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May 20, 2026

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

Re: Docket ID ED-2026-OPE-0100

Dear Secretary McMahon,

We write to share our views on the Department of Education's (Department's) Notice of Proposed Rulemaking (NPRM) to implement the new earnings requirements in Public Law 119-21 (P.L. 119-21) and the proposed accountability framework known as the Student Tuition and Transparency System (STATS).¹ While we support aspects of the proposed rule, the Department must do more to protect students from low-quality programs and show the public it has the capacity to successfully oversee these sweeping changes to higher education consumer protections.

Gainful Employment and Program-Level Accountability

The federal government has a responsibility to hold institutions accountable for providing a high-quality, affordable education without leaving students saddled with debt or unable to earn a living wage. As part of this responsibility, the *Higher Education Act of 1965* (HEA) requires non-degree career programs at all institutions and all programs at for-profit institutions to "prepare students for a gainful employment in a recognized occupation."² In 2023, the Biden Administration finalized the strongest Gainful Employment (GE) rule (*hereinafter* "2023 GE Rule") that would require programs to pass minimum earnings and debt-to-earnings tests.³ The Trump Administration has yet to publish recently collected GE data, but estimates from the

¹ Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability, 91 Fed. Reg. 21088 (Apr. 20, 2026) (to be codified at C.F.R. §668) (*hereinafter* "NPRM").

² 20 U.S.C. §1001(b)(1).

³ Fact Sheet: Biden-Harris Administration Announces Landmark Regulations on Accountability, Transparency, & Financial Value Transparency, U.S. Dep't of Educ. (Oct. 2023).

NPRM indicate that 4.6 percent of programs would fail the current GE regulation, including 69.1 percent of undergraduate certificate programs at for-profit colleges.⁴

Last year, Congress passed P.L. 119-21, which established an earnings test similar but not identical to the current GE rule.⁵ The NPRM aims to implement this earnings test—with which programs at all credential levels across all sectors must comply—and “harmonize” the regulations with GE requirements.⁶ The key to this harmonization is that for bachelor’s and undergraduate certificate programs, students generally must earn more than a high school graduate in the labor force.⁷ Graduate students must earn more than someone with a bachelor’s degree in their same field, and doctoral students must earn more than someone in their field with a graduate degree.⁸

This framework would impact different program types in stark ways. The NPRM would impact approximately 31.1 percent of programs at for-profit colleges, but only 4.3 percent of programs at public colleges and 3.1 percent at non-profit colleges.⁹ An estimated 18.1 percent of undergraduate certificate programs would fail the earnings test.¹⁰ Additionally, only 4 percent of programs at Historically Black Colleges and Universities (HBCUs), 0.1 percent at Tribally Controlled Colleges and Universities (TCCUs), and 3.7 percent at Minority Serving Institutions (MSIs) would fail the proposed test.¹¹ Several analyses have shown that HBCUs, TCCUs, and MSIs are likely to “face minimal impact” since “they enroll comparatively fewer students in low-earning programs.”¹² This aligns with robust research showing that, generally, public and non-profit colleges provide students with lower cost degree and non-degree programs, launch students into jobs with higher earnings, and leave students with less loan debt, when compared to for-profit colleges.¹³ At the same time, with the core incentive to generate revenue for shareholders, for-profit colleges have a long history of waste, fraud, and abuse¹⁴, leading to abrupt college closures, significant borrower defense claims, and ongoing consumer law violations.¹⁵

⁴ NPRM at 21148, 21150. The Department has collected GE data and provided high-level analysis in the NPRM, but it has not published any program-level data with information on the specific programs that failed.

⁵ Pub. L. No. 119-21 §84007 (2025).

⁶ NPRM at 21088.

⁷ *See Id.* at 21139.

⁸ *See Id.*

⁹ NPRM at 21150 (Table 3.12).

¹⁰ NPRM at 21148 (Table 3.11).

¹¹ NPRM at 21146 (Table 3.9).

