



WORLD EDUCATION

RE: Docket ID ED-2023-OPE-0089

June 12, 2023

ATTN: Aaron Washington
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Avenue SW, 5th floor
Washington, DC 20202

Dear Mr. Washington:

World Education, Inc. (WEI) appreciates the opportunity to respond to the U.S. Department of Education's Office of Postsecondary Education notice of proposed rulemaking ([Docket ID ED-2023-OPE-0089](#)). Included in this letter are WEI's comments on the proposed rules regarding Ability to Benefit (ATB).

World Education's [National College Transition Network](#) actively supports several national state and local initiatives that are implementing adult career pathway programs through leveraging the ATB provision of the Higher Education Act (HEA). These partnerships, including [A2B4Equity](#) and [Advancing ATB for Equitable Access to Opportunity](#), focus on achieving equity for all adult learners. Additionally, World Education serves as a [resource](#) for all adult education and postsecondary partners in their exploration and implementation of ATB. We have been honored to [partner with U.S. Department of Education staff](#) and leverage their ATB expertise to build awareness and capacity across our public systems.

[National adult education practitioners](#) have been working for years to promote ATB as a dual enrollment equity strategy within Integrated Education and Training Adult Career Pathways. As adult education professionals, we have a great stake in seeing the HEA ATB rules updated in a way that promotes equitable access for adult learners through the intentional development and implementation of effective career pathway programs.

Please address any inquiries related to this letter to me.

Regards,



Priyanka Sharma
Vice President of US Division
World Education, Inc.
priyanka_sharma@worlded.org

World Education, Inc.'s Response to Docket ID ED-2023-OPE-0089

The U.S. Department of Education (ED) 2021-2022 negotiated rulemaking included the Higher Education Act (HEA)'s Ability to Benefit (ATB) regulation, ostensibly in order to modernize the state-defined process rules which had been drafted in 1991 but never operationalized until 30 years later in 2020. Since the 2016 requirement that ATB students post-2012 be enrolled in a career pathway program, advocates have raised the issue of the misalignment of the state-defined process rules. The existing rules include a list of services to be provided for within a state-defined plan, many of which were redundant with the federal career pathway program definition.

In drafting this new rule, however, ED went far beyond writing comprehensive new criteria for the state-defined process and instead used the opportunity to create a new term – *eligible career pathway program* (ECP) – and require an as-yet-undetermined federal approval process for ECPs to use not only in the state-defined option, but also the two other ATB options: 1) the successful accumulation of credit hours and 2) achieving a set test score on one of the authorized ATB examinations.

Adult education career pathway champions in multiple states have undertaken statewide initiatives to support Integrated Education and Training (IET) programs that simultaneously support adult high school diploma or equivalent completion and postsecondary credential attainment. All of these state-defined ATB plans (i.e., [Illinois](#), [Iowa](#), [Minnesota](#), [Mississippi](#), [Washington](#), and [Wisconsin](#)) were “approved” by default – through inaction by the ED’s Office of Federal Student Aid (FSA). This default approval signaled continued disinterest from FSA on the ATB career pathway strategy, which ED had repeatedly conveyed would be an institutional issue.

The ATB state-defined option – as it existed and as it is reimagined in these draft regulations – puts extensive guard rails around the use of ATB, taking it from an institutional prerogative to part of a systematic state oversight process. The option puts

compliance and monitoring responsibility on a state entity (e.g., state community and technical college systems, which have been the responsible agencies listed in all currently operating state plans), which must provide a structure for institutional financial aid directors and their partners to responsibly implement ATB career pathway programs.

ATB state-defined plans promote adult dual enrollment through state leadership and intentional career pathway strategies, and provide a view into the effectiveness of those strategies through annual reporting. Without a state-defined option, states do not have a view into ATB use in their public institutions of higher education (IHEs) and thus are not able to support the practices that promote equity for adults without a high school diploma or equivalent. ED – through collaboration across the Office of Career, Technical, and Adult Education (OCTAE) and FSA – should be promoting this equity strategy, but instead we fear this new rule’s primary outcome will be chilling state innovation. Already, [ED’s data](#) points out a clear trend on reduced use of ATB since its restoration in 2016. According to ED’s own [analysis](#): *In award year (AY) 2016, nearly 125,000 students received federal financial aid through ability to benefit, including more than 84,000 students who received Pell Grant funding as ATB students. Those numbers have declined in recent years; in AY 2021, fewer than 59,000 students received financial aid through ability to benefit* (p. 1).

