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DEPARTMENT OF EDUCATION

[Docket ID ED-2017-OPE-0090]

Program Integrity: Gainful Employment

34 CFR Part 668

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Announcement of applicable dates; request for comments.

SUMMARY: The Department, in this document, establishes new deadlines for submitting notices of intent to file alternate earnings appeals and for submitting alternate earnings appeals. The Department also announces additional information that will be considered when evaluating alternate earnings appeals.

DATES: We must receive comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

The deadline to submit a notice of intent to file an alternate earnings appeal is October 6, 2017.

The deadline to file an alternate earnings appeal is February 1, 2018.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by

email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to this site?"

- U.S. Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments, address them to Scott Filter, U.S. Department of Education, 400 Maryland Ave., SW., room 6W253, Washington, DC 20202.

Privacy Note: The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the internet.

FOR FURTHER INFORMATION CONTACT: Scott Filter, U.S.

Department of Education, 400 Maryland Ave., SW., room 6W253, Washington, DC 20202. Telephone: (202) 453-7249 or by email at: Scott.Filter@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On January 6, 2017, the Department announced dates by which institutions subject to the Department's gainful employment (GE) regulations must comply with certain provisions of the GE regulations relating to the submission of alternate earnings appeals. On June 15, 2017, the Department announced its intention to negotiate issues related to gainful employment. On July 5, 2017, the Department announced that it would publish a *Federal Register* document to establish a new deadline for institutions to submit alternate earnings appeals in light of the Court Order in *American Association of Cosmetology Schools v. DeVos*, Civil Action No. 17-0263, D.D.C. June 28, 2017 (Court Order).

The Department establishes October 6, 2017, as the deadline for all programs to file a notice of intent to file alternate earnings appeal. The Department establishes February 1, 2018, as the deadline for all programs to file an alternate earnings appeal. However, programs are

encouraged to submit their appeals before this deadline. These deadlines and the associated timelines are being established on a one-time basis to comply with the Court Order. Although the Court Order only applies to institutions that are members of the American Association of Cosmetology Schools, the Court noted concerns with the response threshold required for the graduate surveys used for all programs in the alternate earnings appeal under 34 CFR 668.406, and the Department is establishing these new deadlines for all programs subject to the GE regulations in 34 CFR part 668. Institutions that have already submitted a notice of intent to file an alternate earnings appeal, or an alternate earnings appeal, do not have to resubmit those items or amend their alternate earnings appeal in connection with the modified submission requirements described below. Institutions that wish to supplement an alternate earnings appeal that has already been submitted may do so, and should contact Department staff to make those arrangements on or before October 6, 2017.

To further comply with the Court Order, for alternate earnings appeals based on a graduate survey, the Department will not enforce §668.406(b)(3) or (c) to the extent these provisions require that a graduate survey contain responses from all students that are not exempted under §668.404(e),

nor will the Department require a 50 percent threshold response rate. Instead, the Department will evaluate all graduate surveys, regardless of response rate, provided the submissions include the number of responses, the response rate, and a nonresponse bias analysis, as well as any other information the Department requests. The Department will consider the response rate, the nonresponse bias analysis, and any other information requested by the Secretary that indicates that the responses are a reliable measure of the program graduates' true earnings.

Furthermore, for alternate earnings appeals based on data from State-sponsored data systems, the Department will not enforce §668.406(b)(3) or (d) to the extent these provisions require that an appeal include earnings data for all students that are not exempted under §668.404(e), nor will the Department enforce §668.406(d) to the extent that provision requires a 50 percent threshold to be met, or the earnings of 30 students to be included, before the Department will consider an alternate earnings appeal. Instead, the Department will consider the validity of appeals using State-sponsored data on a case-by-case basis, taking into account the response rate and other information requested by the Secretary.

In modifying the alternate appeals submission requirements, the Department seeks to reduce the burden on institutions in conducting these appeals while still ensuring that institutions provide enough information for the Department to determine whether the program graduates for whom alternate earnings data are provided are a valid representation of the overall cohort. Institutions must still submit the certifications and attestations required by §668.406(c)(2) and (d)(3), as applicable, except to the extent inconsistent with anything in this document.

Institutions intending to file a notice of intent to appeal do not have to issue warnings to students unless they fail to timely submit an alternate earnings appeal or the appeal is resolved.

We invite your comments on this action. We will consider these comments in determining whether to take any future action in connection with the upcoming negotiated rulemaking.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. Free internet access to the official edition of the *Federal Register* and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature of this site, you can limit your search to documents published by the Department.

Dated: August 14, 2017.

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Betsy DeVos,  
Secretary of Education.

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