

DEPARTMENT OF EDUCATION**34 CFR Parts 461, 462, 463, 472, 477, 489, and 490**

RIN 1830-AA22

[Docket ID ED-2015-OCTAE-0003]

Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act)**AGENCY:** Office of Career, Technical, and Adult Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to establish regulations to implement changes to the Adult Education and Family Literacy Act (AEFLA) resulting from the enactment of the Workforce Innovation and Opportunity Act of 2014 (WIOA or the Act). The proposed regulations clarify new provisions in the law. The Secretary also proposes to update the regulations that establish procedures for determining the suitability of tests used for measuring State performance on accountability measures under AEFLA. Finally, we propose to remove specific parts of title 34 of the Code of Federal Regulations (CFR) that are no longer in effect.

DATES: We must receive your comments on or before June 15, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “Are you new to the site?”

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Lekesha Campbell, U.S. Department of Education, 400 Maryland Avenue SW., Room 11-008, Potomac Center Plaza (PCP), Washington, DC 20202-7240.

Privacy Note: The U.S. Department of Education’s (Department) policy is to make all comments received from members of the public available for public viewing in their entirety on the

Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

Lekesha Campbell, U.S. Department of Education, 400 Maryland Avenue SW., Room 11-008, PCP, Washington, DC 20202-7240.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:*Executive Summary:*

Purpose of This Regulatory Action: On July 22, 2014, President Obama signed into law WIOA (P.L. 113-128), which replaces the Workforce Investment Act of 1998 (WIA). As under WIA, AEFLA is title II of WIOA (title II). The new law supports innovative strategies to keep pace with changing economic conditions and seeks to improve coordination across the primary Federal programs that support employment services, workforce development, adult education, and vocational rehabilitation activities. The proposed regulations further the Department’s implementation of new provisions in the law under AEFLA. Through the proposed regulations, we seek to explain the activities authorized under AEFLA and assist programs in their implementation efforts at the State and local levels.

In developing this notice of proposed rulemaking (NPRM), we have limited our proposed regulations to only those that we believe are absolutely necessary to clarify and reiterate key statutory provisions of WIOA. In the proposed regulations, we incorporate the relevant requirements from the law along with the applicable regulations, to provide context and for reader convenience.

Summary of the Major Provisions of This Regulatory Action: The Secretary proposes to:

1. Remove specific parts of title 34 that are no longer in effect.
2. Update and revise existing AEFLA regulations regarding the suitability of tests for use in the National Reporting System for Adult Education (NRS) to reflect new provisions of WIOA. The proposed regulations also include procedures that States and local eligible providers would be required to follow when using suitable tests for NRS reporting. The changes conform to the statutory language in WIOA and clarify existing requirements.

3. Define the purpose of AEFLA and the programs authorized by the Act, as well as clarify the related Education Department General Administration Regulations (EDGAR) and definitions that apply to the program.

4. Describe the process and requirements for States to award grants or contracts to local providers and the activities that may be charged to local administrative costs. These regulations would implement new requirements established by WIOA, including the requirement that local workforce development boards (Local Boards) review applications for funds prepared by applicants for AEFLA funding, the requirement that entities have “demonstrated effectiveness” to be eligible providers, and the requirement that local administrative funds be used to promote the alignment of a provider’s activities with the local workforce development plan established under title I of WIOA (title I).

5. Define what constitutes an adult education and literacy activity or program and clarify how funds can be used for activities that are newly authorized by WIOA.

6. Describe how AEFLA funds may be used to support programs for corrections education and the education of other institutionalized individuals, including new activities authorized by WIOA.

7. Clarify the use of funds for new and expanded activities under the Integrated English Literacy and Civics Education program.

Costs and Benefits: The benefits and costs of these proposed regulations are discussed in more detail in the Regulatory Impact Analysis section of this preamble. One benefit of the proposed regulations is that they would make necessary updates and conforming changes to part 462 to align the regulations with WIOA. The proposed changes to part 462 also would benefit test publishers by creating more opportunities for them to submit assessments to the Secretary for review. This would likely increase the availability of new assessments for use in the NRS, a benefit for State eligible agencies and eligible local providers. The costs of the amendments to part 462, on the other hand, would be negligible.

One benefit of the proposed regulations in part 463 is the promotion of more efficient and consistent implementation of AEFLA in States and outlying areas by clarifying a number of statutory provisions. The proposed regulations clarify, for example, how an English language acquisition program can meet the statutory requirement that the program “leads to attainment of a

secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment,” setting out a consistent standard that would be used by all eligible State agencies. Absent these proposed regulations, each State eligible agency would have to determine on its own how a program can meet the statutory requirement. The proposed regulations in part 463 would not, however, impose additional costs to State eligible agencies, local eligible providers of adult education, or to the Federal government.

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 Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 11-008, PCP, 400 Maryland Avenue SW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. To make arrangements to view the comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary 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 accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The Department proposes to remove 34 CFR part 461 because these regulations are no longer applicable to the Federal adult education program. These regulations were promulgated under the National Literacy Act (Pub. L. 102-73) in 1992, which has since been superseded. We also propose to remove regulations for six discretionary grant programs that are no longer authorized by statute: The National Workplace Literacy Program (part 472), the State Program Analysis Assistance and Policy Studies Program (part 477), the Functional Literacy for State and Local Prisoners Program (part 489), and the Life Skills for State and Local Prisoners Program (part 490).

The Department proposes to update and revise existing regulations in 34 CFR part 462 concerning the Secretary's authority to approve tests suitable for use in measuring State performance on accountability measures. We also propose to establish regulations in part 463 of title 34 of the CFR that would clarify new program activities and requirements under WIOA, as well as the WIA-authorized program activities and requirements that are continued under WIOA. We intend to issue guidance and technical assistance on select title II provisions, as appropriate. The Departments of Education and Labor have also collaborated on the development of proposed regulations related to title I that affect title II programs and activities. These proposed regulations, addressing the Unified or Combined State Plan, the performance accountability system, and the one-stop delivery system, are published elsewhere in this issue of the **Federal Register**.

Public Participation

On August 12, 2014, the Office of Career, Technical, and Adult Education and the Office of Special Education and Rehabilitative Services, which administers the Rehabilitation Act of 1973 that was amended by title IV of WIOA, posted a notice on the Department's Web site that solicited comments and recommendations from the public on the implementation of WIOA. We received 277 comments. The Department also held sessions with stakeholders and providers of adult education activities and programs to assist in the development of related guidance and technical assistance.

Summary of Proposed Changes

These proposed regulations would—

- Remove specific parts of title 34 that are no longer in effect;

- Revise existing AEFLA regulations that have been in place since 2008 related to the Secretary's authority to review and determine the suitability of tests available for use in the NRS;

- Define the purposes of programs authorized by AEFLA;

- Describe the process and requirements for awarding of grants and contracts to local providers and the activities that may be charged for local administrative costs;

- Define and clarify the new and existing adult education and literacy activities or programs that may be funded under WIOA;

- Describe how AEFLA funds may be used to support programs for corrections education and the education of other institutionalized individuals; and

- Clarify how eligible agencies may use funds for activities and requirements under the Integrated English Literacy and Civics Education program.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

34 CFR Part 462

The proposed regulations in 34 CFR part 462 relate to the Secretary's authority to approve tests suitable for use in the NRS. These regulations are authorized under section 212 of AEFLA, which makes adult education and literacy programs and activities subject to the performance accountability requirements of section 116 of WIOA.

Through the proposed regulations, we would further formalize the process for the review and approval of tests for use in the NRS. By creating a uniform review and approval process, the regulations would facilitate the submission process for test publishers and strengthen the integrity of the NRS as a critical tool for measuring State performance on accountability measures related to adult education and literacy activities under AEFLA, as required under section 116 of WIOA. This proposed process would also provide a means by which the Secretary would assess the continued validity of tests that are currently approved for use in the NRS.

I. General

Section 462.1 What is the authority for this part?

In § 462.1, and in other sections in part 462 where we cite WIA as the

statutory authority, we propose to revise the authority citation to refer to WIOA, unless otherwise specified.

Section 462.2 What regulations apply?

We propose revising the list of applicable regulations in § 462.2 to reflect the current Federal regulations. Specifically, we propose deleting references to EDGAR parts 74, 80, and 85 because these parts have been removed from the CFR. The Department, along with other Federal agencies, has recently adopted and amended as its own regulations the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). To that end, we propose adding references to 2 CFR part 180 and 2 CFR part 200.

Section 462.3 What definitions apply?

We propose revising several definitions in § 462.3 to align the terms in § 462.3 with the language in WIOA. For example, to conform with section 203 of AEFLA, we propose replacing the term "English as a second language (ESL)" with the term "English language acquisition (ELA)." We also propose to remove the reference to the physical location of a copy of the NRS Implementation Guidelines as we seek to reduce costs to the government and provide easier and immediate public access online.

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

We propose to revise § 462.4 to reflect the availability of tests that were reviewed and approved after the existing regulation was published on January 14, 2008. This proposed change would reflect the current process the Department follows, in which providers are notified of a date by which they may no longer use the test determined suitable for use.

II. What process does the Secretary use to review the suitability of tests for use in the NRS?

Section 462.10 How does the Secretary review tests?

Proposed § 462.10 would establish the new dates by which tests must be submitted for review each year. Currently, tests must be submitted by October 1 of each year. The two additional submission dates of April 1, 2017 and April 1, 2018 in the proposed regulations would provide more opportunities for the Secretary to review

and approve assessments and likely increase the availability of new assessments to providers.

Section 462.11 What must an application contain?

As proposed, § 462.11(a)(4) would increase the number of application copies that a publisher must submit from three to four. We have increased the number of panel experts who review each application from two to three. Increasing the number of reviewers has provided the Secretary with an additional expert opinion in the event that two reviewers disagree. The proposed changes in the number of required application copies would facilitate this review procedure. One copy of the application would be retained by the Department, and three copies would be submitted to the reviewers.

