Federal Rulemaking Recap for Postsecondary Program Accountability: What Changed and What It Means for Higher Education

By Roxanne Garza, Director of Higher Education Policy

The U.S. Department of Education (ED) concluded a week-long session focused on drafting regulations that detail how postsecondary programs will be held accountable for their graduates' outcomes. As part of the One Big Beautiful Bill Act (OBBBA), Congress enacted an earnings test for all higher education programs that deems programs as "low earning" if their graduates do not earn more than a working adult without that credential.

ED convened a committee of negotiators for the second week of negotiated rulemaking to write regulatory language on the new earnings test, along with the existing Gainful Employment (GE) and Financial Value Transparency (FVT) regulations, now being renamed as Student Tuition and Transparency System (STATS). Throughout the week, ED repeatedly said that their goal was to "harmonize" the various accountability rules with the OBBBA framework, but in doing so, they watered down the stronger standards that were in place for certain programs. ED's agreed upon proposal would:

- Cover all higher education programs under the new earnings test passed in OBBBA, including undergraduate certificate programs
- Completely eliminate the debt-to-earnings metric that captures high-cost programs that would pass the earnings test but leave students with a high-debt burden they can't afford to repay
- Allow students to continue to use Pell Grants at failing programs — programs only lose Pell access if the failing programs represent more than 50% of an institution's students or federal aid revenue

One Earnings Test for All Programs

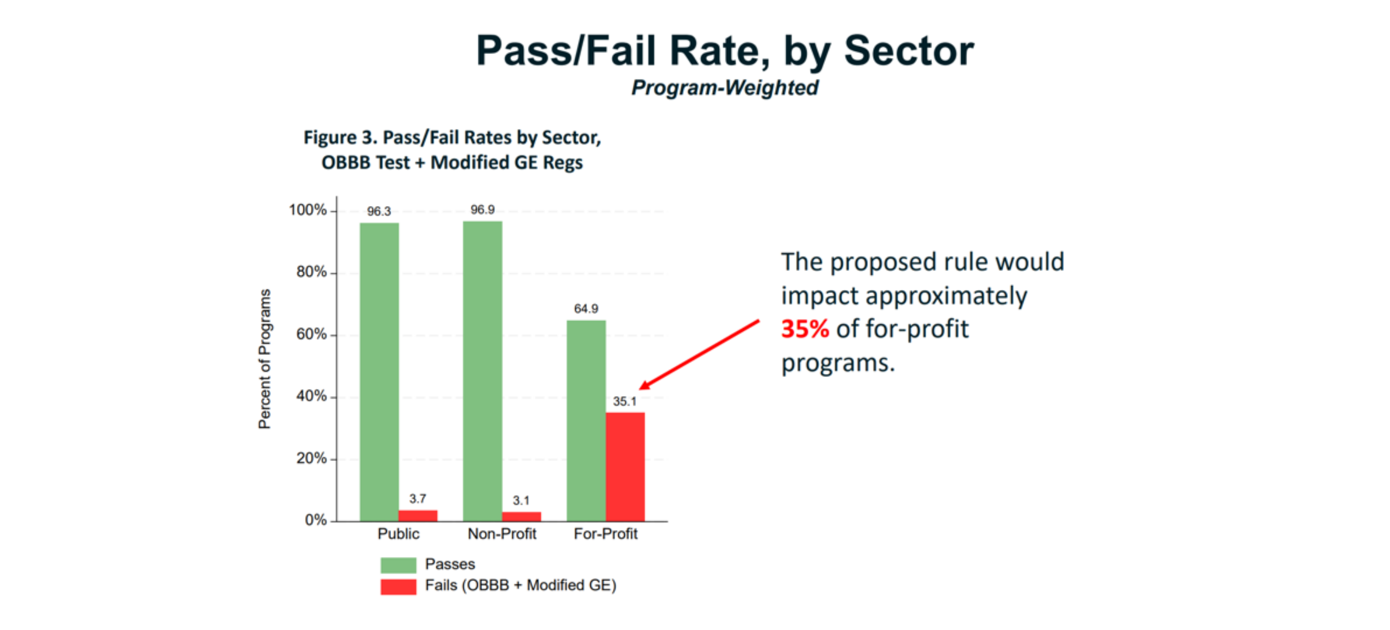
The stated goal of ED was to hold all programs accountable to the same standard, regardless of sector or credential level. ED has proposed measuring all programs against the earnings test in OBBBA which measures graduates' median earnings four years after completion compared to median earnings of 25- to 34-year-olds in the state without that credential. Undergraduate programs are compared to the earnings of working adults with a high school diploma, and graduate programs are compared to the earnings of working adults with a bachelor's degree.

