



August 28, 2025

The Honorable Nicholas Kent
Under Secretary
US Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Docket ID: ED-2025-OPE-0151

Dear Under Secretary Kent:

Thank you for the opportunity to offer comment on the Department of Education's upcoming negotiated rulemaking. Third Way is grateful for the Department's attention to imminent legislative changes to Title IV of the *Higher Education Act* that directly impact students, borrowers, and taxpayers. The issues on which the Department is entering into the negotiated rulemaking process are essential to effective implementation of H.R. 1.¹ This written submission expands upon the oral comments presented on behalf of Third Way during the Department's public hearings on August 7, 2025.

Federal Loan Programs

The Reimagining and Improving Student Education (RISE) Committee will address a significant overhaul to the federal student loan program, including phasing out of Graduate PLUS loans; establishing new loan limits for graduate, professional, and parent borrowers; and implementing new repayment plans, among other changes. Third Way urges the Department to adhere to the statutory intent of H.R. 1 by developing sound, data-driven parameters for the provisions of the law on which the rulemaking committee is required to regulate.

At the highest level, it is critical for the Department to implement these changes carefully and intentionally, given the impact on current and future student loan borrowers. In doing so, the Department has an opportunity to ensure a smooth transition to new repayment plans while also supporting effective and timely repayment of federal loans. Clear and consistent communication with borrowers, servicers, and contractors within the student loan program will be essential in helping borrowers meet their repayment obligations. Third Way encourages the Department to prioritize necessary investments to ensure student loan servicers have adequate resources and information to answer borrower questions accurately and promptly. Below, we offer additional recommendations for how the Department may consider addressing specific areas for regulatory consideration under H.R. 1.

Definitions of Graduate and Professional Programs

As the Department works to implement changes to the federal student loan program, a key decision point will be determining the distinction between a "graduate program" and a "professional program" for the purposes of new federal loan limits. Under H.R. 1, federal loans will be available up to \$20,500 annually and \$100,000 in aggregate for students enrolling in graduate programs, and \$50,000 annually and \$200,000 in aggregate for students enrolling in professional programs. It is evident that Congressional intent was to apply the higher professional program borrowing limits narrowly, to a clearly delineated subset of programs that have higher training costs and require a high level of skill, often leading to professional

licensure. Such programs have most commonly been understood to include degrees in law and health care—fields in which high training costs in turn lead to reliably high wages and strong repayment outcomes. However, higher borrowing limits create a new incentive for programs to seek classification as professional degrees in order to bring in higher tuition revenue, particularly in the wake of the elimination of Graduate PLUS loans.

At the onset, it will be vital for the Department to develop a clear definition for graduate and professional degrees due to the risk associated with programs seeking to change their status in order for students to qualify for higher loan limits (an impulse that was on display during the public hearing, in which several industry trade groups argued for the inclusion of their degree programs in the “professional” category). The statutory intent of the new limits is to reduce unnecessary borrowing. To fulfill that goal, the Department must ensure that the delineation of graduate and professional programs cannot be easily manipulated by high-cost and low-return graduate programs. We therefore recommend a narrow application of the “professional program” designation, consistent with the fields identified as professional degrees in 34 CFR 668.2, which include degrees in medicine, dentistry, pharmacy, and law.²

Institutional and Programmatic Accountability

The Accountability in Higher Education and Access through Demand-driven Workforce Pell (AHEAD) Committee will address programmatic accountability measures through the application of the earnings thresholds passed in H.R. 1, as well as alignment with the Gainful Employment rule and Financial Value Transparency framework. It will also address eligibility for the newly established Workforce Pell Grant that extends federal Title IV dollars to short-term programs. Below, we offer our recommendations to ensure these regulations align with statutory intent, provide a clear implementation process for earnings-based accountability, and ensure quality in programs gaining eligibility to Workforce Pell.

Gainful Employment

Third Way strongly urges the Department to fully implement the Gainful Employment (GE) rule. The GE rule prioritizes program-level data and provides a valuable accountability tool for career training and non-degree programs. H.R. 1’s exclusion of undergraduate certificate programs from earnings-based accountability only serves to amplify the importance of a robust GE rule. Evidence shows that undergraduate certificate programs lead to some of the most volatile outcomes in the higher education system, posing significant risks to students: about a quarter of students earn less than a typical high school graduate three years after completion, and default rates exceed those of bachelor’s degree programs despite lower associated debt loads.³ By using an earnings threshold metric similar to that included in the new accountability framework in H.R. 1, the GE rule ensures that most of a career education or non-degree program’s graduates go on to outearn their peers with a high school diploma. The added requirement of a manageable debt-to-earnings ratio serves as an important indicator of a student’s ability to pay back federal loans and provides key data on a program’s effectiveness in preparing students for gainful employment in today’s labor market.