ED’s analysis also shows that the drop in ATB enrollment has been exclusively within the credit hour option. The use of the test option, which is primarily by non-public, for-profit institutions, has actually grown between 2016 and 2022. It is the credit hour option, the option that undergirds a career pathway strategy and supports aims for equity, that has fallen from 112,341 enrollments in 2016 to just 43,933 in 2022 (p. 3). The role of FSA here should be promoting ATB as a key equity lever in a state adult career pathway system. Instead, ED’s proposed ATB rule for the approved state process § 668.156(b)(2) fails to recognize the state intentionality and the state responsibility central to state-defined options, creating yet more reason for local institutions to continue using the other two ATB options – test and credit hour – over participating within a more rigorous state process.

ED’s analysis of ATB policy change from its introduction in 1991 to its restoration and alignment in 2015-2016 to the approval of the first state defined option in 2020 is instructive but fails to point out the reason for ATB policy change across the decade – to move away from searching for individual students with the ability to perform well on high-stakes testing to advocating for intentional, equity-minded adult career pathway strategies that leverage the federal and state adult education and career technical education investments with federal student aid to benefit the many adults who may have the ability to benefit from postsecondary education. [ED’s research](#) has shown the positive effects of high school and postsecondary dual enrollment – higher high school

graduation rates, higher college enrollment, higher credit accumulation, and higher certification completion. We have come to understand that the [benefits of dual enrollment](#) are even more beneficial for first-generation, low socioeconomic status individuals who may otherwise not pursue higher education. ATB is the funding mechanism for adult dual enrollment through adult career pathway programs.

Our comments on ED's proposed changes reflect the intent of the restored ATB provision to support established state and local adult career pathway partnerships. HEA title IV should be the funding mechanism for strategies developed by WIOA title II adult education and Perkins postsecondary career technical education partners under the shared definition of a career pathway program. ED FSA is not and should not be developing a new program model; rather, through this update to the state-defined process, ED FSA must be clear that the rule is aligning the most impactful and sustainable education funding – federal student aid – to the innovations developed between the partners operating under OCTAE federal to state to local grants. Any ED approval process of adult career pathways needs to be directed by ED OCTAE in order to leverage the funding, technical assistance, reporting, monitoring, and professional development for career pathways already in place.

General Definitions § 668.2

World Education commends ED FSA for including the career pathway definition in section 668.2 rather than keeping it solely in the ATB section. However, we note that the career pathway definition DOES exist in HEA – is it simply being added to this section? – and that this definition must align with the other federal definition of a career pathway. 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) also includes the same career pathway definition.

We strongly recommend keeping the entire definition intact rather than creating a separate and unique definition for section 668.2 which would then be in conflict with the definition in the ATB regulation. HEA's ATB provision must contain the same career pathway definition (34 CFR 668.2 (b)) to create alignment across the three federal laws to support adult basic and postsecondary education: HEA, WIOA, and Perkins V. This alignment of the career pathway definition is not haphazard. It was the work of many education stakeholders recognizing that only by building the alignment of program models across these systems – WIOA title II AEFLA, Perkins V CTE, and FSA – can we incentivize partners to take on the work of building intentional adult career pathways.

We strongly urge ED to continue to use the **exact** same definition. The proposal to exclude the statutory definition’s cross-reference to apprenticeship programs simply because part 668 does not discuss apprenticeship elsewhere is illogical. The 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 U.S. 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 doesn’t exist in another part of these regulations.

