**M E M O R A N D U M**

**To:** David Walters, Alabama Adult Education State Director

**From:** Nick Moore, Director, Governor’s Office of Education and Workforce Transformation

**Date:** 8 March 2021

**Subject:** **Ability to Benefit (ATB)**

In December 2014, section 484(d) of the Higher Education Act of 1965, as amended (HEA), was changed to allow a student who does not have a high school diploma (or its recognized equivalent), or who did not complete a secondary school education in a homeschool setting, to be eligible for Title IV, HEA student assistance (Title IV aid) through one of the ability to benefit (ATB) alternatives, but only if the student is enrolled in an "eligible career pathway program.”[[1]](#footnote-1) Changes were also made to provide that students who first enrolled in any Title IV eligible postsecondary program on or after July 1, 2015, and who gained eligibility under one of the ATB alternatives for enrollment in an eligible career pathway program, would have their Federal Pell Grant award determined under alternative career pathway Pell Grant disbursement schedules. The Department provided guidance about these changes in Dear Colleague Letter GEN-15-09 published on May 22, 2015. ATB allows low-skilled individuals to access necessary workforce training and education that can help lift them out of poverty. It does so by allowing individuals without a high school diploma or equivalent to qualify for federal financial aid for postsecondary education when they participate in an eligible career pathway.[[2]](#footnote-2) On December 18, 2015, the President signed the Consolidated Appropriations Act of 2016 (Pub. L. 114-113), which amended section 401(b)(2)(A)(ii) of the HEA.[[3]](#footnote-3) Dear Colleague Letter GEN-16-09 describes those changes, including: (1) a revised definition of an eligible career pathway program; and (2) the elimination of the career pathway alternative Pell Grant disbursement schedules.[[4]](#footnote-4) Students who participate in an ATB alternative are now eligible for the full Pell award. Formerly, ATB students were eligible for a reduced award, which created an unfair and unprecedented two-tier Pell eligibility standard. The new ATB eligible career pathway definition mirrors the Workforce Innovation and Opportunity Act (WIOA)[[5]](#footnote-5), aligning the career pathway development and implementation underway for WIOA with access to federal financial aid. The previous standard required students to be “concurrently” enrolled in both adult education and postsecondary programs, and it did not well define what could be characterized as adult education. The new definition provides that the career pathway “enables an individual to attain” a high school diploma or equivalency. This clarifies the intent of ATB to support students without a high school diploma or equivalency in both secondary and postsecondary credential attainment.

To receive aid the student must apply for financial aid (FAFSA) and be Title IV eligible except for having earned a secondary credential. They must also prove ability to benefit by: (1) completing 6 college-level credits (or equivalent) applicable toward a postsecondary certificate or degree; or (2) passing a Department of Education approved exam; or (3) completing a state process approved by the Secretary of Education.[[6]](#footnote-6) The Consolidated Appropriations Act of 2021[[7]](#footnote-7) directed the Secretary of the U.S. Department of Education to issue guidance within 90 days to serves as a simple and clear resource for implementing Ability to Benefit at institutions of higher education (IHEs ).[[8]](#footnote-8) On January 15, 2021, the U.S. Department of Education Office of Postsecondary Education issued an Ability to Benefit frequently asked questions document.[[9]](#footnote-9) As noted in Dear Colleague Letter GEN-16-09, thedefinition of an eligible career pathway program aligns with how career pathway is defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(7)). See section 484(d)(2) of the HEA. Each institution must make its own determination of whether a program is an eligible career pathway program based on the statutory definition in section 484(d)(2) of the HEA, and as described in Dear Colleague Letter GEN-16-09. Institutions must document the basis for such a determination. An institution must maintain documentation that each of its eligible career pathway programs meet the requirements in the definition of an eligible career pathway program in section 484(d)(2) of the HEA and described in Dear Colleague Letter GEN-16-09. This includes documentation that the program includes workforce preparation activities and training for a specific occupation or occupational cluster and is aligned with the skill needs of the State or regional economy. Also, for each student who received Title IV aid for enrollment in an eligible career pathway program by successfully completing one of the ATB alternatives, the institution must document—

* Evidence that the student successfully completed one of the ATB alternatives; and
* That the student was enrolled in both the Title IV eligible postsecondary program component and the component that enables an individual to attain a high school diploma or its recognized equivalent.[[10]](#footnote-10)

