Comments from the Legal Aid Community to the Department of Education re:

Proposed 2020 Universal Borrower Defense to Loan Repayment (BD) Form Listing of Elements

Docket ID ED-2020-SCC-0043
(85 Fed. Reg. 12777 (March 4, 2020))

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Comments submitted on behalf of:

East Bay Community Law Center

Housing and Economic Rights Advocates

Legal Aid Foundation of Los Angeles

National Consumer Law Center (on behalf of its low-income clients)

Project on Predatory Student Lending of the Legal Services Center of Harvard Law School

Public Counsel

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Introduction

As organizations that represent low-income student loan borrowers, we thank you for the opportunity to comment on the Department of Education's proposed listing of elements for the borrower defense to loan repayment (BD) form.

Our organizations assist low-income student loan borrowers who have experienced first-hand the financial and emotional harm caused by unscrupulous schools that violate federal regulations, state consumer protection laws, or otherwise misrepresent their services in order to lure students for profit. Our comments are grounded in our experience working directly with low-income borrowers applying for borrower defense and other federal student loan discharges, and are intended to help ensure that the proposed BD form is clear, accessible, and fair to all potentially eligible borrowers. As the proposed list of elements for a universal borrower defense form, it is crucial for the Department to consider the most expansive interpretation of borrower defense eligibility according to the varying standards so that no borrower who may be eligible for relief is excluded or discouraged from applying.

Below, we provide comments first on specific aspects of the proposed listing of elements for the BD form, and then make general recommendations to improve the accessibility of the form for student loan borrowers.

I. Comments on Specific Aspects of the Proposed Listing of Elements for the BD Form

A. Instructions Section

The proposed BD listing of elements has revised the "Instructions" section with language that is likely to mislead and confuse borrowers on the BD eligibility requirements and may discourage borrowers from applying. The proposed language indicates that the first page of the proposed BD form will be a list of types of conduct that do **not** qualify for BD relief. We recommend the Department not use this list, but instead continue to use the shorter and simpler instruction language from the current Universal BD Form 1845-0146 ("current BD form"), which states "If your school misled you or engaged in other misconduct, you may be eligible for 'borrower defense to repayment,' which is the forgiveness of some or all of your federal student loan debt."

In addition, we recommend that Department put forth what conduct may qualify for a borrower defense to repayment **rather than, or at minimum before,** listing what conduct does not qualify for relief. By introducing the BD form with a bullet list of conduct that does not qualify, the Department would essentially shift the burden of evaluating whether facts described in an application meet complex regulatory requirements to unsophisticated borrowers who are not trained in the law. It has provided no justification for doing so and other discharge forms do not begin this way. If this bullet list is used, borrowers would feel compelled to make this legal evaluation on their own and it would discourage many who should be eligible from applying for BD relief.

Further, specific items on the list are misleading and confusing. First, some of the suggested types of conduct are misleading because they are narrowly stated in a way that could mislead a borrower, who is not well-versed in understanding legalese or terms like "directly and clearly relate to." For example, it is misleading to state that "[c]onduct that does not directly and clearly relate to the educational services your school provided" or "conduct that does not directly and clearly relate to enrollment or

continuing enrollment" … "**cannot** lead to a borrower defense discharge." Borrowers might read this to exclude misrepresentations regarding financial aid that are often material to a student's decision to enroll or continue enrollment, even though such misrepresentations can be a basis for borrower defense discharge.

