



May 20, 2026

The Honorable Nicholas Kent  
Under Secretary of Education  
US Department of Education  
400 Maryland Ave. SW  
Washington, DC 20202

Docket ID: ED-2026-OPE-0100

Dear Under Secretary Kent:

Thank you for the opportunity to offer comments on the Department of Education's (Department) notice of proposed rulemaking (NPRM) issued after the second week of the Accountability in Higher Education and Access through Demand-driven Workforce Pell (AHEAD) committee. Third Way is pleased to see the Department's emphasis on ensuring that regulatory language promotes higher education accountability for all programs. Too many programs leave students with little to no earnings premium for their tuition, and these regulations will enact statutory provisions such that fewer students attend low-earning programs and fewer taxpayer dollars keep those programs running. This document contains Third Way's comments on the NPRM with a focus on implementing the accountability framework with fidelity to legislative intent. We believe that these recommendations will further the Department's goal to ensure that programs and institutions are held accountable for student outcomes and taxpayer dollars.

## Directed Questions

### Earnings §668.2(b)

Third Way supports the Department's planned approach to use the Internal Revenue Service (IRS) as the federal agency providing earnings data to calculate the earnings premium. We agree with the Department that this source provides the most accurate, reliable, and consistent data for the calculations. To our knowledge, there are no other data sources that would be a comparable alternate or substitute.

During the second week of the AHEAD committee, some negotiators raised concerns that IRS earnings for certain fields do not reflect all tipped income or parsonages. However, as the Department has stated in its reasoning for using IRS data, tipped income is generally required to be reported. Likewise, while ministerial housing may not be taxed in the same way as income, it is required to be recorded on tax forms. Simply put, all individuals must report these sources of income on their tax return; to not do so risks committing tax fraud. If certain sectors have imprecise typical earnings in IRS data due to unreported income sources, it is not the Department's role to estimate what those would be. The Department should not inflate wages to account for unreported income. We highly encourage the Department to maintain its current approach to earnings data.

## Student Tuition and Transparency System (STATS)

We appreciate that the Department proposes developing the Student Tuition and Transparency System (STATS), a similar framework to the previously established Financial Value Transparency (FVT) system, which Third Way has long supported.<sup>1</sup> The STATS system would enable additional program-level insights currently unavailable through other federal postsecondary data sources, including the Integrated Postsecondary Data System (IPEDS) and the College Scorecard. Ensuring value and promoting accountability in higher education requires a commitment to collecting not only additional data points but also doing so at the program level. The STATS system makes considerable and commendable strides in advancing accountability and value through transparency.

While Third Way is pleased to see the Department's commitment to maintaining most data elements from the prior FVT framework, we disagree with the removal of the debt-to-earnings ratio from STATS reporting. The current accountability framework focuses entirely on postgraduate earnings, which are certainly important, as most students pursue higher education to get a good job and climb the income ladder to the middle class. Still, debt-to-earnings rates fulfill a different and important data transparency function by measuring whether graduates can afford to repay their student loans based on what they earn, protecting students from high-debt, low-wage programs.<sup>2</sup> This information remains useful for prospective and current students as well as for institutions. Pursuant to a separate provision of H.R. 1, institutions will have the authority to set federal loan limits for individual programs going forward. To make such determinations, institutions would benefit from having debt-to-earnings rates readily available to assess affordable debt levels for their programs. Throughout its accountability regulatory framework, the Department shows a clear concern for the affordability of student loan debt—one shared by most Americans.<sup>3</sup> Yet excluding the debt-to-earnings metric moves the needle further from these goals, provides little incentive for colleges and universities to address the costs of higher education, and further exposes taxpayer dollars to unnecessary risk. STATS will include the individual data elements needed to calculate debt-to-earnings ratios for covered programs, and we urge the Department to publish these rates regardless of whether they serve an additional enforcement purpose.

Several negotiators during the negotiated rulemaking process offered alternate proposals to the Department, all of which maintained the debt-to-earnings ratio. We disagree with the Department's stance that further collection and reporting of debt-to-earnings data would be of marginal benefit and argue that it would further deliver the transparency that voters crave from higher education.<sup>4</sup> If the Department already requires institutions to report additional data metrics through STATS, it is incumbent on the Department to allocate the resources and technical expertise to ensure a full and fair picture of what students are borrowing for college, and what they can expect to earn after completion.

