



# FEDERAL REGISTER

---

Vol. 81

Friday,

No. 161

August 19, 2016

---

Part II

## Department of Education

---

34 CFR Parts 461, 462, 463 et al.

Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act);  
Final Rule

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

RIN 1830-AA22

[Docket No. 2015-ED-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:** Final regulations.

**SUMMARY:** The Secretary establishes 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). These final regulations clarify new provisions in AEFLA. The Secretary also updates the regulations that establish procedures for determining the suitability of tests used for measuring State performance on accountability measures that assess the effectiveness of AEFLA programs and activities. The Secretary also removes specific parts of title 34 of the Code of Federal Regulations (CFR) that are no longer in effect.

**DATES:** These final regulations are effective September 19, 2016.**FOR FURTHER INFORMATION CONTACT:** Lekesha Campbell, U.S. Department of Education, 400 Maryland Avenue SW., Room 11008, Potomac Center Plaza (PCP), Washington, DC 20202-2800.

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

**SUPPLEMENTARY INFORMATION:****Background**

On July 22, 2014, President Obama signed into law WIOA (Pub. L. 113-128), which replaces the Workforce Investment Act of 1998 (WIA). As under WIA, AEFLA is title II of WIOA (title II). WIOA 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. These final regulations further the Department of Education's (Department or ED) implementation of new provisions in AEFLA. Through these regulations, we explain the programs and activities authorized

under AEFLA and assist State and local grantees in their implementation efforts.

We have limited the regulations to only those that we believe are absolutely necessary to clarify and reiterate key statutory provisions of WIOA, as well as to respond to public comments. In the regulations, we incorporate the relevant requirements from AEFLA to provide context and for reader convenience.

Summary of the Major Provisions of This Regulatory Action:

Through these final regulations the Secretary:

1. Removes specific parts of title 34 that are no longer in effect.
2. Updates and revises 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 regulations also include procedures that States and local eligible providers must follow when using suitable tests for NRS reporting. The changes conform to statutory language in WIOA and clarify existing requirements.
3. Restates the purpose of AEFLA and the programs authorized by the Act, as well as clarifies the related Education Department General Administration Regulations (EDGAR) and definitions that apply to the program.
4. Describes the process and requirements for States to award grants or contracts to eligible providers and the activities that may be charged to local administrative costs. These regulations implement new requirements established by WIOA, including the requirement that local workforce development boards (Local WDBs) 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 an eligible provider's activities with the local workforce development plan established under title I of WIOA.
5. Reiterates what constitutes an adult education and literacy activity or program and clarifies how funds may be used for activities that are newly authorized by WIOA.
6. Describes 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. Clarifies the use of funds for new and expanded activities under the Integrated English Literacy and Civics Education program.

*Public Comment*

On April 16, 2015, the Secretary published a notice of proposed rulemaking (NPRM or proposed regulations) for these programs in the **Federal Register** (80 FR 20968), available at <https://federalregister.gov/a/2015-05540>. In response to our invitation in the NPRM, nearly 300 parties submitted comments on the proposed regulations. In these final regulations we discuss amendments and new regulations in the order in which their parts appear in the CFR. We then set out our analysis by subpart and section. For each part, we provide a summary of the changes we proposed, a summary of the differences between the proposed regulations and these final regulations, and a detailed discussion of the public comments we received on the proposed regulations. We then discuss the regulations that we are removing. Generally, we do not address technical and other minor changes.

We received a number of comments expressing general support for the proposed regulations. We thank the commenters for their support. We do not discuss comments that were beyond the scope of the changes we proposed in the NPRM.

**34 CFR Part 462—Measuring Educational Gain in the National Reporting System for Adult Education Summary of Changes**

In the preamble of the NPRM, we discussed on pages 20969 through 20971 the major changes proposed to part 462. These regulations are authorized under section 212 of WIOA, 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 sought to further formalize the process for determining the suitability 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. The proposed process would also provide a means by which the Secretary would assess the continued validity of tests that have previously been determined suitable for use in the NRS.

There are three differences between the NPRM and these final regulations. In the final regulations:

- We use the term “English as a Second Language (ESL)” when referring to educational functioning levels of English language learners to maintain consistency with NRS information collection and guidelines.

- We update § 462.13(c) regarding the criteria that the Secretary uses to determine the suitability of tests for use in the NRS.

- We remove § 462.43 regarding how States may report educational functioning level gains for students. Educational functioning level gain is included in the WIOA joint final rule at 20 CFR 677.155(a)(1)(v) (and will be included in part 463, Subpart I) as one of five measures of documented progress that specify how to show a measurable skill gain for performance accountability under section 116 of WIOA, and it applies across all of the WIOA core programs. As such, the Department of Education and the Department of Labor agree that any further explanation regarding educational functioning level gains is best provided in the joint information collection request (ICR) for the WIOA Common Performance Reporting (WIOA Joint Performance ICR) and joint guidance. The Departments reiterate that States will be required to report on the measurable skill gains performance indicator, which may include educational functioning level gain, as set forth in § 677.155(a)(1)(v), consistent with the WIOA Joint Performance ICR and as explained in guidance.

*Public Comment:*

### Subpart A—General

#### § 462.3 What definitions apply?

In the NPRM we proposed to revise § 462.3 to align several terms with the language in WIOA. For example, to conform to section 203 of AEFLA, we proposed replacing the term “English as a second language (ESL)” with the term “English language acquisition (ELA).” We also proposed to remove the reference to a physical copy of the NRS Guidelines to provide an easier and immediate public access online.

*Comments:* Numerous commenters supported changing the term from ESL to ELA, with some stating that it more accurately describes the intent of the programming and pathways. One commenter recommended substituting English Language Acquisition Program (ELAP) for the term ELA. Numerous commenters expressed concern about States using the term English Language Acquisition (ELA) to refer to English Language Learners or students in ESL because “ELA” is commonly understood to refer to English Language

Arts in a number of educational contexts, including in college and career readiness standards. They indicated that it would cause unnecessary confusion. Numerous commenters recommended using the already-branded terms ESL or English for Speakers of Other Languages (ESOL).

*Discussion:* We appreciate the support from some commenters for the change in terminology that we originally proposed. We also acknowledge the concerns raised by other commenters regarding confusion that might arise from the proposed change in terminology. We note that in revising the NRS information collection request, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027), we retained the term English as a Second Language (ESL) when specifically referring to the six educational functioning levels for English language learners. Since the changes we originally proposed in this rule related specifically to these six educational functioning levels used for NRS reporting and not to the actual services available to English language learners under the Act, we believe using the term English as a Second Language (ESL) results in greater clarity and consistency between this rule and the corresponding NRS information collection request.

*Change:* We have replaced the term English language acquisition (ELA) with the term English as a Second Language (ESL) when referring to the educational functioning levels for English language learners, and we have made the appropriate conforming changes throughout part 462.

### Subpart B—What process does the Secretary use to review the suitability of tests for use in the NRS?

#### § 462.10 How does the Secretary review tests?

In proposed § 462.10, the Department established two additional submission dates for the submission of tests in program years 2016 and 2017. Currently, tests must be submitted by October 1 of each year. The two additional dates of April 1, 2017 and April 1, 2018 would provide more opportunities for the Secretary to review and approve assessments and will increase the availability of new assessments to eligible providers in the first two years of implementing the performance accountability requirements under section 116 of WIOA.

*Comments:* Several commenters expressed support for the addition of

two submission dates for test review, stating that this will allow test publishers time to develop quality assessments, and to submit new or revised assessments that align with the *College and Career Readiness Standards for Adult Education* and the final released versions of the educational functioning level descriptors. One commenter suggested two submission dates each year, beginning with April 1, 2017, and continuing until there are multiple tests approved. One commenter recommended that the Department offer more than two submission dates. They suggested that in 2016 and 2017, the Department consider allowing the publishers to submit applications when they are ready, rather than only on October 1 or April 1.

*Discussion:* We appreciate commenters’ support for our proposed two submission dates each year, as well as their suggestion to offer continuous or rolling submissions throughout the year based upon publishers’ readiness to submit. Our past experience indicates that rolling assessment review opportunities do not yield an increase in the quantity or quality of tests suitable for use in the NRS. Based on our experiences to date, we believe that the two additional dates of April 1, 2017 and April 1, 2018, in addition to October 1, 2016 and October 1, 2017, offer increased flexibility as well as additional opportunities to submit new tests for review in the first two years of implementing the performance accountability requirements under section 116 of WIOA. Beginning in program year 2018, we will return to one annual submission date on October 1.

*Change:* None.

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

We noted in the preamble of the NPRM that we proposed to update the reference to the *Standards for Educational and Psychological Testing* to reflect the most current edition of these standards.

*Comments:* One commenter requested that the regulations be updated to refer to the *Standards for Educational and Psychological Testing* as being developed by American Educational Research Association (AERA), American Psychological Association (APA), and the National Council of Measurement in Education (NCME), as reflected in the 2014 edition.

*Discussion:* We appreciate the commenter’s suggestion that the regulations be updated to refer to the

2014 edition of the *Standards for Educational and Psychological Testing*, which was inadvertently omitted in the proposed rule text.

*Change:* We have revised final § 462.13 to reflect the new edition of the *Standards for Educational and Psychological Testing*.

#### **Subpart D—What requirements must States and eligible providers follow when measuring educational gain?**

##### *§ 462.40 Must a State have an assessment policy?*

In § 462.40, we proposed adding one additional element to the information a State must include in its State assessment policy by requiring that the State specify 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 educational functioning level gain. Under WIA, States were directed to specify this target by the information collection request, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027), but in the NPRM, we proposed to make this a regulatory requirement.

*Comments:* Two commenters expressed concern that the requirement to set a post-testing target will negatively influence the integrity of the testing process, leading States to skirt the most effective administration of the tests or to manipulate reporting. One of these commenters recommended that uniform review and approval processes be used to ensure integrity of test and reporting results. The other commenter stated that post-testing targets place too much emphasis on the role post-testing plays in determining educational functioning level gains, to the exclusion of screening, support services, and instruction, and can lead to improper test administration to meet reporting demands.

*Discussion:* We agree with the commenters that the integrity of the testing process and the quality of instructional services must not be negatively impacted by the regulatory requirement. We note that the proposed requirement for a State to specify in its assessment policy a target for the percentage of all pre-tested students who meet that threshold of instruction and take a matched post-test is a standard States are currently directed to specify by the information collection, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB

Control Number: 1830–0027). We are making this practice a regulatory requirement for consistency purposes. As stated in our proposed regulations, the purpose of requiring States to establish this standard is to promote the implementation of policies and practices by eligible providers that maximize the percentage of students who have a matched post-test completed in order to document educational functioning level gain and to encourage continuous improvement over time.

*Change:* None.

*Comments:* One commenter recommended States be given a trial period to evaluate and determine reasonable performance and therefore acclimate to the process of setting post-test targets so they can negotiate more effectively with the Department on reasonable target levels.

*Discussion:* We appreciate the commenter's interest in determining how to most meaningfully implement the proposed requirement. We note that a post-test standard is a current element in the information collection, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027). We are including this element in this section as a regulatory requirement, thus aligning it with the other elements required in the State assessment policy and establishing consistency between these final regulations and the information collection request. We further note that the post-testing standard required in this regulation is determined solely by the State and articulated in the State's assessment policy. It is not negotiated with the Department. The State, at its sole discretion, may evaluate the standard it has set and make any necessary revisions.

*Change:* None.

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

Proposed § 462.42 revised the authority citation to conform to WIOA.

*Comments:* One commenter expressed concerns that the testing methods to determine educational functioning level will disadvantage participants because they may not be experienced with traditional testing, and because standardized testing has been recognized to skew toward particular ethnicities and higher socioeconomic groups.

*Discussion:* We appreciate the commenter's concern that the testing methods to determine educational functioning levels may disadvantage

participants who may not be experienced with standardized testing. We agree that poorly constructed tests can skew results for particular groups. We note that in § 462.13, we have specified the criteria and requirements that the Secretary uses for determining the suitability of tests. These criteria require a regular evaluation of test items for fairness and bias, which includes the design, development, and delivery of tests for variability among intended test takers. We conclude that these criteria are sufficient to address the commenter's concerns.

*Change:* None.

##### *§ 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) confirmed that educational functioning level gain is measured by testing students in reading and mathematics. We also proposed adding § 462.43(c) to allow States that offer adult high school programs, authorized by State law or regulations, to measure and report educational functioning level gain through the awarding of credits or Carnegie units. Additionally, as noted in § 462.41, we revised the title of this section to clarify that the measurement of educational gain as described in these regulations is for the purpose of applying the measurable skill gains performance indicator in section 116 of WIOA to programs and activities under AEFLA.

*Comments:* Many commenters endorsed continued use of educational functioning levels (EFLs) through pre-/post-testing and also encouraged eventual refinement of EFLs or the development of other potential measures that can document participants' progress toward educational goals. Some commenters suggested that the final regulations support measures that demonstrate progression along a career pathway. Various commenters suggested that the final regulations provide specificity on how a number of alternative measures, such as transition to postsecondary education and training, attainment of a secondary credential, advancement in competency-based educational programs, and passing portions of high school equivalency exams or citizenship exams might count as educational functioning level gains for students. Commenters also inquired about how pre-/post-testing could be used to support students' progression along a career pathway. Some commenters supported our proposed inclusion of

Carnegie units or credits in States with adult high school programs while others questioned how the regulation might safeguard against States reporting educational functioning level gains for students based upon seat time rather than actual skills attainment.

*Discussion:* We appreciate the commenters' concern for implementing the measurable skill gains performance indicator in a manner that supports students' progression along a career pathway and that does not only rely on testing. We agree that States need additional flexibility to support students' progression along career pathways responsive to industry needs and standards within local or regional economies and believe that flexibility is provided in § 677.155(a)(1)(v) of the WIOA joint final rule. We note that educational functioning level gain for students is included in § 677.155(a)(1)(v) as one of five measures of documented progress that specify how to show a measurable skill gain under section 116 of WIOA and that apply across all WIOA core programs. We also note that attainment of a secondary school diploma is another measure of documented progress in § 677.155(a)(1)(v) that States may use to demonstrate and report a measurable skill gain under section 116 of WIOA. Because these measures apply across core programs, the Departments have agreed that any further explanation regarding these measures, including educational functioning level gain, is best provided in the WIOA Joint Performance ICR and joint guidance. However, in response to commenters' suggestions, the Departments intend to include transition to postsecondary education and training in the WIOA Joint Performance ICR as an additional way for States to report an educational functioning level gain. The Departments reiterate that States will be required to report on the measurable skill gains indicator, which may include educational functioning level gain, as set forth in § 677.155(a)(1)(v), consistent with the WIOA Joint Performance ICR and as explained in guidance.

