



Insights Into ED's New Earnings Accountability Rule

NCASFAA Webinar Series
April 14, 2026

Thompson Coburn LLP

- Full-service law firm with over 400 attorneys.
- Offices in Chicago, Los Angeles, St. Louis, Dallas, New York, Birmingham, and Washington, D.C.
- Higher education practice provides legal counsel, compliance, and training services to colleges and universities.



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Presentation Preamble

Disclaimer

- Laws and policies are updated regularly. If you are reviewing these slides after April 2026, please keep in mind that changes may have occurred.

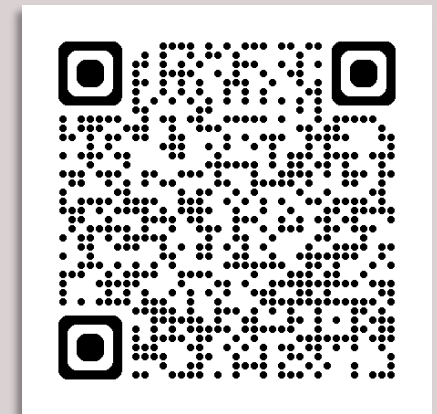
Live Links

- The hyperlinks in these slides (including the PDF) are active and would take you to the underlying resources.

TC Extra Credit

- All TC resources referenced in the presentation are free and available [here](#) or by scanning the QR code.

Magic QR Code



Syllabus

2026 Negotiated Rulemaking

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GE Program Certifications

Institutional Action Plans



2026 Negotiated Rulemaking

Negotiated Rulemaking 2025-2026

- On July 25, 2025, ED [announced](#) the RISE and AHEAD negotiated rulemaking committees to implement changes made by OB3 and “other Administration priorities.”
- For more information and to follow the negotiations as they progress, check out ED’s “[Negotiated Rulemaking for Higher Education 2025](#)” website.

The screenshot shows the U.S. Department of Education website. The header includes the department logo and name, a search bar, and navigation links for Higher Ed, Adult Programs, Birth to Grade 12 Education, Teaching & Admin, Grants & Programs, and Laws & Policy. The main content area is titled "Negotiated Rulemaking for Higher Education 2025" and includes a breadcrumb trail: HOME / LAWS AND POLICY / HIGHER EDUCATION LAWS AND POLICY / HIGHER EDUCATION POLICY. Below the title, there is a paragraph of introductory text and a "What's New" section with a bullet point about expanding the AHEAD Committee header. At the bottom, there is a list of links with expand/collapse icons: Federal Register Notices and Fact Sheets, Public Hearing Information, Public Service Loan Forgiveness Committee, Reimagining and Improving Student Education (RISE) Committee, and Accountability in Higher Education and Access through Demand-driven Workforce Pell (AHEAD) Committee.

ED's Title IV Rulemaking Agenda

Public Service Loan
Forgiveness Committee

- Negotiations: One 3-day session (June - July 2025); **no** consensus.
- [NPRM: August 18, 2025 \(90 FR 40154\)](#).
- [Final Rule: October 31, 2025 \(90 FR 48966\)](#).
- Effective Date: July 1, 2026.

The Reimagining and
Improving Student
Education (RISE)
Committee

- Negotiations: Two 5-day sessions (Sept. - Nov. 2025); **consensus**.
- [NPRM: January 30, 2026 \(91 FR 4254\)](#).
- Final Rule: Projected May 2026
- Effective Dates: July 1, 2026 / July 1, 2027

The Accountability in Higher
Education and Access
through Demand-driven
Workforce Pell (AHEAD)
Committee

- Negotiations: Two 5-day sessions (Dec. 2025 - Jan. 2026); **consensus**.
- [NPRM Workforce Pell: March 9, 2026 \(91 FR 11378\)](#).
- **NPRM Accountability: Projected April**
- Final Rule Workforce Pell: Projected May 2026
- **Final Rule Accountability: Projected June 2026**
- **Effective Dates: July 1, 2026 / July 1, 2027**

ED's Title IV Rulemaking Agenda

The
Accreditation,
Innovation, and
Modernization
(AIM) Committee

- Negotiations: Two 5-day sessions in April - May 2026
- NPRM: Projected Fall 2026
- Effective Date: Projected July 1, 2028

“Kitchen Sink”
Committee

- Negotiations: Project two 5-day sessions in Fall 2026
- NPRM: Projected Fall 2026
- Effective Date: Projected July 1, 2028

Impact Opportunities in Rulemaking

- Coordinate with trade associations, participate in public meetings, nominate or serve as a negotiator.
- Before rulemaking begins, schedule meetings with ED and submit written suggestions.
- Support negotiators during rulemaking (review draft language, crunch data).
- Comment on proposed rules, encourage others to comment, lobby Congress.
- Schedule an EO 12866 meeting with OMB.
- Challenge rule through litigation.

Next Steps in the Rulemaking Process

- It is important to raise concerns **and to express support** where appropriate.
- Be aware of the elements of the regulation that simply restate statute, as ED will have little ability to alter such language. ED will have more flexibility to revise elements of the proposed rule that are interpretive.
- When crafting the final rule, **ED may deviate from the draft consensus language** based on the comments received during the public comment period.



Negotiables and Non-Negotiables

AHEAD: Outcome

- The AHEAD Committee **reached consensus** on issues relating to both Pell grants and accountability.
- The draft language that was the basis for the consensus vote, and that will serve as the basis for the proposed rule, is available on ED's [negotiated rulemaking website](#).

Day 4 Amendatory Text

Monday changes

Tuesday changes

Wednesday changes

Thursday changes

Topic 1: Accountability Technical and Conforming Changes

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION

ACT OF 1965, AS AMENDED

Subpart A—General

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) * * *

(3) For a gainful employment program or eligible non-GE program under 34 CFR part 668, subpart S, subject to any restrictions in 34 CFR 668.603 on establishing or reestablishing the Direct Loan eligibility of the program, an eligible institution must update its application under § 600.21.

* * * * *

Subpart B—Procedures for Establishing Eligibility

§ 600.21 Updating application information.

(a) Reporting requirements. Except as provided in paragraph

(b) of this section, an eligible institution must report to the

GE Program vs. Non-GE Program

- Since 1965, the Higher Education Act has required all non-degree programs offered by public and private non-profit institutions and all programs offered by proprietary institutions to “prepare students for **gainful employment** in a recognized occupation...”

Type of Institution	GE Programs	Non-GE Programs
Public and Private Non-Profit	Non-Degree Programs	Degree Programs
Proprietary	All Programs	None

GE Program vs. Non-GE Program

For PNP and Public Institutions, the programs in black are GE programs. The programs in Orange are non-GE programs.

- Undergraduate certificate or diploma
- Associate degree
- Bachelor's degree
- Post-baccalaureate certificate
- Master's degree
- Doctoral degree
- First professional degree (e.g., MD, DDS, JD)
- Graduate certificate (including a postgraduate certificate)

The FVT/GE Rule

Disclosure and Reporting Requirements

- Includes significant reporting and disclosure requirements for all institutions.

Program Information Website

- The metrics, along with other data, would be made available to prospective and current students through an ED website, and ED would label failing programs as “low-earning” or “high-debt-burden,” per the agency’s determination.

Two Accountability Tests for All Title IV Programs

- Requires ED to subject every Title IV program at every Title IV institution to a **D/E Rates** test and an **Earnings Premium** test.

Sanctions for GE Programs

- Only GE programs can lose Title IV eligibility.

The DNH Statutory Framework

One Accountability Test for Degree Programs and Graduate Certs

- Requires ED to subject every undergraduate degree, graduate or professional degree, and graduate certificate to an **Earnings Premium** test.

Loss of Direct Loans for Failing Degree Programs and Graduate Certs

- Failing programs must make warnings after one failing year and lose Direct Loan eligibility after two.

Negotiables and Non-Negotiables

Negotiables (FVT/GE)

- Disclosure and Reporting Requirements
- Two Accountability Tests for All Title IV Programs
- Sanctions for GE Programs
- Program Information Website

Non-Negotiables (DNH)

- One Accountability Test for Degree Programs and Graduate Certs
- Loss of Direct Loans for Failing Degree Programs and Graduate Certs

A Range of Options

- ED is bound to implement the DNH statutory framework.
- But ED has considerable latitude in determining how to approach reporting and disclosure requirements, its program information website and, importantly, the evaluation of GE programs.
- ED could have argued to keep the existing FVT/GE rule in place, or it could have argued to strip it off the books entirely.
- ED opted for a **middle of the road proposal** but did not hesitate to remind negotiators that all options were on the table.



The Draft Proposal

Regulation Reorganization

Definitions & Consumer Website

- 668.2 General definitions
- 668.43 Institutional and programmatic information.

Student Tuition and Transparency System

Subpart Q

- 668.401 Student tuition and transparency system scope and purpose.
- 668.402 Student tuition and transparency system framework.
- 668.403 Calculating earnings premium measure.
- 668.404 Process for obtaining data and calculating earnings premium measure.
- 668.405 Determination of the earnings premium measure.
- 668.406 Reporting requirements.
- 668.407 Severability.

Earnings Accountability

Subpart S

- 668.601 Earnings accountability scope and purpose.
- 668.602 Earnings accountability criteria.
- 668.603 Low-earning outcome programs.
- 668.604 Certification requirements for GE programs and eligible non-GE programs.
- 668.605 Student warnings.
- 668.606 Severability.

The Policy Framework

Disclosure and Reporting Requirements

- Largely maintains the significant reporting and disclosure requirements for all institutions included in the current FVT/GE regulation. Also, would require all institutions to report all Title IV programs on their ECAR.

Program Information Website

- Largely maintains the publishing of the metrics and other data on ED's new program information website, as required under the current FVT/GE rule.

One Earnings Premium Test for All Title IV Programs

- Requires ED to subject every Title IV program at every Title IV institution to an **Earnings Premium test**. The EP test for non-degree and undergraduate degree programs is different from the EP test for graduate degree programs.

Sanctions for All Title IV Programs

- All failing programs must make warnings after one failing year and all failing programs lose Direct Loan eligibility after two. Pell eligibility can also be lost by all failing programs if the number of failing programs exceeds certain thresholds.



Projected Impact

(1) Data Overview

- ED assembled a program-level dataset that includes performance information for nearly all Title IV programs offered at US colleges (Program Performance Data 2026, or “**PPD:26**”)
- **PPD:26** draws on data from public sources (e.g., IPEDS, College Scorecard, ACS) and private sources (e.g., NSLDS, FAFSA, IRS).
- **PPD:26** allows us to estimate which types of programs are most likely to pass (or fail) the new earnings test in OBBB and the Gainful Employment regulations.
- The **PPD:26** dataset and additional details are available to the public on ED’s website.



Summary

- Remember these results are **estimates**, not the actual results:
 - About **6%** of higher education **programs** will fail the earnings test in the proposed rule.
 - About **5%** of **Title IV students** attend programs that fail the earnings test in the proposed rule.
 - A majority (approx. 55%) of students in failing programs attend **for-profit institutions**.
 - About one-in-three (approx. 31%) of students in **Undergraduate Certificate programs** attend a program that fails the earnings test in the proposed rule.
 - **Fields of study** including Culinary Services, Cosmetology, Drama/Fine Arts, Religious Studies, and Alternative & Complementary Medicine have the highest fail rates.
 - Some **states**, including Florida, Louisiana, Tennessee, California, and Idaho, have a much higher share of programs that fail the earnings test relative to the shares in other states.

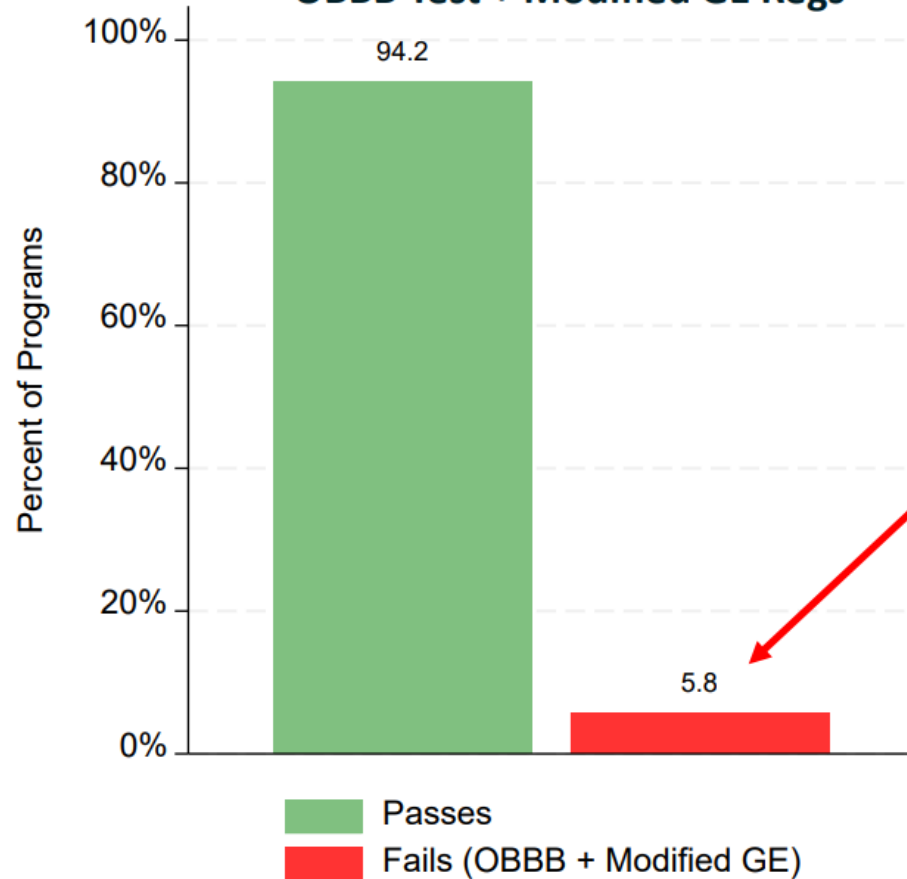


U.S. Department of Education

Overall Pass/Fail Rate

Program-Weighted

Figure 1. Overall Pass/Fail Rates,
OBBB Test + Modified GE Regs

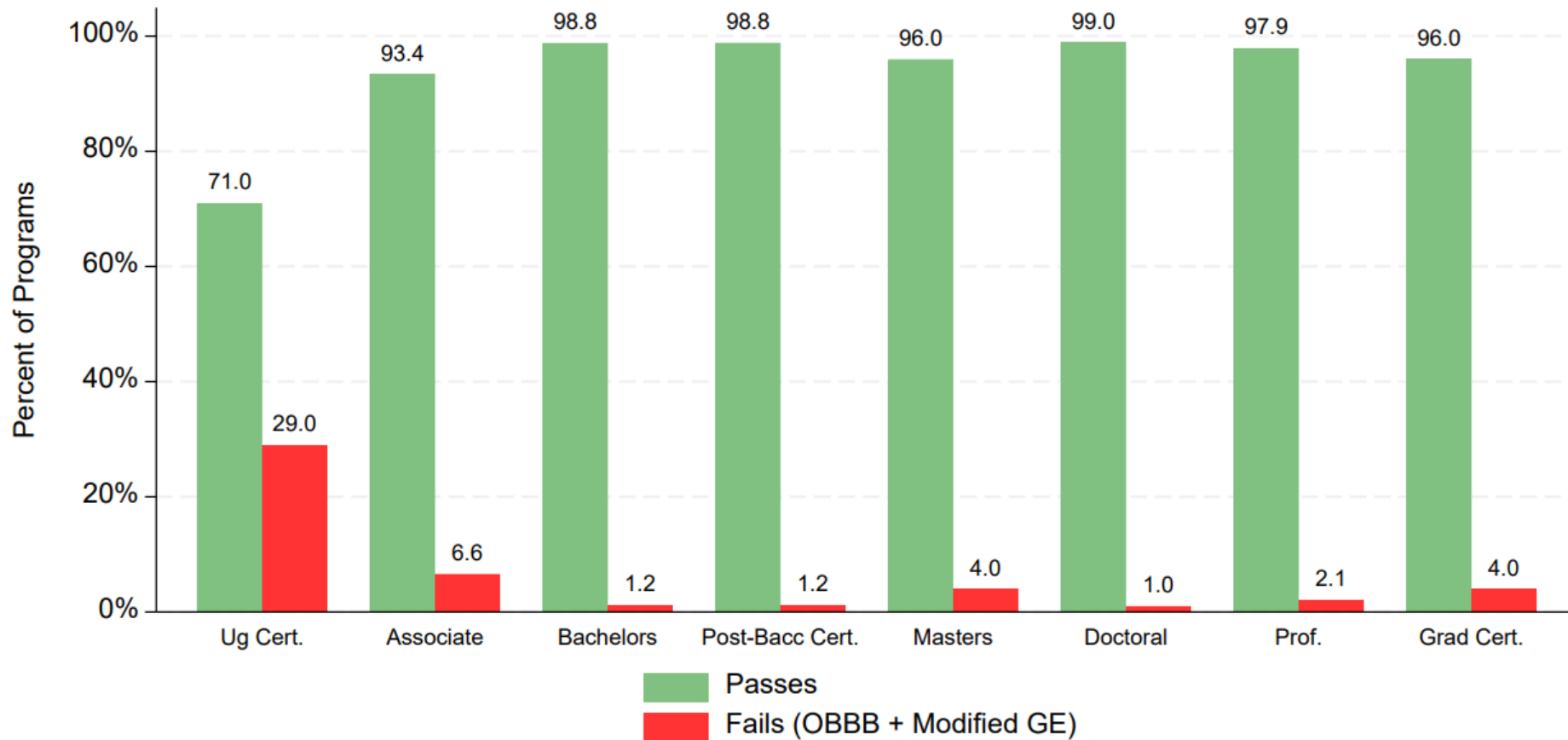


The proposed rule would impact approximately **6%** of programs.

