

recognized equivalent to receive Title IV, HEA Program funds, that person should enter postsecondary education with roughly the same comparable secondary school level basic skills and general learned abilities as those of the typical range of high school graduates.

The Secretary established the passing score on approved tests as the score that represents one standard deviation below the mean for students with high school diplomas who took the test. The score means theoretically that 84 percent of the high school graduates who took the test passed the test. The Secretary established this score based upon a recognition that the secondary school level basic skills and general learned abilities of high school graduates in the United States vary widely.

As noted earlier in the general comments, the Secretary disagrees with the commenters who contended that passing scores should be established on a program-by-program basis. The Secretary also disagrees with those commenters who contended that the passing score was either too high or too low, or was inconsistent with the Goals 2000: Educate America Act and the School-to-Work Opportunity Act. The Secretary believes it is difficult to make definitive judgments regarding whether a passing score is too high or too low until tests are approved and test-takers take the test. Moreover, until performance standards are set for "Certificate of Initial Mastery" under school-to-work models, it is premature to contend that the Secretary's passing score is inconsistent with those standards. When that information is forthcoming, the Secretary may revisit the question of the appropriate passing score for these ATB tests.

The Secretary acknowledges the commenters' point that there is a logic to using the performance of students with GEDs as the reference point for the passing score. However, the Secretary chose not to use that group as a reference because the GED population that subsequently takes the types of examinations used for ability-to-benefit determinations is small and not representative of the general postsecondary school population in the United States. As for the suggestion to adopt institutional variations on the passing score for institutions that provide sufficient remediation and instructional resources for ATB students, the Secretary suggests that this approach is better suited for the "state process" as described in § 668.156.

Finally, the Secretary agrees that the fifth position, basing the passing score on predictive validity studies using program completion as the criterion, is

theoretically the best approach to take in establishing a passing score. However, the Secretary chose not to use that approach because it was impossible to administer, given the small size of the ATB population, the cost of predictive validity studies, and the additional time that would be necessary to review and approve that approach. Moreover, adopting that suggestion would further delay the publication of these regulations implementing section 484(d) of the HEA.

*Changes:* None.

*Section 668.148 Additional Criteria for the Approval of Performance-Based Tests, Tests for Non-Native Speakers of English, Modified Tests for Persons With Disabilities, and Computer-Based Tests and Tests for ESL Programs (Section 668.47 in NPRM)*

*Comments:* One commenter suggested that performance assessments, as described in proposed § 668.147, not be included in the potential pool of approved tests, because the commenter asserted that these tests "are still in a developmental stage, with substantial false negative and false positive reports." Another commenter recommended additional security measures, including the requirement that a student show a photo identification for computer-based tests.

*Discussion:* The validity and reliability of any assessment tests will be based upon the evidence provided by the test publisher, and the Secretary will not rule, *a priori*, that any category of tests is inappropriate. The Secretary will rely on the security requirements of test publishers with regard to the use of photo identification for computer-based tests.

*Changes:* None.

*Section 668.150 Agreement Between the Secretary and a Test Publisher (Section 668.149 in NPRM)*

*Comments:* Two commenters saw no necessity for this or any of the agreements specified in proposed §§ 668.149, 668.150, and 668.151 on the grounds that the practices specified in these agreements and the abuses they are designed to address are already accounted for in normal industry practice.

*Discussion:* In the Secretary's opinion, test publishers are key to the integrity of the ability-to-benefit testing process, and the agreement between the Secretary and the test publisher is designed to assure that the tests are being independently administered in a proper and impartial manner. Past practice has indicated that integrity in the administration of ability-to-benefit

tests is not uniform throughout the industry, and that this agreement is necessary to protect both students and the public interest.

However, the Secretary agrees with the commenters that formal agreements between a test publisher and a test administrator and between a test administrator and an institution are not necessary to the integrity of test administration. Therefore, the Secretary has eliminated those two agreements although key provisions in those agreements have been incorporated in the section dealing with test administration, § 668.151.

*Changes:* The Secretary has deleted the requirement that a test publisher enter into an agreement with a test administrator and that the test administrator also enter into an agreement with an institution. In fact, the Secretary has deleted the proposed regulatory sections in which those requirements were contained, proposed §§ 668.150 and 668.151.

*Comments:* One commenter asked that language be added to ensure that test publishers exercise equal employment opportunity principles in certifying test administrators. Another commenter suggested language be inserted to require the publisher to decertify a test administrator if he or she is found to have compromised the integrity of the testing process. Another commenter asked whether decertified test administrators could appeal and whether they could subsequently be recertified.

*Discussion:* The Secretary believes that it would be inappropriate to include a provision in the agreement regarding the test publisher's employment practices because it is not within his legal jurisdiction to do so.

The proposed rule included a provision for decertifying a test administrator for violating the integrity of the test. The Secretary has revised this provision to indicate that the decertification would coincide with the period for which the test publisher's test was approved. During this period, the test administrator could not be recertified. No appeal is provided for a test publisher's decision to decertify a test administrator.

*Changes:* Section 668.150(b)(3) is revised to provide that if a test publisher decertifies a test administrator, the decertification coincide with the period for which the test publisher's test was approved.

*Comments:* Half the commenters suggested that institutions should be allowed to score the ATB test at the educational location, rather than send the test to the publisher for scoring.