

Proposal to Redefine “Eligible Non-GE Program” as “Eligible OBBBA-Covered Program”

Submitted by: Preston Cooper (Taxpayers and the Public Interest Constituency)

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Explanation and Purpose

To complement a proposal I submitted earlier today (“Proposed Revisions to Severability Language”) and to support the Department’s efforts to ensure severability, I suggest the below changes to the definition of “eligible non-GE program,” which I propose renaming “eligible OBBBA-covered program.”

Under the Department’s current framework, GE programs and eligible non-GE programs are two mutually exclusive categories of programs. This is to ensure that all programs are covered across the two separate statutory authorities from which the proposed earnings accountability system derives: Section 102 of the Higher Education Act for GE programs, and Section 84001 of the One Big Beautiful Bill Act (OBBBA) for eligible non-GE programs.

However, there are some programs which are covered by both statutory authorities. Specifically, degree programs at proprietary institutions and graduate certificate programs at all institutions are subject to both the “gainful employment” language in Section 102 of the Higher Education Act and the new accountability system under Section 84001 of OBBBA.

In light of this overlapping statutory authority, and to further ensure severability, I propose amending the definition of “eligible non-GE program” to specify that it includes GE programs that are also subject to Section 84001 of OBBBA. I also propose renaming “eligible non-GE program” as “eligible OBBBA-covered program” and changing all mentions of “eligible non-GE program” to “eligible OBBBA-covered program” throughout the regulatory text.

Some programs—including degree programs at proprietary institutions and graduate certificate programs at all institutions—would therefore be included under the definitions of both “GE program” and “eligible OBBBA-covered program.” This would not create added complexity for these programs, as the Department proposes to harmonize the accountability framework for both types of programs. However, the redefinition would ensure severability should the application of the accountability system to either program type be held invalid.

Proposed Language (changes in red)

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

Subpart A—Purpose and Scope

§ 685.102 Definitions (a)

(1) The definitions of the following terms used in this part are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Eligible ~~non-GE~~ **OBBBA-covered** program

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

Subpart A—General

§ 668.2 General definitions.

*Eligible ~~non-GE~~ **OBBBA-covered** program.* An educational program ~~other than a GE program~~ **that awards an undergraduate degree, graduate or professional degree, or graduate certificate, that is** offered by an institution and included in the institution's participation in the title IV, HEA programs, identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. Includes all coursework associated with the program's credential level.

[Replace "Eligible non-GE program" with "Eligible OBBBA-covered program" throughout the draft]