Proposed § 462.11(j)(4) sets forth examples of situations that would require a test publisher to provide analysis and explanations of the significant revisions made to tests approved prior to the effective date of the proposed regulations. These examples illustrate the kinds of revisions that could affect the psychometric properties of a test and, therefore, would require additional review. The list of examples is illustrative and not intended to be exhaustive. As we propose to remove § 462.44 and revise and publish the descriptors for the NRS educational functioning levels in a document titled *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830-0027), we propose replacing the current references to § 462.44 with references to the Guidelines.

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

To conform to WIOA, we have replaced the term "English as a second language (ESL)" with "English language acquisition (ELA)" in proposed § 462.12.

Additionally, under proposed § 462.12(c)(2) the Secretary would publish a list of the test forms, along with the names of tests, that have been approved as suitable for use in the NRS. This revision would make the regulation consistent with current practice. As a test can have several forms and new forms may be developed at any time, since 2010, the Secretary has identified specific test forms in addition to test names. Only those test forms reviewed

and approved by the Secretary are suitable for use in the NRS.

Proposed § 462.12(d)(2) would allow a test publisher to resubmit, during the next annual review cycle, an application that was previously not approved as suitable for use in the NRS. This would replace the current rule that allows a test publisher to request reconsideration within 30 days following notification from the Secretary that a test was not approved as suitable. We believe the current reconsideration process has not yielded the substantive benefits that might otherwise justify the costs and delays that accompany a reconsideration process. Permitting resubmission at the next review cycle would give test publishers time to address any deficiencies in their application and would lessen the burden on the Department by utilizing the existing annual review process, while still affording publishers a reasonably timely opportunity for reconsideration.

Proposed § 462.12(e)(ii) provides additional examples of the circumstances under which a test's approval as suitable for use may be revoked. These circumstances could affect the psychometric properties of the test, and would therefore require additional review and possible revocation. The proposed list of examples is illustrative and not intended to be exhaustive.

In addition, we have revised this section to reflect that the name of the Office of Vocational and Adult Education was officially changed to the Office of Career, Technical, and Adult Education.

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

Consistent with the statutory changes, as in proposed § 462.12 we have replaced the term ESL with ELA. We have also updated the reference to the *Standards for Educational and Psychological Testing* to reflect the most current edition of these standards.

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

Proposed § 462.14(b) provides additional examples of circumstances under which a publisher must resubmit a test for review by the Secretary. These examples illustrate circumstances that could affect the psychometric properties of the test. This list of examples is illustrative and not intended to be exhaustive.

III. What requirements must States and local eligible providers follow when measuring educational gain?

Section 462.40 Must a State have an assessment policy?

In § 462.40, we propose replacing the term ESL with ELA.

Proposed § 462.40(c)(3) adds one additional element to the information a State must include in its assessment policy. Under the current regulations, students must receive an initial assessment, or a pre-test, of academic skills using assessments that the Secretary has determined to be suitable for use in the NRS. The results of the pre-test must be used to place students into an educational functioning level. A State must further require that each student who meets a threshold of instruction defined in its assessment policy will receive a matched post-test. We propose to require a State to specify in its State assessment policy a target for the percentage of all pre-tested students who both meet that threshold of instruction and take a matched post-test. The post-test score is used to determine whether the student has made academic progress. If a local provider does not post-test a student, the provider must report that the student has not made an educational gain. The purpose of requiring States to establish this standard is to promote the implementation of policies and practices by local providers that maximize the percentage of students who have a matched post-test completed in order to document academic progress, and to encourage continuous improvement over time. States are currently required to specify this standard by the information collection, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027). We are proposing to make this a regulatory requirement.

Section 462.41 How must tests be administered in order to accurately measure educational gain for the purpose of the performance indicator in section 116(b)(2)(A)(i)(V) of the Act concerning the achievement of measurable skill gains?

We are proposing to revise the title of this section to conform to the proposed joint rule to implement the measurable skill gain indicator by documenting achievement of academic, technical, occupational, or other forms of progress. Test administration will be used to document educational or academic progress under this indicator for purposes of AEFLA.

Section 462.43 How is educational gain measured for the purpose of the performance indicator in section 116(b)(2)(A)(i)(V) of the Act concerning the achievement of measurable skill gains?

Proposed § 462.43(a) sets forth the statutory language in section 203(1)(A) of title II regarding how educational gain is measured. We propose adding § 462.43(c) to reflect the fact that several States offer adult high school programs, sanctioned by State law or regulation, that lead to a secondary school diploma or its equivalent. Proposed § 462.43(c) would allow these States to measure and report educational gain through the awarding of credits or Carnegie units. The Carnegie unit is a credit system that bases the awarding of academic credit on how much time students spend in direct contact with a classroom teacher. As with § 462.41, we are proposing to revise the title of this section to conform to the proposed joint rule to implement the measurable skill gain indicator by documenting achievement of academic, technical, occupational, or other forms of progress.

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

We propose to remove and reserve § 462.44. This section currently describes the descriptors for the educational functioning levels that States and local providers must use to measure and report educational gain in the NRS. Concurrent with the development of regulations and supplementary guidance on the performance indicators, we are revising and updating the descriptors for the NRS educational functioning levels. The revised descriptors were published for public comment in OMB information collection 1830–0027 on January 13, 2015. After reviewing the public comments, we anticipate publishing the final descriptors as part of that information collection. Test publishers will then have an opportunity to revise or develop new assessments that are consistent with the revised descriptors and submit them for review to the Secretary. We anticipate that this process of test revision and development may take several years. The revised descriptors will not be implemented until the Secretary has determined that there is at least one assessment that is both aligned with the revised descriptors and that is suitable for use in the NRS. Until that time, we will continue to use the existing descriptors. Therefore, we propose to

remove the descriptors from the regulations; and, in order to facilitate regular revisions and updates necessary to keep the descriptors current, we propose to include them in an information collection. Information collections are approved by OMB for no more than three years, giving the Department and the public periodic opportunities to review the descriptors and recommend revisions that may be appropriate.

34 CFR Part 463

I. Adult Education—General Provisions

WIOA reauthorizes, retains, and enhances various AEFLA provisions that were previously authorized by WIA. Subpart A of proposed part 463 would clarify the purpose, authorized programs, definitions, and regulations that apply to adult education programs under WIOA.

Section 463.1 What is the purpose of the Adult Education and Family Literacy Act?

WIOA retains and expands the purposes of AEFLA. Under WIA, AEFLA aimed to help adults improve their educational and employment outcomes, become self-sufficient, and support the educational development of their children, but under WIOA, AEFLA's purposes have been expanded to include assisting adults to transition to postsecondary education and training, including through career pathway programs. Further, WIOA formalizes the role of adult education in assisting English language learners to acquire the skills needed to succeed in the 21st-century economy. The proposed regulations would clarify the expanded role of adult education programs at the Federal, State, and local levels.

Section 463.2 What regulations apply to the Adult Education and Family Literacy Act programs?

Proposed § 463.2 lists the regulations that apply to adult education programs to ensure that recipients of grant funds are aware of where to find the relevant requirements for effectively administering a grant or contract awarded with AEFLA funds.

Section 463.3 What definitions apply to the Adult Education and Family Literacy Act programs?

Proposed § 463.3 identifies 31 terms used in WIOA that pertain to the adult education program. In some instances, the terms, which are defined in titles I and II, apply across all core programs authorized under WIOA. In other instances, the terms are specific to title

II. Proposed § 463.3 is intended to assist users by centralizing relevant definitions into one section. Proposed § 463.3 also identifies terms found in EDGAR that apply to State grant programs and that are relevant to AEFLA. Seven additional terms used in WIOA are not explicitly defined. We have listed and defined these terms under “other definitions” to clarify their meaning for purposes of the AEFLA program. For example, the proposed definition of “concurrent enrollment” or “co-enrollment” would clarify its meaning specific to enrollment in two or more of the four core programs in WIOA to provide consistency with how it is used throughout the statute. This definition, developed for the purposes of WIOA, differs from general use of the term which implies enrollment in two or more educational programs. “Digital literacy,” for the purposes of title II, would have the same meaning as that term is given in section 202 of the Museum and Library Services Act. This definition is also consistent with how digital literacy is defined in section 101(d) of the Act. Finally, the proposed definition of “re-entry initiatives and post-release services” is consistent with the definition that is commonly used in the correctional education field.

Section 463.20 What is the process that an eligible agency must follow in awarding grants or contracts to eligible providers?

Proposed § 463.20 describes the process that an eligible agency must follow when awarding grants or contracts to local providers. WIOA retains the WIA requirement that an eligible agency award multiyear grants or contracts on a competitive basis to eligible providers for the purpose of developing, implementing, and improving adult education within the State or outlying area. Proposed § 463.20 restates this statutory requirement.

WIOA also retains the requirement under WIA that an eligible agency ensure that all eligible providers have direct and equitable access to apply for and compete for grants and contracts under AEFLA. Title II of WIOA further requires an eligible agency to use the same grant or contract announcement and application processes for all eligible providers in the State or outlying area. Proposed § 463.20 reiterates this statutory requirement.

Under WIA, when awarding grants under AEFLA, State eligible agencies were required to consider 12 factors. WIOA revises these 12 factors, and adds one additional factor relating to the alignment between proposed activities and services and the strategy and goals

of the local plan under section 108, and the activities and services of the one-stop partners. Eligible agencies must also consider under WIOA the coordination of the local education program with available education, training, and other support services in the community. Proposed § 463.20 restates these statutory requirements.

Section 463.21 What processes must be in place to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with a local plan developed under section 108 of WIOA?

WIOA promotes coordination between the Local Board and adult education providers by requiring in section 107(d)(11) that the Local Board review a provider’s application for AEFLA funds before the application is submitted to the eligible agency. The purpose of the Local Board review is to determine whether the application is consistent with the local workforce plan, and to make recommendations to the eligible agency to promote alignment with the local workforce plan.

