

**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 Student Assistance General Provisions regulation was amended by adding Subpart Q to Part 668. This subpart applies to postsecondary educational programs that lead to gainful employment (GE) in recognized occupations. 1845-0122 pertains to §668.406 – Appeals for Debt to Earnings (D/E) rates. The regulations allow an institution to submit alternate earnings appeals to challenge the Secretary’s determination of a GE program that is failing or in the zone based on the D/E rates calculated for a specific GE program.

On June 16, 2017, the Department of Education (the Department) published a notice in the Federal Register announcing the intention to establish a negotiated rulemaking committee to revise the gainful employment regulations published on October 31, 2014. The Department anticipates scheduling the negotiated rulemaking sessions beginning in November or December 2017.

The Department is requesting an extension without change of burden to the currently approved information collection as any new regulations will not be available before the expiration of this current package. There have been no changes to the regulations since the initial approval of the information collection on November 3, 2014.

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 regulation §668.406 provides an institution the opportunity to submit an alternate earnings appeal when the Secretary, using data from the Social Security Administration, calculates that a program was failing or in the zone under the final D/E rate calculation and provides documentation to the institution. In submitting an alternate earnings appeal under the regulations, an institution will seek to demonstrate that the earnings of students who completed the GE program are sufficient to pass the D/E rates measure, or improve from a failing program to a program in the zone, through the use of a survey or by using State earnings data. Successful appeals will allow the institution to continue to

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

participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA).

The institution may base its appeal on alternate earnings evidence from a survey conducted in accordance with requirements established by National Center for Educational Statistics (NCES). The Secretary provides the NCES established survey protocols and Earnings Survey Form for institutional use. Under the regulations, the institution will 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.

Alternately, the institution may submit an appeal based on earnings data from a State-sponsored data system. Using this method an institution demonstrates the annual earnings data obtained from a State-sponsored data system for a listing of students demonstrating that the annual earnings for those students when calculating the D/E rates will create a passing rates measure, or illustrate the improvement from failing to being in the zone. This method also requires the institution's CEO to attest to the accuracy of the State-provided earnings information as well as provide any documentation requested by the Secretary.

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.

The survey form and survey protocols are available as a document that is downloadable from the Department's web site, <http://www.ifap.ed.gov/GainfulEmploymentInfo/GEResourcesV2.html>. The form was separately cleared under information collection 1845-0138.

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.

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 data collection, a gainful employment program will become ineligible based on its final D/E rates without a method to challenge, appeal, or make adjustments to the underlying data. If a program is deemed ineligible, current and prospective students would lose access to Title IV student financial assistance, however through these alternative earnings appeals, eligibility may be maintained, thereby permitting access to additional Title IV resources.

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 regulations were developed through the Negotiated Rulemaking process where the public provided its input and in consultation with schools, and other affected entities. The Department requested a 60 day public comment period be published in the Federal Register. No comments were received for this information collection. This is the request for the 30 day public comment period to be published in the Federal Register.

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

Payments or gifts may be provided to the respondents at the school's discretion.

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.

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)

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 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.

The regulations provide an institution the opportunity to complete an alternate earnings appeal under §668.406(c) and (d). An institution could appeal a GE program's final D/E rates in any year in which the program's D/E rates are failing or in the zone. In submitting an appeal under the regulations, an institution will seek to demonstrate that using alternate earnings the recalculated rates are sufficient to pass the D/E rates measure or to be in the zone. The institution may base its appeal on alternate earnings evidence from a survey conducted in accordance with requirements established by NCES or from earnings information from a State-sponsored data system.

Section 668.406(c) – Survey requirements for appeals.

The Department provides the NCES survey protocols and Earnings Survey Form that were cleared under 1845-0138 and are available at <http://www.ifap.ed.gov/GainfulEmploymentInfo/GEResourcesV2.html>. Under the regulations, the institution will 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 regulation will 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 expect that most institutions will determine that SSA data reflect accurately the earnings of students and will therefore not elect to conduct the survey. We continue to estimate that any institution that does submit an alternate earnings appeal under the survey appeal option will do so for 10 percent of their failing or zone programs.

We continue to estimate that for-profit institutions will have 1,225 gainful employment programs in the zone and 718 programs will be failing for a total of 1,943 programs. Accordingly, we estimate that for-profit institutions will submit alternate earnings appeals equaling 194 appeals annually ($1,943 \times 10\% = 194$). We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report will total, on average 100 hours of burden, therefore burden will remain 19,400 hours (194 appeals times 100 hours of burden per appeal) under OMB Control Number 1845-0122.