It is the institution's responsibility to document its compliance with all applicable programmatic and student eligibility requirements. Each ATB student enrolled in an eligible career pathway program is not required to be concurrently pursuing both the postsecondary program and the component for attaining a high school diploma, or its recognized equivalent. Each eligible career pathway program must include a Title IV eligible postsecondary program component as defined under 34 CFR 668.8, and provide a component that enables an individual to attain a high school diploma or its recognized equivalent under 34 CFR 600.2. Therefore, the eligible career pathway program must be designed in such a way that students participate in both the Title IV eligible postsecondary program component and the component that enables an individual to attain a high school diploma or its recognized equivalent. However, the attainment of a postsecondary credential is not contingent on obtaining a high school diploma or its recognized equivalent. Similarly, a student who has met the requirements of the secondary component of the eligible career pathway may be awarded a high school diploma or its recognized equivalent even without completing the full program.[[11]](#footnote-11)

**The Alabama State-Prescribed Ability to Benefit Pathway**

Two states, Wisconsin and Washington, have received approval from the U.S. Department of Education for a state-prescribed ATB pathway. Alabama should seek approval for a state-prescribed ATB process that combined the industry-specific ready-to-work program, work-based learning, and co-enrollment in adult education that includes a competency-based high school completion program, which will meet WIOA integrated education and training (IET) requirements and meet all of the seven elements of a WIOA career pathway. Three percent of Alabamians aged 25-64 (73,989 people) have less than a 9th grade education, and 9.2 percent of Alabamians aged 25-64 (229,869 people) have more than a 9th grade education but do not have a high school diploma or equivalency.[[12]](#footnote-12) For the 12.2 percent of Alabamians aged 25-64 with no high school diploma, ATB is a critical pathway into the workforce. The Alabama Ability to Benefit Process must include the following:

* A list of community colleges that will participate;
* calculations and reporting of the rate of demonstrated success, as defined by the Department of Education (34 CFR §668.156), using established resources and reporting systems;
* required services that will be provided to ATB students by the participating institutions, including, but not limited to, (a) student orientation, (b) tutoring/academic support, (c) comprehensive academic assessments to determine each student’s existing capabilities, (d) assistance with achieving educational milestones and goals, (e) individualized academic counseling that incorporates an understanding of each student’s appropriate class level enrollment or career pathway entry points, and (f) faculty/counselor follow-up regarding each student’s classroom performance and their progress towards academic goals and/or program completion;
* Criteria for selecting candidates for enrollment in ATB, a summary of academic supports, program design standards, and data reporting standards; and
* Provisions for annually monitoring participating institutions, enforcing corrective actions with participating institutions to maintain state and federal compliance, and terminating participating institutions from ATB participation should there be continued non-compliance.

**Ability to Benefit Language in the Higher Education Act**

(d) Students who are not high school graduates.

(1) Student eligibility. In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 3, and 4 of part A and parts B, C, D, and E of this subchapter, the student shall meet the requirements of one of the following subparagraphs:

(A) The student is enrolled in an [eligible career pathway program](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-1420297003-460672621&term_occur=999&term_src=title:20:chapter:28:subchapter:IV:part:G:section:1091) and meets one of the following standards:

(i) The student shall take an independently administered examination and shall achieve a score, specified by the [Secretary](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-1264422296-300208764&term_occur=999&term_src=title:20:chapter:28:subchapter:IV:part:G:section:1091), demonstrating that such student can benefit from the education or training being offered. Such examination shall be approved by the [Secretary](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-1264422296-300208764&term_occur=999&term_src=title:20:chapter:28:subchapter:IV:part:G:section:1091) on the basis of compliance with such standards for development, administration, and scoring as the [Secretary](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-1264422296-300208764&term_occur=999&term_src=title:20:chapter:28:subchapter:IV:part:G:section:1091) may prescribe in regulations.

(ii) The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the [Secretary](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-1264422296-300208764&term_occur=999&term_src=title:20:chapter:28:subchapter:IV:part:G:section:1091) unless the [Secretary](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-1264422296-300208764&term_occur=999&term_src=title:20:chapter:28:subchapter:IV:part:G:section:1091) disapproves such process. In determining whether to approve or disapprove such process, the [Secretary](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-1264422296-300208764&term_occur=999&term_src=title:20:chapter:28:subchapter:IV:part:G:section:1091) shall take into account the effectiveness of such process in enabling students without [secondary school](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-431720352-300208765&term_occur=999&term_src=) diplomas or the equivalent thereof to benefit from the instruction offered by institutions utilizing such process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

(iii) The student shall be determined by the [institution of higher education](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-1170964312-1672254014&term_occur=999&term_src=) as having the ability to benefit from the education or training offered by the [institution of higher education](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-1170964312-1672254014&term_occur=999&term_src=) upon satisfactory completion of 6 credit hours or the equivalent coursework that are applicable toward a degree or certificate offered by the [institution of higher education](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-1170964312-1672254014&term_occur=999&term_src=).

