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To: Joe Massman, Office of Postsecondary Education, U.S. Department of Education
From: [CJ Powell](#), Associate Vice President of Government Relations and Public Policy, Association of American Universities
Date: May 20, 2026
Subject: Docket ID ED-2026-OPE-0100, Comments on Notice of Public Rulemaking from Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability (AHEAD)

The Association of American Universities (AAU) submits these comments on behalf of its 69 U.S. member research universities in response to the Department of Education Notice of Proposed Rulemaking published on April 20, 2026, implementing the accountability provisions of the One Big Beautiful Bill (OBBB) through the Accountability in Higher Education and Access Through Demand Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability (AHEAD) negotiated rulemaking. AAU appreciates the Department's commitment to transparency and accountability in higher education, and our member institutions share that commitment. Our institutions endeavor to provide the Department with the requisite information to ensure students and families have the information they need to make the best postsecondary decisions for themselves.

We write, however, to raise serious concerns about the proposed framework's reliance on earnings data as the primary accountability metric, its attribution of responsibility to institutions for factors outside their control, and the consequences for disciplines whose graduates produce substantial public value that wage data alone cannot capture.

Before turning to the substance of the proposed rule, we would like to note a significant procedural concern with the process and composition of negotiators involved in the process. There was a stark omission of stakeholders – including representatives from the financial aid community – whose inclusion would have resulted in a more comprehensive conversation. We are concerned that the omission of these perspectives has resulted in rules that do not adequately account for implementation realities or impacts on students and institutions.

I. The Department should accept alternative earnings data in the appeals process.

OBBB stipulates that academic programs that are designated as “low-earning outcome programs” can lose access to Direct Loans. The law also prohibits the Department from restricting an academic program's access to Direct Loans unless there is an adequate appeals process.¹ However, the appeals process as proposed by the Department allows institutions to appeal Direct Loan decisions only if they allege the Department made a calculation error in a program's earnings premium measure. While AAU appreciates an opportunity for institutions to correct the record, it is

¹[Section 84001 of One Big Beautiful Bill Act](#)

insufficient as the basis for appealing Direct Loan decisions and does not provide institutions due process. As proposed, this appeals process is significantly limited and does not provide space for the crucial contextualization of data, which institutions must have a meaningful opportunity to share. To provide opportunities for more transparency and context, the Department should allow institutions to submit alternative earnings data in an appeal.

With respect to the Secretary's aim of returning education to the states, there are many states that have already invested in robust longitudinal data systems that allow them to monitor information such as program performance, workforce outcomes, completion rates, time to degree, and earnings of completers by degree type, program, and institution.² Currently, the Department asserts that only the use of Internal Revenue Service (IRS) data will be sufficient for the earnings premium data collection. This is inconsistent with the Secretary's stated goal of returning educational oversight to the states. If a state has verified, high-quality earnings data, institutions in that state should be permitted to submit it as relevant evidence in an appeal.

Additionally, there are variables that are outside the institution's control that may influence the earnings outcome in the initial years following degree completion. Those variables include localized economic challenges, public service roles where the salary is allocated by the state legislatures and local policymakers, and systemic pay inequality. Without a robust appeals process that ensures due process, programs may be held accountable for societal economic dynamics over which they have no control. By losing access to Direct Loans, programs that produce public servants who are critical to society – such as education and social work – will be forced to close.

The preamble of the proposed rule states that the Department believes “it would be highly impractical for the Department to evaluate, on an ongoing basis for each State, whether the quality of State-level earnings data exceeds that of Federal-level earnings data.”³ We ask only that the appeals process allow institutions to present verified state data as a recognized alternative and workable standard that respects state investment while preserving federal accountability goals. Excluding such data does not make the earnings premium measure more accurate; it makes it less so.

II. Cohort earnings should be based on earnings from the most recent full tax year for which data are available.

The proposed rule would use a single-year cohort period to calculate the earnings premium measure for a program when there are at least 30 students in the cohort. If the cohort period has fewer than 30 students, the Department proposes expanding the period up to eight previous years at the six-digit Classification of Instructional Programs (CIP) code level as well as at the four- and two-digit CIP code levels until the cohort exceeds 30 or more completers. This would potentially draw upon cohorts that completed their program as early as 2017. This determination assumes that 2025 will be the initial tax year for earnings, which would mean that the first cohort would be completers from 2021.

² [Powering potential: Using data to support postsecondary access, completion, and return on investment.](#)

³ [Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System \(STATS\) and Earnings Accountability.](#) 91 F.R. 21181 (proposed on April 20, 2026)

AAU urges the Department to anchor earnings calculations to the most recent full tax year for which data are available, regardless of how far back the cohort window is expanded. For instance, if the Department plans to release earnings premium measures in 2027, it should use the 2025 tax year for earnings because that is the most recent full tax year for which earnings are captured. Based on this, the prior four-year cohort to be assessed would be from 2021. If the Department learns that the cohort does not have enough graduates, and as a result needs to expand the cohort, the 2025 tax year should still be used in the calculations regardless of how far back the cohort is expanded. If the Department maintains the tax years for earnings to keep a 4-year interval, this would make institutions responsible for the earnings of graduates from the 2021 tax year forward in a fair manner. Using older earnings data to match a multi-year cohort period reduces the measure's reliability as a signal of current program performance.