Transparency and data collection are most meaningful for students and families making consequential decisions about when and whether to pursue postsecondary education when they are displayed in useful, easy-to-use formats. The Department has taken laudable steps to ensure students can access useful data when making decisions, including providing pertinent earnings-based information through the FAFSA low-earnings indicator launched in December 2025.<sup>5</sup> The

Department has reported that roughly 25% of students who were notified that they had listed a low-earnings institution on their FAFSA opted to remove that school from their form in favor of a better option—indicating that students value and respond to such information. We strongly encourage the Department to implement an active acknowledgment for programs that fail the earnings premium measure, whereby students must demonstrate their understanding that their program could become ineligible for Direct Loans due to its earnings outcomes.

As the new H.R. 1 accountability framework is established through this rulemaking, Third Way encourages the Department to keep utility top of mind when publishing STATS data. The Department has already collected its first round of data under the FVT framework, and those data should be analyzed and made publicly available as soon as possible. The Department should additionally prioritize both the personnel and financial resources needed to publicly share a timeline for finalizing the analysis and release of the STATS data and its public-facing integration. In doing so, we strongly encourage the Department to integrate program-level transparency data within the College Scorecard, further bolstering its purpose as a consumer information tool for students, families, and researchers.

## **Earnings Accountability**

### **Limit Low-Earning Programs' Title IV Eligibility**

The H.R. 1 accountability framework is a monumental step for ensuring that taxpayer dollars fund programs that deliver strong financial outcomes for students. Yet, as currently proposed, there is a loophole for failing programs to continue receiving Title IV funds, including Pell Grants. To fulfill the Congressional intent of H.R. 1, Third Way urges the Department to make low-earning programs ineligible for not only Direct Loans, but any Title IV, HEA funding.

To ensure that students use their taxpayer-funded aid for degrees that pay off, low-earning programs should lose access to Direct Loans *and* all Title IV aid. The Department states that it has a greater interest in implementing consequences for loans because taxpayers expect those funds to be repaid. However, taxpayers also benefit when any Title IV, HEA dollars—including federal Pell Grants—support students' completion of degrees and programs of value, whereas taxpayer dollars are ill used when they leave students worse off than if they had never attended.

The Department accepted proposed changes to the program participation agreement and administrative capability regulations. The changes terminate Title IV, HEA eligibility if more than half of an institution's Title IV, HEA recipients or Title IV, HEA revenue are from low-earning outcome programs. This is a step in the right direction, but the stakes must be higher for low-earning programs. Title IV, HEA eligibility should be treated the same as Direct Loan eligibility. Taxpayers fund both sources of aid, and that should be treated seriously, irrespective of whether the Department expects funds to be repaid or not.

A new report from the Postsecondary Education & Economic Research (PEER) Center details the importance of limiting Title IV access beyond loans for low-earning programs. PEER finds that while more programs will fail under the new accountability framework, it fails to protect more students. The current regulations protect more than 600,000 students from using federal aid to attend programs with poor outcomes, while about 300,000 would be impacted under the new earnings test.<sup>6</sup> That's half the number of students who are at risk of using their taxpayer-

funded financial aid at programs where they cannot expect to see a return on investment. We encourage the Department to revoke all Title IV access for low-earning programs to ensure a robust higher education accountability system in alignment with the intent of H.R. 1. We believe, as several negotiators expressed during the negotiations, that low-earning programs should lose access to all Title IV, HEA programs, as required under the current GE accountability framework for GE programs. These higher consequences would further incentivize institutions to shift their program offerings to deliver stronger financial returns for students. We ask the Department to reconsider its current approach and implement stronger consequences for failing programs.

### **Maintain the Debt-to-Earnings Metric**

We applaud the Department for subjecting all programs, including undergraduate certificates, to the earnings premium. At the same time, we encourage Department officials to retain the debt-to-earnings metric for GE programs. Doing so would subject undergraduate certificates to the earnings premium *and* the debt-to-earnings test, which would be aligned with Congressional intent.<sup>7</sup> The proposed earnings premium captures more failing programs in comparison to current regulations except when it comes to undergraduate certificates, so the removal of the debt-to-earnings standard will expose students and taxpayers to risky certificate programs counter to Congressional intent. We recommend that the Department rethink its proposal and maintain the debt-to-earnings metric for undergraduate certificate programs.

The NPRM clearly states: “undergraduate certificate programs face an easier accountability framework” under the proposed regulations. This is not acceptable. In Table 3.11 provided by the Department, we see that 40% of undergraduate certificate programs fail under current regulations, but only 26% do under the proposed ones. This is consistent across institutional sectors—undergraduate certificate programs across the board fail at lower rates under the proposed regulations. Additionally, according to Table 3.14, low-earning undergraduate certificate programs would lose 49% of all their Title IV, HEA funding under the current accountability framework. That percentage drops to 28% under the proposed regulations, meaning that the Department is proposing to weaken accountability for undergraduate certificates.

