National Consumer Law Center’s Comments

In Response to the U.S. Department of Education’s Proposed Borrower Defense to Loan Repayment Universal Forms

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# Introduction

 As an organization that represents low-income student loan borrowers, we thank you for the opportunity to comment on the Department of Education’s proposed borrower defense to loan repayment (BD) form. The National Consumer Law Center assists low-income student loan borrowers in the Boston area, many of whom were harmed by unscrupulous schools that engaged in predatory conduct to make a profit off of our clients’ federal student aid dollars. In addition, we routinely provide consultation and assistance to legal aid attorneys and private attorneys across the country assisting borrowers with borrower defense applications. We submit these comments on behalf of our low-income clients, and our comments reflect our experience working directly with low-income borrowers applying for borrower defense and other federal student loan discharges and are intended to help ensure that the proposed BD form is clear, accessible, and fair to all potentially eligible borrowers.

As we noted in our comment to the last iteration of the form,[[1]](#footnote-3) people eligible for borrower defense are likely to be concentrated in underserved communities and in populations that have vulnerabilities that may increase the burden of completing a complex application form. In our experience, many borrowers that are eligible for a borrower defense discharge also have limited English Proficiency (LEP) or have a high-school or middle-school literacy level. The BD form should be designed with the needs of these populations in mind.

Further, the usability of the form has significant racial equity implications. For-profit colleges—which are subject to the overwhelming majority of borrower defense claims—target low-income Black and Brown communities and first-generation college students, and as a result these students are overrepresented at for-profit schools.[[2]](#footnote-4) Given that people of color are disproportionately preyed upon by for-profit colleges and thus rely disproportionately on borrower defense discharges for redress, whether or not borrowers can successfully complete this form has a direct bearing on how the Department of Education is fulfilling President Biden’s

Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.[[3]](#footnote-5)

We are deeply concerned that this form will still impose substantial barriers to the communities we serve. While the expanded instructions section of the form is an improvement from instructions in the prior draft, the form as a whole will still be extremely difficult for many applicants to comprehend and complete. Under the Plain Writing Act of 2010, the Department of Education is required to write “clear Government communication that the public can understand and use.”[[4]](#footnote-6) This requirement applies to any communication that is necessary for obtaining any federal government benefit or service; provides information about any federal government benefit or service; or explains to the public how to comply with a requirement that the federal government administers or enforces. Unfortunately, the new individual application and reconsideration forms fall short of being clear and easy-to-use by the public as envisioned by the Plain Writing Act.

Our comment primarily focuses on the individual application form, as this is the form that will be used by the highest number of people. First, our comment discusses the need for the Department to revise the language and grammatical structure in this form to be suitable for LEP individuals or individuals with a less than high school education. Second, it addresses the design of the form and discusses the need to reduce the amount of duplicative information a borrower must input. Third, it discusses edits necessary for the introduction to clearly communicate when a borrower would be eligible for a borrower defense discharge. Fourth, we note additions that should be included to the checklists for each form of school misconduct that are listed in Section 3 of the individual form. Lastly, we ask that the Department amend its group discharge application to reflect what legal aid organizations should do if they submit an application with a state agency.

# The Form Uses Language That Will Be Difficult for Many Applicants to Understand.

As written, the form appears to assume that most applicants will have a bachelor’s level vocabulary. For example, the form uses terms and phrases like “judgment,” “administrative tribunal,” “class member,” “settlement,” “conceal,” “suppressed,” “prospects of obtaining a job,” “job placement rates,” “perform any obligations under the contract,” “breach a contract,” “likelihood of obtaining a job”—language that is not accessible to LEP applicants or applicants with a high school or less literacy level. Frequently, the form is not in plain language and fails to ask for information in the same language and grammatical structure that would be used orally. As we noted in our comment to the prior draft of the application, many applicants applying for a borrower defense discharge are unlikely to have a bachelor’s level of vocabulary and reading comprehension, including many borrowers who assert claims related to a certificate or associate program, did not finish their postsecondary program, have limited English proficiency, or were approved for loans based on the “Ability To Benefit” standard despite not having a high school

diploma or GED.[[5]](#footnote-7) Additionally, many Parent PLUS Loan borrowers did not go to college, and some did not finish high school or obtain their GED. Because the language of this form is likely to be confusing to these borrowers, they will struggle to provide the information that the Department seeks.

