American Council on Education

May 20, 2026

Mr. Joe Massman
Office of Postsecondary Education
400 Maryland Ave. SW
Washington, DC 20202

Re: Docket ID ED-2026–OPE–0100

Dear Mr. Massman:

On behalf of the American Council on Education (ACE) and the undersigned higher education associations, we write to offer comments on the Department of Education's (Department) Notice of Proposed Rulemaking (NPRM) titled, "Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability." This NPRM would implement key elements of H.R. 1, the One Big Beautiful Bill Act (OBBB), signed into law on July 4, 2025.[1]

This NPRM focuses primarily on the new programmatic accountability measure created in the OBBB that holds all programs accountable at institutions that participate in Title IV programs of the Higher Education Act (HEA). The Department is extending some of those statutory provisions to aspects of the HEA that were not originally included in OBBB, primarily including certain programs under gainful employment (GE) authority. While there are provisions in OBBB that we do not support, the following comments focus on the Department's implementation of the law rather than the underlying statutory provisions.[2]

Before we offer substantive comments, we again urge the Department to allow more time for future negotiated rulemaking sessions.[3] We feel strongly that the negotiators selected by the Department should have more time —more time to prepare for negotiations once the first draft regulation is made available and more time to actually engage in negotiations. A final product rushed to a final consensus vote shortchanges all stakeholders, especially students.[4]

In addition, we would like to reiterate the importance of ensuring comprehensive representation of institutions of higher education on the negotiated rulemaking committee. The absence of comprehensive representation from impacted stakeholders excludes critical perspectives and knowledge that would lead to more fully informed negotiations. At the very least, we strongly encourage the Department to include the following representation:

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[1] Congress.gov. (2025, July 4). *H.R.1 - One Big Beautiful Bill Act*. https://www.congress.gov/119/plaws/publ21/PLAW-119publ21.pdf
[2] Any matters of concern with the policies in OBBBA should be directed to Congress.
[3] More detailed comments around this were shared in ACE's comment letter regarding the RISE NPRM that can be found here: https://www.acenet.edu/Documents/Comments-ED-RISE-030226.pdf
[4] Section 492(b) of the HEA shares that the Secretary shall provide for a comprehensive discussion and exchange of information.

- Two-year public institutions of higher education;
- Four-year public institutions of higher education;
- Private, nonprofit institutions of higher education;
- Private, proprietary institutions of higher education;
- Institutions of higher education eligible to receive federal assistance under Title III, parts A, B, and F, and Title V of the Higher Education Act (HEA), which include Historically Black Colleges and Universities, American Indian Tribally Controlled Colleges and Universities, Hispanic-Serving Institutions, Alaska Native and Native Hawaiian-Serving Institutions, and other institutions with a substantial enrollment of needy students as defined in Title III of the HEA; and
- Financial aid administrators at postsecondary institutions.

With this in mind, we offer the comments below.

Certificate Programs Should Not be Held to the Same Earnings Threshold as Undergraduate Degree Programs

The OBBB created an earnings-based accountability standard that applies to undergraduate degrees, graduate degrees, and graduate certificate programs.[5] For students completing their postsecondary education with an undergraduate degree, they are held to an earnings threshold using the median earnings of individuals 25–34 years of age with only a high school diploma. Students completing a graduate certificate or degree are held to an earnings threshold using the median earnings of individuals 25–34 years of age with a bachelor's degree. While the OBBB was silent regarding undergraduate certificate programs, it was broadly assumed that the Department would apply similar metrics as those used in the new accountability measure. However, the measure should reflect the different circumstances of students completing a certificate program compared with those completing an undergraduate degree.

When considering the earnings potential of students with varying levels of credentials, there are stark differences across education attainment levels. For instance, students aged 25 years or older with a high school diploma have median weekly earnings estimated at $899, compared to $1,493 for students with a bachelor's degree.[6] For students with an undergraduate certificate, the median weekly earnings are $992.[7] Because the earnings threshold in OBBB uses a high school diploma for undergraduate degree holders, the data shows that a certificate holder has higher projected earnings than someone with a high school degree. However, there is a significant discrepancy of earnings when accounting for age within the comparison group.

