Discussion: The Secretary believes that it is not inequitable to require test publishers to score tests and that considerable delays will not be the result of such a requirement. A test administrator must send the test publisher the test taker's examination within two days of administration of the test, and the test publisher must "immediately" generate a test score and "promptly" notify the test taker and the institution of the test results. If the test is a computer-based test, the test taker and the institution will receive the test results even more quickly. With regard to the retaking of tests, the Secretary points out that many people retake major national examinations and licensing examinations every year without compromising the validity of those tests. However, the Secretary recognizes that the practice of retesting can be abused, and that the criteria for test approval in proposed §668.145 were not explicit in the matter of acceptable retesting procedures.

*Changes:* The Secretary has modified § 668.146(b) to add the requirement that the publishers have guidelines for retesting, including time between test-taking, and that such guidelines be based on empirical analyses.

## Section 668.154 Institutional Accountability

*Comments:* One commenter suggested that those professionals who abuse the system be accountable for their actions, and institutions without a history of abuse should be permitted to continue their practices of local administration and scoring of ATB tests. Another commenter felt that the institutional accountability section was too lenient, and suggested strengthening the language so that students would not be liable for repayment of fraudulently disbursed funds unless the student knowingly caused the erroneous determination.

*Discussion:* As indicated earlier, the Secretary has developed a regulatory scheme that eliminates institutions from test administration. In return, the Secretary will not make institutions financially responsible if an institution awards Title IV, HEA Program funds to a student who presents evidence that he or she passed an approved test, if the institution does not interfere with the independence of the testing process. Therefore, the Secretary strongly disagrees with the commenters' suggestion that an institution should be able to administer and score a test.

Changes: None.

## Section 668.156 Approved State Process (Section 668.155 in NPRM)

Comments: All commenters from community colleges and several other commenters objected to the 95% "success rate" criterion as both arbitrary and too high and suggested that the Secretary use an 85% "success rate" as an alternative. Some commenters added that this requirement does not reflect the statutory mandate that the judgment of success take into account the diversity of the populations served by participating institutions. Nearly all commenters from community colleges requested consistency of calculation of 'success rate" with that of the Student Right-to-Know Act. A few commenters also interpreted the "State process" provisions as excluding students at forprofit institutions. One commenter pointed out that the data required for such a calculation were not immediately available, and that State agencies submitting applications for approval of a "State process" should be allowed three years to assemble the data necessary to support their case.

Discussion: In the NPRM provisions governing the "State process" alternative to ATB testing, the Secretary proposed that the "success rate" for students without a high school diploma or its equivalent must, in effect, be equal to the success rate for students who possess a high school diploma. "Success" was defined as the sum of program completion and continued enrollment, although this definition was not explicit in including successful transfers in the category of continued enrollment. The 95% rate was chosen since it represents an equivalency minus a theoretical standard error of measurement. The Secretary wishes to make sure that institutions participating in a State process are truly serious and not casual in their execution of responsibilities to ATB students. If a special State process for students without high school diplomas is truly effective, the success rate of the students it services should at least equal the success rate of students with high school diplomas who did not receive the special services under the process. To account for variances in the measurement of this outcome, the Secretary chose a standard rule of chance that 1 out of 20 results might be attributable to faulty measurement. One out of 20 is 5%. An equivalency minus 5% is 95%.

The commenters who objected to the 95 percent rate claimed that such a rate was too high and arbitrary and suggested that the rate be reduced to 85%. However, those commenters provided no justification for that lower percentage.

The Secretary disagrees with the commenters who contended that the regulation does not take into account the diversity of the population served by institutions included in the State process. The regulations give States maximum flexibility to design their processes under which States are free to choose how to respond to the needs of the diverse group of students served by the process. The Secretary measures whether the process is successful in satisfying the needs of these students by evaluating whether the success rate of these students, and all the others in the State process, are equal to the success rate of high school graduates.

As for the calculation of the "success rate" in terms similar to those required under the Student Right-to-Know Act, the Secretary proposed a simple "success rate" to avoid the complexities necessitated by implementing that Act.

The Secretary is not requiring any condition or limitation with regard to the type of institutions that may or must participate in a State process. Therefore, the type of institutions that may or must participate will be determined by the State.

Finally, the Secretary believes that a State does not need three years to collect data to support the approval of its State process. The Secretary believes that when this regulation goes into effect on July 1, 1996, the States will have had adequate lead-time to assemble data to support the approval of their State processes. States may, of course, wait a longer period of time before applying to the Secretary for approval of their State process.

*Changes:* The Secretary amends § 668.157(h)(1) to provide that the transfer of a student who remains enrolled in another institution at the end of that award year can be included in the "success rate" for the institution from which the student transferred.

## Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained