May 20, 2026

Nicholas Kent
Under Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Submitted electronically

Re: Postsecondary Education Accountability Framework Draft Regulations (Docket ID ED-2026-OPE-0100)

Dear Under Secretary Kent,

This letter is submitted on behalf of EdTrust, a national nonprofit organization dedicated to advancing policies and practices that dismantle racial and economic barriers in the American education system, in response to the U.S. Department of Education (ED)'s proposed rule to establish a new earnings-based accountability framework in postsecondary education.

We appreciate the opportunity to comment on ED's efforts to ensure all sectors of postsecondary education fulfill their public duty to deliver economic value, transparency, and protection for the students they admit. For too long, the federal government has allowed Title IV dollars to flow unquestioned to institutions that yield definitively poor economic outcomes, particularly for students from underrepresented backgrounds who have the most to lose. ED's proposed rule is an important step toward addressing that gap, and we strongly believe that many of its provisions should be maintained in the final rule.

That said, we are concerned that certain elements of the proposed rule not only fail to advance its broader goals but at times run counter to them. Accordingly, we offer the following recommendations to better align the final rule with ED's guiding principle that taxpayers should not subsidize programs that leave graduates worse off.

1. The final rule should reinstate the debt-to-earnings metric for programs covered by the gainful employment statutory authority.

We strongly believe that the debt-to-earnings (D/E) test should be reinstated for gainful employment (GE) programs to ensure that they deliver not only an earnings premium, but also manageable debt obligations for students. An earnings premium test alone would leave the door open for programs that impose debt burdens so high that repayment is not reasonably achievable, even with higher earnings. We believe this concern is supported by the following two arguments, (a) and (b), which were raised by negotiators and acknowledged, but not rebutted, by ED in the preamble of the proposed rule:

a. The D/E test protects students and taxpayers from programs that leave students with debt burdens they cannot reasonably pay off.

Students who are unable to repay their debts because their balances cannot reasonably be paid off by their earnings, no matter how high, face lasting harm. Default and delinquency can mark students' credit reports for years, limiting their ability to find housing, finance a car, or pursue basic financial security (e.g., they may face wage and tax garnishment). The data is clear that programs that burden students with unreasonable indebtedness disproportionately affect students of color, with one study finding that 60% of students affected by GE programs that failed the Biden-era 2023 D/E test — but not the earnings premium test — were students of color; 26% were Black students. Allowing those programs to continue imposing unaffordable debt burdens on students makes the federal government complicit in harming them.

Programs that leave students with unreasonable indebtedness also impose costs on taxpayers, a concern ED acknowledges elsewhere in the proposed rule; in reference to an overlapping statutory authority, the preamble notes that the Secretary has determined that "when students do not repay their Direct Loans, it hurts the interests of the United States in collecting on those student loans," and that ED aims to "eliminate passing along the cost of such loans to taxpayers." We agree with the Secretary — and we accordingly recommend that the proposed rule reinstate the most direct mechanism for measuring a student's ability to repay their loans for GE programs: the D/E test.

b. The D/E test will become increasingly necessary to protect students as the OBBBA's new loan limits push more toward private loans, which are more difficult to repay for many.

As ED clearly states in its rationale to preserve private loan reporting (which we strongly support), "a private loan is often the difference between Federal loan annual maximums and the overall cost of attendance." This is true. And with the stricter loan limits in OBBBA,

students who are capped out of federal Direct Loans are all but certain to explore private loan options to fill in that resulting gap — something that policy analysts and the private loan industry largely expect to occur.

Crucially, as ED recognizes in the preamble, the amount of private loans taken on by students "can be significant" and have terms and conditions "less favorable to students than those of Direct Loans" in some instances. These less favorable terms include interests rates (both variable and fixed) that are much higher than those offered by Direct Loans for students who can least afford them, which, all in all, make private loans one of the riskiest ways for students of color and from lower-income backgrounds to finance their education — risks that come with more unmanageable debt burden.

Given that the movement of students toward the private loan market is all but guaranteed in the immediate term (as overall cost of attendance has not gone down commensurate with OBBBA's new loan limits), the D/E test is even more important, not less, to protect students. We would also be remiss if we didn't acknowledge ED's closest rebuttal to this argument — referenced in footnotes 13 and 81 — which states that it "approximates that a third of the programs it estimates would fail only the D/E test would instead pass once borrowers are subject to the OBBBA loan limits." It would help our understanding of the proposed rule's effects to clearly see ED's methodology in reaching that conclusion.

c. The number of programs that pass the earnings premium metric but fail the D/E test is substantial – not "de minimis."

Lastly, ED's main rationale for foregoing the D/E test comes from its regulatory impact analysis that maintaining the D/E test for GE programs along with the new earnings premium test would result in a "de minimis" increase of 0.2 percentage points in the total share of programs that would fail the accountability framework.

We disagree that this number is insignificant. In real terms, ED's own analysis shows that this delta represents approximately 260 additional programs and, more importantly, approximately 56,000 additional students. This number is comparable to the student body counts of some of the nation's largest degree-granting campuses, including Arizona State University's Tempe campus, the University of Texas at Austin, and Florida International University. ED should not allow a group of students roughly the size of these campus populations to enroll in programs it knows will impose unaffordable debt burdens. These impacts are not de minimis — and ED should not treat them as such.

2. The final rule should reinstate the loss of Pell eligibility for programs covered by the gainful employment statutory authority — particularly for undergraduate certificate programs.

We strongly support ED's extension of the GE statutory authority to undergraduate certificate programs — which, by ED's own estimates, are most at risk for failing the earnings premium test. However, ED should reverse its decision to weaken the consequences for failing programs.

