

DEPARTMENT OF EDUCATION

34 CFR Part 462

Measuring Educational Gain in the National Reporting System for Adult Education

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to establish procedures for determining the suitability of tests for use in the National Reporting System for Adult Education (NRS). These proposed regulations also include procedures that States and local eligible providers would follow when using suitable tests for NRS reporting.

DATES: We must receive your comments on or before November 17, 2006.

ADDRESSES: Address all comments about these proposed regulations to Sharon A. Jones, U.S. Department of Education, 400 Maryland Avenue, SW., room 11108, Potomac Center Plaza, Washington, DC 20202-7120. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: www.regulations.gov.

Or you may send your Internet comments to us at the following address: NRSregulations@ed.gov.

You must include the term "Part 462" in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Mike Dean, U.S. Department of Education, 400 Maryland Avenue, SW., room 11152, Potomac Center Plaza, Washington, DC 20202-7240. Telephone: (202) 245-7828 or via Internet: Mike.Dean@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiocassette, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:**Invitation To Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 11108, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

These proposed regulations further the Department's implementation of section 212 of the Adult Education and Family Literacy Act (Act), 20 U.S.C. 9201 *et seq.*, which establishes a system to assess the effectiveness of eligible agencies in achieving continuous improvement of adult education and literacy activities.

Under the Act, the Department provides Federal funds to States, which then award grants to local eligible providers of adult education and literacy services. These providers may include local educational agencies, community-based organizations, volunteer literacy organizations, and institutions of higher education.

Accountability for results is a central focus of the Act. The Act sets out performance accountability requirements for States and local

programs that measure program effectiveness on the basis of student academic achievement and other outcomes. The Act establishes three core indicators that must be used to assess State performance:

- Demonstrated improvements in literacy skill levels in reading, writing, and speaking the English language, numeracy, problem solving, English language acquisition, and other literacy skills as defined by the Secretary (educational gain).
- Placement in, retention in, or completion of postsecondary education, training, unsubsidized employment, or career advancement.
- Receipt of a secondary school diploma or a recognized equivalent.

The Department and each State reach agreement on annual levels of performance for each of the core indicators, and States annually report their actual performance in the NRS.

In order to help States validly demonstrate and accurately report their annual improvements in literacy skill levels and other core indicators of performance, and after extensive consultation with State directors of adult education, representatives from volunteer provider agencies, directors of local adult education programs, and experts on accountability systems, the Department established the NRS. The NRS standardizes the measurement of the core indicators across States and establishes procedures for collecting and reporting student outcome data to enhance the data's validity and reliability.

To further assist States, the Department also issued *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (Guidelines), which established reporting requirements, data collection policies, and common definitions for each of the core outcome measures or indicators. (The Guidelines are on the Internet at <http://www.nrsweb.org>). As set forth in the Guidelines, the NRS measures educational gain by defining, using standardized tests, a set of educational functioning levels at which students are initially placed based on their abilities to perform literacy-related tasks in specific skill areas. After a specific time period or number of instructional hours established by the State, students are again assessed to determine their skill levels. If a student's skills have improved sufficiently to be placed one or more levels higher, the student is considered to have made an educational gain.

The Guidelines identify a number of standardized tests (along with the tests'

benchmarks for the NRS educational functioning levels) that are currently acceptable for States to use in measuring educational gain. However, the Guidelines do not require States to use only the standardized tests listed. If a State wishes to allow local eligible providers to use some other standardized test for this purpose, the State must take into account the factors identified in the Guidelines and must demonstrate to the Department that the particular alternate test proposed to be used satisfactorily addresses those factors.

Currently, the Department uses experts in the field of educational testing and assessment to assist us in reviewing tests for their suitability for use in the NRS. These psychometricians, using the same criteria for assessing tests that are contained in the Guidelines and these proposed regulations, review tests and make recommendations to the Secretary regarding the appropriateness of the tests. The Secretary determines, taking into account the experts' recommendations, whether a test is suitable for use in the NRS.

Until these regulations become effective, the Secretary will continue to use (1) the guidance provided in the Guidelines and (2) the Department's current process for providing States and test publishers an opportunity to demonstrate that alternate tests are suitable for NRS purposes.

Through these proposed regulations, we intend to formalize the process for the review and approval of tests for use in the NRS. We believe that the uniform process we are proposing will facilitate test publishers' submission of tests to the Department for review and help to strengthen the integrity of the NRS as a critical tool for measuring State performance. The proposed process also will provide an established means for examining tests that are currently approved for use in the NRS but have not been updated recently and, therefore, need to be reassessed for their continuing validity.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain.

Proposed § 462.3 provides the meanings of terms, including some from the Act, used in these regulations. We define these terms so that there is a common understanding of how the terms are used in the regulations, and because the terms will affect the validity of data collected and reported in the NRS. In that regard, the terms *adult basic education (ABE)*, *adult secondary*

education (ASE), *English-as-a-second language (ESL)*, *adult education population*, *content domains or NRS skill areas*, *educational functioning levels*, *Guidelines*, *local eligible provider*, and *State* connect the regulations to the terms used in the NRS. The definitions of the terms *test*, *test administrator*, and *test publisher* provide standardization, which is particularly needed given the different meanings and synonyms currently used for these terms. For example, in describing the tests used to determine educational functioning levels and to measure educational gain, States and local eligible providers inconsistently use the terms *test*, *assessment*, and *instrument*. By clearly defining terminology, the regulations would eliminate confusion, identify a particular term to be used when describing or referencing a specific circumstance, and provide a shared understanding of how the term is used in the regulations.

Proposed § 462.4 provides the deadline, June 30, 2008, by which States and local eligible providers would stop using tests, including those currently listed in the Guidelines, that the Secretary determines are not suitable for use in the NRS. After June 30, 2008, States and local eligible providers would use only tests that the Secretary has reviewed and considered suitable for use in the NRS under these regulations. We believe a June 30, 2008, deadline provides adequate time for the Secretary to complete at least one review of tests and determine their suitability, and then, if necessary, for States and local eligible providers to transition their accountability systems from use of unsuitable tests to suitable tests. We are particularly interested in your comments on whether June 30, 2008 provides enough time for States and local eligible providers to make the transition to suitable tests.

Proposed § 462.10(a) would provide that the Secretary reviews tests only from test publishers, *i.e.*, an entity, individual, organization, or agency that owns a registered copyright of a test, or is licensed by the copyright holder to sell or distribute a test. In this way, only an entity that has a vested interest in and a great deal of knowledge about a test could request the Secretary's review of a test. These entities have an in-depth knowledge of a test's development, maintenance, content validity, match of scores to the NRS educational functioning levels, reliability, and construct validity, and, as a result, would be able to respond to questions the Secretary may raise during the review process. As importantly, test

publishers would also be able to readily make tests available to States and local eligible providers for use in the NRS.