*Change:* We remove and reserve § 462.43.

### **34 CFR Part 463—Adult Education and Family Literacy Act**

#### **Summary of Changes**

In the preamble of the NPRM, we discussed on pages 20971 through 20975 proposed new regulations to support State and local implementation of WIOA-related changes to the AEFLA program. We proposed regulations to reiterate the purpose of AEFLA and the

programs authorized by the Act, as well as clarify the relationship of those programs and definitions to EDGAR. We also sought to describe the process and requirements for States to award grants or contracts to eligible providers and the activities that may be charged to local administrative costs. The proposed regulations included new requirements established by WIOA, such as: The requirement that Local WDBs 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 an eligible provider's activities with the local workforce development plan established under title I of WIOA. The proposed regulations also sought to define what constitutes an adult education and literacy activity or program and clarify how funds may be used for activities that are newly authorized by WIOA. We also proposed to 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. Finally, we proposed regulations to clarify the use of funds for new and expanded activities under the Integrated English Literacy and Civics Education program.

There are several important differences between the NPRM and these final regulations:

We clarified in these final regulations that attainment of a secondary school equivalency credential is inherently a part of the purpose of AEFLA.

We removed the limitation of the definition of "concurrent enrollment" to subpart F so that the definition now applies to all subparts in this Part 463. In the definition of "reentry initiatives and post release services" in § 463.3, we changed the phrase "release from prison" to "release from a correctional institution."

We have revised § 463.21 to give States more flexibility for organizing and overseeing a process for Local WDBs to review eligible providers' applications for alignment with the local workforce development plan and to make recommendations to the eligible agency to promote alignment with the local plan.

We have revised § 463.24 to clarify that an eligible provider that has not been previously funded under title II of WIOA may demonstrate effectiveness by providing performance data related to its record of improving the skills of eligible individuals, particularly eligible individuals who have low levels of

literacy, in the content domains of reading, writing, mathematics, English language acquisition, and other subject areas relevant to the services contained in the State's application to award contracts or grants to eligible providers.

We have revised § 463.25 to clarify that the eligible agency may increase the amount that can be spent on local administration in cases where the cost limits are too restrictive to allow for specified activities.

We have revised § 463.32(a) to clarify that a State or eligible provider may use curriculum, lesson plans, or instructional materials to demonstrate that an English language acquisition program is implementing the State's content standards for adult education.

We have revised § 463.32(b) to more clearly state our intent for how eligible providers can demonstrate that an English language acquisition program is meeting the requirement of § 463.31(b) by offering educational and career counseling services that enable English language learners to transition to further education or employment.

We have revised § 463.37(a)(1) to more clearly state how, within the overall scope of the program, each of the three required components of an integrated education and training program must be of sufficient intensity and quality, and based on the most rigorous research available.

We have revised § 463.73 to more clearly reflect the statutory requirement to use funds provided under section 243 in combination with integrated education and training activities as defined in subpart D as well as to better clarify options for meeting the requirement.

#### *Public Comment:*

*Comments:* One commenter expressed general support for the Act's potential for helping youth and adults prepare for meaningful employment in State, regional, and local economies. This commenter encouraged adult educators to consult with employers in the design of services.

*Discussion:* We agree with the commenter's suggestion. We have historically provided a range of technical assistance resources to encourage and support adult educators' engagement with employers to ensure that education services are relevant and responsive to local economic circumstances. We believe that the Act's support for career pathways development and new adult education and literacy activities such as workforce preparation activities and integrated education and training offer adult educators new opportunities to enhance and expand engagement efforts with

employers so that adult education services meet the needs of job seekers and employers.

*Change:* None.

### Subpart A—Adult Education General Provisions

#### 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. 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.

*Comments:* Numerous commenters expressed support for the expanded purposes of AEFLA. Two commenters stated that in addition to the focus on workforce development, priority service should continue for individuals who are not in the workforce and need adult education and literacy services. Another commenter expressed concern over the statutory reference in the purpose section of AEFLA to “transition to postsecondary education and training, including through career pathways,” stating that the focus of adult education should remain on secondary credential attainment.

*Discussion:* We appreciate the commenters' support for the expanded purposes of AEFLA. We agree with those commenters who stated that in addition to a focus on workforce development, services should continue to be made available for individuals who are not in the workforce and need adult education and literacy services. We believe that the Act, as well as these final regulations, provide States the flexibility to continue to provide adult education services to eligible individuals both in and out of the labor force. We do not agree, however, that the focus of adult education should remain solely on secondary school equivalency or secondary credential attainment. We believe that within the overall purposes set forth in the Act to strengthen the United States workforce development system through innovation in, and alignment and improvement of, employment, training, and education programs to promote individual and national economic growth, WIOA appropriately emphasizes transition to

postsecondary education and training and career pathways. Moreover, the multiple and expanded purposes of adult education set forth in WIOA do not give us authority to limit the focus to secondary credential attainment.

*Change:* None.

*Comments:* Several commenters expressed concerns that while both the name and the purpose of the authorizing statute reference family literacy, the proposed regulations did not adequately convey the importance of eligible providers continuing to provide family literacy services. One commenter suggested that the Department add language to the proposed regulations to clarify the importance of family literacy services as an express purpose under AEFLA. Another commenter expressed concern that simply restating the statutory language in the proposed regulations might result in individuals not in the workforce being denied services and suggested that the Department revise the language of the proposed regulations.

Several of these commenters suggested that the Department consider including family literacy-relevant performance measures in the performance accountability system. One commenter suggested that the Department allow State plans to include additional performance indicators relevant to improving family literacy. Another commenter suggested that the Department convene an expert group to assist with the development of such measures.

*Discussion:* Proposed § 463.1 restated section 202 from the Act. Section 202 states that the purpose of AEFLA is to create a partnership between the Federal government, States, and localities to assist eligible individuals in achieving four enumerated goals, the second of which is to assist adults who are parents or family members to obtain education skills that—

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

(B) Lead to sustainable improvements in the economic opportunities for their family.

We believe this statutory language clearly and sufficiently establishes the continued importance of family literacy within the Act. Moreover, we do not believe we have the authority to emphasize any one of the four statutory purposes over others. We are aware of the concern over the continued ability to serve individuals not in the labor force. Again, as we noted above, we believe that the Act, as well as these final regulations, provide States the flexibility to continue to provide adult

education services to eligible individuals both in and out of the labor force.

In terms of commenters' requests that we add family literacy measures to the performance accountability system for WIOA, the Act specifies six primary indicators of performance and does not give the Department the authority to create additional indicators of performance. However, section 116(b)(2)(B) provides States with the flexibility to identify in the State plan additional performance accountability indicators. Additionally, based upon these comments we have decided to retain the optional family literacy reporting table within the NRS, thereby supporting States' flexibility to report these measures should they opt to use them. We note that this optional reporting table was created with input from adult education administrators and practitioners and is maintained through a process that includes consultation with a technical work group comprised of State directors of adult education.

*Change:* None.

*Comments:* One commenter suggested that, in addition to the statutory reference to secondary diploma attainment, we should revise proposed § 463.1(c) to expressly include attainment of high school equivalency.

*Discussion:* We appreciate the commenter's suggestion and agree that acknowledging attainment of secondary school equivalency, in addition to secondary school diploma attainment, clarifies proposed § 463.1(c).

*Change:* We have revised § 463.1(c) to include the attainment of the recognized equivalent of a secondary school diploma.

*Comments:* One commenter suggested that proposed § 463.1(d) might be strengthened by adding language from proposed § 463.31 concerning the definition of an English language acquisition program.

*Discussion:* We appreciate the commenter's suggestions and agree that, in instances where immigrants need English language acquisition services, this suggestion might strengthen the regulations. However, we note that not all immigrants need English language acquisition services and that making this change could limit immigrants' access to other adult education and literacy activities. Additionally, we note that in proposing § 463.1, we stated that our intent was to clarify the expanded purposes of AEFLA under WIOA. Our intent was not to expand on those purposes. We believe that § 463.1(d) as proposed achieves the clarity that we sought and also maintains maximum State flexibility to address diverse

immigrants' needs for adult education and literacy activities.

*Change:* None.

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

Proposed § 463.3 identified 31 terms used in WIOA that pertain to AEFLA. In some instances, the terms, as defined in titles I and II, apply across all six of the programs authorized or amended under WIOA, including the Adult, Dislocated Worker, and Youth programs (title I of WIOA); AEFLA (title II of WIOA); the Employment Service program under the Wagner-Peyser Act of 1933 (title III of WIOA); and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973 (title IV of WIOA) (together, "core programs"). In other instances, the terms are specific to AEFLA, title II of WIOA. Proposed § 463.3 is intended to assist AEFLA grantees 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 elsewhere. We have listed and defined these terms under "other definitions" to clarify their meaning for purposes of the AEFLA program.

#### Concurrent Enrollment

*Comments:* One commenter concurred with our proposed definition but noted that other sections of the proposed regulations referred to six, rather than four, core programs. This commenter asked that the proposed definition be revised to be consistent with other related regulations. Two commenters stated that co-enrollment should not be limited to the core programs and should include postsecondary education and training. Additionally, in a comment under § 463.22 (see below) a commenter suggested that we remove the limitation of the definition to this subpart F only.

*Discussion:* We appreciate the suggestion supporting consistency throughout the proposed regulations and agree that in the proposed definition of concurrent enrollment we should have referred to six, rather than four, core programs. We also note that when we originally proposed this definition we stated that it was for purposes of administration of the AEFLA program and that we acknowledged that in practice the term often had a wider meaning. We also originally proposed the definition specifically for purposes of this subpart F in which proposed § 463.60(b) listed

allowable educational programs for criminal offenders in correctional institutions and other institutionalized individuals.

Through the definition of concurrent enrollment, we clarify that postsecondary education is not an allowable use of AEFLA funds under § 463.60(b)(6). Finally, we agree with the commenter who suggested that we not limit the definition of concurrent enrollment only to this subpart F.

*Change:* We have revised the definition of "concurrent enrollment" in § 463.3 to correct the reference to core programs to six rather than four. We have also removed the limitation on this definition applying to only subpart F.

#### Reentry Initiatives and Post Release Services

*Comments:* Regarding the definition of "reentry initiatives and post release services," one commenter objected to the proposed definition's reference to release from prison. This commenter suggested that replacing prison with the term correctional institution as defined in WIOA would not unnecessarily limit reentry services.

*Discussion:* We appreciate the commenter's desire to maintain maximum flexibility in providing reentry services and agree that the final rule should not unnecessarily limit these services.

*Change:* We have revised the definition of "re-entry and post-release services" in § 463.3 to apply to release from a correctional institution.

*Comments:* One commenter suggested that the statutory definition of "basic skills deficient" be expanded in final regulations to provide additional time for both adults who have not taken standardized tests and adults with undiagnosed learning disabilities.

*Discussion:* We appreciate the commenter's concern for being able to provide optimal supports for adults who may be unfamiliar with standardized testing and adults with learning disabilities. We have reviewed the definitions of both "individual with a barrier to employment" in section 3(24) of the Act and "individual with a disability" in section 3(25) of the Act and conclude that they are adequate to include adults with learning disabilities and adults who may be unfamiliar with standardized testing. We also note that section 504 of the Rehabilitation Act of 1973 requires that eligible providers provide appropriate test accommodations as needed.

*Change:* None.

### Subpart C—How does a state make an award to eligible providers?

§ 463.20 What is the process that the 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 eligible 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. WIOA also retains the WIA requirement that an eligible agency ensure that all eligible providers have direct and equitable access to apply 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. 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, 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.

*Comments:* One commenter expressed support for proposed § 463.20, but noted that that the description of individuals in the community who are identified as most in need of adult education no longer contains a stipulation for determining an individual's need based on income. The commenter recommended that, since WIOA requires the alignment between proposed activities and services and the strategy and goals of the local plan, States be allowed flexibility to implement additional factors such as income when determining most in need.

*Discussion:* We appreciate the commenter's concerns for meeting the education and employment needs of low-income individuals. While WIA explicitly required that, in awarding grants or contracts under title II, the eligible agency must consider the commitment of the eligible provider to serve individuals in the community who are most in need of literacy services, including individuals who are low income or have minimal literacy skills, WIOA does not explicitly contain

such a requirement for consideration. However, § 463.20(d) does require that the eligible agency consider the degree to which the eligible provider would be responsive to serving individuals in the community who were identified in the local plan as most in need of adult education. The local plan must include an analysis of the education and skill levels of the workforce, including individuals with barriers to employment. Section 3 of the Act includes low-income individuals as one population in the definition of individuals with barriers to employment. We believe the requirement for an eligible agency to consider the extent to which an eligible provider is responsive to serving those individuals identified in the local plan as needing adult education, combined with local plan requirements to serve those with barriers to employment, will result in better access to education and training for all individuals with barriers to employment, including low-income individuals. Therefore, consistent with the needs identified in the approved Unified or Combined State Plan, we believe States have the flexibility to implement additional factors such as income when determining most in need. We remind States that choose to implement such additional factors of the requirement in section 223(c) of WIOA to identify to eligible providers that the rule or policy is being imposed by the State.

*Change:* None.

*Comments:* Another commenter expressed support for proposed § 463.20, which included a restatement of the 13 considerations that State eligible agencies must take into account in making awards to eligible providers. The commenter asked the Department to consider adding two additional considerations intended to support partnership development among core programs—one addressing co-enrollment and another addressing braided funding. Other commenters suggested that we add an additional consideration: Whether the eligible entity has a comprehensive plan to publicize the availability of adult education programming and the capacity to ensure ongoing communication, where appropriate, through partnerships or coordination with other entities, including public television stations. These same commenters suggested that we amend proposed § 463.20(d)(10) to include public television stations.

*Discussion:* We note that proposed § 463.20 restated the statutory requirements regarding the process that the eligible agency must follow in

awarding grants or contracts to eligible providers. While we appreciate the commenters' support for developing robust local partnerships to support successful WIOA implementation, we do not believe that we have the authority to add additional required considerations beyond the 13 specified in WIOA. We agree that the strategies suggested by commenters can support robust partnership development. We further note that § 463.20 does not preclude eligible providers from engaging in these strategies. Co-enrollment and braided funding may be ways in which an eligible provider demonstrates that it meets the requirements of § 463.20(d)(4) or § 463.20(d)(10). Similarly, engagement with public television stations may be one of the ways in which an eligible provider demonstrates to the eligible agency that it meets the requirements of § 463.20(d)(10).

*Change:* None.

*§ 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 of WIOA?*

WIOA promotes coordination between the Local WDBs and adult education providers by requiring in section 107(d)(11)(B)(i) that the local WDB review applications for AEFLA funds submitted to the eligible agency by eligible providers 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 required an eligible agency to establish procedures for the Local Board review in its grant or contract application process and also established the type of documentation that must accompany the application. The proposed regulations also required the eligible agency to consider the results of the local WDB 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 WDB 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.

*Comments:* Multiple commenters stated that proposed § 463.21 supported improved alignment between local workforce development plans and adult education providers and expressed their

support for this goal. Many of these commenters added that it was essential for the State to set consistent guidelines and uniform procedures. One of these commenters further suggested that the Department require States to (1) implement a standardized process for use statewide, (2) develop a standardized rubric for Local WDBs to use in implementing the process, and (3) develop the process in consultation with Local WDBs. Some of these commenters raised concerns about adequate time for the local WDB to conduct its review as outlined in proposed § 463.21, and one commenter suggested that we expand the language in proposed § 463.21 to include a requirement for the Local WDBs to complete their reviews by a date specified by the eligible State agency.

*Discussion:* We appreciate commenters' support for the goal of improved alignment between local workforce development plans and adult education service delivery. We agree that it is important that States set consistent guidelines and uniform procedures. We also acknowledge that there is diversity among States and local workforce development areas. As a result of this diversity, we believe there is a need to provide States with flexibility in meeting the statutory requirements for Local WDBs to review eligible providers' applications for consistency with the local workforce development plan and make recommendations to the eligible agency to promote alignment with the plan. We believe that adding the level of specificity suggested by commenters will limit States' flexibility in meeting the statutory requirements.

*Change:* None.

*Comments:* One commenter stated that neither section 107 nor section 232 of WIOA prescribed the time frame or the method for local WDB review or dictated the manner in which Local WDBs should make recommendations. The commenter maintained that, as proposed, § 463.21 would require an eligible provider to first submit its application to the local WDB. The commenter felt that this requirement was too restrictive and that States should be afforded the ability to develop operational processes to ensure alignment, consistent with sections 107 and 232 of WIOA.

*Discussion:* We agree with the commenter that, as proposed, § 463.21 presumed a more rigid sequence of steps for the submission of eligible providers' applications to Local WDBs that might not be optimal for all States.

*Change:* We have revised § 463.21(a) and (b) to allow States more flexibility



for organizing and overseeing a process for Local WDBs to review eligible providers' applications for alignment with the local workforce development plan and to make recommendations to the eligible agency to promote alignment with the local plan.

*Comments:* Other commenters, while supportive of the goal of improved alignment, also expressed concern regarding whether the requirement for Local WDBs to review eligible providers' applications for alignment with the local workforce development plans might be realistically implemented in large urban areas with multiple eligible providers submitting applications to provide adult education and literacy activities. Some of these commenters proposed alternative means to achieve the desired alignment. For example, one commenter suggested alternative approaches such as, engaging all eligible providers within a local workforce development area in the creation of the local or regional workforce development plan, recruiting local WDB members to serve on adult education advisory councils, and specifying roles and responsibilities of required partners in local memoranda of understanding (MOUs). Another commenter suggested substituting the requirement for local WDB review of eligible providers' applications for documentation of the eligible provider's involvement in the development of the local workforce development plan.

*Discussion:* We understand commenters' concern regarding implementing the new requirement for Local WDBs to review applications for title II funds submitted to eligible agencies by eligible providers. Final § 463.20 provides an eligible agency with flexibility to implement this new requirement, consistent with section 107(d)(11)(B)(i) of WIOA. The final regulations ensure all applications within a State are treated the same in the local WDB review process. The Act explicitly requires Local WDBs to review applications, and the Department is unable to include in the regulations any alternative review process that eliminates this requirement, such as those suggested by commenters.

*Change:* None.

*Comments:* A few commenters requested that we provide guidance on how to implement the requirements of proposed § 463.21 in single State areas. Some commenters suggested that the Department would need to consider flexible options that respond to States where regional consortia or workforce advisory groups perform some of the duties of Local WDBs. Other

commenters suggested that State workforce development boards should be required to review preliminary decisions by the eligible State agency before funds are awarded and that this could be accomplished by State workforce development board representation on grant review committees.

We also received comments expressing concerns over the Local WDB's ability to avoid conflicts of interest and remain impartial in the conduct of the review of eligible providers' applications for alignment with local workforce development plans. To avoid such conflicts of interest at the local level, one commenter suggested that the final rule require that the State workforce board has a right to review eligible providers' applications prior to the State eligible agency issuing awards.

*Discussion:* Final § 463.21 recognizes the diversity among States, including single State areas, and provides flexibility in how a State establishes a process to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with the local plan under section 108 of WIOA. WIOA does not, however, allow the Department to consider options that would have the effect of replacing local WDB review and recommendations with those from an alternate body or group. Additionally, AEFLA authorizes the eligible agency to award grants and contracts for adult education and literacy activities. In doing so, the eligible agency must consider a set of factors in the award of those grants or contracts, which include the degree to which the eligible provider would be responsive to the regional needs identified in the local plan. Section 463.21 describes how the eligible agency establishes a process for local WDB review in the grant or contract competition and considers the results of the review in its funding decisions. An additional requirement for the local WDB or State Workforce Development Board to review preliminary funding decisions by the eligible agency would diminish the authority of the eligible agency provided in statute. An eligible agency, however, has the flexibility to determine its application review process consistent with title II requirements, including determining how grant or contract applications are reviewed and providing safeguard measures to facilitate objective review and avoid conflicts of interest.

*Change:* None.

*Comments:* Two commenters expressed a concern that proposed

§ 463.21 would enable Local WDBs to determine which eligible providers would have the opportunity to submit applications to the State eligible agency or which applications the State eligible agency could fund.

Some commenters expressed concerns regarding expertise of the local WDB in adult education, and questioned its ability to adequately review eligible providers' applications. One of these commenters suggested that independent adult education experts be invited to assist Local WDBs in conducting their reviews of eligible providers' applications. The commenter suggested that we expand the proposed rule text to explicitly encourage this practice.

*Discussion:* We agree with commenters' concerns that local WDB reviews do not diminish the authority provided in AEFLA of the eligible agency to make funding determinations based on a variety of requirements contained in § 463.20. The purpose of the local WDB review of an eligible provider application is to determine whether such plans are consistent with the local plan under section 108 of WIOA and to make recommendations to the eligible agency to promote alignment with such a plan. The eligible agency must consider the results of the review along with other statutory considerations in making funding decisions. The Department believes that only appointed local WDB members who do not have a conflict of interest as defined in section 107(h) of WIOA are allowed to participate in the review of an eligible provider application. The rule does not preclude the local WDB from offering training to board members by adult education experts prior to participating in the review process and, therefore, a change to the regulations is not necessary.

*Change:* None.

*§ 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. An eligible provider must provide the information and assurances required by the eligible agency. The eligible provider must also describe how it will: Spend funds consistent with the requirements of AEFLA; provide services in alignment with the local plan required under section 108 of WIOA, including promotion of concurrent enrollment with title I services; fulfill one-stop partner responsibilities; meet adjusted levels of performance based on the newly-established primary indicators of

performance in section 116(b)(2)(A)(i) of WIOA and collect data to report on performance indicators; and provide services to meet the needs of eligible individuals. Eligible providers must also describe any cooperative arrangements that they have with other entities for the delivery of adult education and literacy activities and provide other information that addresses the 13 considerations outlined in § 463.20.

*Comments:* Regarding proposed § 463.22(a)(3), one commenter suggested that the description of providing services in alignment with local workforce plans, including promotion of concurrent enrollment with title I services should include specific reference to concurrent or co-enrollment, as we defined these terms in proposed § 463.3, that is concurrent or co-enrollment as enrollment in two or more WIOA core programs.

*Discussion:* We agree with the commenter that the definition of concurrent enrollment contained in § 463.3 should also be applied to sections other than subpart F.

*Change:* We have revised the proposed definition to remove the limitation that it applies only to this subpart F.

*Comments:* Regarding proposed § 463.22(a)(4), several commenters expressed concern about eligible providers' ability to meet this requirement before data on the new WIOA performance indicators becomes available. One commenter suggested that the Department amend proposed § 463.22(a)(4) to enable eligible providers to describe how they will meet additional performance indicators related to self-sufficiency and family literacy.

*Discussion:* We understand the commenters' concerns about the availability of data for the primary indicators of performance. We recognize that data on all indicators will not be available until after eligible agencies are required to conduct competitions under subpart C. However, the requirement in § 463.22(a)(4) is to provide a description of how the eligible provider will meet the State's adjusted levels of performance rather than to demonstrate that it has met the State's adjusted levels of performance. Additionally, the Department issued Program Memorandum OCTAE 16-02, Establishing Expected Levels of Performance and Negotiating Adjusted Levels of Performance for Program Year (PY) 2016-17 and 2017-18. In this guidance we note that the Department is using transition authority under section 503(a) of WIOA to establish a phased-in approach of negotiating and setting

levels of performance for the first two program years of the initial four-year Unified or Combined State Plan. For PYs 2016-17 and 2017-18, the Department will negotiate adjusted levels of performance with States for one indicator for the AEFLA program—the measurable skill gain indicator. The Department will collect baseline data for the other five primary performance indicators during this period.

We are unable to add language to § 463.22(a)(4) that would establish additional indicators of performance because the primary indicators of performance are specified in section 116 of WIOA. A State may identify additional indicators of performance in the State plan, but these additional indicators are not subject to negotiation with the Department. In cases where a State has identified additional indicators of performance in its State plan, section 232 of the Act provides the State with the flexibility to include in its application for funds a requirement for eligible providers to describe how they will meet such additional performance indicators.

*Change:* None.

*Comments:* Regarding proposed § 463.22(a)(5)(i), one commenter questioned what we meant by providing access through the one-stop delivery system to adult education and literacy activities. This commenter stated that in areas where adult education providers and one-stop operators had minimal interactions under WIA, such providers will need time to establish the kind of working relationships now explicitly required under WIOA. The commenter expressed the hope that the Department would acknowledge that such a transformation would require a period of transition.

*Discussion:* We appreciate the commenter's concerns about the time needed to transform relationships among partner programs in the one-stop delivery system and recognize the need for technical assistance and guidance as the workforce system implements expanded partnership requirements. The Department is committed to providing on-going assistance to States in achieving a vision of increased access to high-quality services through the one-stop delivery system.

*Change:* None.

*Comments:* Regarding proposed § 463.22(a)(5)(ii), one commenter suggested that the regulations provide best practice strategies for title II eligible providers to use a portion of funds under WIOA to maintain the one-stop delivery system. This commenter suggested that examples of these best practices might include co-location, co-

enrollment, and delivery of digital literacy and distance learning programming for one-stop customers.

*Discussion:* We agree with the commenter's suggestion that best practice strategies would be helpful to States as they implement one-stop provisions. However, we disagree that these regulations are the appropriate place for providing such best practices. The Department will assist in making best practices and examples available through technical assistance.

*Change:* None.

*Comments:* Three commenters suggested that we redesignate § 463.22(a)(10) to § 463.22(a)(11) and insert the following for § 463.22(a)(10): how the eligible agency, either directly or in partnership or coordination with other agencies, institutions, or organizations, will provide for the delivery of adult education and literacy services across multiple platforms, such as television, internet based, and place based.

*Discussion:* We appreciate the commenter's suggestions to emphasize partnerships that provide adult education and literacy services across multiple platforms. We agree that such partnerships have the potential of enhancing access to these services and remain committed to improving access to services. However, based on the requirements of section 232 of WIOA, § 463.22 contains items that are statutorily required to be in an eligible provider's application for a grant or contract, including information that the eligible agency may require. The Department cannot require additional items.

*Change:* None.

#### *§ 463.23 Who is eligible to apply for a grant or contract for 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, as well as the 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. Proposed § 463.24 further permits other organization types, even if not specifically listed, to apply as eligible providers if they meet the demonstrated effectiveness requirement.

*Comments:* A few commenters suggested that we expand the list of potential eligible providers in proposed § 463.23. Some of these commenters stated that public television stations have demonstrated a commitment and ability to provide necessary and relevant

adult education services and suggested that we expand the list in proposed § 463.23 to include public television stations as potential eligible providers of adult education and literacy services. One commenter suggested that we might better assist States' efforts to develop employer-driven workforce development systems by expanding the list in proposed § 463.23 to include employers. Another commenter suggested that we add non-profit labor unions to the list as well.

*Discussion:* We appreciate the suggestions to add to the list of potential eligible providers. We believe the statutory language is flexible enough to cover other non-profit organizations and entities, such as those identified by commenters, and that it is therefore unnecessary to identify additional, specific organizations or entities.

*Change:* None.

**§ 463.24 How must 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 title II of WIOA, as well as an organization not previously funded under title II of WIOA, 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.

*Comments:* Multiple commenters expressed support for the requirement to use past performance data to establish demonstrated effectiveness. Several of these commenters also suggested that we add a requirement to specify past performance data with particular subpopulations, for example learning disabled adults or English language learners. One of these commenters suggested that the final regulations allow for special consideration of eligible providers that have worked with adults having the lowest levels of educational attainment. A few commenters suggested that the Department issue non-regulatory guidance to assist States and potential eligible providers in better understanding what specific types of data may be used to meet the requirements in proposed § 463.24.

*Discussion:* We appreciate the commenters' support for using past performance data to establish demonstrated effectiveness. We note that in the NPRM, we specified data on past performance in improving the skills of eligible individuals, as defined in section 203(4) of WIOA, which includes

individuals who are basic skills deficient, individuals who do not have a secondary school diploma or its recognized equivalent, and English language learners. We also included the requirement to pay particular attention to past effectiveness in serving eligible individuals who have low levels of literacy. We also note that the final rule does not preclude a State from also considering other subpopulations that may have been identified in the State's unified or combined plan. We believe that any further delimitation of the types of individuals served in the past might limit States' flexibility to respond to emerging needs within a State, regional or local economy. Additionally, creating special consideration for certain eligible providers would violate the requirement in the Act that eligible providers have direct and equitable access to apply for funds. As in the past, the Department expects to provide training and technical assistance to eligible agencies.

*Change:* None.

*Comments:* Many commenters supportive of proposed § 463.24 were also concerned about the lack of past performance data on WIOA performance accountability indicators during the initial years of WIOA implementation. These commenters suggested that we revise § 463.24 to enable eligible providers to establish that they have demonstrated effectiveness using applicable performance measures from the most recent reporting period.

