

**§ 668.149 Special provisions for the approval of assessment procedures for special populations for whom no tests are reasonably available.**

If no test is reasonably available for persons with disabilities or students whose native language is not English and who are not fluent in English, so that no test can be approved under §§ 668.146 or 668.148 for these students, the following procedures apply:

(a) *Persons with disabilities.* (1) 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 disabled students 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.

(2) The Secretary considers the passing scores for these testing procedures or instruments to be those recommended by the test developer, provided that the test administrator—

- (i) Uses those procedures or instruments;
- (ii) Maintains appropriate documentation, including a description of the procedures or instruments, their content domains, technical properties, and scoring procedures; and
- (iii) Observes recommended passing scores.

(b) *Students whose native language is not English.* The Secretary considers a test in a student's native language for a student whose native language is not English to be an approved test under this subpart if—

- (1) The Secretary has not approved any test in that native language;
- (2) The test was not previously rejected for approval by the Secretary;
- (3) The test measures both basic verbal and quantitative skills at the secondary school level; and

(4) The passing scores and the methods for determining the passing scores are fully documented.

(Approved by the Office of Management and Budget under control number 1840-0627).

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

[60 FR 61841, Dec. 1, 1995, as amended at 61 FR 31035, June 19, 1996]

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

(a) If the Secretary approves a test under this subpart, the test publisher 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 and the Secretary provides that the test publisher shall—

(1) Allow only test administrators that it certifies to give its test;

(2) Certify test administrators who have—

- (i) The necessary training, knowledge, and skill to test students in accordance with the test publisher's testing requirements; and
- (ii) The ability and facilities to keep its test secure against disclosure or release;

(3) Decertify a test administrator for a period that coincides with the period for which the publisher's test is approved if the test publisher finds that the test administrator—

- (i) Has repeatedly failed to give its test in accordance with the publisher'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;

(4) Score a test answer sheet that it receives from a test administrator;

(5) If a computer-based test, provide the test administrator with software that will:

- (i) Immediately generate a score report for each test taker;