

Center for Plain Language - comments on the U.S. Department of Education's Borrower Defense to Loan Repayment Form

Who we are and what we do

The Center for Plain Language (the Center) is a nonprofit corporation that encourages the use of plain language in government, business, nonprofit, and legal communications throughout North America. It is registered in the state of Virginia, and is an exempt organization under section 501(c)(3) of the Internal Revenue Code.

The Center is one of three nonprofit organizations that make up the [International Plain Language Federation](#) (IPLF). Its mission is to promote the use of plain language globally.

Among the research and advocacy activities of the Center, we review the plain language efforts of federal agencies. We do this annually in our [Federal Report Card](#). Occasionally the Center provides direct advice and assistance to federal agencies in their efforts to write more clearly for the public.

What we reviewed and how we did it

We reviewed the Department of Education's Borrower Defense to Repayment Application (OMB Control Number: 1845-0163) (the form).

Volunteers from among the Center's members provided comments on the form. These were then analyzed and synthesized by the Center's Public Service Committee.

We have reviewed the comments made by Legal Aid Organizations dated April 3, 2023. We endorse those comments to the extent that they touch on the wording, structure, and design of the form, as well as the value of user-testing of a revised form. We try not to repeat those comments.

We express no view on the comments by Legal Aid Organizations that touch on questions of substantive law, or the procedural complexities of submitting group or individual applications, as we have no expertise in these areas.

The Center's process for analyzing any communication is based on the definition below, which was developed by the IPLF and adopted by the plain language community:

A communication is in plain language if its wording, structure, and design are so clear that the intended audience can easily find what they need, understand what they find, and use that information.

Using this definition, our comments are divided into three sections: wording, structure, and design.

1. The wording is unduly formal, complex, and legalistic

Applicants are required to present a lot of detail and supporting documentation to maximise their chances of success. This is an intimidating task. That challenge is compounded by using an unduly formal tone, and complex sentences throughout the form.

It's good practice to test documents to get a sense of how readable they are. A common plain-language diagnostic tool is a simple readability test, such as the Flesch-Kincaid Grade

Level test available in Microsoft Word. On their own, readability statistics cannot provide a bright-line prediction of a document's success. But they can flag areas in a document that might give readers trouble.

We looked at three readability measurements: words per sentence, percentage of passive sentences, and reading grade level. The grade-level score refers to the U.S. education system, so 8.0 is 8th grade, 13.0 is a college freshman, etc.

If a document is intended for the general public, then a reading grade level score that is higher than grade 8 should prompt further examination.

Words per sentence

Long sentences can interfere with reader focus and comprehension. Those with higher education levels, better working memories, or familiarity with the given subject matter can often tolerate longer sentences, especially in shorter documents. But a person reading a document about an unfamiliar and technical subject needs shorter sentences.

The **average** sentence length in the form – 21.8 words – is cause for some concern because forms usually have shorter sentences than a general narrative does. Some sentences in the form are far too long. For example, the sentences excerpted below are 45 and 67 words respectively.

[Response: The Department agrees that applications should be written in plain language to the extent possible and the Department's Plain Language Department reviewed the application twice. The Department will also incorporate the suggested language in the chart below to shorten the excerpted sentences.](#)

Passive voice

Native speakers of English learn from an early age to recognize, and therefore expect, subject-verb-object (S-V-O) as the core pattern for English sentences. Passive voice frustrates this expectation. If the passive voice is used excessively, readers will struggle to mentally rearrange sentences into S-V-O order. This, in turn, leads to confusion and reader fatigue.

On the other hand, passive voice can make a sentence easier to understand in some instances. For example, passive voice can allow you to start a sentence with information familiar to the reader, instead of starting with unfamiliar information and expecting the reader to guess how the sentences are related.

We recommend using the active voice, unless you have a good reason to use passive voice. This is particularly true of forms, where we would expect to see less use of the passive voice than in a general narrative. In this form, the use of passive voice – 13% – is somewhat high. Moreover, passive voice is often used without a good reason. In many instances, active voice would improve readability and would not interfere with meaning.

Reading grade level

Reading grade level, standing alone, is not definitive proof that a document is or is not in plain language, but it is an indicator. Here, the reading level is at grade 13.

