

June 16, 2023

Comments of the New York Legal Assistance Group (NYLAG) on
Borrower Defense to Loan Repayment Universal Forms
Docket No.: ED-2023-SCC-0024
OMB Control Number: 1845-0163.

To Whom It May Concern:

The New York Legal Assistance Group (NYLAG) submits these comments regarding the Department of Education’s (“ED” or “the Department”) proposed borrower defense form (“BD Form”). NYLAG is a leading provider of non-profit legal services in New York City. NYLAG has extensive expertise assisting federal student loan borrowers, and NYLAG representatives have represented legal services organizations at Department negotiated rulemakings.

NYLAG has provided assistance to many students in completing borrower defense applications, and NYLAG has particular interest in this issue because we have written and disseminated a guide for borrowers to complete their borrower defense applications on their own: the NYLAG Federal Student Loan Borrower Defense to Repayment Application Guide, available at https://nylag.org/wp-content/uploads/2022/03/NYLAG_FSLBDTR_ApplicationGuide.pdf. As the author of a guide for *pro se* applications, we have seen the difficulties that borrowers have translating the application questions to a successful application.

In response to the first issue raised by the Department, “is this collection necessary to the proper functions of the Department”? We strongly respond yes. It is absolutely critical that the Department have a process to receive borrower defense applications from the hundreds of thousands of students who were defrauded by their schools.

In response to the fourth and fifth issues raised by the Department, “how might the Department enhance the quality, utility, and clarity of the information to be collected” and “how might the Department minimize the burden of this collection on the respondents,” we strongly encourage the Department to improve the BD Form and application process by: (1) using plain language accessible to borrowers with a range of reading levels; (2) minimize repetition by requiring borrowers to provide answers to questions only once; and (3) translate the form into Spanish (and other languages as deemed appropriate by the Department).

Use Plain Language

The Department must continue to endeavor to use plain language in the BD form as much as possible. As detailed by other commenters, many individuals who need borrower defense relief are those who were targeted by predatory schools precisely

because they lacked the literacy and related skills that would have made them more likely to attend traditional post-secondary institutions. For example, we have advised hundreds of borrowers who did not have a high school diploma or GED and obtained loans through the ability to benefit program. Many of those borrowers did not benefit from their education and did not complete their degrees, often with tenth or eleventh grade their highest level of education completed. The form should be directed to borrowers with limited literacy skills (including, as explained below, those with limited English proficiency).

For example, an individual who was a member of a class action or covered by an enforcement action that proceeded to judgment against their school is likely to be a strong borrower defense candidate. But the question directed at those applicants— “I benefited from a government enforcement action or from a favorable judgment that arose from my inclusion in a class-action lawsuit relating to the making of a covered loan, or the provision of educational services for which the loan was provided” requires that a borrower understand not only legal jargon, but also terms like “covered loan” and “provision of educational services for which the loan was provided,” which are certainly not straightforward.

[Response: The Department agrees that the applications should be written in plain language and has put the application form through two plain language reviews. The Department believes the application balances the desire to use plain language and the need to articulate legal requirements using the regulatory language.](#)

Minimize Repetition

The BD Form, both the current and proposed versions, requires borrowers to repeat the same facts over and over, in order to connect those facts to different legal violations. The process can be time-consuming and discouraging for borrowers, and likely also makes the Department’s review process more burdensome. We encourage the Department to allow borrowers to state all relevant facts once, and then refer back to those facts when asserting different legal violations.

[Response: The Department agrees that the form may be repetitive in some instances but wants to share that the Digital Platform only prompts borrowers to fill in the sections of the application they have indicated pertain to their experience, making the application shorter and more tailored to the specific applicant.](#)

[The Department seeks to provide borrowers an opportunity to fully explain all the information necessary for the Department to fully consider the unique facts and circumstances surrounding each allegation. The new regulation contains a materially complete requirement. The form is created to minimize the risk that borrowers who would otherwise be entitled to relief get denied because they left out critical information that was necessary to submit a materially complete application.](#)

Translate into Spanish

It is essential that all Department of Education student loan forms are translated into Spanish, given the millions of Americans potentially using these forms and the high rates of individuals who are exclusively or primarily Spanish speakers. But translation is

absolutely the most critical for forms such as the BD form that are aimed at providing the opportunity for life-changing student loan relief to the most vulnerable borrowers, who are disproportionately likely to be non-English speakers. Our office has advised hundreds of monolingual Spanish speaking federal student loan borrowers on their federal loans, spanning from borrowers who attended predatory schools in the 1980s to those whose school precipitously closed earlier this year. These borrowers need a meaningful opportunity to access student loan relief.

Response: The Department agrees with the importance of providing access to Limited English Proficiency individuals. Consistent with the Department's longstanding practice, the borrower defense application will be translated into Spanish.

Sincerely,
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