

the State tests, and further provides that an approved State test may be used as an ability-to-benefit test for Title IV, HEA program purposes only by institutions located in that State.

*Comments:* In their introduction to comments on specific sections of the proposed rule, roughly one-third of the commenters stated that in their opinion the statutory phrase "benefit from the education or training offered" refers to specific educational or training programs and the relative cognitive demands of those programs. The commenters concluded that ability-to-benefit is dependent on existing cognitive demands of occupations, and must be measured and judged individually for each of the hundreds of occupation-specific training programs in postsecondary education, even if the current cognitive demands of an occupation are not "postsecondary."

*Discussion:* The Secretary disagrees with the commenters. The Secretary believes that there is a basic minimum competency that a student must achieve to benefit from any postsecondary education program. That basic competency is appropriately measured in terms of secondary school level basic skills and general learned abilities. Therefore, the Secretary requires approved tests to measure those skills and abilities. Further, as indicated in the preamble to the NPRM, the Secretary believes that earning a high school diploma or GED certificate should be the primary basis for qualifying to receive Title IV, HEA program assistance. The Secretary believes that students who do not have those credentials and qualify to receive such assistance by taking a test should demonstrate through that test a level of verbal and quantitative skills and general learned abilities at least comparable to those other categories of students.

Moreover, the Secretary objects to the position expressed by the commenters on the grounds that it is an approach that accustoms people to the lowest level of functioning in an occupation. It excuses institutions from critical aspects of instruction that will enable individuals to advance in their jobs or to change careers, and it falsely assumes that the nature of specific occupations will never change. The approach thus does not advance the quality of the nation's workforce. When the expenditure of Federal funds for education and training is at issue, the Secretary wishes to encourage more than a minimalist approach that only reinforces social and labor market stratification. The Secretary has encouraged generic academic

competence in the School-to-Work transition programs, and is taking a consistent position here.

*Changes:* None.

*Comments:* Nearly half the commenters contended that the receipt of a high school diploma is no guarantee that a student possesses minimum basic skills necessary to pursue postsecondary education, and that the regulations make an assumption about achievement associated with a secondary school credential that is unfounded.

*Discussion:* The Secretary agrees with the commenters that a high school diploma may not necessarily indicate that the holder of that diploma has sufficient skills to successfully pursue postsecondary education. However, students with a high school diploma or its recognized equivalent are statutorily eligible to receive Title IV, HEA Program funds. The Secretary interprets section 484(d) of the HEA as requiring students who do not have a high school diploma or its equivalent to be comparable to those that do in order to be eligible to receive Title IV, HEA program funds. Therefore, the Secretary established the passing score on ATB tests to reflect the scores received by high school graduates.

*Changes:* None.

#### *Section 668.7 Eligible Student*

*Comments:* Many commenters argued that the paperwork requirement to document receipt of a high school diploma was onerous, particularly at institutions to which students apply while they are still in high school and at open door institutions that, under state law, are required to admit anyone. Two other commenters pointed to the difficulty older students sometimes have in obtaining copies of records, and two commenters asked why students who had attended secondary school in another country were required to provide affidavits in both their native language and English. With few exceptions, commenters questioned whether there was sufficient evidence that students improperly claimed to have a high school diploma or its equivalent to warrant a rule affecting all students in postsecondary education.

One commenter asserted that the requirements weaken current federal standards and advocated stricter provisions for documenting evidence of receipt of a high school diploma or its equivalent. Another commenter, indirectly concurring with this position, suggested that, if an applicant for Title IV, HEA Program funds graduated from a secondary school in the United States but was unable to secure a copy of his or her diploma or transcript, a statement

from the state or local education agency confirming that the records were unavailable should be required.

*Discussion:* The Secretary is persuaded by the commenters that the added burden of documenting a student's declaration that he or she has a high school diploma or its recognized equivalent outweighs the benefit of requiring institutions to document that claim and has, therefore, decided not to require documentation of a high school diploma at this time. However, the Secretary will continue to investigate any alleged abuses in this area and, after consulting with the postsecondary education community and others, may pursue alternative means of ensuring that this student eligibility requirement is being enforced.

*Changes:* The Secretary has deleted the requirements relating to the documentation of a student's claim that he or she has a high school diploma. Moreover, the Secretary is recodifying the provisions of § 668.7 in Subpart C of part 668 in another regulations package.

*Comments:* Two commenters took opposite positions on the requirement that a student could use a passing score on an approved ATB test for 12 months. One commenter recommended a shorter period on the grounds that the most current score is the most valid measure. The other commenter recommended that a passing score should be used indefinitely since a test score on a valid ATB test reflects a permanent level of verbal and quantitative skills. Another commenter asserted that the NPRM fails to incorporate changes made to the definition of a "recognized equivalent of a high school diploma" in § 600.2 of the Institutional Eligibility regulations, 34 CFR 600.2.

*Discussion:* The Secretary believes that a passing score should not be used indefinitely because psychometric research demonstrates that the "current status" of knowledge is a more reliable predictor of imminent performance than previous status of such knowledge. However, such research also indicates that a period shorter than a year does not measurably increase the predictive power of a test.

The commenter is correct in the observation that proposed § 668.7 did not take into account the change in the definition of "recognized equivalent of a high school diploma" in § 600.2 of the Institutional Eligibility regulations, 34 CFR 600.2. However, since the Secretary is deleting the requirements for documenting a student's claim to have a high school diploma or its equivalent, the Secretary is not amending § 668.7 in this regulation package.