



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

**Issue Paper 1: Ability to Benefit**  
**Session 3: March 14-18, 2022**

**Issue:** Ability to Benefit

**Statutory cites:** §484(d) of the Higher Education Act of 1965, as amended

**Regulatory cites:** 34 CFR 668.2, 668.32, 668.156, 668.157

**Proposed Regulations Redline**

**34 CFR § 668.2 General definitions.**

\* \* \*

**(b)**

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*Eligible career pathway program: A program that combines rigorous and high-quality education, training, and other services that--*

*(1) Aligns with the skill needs of industries in the economy of the State or regional economy involved;*

*(2) 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"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.);*

*(3) Includes counseling to support an individual in achieving the individual's education and career goals;*

*(4) 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;*

*(5) 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;*

*(6) Enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and*

*(7) Helps an individual enter or advance within a specific occupation or occupational cluster.*

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**§ 668.32 Student eligibility - general.**

\* \* \*

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**(e)(1)** Has a high school diploma or its recognized equivalent;

**(2)** Has obtained a passing score specified by the Secretary on an independently administered test in accordance with subpart J of this part, and either--

(i) Was first enrolled in an eligible program before July 1, 2012; or

(ii) Is enrolled in an eligible career pathway program as defined in § 668.2-~~of this part~~;

**(3)** Is enrolled in an eligible institution that participates in a State “process” approved by the Secretary under subpart J of this part, and either--

(i) Was first enrolled in an eligible program before July 1, 2012; or

(ii) Is enrolled in an eligible career pathway program as defined in § 668.2-~~of this part~~;

**(4)** Was home-schooled, and either--

**(i)** Obtained a secondary school completion credential for home school (other than a high school diploma or its recognized equivalent) provided for under State law; or

**(ii)** If State law does not require a home-schooled student to obtain the credential described in paragraph (e)(4)(i) of this section, has completed a secondary school education in a home school setting that qualifies as an exemption from compulsory attendance requirements under State law; or

**(5)** Has been determined by the institution to have the ability to benefit from the education or training offered by the institution based on the satisfactory completion of 6 semester hours, 6 trimester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution, and either--

(i) Was first enrolled in an eligible program before July 1, 2012; or

(ii) Is enrolled in an eligible career pathway program as defined in § 668.2-~~of this part~~.

\* \* \* \* \*

### § 668.156 Approved State process.

**(a)**

**(1)** A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test or satisfactory completion of at least six credit hours or its recognized equivalent coursework for the purpose of determining a student's eligibility for title IV, HEA program funds must apply to the Secretary for approval of that process.

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~~(2) To be an approved State process, the State process does not have to include all the institutions located in that State, but must indicate which institutions are included.~~

~~(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 requirements 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" as defined under 34 CFR § 668.2 and as documented through standards outlined in 34 CFR § 668.157 of this part; and~~

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

~~(v) For an institution listed for the first time on the application, an assurance that not more than 33 percent of the institution's undergraduate regular students withdrew from the institution during the institution's latest completed award year. For purposes of calculating this rate, the institution must count all regular students who were enrolled during the latest completed award year, except those students who, during that period--~~

~~(A) Withdrew from, dropped out of, or were expelled from the institution; and~~

~~(B) Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees.~~

~~(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 constitute an "eligible career pathway program" as defined under 34 CFR § 668.2 and as documented through standards outlined in 34 CFR § 668.157 of this part.~~

~~(b) The Secretary approves a State's process if For a State applying for approval for the first time, the Secretary may approve the State process for a two-year initial period if--~~

~~(1) A participating institution does not have more than 33 percent of its undergraduate regular students withdraw from the institution during the institution's latest completed award year. The institution must count all regular students who are enrolled during the latest completed award year, except those students who, during that period--~~

~~(A) Withdrew from, dropped out of, or were expelled from the institution; and~~

