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## Title 34 – Education

### Subtitle B – Regulations of the Offices of the Department of Education

#### Chapter VI – Office of Postsecondary Education, Department of Education

#### Part 668 – Student Assistance General Provisions

**Authority:** 20 U.S.C. 1001-1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c-1, 1221e-3, and 1231a, unless otherwise noted.

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#### Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

**Source:** 75 FR 66960, Oct. 29, 2010, unless otherwise noted.

#### § 668.141 Scope.

- (a) This subpart sets forth the provisions under which a student who has neither a high school diploma nor its recognized equivalent may become eligible to receive title IV, HEA program funds by—

- (1) Achieving a passing score, specified by the Secretary, on an independently administered test approved by the Secretary under this subpart; or
  - (2) Being enrolled in an eligible institution that participates in a State process approved by the Secretary under this subpart.
- (b) Under this subpart, the Secretary sets forth—
- (1) The procedures and criteria the Secretary uses to approve tests;
  - (2) The basis on which the Secretary specifies a passing score on each approved test;
  - (3) The procedures and conditions under which the Secretary determines that an approved test is independently administered;
  - (4) The information that a test publisher or a State must submit, as part of its test submission, to explain the methodology it will use for the test anomaly studies as described in § 668.144(c)(17) and (d)(8), as appropriate;
  - (5) The requirements that a test publisher or a State, as appropriate—
    - (i) Have a process to identify and follow up on test score irregularities;
    - (ii) Take corrective action—up to and including decertification of test administrators—if the test publisher or the State determines that test score irregularities have occurred; and
    - (iii) Report to the Secretary the names of any test administrators it decertifies and any other action taken as a result of test score analyses; and
  - (6) The procedures and conditions under which the Secretary determines that a State process demonstrates that students in the process have the ability to benefit from the education and training being offered to them.

(Authority: 20 U.S.C. 1091(d))

### § 668.142 Special definitions.

The following definitions apply to this subpart:

**Assessment center:** A facility that—

- (1) Is located at an eligible institution that provides two-year or four-year degrees or is a postsecondary vocational institution;
- (2) Is responsible for gathering and evaluating information about individual students for multiple purposes, including appropriate course placement;
- (3) Is independent of the admissions and financial aid processes at the institution at which it is located;
- (4) Is staffed by professionally trained personnel;
- (5) Uses test administrators to administer tests approved by the Secretary under this subpart; and
- (6) Does not have as its primary purpose the administration of ability to benefit tests.

**ATB test irregularity:** An irregularity that results from an ATB test being administered in a manner that does not conform to the established rules for test administration consistent with the provisions of subpart J of part 668 and the test administrator's manual.

**Computer-based test:** A test taken by a student on a computer and scored by a computer.

**General learned abilities:** Cognitive operations, such as deductive reasoning, reading comprehension, or translation from graphic to numerical representation, that may be learned in both school and non-school environments.

**Independent test administrator:** A test administrator who administers tests at a location other than an assessment center and who—

- (1) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the fees earned for administering approved ATB tests through an agreement with the test publisher or State and has no controlling interest in any other institution;
- (2) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;
- (3) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution, its affiliates, or its parent corporation or of any other institution, or a member of the family of any of these individuals; and
- (4) Is not a current or former student of the institution.

**Individual with a disability:** A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

**Non-native speaker of English:** A person whose first language is not English and who is not fluent in English.

**Secondary school level:** As applied to "content," "curricula," or "basic verbal and quantitative skills," the basic knowledge or skills generally learned in the 9th through 12th grades in United States secondary schools.

**Test:** A standardized test, assessment or instrument that has formal protocols on how it is to be administered in order to be valid. These protocols include, for example, the use of parallel, equated forms; testing conditions; time allowed for the test; and standardized scoring. Tests are not limited to traditional paper and pencil (or computer-administered) instruments for which forms are constructed prior to administration to examinees. Tests may also include adaptive instruments that use computerized algorithms for selecting and administering items in real time; however, for such instruments, the size of the item pool and the method of item selection must ensure negligible overlap in items across retests.

**Test administrator:** An individual who is certified by the test publisher (or the State, in the case of an approved State test or assessment) to administer tests approved under this subpart in accordance with the instructions provided by the test publisher or the State, as applicable, which includes protecting the test and the test results from improper disclosure or release, and who is not compensated on the basis of test outcomes.

**Test item:** A question on a test.

*Test publisher:* An individual, organization, or agency that owns a registered copyright of a test, or has been authorized by the copyright holder to represent the copyright holder's interests regarding the test.

