

*Agreement Between the Secretary and a Test Publisher, and Agreement Between an Institution and a Certified Test Administrator (Sections 668.150 and 668.151 in NPRM)*

In response to public comment, the Secretary eliminated the requirements that a test publisher enter into an agreement with a certified test administrator and that the certified test administrator also enter into an agreement with an institution whose students are to be tested. The sections that contained those requirements in the NPRM, §§ 668.150 and 668.151 were also eliminated.

The important aspects of those sections that related to the integrity and independence of test administration were incorporated into § 668.151 *Test administration*.

*Section 668.152 Administration of Tests by Assessment Centers (No Comparable Provision in NPRM)*

In response to public comment, a new section dealing with test administration at assessment centers was added.

*Section 668.155 Transitional Rule for the 1996-97 Award Year (No Comparable Provision in NPRM)*

The Secretary has added a rule to facilitate the transition from the old to the new system.

These regulations go into effect on July 1, 1996 and govern the determination of student eligibility for Title IV, HEA programs under section 484(d) of the HEA starting with the 1996-97 award year. The Secretary strongly encourages test publishers that wish to have their tests approved for use in the 1996-97 award year to submit an application that satisfies the requirements of this subpart as soon as possible. Upon receipt of such an application, the Secretary will evaluate it to determine if it meets the requirements of this subpart.

If the test meets the requirements of this subpart, the Secretary will notify the test publisher. The Secretary will also publish in the Federal Register the name of the test, the passing score for that test, and the name of the test publisher.

To allow for a smooth transition from the current practice to the new regulatory practice, the Secretary will permit institutions to continue to use the current system for making an ability-to-benefit determination for a student until 60 days after the Secretary publishes in the Federal Register the first approved test and passing score that is appropriate for that student. Therefore, an institution may continue

to use a test and test score that was an approved test and test score as of June 30, 1996, the day before the new regulatory provisions go into effect, until 60 days after the Secretary publishes in the Federal Register the first test and passing score for each general category of test approved under these regulations. For example, if the Secretary approves a test in Spanish on August 1, 1996, an institution may continue to use a test in Spanish that was approved as of June 30, 1996 until October 1, 1996.

If an institution properly based a student eligibility determination under the current system, it does not have to redetermine the student's eligibility under the new system.

*Analysis of Comments and Changes*

In response to the Secretary's invitation in the NPRM, 142 parties submitted comments on the proposed regulations. An analysis of the comments and any changes made in the regulations in response to those comments follows.

Substantive issues are discussed under the regulations to which they pertain. If comments apply to more than one regulatory provision, they will be discussed under the first mentioned provision. Technical and other minor changes—and suggested changes that the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

*General Comments*

*Comments:* In the preamble to the NPRM, 59 FR 42134-42135, the Secretary solicited comments with regard to an alternative method of implementing section 484(d) of the HEA. This alternative method would link the ability-to-benefit (ATB) testing system to State educational practices under the Goals 2000: Educate America Act. The Secretary invited public comment on these alternatives. Three comments were received in support of this alternative approach.

*Discussion:* The Secretary agrees with these commenters that there is merit to an approach that links an ability-to-benefit testing system under section 484(d) of the HEA with State educational practices under the Goals 2000: Educate America Act and other State education reform initiatives. The Secretary believes, however, that such an approach should supplement rather than replace the testing system described in the NPRM.

Therefore, in developing the criteria for approved examinations and the passing scores for those examinations, the Secretary took cognizance of the

focus and purpose of the Goals 2000: Educate America Act in raising the educational standards of the country. Accordingly, to the extent that States have developed educational standards that reflect the skills and abilities expected of a high school graduate in that State, and have developed tests or other assessments to measure whether a student meets those standards, the Secretary will approve those tests and assessments for purposes of the provisions of section 484(d) of the HEA as well as the passing scores on those tests and assessments.

Because each State is responsible for determining the educational standards that reflect the skills and abilities expected of a high school graduate in that State, State standards may differ. Moreover, States also may choose different tests or assessments to measure whether students meet those standards, and may also differ on the passing scores on those tests and assessments. Therefore, if the Secretary approves a State's tests and assessments and passing scores, that test or assessment, and the passing score on that test or assessment, may be used for purposes of section 484(d) of the HEA only for students who attend eligible institutions located in that State. In this way, the Secretary will not impose one State's standards on another State.

If the Secretary approves a State's tests or assessments and the passing scores for those tests or assessments, a student must obtain a passing score on each required test or assessment in order to qualify for Title IV, HEA program funds under section 484(d) of the HEA.

Moreover, the educational standards that a State develops, and the tests or assessments that a State establishes to measure those standards, apply to all students in the State. Therefore, the tests that the Secretary approves to measure whether a student meets those standards for Title IV, HEA programs purposes do not include tests that are used solely for admission to a State public postsecondary institution or for admission to an institution that is part of a State system of public postsecondary institutions.

*Changes:* Sections 668.143 to 668.149 were redesignated as §§ 668.144 to 668.150, respectively, and a new section, § 668.143, was added. That new section provides for the approval of State tests or other assessments submitted by a State that the State uses to determine whether a student has the skills and abilities the State expects of a high school graduate in that State. The new section also provides for the approval of the State's passing scores on