

**SUPPORTING STATEMENT**  
**FOR PAPERWORK REDUCTION ACT SUBMISSION**  
William D. Ford Federal Direct Loan Program (DL) Regulations

- 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.**

The Department of Education (the Department) amends the William D. Ford Federal Direct Loan (Direct Loan) Program regulations issued under the Higher Education Act of 1965, as amended (HEA), to implement changes made to the regulations in §685.300 - Agreements between an eligible school and the Secretary for participation in the Direct Loan Program, add §685.402 - Group process for borrower defense and to remove prior changes to §685.304 - Counseling borrowers. These final regulations are a result of negotiated rulemaking and adds new requirements to and removes a requirement from the current regulations.

The Department reinstates prior regulations that bars institutions, as a condition of participating in the Direct Loan program, from requiring borrowers to accept pre-dispute arbitration agreements and class action waivers as they relate to borrower defense claims.

The final regulations amend §685.300(e) to prohibit institutions from relying on a pre-dispute arbitration agreement, or any other pre-dispute agreement with a student who obtained or benefitted from a Direct Loan, in any aspect of a class action related to a borrower defense claim, until the presiding court rules that the case cannot proceed as a class action.

The final regulations amend §685.300(f) to require that certain provisions relating to notices and the terms of the pre-dispute arbitration agreements be included in any agreement with a student who receives a Direct Loan to attend the school or for whom a Direct PLUS Loan was obtained.

The final regulations amend §685.300(g) and (h) to require institutions to submit certain arbitral records and judicial records connected with any borrower defense claim filed against the school to the Secretary by certain deadlines.

These final regulations remove §685.304(a)(6)(xiii) through (xv). The final regulations at §685.300 state the conditions under which disclosures would be required and provide deadlines for such disclosures removing the need for this regulatory language.

In §685.402(c)(4) of the final regulations, the Secretary will notify an institution of a third-party requestor's application requesting to form a borrower defense against repayment (BD) group. The institution will have 90 days to respond to the Secretary regarding the third-party requestor's application.

In §685.402(c)(6), if a third-party requestors' BD group request is denied by the Secretary, the third-party requestor will have 90 days from the initial decision to request reconsideration from the Secretary about the formation of a group.

This request is for a revision of the current information collection to include the new regulatory requirements with the attendant burden and the removal of some current regulatory language and its current burden.

**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 changes to §685.300(e) and (f) require that institutions develop any new agreements including the necessary notices and pre-dispute arbitration information and research which student borrowers may need to receive the new agreement. This will inform the student borrowers of their rights and requirements under any pre-dispute arbitration agreement.

The changes to §685.300(g) and (h) require institutions to provide arbitral and judicial records to the Secretary in connection with any borrower defense claim filed against the school. This allows the Department to maintain a centralized database of such records that will be accessible to the public.

The change to §685.304 removes the requirement that institutions update current entrance counseling to provide students with information about pre-dispute arbitration agreements or class action waivers, when it will apply, how to enter into the process, and who to contact with questions if the institution uses such agreements.

The changes to §685.402 creates the opportunity for institutions to request review of documents that are used to request the formation of a group BD claim against it. It also allows a third-party requestor to request that the Secretary reconsider the Secretary's denial of the creation of a group BD claim. These review and reconsideration opportunities allow for parties to have full access to documents that may impact their efforts to initiate or defend against group BD claims.

**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.**

There are no prohibitions to the use of technology in providing the required information to a borrower or providing the required records to the Secretary.

- 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.**

This information is not duplicated on any other information collection.

- 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.**

While most institutions will provide the required information via electronic means, there could be some smaller institutions that would choose to provide the agreements to students using paper documents. The use of the electronic means would mitigate the burden of these requirements.

- 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 requirements of the regulations are not made available, student borrowers will have greater difficulties understanding and utilizing any institutional pre-dispute arbitration processes regarding dispute resolution. If the requirements of the BD group claims opportunities are not made available, institutions and third-party requestors will have fewer opportunities to affect or defend against such claims. This can increase to possibility of borrowers defaulting on a Direct Loan and thus increasing the risk to the taxpayer.

If the requirements of the regulations regarding the submission of the arbitral and judicial records in connection with any borrower defense claims is not made to the Secretary, students, parents and members of the public will not have the information to make informed school choices and the Department could not make available the centralized database of this information increasing the risk to borrowers and taxpayers.

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 developed these regulations after conducting negotiated rulemaking with the affected entities and other parties. The comment period for this information collection package ran concurrently with the Notice of Proposed Rulemaking.

On July 13, 2022 a Federal Register (Vol. 87, No. 133, pages 41878-42010) was published inviting public comment on the proposed regulations as well as the burden estimates. There were no comments provided specific to the burden estimates. Due to changes in the regulations based on public comment there are new regulations that have burden attached them. These updated burden estimates are included in the Final Rule as well as in this revised Supporting Statement.

**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.<sup>1</sup> 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.**

There is no assurance of confidentiality provided to institutions for the submission of this information.

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<sup>1</sup> 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)

- 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 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.**

Section 685.300 - Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

Under §685.300(e) institutions will be prohibited from relying on a pre-dispute arbitration agreement, or any other pre-dispute agreement with a student who obtained or benefitted from a Direct Loan, in any aspect of a class action related to a borrower defense claim, until the presiding court rules that the case cannot proceed as a class action.

Under §685.300(f) of the regulations, the Department will require that certain provisions relating to notices and the terms of the pre-dispute arbitration agreements be included in any agreement with a student who receives a Direct Loan to attend the school or for whom a Direct PLUS Loan was obtained.

Under §685.300(g) and (h) of the regulations, institutions will be required to submit certain arbitral records and judicial records connected with any borrower defense claim filed against the school to the Secretary by certain deadlines.

#### Section 685.304 – Counseling Borrowers.

Under §685.304(a)(6)(xiii) through (xv), the Department removes the requirements to counsel Federal student loan borrowers prior to making the first disbursement of a Federal student loan (entrance counseling). Schools that use pre-dispute arbitration agreements and/or class action waivers will have to include in the required entrance counseling information on the school's internal dispute resolution process and who the borrower may contact regarding a dispute related to educational services for which the loan was made. Schools that require borrowers to accept a pre-dispute arbitration agreement and/or class action waiver will be required to provide information in writing to the student borrower about the plain language meaning of the agreement, when it would apply, how to enter into the process, and who to contact with questions. These requirements are being replaced by the proposed regulations in §685.300.

#### Section 685.402 – Group process for borrower defense.

Under §685.402(c), the Department may initiate a group process upon request from a third-party requestor, on the condition that the third-party requestor submits an application and provides other required information to the Department to adjudicate the claim. In §685.402(c)(4), the Secretary will notify an institution of the third-party requestor's application requesting the formation of a borrower defense group. The institution will have 90 days to respond to the Secretary regarding the third-party requestor's application. In §685.402(c)(6), if a third-party requestor's group request is denied by the Secretary, the third-party requestor will have 90 days from the initial decision to request reconsideration of the group formation from the Secretary.

#### AFFECTED ENTITIES AND BURDEN:

We believe for §685.300(e) and (f) there would be burden on any school that meets the conditions for supplying students with the changes to any agreements. Based on the Academic Year 2020-2021 Direct Loan information available, there were 1,026,437 Unsubsidized Direct Loan recipients at 1,587 for-profit institutions. Assuming 66 percent of these students will continue to be enrolled at the time these regulations become effective, about 677,448 students will be required to receive the agreements or notices required in § 685.300(e) or (f). We anticipate that it will take 1,587 for-profit

institutions .17 hours (10 minutes) per student to develop these agreements or notices, research who is required to receive them, and forward the information accordingly for 115,166 burden hours (677,448 students X .17 hours).

We believe that §685.300(g) and (h) such a request will require burden on any school that meets the conditions for supplying the records to the Secretary. We continue to estimate that 5 percent of 1,587 for-profit institutions or an estimated 79 for-profit institutions would be required to submit documentation to the Secretary to comply with the proposed regulations. We anticipate that each of the 79 schools will have an average of four filings thus there will be an average of four submissions for each filing. Because these are copies of documents required to be submitted to other parties, we anticipate 5 burden hours to produce the copies and submit to the Secretary for an increase in burden of 6,320 hours (79 institutions × 4 filings × 4 submissions/filing × 5 hours).

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
Proprietary Institutions	1,587	677,448	.17 hrs.	115,116
Proprietary Institutions	79*	1,264	5 hrs.	6,320
	1,587	678,712		121,486

\*The proposed institutional respondent count is not added together to avoid over counting the affected entities.

We believe that with the removal of §685.304(a)(xiii) through (xv) there would be an elimination of previously calculated burden on the schools to create any school specific pre-dispute arbitration agreement and/or class action waivers and provide that information in addition to complying with the current entrance counseling requirements. We estimate this action would remove the currently calculated 2,832 hours (944 x 3 hours).

Additionally with the removal of §685.304(a)(xiii) through (xv) there would be an elimination of the previously calculated burden for borrowers to review the information when completing the required entrance counseling. We estimate this action will remove a total of 27,393 hours of burden (342,407 borrowers time .08 (5 minutes) = 27,393 hours).