(Authority: 20 U.S.C. 1091(d))

## § 668.143 [Reserved]

### § 668.144 Application for test approval.

- (a) The Secretary only reviews tests under this subpart that are submitted by the publisher of that test or by a State.
- (b) A test publisher or a State that wishes to have its test approved by the Secretary under this subpart must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain all the information necessary for the Secretary to approve the test under this subpart, including but not limited to, the information contained in paragraph (c) or (d) of this section, as applicable.
- (c) A test publisher must include with its application—
  - (1) A summary of the precise editions, forms, levels, and (if applicable) sub-tests for which approval is being sought;
  - (2) The name, address, telephone number, and e-mail address of a contact person to whom the Secretary may address inquiries;
  - (3) Each edition, form, level, and sub-test of the test for which the test publisher requests approval;
  - (4) The distribution of test scores for each edition, form, level, or sub-test for which approval is sought, that allows the Secretary to prescribe the passing score for each test in accordance with § 668.147;
  - (5) Documentation of test development, including a history of the test's use;
  - (6) Norming data and other evidence used in determining the distribution of test scores;
  - (7) Material that defines the content domains addressed by the test;
  - (8) Documentation of periodic reviews of the content and specifications of the test to ensure that the test reflects secondary school level verbal and quantitative skills;
  - (9) If a test being submitted is a revision of the most recent edition approved by the Secretary, an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and data from validity studies of the test undertaken subsequent to the revisions;
  - (10) A description of the manner in which test-taking time was determined in relation to the content representativeness requirements in § 668.146(b)(3) and an analysis of the effects of time on performance. This description may also include the manner in which test-taking time was determined in relation to the other requirements in § 668.146(b);
  - (11) A technical manual that includes—
    - (i) An explanation of the methodology and procedures for measuring the reliability of the test;
    - (ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

- (iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;
  - (iv) Evidence that the test was normed using—
    - (A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and
    - (B) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States;
  - (v) Documentation of the level of difficulty of the test;
  - (vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and
  - (vii) Additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with temporary impairments, individuals with disabilities and guidance on the types of accommodations that are allowable;
- (12) The manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the test publisher;
- (13) An analysis of the item-content of each edition, form, level, and (if applicable) sub-test to demonstrate compliance with the required secondary school level criterion specified in § 668.146(b);
- (14) A description of retesting procedures and the analysis upon which the criteria for retesting are based;
- (15) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.146;
- (16) A description of its test administrator certification process that provides—
- (i) How the test publisher will determine that the test administrator has the necessary training, knowledge, skill, and integrity to test students in accordance with this subpart and the test publisher's requirements; and
  - (ii) How the test publisher will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release;
- (17) A description of the test anomaly analysis the test publisher will conduct and submit to the Secretary that includes—
- (i) An explanation of how the test publisher will identify potential test irregularities and make a determination that test irregularities have occurred;
  - (ii) An explanation of the process and procedures for corrective action (up to and including decertification of a certified test administrator) when the test publisher determines that test irregularities have occurred; and
  - (iii) Information on when and how the test publisher will notify a test administrator, the Secretary, and the institutions for which the test administrator had previously provided testing services for that test publisher, that the test administrator has been decertified; and
- (18)

- (i) An explanation of any accessible technologies that are available to accommodate individuals with disabilities, and
  - (ii) A description of the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided, for scoring and norming purposes.
- (d) A State must include with its application—
- (1) The information necessary for the Secretary to determine that the test the State uses measures 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;
  - (2) The passing scores on that test;
  - (3) Any guidance on the interpretation of scores resulting from any modifications of the test for individuals with disabilities;
  - (4) A statement regarding how the test will be kept secure;
  - (5) A description of retesting procedures and the analysis upon which the criteria for retesting are based;
  - (6) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.146;
  - (7) A description of its test administrator certification process that provides—
    - (i) How the State will determine that the test administrator has the necessary training, knowledge, skill, and integrity to test students in accordance with the State's requirements; and
    - (ii) How the State will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release;
  - (8) A description of the test anomaly analysis that the State will conduct and submit to the Secretary that includes—
    - (i) An explanation of how the State will identify potential test irregularities and make a determination that test irregularities have occurred;
    - (ii) An explanation of the process and procedures for corrective action (up to and including decertification of a test administrator) when the State determines that test irregularities have occurred; and
    - (iii) Information on when and how the State will notify a test administrator, the Secretary, and the institutions for which the test administrator had previously provided testing services for that State, that the test administrator has been decertified;
  - (9)
    - (i) An explanation of any accessible technologies that are available to accommodate individuals with disabilities; and
    - (ii) A description of the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided, for scoring and norming purposes; and

- (10) The name, address, telephone number, and e-mail address of a contact person to whom the Secretary may address inquiries.
- (11) A technical manual that includes—
  - (i) An explanation of the methodology and procedures for measuring the reliability of the test;
  - (ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;
  - (iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;
  - (iv) Evidence that the test was normed using—
    - (A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and
    - (B) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States;
  - (v) Documentation of the level of difficulty of the test;
  - (vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and
  - (vii) Additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with temporary impairments, individuals with disabilities and guidance on the types of accommodations that are allowable;
- (12) the manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the State.