Proposed § 462.10(b) would offer test publishers an annual opportunity, by October 1 of each year, to submit tests for the Secretary's review. However, because we anticipate that these regulations will be published as final regulations after October 1, 2006, the Secretary plans to announce in the **Federal Register** the date for the first opportunity for test publishers to submit tests for review. The date of the first opportunity for test publishers to submit tests will be no earlier than the effective date of the final regulations. On that date, test publishers could begin to request that the Secretary determine the suitability of their tests using the standards and procedures established in the final regulations. States and local eligible providers could immediately use tests once they have been determined suitable by the Secretary under these regulations. The annual review proposed in § 462.10(b) would provide the Department with adequate time to review tests; review any additional information provided by test publishers; and notify test publishers, States, and local eligible providers that additional tests are eligible for use in the NRS. By receiving tests beginning in October, the Secretary would be able to synchronize the review of tests with the operations of the adult education programs, especially the data collection process.

Proposed § 462.11 would delineate the information that a test publisher must include in an application so that the Secretary may determine the suitability of a test, whether the test is being submitted for the first time or resubmitted because, for example, it has been substantively revised. These proposed regulations would continue the Department's practice of having test publishers submit information that supports the reliability and validity of their tests. This is the information that experts in the field of educational testing and assessment will need in order to advise the Secretary on the extent to which a particular test meets the criteria and requirements in § 462.13 for determining the suitability of tests. Section 462.11(j) describes the additional information test publishers would include in an application requesting the review of a previous test, for example, a test that was used to measure educational gain in the NRS before the effective date of these regulations or was first published five years or more before the date it is submitted to the Secretary for review. The Secretary reviews this information

to determine whether a test continues to reflect NRS educational functioning levels.

Proposed § 462.12 would describe the Secretary's process for reviewing and determining the suitability of tests for determining educational functioning levels and measuring educational gain. Annually, at the conclusion of the review process, the Secretary would publish a list of suitable tests in the **Federal Register** and post the list on the Internet at <http://www.nrsweb.org>. Copies of the list would also be available from the Department. Proposed § 462.12 would establish the procedure the Secretary would use to make a determination about the suitability of tests, to notify test publishers of the Secretary's decision, to provide an opportunity for test publishers to request that the Secretary reconsider a decision that a test is unsuitable, to conclude the review process upon any reconsideration, to revoke the Secretary's determination that a test is suitable, and to notify affected parties of the revocation. Further, proposed § 462.12(a)(2) identifies the circumstances when the Secretary would determine the suitability of a test. Proposed § 462.12 clearly delineates the formal, reasoned, and uniform process the Secretary would use to determine the suitability of tests and provides an opportunity for test publishers and others to suggest improvements to that process.

Proposed § 462.13 provides that in order to be determined suitable, tests would determine the NRS educational functioning levels of members of the adult education population; sample one or more of the major content domains of the NRS educational functioning levels of Adult Basic Education, Adult Secondary Education, English-as-a-second Language, or all three; meet the applicable and feasible standards for test construction provided in the 1999 edition of the Standards for Educational and Psychological Testing; contain the test publisher's guidelines for retesting; and have two or more secure, parallel, equated forms. Proposed § 462.13 would also establish that the size of the item pool and the method of item selection for computerized adaptive tests must ensure negligible overlap in items across pre- and post-test. Finally, proposed § 462.13 would establish the requirements for tests that have been modified for an individual with a disability. Proposed § 462.13 is necessary because it would notify test publishers of the criteria and requirements the Secretary would use to determine the suitability of tests. Since the information provided in a test

publisher's application must ultimately demonstrate that a test meets the criteria and requirements in § 462.13, this section would be beneficial to test publishers because it contains, in one place, information a test publisher can use to decide whether to submit an application. After reviewing § 462.13, a test publisher could decide to save its resources rather than prepare an application for a test that does not meet the criteria and requirements in the regulations and, as a result, would be determined unsuitable.

Proposed § 462.14 would establish a seven-year period during which a test determined as suitable would remain eligible for use in the NRS, unless the test publisher substantially revises the test—for example, by changing its structure, number of items, content specifications, item types, or sub-tests. The Secretary believes that having a test remain suitable for seven years helps to ensure greater consistency for State and local accountability systems, improves the reliability for data collected and reported in the NRS, and reduces the amount of disruption to State and local programs if suitable tests are later found to be unsuitable and, therefore, can no longer be used in the NRS. The regulations also would establish that the Secretary may determine that a test is suitable for use in the NRS for fewer than seven years. Proposed § 462.14 would clarify for test publishers how often and under which circumstances a test must be reviewed by the Secretary.

Proposed §§ 462.40 through 462.44 would codify a number of existing NRS practices regarding activities such as determining educational functioning levels, administering tests, student placement, measuring educational gain, and State assessment policy. Proposed §§ 462.40 through 462.44 are necessary because they would establish what the Department deems is an efficient and effective means of obtaining accurate, reliable, and valid data for reporting in the NRS.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section, we identify and explain burdens specifically associated with information collection

requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

Elsewhere in this preamble, under the headings Significant Proposed Regulations and Regulatory Flexibility Act Certification, we discuss the potential costs and benefits of these proposed regulations.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 462.1 What is the scope of this part?)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities because they would not impose excessive regulatory burdens or require

unnecessary Federal supervision. The proposed regulations would impose minimal requirements to ensure the proper expenditure of program funds.

These proposed regulations would affect States, a few test publishers, and local eligible providers of adult education programs that receive funding under the Act.

States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

The U.S. Small Business Administration Size Standards classify test publishers as a "small business" if they are organized for profit, have total annual revenue below \$6.5 million, and have 100 or fewer employees. The U.S. Small Business Administration Size Standards classify local eligible providers as (a) "small organizations," which means any not-for profit enterprise that is independently owned and operated and is not dominant in its field or (b) "small governmental jurisdictions," which means governments of cities, counties, towns, townships, village, school districts, or special districts with a population of less than fifty thousand.

The proposed regulations would benefit both small and large entities by providing one uniform process for reviewing tests that are used to measure educational gain in the NRS. This process would relieve States of the burden of using their limited resources to review tests. It would also reduce the amount of resources test publishers would expend to have tests reviewed by individual States. Under the proposed regulations, test publishers would have their tests reviewed by only the Department instead of by each State that intends to use their tests. Thus entities, both small and large, would experience a positive economic impact as a result of these proposed regulations.

