January 2, 2025

Juliana Pearson
Manager of the Strategic Collections
& Clearance Governance and Strategy Division
U.S. Department of Education
400 Maryland Ave, SW, LBJ, Room 4C210, Washington, DC 20202-1200

In re: **ICR Reference Numbers 202409-1830-001 & 202409-1830-002**

Dear Ms. Pearson,

We are writing on behalf of Advance CTE, the national membership association representing the state and territory leaders of our nation's Career and Technical Education (CTE) system, and the Association for Career and Technical Education (ACTE), the nation's largest not-for-profit organization dedicated to the advancement of education that prepares youth and adults for successful careers.

Our organizations are filing this comment to express significant disappointment with the U.S. Department of Education's (ED's) continued efforts to advance a misguided and counterproductive regulatory proposal impacting the implementation of the Carl D. Perkins Career and Technical Education Act (Perkins V). This proposal was recently updated in the form of two Information Collection Request (ICR) revisions as published in the Federal Register December 2nd and 3rd, respectively.[1] While we appreciate the modest steps ED has taken in this latest revision to reduce burden on state Perkins V plans, these revisions to both ICRs carry forward substantial changes to the law's State Plan Guide and Consolidated Annual Reporting (CAR) process. We continue to call on ED to reverse course on this proposal and, at the very least, provide adequate time to assess and provide meaningful feedback regarding the significant changes envisioned through these ICRs.

Accelerated Rulemaking Undermines Stakeholder Trust and Transparency

Given the comment period for the latter of these proposals formally closed on November 26, and new versions were published almost immediately afterward, we question whether ED has approached this regulatory process with sincerity. Both ICRs have undergone substantial revisions since they were initially published in draft form for public comment in early September. The changes, many of which are addressed in greater detail further in this comment, are wide-ranging and appear to have been developed in less than a few days. It remains unclear how ED has been able to produce a substantially new proposal and respond to individual comments on these initially proposed revisions to these underlying ICRs in such a short period of time. We are left to assume that ED has not undertaken a meaningful review of public comments given the extremely short period of time in which this new proposal was published.

[1] https://www.federalregister.gov/documents/2024/12/02/2024-28204/agency-information-collection-activities-submission-to-the-office-of-management-and-budget-for & https://www.federalregister.gov/documents/2024/12/03/2024-28326/agency-information-collection-activities-submission-to-the-office-of-management-and-budget-for

When substantial changes are made to a regulatory proposal, federal agencies must ensure that these changes are a "logical outgrowth" of the original proposal and that these changes could be reasonably anticipated by the public based on the initial contents of the proposal. We contend that ED has failed to meet this minimum standard. ED's newly proposed ICRs deviate significantly from initial draft proposals, introducing substantial changes that were neither reasonably foreseeable nor adequately discussed as part of the initial Federal Register notice on September 11, 2024. The significant differences in these new ICRs, as compared to the initial draft proposals, undermines procedural safeguards which exist to ensure transparency and public participation in the wider rulemaking process. We therefore call on ED to return the proposed ICR to the public comment stage, allowing stakeholders much needed time to evaluate and provide input on the new elements contained within before attempting to move forward with a regulatory effort that will have far-reaching consequences throughout the nation.

Throughout this entire process ED has sought to advance these ICRs on an extremely accelerated basis as previously established. To maintain the public's confidence in the rulemaking process and ensure that these procedures are appropriately adhered to in the future, it is critical that more time be provided to impacted state and local stakeholders—who work every day to implement Perkins V—so that they have adequate opportunity to review and understand the implications of what ED is proposing. The current 30-day comment period occurs over two major federal holiday periods, which has significantly reduced stakeholders' ability to review these proposals. The opportunity to thoughtfully and meaningfully engage in this rulemaking process is especially critical given these ICRs impact nearly every facet of Perkins V and are being proposed despite significant concerns that have been consistently raised by the CTE community and members of Congress throughout this process.

It remains unclear why ED has sought to advance this proposal on such an accelerated basis despite these significant and wide-ranging headwinds. These efforts continue to contribute to a wider public perception that these ICR proposals have been motivated by other reasons rather than on the merits of improving the implementation of the underlying legislation. We remain extremely concerned that advancing these ICRs on such an accelerated time frame will create enormous uncertainty in the wider CTE field. This uncertainty will be directly attributable to the actions currently being taken by ED. To date, the agency has not sufficiently communicated the proposed changes contained in these new versions of either of these ICRs to states or local Perkins V grant recipients. Indeed, it took several days to successfully access the underlying materials in support of these ICRs when it became apparent ED planned to move forward with these proposals after the initial comment period.

If ED is confident in the merits of these ICRs, there should be no reason why an additional or extended public comment period cannot be granted at this juncture in the rulemaking process. Quickly advancing these proposals, over two major federal holidays, has contributed to the perception that ED is uninterested in perspectives from the public and those directly implicated by these proposals. ED's actions throughout this process give the appearance that the agency is seeking to advance changes to Perkins V implementation regardless of formal feedback received to date rather than as part of a thoughtful, meaningful and collaborative process.

ICRs Amount to Regulation and Are Incongruent With Congressional Intent

When Perkins V was signed into law in 2018, it required the establishment of "*State and local* performance accountability systems."[2] The law directed each eligible state agency, with input from local recipients, to "establish *State determined* performance measures" that follow the requirements laid out in the law.[3] The impetus, throughout this section of statutory text, was on the actions of the

[2] 20 U.S.C. 2323(a). Emphasis added.

[3] 20 U.S.C. 2323(b). Emphasis added.

state. The Perkins accountability system was specifically designed in statute to provide states flexibility to report on student performance on the required indicators in the context of their unique state system, leading to the highest quality and most useful data. Where specificity was desired or needed, Congress included language in the performance indicators or other reporting requirements. At no point, however, was it expected that ED would layer on additional performance reporting requirements over and above those included in the law.

In addition, as outlined recently by leaders of the House Education and Workforce Committee, our organizations share the serious concerns about the regulatory nature of the proposed changes to the Perkins accountability system.[4] Historically, Perkins V and its predecessor legislation have been implemented through sub-regulatory guidance, such as FAQs and Dear Colleague letters. The 2018 reauthorization of Perkins V specifically addressed the issue of "Secretarial Authority" and included new regulatory limitations (Section 218) that were intended to restrict ED's ability to regulate only what is "necessary to administer and ensure compliance" with the law.

Yet, many of the changes proposed in this ICR effectively amount to regulations, despite these legislative guardrails. Mandating the use of specific numerators and denominators for each of the law's accountability measures, and requirements for new disaggregation categories, go far beyond the statutory requirements in both scope and specificity.

The regulatory limitations contained in Perkins V and noted above were included on a bipartisan basis during the negotiation of Perkins V in exchange for the stronger and more extensive stakeholder engagement and consultation requirements. The current proposal appears to purposefully circumvent these carefully crafted legislative compromises to advance policies preferred by the Department but lacking any clear support in the legislation. We therefore continue to question the legality of this proposal and ED's authority to require states to alter implementation of the legislation in ways that are directly at odds with bipartisan legislation passed by Congress.

Significant Burden Concerns Remain

States have spent significant time developing Perkins V accountability systems after the law was enacted in 2018. They operationalized the law's performance indicators, gathered baseline data, set performance targets, built state and local data systems, worked with local recipients on their targets, and then began collecting data and subsequently reporting it over the last several years. All of those activities required significant time, resources and stakeholder engagement– aspects of current Perkins V legislation intended to account for the limitations on federal authority regarding the law's implementation. For ED to require changes to state's accountability systems at this point in the law's implementation, after four years of data reporting, creates a significant and unnecessary burden.

The appropriate time to implement changes of this magnitude and significance to Perkins accountability and reporting would have been immediately following the passage of Perkins V in 2018. While the Department states in recent comment responses that it only recently, after reviewing data, "determined that States need clearer specifications for the data to be used in calculating the core indicators so that the Department is able to ensure that States performance measurement is fully aligned with the law," the vast majority of the proposed changes are not related to compliance with law and merely reflect changing preferences of Department leaders. These changes are not necessary at this time for compliance purposes.

In this updated proposal, ED explicitly acknowledges the significant administrative burden that will be caused by these ICRs by increasing related burden estimates and modestly extending the timeline for

[4] https://edworkforce.house.gov/uploadedfiles/perkins_icr_letter_final.pdf

implementation. Yet, even these increased burden estimates fall well short of what it will actually cost states and local Perkins V stakeholders to implement, nor do they effectively account for the time needed to change underlying data systems and related informational structures. For instance, new data systems and related collection approaches will take significant time and funding to implement that go well beyond what ED has outlined in this proposal. As ED is aware, neither of these ICRs provide any funding to account for the costs which will be borne by states and local entities.

Providing stakeholders with merely 18 months to implement the most wide-ranging changes to this legislation since its initial passage remains completely inadequate and reflects a fundamental misunderstanding of how the law works and the costs associated with its implementation. The practical effect of moving forward with this misguided effort will force states to divert precious attention and limited resources away from actual program improvement and innovation to focus on federal administrative compliance, and will require them to incur all of the costs of setting up an accountability system again to account for these wide-ranging changes. While difficult to calculate with precision, both the real and opportunity costs associated with advancing this proposal by the 2026-27 program year will be significant. For example, we have received feedback from state members that these changes will require the re-coding or updating of existing systems of data collection and reporting which could require up to an additional 1,000 hours of staff time to successfully complete per state. These estimates are still not reflected in the most current ICR proposals.

Changing performance measures in a way that requires performance targets to also be revised will also require the involvement of every local recipient of Perkins funds, making this a burden not just on states, but on local Perkins grant recipients as well. These burdens are also not acknowledged in ED's current proposals.

Proposed ICRs Undermine Program Accountability

As mentioned, the proposed ICRs would require states to adopt new definitions for accountability indicators beyond what is statutorily required in the legislation five years after implementation. These changes will significantly reduce states' ability to use longitudinal data to identify trends in aggregate performance as well as disaggregated performance for special populations and underserved learner groups.

By altering nearly all of the legislation's data collection and reporting requirements, ED is effectively eliminating the ability to compare future trend data with previous program years. This disruption in longitudinal analysis will hamper policymakers' ability to make informed decisions about CTE programming and policy at both state and federal levels. It will also significantly impact the ability of policymakers to update Perkins V given the lack of data comparability during the law's implementation.

Data Quality Issues Remain

In addition to overarching concerns about burden and the disruption of historical trend data, several of the proposed accountability definitions remain questionable in their language, purpose and impact, and do not accurately align with the intent of the law, leading to significant concerns about these required changes.

- **2S1-3 Academic Proficiency:** The proposed definitions for performance on state assessments for reading/language arts, mathematics and science add language to the numerator and denominator that requires that proficiency on state assessments be reported for CTE concentrators "for any year in which the student was enrolled in school, and who, in the reporting year, exited secondary education." This dramatically changes this measure to a mandatory cohort of exiting students. By reporting data only when students have left the

secondary system, states will be unable to use academic assessment data for performance improvement. This is in direct conflict with the goals of accountability under ESSA, with which Perkins academic proficiency measures are intended to align. It would also impact states that have created performance indices or growth measures for reporting on these indicators in alignment with their ESSA data systems. When Perkins V was originally passed in 2018, states had significant conversations and made intentional decisions—sometimes at the direct urging of ED—about the best way to structure their academic proficiency measures to provide the most aligned and impactful data, based on their unique ESSA systems. Forcing a one-size-fits-all approach is not aligned with the purpose or requirements of the statute, and will not best serve students. In response to initial comments, the Department is most focused on the number of times a student is reported, but an active vs. exit cohort does not necessarily have any bearing on that element of the measure, and we do not agree that Congress intended that to be the most important part of this measure. In fact, the Department clearly states that under ESSA, "some States report on the current year's participants and others report based on a cohort model." This should continue to be allowed under Perkins at states' discretion.