As detailed below, limiting sanctions to just the loss of Direct Loan eligibility, rather than all Title IV aid including Pell Grants, undermines the effectiveness of the GE framework and violates the requirements of the statutory language governing GE programs. At the very least, ED should maintain the proposed rule's administrative capability standard, which places Pell Grant eligibility at risk for failing programs at institutions where the majority of Title IV dollars or recipients are in such programs.

a. Limiting the consequences of failure to the loss of Direct Loan eligibility creates a weaker accountability framework that will harm Pell Grant recipients.

As research from the Postsecondary Education & Economics Research (PEER) Center shows, not all Title IV recipients are Direct Loan borrowers. At private nonprofit and for-profit institutions, only about 60% of undergraduate Title IV recipients take out Direct Loans; at public institutions, the share is even lower at just 32%. As a result, limiting sanctions to the loss of Direct Loan eligibility would leave many programs — particularly those serving students who rely primarily on Pell Grants — largely unaffected.

This gap is especially pronounced among undergraduate certificate programs, which tend to have lower costs and therefore rely less on borrowing. In these programs, many students depend primarily on Pell Grants rather than Direct Loans, meaning that the loss of Direct Loan access would have little to no impact on program participation.

Indeed, this oversight gap is reflected in PEER's research. Removing the loss of Pell eligibility for GE programs cut the number of students affected by OBBBA and new GE rule by half (down 317,400 students from 639,800), even though more programs are projected to fail under the new framework. Of those no longer affected, 77% of students were from undergraduate certificate programs.

Failing to retain the loss of Pell Grant eligibility for GE programs, particularly for undergraduate certificates, would allow programs that ED defines as low-performing to continue operating with taxpayer support while facing minimal consequences for poor outcomes. It would also harm Pell Grant recipients, who are disproportionately students from underrepresented backgrounds, by wasting limited funds that could have gone to better performing programs. Indeed, ED's own estimates show that this rule would knowingly allow approximately $1.35 billion in Pell Grants to flow to programs that fail its accountability framework.

b. Providing Pell Grant access to low-performing undergraduate certificate programs is inconsistent with ED's value-added-earnings framework for Workforce Pell programs.

One of ED's goals for this new accountability framework is to "at last set forth a harmonized… accountability framework that ensures parity across all institutions and program types." However, the lack of Pell Grant sanctions for GE programs introduces a glaring inconsistency: short-term undergraduate certificate programs that are between eight to 14 weeks of instruction must pass a value-added earnings metric to access Pell Grants, which ED lauded as "reinforc[ing] accountability and fulfill[ing] [its] responsibility to protect both students and taxpayer resources," whereas programs that are just a few weeks longer, or between 15 weeks to two years of instruction, can have unquestioned access to Pell Grant dollars, even after failing ED's own earnings premium test. A longer (and likely more expensive program) should face more scrutiny with respect to Pell Grant access, not less.

Given ED's goal of harmonizing the various accountability frameworks and ensuring that students and taxpayers don't subsidize low quality programs, low-performing GE programs, including undergraduate certificate programs, should lose Pell access in tandem with Direct Loan access.

c. All programs subject under the gainful employment statutory language are required to lose access to Title IV funds if deemed ineligible.

Lastly, as a general matter, we disagree with ED's assertion in the proposed rule that the gainful employment statutory authority "does not explicitly or inherently require loss of all title IV, HEA eligibility as the sole remedy for noncompliance."

Program eligibility defined under the gainful employment authority is universally applicable across Title IV; the definition sits within the general provisions relating to "the student assistance programs" of the Higher Education Act and explicitly applies "for the purposes of this title" — that title being Title IV. Splitting this singular definition to restrict it only to Direct Loan eligibility while exempting Pell Grants is illogical: a program cannot be deemed ineligible under an authorizing definition for one Title IV program yet remain eligible for another under that same definition.

As such, maintaining the loss of Pell eligibility for programs covered by the gainful employment authority would be consistent with what is required under statute.

3. The final rule should reinstate reporting requirements for institutional debt.

We strongly support ED's preservation of strong data transparency and student disclosure requirements that enable current and prospective students to make well-informed decisions about their postsecondary education. For instance, we appreciate ED maintaining student warnings for programs at risk of losing Direct Loan eligibility that must be acknowledged by students before they enroll.

We also urge ED to further its efforts to advance data transparency by reinstating reporting requirements in the Student Tuition and Transparency System (STATS) for the total amount of institutional debt a student may owe any party after completing or withdrawing from the program.

We do not believe ED's rationale — that institutional debt would no longer be needed given the removal of the D/E rate reporting requirement and institutional burden — addresses how dangerous institutional loans are to students. As detailed in research by the National Consumer Law Center (NCLC) and Protect Borrowers, institutional lending has a demonstrated history of high default rates and aggressive collection tactics that have harmed students. CFPB supervisory reports, for example, suggests that "some institutional credit programs have delinquency rates greater than 50%" and that institutions engaged in practices including "withholding official transcripts as a blanket policy in conjunction with the extension of credit" and denying "access to classes, computers, final exams, and other education services." We are concerned that the use of these loans will only increase given the new loan limits under OBBBA, which have already spurred the law schools at the University of Kansas and Washington University in St. Louis to announce new institutional lending programs.

Given recent changes to OBBBA loan limits, transparency is more important than ever, and ED should not scale back oversight in a sector with a clear record of harm.

In closing, we strongly support the Department of Education's aims of ending the virtual absence of sector-wide scrutiny and accountability that has insulated poorly performing programs at the expense of students for far too long. Moreover, we agree with ED that all parties involved — students, taxpayers, and institutions, among others — deserve a framework that will endure. We believe our recommendations above will further advance our shared goals here and appreciate ED's consideration.

If you have any questions about this comment, please contact Reid Setzer, director of government affairs, at rsetzer@edtrust.org.

Sincerely,
EdTrust