*Discussion:* We recognize concerns about the availability of performance data under WIOA in the initial years of WIOA implementation and acknowledge that full performance data on WIOA primary indicators of performance may not be available when eligible providers are making initial applications for funding. However, we believe that § 463.24 provides an alternative for applicants that may not have WIOA primary indicators of performance data available. The regulations allow any eligible provider that has never been funded under title II of WIOA, which would include all eligible providers during the initial years of WIOA, to provide performance data to demonstrate its effectiveness in serving basic skills deficient eligible individuals, including data demonstrating a record of success on outcomes related to improving the skills of eligible individuals, particularly eligible individuals who have low levels of literacy, in the content domains of reading, writing, mathematics, English language acquisition, and other subject areas relevant to the services contained in the State's application for funds.

*Change:* We have revised § 463.24 to clarify that an eligible provider that has not been previously funded under title II of WIOA may demonstrate effectiveness by providing performance data related to its record of improving the skills of eligible individuals, particularly eligible individuals who have low levels of literacy, in the content domains of reading, writing, mathematics, English language acquisition, and other subject areas relevant to the services contained in the State's application for funds.

*Comments:* One commenter suggested that we revise proposed § 463.24 to require three years of past performance data and that we include past data on student persistence as well. The commenter suggested that we consider using an eligible provider's post-test rate as an indicator of student persistence. Another commenter supportive of eligible providers using past performance data to establish that they have demonstrated effectiveness suggested that we also include a requirement to provide data on co-enrollment in other core programs as well as postsecondary career and technical education.

*Discussion:* We appreciate the commenters' recommendations to include additional requirements in § 463.24 to be used in determining demonstrated effectiveness. However, we believe the proposed regulation provides reliable data on participant outcomes that are reflective of program effectiveness. The requirement to provide three years of data and inclusion of additional factors would limit flexibility for States and eligible providers.

*Change:* None.

*Comments:* One commenter suggested that we expand proposed § 463.24 to include § 463.24(d), which would state that the title II eligible State agency is responsible for defining how both current and new applicants are evaluated in the grant competitions when determining demonstrated effectiveness.

*Discussion:* We agree with comments that recognize that the eligible agency for title II is responsible for determining if an applicant is of demonstrated effectiveness. Section 463.20 makes clear that the eligible agency is responsible for awarding grants and contracts to eligible providers within the State or outlying area to provide adult education and literacy activities and the processes it must follow in doing so. We believe the rule is clear and that no further clarification is necessary.

*Change:* None.

*Comments:* Two commenters expressed concerns regarding the requirement in proposed § 463.24 for eligible providers to establish that they have demonstrated effectiveness based upon past performance data. These commenters felt that this requirement limited potential eligible providers to organizations with past experience providing adult education and literacy services. These commenters felt that proposed § 463.24 did not provide eligible providers the opportunity to demonstrate capacity for effectiveness.

One of these commenters stated that proposed § 463.24 limited a State's ability to cultivate or develop new eligible providers of adult education and literacy services. According to this commenter, the requirement in proposed § 463.24 that an eligible provider establish that it has demonstrated effectiveness based upon its past performance data did not allow for States to consider new providers with qualified staff but no past performance data. The commenter suggested that there may be circumstances in which States may want the flexibility to consider the past performance data of individual members of an eligible provider's proposed staff rather than the organization as a whole.

Another commenter stated employers, in particular, as potential eligible providers might have a difficult time meeting the past performance data requirements set forth in proposed § 463.24 and suggested we consider the postsecondary education practice of establishing demonstrated capacity to provide effective education and occupational training services.

One commenter suggested that we revise proposed § 463.24 to allow flexibility for equivalent past performance data with similar subpopulations and institute a provisional year for funding eligible providers able to present adequate equivalent past performance data until more relevant past performance data on actual adult education and literacy services with particular subpopulations becomes available.

*Discussion:* We agree with commenters who expressed concern that the requirement to demonstrate past effectiveness should not limit qualified eligible providers from competing for grants and contracts to provide adult education and literacy services. The regulation establishes uniformity for how past effectiveness is determined so that all eligible providers are treated fairly in the grant competition. Section 463.24 provides an opportunity for an eligible provider who does not have

performance data as defined in the Act to demonstrate past effectiveness by providing data that demonstrates it has been previously effective in serving basic skills deficient eligible individuals. This data may demonstrate past effectiveness in improving reading, writing, mathematics, English language acquisition and other subject areas relevant to services contained in the State's application for funds. We believe this provides flexibility for how an applicant may meet the statutory requirement for having demonstrated effectiveness. In regard to recommendations made to require demonstrated effectiveness related to specific subpopulations, we believe the provision in § 463.24 for an application to demonstrate effectiveness in subject areas relevant to the State's application allows the State the flexibility to garner such information, as appropriate. We are not able to substitute "establishing demonstrated capacity to provide effective educational and occupational training services" or to substitute past effectiveness of staff since such a change would not meet the Act's requirement for demonstrated effectiveness. Additionally, we do not believe that instituting a provisional year for eligible providers to gather data meets the Act's requirement for demonstrated effectiveness based upon past performance.

*Change:* None.

*Comments:* One commenter questioned the clarity of proposed § 463.24 and suggested that we make clear that proposed § 463.24(b) and (c) are intended to specify means by which eligible providers might meet the requirements in § 463.24(a), and are not additional data submission requirements.

*Discussion:* We agree that § 463.24(b) and (c) are not intended to result in additional data submission requirements, but rather that the eligible agency must make a means available in the application process for eligible providers to present such data in the application for a grant or contract.

*Change:* We have revised § 463.24 to more clearly indicate that proposed § 463.24(b) and (c) are two ways in which eligible providers might meet the requirements in § 463.24(a).

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

*Comments:* None.

*Discussion:* As part of the formal clearance process, we identified a need to clarify § 463.25 to better align with the final joint regulations.

*Change:* We revised § 463.25 to clarify that the eligible agency may increase the amount that can be spent on local administration in cases where the cost limits are too restrictive to allow for specified activities.

*§ 463.26 What activities are considered local administrative costs?*

*Comments:* One commenter expressed support for proposed § 463.26. The remainder of the comments that we received regarding proposed § 463.26 focused specifically on § 463.26(e). While commenters supported the use of administrative rather than program funds, these commenters also expressed concern regarding the adequacy of the available local administrative funds to cover AEFLA program administration costs and the provisions of proposed § 463.26(e)—*i.e.*, carrying out the one-stop partner responsibilities described in the proposed joint regulations about one-stop partner responsibilities including contributing to the infrastructure costs of the one-stop delivery system. Some commenters suggested limiting the amount of local administrative funds that could be used for carrying out the partner responsibilities described in § 678.420 including contributing to the infrastructure costs of the one-stop delivery system to not more than 1.5 percent of an eligible provider's total AEFLA funding. One commenter suggested that the cap on administrative funds be raised in order to meet the requirements of proposed § 463.26(e). Another commenter suggested that additional guidance on contributions to the infrastructure costs of the one-stop delivery system was needed.

*Discussion:* We acknowledge the concern expressed by some commenters regarding the adequacy of funds available to cover local administrative costs, particularly as it relates to carrying out one-stop partner responsibilities. The proposed joint regulation describing the local funding mechanism for one-stop infrastructure costs reiterates that the amount of local administrative funds that may be used for one-stop infrastructure costs must be based on proportionate use of the one-stop delivery system and relative benefit received. Additionally, as stated in § 463.25, in cases where the eligible provider believes the 5 percent limitation on administrative costs is too restrictive to allow for administrative activities, including the partner responsibilities to support the one-stop delivery system, the eligible provider may negotiate with the eligible agency to determine an adequate level of funds

to support non-instructional activities. We conclude, therefore, that § 463.25 gives eligible providers adequate flexibility to address the commenters' concerns.

We appreciate the commenter's request for guidance on contributions to the infrastructure costs of the one-stop delivery system. We are working with our partners at the U.S. Department of Labor to develop joint guidance and technical assistance to states on the implementation of the infrastructure cost provisions.

*Change:* None.

#### **Subpart D—What are adult education and literacy activities?**

##### *§ 463.31 What is an English language acquisition program?*

Proposed § 463.31 restates the statutory requirement in section 203(6) of WIOA that an English language acquisition program under the Act be designed to help English language learners achieve competence in reading, writing, speaking, and comprehension of the English language. It also clarifies a new requirement under WIOA that the program must lead to the attainment of a secondary school diploma or its recognized equivalent, and transition to postsecondary education or training, or lead to employment.

*Comments:* Multiple commenters expressed support for the statutory requirement (restated in proposed § 463.31(b)) that an English language acquisition program must lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training, or employment. These commenters stated that this requirement would support successful implementation of career pathways programs. Other commenters stated that this new requirement seemed to contradict the retention of family literacy activities as an express purpose under the Act. These commenters stated that eligible providers funded under the Act provide English language acquisition services to English language learners whose primary reason for participating is to support the educational development of their children, and who may not have immediate goals related to employment or postsecondary education. Commenters suggested that we revise proposed § 463.31(b) such that the program of instruction must lead to documented improvement in literacy levels for the purposes of family literacy, or the attainment of a secondary school diploma or its recognized equivalent and transition to

postsecondary education or training, or lead to employment.

*Discussion:* We appreciate the support of commenters who stated that the new statutory requirement for an English language acquisition program to lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training, or employment, supports the successful implementation of career pathways programs. We do not agree that this new requirement contradicts the retention of family literacy as an adult education and literacy activity under the Act. We acknowledge that students participate in adult education and literacy activities—including family literacy and English language acquisition—for a variety of reasons, not all of which are related to credential attainment, a transition to postsecondary education, or employment. However, we do not believe that the statutory requirement that the English language acquisition program must lead to attainment of a secondary school diploma or its recognized equivalent, transition to postsecondary education and training, or employment, precludes serving eligible individuals whose primary motivation for participating in the program is to support the educational development of their children. Moreover, § 463.1(b) clarifies the appropriateness of serving such eligible individuals. We believe that it is clear that English language acquisition programs should not discourage or exclude eligible individuals from participation, regardless of whether they are seeking a secondary school diploma or its recognized equivalent, or transition to postsecondary education or training or employment. We do not believe that we have the authority to expand the statutory requirement by adding a family literacy-specific requirement for English language acquisition programs to the final regulations. We also note that through the measurable skill gains performance indicator, documented improvements in literacy levels are already inherently a part of all adult education and literacy activities reported in the NRS.

*Change:* None.

*Comments:* A few commenters interpreted proposed § 463.31(b) to mean that adult English language learners are expected to attain a secondary school diploma or its recognized equivalent and transition to postsecondary education or training, or obtain employment within a program year. These commenters expressed concerns regarding the feasibility of such an expectation and noted that it

was inconsistent with the Act's intent to serve eligible individuals who are basic skills deficient. One of these commenters expressed a concern that the perception that participants were meant to achieve the outcomes in proposed § 463.31(b) within a program year might result in lower-skilled individuals not being served. This commenter suggested that the Department provide guidance on how eligible providers can provide English language acquisition services to lower-skilled learners in accordance with the requirements of proposed § 463.31.

*Discussion:* We appreciate the commenters' concerns for continuing to serve all levels of English language learners, including lower-skilled individuals and individuals who are basic skills deficient. We agree that continuing to serve these English language learners is consistent with the intent of the Act. We believe that this is reinforced in § 463.20(d)(1) and (d)(2) through the considerations that eligible agencies must take into account in awarding grants and contracts to eligible providers. We also believe the flexibility that we provide English language acquisition programs in § 463.32 to meet the requirement in § 463.31(b) further supports eligible providers' ability to serve English language learners at all levels, including lower-skilled individuals and individuals who are basic skills deficient.

*Change:* None.

*Comments:* Numerous commenters expressed concerns that some English language learners already have secondary (and, sometimes postsecondary) credentials from their native countries, while others are already employed upon enrollment in English language acquisition activities. Thus, such individuals may not be seeking English language acquisition services for reasons related to the attainment of a secondary school diploma (or its recognized equivalent), transition to postsecondary education and training, or employment, and, therefore, would not be eligible to participate in English language acquisition activities. These commenters suggested that we delete the phrase "that leads to" in § 463.31(b) and substitute in its place the phrase "that provides opportunities that include but are not limited to." Several of these commenters also requested that we provide additional guidance on how English language learners with secondary or postsecondary credentials from their own country might be served in an English language acquisition program under WIOA.

*Discussion:* We appreciate the commenters' concerns for continuing to serve all levels of English language learners including professionals with degrees and credentials from their native countries. As stated earlier, we do not believe that the statutory requirement that the English language acquisition program must lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or employment precludes serving eligible individuals whose primary motivation for participating in the program is other than credential attainment or employment-related. Section 463.31(a) states clearly that an English language acquisition program is a program of instruction designed to help English language learners achieve competence in reading, writing, speaking, and comprehension of the English language. We do not believe that the program design requirements set forth in § 463.31(b) are intended to limit services to particular types of students with particular goals or reasons for participating. We believe that any eligible individual who is an English language learner, as defined in section 203(7) of WIOA, can be served by an English language acquisition program and should not be dissuaded from participation in such programs. Additionally, eligible agencies and eligible providers may want to consider which adult education and literacy activities—e.g., English language acquisition or integrated English literacy and civics education—best meet the needs of particular English language learners and, to the extent possible, match services available to students' needs.

*Change:* None.

*Comments:* One commenter expressed support for what the commenter described as the renaming of ESL (English as a Second Language) to ELA (English Language Acquisition). Multiple commenters expressed a concern over potential confusion that might arise in adopting the acronym ELA to represent English language acquisition. According to these commenters, the acronym ELA is already widely used in education to represent English language arts. Other commenters requested that we allow States to choose to continue using extant nomenclature for English language acquisition activities. According to this commenter, States should continue to be able to refer to these services as English as a Second Language (ESL) or English for Speakers of Other Languages (ESOL) consistent

with past practice within a particular State.

*Discussion:* We appreciate the commenters' concern for clarity and for proactively avoiding any possible confusion. We note that in proposed § 463.31 we restated terminology that is in the Act. We did not propose using any particular acronym to describe services for English language learners. We agree that States should continue to be able to refer to services in a manner that is most appropriate to the particular circumstances within a State as long as the program or services meet the Act's definition of English language acquisition. We also note that we will continue to use language that is consistent with that used in the Act.

*Change:* None.