- **3S1/1P1 Post-Program Placement:** The proposed definition for student placement in college, employment or other postsecondary experiences following the secondary CTE program, and for placement after postsecondary program completion, specifies that the cohort for reporting have "exited secondary education (or completed postsecondary education) during the preceding reporting year" in both the numerator and denominator, requiring states to report data not from the current year but from the year prior. While some states have data collection timing issues that necessitate reporting placement data on such a lag, requiring a lag for every state is detrimental to the goal of using data for program improvement. While the Department notes, and we agree, that there may be valid reasons for a lag in some states, preventing states that have earlier access to placement information from reporting the most current data would negatively impact informed decision-making in those states. A more appropriate solution is to work with all states to ensure data can be reported in as timely a manner as possible.

- **4S1/3P1 Non-traditional Program Concentration:** The proposed definition for student concentration in CTE programs nontraditional for their gender (e.g., women in welding programs or men in health care programs) on the secondary and postsecondary levels defines the denominator as "The number of CTE concentrators in secondary CTE programs and programs of study that lead to non-traditional fields" or "The number of CTE concentrators in postsecondary CTE programs and programs of study that lead to non-traditional fields." These brand-new definitions, developed five years after the law was implemented, attempt to impose an interpretation beyond what is evident in the statutory language approved by Congress. While they are in line with the majority of states, there are other states that have interpreted this language differently, and they should not be forced to comply with implementation language outside the scope of the statute without ED going through proper regulatory channels.

- **2P1 Earned Recognized Postsecondary Credential:** Despite some revisions after the first round of comments, the proposed definition for credential attainment on the postsecondary level makes little sense and will disrupt the way that many states measure this indicator now. By adding the language "The number of CTE concentrators at the postsecondary level enrolled in the reporting year or who completed a CTE program during the previous reporting year" to the denominator, the Department is proposing mixing a cohort of completing students with a cohort of active students (those "enrolled in the reporting year"). This will dramatically lower performance on this indicator in many states and means that an active student will be included in the denominator over and over again until they complete. In comparison, a similar indicator

under WIOA – the inspiration for this measure in Perkins – is worded so that each student is included in the denominator only once. Despite the Department's misunderstanding of this measure, this should be reflected in Perkins as well. This measure is intended to simply be a retroactive examination of students who concentrated in CTE, a year after they completed the program, to measure which learners obtained a credential at any point during their previous participation or soon thereafter. Implementation of this measure should not be complicated by additional language that has no support in statute.

If states are implementing a measure incorrectly based on the statutory language, then those issues can and should be addressed through monitoring or technical assistance, and they do not require wholescale changes to the entire Perkins accountability system for every state. ED has failed to demonstrate an actual need for these changes that cannot already be achieved through more targeted and less burdensome approaches than these.

Conclusion

We continue to call on ED to reverse course on this proposal and, at the very least, provide additional time for our respective state and local memberships to assess the significant changes envisioned through these ICRs. Given the ongoing transition of Presidential Administrations we remain concerned that advancing these proposals will create significant and unnecessary confusion in the field—particularly if new leadership at ED has different views on these and other matters.

We appreciate the opportunity to provide feedback on this proposal and stand ready to work with ED to develop more appropriate and effective approaches to improving Perkins V implementation. However, we cannot support these current ICR proposals given their significant negative implications for state and local CTE systems and call on the Department to quickly reverse course on these counterproductive proposals as outlined throughout this comment.

Sincerely,

LeAnn Curry
Executive Director
ACTE

Kate Kreamer
Executive Director
Advance CTE