

SUPPORTING STATEMENT

FOR PAPERWORK REDUCTION ACT SUBMISSION

GAINFUL EMPLOYMENT APPEALS FOR DEBT TO EARNINGS (D/E) RATES

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a hard copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information, or you may provide a valid URL link or paste the applicable section¹. 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, make note of the sections or changed sections, if applicable.

The Secretary proposes to amend the Student Assistance General Provisions by adding Subpart Q to Part 668, to establish measures for determining whether certain postsecondary educational programs lead to gainful employment in recognized occupations, and the conditions under which these educational programs remain eligible for student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA).

This will be a new collection and includes proposed §668.406 – Appeals for D/E rates.

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 proposed regulations would add new §668.406 which would provide an institution the opportunity to make an alternate earnings appeal, or in the case where an institution has GE programs with few borrowers, could make a low borrower rate appeal. An institution could appeal a GE program's final D/E rates in any year in which the program is failing the D/E rates. However, to account for the addition of the zone, and the related student warning requirements, the proposed regulations would also permit an institution to make an appeal in any year in which the program's final D/E rates are in the zone for that year.

In submitting an alternate earnings appeal under the proposed regulations, an institution would seek to demonstrate that the earnings of students who completed the GE program are sufficient to pass the D/E rates measure.

¹ Please limit pasted text to no longer than 3 paragraphs.

The institution would base its appeal on alternate earnings evidence from a survey conducted in accordance with requirements established by NCES (or it could use data from a State-sponsored data system). The Secretary would publish in the Federal Register the NCES survey protocols and Earnings Survey Form. Under the proposed regulations, the institution would certify that the survey was conducted in accordance with the requirements established by NCES and submit an examination-level attestation engagement report prepared by an independent public accountant or independent governmental auditor, as appropriate.

The information provided on the proposed Alternative Earnings Survey Form would be provided by an institution to the Department for the purpose of appealing its most recent final D/E rate by proving the difference between the mean or median annual earnings the Secretary obtained from SSA and the mean or median annual earnings derived from an institutional survey is sufficient to warrant revisions to the final D/E rates.

For a program that is failing or in the zone under the D/E rates measure, the proposed regulations allow an institution to make a showing of mitigating circumstances based on a program borrowing rate of less than 50 percent for all individuals (both those who received title IV, HEA program funds, and those who did not) who completed the program during the applicable cohort period not having to assume any debt to enroll in the program.

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. Also describe any consideration given to using technology to reduce burden.

A survey form and survey protocols are under development through NCES. We anticipate a proposed form would be downloadable from the Department's web site.

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.

The current requirements avoid duplication. There is no similar information available that can be used or modified for this purpose at this time.

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.

No small businesses are affected by this information collection.

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.

Absent this proposed data collection, the gainful employment program would become ineligible based on its final D/E rates.

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.

The collection of this information will continue to be conducted in a manner that is consistent with the guidelines in 5 CFR 1320.6.

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. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

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 proposed regulations were developed through the Negotiated Rulemaking process where the public provided its input and in consultation with schools, and other affected entities. The comment period for the information collection package will run concurrently with the Notice of Proposed Rulemaking.

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

No payments or gifts will be provided to the 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.

The Department makes no pledge of confidentiality regarding the data.

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.

The Department is not requesting any sensitive data.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- 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, and an explanation of how the burden was estimated, including identification of burden type: recordkeeping, reporting or third party disclosure. All narrative should be included in item 12. Unless directed to do

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)

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 the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

- If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in the ROCIS IC Burden Analysis Table. (The table should at minimum include Respondent types, IC activity, Respondent and Responses, Hours/Response, and Total Hours)
- Provide estimates of annualized cost to respondents of the hour burdens for collections of information, identifying and using appropriate wage rate categories. 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.

Section 668.406(b) –Survey requirements.

The proposed regulations would provide an institution the opportunity to make an alternate earnings appeal under §668.406(b). An institution could appeal a GE program's final D/E rates in any year in which the program is failing the D/E rates. However, to account for the addition of the zone, and the related student warning requirements, the proposed regulations would also permit an institution to make an appeal in any year in which the program's final D/E rates are in the zone for that year. For example, a GE program that is failing the D/E rates measure for two consecutive award years (Year 1 and Year 2) is in jeopardy of becoming ineligible for the subsequent award year (Year 3) if the program fails the D/E rates measure in Year 3. This GE program could submit an alternate earnings appeal of the Year 2 final D/E rates. As another example, a GE program that is in the zone for three consecutive award years (Year 1, Year 2, and Year 3) is in jeopardy of becoming ineligible for the subsequent award year (Year 4) if the program does not pass the D/E rates measure in Year 4. This GE program could submit an alternate earnings appeal of the Year 3 final D/E rates.

