



June 16, 2023

U.S. Department of Education  
400 Maryland Ave. SW, LBJ, Room 6W203  
Washington, DC 20202-8240  
Submitted via electronic portal

Re: Borrower Defense to Loan Repayment Universal Forms (Docket No. ED-2023-SCC-0024)  
Comment Request 5/17/2023

To Whom It May Concern:

Thank you for the opportunity to comment on the edited version of the proposed Borrower Defense to Repayment application form. We want to commend the Department for the edits that have already been made to the proposed form. The edits improve clarity and provide further instruction for borrowers who are filling out the form, and we believe that the edits will encourage more complete applications. We especially thank you for the careful consideration of our prior comments and the edits that were made in response.<sup>1</sup>

We have recommendations for the current version that we think will provide even more clarity for borrowers completing applications. In our work, we advise many student veterans as they attempt to complete the application form, and we have learned that there are areas that commonly cause confusion. That work informs these recommendations:

- A. Recommendations for streamlining questions and clarifying instructions
  - 1. Section 3's instructions could be further improved to make it clear that all categories do not need to be completed

We appreciate the addition of instructions, both at the beginning of Section 3 and following the checkbox list in each category of Section 3, that make it more clear to borrowers how to adequately complete the section. The form would strongly benefit from including an explicit acknowledgement that not all categories need to be completed in order to have a complete application. We also think that the categories should be numbered or otherwise divided (such as with letters or Roman numerals) in order to clearly distinguish each category as set off from the others. For instance, the instructions could read as follows (*italics indicate our suggested additions to the instructions*):

The following *categories (A through G)* are common categories of misconduct alleged by borrowers, including some specific examples. *Categories H and I can also give rise to claims. You should only complete the categories that apply to you.* Please complete all

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<sup>1</sup> Our April 3, 2023, comments on the previous version of the form are available here: <https://vetsedsuccess.org/our-letter-to-the-department-of-education-regarding-proposed-new-borrower-defense-to-repayment-application/>

*categories* that apply. If none of the categories *A through I* apply to you, there is an “Other” category, *category J*, at the end of Section 3.

Response: The Department appreciates this comment however declines to adopt the recommendation. Over 90% of borrowers fill out the application via the Digital Platform. When filling out the application through the Digital Platform borrowers are asked to check the categories of misconduct that apply to them and then are only shown the sections they selected. This process avoids repetition and provides clarity for borrowers.

We propose no changes to the next paragraph of instructions, which begins, “You **must** write out answers...”

As currently written, there is a possibility for borrowers to think that they do not need to check all the boxes in each category, rather than letting them know they do not need to complete all the categories. Lettering the categories also makes it more obvious to borrowers completing the form that the categories are separate and discrete sets of questions.

Response: The Department appreciates the concern raised by the commenter; however the Department believes the application is clear that borrowers should only complete the portions of the application that apply to them and filling out all boxes in each category has not been a problem in the past. Additionally, the Digital Platform experience allows borrowers to choose the conduct that is applicable to their experience and only fill out the relevant sections of the application.

2. Section 4 could be further differentiated from the questions about harm in Section 3

We appreciate the addition of language at the start of “Section 4: Harm,” which helps make it clear to borrowers that the section may require some overlap with the questions about harm in Section 3. However, the Department could consider stating more directly how the information in this section may be different from or in addition to the information already provided in Section 3, as that is not readily apparent with the current instructions. We think more clarity here would remove some confusion for borrowers who might not know what to write in this section, since they already described their harm in Section 3. If there is no distinct information about harm being captured in Sections 3 and 4, the Department should consider asking the questions about harm in only one section.

Response: The Department is glad that the commenter appreciates the change made to the start of Section 4: Harm in response to their earlier comment. The Department believes its revisions draw sufficient distinctions between questions regarding harm as described in Section 3 (which pertain to harm resulting from narrower sets of allegations) and questions regarding harm as described in Section 4 (which pertain to harm resulting from all of the borrower’s claims as a whole).

3. The form and instructions should consistently describe omissions

We are very pleased to see that the edited form includes the concept of omissions in all the questions throughout Section 3. However, the terminology used to refer to instances when schools failed to provide information is inconsistent and could lead to borrowers’ not providing relevant information. The instructions on page 1 of the form state that a “failure to provide

important information” is enough to give rise to a claim. The form also states that the applicant may qualify for Borrower Defense to Repayment “if your school concealed, suppressed, or omitted certain information...” The checkbox lists in Section 3 use the term “omissions.” The individual questions under the categories in Section 3, however, only use the term “concealed,” except one question uses the terms “concealed or suppressed.” None of the specific questions use the term “omitted.”

