SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
Application for Borrower Defense to Loan Repayment Universal 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[1]. 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) amends 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 §685.206(e) - Borrower responsibilities and defenses. The final regulations are a result of negotiated rulemaking and add new requirements to the current regulations. These final regulations require the collection of this information from borrowers who believe they qualify for a borrower defense to repayment discharge, as permitted under Section 455(h) of the Higher Education Act of 1965, as amended.

   The regulations provide, among other things, for the Secretary to discharge a borrower's Direct Loan based on the loan in question being disbursed after July 1, 2020. In particular, the bases for a borrower defense discharge in §685.206(e) are:

   - A misrepresentation by the school that a borrower reason ably relied upon in deciding to obtain a Direct Loan, that clearly relates to:
     - Enrollment, or continuing enrollment at the institution, or
     - Provision of educational services for which the loan was made, and
   - The borrower was financially harmed by the misrepresentation.

   The Department is attaching a the revised *U.S. Department of Education Borrower Defense to Loan Repayment Application* (Universal Borrower Defense Application). This revised form is based on the current Universal Borrower Defense Application, OMB control number 1845-0146, and facilitates processing claims from all borrowers who believe that they have a valid borrower defense claim. The current Universal Borrower Defense Application will be replaced by this revised application.

   The revised form will be available in paper and electronic forms and will provide borrowers with an easily accessible and clear method to provide the information necessary for the Department to review and process claim applications. The revised Universal Borrower Defense Application sets forth examples of the types of activities

[1] Please limit pasted text to no longer than 3 paragraphs.

that could form the basis of borrowers' claims for Borrower Defense relief including those specific to borrowers whose first disbursement was prior to July 1, 2016, on or after July 1, 2016 but prior to July 1, 2020, and on or after July 1, 2020. A successful Borrower Defense claim could provide a full or partial discharge of a borrower's loans, and, if appropriate, reimbursement of amounts previously paid.

This request is for a new information collection to incorporate the new regulatory requirements.

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 Application to determine eligibility for a borrower defense discharge. The form will be submitted through both a paper and electronic means.

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.

The Department will continue to provide the form in both paper and electronic formats and will allow for the form to be submitted by mail, or online. The electronic form will employ skip-logic to provide the borrower with the correct questions based on when their loans were disbursed.

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.

In most cases, the borrower must initiate this request. While certain information relevant to the borrower's claim may be held by the Department, and the Department reviews that information, the Department requires additional information from the borrower to determine the reason for the individual request for discharge and to determine whether the borrower qualifies for the discharge.

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 Application, we would not have the information needed to determine whether individual borrowers were eligible for a borrower defense discharge and could therefore not provide borrowers with the discharge they may qualify for under the law.

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. On March 4, 2020, a notice was published in the Federal Register (Vol., 85, No. 43, pages 12777-12778) announcing the 60-day public comment period for the elements of the new Universal Borrower Defense Application. The public comment period ended May 4, 2020 and the Department received five comments. Three were outside the scope of the collection. Responses to the two responsive commenters are attached as a separate document to this collection. Also attached is the form based on the elements listing that was part of the 60-day comment period filing. The Department is now requesting the 30-day public comment notice be published in the Federal Register.

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.[2] 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 confidentially of the data.

A Privacy Act statement will be included on the Universal Borrower Defense Form based on the Customer Engagement Management System (CEMS) System of Records Notice, 18-11-11, revised in the Federal Register Volume 83, Number 114, June 13, 2018, pages 27587-27591.

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

[2] 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)

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.

We believe there will be burden on individuals filing this revised version of the Universal Borrower Defense Application. We believe it will be used by the same universe of borrowers as the earlier version of the application. We anticipate that the majority of applicants will file the application electronically. The electronic version of the form will present applicants with only the questions to which they must respond based on the date of disbursement of their loans. And because of the skip logic that is employed with the electronic version of the application, we are continuing to anticipate that it will take an average of 30 minutes (.5 hours) for an estimated 96,000 individuals to complete and provide the information on the required form for a total of 48,000 hours (96,00 x .5 hours).

	Respondents	Responses		Burden Hours
Individuals	96,000	96,000	X 0.5hours	48,000

We estimate the cost to respondents, based on $16.30 for individuals, per burden hour, will be $ 782,400 (48,000 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 final 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.

    To continue the Borrower Defense review 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 request is for a new information collection. This reflects the requirements of the final regulations offered through program change. This proposed burden duplicates the current Universal Borrower Defense Application, OMB control number 1845-0146 which will be replaced by this application upon approval.

The burden estimated for this information collection is 48,000 hours based on additional estimated .5 hours for 96,000 individual responses.

We continue to estimate it takes borrowers 30 minutes to complete a borrower defense application based on actual data drawn from our online application portal. This is based on analysis conducted on users who applied for a borrower defense discharge using the Department's online portal.

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.

As requested by Congress, aggregated data about the status of borrower defense applications and the state of residence of borrower defense applicants is published regularly and quarterly on the Federal Student Aid Data Center. To protect privacy, the Department suppresses the publication of information where the number of borrowers about whom data would otherwise be provided is 10 or fewer.

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.