¹² Roxanne Garza, *Federal Rulemaking Recap for Postsecondary Program Accountability: What Changed and What it Means for Higher Education*, EdTrust, 3 (Jan. 2026), <https://edtrust.org/wp-content/uploads/2026/01/HE-Accountability-Brief.pdf>; Jordan Matsudaira et al., *Accountability for All Programs: Aligning America’s Outcomes-Based Standards*, PEER Ctr., 16 (Dec. 2025), <https://www.peer-center.org/research/aligning-americas-accountability-standards>.

¹³ *Lowering Costs and Ensuring Value for Students, Institutions, and Taxpayers: Hearing Before the H. Comm. on Educ. and Workforce*, 118th Cong. 4 (2023) (testimony of Stephanie Reigg Cellini, Prof. of Pub. Pol., George Wash. Univ.).

¹⁴ Victoria Jackson, *Greater State Scrutiny Needed for For-Profit Colleges*, Ctr on Budget. & Pol. Priorities (Feb. 24, 2021), <https://www.cbpp.org/research/state-budget-and-tax/greater-state-scrutiny-needed-for-for-profit-colleges>.

While the framework captures programs that do not pay off for students, it is not as successful at this as current regulations. The Department estimates fewer programs at for-profit colleges (31.1 percent) and undergraduate certificate programs (18.1 percent) will fail compared to those that would fail the current GE rule (47 and 29.3 percent respectively), due to weakened accountability.¹⁶ The data is clear: this proposed rule is significantly weaker than the current GE rule. One analysis of the framework suggests multiple faults: “[E]arnings are measured over a longer time frame, the consequences of failure are lessened, and a measure accounting for unaffordable debt is no longer included. . . .”¹⁷ Together, these factors result in more Title IV disbursements flowing to low-quality programs under this proposal.¹⁸ Therefore, it is critical that the Department improve the framework by maintaining critical aspects of the GE rule to ensure students are protected.

The Department must retain the debt-to-earnings metric to protect students from high-debt programs.

Currently, programs subject to GE are required to pass two tests: a minimum earnings test where completers must earn more than a high school graduate in their state, and a debt-to-earnings (DTE) test where completers’ annual debt payments cannot exceed 8 percent of adjusted gross income or 20 percent of discretionary income.¹⁹ This dual accountability framework ensures students are not saddled with federal or private loan debt.²⁰ We are deeply concerned that the NPRM would eliminate the DTE test²¹ despite continued support for the dual tests²². According to the Department, while approximately only 0.2% of programs currently subject to GE would fail the DTE test but not the earnings test, that is roughly 40,000 students at risk of being burdened with debts they may not be able to pay off.²³ Yet the Department views these students as a “marginal addition [that] would not justify... including [DTE] rates.”²⁴

The Department also argues the elimination of Grad PLUS loans will mitigate the need for a DTE metric; however, many graduate students will finance their education in the private loan market, and have trouble managing their debt load. This argument also does not consider students at any other levels of higher education. We are particularly concerned about students

¹⁵ Stephanie Riegg Cellini & Clare McCann, *Study Guide: For-Profit Colleges*, Postsec. Educ. Econ. Rsch. Ctr. (Feb. 2026), <https://www.peer-center.org/research/study-guide-for-profit-colleges>.

¹⁶ NPRM at 21148 (Table 3.11), NPRM at 21150 (Table 3.12).

¹⁷ Antoinette Flores, *What’s AHEAD: What the Education Department’s new accountability consensus means*, New Amer. (Feb. 9, 2026), <https://www.newamerica.org/insights/whats-ahead/>.

¹⁸ NPRM at 21142-21143.

¹⁹ U.S. Dep’t of Educ., *supra* note 3.

²⁰ Peter Granville & Carolyn Fast, *Congress’s College Accountability Statute Has Cracks. The 2023 Gainful Employment Rule Fills Them*, The Cent. Found. (Dec. 1, 2026), <https://tcf.org/content/commentary/congress-college-accountability-statute-has-cracks-the-2023-gainful-employment-rule-fills-them/>.

²¹ NPRM at 21104.