In submitting an alternate earnings appeal under the proposed regulations, an institution would seek to demonstrate that the earnings of students who completed the GE program in the two-year period are sufficient to pass the D/E rates measure. The institution would base its appeal on alternate earnings evidence from a survey conducted in accordance with requirements established by NCES or from a State-sponsored data system.

The Secretary would publish in the Federal Register the NCES survey protocols and Earnings Survey Form. Under the proposed regulations, the institution would certify that the survey was conducted in accordance with the requirements established by NCES and submit an examination-level attestation engagement report prepared by an independent public accountant or independent governmental auditor. The proposed regulation would

require that the attestation be conducted in accordance with the attestation standards contained in the Government Accountability Office's Government Auditing Standards promulgated by the Comptroller General of the United States (available at www.gao.gov/yellowbook/overview), and with procedures for attestations contained in guides developed by and available from the Department's Office of Inspector General.

We estimate that for-profit institutions would have 1,364 gainful employment programs in the zone and that 910 programs would be failing for a total of 2,274 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students and would therefore not elect to conduct the survey. Accordingly, we estimate that for-profit institutions would submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which would equal 227 appeals annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report would total, on average 100 hours of increased burden, therefore burden would increase 22,700 hours (227 appeals times 100 hours of burden per appeal) under OMB Control Number 1845-NEW2.

We estimate that private-non-profit institutions would have 12 gainful employment programs in the zone and that 34 programs would be failing for a total of 46 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students and would therefore not elect to conduct the survey. Accordingly, we estimate that private-non-profit institutions would submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which would equal 5 appeals annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report would total, on average, 100 hours of increased burden, therefore burden would increase 500 hours (5 appeals times 100 hours of burden per appeal) under OMB Control Number 1845-NEW2.

We estimate that public institutions would have 7 gainful employment programs in the zone and that 55 programs would be failing for a total of 62 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students and would therefore not elect to conduct the survey. Accordingly, we estimate that public institutions would submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which would equal 6 appeals annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report would total, on average, 100 hours of increased burden, therefore burden would increase 600 hours (6 appeals times 100 hours of burden per appeal) under OMB Control Number 1845-NEW2.

Collectively, the projected burden associated with conducting an alternative earnings survey would increase burden by 23,800 hours under OMB Control Number 1845-NEW2.

Section 688.406(b) - New Burden:

# of Respondents	# of Responses	Hours/Response	Burden Hours
238	238	100	23,800

Section 668.406(c) –State-sponsored data system requirements.

We estimate that there would be 1,364 failing GE programs at for-profit institutions and 910 programs in the zone, for a total of 2,274 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students who completed a program and would therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases, institutions would obtain earnings data from a State-sponsored system, resulting in approximately 227 appeals. We estimate that, on average each appeal would take 20 hours, including execution of an agreement for data sharing and privacy protection under the Family Educational Rights and Privacy Act (20 U.S.C 1232g) (FERPA) between the institution and the State agency, preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the proposed revised D/E rates, and submitting those results to the Secretary. Therefore, burden would increase by 4,540 hours under OMB Control Number 1845-NEW2.

We estimate that there would be 34 failing GE programs at private non-profit institutions and 12 programs in the zone, for a total of 46 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students who completed a program and would therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases, institutions would obtain earnings data from a State-sponsored system, resulting in 5 appeals. We estimate that, on average each appeal would take 20 hours, including execution of an agreement for data sharing and privacy protection under FERPA between the institution and the State agency, preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the proposed revised D/E rates, and submitting those results to the Secretary. Therefore burden would increase by 100 hours under OMB Control Number 1845-NEW2.

We estimate that there would be 55 failing GE programs at public institutions and 7 programs in the zone, for a total of 62 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students who completed a program and would therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases institutions would obtain earnings data from a State-sponsored system, resulting in approximately 6 appeals. We estimate that, on average each appeal would take 20 hours, including execution of an agreement for data sharing and privacy protection under FERPA between the institution and the State agency, preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the proposed revised D/E rates, and submitting those results to the Secretary. Therefore, burden would increase by 120 hours under OMB Control Number 1845-NEW2.