*§ 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 employment?*

Proposed § 463.32 seeks to establish how an English language acquisition program must meet the new requirement that it lead to secondary school completion (attainment of a diploma or its recognized equivalent) and transition to postsecondary education and training or employment. Section 463.32 proposes that a program may satisfy the requirement by using rigorous and challenging adult education standards that meet the requirements in the Unified or Combined State Plan, providing supportive services that assist an individual to 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 invited public input on these proposals and requested suggestions regarding other methods that may be used to meet the requirement.

*Comments:* One commenter expressed support for proposed § 463.32, stating that it allows title II providers the necessary flexibility to enable English language acquisition programs to be part of career pathways.

*Discussion:* We appreciate the commenter's support and agree that § 463.32 allows eligible providers flexibility to enable English language acquisition programs to be part of career pathways.

*Change:* None.

*Comments:* Several commenters stated that proposed § 463.32(a) requires States to have an English Language Acquisition curriculum aligned with State adult education content standards. These commenters expressed concerns that States do not have such a curriculum, and that it might take considerable time and additional resources to develop such a curriculum. One of these commenters noted that some States are precluded by State law from creating such a curriculum. These commenters therefore recommended that this requirement be removed or modified. If we modified the requirement, many of these commenters suggested that we replace the word "curriculum" with the phrase "instruction and instructional materials." One commenter requested that we provide a timeline and expected degree of alignment (as a percentage) required between a curriculum and State adult education standards.

*Discussion:* We appreciate the commenters' concerns regarding the creation of State curricula for English language acquisition programs. In proposing § 463.32(a) we did not intend to require States to have an English language acquisition curriculum aligned to the State's content standards for adult education. It was our intention to propose that implementation of the State's content standards for adult education would be one option for meeting the requirement in § 463.31(b) and that one way to demonstrate implementation of the State's content standards for adult education was through use of an aligned curriculum. The proposed regulation does not require that such a curriculum be a State curriculum. Rather, it requires that a curriculum be aligned with the State adult education content standards. This would allow flexibility for a curriculum to be a local curriculum as long as it is aligned with the State content standards.

*Change:* We have revised § 463.32(a) to clarify that a State or local curriculum, lesson plans, or instructional materials, if aligned with State adult education content standards, may demonstrate that an English language acquisition program is implementing the State's content standards for adult education.

*Comments:* Regarding proposed § 463.32(b), numerous commenters expressed concerns regarding our use of the term "supportive services." Commenters noted that supportive services are defined in section 3(59) of the Act. Commenters stated that few adult education programs had sufficient

funds to provide such services using title II funds. Commenters suggested that we revise proposed § 463.32(b) to read as follows: Offer case management or educational and career counseling services that enable an eligible individual to access support in order to attain a secondary school diploma or its equivalent and transition to postsecondary education or employment. One commenter supported our use of the term supportive services as defined in WIOA stating that such services are often necessary to support students' attainment of a secondary credential and transition to postsecondary education and training.

*Discussion:* We appreciate commenters' concerns regarding the use of limited title II funds to provide supportive services. In proposing § 463.32(b), we did not intend that eligible providers use title II funds to provide supportive services as defined in section 3(59) of the Act for the purpose of demonstrating that an English language acquisition program leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment. It was our intention that an English language acquisition program could meet the requirement of § 463.31(b) by offering educational and career counseling services that enabled English language learners to transition to further education or employment. While we agree with the commenter who stated that supportive services are often necessary to support students' attainment of a secondary credential and transition to postsecondary education and training, we do not believe that supportive services, as that term is defined in section 3(59) of the Act, is an appropriate method to meet the intent of § 463.32 or an appropriate use of AEFLA funds. We encourage eligible providers to collaborate with other required partners in the local workforce development area to provide participants access to appropriate supportive services.

*Change:* We have revised § 463.32(b) to more clearly state our intent for how eligible providers might demonstrate that an English language acquisition program is meeting the requirement of § 463.31(b) by offering educational and career counseling services that enable English language learners to transition to further education or employment.

*Comments:* Regarding proposed § 463.32(c), several commenters suggested that we provide non-regulatory guidance on how English language acquisition services for lower

level students can be part of a career pathway. Multiple commenters suggested that we elaborate on the language in proposed § 463.32(c) to read as follows: Be part of a career pathway that includes at lower levels career-infused provisions including infusing contextualizing instructions around high demand job clusters in the area, integrating work readiness skills and integrating career awareness and planning. One commenter suggested that we add a definition of career pathways that includes an emphasis on pathways to jobs with family-sustaining wages to the regulations. Other commenters requested that we clarify whether the term career pathways as applied under proposed § 463.32(c) requires coordination with career pathways being implemented by Local WDBs pursuant to section 107(d)(5) of WIOA.

*Discussion:* We appreciate the commenters' desire to understand how English language acquisition programs serving lower-skilled English language learners can be part of a career pathway. We have historically provided substantive and on-going technical assistance on how adult education programs serving lower-skilled learners can be designed to provide on-ramps and bridges to career pathways. We urge commenters to consult these resources available through the Literacy Information and Communication System (LINC) at <http://lincs.ed.gov/>. While we agree that rephrasing § 463.32(c), as proposed by some commenters, is one way to describe how an English language acquisition program might be part of a career pathway, we do not agree that it is, or should be, the only way. We believe that the statutory definition of career pathways is adequate for English language acquisition programs that opt for § 463.32(c) as a means to meet the requirement that the program lead to secondary school completion (attainment of a secondary school diploma or recognized equivalent) and transition to postsecondary education and training or lead to employment. We encourage English language acquisition programs using this option to coordinate, as appropriate, with career pathways being implemented by Local WDBs pursuant to Section 107(d)(5) of WIOA.

*Change:* None.

*Comments:* One commenter stated that proposed § 463.32(a), (b), and (c) are all necessary to support low-skilled adults' advancement along career pathways and suggested that we revise the regulation to make them all required. Several other commenters

suggested that the regulation should be revised such that all programs are required to demonstrate that they meet proposed § 463.32(a) as well as either proposed § 463.32(b) or (c). Other commenters encouraged the Department to maintain maximum flexibility in how English language acquisition programs might meet the statutory requirement that the program leads to attainment of a secondary school diploma or equivalent and transition to postsecondary education and training or leads to employment.

*Discussion:* We agree with commenters that proposed § 463.32(a), (b), and (c) are all important to support low-skilled adults' advancement along career pathways. We also note that States' English language acquisition programs are diverse and have varying levels of programmatic capacity. While larger, better-resourced programs might be able to meet all three requirements proposed in § 463.32, other programs that also contribute to adults' advancement along a career pathway might not be able to meet all three requirements. We therefore agree with those commenters that urged us to maintain maximum flexibility in how English language acquisition programs might meet AEFLA's 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.

*Change:* None.

*Comments:* One commenter suggested that we add an additional provision to allow programs to meet the requirement by offering health, financial, and general literacy to promote self-sufficiency.

*Discussion:* We appreciate the commenter's response to our request for alternatives to the three options we proposed. We also agree with the commenter that the topics of health, financial, and general literacy to promote self-sufficiency are important for adult English language learners to master. However, we do not believe that mastery of these topics alone necessarily leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment, as AEFLA requires.

*Change:* None.

*Comments:* Another commenter expressed support for proposed § 463.32 and suggested that we add the additional provision for how an English language acquisition program might meet the requirement that the program lead to the attainment of a secondary school diploma or its recognized

equivalent and transition to postsecondary education and training or lead to employment. This commenter suggested that all English language acquisition programs offered by postsecondary institutions that articulate to other postsecondary programs offered at the respective institutions be considered as meeting the requirement.

*Discussion:* We appreciate the commenter's response to our request for alternatives to the three options we proposed. We also note that intra-institutional articulation of courses is an important step in the development of career pathways. However, we further note that intra-institutional articulation among courses does not necessarily always result in career pathways as defined in section 3(7) of the Act. Providing this option, then, could result in a particular subset of adult English language acquisition eligible providers being able to meet the requirement of § 463.31(b) by using a lower standard than other types of eligible providers. We believe that English language acquisition programs offered by postsecondary institutions may meet the requirement in § 463.31(b) using one or more of the three options we originally proposed.

*Change:* None.

#### § 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 acts, rather than through title II of WIA. These services are integrated English literacy and civics education services, which WIOA defines in section 203(12) 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 AEFLA's statutory language pertaining to integrated English literacy and civics education services.

*Comments:* Several commenters expressed support for the definition of English literacy and civics education services. Many of these same commenters expressed confusion over the distinction between integrated English literacy and civics education as an adult education and literacy activity in § 463.30 and the Integrated English

Literacy and Civics Education program in subpart G of these regulations.

*Discussion:* We thank commenters for sharing their concerns and appreciate the opportunity to clarify two distinct uses of the term integrated English literacy and civics education within our regulations. Integrated English literacy and civics education is used in two distinct ways in the Act.

First, integrated English literacy and civics education may be provided by an eligible provider as a "required local activity" under section 231(b), in accordance with its grant or contract with the State to provide adult education and literacy activities. An eligible provider that provides integrated English literacy and civics education as a local activity under section 231(b) is not required to provide the services in combination with integrated education and training.

Second, integrated English literacy and civics education must also be implemented as a program under section 243 of the Act with funds allocated as described in section 243. The integrated English literacy and civics education program under section 243 (see subpart G) carries additional requirements beyond those that an eligible provider must meet in implementing integrated English literacy and civics education as a local activity under section 231(b).

Services provided through section 243 (see subpart G) must include education services that enable adult English language learners to achieve competency in the English language and to acquire the basic and more advanced skills needed to function effectively as parents, workers, and citizens in the United States. It 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. Additionally, the section 243 integrated English literacy and civics education program must be provided in combination with integrated education and training activities.

As part of the integrated English literacy and civics education program requirements, each program that receives funding under section 243 must be 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.

*Change:* None.

#### § 463.34 *What are workforce preparation activities?*

Proposed § 463.34 restated 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 skills, 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, the addition of workforce preparation activities under WIOA will now also enable eligible providers to support the development of self-management skills and digital literacy. WIOA 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 added employability skills to the list of competencies described in WIOA to further clarify the definition of workforce preparation.

*Comments:* One commenter questioned the need to use the term workforce preparation activities, stating that such activities were already a de facto part of existing adult basic and adult secondary education. Multiple commenters expressed support for inclusion of workforce preparation activities in the Act and stated that such instructional activities can help promote self-sufficiency and reduce generational poverty.

One commenter expressed support for inclusion of workforce preparation activities among adult education and literacy activities but expressed concern regarding the adequacy of the accountability framework to assess workforce preparation activities. Another commenter suggested that Local WDBs and adult educators work together to achieve a common ground for measuring the workforce preparation skills of individuals exiting core programs.

*Discussion:* We appreciate commenters' overall support for the Act's specific attention to workforce preparation activities as an explicit part of adult education and literacy activities. We acknowledge that the six primary indicators of performance set forth in section 116 of the Act may not appear to explicitly assess workforce preparation activities. However, the



Secretaries of Labor and Education have defined the measurable skill gains indicator to include attainment of an educational functioning level gain. Within the NRS for adult education, educational functioning level descriptors were recently revised to align with rigorous college and career readiness standards, which include much of the knowledge and skills listed under workforce preparation activities. We maintain, therefore, that workforce preparation activities are assessed broadly through the assessment of educational functioning levels. We further note that, given the highly contextualized nature of these activities relative to particular industry sectors and jobs as well as the diversity in State, regional, and local economic conditions, we appreciate one commenter's suggestion that Local WDBs and adult educators work together to achieve a common ground for measuring the workforce preparation skills of individuals exiting core programs. Finally, we note that States have the flexibility to identify additional performance indicators to address this concern.

*Change:* None.

*Comments:* Numerous commenters expressed support for the inclusion of digital literacy skills as part of workforce preparation activities defined in proposed § 463.34 and requested that the regulation require the use of digital literacy standards in providing these services. These commenters suggested the Northstar Digital Literacy Standards as an example.

*Discussion:* We appreciate the commenters' support for inclusion of digital literacy skills as part of workforce preparation activities. We also appreciate commenters' desire to base instruction of these skills on standards. However, we have authority under section 102(b)(2)(D)(ii) of WIOA only to require eligible agencies to align content standards for adult education with State-adopted challenging academic content standards, as adopted under the Elementary and Secondary Education Act, as amended. Beyond this, we do not have authority to require the adoption of, or instruction based on, any specific kind of standards.

*Change:* None.

**§ 463.35** *What is integrated education and training?*

Proposed § 463.35 restated the statutory definition of integrated education and training from section 203(11) of WIOA.

*Comments:* Some commenters asked for clarification as to whether all eligible providers of adult education and

literacy activities are required to provide integrated education and training. One commenter stated that such a requirement might not be efficient depending upon a particular adult education program's size, type, and location. The commenter speculated that it might not be sufficient that adult education programs provide adult education and literacy activities along with workforce preparation activities and refer students, as appropriate, to occupational training programs within the community. Another commenter questioned the appropriateness of integrated education and training for learners at the lowest levels. The commenter stated that integrated education and training should focus on students with an educational functioning level at or above sixth grade equivalency. The commenter further recommended that integrated education and training be focused on students with employment-related goals rather than all students.

*Discussion:* We appreciate commenters sharing their questions and concerns regarding whether or not all eligible providers of adult education and literacy activities are required to provide integrated education and training. We note that proposed § 463.35 merely restated AEFLA's definition of integrated education and training, which does not require all eligible providers to provide integrated education and training. Section 203(2) of the Act lists the programs, activities, and services that are allowable adult education and literacy activities. Integrated education and training is only one activity of several listed. We point out, however, that eligible agencies receiving funds provided under section 243 of the Act through the integrated English literacy and civics education program are required to provide integrated English literacy and civics education in combination with integrated education and training activities (see § 463.70(c)). Consistent with the purpose as stated in section 202 of the Act, these regulations provide eligible agencies and eligible providers the flexibility to respond to diverse adult education needs particular to State, regional, and local circumstances.

*Change:* None.

*Comments:* One commenter inquired if young adults with disabilities who are no longer eligible for special education might qualify for integrated education and training services as described in proposed § 463.35.

*Discussion:* We appreciate the commenter's question. Section 203(4) of the Act defines eligible individuals. Individuals who meet the stipulations

set forth in section 203(4) of the Act, regardless of disability status, qualify for adult education and literacy services, including integrated education and training services as described in § 463.35.

*Change:* None.

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

Proposed § 463.36 described 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 explained in § 463.30 and § 463.34, respectively. Proposed § 463.36 further clarified the third remaining component, the workforce training component, by referencing section 134(c)(3)(D) of the Act, which identifies the activities that constitute training within the employment and training services authorized by title I–B of WIOA.

