

Department of Education Extends Deadline for Gainful Employment Earnings Appeals

August 22, 2017

The US Department of Education's (ED) latest announcement extends the deadline for all institutions to file alternate earnings appeals that challenge the debt-to-earnings rates issued for their Gainful Employment (GE) programs in January 2017. It also eliminates several of the stringent statistical requirements applicable to those appeals. The effect, as discussed below, raises credible questions regarding when, or if, ED will be able to issue a second set of rates for gainful employment programs.

The ED [Notice](#) announcing the new deadlines and processes applicable to earnings appeals was issued on August 18. It follows an earlier announcement, dated June 30, in which ED delayed a number of provisions of the GE Rule that were otherwise set to take effect on July 1. In both cases, ED has cited the need to make changes to comply with a court order issued by a federal judge in Washington, DC in a lawsuit filed by the American Association of Cosmetology Schools. Even though the order in that case was limited to that association's members, ED considered it appropriate to extend the relief to all affected institutions.

The August 18 announcement indicates the following:

- Institutions that have not previously submitted a notice of intent to appeal their debt-to-earnings rates now have until October 6, 2017 to do so. As a practical matter, this may open the door to hundreds of additional appeals respecting programs that had failing rates in January 2017.
- The deadline to submit the final earnings appeals will be February 1, 2018.
- Institutions that previously submitted a notice of intent to appeal, or the appeal itself, may supplement those submissions. Schools should contact ED staff in advance of October 6 to make arrangements for any supplemental submission.
- Institutions that choose to submit their notice of intent to appeal by the October deadline are no longer required to issue written warnings to currently enrolled students or to prospective students considering enrollment in programs with failing debt-to-earnings rates. Those warnings will not be required again unless or until the institution fails to submit on time an alternate earnings appeal or the appeal is resolved.
- The announcement also eliminates several of the statistical requirements for alternative earnings appeals, although the impact of these changes is not yet entirely clear.
 - It appears that institutions will no longer be required to survey the entire program cohort for either the earnings appeal or state data system options, but it does not explain what portion of a cohort must be surveyed to be valid.
 - It removes the 50% response rate that was previously required for both the recent graduate surveys and the state data surveys.
 - It removes the minimum of 30 graduates for a valid sample for the state data surveys.
 - In place of these hard numeric measures, ED suggests that it will determine if the school's data are "reliable" on a case-by-case or other basis.

There are several other interesting implications to this announcement.

First is the question of what it implies for the next phase in the implementation of the GE Rule. ED previously announced that it will "reset" the GE Rule through a new negotiated rulemaking scheduled to begin this fall. However, ED has not indicated how and when it plans to calculate the second year of debt-to-earnings rates (GE Y2). ED published a recent announcement reminding schools that the next year of data reports, which would be used to establish the debt-to-earnings rates in the 2019/2020 cycle, are due on October 1. Meanwhile, in a recent letter to inquiring Senators, ED stated that it has no current timeline to issue the completer lists needed to establish the 2015/2016 (GE Y2) rates. This is in contrast to last year, when ED had issued the student completer lists by June.

In addition, based on the new earnings appeal deadline in last week's ED Notice, it is clear that ED still will be processing appeals of the 2014/2015 (GE Y1) rates in the winter and spring of 2018, which leads some observers to wonder whether ED will be in a position to gather or crunch the data for the second set of rates at the same time. While it is hazardous to

read between the lines, there are increasing questions about whether that second set of rates will be issued at all.

Even though the new ED Notice is framed as a final action, it has also provided for a comment period, which will end on September 18. Thus, if you have comments or need clarification on any of these issues, there is a short window to file a comment with ED.

Finally, despite all of the recent shifts to ease the impact of the GE Rule, it is important to remember that the disclosure requirements, clarified in the June 30 notice, remain in place. All institutions that offer programs covered by the GE Rule are still required to post the GE program disclosures on their websites wherever academic, cost, financial aid or admissions information about a GE program is located.

Cooley is closely watching the continuing updates surrounding the implementation of the GE Rule and the implications for the future of this controversial regulation. Watch for our additional thoughts [here](#).

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