



# National Coalition for Literacy

19 June 2023

Mr. Aaron Washington  
Office of Postsecondary Education  
U.S. Department of Education  
400 Maryland Avenue SW, 5th Floor  
Washington, DC 20202

RE: Docket ID ED-2023-OPE-0089

Dear Mr. Washington:

The National Coalition for Literacy (NCL) appreciates the opportunity to provide comments on the notice of proposed rulemaking on promoting transparency, competence, stability, and effective outcomes for students in the provision of postsecondary education, as posted by the Department of Education's Office of Postsecondary Education on May 19, 2023. NCL's comments relate specifically to the proposed rules related to Ability to Benefit (ATB) (§§ 668.2, 668.156, and 668.157).

NCL is an alliance of the leading national and regional organizations dedicated to advancing adult education, workforce development, family literacy, and English language acquisition in the United States. Through collaborative efforts with other advocacy organizations and individuals, NCL ensures that leaders and legislators at the national level make informed decisions about policies, regulations, and funding for adult education and family literacy. NCL envisions a nation in which all adults are able to fulfill their potential and meet their goals through access to high quality adult education and literacy services provided by an integrated and well-developed system.

The adults and communities served by NCL members are those that experience the inequities inherent in U.S. society most deeply because they have been left behind by the educational system. Factors beyond their control, including poverty, undiagnosed or unsupported learning differences, migration, and lack of access to schooling have resulted in limited or interrupted formal education, with the result that these adults' literacy, numeracy, and digital skills are not sufficient to permit them to engage fully in supporting their families, participating in the workforce, or contributing to their communities.

Ability to Benefit provides one critical lever for mitigating these educational inequities by providing access to Higher Education Act (HEA) Title IV funding to support participation in an eligible career pathway program for adults who do not have a high school diploma or recognized equivalent and who meet the eligibility requirement. These adults, many of whom have families to support and work multiple low-wage jobs, face major financial and time-related challenges to

participation in adult education and career training. ATB can and should be an essential tool in overcoming those barriers, serving to re-engage adults as learners and provide more equitable access to postsecondary education.

## **§ 668.2, General Definitions**

NCL commends the proposed inclusion of the “eligible career pathway program” definition in section 668.2. However, we strongly encourage ED to include the full definition to ensure alignment across the three federal laws that support adult basic and postsecondary education. Public Law 114-113 amended the definition of an eligible career pathway program for purposes of Title IV aid eligibility under section 484(d)(2) of the HEA to align with the definition of career pathway in section 3 of the Workforce Innovation and Opportunity Act (WIOA) (29 U.S.C. 3102(7)). Subsequently, the Strengthening Career and Technical Education for the 21st Century Act (Perkins V) incorporated the same definition. This alignment of the career pathway definition is not haphazard. It was the work of many education stakeholders who recognized that alignment of program models across WIOA Title II (AEFLA), Perkins V CTE, and HEA Title IV is fundamental to promoting the development of intentional adult career pathways.

We strongly urge ED to use the *exact* same definition in section 668.2, rather than excluding the statutory definition’s cross-reference to apprenticeship programs and thus creating a distinct definition. Current and past administrations have made record investments to create partnerships between HEA Title IV eligible postsecondary programs and recognized apprenticeships. If an HEA Title IV eligible program has established a partnership with a state or federal Department of Labor registered apprenticeship, that is an exemplary form of an adult career pathway program and should not be ignored simply because language for it does not exist elsewhere in part 668.

## **§ 668.156(b)(2), Approved State Process—Limitation to 25 Students or 1% of Enrollment at Each Participating Institution**

A primary restriction in the newly proposed rules for the State-defined process is the call to restrict ATB access to the greater of 25 students or 1.0% of the institution’s enrollment at each IHE named in a State’s plan. NCL believes that this cap will hamper innovation, restrict the impact of funding, and disincentivize the use of the State process option.

Of the three ways for adults who are not high school graduates to demonstrate eligibility for access to HEA Title IV aid under § 668.32 (achievement of a passing score on an independently administered test in accordance with subpart J of the student assistance general provisions; satisfactory completion of 225 clock hours or six semester, trimester, or quarter hours that are applicable toward a degree or certificate offered by the institution; or enrollment in an eligible institution that participates in a State “process” that is approved by the Secretary under subpart J of part 34), the State process option has the greatest potential for mitigating educational inequity because it encourages the provision of alternatives such as Integrated Education and Training (IET) that directly address the factors that inhibit participation in and completion of postsecondary education (see, for example, *A Brief History of Developmental Education Research*, <https://postsecondaryreadiness.org/research/history-developmental-education-reform/#ref1>). IET “provides adult education and literacy activities concurrently and

contextually with workforce preparation activities and workforce training for a specific occupation or occupational cluster for the purpose of educational and career advancement” (WIOA §203(11)). The IET program model builds on Knowles’ Four Principles of Andragogy (Kearsley, 2010), demonstrating clear connections between program content and adult learners’ goals and thus encouraging participation and completion.

The availability of the State process option in ATB has provided a powerful incentive for States to implement IET-type models (see, for example, Washington State’s Integrated Basic Education and Skills Training (I-BEST) programs [<https://www.sbctc.edu/colleges-staff/programs-services/i-best/>]) and for postsecondary institutions to participate in the State process. NCL believes that the proposed artificial cap on the number of participants in ATB will restrict ATB’s impact, inhibit participation in State processes by postsecondary institutions, and reduce the motivation of States and postsecondary institutions to develop innovative ways of providing educational opportunity for those who need it most.

ATB is an underutilized opportunity for adult learners to pursue a path to a postsecondary credential, and ED should promote, not stifle, its use. With ED support, the State process option can become THE mechanism for supporting State-defined adult career pathway strategies that leverage each State’s adult education and postsecondary systems.

