# **SUPPORTING STATEMENT**

# **FOR PAPERWORK REDUCTION ACT SUBMISSION**

Application for Borrower Defense to Loan Repayment Universal Form

1. Explain the circumstances **that make the collection of information necessary. What is the purpose for this information collection? Identify any legal or administrative requirements that necessitate the collection. Include a citation that authorizes the collection of information. 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, list the sections with a brief description of the information collection requirement, and/or changes to 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 a new regulation in §685.400 *et seq.* - Borrower Defense to Repayment. These final regulations are a result of negotiated rulemaking and will 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 under certain circumstances. In particular, the bases for a borrower defense discharge in §685.400 *et seq.* are:

* A substantial misrepresentation by the school that misled the borrower in connection with the borrower’s decision to attend, or continue to attend the school, that relates to:
  + The nature of the educational program,
  + The nature of financial charges, or
  + The employability of graduates;
* A substantial omission of fact in connection with the borrower’s decision to attend, or continue to attend the school;
* The school’s failure to perform its obligations under the terms of a contract with the student if the contractual obligation was undertaken in exchange for the borrower’s decision to attend, or continue attending the school;
* The school engaging in aggressive and deceptive recruitment in connection with the borrower’s decision to attend, or continue attending the school; and/or
* A judgment obtained by the borrower in a court or administrative tribunal of competent jurisdiction based on the school’s act or omission relating to the making of a covered loan, or the provision of educational services for which the loan was provided.

The Department is attaching an updated application as well as new forms for review. These forms will facilitate processing claims from all borrowers who believe that they have a valid borrower defense claim.

The forms 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 forms required by §685.400 *et seq.* are:

* Universal Borrower Defense Application
  + Pursuant to §685.403(b)(1), borrowers must submit an application for borrower defense relief on a form approved by the Secretary. This application is a revision of the previous Borrower Defense application which adds the new bases for relief in §685.400 *et seq.* and removes fields and questions that are no longer relevant or needed.
* Individual Request for Reconsideration
  + Pursuant to §685.407(a)(4)(i), an individual or third party may request reconsideration of their determination. To do so, they must submit an application on a form approved by the Secretary.
* Group Application
  + Pursuant to §685.402(c)(1), qualified third parties may submit a claim to the Department on behalf of a group of borrowers on a form approved by the Secretary. This form allows third parties to submit a group request and outlines the requirements for the third party requestor.
* Group Request for Reconsideration
  + Pursusant to §685.407(a)(4)(i), an individual or third party may request reconsideration of their determination. To do so, they must submit an application on a form approved by the Secretary.
* Institutional Affidavit
  + Pursuant to §685.405(c), after a school has been notified of a borrower defense claim, the school may submit a response to the Department which must include an affidavit, on a form approved by the Secretary, certifying under the penalty of perjury that the information provided is true and correct.

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

1. **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 Individual Borrower Defense Application, Group Application, and Reconsideration forms to determine eligibility for a borrower defense discharge. The forms will be submitted through both a paper and electronic means.

1. **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. Please identify systems or websites used to electronically collect this information. Also describe any consideration given to using technology to reduce burden. If there is an increase or decrease in burden related to using technology (e.g. using an electronic form, system or website from paper), please explain in number 12.**

The Department will continue to provide the forms in both paper and electronic formats and will allow for the form to be submitted by mail or online.

1. **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 already be held by the Department (which is reviewed by the Department), 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.

1. **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.**

There may be small entities that will submit group requests or group requests for reconsideration. However, the Department is reducing the burden on these organizations to these entities by allowing for the electronic submission of the group application and group reconsideration forms.

1. **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 and other forms, 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.

1. **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.

1. **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.**

**Include a citation for the 60 day comment period (e.g. Vol. 84 FR ##### and the date of publication). Summarize public comments received in response to the 60 day notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. If only non-substantive comments are provided, please provide a statement to that effect and that it did not relate or warrant any changes to this information collection request. In your comments, please also indicate the number of public comments received.**

**For the 30 day notice, indicate that a notice will be published.**

**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 February 1, 2023, a notice was published in the Federal Register (Vol.88, No.21, pages 6714-6715) requesting public comment on this information collection. Four comments were received, and responses are available in the attached documents. One comment which was non-substantive was also received. Some changes have been made to the forms based on these comments and an updated copy of the form is also attached.

The Department updated the burden hours in light of new mandatory fields borrowers are required to complete on the Borrower Defense Application Form. The Department also provided updates to include the burden on third-party requestors to submit group applications.

On May 15, 2023, a 30-day notice was published in the Federal Register (Vol.88, No.95, page 31500) requesting public comment on this information collection. Four comments were received, and responses are available in the attached documents. Some changes have been made to the individual application form based on these comments and an updated copy of the form is also attached. There is no change to the estimated number of respondents, responses, or burden hours.

1. **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.

1. **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.[[1]](#footnote-3) 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. If no PII will be collected, state that no assurance of confidentiality is provided to respondents. If the Paperwork Burden Statement is not included physically on a form, you may include it here. Please ensure that your response per respondent matches the estimate provided in number 12.**

A Privacy Act statement will be included on the Universal Borrower Defense Form based on the Aid Awareness and Application Processing (AAAP) System of Records Notice, 18-11-21. This statement will also be included in the Individual Request for Reconsideration, Group Request for Reconsideration, and Group Application.

1. **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.

