

MEMORANDUM

To: U.S. Department of Education

From: David J. Socolow, alternate negotiator for State Higher Education Executive Officers, State Authorizing Agencies, and/or State Regulators of Institutions of Higher Education and/or Loan Servicers

Date: February 1, 2022

Re: Ability to Benefit Proposal

In 2014, Congress enacted a new iteration of the Ability to Benefit (ATB) provision in section 484(d) of the Higher Education Act (HEA), which enables students who are not high school graduates to become eligible for HEA title IV student aid under certain narrowly-tailored circumstances. This version of ATB is restricted to students participating in eligible career pathway programs because Congress recognized that certain adult students who lack a high school diploma or its equivalent can achieve career and educational success through a robust, evidence-based [Integrated Education and Training \(IET\) program](#) that is coordinated with a career pathway program.

Congress clearly intended the post-2014 ATB provision to be implemented through partnerships between the workforce development system and title IV institutions, as evident by the enactment of the identical seven-part statutory definition of a “Career Pathway” in both HEA section 484(d)(2) and section 3 of the Workforce Innovation and Opportunity Act of 2014 (WIOA). As detailed in a recent [IES research and practice guide, IET programs](#) (such as [I-BEST](#)) work within a career pathway by coordinating WIOA title II adult basic education through dual enrollment and contextualization with occupation-specific, for-credit programs offered by an institution of higher education participating in HEA title IV. In 2018, Congress further reinforced the intent for career pathways to build alignment through partnerships among multiple systems, when the same definition of career pathways from HEA and WIOA was added to the Strengthening Career and Technical Education for the 21st Century Act (Perkins V).

The Department’s regulations should honor the intent of the post-2014 definition of ATB by promoting contextualized and coordinated WIOA title II and title IV coursework within an IET, rather than stand-alone components of title IV programs and separate literacy and numeracy education. The Department’s approval of eligible career pathways for the purposes of ATB title IV eligibility should enable adults to gain basic skills through career pathway-aligned methods connected to their career training, by embedding WIOA title II literacy and numeracy instruction into the occupational skills taught by a title IV training component of an IET program. Making these types of robust IET programs a requirement for ATB will help many low-income adult students without a high school diploma or its equivalent receive Pell Grants to support effective training that will boost their career prospects.

I applaud the Department’s proposal to “eliminate the requirement that first-time applicants for the State process must demonstrate past performance metrics and clarify quality controls for the initial approval period.” By approving State processes for an initial two-year trial period, the Department can foster State innovations that implement robust career pathways that incorporate evidence-based IET programs to give adults without a high school diploma a strong chance of success other than by passing an ATB test or finding another way to pay for 6 credit hours or equivalent coursework. While it would be appropriate to cap the number of students served in an initial two-year trial period, the Department

should encourage innovation and experimentation; I urge the Department not to establish a limit on the number of different career pathway programs that may be included in the initial application.

In the same vein, the initial quality metric for the first two-year approval of a State process should be the Department's stringent evaluation of the degree of fidelity to an evidence-based IET model that is exhibited by the career pathway programs included in a State's application. Such an evaluation would enable the Department to determine the "effectiveness" of any new programs that have not yet been implemented, in keeping with the requirement of HEA section 484(d)(1)(A)(ii): "In determining whether to approve or disapprove such process, the Secretary shall take into account the effectiveness of such process in enabling students without secondary school diplomas or the equivalent thereof to benefit from the instruction offered by institutions utilizing such process."

To support these goals, please accept the following suggestions for revising and improving the Department's proposed ATB regulation, summarized below and shown in the redline that follows:

1. Revise the ATB State Process approval language in proposed section 668.156, to clearly cross-reference section 668.157, to make the Department's approval of a State Process contingent on the Department finding that the career pathway programs included in the State Process actually meet all the criteria for an eligible career pathway program (ECPP) as defined in section 668.157 (as revised per the items below). The Department should determine that every one of the Career Pathway programs in a State process complies with the definition of ECPP in 668.157, as a condition of giving a State a full 5-year approval of their State ATB process.
2. For the purpose of ATB title IV eligibility, require that an eligible career pathway program (ECPP) must have instruction delivered through a Department-defined IET. To provide greater clarity, the suggestions in redline below recommend including a cross-reference to the Department's existing WIOA title II regulatory definition of an IET (34 CFR 463.35). For instance, the Department should not approve a career pathway program for ATB purposes if its title IV educational component is disconnected from a separate high school equivalency class. As a practical matter, it would be ideal for the Office of Postsecondary Education to work with the Office of Career, Technical, and Adult Education to conduct the Department's review and approval of ECPPs for ATB eligibility purposes.
3. Require authentic collaboration between title IV institutions and the WIOA title II adult education and career and technical education systems. To reinforce this requirement, each ATB-eligible ECPP should be required to show that it prepares individuals for an in-demand occupation that is defined on a WIOA or Perkins plan. The Department should not allow title IV institutions to simply assert that their program prepares students for "demand occupations" based on their own separate research. The Department should not approve as an ECPP any "one-off" programs that are not aligned with the WIOA title II and Perkins CTE systems.
4. Clarify in paragraph (b) at the end of section 668.157 that the Department shall officially verify that each career pathway program meets all the requirements of the WIOA title II & HEA title IV Partnership (including the IET requirement and alignment with state workforce or Perkins CTE plans).

