



May 20, 2026

The Honorable Linda McMahon
Secretary of Education
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

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 Secretary McMahon and Under Secretary Kent:

We, the 19 undersigned organizations working on behalf of students, consumers, veterans, service members, faculty and staff, civil rights, and college access urge the U.S. Department of Education to enact regulations that strengthen accountability in higher education and protect both students and taxpayers from low-quality programs.

We support the Department's efforts to implement a consistent, commonsense accountability framework that ensures students and taxpayers receive positive returns from their investments in higher education. The proposed rule contains some critical student protections, discussed below, that led negotiators to reach consensus, and we urge the Department to maintain them in the final rule. However, we remain concerned that the proposed regulations fall short of the Department's stated goal in the proposed rule of "robust accountability measures [that] would ensure program integrity and protect students."¹ Discussed below are recommendations that the undersigned organizations agree would strengthen the accountability measures to ensure that all Title IV-eligible programs provide a minimum return on student and taxpayer investment. Without strong

¹ 91 F.R. 21088

protections in the regulations, the Department risks replicating past institutional program integrity failures.

Recommendation #1: The Department Should Maintain Earnings Metric Coverage for Non-Degree Programs

We strongly support the Department’s application of the earnings metric for non-degree programs through its existing gainful employment statutory authority and urge the Department to maintain it in the final rule. The Department's own preliminary [analysis](#) demonstrates the critical importance of this coverage. Programs enrolling 31 percent of undergraduate certificate students are projected to fail the earnings premium test, compared with programs enrolling 4 percent of associate's 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, predominantly 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 ten years after enrollment.

These figures reveal that certificate programs—which enroll a [significant number](#) of low-income students of color in higher education—pose the greatest risk of leaving graduates worse off than if they had never enrolled in the program. Exempting these programs from accountability measures would constitute a significant waste of taxpayer resources and abandon students who deserve the same protection as those provided for students enrolled in degree programs.

As it noted in the proposed rule, the Department possesses clear legal authority to apply earnings metrics to non-degree programs in these regulations using the gainful employment authority. As the Department recognized in the proposed rule, a federal district court in *American Assoc. of Cosmetology Sch. v. Dep't of Educ.*,² affirmed that the Higher Education Act provides the Department authority to issue earnings metrics pursuant to gainful employment statutory language. Critically, the judge in that case 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."³ In determining the plain meaning of that term, the judge agreed with the Trump Administration that “gainful employment” means training that is profitable for students—programs that “actually train and prepare postsecondary students for jobs that

² *American Assoc. of Cosmetology Sch. v. Dep't of Educ.*, 2025 WL 4219345, (N.D. Tex. Oct. 2, 2025).

³ *Id.* at *9-12.

they would be less likely to obtain without that training and preparation.”⁴ 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.⁵

Regardless of credential length, all students seeking an undergraduate degree or certificate should be confident 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 consistent and harmonious protection for students and taxpayer funds.

Recommendation #2: The Department Should Retain the Debt-to-Earnings Metric

We strongly encourage the Department to maintain the debt-to-earnings (D/E) test as an essential complement to the earnings premium measure.

While the earnings premium test identifies programs that fail to boost graduates' earnings above a high school baseline, the D/E test serves a distinct and vital function: protecting students from programs that saddle them with debt they cannot afford to repay, even if those programs provide some earnings benefit, and it serves as a stronger barometer of quality for gainful employment programs, particularly those at historically underfunded institutions.

The Department is misguided in its belief that the D/E metric is an unnecessary burden based on the limited number of programs that fail a D/E test but would not fail the earnings premium metric. Even if the Department believes that the number of programs that would fail D/E but not the earnings premium metric is relatively low,⁶ these programs enroll a significant number of affected students and Title IV taxpayer dollars. An analysis of the Department's data indicates that programs that would fail only D/E but not the earnings premium enrolled approximately 39,700 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 aid

⁴ *Id.* at *10.

⁵ The Senate Committee on Health, Labor, and Education published a [document](#) with answers to frequently asked questions about the One Big Beautiful Bill Act's higher education provisions. It made Congressional intent 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.”

⁶ The Institute of College Access and Success' analysis of U.S. Department of Education 2026 Program Performance Data indicates that 94 programs fail the debt-to-earnings test but not the earnings premium metric.

disbursed and an additional \$95 million in Pell Grant funds disbursed.⁷ The significant scale of harm to students demands continued protection.

With millions of borrowers currently in student loan default—and thousands more poised to enter default—the Department should strengthen, not weaken, protections for future borrowers. The devastating consequences of default, including wage garnishment, damaged credit, and inability to access future federal student aid, justify maintaining every available tool to identify high-risk programs before students enroll.

The D/E metric also provides a critical deterrent effect, discouraging the creation of new programs designed to extract federal dollars while leaving students with unaffordable debt. Removing this metric would invite the proliferation of high-tuition programs that may clear the earnings premium bar while still providing insufficient salary increases to allow graduates to pay back their student loan debt.

