Summary of Negotiated Rulemaking Consensus Agreement on
One Big Beautiful Bill Act (OBBBA) Accountability in Higher Education

On January 9, the Accountability in Higher Education and Access through Demand-driven Workforce Pell (AHEAD) Negotiated Rulemaking committee reached consensus on a regulatory proposal related to the accountability provisions included in the One Big Beautiful Bill Act (OBBBA).

With consensus being reached, the U.S. Department of Education (ED) is expected to move forward with this proposal as the basis of their notice of proposed rulemaking (NPRM). After what will likely be a 30-day public comment period, ED is expected to publish a Final Rule prior to the July 1, 2026, implementation date required under the OBBBA for these provisions.

Below is a summary of the consensus agreement as posted by ED and which may be found here.

Overview:
OBBBA established a new form of program accountability focused on the earnings of students. Specifically, programs that award bachelor's degrees or associate degrees must have a cohort of the students who both complete the program and received Title IV aid earn more than high school graduates between the ages of 25 and 34. In the case of graduate programs (both degrees and graduate certificates), the same type of student (completer and Title IV aid recipient) must earn more than those between the ages of 25 and 34 who have been awarded a bachelor's degree. Under the law, programs which fail this "earnings premium measure" in two out of three years, lose access to Federal Direct loans.

As part of the effort by ED to regulate these new OBBBA provisions, ED also tasked the AHEAD Committee with revising current Gainful Employment (GE) and Financial Value Transparency (FVT) regulations. Unlike OBBBA, GE accountability provisions focus on programs carried out by for-profit institutions as well as all certificate programs at public and private non-profit institutions. Under GE, these programs are held accountable to specific debt-to-earnings ratios and a high school earnings test and risk losing access to all Title IV programs (vs. just Federal Direct loans.) In addition, FVT includes requirements across all programs at all Title IV institutions to report against the GE debt-to-earnings and high school earnings metrics.

As outlined below, the AHEAD Committee compromise language merges the current GE and FVT regulations with the new OBBBA regulations to meet ED's goal of creating a more unified system of accountability across all GE and non-GE programs.

Student Tuition and Transparency System

Program Information Website
The consensus agreement updates the current institutional and programmatic information required to be on a website established and maintained by the Secretary of Education. (Note,

this requirement is from Sec. 485 of the Higher Education Act (HEA), "Institutional and Financial Assistance Information for Students".) Under current regulations, this includes, but is not limited to, information on each program related to: published length of programs; enrollment; cost; percentage of loan recipients; median loan debt of student completers; median earnings; programmatic accreditation; and each program's earning premium measure calculated by the Secretary of Education. Under the consensus agreement, information on a program's debt-to-earnings is no longer required, but the list of information currently required is expanded to include the median length of calendar time taken for students to complete the program's requirement and obtain the degree or credential awarded by the program.

Under current regulations this website may also include other information deemed appropriate by the Secretary, such as that related to the primary occupations that the program prepares students to enter; completion rates and withdrawal rates for full-time and less-than-full-time students; the medians of the total cost of tuition and fees, and the total cost of books, supplies, and equipment and the total net cost of attendance paid by students completing the program; and the loan repayment rate for students or graduates who entered repayment on Direct Loan Program loans during a period determined by the Secretary. The consensus agreement maintains this list with the exception of removing information on whether students who graduate from a program are required to complete a postgraduation training program to obtain licensure before becoming eligible for independent practice.

Under the consensus agreement, institutions must provide a prominent link to, and any other needed information to access, the website maintained by the Secretary on any web page containing academic, cost, financial aid or admissions information about the program or institution. The agreement maintains current regulations which require institutions to provide the relevant information to access the website to any prospective student, or a third party acting on behalf of the prospective student, before the prospective student signs an enrollment agreement, completes registration or makes a financial commitment to the institution. The information must also continue to be provided to enrolled, Title IV aid receiving students.

Participation in the Direct Loan Program

For any Title IV program to participate in the Direct Loan program, a school must show that such program meets the regulation's Student Tuition and Transparency System requirements and the earnings accountability requirements.