Proposed § 463.21 requires an eligible agency to establish procedures for Local Board review in its grant or contract application process. This section would also establish the type of documentation that must accompany the application. For example, an applicant would be required to document that the application was submitted to the Local Board and was reviewed within the specified timeframe and that the Local Board made recommendations to promote alignment. The proposed regulations also require the eligible agency to consider the results of the Local Board review in determining the extent to which the application addresses the requirements of the local plan developed in accordance with section 108 of WIOA. The purpose of the proposed regulation is to establish uniform procedures within the State and outlying area for a Local Board to review an application and to ensure that the eligible agency considers the review in its award of grants and contracts for adult education and literacy activities.

Section 463.22 What must be included in the eligible provider’s application for a grant or contract?

Proposed § 463.22 identifies what an eligible provider must include in its application for a grant or contract under AEFLA. WIOA retains two of the local application requirements from WIA, and adds five new requirements. As under WIA, an eligible provider must provide

the information and assurances required by the eligible agency. Under the new application requirements, the eligible provider must also describe how it will: Provide services in alignment with local workforce plans, including promotion of concurrent enrollment with title I services; fulfill one-stop partner responsibilities; meet performance levels based on the newly established primary indicators of performance and collect data to report on performance indicators; and provide services to meet the needs of eligible individuals. Applicants must also provide other information that addresses the 13 considerations outlined in § 463.20.

Section 463.23 Who is eligible to apply for a grant or contract to provide adult education and literacy activities?

Proposed § 463.23 lists the organizations that are eligible to apply for a grant or contract to provide adult education and literacy activities under WIOA. WIOA lists 10 organization types that may be eligible providers, two of which are a consortium or coalition of organization types and a partnership between an employer and eligible entities. WIOA further permits other organization types, even if not specifically listed, to apply as eligible providers if they meet the demonstrated effectiveness requirement.

Finally, WIOA further requires an “eligible provider” to have “demonstrated effectiveness” in providing adult education and literacy services, a requirement that applied only to community-based organizations and volunteer literacy organizations under WIA.

Section 463.24 How can an eligible provider establish that it has demonstrated effectiveness?

To ensure that programs are of high quality, proposed § 463.24 would further clarify how an organization previously funded under AEFLA, as well as an organization not previously funded under AEFLA, could demonstrate effectiveness by providing performance data in its application. This clarification would help States conduct fair and equitable grant competitions for all eligible providers. We are particularly interested in receiving public comment on the proposed means of demonstrating effectiveness.

Section 463.25 What are the requirements related to local administrative costs?

Proposed § 463.25 restates the statutory language in section 233(b) of WIOA that allows eligible providers to

request to negotiate with the eligible agency the level of funds for non-instructional purposes in the event the statutory cap of 5 percent for local administration is too restrictive.

Section 463.26 What activities are considered local administrative costs?

Proposed § 463.26 describes the activities eligible providers may charge to local administrative costs under WIOA. Under WIA, local administrative costs are identified as funds used for planning, administration, personnel development, and interagency coordination. WIOA retains planning, administration, and personnel development as local administrative costs, and replaces interagency coordination with specific activities to promote alignment with local plans, including concurrent enrollment with title I services and the one-stop partner requirements outlined in section 121(b)(1)(A) of WIOA. Proposed § 463.26 would clarify that local administrative costs may include costs associated with fulfilling required one-stop responsibilities, including contributions to the infrastructure costs of the one-stop delivery system.

II. What are adult education and literacy activities?

The proposed regulations would further define and clarify the new and revised required activities authorized under WIOA to ensure that eligible providers understand how funds may be spent for adult education and literacy activities.

Section 463.30 What are adult education and literacy programs, activities, and services?

WIOA retains, revises, and supplements the adult education and literacy activities under WIA. Specifically, WIOA retains adult education, literacy, workplace adult education and literacy, and family literacy as adult education and literacy activities. WIOA changes the name of the English literacy program under WIA to the “English language acquisition program.” Section 203(2) of WIOA further adds three new activities to the definition of “adult education and literacy activities”: Integrated English literacy and civics education, workforce preparation activities, and integrated education and training. Proposed § 463.30 lists these eight activities and generally restates the statutory language.

Section 463.31 What is an English language acquisition program?

Under section 203(6) of WIOA, an English language acquisition program,

called an “English literacy program” in WIA, is designed to help English language learners achieve competence in reading, writing, speaking, and comprehension of the English language. Under WIOA, the program of instruction must also lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education or training or lead to employment. Proposed § 463.31 would restate the statutory requirements for an English language acquisition program under WIOA.

Section 463.32 How does a program that is intended to be an English language acquisition program meet the requirement that the program leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment?

Proposed § 463.32 would establish how an English language acquisition program must meet the new requirement that it lead to high school completion and transition to postsecondary opportunities or lead to employment. Section 463.32 would establish that a program satisfies the requirement by using rigorous and challenging adult education standards that meet the requirements in the Unified State Plan, providing supportive services that assist an individual to attain a secondary school diploma or its recognized equivalent and transition to postsecondary education or training, or designing the program to be a part of a career pathway. These programs or services have been identified as having a positive impact on the successful transition of adults to postsecondary education and training and employment. We invite public input on these proposals and specifically request suggestions regarding other methods that may be used to meet this requirement.

Section 463.33 What are integrated English literacy and civics education services?

WIOA includes among the authorized adult education and literacy activities a set of services that were previously authorized through annual appropriations language (*i.e.*, not WIA). These services are integrated English literacy and civics education services, which WIOA defines as educational services that include both literacy and English language instruction integrated with civics education. Under WIOA, these services may be provided to adults who are English language learners, including those who are professionals

with degrees or credentials in their native countries, and may include workforce training. Proposed § 463.33 restates the statutory language of WIOA pertaining to integrated English literacy and civics education services.

Section 463.34 What are workforce preparation activities?

Proposed § 463.34 restates statutory language in WIOA that establishes workforce preparation activities as activities, programs, or services that are designed to help an individual acquire a combination of basic academic, critical thinking, digital literacy, and self-management skills. While adult education and literacy instruction has traditionally supported the development of basic academic and critical thinking skills, workforce preparation will also support the development of self-management skills and digital literacy. The statute further states that workforce preparation includes developing competencies in using resources and information, working with others, understanding systems, and obtaining skills necessary to successfully transition to and complete postsecondary education, training, and employment. These competencies are commonly incorporated into definitions of employability skills. Proposed § 463.34 adds employability skills to the list of competencies described in the statute to further clarify the meaning of “workforce preparation.”

Section 463.35 What is integrated education and training?

Proposed § 463.35 restates the statutory definition of integrated education and training activity.

Section 463.36 What are the required components of an integrated education and training program funded under title II?

Proposed § 463.36 describes the three components that would be required in an integrated education and training program. These components are adult education and literacy activities, workforce preparation activities, and workforce training. Two of the components, adult education and literacy activities and workforce preparation activities, are discussed in § 463.30 and § 463.34. In proposed § 463.36, we would further clarify the workforce training component by referencing section 134(c)(3)(D) of WIOA, which identifies the activities that constitute training within the employment and training services authorized by title IB.

Section 463.37 How does a program providing integrated education and training under title II meet the requirement that the three required components be “integrated”?

Proposed § 463.37 would establish how the three components of integrated education and training must be integrated. The proposed regulation would require that an integrated education and training program balance the proportion of instruction across the three components, deliver the components simultaneously, and use occupationally relevant instructional materials. Proposed § 463.37 would also require a program to have a single set of learning objectives that identifies specific adult education content, workforce preparation activities, and workforce training competencies. These proposed requirements are intended to facilitate the design of high-quality integrated education and training programs that focus on improving the academic skills of low-skilled adults while advancing their occupational competencies. We seek public input on the proposed requirements and other suggested requirements that may support the provision of integrated education and training services to eligible adults at all skill levels.

Section 463.38 How does a program providing integrated education and training under title II meet the requirement that an integrated education and training program be “for the purpose of educational and career advancement”?

Under proposed § 463.38, to meet the WIOA requirement that the integrated education and training program be for the purpose of educational and career advancement, the educational component of a program would be required to align with the State’s content standards for adult education in the State’s Unified or Combined State Plan or the program would be required to be part of a career pathway as that term is defined in section 3 of WIOA (29 U.S.C. 3102(7)). The use of rigorous and challenging academic standards and career pathways that contextualize learning are recognized strategies to promote readiness for postsecondary education and work.

III. What are programs for corrections education and the education of other institutionalized individuals?

Section 463.60 What are programs for corrections education and the education of other institutionalized individuals?

In proposed § 463.60, we describe programs for corrections education and

the education of other institutionalized individuals. WIOA expands the educational programs and activities for which funds may be used and changes the WIA terminology. WIOA adds to the list of academic programs five new academic programs and uses the new definition of “adult education and literacy activities” described in § 463.30. “Integrated education and training” and “concurrent enrollment” are defined in § 463.3 and § 463.35, and “career pathways” is defined in WIOA section 3. Definitions for “peer tutoring” and “re-entry initiatives and other post-release services” are in proposed § 463.3.

Section 463.61 How does the eligible agency award funds to eligible providers under programs for corrections education and the education of other institutionalized individuals?

WIOA emphasizes the importance of educational and career advancement for incarcerated individuals by increasing from 10 percent to 20 percent the cap on funds that States may use for programs for corrections education and the education of other institutionalized individuals. Proposed § 463.61 reiterates this new statutory provision and clarifies that any awards made by the eligible agency for programs for corrections education and education programs for other institutionalized individuals must be made in accordance with applicable regulations in subpart C.

Section 463.62 What is the priority for programs that receive funding through programs for corrections education and the education of other institutionalized individuals?

Proposed § 463.62 restates the statutory provision in WIOA that gives priority to serving individuals who are likely to leave the corrections programs within five years of participation in the program.

Section 463.63 How may funds under programs for corrections education and the education of other institutionalized individuals be used to support transition to re-entry initiatives and other post-release services with the goal of reducing recidivism?