GE remains critical in protecting student and taxpayer investment from low-wage, high-debt certificate and career programs, and it provides a complementary accountability mechanism to the earnings-based accountability framework in H.R. 1. Together, the GE rule and new accountability framework ensure that postsecondary credentials at all levels—irrespective of program or institutional control—are required to demonstrate their financial return on investment, contributing to the legislation’s “do no harm” intent that students who enter higher

education are left better off than if they had never enrolled. Indeed, the Senate HELP Committee has acknowledged the intent for H.R. 1 and the GE rule to complement one another in enhancing accountability, clarifying in a public Q&A document about the bill's higher education provisions that the earnings standard "does not apply to undergraduate certificate programs, which are covered by a similar earnings test in the Gainful Employment regulation."⁴ Third Way strongly urges the Department to take all necessary strides to fully and promptly implement the Gainful Employment rule in the best interest of students, student loan borrowers, and taxpayers.

Financial Value Transparency

The new accountability framework established through H.R. 1 certainly makes progress in ensuring a return on investment for students and taxpayers. Yet its ultimate success will rely upon a complete and transparent data infrastructure for program-level outcomes. The Financial Value Transparency (FVT) framework will provide valuable data on completion and withdrawal rates, median earnings post-graduation, and total costs over the course of a college program. Collecting and publishing these data puts power back into the hands of students and families, strengthening their decision-making ability regarding which higher education programs are worth the investment of their time and resources.

The foundation of the FVT regulation, including secure program-level data collection requirements, has laid the groundwork for a smooth implementation of the upcoming accountability provisions passed under H.R. 1. Institutional submission deadlines have already been extended multiple times, and the Department must maintain its final published FVT reporting deadlines of September 30, 2025 for institutions to submit required data for the 2024 cycle, and October 1, 2025 for the 2025 cycle. We urge the Department to enforce these institutional reporting deadlines and make comprehensive FVT data publicly available in advance of the AHEAD committee's first session.

Loan Ineligibility Based on Low Earning Outcomes

Congress demonstrated sincere commitment to stronger higher education accountability through the new programmatic accountability measures in H.R. 1. Under this new framework, federally supported degree programs must demonstrate they deliver a strong economic return on investment to retain eligibility for the federal student loan program. A college education provides both financial and nonpecuniary benefits to students; however, ensuring that taxpayer dollars spent on higher education show a clearly defined return on investment is critical for promoting both fiscal responsibility and strong student outcomes. The framework in H.R. 1 provides a common-sense and intuitive mechanism for understanding the performance of college programs through an earnings threshold test that compares the median earnings of a program's graduates to the typical earnings of someone with only a lower credential. In implementing these provisions, Third Way encourages the Department to apply the framework consistently and neutrally. Doing so will ensure that all programs and fields of study are held to the same standards of measurable value. Below, we offer technical suggestions on how the Department can implement accountability measures smoothly and fairly.

Selection of Data Sources

The selection of the data sources with which the accountability metrics are applied is a key decision for the Department. The H.R. 1 legislative text specifies Census Bureau data as the source to create comparison groups for earnings by program. The American Community Survey

(ACS) provides the most detailed information about the nation's population, including social and economic characteristics. Yet data for Puerto Rico and other US territories are excluded from the ACS survey, creating an immediate limitation. In the long term, the Department should work with the US Census Bureau and the US Department of Commerce to obtain more accurate earnings data for residents of Puerto Rico and other US territories to better include all geographic regions in federal higher education policies.

Appeals Process

The legislation defers to the Secretary the creation of an appeals process for institutions to contest the determined programmatic median earnings of students working and not enrolled in higher education. Third Way encourages the Department to establish a rigorous appeals process that puts protecting student and taxpayer dollars at the forefront of its procedural intent. The criteria upon which an appeal can be approved must be circumscribed in regulation, with limited, articulated reasons that would justify a successful appeal. For example, an appeal should be substantiated by evidence indicating that the data was incorrect or that the comparison group selected for a program was not the one that had the lowest median earnings of the options laid out in the legislation.

A clear timeline on which the appeals process should be initiated and completed should also be defined. It is reasonable that the Department allow current students in a program the opportunity to retain loan access for that program during an active appeal to limit disruptions to their degree progress. Students should be notified, in writing, by the institution and program of their program's appeal of the low earnings failure, and students should be provided the opportunity to transfer programs in the subsequent term if they so choose. However, Third Way strongly encourages the Department to limit new students from using federal loans to enroll in programs under appeal until which point the appeal has concluded. Consistent processes and standards should apply to both undergraduate as well as graduate and professional programs.