We continue to estimate that private-non-profit institutions will have 20 gainful employment programs in the zone and 8 programs will be failing for a total of 28 programs. Accordingly, we estimate that private-non-profit institutions will submit alternate earnings appeals equaling 3 appeals annually ($28 \times 10\% = 3$). We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report will total, on average, 100 hours of burden, therefore burden will remain 300 hours (3 appeals times 100 hours of burden per appeal) under OMB Control Number 1845-0122.

We continue to estimate that public institutions will have 8 gainful employment programs in the zone and 3 programs will be failing for a total of 11 programs. Accordingly, we estimate that public institutions will submit alternate earnings appeals equaling 1 appeal annually ($8 \times 10\% = 1$). We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report will total, on average, 100 hours of burden, therefore burden will remain 100 hours (1 appeals times 100 hours of burden per appeal) under OMB Control Number 1845-0122.

Collectively, the projected burden associated with conducting an alternative earnings survey will remain 19,800 hours under OMB Control Number 1845-0122.

Section 668.406(d) – State-sponsored data system requirements for appeals.

We expect that most institutions will determine that SSA data reflect accurately the earnings of students and will therefore not elect to submit earnings data from a State-sponsored system. We continue to estimate that any institution that does obtain and submit earnings data from a State-sponsored system will do so for 10 percent of their failing or zone programs. We estimate that, on average each appeal will 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 a State agency (when the State agency is located other than in the State in which the institution resides), preparing the list(s), submitting the list(s) to the

appropriate State agency, reviewing the results, calculating the revised D/E rates, and submitting those results to the Secretary.

We continue to estimate that there will be 718 failing GE programs at for-profit institutions and 1,225 programs in the zone, for a total of 1,943 programs. Accordingly, we estimate that institutions will obtain and submit earnings data from a State-sponsored system, resulting in approximately 194 appeals ($1,943 \times 10\% = 194$). Therefore, burden will remain 3,880 hours (194 State system appeals times 20 hours) under OMB Control Number 1845-0122.

We continue to estimate that there will be 8 failing GE programs at private non-profit institutions and 20 programs in the zone, for a total of 28 programs. Accordingly, we estimate that institutions will obtain and submit earnings data from a State-sponsored system, resulting in 3 appeals ($28 \times 10\% = 3$). Therefore burden will remain 60 hours (3 State system appeals times 20 hours) under OMB Control Number 1845-0122.

We continue to estimate that there will be 3 failing GE programs at public institutions and 8 programs in the zone, for a total of 11 programs. Accordingly, we estimate that institutions will obtain and submit earnings data from a State-sponsored system, resulting in approximately 1 appeal ($11 \times 10\% = 1$). Therefore, burden will remain 20 hours (1 State appeal times 20 hours) under OMB Control Number 1845-0122.

Collectively, burden will remain 3,960 hours under OMB Control Number 1845-0122.

Section 668.406(e) – Appeals procedure.

We estimated above that for-profit institutions will have 194 alternate earnings survey appeals annually plus 194 State-sponsored data system appeals for a total of 388 appeals. We continue to estimate that for completing and submitting a notice of intent to use alternate earnings survey data or a State data appeal burden remains, on average, 0.25 hours per submission or 97 hours under OMB Control 1845-0122.

We estimated above that private non-profit institutions will have 3 alternative survey appeals annually plus 3 State-sponsored data system appeals for a total of 6 appeals. We continue to estimate that for completing and submitting a notice of intent to use alternate earnings survey data or a State data appeal burden remains, on average, 0.25 hours per submission or 2 hours under OMB Control 1845-0122.

We estimated above that public institutions will have 1 alternative survey appeals annually plus 1 State-sponsored data system appeals for a total of 2 appeals. We continue to estimate that for completing and submitting a notice of intent to use alternate earnings survey data or a State data appeal burden remains, on average, 0.25 hours per submission or 1 hour under OMB Control 1845-0122.

Collectively, the projected burden associated with completing and submitting a notice of intent will remain 120 hours under OMB Control Number 1845-0122.

SUMMARY:

Currently Approved Numbers:

<i># of Respondents</i>	<i># of Responses</i>	<i>Burden Hours</i>
396	792	23,860

Staff costs at \$36.55 per hour calculate to an estimated \$872,083 to research, record and report the various regulatory requirements.

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 capital/startup costs to respondents. The institutional staffing costs are identified in item 12.

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 Federal Student Aid for the contractor support for all of the Gainful Employment regulatory implementation is \$23,099,946.

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).

The Department anticipates scheduling the negotiated rulemaking sessions beginning in November or December 2017. As any new regulation will not be available before the expiration of this current package, the Department is requesting an extension without change of burden (396 respondents, 792 responses and 23,860 hours) to the currently approved information collection. There have been no changes to the regulations since the initial approval of the information collection on November 3, 2014.

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.