



ETS Policy on the Release of Data to External Researchers

Overview of the Policy

Data collected and maintained by ETS represent rich and valuable sources of information for researchers, and consequently requests for the release of data for research purposes from qualified individuals will be given serious consideration. This Policy on the Release of Data to External Researchers (hereinafter, the “Policy”) is intended to provide guidance to third parties regarding how and under what conditions ETS releases data associated with its programs. ETS programs presently provide individuals and institutions with information in the form of score reports and other reports, and this Policy does not apply to these types of reporting.

Information on requesting data for research purposes is given in the section entitled, “Procedures for Requesting ETS Data”.

What Constitutes ETS Data?

ETS data may be defined as information collected, derived, and generated from test-taker and institutional participation in ETS tests and programs, and includes, but is not limited to, information such as: demographic information, institutional affiliations, item and test scores, and responses to questionnaires. ETS tests include, but are not limited to, the *Graduate Record Examinations*® (GRE®), *The Praxis Series*™, the TOEFL® test and the TOEIC® test. A complete list of tests can be found at www.ets.org. ETS data fall broadly into three categories: (1) Data that is wholly owned by ETS; (2) Data that is maintained by ETS but permission for release of the data must be granted by another entity; and (3) Data that is maintained by ETS but cannot be released by ETS due to contractual requirements.

Some data maintained by ETS may require that, in addition to permission from ETS, permission must also be granted by an outside agency or governing body. For example, data from a client program will require permission from both ETS and the client for the release of data to an external researcher. It is the responsibility of the researcher to obtain any additional permission that may be required for the release of data. ETS will not release any such data until researcher provides ETS with a copy of the permission from the data owner. (NOTE: All requests for data from College Board programs, such as the SAT and the SAT Subject Tests, should be submitted directly to the College Board according to their guidelines for the release of data (<http://professionals.collegeboard.com/data-reports-research>)).

Further, some data maintained by ETS are owned by a separate entity and cannot be released to a third party due to contractual requirements. For example, data from a testing program under contract to a state or local education agency cannot be released by ETS, and ETS cannot grant permission for access or use. In this case, permission to access and use the data can only be granted by the entity that owns the rights to the data. In this case, any data released would come from the owning entity and not from ETS.

In order to protect the privacy of test takers and the confidentiality of individuals and institutions, personally identifiable information (PII) will not be released by ETS to external researchers under any circumstances. PII refers to any information that can be used to uniquely identify a single person or that can be used with other sources to uniquely identify a single individual. In the context of this policy, PII includes the following:

- Full name
- National identification number (Social Security Number in U.S.)
- Date of birth
- Telephone number
- Street address
- Zip Code
- Email address
- Driver's license number
- Passport number
- Face, fingerprints, handwriting samples, voice prints or speech samples (and any other biometric identifiers)
- Credit card and financial account numbers
- Digital identifiers
- Medical or health information (including accommodations)
- Other sensitive information (e.g., demographic information, racial or ethnic origin, citizenship, religious beliefs or affiliation, political opinions)

Please note that this is not an exhaustive list of identifiers. Moreover, in some instances, specific data elements, while they may be personal information, will not be PII unless combined with an individual's name or other data element. For example:

- Date of birth by itself may not identify an individual, but if combined with full name or another data element could be PII.
- Numeric test scores by themselves would not be enough to identify an individual. However, if combined with an identification number or, in some cases, an institutional affiliation, could be PII.
- Some countries include in their definition of PII certain demographic information, such as gender and ethnicity, in cases where the sample size is small enough, that this information could be used to identify an individual.

It is important to note that PII or a variation of that term is defined differently in the myriad of applicable laws. ETS, in its sole discretion, will determine whether individual elements or certain combinations of data constitute PII.

Procedures for Requesting ETS Data

Requests for data will be given careful consideration, and ETS reserves the right to deny any request. Requests for data should be submitted using the Data Request Form in Appendix A. Note that a research proposal must also be included with the Data Request Form. The research

proposal must clearly state the objectives and the significance of the study and provide a credible argument for the importance of the project and the need for the requested data. The research proposal must include all of the following sections: hypotheses/study issues, analysis plans, analysis methods, qualifications of key research team members, evidence of Institutional Review Board approval, source(s) of funding (if any), and countries where data will be used, accessed or stored.