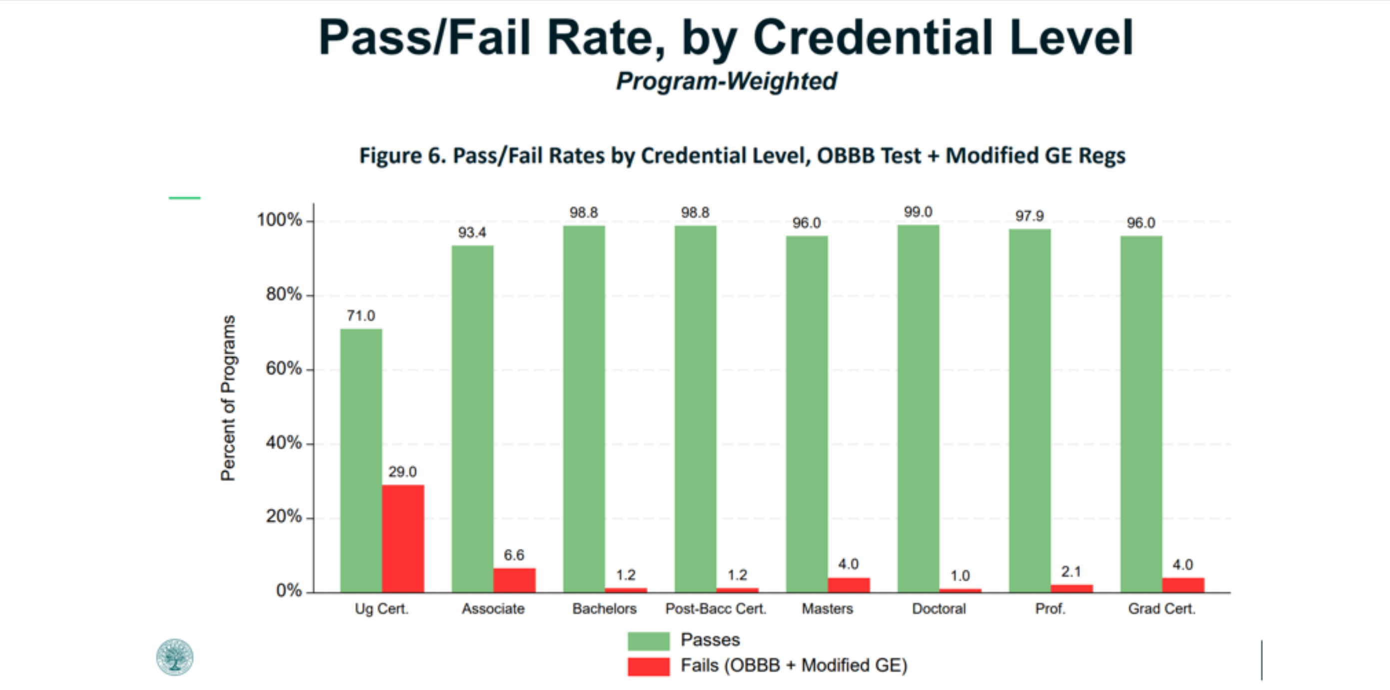
Timeline for the earnings test implementation:

- In 2027, tax information is used covering earnings from 2025 to calculate earnings test for cohort of completers graduating between July 1, 2020 and June 30, 2021 — these completers will have been out of college for four years
- July 1, 2027: First earnings test is calculated, first time programs could fail
- July 1, 2028: Second earnings test is calculated, first time programs could lose access to federal loans if they fail two years in a row

Notably, Congress did not include undergraduate certificates in the OBBBA framework, but ED is proposing to include those programs and measure them against the new earnings test. Including undergraduate certificate programs is key to having a substantive accountability framework, since the majority of low-earning programs are projected to be at this credential level.