A successful, robust accountability framework should hold *more* programs to a *higher* standard. In this context, that means maintaining the debt-to-earnings metric for undergraduate certificate programs in addition to the proposed earnings premium. Our higher education accountability system should improve outcomes, not weaken them.

### **Rescind the Orderly Closure Loophole**

During negotiations, the Department accepted a proposal from some negotiators that would give low-earning programs the option to conduct an orderly program closure after they fail the earnings premium the first year. We are concerned that this policy creates a workaround for failing programs to access student loans for more time. The extension prioritizes low-earning programs over students, and it is inconsistent with Congress’s intent in H.R. 1. Therefore, we recommend that the Department remove it from the proposed rule.

With this option, programs will be able to access loans for the lesser of three years or the full-time duration of the program. This means that some programs will be able to access federal

loans for a longer period than had they not chosen this option and failed the metric the following year. For example, without the orderly closure policy, a three-year master's degree program that fails the earnings premium two years in a row will lose access to loans after the second year. With the loophole, this program could fail the first year, opt for the orderly closure, and maintain access for two *more* years. During this time, new students cannot enroll, but current students can still take out loans to continue to pursue a degree that has proven to provide poor financial outcomes for students. The Department states that this option will support degree completion. While that might be true, it is potentially more harmful to encourage students to stay enrolled in a program that will leave them worse off.

We recommend that the Department remove this policy. The orderly closure option is an appealing option for failing institutions, but it is under-protective of students and taxpayer dollars. Overall, a small proportion of total programs, just 1%, are projected to fail the earnings threshold tests. For those that do fail, most students can find alternative programs at the same credential level and field of study at the same institution.<sup>8</sup> Rather than allowing students to complete a program that will never pay off, they should be able to seek out options that pass the threshold. Congress was clear in H.R. 1—programs that fail to pass the earnings premium for two out of three years will lose access to loans; the legislative intent was certainly not to allow underperforming programs to maintain access to Direct Loans for a longer period.

However, if the Department is keen on keeping this option, we recommend some key changes. Programs should not be able to retain loan access for three years. The Department should consider shortening that to one or two years, which would be more aligned with the consequences for failing programs under H.R. 1. Under the student warning portion of this policy, the Department should also explain how and when students will be notified that their program is at risk of losing access to loans. We recommend that programs be required to notify students digitally and multiple times. Programs that enter into this option with the Department should also be required to be in good standing with their accreditor. If an agency has taken any action against the program or institution in the past five years, the program should not be eligible for an orderly closure.

## **Use Federal Data Sources to Measure Earnings**

Third Way supports the Department's decision to use federal sources for earnings data. We agree that the Department should not allow appeals to adjust median graduate earnings data or allow programs to submit alternative earnings data. As previously stated, IRS data provide the highest quality and most accurate measurements of earnings. While no data source may be perfect, there are no substitutes that would be appropriate to use. Appeals for earnings information would also make more work for the Department to verify those data, it could incentivize programs to manipulate data, and it would delay accountability for the students who should be protected from these programs.

Some negotiators recommended that the Department inflate graduate earnings to account for unreported tipped or self-employment income. We agree with the Department that this is not appropriate. Individuals must accurately report their tipped and self-employment income on their taxes, and it is not the Department's role to artificially adjust those wages. Additionally, as the Department references in the NPRM's preamble, underreported tip income is not what causes these programs to fail. Even when accounting for tips, these programs consistently

deliver poor outcomes for students. A 2022 analysis found that underreported tips among barbers in Texas did not change program outcomes under the earnings test.<sup>9</sup> More research about cosmetology programs shows that they consistently fail to deliver strong outcomes for students. Median graduate earnings for these programs are about \$20,000 four years after students complete the credential.<sup>10</sup> That is far below the median earnings of an individual who only holds a high school diploma. Given this evidence and how difficult it would be to account for untipped wages, the Department should resist the pressure to provide failing programs with a new loophole. Poor-performing programs should not escape the consequences of the accountability framework.

## **Improve Student Warnings**

The Department has proposed important changes to warnings sent to prospective or current students enrolled in a program at risk of losing Direct Loan eligibility. It is critical to broaden the population of individuals whom the warnings will reach, and providing specific information about loan and Title IV eligibility will help students understand the situation and navigate their options. We also support the Department's proposal to include information about lifetime Pell Grant eligibility in student warnings. This is critical information for students who are enrolled in or considering a program that is at risk of losing Direct Loan eligibility. We also recommend that similar information is conveyed to students who qualify for G.I. Bill dollars.

