

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
Borrower Defense to Loan Repayment Universal Forms**

- 1. Explain the circumstances that make the collection of information necessary. What is the purpose for this information collection? Identify any legal or administrative requirements that necessitate the collection. Include a citation that authorizes the collection of information. Specify the review type of the collection (new, revision, extension, reinstatement with change, reinstatement without change). If revised, briefly specify the changes. If a rulemaking is involved, list the sections with a brief description of the information collection requirement, and/or changes to sections, if applicable.**

On April 4, 2024 the U.S. Court of Appeals of the Fifth Circuit granted a preliminary injunction against 34 §685.400 *et seq* (“2023 Regulation”) enjoining the rule and postponing the effective date of the regular pending final judgment in the case.¹ The current Borrower Defense to Repayment application and related Request for Reconsideration are drafted to conform to the enjoined provisions of the 2023 Regulation.

This request is to revise the currently approved information collection 1845-0163 to comply with the regulatory requirements of the borrower defense regulations that are still in effect, 34 C.F.R. § 685.206(e) (“2020 Regulation”), 34 C.F.R. § 685.222 (“2016 Regulation”), and 34 C.F.R. § 685.206(c) (“1995 Regulation”) (together, the “current regulations”). These regulatory requirements are distinct from the 2023 Regulation’s provisions. The revision is part of contingency planning in case the 2023 Regulation is permanently struck down.

The Department of Education (“the Department”) is attaching an updated Borrower Defense Application and application for Request for Reconsideration.

The forms will be available in paper and electronic forms on studentaid.gov and will provide borrowers with an easily accessible and clear method to provide the information necessary for the Department to review and process claim applications. The forms required by the three regulations are:

- Universal Borrower Defense Application 4.0
 - This application is a revision of the previous Borrower Defense Application, which removes fields and questions that are no longer applicable under current regulations and adds a section related to the financial harm requirement for borrowers whose loans fall under the 2020 Regulation.
- Request for Reconsideration
 - Pursuant to §685.222(e)(5)(i), if the borrower defense application is denied in full or in part, the borrower may submit new evidence in support of the borrower’s claim and request that the decision be reconsidered. The

¹ *Career Colleges and Schools of Texas v. United States Department of Education, et al.*, USDC No. 1:23-CV-43

revised Request for Reconsideration removes fields and questions that relate to grounds that are not available under current regulations.

2. **Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The Department will utilize the information provided on the Universal Borrower Defense Application and Request for Reconsideration forms to determine eligibility for a borrower defense discharge.

3. **Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision of adopting this means of collection. Please identify systems or websites used to electronically collect this information. Also describe any consideration given to using technology to reduce burden. If there is an increase or decrease in burden related to using technology (e.g. using an electronic form, system or website from paper), please explain in number 12.**

The Department will continue to make the forms available in both paper and electronic formats and will allow for the form to be submitted by mail or online.

4. **Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

In most cases, the borrower must initiate this request. While certain information relevant to the borrower's claim may already be held by the Department (which is reviewed by the Department), the Department requires additional information from the borrower to determine the reason for the individual request for discharge and to determine whether the borrower qualifies for the discharge.

5. **If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction, which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.**

This information collection does not impact any small businesses or other small entities.

- 6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

If the Department did not collect the information on the Universal Borrower Defense Application or Reconsideration Request, the Department would not have the information needed to determine whether individual borrowers are eligible for a borrower defense discharge and could therefore not provide borrowers with the discharge they may qualify for under the law.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- requiring respondents to report information to the agency more often than quarterly;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- in connection with a statistical survey, that is not designed to produce valid and reliable results than can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or that unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

This information collection does not require any special circumstances.

- 8. As applicable, state that the Department has published the 60 and 30 Federal Register notices as required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB.**

Include a citation for the 60 day comment period (e.g. Vol. 84 FR ##### and the date of publication). Summarize public comments received in response to the 60 day notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. If only non-

substantive comments are provided, please provide a statement to that effect and that it did not relate or warrant any changes to this information collection request. In your comments, please also indicate the number of public comments received.

For the 30 day notice, indicate that a notice will be published.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instruction and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department published a 60-day Federal Register Notice on January 14, 2025. (Vol. 90. No. 8, page 3194) inviting public comment on this information collection. Four organizations submitted a total of 20 comments and those comments are addressed in a separate document entitled Borrower Defense to Repayment Application Comment Responses. One of the organizations' comments were not substantive. Other Comments included suggestions for updating the format of the pdf application and online application. There were also comments about the privacy act information in both the application and reconsideration form. Changes were made to the collection and forms based on comments received. The Department will implement the following suggestions: borrowers will be able to save their online application and reconsideration form to finish at a later date, information about how long it takes the Department to review an application has been updated to "multiple years" on the application form, and the term "enough harm" has been removed from the application form. The burden estimates have not changed.

The Department is now requesting the 30 day public comment notice to be pulished in the Federal Register.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees with meaningful justification.

There are no payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If personally identifiable information (PII) is being collected, a Privacy Act statement should be included on the instrument. Please provide a citation for the Systems of Record Notice and the date a Privacy Impact Assessment was completed as indicated on the IC Data Form.

A confidentiality statement with a legal citation that authorizes the pledge of confidentiality should be provided.² If the collection is subject to the Privacy Act, the Privacy Act statement is deemed sufficient with respect to confidentiality. If there is no expectation of confidentiality, simply state that the Department makes no pledge about the confidentiality of the data. If no PII will be collected, state that no assurance of confidentiality is provided to respondents. If the Paperwork Burden Statement is not included physically on a form, you may include it here. Please ensure that your response per respondent matches the estimate provided in number 12.

A Privacy Act statement is included on the Universal Borrower Defense Application based on the Aid Awareness and Application Processing (AAP)) System of Records Notice, 18-11-21. Privacy Act statements will also be included in the Request for Reconsideration.

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. The justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature in this collection.

- 12. Provide estimates of the hour burden for this current information collection request. The statement should:**

- **Provide an explanation of how the burden was estimated, including identification of burden type: recordkeeping, reporting or third party disclosure. Address changes in burden due to the use of technology (if applicable). Generally, estimates should not include burden hours for customary and usual business practices.**
- **Please do not include increases in burden and respondents numerically in this table. Explain these changes in number 15.**
- **Indicate the number of respondents by affected public type (federal government, individuals or households, private sector – businesses or other for-profit, private sector – not-for-profit institutions, farms, state, local or tribal governments), frequency of response, annual hour burden. Unless directed to do so, agencies should not conduct special surveys to obtain information on**

² Requests for this information are in accordance with the following ED and OMB policies: Privacy Act of 1974, OMB Circular A-108 – Privacy Act Implementation – Guidelines and Responsibilities, OMB Circular A-130 Appendix I – Federal Agency Responsibilities for Maintaining Records About Individuals, OMB M-03-22 – OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002, OMB M-06-15 – Safeguarding Personally Identifiable Information, OM:6-104 – Privacy Act of 1974 (Collection, Use and Protection of Personally Identifiable Information)

which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable.

- If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burden in the table below.
- Provide estimates of annualized cost to respondents of the hour burdens for collections of information, identifying and using appropriate wage rate categories. [Use this site](#) to research the appropriate wage rate. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14. If there is no cost to respondents, indicate by entering 0 in the chart below and/or provide a statement.

We believe there will be a burden on individuals filing the revised Universal Borrower Defense Application and/or the revised Reconsideration Form. We believe the forms included in this revision will be used by the same universe of borrowers.

Borrower Defense Application Form

We anticipate that it will take an average of 3 hours to complete the Universal Borrower Defense Application. We estimate 67,000 individuals will complete the revised Universal Borrower Defense Application for a total of 201,000 hours (67,000 x 3 hours).