Programs most at risk of failing the new earnings test are undergraduate certificates and associate degree programs. According to ED's [analysis](#) of projected impact, approximately 6% of programs would fail the earnings test. These programs enroll about 650,000 Title IV students, and half of those students are enrolled at a for-profit institution. Approximately 31% of students in undergraduate certificate programs attend failing programs.





**Source: Department of Education, Materials Distributed by the Department Day 1 [Ppt3_Results of Earnings Test and GE Changes_v3](#)*

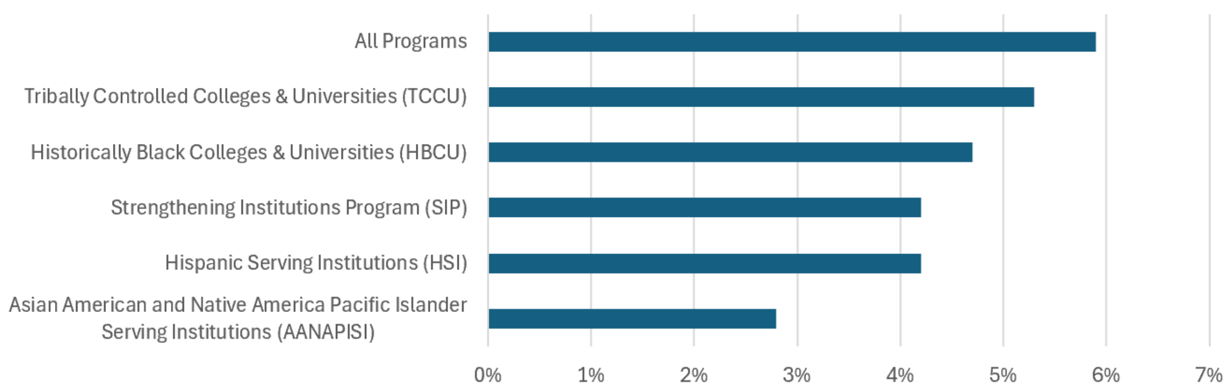
ED also ran data cuts to see what fields of study are more likely to have failing programs — Culinary Services, Cosmetology, Religious Studies, and Alternative & Complementary Medicine have some of the highest fail rates. Some of the states with a higher share of programs that fail the earnings test include Louisiana, Florida, Mississippi, Utah, and California.

While it's crucial that ED continues to impose an earnings test for all programs, it's important to note that the earnings test in OBBBA is less stringent than the earnings test in the current GE rule and would cover less programs. According to an analysis done by the Postsecondary Education and Economics Research Center (PEER Center) at American University, replacing the GE earnings test with the one in OBBBA would lower the share of students enrolled in programs deemed low earning to 3.7%, meaning that the earnings test in OBBBA captures less programs.

Our Findings

Our team used the data that was published by ED to assess how minority-serving institutions (MSIs) fare on the earnings test. Of the roughly 50,000 Title IV programs with sufficient earnings data, our analysis shows that MSI programs have failure rates comparable to non-MSI programs; in fact, they are modestly lower compared to the baseline of around 6% for all programs.[1]

Earnings Test Failure Rates, by Program MSI-Type



	Asian American and Native America Pacific Islander Serving Institutions (AANAPISI)	Hispanic Serving Institutions (HSI)	Strengthening Institutions Program (SIP)	Historically Black Colleges & Universities (HBCU)	Tribally Controlled Colleges & Universities (TCCU)	All Programs
■ Failure Rate	2.8%	4.2%	4.2%	4.7%	5.3%	5.9%

These findings align with research from the PEER Center, which suggests that MSIs are likely to face minimal impact from OBBBA's new accountability measures as they enroll comparatively fewer students in low-earning programs.