All information should be written in clear, understandable language. Definitions for key terms provided and resources to navigate program transfer or alternative program options should also be provided in disclosures.

## **Standards for Participation in Title IV, HEA Programs**

We agree with the Department's rationale that a majority of Title IV students or funds associated with failing programs could signify systemic issues within an institution and that provisional program participation status is warranted in such cases. Under the proposed rules, to retain full participation in Title IV programs, an institution must have at least half of its Title IV students *and* half of its Title IV dollars associated with programs that pass the earnings test. If the majority of either is tied to failing programs, the Department may place the institution on a provisional PPA.

However, the proposed rule does not adequately define how failing programs will be tracked for the purposes of administrative capability. The rule appears to facilitate continued access to Title IV funds by institutions that may in fact be leaving large segments of their student populations worse off. For example, if an institution has 60% of its Title IV funds flowing through marginal programs that fail one year but not the next, while 40% of funds are associated with programs that fail two consecutive years, one might reasonably assume there are systemic quality concerns. However, under the proposed rule's current structure, that institution is likely to remain fully certified to participate in Title IV programs, and its specific failing programs will continue to receive Pell Grants and other publicly funded education benefits.

Without a clearer structure, institutions could manipulate enrollment counts or dollar allocations to avoid provisional status, leaving students unprotected. At a minimum, the Department should use a cumulative failing program rate of 50% across any two of three consecutive years to trigger placement on provisional PPA status and loss of access to Title IV

for failing programs.

Delaying loss of eligibility would allow institutions to enroll new cohorts during the warning period, exposing students to debt for programs already known to be failing. The Department should clarify that loss of eligibility for new enrollments occurs immediately after the qualifying failure, and any student enrolled during the first failing year should receive teach-out protections.

According to Table 3.10 within the proposed rule, under current administrative capability standards, 20% of for-profit colleges that offer exclusively graduate programs fail. However, under the proposed rule, under 7% of such colleges would be flagged; this is a dramatic reduction that suggests the new standard lacks rigor and will fail to protect students from low-value programs. This is concerning for a few reasons. One, graduate programs account for a disproportionate share of the nation's student loan debt. Any relaxation of accountability for graduate programs directly threatens a large segment of the future student debt portfolio. Second, federal graduate student lending is soon to be curtailed through the elimination of the Grad PLUS program and the implementation of new borrowing limits. If administrative capability standards are simultaneously weakened, the remaining lending (and any new boom in borrowing from the private student loan market) could flow to subpar institutions and programs that would have been previously flagged, exposing students and taxpayers (and even private lenders) to heightened risk. And lastly, the proposed rule disregards debt-to-earnings metrics, as noted above. Without a complete debt-to-earnings accountability framework, for-profit graduate colleges face virtually no checks on their quality or tuition pricing.

Overall, the proposed structure of the administrative capability standards is inconsistent with the Department's other stated priorities, especially regarding graduate student lending. We recommend the Department include student debt metrics alongside the earnings accountability tests in its updated administrative capability standards.

Finally, we offer a clarifying question regarding the Department's explanation of Table 3.10 in the Regulatory Impact Analysis. In the two paragraphs preceding Table 3.10, the Department states:

*“Under the proposed rule, only **programs that fail the accountability framework would lose eligibility for Pell Grants**. Under the current regulations, all programs at an institution that fail[s] to meet the standard would lose access to all title IV, HEA funds.”*

Under “Standards for Participation in Title IV, HEA Programs, Standards of administrative capability (§ 668.16),” the Department is clear that tying the accountability framework to administrative capability requirements can trigger the loss of access to all Title IV, HEA funds for programs that do not meet the standard, as opposed to only losing access to Direct Loans or only losing access to Pell Grants. We suggest the Department revise this section of the Regulatory Impact Analysis to accurately reflect that participation in all Title IV, HEA programs is contingent on meeting administrative capability standards.

## **Removal of certain disclosures may harm student decision-making**

We are concerned that the proposed rule removes two key disclosures students may rely on:

- programmatic debt-to-earnings rates, and
- whether graduates must complete additional training to qualify for licensure.

We urge the Department to maintain these disclosures. Without a debt-to-earnings rate disclosure, students cannot compare true affordability across programs. Similarly, omitting licensure requirements is a direct risk to students who need comprehensive information on the time and financial commitment it will take for them to be fully employable and/or qualified to work in their field.

