May 20, 2026

Under Secretary Nicholas Kent
U.S. Department of Education
Office of Postsecondary Education
400 Maryland Avenue SW
Washington, DC 20202

Submitted electronically

Re: Docket ID ED-2026-OPE-0100

Dear Under Secretary Kent:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (ED-2026-OPE-0100) regarding the Department's proposed changes to institutional accountability considered by the Accountability in Higher Education and Access through Demand-Driven Workforce Pell (AHEAD) Committee. The Institute for College Access & Success (TICAS) is a nonprofit, nonpartisan organization advocating for student-centered public policies that promote affordability, accountability, and equity in higher education. TICAS has long advocated for stronger institutional accountability measures that protect students, borrowers, and taxpayers from postsecondary programs that do not deliver strong outcomes.

We appreciate the Department's collaboration with negotiators to reach consensus on language to implement the earnings accountability framework and the Student Tuition and Transparency System (STATS) mandated by H.R.1, the One Big Beautiful Bill Act (OBBBA). We particularly support the Department's efforts to create a consistent quality assurance framework across all credential levels, limit appeals, and increase transparency about program outcomes. Our comments respond to the Department's directed questions and provide recommendations for further strengthening the final rule to ensure postsecondary programs eligible for the Direct Loan program provide a minimum return on student and taxpayer investment.

Response to First Directed Question

Use earnings data collected by the Internal Revenue Service (IRS) and prohibit alternative earnings appeals

As the Department notes, the IRS's income tax reporting process offers the most accurate, consistent, and reliable measure of earnings, including tipped income. We share the Department's concern that state administrative data may not be comparable between states due to differences in collection criteria and definitions. The Department also rightly proposes to prevent institutions from appealing to use alternative earnings data to calculate their program's earnings premium. Programs leading to employment in fields in which employees regularly earned tipped income, particularly cosmetology programs, have urged the Department to allow alternative earnings appeals because of their concerns that IRS data does not accurately reflect graduates' tips. However, a 2022 analysis of IRS data estimates that just 8 percent of earnings go unreported by cosmetologists, indicating that appeals to include unreported tipped income in the earnings premium calculation would not substantially change fail rates for most cosmetology programs. Limiting alternative earnings appeals at the calculation stage will reduce unnecessary burdens for institutions reporting data, prevent institutions from gaming the metric in a way that ultimately harm students, and ensure the earnings premium test provides an apples-to-apples outcomes comparison across all programs.

Under Section 454(c)(5) of the Higher Education Act, the Secretary has the discretion, but not the requirement, to permit programs to continue participating in the Direct Loan program during an appeal, and must only provide the opportunity for, but not the decision on, an appeal before a school loses eligibility for Direct Loans. If, as proposed, the Department limits appeals only to instances in which the Department erred in calculating the earnings premium, we believe the Department can and should process such appeals quickly enough to allow programs to maintain Direct Loan access during the review process with limited risk to students. However, if the Department allows more extensive appeals or alternative earnings submissions, we recommend disallowing Direct Loan program participation to prevent institutions from continuing to offer students loans during a lengthy appeal process. Also, it is our understanding that a school that appeals but is unsuccessful would have to pay back the amount of any loans disbursed during the time when it would have been ineligible but for the appeal.

Recommendations for Strengthening Program Accountability

Maintain earnings accountability for undergraduate certificate programs

We agree strongly with the Department's assessment that it is in students and taxpayers' best interest to include undergraduate certificate programs in the earnings accountability framework and urge the Department to maintain this provision in the final rule. By revising the existing Gainful Employment rule to align with the earnings accountability test created in the OBBBA, the Department has taken a critical step toward ensuring that programs at all credential levels deliver a positive return on investment. The Department's own preliminary analysis of pass/fail rates under the proposed earnings premium demonstrates the need for this coverage. Programs enrolling 31 percent of undergraduate certificate students are projected to fail the earnings premium test, compared with programs enrolling four percent of associate degree students and less than one percent of bachelor's degree students. This estimate echoes a 2023 study that found most certificate-granting institutions left more than half of their students earning less than their peers with only a high school diploma. Low earnings and poor employment outcomes are of particular concern at for-profit, predominately certificate-granting colleges; the same study found that nearly three in four certificate-granting for-profit institutions leave the majority of their students earning less than the typical high school graduate, even 10 years after enrollment.