²² Ben Cecil, *Public Opinion Backs Retaining Gainful Employment Alongside New Earnings Standards*, Third Way (Jan. 8, 2026), <https://www.thirdway.org/blog/public-opinion-backs-retaining-gainful-employment-alongside-new-earnings-standards>.

²³ Presentation, Adding a Debt-to-Earnings Test to the Proposed Gainful Employment (GE) Rule, U.S. Dep’t of Educ., 3, 8 (Jan. 2026), <https://www.ed.gov/media/document/2025-2025-ahead-adding-debt-earnings-test-proposed-gainful-employment-ge-rule-112933.pdf>.

²⁴ NPRM at 21180.

enrolled in high-cost, low-quality programs at for-profit colleges. Students who attended for-profit colleges are more likely to both have higher loan balances and to default on their loans.²⁵ Without a strongly enforced DTE metric, it is harder to prevent unmanageable debt and we risk continued harm to these students. Therefore, we strongly urge the Department to retain the DTE test. In this test, the Department must also account for all forms of educational debt, including federal and private loans. Further, the Department should collect and report DTE data to help students make informed choices.

The Department must apply strict standards to undergraduate certificate programs under the GE rule.

P.L. 119-21 did not make the new earnings test applicable to undergraduate certificate programs. One of the architects of these provisions made clear this was because these programs “are covered by a similar earnings test”²⁶ in the GE rule. Therefore, we are pleased the Department will hold these certificate programs accountable by leveraging its GE authority,²⁷ and we strongly urge the Department to retain this proposal, as well as all other aspects of the 2023 GE Rule. It is critical for the roughly 1.4 million students who use their federal student aid to earn an undergraduate certificate²⁸ to access high-quality programs that lead to high-skill, high-wage, and in-demand jobs. Recent analysis estimates that by preserving the 2023 GE Rule, students directed from low-quality programs to those with stronger outcomes would have a projected average earnings increase of \$9,500.²⁹ At a time when nearly half of Americans cannot afford the cost of living³⁰, that potential wage increase is critical. Thus, the Department must continue to hold accountable all undergraduate certificate programs and reject any proposals to weaken oversight of these programs’ earnings and debt loads.

The Department must ensure failing programs are restricted from all federal student aid, not just student loans.

Under the current GE rule, failing programs lose access to disbursing *all* federal student aid.³¹ While the NPRM would restrict low-earnings programs from disbursing federal loans to students, it does not restrict Pell Grant disbursement unless half of the institution’s Title IV recipients are enrolled in failing programs or half of the institution’s Title IV funding is used by students in failing programs.³² When low-quality programs are allowed to continue disbursing federal student aid, students risk wasting their loan and Pell Grant eligibility. This allowance for low-performing programs to continue disbursing other forms of aid renders the earnings test ineffective for many undergraduate certificate programs. Forty percent of students in failing GE

²⁵ Luis Armona et al., *Student Debt and Default: The Role of For-Profit Colleges*, Fed. Res. Bank of New York 3-4 (Apr. 2017) (2021), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr811.pdf.

²⁶ Fact Sheet, Sen. Bill Cassidy, *Q&A’s About Higher Education in the One Big Beautiful Bill*, S. Comm. on Health, Educ., Labor, & Pensions, 4 (July 2026), https://www.help.senate.gov/imo/media/doc/faq_docpdf.pdf.

²⁷ NPRM at 21104.

²⁸ Granville & Fast, *supra* note 17.

²⁹ Granville, Fast, *supra* note 17.

³⁰ The American Affordability Tracker, Urban Inst. (last updated Apr. 2, 2026), <https://www.urban.org/data-tools/american-affordability-tracker>.

³¹ Granville & Fast, *supra* note 17.

³² NPRM at 21120.

programs do not participate in the Direct Loan program³³, and certificate programs hoping to access Workforce Pell Grants will soon be unable to disburse federal loans at all.³⁴ If a student remains in a failing program and burns through their Pell Grant eligibility, they may not have the financial option to continue their education elsewhere. It is unacceptable for Pell Grant recipients to have fewer protections from low-quality programs than students who receive federal loans. Therefore, the Department must restrict all failing programs from accessing *all* federal student aid, including Pell Grants.

