



April 3, 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)

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed Borrower Defense to Repayment Application form under review. Veterans Education Success works on a bipartisan basis to advance higher education success for veterans, service members, and military families, and to protect the integrity and promise of the GI Bill and other federal postsecondary education programs. Last year, over 750 military-connected students contacted our organization for assistance. Many had federal student loan debt, and many had attended schools that defrauded them or made misrepresentations to them. Thus, we regularly advise students about the Borrower Defense to Repayment application process.

We appreciate many of the changes that have been made between the current application and the proposed application. These changes make a lot of the questions clearer for the borrower and have shortened the overall length of the application. We think, however, that some of the questions and instructions may still be confusing to borrowers, and the online application tool itself, in the past, has not been user-friendly. Enclosed are our recommendations for streamlining the questions and for improving the online application process.

A. Recommendations for streamlining questions and clarifying instructions

We understand that there is a need to collect detailed information from borrowers so that their claims can be assessed appropriately. The Borrower Defense to Repayment application can look intimidating to borrowers and, if too long or confusing, could discourage borrowers from completing the form. We write with a few suggestions that may make the application process easier for borrowers with legitimate claims.

1. Section 3 should include instructions on how to complete the section adequately

Since Section 3 contains 10 subsections, each of which contains several questions, the Borrower Defense form should explain to borrowers that some subsections may not apply to them, so they do not need to respond to all subsections in order to make a valid claim. Many borrowers do not have content to share that is responsive to each subsection. The form should provide specific instructions that borrowers do not need to respond to every subsection, but indicate which questions within each subsection must be answered in order to sufficiently complete the subsection. We recommend numbering these subsections so that borrowers can more easily tell them apart and move between them.

2. The form should either consolidate the questions about harm or explain how the questions differ from each other

The form requests information about harm in two different places on the application. At the end of most of the subsections in Section 3, the students are asked, “How has the information provided caused you harm?” Later, Section 5 asks, “What harm did you experience...?,” “How did the school’s statements, acts, or omissions cause you this harm?,” and “How has your life been impacted by this harm?” It is not immediately apparent why these similar questions are both necessary. It can be confusing when completing the form. We recommend including information or directions that explain to borrowers how these questions are different or what different or additional information is being captured in Section 3 versus Section 5. Section 5 might seem very repetitive to a borrower filling out this form after just answering a similar question in every subsection of Section 3.

On a technical note, there is currently no section 4 on the draft form. Section 5: Harm should be relabeled as Section 4, and likewise for all succeeding sections.

3. The draft form needs to more clearly invite borrowers to include information about omissions in Section 3

We urge the Department to rewrite the questions in Section 3 to include omissions more clearly or to provide a separate optional question specifically about omissions within each subsection of Section 3. The proposed application form makes it clear in the directions and in the initial question of each subsection of Section 3 that omissions are grounds for Borrower Defense to Repayment. However, the questions that follow each initial question do not always adequately include omissions. For example, the question, “What exactly did the school say, write, or represent to you? What did you understand the statement to mean?” does not make it easy for borrowers to understand they could also be discussing things the school did NOT say, write, or represent – but instead omitted. The next questions mention being given, told, or provided information or having it communicated to the borrower. Omissions – by definition – are not communicated to the borrower, so borrowers may have a hard time adequately answering those

questions, and the Department may miss out on learning critical information for making a determination on the borrowers' claims.

4. The questions in Section 3 should be reordered for clarity

We recommend reorganizing the questions within each subsection of Section 3 as such: First, "How was the information communicated to you?"; second, "When and where were you told this information?"; and third, "Who gave you this information?" Reorganizing the questions in this sequence could help borrowers answer the questions in full without getting stuck on an early question, since some borrowers will have learned the information from marketing materials rather than any individual. The Department could also include additional explanatory information for the question, "Who gave you this information?," such as, "If no individual told you this, please write 'Not applicable'." We think that the examples provided in parentheses for other questions throughout Section 3 are very useful in providing clarity to borrowers, and this is one particular area where more clarity can be provided.

5. The form could more accurately reflect regulations when asking why misrepresentations were important to students

Finally, we think that the question in each subsection of Section 3, "Why was the information provided to you important to you when you enrolled?," should better reflect 34 CFR § 685.403(b)(1)(i)(D), which states that borrowers should report "how the act or omission impacted their decision to attend, to continue attending, or to take out the loan for which they are asserting a defense to repayment." The question as written only gets to the decision to attend, and it omits decisions to remain enrolled or to take out loans. This question as written could erroneously make some borrowers think that they do not have anything relevant to say in response if, for example, their issues pertain to misrepresentations made after they enrolled and they would have left if not for these misrepresentations.

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

We would also like to share some ongoing concerns from borrowers about the online application experience. 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.

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.

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.

C. Conclusion

Thank you for the opportunity to provide comment 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,

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