Pass/Fail Rate, by Credential Level

Program-Weighted

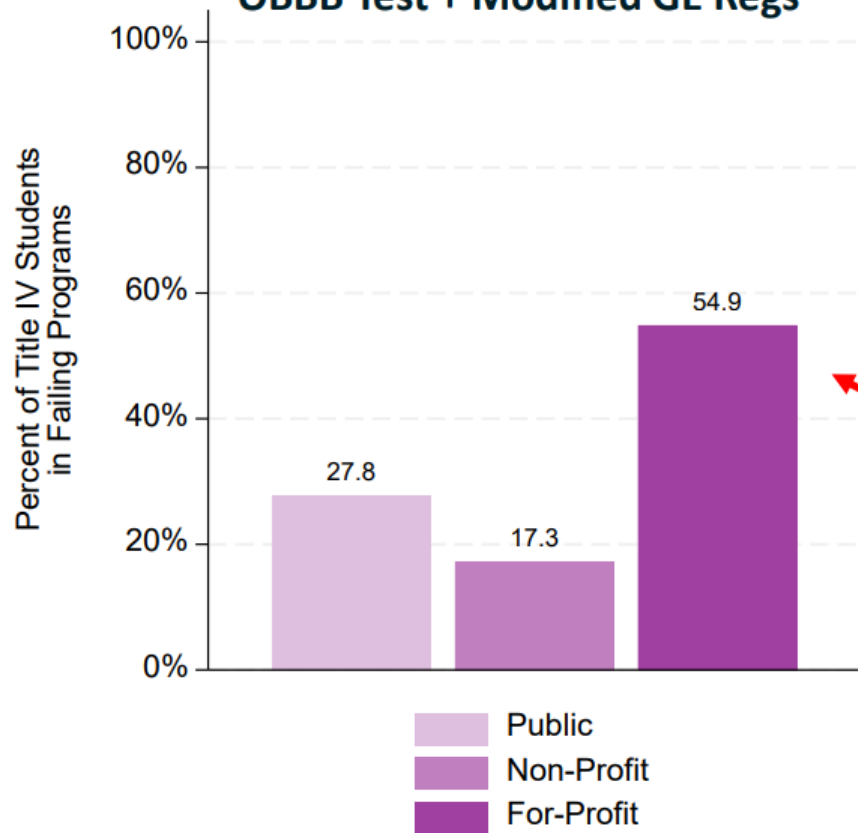
Figure 6. Pass/Fail Rates by Credential Level, OBBS Test + Modified GE Regs



Students in Failing Programs, by Sector

Student-Weighted

Figure 5. Percent of Students in Programs that Fail, by Sector, OBBB Test + Modified GE Regs

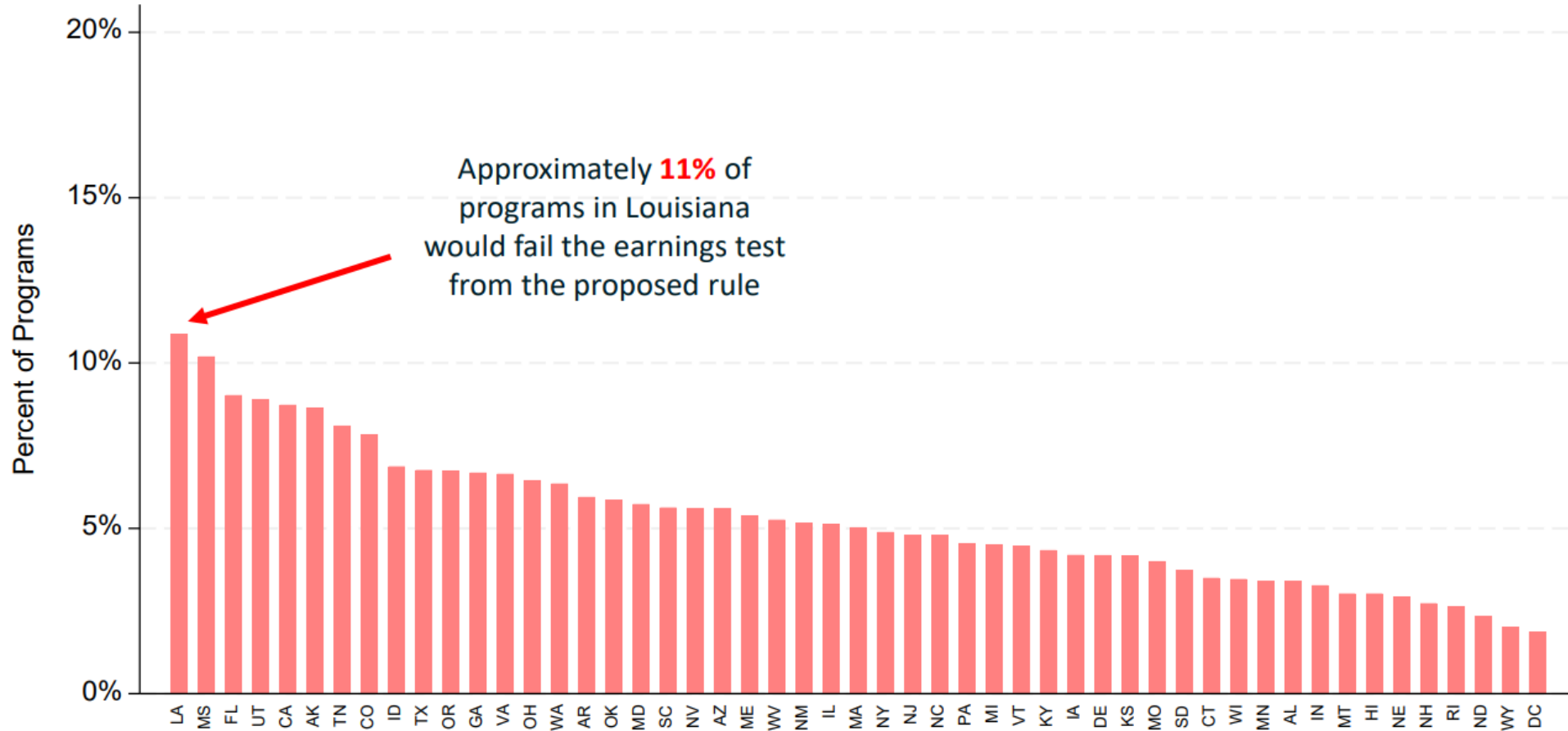


- Approximately **650K** Title IV students attend a failing program, across all sectors.
- Among those students, approximately half (**55%**) attend a for-profit institution.

Fail Rate, by State

Program-Weighted

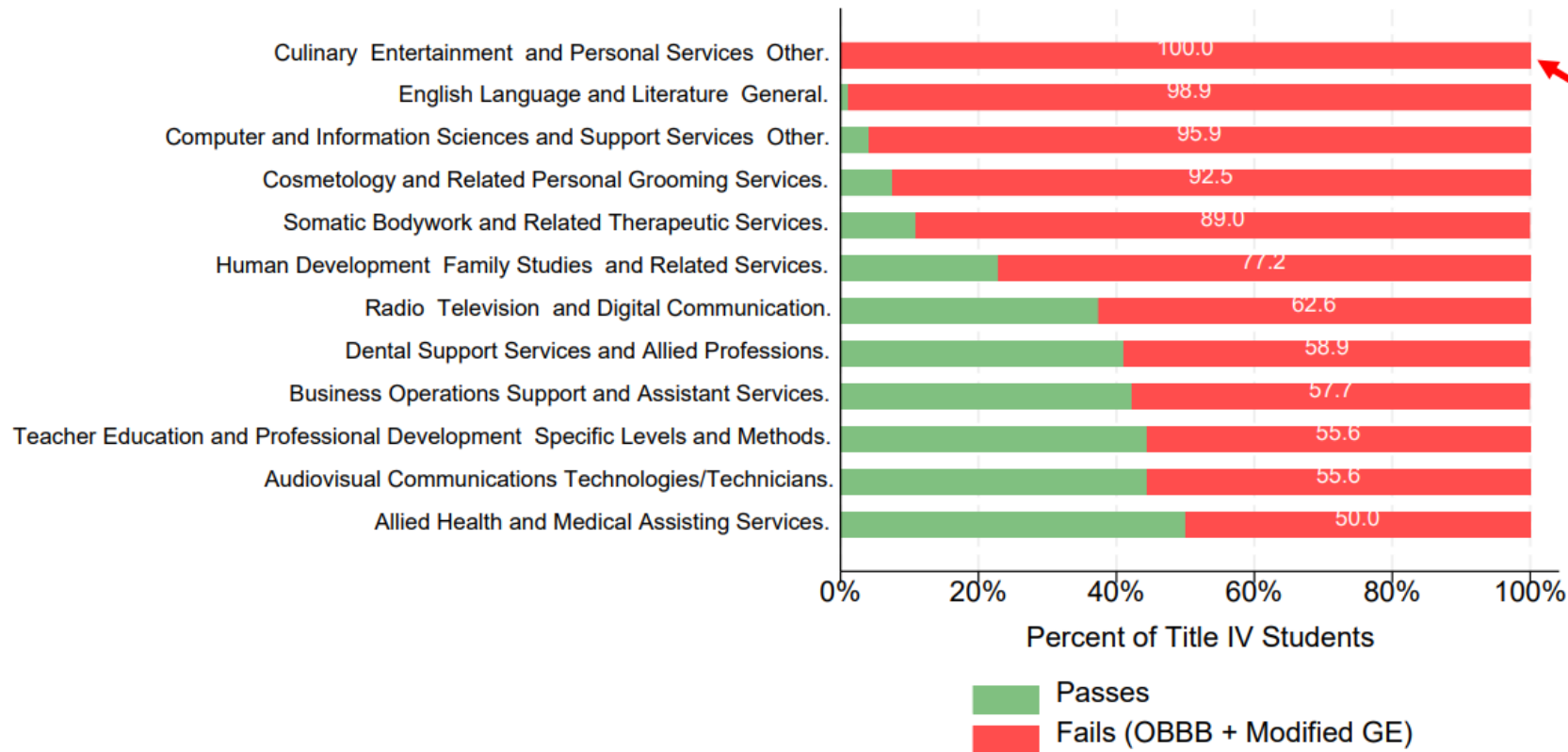
Figure 8. Fail Rates by State, OBBB Test + Modified GE Regs



