

May 20, 2026

Via www.regulations.gov

The Honorable Linda McMahon
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Docket ID ED-2026-OPE-0100; Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability (91 Fed. Reg. 21088, Apr. 20, 2026)

Dear Secretary McMahon:

The American Massage Therapy Association (AMTA) respectfully submits this comment on the Department's April 20, 2026, Notice of Proposed Rulemaking (NPRM) establishing an earnings accountability framework and related provisions under title IV of the Higher Education Act.

AMTA is the nation's largest professional association for licensed massage therapists, schools, and students. We advocate for standards that protect the public and advance professional competency, and we support transparency that helps students make informed choices. Based on the statutory record, the Department's own prior rulemakings, and current labor-market and tax-administration realities, AMTA urges the Department to withdraw or revise the proposal as it applies to undergraduate nondegree certificate programs. At minimum, AMTA recommends targeted modifications and staged implementation to avoid unintended harm to students, programs, and the massage therapy workforce.¹

I. Introduction

AMTA represents a nationwide membership of licensed massage therapists, massage therapy students, and institutions of higher education offering massage therapy education programs. AMTA conducts and publishes annual research on the profession, surveys its member schools

¹ 91 Fed. Reg. 21088 (Apr. 20, 2026) (NPRM). The Department proposes to amend 34 C.F.R. parts 600, 668, and 685 to implement OBBBA-related changes and revise accountability and transparency frameworks.

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about accreditation, curricula, and clock-hour requirements, and produces an annual Massage Profession Research Report used by educators and practitioners. Those data show a profession characterized by high rates of self-employment, substantial part-time work by choice, and significant reliance on tip income.

In 2025, massage therapists worked an average of 23.9 hours per week and were paid for roughly 20.2 hours; approximately seventy percent self-identified as sole practitioners, with nineteen percent as independent contractors and thirteen percent as full-time employees. Tips account for approximately twenty percent of a therapist's total income, and sixty-two percent of therapists report receiving tips in a majority of client sessions.²

Our findings are consistent with those of the U.S. Department of Labor's Bureau of Labor Statistics, which notes that there is a good reason why most massage therapists are part time: "... because of the strength and endurance needed to give a massage, many therapists cannot perform massage services 8 hours per day, 5 days per week."³ These structural features of the occupation, including physical limitations on practitioners, are central to assessing any accountability metric that turns on reported annual earnings measured at a single time point.

Massage therapy can be an important part of an integrative care approach to medicine and can be an effective treatment for many conditions. While often performed independently, massage therapy is also used in conjunction with a number of conventional medical services used to treat a variety of health conditions. Massage therapy is increasingly recognized by consumers as an option for reducing pain and addressing their health and wellbeing without reliance on narcotics.⁴

Massage therapy is increasingly being integrated into healthcare in the US. Any reduction in the supply of new therapists may also impact staffing and costs within the healthcare system. Overall employment in healthcare occupations is projected to grow much faster than the average for all occupations from 2024 to 2034. About 1.9 million openings are projected each year, on average, in these occupations due to employment growth and the need to replace workers who leave the occupation permanently.⁵

Research indicates that private insurers and government third-party payers stand to save as much as \$11.1 billion in net costs if they were to cover massage therapy nationally. The overall result of this shift from pharmaceutical, narcotic, and medical interventions to massage therapy would lead to a net increase in 63,390 jobs across the country, providing workers with \$5.6 billion in increased wages. In addition to providing governments savings from reduced health care service costs, the shift would also increase federal tax revenues by \$1.9 billion and state and local revenues by \$2.1 billion. Additionally, the use of massage therapy as part of a comprehensive

² AMTA, 2026 Massage Profession Research Report (2026) (Section 2, Compensation and Work Patterns; Section 4, Training and Education). The report documents that approximately seventy percent of therapists identify as sole practitioners; nineteen percent as independent contractors; thirteen percent as full-time employees; and that tips comprise roughly twenty percent of income. Average weekly hours worked in 2025 were 23.9, with 20.2 hours paid.

³ See, <https://www.bls.gov/ooh/healthcare/massage-therapists.htm#tab-3> (last accessed May 14, 2026).

⁴ The Economic Value of Massage Therapy In Reducing Medical Costs And Addressing Opioid Addiction 2026 Update, John Dunham & Associates (draft prior to publication).