*Comments:* One commenter agreed that the three required components in proposed § 463.36 were essential and recommended that we add two additional requirements—supportive services and integration with job placement services and other functions of the local workforce development system. According to this commenter, supportive services and integration with job placement services and other functions of the local workforce development system are also essential to supporting students' successful completion of integrated education and training and subsequent employment.

*Discussion:* We appreciate the commenter's support for the proposed three required components of integrated education and training. We also acknowledge the importance of supportive services (see our discussion regarding § 463.32(b) above) and job placement services in supporting eligible individuals' educational and career advancement. However, we do not believe that WIOA provides us with the authority to add additional requirements for integrated education and training programs. We note that in § 463.38 (see below) we establish that an integrated education and training program meets the requirement that it is for educational and career advancement in part by being part of a career pathway. We believe the requirement that integrated education and training programs funded under title II be part of

a career pathway will help ensure that integrated training and education program participants can access appropriate supportive and job placement services.

*Change:* None.

*Comments:* One commenter suggested that for lower level learners we revise the three required components in proposed § 463.36 by substituting § 463.36(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, for career awareness. Another commenter suggested that for lower level students we require only § 463.36(a), adult education and literacy activities, and § 463.36(b), workforce preparation activities.

*Discussion:* We appreciate the commenters' concerns for adequately addressing the education and employment needs of lower-skilled adults. We also agree that it is important to provide learners at all levels with career awareness services. We note that section 203(12) of the Act requires that integrated education and training include "workforce training for a specific occupation or occupational cluster." We do not believe that general career awareness activities alone constitute workforce training as described in section 203(12).

Additionally, as we noted in our discussion in § 463.35, above, we do not anticipate that all eligible individuals served by an eligible provider will immediately be ready for or need integrated education and training. Some eligible individuals—depending upon local economic conditions or individual characteristics—may be best served first through other adult education and literacy activities prior to, and in preparation for, subsequent enrollment in an integrated education and training program. Again, we believe that eligible agencies and eligible providers need maximum flexibility to determine how to best address the needs and goals for job seekers and employers identified in the State and local workforce development plans.

*Change:* None.

*Comments:* One commenter expressed support for the flexibility to use title II funds for workforce training for a specific occupation or occupational cluster for the purpose of educational and career advancement. Another commenter suggested that title II providers should partner with title I providers whenever possible to ensure efficiency and avoid duplication of services. Numerous other commenters suggested that the occupational training

component of integrated education and training be funded with title I funds and that those funds should be exhausted before title II funds were used for that purpose. These commenters suggested that a provision be added to the regulations similar to the limitations of use of AEFLA funds for family literacy services found in section 231(d) of the Act. Additional commenters offered alternative suggestions, including ability to benefit and employer funds that could be used for occupational training costs before title II funds were used. Commenters sharing this view further suggested that if title II funds were to be used to pay for occupational training, the regulations should provide a limit on how much of the funds could be expended on occupational training. One commenter stated that title II funds should not be used for costs associated with occupational training.

*Discussion:* We appreciate commenters' concerns for optimal efficiency in devoting resources to the development and provision of integrated education and training programs. We agree that whenever possible, appropriate WIOA core programs or other appropriate resources should be leveraged to maximize overall efficiency and impact of the publicly funded workforce development system. We acknowledge that reserving title II funds for the provision of adult education and literacy activities, including workforce preparation activities, and utilizing other sources of funding, as appropriate, to provide the workforce training component can extend the availability of much-needed adult education and literacy services. We also agree with commenters who suggested strong partnerships with title I programs and strongly encourage effective co-enrollment strategies between title II and title I training services in order to maximize resources when delivering integrated education and training. We note, however, that the Act does not provide us with the authority to restrict the source of funding for the workforce training component of integrated education and training, nor does it provide us with the authority to limit the amount of funds that can be used for occupational training.

*Change:* None.

*§ 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 sought to establish how the three components of integrated education and training must be

integrated. The proposed regulation required 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 were 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 sought 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.

*Comments:* Numerous commenters expressed support for proposed § 463.37. One commenter expressed support for proposed § 463.37 and noted additionally that adult educators would likely require new and ongoing professional development in order to be able to effectively meet the requirement that the three required components be integrated. Other commenters expressed specific concern over local programs' ability to meet the proposed requirement in rural areas with few occupational training providers. Other commenters expressed support for proposed § 463.37 and encouraged the Department to consider whether it may be appropriate to provide additional guidance to States and eligible providers on appropriate tools for measuring workforce preparation activities and workforce training competencies. These commenters stated that workforce preparation activities and workforce training competencies may be newer curriculum elements for some adult education providers, and it might be valuable to offer resources on how they can best be measured. Another commenter stated that additional guidance and flexibility would be required in order for title II providers to be able to meet the requirements of proposed § 463.37.

*Discussion:* We appreciate commenters' overall support for proposed § 463.37 and agree that for many eligible providers the development, delivery, and assessment of integrated education and training will present both new opportunities and challenges. We appreciate the commenters' suggestions regarding specific types of guidance and

professional development that may be needed to support expansion of high quality integrated education and training. We continue to support an online collection of technical assistance resources, a virtual community of practice, and a number of online courses and Webcasts available through the Literacy Information and Communication System (LINCS) at: <http://lincs.ed.gov/> as well as the Department's online resource for teaching and assessing employability skills available at: <http://cte.ed.gov/employabilityskills/>. As we plan for future guidance and technical assistance efforts, we will consider the commenters' suggestions.

*Change:* None.

*Comments:* Regarding proposed § 463.37(a)(1) that within the overall scope of an integrated education and training program the three required components be instructionally balanced proportionately across the three components, particularly with respect to improving reading, writing, mathematics, and English proficiency of eligible individuals, one commenter questioned the clarity of the phrase "instructionally balanced proportionately" and stated that requiring the three components to be instructionally balanced proportionately would limit States' flexibility to design integrated education and training programs that are responsive to the needs of students, employers, and local economies.

*Discussion:* We appreciate the commenter's concern for maintaining adequate flexibility to design integrated education and training programs that are responsive to the needs of students, employers and, local economies. We note that in proposing § 463.37(a) we stated that § 463.37(a)(1), § 463.37(a)(2), and § 463.37(a)(3) were meant to be considered within the overall scope of an integrated education and training program. We do not, therefore, agree that this limits States' flexibility to design integrated education and training programs that are responsive to the needs of students, employers, and local economies. However, we also recognize that the proposed phrasing of § 463.37(a)(1) may not have adequately stated our intent that all three required components be of sufficient quality and intensity. We note that one of the considerations that an eligible agency must take into account when reviewing eligible providers' applications for grants or contracts to provide adult education and literacy services is sufficient quality and intensity of the services proposed (see § 463.20(d)(5)(i)). In proposing § 463.37(a)(1), it was our

intention to ensure that each of the required components of an integrated education and training program be of sufficient quality and intensity.

*Change:* We have revised § 463.37(a)(1) to more clearly state our intent that within the overall scope of an integrated education and training program, all three required components must be of sufficient quality and intensity and must be based on the most rigorous research available.

*Comments:* Regarding proposed § 463.37(a)(2) that the three required components occur simultaneously, two commenters asked whether providing adult education and literacy activities, workforce preparation activities, and occupational training as distinct, yet linked, activities sufficiently met the requirement for the components to be integrated. Another commenter expressed overall support for proposed § 463.37 and suggested that we emphasize in the final rule that integrated education and training is a career pathways strategy that supports acceleration in accordance with the definition of career pathways in section 3(7)(E) of the Act. The commenter suggested, therefore, that we emphasize that the adult education and literacy activities, workforce preparation activities, and occupational training should occur simultaneously and not sequentially. One commenter stated that the requirement that the three activities occur simultaneously would limit States' flexibility in designing integrated education and training programs that are responsive to the needs of students and employers.

*Discussion:* We appreciate the commenters' desire for flexibility in the design of integrated education and training programs that are responsive to the needs of both job seekers and employers. We note that section 203(11) of the Act requires that the three components be delivered "concurrently and contextually." We further note that in proposing § 463.37(a) we stated that § 463.37(a)(1), (a)(2), and (a)(3) were meant to be considered *within the overall scope* of an integrated education and training program. We do not, therefore, agree that this limits States' flexibility to design integrated education and training programs that are responsive to the needs of students, employers, and local economies. We agree with the commenter who noted that integrated education and training is part of a career pathways strategy that supports acceleration in accordance with the definition of career pathways in section 3(7)(E) of the Act and, accordingly, that the adult education and literacy activities, workforce

preparation activities, and occupational training should occur simultaneously and not sequentially. We anticipate that as WIOA implementation unfolds, we will be collaborating with eligible agencies and providers to provide additional guidance on particular questions regarding diverse models of integrated education and training.

*Change:* None.

*Comments:* Numerous commenters expressed concerns for programs serving lower level students and students in multi-level classes and the ability of these programs to meet the requirement in proposed § 463.37(a)(3) that the instruction in the three required components use occupationally relevant materials. These commenters suggested that we revise proposed § 463.37(a)(3) to change the words "use occupationally relevant instructional materials" to "use employability relevant instructional materials." The commenters stated that this change would better encompass all students served by adult education programs.

*Discussion:* We appreciate the commenters' concerns for adequately addressing the education and employment needs of lower-skilled adults. We also agree that it is important to provide learners at all levels with opportunities to master employability skills and encourage eligible providers to incorporate workforce preparation activities into all adult education and literacy activities, as appropriate. As we noted in our discussion in § 463.35 above, we do not anticipate that all eligible individuals served by an eligible provider will immediately be ready for or need integrated education and training. It may be that some eligible individuals—depending upon local economic conditions or individual characteristics—are best served by first providing other adult education and literacy activities prior to, and in preparation for, subsequent enrollment in an integrated education and training program. For those eligible individuals who need, and are ready for, integrated education and training services, we believe it necessary to use occupationally relevant instructional materials, as appropriate, across the three required components of the integrated education and training program. We note that section 203(12) of the Act requires that integrated education and training include "workforce training for a specific occupation or occupational cluster." We do not believe that substituting general employability instructional materials for occupationally relevant instructional materials would be consistent with the statutory requirement.

*Change:* None.

*Comments:* One commenter suggested that we add an additional requirement that adult education programs providing integrated education and training must have components that are integrated by coordinating with one or more industry partnerships that will be established by the local WDB. The commenter stated that working with industry partnerships would support the development of relevant curricula, contextualization of programming, and the creation of work-based learning opportunities that support the integration of the three required components. The commenter asserted that such partnerships are critical to the building of a strong career pathway for program participants.

*Discussion:* We agree with the commenter that the quality and relevance of integrated education and training programs can be enhanced by coordinating with one or more industry partnerships to be established by Local WDBs. We agree that working with industry partnerships can support the development of relevant curricula, contextualization of programming, and the creation of work-based learning opportunities. We also believe that such coordination can be a strategy for ensuring high quality occupationally relevant instructional materials. And we agree that such partnerships are critical to the building of a strong career pathway for program participants and we encourage all eligible providers to coordinate, as appropriate, with industry partnerships. However, we do not agree that such partnerships necessarily result in the integration of the three required components of an integrated education and training program.

*Change:* None.

**§ 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, we required the educational component of a program to be aligned with the State’s content standards for adult education as described in the State’s Unified or Combined State Plan and that the program be part of a career pathway as defined in section 3(7) of WIOA, in order to meet the WIOA requirement that the integrated education and training program be for the purpose of educational and career advancement. 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.

*Comments:* Numerous commenters expressed support for proposed § 463.38, particularly the requirement in proposed § 463.38(a) that the adult education component of the program be aligned with the State’s content standards for adult education as described in the State’s Unified or Combined State Plan.

A few commenters expressed some reservation regarding the requirement in proposed § 463.38(b) that the integrated education and training program be part of a career pathway. According to these commenters, some jobs in some regional economies (e.g., van driver, casino dealer, night janitor) were not part of a career pathway. They suggested that we modify proposed § 463.38(b) to require that, if possible, the integrated education and training program be part of a career pathway. Another commenter recommended that career awareness activities be interpreted to satisfy the requirement that the program is part of a career pathway, especially for beginning level, lower-skilled learners.

One commenter stated that integrated education and training should address the long-term needs of the workforce as well as the immediate needs of employers. According to the commenter, integrated education and training should be defined as both education for transferrable skills, and knowledge and job related training for immediate job placement. The commenter suggested that the Department strengthen proposed § 463.38 to reinforce these two goals.

*Discussion:* We appreciate the commenters’ support for the requirement in § 463.38(a) that the adult education component of the program be aligned with the State’s content standards for adult education as described in the State’s Unified or Combined State Plan. We agree with the commenter who stated that integrated education and training should address the long-term needs of the workforce as well as the immediate needs of employers. In large part, our intent in establishing the requirement that the adult education component of the program be aligned with the State’s content standards for adult education is to support the inclusion of transferrable skills and knowledge in the design of integrated education and training programs. We appreciate commenters who shared concerns about integrated education and training programs designed for particular jobs in local economies meeting the requirement that

the program be part of a career pathway. However, based on the examples provided by these commenters, we disagree that such jobs cannot be part of a career pathway. In fact, in our own research on occupational or career clusters at O\*Net OnLine (see <http://www.onetonline.org/>), which is sponsored by the Department of Labor, we found that each of the examples offered could easily be associated with one or more career pathways. Thus, requiring an integrated education and training program to be aligned with the State’s content standards for adult education and to be part of a career pathway, allows such a program to address both the short- and long-term needs of the workforce as well as the immediate needs of employers. We do not believe that providing only career awareness meets the definition of career pathways in section 3(7) of the Act.

*Change:* None.

#### **Subpart F—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?*

Proposed § 463.60 described programs for corrections education and the education of other institutionalized individuals.

*Comments:* One commenter expressed support for proposed § 463.60. Several commenters stated that not all corrections facilities provide all of the educational programs listed in proposed § 463.60(b). The commenters concluded that the list of academic programs should be suggestive rather than mandatory and asked that we revise the language in proposed § 463.60(b) accordingly.

*Discussion:* We appreciate the commenters’ concerns for clarity regarding proposed § 463.60. We note that proposed § 463.60 restated the list in section 225(b) of WIOA of the permissible educational programs for criminal offenders in correctional institutions and other institutionalized individuals. We believe both WIOA and § 463.60 are sufficiently clear that the list is permissive and that implementing every program on the list is not required.

*Change:* None.

*Comments:* One commenter suggested that completion of high school equivalency begun while incarcerated should be a condition of parole. The commenter further suggested that postsecondary education should be available to individuals under the age of 21.

*Discussion:* We appreciate the commenter's concern for maximizing incarcerated and formerly incarcerated individuals' access to educational opportunities. We note, however, that both suggestions are beyond our statutory authority.

*Change:* None.

*Comments:* We received several comments requesting additional guidance on corrections education. Numerous commenters requested that we provide guidance on whether incarcerated individuals were considered in the workforce and whether prison jobs counted as employment for purposes of the performance accountability system in section 116 of WIOA. One of these commenters suggested that consideration of the difficulties in serving incarcerated individuals be factored into the negotiation of State adjusted levels of performance for purposes of the performance accountability system. This commenter also requested that we clarify what career pathways services should be provided to eligible individuals served in corrections education programs. Another commenter requested that we clarify if AEFLA funds for corrections education and education of other institutionalized individuals could be used to provide special education services to young adults incarcerated in the juvenile justice system or students eligible for a 504 plan.

*Discussion:* We appreciate the commenters' requests for guidance and clarification regarding programs for corrections education and other institutionalized individuals. Questions regarding whether incarcerated individuals are considered in the workforce and whether prison jobs count toward the employment indicators have been addressed in the joint final regulations on the performance accountability system. The Department of Labor and the Department of Education (the Departments) have added language in 20 CFR 677.155(a)(2)(i) (for purposes of AEFLA, found in Part 463 subpart I) to establish that for the purpose of determining program performance levels, section 225 participants will not be included in performance calculations for the following indicators: Employment under 20 CFR 677.155(a)(1)(i) and (ii); earnings under 20 CFR 677.155(a)(1)(iii); credential attainment under 20 CFR 677.155(a)(1)(iv); and the effectiveness in serving employers under 20 CFR 677.155(a)(1)(vi). The Departments made this decision based on the fact that section 225 participants do not

have the opportunity to be employed or to participate in education or training programs in the same manner as other participants who are in the general population. The process of negotiating and reaching agreement on adjusted levels of performance has been addressed in the final WIOA Unified and Combined State Plan Requirements Information Collection Request (State Plan ICR), as well as through Program Memorandum OCTAE 16-02, Establishing Expected Levels of Performance and Negotiating Adjusted Levels of Performance for Program Year (PY) 2016-17 and 2017-18. As noted in the State Plan ICR and guidance, for the first State plan submission, the Departments will work with States during the negotiation process to establish the adjusted levels of performance for each of the primary indicators for the core programs. If necessary, some may be adjusted after the release of the final regulation and joint performance ICR. Additionally, the Departments will disseminate joint and program-specific guidance to provide further clarification.

In terms of clarifying what career pathway services should be provided to eligible individuals served in corrections programs, we believe that eligible providers should provide career pathway services that support achievement of the vision and goals articulated in State and local workforce development plans. We seek to maintain State and local flexibility to achieve their respective visions and goals and therefore decline to limit the services that may be provided through regulation. Finally, we note that AEFLA funds for corrections education and education of other institutionalized individuals may be used to provide special education services to eligible individuals regardless of disability status.

*Change:* None.

*Comments:* One commenter described challenges in providing concurrent enrollment services to inmates in rural areas where occupational training providers and resources were scarce and training program offerings limited and sporadic. The commenter requested that the Department provide non-regulatory guidance to address these issues.

*Discussion:* We acknowledge that the challenges in providing adult education and literacy activities, including programs for corrections education and the education of other institutionalized individuals, may differ in rural and urban areas. In the past we have provided technical assistance to support high-quality corrections education across the nation (see, for example, the

corrections education resource collection and community of practice through the available through the Literacy Information and Communication System (LINCS) at: <http://lincs.ed.gov/>). As we move forward with WIOA implementation, we will continue to look for opportunities to address emerging challenges.

*Change:* None.

*§ 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 the cap on funds that States may use for programs for corrections education and the education of other institutionalized individuals from 10 percent (under WIA) to 20 percent. Proposed § 463.61 restated this new statutory provision and clarified 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 the applicable regulation in subpart C.

*Comments:* One commenter expressed support for proposed § 463.61. Other commenters requested clarification on how State departments of corrections might participate in the process specified in subpart C.

*Discussion:* We appreciate the opportunity to provide clarification that State departments of corrections, like all other eligible providers, would submit an application for a grant or contract to provide adult education and literacy activities following the process specified in subpart C.

*Change:* None.

*§ 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 sought to establish how funds may support transition to re-entry initiatives and other post-release services. This regulation was intended to clarify that re-entry and other post-release services must support the educational needs of the individual.

*Comments:* One commenter expressed support for proposed § 463.63, noting that the provision of such post-release services was consistent with the design of career pathways. Another commenter questioned how recidivism might be

defined in order to meet any associated reporting requirements under the Act.

*Discussion:* We appreciate the support for the proposed regulation and agree that such post-release services are consistent with the design of career pathways. In our definition of re-entry and post-release services we noted that examples of such services might include education and employment services that can help formerly incarcerated individuals in progressing along a career pathway. We appreciate the question regarding a definition of recidivism and have addressed that issue in amendments to our information collection package, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830-0027).

*Change:* None.

### Subpart G—What is the Integrated English Literacy and Civics Education program?

In addition to the new integrated English literacy and civics education services described in § 463.33—one of several authorized “adult education and literacy activities” in AEFLA—WIOA authorized a new, specific Integrated English Literacy and Civics Education program that replaces the English literacy and civics education (EL/Civics) program previously authorized through annual appropriations. The authorization of the program in WIOA 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.

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

Proposed § 463.70 described the program’s statutory requirements related to participants for whom this program is intended and the types of services that are required in the program. It also sought to clarify that the educational services provided under the program must meet the requirements established in § 463.33 pertaining to integrated English literacy and civics education services.

*Comments:* Two commenters expressed support for proposed § 463.70. A third commenter expressed similar support but also suggested implementing a flexible approach to incorporating workforce preparation into education. According to this commenter, curricula not necessarily

contextualized for workforce development or employment is still relevant to workforce development and employment. Other commenters expressed support for proposed § 463.70 and also encouraged flexibility in implementation. According to these commenters, co-enrollment in workforce development programs should be optional and reflect a student-centered approach that takes students’ needs and abilities into account. The commenters encouraged the Department to provide examples in guidance of how the program might support the economic, linguistic, and civic integration goals of diverse immigrant subpopulations.

Other commenters expressed concern that the definition of the Integrated English Literacy and Civics Education program in proposed § 463.70 was more restrictive than the definition of “integrated English literacy and civics education” in section 203(12) of the Act and restated in proposed § 463.33. These commenters suggested that we replace the word “must” in proposed § 463.70(c) with “may” so that § 463.70(c) would read as follows: “Such educational service may be delivered in combination with integrated education and training services as described in § 463.36.”

Two commenters sharing this concern expressed the additional concern that the definition of the Integrated English Literacy and Civics Education program in proposed § 463.70 would limit States’ ability to provide services that can address all the needs of English language learners seeking English language proficiency and civics education services. These commenters further stated that not all English language learners seeking English language proficiency and civics education services seek or require workforce training. Some, for example, are already gainfully self-employed and interested primarily in improving their language skills and obtaining citizenship. For those learners for whom workforce training might be appropriate, the commenter encouraged workforce development providers to partner with adult education providers to leverage their respective expertise and resources in support of efficiently helping such learners to be placed in unsubsidized employment.

*Discussion:* We appreciate commenters sharing their support for the proposed regulation and suggesting that we adopt a flexible approach for incorporating workforce preparation into educational services. We agree that curricula not necessarily contextualized for workforce development or

employment can still be relevant to workforce development and employment. We also agree that eligible individuals’ co-enrollment in workforce development programs should be optional and based upon individuals’ needs and abilities. Proposed § 463.70(c) restates statutory language. Substituting “must” for “may,” as some commenters suggested, would change language explicitly restated from the Act. We do not believe we have the authority to change language restated from the Act. We agree that not all English language learners seeking English language proficiency and civics education services also seek, or require, workforce training. As we have stated above in our discussion of § 463.35, we do not anticipate that all eligible individuals seeking English language proficiency and civics education services would require integrated education and training. English language learners seeking English language proficiency and civics education, but not seeking workforce training, should not be excluded or discouraged from participation in the Integrated English Literacy and Civics Education program. However, we do note that the Act requires that eligible providers receiving funds under section 243 are required to provide these services in combination with integrated education and training (see § 463.73). We believe that a program design that provides the option for interested eligible individuals to access integrated education and training services meets the statutory requirement that the program funds be used in combination with such services. For those eligible providers serving eligible individuals under section 243 who do require integrated education and training, we proposed two options for meeting the requirement in § 463.74. Additionally, as we noted in our discussion of § 463.33, States have the flexibility to provide integrated English literacy and civics education as a required activity under section 231(b) without the additional workforce and employment-related requirements of section 243. Therefore, we do not agree that the regulation, as proposed, would limit States’ flexibility to provide integrated English literacy and civics education services that are responsive to students’ diverse needs.

*Change:* None.

*Comments:* Other commenters expressed concern regarding the absence of specific measures for civics education in the proposed regulations and suggested that the Department consider adding such measures to the performance accountability system for WIOA. These commenters stated that an

absence of such measures could result in creating unintended disincentives for providing much needed civics instruction.

*Discussion:* We appreciate the commenters' concerns over creating unintended disincentives for providing civics instruction. We note that the definition of integrated English literacy and civics education provided in § 463.33 requires that it include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation. While we lack authority to add additional primary indicators of performance, we continue to include optional civics education outcomes for States to use in our information collection request for title II (see *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830-0027)).

*Change:* None.

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

Proposed § 463.72 described 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.

*Comments:* One commenter expressed support for proposed § 463.72. Other commenters expressed concerns over the requirement that EL/Civics education providers funded under WIA may not be able to meet the requirements of demonstrated effectiveness in proposed § 463.24 and suggested that the Department revise the proposed regulations in order to provide special consideration for providers of EL/Civics under WIA as they compete for Integrated English Literacy and Civics Education funds.

*Discussion:* Section 231(c) of the Act requires that eligible agencies ensure that all eligible providers have direct and equitable access to apply and compete for grants or contracts. We do not have authority to give States the flexibility to provide special consideration for EL/Civics providers under WIA. We have, however, revised § 463.24 to clarify options for how eligible providers can establish demonstrated effectiveness.

*Change:* We revised § 463.24(b)(2) to provide an option for eligible providers who do not have performance data based upon the primary indicators of

performance listed in section 116 of the Act.

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

Proposed § 463.73 reiterated 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.

*Comments:* Two commenters expressed support for proposed § 463.73. Multiple commenters expressed disagreement with proposed § 463.73(b) and (c) by suggesting that these should not be requirements. These commenters suggested that the Department rephrase proposed § 463.73 to make § 463.73(b) and (c) optional.

*Discussion:* We appreciate commenters' support for proposed § 463.73. Section 463.73 restates the Act's statutory language. It is inconsistent with the Act to make these statutory requirements optional.

*Change:* None.

*Comments:* A few commenters suggested that we revise proposed § 463.73(a) and add language to encourage providers of integrated English literacy and civics education to partner with public television stations. These commenters stated that such a revision could support the use of high-quality instructional materials.

*Discussion:* We appreciate the commenters' concern for the use of high-quality instructional materials and agree that public television stations may serve as one potential source of such materials. We note that we set out requirements in these final regulations and use technical assistance to share promising practices. We also note that the Department does not have the authority to endorse particular curricula or sets of materials.

*Change:* None.

*Comments:* One commenter stated that meeting the requirement of proposed § 463.73(b) might pose particular challenges for rural areas where sufficient integrated education and training providers may not exist.

*Discussion:* We acknowledge that the challenges in providing adult education and literacy activities, including integrated education and training, may differ in rural and urban areas. In the past we have provided technical assistance to support high-quality career pathways development, including the development of models of integrated education and training, across the

nation (see, for example, the career pathways resource collection and community of practice available through the Literacy Information and Communication System (LINC) at: <http://lincs.ed.gov/>). We have also encouraged and supported States in exploring non-traditional service delivery options, including distance and hybrid models of education. As we move forward with WIOA implementation, we will continue to look for opportunities to address challenges through innovation and technology.

*Change:* None.

*Comments:* Other commenters suggested that we specify a particular type of integrated education and training that will meet the requirement proposed in § 463.73(b). One commenter suggested that we revise § 463.73(b) to state that the integrated education and training activities provided to participants served under section 243 include entrepreneurship education and small business planning and development so that those participants are able to start their own business as a career pathway that leads to sustainable improvements in the economic opportunities for their families.

*Discussion:* We appreciate the commenters' concern for ensuring that the integrated education and training provided in combination with integrated English literacy and civics education is relevant to the needs of English language learners. We agree that for some eligible individuals, entrepreneurship education can contribute to advancement along a career pathway that leads to sustainable improvements in the economic opportunities for families. We also note that in § 463.36, we clarify the workforce training component of integrated education and training by referencing the training services listed in section 134(c)(3)(D) of the Act, including "entrepreneurial training."

*Change:* None.

*Comments:* One commenter expressed concern for adult education providers' ability to meet the requirements in proposed § 463.73(c)(1) and (c)(2). This commenter suggested that these requirements might be more easily achieved through collaboration with other core programs.

*Discussion:* We agree with the commenter. We believe that § 463.74(a) provides this option to eligible providers through the option of co-enrolling participants in integrated education and training, as described in subpart D, that is provided within the local or regional workforce development

area from sources other than section 243. For example, an eligible provider might collaborate with the local title I Youth, Adult, or Dislocated Worker provider to fund the training component of the integrated education and training activities.

*Change:* None.

**§ 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 was intended to clarify an important distinction between integrated English literacy and civics education services that may be provided under section 231 of the Act, and integrated English literacy and civics education programs funded under section 243 of the Act. The Act requires that funds made available for integrated English literacy and civics education be used in combination with integrated education and training activities. The proposed regulation provided two options that an eligible provider funded under section 243 of the Act may use to provide integrated English literacy and civics education in combination with integrated education and training activities.

*Comments:* Several commenters stated that the Department needs to provide further clarification regarding proposed § 463.74. These commenters suggested that not all students would need to be co-enrolled in occupational training. Additionally, these commenters suggested that for some students (for example, lower skilled students) on-ramp or bridge programs that can improve students' basic skill levels, as well as provide career awareness and workforce preparation activities, rather than co-enrollment in occupational training, may be a better approach. These commenters asked the Department to allow flexibility so lower skilled students could participate in integrated English literacy and civics education services, make a career pathway plan while they are participating, and then transition to appropriate workforce training when they reach a level of English that would ensure that they could benefit from occupational training. Commenters asked the Department to supplement the final regulations with further guidance on such flexibility.