Key Definitions

Cohort Period

The consensus agreement defines the cohort period as the set of award years used to identify a cohort of students who completed a program and whose earnings outcomes are used to calculate the earnings premium measure. A single-year cohort is used if the number of such students is 30 or more. In determining this single-year cohort, ED will look at the year that is four years prior to the year in which the program's earnings are determined. If this results in less than 30 completers, then the Department will keep collecting data on students who completed 5, 6, 7 or 8 years prior to the date with the most recent earnings data available. If the dataset still does not have 30 or more completers, then the Department will collect data at the four-digit CIP code level for up to eight years and at the two-digit CIP code level for up to eight years.

Earnings
The consensus agreement defines earnings as wages, income as reported to the Internal Revenue Service, and other earned income, including self-employment.

Earnings Threshold
The consensus agreement defines the earnings thresholds separately for undergraduate and graduate programs using U.S. Census Bureau data. For undergraduate programs, the earnings threshold is equal to the median earnings for working adults aged 25-34, who have only a high school diploma (or recognized equivalent), worked and were not enrolled in an eligible institution during the year of the associated earning. In cases where more than half of students enrolled in the institution are not in the State in which the institution is located, the threshold uses national vs. State data.

For graduate programs, those in which less than half of students are located in a different State from which the institution is located, the earnings threshold is based on the median earnings of working adults aged 25-34, with only a baccalaureate degree, who worked and were not enrolled in an eligible institution during the year of the associated measure. The median earnings will be determined as the lowest of the median earning of working adults in the State in which the institution is located; the same field of study under the two or four-digit CIP code in the State in which the institution is located or, nationally in the same flied of student under the two or four-digit CIP code. If fewer than 50 percent of the students enrolled in the institution are within-State, the threshold is the lowest of the median earnings of working adults nationally or, nationally in the same field of study under the two-or four-digit CIP code.

<u>Student Tuition and Transparency System</u>
Under the consensus agreement, the current Financial Value Transparency (FVT) system is renamed the Student Tuition and Transparency System and no longer includes the Secretary's assessment of debt and earnings outcomes for programs. However, institutions will continue to report information about their programs to the Secretary, and the Secretary will continue to be required to assess the programs' earnings outcomes using an updated earnings premium measure (described below). Programs pass this measure if median annual earning of the students who completed the programs is equal to or exceeds the earnings threshold. Under current regulations, programs must "exceed" the earnings threshold to pass.

Calculating the Earnings Premium Measure
Under the consensus agreement, the Secretary calculates the earnings premium measure using a process similar to current FVT regulations. Specifically:

- The Secretary obtains from "a Federal agency with earnings data" the median annual earnings of the students who completed the program during the cohort period. Unlike current regulations, which require the use of the most currently available data, under the agreement, earnings must be from the fourth tax year following when students complete the programs and are limited to students who are working.

- As under current regulations, students are excluded in certain cases such as having a Total and Permanent Disability. However, an additional exclusion was added for students in a graduate program who complete a higher credentialed graduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the earnings premium measure.
- Similar to current regulations, the Secretary does not issue the earnings premium if after applying the exclusions, fewer than 30 students completed the programs during the "fully expanded" cohort period vs. the two- or four-year cohort period under current regulations; or the earning data is not provided by the Federal agency with earnings data.

Process for Obtaining Data and Calculating Earnings Premium Measure

The consensus agreement maintains many of the current regulatory requirements with respect to obtaining data and calculating earnings premium measures. Specifically, under this process:

- The Secretary uses administrative data otherwise required to be reported to the Secretary for purposes of Title IV participation to compile a list of students who completed each program during the cohort period.
- The Secretary removes students who are excluded for reasons described above and provides the list to institutions, allowing them to correct the information on which the list was based.
- The Secretary obtains from a Federal agency with earnings data the median annual earnings of the remaining students on the list (in the aggregate) to the extent such students are working.
- The Secretary uses the median annual earnings provided by the Federal agency with earnings data to calculate the earnings premium measure for each program.

Determination of the Earnings Premium Measure

The consensus agreement maintains many of the current regulatory requirements with respect to the determination of the earnings premium measure. Specifically:

- For each award year for which the Secretary calculates the earnings premium measure for a program, the Secretary issues a notice of determination which informs the institution of the following:
    - The earnings premium measure for each program;
    - The determination by the Secretary of whether each program is passing or failing;
    - The consequences of that determination;
    - Whether the institution is required to provide student warnings; and
    - Whether the program could become ineligible based on its final earnings premium measure for the next award year for which the earnings premium measure is calculated for the program.

Reporting Requirements
The consensus agreement maintains similar reporting requirements as under the current GE and FVT regulations. Under the agreement, institutions offering such programs must report to the Department:

- The name, CIP code, credential level and length of the program;
- Whether the program is programmatically accredited and, if so, the name of the accrediting agency;
- Whether the program meets licensure requirements or prepares students to sit for a licensure examination in any State, and a list of all States where the institution has determined the program meets such requirements, including as part of the institution's Program Participation Agreement (PPA);
- The total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of Title IV, HEA funds;
- For each student (for each award year):
    - Information needed to identify the student and the institution;
    - The date the student initially enrolled in the program;
    - The student's total cost of attendance (COA);
    - The total <u>actual</u> tuition and fees assessed to the student;
    - The student's residency tuition status by State or district, as applicable;
    - The student's total annual allowance for books, supplies, and equipment from their COA;
    - The student's total allowance for housing and food from their COA;
    - The amount of institutional grants and scholarships disbursed to the student;
    - The amount of other Federal, State, Tribal or private grants disbursed to the student; and
    - The amount of any private education loans disbursed to the student for enrollment in the program that the institution is, or should reasonably be, aware of, including private education loans made by the institution;
- If the student completed or withdrew from the program during the award year:
    - The total amount the student received from private education loans for enrollment in the program that the institution is, or should reasonably be, aware of;
    - The total amount of tuition and fees assessed the student for the student's entire enrollment in the program;
    - The total amount of the allowances for books, supplies and equipment included in the student's Title IV, HEA COA for each award year in which the student was enrolled in the program, or a higher amount if assessed to the student by the institution for such expenses;
    - The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program; and
    - The total amount of Federal, State, private or other grants and scholarships provided for the student's entire enrollment in the program; and

- As described in a notice published by the Secretary in the *Federal Register*, any other information the Secretary requires the institution to report.

Initial and Annual Reporting

- An eligible institution must report the above information no later than
  - October 1, following the date these regulations take effect, for the two most recently completed award years prior to that date;
  - For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes different dates in a notice published in the Federal Register; and
  - If an institution fails to provide all or some of the information required above, the institution must provide to the Secretary an explanation, of why the institution failed to comply with any of the reporting requirements that is acceptable to the Secretary.

Earnings Accountability

Under the consensus agreement, current GE regulations are updated to reflect the new earnings accountability provisions applicable to eligible Title IV programs offered by an eligible institution.

- A Title IV program meets the new earnings accountability provisions if it meets the applicable certification requirements (see below) and is not a failing program under the earnings premium measure in two of any three consecutive award years for which the program's earnings premium measure is calculated.
- Programs failing the earnings premium measure in two out of any three consecutive award years are considered a "low-earning outcome program" and its participation in Direct Loan Programs ends upon the completion of a termination action of Direct Loan Program eligibility. Note, this revises current GE regulations in which failing GE programs are no longer able to participate in any Title IV programs.
- If the Secretary initiates such action, the institution may initiate an appeal if it believes the Secretary erred in the calculation of the earnings premium measure.
- Institutions may not seek to reestablish eligibility for two years and programs voluntarily discontinued remain ineligible until meeting the new eligibility requirements.
- In cases where the Secretary determines that it is in the best interest of students, the Secretary may allow a program to continue to participate in the Direct Loan Program for not more than the lesser of three years or the full-time normal duration of the program. In such cases, the program may not accept new enrollments and must engage in an orderly closure of the program in which the institution provides an opportunity for enrolled individuals to complete their program regardless of their academic progress at the time of closure.