⁵ US Bureau of Labor Statistics, Occupational Outlook Handbook, Healthcare Occupations <https://www.bls.gov/ooh/healthcare/>

treatment environment could lead to a reduction in net costs to the healthcare system of about \$11.1 billion.⁶

The NPRM’s core proposal would replace or repurpose prior Gainful Employment (GE) constructs to establish a revised earnings-premium (EP) test and to expand accountability consequences across a broad universe of programs, with additional changes to student warnings, reporting, administrative capability, and appeals.⁷ Eighty-nine percent (89%) of the nation’s massage therapy programs relying on federal financial aid would fail the proposed rule according to the Department’s own data. This extremely high rate of failure would irreparably damage the labor supply in this area of work. As explained below, AMTA supports student-facing transparency and institutional accountability but has serious legal, methodological, and implementation concerns with the Department’s approach to certificate programs in general, and to massage therapy programs in particular.

II. Overview of the Proposed Regulatory Construct

A. “Do No Harm” Earnings Premium

We recognize that the Department is implementing the statutory directives in P.L. 119-21 (the “*Reconciliation Act*”); we are, however, concerned that the NPRM’s “Do No Harm” EP accountability construct relies on unmatched comparison groups, fails to control for confounders, compares outcomes across mismatched measurement periods, omits any risk adjustment for local economic conditions, and applies a temporal lag that obscures early-career trajectories. These design choices conflict with baseline expectations for policy-relevant evidence, including standards embodied in the Department’s own What Works Clearinghouse. When an accountability regime predicates eligibility on pass–fail determinations using a single median-earnings figure against a statewide benchmark, the absence of matching, risk adjustment, and timing alignment renders the EP measure unstable and sensitive to factors unrelated to program quality.⁸ Given the data quality issues, we also have legal concerns about reliance on this data. While the Department suggests that they have relied on the “best available evidence” and that case law justifies this position, we note that case law also states that “agencies do not have free rein to use inaccurate data.”⁹ As such, the Department cannot “fail to consider” problems with data or “ignore new and better data.”¹⁰

⁶ The Economic Value of Massage Therapy In Reducing Medical Costs And Addressing Opioid Addiction 2026 Update, John Dunham & Associates (draft prior to publication).

⁷ 91 Fed. Reg. at 21089–21090 (proposed changes to §§668.401–.405 establishing EP as accountability standard; §668.603 “low-earning outcome programs”; §668.605 warnings; and related provisions).

⁸ See, e.g., What Works Clearinghouse standards (U.S. Department of Education), setting expectations for comparison-group design, risk adjustment, and timing alignment; see also *District Hospital Partners v. Burwell*, 786 F.3d 46, 56 (D.C. Cir. 2015) (agencies “do not have free rein to use inaccurate data” and may not ignore data problems).

⁹ *Dist. Hosp. Partners v. Burwell*, 786 F.3d 46, 56 (D.C. Cir. 2015).

¹⁰ *Id.*

B. Earnings Premium for Certificate Programs

Congress limited the new statutory EP accountability framework to programs awarding “an undergraduate degree, graduate or professional degree, or graduate certificate.”¹¹ Undergraduate nondegree certificate programs are not included. The Department’s proposal to extend the EP metric (and its associated consequences) to undergraduate certificate programs exceeds that statutory grant and risks displacing students from workforce pathways Congress did not subject to this framework. Massage therapy programs are overwhelmingly certificates or diplomas; they would be swept in by the NPRM despite their exclusion from the statute.¹²

C. Elimination of Prior GE Metrics

AMTA notes the NPRM’s proposal to eliminate the GE debt-to-earnings construct and to elevate EP as the sole earnings accountability metric. While we appreciate the Department’s aim to simplify, EP as proposed is not a suitable accountability proxy for the reasons detailed in this comment.¹³

III. Procedural Concerns

A. Thirty-Day Comment Period

A thirty-day comment window for rules of this scope is insufficient to marshal data, analyze impacts across diverse program models, and propose alternatives. Complex changes to eligibility conditions and student warnings demand a meaningful comment period to satisfy the Administrative Procedure Act’s (APA) requirement of a fair opportunity to participate.

B. Master Calendar Alignment

The proposed July 1, 2026, effective date cannot be reconciled with the Higher Education Act’s (HEA) Master Calendar requirements. The Master Calendar provisions exist to ensure orderly implementation and adequate lead time for institutions and students. We disagree that the Reconciliation Act waives the Master Calendar. First, even if the Department were to claim some species of waiver, the APA independently requires at least a thirty-day delayed effective date for substantive rules absent good cause.¹⁴ Nothing in the NPRM demonstrates the “good cause” necessary to overcome the APA’s default. Second, even if Congress implicitly waived the Master Calendar for the new EP metric for degree granting programs, the same is not true for the accountability change to undergraduate certificate programs.