Most Common Undergraduate Certificate Programs That Fail

Student-Weighted

Figure 10. Pass/Fail Rates by CIP4, OBBB Test + Modified GE Regs

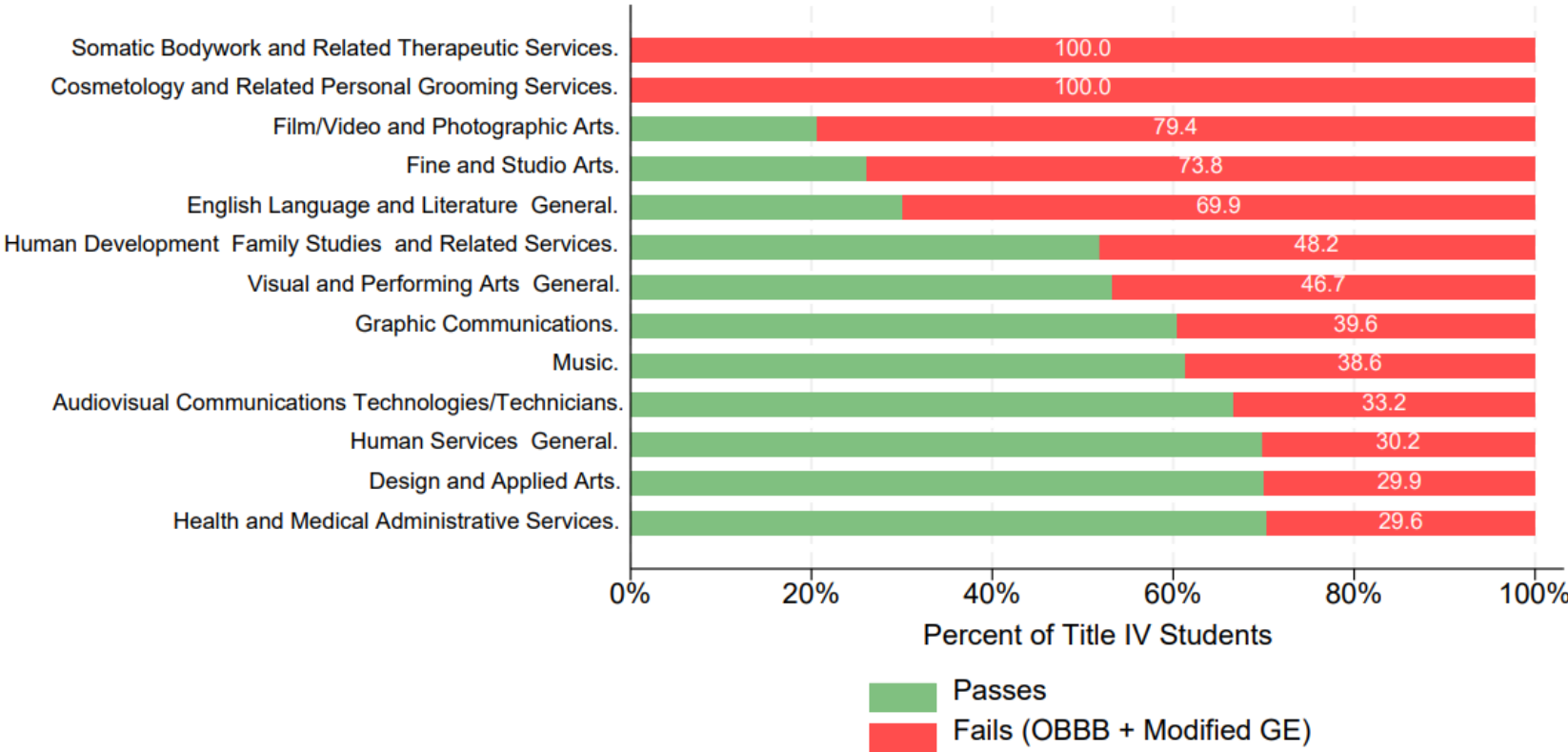


100% of Title IV students in undergraduate certificate programs in “Culinary Entertainment, Other” fail the proposed rule.

Most Common Associate Degree Programs That Fail

Student-Weighted

Figure 11. Pass/Fail Rates by CIP4, OBBB Test + Modified GE Regs

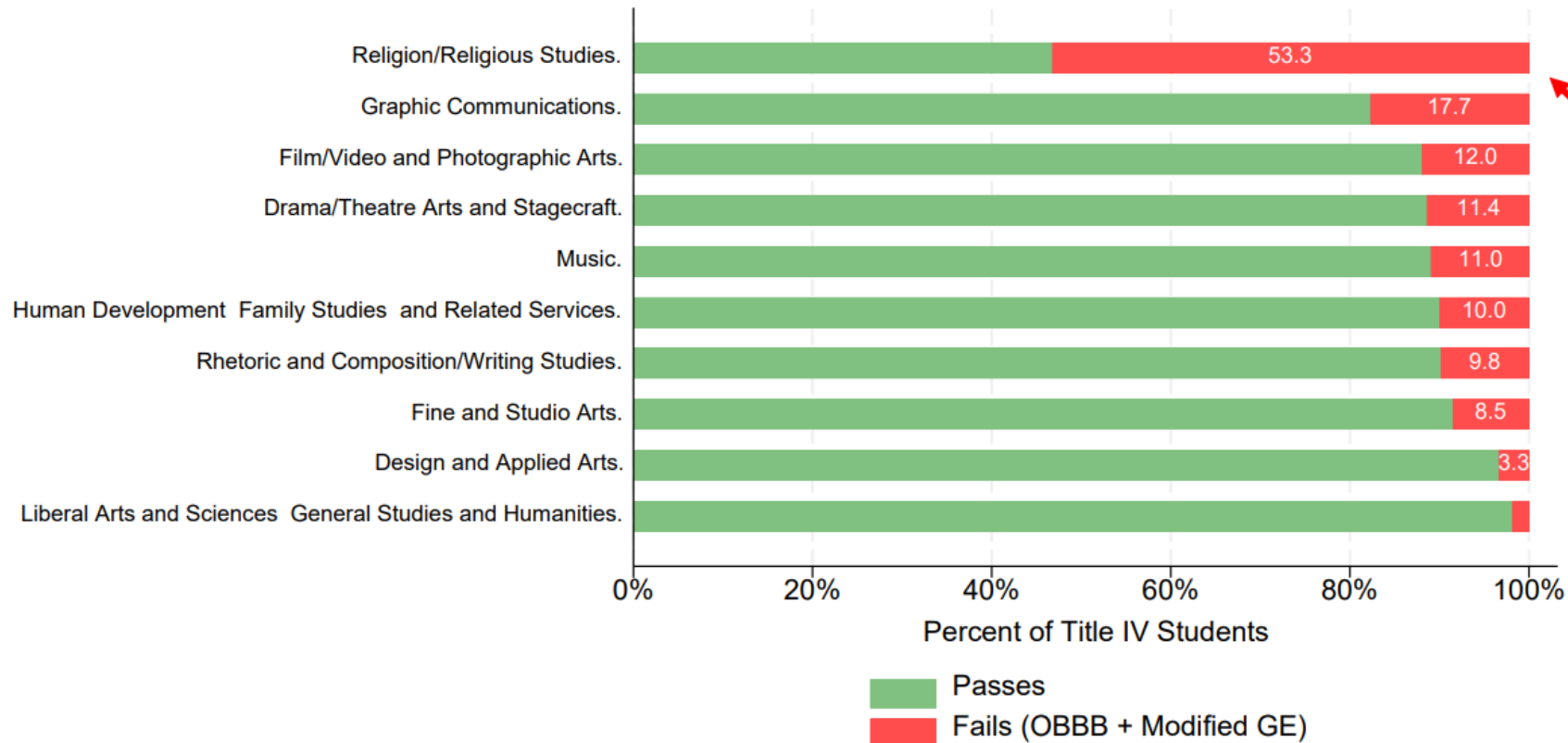


100% of Title IV students in associate degree programs in “Somatic Body Work & Related” and “Cosmetology & Related” fail the proposed rule.

