



# U.S. DEPARTMENT OF EDUCATION

## BORROWER DEFENSE TO REPAYMENT

### THIRD-PARTY APPLICATION FORM

OMB Number: 1845-0163  
Form Under Review  
Expiration Date:  
XX/XX/XXXX

#### INSTRUCTIONS

Under the U.S. Department of Education's regulations at 34 C.F.R. § 685.402(c), certain state agencies and legal assistance organizations ("third-party requestors") may submit a request that the Secretary form a group of federal student loan borrowers for borrower defense relief. To request that the Secretary form a group under the borrower defense regulation, qualified third-party requestors must complete this application and include all required documentation.

The most common types of conduct that might make a borrower eligible for loan relief through borrower defense to repayment discharge are substantial misrepresentations made by the school or its representatives during their efforts to recruit a borrower to enroll at the school or to continue their enrollment at the school. To qualify as a substantial misrepresentation, the misrepresentation made by the school must relate to the school's educational program, its financial charges, or the employability of its graduates. These misrepresentations typically take the form of untruthful statements or the concealment of information regarding the likelihood that borrowers would obtain employment and/or earnings outcomes, the likelihood that its credits will be accepted by another school or that it will accept credits from other schools, the cost of the program and/or how a borrower would pay for the program, whether completion of a program qualifies a borrower for a specific license or certification, or the number, availability, and qualifications of instructors.

Additionally, borrowers may qualify for borrower defense to repayment relief if their school engaged in aggressive and deceptive recruitment tactics, made a substantial omission of fact, breached a contract with them, or if they have obtained a favorable judgment against the school. For a complete description of the federal standard for a borrower defense to repayment discharge please see 34 C.F.R. §685.402(c).

**The regulation requires that a third-party requestor's application to form a group must be materially complete to be considered by the Secretary. The regulation defines materially complete as including, at a minimum, the following information:**

- The identity of the affected group, including:
  - The name of the institution or commonly owned institutions;
  - The campuses or programs which are the subject of your claim;
  - A description of the conduct that forms the basis for your group borrower defense claim;
  - An analysis of why the described conduct should result in an approved group borrower defense claim under the federal standard in § 685.401(b); and
  - The period during which the conduct occurred.
- **Evidence beyond sworn borrower statements to support each element of the claim.** The evidence must demonstrate that the conduct asserted was pervasive or widely disseminated.
- Names and other identifying information of borrowers in your proposed group to the extent available.
- **If you are submitting this request on behalf of a legal assistance organization, your application must also include a certification that the requestor has entered into a legal representation authority with each borrower identified as a member of the group.**

**Instructions for submitting your application:** Submit this completed and signed application to the Borrower Defense Group directly at [BDGroupRequest@ed.gov](mailto:BDGroupRequest@ed.gov). After the Borrower Defense Group receives your signed application you will be contacted with instructions for how to submit your supporting evidence, analysis, and other documentation.

**By completing this application, you are certifying, under penalty of perjury, that all the information provided is true and complete.** This means that you could face criminal prosecution under the U.S. Criminal Code and 20 U.S.C. 1097 if you knowingly submit a false statement on your application.

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## SECTION 1: THIRD-PARTY REQUESTOR INFORMATION

Please provide contact information for the third-party requestor and its representative preparing this submission:

Third Party Requestor Organization/Institution Name

Street Address

City

State

Zip Code

Representative First Name

Representative Middle Name

Representative Last Name

Representative Title

Representative Email

Representative Telephone Number

Are you submitting this Third-Party Application on behalf of a State Requestor or a Legal Assistance Organization?

State Requestor     Legal Assistance Organization

**If you are submitting on behalf of a Legal Assistance Organization, provide the Organization's FEIN below.**

**Legal Assistance Organization FEIN:** \_\_\_\_\_

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## SECTION 2: GROUP INFORMATION

School Name:

Campus Name and Location (if more than one, include the name and location for each):

Program Name or Major Impacted (*e.g., Engineering, Law, Nursing, All Programs*):

Credential/Degree Impacted (*e.g., Certificate, Diploma, Associates, Bachelors, Masters, All Credentials*):

Estimated Size of Proposed Group (if known):

Identify the beginning and ending dates of the time period you believe the School and/or its Campuses engaged in the conduct identified in this application:

What is the basis for Borrower Defense relief for the proposed group? (You may select more than one).

- Substantial Misrepresentation (34 C.F.R. § 685.401(b)(1))
- Substantial Omission (34 C.F.R. § 685.401(b)(2))
- Breach of Contract (34 C.F.R. § 685.401(b)(3))
- Aggressive and Deceptive Conduct (34 C.F.R. § 685.401(b)(4))

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Favorable Judgment (34 C.F.R. § 685.401(b)(5)(i))

Other: \_\_\_\_\_

If substantial misrepresentation is a basis for Borrower Defense relief, please indicate the category that the conduct falls under: (You may select more than one).