Completed forms must be submitted to the appropriate ETS research contact person using the information shown in Appendix B. Upon acceptance of a properly completed Data Request Form, ETS will render a decision regarding the request in a timely manner, typically within four weeks of receipt of the request. ETS may charge fees for fulfilling requests for data based on its current pricing guidelines.

If a request for data is approved, the requestor will be required to sign a licensing agreement before the data can be released. A sample licensing agreement is shown in Appendix C. Data that is released by ETS to an external researcher may not be shared with any other parties. Authorized members of a research team may have access to the data solely as needed for the research purposes as stated in the research proposal and agreed to in writing by ETS, but the data must be protected from unauthorized use and distribution to the greatest extent possible. Once the data have been utilized, they must be destroyed using either your own policies for treatment of the most sensitive information or ETS policies to the extent you are provided with a copy.

In addition, ETS requires that a copy of any publications that reside or will reside in the public domain, and which resulted from use of the data requested, be sent upon completion to the ETS research contact person.

Further Information on This Policy

For further information regarding this policy, please contact Elizabeth Stone at estone@ets.org.

Appendix A: Data Request Form

Name: _____

Title: _____

Institution: _____

Department: _____

Mailing Address: _____

City: _____

State: _____

ZIP: _____

Telephone: _____

E-mail Address: _____

Data request rationale/purposes for which data will be used: _____

Data set(s) being requested (Please be as specific as possible)

Reminder: A research proposal must also be included with the Data Request Form.

Appendix B: ETS Research Contact Information

Elizabeth Stone, Ph.D.
Associate Research Scientist
Center for Validity Research
Educational Testing Service
660 Rosedale Road
MS 09-R
Princeton, NJ 08541 USA
1-609-734-1890
estone@ets.org

Appendix C: Sample Licensing Agreement

THIS AGREEMENT is effective _____ (“Effective Date”) by and between EDUCATIONAL TESTING SERVICE, a nonprofit, nonstock corporation organized and existing under the Education Law of the State of New York, with principal offices at Princeton, New Jersey 08541 (hereinafter “ETS”), and _____, with a principal location at _____ (hereinafter the “Researcher”).

WHEREAS, ETS is the owner of all right, title and interest and into certain data which has been made available to Researcher in response to Researcher’s research proposal as described in the attached Exhibit A (hereinafter, the “Data”);

WHEREAS, Researcher has requested the opportunity to perform academic research utilizing such Data and ETS is willing to agree to such research, subject to the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants contained herein, ETS and the Researcher, intending to be legally bound hereby, agree as follows:

1. LICENSE

- a) Grant. Upon ETS's receipt of the License Fees and a fully executed Agreement, ETS hereby grants to the Researcher a limited, non-exclusive, revocable, non-transferable license to perform the following enumerated rights with respect to the Data solely for non-commercial, research purposes to reproduce and copy the Data as reasonably necessary for the Researcher to conduct the academic, non-commercial research anticipated herein, and solely as described in the attached Research Proposal (Exhibit B), in accordance with the terms and conditions of this Agreement;
- b) Notwithstanding Section 1(a) above, In the event the Researcher desires to lecture or publish any manuscripts, abstracts, papers, including, but not limited to a thesis, or public releases of scientific merit (including conference proposals and presentations) describing results of the work (each a "Publication"), the Publication shall first be submitted to ETS, in its full and final textual form, at least thirty (30) days prior to submission to any third party. In the event that ETS wishes to preserve its rights with respect to any intellectual property or Data disclosed in the Publication, submission and/or publication of the proposed Publication by Researcher shall be postponed upon ETS's notice for a maximum of an additional thirty (30) days, or such longer period as agreed by the parties, to permit ETS to protect any and all rights in the Publication, including, without limitation, patent rights. ETS shall further have the right to suggest revisions to the Publication as are necessary to protect any and all trade secrets, and Researcher agrees to make such revisions as are necessary to protect any and all trade secrets or intellectual property.
- c) In the event that Researcher produces a written work and/or Publication that incorporates the Data, including but not limited to a research report, Researcher agrees to acknowledge the Data as property of ETS by displaying the following attributions:

Source: Derived from data provided by ETS

Copyright © 201x ETS. www.ets.org

- d) Researcher must also include the following disclaimer language in all Publications:

"The opinions set forth in this publication are those of the author(s) and not ETS."