C. Implementation Date for Certificate Programs

If the Department persists in applying EP to certificate programs notwithstanding the statute, AMTA urges at least a one-year deferral of EP implementation for those programs to allow

¹¹ 20 U.S.C. §1087d(c)(2) (as amended) (defining covered educational programs for EP determinations as those awarding an undergraduate degree, graduate or professional degree, or graduate certificate).

¹² AMTA, 2026 Massage Profession Research Report (2026) (most schools offer certificates or diplomas; ninety-three percent of schools offer a certificate in massage therapy).

¹³ Financial Value Transparency and Gainful Employment, 88 Fed. Reg. 70004 (Oct. 10, 2023).

¹⁴ 20 U.S.C. §1089 (master calendar) (requiring adherence to specified calendar dates and orderly implementation of changes affecting title IV administration).

completion of critical tax-administration changes under the One, Big, Beautiful Bill Act (OBBBA) related to tip and overtime reporting, as discussed in Section VII.C, and to afford programs an informational year to review data quality and correct record linkages before sanctions attach.¹⁵ This deferral should also be used to pilot an hours-matched comparator and a full-time or FTE-adjusted EP, as outlined in Section VI.A, so that the rule does not penalize programs in occupations with high rates of part-time-by-choice work.

IV. Legal Concerns

A. Absence of Statutory Authority to Apply EP to Undergraduate Certificates

Section 1087d(c) of title 20, as amended, confines the EP accountability framework to programs awarding an undergraduate degree, graduate or professional degree, or graduate certificate.¹⁶ The Department cannot expand Congress’s list by regulation. Although the NPRM cites consensus at negotiated rulemaking and its general rulemaking authorities, those do not permit the Agency to add entire categories of programs Congress chose not to include.

B. Congressional Intent and Program Scope

The structure of the HEA provisions that separately govern “gainful employment” for certain programs and OBBBA’s distinct EP framework for degrees confirms that Congress crafted different accountability regimes for different program types. The Department’s own recent preamble discussions in the 2023 Financial Value Transparency/GE final rule reflect careful distinctions drawn by Congress and by the Agency between program categories.¹⁷ Extending EP to undergraduate certificates collapses those distinctions.

C. GEPA Notice to Congress

The General Education Provisions Act (“GEPA”) requires the Department to transmit a timely schedule for promulgating final regulations that implement statutory changes to applicable programs, including an articulation of the scope of such rules.¹⁸ The NPRM does not demonstrate compliance with GEPA’s schedule submission requirements for the expansion of EP to certificate programs.

D. Administrative Law Constraints After *Loper Bright*

The Supreme Court has clarified that reviewing courts must exercise independent judgment in deciding whether an agency has acted within its statutory authority; ambiguity is not a warrant

¹⁵ See IRS News Release IR-2025-82 (Aug. 7, 2025) (announcing no changes to Forms W-2 and 1099 for tax year 2025 under OBBBA); Notice 2025-62 (transition penalty relief for 2025 reporting of tips and overtime).

¹⁶ 20 U.S.C. §1087d(c)(2).

¹⁷ 88 Fed. Reg. at 70004 et seq. (discussing program categories and distinct accountability constructs).

¹⁸ Title IV of the Elementary and Secondary Education Amendments of 1967 (P.L. 90-247), as amended by Title IV of the Elementary and Secondary Education Amendments of 1969 (ESEA, P.L. 91-230) and further amended by the Education Sciences Reform Act (P.L. 107-279); 20 U.S.C. §1232(e) (requiring a schedule for promulgating final regulations necessary to implement new statutes affecting applicable programs).

for deference.¹⁹ The text of §1087d(c) draws a clear line that does not include undergraduate certificates. The Department should realign the proposal with the statute’s limits.

V. Legal Concerns Specific to “Gainful Employment” Background

The Department’s long-running GE efforts rested on a different statutory hook and a different set of metrics. The 2023 FVT/GE final rule collected extensive evidence and commentary about measurement challenges, underreported income in certain tip-reliant occupations, and the need for careful implementation.²⁰ Aspects of prior GE litigation, particularly involving cosmetology programs, underscored those same concerns. The NPRM’s move to EP for degrees does not create a new authority to import those constructs onto undergraduate certificates.