Nature of Educational Services (34 C.F.R. § 668.72)

Nature of Financial Charges or Financial Assistance (34 C.F.R. § 668.73)

Employability of Graduates (34 C.F.R. § 668.74)

Other: \_\_\_\_\_

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### **SECTION 3: OTHER REFUNDS, REMEDIES, LOAN REDUCTION, OR TUITION RECOVERY REQUESTS OR ACTIONS**

If known, have any group members recovered tuition or fees that were paid to the school? (for example, were any group members part of a class action lawsuit or other settlement)?

Yes     No

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If yes, please describe these other request(s), and attach any documentation about the requests, if available.

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If known, how much relief did the members of the group receive?

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### **SECTION 4: REQUIRED DOCUMENTS**

Third-Party Requestors must include an analysis of why the proposed group borrower defense claim should be approved under the federal standard for borrower defense claims. This analysis must be supported by evidence beyond sworn borrower statements that demonstrates that the conduct was pervasive or widely disseminated. This evidence must demonstrate all elements of a group borrower defense claim:

- The conduct that forms the basis for your group borrower defense claim;
- The school or school representative(s) you attribute with this conduct;
- The campuses or programs which are the subject of your claim;
- The period during which the conduct occurred; and
- Why the described conduct should result in an approved group borrower defense claim under the federal standard.

ED also requests that you provide the names and other identifying information of borrowers in the proposed group to the extent available. If you are submitting on behalf of a legal assistance organization, you must also include a certification that your organization has entered into a legal representation authority with each borrower identified as a member of the group.

**If the Secretary approves the formation of the proposed group, any documents you submit may be disclosed to the school during the ED's adjudication of the group claim and/or any subsequent recoupment or enforcement action by ED against the school.**

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## SECTION 5: CERTIFICATION

By signing this attestation, I certify, **under the penalty of perjury**, that:

I am an authorized representative of the Third-Party Requestor identified in Section 1. The Third-Party Requestor I represent meets the definition of a legal assistance organization or State requestor under 685.401(a).

All of the information that I provided is true and complete to the best of my knowledge. Upon request, I agree to provide to the U.S. Department of Education additional information that is reasonably available to me that will verify the accuracy of my completed attestation.

I understand that the U.S. Department of Education has the authority to verify information reported on this application with other federal or state agencies or other entities.

I authorize the U.S. Department of Education, along with its agents and contractors, to contact me regarding this request at the phone number above using automated dialing equipment or artificial or prerecorded voice or text messages.

I understand that any rights and obligations with regard to borrower defense to repayment are subject to the provisions of the Higher Education Act of 1965, as amended and the Department's applicable regulations.

Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097. I sign this application under penalty of perjury.

I understand that, if the Secretary approves the formation of the proposed group, all identified borrowers will be placed into forbearance and/or stopped collections, unless the borrower has opted-out, pursuant to 34 C.F.R. § 685.402(d)-(e). I understand that this includes both borrowers identified in this application and borrowers separately identified by the Secretary.

I understand that this application and included evidence may be disclosed through requests under the Freedom of Information Act, and further may be disclosed to the school that is the subject of this application in the course of the U.S. Department of Education's adjudication and/or any recoupment or enforcement proceedings initiated by the U.S. Department of Education against the school.

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Signature

Date

**Instructions for submitting your application:** Submit this completed and signed application to the Borrower Defense Group directly at [BDGroupRequest@ed.gov](mailto:BDGroupRequest@ed.gov). After the Borrower Defense Group receives your signed application you will be contacted with instructions for how to submit your supporting evidence, analysis, and other documentation

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## PRIVACY ACT NOTICE

**Authorities:** Under the U.S. Department of Education's (Department's) regulations at 34 C.F.R. §685.402(c), certain state agencies and legal assistance organizations ("third-party requestors") may submit a request that the Secretary form a group of federal student loan borrowers for borrower defense relief. The authorities for collecting the requested information from third-party requestors about borrowers who are part of a group are §§421 *et seq.*, §§451 *et seq.*, and §§461 *et seq.* of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1071 *et seq.*, 20 U.S.C. 1087a *et seq.*, and 20 U.S.C. 1087aa *et seq.*). The authorities for collecting and using Social Security numbers (SSNs) are §§428B(f), 455(h), 484(a)(4) of the HEA (20 U.S.C. 1078-2(f), 20 U.S.C. 1091(a)(4), 20 U.S.C. 1087e(h), and 20 U.S.C. 1091(a)(4)) and Executive Order 9397 (November 22, 1943) as amended by Executive Order 13478 (November 18, 2008).