Paperwork Reduction Act of 1995

Sections 462.10, 462.11, 462.12, 462.13, and 462.14 contain new information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management Budget (OMB) for its review. Sections 462.4 and 462.40 through 462.44 contain information collection requirements approved by OMB under Control Number 1830-0027 for existing NRS practices.

Collection of Information: Measuring Educational Gain in the National Reporting System for Adult Education.

Under these proposed regulations, test publishers would request the Secretary's review of tests that measure educational

gain. The collection of information includes the following:

(a) Specific information concerning a test's development, maintenance, content validity, match scores, reliability, validity, and the extent to which the test meets applicable and feasible standards for test construction.

(b) Specifications on how tests will be administered at the local eligible provider level.

(c) Existing NRS practices regarding determining educational functioning levels, administering tests, student placement, State assessment policy, and measuring educational gain in the NRS that have been approved by OMB under Control Number 1830-0027.

The Department would use this information to (a) determine the suitability of tests for use in the NRS and (b) judge program performance, including eligibility for incentive grants.

The collection of information would be provided when (a) a test publisher wishes the Secretary to determine the suitability of its test for use in the NRS and (b) States and local eligible providers measure and report educational gain under the NRS.

Once the Secretary determines that a test is suitable for use in the NRS, a test could be used in the NRS for seven years. After that time, the test publisher could again submit the test to the Secretary for review, or the test could no longer be used in the NRS. We estimate reporting and recordkeeping burden for an application requesting the Secretary to determine the suitability of a test for use in the NRS to average 40 hours for each response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and responding to questions the Secretary may have. While the collection of information is necessarily inclusive, it would request merely the data test publishers can reasonably be expected to have on hand to support their claims regarding the appropriateness and effectiveness of their test or tests, including whether the test meets applicable and feasible standards for test construction in the 1999 edition of the *Standards for Educational and Psychological Testing*. Much of the information is routinely included in the technical manual and the test administrator's manual that are provided with a test.

While we cannot estimate the total number of respondents, because it is impossible to know the number of test publishers that may want to expand their markets into the field of adult education, we are aware of: (a) 25 tests

that test publishers may ask the Secretary to review for suitability for use in the NRS and (b) 25 widely used tests of an adult's basic skills that have been in use in the NRS since 1999 and that would need to be reviewed by the Secretary after these regulations become effective if they are to continue to be used in the NRS. Therefore, we estimate the total reporting burden for this collection to be 2,000 hours (50 × 40). This estimate does not include the reporting burden associated with (a) the actual use of a test to measure educational gain and (b) existing NRS practices regarding determining educational functioning levels, administering tests, student placement, State assessment policy, and measuring educational gain in the NRS because that burden has been approved by OMB under Control Number 1830-0027.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden of those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submissions of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

These regulations are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects in 34 CFR Part 462

Administrative practice, Adult education, Grants program—education, Incorporation by reference, and Reporting and recordkeeping requirements.

Dated: October 11, 2006.

Margaret Spellings,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 462 to read as follows:

PART 462—MEASURING EDUCATIONAL GAIN IN THE NATIONAL REPORTING SYSTEM FOR ADULT EDUCATION

Subpart A—General

Sec.

- 462.1 What is the scope of this part?
- 462.2 What regulations apply?
- 462.3 What definitions apply?
- 462.4 What are the transition rules for using tests to measure educational gain for the National Reporting System for Adult Education (NRS)?

Subpart B—What Process Does the Secretary Use to Review the Suitability of Tests for Use in the NRS?

- 462.10 How does the Secretary review tests?
- 462.11 What must an application contain?
- 462.12 What procedures does the Secretary use to review the suitability of tests?
- 462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?
- 462.14 How often and under what circumstances must a test be reviewed by the Secretary?

Subpart C—[Reserved]

Subpart D—What Requirements Must States and Local Eligible Providers Follow When Measuring Educational Gain?

- 462.40 Must a State have an assessment policy?
- 462.41 How must tests be administered in order to accurately measure educational gain?
- 462.42 How are tests used to place students at an NRS educational functioning level?
- 462.43 How is educational gain measured?
- 462.44 Which educational functioning levels must States and local eligible providers use to measure and report educational gain in the NRS?

Authority: 20 U.S.C. 9212, unless otherwise noted.

Subpart A—General

§ 462.1 What is the scope of this part?

These regulations establish the—
(a) Procedures the Secretary uses to determine the suitability of standardized tests for use in the National Reporting System for Adult Education (NRS) to measure educational gain of participants in an adult education program required to report under the NRS; and
(b) Procedures States and local eligible providers must follow when measuring educational gain for use in the NRS.

(Authority: 20 U.S.C. 9212)

§ 462.2 What regulations apply?

The following regulations apply to this part:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(10) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(11) 34 CFR part 97 (Protection of Human Subjects).

(12) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(13) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 462.

(Authority: 20 U.S.C. 9212)

§ 462.3 What definitions apply?

(a) *Definitions in the Adult Education and Family Literacy Act (Act).* The following terms used in these regulations are defined in section 203 of the Adult Education and Family Literacy Act, 20 U.S.C. 9202 (Act):

Adult education
Eligible provider
Individual of limited English proficiency
Individual with a disability
Literacy

(b) *Other definitions.* The following definitions also apply to this part:

Adult basic education (ABE) means instruction designed for an adult whose educational functioning level is equivalent to a particular ABE literacy level listed in the NRS educational functioning level table in § 462.44.

Adult education population means individuals—

(1) Who are 16 years of age or older;
(2) Who are not enrolled in secondary school; and

(3) Who—

(i) Lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(ii) Do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(iii) Are unable to speak, read, or write the English language.

Adult secondary education (ASE) means instruction designed for an adult whose educational functioning level is equivalent to a particular ASE literacy level listed in the NRS educational functioning level table in § 462.44.

Content domains or NRS skill areas mean, for the purpose of the NRS, reading, writing, and speaking the English language, numeracy, problem solving, English language acquisition, and other literacy skills as defined by the Secretary.

Educational functioning levels mean the ABE, ASE, and ESL literacy levels, as provided in § 462.44, that describe a set of skills and competencies that students demonstrate in the NRS skills areas.

English-as-a-second language (ESL) means instruction designed for an adult whose educational functioning level is equivalent to a particular ESL literacy level listed in the NRS educational functioning level table in § 462.44.

Guidelines means the *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (also known as NRS Implementation Guidelines) posted on the Internet at: <http://www.nrsweb.org>. A copy of the Guidelines is also available from the U.S. Department of Education, Division of Adult Education and Literacy, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202-7240.

