



DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED-2019-OSERS-0163]

Proposed Priorities--Innovative Rehabilitation Training Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priorities.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services proposes priorities under the Innovative Rehabilitation Training program, Catalog of Federal Domestic Assistance (CFDA) numbers 84.263D/E/F. The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2020 and later years. We take this action to improve employment outcomes and raise expectations for all people with disabilities. The program funds time-limited pilot innovative rehabilitation training projects to develop, refine, implement, evaluate, and disseminate innovative methods of training vocational rehabilitation (VR) personnel to support the work of the State VR agencies in the following topic areas: Client Assistance Program (84.263D); assisting and supporting individuals with

disabilities pursuing self-employment, business ownership, and telecommuting (84.263E); and field-initiated projects in an area related to VR (84.263F).

DATES: We must receive your comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments, address them to Cassandra P. Shoffler, U.S. Department of Education, 400 Maryland Avenue, SW, room 5122, Potomac Center Plaza, Washington, DC 20202-2800.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Cassandra P. Shoffler, U.S. Department of Education, 400 Maryland Avenue, SW, room 5122, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7827. Email: 84.263DEF@ed.gov.

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from the proposed priorities. Please let us know of any further ways we could reduce

potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities by accessing Regulations.gov. You may also inspect the comments in person in room 5059, 550 12th Street, SW, Washington, DC, between the hours of 9:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The Innovative Rehabilitation Training program is designed to develop (a) new types of training programs for rehabilitation personnel and to demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation

services to individuals with disabilities; (b) new and improved methods of training rehabilitation personnel so that there may be a more effective delivery of rehabilitation services to individuals with disabilities by designated State rehabilitation agencies and designated State rehabilitation units or other public or non-profit rehabilitation service agencies or organizations; and (c) new innovative training programs for VR professionals and paraprofessionals to have a 21st-century understanding of the evolving labor force and the needs of individuals with disabilities so they can more effectively provide VR services to individuals with disabilities.

Program Authority: 29 U.S.C. 709(c) and 772.

Applicable Program Regulations: 34 CFR parts 385 and 387.

PROPOSED PRIORITIES: This document contains four proposed priorities.

Proposed Priority 1-Topic Area One: Innovative Rehabilitation Training Project, Client Assistance Program.

Background:

The purpose of the Client Assistance Program (CAP) under the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA) (Rehabilitation Act), is to advise and inform VR clients and applicants with disabilities of all services and

benefits available to them through programs authorized under the Rehabilitation Act, including under sections 113 and 511, and title I of the Americans with Disabilities Act of 1990, and advocate on behalf of VR clients and applicants in their relationships with projects, programs, and services provided under the Rehabilitation Act.

According to the Annual Client Assistance Program Report (RSA-227), CAP offices responded to 40,917 requests for information and referral in FY 2018. They also provided extensive services—including assistance and advocacy—to 4,038 individuals with disabilities that year.

In FY 2014, the Rehabilitation Services Administration (RSA) funded a CAP training and technical assistance center, which primarily provides training on the statutory and regulatory requirements governing VR services. Such training continues to be necessary, however, to be effective advocates for VR clients and applicants today. CAP professionals also need greater expertise about the expanded opportunities for quality employment and economic self-sufficiency made available after WIOA. These opportunities include a focus on acquiring career-oriented credentials, such as advanced postsecondary degrees; career exploration and advancement strategies, such as work-based learning, apprenticeships, customized employment, and

career pathways; and pre-employment transition services and outreach to subminimum wage employers. Furthermore, CAP professionals require updated leadership, relationship-building, and management skills to be effective advocates for VR clients and applicants.

Proposed Priority:

A project under this priority must increase the capacity of CAP professionals to inform VR clients and applicants about the expanded opportunities under WIOA and provide the assistance and advocacy the clients and applicants need. The project must develop a new or substantially improved training program, including stand-alone modules to be incorporated into an existing academic degree program for educating VR counselors or other VR professionals and paraprofessionals, or into short-term training for VR professionals, or both. The training program or modules must be developed by the end of the first year of the project period and piloted, refined, implemented, evaluated, and disseminated in years two, three, four, and five of the project period. A process for feedback and continuous improvement to ensure the training program or modules are refined throughout years two, three, four, and five must be included.

The training must be of sufficient scope, intensity, and duration for VR CAP professionals, paraprofessionals, and individuals studying to become VR professionals and paraprofessionals to achieve increased skill, knowledge, and competence in the topic area.