*Approved by the Office of Management and Budget under control number 1845-0049)*

(Authority: 20 U.S.C. 1091(d))

### **§ 668.145 Test approval procedures.**

(a)

- (1) When the Secretary receives a complete application from a test publisher or a State, the Secretary selects one or more experts in the field of educational testing and assessment, who possess appropriate advanced degrees and experience in test development or psychometric research, to determine whether the test meets the requirements for test approval contained in §§ 668.146, 668.147, 668.148, or 668.149, as appropriate, and to advise the Secretary of their determinations.
- (2) If the test involves a language other than English, the Secretary selects at least one individual who is fluent in the language in which the test is written to collaborate with the testing expert or experts described in paragraph (a)(1) of this section and to advise the Secretary on whether the test meets the additional criteria, provisions, and conditions for test approval contained in §§ 668.148 and 668.149.

- (3) For test batteries that contain multiple sub-tests measuring content domains other than verbal and quantitative domains, the Secretary reviews only those sub-tests covering the verbal and quantitative domains.

(b)

- (1) If the Secretary determines that a test satisfies the criteria and requirements for test approval, the Secretary notifies the test publisher or the State, as applicable, of the Secretary's decision, and publishes the name of the test and the passing scores in the FEDERAL REGISTER.
- (2) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the Secretary notifies the test publisher or the State, as applicable, of the Secretary's decision, and the reasons why the test did not meet those criteria and requirements.
- (3) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the test publisher or the State that submitted the test for approval may request that the Secretary reevaluate the Secretary's decision. Such a request must be accompanied by—
  - (i) Documentation and information that address the reasons for the non-approval of the test; and
  - (ii) An analysis of why the information and documentation submitted meet the criteria and requirements for test approval notwithstanding the Secretary's earlier decision to the contrary.

(c)

- (1) The Secretary approves a test for a period not to exceed five years from the date the notice of approval of the test is published in the FEDERAL REGISTER.
- (2) The Secretary extends the approval period of a test to include the period of review if the test publisher or the State, as applicable, re-submits the test for review and approval under § 668.144 at least six months before the date on which the test approval is scheduled to expire.

(d)

- (1) The Secretary's approval of a test may be revoked if the Secretary determines that the test publisher or the State violated any terms of the agreement described in § 668.150, that the information the test publisher or the State submitted as a basis for approval of the test was inaccurate, or that the test publisher or the State substantially changed the test and did not resubmit the test, as revised, for approval.
- (2) If the Secretary revokes approval of a previously approved test, the Secretary publishes a notice of that revocation in the FEDERAL REGISTER. The revocation becomes effective—
  - (i) One hundred and twenty days from the date the notice of revocation is published in the FEDERAL REGISTER; or
  - (ii) An earlier date specified by the Secretary in a notice published in the FEDERAL REGISTER.

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(Authority: 20 U.S.C. 1091(d))

### **§ 668.146 Criteria for approving tests.**

- (a) Except as provided in § 668.148, the Secretary approves a test under this subpart if—

- (1) The test meets the criteria set forth in paragraph (b) of this section;
  - (2) The test publisher or the State satisfies the requirements set forth in paragraph (c) of this section; and
  - (3) The Secretary makes a determination that the information the test publisher or State submitted in accordance with § 668.144(c)(17) or (d)(8), as applicable, provides adequate assurance that the test publisher or State will conduct rigorous test anomaly analyses and take appropriate action if test administrators do not comply with testing procedures.
- (b) To be approved under this subpart, a test must—
- (1) Assess secondary school level basic verbal and quantitative skills and general learned abilities;
  - (2) Sample the major content domains of secondary school level verbal and quantitative skills with sufficient numbers of questions to—
    - (i) Adequately represent each domain; and
    - (ii) Permit meaningful analyses of item-level performance by students who are representative of the contemporary population beyond the age of compulsory school attendance and have earned a high school diploma;
  - (3) Require appropriate test-taking time to permit adequate sampling of the major content domains described in paragraph (b)(2) of this section;
  - (4) Have all forms (including short forms) comparable in reliability;
  - (5) Have, in the case of a test that is revised, new scales, scale values, and scores that are demonstrably comparable to the old scales, scale values, and scores;
  - (6) Meet all standards for test construction provided in the 1999 edition of the *Standards for Educational and Psychological Testing*, prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Federal Student Aid, room 113E2, 830 First Street, NE., Washington, DC 20002, phone (202) 377-4026, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1-866-272-6272, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). The document also may be obtained from the American Educational Research Association at: <http://www.aera.net>; and
  - (7) Have the test publisher's or the State's guidelines for retesting, including time between test-taking, be based on empirical analyses that are part of the studies of test reliability.
- (c) In order for a test to be approved under this subpart, a test publisher or a State must—
- (1) Include in the test booklet or package—
    - (i) Clear, specific, and complete instructions for test administration, including information for test takers on the purpose, timing, and scoring of the test; and
    - (ii) Sample questions representative of the content and average difficulty of the test;