Local eligible provider means an "eligible provider" as defined in the Act that operates an adult education program that is required to report under the NRS.

State means "State" and "Outlying area" as defined in the Act.

Test means a standardized test, assessment, or instrument that has a formal protocol on how it is to be administered. These protocols include, for example, the use of parallel, equated forms, testing conditions, time allowed for the test, standardized scoring, and the amount of instructional time a student needs before post-testing. Violation of these protocols often invalidates the test.

Test administrator means an individual who is trained to administer tests the Secretary determines to be suitable under this part.

Test publisher means an entity, individual, organization, or agency that owns a registered copyright of a test, or

is licensed by the copyright holder to sell or distribute a test.

(Authority: 20 U.S.C. 9202, 9212)

§ 462.4 What are the transition rules for using tests to measure educational gain for the National Reporting System for Adult Education (NRS)?

A State or a local eligible provider may continue to measure educational gain for the NRS using a test that was identified in the Guidelines until June 30, 2008. After that time, States and local eligible providers must use only tests that the Secretary has reviewed and determined to be suitable for use in the NRS under this part. (Approved by the Office of Management and Budget under control number 1830-0027)

(Authority: 20 U.S.C. 9212)

Subpart B—What Process Does the Secretary Use to Review the Suitability of Tests for Use in the NRS?

§ 462.10 How does the Secretary review tests?

(a) The Secretary only reviews tests under this part that are submitted by a test publisher.

(b) A test publisher that wishes to have the suitability of its test determined by the Secretary under this part must submit an application to the Secretary by October 1 of each year and in the manner the Secretary may prescribe.

(Authority: 20 U.S.C. 9212)

§ 462.11 What must an application contain?

(a) *Application content and format.*

(1) In order for the Secretary to determine whether a standardized test is suitable for measuring the gains of participants in an adult education program required to report under the NRS, a test publisher must include with its application information listed in paragraphs (b) through (i) of this section, as well as the applicable information in paragraph (j) of this section.

(2) A test publisher must arrange the information in its application in the order it is presented in paragraphs (b) through (j) of this section.

(3) A test publisher must submit to the Secretary three copies of its application.

(b) *General information.* (1) A statement, in the technical manual for the test, of the intended purpose of the test and of how the test will allow examinees to demonstrate the skills that are associated with the NRS educational functioning levels in § 462.44.

(2) The name, address, e-mail address, and telephone and fax numbers of a

contact person to whom the Secretary may address inquiries.

(3) A summary of the precise editions, forms, levels, and, if applicable, subtests and abbreviated tests that the test publisher is requesting that the Secretary review and determine to be suitable for use in the NRS.

(c) *Development.* Documentation of how the test was developed, including a description of—

(1) The nature of samples of examinees administered the test during pilot or field testing, for example—

(i) The number of examinees administered each item;

(ii) How similar were the sample or samples of examinees used to develop and evaluate the test to the adult education population of interest to the NRS; and

(iii) The steps, if any, taken to ensure that the examinees were motivated while responding to the test; and

(2) The steps taken to ensure the quality of test items or tasks, for example—

(i) The extent to which items or tasks on the test have been reviewed for fairness and sensitivity; and

(ii) The extent to which items or tasks on the test have been screened for the adequacy of their psychometric properties.

(d) *Maintenance.* Documentation of how the test is maintained, including a description of—

(1) How frequently, if ever, new forms of the test are developed;

(2) The steps taken to ensure the comparability of scores across forms of the test;

(3) The steps taken to maintain the security of the test; and

(4) A history of the test's use.

(e) *Match of content to the NRS educational functioning levels (content validity).* Documentation of the extent to which the items or tasks on the test cover the skills in the NRS educational functioning levels in § 462.44, including—

(1) Whether the items or tasks on the test require the types and levels of skills used to describe the NRS educational functioning levels;

(2) Whether the items or tasks measure skills that are not associated with the NRS educational functioning levels;

(3) Whether aspects of a particular NRS educational functioning level are not covered by any of the items or tasks;

(4) Whether there are items or tasks that are not associated with any of the NRS educational functioning levels;

(5) The procedures used to establish the content validity of the test;

(6) The number of subject-matter experts who provided judgments linking

the items or tasks to the educational functioning levels, and their qualifications for doing so, particularly their familiarity with adult education and the NRS educational functioning levels; and

(7) The extent to which the judgments of the subject matter experts agree.

(f) *Match of scores to NRS educational functioning levels.* Documentation of the adequacy of the procedure used to translate the performance of an examinee on a particular test to an estimate of the examinee's standing with respect to the NRS educational functioning levels in § 462.44, including—

(1) The standard-setting procedures used to establish cut scores for transforming raw or scale scores on the test into estimates of an examinee's NRS educational functioning level;

(2) If judgment-based procedures were used—

(i) The number of subject matter experts who provided judgments, and their qualifications; and

(ii) Evidence of the extent to which the judgments of subject-matter experts agree;

(3) The standard error of each cut score, and how it was established; and

(4) The extent to which the cut scores might be expected to differ if they had been established by a different (though similar) panel of experts.

(g) *Reliability.* Documentation of the degree of consistency in performance across different forms of the test in the absence of any external interventions, including—

(1) The correlation between raw (or number-correct) scores across alternate forms of the test;

(2) The consistency with which examinees are classified into the same NRS educational functioning levels across forms of the test. Information regarding classification consistency should be reported for each NRS educational functioning level that the test is being considered for use in measuring;

(3) The adequacy of the research design leading to the estimates of the reliability of the test, including—

(i) The size of the sample;

(ii) The similarity between the sample used in the data collection and the adult education population; and

(iii) The steps taken to ensure the motivation of the examinees; and

(4) Any other information explaining the methodology and procedures used to measure the reliability of the test.

(h) *Construct validity.* Documentation of the appropriateness of a given test for measuring educational gain for the NRS, *i.e.*, documentation that the test

measures what it is intended to measure, including—

(1) The extent to which the raw or scale scores and the educational functioning classifications associated with the test correlate (or agree) with scores or classifications associated with other tests designed or intended to assess educational gain in the same adult education population as the NRS;

(2) The extent to which the raw or scale scores are related to other relevant variables, such as hours of instruction or other important process or outcome variables;

(3) The adequacy of the research designs associated with these sources of evidence (see paragraph (g)(3) of this section); and

(4) Other evidence demonstrating that the test measures gains in educational functioning resulting from adult education, and not some other construct-irrelevant variables, such as practice effects.

(i) *Other information.* (1) A description of the manner in which test-taking time was determined in relation to the content domains of the NRS educational functioning levels, and an analysis of the effects of time on performance.

