



The Honorable Nicholas Kent  
Undersecretary of Education  
U.S. Dept. of Education  
400 Maryland Ave., SW  
Washington, DC 20202

Re: Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability Proposed Rule (Docket ID ED–2026–OPE–0100)

Dear Undersecretary Kent:

On behalf of the nation’s 1,015 community colleges, the American Association of Community Colleges and the Association of Community College Trustees are pleased to submit these comments in response to the above-referenced Notice of Proposed Rulemaking (NPRM).

The Working Families Tax Cuts Act, also known as the One, Big, Beautiful Bill Act (OBBBA), establishes a new, comprehensive accountability system that holds degree programs at institutions of higher education accountable for the wages earned by program completers. OBBBA complements the Gainful Employment (GE) regulations that already applied to certificate programs at our institutions. The proposed regulations seek to harmonize OBBBA and the GE/Financial Value and Transparency (FVT) regulations in ways that we generally support. In our comments below, we urge modifications to the proposed rule that do not undermine this intended harmonization.

Community colleges have never shied from accountability as long as the metrics are carefully crafted and fairly applied. We believe that our recommendations below would help the proposed regulations better meet these goals.

### **General Definitions - (668.2(b))**

**Cohort Period:** The proposed regulations go to great lengths to achieve a cohort of at least 30 completers for the purpose of calculating programmatic earnings. This is partly driven by the OBBBA, which calls for adding additional years from the same program and, if that does not achieve a cohort of 30, adding years of data from programs of equivalent length. We understand the department’s desire to calculate the earnings for as many programs as possible, but the regulations as proposed go too far in pursuit of that goal. The more generalized the cohorts become, the farther they stray from accurately assessing the earnings outcome of a given program. Even some 4-digit Classification of Instructional Programs (CIP) codes contain many programs, some of which differ substantially from each other. This will almost always be the case at the 2-digit CIP code level.



We recommend that the cohort period be limited to the first two stages of the process as detailed in the regulations: adding additional award years from the same program to achieve the requisite cohort size and then adding programs with the same four-digit CIP code, if necessary. This is sufficient to comply with the statute's mandate while not producing cohorts that have little, if any, substantive connection to the program in question.

**Earnings Threshold:** OBBBA dictates that the earnings benchmark against which degree programs will be judged is the median earnings of workers aged 25-34 whose highest educational attainment is a high school diploma. The same age range is used in the current GE/FVT regulations. We have consistently maintained that this is an inappropriate benchmark because the age range is too broad.

The basic concept behind the earnings premium metric is to judge whether a postsecondary program leaves workers better off than if they only had a high school diploma. The threshold, therefore, should be carefully designed to focus on this basic concept and eliminate other "noise" that may skew the comparison. A 25-34-year-old cohort introduces this noise by including workers that have been in the workforce for up to 16 years; therefore, any number of other factors beyond their educational attainment, such as promotions and skills gained on the job, may influence their current earnings. The most apt comparison would be to an age group for which educational attainment alone more strongly influences current earnings. This can be achieved by using a cohort that only includes those who have been in the workforce for a shorter amount of time.

While ED is required by law to use the median earnings of high school completers age 25-34 as the benchmark for degree programs, this is not the case for undergraduate certificate programs. For the reasons stated above, we urge ED to add an additional earnings threshold for certificate programs: median earnings of workers aged 18 – 22 [or the closest age range available in the data] who have only attained a high school diploma. Adding an additional earnings threshold for certificate programs would not overly complicate the regulations, it would merely involve establishing one additional earnings figure for each state using the same data source as the other two. The other benefits of creating a unified GE/non-GE accountability system noted below would still apply with the addition of a third earnings threshold.

### **Program Participation Agreement (668.14) and Standards of Administrative Capability (668.16)**

The NPRM's preamble discusses at length its reasoning and statutory authority to harmonize the accountability system for gainful employment (GE) and non-GE programs. Specifically, it applies the system laid out in OBBBA to both categories of programs, even though OBBBA applies directly only to degree programs. In the process, the debt-to-earnings (DtoE) metric that previously applied to GE programs would be jettisoned in favor of exclusively using OBBBA's earnings premium measure. The consequence for being a low earnings outcome program, whether GE or non-GE, is loss of eligibility to participate in the direct loan program.

Though AACCC and ACCT have consistently favored the DtoE metric over the earnings premium measure, we generally support ED's efforts to bring GE and non-GE programs under the same accountability umbrella. Given this consideration, and the weight of the OBBBA provisions, these comments do not formally ask for the



adoption of DtoE and a jettisoning of the earnings premium for GE (though we have called for modifying the benchmark for the earnings premium for certificate programs).

Our associations strongly oppose the provision that would eliminate all Title IV eligibility for low earnings programs at institutions where greater than 50% of students are in such programs or greater than 50% of the institution's Title IV revenue goes to such programs (the 50-50 standard). The 50-50 standard appears in both the program participation requirements of 668.14 and the administrative capability rules in section 668.16.