Suggested changes to the Department’s proposed ATB regulations

§ 668.156 Approved State Process.

(a)

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(2) A State’s application for approval of its State process must include –

(i) The institutions located in the State included in the proposed process, which need not be all of the institutions located in the State;

(ii) The requirement that participating institutions must meet to offer eligible career pathway programs through the State process;

(iii) a certification that, as of the date of the application, each proposed career pathway program intended for use through the State process constitutes an “eligible career pathway program” under § ~~668.2~~ 668.157 of this part; and

(iv) The criteria used to determine student eligibility for participation in the State process.

(3) Before approving the State process, the Secretary will verify that a sample of the proposed eligible career pathway programs comply with the definition of an “eligible career pathway program” under § ~~668.2~~ 668.157 of this part.

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(e) After the initial two-year period described two-year period described in paragraph (b) of this section, the State must reapply for continued participation and, in its application –

(1) Demonstrate that the students it admits under that process have a success rate as determined under paragraph (f) of this section that is within 95 percent of the success rate of students with high school diplomas;

(2) Demonstrate that the State’s process continues to satisfy the requirements in paragraphs (a), (c), and (d) of this section;

(3) Demonstrate that every program included in the State’s process complies with the definition of an “eligible career pathway program” under § 668.157 of this part; and

(34) Report information to the Department on the enrollment and success of participating students by eligible career pathway program and by race, gender, age, economic circumstances, and educational attainment, to the extent available.

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Commented [DS1]: The federal review of ECPPs for ATB should be based on the more granular language in 668.157, including the proposed revisions to that section below

Commented [DS2]: Note: ED is proposing to review the eligibility of only a sample of the CP programs included in the State process for the initial 2-year approval. If ED conducts only this limited review at the outset, as noted below, ED should subsequently validate the eligibility of all of the CP programs included in the State process when considering an application for a State process to receive 5-year approval of continued participation pursuant to proposed 688.156(e) and (i).

Commented [DS3]: The federal review of ECPPs for ATB purposes should be based on the more precise language in 668.157, including the proposed revisions to that section below

Commented [DS4]: The initial 2-year approval in 668.156(a)(3) merely requires ED validation of eligibility of “a sample” of the proposed eligible career pathway programs included in the State process. When considering a subsequent 5-year continued approval based on the application submitted pursuant to proposed 668.156(e), the Department should determine whether ALL of the CP programs included in the State process are in compliance with the definition of an “eligible career pathway program” under § 668.157.

Commented [DS5]: The success rate metrics should be disaggregated by ECPP. This will allow calculations of whether some ECPPs included in the State process do achieve the success rate standard under (e)(1), even if other career pathway programs do not meet the standard. Could the Department please clarify whether the intent is to completely “withdraw approval of a State process” under 668.156(j)(1) if even only one of the ECPPs fails the success rate metric? Would the Department consider instead providing partial approval of a State process for the 5-year continuation period with respect ONLY to those ECPPs that DO meet the success rate measure?

§ 668.157 Eligible Career Pathway Program.

(a) An institution demonstrates to the Secretary that a student is enrolled in an eligible career pathway program, as required under 668.156(a)(3) of this part, by documenting a partnership between adult education and a postsecondary institution providing that --

(1) The student has enrolled in or is receiving both--

(i) An eligible postsecondary program as defined in § 668.8 of this part; and

(ii) WIOA Title II adult education and services ~~Coursework, training, or other support services~~ that enable an individual to attain a high school diploma or its recognized equivalent.

(2) The program aligns with the skill needs of industries in the State or regional labor market in which the institution is located, based on ~~research the institution has conducted, including~~ the occupations identified as having the greatest hiring demand in the State or regional labor market as documented in--

~~(i) Government reports identifying occupations with the greatest hiring demand in the State or regional labor market~~

~~(i) the State Plan required under section 102(b)(1)(B) of the Workforce Innovation and Opportunity Act; or~~

~~(ii) the comprehensive local needs assessments required under section 135(c) of the Carl D. Perkins Career and Technical Education Act; or~~

~~(ii) Surveys, interviews, meetings, or other information obtained by the institution regarding the hiring needs of employers in the State or regional labor market.~~

(3) The skill needs described in paragraph (a)(2) of this section align with the specific coursework and postsecondary credential provided by the postsecondary program or other required training;

(4) The program provides career counseling services that assist students in obtaining jobs aligned with skill needs described in paragraph (a)(2) of this section, and ~~identifying~~ identifies the individuals providing the career counseling services;

(5) The WIOA title II adult education ~~described in paragraph (a)(1)(ii) of this section~~ is offered through an integrated education and training program as defined by the Department under 29 U.S.C. 3272(11) and 34 CFR 463.35, which provides coordinated education and services concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(6) The program is designed to lead to a valid high school diploma as defined in § 668.16(p) of this part or its recognized equivalent.

(b) For eligible career pathway programs that do not enroll students through a State process as defined in § 668.156 of this part, the Department will verify that the partnership between adult education and the postsecondary institution meets the criteria in paragraph (a) of this section to determine ~~verify~~ the eligibility of eligible career pathway programs for title IV, HEA program purposes. The Secretary provides an institution with the opportunity to appeal any adverse eligibility decision.