(2) Additional guidance on the interpretation of scores resulting from any modifications of the tests for an individual with a disability.

(3) The manual provided to test administrators containing procedures and instructions for test security and administration.

(4) A description of the training or certification required of test administrators and scorers by the test publisher.

(5) A description of retesting procedures and the analysis upon which the criteria for retesting are based.

(6) Such other evidence as the Secretary may determine is necessary to establish the test's compliance with the criteria and requirements the Secretary uses to determine the suitability of tests as provided in § 462.13.

(j) *Previous tests.* (1) For a test used to measure educational gain in the NRS before the effective date of these regulations that is being submitted to the Secretary for review under this part, the test publisher must provide documentation of periodic review of the content and specifications of the test to ensure that the test continues to reflect NRS educational functioning levels.

(2) For a test first published five years or more before the date it is submitted to the Secretary for review under this part, the test publisher must provide documentation of periodic review of the content and specifications of the test to

ensure that the test continues to reflect NRS educational functioning levels.

(3) For a test that has not changed in the seven years since the Secretary determined, under § 462.13, that it was suitable for use in the NRS that is again being submitted to the Secretary for review under this part, the test publisher must provide new data supporting the validity of the test.

(4) If a test has been substantially revised—for example by changing its structure, number of items, content specifications, item types, or sub-tests—from the most recent edition reviewed by the Secretary under this part, the test publisher must provide 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 results from validity, reliability, and equating or standard-setting studies undertaken subsequent to the revisions.

(Authority: 20 U.S.C. 9212)

§ 462.12 What procedures does the Secretary use to review the suitability of tests?

(a) *Review.* (1) When the Secretary receives a complete application from a test publisher, the Secretary selects experts in the field of educational testing and assessment who possess appropriate advanced degrees and experience in test development or psychometric research, or both, to advise the Secretary on the extent to which a test meets the criteria and requirements contained in § 462.13.

(2) The Secretary reviews and determines the suitability of a test only if an application—

(i) Is submitted by a test publisher;

(ii) Meets the deadline established by the Secretary;

(iii) Includes a test that has two or more secure, parallel, equated forms of the test;

(iv) Includes a test that samples one or more of the major content domains of the NRS educational functioning levels of ABE, ESL, or ASE with sufficient numbers of questions to represent adequately the domain or domains; and

(v) Includes the information prescribed by the Secretary, including the information in § 462.11 of this part.

(b) *Secretary's determination.* (1) The Secretary determines whether a test meets the criteria and requirements in § 462.13 after taking into account the advice of the experts described in paragraph (a)(1) of this section.

(2) For tests that contain multiple sub-tests measuring content domains other than those of the NRS educational functioning levels, the Secretary

determines the suitability of only those sub-tests covering the domains of the NRS educational functioning levels.

(c) *Suitable tests.* If the Secretary determines that a test satisfies the criteria and requirements in § 462.13 and, therefore, is suitable for use in the NRS, the Secretary—

(1) Notifies the test publisher of the Secretary's decision; and

(2) Annually publishes in the **Federal Register** and posts on the Internet at <http://www.nrsweb.org> a list of the names of tests and the educational functioning levels the tests are suitable to measure in the NRS. A copy of the list is also available from the U.S. Department of Education, Division of Adult Education and Literacy, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202-7240.

(d) *Unsuitable tests.* (1) If the Secretary determines that a test does not satisfy the criteria and requirements in § 462.13 and, therefore, is not suitable for use in the NRS, the Secretary notifies the test publisher of the Secretary's decision and of the reasons why the test does not meet those criteria and requirements.

(2) Within 30 days after the Secretary notifies a test publisher that its test is not suitable for use in the NRS, the test publisher may request that the Secretary reconsider the Secretary's decision. This request must be accompanied by—

(i) An analysis of why the information and documentation submitted meet the criteria and requirements in § 462.13 notwithstanding the Secretary's earlier decision to the contrary; and

(ii) Any additional documentation and information that address the Secretary's reasons for determining that the test was unsuitable.

(3) The Secretary reviews the additional information submitted by the test publisher and makes a final determination regarding the suitability of the test for use in the NRS.

(i) If the Secretary's decision is unchanged and the test remains unsuitable for use in the NRS, the Secretary notifies the test publisher, and this action concludes the review process.

(ii) If the Secretary's decision changes and the test is determined to be suitable for use in the NRS, the Secretary follows the procedures in paragraph (c) of this section.

(e) *Revocation.* (1) The Secretary's determination regarding the suitability of a test may be revoked if the Secretary determines that the information the publisher submitted as a basis for the Secretary's review of the test was inaccurate.

(2) If the Secretary revokes the determination regarding the suitability of a test, the Secretary publishes in the **Federal Register** and posts on the Internet at <http://www.nrsweb.org> a notice of that revocation along with the date by which States and local eligible providers must stop using the revoked test. A copy of the notice of revocation is also available from the U.S.

Department of Education, Division of Adult Education and Literacy, 400 Maryland Avenue, SW., room 11159, Potomac Center Plaza, Washington, DC 20202-7240.

(Authority: 20 U.S.C. 9212)

§ 462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?

In order for the Secretary to consider a test suitable for use in the NRS, the test or the test publisher, if applicable, must meet the following criteria and requirements:

(a) The test must measure the NRS educational functioning levels of members of the adult education population.

(b) The test must sample one or more of the major content domains of the NRS educational functioning levels of ABE, ESL, or ASE with sufficient numbers of questions to adequately represent the domain or domains.

(c)(1) The test must meet all applicable and feasible standards for test construction provided in the 1999 edition of the *Standards for Educational and Psychological Testing*, prepared by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Psychological Association, Inc., 750 First Street, NE., Washington, DC 20002. You may inspect a copy at the Department of Education, room 11108, 550 12th Street, SW., Washington, DC 20202 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(2) If asked by the Secretary, a test publisher must be able to explain why it believes that certain standards in the *Standards for Educational and*

Psychological Testing were not applicable or were not feasible.

(d) The test must contain the publisher's guidelines for retesting, including time between test-taking, which are accompanied by appropriate justification.

(e) The test must have two or more secure, parallel, equated forms.

(f) For computerized adaptive tests, the size of the item pool and the method of item selection must be adequate to ensure negligible overlap in items across pre- and post-test administrations of the test to the same examinee. Scores associated with these alternate administrations must be equivalent in meaning.

(g) For a test that has been modified for an individual with a disability, the test publisher must—

(1) Provide documentation that it followed the guidelines provided in the Testing Individuals With Disabilities section of the 1999 edition of the *Standards for Educational and Psychological Testing*;

(2) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance; and

(3) Recommend educational functioning levels based on the previous performance of test takers who are members of the adult education population of interest to the NRS.

