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 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))
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 re-
views of the content and specifications of the test to ensure that the test re-
fects secondary school level verbal and
quantitative skills;
(9) If a test being submitted is a revi-
sion of the most recent edition ap-
proved 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 valid-
ity studies of the test undertaken sub-
sequent to the revisions;
(10) A description of the manner in
which test-taking time was determined
in relation to the content representa-
tiveness 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 in-
cludes—
(i) An explanation of the method-
ology 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 assess-
ment of individual skill and ability;
(iv) Evidence that the test was
normed using—
(A) Groups that were of sufficient
size to produce defensible standard er-
rors of the mean and were not dis-
proportionately composed of any race
or gender; and
(B) A contemporary sample that is
representative of the population of per-
sons who have earned a high school di-
ploma in the United States;
(v) Documentation of the level of dif-
culty of the test;
(vi) Unambiguous scales and scale
values so that standard errors of meas-
urement can be used to determine sta-
tistically significant differences in per-
formance; and
(vii) Additional guidance on the in-
terpretation of scores resulting from
any modifications of the test for indi-
viduals with temporary impairments,
individuals with disabilities and guid-
ance on the types of accommodations
that are allowable;
(12) The manual provided to test ad-
ministrators containing procedures and
instructions for test security and ad-
ministration, and the forwarding of
tests to the test publisher;
(13) An analysis of the item-content
of each edition, form, level, and (if ap-
plicable) sub-test to demonstrate com-
pliance with the required secondary
school level criterion specified in
§668.146(b);
(14) A description of retesting proce-
dures 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 adminis-
trator certification process that pro-
vides—
(i) How the test publisher will deter-
mine 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 deter-
mine that the test administrator has
the ability and facilities to keep its
test secure against disclosure or re-
lease;
(17) A description of the test anomaly
analysis the test publisher will conduct
and submit to the Secretary that in-
cludes—
(i) An explanation of how the test
publisher will identify potential test
irregularities and make a determina-
tion that test irregularities have
occurred;
(ii) An explanation of the process and
procedures for corrective action (up to
and including decertification of a cer-
tified 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 §§668.146, 668.147, 668.148, or 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