Notice to Students

The Department must also recognize the need for transparent communication and notice to students when a program fails to meet earnings thresholds. Third Way encourages the Department to consider articulating in regulations the means and timing of communication with students and borrowers whose programs lose loan eligibility based on low earning outcomes. Once a program fails the accountability earnings threshold for the first time, students should be notified in writing by their institution and loan servicer within no more than 60 days. This communication should provide an explanation in plain, understandable language that includes updated median earnings for program graduates and note the risk of loan eligibility forfeiture should the program fail for an additional consecutive year. Such notice should be repeated prior to the disbursement of federal financial aid for each subsequent semester or academic term until the program is either removed from the federal student loan program or is restored to earnings-based compliance.

Restoration of Eligibility for Programs that Fail the Earnings Threshold

The accountability thresholds for programs under the H.R. 1 framework are intuitive and common-sense: graduates of higher education programs should earn more than someone with only a lower credential. By providing options for constructing comparison groups within the state or nationally, the legislation takes steps to account for regional wage differences and varied labor market outcomes across the myriad degree programs offered by colleges and universities. While it is a steep consequence for programs to lose access to federal dollars, Congressional intent was clear in crafting H.R. 1 that college programs should demonstrate a tangible return

on investment to be eligible to receive federal student loans.

The legislative text stipulates that programs that fail the accountability threshold and are removed from the federal student loan program must wait at least two years before they regain eligibility, subject to requirements established by the Secretary. Given the already reasonable bar of comparison earnings thresholds, Third Way encourages the Department to develop a stringent process for programs that seek to regain loan access following their period of ineligibility. Such a process should include, at a minimum, the submission of no fewer than three cohorts of passing earnings outcomes. Additional components might include: a written testimony demonstrating how the program made changes to improve its labor market value since its loss of eligibility and how the program plans to continually meet the accountability threshold moving forward; and/or readmittance to the loan program on a provisional basis of no fewer than two years, wherein the program can demonstrate such positive outcomes. Programs that lose eligibility more than once should face at least a five-year removal period from loan eligibility, and programs that lose eligibility two times should not be permitted reentry to the student loan program at any point. Additionally, the Department should take measures to ensure that programs that have forfeited eligibility based on low earnings are not permitted to subsequently gain eligibility by reconstituting the same program offering under a different name or degree type.

Workforce Pell Eligibility

As established through the 1972 reauthorization of the *Higher Education Act*, the Pell Grant program provides federal need-based aid for students with the greatest financial need. Workforce Pell will extend Pell eligibility to short-term training programs between 8 and 15 weeks in length. There are limited data on the labor market outcomes and return on investment associated with these very short programs, and the data that exist for 15-week programs already eligible for Pell Grants point to typical earnings below \$30,000, with roughly 40% of graduates being unemployed.⁵ The heightened risk associated with granting Pell access to unproven short-term programs makes it incumbent on the Department to ensure that strong guardrails are in place to prevent waste, fraud, and abuse of taxpayer dollars and ensure that Pell-eligible students receive value from Workforce Pell programs.

In establishing program eligibility guidelines for Workforce Pell, Third Way urges the Department to uphold the statutory intent for Workforce Pell to support students in pursuing high-quality credentials. We encourage the Department to adopt data-driven definitions for the statutory thresholds of completion, job placement, and value-added earnings that promote consistent accountability while safeguarding students and taxpayer investment against low-quality, high-cost programs. In doing so, the Department has an opportunity to ensure the Workforce Pell program works as intended and provides positive returns for students.

Workforce Pell is slated to take effect on July 1, 2026, and given the multiple levels of approval required from state and federal entities, the Department must delineate clear guidance and steps to enable implementation on a tight timeline. The statutory language mandates that a program be in operation for at least one year prior to initial approval for Workforce Pell eligibility. Third Way urges the Department to apply a strict definition to this one-year approval period: programs should have been in existence as a short-term credential between 150 and 600 clock hours or between 8 and 15 weeks for at least one year prior to the signing of H.R. 1 on July 4, 2025. While the legislative text stipulates that programs ultimately must report value-added earnings for students in three prior years, such data are not yet available. To ensure eligible

programs are in compliance with the value-added earnings metric, potential programs should be required to submit preliminary earnings data from their graduates as a prerequisite to approval. For any programs initially deemed eligible that then fail to meet criteria once three years of data are produced, Third Way strongly urges the Department to reinstate the corresponding amount of Pell Grant lifetime eligibility used back to the student. It is also pertinent for the Department to ensure that institutions do not take advantage of the period between H.R. 1's passage and its implementation to prop up new, untested programs or alter the contact hours of existing programs in an attempt to become eligible for Workforce Pell funding.