- (2) Have two or more secure, equated, alternate forms of the test;
- (3) Except as provided in §§ 668.148 and 668.149, provide tables of distributions of test scores which clearly indicate the mean score and standard deviation for high school graduates who have taken the test within three years prior to the date that the test is submitted to the Secretary for approval under § 668.144;
- (4) Norm the test with—
  - (i) Groups that are of sufficient size to produce defensible standard errors of the mean and are not disproportionately composed of any race or gender; and
  - (ii) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States; and
- (5) If test batteries include sub-tests assessing different verbal and/or quantitative skills, a distribution of test scores as described in paragraph (c)(3) of this section that allows the Secretary to prescribe either—
  - (i) A passing score for each sub-test; or
  - (ii) One composite passing score for verbal skills and one composite passing score for quantitative skills.

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(Authority: 20 U.S.C. 1091(d))

### **§ 668.147 Passing scores.**

Except as provided in §§ 668.144(d), 668.148, and 668.149, to demonstrate that a test taker has the ability to benefit from the education and training offered by the institution, the Secretary specifies that the passing score on each approved test is one standard deviation below the mean score of a sample of individuals who have taken the test within the three years before the test is submitted to the Secretary for approval. The sample must be representative of the population of high school graduates in the United States.

(Authority: 20 U.S.C. 1091(d))

### **§ 668.148 Additional criteria for the approval of certain tests.**

- (a) In addition to satisfying the criteria in § 668.146, to be approved by the Secretary, a test must meet the following criteria, if applicable:
  - (1) In the case of a test developed for a non-native speaker of English who is enrolled in a program that is taught in his or her native language, the test must be—
    - (i) Linguistically accurate and culturally sensitive to the population for which the test is designed, regardless of the language in which the test is written;
    - (ii) Supported by documentation detailing the development of normative data;

- (iii) If translated from an English version, supported by documentation of procedures to determine its reliability and validity with reference to the population for which the translated test was designed;
  - (iv) Developed in accordance with guidelines provided in the 1999 edition of the “Testing Individuals of Diverse Linguistic Backgrounds” section of the *Standards for Educational and Psychological Testing* prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Federal Student Aid, room 113E2, 830 First Street, NE., Washington, DC 20002, phone (202) 377-4026, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1-866-272-6272, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). The document also may be obtained from the American Educational Research Association at: <http://www.aera.net>; and
  - (v)
    - (A) If the test is in Spanish, accompanied by a distribution of test scores that clearly indicates the mean score and standard deviation for Spanish-speaking students with high school diplomas who have taken the test within five years before the date on which the test is submitted to the Secretary for approval.
    - (B) If the test is in a language other than Spanish, accompanied by a recommendation for a provisional passing score based upon performance of a sample of test takers representative of non-English speaking individuals who speak a language other than Spanish and who have a high school diploma. The sample upon which the recommended provisional passing score is based must be large enough to produce stable norms.
- (2) In the case of a test that is modified for use for individuals with disabilities, the test publisher or State must—
- (i) Follow guidelines provided in the “Testing Individuals with Disabilities” section of the *Standards for Educational and Psychological Testing*; and
  - (ii) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance.
- (3) In the case of a computer-based test, the test publisher or State, as applicable, must—
- (i) Provide documentation to the Secretary that the test complies with the basic principles of test construction and standards of reliability and validity as promulgated in the *Standards for Educational and Psychological Testing*;
  - (ii) Provide test administrators with instructions for familiarizing test takers with computer hardware prior to test-taking; and
  - (iii) Provide two or more parallel, equated forms of the test, or, if parallel forms are generated from an item pool, provide documentation of the methods of item selection for alternate forms.

- (b) If a test is designed solely to measure the English language competence of non-native speakers of English—
  - (1) The test must meet the criteria set forth in § 668.146(b)(6), (c)(1), (c)(2), and (c)(4); and
  - (2) The test publisher must recommend a passing score based on the mean score of test takers beyond the age of compulsory school attendance who completed U.S. high school equivalency programs, formal training programs, or bilingual vocational programs.

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(Authority: 20 U.S.C. 1091(d))

### **§ 668.149 Special provisions for the approval of assessment procedures for individuals with disabilities.**

If no test is reasonably available for individuals with disabilities so that no test can be approved under §§ 668.146 or 668.148 for these individuals, the following procedures apply:

- (a) The Secretary considers a modified test or testing procedure, or instrument that has been scientifically developed specifically for the purpose of evaluating the ability to benefit from postsecondary training or education of individuals with disabilities to be an approved test for purposes of this subpart provided that the testing procedure or instrument measures both basic verbal and quantitative skills at the secondary school level.
- (b) The Secretary considers the passing scores for these testing procedures or instruments to be those recommended by the test publisher or State, as applicable.
- (c) The test publisher or State, as applicable, must—
  - (1) Maintain appropriate documentation, including a description of the procedures or instruments, their content domains, technical properties, and scoring procedures; and
  - (2) Require the test administrator to—
    - (i) Use the procedures or instruments in accordance with instructions provided by the test publisher or State, as applicable; and
    - (ii) Use the passing scores recommended by the test publisher or State, as applicable.