Standards for Participation in Title IV, HEA Programs

The consensus agreement expands current requirements for institutions demonstrating their administrative capability in order to continue participating in Title IV, HEA programs (i.e. not limited to just Direct Student Loans). Specifically:

- Institutions must demonstrate that at least half of their Title IV students and at least half of the institution's total Title IV, HEA funds are not from low-earning outcome programs as defined under these regulations.
- Requirements for PPAs was also expanded to reflect that in addition to any other conditions that the Secretary may deem appropriate, institutions not demonstrating the above requirement, (at time of enactment) in two out of any three consecutive award years, will be placed on provisional status and the institution's low-earning outcome programs will not qualify for Title IV, HEA funds. However, institutions would have the opportunity to appeal the Secretary's determination that the institution failed to meet these conditions.

Certification Requirements for GE Programs and Eligible Non-GE Programs
Under the consensus agreement, current GE regulations related to certification requirements are amended to incorporate eligible non-GE programs. Specifically:

- The current PPA certification is amended to incorporate eligible non-GE programs and reflects that the new provisions impact eligibility of just the Direct Loan Program and not all Title IV programs.
- Institutions establish a program's eligibility by updating the list of Direct Loan-eligible programs maintained by the Department which affirms the program meets certification requirements. An institution may not include programs sharing both the same four-digit CIP code and any overlapping SOC codes according to the CIP SOC Crosswalk that is provided by a Federal agency as a failing program that the institution voluntarily discontinued or became ineligible at the same credential level that was subject to the two-year loss of eligibility until that period expires.
- Institutions may not update their list of Direct Loan-eligible programs to include a program sharing the same four-digit CIP code and any overlapping SOC codes as one that was subject to the two-year loss of eligibility and is a failing program in either of the two most recent award years, or a program sharing the same four-digit CIP code at the same credential level as a program that was both subject to the two-year loss of eligibility and is a failing program in either of the two most recent award years.

GE Direct Loan Program Eligibility Certifications.
The consensus agreement updates the current GE Direct Loan program eligibility certification to reflect the new requirements for such programs.

Student warnings
The consensus agreement maintains current requirements for student warnings but makes several modifications:

- Amends the language to reflect ineligibility of GE programs for Direct Student Loans versus all Title IV programs and also expands to cover eligible non-GE programs, including with respect to requiring subsequent warnings in cases where a prospective student receives a warning but does not seek to enroll until more than 12 months after receiving the warning,

- Updates the required content of student warnings to reflect the removal of GE debt-to-earnings measurements and the limitation of loss of Direct Student Loan eligibility versus all of Title IV aid.
- Adds a new requirement that institutions must provide students who are eligible for Pell Grant funds a description of their remaining lifetime eligibility for Pell Grant funds and an explanation that all Pell Grant funds received for enrollment in the program count against their future lifetime eligibility.
- Removes current requirements related to information required to be provided to students related to academic and financial options available to students to continue their education.

Delivery to enrolled students
The consensus agreement updates required procedures for delivering warning notices to enrolled students.

- It maintains the requirement that institutions provide the warning in writing, by hand delivery, mail or electronic means, to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination and maintain documentation of its efforts to provide that warning and that the warning be the only substantive content contained in these written communications.
- It adds a requirement that the warning regarding the student's remaining Pell Grant be provided to an enrolled student at the time that the institution makes a disbursement of Pell Grant funds to that student.

Delivery to prospective students
The consensus agreement maintains required procedures for delivering warning notices to prospective students, which in general requires institutions to provide the warning to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or the third party acting on behalf of the student.

Acknowledgment prior to enrollment and disbursement
The consensus agreement maintains the current language with respect to acknowledgement of warnings. Specifically, an institution may not allow a prospective student seeking Title IV, HEA assistance to sign an enrollment agreement, complete registration or make a financial commitment to the institution, or disburse Title IV, HEA funds to the student until the student or prospective student completes the acknowledgment of the warning.

Discharge claims
The consensus agreement maintains the current language with respect to discharge claims. Specifically, the provision of a student warning or acknowledgment does not mitigate the institution's responsibility to provide accurate information to students concerning program status, nor will it be considered as dispositive evidence against a student's claim if applying for a loan discharge.