DEPARTMENT OF EDUCATION

34 CFR Part 668 RIN 1840-AB84

Student Assistance General Provisions

AGENCY: Department of Education. **ACTION:** Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations by adding a new Subpart J. These regulations govern the approval and administration of tests that may be used to determine a student's eligibility for assistance under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs), if that student does not have a high school diploma or its recognized equivalent. The regulations also provide for a passing score for each approved test. The regulations implement changes made to section 484(d) of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992, Public Law 102-325.

EFFECTIVE DATE: These regulations take effect on July 1, 1996 and apply to the 1996-97 and subsequent award years. However, affected parties do not have to comply with the information collection requirements in §§ 668.143, 668.144, 668.145, 668.146, 668.147, 668.148, 668.149, 668.150, 668.151, 668.152, 668.153, and 668.155 until the Department of Education publishes in the Federal Register the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995. The incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of July 1, 1996.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: These regulations implement section 484(d) of the HEA which provides that a student

who does not have a high school diploma or its recognized equivalent is eligible to receive Title IV, HEA program funds only if—

- The student takes an independently administered examination and achieves a score specified by the Secretary, demonstrating that the student has the ability to benefit from the education or training being offered; or
- The student is determined to have the ability to benefit from the education or training being offered in accordance with a "process" prescribed by the State in which the institution the student is attending or plans on attending is located and that has been approved by the Secretary.

The Secretary estimates that each year there are approximately 150,000 individuals without a high school diploma or its recognized equivalent who take ability to benefit tests under section 484(d) of the HEA in order to become eligible to receive Title IV, HEA Program funds. There are also approximately another 150,000 individuals without a high school diploma or its recognized equivalent who enroll in postsecondary educational institutions who do not apply for Title IV, HEA Program funds or who enroll in educational programs that do not qualify as eligible programs under the Title IV, HEA programs. (In addition, there are many other people who take basic skills tests for reasons other than seeking Title IV, HEA program assistance.) However, these regulations apply only to the first group.

The Secretary published a notice of proposed rulemaking in the Federal Register on August 16, 1994, 52 FR 42134–42144. The NPRM included a discussion of the major issues involving the proposed regulations that will not be repeated here. The following list summarizes those issues and identifies the pages in the preamble to the NPRM on which a discussion of those issues can be found.

The Secretary proposed that students had to provide documentation to institutions that they had high school diplomas or the recognized equivalent (52 FR 42134–5);

The Secretary proposed that approved tests assess secondary school level basic verbal and quantitative skills and general learned abilities (52 FR 42136);

The Secretary proposed that students without a high school diploma or a GED should be eligible for Title IV, HEA program funds because they demonstrate on that test secondary school level basic verbal and quantitative skills and general learned abilities comparable to the range of

scores of students who have a high school diploma or GED (52 FR 42136);

The Secretary proposed that the passing score on a test be one standard deviation below the mean for students with high school diplomas who have taken the test within three years before the date on which the test was submitted for approval (52 FR 42136);

The Secretary proposed a scheme for test administration that provided for tests being administered independent of the institutions that use the test (52 FR 42136–42137); and

The Secretary proposed to approve a State "process" based upon the "success rate" of students enrolled in that State process as compared to the success rate of high school graduates. (page 42137).

Substantive Changes to the NPRM

The following discussion reflects substantive changes made to the NPRM in the final regulations. The provisions are discussed in the order in which they appeared in the proposed rule.

Section 668.7 Eligible Student

In response to public comments, the Secretary has withdrawn the proposed requirement that institutions document that their students have high school diplomas or GEDs. Moreover, the Secretary is recodifying the provisions of § 668.7 in Subpart C of part 668 in another regulations package.

Section 668.143 Approval of State Tests or Assessments (No Comparable Provision in NPRM)

In response to public comments and the Secretary's proposal in the preamble, the Secretary has included an additional type of approved tests. Those approved tests are tests that have been developed by States to measure a student's skills and abilities for the purpose of determining whether the student has the skills and abilities the State expects of a high school graduate in that State. These tests will supplement rather than substitute for the other type tests discussed in this regulation.

Section 668.146 Criteria for Approving Tests (Section 668.145 in NPRM)

In response to public comment, the Secretary will approve tests that consist of a series of subtests. If a test publisher does not provide for a composite passing score for a series of basic verbal tests and a composite passing score for a series of basic quantitative tests, the test publisher must present evidence that allows the Secretary to prescribe a cut score for each subtest. To pass that test, a student must score at or above the cut score for each of the subtests.