In addition, other listed exclusions could be a valid basis for a borrower defense claim. For example, "[a] violation of the legal requirements a school is bound to follow under its agreement with the U.S. Department of Education" may serve as a legitimate ground for a borrower defense claim, depending on the facts. In California, for example, such a violation may constitute a violation of Cal. Bus. & Prof. Code section 17200. At a minimum, such a claim would be eligible for BD relief under the regulation applicable to loans made prior to July 1, 2017.[1]

Finally, two of the proposed types of conduct could serve as the basis for a borrower defense claim for borrowers with Direct Loans made prior to July 1, 2020. Depending on the level of misconduct, conduct relating to the quality of education or the reasonableness of faculty could rise to the level of a breach of contract, could be the basis for a state law cause of action, or could be the basis of a material misrepresentation that a student relied upon in deciding to enroll. Only the regulations in effect on or after July 1, 2020 explicitly exclude these two grounds for relief.[2]

For example, a school may promise that it will provide faculty who are experts in their field and up-to-date on the most recent technical developments in a given field, but then provide faculty who do not have any expertise, do not know how to use the most up-to-date equipment necessary for employment (for example, the use of technical equipment), provide answers to exams before students take the exams, read straight from a book for class instruction, or come to class but provide no instruction. This alone, or combined with other facts, may constitute the basis for a breach of contract, a violation of a state statute, or a misrepresentation that could be the basis for a valid BD claim. Similarly, conduct "relating to academic disputes and disciplinary matters" could also be the basis for a breach of contract. For example, we have represented students whose schools terminated their enrollment, locked them out the school computer networks, or made it impossible for them to complete a required externship in retaliation for complaining about misrepresentations, absent faculty, failure to provide books, equipment or externships, or other problems. We have also seen teachers retaliate against students who complain about them by failing them when in fact the students passed their classes. Such conduct may constitute the basis for a breach of contract, a violation of a state statute, or a misrepresentation that could be the basis for a valid BD claim.

Should the Department choose to keep a list of conduct that does not qualify for BD relief, we recommend that it substantially narrow down the list according to our suggestions and move the list to a supplemental instruction section that comes after the borrower's signature line.

B. Section 2: School Information

The proposed BD form listing of elements asks borrowers for the "Current Enrollment Status at school listed above" and "Are you still enrolled at this school." It is redundant to ask both these questions. We recommend that the Departments maintain the language in the current BD form,

[1] 34 C.F.R. § 685.206(c)(1) ("the borrower may assert a borrower defense" based on "any act or omission . . . that relates to the making of the loan for enrollment at the school or the provision of educational services . . .."
[2] 34 C.F.R. § 685.206(e)(5)(2).

which asks for the "current enrollment status at school listed above" and provides check boxes of responses: withdrawn, graduated, transferred out, or attending.

C. Section 4 – Basis for Borrower Defense

i. *Comments Applicable to All Subsections Under Section 4: Basis for Borrower Defense*

a. Examples of School Misconduct

We strongly support the Department's decision to provide examples of qualifying misrepresentation or misconduct as boxed options while also providing an "other" option to provide further information so that applicants need only select all that apply and can add other details if applicable.

b. School Communication Method

We also support the Department's proposal to provide examples of communication methods so that borrowers can select all that apply. For clarity, we recommend that the Department specify that "online" communication includes email and website statements.

c. Requests for Evidence

Each subsection asks: "Please describe your communication with the school below. Please describe in detail what the school told you, or failed to tell you, and why you believe it was misleading. Additionally, please attach any emails or other communications regarding the misleading behavior and any other documents that may support your claim." While we support this question, we are concerned that repeating the list of potentially relevant documents in each subsection makes the form too long. In order to streamline the form, we suggest putting this request for documentation re. the school's communication at the beginning of the application with a general recommendation that the borrower should submit relevant documents that support the BD claim. However, to the extent a borrower is submitting the application form online, we recommend that the Department provide this request for documentation re. the school's communication with every question, to the extent possible.

Further, the request for "documents" in each subsection could lead borrowers to think they must have access to documents to receive relief, even though their own testimony may be sufficient and, in our experience, is all most will have access to. We therefore recommend that the Department add a statement that borrowers may still be eligible for relief even if no supporting documentation is included.