## Ability to Benefit 4

~~(B) Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees; and~~

~~The State administering the process can demonstrate that the students it admits under that process without a high school diploma or its recognized equivalent, and who enroll in participating institutions, have a success rate as determined under paragraph (h) of this section that is within 95 percent of the success rate of students with high school diplomas~~

~~(21) The State's process satisfies the requirements contained in paragraphs (a), (c), and (d) of this Section; and,~~

~~(32) The State agrees that the total number of students that who enroll through the State process during the initial period will total no more than 1.0 percent of enrollment at each institution participating in the State process.~~

~~(c) A State process must require institutions participating in the process to provide each student they admit without a high school diploma or its recognized equivalent with the following services —~~

~~(1) Orientation regarding the institution's academic standards and requirements, and student rights.~~

~~(2) Assessment of each student's existing capabilities through means other than a single standardized test.~~

~~(3) Tutoring in basic verbal and quantitative skills, if appropriate.~~

~~(4) Assistance in developing educational goals.~~

~~(5) Counseling, including counseling regarding the appropriate class level for that student given the student's individual's capabilities.~~

~~(6) Follow-up by teachers and counselors regarding the student's classroom performance and satisfactory progress toward program completion.~~

~~(d) A State process must—~~

~~(1) Allow the participation of only those students eligible under § 668.32(e)(3) of this part;~~

~~(12) Monitor on an annual basis each participating institution's compliance with the requirements and standards contained in the State's process, including the success rate as calculated in paragraph (f) of this section;~~

~~(23) Require corrective action if an institution is found to be in noncompliance with the State process requirements; and~~

~~(4) Provide a participating institution that has failed to achieve the success rate required under paragraphs (e)(1) and (f) up to three years to achieve compliance;~~

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~~(345)~~ Terminate an institution from the State process if the institution refuses or fails to comply with the State process requirements, **including exceeding the total number of students referenced in paragraph (b)(3) of this section; and**

**(6) Prohibit an institution from participating in the State process for at least five years after termination.**

~~(ed)~~

**(1)** The Secretary responds to a State's request for approval of its State process within six months after the Secretary's receipt of that request. If the Secretary does not respond by the end of six months, the State's process is deemed to be approved.

**(2)** An approved State process becomes effective for purposes of determining student eligibility for title IV, HEA program funds under this subpart--

**(i)** On the date the Secretary approves the process; or

**(ii)** Six months after the date on which the State submits the process to the Secretary for approval, if the Secretary neither approves nor disapproves the process during that six-month period.

~~(f) The Secretary approves a State process for a period not to exceed five years.~~

~~(g)~~

~~(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.~~

~~(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.~~

~~(h) The State must calculate the success rates as referenced in paragraph (b) of this section by--~~

~~(1) Determining the number of students with high school diplomas who, during the applicable award year described in paragraph (i) of this section, enrolled in participating institutions and--~~

~~(i) Successfully completed education or training programs;~~

~~(ii) Remained enrolled in education or training programs at the end of that award year; or~~

~~(iii) Successfully transferred to and remained enrolled in another institution at the end of that award year;~~

~~(2) Determining the number of students with high school diplomas who enrolled in education or training programs in participating institutions during that award year;~~

~~(3) Determining the number of students calculated in paragraph (h)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from~~

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~~participating institutions and received a 100 percent refund of their tuition under the institutions' refund policies;~~

~~(4) Dividing the number of students determined in paragraph (h)(1) of this section by the number of students determined in paragraph (h)(3) of this section;~~

~~(5) Making the calculations described in paragraphs (h)(1) through (h)(4) of this section for students without a high school diploma or its recognized equivalent who enrolled in participating institutions.~~

~~(i) For purposes of paragraph (h) of this section, the applicable award year is the latest complete award year for which information is available that immediately precedes the date on which the State requests the Secretary to approve its State process, except that the award year selected must be one of the latest two completed award years preceding that application date.~~

~~(e) After the initial 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 **at each participating institution** have a success rate as determined under paragraph (g) 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; and~~