As an example, consider an 18-year-old student who completes high school, immediately enrolls in a postsecondary institution, and makes the decision to obtain a credential to enter the workforce quickly. After the completion of 12–18 credit hours within a year, this student immediately begins to work. After four years in the workforce, this student is now 23 years old, but their earnings are

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[5] This information can be found in Section 84001 of the One Big Beautiful Bill Act.
[6] U.S. Bureau of Labor Statistics. (2023). *Earnings and unemployment rates by educational attainment, 2023* [Table]. U.S. Department of Labor. https://www.bls.gov/cps/earnings.htm#education
[7] Ibid; This number can also include students who do not hold a certificate but simply completed some college without obtaining a degree.

counted in an age group that includes individuals with 7 to 16 more years of work experience and the related increase in earnings.[8]

Recent data shows that 14.5 percent of workers aged 25–34 experienced promotions,[9] which can mean that these individuals are highly likely earning more than a 23-year-old with four years of work experience. Also, various age groups do not have the same earning potential. The age group of 25–34-year-olds had median weekly earnings of $1,140, but the age group of 20–24-year-olds had median weekly earnings of $810.[10] Because the age range for certificate holders is decreasing—academic year 2023-2024 marks the first time that certificate completers aged 24 and younger outnumbered those 25 and older[11]— a more valid comparison group for students with undergraduate certificates would be those aged 20–24 years old with a high school diploma.[12]

Institutions Should Be Able to Offer Alternative Earnings During an Appeal

In OBBB, the Department is prohibited from denying any academic program Direct Loan eligibility unless the institution can file an appeal.[13] While the language in OBBB is broad and gives the Department discretion in determining processes for an appeal, we strongly believe that the Department should create an appeals process that allows institutions to present alternative earnings.

We appreciate that the proposed rules allow institutions to check the completer lists in each program and provide corrections. Certainly, the accuracy of this list is crucial to the overall accuracy of the earnings data. However, our main concern lies with limiting institutions to filing appeals only on the basis of the Department erroneously calculating the program's earnings premium measurement.[14] While it is important to allow institutions to check the math of the Department in calculating the earnings premium measure, institutions also should have the opportunity to offer alternative earnings data before any earnings premium calculations are made.

Many states have developed data systems that allow the state to track information such as enrollment and completion data; program performance data; financial aid data; workforce data; and return on investment data that includes student debt, time to degree, and earnings of graduates by degree type, program, and institution.[15] If an institution is in a state with a robust state-level data system,[16] the institution should be afforded the opportunity to submit state earnings data. Also, in an alternative earnings appeal, institutions should be able to inform the Department of any disparities in earnings due to factors outside of an institution's control, such as economic challenges, geographical differences, and pay inequities.

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[8] While this age group also includes 25-year-olds, those aged 34 years old help to significantly increase the median earnings of the age group.

[9] Terrazas, A. (2025, June 20). *Promotions are at a 5-year low — what that says about the labor market.* Gusto Insights. https://gusto.com/resources/gusto-insights/2025-workforce-promotions

[10] U.S. Bureau of Labor Statistics. (2026). *Median usual weekly earnings of full-time wage and salary workers by age and sex* [Table]. https://www.bls.gov/charts/usual-weekly-earnings/usual-weekly-earnings-current-quarter-by-age.htm

[11] National Student Clearinghouse. (2025, April 10). *Number of learners earning certificates reaches a new 10-year high for the third consecutive year.* https://www.studentclearinghouse.org/news/number-of-learners-earning-certificates-reaches-10-year-high/

[12] For this data to be captured, the U.S. Census Bureau would need to be instructed to collect this data for this age group.

[13] This can be found in Section 84001 of the One Big Beautiful Bill Act.

[14] This can be found in Section 668.603(b) of the proposed rule.

[15] Data Quality Campaign. (2025, March). *Powering potential: Using data to support postsecondary access, completion, and return on investment.* https://dataqualitycampaign.org/wp-content/uploads/2025/03/DQC-Powering-Potential.pdf

[16] This system would capture earnings data that could be used by institutions during an appeal.

In the preamble, the Department states, "[w]e believe it would be highly impractical for the Department to evaluate, on an ongoing basis for each State, whether the quality of State-level earnings data exceeds that of Federal-level earnings data."[17] While complexity is added when state data is considered, it should be accommodated given the stakes: students' access to federal loans. This includes considering data from a state-sponsored data system as part of the appeals process alone before making a final determination. At the end of the day, these determinations carry such a significant impact for students that it is incumbent on the Department to ensure they are collecting the most accurate data on earnings outcomes of academic programs.