The training curricula and materials must encompass:

- (a) the expanded opportunities available under WIOA and the pertinent provisions regarding unified and combined State plans, common performance measures, and the workforce development system;
- (b) specific opportunities and challenges for individuals with the most significant disabilities, students and youth with disabilities, and traditionally underserved populations, including those at the intersection of poverty and disability; and
- (c) leadership, relationship-building, and management skills promoting effective CAP personnel interaction with State VR agencies, State Rehabilitation Councils, and other VR stakeholders.

Training delivery methods must encompass: (a) state-of-the-art communication tools and platforms, including virtual conferences, social media, and searchable databases; and (b) the latest knowledge translation methods and techniques. The applicant must include the resources developed by the RSA VR Technical Assistance Centers and

Demonstration and Training projects, available at the National Clearinghouse for Rehabilitation Training Materials, and other Federal and nongovernment sources, in developing its training and technical assistance curricula and delivery methods.

Proposed Priority 2-Topic Area Two: Innovative Rehabilitation Training Program, Assisting and Supporting Individuals with Disabilities Pursuing Self-employment, Business Ownership, and Telecommuting.

Background:

Self-employment, business ownership, and telecommuting could be viable options for individuals with disabilities who face barriers to competitive integrated employment, such as health challenges, inaccessible work sites, and lack of transportation, and could offer people with disabilities an opportunity for economic independence. A 2017 study funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR)¹ analyzed data from 230,931 VR consumers age 16 or older who completed VR services and became employed in 2008 or 2009.

¹ Reference: naric.com/?q=en/rif/self-employment-may-be-promising-avenue-economic-independence-people-disabilities. Additional information on this study can be found at Ipsen, C., and Swicegood, G. (2017) Rural and urban vocational rehabilitation self-employment outcomes. *Journal of Vocational Rehabilitation*, 46, 97-105. This article is available from the NARIC collection under Accession Number J75341.

The researchers found that: (1) on average, only 2.1 percent of VR consumers became self-employed; (2) self-employment rates were lowest for consumers in urban counties (1.4 percent) and highest for consumers in isolated rural counties (5.2 percent), while the rates in large rural and small rural counties fell in between (3.5 percent and 3.7 percent); and (3) consumers who became self-employed earned about \$1.30 more per hour, on average, at the start of their jobs than consumers who became competitively employed. Consumers who became self-employed were also able to work about three hours less per week, on average, and still earn weekly pay equivalent to their competitively employed peers.

The U.S Department of Labor, Office of Disability Employment Policy (ODEP) examined telework practices of public and private sector employers, finding that 80 percent had employees with disabilities and 23 percent had employees who telework, but only 8 percent had employees with disabilities who telework.²

² Linden, Maureen: Telework research and practice: Impacts on people with disabilities.
www.researchgate.net/profile/Maureen_Linden/publication/261881961_Telework_Research_and_Practice_Impacts_on_People_with_Disabilities/links/586405d708ae6eb871ad02f5/Telework-Research-and-Practice-Impacts-on-People-with-Disabilities.pdf.

The use of self-employment, business ownership, and telecommuting may assist VR consumers with achieving competitive integrated employment.

Proposed Priority:

A project in the area of assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting must develop a new or substantially improved and, to the extent possible, evidence-based³ training program, including stand-alone modules and instructional materials to be incorporated into an existing academic degree program for educating VR counselors or other VR professionals and paraprofessionals or into short-term training for VR professionals, or both. The training program or modules must be developed by the end of the first year of the project period and piloted, refined, implemented, evaluated, and disseminated in years two, three, four, and five of the project period. A process for feedback and continuous improvement to ensure the training program or modules are refined throughout years two, three, four, and five must be included.

³ For the purpose of this priority, "evidence-based" means the proposed project component is supported, at a minimum, by evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model (as defined in 34 CFR 77.1) is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes (as defined in 34 CFR 77.1).

The training must be of sufficient scope, intensity, and duration for VR professionals, paraprofessionals, and individuals studying to become VR professionals and paraprofessionals to achieve increased skill, knowledge, and competence in the area of assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting.

Proposed Priority 3-Topic Area Three: Innovative Rehabilitation Training Program, Field Initiated.

Background:

The purpose of the Innovative Rehabilitation Training program, Field Initiated project, is to develop, refine, implement, evaluate, and disseminate innovative methods of training for VR personnel in an area for which no training currently exists, enhance training in an area for which the existing training is no longer current or relevant, or enhance training in an area that has received increased emphasis under the Rehabilitation Act.