As noted in the proposed rule, the Department possesses clear legal authority to apply earnings metrics to non-degree programs using the gainful employment authority. In *American Association of Cosmetology Schools v. United States Department of Education*,[1] the court affirmed that the Higher Education Act provides the Department authority to issue earnings metrics pursuant to gainful employment statutory language. Critically, Judge O'Connor held that the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* does not preclude the Department from issuing rules consistent with the plain meaning of "gainful employment."[2] In determining the plain meaning of that term, Judge O'Connor agreed with this Administration that "gainful employment" means training that is profitable for students—programs that "actually train and prepare postsecondary students for jobs that they would be less likely to obtain without that training and preparation."[3] Colleges fall short of that statutory requirement when a program leaves graduates financially worse off with earnings below those of working adults with only a high school diploma. The Department should be confident that applying an earnings metric under the gainful employment statutory authority is legal, appropriate, and consistent with the intent of Congress.[4]

Regardless of credential length, undergraduate students should be assured that their program will lead to wages higher than those of workers with only a high school diploma. The inclusion of undergraduate certificate programs in the earnings accountability framework will provide accountability where students need it most.

For programs subject to the gainful employment authority, rescind failing programs' access to all Title IV financial aid

The Higher Education Act requires that proprietary and vocational institutions provide programs that "prepare students for gainful employment in a recognized occupation" to receive federal financial aid under Title IV.[5] By using the gainful employment authority to extend the OBBBA earnings premium test to certificate programs, the Department must revoke access to all federal aid, not just Direct Loans, for failing programs subject to gainful employment standards.

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[1] *American Assoc. of Cosmetology Sch.* v. *Dep't of Educ.,* 2025 WL 4219345, (N.D. Tex. Oct. 2, 2025).
[2] *Id.* at *9-12.
[3] *Id.* at *10.
[4] The Senate Committee on Health, Labor, and Education posted a document with answers to frequently asked questions about the OBBBA's higher education provisions. It made clear that the earnings metric in the bill did not apply to undergraduate certificate programs because they "are covered by a similar earnings test in the Gainful Employment regulation."
[5] 20 U.S.C. 1002 (b)(1)(A), (c)(1)(A).

Students who attend for-profit colleges are less likely to graduate on time yet more likely to have debt and higher amounts of it than students at public colleges. For-profit programs lead to particularly troubling outcomes among Black and Latino students. Nine out of 10 Black and Latino students who graduated from a for-profit undergraduate degree program had to take on debt, and graduates who borrowed took on at least $10,000 more, on average, than their peers who borrowed to attend public colleges. By the Department's own estimation, 48.3 percent of for-profit institutions have 100 percent of their enrollment in programs that would fail the proposed rule, compared with just 0.7 percent and 4.3 percent of public and nonprofit institutions, respectively.[6] Poor outcomes and high debt among students who attend proprietary institutions necessitate strong oversight, and we urge the Department to exercise the gainful employment authority as it was intended—to oversee institutions that pose significant, documented risks to students and waste taxpayer dollars.

Conditioning Title IV access on earnings outcomes, as under the current Gainful Employment rule, is likewise critical for undergraduate certificate programs across sectors, whose students are less likely to rely on loans than their peers in longer credentials and may continue to operate even after losing Direct Loans.[7]

At a minimum, the Department should maintain the administrative capability compromise that would terminate Title IV eligibility for low-earning outcome programs if the majority of an institution's students are enrolled in or federal aid volume flows to failing programs. The Department should also make this assessment of administrative capability a one-year measure, rather than a two-year measure, and should limit the appeals to the same types of calculation errors permitted under the earnings-based accountability provisions. As the Department notes in the proposed rule, institutions at which a majority of Title IV funding or enrollment is from low-earning outcome programs warrant heightened scrutiny. Students should not direct their limited, taxpayer-funded Pell Grant dollars to substandard programs, and we strongly encourage the Department to enact the strongest student protections possible under existing statute.

Reinstate the debt-to-earnings test

TICAS is deeply concerned by the Department's proposal to eliminate the debt-to-earnings test currently included in the Gainful Employment and Financial Value Transparency rules. The debt-to-earnings test provides a critical complement to the earnings premium measure by protecting students from programs that would otherwise leave them with debt they cannot afford to repay. **TICAS analysis of data provided by the Department indicates that programs**

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[6] 91 FR 21145.