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(Authority: 20 U.S.C. 1091(d))

### **§ 668.150 Agreement between the Secretary and a test publisher or a State.**

- (a) If the Secretary approves a test under this subpart, the test publisher or the State that submitted the test must enter into an agreement with the Secretary that contains the provisions set forth in paragraph (b) of this section before an institution may use the test to determine a student's eligibility for title IV, HEA program funds.

- (b) The agreement between a test publisher or a State, as applicable, and the Secretary provides that the test publisher or the State, as applicable, must—
- (1) Allow only test administrators that it certifies to give its test;
  - (2) Require each test administrator it certifies to—
    - (i) Provide the test publisher or the State, as applicable, with a certification statement that indicates he or she is not currently decertified; and
    - (ii) Notify the test publisher or the State, as applicable, immediately if any other test publisher or State decertifies the test administrator;
  - (3) Only certify test administrators who—
    - (i) Have the necessary training, knowledge, and skill to test students in accordance with the test publisher's or the State's testing requirements;
    - (ii) Have the ability and facilities to keep its test secure against disclosure or release; and
    - (iii) Have not been decertified within the last three years by any test publisher or State;
  - (4) Decertify a test administrator for a period of three years if the test publisher or the State finds that the test administrator—
    - (i) Has failed to give its test in accordance with the test publisher's or the State's instructions;
    - (ii) Has not kept the test secure;
    - (iii) Has compromised the integrity of the testing process; or
    - (iv) Has given the test in violation of the provisions contained in § 668.151;
  - (5) Reevaluate the qualifications of a test administrator who has been decertified by another test publisher or State and determine whether to continue the test administrator's certification or to decertify the test administrator;
  - (6) Immediately notify the test administrator, the Secretary, and the institutions where the test administrator previously administered approved tests when the test publisher or the State decertifies a test administrator;
  - (7)
    - (i) Review the test results of the tests administered by a decertified test administrator and determine which tests may have been improperly administered during the five (5) year period preceding the date of decertification;
    - (ii) Immediately notify the affected institutions and students or prospective students; and
    - (iii) Provide a report to the Secretary on the results of the review and the notifications provided to institutions and students or prospective students;
  - (8) Report to the Secretary if the test publisher or the State certifies a previously decertified test administrator after the three year period specified in paragraph (b)(4) of this section;
  - (9) Score a test answer sheet that it receives from a test administrator;
  - (10) If a computer-based test is used, provide the test administrator with software that will—

- (i) Immediately generate a score report for each test taker;
  - (ii) Allow the test administrator to send to the test publisher or the State, as applicable, a record of the test taker's performance on each test item and the test taker's test scores using a data transfer method that is encrypted and secure; and
  - (iii) Prohibit any changes in test taker responses or test scores;
- (11) Promptly send to the student and the institution the student indicated he or she is attending or scheduled to attend a notice stating the student's score for the test and whether or not the student passed the test;
  - (12) Keep each test answer sheet or electronic record forwarded for scoring and all other documents forwarded by the test administrator with regard to the test for a period of three years from the date the analysis of the tests results, described in paragraph (b)(13) of this section, was sent to the Secretary;
  - (13) Analyze the test scores of students who take the test to determine whether the test scores and data produce any irregular pattern that raises an inference that the tests were not being properly administered, and provide the Secretary with a copy of this analysis within 18 months after the test was approved and every 18 months thereafter during the period of test approval;
  - (14) Upon request, give the Secretary, a State agency, an accrediting agency, and law enforcement agencies access to test records or other documents related to an audit, investigation, or program review of an institution, the test publisher, or a test administrator;
  - (15) Immediately report to the Secretary if the test publisher or the State finds any credible information indicating that a test has been compromised;
  - (16) Immediately report to the Office of Inspector General of the Department of Education for investigation if the test publisher or the State finds any credible information indicating that a test administrator or institution may have engaged in civil or criminal fraud, or other misconduct; and
  - (17) Require a test administrator who provides a test to an individual with a disability who requires an accommodation in the test's administration to report to the test publisher or the State within the time period specified in § 668.151(b)(2) or § 668.152(b)(2), as applicable, the nature of the disability and the accommodations that were provided.