We estimate the cost to respondents, based on \$23 for individuals, per burden hour, will be \$ 4,623,000 (201,000 x \$23).

Reconsideration Form:

We believe there will be a burden on individuals filing the Reconsideration Form. We believe approximately 25% of the borrowers who submit an application will request reconsideration. We anticipate that it will take an average of 1 hour for an estimated 16,750 individuals to complete and provide the information on the required form for a total of 16,750 hours (16,750 x 1 hour).

We believe the cost to respondents, based on \$23 for individuals, per burden hour, will be \$385,250 (16,750 x \$23).

Estimated Annual Burden and Respondent Costs Table

Information Activity or IC (with type of respondent)	Number of Respondents	Number of Responses	Average Burden Hours per Response	Total Annual Burden Hours	Estimated Respondent Average Hourly Wage	Total Annual Costs (hourly wage x total burden hours)
Individual	83,750	83,750	see above	217,750	\$23	\$5,032,203
For-Profit Institutions	0	0	0	0	0	0

Information Activity or IC (with type of respondent)	Number of Respondents	Number of Responses	Average Burden Hours per Response	Total Annual Burden Hours	Estimated Respondent Average Hourly Wage	Total Annual Costs (hourly wage x total burden hours)
Private Institutions	0	0	0	0	0	0
Public Institutions	0	0	0	0	0	0
Annualized Totals						

For individuals we have used the median hourly wage for all occupations, \$23.11 per hour according to BLS. https://www.bls.gov/oes/current/oes_nat.htm#00-0000.

Please ensure the annual total burden, respondents and response match those entered in IC Data Parts 1 and 2, and the response per respondent matches the Paperwork Burden Statement that must be included on all forms.

13. **Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)**
 - **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and acquiring and maintaining record storage facilities.**
 - **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
 - **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the**

government or (4) as part of customary and usual business or private practices. Also, these estimates should not include the hourly costs (i.e., the monetization of the hours) captured above in Item 12.

Total Annualized Capital/Startup Cost :
 Total Annual Costs (O&M) : _____
 Total Annualized Costs Requested :

There is no additional cost to applicants.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

To continue the Borrower Defense review process, the Department has hired additional personnel to review applications, refine the intake process, build the infrastructure to make the Borrower Defense claim review efficient and sustainable, and make determinations regarding Borrower Defense applications.

15. Explain the reasons for any program changes or adjustments. Generally, adjustments in burden result from re-estimating burden and/or from economic phenomenon outside of an agency's control (e.g., correcting a burden estimate or an organic increase in the size of the reporting universe). Program changes result from a deliberate action that materially changes a collection of information and generally are result of new statute or an agency action (e.g., changing a form, revising regulations, redefining the respondent universe, etc.). Burden changes should be disaggregated by type of change (i.e., adjustment, program change due to new statute, and/or program change due to agency discretion), type of collection (new, revision, extension, reinstatement with change, reinstatement without change) and include totals for changes in burden hours, responses and costs (if applicable).

Provide a descriptive narrative for the reasons of any change in addition to completing the table with the burden hour change(s) here.

	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate
Total Burden			-772,284
Total Responses			-294,480
Total Costs (if applicable)			

This request is for a revised information collection. This reflects the requirements of the regulations offered through program change.

We have amended our estimates to 3 hours per borrower to complete a borrower defense application. This is based on a previous analysis completed using a similar application form and takes into consideration all of the mandatory fields.. The change reflects the lower estimates for anticipated total responses per year than previously estimated. Also, under the current regulations, the Department will no longer require a group application nor group reconsideration application. The decrease in total burden reflects this change and the anticipated total response number.

- 16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

Data about the status of borrower defense applications is published quarterly on Studentaid.gov.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

The Department is not seeking this approval.

- 18. Explain each exception to the certification statement identified in the Certification of Paperwork Reduction Act.**

The Department is not requesting any exceptions to the "Certification for Paperwork Reduction Act Submissions."