The first rule of the Federal Plain Language Guidelines is “Think about your audience.”[[6]](#footnote-8) We ask that the Department edit this form to better reflect the communication needs of the audience of borrower defense applicants. To do so, we recommend that the Department engage in A/B testing and user testing to ensure that the language of this form is accessible and comprehensible to the audience of borrowers that will rely on it to apply for relief.

Response: The Department agrees that the applications should be written in plain language and has already put the application form through two plain language reviews. The application was subject to a plain language review by the Plain Language Department, which aimed to ensure the website was written at a seventh-grade reading level. Additionally, several of the commenter’s previously proposed revisions were incorporated into the revised forms.

The Department also agrees that user testing is important to ensure borrowers who submit applications through the Digital Platform have a positive experience. However, the Department has already engaged in user testing through its vendor as we update and build out the technological requirements to seamlessly transition to the new application when the regulation takes effect. The user testing assessed the intuitiveness of the general flow, page structure, and interaction with the application. During user testing earlier this year, where the top finding was that participants “found the application easy, straight-forward, and that it simplified a complicated process.”

The Department agrees that additional user testing, could be helpful, however, the Department also must ensure the application is available to borrowers when the regulation goes into effect and the necessary technology is updated and cannot accomplish that if it engages in additional user testing at this point.

# The Individual Form Should Be Simplified to Reduce Its Length and to Reduce Requests for Duplicative Information

The length of the proposed form—21 pages—is daunting and filled with numerous instances where a borrower is prompted to input duplicative information. This creates unnecessary burden on borrowers and may deter some from starting or completing the application for relief. For example, in Section 3, “Conduct That May Result In A Borrower Defense Claim,” the borrower must provide a narrative response to the following seven questions for each category of school misconduct (Employment Prospects, Career Services, Transferring Credits, Accreditation, Educational Services, Program Cost and Nature of Loans, Aggressive and Deceptive Recruitment, and Other):

* 1. ***What*** did the school say, write, represent to you, or conceal from you? Please be as specific as possible. What did the school’s actions lead you to believe?
	2. ***Who or what*** provided you this information, or concealed this information from you (include the person’s name and title, if known)?
	3. ***When and where*** were you told this information (for example, the approximate date or time of year and whether it was during a campus tour or interview, in a meeting, or over the phone)? If the school concealed or suppressed information from you, please explain when and where you should have received this information.
	4. ***How*** was the information communicated to you or concealed from you (for example, via e-mail, in person, through an advertisement, through the school’s website)? Please provide examples of the school’s communication, if possible.
	5. ***How*** was the information provided to you, or concealed from you, false or misleading and how did you determine the information was false or misleading?
	6. ***Why*** was the information provided to you, or concealed from you, important to you when you decided to enroll or remain enrolled (for example, you chose to attend this school over others or take out student loans because of the information you were provided)?
	7. ***How*** has the information provided to you, or concealed from you, caused you harm (for example, have you suffered financial harm, lost opportunities, or experienced other harm as a result)?

In addition to these questions, Section 4 requires that borrowers explain the cumulative harm that all of the school misconduct, taken together, caused the applicant.

This formatting imposes substantial burdens for applicants completing this form. First, multiple forms of misconduct across misconduct categories can occur in a single interaction with a school. The way this form is arranged, the borrower will need to insert the same information over and over again to successfully complete the form. This is burdensome and time consuming for all applicants but it is particularly harmful to borrowers who must complete the form on their phone because they do not have access to a computer or internet. We strongly recommend that the Department user-test a version of the form that collapses the 6 sections on school misrepresentations or omissions (Employment Prospects, Career Services, Transferring Credits, Accreditation, Educational Services, Program Cost and Nature of Loans, Aggressive and Deceptive Recruitment, Other) into a single section that is comprised of a checklist of all forms of school misconduct that could amount to an affirmative misrepresentation and follows that checklist with an open-ended narrative response question prompting the borrower to provide the supporting details of the misconduct. We believe that collapsing the formatting of the form into a singular section may increase the likelihood that the applicant will provide the full scope of statements that were misrepresentations or omissions.

Response: The Department agrees that the form may be repetitive in some instances however the goal is 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 2023 regulation contains a materially complete requirement. The application is designed to ensure borrowers are guided question by question through submitting a materially complete application. The Department seeks 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.

The Department agrees that additional user testing, could be helpful, however, the Department also must ensure the application is available to borrowers when the regulation goes into effect and the necessary technology is updated and cannot accomplish that if it engages in additional user testing at this point.

