

# Federal Policy Digest

January 7, 2026

## Negotiated Rulemaking Committee Discusses New Earnings Accountability Framework (1.7.26)

The AHEAD (Accountability in Higher Education and Access through Demand-driven Workforce Pell) Committee is meeting this week to discuss earnings accountability for postsecondary programs, as necessitated under provisions in OBBBA. Based on the accountability metric included in the Department of Education's [policy proposal](#) last week, undergraduate programs must show that their graduates earn more than a working adult with a high school degree; graduate programs must show that their graduates earn more than those with a baccalaureate degree. In its policy proposal, the ED also indicated that it intends to revise existing Financial Value Transparency and Gainful Employment regulations to align with OBBBA requirements. Topics [discussed](#) thus far during negotiated rulemaking this week include: the ED's proposal to maintain Pell Grant eligibility for programs that fail the accountability metric; the ED's proposal to exclude the debt-to-earnings test from the new accountability metric; and concerns about the disproportionate impacts of the accountability metric and its ability to assess vastly different programs.

**Implications/next steps:** The AHEAD committee will continue meeting through January 9, and all materials distributed for the week of January 5-9 can be accessed on the ED's webpage, [Negotiated Rulemaking for Higher Education 2025](#). Decisions related to earnings accountability carry significant consequences for institutions, as programs that fail to meet the earnings threshold could lose access to federal student loans. According to an [analysis](#) by Robert Kelchen of the ED's new program-level performance data, 5.9% of the nearly 50K programs with sufficient program-level earnings data fall below the earnings threshold. Failure rates vary by sector and credential level, as shown below:

	Public	Private nonprofit	For-profit
Undergrad certificate	13.3%	28.5%	55.8%
Associate	5.9%	8.2%	12.0%
Bachelor's	1%	1.4%	3.8%
Post-bacc certificate	N/A	N/A	N/A
Master's	3.1%	6.2%	12.0%
Graduate certificate	3.8%	3.9%	5.3%
First professional degree	0.0%	3.0%	31.3%
Doctoral	0.2%	2.2%	0.0%

*The Chronicle* has also [published](#) a searchable table identifying associate and bachelor's programs at risk of failing the earnings test, according to Kelchen's analysis. Furthermore, his analysis indicates that certain fields of study are disproportionately affected: Personal/Culinary Services have a 78.5% failure rate, Visual/Performing Arts have a 17.7% failure rate, and Health has a 8.3% failure rate.

## Trump Administration Restarts Student Loan Wage Garnishments (1.7.26)

The federal government is [resuming](#) wage garnishment for defaulted federal student loans for the first time since pandemic-era collection pauses took effect in 2020. Wage garnishment allows the federal government to require employers to withhold a portion of an employee's paycheck and redirect it to the Department of Education to repay outstanding student loan debt. Millions of borrowers are currently in [default](#), which occurs after 270 days of missed payments.

***Implications/next steps:***

According to the Department of Education, approximately 1,000 borrowers who have not resumed payments will begin receiving 30-day wage garnishment notices this week, with additional notices scheduled to be sent in the coming months. Once the 30-day notice period expires, employers may withhold up to 15 percent of a borrower's disposable income—after taxes and certain deductions—to apply toward loan repayment. For affected borrowers, garnishment may significantly reduce take-home pay and strain the ability to cover basic expenses such as rent and groceries.

## **Federal Appeals Court Blocks NIH's 15% Indirect Cost Cap (1.5.26)**

In February 2025, the National Institutes of Health attempted to cap reimbursements for indirect research costs at 15%. In response, U.S. District Judge Angel Kelley issued a permanent injunction to block the 15% cap. Kelley's ruling marked the first successful legal challenge to the Trump administration's efforts to limit indirect cost recovery, prompting the administration to appeal. This week, the 1<sup>st</sup> U.S. Circuit Court of Appeals unanimously upheld the district court's decision, concluding that NIH violated statutory law as well as its own regulatory procedures in implementing the proposed cap.