#### **§ 668.156(e), Approved State Process—Disaggregated Data**

NCL wholeheartedly supports 668.156(e)’s requirement for States to report data about participating students in eligible career pathway programs disaggregated by race, gender, age, economic circumstances, and educational attainment, related to their enrollment and success. However, we strongly recommend also including linguistic background to this list in order to determine whether and how immigrants and refugees are served through ATB. Given that immigrants account for 15 percent of the total labor force, that over a quarter of all immigrants arrive in the United States with less than a high school diploma, and that 46.1 percent of all immigrants are termed Limited English Proficient, understanding how ATB is able to support new Americans is imperative for both their futures and the future of the labor market. NCL suggests including questions such as those identified in the U.S. Census Bureau’s American Community Survey: What other languages do they speak at home? How well do they self-report speaking English?

#### **§ 668.156(f), Approved State Process—Success Rate**

NCL applauds the Department for clarity on calculating the success rate of ATB participants with non-ATB participants “in the same program” and institution by institution (f)(1). This will provide the type of data states need to gauge the effectiveness of local career pathway program implementation.

NCL suggests strongly that the Department use the 75% comparison rate (j)(1) overall rather than using an 85% success rate initially (e)(1). The 75% rate is a more reasonable target that will help State entities promote the use of ATB through the State-defined process to the postsecondary institutions named in their State plan that might otherwise choose to continue using the credit hour or test options and so impede progress toward a State-led equity strategy.

## **§ 668.157(a), Eligible Career Pathway Program**

The most dramatic change in this rule is the inclusion of documentation requirements for an eligible career pathway program (ECP) and a yet-to-be defined ED submission approval process for these ECPs.

NCL strongly recommends that, whatever process is put into place to evaluate these programs for use of federal student aid through ATB, OCTAE—specifically, WIOA Title II and Perkins V, the two systems in which an adult career pathway student is dually enrolled—be central to the process. As noted, the federal definition of career pathway exists in WIOA and Perkins V legislation. These systems, not FSA, need to oversee the technical assistance and professional development needed to “authorize” eligible career pathway programs.

NCL supports the alignment of eligible career pathway programs with integrated education and training programs through inclusion in § 668.157(a)(1) of a reference to adult education and literacy activities as described in WIOA §463.30. This direct and documented connection to WIOA Title II (AEFLA) should give FSA the power it needs to shut down programs that do not provide adequate adult education to support adult high school diploma/equivalency completion and therefore do not meet the requirements for comprehensive adult career pathway programs.

In the proposed language NCL sees a nod to the IET definition in WIOA and a recognition that IET is indeed the career pathway education design and delivery strategy at the heart of the career pathway definition. However, having workforce preparation called out separately in this context (a)(1)(iii) is confusing, as unlike an HEA Title IV-eligible postsecondary education program (a)(1)(i) and a WIOA Title II AEFLA program (a)(1)(ii), workforce preparation is not a separate standalone system. In fact, workforce preparation is part of the definition of AEFLA activities (34 CFR § 463.30). NCL therefore recommends including HEA Title IV postsecondary programs and WIOA Title II AEFLA programs as the required partners in an ATB-eligible career pathway program, and then naming the IET definition (CFR § 463.35 What is integrated education and training?). This definition includes the simultaneous design and delivery of workforce training, including HEA Title IV-eligible programs, adult education as defined in WIOA Title II AEFLA, and workforce preparation as defined in WIOA.

Finally, in 668.157(a)(5), the use of “secondary education” should be clarified to NOT mean high school education, but rather adult education. NCL recommends using the term *adult education* here.

## **§ 668.157(b), Eligible Career Pathway Program—Verification for Eligible Career Pathway Programs That Enroll Students Outside of the State Process**

NCL is most concerned with this sentence in the proposed rules: “Under 668.157(b) we propose that, for career pathway programs that do not enroll students through a State process as defined in 668.156, the Secretary would verify the eligibility of eligible career pathway programs for title IV, HEA program purposes pursuant to proposed 668.157(a).”

NCL understands that ED needs to ensure that HEA Title IV funding supports effective career pathway programs for adults dually enrolled across adult education and postsecondary education.

We believe that ED’s intent in including this sentence is to give postsecondary institutions an alternative to participation in the State process, while still ensuring oversight of program quality and compliance with statutory requirements. However, we encourage ED to provide detail in the proposed rule about how the approval process between ED and a local postsecondary institution—that is, approval outside of the State system—would work. We suggest that ED outline, at a minimum, the following:

- Who will verify the eligibility of career pathway programs submitted by local partnerships? OCTAE, which oversees the AEFLA grants and Perkins grants to states? Or FSA, which oversees HEA disbursement? Or a partnership?
- When and how often will eligibility be documented and verified? At each enrollment period? On an annual basis? Or for two years and then five years (similar to the State process)?
- What can local partnerships expect in terms of the turnaround time for completion of the approval process by ED?
- How will ED ensure that sufficient funding and staff time will be designated for this labor-intensive process?

NCL believes that publishing the draft rule without further clarification around this verification process will surely reduce ATB use in the near term. Local partnerships will need to wait for procedural details to be developed and deployed. Once deployed, those processes will need to function quickly, because awaiting federal approval (or approval by default) is not an expedient process that can fit into the work of local and regionally responsive career pathway program development and implementation. NCL therefore recommends that ED delay publication of the rule until a more detailed articulation of this verification process can be included.

Thank you in advance for your thoughtful consideration of these comments and for your action in response to the points we have presented. Please address any inquiries related to this letter to me.

Sincerely,

*Deborah Kennedy*

Deborah Kennedy  
Executive Director  
202-364-1964