Second, the questions, as arranged, do not comport with how most people would explain how they have been wronged. Most applicants will explain what was said and how it was wrong in a single telling instead of instinctually breaking it up between the boxes. Further, the questions are duplicative of each other. For example, take **“*Who or what*** provided you this information, or concealed this information from you (include the person’s name and title, if known)” and “***When and where*** were you told this information (for example, the approximate date or time of year and whether it was during a campus tour or interview, in a meeting, or over the phone)? If the school concealed or suppressed information from you, please explain when and where you should have received this information.” If the information came from an advertisement, the answer is the same across the board. In addition, if the information came from a person or from multiple people, applicants will provide both who shared the misleading information and where and when that information was provided in a single answer. Further, asking borrowers when omitted information should have been provided is unnecessary and is irrelevant to whether the borrower has a meritorious claim.

Response: The Department agrees that in some borrower’s circumstances borrowers may restate the same information. However, in most instances different allegations will have different facts and borrowers should be afforded the space and opportunity to fully explain each basis for relief and provide all the information necessary for the Department to fully consider each allegation and the unique facts and circumstances surrounding each allegation. As stated above, the 2023 regulation contains a materially complete requirement. The application is designed to ensure borrowers are guided question by question through submitting a materially complete application.

If the Department insists on maintaining separate sections for each type of school misconduct, we recommend consolidating the questions into the following three questions:

1. ***What did the school say***, write, or represent to you? At the time, what did you believe the school meant when it made those statements? **How was the statement misleading or wrong?** If the school failed to tell you something that was important to your decision to enroll, please describe in detail what they failed to tell you. Please describe each statement that made you check any of the boxes above.
2. ***When, where, and how*** were you told this information (for example, list the approximate date or time of year and whether it was during a campus tour or interview, in a meeting, via email or text, over the phone, or through an advertisement)? **If a person** or company employed by the school **made the misrepresentation, please share their name and/or their job title (for example recruiter, admissions counselor, financial aid officer, etc.).** Please explain the where, when, how, and who for each misrepresentation you identified above.
3. ***Explain why each misrepresentation*** you checked above **was important to you** when you enrolled.

This formatting is more intuitive to how borrowers naturally tell their story and will reduce the burden borrowers experience when completing the form. Additionally, it will significantly reduce the length of the form.

Response: The Department respectfully disagrees with this comment. In the Department’s experience, borrowers are more likely to omit necessary information when shown prompts that combine several questions. The Department believes borrowers are more likely to submit materially complete allegations with the question by question prompts on the current form.

Third, the form asks the applicant to explain twice how the school’s misconduct harmed them: first, in each section describing that category of misconduct, and second, in Section 4 of the form. This is unnecessary and will require the borrower input the same information repeatedly when completing the form. In addition, in our experience borrowers cannot segregate the harm caused by each individual misrepresentation or instance of misconduct. Instead, they can explain how all of the school’s misconduct caused them detriment warranting relief, as is required by the regulations. Instead of including questions regarding harm at the end of each category of school misconduct, we recommend that the Department just require the borrower to address harm in Section 4. This will make the form significantly less burdensome for borrowers.

Response: The Department appreciates this comment, however, the Department declines to make the proposed changes. The Department’s goal is to ensure borrowers are given every opportunity to submit a materially complete allegation. This includes describing the detriment the borrower suffered as a result of each allegation in Section 3 when borrowers are providing detail about each allegation.

The Department also wants to provide borrowers, in Section 4, with an opportunity to fully articulate the injury they experienced as a whole due to the school’s alleged misconduct given that borrowers must demonstrate they have suffered harm that warrants a full relief of their applicable loans.

An allegation-by-allegation description of the harm borrowers suffered in Section 3 and an additional opportunity to explain the overall harm they suffered in Section 4 is a reasonable way to ensure that borrowers have an opportunity to explain all relevant harm.

# The Form’s Instructions Regarding Misrepresentations Should Mirror the Categories of Misconduct Represented in Section 3 of the Form and Should More Accurately Summarize the Conduct Listed in 34 C.F.R. 668 Subparts F and R.