The Department Should Allow an Adequate Amount of Time Before New Data Fields Are Required to be Reported

Section 668.43 of the proposed rule includes a requirement that the Department establish and maintain a website on academic programs and institutions to increase transparency for both current and prospective students and families. To be exact, this website would make the following data more transparent:

- The published length of the program in calendar time;
- The median length of calendar time, as calculated by the Department, used for full-time and less-than-full-time students to complete their program and obtain a degree/credential;
- The total number of students enrolled in a program during the most recently completed award year;
- The total cost of tuition and fees plus the costs of books, supplies, and equipment incurred by the student;
- The percentage of students who received a Direct Loan and/or private loan while enrolled in a program;
- The median loan debt of students who completed a program during the most recently completed award year or those students who withdrew, as calculated by the Department;
- The median earnings of students who completed a program during the most recently completed award year or those students who withdrew, as calculated by the Department;
- The accreditation status of the program and name of accrediting agency;
- The earnings premium measure for each program, as calculated by the Department; and
- Other information deemed appropriate by the Department such as completion rates, prepared primary occupations by program, and loan repayment rates.[18]

Section 668.406 requires institutions to also report over 20 additional data fields. These data fields include information on each student enrolled in a program, the date they enrolled as well as the name, classification of instructional program (CIP) code, credential level, and length of a program.[19]

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[17] Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability, 91 F.R. 21181 (proposed on April 20, 2026) (to be codified in 34 CFR Parts 600, 668, and 685). https://www.govinfo.gov/content/pkg/FR-2026-04-20/pdf/2026-07666.pdf
[18] Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability, 91 F.R. 21200 (proposed on April 20, 2026) (to be codified in 34 CFR Parts 600, 668, and 685). https://www.govinfo.gov/content/pkg/FR-2026-04-20/pdf/2026-07666.pdf
[19] Ibid.

This list also includes any other data field as may be determined by the Department in a future Federal Register notice.

While we support transparency, these information requirements could include many other data elements that remain unknown to institutions. Should the Department add any other data fields to this list, advanced notice of at least 180 days should be given to ensure complete compliance.

Cohort Earnings Should be Based on Earnings from the Most Recent Full Tax Year for which Earnings are Available

The proposed regulation includes a definition of the cohort period and states that, as in the statue, a single-year cohort will be used to calculate the earnings premium measure when there are 30 or more completers. The Department has the authority to expand the cohort period when the number of completers is below 30, and the Department proposes to expand the cohort period up to eight previous years at the six-digit CIP code level and, if necessary, at the four- and two-digit CIP code levels to achieve a cohort of 30 or more completers.

Because this rule is slated to go into effect on July 1, 2026, we do not believe that the Department should take punitive measures against institutions for the macroeconomic challenge in the years prior to this rule being finalized. For example, the COVID-19 pandemic era had a significant impact on earnings and employment of recent graduates. We understand that the cohort period will initially consist of graduates who completed their program four years prior to the year with the most recent earnings data from the IRS. However, the rule states that the Department could consider up to eight previous years at the six-digit CIP code level before repeating this at the four- and two-digit CIP code levels, potentially using data from a cohort completing their program as early as 2017 per our estimates.[20]

If the Department has to sequentially expand the cohort beyond the prior four years, we ask that the Department use the earnings from the most recent full tax year that earnings are available. For example, if the Department plans to issue earnings premium measures in 2027, it should use 2025 as the reference year because this is the most recent full tax year that earnings are captured. Given this, the prior four-year cohort to be measured would be from 2021. Should the Department learn that this cohort does not have 30 completers and, therefore, needs to expand the cohort, we believe that the 2025 tax year should still be the year used to determine earnings. If the Department were to move the tax years for earnings to keep a four-year interval, then institutions would be responsible for the earnings of completers from tax years as far back as 2021.

The Department Should Not Allow for the Loss of All Title IV Aid for Programs that Do Not Meet the Earnings Test

In OBBB, Congress's clear intent was to deny eligibility for Direct Loans, and only Direct Loans, for programs that did not meet the earnings threshold. However, in holding institutions accountable under administrative capability, the NPRM proposes to eliminate all Title IV eligibility for low-

[20] This assumes 2025 to be the initial tax year for earnings, which would mean that the first cohort would be from 2021.

earning-outcome programs unless an institution "[d]emonstrates that at least half of the institution's recipients of [T]itle IV, HEA funds and at least half of the institution's total [T]itle IV, HEA funds are not from low-earnings outcome programs."[21] We understand that this was a concession made by the Department to reach consensus on the proposed draft rule, but the Department's position goes well beyond the intent of OBBBA.