Proposed § 463.63 establishes how these funds may support transition to re-entry initiatives and other post-release services under section 225(b)(8) of WIOA. This section would clarify that re-entry initiatives and other post-release services must support the educational needs of the individual. We propose to make this clarification because section 225(b) of the Act

specifies that funds may only be used “for the costs of educational programs.”

IV. What is the Integrated English Literacy and Civics Education program?

In addition to the new integrated English Literacy and Civics Education services discussed in § 463.34, WIOA creates a new integrated English Literacy and Civics Education program that codifies and replaces the English Literacy and Civics Education program previously authorized through annual appropriations. The inclusion of the program in WIOA makes it an authorized program and eliminates the need for it to be authorized and separately funded annually through the appropriations process. The new program retains the focus on English language proficiency and civics education instruction, but there are new requirements to support stronger ties to employment and the workforce system.

Section 463.70 What is the Integrated English Literacy and Civics Education program?

Proposed § 463.70 describes the statutory requirements related to participants for whom funds are intended and the sets of services that are required in the program. This section would also clarify that the educational services must meet the requirements established in § 463.33 pertaining to integrated English literacy and civics education services.

Section 463.71 How does the Secretary make an award under the integrated English Literacy and Civics Education program?

Section 463.71 restates the statutory requirements for how the Secretary makes awards under the Integrated English Literacy and Civics Education program. It includes the statutory formula for how funds will be allocated to eligible agencies.

Section 463.72 How does the eligible agency award funds to eligible providers for the Integrated English Literacy and Civics Education program?

Proposed § 463.72 describes the statutory requirements to be used by eligible agencies in awarding funds, including a requirement that States must follow the provisions governing the award of funds established in subpart C.

Section 463.73 What are the requirements for eligible providers that receive funding through the integrated English Literacy and Civics Education program?

Proposed § 463.73 reiterates statutory language regarding Integrated English Literacy and Civics Education program services and design, including requirements for the program to facilitate job placement, economic self-sufficiency, and integration with the workforce development system.

Section 463.74 How does an eligible provider that receives funds through the Integrated English Literacy and Civics Education program meet the requirement to provide services in combination with integrated education and training?

Proposed § 463.74 specifies two options an eligible provider may use to provide programs combined with integrated education and training in order to meet the requirement for the Integrated English Literacy and Civics Education program. The two options correspond with the requirements for integrated English Literacy and Civics Education services under section 231 of the Act and Integrated English Literacy and Civics Education programs under section 243 of the Act.

Section 463.75 Who is eligible to receive education services through the Integrated English Literacy and Civics Education program?

Proposed § 463.75 describes the statutory requirements for eligibility to receive services under the program.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the

analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

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

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that these proposed regulations would not impose additional costs to State eligible agencies under title II, local eligible providers of adult education, or the Federal government. We make this determination based upon analysis of the particular requirements proposed in parts 462 and 463.

The proposed regulations in part 462 primarily represent conforming changes and updates to current regulations in order to transition smoothly from WIA to WIOA. For example, we propose updating the language in the regulations in part 462 for consistency with language in the new law in which the term English as a second language (ESL) has been replaced with the term English language acquisition (ELA). A second example of proposed changes in part 462 is one in which States would be provided more flexibility in reporting outcomes for adult learners. Proposed § 462.43(c) would recognize the fact that several States offer adult high school programs, sanctioned by State law or regulation, that lead to a secondary school diploma or its equivalent. This new rule would allow these States to measure and report educational gain through the awarding of credits or Carnegie units, but would not require States to implement changes at an additional cost. Thus, from a cost perspective, the proposed regulations in part 462 would not impose new substantive requirements on State eligible agencies or local eligible providers of adult education. Additionally, the benefits of clarifying the conforming changes from WIA to WIOA and providing States additional

flexibility justify the promulgation of the proposed regulations in part 462.

The proposed regulations in part 462 would also update and revise existing AEFLA regulations established under WIA that determine the suitability of tests for use in the NRS to reflect new WIOA provisions. We expect that the proposed regulations would result in a more uniform test review and approval process. For example, proposed § 462.10 would establish new dates by which tests must be submitted for review each year. The revised submission dates would provide more opportunities for publishers to submit assessments to the Secretary for review and would likely increase the availability of new assessments to providers. As proposed, § 462.11(a)(4) would increase the number of application copies that a publisher must submit to the Secretary from three to four. The additional cost to test publishers of providing another copy of an application is negligible. Accordingly, we conclude that the proposed regulations in part 462 would provide test publishers with greater flexibility in the overall submission process and, as such, anticipate that the benefits of this additional flexibility outweigh any potential minimal costs for test publishers. Moreover, we believe that the benefits of this proposed change outweigh the potential costs as it would strengthen the integrity of the NRS as a critical tool for measuring State performance on accountability measures while reducing costs to the Federal Government.

The proposed regulations in part 463 would largely clarify administrative and programmatic changes made by WIOA to the provisions regarding general adult education (*e.g.*, applicable definitions, relevant programs, applicable regulations), how States make awards to local eligible providers, new adult education and literacy activities, new requirements for programs for corrections education and the education of other institutionalized individuals, and a new English literacy and civics education program. While WIOA enacts substantive programmatic changes in these areas, WIOA also provides States and outlying areas funding and flexibility to address these challenges.

The proposed regulations in subpart C of part 463 would describe the process and requirements for States and outlying areas to award grants or contracts to eligible local providers as well as the activities allowed for local administrative costs. New application requirements would include those aimed at alignment with local workforce plans and promotion of concurrent enrollment with title I services,

fulfillment of one-stop partner responsibilities, performance against the newly established primary indicators of performance, improving services to meet the needs of eligible individuals, and other information that addresses the 13 considerations outlined in proposed § 463.20. The changes and new requirements in subpart C pose no costs to eligible State agencies, eligible local providers, or the Federal Government that are additional to the costs imposed by statutory requirements.

Proposed § 463.21 would require an eligible agency to establish procedures for Local Board review in its grant or contract application process. The regulation would further establish the type of documentation that must accompany the application. For example, an applicant would be required to document that the application was submitted to the board and was reviewed within the specified timeframe and that the Local Board made recommendations to promote alignment. While this is a new requirement under WIOA, we conclude that it does not impose significant additional costs to eligible State agencies, eligible local providers, or the Federal Government as it minimally extends requirements already in place to compete for AEFLA funds.

The proposed regulations in subparts D, F, and G would generally restate statutory definitions of adult education and literacy activities and clarify new allowable uses of funds. As such, we conclude that these proposed new regulations would add no additional costs and would provide the added benefit of clarifying the flexibility that eligible State agencies and local eligible providers have in using funds provided under the Act for adult education and literacy activities as set forth in WIOA. Thus, we have determined that the proposed regulations in part 463 would not impose additional costs to State eligible agencies under title II of WIOA, local eligible providers of adult education, or the Federal government.

Elsewhere in this section under *Paperwork Reduction Act of 1995*, we identify and explain burdens specifically associated with information collection requirements.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "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, § 462.11. What must an application contain?)
- 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?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

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. The U.S. Small Business Administration Size Standards define institutions as "small entities" if they are for-profit or nonprofit institutions with total annual revenue below \$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. The proposed regulations in part 462 would affect test publishers that meet this definition. However, the part 462 regulations would not have a significant economic impact on these entities. Both large and small entities that publish assessments would benefit from proposed § 462.10 because it increases the number of opportunities that they may submit assessments to the Secretary for review and approval, potentially enabling them to market and sell their assessments to eligible local providers earlier than they could under the current regulations. The only new cost that would be imposed on assessment publishers by the proposed part 462 regulations is the nominal cost of providing one additional copy of an application to the Secretary (§ 462.11(a)(4)).

The regulations in part 463 would affect eligible local providers of adult education that are small, including small institutions of higher education, small local educational agencies, small

community-based organizations or faith-based organizations, small volunteer literacy organizations, and other small entities that WIOA makes eligible to compete for adult education and literacy funds. The proposed regulations would benefit these small entities, as well as larger entities that are eligible local providers, by clarifying key statutory requirements. For example, proposed § 463.24 would explain how a provider can establish that it meets that the statutory requirement that a provider have “demonstrated effectiveness” in order to be eligible to compete for funds. Similarly, proposed § 463.38 would explain how an eligible provider that administers an integrated education and training program must meet the statutory requirement that the program be “for the purpose of educational and career advancement.” By reducing uncertainty and ambiguity about the adult education program’s requirements, these clarifications would benefit all eligible providers, both small and large.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Part 462 contains information collection requirements. Under the PRA, the Department has submitted a copy of the sections of part 462 that contain information collection requirements to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the control numbers assigned by OMB to any information collection

requirements proposed in this NPRM and adopted in the final regulations.

Determining the Suitability of Tests for Use in the NRS

Section 462.10 describes when a test publisher may submit an application to the Secretary to have a standardized test evaluated to determine if it is suitable for measuring the educational gains of participants in adult education programs that are required to report under the NRS. Under our current regulations, tests may be submitted annually by October 1 of each year. We are proposing to amend § 462.10 to increase the opportunities for a test publisher to submit an application from once to twice a year during calendar years 2017 and 2018. The intent of this proposal is to accommodate the review of what we expect will be a new generation of tests. The collection of this information has been approved through April 30, 2017, by OMB under the PRA as OMB Control Number 1830–0567. Under our current regulations, we estimated that we would receive five applications from test publishers on each of October 1, 2014, October 1, 2015, and October 1, 2016. The burden associated with each response is 40 hours (30 hours of work by professional employees and 10 hours by clerical employees), making 600 hours the total burden hours approved for OMB Control Number 1830–0567 over the three-year approval period. Our proposed regulations would give test publishers one additional opportunity during the approval period to submit applications (April 1, 2017). We estimate that this change will not modify the number of responses that we will receive annually from test publishers during the approval period. Rather, it will most likely spread out over two time periods the number of submissions we currently receive. Consequently, the total burden hours estimated under OMB Control Number 1830–0567 remains at 600 hours.