(c)

- (1) The Secretary may terminate an agreement with a test publisher or a State, as applicable, if the test publisher or the State fails to carry out the terms of the agreement described in paragraph (b) of this section.
- (2) Before terminating the agreement, the Secretary gives the test publisher or the State, as applicable, the opportunity to show that it has not failed to carry out the terms of its agreement.
- (3) If the Secretary terminates an agreement with a test publisher or a State under this section, the Secretary publishes a notice in the FEDERAL REGISTER specifying when institutions may no longer use the test publisher's or the State's test(s) for purposes of determining a student's eligibility for title IV, HEA program funds.

*Approved by the Office of Management and Budget under control number 1845-0049)*

(Authority: 20 U.S.C. 1091(d))

### § 668.151 Administration of tests.

(a)

- (1) To establish a student's eligibility for title IV, HEA program funds under this subpart, an institution must select a test administrator to give an approved test.
- (2) An institution may use the results of an approved test it received from an approved test publisher or assessment center to determine a student's eligibility to receive title IV, HEA program funds if the test was independently administered and properly administered in accordance with this subpart.

(b) The Secretary considers that a test is independently administered if the test is—

- (1) Given at an assessment center by a certified test administrator who is an employee of the center; or
- (2) Given by an independent test administrator who maintains the test at a secure location and submits the test for scoring by the test publisher or the State or, for a computer-based test, a record of the test scores, within two business days of administering the test.

(c) The Secretary considers that a test is not independently administered if an institution—

- (1) Compromises test security or testing procedures;
- (2) Pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test; or
- (3) Otherwise interferes with the test administrator's independence or test administration.

(d) The Secretary considers that a test is properly administered if the test administrator—

- (1) Is certified by the test publisher or the State, as applicable, to give the test publisher's or the State's test;
- (2) Administers the test in accordance with instructions provided by the test publisher or the State, as applicable, and in a manner that ensures the integrity and security of the test;
- (3) Makes the test available only to a test-taker, and then only during a regularly scheduled test;
- (4) Secures the test against disclosure or release; and
- (5) Submits the completed test or, for a computer-based test, a record of test scores, to the test publisher or the State, as applicable, within the time period specified in § 668.152(b) or paragraph (b)(2) of this section, as appropriate, and in accordance with the test publisher's or the State's instructions.

(e) An independent test administrator may not score a test.

(f) An individual who fails to pass a test approved under this subpart may not retake the same form of the test for the period prescribed by the test publisher or the State responsible for the test.

(g) An institution must maintain a record for each individual who took a test under this subpart. The record must include—

- (1) The test taken by the individual;

- (2) The date of the test;
- (3) The individual's scores as reported by the test publisher, an assessment center, or the State;
- (4) The name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State; and
- (5) If the individual who took the test is an individual with a disability and was unable to be evaluated by the use of an approved ATB test or the individual requested or required testing accommodations, documentation of the individual's disability and of the testing arrangements provided in accordance with § 668.153(b).

*(Approved by the Office of Management and Budget under control number 1845-0049)*

(Authority: 20 U.S.C. 1091(d))

### **§ 668.152 Administration of tests by assessment centers.**

- (a) If a test is given by an assessment center, the assessment center must properly administer the test as described in § 668.151(d), and § 668.153, if applicable.
- (b)
  - (1) Unless an agreement between a test publisher or a State, as applicable, and an assessment center indicates otherwise, an assessment center scores the tests it gives and promptly notifies the institution and the student of the student's score on the test and whether the student passed the test.
  - (2) If the assessment center scores the test, it must provide weekly to the test publisher or the State, as applicable—
    - (i) All copies of the completed test, including the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State, as applicable; or
    - (ii) A report listing all test-takers' scores and institutions to which the scores were sent and the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State, as applicable.

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(Authority: 20 U.S.C. 1091(d))

### **§ 668.153 Administration of tests for individuals whose native language is not English or for individuals with disabilities.**

- (a) **Individuals whose native language is not English.** For an individual whose native language is not English and who is not fluent in English, the institution must use the following tests, as applicable:
  - (1) If the individual is enrolled or plans to enroll in a program conducted entirely in his or her native language, the individual must take a test approved under §§ 668.146 and 668.148(a)(1).

- (2) If the individual is enrolled or plans to enroll in a program that is taught in English with an ESL component, the individual must take an English language proficiency assessment approved under § 668.148(b) and, before beginning the portion of the program taught in English, a test approved under § 668.146.
- (3) If the individual is enrolled or plans to enroll in a program that is taught in English without an ESL component, or the individual does not enroll in any ESL component offered, the individual must take a test in English approved under § 668.146.
- (4) If the individual enrolls in an ESL program, the individual must take an ESL test approved under § 668.148(b).
- (5) If the individual enrolls or plans to enroll in a program that is taught in the student's native language that either has an ESL component or a portion of the program will be taught in English, the individual must take an English proficiency test approved under § 668.148(b) prior to beginning the portion of the program taught in English.