This concern is particularly acute given the Department's insistence that these rules are implemented July 1, 2026, regardless of the Master Calendar requirement. An expanded cohort window covering years prior to 2021 would capture earnings during the COVID-19 pandemic and its economic aftermath, among the most severe labor market disruptions in modern history. Using the most recent available tax year data would mitigate this distortion and produce a more accurate accountability measure.

III. The Earnings Metric Is Ill-Suited to Arts and Conservatory Programs.

The proposed rule applies an earnings premium framework that is not well aligned with the structure of conservatory and arts education. As proposed, it measures program success utilizing benchmarks that do not reflect how achievement is realized in these fields. A salary-based metric is being used to assess career advancement in fields where progression cannot be measured by wages or salaries. Graduates in the arts often pursue freelance, portfolio, or entrepreneurial careers where annual wage data provides an incomplete and often misleading snapshot of career economic viability.

As it relates to arts education, these programs pose low financial risk to taxpayers while delivering substantial public and civic value. The earnings patterns of graduates do not begin to accurately capture their contributions to cultural life, education, community engagement, and the creative economy. The proposed rule risks discouraging entry into precisely the public service and culturally vital careers that policymakers have historically sought to sustain and expand. Outcomes measures that privilege early, stable wages disadvantage professions characterized by long-term development, variable income, and public-facing impact.

In the trajectory of an arts career, it may take a decade or more before careers develop and stabilize – a reflection of the nature of the arts industry and not the fault of academic programs. Consider how rare it is that an arts or conservatory program graduate is immediately hired to be a principal soloist in a major orchestra or dance company or a leading actor in a Broadway play. A slow early-career start does not preclude graduates from achieving these roles and a stable arts career over time. Importantly, students who enter these programs understand that while financial gain may not be immediate, the training they receive prepares them for durable and long-lasting careers in the arts that are fulfilling and contribute to their communities.

The public and economic contributions of arts education are substantial, and creative sectors constitute a major component of the national economy. In 2023, the arts and cultural sector added \$1.2 trillion to the U.S. economy, representing 4.2% of our national Gross Domestic Product (GDP).⁴ The most innovative professional performing arts schools today are focused on both the artistic excellence achieved in core training as well as the tools needed to develop flexible, adaptable artists capable of responding to an always-evolving job market.

This proposed rule has implications far beyond individual programs at individual institutions, affecting workforce development, regional economies, and cultural infrastructure. Absent adjustments that consider the variety of ways those who complete degree programs in the arts support themselves following graduation, the proposed rule will systemically underestimate program success, penalize careers oriented toward the public good, and ultimately undermine a significant sector of our national economy. This phenomenon will prevent students from lower and middle-income backgrounds from making their own decisions about their education and professional futures; instead, the government will have decided for these students. This is the opposite of what postsecondary education should be.

IV. The Department must comply with the Master Calendar requirement.

The Department contends in the preamble that when there is a conflict between a general provision and specific provision, the specific provision will prevail, as it relates to an implementation timeline for OBBB.⁵ This position is counter to previous instances when Congress waived the Master Calendar requirements because lawmakers' intent was explicit in statute.⁶ Students, institutions, taxpayers, or the Department itself are unlikely to gain anything from forcing a rushed implementation. Institutions will already be grappling with new requirements from the RISE negotiated rulemaking. Rushed implementation is especially undesirable due to the estimated 1.6 million burden hours required of institutions to comply with the AHEAD regulation.⁷

The Master Calendar requirement enables institutions, students, families, and the government to know that there is sufficient time for implementation to facilitate compliance with new rules. Importantly, the requirement allows for students to have the best information possible with a long enough runway to make an informed decision about the next phase of their lives. AAU urges the Department to comply with the Master Calendar requirement and provide institutions, students, and families adequate time to understand and prepare for the changes these rules impose.

V. The Department should not condition loss to all Title IV aid on the earnings test.

OBBB explicitly limits the consequence of a "low-earning outcome" designation for academic programs to a loss of Direct Loan eligibility. Unfortunately, the Department exceeded its authority by blocking access to all Title IV financial aid for low-earning outcome programs in which at least half of enrolled students are receiving Title IV financial aid and the program receives at least half of

⁴ [The U.S. Arts Economy in 2023: A National Summary Brief](#).

⁵ [Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System \(STATS\) and Earnings Accountability](#), 91 F.R. 21181 (proposed on April 20, 2026)

⁶ The most recent HEA reauthorization was the Higher Education Opportunity Act (HEOA) and this bill included direct instructions to waive the master calendar requirements.

⁷ [Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System \(STATS\) and Earnings Accountability](#), 91 F.R. 21181 (proposed on April 20, 2026)

its funding from Title IV aid programs during a period where the program does not pass the earnings premium measure.

The preamble rationale provided by the Department about the focus on Direct Loans was that taxpayers expect loans to be repaid. That rationale does not extend to grant aid, which carries no repayment obligation. The compromise made by the Department to allow the loss of all Title IV funds, including grant funding that is not expected to be repaid, is contradictory and counterintuitive. To reflect congressional intent, the Department should return to the statutory authority granted by designating the loss of access to Direct Loans as the only punitive action against low-earnings academic programs.

Conclusion

AAU and its member universities support rigorous accountability in higher education. But accountability measures must be accurate, contextually sensitive, and legally grounded. The proposed rule, as written, applies an earnings-based framework that cannot account for the full range of career outcomes that constitute program success, attributes to institutions responsibility for factors beyond their control, and in critical respects exceeds statutory authority. AAU respectfully urges the Department to address these concerns before finalizing the rule, and we welcome continued engagement on the issues raised here.