Section 462.11 describes the required content of applications submitted by test publishers to the Secretary. We are proposing to amend § 462.11 to increase the number of copies of an application that a test publisher must submit from three to four. This change will not increase the burden hours associated with each response and will have a negligible impact on the costs of responding.

We also are proposing to amend § 462.11, § 462.12, and § 462.14 to provide additional examples of the kinds of revisions to tests that we consider to be “substantial” and that thus require a new determination by the

Secretary concerning the revised test’s suitability for use in the NRS. Specifically, we are proposing to include as examples of “substantial revisions” changes in a test’s mode of administration, administration procedures, forms, and the number of hours between pre- and post-testing. Under § 462.11 and § 462.14, a test publisher that has substantially revised a test approved for use in the NRS must submit to the Secretary the substantially revised test, an analysis that describes the reasons for the revision, a description of the revision’s implications for the comparability of scores on the current test to scores on the previous test, and the results of validity, reliability, and equating or standard-setting studies undertaken subsequent to the revision. Section 462.12 authorizes the Secretary to revoke the approval of a test if the Secretary determines that the test has been substantially revised. We do not expect the proposed changes to have an impact on the burden hours associated with OMB Control Number 1830–0567 because we expect that substantial revisions to standardized tests will be rare.

Section 462.12 also describes the procedures the Secretary uses to review the suitability of tests submitted by test publishers. We are proposing to amend § 462.12 to change the date when test publishers may resubmit applications for tests that the Secretary has determined are not suitable for use in the NRS. Under our current regulations, test publishers may resubmit an application within 30 days after the Secretary notifies the publisher that its test is not suitable for use in the NRS. We are proposing to eliminate this opportunity to request reconsideration and instead propose to give test publishers the opportunity to submit a new application on the next date the Secretary invites new applications from test publishers. Because the opportunity for reconsideration has been rarely used by test publishers, we do not expect that this change will have an impact on the burden hours associated with OMB Control Number 1830–0567.

Requirements States and Local Eligible Providers Must Follow When Measuring Educational Gain

Subpart D of part 462 describes the requirements States and local eligible providers must follow when measuring educational gain under the NRS. It contains information collection requirements that have been approved by OMB through August 31, 2017, as OMB Control Number 1830–0027. Section 462.40 currently describes the

required contents of the written assessment policy each State must establish for its local eligible providers. We are proposing to amend § 462.40 to require the State to specify in its written assessment policy a standard for the percentage of students to be pre- and

post-tested. Each State is currently required to include this information as part of the Data Quality Checklist that it submits to the Department by the OMB Control Number 1830–0027 information collection. Because each State currently provides this

information, this new regulatory requirement will not increase the burden associated with OMB Control Number 1830–0027.

Collection of Information

<i>Regulatory section</i>	<i>Information collection</i>	<i>OMB Control Number and estimated burden [change in burden]</i>
§ 462.10	The proposed amendment to this regulatory provision would give test publishers one additional opportunity to submit an application to have a standardized test evaluated to determine if it is suitable for use in the NRS.	OMB 1830–0567. There would be no change in burden hours or costs.
§ 462.11	One of the proposed amendments would increase the number of copies of an application that must be submitted by a test publisher from three to four. A second proposed amendment would provide additional examples of the kinds of revisions to tests that we consider to be “substantial” and that require a test publisher to provide information to the Secretary about the substantially revised test so that the Secretary can evaluate the substantially revised test’s suitability for use in the NRS.	OMB 1830–0567. There would be no change in burden hours or costs.
§ 462.12	The proposed amendment would eliminate the opportunity for a test publisher to request reconsideration of a test that the Secretary has determined is not suitable for use in the NRS. The test publisher would instead be permitted to submit a new application for consideration when the Secretary next invites applications.	OMB 1830–0567. There would be no change in burden hours or costs.
§ 462.14	The proposed amendment would provide additional examples of the kinds of revisions to tests that we consider to be “substantial” and that could prompt the Secretary to revoke a determination that a test is suitable for use in the NRS.	OMB 1830–0567. There would be no change in burden hours or costs.
§ 462.40	The proposed amendment to this regulatory provision would require a State to include in its written assessment policy a standard for the percentage of students who will have a matched post-test completed.	OMB 1830–0027. There would be no change in burden hours or costs.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We have prepared Information Collection Requests (ICR) for these collections. In preparing your comments you may want to review the ICR, which is available at *www.reginfo.gov*. Click on Information Collection Review. These proposed collections are 1830–0567 and 1830–0027.

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 on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection 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 your comments by May 18, 2015. This does not affect the deadline for submitting comments to us on the proposed regulations.

Intergovernmental Review

This program is 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

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, 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.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications.

“Federalism implications” means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in parts 462 and 463 may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: 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 via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Number: 84.002)

Adult Education—Basic Grants to States)

List of Subjects

34 CFR Part 461

Administrative practice and procedure, Adult education, Grant programs-education.

34 CFR Part 462

Administrative practice and procedure, Adult education, Grant programs-education, Reporting and recordkeeping requirements.

34 CFR Part 463

Adult education, Grant programs-education.

34 CFR Part 472

Administrative practice and procedure, Adult education, Grant programs-education, Reporting and recordkeeping requirements.

34 CFR Part 477

Administrative practice and procedure, Adult education, Grant programs-education.

34 CFR Part 489

Administrative practice and procedure, Adult education, Grant programs-education, Reporting and recordkeeping requirements.

34 CFR Part 490

Adult education, Grant programs—education, Prisoners, Reporting and recordkeeping requirements.

Dated: March 6, 2015.

Arne Duncan,

Secretary of Education.

For the reasons discussed in this preamble, under the authority of 29 U.S.C. 3271 *et seq.* and 3343(f), the Secretary proposes to amend title 34 of the Code of Federal Regulations as follows:

PART 461 [REMOVED AND RESERVED]

- 1. Remove and reserve part 461.

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

- 2. The authority citation for part 462 is revised to read as follows:

Authority: 29 U.S.C. 3292, *et seq.*, unless otherwise noted.

- 3. The authority citation at the end of § 462.1 is revised to read as follows:

§ 462.1 What is the scope of this part?

* * * * *

(Authority: 29 U.S.C. 3292)

- 4. Section 462.2 is revised to read as follows:

§ 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 76 (State-Administered Programs).
- (2) 34 CFR part 77 (Definitions that Apply to Department Regulations).
- (3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(7) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(8) 34 CFR part 97 (Protection of Human Subjects).

(9) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(10) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 462.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and
(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 29 U.S.C. 3292)

■ 5. Section 462.3 is amended by:

- a. Revising the introductory text of paragraph (a).
- b. Revising the definition of “Adult basic education (ABE)” in paragraph (b).
- c. Revising paragraphs (1), (3)(i), and (3)(iii) of the definition of “Adult education population” in paragraph (b).
- d. Revising the definitions of “Adult secondary education (ASE)”, “Content domains, content specifications, or NRS skill areas”, and “Educational functioning levels” in paragraph (b).
- e. Removing the definition of “English-as-a-second language (ESL)” from paragraph (b).
- f. Adding a definition of “English language acquisition (ELA)” to paragraph (b) in alphabetical order.
- g. Revising the definition of “Guidelines” in paragraph (b).

The additions and revisions read as follows:

§ 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, 29 U.S.C. 3272 (Act):

* * * * *

(b) * * *

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 the Guidelines.

Adult education population means individuals—

(1) Who have attained 16 years of age;

(3) * * *

(i) Are basic skills deficient;

(ii) * * *

(iii) Are English language learners.

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 the Guidelines.

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

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

English language acquisition (ELA) means instruction designed for an adult whose educational functioning level is equivalent to a particular ELA literacy level listed in the NRS educational functioning level table in the Guidelines.

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: www.nrsweb.org.

(Authority: 29 U.S.C. 3292, et seq., unless otherwise noted)

6. Section 462.4 is revised to read as follows:

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 tests that the Secretary has identified in the most recent notice published in the Federal Register until the Secretary announces through a notice published in the Federal Register a date by which such tests may no longer be used.

(Authority: 29 U.S.C. 3292)

7. Section 462.10 is amended by revising paragraph (b) and the authority citation to read as follows:

462.10 How does the Secretary review tests?

* * * * *

(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, in the manner the Secretary may prescribe, by October 1, 2016, April 1, 2017, October 1, 2017, April 1, 2018, October 1, 2018, and by October 1 of each year thereafter.

(Authority: 29 U.S.C. 3292)

8. Section 462.11 is amended by revising paragraphs (a)(4), (b)(1), (e) introductory text, (f) introductory text, and (j)(4) and the authority citation to read as follows:

462.11 What must an application contain?

(a) * * *

(4) Submit to the Secretary four 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 how the test will allow examinees to demonstrate the skills that are associated with the NRS educational functioning levels in the Guidelines.

(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 the Guidelines, including—

(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 the Guidelines, including—

(j) * * *

(4) If a test has been substantially revised—for example by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms, sub-tests, or number of hours between pre- and post-testing—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: 29 U.S.C. 3292)

9. Section 462.12 is amended by revising paragraphs (a)(2)(i)(iv), (c)(2), (d)(2), (e)(1)(ii), (e)(2) introductory text, and (e)(5), and the authority citation to read as follows:

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

(a) * * *

(2) * * *

(i) * * *

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

(c) * * *

(2) Annually publishes in the Federal Register and posts on the Internet at www.nrsweb.org a list of the names of tests and test forms 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, Office of Career, Technical, and Adult Education, Division of Adult Education and Literacy, 400 Maryland Avenue SW., room 11152, Potomac Center Plaza, Washington, DC 20202-7240.

(d) * * *

(2) The test publisher may resubmit an application to have the suitability of its test determined by the Secretary under this part on October 1 in the year immediately following the year in which the Secretary notifies the publisher.

(e) * * *

(1) * * *

(ii) A test has been substantially revised—for example, by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms or sub-tests, or number of hours between pre- and post-testing.

