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Higher Education Alert

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Department of Education finalizes OBBB Higher Ed Accountability Rule

By Alexandra A. Mitropoulos and Steven M. Richard

The DOE's final Accountability Rule ties Title IV eligibility to program-level graduate earnings, with new timelines, exemptions, and appeal procedures.



What's the impact?

- The Department of Education's final accountability rule ties program-level Direct Title IV eligibility to graduate earnings outcomes and eliminates the debt-to-earnings metric.
- The rule is generally effective July 1, 2027, with early reporting options in 2026 and first earnings calculations expected in 2027.
- Final changes add key exemptions, revised cohort aggregation, enhanced warnings, and a streamlined appeals process for institutions.

On July 1, the US Department of Education (DOE) published final regulations implementing the new institutional accountability framework established under the One Big Beautiful Bill Act (OBBB Act). The final rule largely tracks the consensus language developed through the DOE's Accountability in Higher Education and Access through Demand-driven Workforce Pell (AHEAD)

negotiated rulemaking and reflected in the DOE's April 2026 notice of proposed rulemaking, but it incorporates several meaningful refinements in response to the nearly 10,000 public comments received. This alert highlights both the framework as finalized and the most notable departures from the proposed rule.

Summary and effective date updates

The final rule creates a program-level "low-earning outcome" framework that ties continued Title IV eligibility to graduate earnings performance, eliminates the debt-to-earnings (D/E) metric entirely for all programs (including gainful employment (GE) programs), and is generally effective **July 1, 2027**, a shift from the proposed rule's contemplated July 1, 2026, effective date. Two narrower categories of provisions operate on different timelines:

- / **July 1, 2026:** Institutions have the option to implement certain Part 668 reporting provisions early if they choose. Under the final regulations (and discussed further below), the DOE is eliminating several data elements that institutions previously had to report under the current Financial Value Transparency and Gainful Employment rules, including detailed institutional debt information for students who completed or withdrew from a program. Institutions that simply stop reporting the eliminated items on the October 1, 2026, reporting deadline will be treated as having chosen to implement the change early. Note that the substantive provisions of the final regulation remain effective July 1, 2027, regardless of an institution's reporting choice.
- / **August 31, 2026:** Institutions must agree, through their Program Participation Agreements, to be subject to the new earnings accountability framework.

Program-level earnings outcomes

The most significant structural feature of the rule is its shift to program-level accountability determinations. The DOE will evaluate individual academic programs using completer cohorts, federal earnings data (sourced from the IRS), credential level, Classification of Instructional Programs (CIP) coding, and earnings-premium calculations. Institutions may maintain Title IV eligibility for some programs while other programs lose eligibility based on earnings performance.

UNDERSTANDING THE "EARNINGS PREMIUM" CALCULATION

At the center of the accountability framework is the earnings premium metric. A program risks losing Direct Loan eligibility if the median earnings of its Title IV completers—measured in the fourth tax year following completion of their program, excluding individuals still enrolled—fall

below the applicable benchmark in two of any three consecutive award years for which the metric is calculated.

Benchmarks are determined as follows:

- / **For undergraduate programs:** The median earnings of working adults aged 25–34 with only a high school diploma in the state where the institution is located. If less than 50% of the institution’s enrolled students are from that state, the national median is used instead.
- / **For graduate programs:** The lowest of three medians for working adults aged 25–34 with a bachelor’s degree: (i) in the same state, (ii) in the same field of study (by 2-digit CIP code) in the same state, or (iii) in the same field of study nationally. The in-state benchmarks apply only where at least 50% of the institution’s enrolled students are from the state.

The framework focuses on earnings outcomes rather than debt burden. As a result, programs with relatively low borrowing levels could still fail the metric if earnings outcomes are weak, while programs with comparatively higher debt levels may satisfy the framework if completer earnings exceed the applicable threshold.

SPECIAL EARNINGS-THRESHOLD RULES ADDED IN THE FINAL RULE

The final rule introduces two significant refinements to the threshold calculation that were not present in the proposed rule:

- / **Insufficient Census data.** In the proposed rule, the DOE indicated that for graduate programs at majority in-state-serving institutions in fields where American Community Survey (ACS) data is insufficient to calculate the “same-state, same-field” threshold, no earnings premium would be calculated at all. The final rule instead defaults the threshold to \$1, effectively exempting those programs from pass/fail consequences while still permitting the metric to be reported. The DOE estimates this affects approximately 2,650 graduate programs, including roughly 300 programs in US Territories where Census data is unavailable.
- / **Tipped-income occupations.** This provision did not appear in the proposed rule and was added in the final rule in response to extensive comments from the cosmetology, massage therapy, and related sectors. The final rule delays the accountability framework for programs preparing students for approximately 20 programs (identified by 6-digit CIP code) where 50% or more of workers customarily receive tipped income. For these programs, the DOE will publish earnings data but will not impose pass/fail consequences for any year in which the calculation uses tax year 2025 or earlier data. This aligns with the implementation of the OBBB Act’s “No Tax on Tips” provision and effectively pushes consequences out at least one additional year.

Simplified cohort aggregation

The final rule also simplified the cohort aggregation methodology for small programs in response to comments that the proposed approach grouped dissimilar programs too broadly. The final rule removes expansion to the 2-digit CIP level entirely and removes use of data from the eighth award year prior. Expansion now proceeds within the same 6-digit CIP through prior award years, then expands to 4-digit CIP only, if necessary, more closely aligning with the Workforce Pell aggregation methodology.

Consequences for programs that fail the earnings-premium metric

The final rule, like the proposed rule, establishes a graduated enforcement framework. If a program fails the earnings threshold in any **one** of the most recent three years, institutions must warn currently enrolled and prospective students that the program is at risk of losing Title IV eligibility and must provide notice regarding remaining lifetime Pell eligibility. A program becomes a “low-earning outcome program” and loses Direct Loan eligibility if it fails the metric in **two out of any three** consecutive award years for which the metric is calculated. Ineligibility lasts at least two years, and the institution may not seek to reestablish eligibility for a program sharing the same 4-digit CIP code and any overlapping Standard Occupational Classification (SOC) codes during that period.

TERMINATION MECHANISM

The proposed rule would have required the DOE to use a single, formal legal process (the Subpart G termination proceeding) every time it wanted to end a program’s eligibility for federal aid. Commenters flagged concerns that the DOE may not have the staff to handle an influx of formal cases, which could create a backlog. As a result, the final rule now permits the DOE to use “any available mechanism” to end program eligibility, including proceeding under a partial revocation under § 668.13 or simply declining to include low-earning outcome programs on an institution’s Eligibility and Certification Approval Report (ECAR) at recertification.

ORDERLY PROGRAM CLOSURE

Programs that fail the earnings-premium metric in a single year may enter an “orderly program closure” arrangement with the DOE through an amendment to the institution’s PPA. Under this process, the institution agrees to stop new enrollments in that program while continuing to teach out currently enrolled students. If the DOE determines the arrangement is in students’ best interests, the DOE may permit continued Direct Loan eligibility for the lesser of three years or the normal full-time length of the program. During the program’s closure period, the program is set aside from the low-earning outcome designation and does not count toward the administrative capability threshold discussed below.

Administrative capability standard and institutional-level consequences

The final rule retains the new administrative capability standard tied to institutional concentration of low-earning programs. An institution fails this standard if, in **two of any three** consecutive award years, more than half of its Title IV recipients or more than half of its Title IV funds are associated with low-earning outcome programs. Institutions that fail are placed on provisional certification, and their low-earning outcome programs may lose eligibility for all Title IV programs, not just Direct Loans.

The final rule, however, adds two important exemptions that were not in the proposed rule. These additions respond to extensive comments, particularly from religious institutions and others arguing that the proposed rule's institutional-level penalty exceeded congressional intent as applied to institutions that do not participate in the Direct Loan program:

- / **Non-Direct Loan institutions.** Institutions that have not participated in the Direct Loan program for the five most recently completed award years are exempt from the automatic loss of Title IV eligibility under the administrative capability standard. This change is particularly significant for many religious institutions and others that historically operate outside the Direct Loan program but rely on Pell Grants.
- / **Voluntary Direct Loan opt-out.** A specific program is exempt if, within 120 days of the DOE's first determination that the program failed the earnings premium measure, the institution agrees to amend its PPA to prevent students from borrowing Direct Loans in that program (under § 685.203(m)(2)) for at least five award years. The exemption remains in effect as long as the institution prevents Direct Loan borrowing in the program.