We understand that many users of this form will not have college level education. We also know that all readers prefer to read at levels lower than their actual educational attainment. Asking applicants to provide detailed factual explanations in order to meet a legal test is an inherently complex task, so explaining how to provide such explanations is also inherently complex. For this reason, we recommend that the form aim for a reading grade level of around 9-10.

Response to passive voice and reading grade level: The Department generally agrees that plain language is important and understands that passive voice and reading grade level are aspects of that review. As stated above, the Department's Plain Language Department reviewed the application twice and that Department's stated goal is to ensure that the reading level is at grade 7.

Legalisms

While much of the form uses plain wording, at times it has a legalistic tone. For example, the form contains the following sentence:

"You may also qualify for Borrower Defense to Repayment if your school concealed, suppressed, or omitted certain information..."

It is unclear to the reader whether each of the words "concealed, suppressed, or omitted" has a separate meaning, or whether this is an example of a common technique in legal writing to simply use a series of synonyms for emphasis.

There are other examples of legal terminology (e.g., "materially complete"; "relief") that could be better expressed through simpler terms. Using simple, non-legal words such as "lies", "loss", "pay" and "repay" would make the reader's job easier.

Response: The Department appreciates that the commenters recognizes that the form uses plain wording. In some cases, the Department has decided to use language directly from the regulation to ensure that the application is consistent with the regulation. In the example above, the terms concealed, suppressed, or omitted are directly from the regulation.

Few readers understand legal citations, including references to regulations. Citations generally act as a distraction. And they become even more of a distraction when they include explanatory parenthetical information. They also add to reader fatigue because they are constant "interrupters". This causes the reader to intentionally skip over them.

There may be a need to reference regulatory authorities in the form. But this can be done in a more accessible way, and without sacrificing legal accuracy. If the citation is explained once, then it does not need to be repeated throughout the text. In the example below, the alternative version has a lower grade reading level, shorter sentences and fewer uses of the passive voice:

Current text	Plain language alternative
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<p>Under the Borrower Defense to Repayment (“Borrower Defense”) Regulations (34 C.F.R. §§ 685.400–499), certain misconduct committed by a school that you attended, or that your child attended if you are a parent PLUS borrower, might make you eligible to receive a discharge of your applicable federal student loans. This is called a “Borrower Defense to Repayment” discharge.</p>	<p>You may be eligible to receive a discharge of your applicable federal student loans, if the school that you attended, or that your child attended if you are a parent PLUS borrower, committed certain misconduct.</p> <p>This is called a “Borrower Defense to Repayment” discharge</p> <p>The regulations that apply to this kind of situation are the Borrower Defense to Repayment Regulations. You can find them in the Code of Federal Regulations (C.F.R) at Title 34, Sections 685.400-499. Click on this link if you want to read the regulations.</p>
<p>You may qualify for a Borrower Defense to Repayment if a school or its representatives made untruthful or misleading statements while trying to convince you to enroll or to remain enrolled, that information was important to you when you decided whether to enroll or remain enrolled, and the misconduct caused you harm warranting a full discharge and refund of all applicable federal loans (34 C.F.R. § 685.401(a)).</p>	<p>You may qualify for a Borrower Defense to Repayment if a school or its representatives made untruthful or misleading statements while trying to convince you to enroll or to remain enrolled.</p> <p>You have to show that this information was important to you when you decided whether to enroll or remain enrolled.</p> <p>You also have to show that the misconduct caused you enough harm to justify a full discharge and refund of all applicable federal loans.</p> <p>You can find this at Section 685.401(a) of the regulations.</p>

Response: The Department appreciates the plain language examples the commenter provides and will incorporate them into the revised application.

Tone

The tone could benefit from being more conversational and less intimidating. For example, we recommend using personal pronouns consistently throughout the form. While the applicant is referred to as “you”, using “we” to refer to the Department would reduce the formality of the tone.

Response: The Department appreciates this comment but respectfully disagrees and will continue to use “ED” for clarity.

Confusing focus

Throughout the form, words and phrases are bolded but not explained. They are often not the primary subject or message of that paragraph, which means the reader's eyes are drawn to the wrong message in the paragraph.

