked as distinct and placed side-by-side. The Department should also place consequences of each option directly below the choice, rather than in the preceding text. 4. We are particularly concerned with the placement and marking of the following question: “*Did any of the issues you describe above affect your decision to enroll in this school?” While it appears that the Department has attempted to respond to our comments by placing this immediately below each subject matter area of substantive questions, we are concerned it will get lost and remain unanswered by borrowers due to: <ul style="list-style-type: none"> • Its placement immediately below the text box for each question without any spacing, as if it is an unimportant footnote. • Lack of special marking or highlighting of the question or Yes/No checkboxes after the question indicating that the student must answer the question and that his/her application will remain incomplete with no answer. 	<p>borrowers could understand the terms within the form. Further, the Department drafted this form such that borrowers must provide an explanation of the school’s conduct in their own words, but we also included broad categories under which a borrower may be eligible for relief in Section III (Basis for Borrower Defense). Therefore, each of the relevant sections uses general questions within certain categories in order to inform the borrower of possible bases for relief, while ensuring that the borrowers use their own language and phrasing within their applications.</p> <ol style="list-style-type: none"> 2. Both before and after the comment period, the Department tested this form with borrowers for usability in order to ensure that borrowers could understand the terms within the form. The final version incorporates numerous word choice revisions based on feedback from the borrower usability testing. 3. The “yes” or “no” options within the form are side-by-side. The consequences of selecting “yes,” that borrowers must also provide narrative regarding their allegations against an institution, are described immediately after each sub-section within Section III (Basis for Borrower Defense). 4. The Department’s new, final Borrower Defense to Repayment regulations (81 Fed. Reg. 75926-76089) require that individual borrower applications demonstrate reliance with regard to any claims made by the borrower. This question is provided immediately after the relevant text box, including an asterisk (*) that indicates that this is a mandatory field that the borrower must complete. Within the Department’s forthcoming Borrower Defense form wizard, this will be a required field for any

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			<p>5. The Department should ensure that all fields are flexible enough to capture unique circumstances, including:</p> <ul style="list-style-type: none"> • The revised form does not allow a borrower to indicate that she attended multiple programs and to answer questions about representations made regarding each different program. • The form does not allow the borrower to indicate that she attended school for years with gaps in attendance. • While Section I of the form refers to Parent PLUS borrowers, the remaining sections do not clarify that only the person who experienced the illegal conduct should answer the questions in Section III and attest to those facts. If not clear, the form essentially asks parents to attest to facts of which they have no personal knowledge. This has been an issue for Parent PLUS borrowers using the Corinthian attestation form. Several of our client parent borrowers report being told by Department of Education that they should sign the attestation form, rather than the student. <p>6. The form should capture the breadth of available bases for relief. Eligible borrowers may be discouraged if they do not see their circumstances described on the form. Currently, Section III of the form lists a few types of misrepresentations and repeatedly asks if the misrepresentations affected the borrower’s decision to enroll. The limited list excludes important categories of misrepresentations such as institutional and programmatic accreditation misrepresentations, misrepresentations regarding borrowers’ refunds or cancellation rights under federal or state law, and a number of other common and serious misrepresentations.</p> <p>7. The form currently presents an unnecessarily restrictive view of the reliance standard: it lists six discrete types misrepresentations, presents a problematic “other”</p>	<p>section for which the borrower includes text in the text box immediately above.</p> <p>5. The Department has accepted the commenter’s suggestion. Sections II (School Information) and III (Basis for Borrower Defense) reflect these changes.</p> <p>6. The Department drafted the Borrower Defense form for the purpose of providing borrowers with general sections that encompass the most common types of school misconduct that the Department has found in its review of a large number of Borrower Defense applications to date. The form also includes a sub-section within Section III (Basis for Borrower Defense) to allow borrowers to address “Other” types of activities that could form the bases for Borrower Defense relief. Further, the form is supposed to both prompt borrowers to provide relevant information, but also afford them the opportunity to explain what happened to them in their own language. The Department also is aware, from its user testing of the form and other forms that it utilizes, that if the form is too lengthy, borrowers will be less likely to complete and submit it.</p> <p>7. The instructions within Section III (Basis for Borrower Defense) of the application form inform borrowers that they can provide information for more than one type of institutional misrepresentation or activity, and provides an “Other” section for borrowers to provide information that does fall into the other categories. For these reasons, the Department does not believe that the form is restrictive.</p> <p>8. Section III (Basis for Borrower Defense) of the application form specifically encourages borrowers to provide any additional information if they do not have sufficient space</p>

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			<p>category, and asks borrowers if they chose to enroll in a school based in part on misrepresentations regarding each of these subsections. The form should include an instruction that borrowers can provide information about multiple types of misrepresentations, including misrepresentations about issues not expressly itemized in the form.</p> <p>8. The Department should encourage students to submit additional pages as necessary in writing or ensure that a fillable pdf has sufficient space for students to provide thorough and detailed information.</p>	<p>to provide a full description in any of the text boxes. Within the Department's forthcoming Borrower Defense form wizard, there will be sufficient space for students to provide narrative.</p>
Silvia A	ED-2016-ICCD-0075-0030	Student	<p>I was a former student who attended Heald College around 2011-2013. Before I enrolled into Heald, the admission representative who I spoke with informed me about the job rates and that the units I will obtain at Heald were transferable to other colleges. As of today, I have tried transferring the units I earned from Heald College to two different community colleges located in my county only to be told that those units were not acceptable. I am now stuck with 40 units, no degree and a big student loan.</p>	<p>This comment is unrelated to the information collection required for borrowers seeking to file a Borrower Defense claim on this form.</p>