Cooley

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Recently, a number of third-party test providers have begun promoting the Department of Education's ("ED") approval of their Ability-to-Benefit ("ATB") assessments by notifying institutions that, after a three-year hiatus, they can once again award federal financial aid to students who do not have high school diplomas. What these notifications fail to clearly explain is that ATB has been *reincarnated* in a new form—not "reinstated" in its previous form—and the new ATB requires substantial operational investment. The good news is that, done properly, institutions will now be able to provide the benefits of their programs to many deserving adults for whom postsecondary education was previously cost-prohibitive. The bad news is that the new standards remain obscure and carry risk.

Statutory sources

The Higher Education Act ("HEA") requires students to have a high school diploma or its recognized equivalent, such as a GED, or to complete a secondary school education in a home school setting, in order to be eligible to receive federal financial aid. The former ATB alternative allowed students who did not meet the high school completion requirement to establish eligibility by instead passing an ED-approved basic skills test or completing a minimum of six (6) college level credits. The criteria were simple, objective, and easy to document: a passing score on an ATB test or a transcript showing the college credits earned allowed an institution to award Title IV funds for a student's entire program of study, assuming all other requirements were met.

Congress eliminated the ATB alternative in summer 2012 due to funding constraints. Over the next two years, Senator Patty Murray (D-WA), ranking member of both the Health, Education, Labor, and Pensions ("HELP") Committee and the Appropriations Subcommittee on Labor, Health and Human Services, and Education, made several attempts to pass legislation introducing a new version of ATB.[1] Her efforts were rewarded in December 2014 with the passage of a consolidated appropriations act that includes the ATB language, under a new "career pathway" model, that now appears in section 484(d) of the HEA.

Essential characteristics

On May 22, 2015, the Department made its first effort to spell out the career pathway requirements in Dear Colleague Letter GEN-15-09. In brief, effective July 1, 2015, students without a high school diploma may be eligible for federal student aid via the ATB option using an ED-approved ATB test or the 6-credit option,[2] but *only if* they are enrolled in an "eligible career pathway program." Such a program must meet each of the following requirements, among others:

1. **Concurrent enrollment**. ATB students must be "concurrently enrolled" in a postsecondary educational program that is Title IV eligible *and* a "connected" adult education program. Adult education is defined in another statute as instruction and services offered below the postsecondary level (but above the secondary school level) that increase an individual's ability to perform activities necessary for a secondary school diploma (such as communicating in English), transition to postsecondary education and training, and obtain employment.
2. **Structured curriculum and support services**. The program must be organized to meet the needs of adults, designed to include counseling and support services to help students identify and attain career goals, and incorporate "structured course sequences" that are both "articulated and contextualized" and "allow students to advance to higher levels of education and employment."
3. **Industry collaboration**. The program must be "developed and implemented in collaboration with partners in business, workforce development, and economic development," such that it is aligned with the regional economy's "education and skill needs."

Many institutions are wondering what these requirements mean and how they can be implemented—for good reason. ED has declined to elaborate on the Congressional language and has been reluctant to offer any form of pre-approval of a career pathway program. Indeed, such programs do not need to be separately reported in the Electronic Application or identified on the Eligibility and Certification Approval Report, so there is no clear mechanism for ED to offer approval.

Although there is extensive data on career pathways and literature discussing effective models for the substantive component of such a curriculum, it is not clear how ED will go about evaluating each of the required components as they relate to the new ATB pathway. For example, does "concurrent enrollment" mean that a student must attend both the adult education and postsecondary components during the same term? Or does it mean that a student must register for the career pathways program as a whole, but might complete the adult education component first, and then proceed to the postsecondary component as an ATB student, receiving Title IV aid without needing a high school diploma or GED? These are practical questions that are ripe for ED guidance that, thus far, has not been forthcoming.

Implications for financial aid awards

The financial aid mechanics are significantly more restrictive under the new ATB option. The adult education component of a career pathways program *cannot* be included in a student's cost of attendance or enrollment status for Title IV purposes. This means that institutions must develop alternative funding avenues that are affordable for the adult learners who enroll, but still cost-effective for the institution.

The financial aid risks are also significant. If an institution fails to comply with each element of the statutory definition of career pathways programs, as interpreted by ED, it could be required to return all federal financial aid awarded to ATB students in that program, even though the students passed the ATB tests. And, because ED is not pre-approving career pathways programs (and does not have any mechanism to approve such programs through the existing application), this issue is very likely to arise years after the fact through a program review or audit.

For some institutions that assume ATB was reinstated in its previous form and begin admitting ATB students without designing a career pathways program that meets each statutory requirement, it will be too late to avoid the consequences. For other institutions that take the time at the front end to craft a program that effectively integrates adult education instruction and services with postsecondary curriculum and the needs of the regional economy, the arrival of the new ATB provides exciting new avenues of service both to students and local communities.

Although the Department—as well as eager test-providers—refers to the new ATB alternative as a "reinstatement," there appear to be more differences than similarities. We are closely monitoring new developments and would be happy to answer any questions you might have or provide additional details about designing a program that meets the new criteria.

NOTES

1. Senator Murray modeled the legislation on the successful and well-researched Integrated Basic Education and Skills Training ("I-BEST") programs developed in her home state of Washington.
2. ED released an Electronic Announcement on June 24, 2015, with an updated list of six approved ATB tests: four new Wonderlic Basic Skills tests and two tests that were previously approved under the old ATB rules (CELSA and ACCUPLACER). Six tests were eliminated from the ED-approved list. This announcement is available here.

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