### **New disclosure of median time to completion is insufficient without additional enrollment status data**

We support the Department's proposal to add a disclosure of the median calendar time it takes full-time and part-time students to complete. However, the Department declined to accept a negotiator's suggestion to also disclose the percentage of full-time and part-time students enrolled in a program. While around half of all college students attend part time, the concentration of part-time students varies by institution type and program, and along demographic dimensions like race and family income.<sup>11</sup> Part-time student completion rates are similarly varied, and proportions of types of students enrolled can give prospective students an idea about how similarly they might be situated among their peers and supported by their institution. Without knowing the student body composition, prospective students cannot make fully informed estimations about how likely they are to be successful given their own circumstances and responsibilities.

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Third Way thanks the Department for the opportunity to comment on this NPRM. We appreciate the Department and AHEAD Committee's commitment to bolstering higher education accountability. We also encourage the Department to examine how the accountability system can be enacted to ensure that students are securing strong earnings and that taxpayer dollars are used to support quality programs. There are scores of fantastic programs across the country that deliver strong outcomes for students. The Department should create the conditions to ensure students can adequately consider those programs, rather than dedicate taxpayer dollars to propping up the portion that fails to deliver any return. We believe that, with the changes recommended above, we can enter a new era of higher education that prioritizes student outcomes and higher education accountability. Please contact us with any questions about these comments.

Sincerely,

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<sup>1</sup> Dimino, Michelle. "What Public Commenters Said About a Low-Financial-Value College Programs List." *Third Way*, 12 April 2023, <https://www.thirdway.org/report/what-public-commenters-said-about-a-low-financial-value-college-programs-list>. Accessed 4 May 2026.

<sup>2</sup> Akers, Beth. "Beyond 'Do No Harm': The Next Era of Value-Based Accountability Policy." *American Enterprise Institute*, 30 April 2026, <https://www.aei.org/research-products/report/beyond-do-no-harm-the-next-era-of-value-based-accountability-policy/>. Accessed 4 May 2026.

<sup>3</sup> Cecil, Ben and Michelle Dimino. "What Voters Think About New Higher Education Loan Limits and Accountability Reforms." *Third Way*, 9 Mar. 2026, <https://www.thirdway.org/presentation/what-voters-think-about-new-higher-education-loan-limits-and-accountability-reforms>. Accessed 4 May 2026.

<sup>4</sup> Cecil, Ben. "Public Opinion Backs Retaining Gainful Employment Alongside New Earnings Standards." *Third Way*, 8 Jan. 2026, <https://www.thirdway.org/blog/public-opinion-backs-retaining-gainful-employment-alongside-new-earnings-standards>. Accessed 4 May 2026.

<sup>5</sup> U.S. Department of Education. "U.S. Department of Education Celebrates More Than 10 Million FAFSA Forms Complete and Additional Transparency Measures." Press Release, 26 Mar. 2026, <https://www.ed.gov/about/news/press-release/us-department-of-education-celebrates-more-10-million-fafsar-forms-complete-and-additional-transparency-measures>. Accessed 4 May 2026.

<sup>6</sup> Matsudaira, Jordan and Allen, Kristen. "What's the Harm in 'Do No Harm'?" PEER Center, May 2026, <https://www.peer-center.org/research/harm-in-do-no-harm>. Accessed 14 May 2026.

<sup>7</sup> Senate Committee on Health, Education, Labor & Pensions. "Q&A's About Higher Education in the One Big Beautiful Bill." [https://www.help.senate.gov/imo/media/doc/faq\\_docpdf.pdf](https://www.help.senate.gov/imo/media/doc/faq_docpdf.pdf). Accessed 19 May 2026.

<sup>8</sup> Rounds, Emily. "Earning Their Keep: Better Program Alternatives Abound Near Programs That Fail the Earnings Threshold." *Third Way*, 2 Dec. 2026, <https://www.thirdway.org/blog/earning-their-keep-better-alternatives-abound-near-programs-that-fail-the-earnings-threshold>.

<sup>9</sup> Rieg Cellini, Stephanie and Kathryn J. Blanchard. "Hair and Taxes: Cosmetology Programs, Accountability Policy, and the Problem of Underreported Income." PEER Center, Jan. 2022, [https://www.american.edu/spa/peer/upload/peer\\_hairtaxes-final.pdf](https://www.american.edu/spa/peer/upload/peer_hairtaxes-final.pdf). Accessed 18 May 2026.

<sup>10</sup> Jeremy Bauer-Wolf, et al. "Cut Short: The Broken Promises of Cosmetology Education." *New America*, Mar. 2025, <https://www.newamerica.org/insights/cut-short-the-broken-promises-of-cosmetology-education/>. Accessed 18 May 2026.

<sup>11</sup> Complete College America. "Part-Time Students Must Be a Full-Time Priority." 2022. <https://completecollege.org/resource/parttimestudentsmustbeafulltimepriority/>. Accessed 19 May 2026.