VI. §668.403 Definitions and Measurement Issues for Certificate Programs

A. “Working” Must Reflect Meaningful Labor-Market Attachment

The EP’s inclusion criteria count any completer “who is working” without a floor. To avoid distorting medians with de minimis earnings, the Department should define “working” for EP purposes as annual earnings above a reasonable threshold—e.g., \$10,000—to reflect meaningful participation in the labor market rather than sporadic, seasonal, or incidental work that does not relate to the credential. That modification aligns the metric with its stated purpose.

These realities are recognized by the U.S. Bureau of Labor Statistics (“BLS”), which reports that part-time work is common for massage therapists; that schedules and hours vary considerably because most therapists work by appointment; and that, given the strength and endurance required to perform massage, many therapists cannot provide massage services eight hours per day, five days per week.²¹ We also note that according to AMTA’s research, 78% of massage therapy students and 84% of practicing massage therapists are women. Women are more likely to seek part time and flexible work schedules to account for child care and family responsibilities.

In addition, the accountability comparator must be matched on hours, not just age and geography. The proposed “working adult” benchmark drawn from American Community Survey (ACS) data should be limited to full-time, year-round earners for the corresponding year, rather than the broader 25–34 “working” population, to avoid penalizing programs in occupations—like massage therapy—in which a large share of graduates choose part-time schedules. Where hours information is not available for program completers in Federal tax data, the Department can approximate hours matching by adopting a higher minimum-earnings floor that reflects full-time, year-round work in the State (for example, an annualized proxy of at least 2,000 hours multiplied by the State minimum wage or other appropriate wage standard). This approach would bring the

¹⁹ *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (courts must exercise independent judgment under APA §706 to determine whether agencies act within statutory authority).

²⁰ 88 Fed. Reg. at 70095, 70136 (discussing underreporting and occupational realities in cosmetology and similar fields and citing research on unreported income).

²¹ U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, Massage Therapists — Work Environment and Work Schedules (noting that part-time work is common, schedules vary because work is by appointment, and the physical demands limit the number of hours therapists can perform massage), <https://www.bls.gov/ooh/healthcare/massage-therapists.htm> (last visited May 14, 2026).

EP calculation for both the treatment and comparison groups closer to a like-for-like evaluation while preserving simplicity.

Alternatively, the Department could normalize graduate earnings to a full-time-equivalent (FTE) basis for EP purposes during a transition period by scaling reported annual earnings to a 1.0 FTE proxy and publishing both the unadjusted and FTE-adjusted EP. If the Department is not prepared to implement an hours-matched comparator or an FTE normalization in the first year, it should, at minimum, publish a parallel “full-time-only” informational EP and use that measure for accountability during the one-year implementation deferral discussed in Sections III.C and X, while it finalizes an hours-matched benchmark and validates the FTE adjustment methodology.

B. Cohort Construction and CIP Aggregation

The proposal to aggregate outcomes across broader CIP groupings to achieve minimum sample size (Ns) dilutes program-specific signals and can blend dissimilar occupations with wildly different earnings profiles even within two- or four-digit groupings. For massage therapy, aggregation with unrelated personal services subfields will produce arbitrary benchmarks. The Department should avoid cross-program aggregation that undermines content validity. The program level CIP code for massage therapy is 51.3501. Expansion to the four-digit CIP of 51.35 would include all somatic bodywork and related programs in the calculation. Expansion to the two-digit CIP of 51 would include all health professions and related clinical sciences, including MD and DDS programs. Such an expansion would lead to an absurd result.

C. Earnings Data Sources and Benchmarks

1. IRS Earnings and Underreporting in Tip-Dependent Occupations

The Department relies on Federal earnings data to construct program medians and uses American Community Survey (ACS) “high school graduate” earnings as the benchmark. Both inputs are problematic for certificate programs like massage therapy. First, IRS-derived earnings undercount significant portions of income in tip-dependent and self-employed occupations because they are reported on net bases (Schedule C) and because cash and electronic tips are historically underreported. The Department has acknowledged underreporting issues in analogous cosmetology contexts.²²

Second, Congress and the Treasury have recently undertaken material changes under OBBBA to the tax treatment and reporting of tips and overtime, with the IRS issuing penalty relief for 2025, stating that Forms W-2 and 1099 would not be updated for 2025, and finalizing regulations in April 2026 that list occupations that “customarily and regularly” receive tips and define “qualified tips.”²³ These transitions will alter reported earnings in ways that make near-term EP calculations uniquely unstable for tip-reliant certificate fields.