- e) Limited Faculty Advisor Rights. The foregoing license shall include the right for the Researcher's faculty advisor, or such other faculty member of the Researcher's university responsible for overseeing the Researcher's research, to monitor, supervise, and advise the Researcher with respect to such research provided such faculty member agrees and adheres to the provisions of this Agreement.

2. FEES; FORMAT OF DATA

License Fee: The license fee for use of the Data is \$XXXXXX.

Format of Data: The Data will be provided to Researcher in the following format: [] (see Exhibit A).

3. **RESTRICTIONS.** The rights to the Data granted to the Researcher pursuant to this Agreement shall be subject to the following restrictions:

- a) the license set forth in Section 1 shall permit research to be conducted only by the Researcher solely for purposes as set forth in the attached Exhibit B. Access shall be provided only to Researcher's staff who are conducting the analyses and interpretation of the Data and who have been made aware of, and have agreed to abide by the terms of this Agreement;
- b) the Researcher shall not license, rent, lease, sell, distribute or otherwise transfer the Data, or any copies thereof, in part or in whole, to any third party;
- c) the Researcher shall not commercialize, attempt to commercialize the Data or otherwise obtain commercial gain or benefit from his or her use of the Data;
- d) the Researcher acknowledges and agrees that the Data he/she is receiving is not personally-identifiable data. Further Researcher agrees that he/she will not attempt to compile or match up Data with other personal data so that any individual(s) may be identified;
- e) Researcher may include the Data in the aggregate in reports, but may not reproduce the Data, as a whole, in any format. Upon termination or expiration of the Agreement, whichever comes first, Researcher will permanently destroy these Data, and any and all copies thereof and shall send written certification to ETS that all Data have been permanently destroyed; and
- f) the Researcher shall use the Data solely for the purpose of this Agreement and shall not disclose any of the Data to any third party. The Researcher shall exert reasonable efforts (no less than the protection given its own confidential information) to maintain such information in confidence.

4. PROPRIETARY RIGHTS

- a) **Ownership of Data.** ETS shall be the sole and exclusive owner of all right, title, and interest in and to the Data including all intellectual property rights thereto. Except for the non-commercial, research license set forth in Section 1, no other rights or interests are transferred by or through this Agreement in the Data from ETS to the Researcher, or any other third party.
- b) **Security and Notification.** Researcher shall ensure that the Data is secure and kept confidential at all times, and shall take necessary steps to prevent any unauthorized disclosure or use of such Data. The Researcher shall immediately, upon discovery of any disclosure not authorized hereunder, notify ETS and take reasonable steps to prevent any further disclosure or unauthorized use.
- c) **Return or Destruction.** Upon completion of the research proposal (Exhibit B), expiration or termination of this Agreement, or upon written notice from ETS, the Researcher shall cease using the Data; return to ETS, the Data, together with any copies, notes or extracts thereof; or destroy the Data in possession of the Researcher including any copies, notes or extracts thereof. Further, the Researcher shall certify, in writing, his or her compliance with the requirements of this Section. Researcher may retain any analysis, research reports and publications which were created prior to the termination of this Agreement.