Recommendation #3: The Department Should Extend the Consequences of Earnings Metric Failure to Include All Title IV Eligibility

We urge the Department to ensure that gainful employment programs that fail the earnings metric lose eligibility for all Title IV funds including Pell Grants, not only Direct Loans. This change is particularly critical for undergraduate certificate programs but would be applicable, and statutorily required,⁸ for all programs subject to the gainful employment statutory language.

Because of lower cost, students in certificate programs are often less reliant on federal loans than their peers in degree programs, meaning institutions may be able to continue enrolling Pell-only students in failing programs even after losing access to Direct Loans. Without extending consequences to Pell Grant eligibility, low-income students may

⁷ This is based upon The Institute of College Access and Success' 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*.

⁸ The Higher Education Act requires that proprietary and vocational institutions and all non-degree programs must “prepare students for gainful employment in a recognized occupation” to receive federal financial aid under Title IV. 20 U.S.C. 1002 (b)(1)(A), (c)(1)(A). By using the gainful employment authority to extend the 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.

continue directing their limited, taxpayer-funded grant dollars to programs that demonstrably fail them and do not provide an earnings boost that these students need.⁹

The statutory language governing gainful employment provides authority, and the requirement, to condition a program's eligibility of both Direct Loans and Pell Grants (along with other Title IV aid). Protecting taxpayer investments in student success, and upholding the legal requirement around the gainful employment statutory language, requires treating all federal student aid consistently for any program subject to that requirement. The failure of the earnings metric for those programs must lead to the loss of all Title IV funds, as the Higher Education Act requires.

At minimum, the Department should retain the administrative capability provisions addressing institutions in which a majority of students are enrolled in, or a majority of Title IV dollars flow to, failing programs. It 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. Institutions with such widespread failures of the earnings metric should not be permitted to continue to waste students' lifetime Pell Grant eligibility on low-value programs that are such a large part of the school's operation.

Recommendation #4: The Department Should Preserve the Limited Appeals Process

We urge the Department to maintain the current appeals framework, which limits challenges to calculation errors and does not permit alternative earnings appeals.

Some institutions have urged the Department to allow alternative earnings appeals because of their concerns that IRS data does not accurately reflect graduates' tips. This argument should be rejected. A [2022 analysis](#) of IRS data by Stephanie Riegg Cellini and Kathryn J. Blanchard estimates that just 8 percent of earnings go unreported by cosmetologists, which shows that including unreported tipped income in the earnings premium calculation (if it could be obtained accurately in a survey of graduates, which is doubtful) would not substantially change fail rates for most cosmetology programs - especially considering the other ways in which the proposed rules already weaken the earnings-based standard for many programs.¹⁰

⁹ An example is Florida Career College, a school that 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 the school'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.

¹⁰ For example, the proposed rules now use a four-year, rather than a three-year, median earnings measure.

The existing appeals structure appropriately balances institutional due process with efficient administration. Expanding appeals to include alternative earnings measures or other measures would invite protracted disputes, create opportunities for gaming that ultimately harm students, and waste Title IV funds on programs that are providing little to no earnings premium for their graduates.

Recommendation #5: The Department Should Maintain and Strengthen Data Transparency Requirements

We appreciate the Department's efforts to maintain strong transparency and consumer disclosures through the Student Tuition and Transparency System (STATS). Access to accurate program-level data on costs, debt, and outcomes—as well as active disclosures for programs that do not meet minimum earnings requirements—will help students and families make more informed decisions when choosing a program. In addition to the proposed reporting requirements, the Department should retain current regulatory requirements for institutions to report both the total amount of institutional debt students owe after completing or withdrawing from programs, and we encourage the Department to also require schools to report their policies to collect on these student debts. 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.

Institutions already demonstrate the capacity to track and report private loan information; requiring similar reporting for institutional debt imposes no undue burden. Transparency serves students, families, and policymakers alike in assessing whether programs deliver value commensurate with their total cost.

Conclusion

We appreciate the Department's commitment to creating durable regulations that will provide accountability for programs that do not serve the best interests of students. The Department has both the policy imperative and the legal authority to maintain strong accountability measures for programs receiving federal student aid. Its regulations must faithfully implement the goals of all parts of the Higher Education Act to protect students from low-quality programs, ensure responsible stewardship of taxpayer dollars, and maintain the integrity of the federal investment in higher education.

Sincerely,

AFT: Education, Healthcare, Public Services
American Association of University Women (AAUW)
Community Service Society of New York

Debt Collective

EdTrust

Institute for Higher Education Policy (IHEP)

NAACP

National Association for College Admission Counseling

New America Higher Education Policy Program

Partnership for College Completion

Project on Predatory Student Lending

Protect Borrowers

Service Employees International Union (SEIU)

The Institute for College Access and Success

United States Student Association

University of California Student Association (UCSA)

UnidosUS

Veterans Education Success

Young Invincibles