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
Individuals	-342,407	-342,407	x .08 hours	-27,393
Proprietary Institutions	-944*	-944	x 3 hours	-2,832
	-342,407	-343,351		-30,225

\*The institutional respondent count is not added together to avoid over counting the affected entities.



We believe §685.402(c) will require burden on the institutions who are included in a proposed group claim. From 2015-2021 the Department received 11 group claims against institutions from 29 States Attorneys General regarding borrower defense claims. With the new regulations, the Department anticipates an increase group claim filings by third-party requestors. We estimate that 25 such third-party requestor group claims annually. Of that figure, we anticipate that 5 of the group claims will not meet the materially complete requirements. We anticipate that 5 of the estimated 25 third-party requestors filings for consideration of group claims will not be approved by the Secretary.

For the 20 group claims that initially meet the materially complete requirement for which Secretary provides notice to the institutions, we believe that the 20 notified institutions will utilize the 90-day timeframe to respond to the group claim. We estimate that the 20 institutions will require an average of 378 hours per notice to review and respond to the proposed group claim for a total of 7,560 burden hours (20 institutions x 378 hours/notice = 7,560).

Of the 5 denials, we anticipate that 4 of the third-party requestors will request reconsideration from the Secretary within the 90-day timeframe of the regulations. We estimate that the 4 third-party requestors will require an average of 378 hours per request for reconsideration for a total of 1,512 burden hours (4 third-party requestor x 378 hours/reconsideration request = 1,512).

Affected Entity	# of Respondents	# of Responses	Hrs/Response	Total Burden
Proprietary Institutions	18*	18	x 378 hours	6,804
Private Institutions	2*	2	X 378 hours	756
Private Entities	2	2	x 378 hours	756
Public Entities	2	2	x 378 hours	756
	4	24		9,072

\*The institutional respondent count is not added together to avoid over counting the affected entities.

#### **Total of Proposed Burden:**

# of Respondents	# of Responses	Total Burden
-343,648	335,385	100,333

#### **Current Burden:**

# of Respondents	# of Responses	Total Burden
7,849,537	9,042,140	739,746

#### **Proposed Revised Burden for Information Collection**

# of Respondents	# of Responses	Total Burden
7,505,885	9,377,525	840,079

We estimate the cost to respondents for the changes to \$685.300, based on \$46.59 for institutions per burden hour to be \$5,660,033 (121,486 x \$46.59).

We also remove the previously estimated costs of \$572,275.02 for \$685.304 based on \$16.30 for individuals, \$44.41 for institutions per burden hour:

Proprietary Institutions = \$ -125,769.12(2,832 x \$44.41)  
Individuals = \$ -446,505.90(27,393 x \$16.30)

We estimate the cost to respondents for the changes to \$685.402, based on \$46.57 per institution/entity per burden hour to be \$422,664.48 (9,072 x \$46.59).

For individuals, we have used the median hourly wage for all occupations, \$22.00 per hour according to BLS. [https://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/current/oes_nat.htm#00-0000).

For institutions, lenders, and guaranty agencies we have used the median hourly wage for Education Administrators, Postsecondary, \$46.59 per hour according to BLS. <https://www.bls.gov/oes/current/oes119033.htm>.

In the Final Rule published in the Federal Register on November 1, 2022 (Vol.87, No. 210, pages 65904-66073), an error was made in relation to the total burden hours for this information collection based on the changes in this regulatory package. The total revised burden for the collection was misreported as 851,009 when the correct total is 840,079. A correction notice will be published in the Federal Register correcting that error.

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	7,500,838	7,500,838	See above	586,593	\$22.00	\$ 12,905,046.00
For-Profit Institutions	1,587	1,201,551	See above	166,906	\$46.59	\$ 7,809,531.74
Private Institutions	1,660	337,784	See above	46,709	\$46.59	\$ 2,185,514.11
Public Institutions	1,804	337,352	See above	39,871	\$46.59	\$ 1,865,564.09
Annualized Totals	7,505,885	9,377,525		840,079		\$ 24,765,655.94

***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 are no start-up costs related to this proposed regulation.

**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.**

There are no additional costs to the Federal government from these proposed regulations.

- 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.**

	<b>Program Change Due to New Statute</b>	<b>Program Change Due to Agency Discretion</b>	<b>Change Due to Adjustment in Agency Estimate</b>
<b>Total Burden</b>		100,333	
<b>Total Responses</b>		335, 385	
<b>Total Costs (if applicable)</b>			

This request is for a revision of the currently approved information collection. These changes are due to the final regulations offered through program change. The increase in burden to this information collection is 100,333 hours for 335,385 responses including the removal of 30,225 hours due to the deletion of the previous regulatory requirements.

- 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.**

The information in the final rule will not be published by the Department.

- 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” of OMB Form 83-I.