THE Cardinal Newman SOCIETY

Promoting and Defending Faithful Catholic Education

May 20, 2026

Dr. David Barker
Assistant Secretary
Office of Postsecondary Education
United States Department of Education
400 Constitution Avenue, S.W.
Washington, DC 20202
Via regulations.gov

Re: Comment on "Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability," 91 FR 21088 (April 20, 2026); Docket ID ED-2026-OPE-0100; RIN 1840-AE06

Dear Dr. Barker:

The Cardinal Newman Society submits this comment regarding the Department of Education Office of Postsecondary Education's Notice of Proposed Rulemaking entitled, "Accountability in Higher Education and Access Through Demand-Driven Workforce Pell: Student Tuition and Transparency System (STATS) and Earnings Accountability," 91 FR 21088, published in the Federal Register on April 20, 2026.

The Cardinal Newman Society evaluates, recognizes, and promotes faithful Catholic schools, colleges, graduate programs, and home and school curriculum providers that meet high stands of fidelity to Catholic teaching and formation of students in the light of our Catholic faith, without compromise to Catholic beliefs or morals. Our Newman Guide is the hallmark of faithful Catholic education, helping families find education that meets our high standards of fidelity and formation. Our Newman Guide Network brings together leaders in faithful Catholic education for meaningful collaboration in support of their Catholic mission. Our subsidiary organization, National Association of Private Catholic and Independent Schools (NAPCIS), accredits schools that are faithful to their Catholic mission.

Our comments are primarily focused on protecting the access of students choosing ministry-oriented degree programs in Catholic colleges and graduate schools.

A. Background

On July 4, 2025, President Trump signed H.R. 1, the One Big Beautiful Bill Act (OBBB). Section 84001 of the Act amended section 454 of the Higher Education Act, which governs agreements between institutions of higher education and the Department of Education regarding participation in the William D. Ford Federal Direct Loan Program. The Act added a subsection (c) to section 454 entitled, "[i]neligibility for certain programs based on low earning outcomes," which has come to be called the "Do No Harm" provision. *See* 20 U.S.C. § 1087d(c).

Under the Do No Harm (DNH) provision, the Department will deny direct loans to students in "low-earning outcome programs." To determine whether a program has "low-earning outcomes," the Secretary of Education compares the median earnings of its graduates with the median earnings of a specified subset of the working adult population. *See* 20 U.S.C. § 1087d(c)(2).

Following negotiated rulemaking, on April 20, the Office of Postsecondary Education published a Notice of Proposed Rulemaking setting forth proposed regulations that, among other things, implement OBBB's changes to HEA section 454. 91 FR at 21198-21205; *see especially id.* at 21203 (to be codified at 34 C.F.R. § 668.603 (direct loan program ineligibility for low-earning outcome programs)).

The NPRM also adds a new standard of "administrative capability" under which an institution must demonstrate that "at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds are not from low-earning outcome programs." 91 FR at 21200 (to be codified at 34 C.F.R. § 668.16(t)).

If an institution fails to make such a demonstration in two out of any three consecutive award years, its low-earning outcome programs will also lose eligibility for Pell Grants and other forms of Title IV aid, and it will be placed on provisional status. 91 FR at 21200-21201 (to be codified at 34 C.F.R. § 668.14(h)(1)).

Presumably, if an institution continues to fail the new standard of administrative capability, it could lose its provisional status and become completely ineligible for any Title IV funding.

B. Comments

First, applying the DNH provision to ministry-oriented degree programs at faith-based institutions violates the rights under Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et seq.*, of students and institutions. Given this, we respectfully encourage the Department to exempt those programs from the DNH

provision so that students and schools are able to continue exercising their religion without undue and insufficiently justified government interference.

Second, the proposed new "administrative capability" requirement, *see* 91 FR at 21200 (to be codified at 34 C.F.R. § 668.16(t)), not only exacerbates the legally impermissible burden on religious exercise but also exceeds the Department's authority under the Administrative Procedure Act. It should therefore be removed from the final rule.

1. *The Religious Freedom Restoration Act requires an exemption from the DNH provision for religion-focused degree programs at faith-based institutions.*

Applying the DNH provision and its proposed implementing regulations to ministry-oriented degree programs at faith-based institutions of higher education substantially burdens the religious exercise of both institutions and students. In Catholic colleges and graduate schools, such degree programs include Theology, Religious Studies, Catholic Education, Church Administration, Catholic Counseling, Catholic Social Work, Liturgical Music, Sacred Arts, and other programs intended to prepare a significant portion of their students for religious vocations or ministerial positions in Catholic schools, colleges, parishes, dioceses, and other religious apostolates.

a. **The substantial burden on religious exercise: in general**

During negotiated rulemaking, the Department assessed the likely impact of the DNH provision, including on various programs of study. That assessment showed that 53.3% of HEA Title IV students in bachelor's degree programs and 89.4% of students in master's degree programs in Religion/Religious studies would lose their direct loans. A large percentage of these students are training at faith-based institutions for ministerial careers, including religious vocations, theology, teaching in faith-based schools and colleges, missionary work, and faith-centered counseling and social ministry.

The preamble to the proposed rule confirms that application of the DNH test will harm religious institutions and their students. For example, the preamble states that the Department found that "HBCUs, *religiously affiliated colleges*, and foreign institutions will be more negatively impacted by the proposed regulation relative to the current regulation." 91 FR at 21145 (emphasis added).

The preamble also states that "approximately five times as many students are enrolled in Religious Studies undergraduate programs that are expected to fail under the proposed regulation relative to the share of these students attending

Religious Studies programs that would fail under the current regulations." *Id.* at 21154. It also declares that "[u]ndergraduate programs in Religious Studies are also estimated to have a sizeable loss in title IV, HEA funds." *Id. See also id.* at 21160 (disproportionate impact on students in Religious Studies programs); *id.* (high rates of program closure likely to occur).