1. The Department shared program-level dataset that includes performance information for nearly all Title IV programs by 4-digit CIP code. We added MSI designations by appending the Department's 2025 eligibility matrix designations to the program-level dataset via OPEID code.

No More Accounting of Debt (and by Extension, Cost)

The new accountability framework in OBBBA relies on earnings as a singular proxy for value, overlooking high-cost programs that would pass the earnings test yet leave students with a high-debt burden they may not be able to repay. The GE rule included a debt-to-earnings metric for all for-profit programs and career education programs. ED's drafted regulatory proposal eliminates the metric for holding GE programs accountable and eliminates it from reporting requirements for transparency.

Debt-to-earnings (DTE) helps account for whether a graduate earns enough to repay their student loans. As part of ED's case-making for this change, they presented data that shows that only 2% of GE programs pass the earnings test but fail DTE. Their perspective is that the burden of running this metric is not worth the additional programs covered. While 2% might seem small, programs in that 2% enroll approximately 40,000 students that receive federal aid, and those programs would continue to be able to access loans that their students can't pay off. Last year, the Trump administration even argued to uphold the GE rule, including the debt-to-earnings metric, in a court filing stating, "It is the Federal Government's responsibility to be a good steward of taxpayer dollars, and the Department of Education's interest in doing so is particularly acute in light of the billions of dollars it disburses in Title IV aid, and the high levels of unpaid student debt that continue to plague many Americans who have sought some form of higher education."

Students Can Continue to Use Pell Grants for Failing Programs

While Congress stipulated in OBBBA that low-earning programs should only lose access to direct federal student loans, the existing GE rule eliminates access to all Title IV aid, including Pell Grants. It's noteworthy that Congress did not make changes to GE or FVT in the law; but in its effort to streamline the rules, ED has proposed that failing GE programs only lose access to direct student loans.

Allowing failing GE programs to continue to access Pell Grants while eliminating access to federal loans exposes students most in need of their federal aid to even more risk. Students could still use their Pell Grants, and potentially part of their Pell lifetime eligibility, at a program that has been deemed "low earning" and is unlikely to pay off. By making this change, ED is agreeing to send approximately $1.35 billion in Pell Grants to programs that fail their own accountability metric.

After it became clear that the full exclusion of the loss of Pell Grant eligibility for failing programs was not supported by all negotiators, they agreed to continue to revoke Pell Grant eligibility for some low-earning programs in a convoluted way. ED is now proposing to require at least half of an institution's Title IV recipients and half of the institution's total Title IV aid come from programs that are not deemed low earning. Failing programs at an institution that fails to meet either of those criteria will lose access to all Title IV funding, including Pell Grants. Notably, the proposed regulation allows institutions to close failing programs to avoid losing access to federal loans, making this secondary test for losing Pell eligibility unlikely to be employed in most cases.

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LOSS OF PELL ELIGIBILITY EXAMPLE:

Year 1: Earnings metric is calculated. Program fails earnings test. Program warns students that the program is at risk of losing aid eligibility.

Year 2: Program fails earnings metric for the second time. Loses direct loan eligibility and is classified as a low-earning program.

That same year, ED would determine if 50% of the institution's students or 50% of the institution's Title IV revenue come from low-earning programs. If that's the case, the school goes on notice (but programs do not yet lose Pell Grant eligibility).

Year 3: ED will run the same test. If the institution does not meet one of those criteria, all low-earning programs lose Title IV eligibility, including Pell Grants.

Consensus Reached

ED reached consensus, with one constituency group (legal aid) abstaining from the vote (not supporting, but also not blocking consensus). Since the rulemaking committee reached consensus on the draft regulatory language, ED will use the agreed upon text as the draft regulation that will be posted on the Federal Register for a public comment period of 30 days. ED will then review and respond to public comments before finalizing the rule by July 1, 2026. During this time, stakeholders who have ideas on how to improve the regulation should submit their comments to the Department of Education.