The proposed form’s instructions regarding misrepresentations under heading “What kind of conduct by the school can lead to an approved application” state

The school’s conduct must relate to untruthful or misleading statements concerning one or more of the following areas:

* Graduates’ employment outcomes; for example:
	+ Guarantees of employment; or
	+ Guarantees that you would earn a certain salary.
* The school’s educational programs; for example:
	+ Whether completion of a program qualifies you for a specific license or certification;
	+ The number, availability, and qualifications of instructors; or
	+ Your ability to transfer credits to another school;
* The school’s financial charges; for example:
	+ The school’s program cost; or
	+ The availability or type of financial assistance available to you.

This summary is not accurate. It does not mirror the 6 types of school misconduct that could amount to a misrepresentation listed in Section C of the form and fully omits any reference to career services or accreditation. Further, it does not mirror the over 40 examples of school misconduct that are enumerated in 34 C.F.R. 668 Subpart F that will take effect on July 1, 2023 that could give rise to a borrower defense claim.[[7]](#footnote-9) Borrowers with meritorious claims looking at these instructions may forgo completing the form because the school misconduct they experienced does not fit into the 7 examples of school misconduct listed above.

We ask that the Department make the list of potential misrepresentations more representative of the scope of claims a borrower could assert and ensure that it is consistent with the rest of the form. Borrowers will use this list to determine whether or not they should dedicate the time necessary to compiling an application. In addition, in our experience, borrowers who have meritorious claims need clear examples of what school misconduct qualifies for relief. While a comprehensive list in the instruction portion of the form will make the form slightly longer,[[8]](#footnote-10) it is a crucial tool borrowers will use to help themselves prepare the information to complete the whole form. We propose that the following language, which mirrors the checklists in Section 3,[[9]](#footnote-11) serve as a starting point for what the Department should ultimately add to the misrepresentation portion of the instructions. The Department should simplify this language—and the language in the checklists themselves—consistent with plain language principles.

## Misrepresentations About Graduates and Employment Prospects

* + Your school misrepresented information about where graduates would work, how much money graduates made, or how many graduates were able to get jobs in their field.
	+ Your school told you false or misleading information about its relationships with specific employers.
	+ The school provided you with misleading information that successful completion of a

course would qualify graduates for acceptance into a labor union or similar organization.

* + Your school misrepresented the demand for graduates in your field.
	+ Your school misled you about likely earnings after graduation by exaggerating the earnings of graduates.
	+ Your school failed to tell you that obtaining a job or required licensure/certification in your field of study was highly unlikely due to your prior criminal history, a preexisting medical condition, or another circumstance known by your school.

## Misrepresentations About Career Services

* + Your school promised it would provide career services assistance (including, but not limited to resume writing help, mock interviews, and responding to job listings), but it did not.
	+ Your school promised it would help you find a job after you graduated, but it did not.
	+ Your school otherwise misrepresented the career services it would provide students.

## Accreditation and Licensure Misrepresentations:

* + Your school told you false or misleading information about whether or not your program was eligible for licensure in your state, would make you eligible to sit for a licensure exam, or how many graduates passed or failed licensure exams.
	+ Your school failed to tell you that your school or program lacked proper accreditation or was not authorized by the appropriate agency in your state.
	+ Your school gave you false or misleading information about the accreditation your school or program had, or failed to tell you that your school or program lost accreditation prior to or during your enrollment.

## Misrepresentations About Credit Transferability

* + Your school told you that your credits were transferable to other schools but they were not.
	+ Your school told you it would accept credits you had earned elsewhere, but after you enrolled, it told you that it would not accept some or all of your transfer credits.

## Misrepresentations Relating to The School or a Particular Program Offered by The School (Note: The “Educational Services” Portion of Section 3 of the Proposed Form)

* + Your school gave you false or misleading information about its criteria for admission, (meaning the basis upon which a school determines who it will admit), how selective it was, or provided you with false or misleading information about the prerequisites required for your course of study.
	+ Your school misrepresented how you would be taught (for example, in-person versus online).
	+ Your school misrepresented the number of credits required to graduate, or how long it would take you to complete my program.
	+ Your school told you that you would be able to graduate in a certain amount of time, but then did not offer enough sections of required classes so that you could complete the program on time, or misrepresented when required classes would be scheduled (e.g. you were promised you could complete the program by enrolling on weekends, but later learned that a required course was available only on weekdays during regular business hours when you work).
	+ Your school misrepresented the availability of internships or externships or the assistance it would provide in obtaining required internships or externships.
	+ Your school provided misleading or false information about the availability, or qualifications of its faculty, or failed to tell you that a different company was providing the curriculum instructional materials or would provide instruction in your program.
	+ Your school misrepresented the type and availability of any tutoring or specialized instruction or assistance it would provide you before, during, or after completion of a course.
	+ Your school misled you about the how often courses that would prepare you for employment would be offered.
	+ Your school failed to tell you that a different company was recruiting students on the school’s behalf.
	+ Your school misrepresented its status as a for-profit, nonprofit, or public institution.
	+ Your school misled you about the endorsements or unsolicited testimonials from government officials, colleges or high schools, or members of a particular industry.
	+ Your school misled you about its size, location, facilities, or institutionally provided equipment, technology, books, or supplies.