(2) The Secretary notifies the test publisher of the—

(5) If the Secretary revokes the determination regarding the suitability of a test, the Secretary will publish in the Federal Register, and post on the Internet at 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 will also be available from the U.S. Department of Education, Office of Career, Technical, and Adult Education, Division of Adult Education and Literacy, 400 Maryland Avenue SW., room 11152, Potomac Center Plaza, Washington, DC 20202-7240.

(Authority: 29 U.S.C. 3292)

■ 10. Section 462.13 is amended by revising paragraph (b) to read as follows:

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

* * * * *

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

* * * * *

(Authority: 29 U.S.C. 3292)

■ 11. Section 462.14 is amended by revising paragraph (b) and the authority citation to read as follows:

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

* * * * *

(b) If a test that the Secretary has determined is suitable for use in the NRS is substantially revised—for example, by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms, sub-tests, or number of hours between pre- and post-testing—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: 29 U.S.C. 3292)

■ 12. Section 462.40 is amended by revising paragraph (c)(3) and the authority citation to read as follows:

§ 462.40 Must a State have an assessment policy?

* * * * *

(c) * * *

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

(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; and

(iii) Specify a standard for the percentage of students who will have a matched post-test completed.

* * * * *

(Authority: 29 U.S.C. 3292)

■ 13. Section 462.41 is amended by revising paragraphs (b)(2) and (3), (c)(3),

and the authority citation to read as follows:

§ 462.41 How must tests be administered in order to accurately measure educational gain for the purpose of the performance indicator in section 116(b)(2)(A)(i)(V) of the Act concerning the achievement of measurable skill gains?

* * * * *

(b) * * *

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

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

(c) * * *

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

* * * * *

(Authority: 29 U.S.C. 3292)

■ 14. The authority citation at the end of § 462.42 is revised to read as follows:

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

* * * * *

(Authority: 29 U.S.C. 3292)

■ 15. Section 462.43 is amended by:

■ a. Revising the section heading and paragraphs (a)(1) and (b).

■ b. Adding paragraph (c).

■ c. Revising the authority citation.

The revisions and addition read as follows:

§ 462.43 How is educational gain measured for the purpose of the performance indicator in section 116(b)(2)(A)(i)(V) of the Act concerning the achievement of measurable skill gains?

(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 mathematics. The student scores lower in reading than in mathematics. 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 the student's educational gain, the local eligible provider would compare the reading score on the pre-test with the reading score on the post-test.

* * * * *

(b) Except as specified in paragraph (c) of this section, 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.

(c) States that offer adult high school programs, sanctioned by State law, code, or regulation, that lead to a secondary school diploma or its equivalent may measure and report educational gain through the awarding of credits or Carnegie units.

(Authority: 29 U.S.C. 3292)

§ 462.44 [Removed]

■ 16. Remove § 462.44.

■ 17. Add part 463 to read as follows:

PART 463—ADULT EDUCATION AND FAMILY LITERACY ACT

Subpart A—Adult Education General Provisions

Sec.

463.1 What is the purpose of the Adult Education and Family Literacy Act?

463.2 What regulations apply to the Adult Education and Family Literacy Act programs?

463.3 What definitions apply to the Adult Education and Family Literacy Act programs?

Subpart B [RESERVED]

Subpart C—How does a State Make an Award to Eligible Local Providers?

463.20 What is the process that the eligible agency must follow in awarding grants or contracts to eligible providers?

463.21 What processes must be in place to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with a local plan under section 108?

463.22 What must be included in the eligible provider's application for a grant or contract?

463.23 Who is eligible to apply for a grant or contract to provide adult education and literacy activities?

463.24 How can an eligible provider establish that it has demonstrated effectiveness?

463.25 What are the requirements related to local administrative cost limits?

463.26 What activities are considered local administrative costs?

Subpart D—What are Adult Education and Literacy Activities?

463.30 What are adult education and literacy programs, activities, and services?

463.31 What is an English language acquisition program?

463.32 How does a program that is intended to be an English language acquisition program meet the requirement that the program lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment?

463.33 What are integrated English literacy and civics education services?

- 463.34 What are workforce preparation activities?
- 463.35 What is integrated education and training?
- 463.36 What are the required components of an integrated education and training program funded under title II?
- 463.37 How does a program providing integrated education and training under title II meet the requirement that the three required components be “integrated”?
- 463.38 How does a program providing integrated education and training under title II meet the requirement that an integrated education and training program be “for the purpose of educational and career advancement”?

Subpart E [RESERVED]

Subpart F—What are Programs for Corrections Education and the Education of Other Institutionalized Individuals?

- 463.60 What are programs for corrections education and the education of other institutionalized individuals?
- 463.61 How does the eligible agency award funds to eligible providers under programs for corrections education and the education of other institutionalized individuals?
- 463.62 What is the priority for programs that receive funding through programs for corrections education and the education of other institutionalized individuals?
- 463.63 How may funds under programs for corrections education and the education of other institutionalized individuals be used to support transition to re-entry initiatives and other post-release services with the goal of reducing recidivism?

Subpart G—What Is the Integrated English Literacy and Civics Education Program?

- 463.70 What is the Integrated English Literacy and Civics Education program?
- 463.71 How does the Secretary make an award under the Integrated English Literacy and Civics Education program?
- 463.72 How does the eligible agency award funds to eligible providers for the Integrated English Literacy and Civics Education program?
- 463.73 What are the requirements for eligible providers that receive funding through the Integrated English Literacy and Civics Education program?
- 463.74 How does an eligible provider that receives funds through the Integrated English Literacy and Civics Education program meet the requirement to provide services in combination with integrated education and training?
- 463.75 Who is eligible to receive education services through the Integrated English Literacy and Civics Education program?

Subparts H–K [RESERVED]

Authority: 29 U.S.C. 3271, *et seq.*, unless otherwise noted.

Subpart A—Adult Education General Provisions

§ 463.1 What is the purpose of the Adult Education and Family Literacy Act?

The purpose of the Adult Education and Family Literacy Act (AEFLA) is to create a partnership among the Federal Government, States, and localities to provide, on a voluntary basis, adult education and literacy activities, in order to—

- (a) Assist adults to become literate and obtain the knowledge and skills necessary for employment and economic self-sufficiency;
- (b) Assist adults who are parents or family members to obtain the education and skills that—

- (1) Are necessary to becoming full partners in the educational development of their children; and

- (2) Lead to sustainable improvements in the economic opportunities for their family;

- (c) Assist adults in attaining a secondary school diploma and in the transition to postsecondary education and training, through career pathways; and

- (d) Assist immigrants and other individuals who are English language learners in—

- (1) Improving their—
 - (i) Reading, writing, speaking, and comprehension skills in English; and
 - (ii) Mathematics skills; and
- (2) Acquiring an understanding of the American system of Government, individual freedom, and the responsibilities of citizenship.

(Authority: 29 U.S.C. 3271)

§ 463.2 What regulations apply to the Adult Education and Family Literacy Act programs?

The following regulations apply to the Adult Education and Family Literacy Act programs:

- (a) The following Education Department General Administrative Regulations (EDGAR):
 - (1) 34 CFR part 75 (Direct Grant Programs), except that 34 CFR 75.720(b), regarding the frequency of certain reports, does not apply.
 - (2) 34 CFR part 76 (State-Administered Programs), except that 34 CFR 76.101 (the general State application) does not apply.
 - (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 81 (General Education Provisions Act—Enforcement).
 - (6) 34 CFR part 82 (New Restrictions on Lobbying).

- (7) 34 CFR part 86 (Drug and Alcohol Prevention).

- (8) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

- (b) The regulations in 34 CFR part 462.

- (c) The regulations in 34 CFR part 463.

§ 463.3 What definitions apply to the Adult Education and Family Literacy Act programs?

(a) *Definitions in the Workforce Innovation and Opportunity Act.* The following terms are defined in Sections 3, 134, 203, and 225 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102, 3174, 3272, and 3305):

Adult Education
 Adult Education and Literacy Activities
 Basic Skills Deficient
 Career Pathway
 Core Program
 Core Program Provision
 Correctional Institution
 Criminal Offender
 Customized Training
 Eligible Agency
 Eligible Individual
 Eligible Provider
 English Language Acquisition Program
 English Language Learner
 Essential Components of Reading
 Family Literacy Activities
 Governor
 Individual with a Barrier to Employment
 Individual with a Disability
 Institution of Higher Education
 Integrated Education and Training
 Integrated English Literacy and Civics Education
 Literacy
 Local Educational Agency
 On-the-Job Training
 Outlying Area
 Postsecondary Educational Institution
 State
 Training Services
 Workplace Adult Education and Literacy Activities
 Workforce Preparation Activities

(b) *Definitions in EDGAR.* The following terms are defined in 34 CFR 77.1:

Applicant
 Application
 Award
 Budget
 Budget Period
 Contract
 Department
 ED
 EDGAR
 Fiscal Year
 Grant

Grantee
 Nonprofit
 Private
 Project
 Project Period
 Public
 Secretary
 Subgrant
 Subgrantee

(c) *Other definitions.* The following definitions also apply:

Act means the Workforce Innovation and Opportunity Act, Public Law 113—128.

Concurrent enrollment or co-enrollment, for the purpose of this subpart F, refers to enrollment by an individual in two or more of the programs administered under the four core programs.

Digital literacy means the skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.

Peer tutoring means an instructional model that utilizes one institutionalized individual to assist in providing or enhancing learning opportunities for other institutionalized individuals. A peer tutoring program must be structured and overseen by educators who assist with training and supervising tutors, setting educational goals, establishing an individualized plan of instruction, and monitoring progress.

Re-entry initiatives and post-release services means services provided to a formerly incarcerated individual upon or shortly after release from prison that are designed to promote successful adjustment to the community and prevent recidivism. Examples include education, employment services, substance abuse treatment, housing support, mental and physical health care, and family reunification services.

Title means title II of the Act.

Subpart B [RESERVED]

Subpart C—How Does a State Make an Award to Eligible Local Providers?

§ 463.20 What is the process that the eligible agency must follow in awarding grants or contracts to eligible providers?