(Authority: 20 U.S.C. 9212)

§ 462.14 How often and under what circumstances must a test be reviewed by the Secretary?

(a) The Secretary's determination that a test is suitable for use in the NRS is in effect for a period of seven years from the date of the Secretary's written notification to the test publisher, unless otherwise indicated by the Secretary. After that time, if the test publisher wants the test to be used in the NRS, the test must be reviewed again by the Secretary so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

(b) If a test that the Secretary has determined is suitable for use in the NRS is substantially revised—for example, by changing its structure, number of items, content specifications, item types, or sub-tests—and the test publisher wants the test to continue to be used in the NRS, the test publisher must submit, as provided in § 462.11(j)(4), the substantially revised test or version of the test to the Secretary for review so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

(Authority: 20 U.S.C. 9212)

Subpart C—[Reserved]

Subpart D—What Requirements Must States and Local Eligible Providers Follow When Measuring Educational Gain?

§ 462.40 Must a State have an assessment policy?

(a) A State must have a written assessment policy that its local eligible providers must follow in measuring educational gain and reporting data in the NRS.

(b) A State must submit its assessment policy to the Secretary for review and approval at the time it submits its annual statistical report for the NRS.

(c) The State's assessment policy must—

(1) Include a statement requiring that local eligible providers measure the educational gain of all students who receive 12 hours or more of instruction in the State's adult education program with a test that the Secretary has determined is suitable for use in the NRS;

(2) Identify the pre- and post-tests that the State requires local eligible providers to use to measure the educational gain of ABE, ESL, and ASE students;

(3)(i) Indicate when, in calendar days or instructional hours, local eligible providers must administer pre- and post-tests to students; and

(ii) Ensure that the time for administering the post-test is long enough after the pre-test to allow the test to measure educational gains according to the test publisher's guidelines;

(4) Specify the score ranges tied to educational functional levels for placement and for reporting gains for accountability;

(5) Identify the skill areas the State intends to require local eligible providers to assess in order to measure educational gain;

(6) Include the guidance the State provides to local eligible providers on testing and placement of an individual with a disability or an individual who is unable to be tested because of a disability;

(7) Describe the training requirements that staff must meet in order to be qualified to administer and score each test selected by the State to measure the educational gains of students;

(8) Identify the alternate form or forms of each test that local eligible providers must use for post-testing;

(9) Indicate whether local eligible providers must use a locator test for

guidance on identifying the appropriate pre-test;

(10) Describe the State's policy for the initial placement of a student at each NRS educational functioning level using test scores;

(11) Describe the State's policy for advancing students across educational functioning levels using the post-test and for measuring educational gain;

(12) Describe the pre-service and in-service staff training that the State or local eligible providers will provide, including training—

(i) For staff who either administer or score each of the tests used to measure educational gain;

(ii) For teachers and other local staff involved in gathering, analyzing, compiling, and reporting data for the NRS; and

(iii) That includes the following topics:

(A) NRS policy, accountability policies, and the data collection process.

(B) Definitions of measures.

(C) Conducting assessments; and

(13) Identify the State or local agency responsible for providing pre- and in-service training.

(Approved by the Office of Management and Budget under control number 1830-0027)

(Authority: 20 U.S.C. 9212)

§ 462.41 How must tests be administered in order to accurately measure educational gain?

(a) *General.* A local eligible provider must measure the educational gains of students using only tests that the Secretary has determined are suitable for use in the NRS and that the State has identified in its assessment policy.

(b) *Pre-test.* A local eligible provider must—

(1) Administer a pre-test to measure a student's educational functioning level at intake, or as soon as possible thereafter;

(2) Administer the pre-test to students at a uniform time, according to its State's assessment policy; and

(3) Administer pre-tests to students in the skill areas identified in its State's assessment policy.

(c) *Post-test.* A local eligible provider must—

(1) Administer a post-test to measure a student's educational functioning level after a set time period or number of instructional hours;

(2) Administer the post-test to students at a uniform time, according to its State's assessment policy;

(3) Administer post-tests with a secure, parallel, equated form of the same test that was used to pre-test and determine the initial placement of students; and

(4) Administer post-tests to students in the same skill areas as the pre-test.

(d) *Other requirements.* (1) A local eligible provider must administer a test using only staff who have been trained to administer the test.

(2) A local eligible provider may use the results of a test in the NRS only if the test was administered in a manner that is consistent with the State's assessment policy and the test publisher's recommendations.

(Approved by the Office of Management and Budget under control number 1830-0027)

(Authority: 20 U.S.C. 9212)

§ 462.42 How are tests used to place students at an NRS educational functioning level?

(a) A local eligible provider must use the results of the pre-test described in § 462.41(b) to initially place students at the appropriate NRS educational functioning level.

(b) A local eligible provider must use the results of the post-test described in § 462.41(c)—

(1) To determine whether students have completed one or more educational functioning levels or are progressing within the same level; and

(2) To place students at the appropriate NRS educational functioning level.

(c)(1) States and local eligible providers are not required to use all of the skill areas described in the NRS educational functioning levels to place students.

(2) States and local eligible providers must test and report on the skill areas most relevant to the students' needs and to the programs' curriculum.

(d)(1) If a State's assessment policy requires a local eligible provider to test a student in multiple skill areas and the student will receive instruction in all of the skill areas, the local eligible provider must place the student in an educational functioning level that is equivalent to the student's lowest test score for any of the skill areas tested under § 462.41(b) and (c).

(2) If a State's assessment policy requires a local eligible provider to test a student in multiple skill areas, but the student will receive instruction in fewer than all of the skill areas, the local eligible provider must place the student in an educational functioning level that is equivalent to the student's lowest test score for any of the skill areas—

(i) Tested, under § 462.41(b) and (c); and

(ii) In which the student will receive instruction.

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(Authority: 20 U.S.C. 9212)

§ 462.43 How is educational gain measured?

(a)(1) Educational gain is measured by comparing the student's initial educational functioning level, as measured by the pre-test described in § 462.41(b), with the student's educational functioning level as measured by the post-test described in § 462.41(c).

Example: A State's assessment policy requires its local eligible providers to test students in reading and numeracy. The student scores lower in reading than in numeracy. As described in § 462.42(d)(1), the local eligible provider would use the

student's reading score to place the student in an educational functioning level. To measure educational gain, the local eligible recipient would compare the reading score on the pre-test with the reading score on the post-test.

(2) A student is considered to have made an educational gain when the student's post-test indicates that he or she has completed one or more educational functioning levels above the level in which the student was placed by the pre-test.