²² 88 Fed. Reg. at 70095, 70136 (discussing underreporting and occupational realities in cosmetology and similar fields and citing research on unreported income); see also Cellini & Blanchard, *Hair and Taxes: Cosmetology Programs, Accountability Policy, and the Problem of Underreported Income* (2022) (documenting underreporting dynamics in cosmetology).

²³ Notice 2025-62, Part III (IRS transition penalty relief for 2025 tips and overtime reporting); IR-2025-82 (Aug. 7, 2025) (no W-2/1099 changes for 2025); T.D. 10044, *Occupations That Customarily and Regularly Receive Tips; Definition of Qualified Tips*, 91 Fed. Reg. 19026 (Apr. 13, 2026); IR-2026-49 (Apr. 10, 2026) (Treasury/IRS news release on final regulations listing tipped occupations and defining “qualified tips”).

2. “High School Graduate” Comparison Group

The ACS “high school graduate” category does not consistently isolate individuals with only a high school diploma and no postsecondary occupational training, particularly for noncredit certificates that may not be captured as “some college.” Using that benchmark likely inflates the comparison group’s earnings for reasons unrelated to a high school diploma, undermining the legal and methodological soundness of the EP test for certificates.

3. Geographic Variation and Regional Price Parities

Statewide benchmarks do not account for local labor markets or cost-of-living differences that materially affect earnings and purchasing power. The Department should normalize EP calculations using recognized measures of regional price parity from the Department of Commerce’s Bureau of Economic Analysis, or permit institutions to demonstrate local earnings comparators for the commuting zone or county in which graduates predominantly work.²⁴

4. Data Currency and CIP-Granularity Mismatch

The NPRM’s comparison-group earnings are drawn from ACS field-of-study data that, by the Department’s own account, are available only at the four-digit CIP level at this time; the preamble further acknowledges that future use of four-digit CIP data would depend on availability and statistical reliability.²⁵ Yet the proposed accountability determinations would operate at the six-digit CIP “program” level. Prior Department releases and documentation also confirm that consumer-facing program earnings data (e.g., College Scorecard field-of-study datasets) have historically been calculated and reported at the four-digit CIP level rather than the six-digit program level, reflecting data constraints and suppression rules.²⁶ Independent research underscores the heterogeneity of earnings within broad four-digit CIP groupings and the risk of misclassification when program-level accountability determinations rely on coarser field-of-study aggregates.²⁷ In addition, Scorecard and related documentation show that

²⁴ BEA, Regional Price Parities by State and Metro Area (Commerce Data Hub; “Regional Price Parities allow comparisons of buying power across the 50 states and the District of Columbia, or from one metro area to another”); dataset metadata and API are available through the Commerce Data Hub.

²⁵ Public Inspection version of 2026 NPRM, “Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: STATS and Earnings Accountability,” at 24–25 (Apr. 20, 2026) (Department explaining that ACS “currently contains field of study information that is only disaggregated at the 2-digit CIP level,” and that use of four-digit CIP might be considered if “widely available and statistically reliable” in the future), available at <https://public-inspection.federalregister.gov/2026-07666.pdf>; see also 91 Fed. Reg. 21088 (Apr. 20, 2026) (preambular discussion of grouping fields of study into broader categories at the two- or four-digit CIP level to address ACS sample-size constraints).

²⁶ See, e.g., College Scorecard Field-of-Study Technical Documentation (Version: June 2024) (explaining that Scorecard “uses the first four digits of the CIP code in its calculations”), available at <https://collegescorecard.ed.gov/assets/FieldOfStudyDataDocumentation.pdf>; NAICU, “Education Department Publishes Program-Level Earnings Data” (Nov. 22, 2019) (noting program-level earnings calculated using four-digit CIP), <https://www.naicu.edu/news-events/washington-update/2019/november-22-2019/education-department-publishes-program-level-earnings-data/>.

