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Submitted electronically.

US Department of Education
Office of Panning, Evaluation and Policy
Attn: Brian Fu

Re: Information collection request: Borrower Defense to Repayment Universal
Forms; Dkt. No. ED-2025-SCC-0002

Dear Mr. Fu:

This firm represents numerous institutions of higher education that participate in Federal Direct Loan programs. On behalf of those institutions, we submit the following response to the Department's comment request published in Vol. 90 of the Federal Register, p. 21296 – 21297.

The Department's request solicits feed back on five questions, which we address below.

1. Is this Collection necessary to the proper functions of the Department?

- a. The Department's recent methods for the processing Borrower Defense ("BD") claims have led to enormous and unsustainable burdens on both the Department and its partner institutions. To avoid such problems in the future, the Department must have the capability and the will to initially screen every incoming BD claim for legal sufficiency and a modicum of evidentiary support prior to engaging in any fact gathering or submission to the institution for a response. Over the last several years there has been an explosion of BD claims provided to institutions during the fact gathering phase that are obviously deficient on their face. It has become common place for the Department to pass on BD claims to schools that lack validity, merit, substance, or supporting documentation. Such applications for BD should be quickly administratively closed before involving institutions in the burdensome and costly exercise of responding or rebutting them.

- b. Borrower Defense to Repayment was designed for students who are victims of substantial misrepresentation claims. These are rare events in higher education, however, in the recent past this process has been abused by individuals who are looking for a way to avoid their obligations to the loan programs and by policy makers that wanted to use Borrower Defense as a back door to mass loan forgiveness, or as a weapon to target institutions that have fallen out of favor with the Department for closure. The process of adjudicating BD claims must be re-evaluated to prevent these abuses from happening again.
 - i. The Department should adopt a first-level screening to determine whether the BD claim states a legally sufficient claim and contains prima facie evidence to support any such claim or claims. Applications that do not state a valid claim for BD, are incomplete or lack sufficient evidentiary support should be rejected.
 - ii. The first-level review should also confirm whether the borrower has taken out loans to attend the institution referenced in the BD application, or if the borrower submitted multiple identical forms against multiple institutions.
 - iii. The Department can leverage information it possesses for this purpose. Further, based on information the Department collects in connection via GE/FVT transparency framework should also be used to vet BD claims. In the future the Department should be able to verify claims made by borrowers citing unemployment or income disparities or the inability to make loan payments.

2. Will this information be processed and used in a timely manner?

- a. History indicates that the Department will not be able to timely process BD claims without substantial investments in additional personnel and technology, and in the absence of a reasonable process to vet submissions of BD claims. Previously BD claims stayed in the Department for several years before they were submitted to institutions in the fact gathering process.
- b. The administrative bottleneck in many cases caused a multitude of BD claims to be sent to institutions with a short response window of 60 days. The result was to create an emergency at many institutions as resources and staff had to be reallocated to quickly review and respond to the multitudinous submissions.



3. Is the estimate of burden accurate?

- a. The estimates of the burden involved appear unrealistic and inaccurate based on past practices. The ICR estimates the private sector burden of responding to BDR applications will require 10 hours annually, based on 30 minutes of response time and 10 applications. See 90 Fed. Reg. at p. 21296. The estimate of 30 minutes of response time to respond to an application is wildly inaccurate based on the experience of the institutions this firm represents. If institutions are required to respond to BD applications are incomplete, incoherent, reference periods of enrollment several years or decades in the past, and lacking any corroborating evidence provided by the borrower, the time required to process BD claims will certainly exceed the Department's estimate by ten to twentyfold. Additionally, because the BD process historically has not led to any negative consequences for borrowers who submit false or insufficient claims, borrowers have been incentivized to submit insufficient claims which creates a high volume of BD claims for the Department and institutions to process. For this reason, many institutions are likely to receive more than 10 applications annually.
- b. Because the Department has not applied a statute of limitations to BD claims when processing them, institutions had to search for evidence to rebut BD claims in archived data from legacy systems no longer in use. Institutions have frequently had to respond to claims that relate back 15 years or more. Such challenges prolong the time necessary to respond.

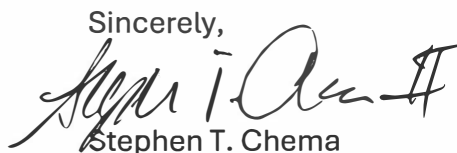
4. How might the Department enhance the quality, utility and clarity of the information to be collected?

- a. The Department should not utilize the BD process as a way for students to avoid paying their student loan debt by exploiting automatic forbearances while also hoping to be part of a mass loan forgiveness. The Department should communicate that the BD process is an individualized process that requires substantial evidence of wrongdoing. The Department should also clarify that BD is not intended to accomplish broad-based loan forgiveness.
- b. The Department should provide institutions with a reasonable timeframe to respond to BD applications and should provide technical support in the event there are issues with transmission of BD applications to institutions.
- c. As indicated above, the Department should undertake a first-level review to dispose of BD claims that are obviously meritless.



- d. The Department's application should only be available as a web form that requires all fields to be filled out prior to submission completion.
 - i. When a student checks a box of alleging some category of misconduct, the fields seeking important factual background, i.e., who, what, when, where must be completed.
- 5. How might the Department minimize the burden of this collection on the respondents, including through the use of information technology?**
- a. See responses to items 1. – 4. above.
 - b. The Department should consider analyzing BD applications to detect BD applications with identical verbiage throughout the form. This is an indication that the BD applications were submitted by a 3rd party and not the actual borrower.
 - c. Require every borrower submit a copy of their transcript from the institution at which they alleged the misconduct occurred. This would ensure the student attended the institution in the program and period enrollment corresponding to the loans the borrower is seeking to discharge. This piece of evidence could be used by the Department during the first-level review. For example, if the borrower states they did not get a job in their field of study, a transcript might show the student never successfully completed the program.
 - d. The Department should provide accountability during the adjudication process by identifying the personnel that conducted the review and adjudication of the BD claim.
 - e. Borrowers should provide evidence that they attempted to address the issue via the institution's procedures for resolving grievances before submitting a BD claim.

Thank you for your consideration of the comments above.

Sincerely,

Stephen T. Chema