5. EXCLUSION OF WARRANTIES

The Data provided by ETS to the Researcher under this Agreement is “as is” and without any warranty, of any kind. ETS DISCLAIMS, AND THE RESEARCHER HEREBY WAIVES, ALL EXPRESS, IMPLIED AND/OR STATUTORY WARRANTIES, INCLUDING BUT NOT

LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. LIMITATION OF LIABILITY

In no event shall ETS be liable to the Researcher, regardless of the form of action or theory of recovery, in association with this Agreement, for (a) any indirect, special, exemplary, consequential, incidental or punitive damages, even if that party has been advised of the possibility of such damages; (b) lost profits, lost revenue, lost business expectancy, benefit of bargain damages, business interruption losses or loss of data; or (c) direct damages or any kind. Furthermore, any claim arising out of this Agreement which may be permitted against ETS must be initiated within one (1) year of the date that such claim actually arose.

7. INDEMNIFICATION

The Researcher shall defend, indemnify and hold ETS and ETS's officers, directors, employees and agents harmless from and against any and all claims, demands, suits, damages, losses, costs, fees, (including actual attorney fees), expenses, judgments, liability, penalties and fines of any kind or nature arising out of or in connection with the Researcher's use of the Data, or otherwise arising as a result of, or related to this Agreement.

8. TERM

- a) Term. This Agreement shall be effective as of the effective date and shall continue in full force and effect during the earliest to occur: completion of the research as set forth in Exhibit B, or for a period of one (1) year, unless terminated earlier in accordance with this Section.
- b) Termination. ETS or the Researcher may terminate this Agreement, for any reason, by providing written notice to each of the parties hereof of its intent to terminate this Agreement. In the event such notice is provided, termination of this Agreement shall be effective on the 30th calendar day following receipt of such notice.

9. IRREPARABLE HARM

The provisions of Sections 1, 3, and 4 of this Agreement, relate to unique and valuable assets of ETS. Breach or threatened breach of these sections will result in irreparable harm to ETS and remedies at law for such breach or threatened breach will be inadequate. In the event of a breach or threatened breach of Sections 1, 3, or 4, ETS shall be entitled to specific performance and/or injunctive relief, without any requirement to post a bond or other security. Such remedy shall not be deemed to be the exclusive remedy for any such breach of this Agreement, but shall be in addition to all other remedies available at law or equity.

10. REPRESENTATIONS AND WARRANTIES

- a) Researcher represents and warrants that it is empowered under applicable laws to enter into and perform this Agreement and that it has caused this Agreement to be duly authorized, executed and delivered by and through a person with the authority to execute the Agreement on its behalf.
- b) Researcher represents and warrants that all research performed hereunder shall be reviewed and approved by the Institutional Review Board at the Researcher's institution.

- c) Researcher further represents and warrants that it will comply with any and all laws, rules and regulations, throughout the world, which are applicable to the performance of its obligations under this Agreement, including all applicable laws, rules, and regulations relating to privacy and data protection.

11. GOVERNING LAW

This Agreement shall be governed by the federal laws of the United States and the state laws of the State of New Jersey. In the event of any litigation related to this Agreement, the parties agree and consent to the exclusive jurisdiction of the State and Federal Courts located in the State of New Jersey, USA.

12. ASSIGNMENT

The Researcher may not assign this Agreement without the prior written permission of ETS. Any attempt to assign any rights, duties, or obligations that arise under this Agreement without such permission shall be void.

13. NOTICE

Any notice or other communication required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given on the day of service if served personally or three (3) days after mailing, registered or certified, postage prepaid, and addressed as follows or to such other address as a party shall designate:

IF TO ETS:

Educational Testing Service

Rosedale and Carter Roads

Princeton, NJ 08541

Attention: Elizabeth Stone

IF TO RESEARCHER:

14. SURVIVAL BEYOND TERMINATION OR EXPIRATION

The provisions of Sections 3 (Restrictions), 4 (Proprietary Rights), 5 (Exclusion of Warranties), 6 (Limitation of Liability), 7 (Indemnification), 9 (Irreparable Harm), and 11 (Governing Law), shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereunder have executed this Agreement as of the day and year first above written.

EDUCATIONAL TESTING SERVICE

RESEARCHER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

For purposes of this Agreement, “Data” shall mean:

[insert list of data fields and appropriate description]

EXHIBIT B
APPROVED RESEARCH PROPOSAL