²⁷ See Urban Institute, The Feasibility of Program-Level Accountability in Higher Education (2018) (discussing heterogeneity within CIP groupings and need for adequate Ns; narrowest definition is six-digit CIP), <https://www.urban.org/research/publication/feasibility-program-level-accountability-higher-education>; see also Urban Institute, Measuring Program-Level Outcomes in Higher Education (2026) (analyzing roll-ups from six-digit to four-digit CIP and implications for accuracy), https://www.urban.org/sites/default/files/2026-01/Measuring_Program_Level_Outcomes_in_Higher_Education.pdf.

program-level earnings measures often incorporate older cohorts, making the data comparatively stale by the time rules take effect.²⁸

5. Unique Income Structure of Massage Therapy and Data Reliability

Massage therapy's income structure further undermines the reliability of the proposed EP metric for certificate programs that prepare students for this occupation. As AMTA's research documents, a substantial majority of massage therapists are sole proprietors or independent contractors who report income on Schedule C, where legitimate business-expense deductions (e.g., equipment, supplies, mileage, rent, insurance, and home-office costs) convert gross receipts into net taxable income.²⁹ Net income reported on Schedule C often diverges meaningfully from a graduate's revenue-generating capacity and from the market price of services delivered; in some cases, it may be negative for tax purposes despite robust client demand. Using net taxable income—or earnings measures derived from it—as the core input to a pass-fail accountability test thus systematically understates labor-market value for self-employed graduates in ways that are unrelated to program quality.

Tip income compounds the distortion. A large share of massage-therapy compensation is conveyed as tips, historically underreported in both cash and electronic forms.³⁰ Congress's enactment of the One, Big, Beautiful Bill Act created a new deduction for “qualified tips” and directed heightened information reporting, but the IRS has expressly treated tax year 2025 as a transition period: Forms W-2 and 1099 were not updated for 2025, and penalty relief applies where required separate accounting for tips is missing.³¹³²³³

²⁸ See College Scorecard Institution-Level Data Documentation (Version: Sept. 2025) (showing multi-year lags for post-entry earnings metrics and that field-of-study cohorts are limited by the start of NSLDS program-level collection in 2014-15), <https://collegescorecard.ed.gov/files/InstitutionDataDocumentation.pdf>; Urban Institute, Degrees of Value (noting Scorecard uses earnings from earlier academic years), <https://www.urban.org/data-tools/degrees-value>.

²⁹ See, FN 2, *infra*.

³⁰ *Id.*; see also Cellini & Blanchard, Hair and Taxes: Cosmetology Programs, Accountability Policy, and the Problem of Underreported Income (2022) (documenting underreporting dynamics in cosmetology).

³¹ One, Big, Beautiful Bill provisions – Individuals and workers (IRS summary page describing no-tax-on-tips and no-tax-on-overtime and noting transition to updated forms beginning with TY 2026), <https://www.irs.gov/newsroom/one-big-beautiful-bill-provisions-individuals-and-workers> (last visited May 14, 2026).

³² Treasury, IRS provide guidance for individuals who received tips or overtime during tax year 2025 (Notice 2025-69; transition relief and instructions while Forms W-2/1099 remain unchanged for TY 2025), <https://www.irs.gov/newsroom/treasury-irs-provide-guidance-for-individuals-who-received-tips-or-overtime-during-tax-year-2025> (Nov. 21, 2025).

³³ IRS announces no changes to individual information returns or withholding tables for 2025 under the One, Big, Beautiful Bill Act (IR-2025-82; W-2/1099 unchanged for TY 2025) and Notice 2025-62 (penalty relief for 2025 information reporting on tips and overtime), <https://www.irs.gov/newsroom/irs-announces-no-changes-to-individual-information-returns-or-withholding-tables-for-2025-under-the-one-big-beautiful-bill-act>; <https://www.irs.gov/pub/irs-drop/n-25-62.pdf>.

In April 2026, Treasury and the IRS finalized regulations implementing the “no tax on tips” provisions and published a detailed list of occupations that customarily and regularly receive tips, together with a definition of “qualified tips.”³⁴ As those provisions phase in, reported taxable income for tipped workers will change even if underlying service revenue and client demand remain constant. For employees who claim the new deduction for qualified tips, taxable wages used in EP computations that rely on tax-return information will fall relative to pre-OBBBA baselines; for self-employed practitioners, qualified tips included in gross receipts but offset by the deduction and Schedule C expenses will likewise depress reported net income. During and after this transition, the EP will reflect tax-law design choices and reporting upgrades rather than program quality or occupational value.