Collectively, burden would increase by 4,760 hours under OMB Control Number 1845-NEW2.

Section 688.406(c) - New Burden:

# of Respondents	# of Responses	Hours/Response	Burden Hours
238	238	20	4,760

Section 668.406(d) – Low borrowing rate requirements:

We estimate that 2 percent of the total 2,274 programs at for profit institutions (910 zone programs plus 1,364 failing programs) or 45 programs at for profit institutions would submit a low borrowing rate appeal and that generally this would be an automated process, however, there would be some situations, probably at a small institution where the process could be a manual process and therefore we estimate the average amount of time to collect the data, compile and submit the low borrower rate appeal would on average be 5 hours per appeal. The estimated burden would be 225 hours (45 appeals times 5 hours per appeal) under OMB Control Number 1845-NEW2.

We estimate that 5 percent of the total 46 programs at private non-profit institutions (12 zone programs plus 34 failing programs) or 2 programs at for private non-profit institutions would submit a low borrowing rate appeal and that generally this would be an automated process, however, there would be some situations, probably at a small institution where the process could be a manual process and therefore we estimate the average amount of time to collect the data, compile and submit the low borrower rate appeal would on average be 5 hours per appeal. The estimated burden would be 10 hours (2 appeals times 5 hours per appeal) under OMB Control Number 1845-NEW2.

We estimate that 50 percent of the total 62 programs at public institutions (7 zone programs plus 55 failing programs) or 31 programs at public institutions would submit a low borrowing rate appeal and that generally this would be an automated process, however, there would be some situations, probably at a small institution where the process could be a manual process and therefore we estimate the average amount of time to collect the data, compile and submit the low borrower rate appeal would on average be 5 hours per appeal. The estimated burden would be 155 hours (45 appeals times 5 hours per appeal) under OMB Control Number 1845-NEW2.

Section 688.406(d) - New Burden:

# of Respondents	# of Responses	Hours/Response	Burden Hours
78	78	5	390

Section 668.406(e) – Alternate appeal procedures.

We estimated above that for-profit institutions would have 227 alternate earnings survey appeals annually, plus 227 State-sponsored data system appeals, plus 45 low

borrower rate appeals for a total of 499 appeals. We estimate that completing and submitting a notice of intent to use survey alternate earnings data, State data increases burden, or a low borrower rate appeal on average, by 0.25 hours per submission or 125 hours under OMB Control 1845-NEW2.

We estimated above that private non-profit institutions would have 5 alternative survey appeals annually, plus 5 State-sponsored data system appeals, and 2 low borrowing rate appeals for a total of 12 appeals. We estimate that completing and submitting a notice of intent to use survey alternate earnings data, State data, or a low borrowing rate appeal increases burden, on average, by 0.25 hours per submission or 3 hours under OMB Control 1845-NEW2.

We estimated above that public institutions would have 6 alternative survey appeals annually plus 6 State-sponsored data system appeals, plus 31 low borrower rate appeals for a total of 43 appeals. We estimate that completing and submitting a notice of intent to use survey alternate earnings data, State data, or make a low borrowing rate appeal increases burden, on average, by 0.25 hours per submission or 11 hours under OMB Control 1845-NEW2.

Collectively, the projected burden associated with completing and submitting a notice of intent would increase burden by 120 hours under OMB Control Number 1845-NEW2.

Section 688.406(e) - New Burden:

# of Respondents	# of Responses	Hours/Response	Burden Hours
554	554	.25	139

SUMMARY:

Currently Approved Numbers:

# of Respondents	# of Responses	Hours/Response	Burden Hours
0	0		0

New Burden:

Section 688.406 - New Burden:

# of Respondents	# of Responses	Hours/Response	Burden Hours
1,108	1,108		29,089

Revised Numbers Requested:

# of Respondents	# of Responses	Hours/Response	Burden Hours
1,108	1,108		29,089

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 : _____

Discussions with institutional representatives related to estimated costs for the surveys or use of State sponsored data systems would be conducted after the NPRM is published and prior to the final regulation's publication to inform the cost estimate.

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.

The cost to the federal government will be determined following the discussions above that occur after the NPRM and prior to the final regulation's publication.

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).

This is a new collection due to the changes to burden under proposed §668.406 that are a result of the addition of Subpart Q of Part 668. The program changes are due to agency discretion upon completion of Negotiated Rulemaking sessions.

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 results of this collection of information will not be published.

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 83-1.