

## **OBBBA Accountability Framework and Licensed Professions**

The statutory earnings comparison framework in OBBBA leaves three key terms undefined—“working adult,” “same field of study,” and “working and not enrolled”—and each ambiguity gives the Department of Education wide discretion to adopt regulatory definitions that more accurately reflect the labor market realities of mental health counseling and similar licensure-based professions. Because counseling graduates typically earn less during their prelicensure years, often work parttime or across multiple employers, and enter occupations with earnings well below large umbrella CIP group medians, the Department can (within the bounds of the authority granted under OBBBA) choose comparison benchmarks that better align with counseling graduates’ actual employment fields and licensure trajectories. By defining “same field of study” in occupational, licensure, or narrow CIP terms; broadening the definition of “working adult” and refining which graduates qualify as having “worked” in the earnings measurement year; and allowing broader bases for appeal and alternative wage record supplementation when IRS data undercounts earnings, ED can make the accountability system more accurate, fair, and consistent with statutory purpose—particularly for counseling and behavioral health services programs.

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### **Five Proposed Regulatory Edits**

#### **1. Definition of “same field of study”**

##### **§ 668.2(b) – Same Field of Study**

*“Same field of study” means the field in which the working adult is employed, as aligned to the program’s intended occupational outcomes. The Secretary shall determine the program’s occupational alignment using SOC Standard Occupational Classification (SOC) codes; 2-digit, 4-digit, or 6-digit CIP codes; licensure-linked professional categories; and predominant feeder bachelor’s-degree fields. For each program, the Secretary shall select the lowest reliable median earnings benchmark among these valid ‘same field’ comparators for purposes of the statutory benchmark.*

**Rationale:** Allows the Department to use more targeted and statistically relevant occupational comparators (e.g., SOC 21-1010 for counselors) rather than broad CIP families.

#### **2. Definition of “working adult”**

##### **§ 668.2(b) – Working Adult**

*A “working adult” means any adult with nonzero earnings in the measurement year, including part-year, seasonal, self-employed, or contract workers. For fields requiring postgraduation*

*supervised practice or provisional licensure, a “working adult” is limited individuals with equivalent or lower-tier licensure status.*

**Rationale:** Broadens the comparison population to include lower-earning workers, producing a more appropriate benchmark for counseling fields.

### **3. Definition of “worked and were not enrolled” for purposes of earnings threshold**

**§ 668.2(b)** – Earnings.threshold;

*(5) Graduates engaged in required post-degree licensure activities—including supervised practice hours, continuing-education requirements, or exam preparation mandated by state licensing bodies—shall not be classified as “working” for purposes of constructing the earnings cohort. Such individuals may be excluded from the cohort because they are not yet fully participating in the labor market for which the program prepares them.*

**Rationale:** Prevents artificially low program earnings caused by including graduates still completing pre-licensure requirements.

### **4. Supplementation of federal earnings data**

**§ 668.404(e)** – Supplementation.of.Earnings.Records;

*Institutions may supplement IRS earnings data with state records or other reliable earnings sources upon showing that federal data undercounts a graduate’s earnings. The Secretary shall consider such evidence during the program-level earnings calculation and in any appeal.*

**Rationale:** Ensures counseling graduates with multiemployer or part-time arrangements are not undercounted.

### **5. Appeals and data reliability**

**§ 668.603(b)** – Basis.for.appeal;

*If the Secretary initiates an action under paragraph (a) of this section, the institution may initiate an appeal under subpart G of this part. Before any loss of eligibility, an institution may appeal both the Secretary’s earnings calculation and the reliability of the underlying data, including determinations of “worked and not enrolled” for cohort inclusion, the comparator same-field-of-study earnings benchmark selection, and the reliability of earnings records used. Institutions may submit rebuttal evidence, including alternative earnings data, licensure status, and employment verification. During such appeal, the Secretary may permit the educational program to continue to participate in the Direct Loan Program.*

**Rationale:** Creates a meaningful appeal mechanism with adequate due process protections to help ensure the reliability of the accountability framework.