Additionally, some borrowers may know of former classmates or others who can provide corroborating testimony, but a question about this is not included in the list of potentially supporting evidence. Such evidence is important and relevant and can aid in Department investigation and evaluation of BD applications. Thus, we recommend that the Department add a question asking students to list the names of borrowers, faculty, school staff, or others that may have relevant information.

d. Financial Effect

On all subsections, the proposed BD asks: "How were you financially affected by the misleading information or lack of information relating to _____. Please include any difficulties you have had getting a job in your field of study as a result of your school's misrepresentations regarding _____."

This method of eliciting information regarding financial harm is far too narrow. While the Department has amended the regulation to limit what constitutes financial harm for loans disbursed on or after July 1, 2020, for loans disbursed prior to that date financial harm can include, for example, the taking out of student loans and grants, giving up jobs to attend school full-time, loss of income or opportunities, additional schooling/training/materials borrower needed to pay for outside of the school, paying more for the program than they would have otherwise, or earning less than they believed or were told that they would, etc.. We therefore suggest that either the Department generally ask the borrower to describe how he/she was financially harmed or provide a more extensive checklist (including "other") and a request for further description. More examples should be provided to establish a fuller picture of the financial harm that a borrower could suffer as a result of the school's misconduct.

We also recommend that the financial harm question be removed from each subsection and inserted as a separate section after Section 4. The financial harm cannot be always be traced to one misrepresentation. For example, if a student enrolls based in part of promises of credit transferability, but then does not enroll in another college because it will not accept transfer of the credits, what is the financial harm exactly? This should include post-graduate earnings lower than promised if the student cannot get the type of job for which she trained without further education. In this case, this misrepresentation combined with others leads to financial harm.

e. Reliance on Misrepresentation

The question "did you rely on the ____ when you chose to enroll in your school" should refer to all the conduct by the school as it does in the current BD application. For example, in the "Employment Prospects" subsection, the proposed BD form asks, "Did you rely upon the promises of employment you described above when you chose to enroll in your school?" This wording limits the reliance to only one type of statement and is too limiting in the context of the subsection that includes misrepresentations relating to employment including but NOT limited to "promises of employment". A borrower might accurately answer no to this despite having relied on misrepresentations regarding likely earnings, eligibility for certification or licensure, or other misrepresentation types addressed in the "Employment Prospects" subsection.

We encourage the Department instead to keep the language in the current BD form, which asks "Did you choose to enroll, remain enrolled, or take out loans based in part on the issues described above" and provides a checkbox responses of "Yes" and "No" for an applicant to mark their response.

ii. *Employment Prospects Subsection:*

We recommend that the Department add the following to ensure these type of common misrepresentations are included as a basis for BD relief:

- The school misrepresented or implied that the school was accredited when it was not.
- The school misrepresented or implied that my program had the accreditation necessary to qualify graduates for licensure or certification when it did not.
- The school failed to tell me that my programs did not have the accreditation necessary to qualify graduates for certification or licensure.

iii. *Program Cost and Nature of Loan Subsection:*

We recommend that Department add the following bases for a BD claim to the checklist:

- My school told me I would have no problem repaying my loans after I graduated.
- My school told me that I would have low monthly payments on my loan after I graduated.
- My school told me that I would not have to repay my loans until I found a job.

iv. *Educational Services Subsection:*

We recommend that the Department add the following bases for a BD claim to the checklist:

- My school misrepresented the quality, number, or availability of materials or equipment that would be provided for my program.
- My school misrepresented the student to teacher ratio or classroom size.
- My school misrepresented the skills or instructions that I would receive from my program.

v. *Urgency to Enroll Subsection:*

The listed bases for a BD claim in this subsection are worded in a confusing manner. We recommend the Department revise this part:

- My school misrepresented that I had to enroll right away or that I would lose my spot in the program.
- My school misrepresented that there were limited spots in the program.
- My school misrepresented when new enrollments could be accepted into the program.
- My school pressured me to enroll by other means. Please explain.

vi. *Admissions Selectivity Subsection:*

This section could be broadened significantly to address the common abuses among predatory schools. We recommend the Department add the following bases for a BD claim to the checklist:

- My school misrepresented the reputation of the school or of a program offered by the school.

vii. *Representations to Third Parties Subsection:*

While a school's misrepresentations to third parties may form a basis for a borrower defense claim, it is unclear how an individual pro se applicant would be aware if the school made misrepresentations to third parties such as an accreditor or a ranking organization. We urge the Department not only to seek this information from individual BD applicants, but also to affirmatively review accreditation reports and other relevant documentations or findings within its control that would evidence such misrepresentations to third parties.

viii. *Judgment Subsection:*

Under the proposed subsection titled "Judgment," it states that the section only applies to borrowers who received a Direct Loan, including a Direct Consolidation Loan, on or after July 1, 2017 and prior to July 1, 2020. This information sought, however, is also relevant to loans made prior to July 1, 2017. If a borrower obtained a contested judgment against a school for violations of state law, then this may be evidence the borrower should include with his/her application. While the Department may choose to make a decision different from the court, a court's determination and findings should be evidence considered by the Department. We therefore suggest removing the beginning "Note."

The proposed revision further asks, "Do you have a judgment against your school in a Federal Court, a State Court, or Administrative Board?" The regulation applicable to loans made on or after July 1, 2017 and before July 1, 2020 has broader eligibility criteria based on judgments. It states that "The borrower has a borrower defense if the borrower, whether as an individual or as a member of a class, or a governmental agency, has obtained against the school a nondefault, favorable contested judgment based on State or Federal law in a court or administrative tribunal of competent jurisdiction."[3] Contrary to this regulation, however, this proposed subsection suggests that the borrower had to individually obtain the judgment against the school, which improperly limits the eligibility scope for borrowers with Direct Loans made during that period. To better align with the regulatory language and ensure that the proposed BD listing of elements can effectively be used as a universal form, we recommend that the question be revised to state: "Did you, as an individual or member of a class, or did a government agency obtain a favorable judgment against your school in a Federal Court, a State Court, or Administrative Board?"

ix. *Other Subsection:*

This subsection asks "Did your school mislead you, or fail to tell you, important information other than what you have already alleged in this application? It then asks "Were these promises a key part of the reason you chose to enroll in your school?"

[3] 34 C.F.R. § 685.222(b).

The proposed language is unduly limiting by requiring that the school's misconduct be a "key part" of the borrower's decision to enroll. We recommend that the Department keep the language in the current BD form, which asks "Did you choose to enroll in your school based in part on the issues you describe above?" and provides a checkbox responses of "Yes" and "No" for an applicant to mark their response.

D. Section 5: Financial Harm

The Department's list of possible examples of financial harm may be found at 34 C.F.R. § 685.206(e)(4)(i) through (iv). In the September 23, 2019 Fed. Reg, the Department noted that "[c]ommenters suggested that the Department provide clear information, such as a checklist of possible examples of financial harm from those identified in the proposed rule, and ask borrowers to check all that apply, explaining the meaning of items in the list, and allowing borrowers to describe other examples of financial harm they have experienced."[4] We reiterate that comment and recommend the Department include a list of what counts as "financial harm," as the proposed list of elements only identifies what doesn't count.

Further, this section states that it "*only applies to borrowers who receive a Direct Loan, including a Direct Consolidation Loan, on or after July 1, 2020."* While this language does comply with the final borrower defense regulations published in September 2019, we understand that the Department is currently requiring a financial harm showing in order for all borrower defense claimants to qualify for full relief. We believe all borrowers with meritorious claims should receive full relief. If, however, the Department is going to continue its practice to require all borrower defense applicants to show specific types of financial harm in order to obtain full relief, it must reasonably put claimants on notice and provide them an opportunity to show financial harm. For this reason, we recommend that the Department broaden this section to ask for information regarding all types of financial harm, as we state above, including through using a more extensive checklist with an "other" category and request for a description.