## Misrepresentations Relating Program Cost, Nature of Loans, or Amount of Financial Assistance (Note: currently “Program Cost and Nature of Loans” portion of Section 3 of the proposed form)

* + Your school told you that you were receiving only grants and scholarships, but you found out later that some or all of those funds were loans, or the school reduced the amount of scholarship after you enrolled, even though you met the scholarship requirements.
	+ Your school misled you about your responsibility to repay any loans provided to attend the school, or misrepresented the repayment terms or total cost of the loans provided to attend the school.
	+ Your school misrepresented the overall cost of your program.
	+ Your school misrepresented what costs were or were not included in the published tuition and fees.
	+ Your school misrepresented the cost of living in campus-owned or campus-operated housing.
	+ Your school didn’t give you truthful information about the institution’s refund policy for when students fail to complete the program.
	+ The school misled you about the nature or availability of scholarships or the availability, amount, or nature of financial assistance.
	+ The school misled you to believe that you couldn’t reject any financial aid offer or choose whether to apply for financial aid.
	+ The school misled or failed to tell you important information about the amount, method, or timing of the payment of tuition and fees.

Response: The Department appreciates this comment but declines to adopt this recommendation. The instructions section of the application is currently two full pages of text. The Department believes it has the appropriate balance of providing illustrative examples and being responsive to other comments that are concerned with the length of the application.

# The Checklists for School Misconduct Should Include All of the Examples Provided in 34 C.F.R. 668 Subparts F and R.

We were happy to see that the Department revised some of the items on the checklists of school misconduct in Section 3. These checklists are an essential tool borrowers use to determine what types of school misconduct might qualify them for relief. However, we ask that the Department add the following items that are listed as types of school misconduct in 34 C.F.R. Subparts F and R[[10]](#footnote-12) in plain language to the checklists in the corresponding sections, as the populations we serve may raise these claims in their applications:

# Employment Prospects

* My school used government job market statistics even though the placement rate and earnings data regarding its graduates was lower than those government statistics. 34 C.F.R. § 668.74(e).

# Accreditation and Licensure Qualifications

* My school led me to believe that when I completed my program, I’d be eligible to join a labor union or similar professional organization, when in reality that wasn’t true. 34 C.F.R. § 668.72(c).
* My school led me to believe that it or its program was accredited when in reality it was not. 34 § C.F.R. 668.72(a), (o).

# Educational Services

* My school misled me about the help it would give me so that I could get an externship or to earn my GED or high school diploma.[[11]](#footnote-13) 34 C.F.R. § 668.72(p), (q).
* My school misled me about its size, location, facilities, or institutionally provided equipment, technology, books, or supplies. 34 C.F.R. § 668.72(f).
* My school misled me about the endorsements or unsolicited testimonials from government officials, colleges or high schools, or members of a particular industry. 34 C.F.R. § 668.72(e).
* My school misled me to believe that my program would be taught by faculty or instructors employed by the school, but it was not. 34 C.F.R. § 668.75(a).
* My school misled me about the how often courses that would prepare me for employment would be offered. 34 C.F.R. § 668.72(g).
* My school gave me false or misleading information about how long it would take to complete my program. 34 C.F.R. § 668.72(r).
* My school misled me about when a student could be terminated from a program. 34

C.F.R. 668.72(d).

* My school provided false or misleading information about how long it would take to complete my program. 34 C.F.R. 668.72(r).

# Program Cost

* My school misled me about the availability of scholarships or what the terms of those scholarships were. 34 C.F.R. § 668.73(a), (d).
* My school made me think that I could not reject any financial aid offer or choose whether to apply for financial aid. 34 C.F.R. § 668.73(f).
* My school misled me about the amount, method, or timing of the payment of tuition and fees. 34 C.F.R. § 668.73(g).
* My school misled me about my responsibility to repay any loans provided to attend the school 34 C.F.R. § 668.73(e).
* My school didn’t give me truthful information about the institution’s refund policy for when students fail to complete the program 34 C.F.R. § 668.73(c).