Proposed Priority:

A field-initiated project must clearly identify the topic to be addressed and provide sufficient evidence to demonstrate the need for the innovative rehabilitation training in a proposed new topic area or, in areas for which there is existing training, demonstrate that the

existing training is not adequately meeting the needs of VR professionals, paraprofessionals, and individuals studying to become VR professionals and paraprofessionals.

The project must develop a new or substantially improved and, to the extent possible, evidence-based⁴ training program, including stand-alone modules and instructional materials to be incorporated into an existing academic degree program for educating VR counselors or other VR professionals and paraprofessionals, or into short-term training for VR professionals, or both. The training program or modules must be developed by the end of the first year of the project period and piloted, refined, implemented, evaluated, and disseminated in years two, three, four, and five of the project period. A process for feedback and continuous improvement to ensure the training program or modules are refined throughout years two, three, four, and five must be included.

The training must be of sufficient scope, intensity, and duration for VR professionals, paraprofessionals, and individuals studying to become VR professionals and

⁴ For the purpose of this priority, "evidence-based" means the proposed project component is supported, at a minimum, by evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model (as defined in 34 CFR 77.1) is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes (as defined in 34 CFR 77.1)

paraprofessionals to achieve increased skill, knowledge, and competence in the topic area.

Proposed Priority 4--Applications From New Potential Grantees.

Background:

In order to increase the size of the applicant pool, we propose a priority for applications from new potential grantees.

Proposed Priority:

(a) Under this priority, an applicant must demonstrate one or more of the following:

(i) The applicant has never received a grant, including through membership in a group application submitted in accordance with 34 CFR 75.127-75.129, under the program from which it seeks funds.

(ii) The applicant does not, as of the deadline date for submission of applications, have an active grant, including through membership in a group application submitted in accordance with 34 CFR 75.127-75.129, under the program from which it seeks funds.

(iii) The applicant has not had an active discretionary grant under the program from which it seeks funds, including through membership in a group application submitted in accordance with 34 CFR 75.127-75.129, in one

of the following number of years before the deadline date for submission of applications under the program:

- (1) One year;
- (2) Two years;
- (3) Three years;
- (4) Four years;
- (5) Five years;
- (6) Six years; or
- (7) Seven years.

(iv) The applicant has not had an active discretionary grant from the Department, including through membership in a group application submitted in accordance with 34 CFR 75.127-75.129, in one of the following number of years before the deadline date for submission of applications under the program:

- (1) One year;
- (2) Two years;
- (3) Three years;
- (4) Four years;
- (5) Five years;
- (6) Six years; or
- (7) Seven years.

(v) The applicant has not had an active contract from the Department in one of the following number of years

before the deadline date for submission of applications under the program:

- (1) One year;
- (2) Two years;
- (3) Three years;
- (4) Four years;
- (5) Five years;
- (6) Six years; or
- (7) Seven years.

(b) For the purpose of this priority, a grant or contract is active until the end of the grant's or contract's project or funding period, including any extensions of those periods that extend the grantee's or contractor's authority to obligate funds.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment,

public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

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

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

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

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new rule must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to "transfer rules" that cause

only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the proposed priorities would be utilized in connection with a discretionary grant program, Executive Order 13771 does not apply.

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

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

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

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

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

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

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

We are issuing the proposed priorities 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 this regulatory action is consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action

does 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 are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. The costs would include the time and effort in responding to the priority for entities that choose to respond.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document. The benefits include receiving comments regarding the best way to support the work of the State VR agencies in the Client Assistance Program (84.263D); assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting (84.263E); and field-initiated projects related to VR (84.263F); and whether the activities identified reflect the greatest needs in the field.

Clarity of the Regulations

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

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

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

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

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are public or private nonprofit agencies and organizations, including Indian Tribes and institutions of higher education that may apply. We believe that the costs imposed on an applicant by the proposed priorities would be limited to paperwork burden related to preparing an application and that the benefits of these proposed priorities would outweigh any costs incurred by the applicant. There are very few entities who could provide the type of technical assistance required under the proposed priorities. For these reasons these

proposed priorities would not impose a burden on a significant number of small entities.

Paperwork Reduction Act of 1995: The proposed priorities contain information collection requirements that are approved by OMB under OMB control number 1820-0018.

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

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

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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 program contact 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*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. 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. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

*Commissioner, Rehabilitation Services Administration.
Delegated the authority to perform
the functions and duties of the Assistant Secretary for the
Office of Special Education and Rehabilitative Services.*

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