These measurement challenges sit atop an occupation with inherently variable and often part-time schedules by choice. As BLS explains, part-time work is common for massage therapists; most work by appointment, with hours that vary considerably; and, given the strength and endurance required to perform massage, many cannot provide massage services eight hours per day, five days per week.³⁵ Blending part-time-by-choice and self-employment-adjusted net incomes into a single median and comparing that median to a broad “working adult” benchmark that is not matched on hours or employment type will yield EP determinations driven by occupational structure and tax-administration mechanics—not by the quality of entry-level education.

These occupation-specific features reinforce AMTA’s requests that the Department:

- (a) limit the comparator to full-time, year-round workers and adopt a meaningful earnings floor (or an FTE-normalized EP) during a transition period, as described in Section VI.A;
- (b) broaden appeals to allow demonstration of tip- and self-employment-related distortions; and
- (c) defer implementation for at least one year, as described in Sections III.C and X, both to develop appropriately current six-digit CIP comparison-group data and to allow OBBBA’s tip-income provisions to take full effect so that their impact is reflected—and can be responsibly incorporated—into the underlying earnings data used for EP calculations.

D. Measurement Periods and Early-Career Earnings

Comparing a certificate completer’s fourth-year post-completion earnings to the earnings of a 25–34 year-old population that has been in the labor force far longer is an apples-to-oranges comparison that structurally disadvantages short-term workforce programs. The Department

³⁴ Occupations That Customarily and Regularly Receive Tips; Definition of Qualified Tips (T.D. 10044), 91 Fed. Reg. 19026 (Apr. 13, 2026) (final regulations implementing “no tax on tips” and listing tipped occupations); see also Treasury/IRS news release IR-2026-49 (Apr. 10, 2026), <https://www.irs.gov/newsroom/treasury-irs-issue-final-regulations-listing-occupations-where-workers-customarily-and-regularly-receive-tips-under-the-one-big-beautiful-bill>.

³⁵ See FN 18, *infra*.

should align comparator ages and experience or, at minimum, use a narrower age band suited to early career (e.g., 19–24).

E. Exclusions

The Department should expand exclusions to omit completers who work less than full-time year-round, volunteers providing unpaid massage services, and those for whom earnings data reflect negative net income attributable to business-expense deductions unrelated to revenue-generating capacity.

VII. Section-Specific Comments on the NPRM

A. §668.16(t) Administrative Capability

The NPRM contemplates institution-level consequences if more than half of an institution’s title IV recipients or revenues are associated with “low-earning outcome programs.” The regulatory text should clarify that programs in orderly closure following a first-year EP failure do not continue to accrue failures or count toward the 50 percent threshold during wind-down, to avoid penalizing institutions for responsible exits from programs while protecting currently enrolled students.

B. §668.406 Reporting Requirements

AMTA supports the NPRM’s reduction of some reporting burdens relative to the 2023 FVT/GE rule. However, the remaining requirements still reach far beyond what is necessary to compute EP, including state-by-state licensing details, individualized private loan amounts, and extensive cost-of-attendance components. The Department should tailor reporting to the data elements required to compute EP and STATS transparency, and eliminate student-level licensing and financial details unconnected to EP.

C. §668.605 Student Warnings

Triggering institution-wide warnings after a single EP failure will irreparably harm programs with marginal or correctable issues by collapsing applicant pipelines based on one data point that may be affected by transient economic conditions or reporting anomalies. If warnings are retained, they should be deferred until after a second failure within a covered period and be accompanied by an opportunity to present contextual information, including local-labor-market data and program improvement plans. Because the Department’s comparison-group data are presently available only at the two-digit CIP level for ACS field-of-study earnings, warnings should not be issued until the Department has developed, validated, and deployed appropriately disaggregated six-digit CIP comparison data, as discussed in Section VI.C.4.

D. Appeals Process

Limiting appeals to mathematical-calculation errors deprives institutions of due process where systemic earnings-data distortions exist. The Department should broaden appeals to include a “Local Earnings Appeal” under which an institution can demonstrate that statewide comparator earnings exceed local-market earnings relevant to its graduates, using Census and Commerce data, and have the EP recalculated using a locality benchmark (e.g., commuting zone or county).

The Department should also authorize appeals based on demonstrated underreporting distortions in tip-dependent and self-employed occupations during the OBBBA transition.