Most Common Bachelor Degree Programs That Fail

Student-Weighted

Figure 12. Pass/Fail Rates by CIP4, OBBB Test + Modified GE Regs

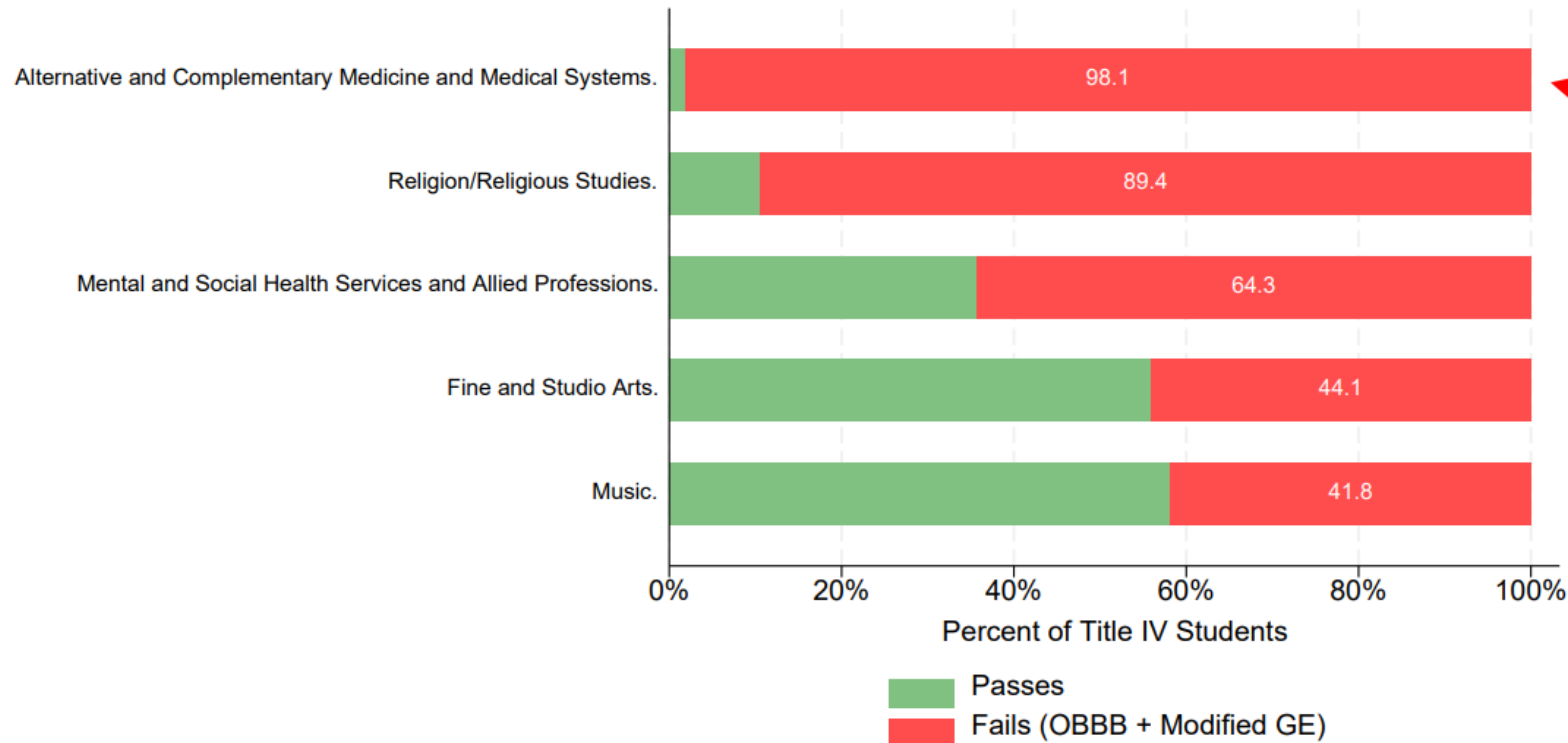


53% of Title IV students in bachelor degree programs in “Religion/Religious Studies” fail the proposed rule.

Most Common Master's Degree Programs That Fail

Student-Weighted

Figure 13. Pass/Fail Rates by CIP4, OBBB Test + Modified GE Regs



98% of Title IV students in master's degree programs in "Alternative & Complimentary Medicine" fail the proposed rule.

Where to find the PPD:26 Data Set

- Institutions can find the PPD: 26 data files on ED's "[Negotiated Rulemaking for Higher Education 2025](#)" website under the AHEAD section.
- Look under "Materials distributed by the Department Pre-session."
- The specific spreadsheet with the outcomes for programs can be downloaded by clicking this [link](#).

Session 2 - Dates and Times:

January 5-9, 2026, 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m., Eastern

Materials distributed by the Department Pre-session:

- [Committee Agenda](#)*
- [AHEAD Session 2 Discussion Draft and Amendatory Text](#)*
- [AHEAD Session 2 Discussion Draft and Amendatory Text \(Annotated\)](#)*
- [AHEAD Session 2 Program Performance Data \(Institution Characteristics and Completions\)](#)*
- [AHEAD Session 2 Program Performance Data \(Enrollments\)](#)*
- [AHEAD Session 2 Program Performance Data \(Financial Aid Part 1\)](#)*
- [AHEAD Session 2 Program Performance Data \(Financial Aid Part 2\)](#)*
- [AHEAD Session 2 Program Performance Data \(Financial Aid Part 3\)](#)*
- [AHEAD Session 2 Program Performance Data \(Debt, Earnings, and Earnings Test Metrics\)](#)*
- [AHEAD Session 2 Program Performance Data Variable Codebook](#)*
- [AHEAD Session 2 Program Performance Data Fact Sheet](#)*
- [AHEAD Session 2 Program Performance Data Technical Appendix](#)*



Materials distributed by the Negotiators Pre-session:

- [OBBBA Accountability Framework and Licensed Professions \(Submitted by Jeff Arthur\)](#)*
- [Ensure Accurate Earnings Benchmarks and Methodology \(Submitted by Jeff Arthur\)](#)*
- [Policy Recommendations for an Undergraduate Certificate Program Accountability Framework \(Submitted by D Cariello\)](#)*
- [Military Affiliated Students Proposal Summary_02JAN26 \(Submitted by Matt Feehan\)](#)*
- [Memo_Requested Change to Variable Codebook \(Submitted by Eric Atchison\)](#)*
- [Memo_Proposal for Publishing Calendar Time to Complete a Program of Study \(Submitted by Eric Atchison\)](#)*

Materials distributed by the Department Day 1:

- [Explanation of Earnings Test and GE Changes](#)*
- [Process for Aggregating Small Programs](#)*
- [Definitions from ACS Data](#)*
- [Results of Earnings Test and GE Changes](#)*



Reporting Requirements

Lightened Reporting Requirements

- Institutions would still be required to report a wide range of data to ED.
- These reporting obligations would still generally fall into three categories:
 - Title IV program data;
 - all students' data; and
 - completed and withdrawn students' data.
- ED also retains the right to collect “any other information the Secretary requires the institution to report.”
- The scope of the data production would still far exceed what is required to calculate the EP for each program.

Elimination of Reporting Exemption

- Under the existing FVT/GE rule, an institution is not required to report if it has not offered any group of substantially similar programs with 30 or more completers in total over the four most recent award years.
- ED would eliminate this exemption, observing that the agency “does not believe this exemption was appropriate given the statutory framework going back numerous years into the past to obtain individuals for the cohorts. We propose to strike it.”

Data for Title IV Programs

For each Title IV-eligible program, for the most recently completed award year

- Name, CIP code, credential level, and length.
- Whether program is programmatically accredited and, if so, name of accreditor.
- Whether program meets licensure requirements or prepares students to sit for licensure exams in ~~a particular occupation for each state in the institution's metropolitan statistical area~~ any state and, consistent with the requirements in 34 CFR 668.43(a)(5)(v), a list of all States where the institution has determined the program meets such requirements, including as part of the institution's obligation under 34 CFR 668.14(b)(32).
- Total number of students enrolled during most recently completed award year, including both recipients and non-recipients of Title IV funds.
- ~~Whether program is a qualifying graduate program whose students are required to complete postgraduate training programs.~~

Data for all Students (Part 1)

For each student

- Information needed to identify the student and institution.
- The date the student initially enrolled.
- ~~• Attendance dates and attendance status (e.g., enrolled, withdrawn, or completed) during the award year.~~
- ~~• Enrollment status (e.g., full time, half time) as of first day of student's enrollment;~~
- The student's total **annual** cost of attendance (COA) **for the award year**.
- The total **actual** tuition and fees assessed to the student for most recent award year.
- The student's residency tuition status by state or district, **as applicable**.

Data for all Students (Part 2)

For each student

- The total **annual** allowance for books, supplies, and equipment from the student's COA **for the award year**.
- The student's total **annual** allowance for housing and food from the student's COA **for the award year**.
- The amount of institutional grants and scholarships disbursed to the student **for the award year**.
- The amount of **Federal**, state, tribal, or private grants disbursed to the student **for the award year**.
- The amount of any private education loans disbursed to the student **for the award year** for enrollment in the program that institution is, or should reasonably be, aware of, including private education loans made by institution.