Data transparency for Workforce Pell programs will be critical to ensuring quality and showcasing the return on taxpayer investment in such programs. Third Way encourages the Department to make data publicly and swiftly available for Workforce Pell programs, including program approvals, recertification dates, program length, earnings measures, completion rates, job placement rates, total Pell Grant dollars, and federal and private loan volume. These data should supplement, not supplant, data collected through the FVT framework, and all data should be readily available through the Federal Student Aid data center and comparable platforms. Given the risks with institutions self-reporting key information, the Workforce Pell program design should follow the procedures in place for programs participating in the short-term loan program with respect to compliance audits, as outlined in 34 CFR 668.8 and Federal Student Aid guidance on independent auditor substantiation.⁶

States and governors will play an important role in implementing Workforce Pell, including determining which programs in their states will be eligible and how they will gain approval and recertification. Third Way encourages the Department to provide recommendations to governors and state workforce boards for defining strong outcomes and expectations for quality. We recommend recertification be performed annually, with a process that includes review of participating programs' earnings outcomes. The legislation also requires eligible programs to be transferable and stackable, allowing students to apply Workforce Pell credits toward higher degrees or credentials. The Department should articulate guidance for states on how to assess the portability of Workforce Pell credits. To gain eligibility, programs should provide states with documentation of all other programs within the same institution or at other institutions that will accept academic credit from the Workforce Pell program toward meeting certificate or degree requirements.

Federal Pell Grant Exclusion Relating to Other Grant Aid

H.R. 1 stipulates that starting July 1, 2026, a student will be ineligible to receive a Pell Grant if the grant aid they receive from states, institutions, or private scholarship sources surpasses their cost of attendance. This change will primarily impact students receiving full-ride scholarships, some of whom may be low-income students receiving need-based state or institutional aid that includes the Pell Grant award for which they are eligible in the overall funding package. Given that the legislation's intent is not to reduce the need-based aid available to low-income students through various non-federal sources, negotiated rulemaking should clarify that this provision does not apply to state grant aid programs or institutional scholarships that are applied after a student's Pell Grant to constitute the full cost of attendance for that student.

These recommendations are intended to support the Department's efforts to ensure a smooth transition for borrowers, improved loan repayment outcomes, and greater accountability applied consistently across all higher education programs. Third Way encourages the

Department to allocate the time, resources, and expertise needed for the full and effective implementation of these new provisions, as they are critical to achieving the statutory aims of H.R. 1. Given the recent reductions in force across the Department and Federal Student Aid, we also encourage the Department to share specific and thorough plans for how it plans to smoothly implement such changes to the *Higher Education Act* with minimal disruption to students, borrowers, and institutions.

Taken together, these new provisions will protect the integrity of the Title IV student aid programs and establish meaningful protections and transparency mechanisms for students, borrowers, families, and taxpayers. We thank you for your time and the opportunity to contribute to the Department's negotiated rulemaking process. Please do not hesitate to contact us should you have any questions about these comments.

Sincerely,

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¹ United States, Congress, House of Representatives. One Big Beautiful Bill Act. *Congress.gov*, <https://www.congress.gov/bill/119th-congress/house-bill/1/text>. 119th Congress, 1st Session, House Resolution 1, passed 4 July 2025.

² Code of Federal Regulations, Title 34, § 668.2 General definitions, <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-668/subpart-A/section-668.2>.

³ McCann, Clare, Tia Caldwell, and Jordan Matsudaira. "Accountability for All Programs: The Senate's Proposal Needs Change." Postsecondary Education & Economics Research Center, July 2025, https://www.american.edu/spa/peer/upload/senate-accountability-for-all_rpt.pdf.

⁴ United States, Congress, Senate. "Q&A's About Higher Education in the One Big Beautiful Bill." Senate Committee on Health, Education, Labor & Pensions, https://www.help.senate.gov/imo/media/doc/faq_docpdf.pdf.

⁵ Cecil, Ben. "Short-Term Pell Guardrails to Protect Students and Taxpayers." Third Way, 18 Sept. 2023, <https://www.thirdway.org/memo/short-term-pell-guardrails-to-protect-students-and-taxpayers>.

⁶ Code of Federal Regulations, Title 34, § 668.8. Eligible programs, <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-668/subpart-A/section-668.8>.

(GENERAL-23-121) Requirement for Institutions to Have Certain Calculations Related to Institutional and Program Eligibility Substantiated by an Independent Auditor. Electronic Announcement, *Federal Student Aid*, 21 December 2023, <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-12-21/requirement-institutions-have-certain-calculations-related-institutional-and-program-eligibility-substantiated-independent-auditor>.