(a) From grant funds made available under section 222(a)(1) of the Act, each eligible agency must award competitive multiyear grants or contracts to eligible providers within the State or outlying area to enable the eligible providers to develop, implement, and improve adult education and literacy activities within the State or outlying area.

(b) The eligible agency must require that each eligible provider receiving a grant or contract use the funding to establish or operate programs that

provide adult education and literacy activities, including programs that provide such activities concurrently.

(c) In conducting the competitive grant process, the eligible agency must ensure that—

(1) All eligible providers have direct and equitable access to apply and compete for grants or contracts;

(2) The same grant or contract announcement and application processes are used for all eligible providers in the State or outlying area; and

(3) In awarding grants or contracts to eligible local providers for adult education and literacy activities, funds are not used for the purpose of supporting or providing programs, services, or activities for individuals who are not eligible individuals as defined in the Act, except that such agency may use such funds for such purpose if such programs, services, or activities are related to family literacy activities. Prior to providing family literacy activities for individuals who are not eligible individuals, an eligible provider must attempt to coordinate with programs and services that do not receive funding under this title.

(d) In awarding grants or contracts for adult education and literacy activities to eligible providers, the eligible agency must consider the following:

(1) The degree to which the eligible provider would be responsive to—

(i) Regional needs as identified in the local workforce development plan; and

(ii) Serving individuals in the community who were identified in such plan as most in need of adult education and literacy activities, including individuals who—

(A) Have low levels of literacy skills; or

(B) Are English language learners;

(2) The ability of the eligible provider to serve eligible individuals with disabilities, including eligible individuals with learning disabilities;

(3) The past effectiveness of the eligible provider in improving the literacy of eligible individuals, especially those individuals who have low levels of literacy, and the degree to which those improvements contribute to the eligible agency meeting its State-adjusted levels of performance for the primary indicators of performance described in § 677.155;

(4) The extent to which the eligible provider demonstrates alignment between proposed activities and services and the strategy and goals of the local plan under section 108 of the Act, as well as the activities and services of the one-stop partners;

(5) Whether the eligible provider's program—

(i) Is of sufficient intensity and quality, and based on the most rigorous research available so that participants achieve substantial learning gains; and

(ii) Uses instructional practices that include the essential components of reading instruction;

(6) Whether the eligible provider's activities, including whether reading, writing, speaking, mathematics, and English language acquisition instruction delivered by the eligible provider, are based on the best practices derived from the most rigorous research available, including scientifically valid research and effective educational practice;

(7) Whether the eligible provider's activities effectively use technology, services and delivery systems, including distance education, in a manner sufficient to increase the amount and quality of learning, and how such technology, services, and systems lead to improved performance;

(8) Whether the eligible provider's activities provide learning in context, including through integrated education and training, so that an individual acquires the skills needed to transition to and complete postsecondary education and training programs, obtain and advance in employment leading to economic self-sufficiency, and to exercise the rights and responsibilities of citizenship;

(9) Whether the eligible provider's activities are delivered by instructors, counselors, and administrators who meet any minimum qualifications established by the State, where applicable, and who have access to high-quality professional development, including through electronic means;

(10) Whether the eligible provider coordinates with other available education, training, and social service resources in the community, such as by establishing strong links with elementary schools and secondary schools, postsecondary educational institutions, institutions of higher education, local workforce investment boards, one-stop centers, job training programs, and social service agencies, business, industry, labor organizations, community-based organizations, nonprofit organizations, and intermediaries, in the development of career pathways;

(11) Whether the eligible provider's activities offer the flexible schedules and coordination with Federal, State, and local support services (such as child care, transportation, mental health services, and career planning) that are necessary to enable individuals, including individuals with disabilities

or other special needs, to attend and complete programs;

(12) Whether the eligible provider maintains a high-quality information management system that has the capacity to report measurable participant outcomes (consistent with section § 677.155) and to monitor program performance; and

(13) Whether the local area in which the eligible provider is located has a demonstrated need for additional English language acquisition programs and civics education programs.

(Authority: 29 U.S.C. 3321)

§ 463.21 What processes must be in place to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with a local plan under section 108?

(a) An eligible agency must establish, within its grant or contract competition, a process that requires an eligible provider applying for funds under AEFLA to submit its application to its Local Board prior to submission to the eligible agency.

(b) The process must require eligible providers to—

(1) Submit the application to the Local Board for its review for consistency with the local plan within the appropriate timeframe; and

(2) Provide an opportunity for the Local Board to make recommendations to the eligible agency to promote alignment with the local plan.

(c) The eligible agency must consider the results of the review by the Local Board in determining the extent to which the application addresses the required considerations in § 463.20.

(Authority: 29 U.S.C. 3122(d)(11), 3321(e), 3322)

§ 463.22 What must be included in the eligible provider's application for a grant or contract?

(a) Each eligible provider seeking a grant or contract must submit an application to the eligible agency containing the following information and assurances:

(1) A description of how funds awarded under this title will be spent consistent with the requirements of title II of AEFLA;

(2) A description of any cooperative arrangements the eligible provider has with other agencies, institutions, or organizations for the delivery of adult education and literacy activities;

(3) A description of how the eligible provider will provide services in alignment with the local workforce development plan, including how such provider will promote concurrent

enrollment in programs and activities under title I, as appropriate;

(4) A description of how the eligible provider will meet the State-adjusted levels of performance for the primary indicators of performance identified in the State's Unified or Combined State Plan, including how such provider will collect data to report on such performance indicators;

(5) A description of how the eligible provider will fulfill, as appropriate, required one-stop partner responsibilities to—

(i) Provide access through the one-stop delivery system to adult education and literacy activities;

(ii) Use a portion of the funds made available under the Act to maintain the one-stop delivery system, including payment of the infrastructure costs of the one-stop centers, in accordance with the methods agreed upon by the Local Board and described in the memorandum of understanding or the determination of the Governor regarding State one-stop infrastructure funding;

(iii) Enter into a local memorandum of understanding with the Local Board, relating to the operations of the one-stop system;

(iv) Participate in the operation of the one-stop system consistent with the terms of the memorandum of understanding and the requirements of the Act; and

(v) Provide representation on the State board;

(6) A description of how the eligible provider will provide services in a manner that meets the needs of eligible individuals;

(7) Information that addresses the 13 considerations listed in § 463.20;

(8) Documentation of the activities required by § 463.21(b);

(9) Information, as required under § 463.24, establishing that the eligible provider has demonstrated effectiveness; and

(10) Any other information required by the eligible agency.

(b) [Reserved]

(Authority: 29 U.S.C. 3322)

§ 463.23 Who is eligible to apply for a grant or contract to provide adult education and literacy activities?

An organization that has demonstrated effectiveness in providing adult education and literacy activities is eligible to apply for a grant or contract. These organizations may include, but are not limited to:

(a) A local educational agency;

(b) A community-based organization or faith-based organization;

(c) A volunteer literacy organization;

(d) An institution of higher education;

(e) A public or private nonprofit agency;

(f) A library;

(g) A public housing authority;

(h) A nonprofit institution that is not described in any of paragraphs (a) through (g) of this section, and has the ability to provide adult education and literacy activities to eligible individuals;

(i) A consortium or coalition of the agencies, organizations, institutions, libraries, or authorities described in any of paragraphs (a) through (h) of this section; and

(j) A partnership between an employer and an entity described in any of paragraphs (a) through (i) of this section.

(Authority: 29 U.S.C. 3272(5))

§ 463.24 How must an eligible provider establish that it has demonstrated effectiveness?

(a) For the purposes of this section, an eligible provider must demonstrate past effectiveness by providing performance data on its record of improving the skills of eligible individuals, particularly eligible individuals who have low levels of literacy, in the content domains of English language arts, mathematics, English language acquisition, and other subject areas relevant to the proposed services described in the eligible provider's application submitted under § 463.22. An eligible provider must also provide information regarding its outcomes for participants related to employment, high school completion, and transition to postsecondary education and training.

(b) An eligible provider that has been previously funded under AEFLA must provide performance data required under its accountability provisions to demonstrate effectiveness.

(c) An eligible provider that has not been previously funded under AEFLA must provide performance data to demonstrate its effectiveness in serving basic skill-deficient eligible individuals, including evidence of its success in achieving the outcomes listed in paragraph (a) of this section.

(Authority: 29 U.S.C. 3272(5))

§ 463.25 What are the requirements related to local administrative cost limits?

Not more than 5 percent of a local grant to an eligible provider can be expended to administer a grant or contract under title II. In cases where 5 percent is too restrictive to allow for administrative activities, the eligible provider must negotiate with the eligible agency to determine an adequate level of funds to be used for non-instructional purposes.

(Authority: 29 U.S.C. 3323)

§ 463.26 What activities are considered local administrative costs?

An eligible provider receiving a grant or contract under this part may consider costs incurred in connection with the following activities to be administrative costs:

- (a) Planning;
- (b) Administration, including carrying out performance accountability requirements;
- (c) Professional development;
- (d) Providing adult education and literacy services in alignment with local workforce plans, including promoting co-enrollment in programs and activities under title I, as appropriate; and
- (e) Carrying out the one-stop partner responsibilities described in § 678.420, including contributing to the infrastructure costs of the one-stop delivery system.

(Authority: 29 U.S.C. 3323, 3322, 3151)

Subpart D—What Are Adult Education and Literacy Activities?**§ 463.30 What are adult education and literacy programs, activities, and services?**

The term “adult education and literacy activities” means programs, activities, and services that include:

- (a) Adult education,
 - (b) Literacy,
 - (c) Workplace adult education and literacy activities,
 - (d) Family literacy activities,
 - (e) English language acquisition activities,
 - (f) Integrated English literacy and civics education,
 - (g) Workforce preparation activities,
- or
- (h) Integrated education and training.

(Authority: 29 U.S.C. 3272(2))

§ 463.31 What is an English language acquisition program?