In the preamble, the Department stated that it "has a greater interest in applying the accountability framework to the Direct Loan program because, unlike the other programs under Title IV, HEA, the government and taxpayers expect loan funds to be repaid,"[22] which contradicts the decision the Department made in agreeing to this concession. In OBBB, there is no mention of the loss of the entirety of Title IV aid. Congress intended to limit punitive action to Direct loans only. We urge the Department to reconsider its proposal to extend the impact of this measure beyond the intent and the statutory language of the law and only hold programs accountable for the loss of Direct Loans.

The Department Should Abide by the Master Calendar

The Department states in the preamble that if there is a conflict between a general provision and a specific provision, the specific provision prevails.[23] This statement is in relation to the implementation timeline for OBBB; however, whenever Congress has historically wanted to waive the Master Calendar requirements, their intention to do so has been specifically and consistently stated in the statute.[24]

Given this policy and the Department's estimate that it will take more than 1.6 million burden hours for institutions to comply with this regulation[25], the final rules issued in 2026 should have an implementation date of July 1, 2027, at the earliest.[26] Abiding by the Master Calendar gives institutions the enough time to prepare for the regulatory changes, adequately inform students and families of the changes to their student aid, and plan for the smoothest possible transition. It also ensures that students have sufficient time to consider their options and adjust their plans accordingly.

We appreciate your time and attention to this matter. We hope that you will give our comments full consideration. They will help ensure that the final rule better serves both students and institutions.

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[21] Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability, 91 F.R. 21200 (proposed on April 20, 2026) (to be codified in 34 CFR Parts 600, 668, and 685). https://www.govinfo.gov/content/pkg/FR-2026-04-20/pdf/2026-07666.pdf; In an effort to comply with this new requirement, the Department shares in the preamble that a program would lose all Title IV, HEA eligibility if an institution meets either condition. This can be found on pages 21118, 21119, 21120, 21142, 21183, and 21184 of the preamble.

[22] Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability, 91 F.R. 21184 (proposed on April 20, 2026) (to be codified in 34 CFR Parts 600, 668, and 685). https://www.govinfo.gov/content/pkg/FR-2026-04-20/pdf/2026-07666.pdf

[23] Also known as the General/Specific Canon perspective.

[24] For example, the last bill to reauthorize the HEA was the Higher Education Opportunity Act (HEOA) and this bill included direct instructions to waive the master calendar requirements. More information on ACE's position regarding the master calendar can be found in the comment letter to the Department regarding the Reimagining and Improving Student Education (RISE) NPRM: https://www.acenet.edu/Documents/Comments-ED-RISE-030226.pdf

[25] Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability, 91 F.R. 21191 (proposed on April 20, 2026) (to be codified in 34 CFR Parts 600, 668, and 685). https://www.govinfo.gov/content/pkg/FR-2026-04-20/pdf/2026-07666.pdf

[26] The Department has the authority in Section 482(c)(2) of the HEA to designate any regulatory provision as one that may be implemented early at the discretion of the entity that is subject to the regulation.

Sincerely,

Ted Mitchell
President

On behalf of:

AACTE–American Association of Colleges for Teacher Education
ACPA–College Student Educators International
ASPA–Association of Specialized and Professional Accreditors
American Association of Colleges and Universities
American Association of Colleges of Nursing
American Association of Colleges of Osteopathic Medicine
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Association of Veterinary Medical Colleges
American Council of Learned Societies
American Council on Education
American Indian Higher Education Consortium
Association of Accredited Naturopathic Medical Colleges
Association of American Universities
Association of Community College Trustees
Association of Governing Boards
Association of Independent California Colleges and Universities
Association of Independent Colleges and Universities in Massachusetts
Association of Independent Colleges and Universities of Pennsylvania
Association of Independent Colleges and Universities of Rhode Island
Association of Jesuit Colleges and Universities
Association of Schools and Programs of Public Health
Career Education Colleges and Universities
Commission on Independent Colleges and Universities in NY
Connecticut Conference of Independent Colleges
Council for Higher Education Accreditation
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National Association for College Admission Counseling
National Association of College and University Business Officers
National Association of Colleges and Employers
National Association of Diversity Officers in Higher Education

National Council for Community and Education Partnerships
UPCEA–the Online and Professional Education Association