(b) If a student is not post-tested, then no educational gain can be measured for that student and the local eligible provider must report the student in the

same educational functioning level as initially placed for NRS reporting purposes.

(Approved by the Office of Management and Budget under control number 1830-0027)

(Authority: 20 U.S.C. 9212)

§ 462.44 Which educational functioning levels must States and local eligible providers use to measure and report educational gain in the NRS?

States and local eligible providers must use the NRS educational functioning levels in the following functioning level table:

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Table to §462.44—Functioning Level Table

EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ADULT BASIC EDUCATION LEVELS			
Literacy Level	Basic Reading and Writing	Numeracy Skills	Functional and Workplace Skills
Beginning ABE Literacy Grade level 0–1.9	Individual has no or minimal reading and writing skills. May have little or no comprehension of how print corresponds to spoken language and may have difficulty using a writing instrument. At the upper range of this level, individual can recognize, read, and write letters and numbers but has a limited understanding of connected prose and may need frequent re-reading. Can write a limited number of basic sight words and familiar words and phrases; may also be able to write simple sentences or phrases, including very simple messages. Can write basic personal information. Narrative writing is disorganized and unclear, inconsistently uses simple punctuation (e.g., periods, commas, question marks), and contains frequent errors in spelling.	Individual has little or no recognition of numbers or simple counting skills or may have only minimal skills, such as the ability to add or subtract single digit numbers.	Individual has little or no ability to read basic signs or maps and can provide limited personal information on simple forms. The individual can handle routine entry level jobs that require little or no basic written communication or computational skills and no knowledge of computers or other technology.
Beginning Basic Education Grade level 2–3.9	Individual can read simple material on familiar subjects and comprehend simple and compound sentences in single or linked paragraphs containing a familiar vocabulary; can write simple notes and messages on familiar situations but lacks clarity and focus. Sentence structure lacks variety, but individual shows some control of basic grammar (e.g., present and past tense) and consistent use of punctuation (e.g., periods, capitalization).	Individual can count, add, and subtract three digit numbers, can perform multiplication through 12, can identify simple fractions, and perform other simple arithmetic operations.	Individual is able to read simple directions, signs, and maps, fill out simple forms requiring basic personal information, write phone messages, and make simple changes. There is minimal knowledge of and experience with using computers and related technology. The individual can handle basic entry level jobs that require minimal literacy skills; can recognize very short, explicit, pictorial texts (e.g., understands logos related to worker safety before using a piece of machinery); and can read want ads and complete simple job applications.
Low Intermediate Basic Education Grade level 4–5.9	Individual can read text on familiar subjects that have a simple and clear underlying structure (e.g., clear main idea, chronological order); can use context to determine meaning; can interpret actions required in specific written directions; can write simple paragraphs with a main idea and supporting details on familiar topics (e.g., daily activities, personal issues) by recombining learned vocabulary and structures; and can self and peer edit for spelling and punctuation errors.	Individual can perform with high accuracy all four basic math operations using whole numbers up to three digits and can identify and use all basic mathematical symbols.	Individual is able to handle basic reading, writing, and computational tasks related to life roles, such as completing medical forms, order forms, or job applications; and can read simple charts, graphs, labels, and payroll stubs and simple authentic material if familiar with the topic. The individual can use simple computer programs and perform a sequence of routine tasks given direction using technology (e.g., fax machine, computer operation). The individual can qualify for entry level jobs that require following basic written instructions and diagrams with assistance, such as oral clarification; can write a short report or message to fellow workers; and can read simple dials and scales and take routine measurements.

Table to §462.44—Functioning Level Table (Continued)

EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ADULT BASIC EDUCATION LEVELS			
Literacy Level	Basic Reading and Writing	Numeracy Skills	Functional and Workplace Skills
High Intermediate Basic Education Grade level 6–8.9	Individual is able to read simple descriptions and narratives on familiar subjects or from which new vocabulary can be determined by context and can make some minimal inferences about familiar texts and compare and contrast information from such texts but not consistently. The individual can write simple narrative descriptions and short essays on familiar topics and has consistent use of basic punctuation but makes grammatical errors with complex structures.	Individual can perform all four basic math operations with whole numbers and fractions; can determine correct math operations for solving narrative math problems and can convert fractions to decimals and decimals to fractions; and can perform basic operations on fractions.	Individual is able to handle basic life skills tasks such as graphs, charts, and labels and can follow multistep diagrams; can read authentic materials on familiar topics, such as simple employee handbooks and payroll stubs; can complete forms such as a job application and reconcile a bank statement. Can handle jobs that involve following simple written instructions and diagrams; can read procedural texts, where the information is supported by diagrams, to remedy a problem, such as locating a problem with a machine or carrying out repairs using a repair manual. The individual can learn or work with most basic computer software, such as using a word processor to produce own texts, and can follow simple instructions for using technology.
EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ADULT SECONDARY EDUCATION LEVELS			
Literacy Level	Basic Reading and Writing	Numeracy Skills	Functional and Workplace Skills
Low Adult Secondary Education Grade level 9–10.9	Individual can comprehend expository writing and identify spelling, punctuation, and grammatical errors; can comprehend a variety of materials such as periodicals and nontechnical journals on common topics; can comprehend library reference materials and compose multiparagraph essays; can listen to oral instructions and write an accurate synthesis of them; and can identify the main idea in reading selections and use a variety of context issues to determine meaning. Writing is organized and cohesive with few mechanical errors; can write using a complex sentence structure; and can write personal notes and letters that accurately reflect thoughts.	Individual can perform all basic math functions with whole numbers, decimals, and fractions; can interpret and solve simple algebraic equations, tables, and graphs and can develop own tables and graphs; and can use math in business transactions.	Individual is able or can learn to follow simple multistep directions and read common legal forms and manuals; can integrate information from texts, charts, and graphs; can create and use tables and graphs; can complete forms and applications and complete resumes; can perform jobs that require interpreting information from various sources and writing or explaining tasks to other workers; is proficient using computers and can use most common computer applications; can understand the impact of using different technologies; and can interpret the appropriate use of new software and technology.
High Adult Secondary Education Grade level 11–12	Individual can comprehend, explain, and analyze information from a variety of literacy works, including primary source materials and professional journals, and can use context cues and higher order processes to interpret meaning of written material. Writing is cohesive with clearly expressed ideas supported by relevant detail, and individual can use varied and complex sentence structures with few mechanical errors.	Individual can make mathematical estimates of time and space and can apply principles of geometry to measure angles, lines, and surfaces and can also apply trigonometric functions.	Individual is able to read technical information and complex manuals; can comprehend some college level books and apprenticeship manuals; can function in most job situations involving higher order thinking; can read text and explain a procedure about a complex and unfamiliar work procedure, such as operating a complex piece of machinery; can evaluate new work situations and processes; and can work productively and collaboratively in groups and serve as facilitator and reporter of group work. The individual is able to use common software and learn new software applications; can define the purpose of new technology and software and select appropriate technology; can adapt use of software or technology to new situations; and can instruct others, in written or oral form, on software and technology use.