The term “English language acquisition program” means a program of instruction—

- (a) That is designed to help eligible individuals who are English language learners achieve competence in reading, writing, speaking, and comprehension of the English language; and
- (b) That leads to—
 - (1)(i) Attainment of a secondary school diploma or its recognized equivalent; and
 - (ii) Transition to postsecondary education and training; or
 - (2) Employment.

(Authority: 29 U.S.C. 3272(6))

§ 463.32 How does a program that is intended to be an English language acquisition program meet the requirement that the program leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment?

To meet the requirement in § 463.31(b), a program of instruction must:

- (a) Have implemented State adult education content standards that are aligned with the State adopted standards under ESEA as described in the State’s Unified or Combined State Plan and as evidenced by the use of a curriculum that is aligned with the State adult education content standards; or
- (b) Offer supportive services that assist an eligible individual to attain a secondary school diploma or its recognized equivalent and transition to postsecondary education or employment; or
- (c) Be part of a career pathway.

(Authority: 29 U.S.C. 3112(b)(2)(D)(ii), 3272)

§ 463.33 What are integrated English literacy and civics education services?

(a) Integrated English literacy and civics education services are education services provided to English language learners who are adults, including professionals with degrees or credentials in their native countries, that enable such adults to achieve competency in the English language and acquire the basic and more advanced skills needed to function effectively as parents, workers, and citizens in the United States.

(b) Integrated English literacy and civics education services must include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation and may include workforce training.

(Authority: 29 U.S.C. 3272(12))

§ 463.34 What are workforce preparation activities?

Workforce preparation activities include activities, programs, or services designed to help an individual acquire a combination of basic academic skills, critical thinking skills, digital literacy skills, and self-management skills, including competencies in:

- (a) Utilizing resources;
- (b) Using information;
- (c) Working with others;
- (d) Understanding systems;
- (e) Skills necessary for successful transition into and completion of postsecondary education or training, or employment; and

(f) Other employability skills that increase an individual’s preparation for the workforce.

(Authority: 29 U.S.C. 3272(17))

§ 463.35 What is integrated education and training?

The term “integrated education and training” refers to a service approach that provides adult education and literacy activities concurrently and contextually with workforce preparation activities and workforce training for a specific occupation or occupational cluster for the purpose of educational and career advancement.

(Authority: 29 U.S.C. 3272(11))

§ 463.36 What are the required components of an integrated education and training program funded under title II?

An integrated education and training program must include three components:

- (a) Adult education and literacy activities as described in § 463.30.
- (b) Workforce preparation activities as described in § 463.34.

(c) Workforce training for a specific occupation or occupational cluster which can be any one of the training services defined in section 134(c)(3)(D) of the Act.

(Authority: 29 U.S.C. 3272, 3174)

§ 463.37 How does a program providing integrated education and training under title II meet the requirement that the three required components be “integrated”?

In order to meet the requirement that the adult education and literacy activities, workforce preparation activities, and workforce training be integrated, services must be provided concurrently and contextually such that—

(a) Within the overall scope of a particular integrated education and training program, the adult education and literacy activities, workforce preparation activities, and workforce training:

- (1) Are instructionally balanced proportionally across the three components, particularly with respect to improving reading, writing, mathematics, and English proficiency of eligible individuals;
- (2) Occur simultaneously; and
- (3) Use occupationally relevant instructional materials.

(b) The integrated education and training program has a single set of learning objectives that identifies specific adult education content, workforce preparation activities, and workforce training competencies, and the program activities are organized to function cooperatively.

(Authority: 29 U.S.C. 3272)

§ 463.38 How does a program providing integrated education and training under title II meet the requirement that the integrated education and training program be “for the purpose of educational and career advancement”?

A provider meets the requirement that the integrated education and training program provided is for the purpose of educational and career advancement if:

(a) The adult education component of the program is aligned with the State’s content standards for adult education as described in the State’s Unified or Combined State Plan; and

(b) The integrated education and training program is part of a career pathway.

(Authority: 29 U.S.C. 3272, 3112)

Subpart E [RESERVED]

Subpart F—What are Programs for Corrections Education and the Education of Other Institutionalized Individuals?

§ 463.60 What are programs for corrections education and the education of other institutionalized individuals?

(a) Authorized under section 225 of the Act, programs for corrections education and the education of other institutionalized individuals require each eligible agency to carry out corrections education and education for other institutionalized individuals using funds provided under section 222(a)(1) of the Act.

(b) The funds described in subsection (a) must be used for the cost of educational programs for criminal offenders in correctional institutions and other institutionalized individuals, including academic programs for—

- (1) Adult education and literacy activities;
- (2) Special education, as determined by the eligible agency;
- (3) Secondary school credit;
- (4) Integrated education and training;
- (5) Career pathways;
- (6) Concurrent enrollment;
- (7) Peer tutoring; and

(8) Transition to re-entry initiatives and other post-release-services with the goal of reducing recidivism.

(Authority: 29 U.S.C. 3302, 3305)

§ 463.61 How does the eligible agency award funds to eligible providers under programs for corrections education and the education of other institutionalized individuals?

(a) States may award up to 20 percent of the 82.5 percent of the funds made available by the Secretary for local grants and contracts under section 231

of the Act for programs for corrections education and the education of other institutionalized individuals.

(b) The State must make awards to eligible providers in accordance with subpart C of this part.

(Authority: 29 U.S.C. 3302, 3321)

§ 463.62 What is the priority for programs that receive funding through programs for corrections education and the education of other institutionalized individuals?

Each eligible agency using funds provided under programs for corrections education and the education of other institutionalized individuals to carry out a program for criminal offenders within a correctional institution must give priority to programs serving individuals who are likely to leave the correctional institution within five years of participation in the program.

(Authority: 29 U.S.C. 3305)

§ 463.63 How may funds under programs for corrections education and the education of other institutionalized individuals be used to support transition to re-entry initiatives and other post-release services with the goal of reducing recidivism?

Funds under programs for corrections education and the education of other institutionalized individuals may be used to support educational programs for transition to re-entry initiatives and other post-release services with the goal of reducing recidivism. Such use of funds may include educational counseling or case work to support incarcerated individuals’ transition to re-entry initiatives and other post-release services. Examples of allowable uses of funds include assisting incarcerated individuals to develop plans for post-release education program participation, assisting students in identifying and applying for participation in post-release programs, and performing direct outreach to community-based program providers on behalf of re-entering students. Such funds may not be used for costs for participation in post-release programs or services.

(Authority: 29 U.S.C. 3305)

Subpart G—What Is the Integrated English Literacy and Civics Education Program?

§ 463.70 What is the Integrated English Literacy and Civics Education program?

(a) The Integrated English Literacy and Civics Education program refers to the use of funds provided under section 243 of the Act for education services for English language learners who are adults, including professionals with degrees and credentials in their native countries.

(b) The Integrated English Literacy and Civics Education program delivers educational services as described in § 463.33.

(c) Such educational services must be delivered in combination with integrated education and training services as described in § 463.36.

(Authority: 29 U.S.C. 3272, 3333)

§ 463.71 How does the Secretary make an award under the Integrated English Literacy and Civics Education program?

(a) The Secretary awards grants under the Integrated English Literacy and Civics Education program to States in accordance with this section.

(b) The Secretary allocates funds to States following the formula described in section 243(b) of the Act:

(1) Sixty-five percent is allocated on the basis of a State’s need for integrated English literacy and civics education, as determined by calculating each State’s share of a 10-year average of the data of the Office of Immigration Statistics of the Department of Homeland Security for immigrants admitted for legal permanent residence for the 10 most recent years; and

(2) Thirty-five percent is allocated on the basis of whether the State experienced growth, as measured by the average of the three most recent years for which the data of the Office of Immigration Statistics of the Department of Homeland Security for immigrants admitted for legal permanent residence are available.

(3) No State will receive an allotment less than \$60,000.

(Authority: 29 U.S.C. 3333)

§ 463.72 How does the eligible agency award funds to eligible providers for the Integrated English Literacy and Civics Education program?

States must award funds for the Integrated English Literacy and Civics Education program to eligible providers in accordance with subpart C of this part.

(Authority: 29 U.S.C. 3321)

§ 463.73 What are the requirements for eligible providers that receive funding through the Integrated English Literacy and Civics Education program?

Eligible providers receiving funds through the Integrated English Literacy and Civics Education program must provide services that—

(a) Include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation.

(b) Are in combination with integrated education and training.

(c) Are designed to:

(1) Prepare adults who are English language learners for, and place such adults in, unsubsidized employment in in-demand industries and occupations that lead to economic self-sufficiency; and

(2) Integrate with the local workforce development system and its functions to carry out the activities of the program.

(Authority: 29 U.S.C. 3272, 3333)

§ 463.74 How does an eligible provider that receives funds through the Integrated English Literacy and Civics Education program meet the requirement to provide services in combination with integrated education and training?

An eligible provider that receives funds through the Integrated English Literacy and Civics Education program can meet the requirement to provide services in combination with integrated education and training by providing:

(a) Integrated English literacy and civics education activities as described

in subpart D and integrated education and training as described in subpart D to eligible individuals as defined in this subpart; or

(b) Integrated English literacy and civics education activities as described in subpart D to eligible individuals as described in this subpart and co-enrolling participants in integrated education and training programs provided within the local or regional workforce development area.

(Authority: 29 U.S.C. 3333, 3121, 3122, 3123)

§ 463.75 Who is eligible to receive education services through the Integrated English Literacy and Civics Education program?

Individuals who otherwise meet the definition of “eligible individual” and are English language learners, including professionals with degrees and credentials obtained in their native countries, may receive Integrated

English Literacy and Civics Education services.

(Authority: 29 U.S.C. 3272)

Subparts H–K—[RESERVED]

PART 472—[REMOVED AND RESERVED]

■ 18. Remove and reserve part 472.

PART 477—[REMOVED AND RESERVED]

■ 19. Remove and reserve part 477.

PART 489—[REMOVED AND RESERVED]

■ 20. Remove and reserve part 489.

PART 490—[REMOVED AND RESERVED]

■ 21. Remove and reserve part 490.
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