Response: The Department agrees that bolded phrases should draw the readers to important subjects and messages. However, the Department believes it has used bolding appropriately for this purpose. For example, the first instance of bolding is used to identify the need for borrowers to include "as much detail as possible in this application for your relevant claim" — a key requirement for submitting a materially complete application. Further, the application bolds the "who or what," "when and where," "how," and "why" questions to draw the readers attention to the nature of the details they must provide regarding their claims and to signal that these same or similar questions are repeated under the various categories of claims in Section 3 of the application.

2. The structure of the form makes the applicant's task unduly complex

In our view, the structure of the form is the most significant obstacle to ease of use. We endorse the suggestion made by Legal Aid Organizations in their comment dated April 3, 2023, at p. 3-6. A restructuring of the form would reduce its length. It would also reduce the cognitive load which the form currently imposes on readers. The repetition which is created by separating the various forms of school misconduct makes the task unduly burdensome.

Response: The Department understands the commentors concern, however declines to adopt the recommendation. To the extent repetition is a concern, 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.

To this we add further suggestions below.

The instruction section should include:

- o Information about what to know or do before, during, and after filling out the form.
- o Information to explain why applicants need to use this form, how it will help them, and the steps in the relief process.
 - Re: applicant eligibility, it might be helpful to add a short section with clear headings: "who is included," and, "who is not included."
 - Re: school eligibility, it might be helpful to add similar headings: "schools included," and, "schools not included."
 - Both applicant and school eligibility categories could also be presented as a checklist to determine if the applicant should continue filling out the form or not.

- Re: benefits, the form should better explain each level of forgiveness (partial or full). Use simple words with pronouns such as, “no need to pay us back, or not required,” you “will be paid back,” and/or “we will contact credit bureaus to fix your credit report,” and, “you may re-apply for a student loan.”

Response: The Department appreciates this comment. However, the Department believes it has struck the appropriate balance between providing the information necessary for borrowers to complete the form and reducing the length of the overall application. Additional information will be published on the Borrower Defense website to provide more guidance for borrowers which may not be appropriate to include in the application itself.

Using checklists makes it easier to complete a form. Here there is an inconsistent use of checklists. For example, the question ‘What was your level of education at the time you enrolled?’ does not use a checklist to answer the question, although it appears that it could. There are other similar examples.

Response: The Department has used checklists where appropriate. Regarding the level of the borrower’s education at the time of enrollment, referenced by the commenter, a checklist is not used in this instance because of the confusion borrowers have expressed in the past about the specific credential they have obtained. Allowing borrowers to fill in their level of education gives the Department the ability to gather the information it needs without requiring borrowers to guess or provide inaccurate information. An open-ended response allows flexibility, such as where a school used terms to describe the credential that might not reflect the more typical credential descriptions referenced in the application.

3. There are opportunities to improve the design of the form

The font is Arial size 10pt. We would encourage using a minimum of 11 or 12pt when using Arial to ensure it is large enough for a reader with visual impairments.

We also recommend improving the ‘save’ and ‘export’ features of the form.

The layout is visually dense. Increased white space on a page reduces cognitive load. A redesign of the form to increase white space would make it easier for applicants to complete the form accurately.

Response: In terms of size, the Department agrees that increasing the size can be helpful and for that reason applicants can complete the form via the Digital Platform, which has the ability to increase the font for users with visual impairments. Over 90% of applicants already use the Digital Platform. In terms improving the save and export features, the Department is not sure how to execute on that comment without a specific recommendation. In terms of the layout, the idea of more white space conflicts with another recommendation from other commenters to make the application shorter, so the Department has made efforts to balance these concerns.

Conclusion

In summary, the form has significant weaknesses with all three components of a plain language communication: wording, structure, and design. As a result, intended users will struggle to find the information they need, understand that information if they do find it, and use it to carry out the necessary steps. This thwarts your goals and their ability to make informed decisions.

We hope you will take the opportunity to apply our recommendations to the form. You are likely to see positive user-testing feedback. However, it may be necessary to address parts of a re-written form again if test users indicate they have trouble reading it.

The Center would be happy to collaborate with the Department of Education, should it decide to redesign the form along the lines we set out above.

[Response: The Department thanks the commentor for the thoughtful recommendations and suggestions to improve the application process for borrowers.](#)