**Information Collected:** At a minimum, the Secretary requires the following information to consider whether to form a group of borrowers for borrower defense relief:

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- Third-party requestor organization, name, mailing address, email address and telephone number;
  - The name of the institution or commonly owned institutions attended by the borrowers in the group;
  - A description of the conduct that forms the basis for the group borrower defense claim;
  - The campuses or programs which are the subject of the claim;
  - The period during which the conduct occurred;
  - If applicable, any other characteristics for defining the group that correspond to which borrowers were impacted by the relevant conduct and are entitled to relief; and
  - An analysis of why the described conduct should result in an approved group borrower defense claim under the federal standard, including the basis for the claim and whether the proposed group members suffered detriment as a result of the act/omission constituting the basis for the claim.
  - The request must support each element above with evidence beyond sworn borrower statements. The evidence must demonstrate that the conduct asserted was pervasive or widely disseminated. To the extent available, provide names and other identifying information of borrowers in your proposed group.
  - If the request is submitted by a legal assistance organization the application must also include a certification that the organization has entered into a legal representation authority with each borrower identified as a member of the group.

The Secretary also may require a third-party requestor to provide additional information, such as the impacted borrowers' names, SSNs, dates of birth, and contact information, to allow for proper identification of borrowers who the third-party requestor considers to be part of the group and to allow for proper notification to borrowers of their potential inclusion in a group.

**Purpose:** The principal purpose for collecting the information on this form is to provide information to the Secretary about a potential group borrower defense discharge application. This information assists the Department with determining, correcting, processing, tracking, and reporting program eligibility and benefits for the federal student financial assistance programs authorized by title IV of the HEA, including, but not limited to, discharge of eligible loans under title IV, HEA programs.

**Disclosures:** The Privacy Act of 1974, as amended (Privacy Act) contains exceptions that permit the Department to disclose individually identifiable information in records contained in systems of records without the prior written consent of the individual, including for "routine uses" published in a system of records notice (SORN). The identifiable information about borrowers collected on this form is covered by the SORN entitled "Aid Awareness and Application Processing" (18-11-21) (this SORN is accessible at the Department's webpage on Privacy Act System of Record Notice Issuances at: <https://www2.ed.gov/notices/ed-pia.html#fsa>). Such information may be disclosed without the consent of the individual borrower, on a case-by-case basis or under a matching program that meets the requirements of the Privacy Act, to third parties as authorized under routine uses published in the foregoing SORN. Routine use disclosures that may be made of this information include, but are not limited to, the following:

- To determine the relief that is appropriate if the Secretary grants a borrower defense to repayment discharge application, as well as to pursue repayment of the amount of such discharges against the Institution of Higher Education (IHE), the Department may disclose information from this form to federal, state, and tribal agencies, accreditors, IHEs, lenders and loan holders, guaranty agencies, third-party servicers, and private collection agencies;
- To investigate and resolve requests for relief under the borrower defense to repayment regulations, and to update borrower account records and to correct errors, the Department may disclose information from this form to guaranty agencies, lenders and loan holders participating in the Federal Family Education Loan Program, accreditors, IHEs, third-party servicers, private collection agencies, and federal, state, and local agencies;
- If the Department determines that the disclosure of information from this form is relevant and necessary to judicial or administrative litigation or Alternative Dispute Resolution (ADR), the Department may, in certain circumstances and provided certain conditions are satisfied, disclose such information to the U.S. Department of Justice (DOJ), certain adjudicative bodies, persons, or entities, and parties, counsel, representatives, or witnesses;
- If the Department contracts with an entity to perform any function that requires disclosing information from this form to the contractor's employees, the Department may disclose such information to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed information; and
- The Department may disclose information from this form to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of and on behalf of the individual

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whose information is being disclosed. The member's right to the information is no greater than the right of the individual who requested it.

For a full list of routine uses covered under the SORN entitled "Aid Awareness and Application Processing" (18-11-21), please refer to the web link cited above.

**Consequences of Failure to Provide Information:** Failure to provide required or requested information may result in the denial of the third-party requestor's request to form a group of federal student loan borrowers for borrower defense relief and the requested relief.

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## **PAPERWORK REDUCTION ACT NOTICE**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0163. Public reporting burden for this collection of information is estimated to average 500 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain a benefit (20 U.S.C. 1087e(h)). If you have comments or concerns regarding the status of your individual submission of this application, please contact the Borrower Defense customer Contact Center at 1-855-279-6207 directly.

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