(b) **Individuals with disabilities.**

- (1) For an individual with a disability who has neither a high school diploma nor its equivalent and who is applying for title IV, HEA program funds and seeks to show his or her ability to benefit through the testing procedures in this subpart, an institution must use a test described in § 668.148(a)(2) or § 668.149(a).
- (2) The test must reflect the individual's skills and general learned abilities.
- (3) The test administrator must ensure that there is documentation to support the determination that the individual is an individual with a disability and requires accommodations—such as extra time or a quiet room—for taking an approved test, or is unable to be evaluated by the use of an approved ATB test.
- (4) Documentation of an individual's disability may be satisfied by—
  - (i) A written determination, including a diagnosis and information about testing accommodations, if such accommodation information is available, by a licensed psychologist or physician; or
  - (ii) A record of the disability from a local or State educational agency, or other government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the individual's disability. This record may, but is not required to, include a diagnosis and recommended testing accommodations.

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(Authority: 20 U.S.C. 1091(d))

**§ 668.154 Institutional accountability.**

An institution is liable for the title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if—

- (a) The institution used a test that was not administered independently, in accordance with § 668.151(b);
- (b) The institution or an employee of the institution compromised the testing process in any way; or

- (c) The institution is unable to document that the student received a passing score on an approved test.

(Authority: 20 U.S.C. 1091(d))

## § 668.155 [Reserved]

### § 668.156 Approved State process.

(a)

- (1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test or satisfactory completion of at least six credit hours or its recognized equivalent coursework for the purpose of determining a student's eligibility for title IV, HEA program funds must apply to the Secretary for approval of that process.
- (2) A State's application for approval of its State process must include—
  - (i) The institutions located in the State included in the proposed process, which need not be all of the institutions located in the State;
  - (ii) The requirements that participating institutions must meet to offer eligible career pathway programs through the State process;
  - (iii) A certification that, as of the date of the application, each proposed career pathway program intended for use through the State process constitutes an "eligible career pathway program" as defined in § 668.2 and as documented pursuant to § 668.157;
  - (iv) The criteria used to determine student eligibility for participation in the State process; and
  - (v) For an institution listed for the first time on the application, an assurance that not more than 33 percent of the institution's undergraduate regular students withdrew from the institution during the institution's latest completed award year. For purposes of calculating this rate, the institution must count all regular students who were enrolled during the latest completed award year, except those students who, during that period—
    - (A) Withdrew from, dropped out of, or were expelled from the institution; and
    - (B) Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees.

- (b) For a State applying for approval for the first time, the Secretary may approve the State process for a two-year initial period if—

- (1) The State's process satisfies the requirements contained in paragraphs (a), (c), and (d) of this section; and
- (2) The State agrees that the total number of students who enroll through the State process during the initial period will total no more than the greater of 25 students or 1.0 percent of enrollment at each institution participating in the State process.

- (c) A State process must—

- (1) Allow the participation of only those students eligible under § 668.32(e)(3);

- (2) Monitor on an annual basis each participating institution's compliance with the requirements and standards contained in the State's process, including the success rate as calculated in paragraph (f) of this section;
  - (3) Require corrective action if an institution is found to be in noncompliance with the State process requirements;
  - (4) Provide a participating institution that has failed to achieve the success rate required under paragraphs (e)(1) and (f) up to three years to achieve compliance;
  - (5) Terminate an institution from the State process if the institution refuses or fails to comply with the State process requirements, including exceeding the total number of students referenced in paragraph (b)(2) of this section; and
  - (6) Prohibit an institution from participating in the State process for at least five years after termination.
- (d)
- (1) The Secretary responds to a State's request for approval of its State process within six months after the Secretary's receipt of that request. If the Secretary does not respond by the end of six months, the State's process is deemed to be approved.
  - (2) An approved State process becomes effective for purposes of determining student eligibility for title IV, HEA program funds under this subpart—
    - (i) On the date the Secretary approves the process; or
    - (ii) Six months after the date on which the State submits the process to the Secretary for approval, if the Secretary neither approves nor disapproves the process during that six-month period.
- (e) After the initial two-year period described in paragraph (b) of this section, the State must reapply for continued participation and, in its application—
- (1) Demonstrate that the students it admits under that process at each participating institution have a success rate as determined under paragraph (f) of this section that is within 85 percent of the success rate of students with high school diplomas;
  - (2) Demonstrate that the State's process continues to satisfy the requirements in paragraphs (a), (c), and (d) of this section; and
  - (3) Report information to the Department on the enrollment and success of participating students by eligible career pathway program and by race, gender, age, economic circumstances, and educational attainment, to the extent available.
- (f) The State must calculate the success rate for each participating institution as referenced in paragraph (e)(1) of this section by—
- (1) Determining the number of students with high school diplomas or equivalent who, during the applicable award year described in paragraph (g)(1) of this section, enrolled in the same programs as students participating in the State process at each participating institution and—
    - (i) Successfully completed education or training programs;
    - (ii) Remained enrolled in education or training programs at the end of that award year; or

(iii) Successfully transferred to and remained enrolled in another institution at the end of that award year;

(2) Determining the number of students with high school diplomas or equivalent who, during the applicable award year described in paragraph (g)(1) of this section, enrolled in the same programs as students participating in the State process at each participating institution;

(3) Determining the number of students calculated in paragraph (f)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from each participating institution and received a 100 percent refund of their tuition under the institution's refund policies;

(4) Dividing the number of students determined under paragraph (f)(1) of this section by the number of students determined under paragraph (f)(3) of this section; and

(5) Making the calculations described in paragraphs (f)(1) through (4) of this section for students who enrolled through a State process in each participating institution.