Together, these exemptions create meaningful escape valves that institutions should evaluate carefully. The DOE's analysis indicates that the final rule will have roughly half the impact on students and Title IV funds in religious programs compared to the current FVT/GE regulations.

Exemption for programs serving students with specific disabilities

Also new in the final rule, § 668.601(b) exempts programs at institutions that exclusively enroll students with Specific Learning Disabilities or Autism Spectrum Disorder from the program-eligibility consequences of the framework. The DOE added this provision in response to comments raising concerns that the proposed rule, by failing to account for documented labor market gaps for individuals with disabilities, could violate Section 504 of the Rehabilitation Act. The DOE will still calculate the metric for such programs, but failure will not trigger loss of Title IV eligibility.

Enhanced student warning requirements

The final rule expands the student warning requirements beyond what the proposed rule contemplated. Where an institution has failed the administrative capability requirement in at least one of the three most recent years, student warnings must now include additional language explaining that students enrolled in a low-earning outcome program could lose access to all Title IV programs, not just Direct Loans. Institutions must also provide Pell-eligible students with notice of their remaining lifetime Pell eligibility, both as part of the warning and at the time of each Pell disbursement.

Appeals process

The appeals process underwent significant refinement between the proposed and final rules. The proposed rule was widely criticized for being unclear about what institutions could appeal and for requiring all appeals to proceed through Subpart G hearing procedures.

The final rule responds in two ways. First, the DOE moved the appeals process out of Subpart G into a streamlined process under Subpart S, expected to result in faster and more efficient adjudication. Second, new § 668.603(c) enumerates four explicit bases for appeal:

- / The individuals included in the program's completers list;
- / The determination of the appropriate version of the earnings threshold (e.g., in-state vs. national);
- / The comparison of median earnings to the earnings threshold; and
- / Other bases as determined by the secretary.

Institutions have 30 days from the DOE's notice of determination to file an appeal. Importantly, the final rule still does not permit institutions to submit independent or alternate earnings data (such as graduate surveys or state wage data) to challenge the federal earnings calculations themselves, a position the DOE maintained over significant industry opposition, citing concerns about data quality issues that arose under prior gainful employment frameworks.

A program continues to participate in the Direct Loan program during the pendency of an appeal; however, if the appeal is unsuccessful, the effective date of ineligibility relates back to the date of the DOE's initial determination.

Reporting

The reporting framework remains largely consistent with the prior FVT/GE structure but is reduced by approximately 30% in the number of required data elements. The DOE has eliminated certain duplicative or particularly burdensome items, including the requirement to

report institutional debt at the student level. Even with the streamlined elements, institutions should anticipate substantial coordination obligations across financial aid, registrar, institutional research, and compliance functions.

Implementation timeline

Although Congress established July 1, 2026, as the statutory effective date for portions of the OBBB Act accountability framework, and the proposed rule contemplated a July 1, 2026, effective date, the DOE's final rule is generally effective July 1, 2027. The DOE's has invoked an implied waiver of the Higher Education Act's master calendar requirements for certain OBBB Act-mandated provisions and has designated select provisions of Part 668 for optional early implementation beginning July 1, 2026, most notably certain changes to reporting requirements under § 668.406.

The first earnings-premium calculations under the new framework are expected to be released in 2027, with the earliest loss of Direct Loan eligibility for most programs likely occurring no earlier than **2028**, and later for programs preparing students for tipped occupations or small programs requiring multi-year cohort aggregation.

Our prior coverage of institutional readiness considerations ahead of the OBBB Act's implementation provided an [overview of changes for colleges and universities, discussed the end of Grad Plus and the cap on Parent Plus loans](#), and reviewed the [new loan proration requirements](#).

Nixon Peabody's Higher Education Team helps institutions navigate high-stakes regulatory disputes, enforcement actions, and appeals involving federal program eligibility and compliance obligations. We work with clients to assess risk, develop response strategies, and advocate effectively before agencies and in court.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

[Alexandra A. Mitropoulos](#)

617.345.6177

amitropoulos@nixonpeabody.com

[Steven M. Richard](#)

401.454.1020

srichard@nixonpeabody.com

