

**SUPPORTING STATEMENT  
FOR PAPERWORK REDUCTION ACT SUBMISSION  
William D. Ford Federal Direct Loan Program (DL) 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 (Direct Loan) Program regulations issued under the Higher Education Act of 1965, as amended (HEA), to implement changes made to the regulations in §685.304 - Counseling borrowers. These proposed regulations are a result of negotiated rulemaking and would add a new requirement to the current regulations.

These proposed regulations would amend §685.304 to require institutions that use pre-dispute arbitration agreements or class action waivers to disclose descriptions of those agreements using written, plain language to borrowers as well as with written information on how to use the institution's internal dispute resolution process. The institutions must make this information available to the student borrower prior to the first disbursement.

This request is for a revision of the current information collection to include this new regulatory requirement.

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 proposed change to §685.304 would require institutions to update current entrance counseling to provide students with information about pre-dispute arbitration agreements or class action waivers, when it would apply, how to enter into the process, and who to contact with questions if the institution uses such agreements.

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.

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

There are no prohibitions to the use of technology in providing the required information to a borrower.

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.

While most institutions would provide the required information via electronic means, there would be some smaller institutions that would choose to provide the warnings to students using paper documents. The use of the electronic means would 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.

If the requirements of the proposed regulations are not made available, student borrowers would have greater difficulties understanding and utilizing the internal institutional processes regarding dispute resolution. This can increase to possibility of borrowers defaulting on a Direct Loan and thus increasing the risk to the 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

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<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)

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)
  - 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.

#### Section 685.304 – Counseling Borrowers.

Under proposed 685.304 there are changes to the requirements to counsel Federal student loan borrowers prior to making the first disbursement of a Federal student loan (entrance counseling). Schools that use pre-dispute arbitration agreements and/or class action waivers would have to include in the required entrance counseling information on the school's internal dispute resolution process and who the borrower may contact regarding a dispute related to educational services for which the loan was made. Schools that

require borrowers to accept a pre-dispute arbitration agreement and/or class action waiver would be required to provide information in writing to the student borrower about the plain language meaning of the agreement, when it would apply, how to enter into the process, and who to contact with questions.

#### AFFECTED ENTITIES AND BURDEN:

We believe there would be burden on the schools to create any school specific pre-dispute arbitration agreement and/or class action waivers and provide that information in addition to complying with the current entrance counseling requirements. Of the 1,888 participating proprietary institutions, we estimate that 50 percent or 944 institutions would need to create additional entrance counseling information regarding the use of the pre-dispute arbitration agreement and/or class action waivers to provide to their student borrowers. We anticipate that it would take an average of 3 hours to adapt the information as a part of the required entrance counseling, and to identify staff that would be able to answer additional questions for a total of 2,832 hours (944 x 3 hours).

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
Proprietary Institutions	944*	944	x 3 hours	2,832

#### AFFECTED ENTITIES AND BURDEN:

Additionally, we believe that there would be minimum additional burden for borrowers to review the information when completing the required entrance counseling. In calendar year 2017, 684,813 Direct Loan borrower completed entrance counseling using the Department's on-line entrance counseling. Assuming the same 50 percent of borrowers attend a school that uses pre-dispute arbitration agreements and/or class action waivers would require five minutes to review the material, we estimate a total of 27,393 hours of additional burden (342,407 borrowers time .08 (5 minutes) = 27,393 hours).

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
Individuals	342,407	342,407	x .08 hours	27,393

#### **Total of Proposed Burden:**

# of Respondents	# of Responses	Total Burden
342,407*	343,351	30,225

#### **Current Burden:**

# of Respondents	# of Responses	Total Burden
7,506,186	8,698,789	709,521

#### **Proposed Revised Burden for Information Collection**

# of Respondents	# of Responses	Total Burden
7,830,593	9,042,140	739,746

\*The proposed institutional respondent count is not added to the current respondent count to avoid over counting the affected entities.

We estimate the cost to respondents, based on \$16.30 for individuals, \$44.41 for institutions per burden hour, would be:

Proprietary Institutions =	\$ 125,769.12(2,832 x \$44.41)
Individuals =	\$ 446,505.90(27,393 x \$16.30)

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 revision of the currently approved information collection. These changes are due to the proposed regulations offered through program change. The increase in burden to this information collection is 30,225 hours based on additional estimated 3 hours for 944 institutional responses and an additional estimated 5 minutes for 342,407 individual responses. The institutions would need to update the entrance counseling materials for borrowers explaining any pre-dispute arbitration agreements or class action waivers the institution requires of enrolling students. The individuals would be given additional time to review the newly required information before accepting the first disbursement of a Direct Loan.

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 would 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.