1. **Provide estimates of the hour burden for this current information collection request. The statement should:**

* **Provide an explanation of how the burden was estimated, including identification of burden type: recordkeeping, reporting or third party disclosure. Address changes in burden due to the use of technology (if applicable). Generally, estimates should not include burden hours for customary and usual business practices.**
* **Please do not include increases in burden and respondents numerically in this table. Explain these changes in number 15.**
* **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. 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 this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burden in the table below.**
* **Provide estimates of annualized cost to respondents of the hour burdens for collections of information, identifying and using appropriate wage rate categories.** [**Use this site**](https://www.bls.gov/oes/current/oes_nat.html) **to research the appropriate wage rate. 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. If there is no cost to respondents, indicate by entering 0 in the chart below and/or provide a statement.**

Individual Application Form

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. However, because of the addition of mandatory questions to the application the Department believes amending the average burden to one hour is appropriate. We anticipate that it will take an average of 3 hours for an estimated 300,000 individuals to complete and provide the information on the required form for a total of 900,000 hours (900,000 x 3 hours).

We estimate the cost to respondents, based on $22 for individuals, per burden hour, will be $ 19,800,000 (900,000 x $22).

Individual Reconsideration Form

We believe there will be burden on individuals filing the Individual Reconsideration Form. We believe approximately 25% of the borrowers who submit an application will request reconsideration. We anticipate that it will take an average of 1 hour for an estimated 75,000 individuals to complete and provide the information on the required form for a total of 75,000 hours (75,000 x 1 hour).

We estimate the cost to respondents, based on $22 for individuals, per burden hour,will be $ 1,650,000 (75,000 x $22).

Group Application

We believe there will be burden on third-party requestors who submit the Group Application. The Department previously estimated that 25 group claims will be submitted per year. (Federal Register, November 1, 2022, Vol 87, No. 210 at 66030) We anticipate that it will take an average of 500 hours for an estimated 25 entities (15 Private entities and 10 Public entities) to complete and provide the information on the required form for a total of 12,500 hours (25 x 500 hours).

Group Reconsideration Form

We believe there will be burden on third-party requestors who submit the Group Reconsideration Form. The Department previously estimated that 5 group reconsideration claims will be submitted per year. (Federal Register, November 1, 2022,Vol 87, No. 210 at 66030) We anticipate that it will take an average of 400 hours for an estimated 5 entities (2 Private entities and 3 Public entities) to complete and provide the information on the required form for a total of 2,000 hours (5 x 400 hours).

Institutional Affidavit

We estimate that there will be burden for the institutions who have borrower defense claims filed against them to review and sign the affidavit when returning any documentation in response to the claim. We anticipate that it will take an average of 10 minutes (.167 hours) for an institution to complete the affidavit. We estimate that 1,000 for-profit institutions will complete and provide the information on the required form for a total of 167 hours (1,000 x .167 hours). We anticipate that it will take an average of 10 minutes (.167 hours) for an institution to complete the affidavit. We estimate that 1,000 private institutions will complete and provide the information on the required form for a total of 167 hours (1,000 x .167 hours). We anticipate that it will take an average of 10 minutes (.167 hours) for an institution to complete the affidavit. We estimate that 1,200 public institutions will complete and provide the information on the required form for a total of 200 hours (1,200 x .167 hours). This represents an increase in users of 3,200 and an increase in burden of 534 hours.

We estimate a new total number of users of 303,200 and a new total burden of 150,534 hours.

Estimated Annual Burden and Respondent Costs Table

| Information Activity or IC (with type of respondent) | Number of Respondents | Number of Responses | Average Burden Hours per Response | Total Annual Burden Hours | Estimated Respondent Average Hourly Wage | Total Annual Costs (hourly wage x total burden hours) |
| --- | --- | --- | --- | --- | --- | --- |
| Individual | 300,000 | 375,000 | See above | 975,000 | $22 | $21,450,000 |
| For-Profit Institutions | 1,000 | 1,000 | See above | 167 | $46.59 | $7,780.53 |
| Private Institutions | 1,015 | 1,017 | See above | 8,467 | $46.59 | $394,477.53 |
| Public Institutions | 1,210 | 1,213 | See above | 6,400 | $46.59 | $298,176.00 |
| Annualized Totals | 303,225 | 378,230 |  | 990,034 |  | $22,150,434.06 |

For individuals we have used the median hourly wage for all occupations, $22 per hour according to BLS. <https://www.bls.gov/oes/current/oes_nat.htm#00-0000> .

For institutions we have used the median hourly wage for Education Administrators, Postsecondary, $46.59 per hour according to BLS. <https://www.bls.gov/oes/current/oes119033.htm> .

***Please ensure the annual total burden, respondents and response match those entered in IC Data Parts 1 and 2, and the response per respondent matches the Paperwork Burden Statement that must be included on all forms.***

1. **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.

1. **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. Technology improvements to implement the new application and regulatory requirements amount to approximately 1.5 million

1. **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).**

**Provide a descriptive narrative for the reasons of any change in addition to completing the table with the burden hour change(s) here.**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Program Change Due to New Statute** | **Program Change Due to Agency Discretion** | **Change Due to Adjustment in Agency Estimate** |
| **Total Burden** |  | 942,034 |  |
| **Total Responses** |  | 282,230 |  |
| **Total Costs (if applicable)** |  |  |  |

This request is for a revised information collection. This reflects the requirements of the final regulations offered through program change.

We have amended our estimate to 3 hours per borrower to complete a borrower defense application. This is based on a previous analysis completed using the current application form and takes into consideration new mandatory fields borrowers will now need to complete. We have also included our estimate to complete the group application and reconsideration forms.

1. **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.

1. **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.

1. **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."

1. 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) [↑](#footnote-ref-3)