Table to §462.44—Functioning Level Table (Continued)

EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ENGLISH AS A SECOND LANGUAGE LEVELS			
Literacy Level	Listening and Speaking	Basic Reading and Writing	Functional and Workplace Skills
Beginning ESL Literacy SPL 0–1	Individual cannot speak or understand English, or understands only isolated words or phrases.	Individual has no or minimal reading or writing skills in any language. May have little or no comprehension of how print corresponds to spoken language and may have difficulty using a writing instrument.	Individual functions minimally or not at all in English and can communicate only through gestures or a few isolated words, such as name and other personal information; may recognize only common signs or symbols (e.g., stop sign, product logos); can handle only very routine entry-level jobs that do not require oral or written communication in English. There is no knowledge or use of computers or technology.
Low Beginning ESL SPL 2	Individual can understand basic greetings, simple phrases and commands. Can understand simple questions related to personal information, spoken slowly and with repetition. Understands a limited number of words related to immediate needs and can respond with simple learned phrases to some common questions related to routine survival situations. Speaks slowly and with difficulty. Demonstrates little or no control over grammar.	Individual can read numbers and letters and some common sight words. May be able to sound out simple words. Can read and write some familiar words and phrases, but has a limited understanding of connected prose in English. Can write basic personal information (e.g., name, address, telephone number) and can complete simple forms that elicit this information.	Individual functions with difficulty in social situations and in situations related to immediate needs. Can provide limited personal information on simple forms, and can read very simple common forms of print found in the home and environment, such as product names. Can handle routine entry level jobs that require very simple written or oral English communication and in which job tasks can be demonstrated. May have limited knowledge and experience with computers.
High Beginning ESL SPL 3	Individual can understand common words, simple phrases, and sentences containing familiar vocabulary, spoken slowly with some repetition. Individual can respond to simple questions about personal everyday activities, and can express immediate needs, using simple learned phrases or short sentences. Shows limited control of grammar.	Individual can read most sight words, and many other common words. Can read familiar phrases and simple sentences but has a limited understanding of connected prose and may need frequent re-reading. Individual can write some simple sentences with limited vocabulary. Meaning may be unclear. Writing shows very little control of basic grammar, capitalization and punctuation and has many spelling errors.	Individual can function in some situations related to immediate needs and in familiar social situations. Can provide basic personal information on simple forms and recognizes simple common forms of print found in the home, workplace and community. Can handle routine entry level jobs requiring basic written or oral English communication and in which job tasks can be demonstrated. May have limited knowledge or experience using computers.

Table to §462.44—Functioning Level Table (Continued)

Literacy Level	EDUCATIONAL FUNCTIONING LEVEL DESCRIPTORS—ENGLISH AS A SECOND LANGUAGE LEVELS		
	Listening and Speaking	Basic Reading and Writing	Functional and Workplace Skills
Low Intermediate ESL SPL 4	Individual can understand simple learned phrases and limited new phrases containing familiar vocabulary spoken slowly with frequent repetition; can ask and respond to questions using such phrases; can express basic survival needs and participate in some routine social conversations, although with some difficulty; and has some control of basic grammar.	Individual can read simple material on familiar subjects and comprehend simple and compound sentences in single or linked paragraphs containing a familiar vocabulary; can write simple notes and messages on familiar situations but lacks clarity and focus. Sentence structure lacks variety but shows some control of basic grammar (e.g., present and past tense) and consistent use of punctuation (e.g., periods, capitalization).	Individual can interpret simple directions and schedules, signs, and maps; can fill out simple forms but needs support on some documents that are not simplified; and can handle routine entry level jobs that involve some written or oral English communication but in which job tasks can be demonstrated. Individual can use simple computer programs and can perform a sequence of routine tasks given directions using technology (e.g., fax machine, computer).
High Intermediate ESL SPL 5	Individual can understand learned phrases and short new phrases containing familiar vocabulary spoken slowly and with some repetition; can communicate basic survival needs with some help; can participate in conversation in limited social situations and use new phrases with hesitation; and relies on description and concrete terms. There is inconsistent control of more complex grammar.	Individual can read text on familiar subjects that have a simple and clear underlying structure (e.g., clear main idea, chronological order); can use context to determine meaning; can interpret actions required in specific written directions; can write simple paragraphs with main idea and supporting details on familiar topics (e.g., daily activities, personal issues) by recombining learned vocabulary and structures; and can self and peer edit for spelling and punctuation errors.	Individual can meet basic survival and social needs, can follow some simple oral and written instruction, and has some ability to communicate on the telephone on familiar subjects; can write messages and notes related to basic needs; can complete basic medical forms and job applications; and can handle jobs that involve basic oral instructions and written communication in tasks that can be clarified orally. Individual can work with or learn basic computer software, such as word processing, and can follow simple instructions for using technology.
Advanced ESL SPL 6	Individual can understand and communicate in a variety of contexts related to daily life and work. Can understand and participate in conversation on a variety of everyday subjects, including some unfamiliar vocabulary, but may need repetition or rewording. Can clarify own or others' meaning by rewording. Can understand the main points of simple discussions and informational communication in familiar contexts. Shows some ability to go beyond learned patterns and construct new sentences. Shows control of basic grammar but has difficulty using more complex structures. Has some basic fluency of speech.	Individual can read moderately complex text related to life roles and descriptions and narratives from authentic materials on familiar subjects. Uses context and word analysis skills to understand vocabulary, and uses multiple strategies to understand unfamiliar texts. Can make inferences, predictions, and compare and contrast information in familiar texts. Individual can write multi-paragraph text (e.g., organizes and develops ideas with clear introduction, body, and conclusion), using some complex grammar and a variety of sentence structures. Makes some grammar and spelling errors. Uses a range of vocabulary.	Individual can function independently to meet most survival needs and to use English in routine social and work situations. Can communicate on the telephone on familiar subjects. Understands radio and television on familiar topics. Can interpret routine charts, tables and graphs and can complete forms and handle work demands that require non-technical oral and written instructions and routine interaction with the public. Individual can use common software, learn new basic applications, and select the correct basic technology in familiar situations.

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