August 25, 2025

Linda McMahon
Secretary, U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

RE: Docket ID ED-2025-OPE-0151-0001

Dear Secretary McMahon:

This is a comment on the Department of Education's ("department's") rulemaking to implement Pub. L. 119-21 (the "One Big Beautiful Bill Act" or "OBBBA") and implement other priorities of the current administration. In general, this rulemaking should interpret the OBBBA so as to maximally prevent future administrations from pursuing unauthorized loan forgiveness of the sorts pursued by the Biden administration. References to page numbers of the OBBBA here refer to the pagination at https://www.govinfo.gov/content/pkg/PLAW-119publ21/pdf/PLAW-119publ21.pdf.

This comment takes the first item out of order because it is the most challenging to implement and most worth attention.

1. Regaining program eligibility. The OBBBA's prohibition on federal financial aid program funds for low-earning outcome programs is excellent (Sec. 84001, pp. 283–285). What is challenging, however, is determining how a program may regain eligibility under 20 USC 1087d(c)(7). The right principle should be: an institution should be able to demonstrate that its program, at minimum, is *more likely than not* able to meet the eligibility standards going forward.

The department is not an appropriate body to make such a prediction. Such a prediction is best made by the institution's accreditor. I propose that if an institution wants its program to regain eligibility, the institution must produce a letter from its accreditor vouching for the program's quality and likely outcomes (which the department may provide criteria for). So long as the department determines that the letter is valid and not frivolous (the letter must contain reasoning, but the department should not apply more than a rational-basis test), the department should accept the accreditor's determination.

The department also should prohibit an institution from gaining eligibility for a substantially identical program to one that has lost eligibility, unless a letter from the accreditor explains how the new program is *more likely than not* to be eligible going forward.

2. Zero-dollar "payments." A zero-dollar "payment" is not, in reality, a payment and should not count as one. The department should explicitly disallow any zero-dollar "payment" from any definition of "qualifying monthly payment" for any purpose, except where specifically required by the OBBBA—that is, only the parts of Sec. 82001(d) amending 20 USC 1087e to add

(q)(1)(F)(vi) and (vii) and no more, and only for the purposes of the Repayment Assistance Plan created as paragraph (q) (see OBBBA, pp. 272–273). The department should explicitly exclude zero-dollar "payments" from every other regulation by which payments are counted.

3. Timing of termination of partial financial hardship. Under Sec. 82001(f)(1)(B) amending 20 USC 1098e(a)(3), the Secretary is permitted to frequently recalculate an "applicable amount" in the calculation of a monthly payment under income-based repayment (see OBBBA, p. 276). The minimum calculation is annual. But taxpayers and the department should be concerned to accurately calculate partial financial hardship more frequently. A borrower should be required to timely report a significant increase or decrease in monthly income and the date at which the increased income began so that partial financial hardship and monthly payments can be recalculated and appropriately adjusted. Perhaps best is a required quarterly certification from borrowers who are in the status of partial financial hardship, certifying that their monthly income has or has not changed and the date of any change.

4. Term when leaving income-based repayment. Under Sec. 82001(f)(1)(C) amending 20 USC 1098e(b)(6)(B), when a borrower leaves income-based repayment, the repayment term "may exceed 10 years" (see OBBBA, p. 276). The department should specify in regulations that when a borrower returns to his or her original loan program (prior to income-based repayment), the remaining repayment term should be the amount of the term that was remaining for the borrower's original loan program minus the amount of time in income-based repayment.

For example, if a borrower had fifteen years remaining in the original loan program and then was in income-based repayment for three years, the new term upon return to the original program would be twelve years.

5. Eligibility determinations. Under Sec. 82001(f)(1)(D) amending 20 USC 1098e(c), the Secretary shall establish procedures for "determining … the borrower's eligibility for income-based repayment, including the verification of a borrower's annual income and the annual amount due … and such other procedures as are necessary to effectively implement income-based repayment," and the Secretary is not limited to procedures specified elsewhere (see OBBBA, p. 277). Here the department should carefully consider and close all loopholes that a loan forgiveness–prone future administration might use to minimize a borrower's official income.

For example, a forgiveness–prone future administration has an incentive not to collect or to delay the collection of updated income information from a borrower on the assumption that income tends to rise from one year to the next. The department should require itself (and loan servicers and other contractors as appropriate) to pursue timely, updated information from borrowers and federal sources and should require every reasonable effort to procure timely information, prohibiting borrowers and all other parties from delaying income verification. All parties may use alternative sources of income information (for example, state tax forms) when

IRS data is not timely available. Perhaps the Secretary and servicers may also infer income on the basis of other indirect data and then make corrections up or down once accurate information is received.

Overall, the scenario to avoid is one in which the department delays income verification for an unreasonable period and thereby uses systemically inaccurate data for calculating loan payments. What is proposed here would be consistent with (c)(2)(A)(iii) requiring the Secretary to "provide the borrower with an opportunity to update the return information so disclosed before the determination of the repayment obligation of the borrower" (OBBBA, p. 277).

6. <u>Defining terms such as "portable" and "stackable"; federalism; program duration.</u>
Sec. 83002(b), amending 20 USC 1088(b), does not define "a recognized postsecondary credential that is stackable and portable across more than one employer" (OBBBA, p. 281). Here the department should leave such definitions, and thereby the determinations of eligibility, to each state's governor as described in (b)(3)(A)(iii) of this section. If a governor determines that a credential is recognized, stackable, and portable, or otherwise eligible, that determination should be sufficient for the department.

As the economy continues to change, a decentralized approach here—not defining terms—is best. Broadly, the department should refrain from issuing any regulations that would limit the role of a governor in the Workforce Pell Grant program, keeping as much authority as possible at the state level, consistent with this administration's policy of returning the department's authority to the states.

If the department does choose to regulate this program, one possible flexibility is to specify that the minimum of 150 clock hours over eight weeks need not be continuous. For example, a program's eight weeks might be one week per month for eight months. Such flexibility would promote innovation and flexibility for students/workers, educators, and employers.

Here are two more general comments:

7. <u>Waivers and role of accreditors in Pell programs.</u> Even if a program is new or has only been existence for one year, the department should permit an eligible institution's accreditor to vouch for the quality of the program for the purposes of eligibility for Prison Pell or Workforce Pell by means of a letter to the department. Such a waiver or determination should be available for an institution to the maximum extent allowed by law, since the economy moves much more quickly than an agency can keep up.

8. <u>Distance education.</u> To the extent the department can revisit 34 CFR § 668.14(b)(32) and other regulations relating to distance education in the present rulemaking, the department should reconsider the treatment of distance education in relation to other modes of education. It is not clear why distance education should be treated differently or worse than other modes

of education; consider rescinding 34 CFR § 668.14(b)(32) and any regulations regarding distance education that are not clearly necessary under relevant laws.

Thank you for the opportunity to comment. I would be delighted to answer any questions about this comment.

/s/

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