***Implications/next steps:*** The NIH has not yet indicated whether it will appeal the ruling further. For research universities, the decision provides significant relief. A [New York Times](#) analysis earlier this year estimated that a 15% cap would cost the top NIH-funded research universities more than \$100M annually. More broadly, the cap would have jeopardized medical research and biomedical science by eliminating billions of dollars used to support essential infrastructure, including laboratory operations and administrative support. The Trump administration has also attempted to cap indirect research costs at other federal agencies, but those attempts have not been successful.

## **NIH Reaches Settlement with 16 States Over Delayed Reviews of Research Grant Applications (12.29.25)**

The National Institutes of Health (NIH) and attorneys general from 16 states have reached a settlement over the delayed reviews of research grant applications. The settlement covers over 5,000 grants and potentially billions of dollars in research funding for universities and other research institutions. The research grant delays and cancellations stemmed from an internal NIH directive to redirect funding away from research related to DEI and other topics misaligned with the administration's priorities. Under the settlement, the NIH is to resume the "usual process" for reviewing grants, without applying the anti-DEI directive. The Trump administration defendants did not concede the merits of the plaintiffs' claims or admit liability, and the plaintiffs agreed to drop some of their claims against the NIH.

***Implications/next steps:*** The NIH will review applications it previously withdrew or denied under the directive and issue decisions by January 12, April 14, or July 31. State attorneys general praised the settlement as restoring a pathway for federally funded medical and public health research. The settlement follows a June ruling by U.S. District Judge William Young, who found the NIH's anti-DEI directive unlawful. A federal appeals court is scheduled to hear arguments related to that ruling on January 6.

## **Federal Court Upholds Trump Administration's Authority to Impose \$100K H-1B Fee (12.23.25)**

In September 2023, the Trump administration announced a new \$100K H-1B fee, which the US Citizenship and Immigration Services clarified applies to new petitions filed for workers outside the US who do not currently hold a valid H-1B visa. Three separate lawsuits were filed in response to this pronouncement. In the first case, filed by the Association of American Universities and the Chamber of Commerce, a federal district court ruled against the AAU and Chamber. The court found that the Trump administration has the authority to impose the \$100K fee under the Immigration and Nationality Act and that the DHS and State Department did not act "arbitrarily and capriciously" in implementing the proclamation. While acknowledging the economic and research contributions of H-1B workers, the judge concluded that the fee was justified as a response to perceived abuses within the H-1B program.

***Implications/next steps:*** Following the court's decision, the AAU and the Chamber filed a notice of appeal on December 29. Employers have previously warned that the H-1B fee could disrupt hiring pipelines in higher education, technology, and healthcare. Because the fee applies primarily to new hires

recruited from abroad, institutions attempting to expand globally or fill specialized roles from abroad are likely to be most affected by the ruling.

## **Department of Justice Declares Certain Education Grant Programs Unlawful Due to Race-Based Criteria (12.2.25)**

The Department of Justice released a [legal memo](#) concluding that several Department of Education grant programs are unlawful because they rely on race-based eligibility criteria, noting that their continuance would be unconstitutional but that their funding could be redirected. In particular, the DOJ [found](#) the following grant programs to be unconstitutional:

- Grants for Hispanic-serving institutions
- Grants for Alaska Native and native-Hawaiian-serving institutions
- Grants for Native American-serving, nontribal institutions
- Grants for community-based organizations providing career and technical education for Native-Hawaiian students
- Formula-based grants for predominantly-Black institutions

The memo further indicated that the following programs could continue if race-based criteria were removed from eligibility requirements:

- The Minority Science and Engineering Improvement Program
- The Ronald E. McNair Postbaccalaureate Achievement Program
- Competitive grant programs for predominantly-Black institutions
- Student Services Support Program

***Implications/next steps:*** Prior to the DOJ's memo, the ED had already canceled discretionary grants for minority-serving institutions, eliminating approximately \$350M in funding. The ED still disbursed \$132M in congressionally mandated grant funding. Secretary McMahon released a [statement](#) in December noting her agreement with the DOJ's memo.