The inconsistent terminology, and using “concealed” as a shorthand for “concealed, suppressed, or omitted,” is likely to cause confusion. It could lead borrowers to believe that, unless the word “omitted” is specifically included, their information should be limited to instances when information was “concealed,” which carries a connotation of actively hiding the information. The questions in Section 3 should consistently use all three terms throughout, as used in the instructions on page 1 of the form.

[Response: The Department agrees the terminology is inconsistent and has updated the application with the commentors proposal.](#)

4. Section 3 questions still have the ability to confuse borrowers in how they address information that may not have come from a person

We think that one particular question throughout Section 3 can be confusing to borrowers filling out the form: “Who or what provided you this information, or concealed this information from you (include the person’s name and title if known)?” This question is particularly confusing if the borrower did not get the information from a person. They may not know how they are supposed to answer the question, “What provided you this information?”, especially without any examples provided.

We think it would be best to say something like the following: “Who provided you this information, or did not provide the relevant information (include the person’s name and title if known)? *If not a person, please state how you found out the information or where it should have been provided (for example, a television ad, campus materials, etc.).*”

Alternatively, the question could be, “Who provided you this information, or did not provide the relevant information (include the person’s name and title if known)? *If not a person, please write ‘Not applicable’ and complete the next question.*” It could then be followed by the existing question, “How was the information communicated to you...?”

[Response: The Department agrees the question could be better worded and has updated the application with the commentors proposal.](#)

5. The form instructions should be slightly edited for clarity

On page 2, there is a list of information that is needed for a complete application. We think the second point on the list should be edited to say, “An explanation of who made the statements, acts, or omissions, *or how they were made*, and in what context.” Currently, it does not consider that a person may not have made the statements, but they may have instead been contained in school materials or advertisements.

[Response: The Department appreciates this comment and agrees that the application should](#)

be updated accordingly. The Department will revise the application.

B. Recommendations for improving the user experience with the online application tool

We had previously provided comments regarding the online version of the application, and

do

not know at this time if our recommendations for the online experience have been incorporated. We have copied those comments here for ease of reference. We hope the online application can be improved with the implementation of the proposed changes to the Borrower Defense to Repayment form.

1. Borrowers should be able to save their work and come back to it later

We have heard from borrowers, and have experienced ourselves, that the “save” feature on the online application does not always work. This means that students either have to finish the application in one sitting or risk losing all of their work and needing to start over. If the “save” feature is available, it must work reliably, or else students may be discouraged from completing applications because they need to duplicate their work. This is especially important since the form is quite long and requires many long-form responses.

[Response: The Department agrees that the form should be free of logistical and technical problems. Toward those ends, the Department is working closely with its vendor to implement the technology requirements for the 2023 regulation, including technical fixes to the digital experience.](#)

2. The online form should exactly match the PDF version of the form

All of the questions on the Borrower Defense to Repayment form should appear on both the online version and the PDF version, in the same order. When we last utilized the online application, some questions appeared in different places on the two forms, and some questions only appeared on one version of the form. The two forms should be identical, in part so that borrowers have the option of taking their time to prepare their answers on the PDF form in advance – or seeking pro bono help from legal aid organizations – and then filling out and submitting the online form, which is easier for borrowers to track for status updates. This is especially important since, as stated above, the save feature on the online form does not always work.

[Response: The Department agrees that all questions on the Borrower Defense to Repayment form should appear both on the online form and the PDF form. The Department is currently working with its vendor to build out the Digital Platform online experience and intends for the forms to have the same questions in the same order.](#)

3. The online form should allow borrowers to see a preview of all the questions that will be asked

The online form should allow borrowers to see a preview of all of the questions on the online form or point borrowers to the PDF version of the form for review in advance of filling out the application. Currently, borrowers cannot move on to the next page of the online application

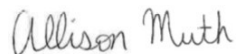
without fully answering all the questions on the current page, which means that borrowers who only see the online version of the form do not have any idea what questions are coming up next or what information it would be useful for them to gather to assist them in filling out the questions. Providing an easily accessible preview would allow borrowers to prepare their application in advance of beginning the submission process while also allowing the Department to mark required fields.

Response: The Department understands the importance of allowing borrowers to see the questions in advance before filling out the application. The Department will provide a PDF version of the form on its website, which will allow borrowers to view the application before beginning the process of filling it out.

### C. Conclusion

Thank you for the opportunity to provide comments on the Borrower Defense to Repayment application form. We are pleased to see some user-friendly changes have already been made, and we hope that you will consider the additional changes we have raised above.

Sincerely,

A handwritten signature in cursive script that reads "Allison Muth".

Allison Muth  
Senior Attorney  
Veterans Education Success