[7] For example, Florida Career College (FCC) enrolled students mostly in certificate programs and was found by the Department to have committed a range of Title IV violations in 2023. According to FCC's data, 97.8% of its 9,624 students that received Title IV funds in the 2021-2022 award year paid for part of their tuition with a Pell Grant. The Department's denial of all Title IV funds may have resulted in a different outcome if only participation in the Direct Loan program was prohibited.

that would fail only the debt-to-earnings test—in other words, programs not captured by the earnings premium test—enrolled approximately 39,600 Title IV recipients (with 20,260 of them receiving Pell Grants) in the 2024-2025 award year, with over $370 million in Title IV loan volume disbursed and an additional $95 million in Pell Grant funds).[8]

The Department argues that maintaining the debt-to-earnings metric would increase the share of failing programs by too small an amount to warrant the administrative burden. Although they attend what the Department claims is a relatively small number of programs, nearly 40,000 students will be left without assurance that their program delivers meaningful return on investment that enables them to repay their loans. We urge the Department to prioritize protecting these students—and taxpayer investments totaling hundreds of millions of dollars—in its evaluation of the debt-to-earnings test as both an accountability standard for accessing Title IV programs and a metric students and families should have access to when making decisions about their education.

The Department estimates 4.4 percent of Title IV students are enrolled in programs that would fail the proposed rule, down from 4.7 percent under the current Gainful Employment rule. Despite the proposed rule encompassing a significantly greater number of programs at the undergraduate and graduate level across institutional sectors, tens of thousands of students will no longer be covered by accountability protections. This gap underscores the need to maintain the debt-to-earnings test for undergraduate certificate programs and extend the metric alongside the earnings premium to all undergraduate and graduate degree programs.

In the proposed rule, the Department points directly to the need to sanction programs that consistently leave students with unaffordable debt: "When students do not repay their Direct Loans, it hurts the interests of the United States in collecting on those student loans, and we aim to eliminate passing along the cost of such loans to taxpayers." Applying the existing debt-to-earnings test to all programs would ensure taxpayer funds flow only to programs that set borrowers up for success in repayment. With millions of borrowers currently in student loan default and thousands more poised to fall into default in the coming months, the Department should maintain the debt-to-earnings test to protect future borrowers from the devastating consequences of default.

Regardless of whether the Department chooses to reinstate the debt-to-earnings test as a requirement for accessing Direct Loans, we recommend the Department publish program outcomes of both the annual and discretionary debt-to-earnings tests in the updated Student

[8] TICAS analysis of U.S. Department of Education 2026 Program Performance Data. Analysis includes only gainful employment programs with debt and earnings data. The D/E metric used in this analysis (variable name: *ge_dte_overall_algn_fail*) evaluates earnings measured four years after completion to align with the statutory earnings premium measure. 94 programs were identified as failing the D/E metric, but not failing the earnings metric (variable name: *mstr_obbb_fail_cip2_wageb*). TICAS calculated the total number of Title IV students, Title IV aid disbursed, Pell recipients, and Pell disbursed for these 94 programs using variables *t4enrl_prg_2025*, *loan_vol_total_2025*, *pell_stu_count_2025*, and *pell_vol_2025*.

Tuition and Transparency System (STATS). Understanding how well (or poorly) a program's graduates fare in repaying their loans gives students critical context when choosing a postsecondary program. In recent TICAS interviews with for-profit college graduates, most individuals cautioned others to research program costs and loan repayment outcomes when choosing a school. Students at all institutions need accurate, clear, and transparently presented data to make informed decisions about their educational and financial futures. The ability to access debt-to-earnings outcomes on the STATS website would give students like those we spoke to the resources they need to make informed choices.

Align the limitations on restarting closed programs and failing programs

We recommend the Department align the criteria for programs an institution may not start for at least two award years following either the completion of a voluntary orderly closure or designation as a low-earning outcome program. Under § 668.603(c)(4), a program may maintain access to Direct Loans during an orderly closure if the institution agrees not to restart the same program or to start a program sharing the same 4-digit CIP code for at least two award years following closure. However, under § 668.604(b), institutions would be limited from restarting programs sharing the same 4-digit CIP code and any overlapping SOC codes according to the CIP SOC Crosswalk with a low-earning outcome program or voluntarily closed program. The limitation under § 668.603(c)(4) offers more robust protection for students by ensuring institutions cannot start programs that share the same 4-digit CIP code as a closed or failing program, not only programs that meet both CIP code and SOC code criteria. We encourage the Department to make this limitation consistent throughout the proposed regulations.

We appreciate the Department's focus on regulatory durability and ensuring the longevity of this accountability scheme. Likewise, we support the proposed STATS framework and align ourselves with comments submitted by the Postsecondary Data Collaborative with recommendations for further strengthening transparency for students. We particularly encourage the Department to retain current reporting requirements on the cumulative loan debt students owe their institutions after completing or withdrawing from programs. This information is essential for prospective students to understand the true cost of attendance and make informed enrollment decisions. Institutional debt often represents a significant financial burden that federal loan data alone does not capture.

Thank you for the opportunity to provide comments and for your work to serve students.

Sincerely,

Lydia Franz

Senior Policy Associate, Accountability
The Institute for College Access & Success