Response: The Department appreciates the commenter’s suggested addition but declines to include all of the examples of school misconduct as the commenter suggest. Section 3 provides illustrative examples of misconduct most likely to be helpful to borrowers because they are the allegations that have frequently appeared on borrower defense applications to date.

# The Department Should Provide Instructions For How State Agencies and Legal Assistance Organizations Can Submit Group Discharge Applications Together

The proposed group discharge form assumes that a group discharge will either be submitted by a legal aid organization or a state agency. However, we anticipate that legal aid organizations may collaborate with their state agency to submit applications. It is unclear from the regulations and the proposed form whether legal aids must have a representation agreement with every member of the group if they co-author a group application with a state agency. We ask that the form be amended to address this ambiguity, as it will directly affect how both types of organizations will submit group applications.

Response: The Department appreciates this comment. It is the Department’s position that for an application jointly authored and submitted by a legal assistance organization and state requestor, the filing does not require a certification that the legal assistance organization has entered into a legal representation authority with identified group members that could otherwise be covered by a submission from the state requestor.

# Conclusion and Contact Information

Thank you for this opportunity to comment on these application forms. We welcome the opportunity to meet with the Department to discuss ways to make this form more accessible and less burdensome to the borrowers we serve. Please contact Kyra Taylor at Ktaylor@nclc.org with questions or if you would like to discuss further.

1. Our prior legal aid comments in response to the prior draft of the application are attached to this comment. [↑](#footnote-ref-3)
2. *Mapping Exploitation: Examining For Profit Colleges as Financial Predators in Communities of Color*, Student Borrower Protection Ctr. (July 2021) https://protectborrowers.org/wp-content/uploads/2021/07/SBPC-Mapping- Exploitation-Report.pdf; J Geiman & Alpha Taylor, *Disproportionately Impacted: Closing the Racial Wealth Gap through Student Loan Cancellation, Payment Reforms, and Investment in College Affordability* at 19 (June 2022) https://[www.nclc.org/wp-content/uploads/2022/10/2022 Disproportionately-Impacted.pdf.](http://www.nclc.org/wp-content/uploads/2022/10/2022Disproportionately-Impacted.pdf) [↑](#footnote-ref-4)
3. *See* § 3 (Feb. 16, 2023) https://[www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-](http://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-) order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal- government/. [↑](#footnote-ref-5)
4. Pub. L. 111-274, https://[www.govinfo.gov/content/pkg/PLAW-111publ274/pdf/PLAW-111publ274.pdf.](http://www.govinfo.gov/content/pkg/PLAW-111publ274/pdf/PLAW-111publ274.pdf) [↑](#footnote-ref-6)
5. 20 U.S.C. § 1091(d) (Jan. 1, 1986 until July 1, 2012); 34 C.F.R. §§ 682.402(e), 682.402(e)(13)(iv) (FFEL),

685.215(a)(1)(i) (Direct Loan) (citing student eligibility regulations at 34 C.F.R. § 668.32(e)(1) and ATB test requirements at 34 C.F.R. §§ 668.141–668.156). [↑](#footnote-ref-7)
6. Federal Plain Language Guidelines at 1 (May 2011) https://[www.plainlanguage.gov/media/FederalPLGuidelines.pdf.](http://www.plainlanguage.gov/media/FederalPLGuidelines.pdf) [↑](#footnote-ref-8)
7. If the Department has sub-regulatorily decided that the types of school misconduct listed in amended 34 C.F.R. 668 Subpart F will not give rise to a meritorious borrower defense claim, it should publicize that decision for borrowers. [↑](#footnote-ref-9)
8. The Department should consider making the various examples of misconduct a drop-down list that can be expanded in the online application. [↑](#footnote-ref-10)
9. We have incorporated both the existing items in the checklists and the items from 34 C.F.R. 668 Subpart F we suggest be included in the checklists *infra*. [↑](#footnote-ref-11)
10. All citations to these regulations refer to the 2022 amendments. [↑](#footnote-ref-12)
11. Amending item 1 in the checklist to include reference to the borrower’s GED or high school diploma. [↑](#footnote-ref-13)