(B) The student has completed a [secondary school](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-431720352-300208765&term_occur=999&term_src=) education in a home school setting that is treated as a home school or private school under State law.

(2) Eligible career pathway program. In this subsection, the term “[eligible career pathway program](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-1420297003-460672621&term_occur=999&term_src=title:20:chapter:28:subchapter:IV:part:G:section:1091)” means a program that combines rigorous and high-quality education, training, and other services that—

(A) aligns with the skill needs of industries in the economy of the State or regional economy involved;

(B) prepares an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the “[National Apprenticeship Act](https://www.law.cornell.edu/topn/fitzgerald_act_apprentice_labor)”; [50 Stat. 664](https://www.law.cornell.edu/rio/citation/50_Stat._664), chapter 663; [29 U.S.C. 50](https://www.law.cornell.edu/uscode/text/29/50) et seq.) (referred to individually in this chapter as an “apprenticeship”, except in section 171);

(C) includes counseling to support an individual in achieving the individual’s education and career goals;

(D) includes, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(E) organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(F) enables an individual to attain a [secondary school](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-431720352-300208765&term_occur=999&term_src=) diploma or its recognized equivalent, and at least 1 recognized postsecondary credential; and

(G) helps an individual enter or advance within a specific occupation or occupational cluster.[[13]](#footnote-13)

1. U.S. Department of Education, Office of Postsecondary Education, Dear Colleague Letter, “Changes to Title IV Eligibility for Students Without a Valid High School Diploma Who Are Enrolled in Eligible Career Pathway Programs,” 9 May 2016, accessed on 7 March 2021 <https://ifap.ed.gov/dear-colleague-letters/05-09-2016-gen-16-09-subject-changes-title-iv-eligibility-students-without>. [↑](#footnote-ref-1)
2. #  [Lauren Walizer](https://www.clasp.org/profile/lauren-walizer) and [Judy Mortrude](https://www.clasp.org/profile/judy-mortrude), Federal Guidance Explains How the Ability to Benefit Provision Aligns with a Career Pathway,” The Center for Law and Social Policy (CLASP), 19 May 2016, accessed on 7 March 2021 <https://www.clasp.org/blog/federal-guidance-explains-how-ability-benefit-provision-aligns-career-pathway>.

 [↑](#footnote-ref-2)
3. P.L. 114-113. [↑](#footnote-ref-3)
4. *Ibid.* [↑](#footnote-ref-4)
5. P.L. 113-128. [↑](#footnote-ref-5)
6. National Association of State Directors of Adult Education, Ability to Benefit, Issue Brief, October 2019, accessed on 7 March 2021 <http://nasdae.org/wp-content/uploads/2019/10/NASDAE-ATB-final.pdf>. [↑](#footnote-ref-6)
7. P.L. 116-159. [↑](#footnote-ref-7)
8. Tom Netting, “Consolidated Appropriations Act, 2021,” FAME, 22 December 2020, accessed on 7 March 2021 <https://www.fameinc.com/consolidated-appropriations-act-2021/>. [↑](#footnote-ref-8)
9. U.S. Department of Education, Office of Postsecondary Education, Ability to Benefit Frequently Asked Questions (EA ID: OPE Announcements-21-02), 15 January 2021, accessed on 7 March 2021 <https://ifap.ed.gov/electronic-announcements/011521AbilitytoBenefitFAQ>. [↑](#footnote-ref-9)
10. *Ibid.* [↑](#footnote-ref-10)
11. *Ibid.* [↑](#footnote-ref-11)
12. Lumina Foundation, *A Stronger Nation*, Alabama, February 2020, accessed on 7 March 2021 <https:// www.luminafoundation.org/stronger-nation/report/2020/#page/downloads>. [↑](#footnote-ref-12)
13. 20 USC § 1091 [↑](#footnote-ref-13)