Student Eligibility § 668.32

As noted, these are technical fixes to support understanding of the way non-high school graduates enrolled in ATB prior to July 1, 2012, are grandfathered into the old ATB rule and therefore not subject to the requirement to be enrolled in an eligible career pathway program. We support these clarifications, and we would also strongly recommend that ED communicate this not as a benefit to those enrolled over two decades ago, but rather as an unfortunate fact that those enrolled two decades ago were not required to experience program design and delivery innovations that focus intentionally on supporting their access and success. This may not seem like FSA’s role, but clearly the messaging from ED since 2015 has communicated the idea that “old” ATB was easier and better than “new” ATB and that these legacy users had the better option. ED FSA should reveal the numbers of potential participants who could utilize this grandfather provision – which we would hazard is extremely small – and then start focusing on implementing the new and improved ATB.

Limitation to 25 Students or 1.0% of Enrollment § 668.156 (b)(2)

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. We strongly disagree with this cap because we believe it will hamper innovation, restrict the impact of funding, and disincentivize the use of the State process option.

Foremost is the clear and convincing evidence from the past decade that sequential remediation does not lead to postsecondary success for adults. Achieving the Dream’s [“A Brief History of Developmental Education Research”](#) summarizes the state of the evidence:

Over a decade ago, an analysis of longitudinal student records from the Achieving the Dream initiative made plain how many community college students were lost along multicourse, prerequisite sequences, and how few

students completed gateway English and math courses [1], raising questions about the overall benefits of developmental education. A variety of rigorous studies followed and showed that developmental students never made up for the time lost in their first semester; their academic outcomes were no better, and were sometimes even worse, than similar students who did not take developmental education courses [2–6]. A few positive results were scattered among null and negative results in some rigorous studies [e.g., 7], but no study has shown consistently positive results for the traditional multicourse, prerequisite developmental education system [8].

This developmental education research has led to reform – corequisite courses, multiple measures, and self-placement. Analogously, in adult education, this understanding has led to a focus on IET program development, a model that dually enrolls adults in secondary and postsecondary coursework aligned through a single set of learning objectives. As this work incubated in the early 2000s, ATB was the funding mechanism that allowed [Washington State’s Integrated Basic Education and Skills Training \(I-BEST\) programs](#) and the many state replications initiated under [Accelerating Opportunity](#) to flourish. The 2012 rescission of ATB was a blow to these efforts. While the 2015-2016 reinstatement of ATB coincided with both WIOA title II career pathway, and IET efforts, as well as [Community College Research Center](#) guided pathway reforms, progress has been slow. As institutions finally embrace career pathway and guided pathway strategies, putting an artificial limit on who can participate will restrict impact and innovation.

ATB leaders from across the country responded to this student cap with shock and disappointment. Some of their responses include:

- “This limit puts a lie to goals of equity and access.”
- “Twenty-five is too small a denominator to get a clear picture of the success rate required in state plan monitoring.”
- “The small number combined with the success rate will incent colleges to continue to look for the unicorns – those who are SURE to be successful, in their view, rather than making this a regular strategy to support all adult learners.”
- “This is yet another barrier to access that conflicts with the design of community colleges as an open access system. People will still be stuck in inefficient, ineffective remedial programs.”
- “California has one-fifth of all community colleges in the United States. Twenty-five is too small a number to get the attention of a college system like the California Community College Chancellor’s Office. They will discount this as not impacting enough learners to make it worth their attention.”

- “At Pima Community College, our goal is 25 students utilizing ATB in each program cohort, not per academic year!”

The 25-student cap also creates an artificial limit on the use of ATB to access federal student aid – something not called for in HEA. Section 668.156(a)(5) says “the State will enroll no more than the greater of 25 students or one percent of enrollment at each participating institution,” which misses the fact that the State does not enroll students; institutions do. This artificial cap will disincentivize institutions from participating in the state plan which is – of course – the only transparent method for ATB reporting and oversight that exists. ED needs to incentivize the use of the state-defined option as THE mechanism for supporting state-defined adult career pathway strategies leveraging a state’s adult education and postsecondary systems.

