



September 19, 2017

Hilary Malawer, Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue SW., Room 6E231
Washington, DC 20202

RE: Docket ID: [ED-2017-OS-0074](#)

Dear Assistant General Counsel Hilary Malawer:

On behalf of the Association for Career and Technical Education (ACTE), the nation's largest not-for-profit association committed to the advancement of education that prepares youth and adults for career success, and Advance CTE, representing the state and territory leaders of our nation's Career and Technical Education (CTE) system, we write to respond to the U.S. Department of Education's Agency Reform Taskforce request for comments on regulations that may be appropriate for repeal, replacement, or modification, as authorized by Executive Order 13777, "Enforcing the Regulatory Reform Agenda," (Docket ID: [ED-2017-OS-0074](#)).

The members of our organizations are the state and local CTE professionals across the country who are responsible for administering and implementing the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV). Given their important role in the delivery of CTE, our members are among the stakeholders who would be most impacted by any changes to or rescissions of current regulations and policy guidance. As such, our comments focus on two key ways that current regulations and guidance documents promote additional clarity and equity in the implementation of Perkins IV and CTE systems, programs and students. Additionally, we would like to offer feedback on the Department of Education's efforts to develop a new accountability framework for certificate programs at postsecondary CTE institutions as required by the Higher Education Act.

Keep Frequently Asked Questions (FAQs) Documents

As states have worked with the Office of Career, Technical and Adult Education (OCTAE) at the Department of Education to implement Perkins, the relationship has been highly collaborative. Given that formal regulations for Perkins have not been adopted since the 1990s, this collaboration has been long-standing and states have felt comfortable requesting non-regulatory and informal guidance from OCTAE. This collaborative relationship has resulted in numerous guidance and policy documents that were reflective of questions and requests from state and local CTE leaders. Our memberships have relayed to us that the FAQs, Question and Answer documents, Program Memorandum and other guidance issued by the OCTAE are helpful to be able to carry out their work (e.g., the document found here:

<https://s3.amazonaws.com/PCRN/docs/PerkinsIVNon-RegulatoryGuidanceQAVersion4.0-4-22-15.pdf> and all other documents referenced or linked to in it regarding implementation of Perkins IV and the document found here <https://s3.amazonaws.com/PCRN/docs/nonregulatory/studentdef.pdf> regarding accountability and the compiled Questions and Answers found here: https://s3.amazonaws.com/PCRN/docs/Compiled_List_of_QAs-8-8-16.docx). These documents provide clarity to state and local leaders on how to report the Perkins core indicators of performance. In addition, these documents provide helpful guidance on key components of Perkins implementation, including state plans, definitions, accountability, allowable uses of funds and more. We have heard time and time again that these documents are useful and that eliminating the guidance they provide would have a detrimental impact on states and locals, potentially resulting in inefficiency and noncompliant interpretations of the statute. We encourage the Department of Education to keep all FAQs and Question and Answer documents issued by OCTAE in place. However, we agree with the Department of Education's recommendations to rescind the Perkins-related regulations listed beginning on page 32 here: <https://www2.ed.gov/documents/press-releases/regulatory-reform-task-force-progress-report.pdf> given that they are outdated and do not apply to current law.

Develop Appropriate Methods of Administration (MOA) Guidance

The MOA guidelines, as written and as intended, require that the Perkins eligible agencies receiving federal funding (from the Carl D. Perkins Career and Technical Education Act) attest that the local programs they are awarding funding to are not discriminatory on the basis “race, color, and national origin” (MOA Regulations: <https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr100.html>). We believe protecting the civil rights of students is extremely important and that there is an important role for the federal government to play in ensuring these protections for students. By extension, the states also have an important role to play, as they have oversight responsibilities for any federal funds the state receives. However, the current practice of the Office of Civil Rights (OCR) extends beyond the legal authority in regulation, which only includes race, color, and national origin (see 34 CFR 100.4(b)). Current practice for MOA compliance extends beyond these requirements and OCR has significantly broadened the responsibility of states to carry out “Access Analysis” under Section 504 of the MOA. These analyses are both time-consuming and expensive and compliance with these additional requirements is a responsibility that falls primarily on the state’s Perkins eligible agency. Furthermore, there is no separate funding allocation for such compliance activities, meaning significant resources from the Perkins Basic State Grant (namely state administration), a highly limited source of funds, are being drawn upon to comply with the overreach on MOA rather than being used to improve CTE programs, expand equitable access to them, or develop the skilled workforce demanded by employers. The MOA burden, whether as written or as currently misinterpreted, should not be placed solely upon the Perkins eligible agency, but should also be equitably shared among the state education agency and other state agencies that administer federal grant programs.

As such, we recommend developing MOA guidance through a formal regulatory process, which was also required after the 1973 *Adams v. Califano* lawsuit (see this [Federal Register notice from March 21, 1979](#)). This process should involve state and local CTE leaders and allow them to have the opportunity to provide input and work collaboratively with OCR to develop appropriate MOA guidance. Given that past requests to OCR have not resolved this issue, we would like to raise this issue for further investigation. We welcome the opportunity to discuss

viable solutions that both fully enforce civil rights protections and also hold CTE appropriately responsible for oversight responsibilities (when compared to other federal education programs). Finally, we would hope that this review process would identify solutions that have a clear track record of impact and success, as our prior request to OCR through the Freedom of Information Act did not result in OCR providing us with information that documented successful strategies that address MOA violations.

Create Effective Framework for Gainful Employment Rule

We also wish to offer comments regarding the Department of Education's rule on gainful employment (GE) programs under Title IV of the Higher Education Act. In 2014, the Obama Administration put forward a regulatory framework for evaluating GE program effectiveness, as well as public disclosure requirements for certain performance and outcomes data, including student debt, employment and earnings information. While nearly all educational programs at for-profit institutions are affected by this rule, certificate programs at nonprofit postsecondary CTE institutions, including community colleges and area CTE schools, are similarly impacted.

We agree that thoughtful guidelines on program accountability are necessary to ensure that students are prepared to compete in the 21st century economy without incurring excessive debt. However, it is essential that such policies do not impose burdensome and costly reporting and disclosure mandates on postsecondary CTE institutions that provide students with the skills and credentials sought by employers. It is important to note that that 98 percent of the GE programs that failed the department's "debt-to-earnings" accountability metric were at for-profit colleges, not nonprofit CTE institutions. Postsecondary CTE strives to minimize student debt through lower cost educational program options. Moreover, CTE certificate programs generally have lower levels of student loan borrowing than programs at four-year colleges and universities.

It is our hope that the negotiated rulemaking panel that will convene later this year can develop a new GE regulatory framework that addresses the particular needs of postsecondary CTE. We believe that the rule should appropriately hold programs accountable, while acknowledging that high-quality postsecondary CTE programs are an affordable option for many students.

Thank you for your thoughtful consideration of these comments. We look forward to working in cooperation with the department to address the issues we have outlined here. Please feel free to contact Mitch Coppes (mcoppes@acteonline.org), ACTE's legislative and regulatory affairs manager, or Kathryn Zekus (kzekus@careertech.org), Advance CTE's senior associate, federal policy, should you have any questions.

Sincerely,



LeAnn Wilson
Executive Director
ACTE



Kimberly A. Green
Executive Director
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