

Updated Proposals on the Initial Consideration of Earnings Data

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Red text = from the Taxpayer and Public Interest negotiators' original proposal

Red text with yellow highlights = new proposal from Taxpayer and Public Interest negotiators

Background

The Department has proposed language to clarify how a state should calculate a job placement rate for a program. However, we are concerned that there is insufficient clarity about what should constitute an adequate placement. To that end, we propose including only jobs that ensure graduates earn at least 150 percent of the Federal poverty level each year in the numerator of the job placement rate.

This proposal is particularly important from a taxpayer perspective. Without this added clarification, institutions could count even the lowest-wage jobs toward their workforce programs' passage of the job placement rate – even as those programs are likely to later fail the tuition to value-added earnings test. Including this specification in the definition of a job placement will help to protect both students and taxpayers.

Amended Language

§ 690.94 Components determined by the Secretary

(a) After the Governor determines that the program meets the requirements under 34 CFR § 690.93, the institution must submit to the Secretary documentation that—

(2) The program meets placement and completion rate requirements—

(i) For the 2026-27 and 2027-28 award years only, as determined through a certification from the Governor, based on the Governor's analysis using administrative data, including wage records, that the eligible workforce program meets the following standards—

(A) A completion rate of at least 70 percent, within 150 percent of the normal time to completion; and

(B) A job placement rate of at least 70 percent, calculated as the percentage of students that are employed during the second quarter after exiting the program in a job earning at least 150 percent of the Federal poverty level for an individual each year;

(ii) For each award year after the 2027-28 award year—

(A) A completion rate of at least 70 percent, within 150 percent of the normal time of completion, as determined under 34 CFR 668.8 (f); and

(B) A job placement rate of at least 70 percent, calculated as the percentage of students who are employed in a job earning at least 150 percent of the Federal poverty level each year for an individual that is in the occupation for which the program prepares students (as identified through the process established under 34 C.F.R. 690.93 (b)) or a comparable high-skill, high-wage, or in-demand occupation during the second quarter after successfully completing the program, as determined through a certification from the Governor, based on the Governor's analysis using available administrative data, including wage records.

Legal Justification

Section 83002(b)(2)(iv)(III) of the One Big Beautiful Bill Act (OBBBA) states that the Secretary must determine that "for each award year, the program has a verified job placement rate of at least 70 percent, measured 180 days after completion." The Department has already acknowledged that this should be understood to determine initial, as well as ongoing, eligibility.

However, the statute does not define "job placement." The Department has already, in other parts of the regulation, implicitly determined that the Secretary has discretion to define this term, such as by requiring occupation-specific job placement rates for the 2028-29 award year and beyond. We are merely proposing that the Secretary use that discretion to further define what an eligible "job" is for initial eligibility, absent data on placement in specific sectors. We believe that the threshold of 150 percent of the Federal poverty level is a legally defensible metric; it is also used as a metric for value-added earnings, for instance. We believe that using a VAE metric helps to reduce the legal risk that the Department sees by incorporating earnings relative to a known threshold favored by Congress in the context of Workforce Pell.