There is no doubt that these effects interfere with religious exercise. When students study and train for religious vocations and other ministerial careers, they are exercising their religion. When institutions offer and execute such courses of study, they are exercising their religion.

b. The substantial burden on religious exercise: Newman Guide Recommended colleges and graduate programs

The DNH provision will substantially burden religious exercise particularly at faithfully Catholic colleges and graduate programs recognized in The Newman Guide for their strong devotion to their Catholic mission, and it will substantially burden the religious exercise of their students. For faithful Catholic colleges and graduate schools, the DNH provision and its implementing regulations will not survive strict scrutiny and thus violate RFRA.

If a federal government policy or practice substantially burdens religious exercise, that policy or practice is illegal unless the government proves that it is the least restrictive means of furthering a compelling governmental interest. *See* 42 U.S.C. § 2000bb-1. The DNH provision is not the least restrictive means of furthering a compelling governmental interest. Therefore, the Department should exercise its obligations under RFRA and create an exemption for ministry-oriented degree programs at faith-based institutions.

Congress and the Department have identified a number of interests the DNH provision allegedly advances. The preamble to the NPRM states that the proposed regulations "would ensure program integrity and protect students from low-earning outcomes, aligning with Congressional objectives for higher education oversight." 91 FR at 21088. The preamble declares that the proposed regulations will "aim to incentivize institutions in every sector of higher education to offer programs that deliver economic value" and "protect taxpayers and students through stricter oversight." *Id.*

The preamble further states that "[s]tudents will also benefit in cases where the proposed regulation prevents them from attending low-earning and high-cost degree programs." *Id.* at 21089. Another objective is to ensure that students "repay their loans." *Id.* at 21095.

It is clear that the primary purposes of the Do No Harm provision are (1) to push institutions to shut down degree programs whose graduates do not earn "enough money"; and (2) to pressure students to abandon such degree programs and instead enter fields of study that are likely to result in higher earnings.

It is difficult to argue that achieving these goals in the context of ministry training programs furthers a compelling governmental interest. It certainly harms ministry-oriented students, faith-based higher education, and any religion that relies on ministry-oriented training.

First, those studying to serve in religious vocations and other ministerial careers are rarely motivated by the prospect of generous compensation. As a general matter, they are not surprised by the relatively modest compensation clergy and other religious workers receive. They are instead motivated by obedience to God's calling, by an inspiration to evangelize and teach religion, and by a desire to love and serve their neighbors. This is not a scenario where it is necessary for the government to step in and protect individuals from their own choices.

Second, religious employment—especially service as clergy—simply requires a level of study and training that is normally associated with higher-paying professions. For example, those aspiring to become Catholic priests or theologians often must master Latin and Greek, systematic theology, Church history, and other complex subjects in order to qualify for their chosen profession. Such training is necessary, even if their resulting employment is not particularly lucrative.

Third, religious congregations and communities more broadly benefit from a steady supply of well-trained religious workers. Application of the DNH provision to ministry-oriented programs at faith-based institutions will either diminish the number of available religious workers, reduce the number of adequately trained pastors, or both. The fact that individuals who are financially unable to train for faith-based jobs might pursue different degrees resulting in higher paying jobs does not ameliorate the real social costs the DNH provision will impose.

Given this, it is difficult to conclude that the substantial burdens the DNH provision and its implementing regulations will impose on religious exercise are legally justified under RFRA. Accordingly, we respectfully request that the Department craft an adequate religious exemption.

2. *The proposed new "administrative capability" standard exceeds the Department's authority and exacerbates religious liberty concerns.*

As noted above, under the proposed new "administrative capability" standard, an institution must demonstrate that "at least half of the institution's recipients of title IV, HEA funds and at least half of the institution's total title IV, HEA funds

are not from low-earning outcome programs." 91 FR at 21200 (to be codified at 34 C.F.R. § 668.16(t)).

If an institution fails to make such a demonstration, its low-earning outcome programs will also lose eligibility for Pell Grants and other forms of Title IV aid. 91 FR at 21199-21200 (to be codified at 34 C.F.R. § 668.14(h)(1)). The institution will also be put on provisional status. *See id.* Presumably, if an institution continues to fail the new standard of administrative capability, it could lose its provisional status and become completely ineligible for any Title IV funding.

In our view, this proposal exceeds the Department's authority and should therefore be removed from the final rule.

The proposed new administrative capability requirement is obviously neither required nor justified by Congress's addition of the DNH provision, which pertains exclusively to the Direct Loan Program. OBBB section 84001's amendment to HEA section 454 reveals Congress's intention that low-earning outcome programs only lose eligibility for direct loans, not Pell Grants and other forms of Title IV aid.

Stripping programs—and potentially entire institutions—of all Title IV aid exacerbates the proposed rule's burden on religious exercise. Faith-based programs and institutions are poised to lose *all* forms of Title IV aid because graduates of religious degree programs earn relatively modest incomes.

This puts addition pressure on institutions to stop offering ministry-oriented degree programs—a form of religious exercise. Denying any form of Title IV aid to students who hope to train for religious vocations also pressures them to abandon this manner of exercising their religion, which for Catholics is a threat to the Mass, which is essential to living as Catholic. This imposition of a substantial burden on religious exercise is not the least restrictive means of furthering a compelling governmental interest and thus violates RFRA. For this additional reason, tThe proposed new administrative capability requirement should be eliminated from the final rule.

Thank you in advance for your consideration of these comments.

Very truly yours,

Patrick Reilly

Patrick J. Reilly
President and Founder