This section also asks, "Have you been terminated or removed for performance reasons from a position which was in your field of study or a related field?" If the Department is seeking to determine whether a borrower was terminated or removed for performance reasons <u>unrelated</u> to the school's misrepresentations or breach of contract, we ask that the Department clarify the term "performance reasons" in this question such as removal or termination for misconduct such as drug use, failure to report on-time, excessive absences, etc.. The school's misrepresentations or breach of contract, for example failing to provide training in the skills or on the equipment necessary for maintaining employment, may be the cause of a borrower's performance issues and it should be made clear that the "performance issues" referred to in this question are not related to the school's misrepresentation.

E. Section 6: Forbearance/Stopped Collections

We strongly oppose the proposed BD language that states that interest may be capitalized if the borrower defense application is denied or partially approved. Nowhere in the final borrower defense regulations is the Secretary permitted to capitalize interest for a borrower defense claim that is partially approved. While the Department noted that it *may* capitalize interest if a borrower

[4] 84 Fed. Reg. 49788, 49818 (Sept. 23, 2019).

defense claim is "not successful," [5] it defies logic to interpret a partial discharge as a claim that is "not successful." We strongly urge the Department to remove this statement and end any such policy of capitalization for borrowers who receive partial relief, lest defrauded borrowers with approved claims end up owing ***more*** as a result of filing a borrower defense application and being subjected to interest capitalization.

Additionally, as the Department has done in the current BD form, we encourage the Department to include a link for an FAQ regarding the consequences of forbearance and stopped collections so that a borrower may seek further information before deciding which option is best for his/her situation.

F. Section 7: Certifications

Under the certification section, we propose that the revision be revised as follows (suggested language in italics): "I understand that any rights and obligations with regard to borrower defense to repayment are subject to the provisions ~~currently in effect~~ under Title 34 of the CFR *that are applicable to my Direct Loans*."

The proposed BD form includes a certification that "I understand that in the event that I receive a 100 percent discharge of my loan balance for which the defense to repayment application has been submitted, the institution may, if not prohibited by other applicable law, refuse to verify or to provide an official transcript that verifies my completion of credits or a credential associated with the discharged loan." We reiterate the concerns raised in our prior comments to the proposed borrower defense regulations regarding transcript withholding, and firmly recommend that the Department remove this statement as it may dissuade eligible borrowers from seeking relief. The Department has cited no authority for its assertion that schools may withhold such documentation. To the contrary, the legal precedent indicates that while schools may have a basis for withholding official transcripts if the student owes the school an unpaid debt, including a defaulted Perkins Loan or an unpaid fee or tuition debt,[6] schools may not withhold transcripts if the student does not owe a debt, including if a loan debt has been discharged.[7] For example, the Seventh Circuit concluded that a student who did not owe an enforceable debt to a school had a right to receive an official copy of her transcript.[8]

Moreover, there is no evidence that schools do in fact withhold transcripts on the basis of a loan discharged as a result of a borrower defense, even if they legally could. And in our experience,

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[5] 84 Fed. Reg. 49788, 49815 (Sept. 23, 2019).

[6] *See, e.g.*, *Ball State Univ. v. Irons*, 27 N.E.3d 717, 721 (Ind. 2015) (recognizing that school has a common law lien over transcript based on student's tuition debt and "may not be compelled to release the transcript absent payment of the unpaid tuition balance"); *Song v. Regents of Univ. of Minnesota*, No. CIV. 11-427 ADM/TNL, 2011 WL 5835087 (D. Minn. Nov. 21, 2011) (finding student unlikely to prevail on merits of claim for transcript where school declined to release transcript until student paid back funds received that she was not entitled to due to her suspension of enrollment); *see also* U.S. Dep't of Educ., Fed. Student Aid Dear Colleague Letter CB-98-13 (Sep. 1, 1998) (noting that the Department encourages institutions to withhold transcripts for defaulted Perkins Loans to encourage repayment).