Data for Completed and Withdrawn Students

For students who completed or withdrew during the applicable award year

- ~~The date the student completed or withdrew.~~
- The total amount the student received from private education loans for the program that the institution is, or should reasonably be, aware of.
- ~~The total amount of institutional debt the student owes any party after completing or withdrawing from the program.~~
- The total amount of tuition and fees assessed the student for the student's entire enrollment in program.
- The total amount of the allowances for books, supplies, and equipment included in the student's COA for each award year in which the student was enrolled in program, or a higher amount if assessed the student by the institution.
- The total amount of institutional grants and scholarships provided for the student's entire enrollment in program.
- The total amount of Federal, State, private, or other grants and scholarships provided for the student's entire enrollment in the program.

Institutional Grants and Scholarships

- ED would clarify in the regulation that institutional grants and scholarships do “not include Federal education benefits; State, Tribal, local, or private grants and scholarships that the institution does not control or direct; the institutional share of Federal Supplemental Education Opportunity Grants; or assistance that must be repaid.”
- ED observes that this “is an attempt to clarify types of assistance that aren’t considered institutional grants and scholarships. This language reflects sub-regulatory guidance through the FVT/GE FAQs.”

Reporting Timeframes

- By October 1 of the year the regulations take effect, institutions would be required to report all required data for the two most recently completed award years.
 - For example, if the regulations take effect on July 1, 2026, data for AY 2024-25 and AY 2025-26 would be due by October 1, 2026.
- Thereafter, on October 1 of each year, institutions would be required to report all required data for the most recently completed award year.
- If an institution were to fail to provide the requisite data, it would be required to provide an acceptable explanation to ED.

Elimination of Transitional Reporting

- ED would eliminate **transitional reporting**, observing “there is no need for a transitional reporting process under the revised accountability framework because the new framework does not demand institutional reporting of debt and scholarship/grant values for numerous years in the past.”

Elimination of Qualified Graduate Program

- ED also would eliminate the definition of “qualified graduate program,” along with the associated reporting requirements and extended cohort periods.
- ED explains that in the existing FVT/GE regulation, the qualified graduate program concept is “used to extend the time between graduation and earnings measurement for certain individuals studying for professions involving residencies. To harmonize the GE requirements with the OBBB accountability framework, this concept would no longer be used to extend the amount of time between graduation and earnings measurement under these regulations.”

All Title IV Programs on the ECAR

- All institutions would be required to add **new Title IV eligible programs** to their ECAR.
- Qualifying institutions would still be able to self-certify the Title IV eligibility of the program, meaning they would not have to wait until it is approved to begin funding.
- Consistent with current practice, ED indicates that the agency “would evaluate the eligibility of those programs during the institution’s recertification.”



Disclosures and Distribution

Program Information Website

- ED still would establish and maintain a new “program information website” that would include extensive information about institutions and their educational programs.
- It is unclear how this website and the data displayed would interface with College Navigator, College Scorecard, and IPEDS.
- ED would eliminate the existing regulatory requirement that the new website be up and running by July 1, 2026.

ED's Program Information Website

Data that **would**
be included for
every Title IV
program

- The published length of the program in calendar time (i.e., weeks, months).
- As calculated by ED, the median length of calendar time (i.e., weeks, months, years) taken for full-time and less-than-full-time students to complete the program and obtain the degree or credential.
- Total enrollments in the most recent AY.
- The total cost of tuition and fees and of books, supplies, and equipment if completing within the published length of the program.
- Of enrollments during the most recent AY, the percent who received a Direct Loan, private loan, or both (for the program).
- As calculated by ED, the Median Loan Debt for (1) completers or (2) completers and withdrawals during the most recent AY.
- As calculated by ED, the Median Earnings for (1) completers or (2) completers and withdrawals during a period determined by ED.
- Any programmatic accreditation and the name of the accreditor.
- The program's ~~D/E rates and~~ Earnings Premium measure.

ED's Program Information Website

Data that might be included for every Title IV program

- The primary occupations (by name, SOC code, or both) the program prepares students to enter, with links to occupational profiles on O*NET.
- The program or institution's completion and withdrawal rates for full-time and less-than-full-time students.
- For completers, the median (1) total cost of tuition and fees; (2) total cost of books, supplies, and equipment; and (3) total net cost of attendance.
- The loan repayment rate for students or graduates who entered repayment on Direct Loan Program loans during a period determined by ED.
- ~~Whether program graduates must complete postgraduation training and obtain licensure to be eligible for independent practice.~~

Elimination of Prominent Link Requirement

- ED would modify the existing requirement that institutions provide a “prominent link” to ED’s program information website, requiring that institutions provide the link “on any webpage containing ~~academic~~, cost, financial aid, or admissions information about the program or institution.”
- ED explains “[c]onsistent with our desire to limit regulatory burden, we propose to eliminate this set of requirements because we do not believe that they provide adequate value to students and taxpayers given the burden they impose on institutions. This is particularly true because the regulations already require institutions to provide warnings to students in programs that fail the metric.”

Direct Distribution Requirements

- Institutions still would be required to “provide the relevant information to access” ED’s program information website to:
 - Any **prospective student**, or third party acting on behalf of the prospective student, “before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.”
 - Any **currently enrolled student and Title IV recipient** “prior to the start date of the first payment period associated with each subsequent award year in which the student continues enrollment at the institution.”



The Earnings Premium Test

Elimination of the D/E Rates

- ED would eliminate entirely the D/E Rates test that exists in the current FVT/GE rule and only subject Title IV programs to the Earnings Premium test.
- The agency observes that this change is to “harmonize the requirements for GE programs with those of other programs covered by the OBBS’s accountability framework. The Department’s intent is for all programs to be subject to the earnings premium requirements described in the OBBS.”

Elimination of Exemptions

- ED proposes to eliminate the general exemption in the current FVT/GE rule for institutions located in U.S. Territories or Freely Associated States.
 - However, ED proposes that if the Census Bureau data required to calculate the Earnings Threshold is not available for the territory or state, no calculation will be performed.
- ED also would eliminate the exemption for institutions that have not offered any group of substantially similar programs with 30 or more completers in total over the four most recent award years.
 - “[ED] does not believe this exemption was appropriate given the statutory framework going back numerous years into the past to obtain individuals for the cohorts.”

Earnings Premium Test: Overview

- ED's Earnings Premium test would apply to **all Title IV programs**, including both GE programs and non-GE programs.
- Both GE and non-GE programs would still be identified by a combination of the institution's six-digit OPE ID number, the program's six-digit CIP code, and the program's credential level.

Earnings Premium Test: Overview

- Each year, ED would calculate an Earnings Premium for each Title IV program using the following formula:

$$\text{Earnings Premium} = \text{Median Annual Earnings} - \text{Earnings Threshold}$$

- A program passes the Earnings Premium test if its Median Annual Earnings equal or exceed the Earnings Threshold.

Earnings Premium Test: Overview

- If a program fails once in 3 years, the institution would be required to issue a **warning** to students in the program.
- If a program fails twice in 3 years, it would be a “low-earning outcome program” and students in the program would **lose access to Direct Loans**.

Earnings Premium Test: Overview

- If 50% or more of an institution's Title IV recipients are in, or 50% or more of an institution's Title IV funds are from, low-earning outcome programs, the institution would fail a new **administrative capability standard**.
- If an institution were to fail this new standard in 2 out of any 3 consecutive award years, the institution would be placed on provisional status and the institution's low-earning outcome programs would **lose access to all Title IV funds (including Pell grants)**.

Annual Process: Overview

ED would compile for each program a list of all students who completed during the applicable cohort period (Completer List), removing any student satisfying certain exclusion criteria (e.g., total and permanent disability, deceased).

ED would provide the draft Completer List to the institution and affords it 60 days to “correct the information reported by the institution on which the list was based.”

The final Completer List is sent to a yet-to-be-named federal agency (Earnings Agency) to obtain the median annual earnings of the students on the list.

Once the earnings information is received, ED makes any needed adjustments calculates the Earnings Premium for the program and issues a Notice of Determination to the school.

The institution can accept the determination, appeal, or in some cases, initiate a voluntary teach out.

Earnings Premium: Undergrad and Non-Degree

- For Title IV Programs granting a **baccalaureate or lesser credential**.

Median Annual Earnings

Median annual earnings of working completers who graduated about 4 years before the determination year

vs.

Earnings Threshold

Median annual earnings of working adults aged 25-34 who only have a HS diploma or its recognized equivalent

Earnings Premium: Graduate Degree

- For Title IV Programs granting a **graduate or professional degree**.

Median Annual Earnings

Median annual earnings of working completers who graduated about 4 years before the determination year

vs.

