

## Proposed Clarifications to Regaining Eligibility

Preston Cooper and Ethan Pollack (Taxpayers and the Public Interest)

To the AHEAD Committee

December 9, 2025

Below are proposed changes to 34 CFR § 690.97, along with an explanation of our proposed changes. These changes are primarily related to clarity and are not meant to change the meaning or intent of the proposed regulatory language. Further explanation of each change is included after the proposed amended language.

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### PROPOSED LANGUAGE

#### § 690.97 Regaining eligibility

(a) If an eligible workforce program loses eligibility based on failure of completion or placement rates under 34 CFR § 690.94(a)(2) or the institution voluntarily discontinues a failing eligible workforce program, the institution may not seek to reestablish the eligibility of the failing eligible workforce program, or to establish eligibility for a substantially similar eligible workforce program sharing the same four-digit CIP code, until two years following the earlier of the date the program loses eligibility under 34 CFR § 690.96(b) or the date the institution voluntarily discontinues the failing workforce program.

(b) If an eligible workforce program loses eligibility due to a lack of Governor approval, the program may reestablish eligibility after the Secretary receives the Governor's Certification that the program has been approved as provided under 34 CFR 690.93(c), **and after the Secretary determines the program has met eligibility criteria under 34 CFR 690.94.**

(c) If an eligible workforce program loses eligibility because its published tuition is higher than its value-added earnings under 34 CFR 690.89(e), the institution may, through a process described by the Secretary, request that the program's eligibility be reinstated by-

(1) Providing to the Secretary a new certification of the Governor's approval of the program as provided under 34 CFR §690.93(c) ~~that addresses how the institution complies with the value-added earnings requirement;~~

(2) Submitting to the Secretary documentation of the program's current published tuition and fees and an attestation that the tuition and fees **have been reduced and** will remain equal to or less than the program's recalculated value-added earnings; and

(3) Requesting a recalculation of **whether** the program's **updated tuition and fees value-added earnings** that will apply to the next award year **exceed the program's value-added earnings**.

## **EXPLANATIONS OF PROPOSED AMENDMENTS**

*Changes to (b):* As written, the language could be read to allow for an ineligible program to regain eligibility *merely* by attaining Governor's approval. The additional language clarifies that the program still must meet the additional Secretarial eligibility criteria outlined in 34 CFR §690.94

*Changes to (c)(1):* This paragraph is meant to certify a program based on the Governor's approval process in 34 CFR §690.93(c), which does not include a value-added earnings requirement. Thus the value-added earnings clause appears extraneous to the paragraph.

*Changes to (c)(2):* The purpose of (c) is addressing how a school can gain eligibility by reducing their tuition in order to comply with the value-added earnings test. This additional language clarifies the intent, whereas the previous language was ambiguous.

*Changes to (c)(3):* This additional language again clarifies that the intent of this subsection relates to a school reducing its tuition and fees in order to regain eligibility.