[7] *In re Kuehn*, 563 F.3d 289, 294 (7th Cir. 2009).

[8] *Id.* (finding that school had no enforceable right to recover against student whose debt was discharged in bankruptcy and therefore could not withhold her transcript, and concluding "Giving weight to custom that amounts to an implicit term of the educational contract, and following the reasoning in *Hirsch*, we conclude that Kuehn has a state-law right to receive a certified copy of her transcript).

this is extremely unlikely. This language thus seems likely to primarily serve as a baseless threat that will unnecessarily deter defrauded borrowers from applying for much-needed relief.

The proposed BD form list of elements also includes a certification stating, "I agree to allow the institution that is the subject to this defense to repayment application to provide the Department with items from my student educational record relevant to this defense to repayment application." Pursuant to the regulatory language, we recommend that the Department include a notice that should the Department receive any documentation from the school, it will provide the borrower a copy of the school's submission as well as any evidence otherwise in possession of the Secretary, which was provided to the school.[9]

II. Other Recommendations to Improve Accessibility for All Claimants

A. The Department should streamline the BD form and minimize the page count.

Compared to the current Universal BD Form 1845-0146, which is 8 pages long, the proposed 2020 Universal BD Form Listing of Elements has increased to 19 pages. While we understand that the final form may have a different page count than the draft listing of elements, it appears clear that the Department is proposing language that will create a significantly longer form. The current BD form is already much more extensive than other federal loan discharge applications (i.e., False Certification (ATB) Loan Discharge Application is 5 pages, Closed School Loan Discharge Application is 5 pages). Based on our experience working with borrowers who have attended predatory schools, we believe that the expanded length of the revised BD form will strongly discourage borrowers from applying for relief to which they are entitled. A lengthier BD form will also likely impose a heavy burden on the Department staff reviewing the BD applications, resulting in longer delays in processing applications and a greater risk of financial harm for borrowers awaiting their application review. We urge the Department to reduce redundant requests for information and to streamline the application where possible to minimize the page count.

B. Where possible, provide boxed options for borrowers to check their response(s).

To the extent possible, the proposed BD form should provide responses that borrowers can check if applicable. This will help ensure that borrowers can more quickly and efficiently complete the BD form and will expedite the Department's review of the application.

C. The revised form should be made available to complete and submit online and through mobile devices.

For the low-income clients that we serve, borrowers often do not have access to a computer or a printer and rely on a mobile device for their only connection to the Internet. Therefore, the Department should ensure that the proposed BD form is accessible online and formatted for mobile devices so that borrowers can complete and submit the form through their phones. The online BD form should be formatted so that borrowers can save their place in the application and come back to it at a later time. In addition, the Department should develop an accessible and easy way for borrowers to submit documentation in support of their BD claims online.

[9] 34 C.F.R. § 684.206(e)(10)(ii) (effective July 1, 2020).

In addition, to avoid unnecessary delay or burden in completing an online BD form, the form should be formatted so that when borrowers mark that a section is not applicable, they are given the option to be directed to the next question.

Finally, borrowers who submit an online application should receive a copy of their signed, submitted BD form for their records, and all borrowers who submit applications should receive confirmation of receipt and a tracking number to allow them to monitor processing of their application.

D. The revised form should incorporate plain language and should be evaluated by consumer feedback.

While we appreciate the Department's efforts to simplify the BD form by including the checked boxes, we continue to urge the Department to consider best practices in form design and learn from borrowers' experiences with existing Department forms and user interfaces. From prior experience, we know that a poorly designed form will discourage eligible applicants from seeking and accessing relief. In particular, the proposed listing of elements for the BD form does not address the following:

- The proposed listing of elements for the BD form does not appear to incorporate plain language tailored to the intended audience – students who were defrauded, primarily by unscrupulous colleges. Following best practices for form design and The Plain Writing Act of 2010, the Department should use plain language on all versions of the discharge forms.