The Department should retain provisions to support students in specialized programs with unique missions.

There are some instances where an earnings requirement may not reflect the full positive outcomes of a program. The NPRM excludes from all earnings calculations any student enrolled in a Comprehensive Transition and Post-Secondary (CTP) program or an approved prison education program (PEP). CTP programs are federally recognized degree, certificate, or noncredit programs designed for individuals with intellectual disabilities to fully participate in higher education through social inclusion in academic classes and life skills development.³⁵ PEPs were established to provide high-quality college coursework to incarcerated individuals.³⁶ While both of these student populations face systemic challenges in the labor market³⁷, CTP programs and PEPs still play a critical role developing students within the higher education ecosystem. Because both CTP programs and PEPs have specific missions to serve unique student populations, the earnings test is not an appropriate measure of the success of these programs. We suggest the Department maintain these exceptions in the final rule.

Additionally, we have heard concerns about how other programs, including but not limited to fine arts and religious studies, fare under the proposed framework. While we do not believe these programs should be completely shielded from accountability for student outcomes, we recognize that a program's value is not solely determined by the earnings of its students. The Department should carefully consider the impact the rule may have on students enrolled in these specialized programs. The Department must also ensure students enrolled in failing programs have robust access to information on other comparable programs that can prepare them to enter their profession with adequate preparation.

Student Tuition and Transparency System

In addition to implementing the new earnings test, the NPRM also establishes a new Student Tuition and Transparency System (STATS) which would require colleges to report program-level student outcomes data and require the Department to disseminate this information via a

³³ Flores, *supra* note 14.

³⁴ Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Pell Grant Exclusion Relating to Other Grant Aid; and Workforce Pell Grants, 91 Fed. Reg. 11390 (Mar. 9, 2026) (to be codified at 34 C.F.R. § 690).

³⁵ 20 U.S.C. §§ 1140f-o.

³⁶ 20 U.S.C. § 1090(t).

³⁷ See *People with a Disability: Labor Force Characteristics*, Bur. of Lab. Stats., U.S. Dep't of Lab. (Mar. 3, 2026), <https://www.bls.gov/news.release/pdf/disabl.pdf>; Shaun Libby & Daniel Throop, *Prison Education Programs Lead the Way in Fair Chance Hiring*, Jobs for the Future (Mar. 17, 2025), <https://www.jff.org/idea/prison-education-programs-lead-the-way-in-fair-chance-hiring/>.

“Program Information Website”.³⁸ STATS is the successor to the widely supported Financial Value Transparency (FVT) framework established under the Biden Administration.³⁹ Program-level data is crucial for students to have, since outcomes and costs may be vastly different across programs and institutions.⁴⁰ The framework provides students with information on the cost of attendance, financial aid, completion rates, student debt, and more. While most components of FVT remain the same under STATS, the Department regrettably repealed multiple reporting requirements – including DTE – that students would still benefit from seeing.⁴¹ Thus, it is imperative that the Department maintain the STATS framework, but incorporate all current reporting requirements from FVT, and publish all existing FVT data. With these recommendations, STATS has the potential to provide prospective students with comprehensive information before making the decision to enroll in a program.

Department of Education Dismantling

For this framework to serve as an effective accountability mechanism, the Department needs to be fully functional and must ensure colleges can implement the changes. Regrettably, the ongoing dismantling of the Department has already weakened consumer protection enforcement⁴² and threatens the success of any institutional accountability rule. We are concerned that the Department may be unable to implement the proposed rule or provide students with high-quality, accurate information without creating unworkable timelines for colleges. The Department has conducted a mass reduction in force⁴³ and alarmingly transferred many statutory responsibilities to other federal agencies.⁴⁴ In March, the Department began moving core “operational” functions of the Office of Federal Student Aid (FSA) to the Treasury Department.⁴⁵ Despite FSA’s critical role in preventing waste, fraud, and abuse in student aid, there has been no thoughtful consideration of these changes in the NPRM. Just recently in the issuance of the other major federal student aid final rule for implementation of P.L. 119-21, the Department did no Regulatory Analyses or cost analysis based on the presumption that the implementation of this rule would be done in part by the Treasury Department.⁴⁶ We do not have confidence that this Administration will faithfully implement the law as it tries to close the doors

³⁸ NPRM at 21120-21121.

³⁹ U.S. Dep’t of Educ., *supra* note 3.

⁴⁰ Joceyln Salguero & Diane Cheng, *Education Department’s Proposed Higher Ed Rule Includes Key Transparency Provisions for Students*, Inst. for Higher Educ. Pol. (Feb. 11, 2026), <https://www.ihep.org/education-departments-proposed-higher-ed-rule-includes-key-transparency-provisions-for-students/>.

⁴¹ *Id.*

⁴² See e.g., U.S. Gov’t Accountability Off., GAO-26-108534, *Federal Student Loans: Education Needs to Address Gaps in Servicer Oversight*, (2026), <https://www.gao.gov/products/gao-26-108534>; David Halperin, *Trump is Weak on Protecting Americans from Overpriced, Deceptive Colleges*, Republic Report (Mar. 3, 2026), <https://www.republicreport.org/2026/trump-is-weak-on-protecting-americans-from-overpriced-deceptive-colleges/>.

⁴³ Press Release, U.S. Dep’t of Educ., U.S. Department of Education Initiates Reduction in Force (Mar. 11, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force>.

⁴⁴ Kara Arundel, *Interagency agreements now number 10. Here are the details*. K-12 Dive (Mar. 26, 2026), <https://www.k12dive.com/news/education-department-interagency-agreements-HHS-Labor-Treasury-table/815663/>.

⁴⁵ Press Release, U.S. Dep’t of Educ., U.S. Department of Education and U.S. Department of Treasury Announce Historic Federal Student Assistance Partnership (Mar. 19, 2026), <https://www.ed.gov/about/news/press-release/us-department-of-education-and-us-department-of-treasury-announce-historic-federal-student-assistance-partnership>

⁴⁶ Reimagining and Improving Student Education: Federal Student Loan Program Final Regulations, 91 Fed. Reg. 23768 (May 1, 2026) (to be codified at 34 C.F.R. §§ 674, 682, 685).

The Honorable Linda McMahon

May 20th, 2026

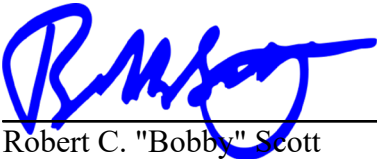
Page 7

of the Department. Thus, consistent with P.L. 119-21, we expect the Department to expressly state that all implementation of GE and STATS reporting will be done solely by the Department of Education. At the very least, if the Department plans to cede its authority to another Department, we expect thorough analysis in the final rules of the implications of that action. We will also conduct robust oversight on implementation of this law in accordance with the Department's other statutory responsibilities to protect federal student aid against waste, fraud, and abuse.

Conclusion

These comments are based on a fundamental goal to protect students from low-quality programs disproportionately offered by for-profit colleges and via undergraduate certificate programs, programs that leave many students worse off than before they entered them. Since the framework in this NPRM is not as strong as past and current accountability measures, the Department should incorporate our commonsense proposed changes and reject any proposals to further weaken the rule.

Sincerely,



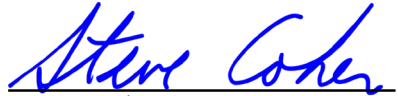
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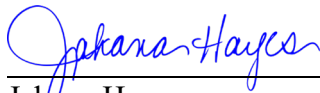
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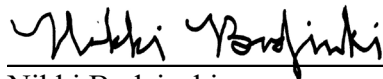
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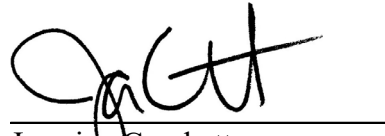
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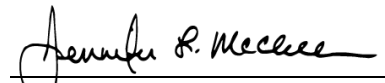
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