Earnings Threshold

Median annual earnings of working adults aged 25-34 who have only a baccalaureate degree



Median Annual Earnings

Working Completers

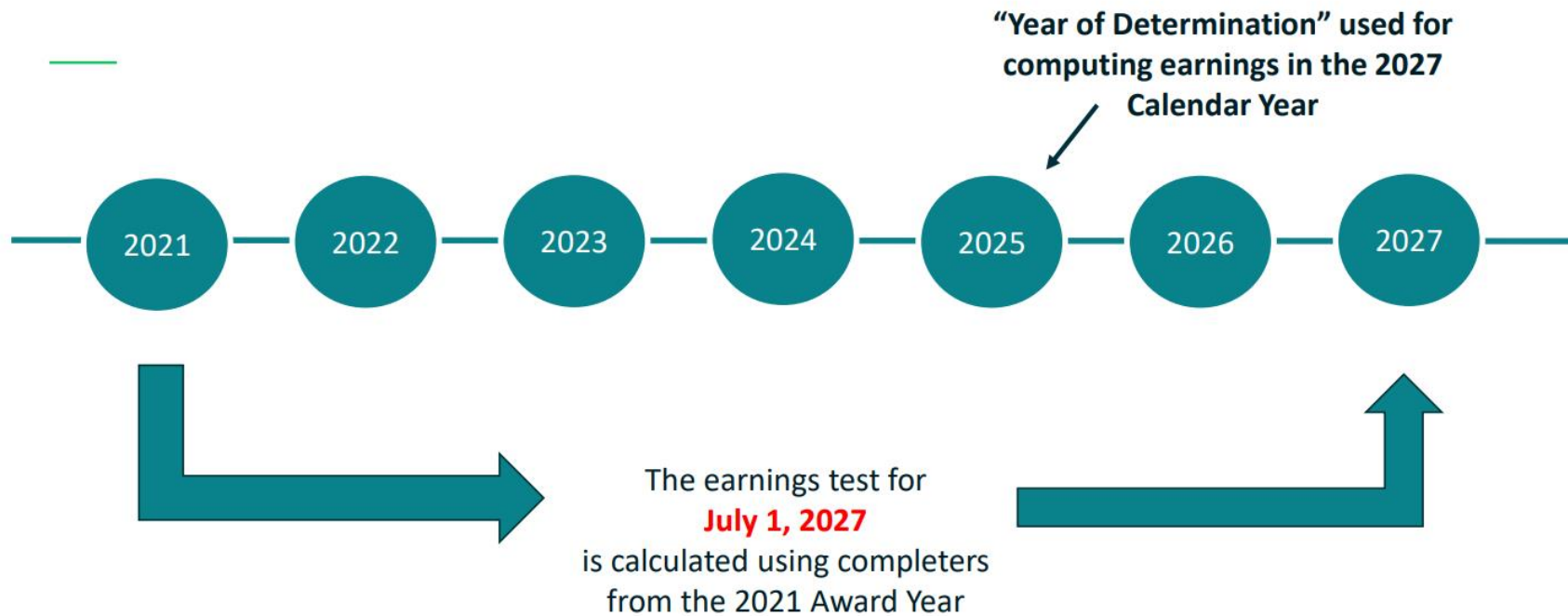
- For all Title IV programs, the median annual earnings would be based on the median earnings for working completers, which are students who:
 - completed the program during the applicable **cohort period**;
 - received some form of Title IV aid;
 - are **working**; and
 - do not otherwise fall into an **excluded category**.
- These are the students who would appear on a program's completer list.

Initial Cohort Period

- ED proposes to begin by only looking at the earnings of students who completed during a single award year. The initial, single-year cohort would be the fourth award year prior to the calendar year for which the most recent earnings data is available.
- This would mean that if the most recent year for which earnings data is available were CY 2025, the initial, single-year cohort would be made up of students who completed during the 2020-21 award year.

Initial Cohort Period

(2) Cohorts used for the Earnings Test

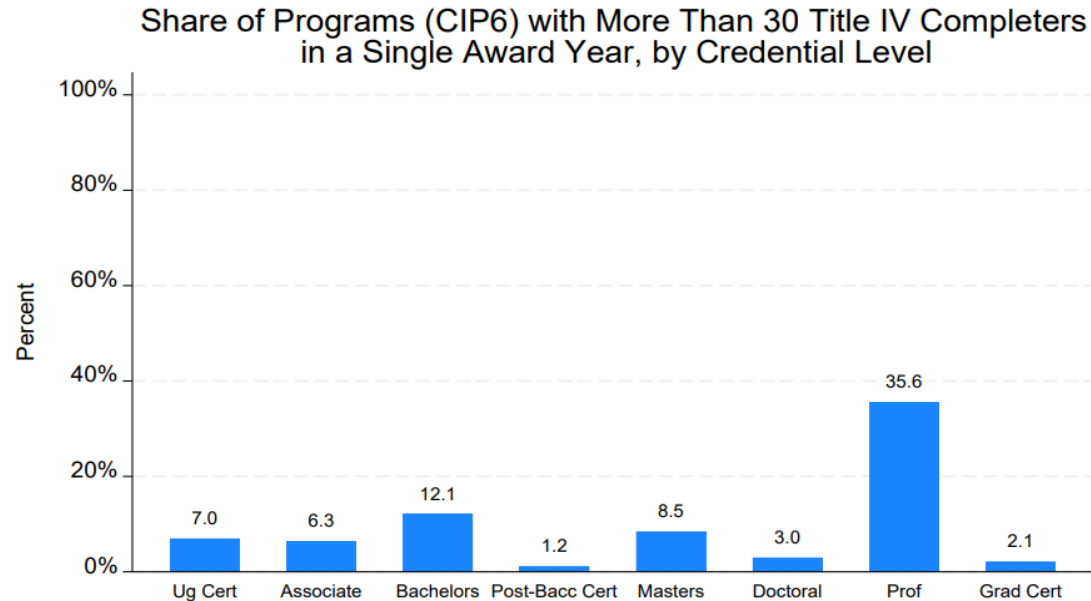


Expanded /Aggregated Cohort

- ED proposes to expand the cohort, as required, in accordance with the following schedule:
 - If the initial, single-year cohort (2020-21) has fewer than 30 completers, ED would expand the cohort for the program, one year at a time, until it reaches the 30 completer threshold. The agency would include up to four additional award years in this expansion.
 - If the cohort still includes fewer than 30 students, the ED would expand the cohort to include all programs within **the same 4-digit CIP code** and credential level, beginning with the initial, single-year cohort (2020-21) and expanding one year at a time through the eighth prior award year (2016-17).
 - If the cohort still includes fewer than 30 students, the ED would expand the cohort to include all programs at **the same 2-digit CIP code** and credential level, beginning once again with the initial, single-year cohort (2020-21) and expanding one year at a time through the eighth prior award year (2016-17).

Expanded /Aggregated Cohort

(2) Cohort Aggregation Will Be Common



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- Overall, only **9%** of programs have greater than 30 Title IV completers in a single award year
- This means **91%** of programs will need to be aggregated with prior cohorts

Expanded /Aggregated Cohort

Sequentially Expanded / Aggregated Cohort									
AY 2016-17	AY 2017-18	AY 2018-19	AY 2019-20	AY 2020-21	AY 2021-22	AY 2022-23	AY 2023-24	CY 2025	AY 2027-28
8 th Prior AY	7 th Prior AY	6 th Prior AY	5 th Prior AY	4 th Prior AY	3 rd Prior AY	2 nd Prior AY	1st Prior AY	Most recent CY for which earnings are available	AY for which Determination is Effective

Earnings Year and Data

- For the students who completed the program during the cohort period, ED would always use the earnings for the fourth tax year following when they completed the program. This ensures a **consistent interval** between program completion and earnings measurement.
- ED does not specify the federal agency from which it would obtain earnings data for working completers, but indicates in its commentary that “the IRS is the agency most likely to serve as the Federal agency with earnings data...”


Cohort Periods & Earnings Year(s)

AY for which Determination is Effective	2027-2028		2028-2029		2029-2030	
	Award Year (AY) of Completion	Calendar Year (CY) used for Earnings	Award Year (AY) of Completion used for Cost/Debt	Calendar Year (CY) used for Earnings	Award Year (AY) of Completion used for Cost/Debt	Calendar Year (CY) used for Earnings
Single-Year Cohort	2020-2021	2025	2021-2022	2026	2022-2023	2027
Sequentially Expanded / Aggregated Cohort	2019-2020	2024	2020-2021	2025	2021-2022	2026
	2018-2019	2023	2019-2020	2024	2020-2021	2025
	2017-2018	2022	2018-2019	2023	2019-2020	2024
	2016-2017	2021	2017-2018	2022	2018-2019	2023


ED's Proposed Implementation Timeline

Calendar Year	Colleges First Notified	Takes Effect	Completer Cohort Used	Earnings Period Measured	Aggregation Window
2026	N/A	N/A	N/A	N/A	N/A
2027	Early 2027	July 1, 2027	Award Year 2021	Jan. 1, 2025- Dec. 31, 2025	AY2017- AY2020
2028	Early 2028	July 1, 2028	Award Year 2022	Jan. 1, 2026- Dec. 31, 2026	AY2018- AY2021
2029	Early 2029	July 1, 2029	Award Year 2023	Jan. 1, 2027- Dec. 31, 2027	AY2019- AY2022
2030	Early 2030	July 1, 2030	Award Year 2024	Jan. 1, 2028- Dec. 31, 2028	AY2020- AY2023
[...]	[...]	[...]	[...]	[...]	[...]

The first year programs could lose eligibility for Federal student loans.



If cohort aggregation is needed, earnings for prior cohorts are measured at the same interval (the tax year corresponding to four years after that cohort exits).