- In addition, the Department should avoid language that requires applicants to interpret complex legal concepts (such as contract "breach", "punitive damages," etc.). As far as we are aware, the Department has not tested the forms for consumer comprehension and usability, to ensure all students who attend various institution levels and types are able to comprehend and complete the forms.

We understand that testing may take time. We encourage the Department to seek input on the forms and on this testing process from other federal agencies that have extensive testing experience, including the Federal Trade Commission and the Consumer Financial Protection Bureau.

The Department should also provide support structures for borrowers who need assistance filling out the forms, including a help line, a chat function, a search function, and a frequently asked questions section. Contractors and staff providing assistance should be trained on how to advise and assist borrowers and evaluated by consumer feedback and compliance testing.

Additionally, any "yes" or "no" options on the form should be clearly marked as distinct and placed side-by-side. The Department should also place consequences of each option directly below the choice, rather than in the preceding text.

E. The revised form should be provided in other languages.

These forms should also be available in languages other than English, particularly in Spanish and other languages commonly used by borrowers. Many of the predatory colleges that engage in the kind of misconduct to form the basis of a BD claim have specifically targeted their deceptive practices towards Spanish speakers who are not proficient in English (Limited English Proficiency or LEP individuals). Just a few examples from California alone include Meadows College of Business, CIT College, Northern California Institute of Cosmetology, Webster Career College, Wyotech and Heald. In addition, these unscrupulous schools often target students in other languages. The BD form should be available in Spanish and other languages spoken by LEP students commonly targeted by fraudulent schools.

Translated discharge forms are critical to ensuring that LEP borrowers harmed by colleges are able to understand and exercise their federal right to apply for discharges. If the BD discharge form is not translated into Spanish and other languages, LEP borrowers will be denied the loan discharges to which they are entitled by law, which will likely result in large numbers of them defaulting on their loans, suffering from the Department's harsh involuntary debt collection tactics, and being barred from access to quality higher education. This result is contrary to the purpose of the Higher Education Act, as well as the requirements of Title VI of the Civil Rights Act, and the Department's own commitment to equal access to education.

F. Borrowers should not have to waive consumer protections in order to seek relief.

A loan discharge form such as the proposed listing of elements for the BD form never include a mandatory requirement for applicants to allow prerecorded voice messages and autodialing to their cellphones, including via text messages. Unfortunately, such a provision continues to appear in the Certification section of the proposed form. Seeking any type of discharge relief should not come at the cost of waiving important consumer protections. At most, the forms should include "yes" and "no" check boxes in which applicants have the option of providing consent. If any waiver language is included, applicants should also be advised of their right to revoke consent and informed about how to do so.

G. The Department should rely on evidence provided from other sources and utilize the group discharge process to minimize the evidentiary burden on individual students.

We urge the Department to focus on collection of evidence from other sources that may support a borrower's BD claim, including its own loan and education records, government investigations, audits, state attorneys general, other loan discharge applications filed by students from the same school, etc.. As advocates who have served low-income students who have been harmed by their educational institutions to navigate the loan discharge process, we have seen firsthand the tremendous burden that the borrower defense application process has put on borrowers who are unlikely to have access to counsel.

Finally, we urge the Department to exercise its authority to initiate a group discharge for borrower defense claimants whose loans were first disbursed prior to July 1, 2017.[10] We strongly support

[10] 34 CFR 685.222 (f)-(h).

that the group relief process reasonably achieves the goals of efficiency, consistency, and provision of relief for borrowers when there is sufficient evidence of systemic wrongdoing by a school.

III. Conclusion and Contact Information

Thank you again for your work to help defrauded borrowers and protect taxpayers, and for considering our prior comments. We appreciate your careful consideration of these comments. Please feel free to contact Josephine Lee, Staff Attorney, Legal Aid Foundation of Los Angeles at jslee@lafla.org if you have any questions.