E. §668.405 Determination of Program Failure—Primary Program Remediation Path

For institutions where a single six-digit CIP program composes at least seventy-five percent of total enrollment, the Department should consider a “Primary Program Remediation Agreement” in lieu of automatic Direct Loan ineligibility after two EP failures. Under such an agreement, the school would commit to tuition freezes, quarterly reporting of placement and gross receipts data, and enhanced financial literacy training for students for a defined period (e.g., five years), with transparent monitoring. This alternative advances student protection while avoiding institutional collapse in fields with workforce demand.

VIII. §668.402(b)–(d): STATS Framework

AMTA supports clear, comprehensible transparency tools that help prospective students understand program costs and outcomes. If EP remains the accountability metric for degree programs, EP should be displayed in STATS for all programs as informational context, with robust disclosures that explain data limitations for tip-reliant and self-employment-heavy fields.

IX. §668.16(t) Administrative Capability—Clarification Requested

The Department should clarify that “low-earning outcome programs” used in the 50 percent threshold exclude programs exempted from EP calculation due to insufficient Ns and programs in approved orderly closure and should codify that no additional EP failures accrue during an approved wind-down period.

X. §668.406 Reporting Requirements—Practical Constraints

The Department should align institutional reporting cycles with IRS and SSA data-availability cycles and provide an “informational year” during which institutions can validate cohort rosters, resolve identity or SSN mismatches, and correct misattributions before EP determinations carry consequences. Given the IRS’s transitional guidance for 2025 that Forms W-2 and 1099 will not separately capture qualified tips or overtime, EP determinations relying on 2025 earnings should be nonconsequential for certificate programs in tip-reliant fields.³⁶ Further, as discussed in Section VI.C.4, the Department should defer implementation for at least one year to permit development of current, six-digit CIP-level comparison data to match the granularity of program-level determinations. The one-year deferral should likewise allow the Department to stand up an hours-matched comparator and to test a full-time or FTE-adjusted EP, consistent with Section VI.A, before imposing consequences tied to an EP that blends full-time and part-time earners.

XI. Appeals—Due Process and Data Quality

The Department should establish an appeals track that permits institutions to present evidence that statewide ACS “high school graduate” earnings benchmarks are inapposite for their localities; to use BEA regional price parity adjustments; and to present data showing that

³⁶ See FN 22, *infra*.

OBBBA-related changes materially affected reported earnings for the relevant tax years. Appeals should also allow demonstration of material undercounts of income due to tip underreporting during the 2025–2026 tax-form transition.³⁷

XII. Determination of Program Failure—Remediation Path Proposal

As noted in Section VII.E, a “Primary Program Remediation Path” would better serve students in institutions dominated by a single workforce program. Incorporating tuition controls, enhanced counseling, and public reporting during a remediation period preserves access while addressing the Department’s concerns.

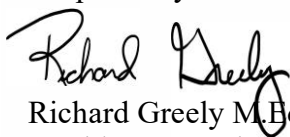
XIII. Conclusion and Recommendations

AMTA appreciates the Department’s goal of protecting students and taxpayers. But extending a one-size-fits-all earnings-premium accountability regime to undergraduate certificate programs—particularly those in tip-reliant, self-employment-intensive fields—exceeds statutory authority and is methodologically unsound in the near term. AMTA respectfully requests that the Department:

1. Conform the final rule to 20 U.S.C. §1087d(c) by limiting EP accountability consequences to degree and graduate-certificate programs; maintain transparency for certificates through STATS without punitive eligibility consequences.
2. If the Department nonetheless applies EP to certificates, adopt the following safeguards: define “working” with a meaningful earnings floor; narrow or eliminate cross-program CIP aggregation; permit geographic adjustments and a Local Earnings Appeal; defer EP implementation for certificate programs by at least one year to allow completion of OBBBA-related reporting changes and to develop appropriate six-digit CIP comparison data; and provide an informational year for data validation.
3. Modify §668.16(t), §668.406, and §668.605 to avoid counting programs in orderly closure toward institution-level thresholds; remove reporting elements unnecessary for EP; delay warnings until a second failure; and provide comprehensive appeals that reach beyond calculation errors.
4. Establish a “Primary Program Remediation Path” for institutions dominated by a single program to avoid abrupt loss of access that harms current and prospective students.

AMTA stands ready to assist the Department in refining a student-centered, lawful, and empirically sound accountability framework that recognizes the diversity of workforce programs and protects student choice. Thank you for considering these comments.

Respectfully submitted,



Richard Greely M.Ed., L.M.T.
President, American Massage Therapy Association

³⁷ See FN 23, *infra*.