“Earnings” and “Working”

- The draft text defines “earnings” as “wages, income as reported to the Internal Revenue Service, and other earned income, including from self-employment.”
- ED does not define “working” in the draft regulation but will look to align its treatment of “working” with the treatment of “working” in the Census Bureau’s data.

Excluded Completers

Students excluded from the completers list

- Students with loans discharged (or being considered for discharge) due to total and permanent disability.
- Students enrolled in another educational program at a Title IV institution during the earnings year.
- For undergraduate programs, students who completed a higher credentialed undergraduate program at the institution after completing the program as of the end of the most recently completed AY prior to the calculation of the earnings premium.
- For graduate programs, students who completed a higher credentialed graduate program at the institution after completing the program as of the end of the most recently completed AY prior to the calculation of the earnings premium.
- Students enrolled in an approved prison education program.
- Student is enrolled in a comprehensive transition and postsecondary program.
- Students who died.

When Earnings Premiums are not Issued

ED will not calculate an earnings premium in two instances.

- If after expanding the cohort fully and applying all exclusions, the fully expanded completer cohort has fewer than 30 students.
- If the Federal agency with earnings data does not provide the median earnings for the program or reports from records of earnings on 15 or fewer students.



Earnings Threshold

Working Adults: Undergrad and Non-Degree

- The earnings threshold for **undergraduate and non-degree programs** offered by a Title IV institution located in a State would be based on the median earnings for adults:
 - aged 25-34;
 - with only a high school diploma (or recognized equivalent);
 - who worked; and
 - who were not enrolled in a Title IV eligible institution during the earnings year.

Working Adults: Undergrad and Non-Degree

- For **undergraduate and non-degree programs**, ED would use the median earnings of working adults:
 - In the state in which the institution is located, or
 - Nationally, if fewer than 50% of the students enrolled in the institution during the award year for which calculations are made are from the state where the institution is located.

Working Adults: Graduate Degree

- The earnings threshold for **graduate degree programs** offered by a Title IV institution located in a State would be based on the median earnings for adults:
 - aged 25-34;
 - with only a baccalaureate degree;
 - who worked; and
 - who were not enrolled in a Title IV institution during the earnings year.

Working Adults: Graduate Degree

- For **graduate degree programs**, if 50% or more of the students enrolled in the institution during the award year for which calculations are made are from the state where the institution is located, ED would use **the lowest** of the median earnings of working adults:
 - Located in the state in which the institution is located;
 - Located in the state in which the institution is located **and** in the same field of study under the two-digit CIP or four-digit CIP code, as such data is available and statistically reliable; or
 - Nationally and in the same field of study under the two-digit CIP code or four-digit CIP code, as such data is available and statistically reliable.
- For **graduate degree programs**, if fewer than 50% of the students enrolled in the institution during the award year for which calculations are made are from the state where the institution is located, ED would use **the lowest** of the median earnings of working adults:
 - Nationally; or
 - Nationally in the same field of study under the two-digit CIP or four-digit CIP code, as such data is available and statistically reliable.

Earnings Data for Working Adults

- For working adults, ED indicates that it would use “data from the Census Bureau.”
- Specifically, ED will draw its data for working adults from the Census Bureau’s [American Community Survey \(ACS\)](#).
- The ACS is updated annually, and “collects detailed social, economic, housing, and demographic information from a sample of households across the 50 states, the District of Columbia, and Puerto Rico.”

The Definition of “Earnings” in PPD:26

“Earnings”

- The ACS provides two primary options for defining “earnings”:
 - 1) Personal income from wages and salary
 - 2) Personal income from wages, salary, and income through self-employment
- The 2026 Program Performance Data (PPD:26) defines earnings using option #2, personal income from wages, salary, and income from self-employment.



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The Definition of “Working” in PPD:26

“Working”

- The ACS provides at least four different options to define “working”:
 - 1) Individuals in the labor force (includes both employed and unemployed individuals)
 - 2) Individuals the labor force and employed (excludes unemployed individuals)
 - 3) Individuals who are in the labor force, employed, and have a positive non-zero income (excludes employed individuals who have \$0 annual income)
 - 4) Individuals who are in the labor force, employed full-time, and have a positive non-zero income (excludes part-time workers & individuals who have \$0 annual income)
- PPD:26 defines working using option #3, individuals who are in the labor force, employed, and have a positive non-zero income



U.S. Department of Education

Impact of “Earnings” and “Working” Definitions

National Median Income of 25-34 Year Olds with only a High School Diploma under different definitions of “Earnings” & “Working”

	In Labor Force	Employed	Employed with Positive Income	Employed Full-Time with Positive Income
Wages & Salary	\$31,958	\$33,491	\$33,491	\$36,082
Wages, Salary, & Business Income	\$32,841	\$34,808	\$34,808	\$36,497

National Median Income of 25-34 Year Olds with only a Bachelor’s Degree under different definitions of “Earnings” & “Working”

	In Labor Force	Employed	Employed with Positive Income	Employed Full-Time with Positive Income
Wages & Salary	\$57,965	\$58,761	\$58,761	\$61,854
Wages, Salary, & Business Income	\$58,384	\$60,112	\$60,112	\$62,655



The Consequences of Failure

Notice of Determination

- Each year, upon finalizing the Earnings Premium for each program, ED would issue a notice of determination to the institution informing it of the Earnings Premium for each Title IV program, as well as whether each program is passing or failing, and the consequences of that determination.
- Consequences are student warnings and loss of Direct Loan eligibility.
- Also, If 50% or more of an institution's Title IV recipients are in, or 50% or more of an institution's Title IV funds are from, low-earning outcome programs, the institution would fail a new administrative capability standard and could lose Pell grant eligibility for failing programs.

Student Warnings

- An institution would be required to provide a warning to current and prospective students if its program could become ineligible in the next award year for which the Earnings Premium is calculated.
- As a practical matter, this means institutions would be required to provide the required warnings if a program fails a single year, because under the rule, after a single failure a program would be one year from potentially losing eligibility.
- ED would streamline the content of the student warnings and remove the alternate language requirement.

Student Warnings

- ED would preserve the requirement that an institution may not sign an enrollment agreement, complete registration, enter a financial commitment with, or disburse Title IV funds to a prospective student earlier than three business days after the institution delivers the warning and until the prospective student completes an acknowledgment.
- An institution would not be permitted to disburse Title IV funds to a current student until the student completes an acknowledgment.
- Specific content and direct distribution requirements for student warnings are located at 34 C.F.R. § 668.605.

Loss of Direct Loan Eligibility

- A Title IV program would become ineligible for Direct Loans of the program failed the Earnings Premium test in two out of any three consecutive award years for which the program's Earnings Premium is calculated.
 - If ED did not calculate or issue an Earnings Premium for a program for an award year, the program would receive a “no result” for that award year and remain in the same status as the previous award year.
- A program's participation in the Direct Loan program would end upon the completion of a termination action under subpart G.

Voluntary Program Closure

- Following its first failure, and provided ED agrees, an institution would have 120 days to sign a PPA amendment permitting it to voluntarily teach out the program.
- Among other requirements, the institution would have to immediately cease new enrollments. And the decision is not reversible.
- However, it would permit continued access to Direct Loans for the lesser of 3 years or the full-time normal duration of the program.
- Following the end of the teach out, the program would be subject to the period of ineligibility requirements.

Period of Ineligibility

- An institution may not seek to reestablish Direct Loan eligibility of a failing program that it discontinued voluntarily either before or after the earnings premium measure becomes effective for that program, or reestablish the Direct Loan eligibility of a program that is ineligible under the earnings premium measure, until two years following the earlier of the date the program loses eligibility or the date the institution voluntarily discontinued the failing program.

Scope of Ineligibility

- During the two-year period of ineligibility, an institution also may not seek to establish Direct Loan eligibility for a program sharing the same 4-digit CIP code and any overlapping SOC codes as the program that is ineligible.
- However, the institution may seek to establish eligibility for a program with the same CIP code if it is at a different credential level.

A Very Limited Appeal

- Institutions would be permitted to initiate an appeal under subpart G if they believe ED erred in the “calculation of the program’s earnings premium.”
- Institutions would not be permitted to dispute a program’s Direct Loan Program ineligibility based upon its earnings premium measure except as described in this paragraph.
- ED would not offer any form of alternate earnings appeal.



GE Program Certifications

Program Certifications

- As a condition of continued participation in the Title IV programs, an institution would be required to certify in its PPA that:
 - It agrees to comply with the requirements of subparts Q and S; and
 - Each Title IV program it offers is “approved by a recognized accrediting agency or is otherwise included in the institution’s accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation.”

Program Certifications

- To establish the eligibility of a program for Direct Loans, an institution would be required to update “the list of the institution's Direct Loan-eligible programs maintained by the Department to include that program...”
- On a go-forward basis, institutions would be required to update the certification within 10 days “if there are any changes in the approvals for a program, or other changes for a program that render an existing certification no longer accurate.”



Institutional Action Plans

Institutional Action Plans

- Initiate conversations among institutional leadership, legal counsel, academics and others to begin developing a compliance plan for this rule.
- Determine which programs, if any, may fail the new earning premium test, and develop a plan for managing failing programs (replacement programs, institutional or private funding).
- Integrate earnings analysis into program development process.
- Comment on the proposed rule.



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Higher Education Team



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