*Discussion:* We agree with commenters' observations that not all students seeking services under section 243 of the Act will require employment related services and, therefore, may

have no need to be co-enrolled in occupational training. Similarly, we further agree that some students who have employment-related educational needs may not be adequately prepared for integrated education and training and may benefit most from more basic educational services in preparation for integrated education and training. We believe the Act does not require all participants enrolled in integrated English literacy and civics education programs under section 243 to be receiving integrated education and training services. We do believe the Act requires that eligible providers receiving funds under section 243 use those funds for integrated English literacy and civics education in combination with integrated education and training activities. Thus, participants for whom integrated education and training services are appropriate will have access to those services. For these reasons, we proposed in the NPRM two options for how programs could meet the statutory requirement that funds for integrated English literacy and civics education programs provided under section 243 be used in combination with integrated education and training activities. First, eligible providers serving eligible individuals for whom integrated English literacy and civics education and integrated education and training are appropriate have the flexibility to co-enroll such eligible individuals in other integrated education and training programs within the local or regional workforce development area funded through sources other than section 243. Second, such eligible providers may use section 243 funds to support integrated education and training activities as defined in subpart D.

*Change:* We have revised § 463.74 to more clearly reflect the statutory requirement to use funds provided under section 243 in combination with integrated education and training activities as defined in subpart D as well as to better clarify the options for meeting the requirement.

*Comments:* One commenter expressed concern that the requirement to provide integrated English literacy and civics education services in combination with integrated education and training would disadvantage many providers of EL/Civics education under WIA in competing for funds under section 243 of the Act. According to this commenter, many of the EL/Civics providers funded under WIA did not provide workforce preparation or workforce training, and therefore do not have the capacity to offer such programming. The commenter asked the Department to modify the proposed rule

to give special consideration to organizations that offer EL/Civics programming but not integrated education and training services. The commenter suggested that the rule be modified to expressly state that integrated education and training services could be offered by an entity other than the organization providing EL/Civics programming but working in coordination with that entity. In support of this point the commenter further stated that proposed § 463.23(i) specifically provided for applications from consortia and coalitions of different organizations that provide services. The commenter also suggested that the rule could also be modified to give consideration to an applicant organization's prior receipt of EL/Civics funding and provision of EL/Civics programming when applying for grants under AEFLA.

*Discussion:* We appreciate concerns expressed related to current providers of English literacy and civics education under WIA not having the capacity to provide services under the new requirements of section 243 of WIOA. Section 463.72 of these final regulations requires the eligible agency to award funds to eligible providers under subpart C. We believe the requirement to award section 243 funds using the same requirements as other awards under title II is consistent with WIOA. We cannot create special considerations for one type of eligible provider over another in the rule. We do, however, agree that the types of cooperation described by the commenter may result in a competitive application for section 243 funds and we encourage eligible providers to seek out partnerships that leverage workforce services for participants in integrated English literacy and civics education.

*Change:* None.

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

Proposed § 463.75 described those eligible under the Act to receive services under the integrated English literacy and civics education program.

*Comments:* One commenter expressed support for proposed § 463.75. Another commenter expressed appreciation for the inclusion of professionals with degrees and credentials in their native countries. One commenter inquired whether civics education was applicable only to English language learners or to all students enrolled in integrated education and training.

*Discussion:* We appreciate commenters' overall support for



proposed § 463.75 and share in their appreciation for the inclusion of professionals with degrees and credentials in their native countries. While we support the integration of civics education, as appropriate, into all adult education and literacy activities for all students, we also note that integrated English literacy and civics education is specifically for English language learners.

*Change:* None.

#### *Regulations To Be Removed*

In the preamble of the NPRM, we discussed on page 20969 those regulations that we proposed to remove. The Department proposed to remove 34 CFR parts 460 and 461 because these regulations are no longer applicable to the Federal AEFLA program. These regulations were promulgated under the National Literacy Act (P.L. 102–73) in 1992, which has since been superseded. We also proposed to remove regulations for six discretionary grant programs that are no longer authorized by statute: the State Literacy Resource Centers Program (part 464), 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), the Life Skills for State and Local Prisoners Program (part 490), and the Adult Education for the Homeless Program (part 491).

*Public Comment:* In response to our invitation in the NPRM, no parties submitted comments on the removal of any of these regulations.

*Changes:* None.

#### *Regulatory Impact Analysis*

##### **Executive Order 12866**

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

We are issuing these final regulations only on a reasoned determination that

their benefits 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 final 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 regulations do 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 in parts 462 and 463.

The regulations in part 462 primarily represent conforming changes and updates to current regulations so as to make an orderly transition from WIA to WIOA. For example, we revised the title of § 462.41 to conform to the joint WIOA rule to implement the measurable skill gains performance indicator by requiring the documentation of achievement of academic, technical, occupational, or other forms of progress.

A second example of changes in part 462 is one in which States are provided more flexibility in reporting outcomes for adult learners. Section 462.43(c) recognizes the fact that several States offer adult high school programs, sanctioned by State law or regulation, which lead to a secondary school diploma or its equivalent. The rule now allows these States to measure and report educational gain through the awarding of credits or Carnegie Units, but does not require States to implement changes at an additional cost. Thus, from a cost perspective, the regulations in part 462 do not impose substantively new 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 regulations in part 462.

The regulations in part 462 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 these final regulations will result in a more uniform test review and approval process. For example, § 462.10 establishes new dates by which tests must be submitted for review each year. The revised submission dates provide more opportunities for publishers to submit assessments to the Secretary for review and may increase the availability of new assessments to providers. Section 462.11(a)(4) increases 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 regulations in part 462 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 change outweigh the potential costs as it strengthens the integrity of the NRS as a critical tool for measuring State performance on accountability measures while reducing costs to the Federal government.

The regulations in part 463 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 regulations in subpart C of part 463 describe the process and requirements for States and outlying areas to award grants or contracts to eligible providers as well as the activities allowed for local administrative costs. New application requirements 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 § 463.20. The changes and new requirements in subpart C pose no costs to eligible State agencies, eligible providers, or the Federal government that are additional to the costs imposed by statutory requirements.

Section 463.21 requires an eligible agency to establish procedures for local WDB review in its grant or contract application process. The regulation further establishes that the local WDB must have an opportunity to make recommendations to the eligible agency to promote alignment with the local plan and that the eligible agency must consider the results of the review by the local WDB in determining the extent to which the application addresses the required considerations in § 463.20. While this is a new requirement under WIOA, we conclude that it does not impose significant additional costs to eligible State agencies, eligible providers, or the Federal government as it minimally extends requirements already in place to compete for AEFLA funds.

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

#### *Paperwork Reduction Act of 1995*

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the 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 the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. We received no comments, and we do not believe that these regulations would require transmission of this sort of information.

#### *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. In the NPRM we stated that the regulations covered in that document may have federalism implications and encouraged State and local elected officials to review and provide comments on the proposed regulations. In the *Public Comment* section of this preamble, we discuss any comments we received on this subject.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, 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](http://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 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](http://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 460*

Adult education, Grant programs—education.

*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 464*

Administrative practice and procedure, 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 491*

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

Dated: June 30, 2016.

**John B. King, Jr.**,  
*Secretary of Education.*

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

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

■ 1. The authority citation for part 462 is revised to read as follows:

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

■ 2. 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)

■ 3. 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)

■ 4. Section 462.3 is amended by:  
■ a. Revising paragraph (a) introductory text.

■ 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”, “Educational functioning levels”, “English as a second language (ESL)”, and “Guidelines” in paragraph (b).

■ e. Revising the authority citation. The 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, 20 U.S.C. 3292 (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* \* \* \*

(1) Who have attained 16 years of age;

(3) \* \* \*

(i) Are basic skills deficient;

\* \* \* \* \*

(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 ESL literacy levels, as provided in the Guidelines, that describe a set of skills and competencies that students demonstrate in the NRS skill areas.

*English as a Second Language (ESL)* means instruction designed for an adult whose educational functioning level is equivalent to a particular ESL English language proficiency 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* (OMB Control Number: 1830–0027) (also known as NRS Implementation Guidelines) posted on the Internet at: [www.nrsweb.org](http://www.nrsweb.org).

\* \* \* \* \*

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

■ 5. 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 an 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)

■ 6. In § 462.10, paragraph (b) and the authority citation for the section are revised 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)

■ 7. Section 462.11 is amended by revising paragraphs (a)(4), (b), (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)

■ 8. Section 462.12 is amended by revising paragraphs (a)(2)(iv), (c)(2), (d)(2), (e)(1)(ii), 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, ASE or ESL with sufficient numbers of questions to represent adequately the domain or domains;

\* \* \* \* \*

(c) \* \* \*

(2) Annually publishes in the **Federal Register** and posts on the Internet at [www.nrsweb.org](http://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.

\* \* \* \* \*

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

■ 9. Section 462.13 is amended by revising paragraph (b) and the authority citation 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, ASE or ESL with sufficient numbers of questions to adequately represent the domain or domains.

\* \* \* \* \*

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

■ 10. 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)

■ 11. Section 462.40 is amended by revising paragraphs (c)(2) and (3) and the authority citation to read as follows:

**§ 462.40 Must a State have an assessment policy?**

\* \* \* \* \*

(c) \* \* \*

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

(3)(i) Indicate when, in calendar days or instructional hours, 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 functioning level gains according to the test publisher's guidelines; and

(iii) Specify a standard for the percentage of students to be pre- and post-tested.

\* \* \* \* \*

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

■ 12. Section 462.41 is amended by revising paragraphs (b)(2) and (3), (c)(2), and the authority citation to read as follows:

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

\* \* \* \* \*

(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)

■ 13. 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)

**§ 462.43 [Removed and Reserved]**

■ 14. Remove and reserve § 462.43.

**§ 462.44 [Removed and Reserved]**

■ 15. Remove and reserve § 462.44.

■ 16. Part 463 is added to read as follows:

**PART 463—ADULT EDUCATION AND FAMILY LITERACY ACT**

Sec.

**Subpart A—Adult Education General Provisions**

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 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 of WIOA?

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 for 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—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 the program for Corrections Education and Education of other Institutionalized Individuals?

463.62 What is the priority for programs that receive funding through programs for Corrections Education and Education of other Institutionalized Individuals?

463.63 How may funds under programs for Corrections Education and 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 use funds for Integrated English Literacy and Civics Education in combination with integrated education and training activities?

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

**Subpart H—K—[Reserved]**

Authority: 29 U.S.C. 102 and 103, 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 or its recognized equivalent 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?**

*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

*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

*Other Definitions.* The following definitions also apply:  
*Act* means the Workforce Innovation and Opportunity Act, Public Law 113–128.  
*Concurrent enrollment or co-enrollment* refers to enrollment by an eligible individual in two or more of the six core programs administered under the Act.

*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 and post-release services* means services provided to a formerly incarcerated individual upon or shortly after release from a correctional institution 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 Workforce Innovation and Opportunity Act, the Adult Education and Family Literacy Act, Public Law 113–128.

**Subpart B—[Reserved]**

**Subpart C—How Does a State Make an Award to Eligible 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 providers for adult education

and literacy activities, funds shall not be 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 shall 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 WDBs, 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 § 666.100) 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 of WIOA?**

(a) An eligible agency must establish, within its grant or contract competition, a process that provides for the submission of all applications for funds under AEFLA to the appropriate Local Boards.

(b) The process must include—

(1) Submission of the applications to the appropriate Local Board for its review for consistency with the local plan within the appropriate timeframe; and

(2) 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 information and assurances listed below, as well as any additional information required by the eligible agency, including:

(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 for 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 to 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; and

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

(b) [Reserved]

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

**§ 463.23 Who is eligible to apply for a grant or contract for 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 reading, writing, mathematics, English language acquisition, and other subject areas relevant to the services contained in the State's application for funds. An eligible provider must also provide information regarding its outcomes for participants related to employment, attainment of secondary school diploma or its recognized equivalent, and transition to postsecondary education and training.

(b) There are two ways in which an eligible provider may meet the requirements in paragraph (a) of this section:

(1) An eligible provider that has been funded under title II of the Act must provide performance data required under section 116 to demonstrate past effectiveness.

(2) An eligible provider that has not been previously funded under title II of the Act must provide performance data to demonstrate its past effectiveness in serving basic skills deficient eligible individuals, including evidence of its success in achieving 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 five percent of a local grant to an eligible provider can be expended to administer a grant or contract under title II. In cases where five percent is too restrictive to allow for administrative activities, the eligible agency may increase the amount that can be spent on local administration. In such cases, 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) Attainment of a secondary school diploma or its recognized equivalent; and

(2) Transition to postsecondary education and training; or

(3) 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 State-adopted challenging academic content standards, as adopted under the Elementary and Secondary



Education Act of 1965, as amended (ESEA) as described in the State's Unified or Combined State Plan and as evidenced by the use of a State or local curriculum, lesson plans, or instructional materials that are aligned with the State adult education content standards; or

(b) Offer educational and career counseling services that assist an eligible individual to 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); P.L. 111–340)

**§ 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 each of sufficient intensity and quality, and based on the most rigorous research available, 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 of the Act.

(b) The funds described in paragraph (a) of this section 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 the program for Corrections Education and 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.

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

**§ 463.62 What is the priority for programs that receive funding through programs for Corrections Education and Education of other Institutionalized Individuals?**

Each eligible agency using funds provided under Programs for Corrections Education and 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 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 and other post-release services. Examples 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 activities 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 that have an approved Unified State Plan in accordance with § 463.90 through § 463.145, or an approved Combined State Plan in accordance with § 463.90 through § 463.145.

(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 receives 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.

(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; and

(b) 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 use funds for Integrated English Literacy and Civics Education in combination with integrated education and training activities?**

An eligible provider that receives funds through the Integrated English Literacy and Civics Education program may meet the requirement to use funds for integrated English literacy and civics education in combination with integrated education and training activities by:

(a) Co-enrolling participants in integrated education and training as described in subpart D of this part that is provided within the local or regional workforce development area from sources other than section 243 of the Act; or

(b) Using funds provided under section 243 of the Act to support integrated education and training activities as described in subpart D of this part.

(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)

**Subpart H—K—[Reserved]**

**PART 464 [REMOVED AND RESERVED]**

■ 17. Remove and reserve part 464.

**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.

[FR Doc. 2016-16049 Filed 8-8-16; 11:15 am]

**BILLING CODE 4000-01-P**