Before considering the substance of the 50-50 standard, AACCC and ACCT note that it has absolutely no place in the administrative capability regulations. This policy is of an entirely different nature than the examples of administrative capability laid out in the Higher Education Act and most other provisions in section 668.16. The exceptions to this are additions made to this section by the GE/FVT regulations, including the original version of paragraph (t) that this regulation would modify. Paragraphs (q) and (r), relating to career services and externship opportunities, respectively, are other examples of the GE/FVT overreach in this area. We objected to the addition of those provisions to the administrative capability requirements at the time and believe that ED is compounding that mistake with the current proposed modification.

The NPRM's preamble states that the inclusion of the 50-50 standard in paragraph (t) is justified because a failure to meet that standard is prima facie evidence that "suggest[s] a systemic institutional-level issue that is not limited to individual programs and could represent a substantial risk to students and taxpayers." However, there are numerous situations in which that is not true. The institution may have a small number of programs, greatly increasing the chances that if one of them is a low earnings outcome program, the institution may fail the 50-50 standard. The institution may be in an area of the state where employment opportunities, even in occupations that require a postsecondary credential, are limited to low-earning occupations. Similarly, an institution may be located in an area where earnings generally lag behind the statewide medians. All of these scenarios or more could lead to an institution failing the 50-50 standard through no fault of its own.

Most importantly, under the proposed regulations, failure to meet the 50-50 standard is subject to consequences that go beyond those that generally attach to an institution that is found to not be administratively capable. 668.14(b)(6) already requires institutions to agree to comply with the administrative capacity standards detailed in 668.16. The proposed new 668.14, therefore, is superfluous as far as an institution's administrative capability is concerned. Instead, the department is using existing statutory authority to introduce a standard that would automatically bar certain programs from all Title IV programs. This is unlike any of the other requirements in the program participation agreement. Taken together, the proposed modification of 668.16 and 668.14 effectuate a substantive consequence (loss of all Title IV eligibility) for low-earnings programs that goes beyond what is authorized by OBBBA (loss of direct loan eligibility), as applied to degree programs. The department cannot use other statutory authority to evade OBBBA's stated consequence for low-earnings programs.



A comparison to 34 CFR 668.16(m) is instructive, in outlining the appropriate uses of the administrative capability authority. That paragraph states that an institution may not be administratively capable if it has a cohort default rate (CDR) of 30% or more in two out of the three most recent fiscal years. The paragraph then goes on to state that the consequence for this situation is limited to provisional certification if having CDRs of 30% or more for two out of three years is the only reason that the institution runs afoul of the administrative capability regulations. The institution may continue to participate in the Title IV programs in this situation, and even provisional certification is disallowed if the institution is availing itself of its statutorily authorized rights to appeal or seek an adjustment to the most recent CDR.

Like paragraph (t), paragraph (m) deals with the administrative capability of an institution as it relates to an accountability measure authorized by statute that is placed in another section of the regulations. Unlike the proposed paragraph (t), paragraph (m) contains extensive provisions to ensure that consequences to the institution do not exceed what is otherwise authorized by the HEA and its corresponding regulations.

Paragraph (t) (in conjunction with proposed 668.14 (h)) does the opposite. Instead of carefully avoiding consequences that go beyond what was envisioned in statute, by incorporating the 50-50 standard the proposed language for both sections creates a new consequence for institutions out of whole cloth. The potential loss of Pell Grant and other Title IV eligibility for community college students could not be more serious. The policy advanced in the regulations was the result of discussions at the close of negotiations and was not subject to appropriate consideration. It is not in the statute and was never contemplated by Congress. AACCC urges in the strongest possible terms that it be excised from regulations.

**Calculating Earnings Premium Measure (668.403):** OBBBA calls for calculating programmatic earnings based on the earnings of students who completed the program 4 years prior to the year of determination. The statute and regulations also establish that the cohort period may extend beyond the initial cohort year to include students who completed the program (and possibly other programs) up to 8 years before programmatic earnings are determined for a given year. ED proposes maintaining the four-year interval between completion and earnings regardless of the students' year of completion.

We urge ED to use the most recent year for which earnings are available for all students in the cohort period, no matter how many award years were used to establish the cohort. This is the simplest way to achieve an earnings match and avoid any potential issues with low cohort sizes in individual years.

It is also the best way to deal with the issue of inflation, which must be done if earnings from multiple years are included in the calculation. If ED is to keep the four-year interval, it must adjust earnings of those who completed the program 5-8 years before the earnings determination year so that they are equivalent in inflation-adjusted dollars to the earnings of program completers in the initial cohort year (students who completed the program 4 years prior to the earnings determination). Using the most recent earnings data for all completers in the cohort, regardless of when they completed the program, makes these calculations unnecessary.



Thank you for your consideration of these views.

Sincerely,

A handwritten signature in black ink, reading 'De Rionne Pollard'.

De Rionne Pollard, Ph.D.  
AACCC President and CEO

A handwritten signature in black ink, reading 'Jee Hang Lee'.

Jee Hang Lee  
ACCT President and CEO