(g)

(1) For purposes of paragraph (f) of this section, the applicable award year is the latest complete award year for which information is available.

(2) If no students are enrolled in an eligible career pathway program through a State process, then the State will receive a one-year extension to its initial approval of its State process.

(h) A State must submit reports on its State process, in accordance with deadlines and procedures established and published by the Secretary in the FEDERAL REGISTER, with such information as the Secretary requires.

(i) The Secretary approves a State process as described in paragraph (e) of this section for a period not to exceed five years.

(j)

(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(i) If a State has not terminated an institution from the State process under paragraph (c)(5) of this section for failure to meet the success rate, then the Secretary withdraws approval of the State process, except in accordance with paragraph (j)(1)(ii) of this section.

(ii) At the Secretary's discretion, under exceptional circumstances, the State process may be approved once for a two-year period.

(iii) If 50 percent or more participating institutions across all States do not meet the success rate in a given year, then the Secretary may lower the success rate to no less than 75 percent for two years.

(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

- (3) If the Secretary upholds the withdrawal of approval of a State process, then the State cannot reapply to the Secretary for a period of five years.

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[88 FR 74701, Oct. 31, 2023]

### § 668.157 Eligible career pathway program.

- (a) An institution demonstrates to the Secretary that a student is enrolled in an eligible career pathway program by documenting that—
  - (1) The student has enrolled in or is receiving all three of the following elements simultaneously—
    - (i) An eligible postsecondary program as defined in § 668.8;
    - (ii) Adult education and literacy activities under the Workforce Innovation and Opportunity Act as described in 34 CFR 463.30 that assist adults in attaining a secondary school diploma or its recognized equivalent and in the transition to postsecondary education and training; and
    - (iii) Workforce preparation activities as described in 34 CFR 463.34;
  - (2) The program aligns with the skill needs of industries in the State or regional labor market in which the institution is located, based on research the institution has conducted, including—
    - (i) Government reports identifying in-demand occupations in the State or regional labor market;
    - (ii) Surveys, interviews, meetings, or other information obtained by the institution regarding the hiring needs of employers in the State or regional labor market; and
    - (iii) Documentation that demonstrates direct engagement with industry;
  - (3) The skill needs described in paragraph (a)(2) of this section align with the specific coursework and postsecondary credential provided by the postsecondary program or other required training;
  - (4) The program provides academic and career counseling services that assist students in pursuing their credential and obtaining jobs aligned with skill needs described in paragraph (a)(2) of this section, and identifies the individuals providing the career counseling services;
  - (5) The appropriate education is offered, concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster through an agreement, memorandum of understanding, or some other evidence of alignment of postsecondary and adult education providers that ensures the education is aligned with the students' career objectives; and
  - (6) The program is designed to lead to a valid high school diploma as defined in § 668.16(p) or its recognized equivalent.
- (b) For a postsecondary institution that offered an eligible career pathway program prior to July 1, 2024, the institution must—
  - (1) Apply to the Secretary to have one of its career pathway programs determined to be eligible for title IV, HEA program purposes by a date as specified by the Secretary; and
  - (2) Affirm that any career pathway program offered by the institution meets the documentation standards in paragraph (a) of this section.

- (c) For a postsecondary institution that does not offer an eligible career pathway program prior to July 1, 2024, the institution must—
  - (1) Apply to the Secretary to have its program determined to be an initial eligible career pathway program; and
  - (2) Affirm that any subsequent career pathway program offered by the institution, initiated only after the approval of the initial eligible career pathway program, will meet the documentation standards outlined in paragraph (a) of this section.
- (d) The Secretary provides an institution with the opportunity to appeal an adverse eligibility decision under paragraphs (b) and (c) of this section.
- (e) The Secretary maintains the authority to require the approval of additional eligible career pathway programs offered by a postsecondary institution beyond the requirements outlined in paragraphs (b) and (c) of this section for any reason, including but not limited to—
  - (1) A rapid increase, as determined by the Secretary, of eligible career pathway programs at the institution; or
  - (2) The Secretary determines that other eligible career pathway programs at the postsecondary institution do not meet the documentation standards outlined in this section.

[88 FR 74702, Oct. 31, 2023]