~~(3) 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.~~

~~(f) The State must calculate the success rates **for each participating institution** as referenced in paragraph (e)(1) of this section by-~~

~~(1) Determining the number of students with high school diplomas **or equivalent** who, during the applicable award year described in paragraph (g)(1) of this section, enrolled in **the same programs as students participating in the State process at each** participating institutions and--~~

~~(i) Successfully completed education or training programs;~~

~~(ii) Remained enrolled in education or training programs at the end of that award year; or~~

~~(iii) Successfully transferred to and remained enrolled in another institution at the end of that award year;~~

~~(2) Determining the number of students with high school diplomas **or equivalent** who, **during the applicable award year described in paragraph (g)(1) of this section,** enrolled **in the same programs as students participating in the State process at each** ~~in education or training programs in~~ participating institutions ~~s during that award year;~~~~

~~(3) Determining the number of students calculated in paragraph (f)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from~~

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each participating institutions and received a 100 percent refund of their tuition under the institution's refund policies;

(4) Dividing the number of students determined underin paragraph (f)(1) of this section by the number of students determined underin paragraph (f)(3) of this section; and

(5) Making the calculations described in paragraphs (f)(1) through (f)(4) of this section for students without a high school diploma or its recognized equivalent who enrolled through a State process in each participating institutions.

(g)(1) For purposes of paragraph (f) of this section, the applicable award year is the latest complete award year for which information is available. that immediately precedes the date on which the State requests the Secretary to approve its State process, except that the award year selected must be one of the latest two completed award years preceding that application date.

(2) If no students are enrolled in an eligible career pathway program through a State process, then success rate reporting will not be required in the subsequent application as described in paragraph (f) of this section.the State will receive a one-year extension to its initial approval of its State process.

(h) A State must submit reports on its State process, in accordance with deadlines and procedures established and published by the Secretary in the *Federal Register*, with such information as the Secretary requires.

(i) The Secretary approves a State process as described in paragraph (e) of this section for a period not to exceed five years.

(j)(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(i) If a State has not terminated an institution from the State process under paragraph (c)(5) of this section for failure to meet the success rate, then the Secretary withdraws approval of the State process, except in accordance with paragraph (j)(1)-(ii) of this section.

(ii) At the Secretary's discretion, under exceptional circumstances, the State process may be approved once for a two-year period.

(iii) If 50 percent or more participating institutions across all States do not meet the success rate in a given year, then the Secretary may lower the success rate to no less than 75 percent for two years.

(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(3) If the Secretary upholds the withdrawal of approval of a State process, then the State cannot reapply to the Secretary for a period of five years.

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### § 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 that--

(1) The student has enrolled in or is receiving ~~both all three of the following elements simultaneously --~~

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

(ii) ~~Coursework, training, or other support services that enable an individual to attain a secondary school diploma or its recognized equivalent; Adult education and literacy activities under the Workforce Innovation and Opportunity Act as described in 34 CFR 463.30 that assist adults in attaining a secondary school diploma or its recognized equivalent and in the transition to postsecondary education and training; and~~

(iii) ~~Workforce preparation activities as described in 34 CFR § 463.34.~~

(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--

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

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

(iii) ~~Documentation that demonstrates direct engagement with industry;.~~

(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 ~~academic and~~ career counseling services that assist students in ~~pursuing their~~ ~~credential and~~ obtaining jobs aligned with skill needs described in paragraph (a)(2) of this section, and ~~identifying~~ the individuals providing the career counseling services;

(5) The education is offered, ~~as appropriate,~~ concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster ~~through an~~ ~~agreement, memorandum of understanding, or some other evidence of alignment of postsecondary and adult education providers that ensures the secondary education is aligned with the students' career objectives;~~ and

(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~~ ~~Secretary~~ will verify the eligibility of eligible career pathway

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programs for title IV, HEA program purposes pursuant to **paragraph (a) of this section.** The Secretary provides an institution with the opportunity to appeal any adverse eligibility decision.