We would also suggest that the six states that have put state-defined processes into place have a reliance interest in maximizing the use of that option, which this rule would impede. Certainly Mississippi’s Mississippi Integrated Basic Education and Skills Training (MIBEST), Washington’s I-BEST, and Wisconsin’s career pathways certificate initiatives are evidenced-based strategies that call for investment. Two other states in active discussion about developing a state-defined option, California and Florida, are currently the largest users of ATB. Unfortunately, because these states do not have a state-defined option, that usage is all but hidden from the adult education and community college systems. These states would have little appetite for implementing a strategy that is so limited in potential enrollments. We call on ED to remove this cap language entirely, allowing the state entity responsible for the ATB state plan to promote ATB as an intentional reform strategy and use the annual monitoring of all named IHEs in the plan to gauge impact and effectiveness.

Success Rate §668.156

World Education applauds ED for clarity on calculating the success rate of ATB participants with non-ATB participants “in the same program” (f)(1), but we call on ED to use the 75% comparison rate (j)(1) immediately rather than using an 85% success rate initially (e)(1). Having a reasonable target of 75% will help state entities sell the use of ATB through the state-defined process to the IHEs named in their state plan that might otherwise elect to continue using the credit hour or test options and so impede progress toward a state-led equity strategy. [Previous research on performance-based funding policies in higher education](#) has illustrated that though policies aim to improve equity through tracking important outcomes, they often produce little to no positive effect on the associated outcomes, and instead may even mitigate efforts toward equitable access to postsecondary education.

We applaud 668.156(f)(1)’s clarification that the success rate is developed through comparing students in the same program and institution by institution. This will

provide the type of data states need to gauge the effectiveness of local career pathway program implementation.

We fear that ED's inclusion of a yet undetermined reporting requirement 668.156(h) will be yet another chilling factor to state leaders considering a state-defined plan option. We suggest that ED create the reporting requirements up front and clearly communicate them here.

We would again stress that the wealth of information collected via state annual ATB reports on students and student subgroups which support the "critical goals...central to the purpose of the title IV, HEA programs" is only happening with the ATB state-defined option – not in the test option or the credit hour option, because those have no state role. Therefore, ED FSA should be doing everything in their power to make the ATB state-defined option the MOST appealing to local HEA title IV eligible providers.

Disaggregated Data § 668.156(e)

World Education applauds 668.156(e)'s requirement for states to report information 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 including linguistic background to this list in order to determine if and how immigrants and refugees are being served through ATB. Given that [immigrants account for 15% of the total labor force, and that over 10 million \(25.6%\) of all immigrants arrive to the U.S. with less than a high school diploma and over 20 million \(46.1%\) of all immigrants are termed Limited English Proficient](#), understanding how ATB is able to support New Americans is imperative for the future of not only many New Americans, but also the future labor market. This requires information about their linguistic background, such as those identified in the U.S. Census Bureau's American Community Survey: "What other languages do they speak at home?" and "How well do they self-report speaking English?"

Eligible Career Pathway Program § 668.157

The most dramatic change in this rule, which impacts not only the state-defined option but all uses of ATB (668.157(6)(b)), is the inclusion of documentation requirements for an *eligible career pathway program* (ECPP) and a yet-to-be defined ED submission approval process for these ECPPs (668.157(a)(1)).

Since 2016 (when this aligned career pathway definition was included in the HEA ATB provision), ED has been asked repeatedly, "Will ED have an approval process for ATB career pathways?" The answer has always been a resounding *no*, as in this [Ability to Benefit Frequently Asked Questions \(EA ID: OPE Announcements-21-02\)](#):

In what instances will an institution's compliance with the ATB requirements be evaluated in the absence of a career pathway program approval process?

As we stated in Q & A #7 in DCL GEN 16-09, there is no requirement under the HEA that an eligible career pathway program be approved or endorsed by the Department or that such a program be part of an approved State process, even if such a process exists in the State in which the institution is located. However, institutions may be subject to State laws or regulations regarding eligible career pathway programs or relevant requirements of their accrediting agency. The Department has not developed a career pathway program approval process but will review the eligibility of these programs through program reviews and audits.

This new rule is a complete 180-degree change. Why? What problem is ED trying to solve? We know that institutional financial aid directors have sought more guidance on the career pathway program model and that may indeed be enough of a reason to include this second documentation process, but much needs to be made clear both in this submission and in the approval process hinted at in this proposed rule. Otherwise, ED again risks chilling the use of ATB among the “good actors” in this space.

We strongly recommend that regardless of whatever process is put into place to evaluate these programs for use of federal student aid through ATB, that OCTAE – specifically WIOA title II and Perkins V, which are 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.

To the descriptive elements, we applaud the inclusion of an eligible postsecondary program as defined in 668.8 and adult education and literacy activities under the WIOA as described in 463.30. This direct and documented connection to WIOA title II (1)(ii) should give FSA the power it needs to shut down predatory programs that do not provide adequate adult education to support adult high school diploma or equivalent completion and therefore do not meet the requirements for comprehensive adult career pathway programs.

We also applaud the language around simultaneous adult education and postsecondary education (1)(i).

We see, in the use of the three elements together, a nod to the IET definition in WIOA and recognize that IET is indeed the career pathway education design and delivery strategy at the heart of the career pathway definition. However, having workforce preparation (a)(1)(iii) called out separately in this context is confusing, as unlike (a)(i) an HEA Title IV-eligible postsecondary education program and (a)(1)(ii) a WIOA title II

Adult Education and Family Literacy Act (AEFLA) program, workforce preparation is not a separate standalone system. In fact, workforce preparation is part of the definition of AEFLA activities ([34 CFR § 463.30](#) *What are adult education and literacy programs, activities, and services?*).

We recommend including (a)(1)(i) HEA Title IV postsecondary programs and (a)(1)(ii) 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, and workforce preparation as defined in WIOA.

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

The Verification Process § 668.157(b)

Far and away, this is the most critical sentence in these 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).”

ED FSA knows that only a miniscule portion of the already declining ATB use is happening under the fledgling state-defined processes initiated just prior to the global pandemic and the subsequent shockwave of declining enrollments at American postsecondary institutions. The inclusion of this sentence is therefore the largest disrupter of the existing ATB infrastructure. It also puts ED FSA in the position of disregarding the state’s role in adult career pathway strategy and instead inserting a federal approval process into local partners.

Using negotiated rulemaking to update the state-defined process has led ED FSA, in this one closing line, to upend the entirety of ATB. We understand that ED – like all adult education advocates – wants to ensure the use of HEA title IV funding for impactful and effective career pathway programs for adults dually enrolled across adult education and postsecondary education. We agree that having more insight and clarity into the service provided and more evidence of intentional and working partnerships between WIOA title II AEFLA providers and postsecondary institutions is critical. However, if a written agreement is required for such partnerships, AEFLA providers will need crystal clear guidance on the ECPP approval process in order to convince IHE financial aid directors to come to the table.

World Education feels strongly that much MUCH more information is needed here in the rule about what this approval process would be between ED and a local institution of higher education:

- WHO will verify the eligibility of eligible career pathway programs submitted by local partnerships?
 - OCTAE, since they oversee the AEFLA and Perkins grants to states?
 - FSA, since they oversee HEA disbursement?
 - A partnership within ED?
- HOW will this eligibility be verified?
 - A sampling of programs (as in the state defined option)?
 - Every single occurrence?
- WHEN will this eligibility be documented?
 - At each enrollment period?
 - Prior to each enrollment?
- HOW will ED ensure that sufficient funding and staff time will be designated for this labor-intensive process?

Publishing this draft rule without further clarification around this process would surely be the death knell of ATB since it will immediately chill ATB use while local partnerships await further processes to be developed and deployed. Once deployed, those processes will need to function more quickly than any we have seen from a federal agency, 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.

Overall, ED has the opportunity to reverse the trend of falling ATB use among public and community colleges and to accelerate access and success for the most underserved individuals. This can be done through clear guidance and incentives, and creating an opportunity to support adult career pathway initiatives using dual enrollment. We implore ED to promote a fully explicated process which includes collaboration with state public higher education systems that can rapidly meet the needs of local adult career pathway partnerships. Anything less will certainly mean the end of ATB use, and ED will only have succeeded in gaining reduced net title IV HEA spending by the federal government on the backs of adult learners who have been failed – again and again – by our educational and political systems.