



DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED-2020-OSERS-0192]

Proposed priority-- Rehabilitation Short-Term Training-
Client Assistance Program (CAP Training)

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

ACTION: Proposed priority.

SUMMARY: The Department of Education (Department) proposes a priority under the Rehabilitation Short-Term Training program, Assistance Listing Number 84.246K. We may use this priority for competitions in fiscal year (FY) 2021 and later years. We take this action to improve the capacity of Client Assistance Program (CAP) professionals to inform, assist, and advocate for State Vocational Rehabilitation (VR) Services program clients and applicants about expanded education, training, and employment opportunities under the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA). The priority will provide enhanced training and technical assistance on CAP duties and responsibilities under section 112 of the Rehabilitation Act, VR service provision requirements in the Rehabilitation Act, expanded opportunities under WIOA, individual and systems advocacy competencies, and leadership, relationship-building, and outreach skills as

well as CAP strategic planning and resources management capacity-building. Also, the priority will promote the use of flexible training delivery methods, including in-person and virtual activities, and state-of-the-art communication tools and platforms, including the latest distance learning and convening technologies.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER THE 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 Felipe Lulli, U.S. Department of Education, 400 Maryland

Avenue, SW, room 5101, 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: Felipe Lulli, U.S. Department of Education, 400 Maryland Avenue, SW, room 5101, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7425. Email: 84.246K@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 this proposed priority. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to clearly identify the proposed priority and specific requirement 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 priority.

Please let us know of any 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 this proposed priority by accessing Regulations.gov. Due to the COVID-19 pandemic, the Department buildings are currently not open. However, upon reopening, you may also inspect the comments in person in room 5051, 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 this proposed priority. 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 Rehabilitation Short-Term Training program is designed to provide short-term training and technical instruction in areas of special significance to the vocational, medical, social, and psychological rehabilitation programs, supported employment programs, independent living services programs, and client assistance

programs, including special seminars, institutes, workshops, and other short-term courses. Short-term training projects may be of regional or national scope.

Program Authority: 29 U.S.C. 772(a)(1).

Applicable Program Regulations: 34 CFR part 385 and 390.

PROPOSED PRIORITY:

This notice contains one proposed priority.

Background:

The CAP is a formula program authorized by section 112 of the Rehabilitation Act. The purpose of the CAP is to inform and advise VR clients and applicants about all the benefits available under the Rehabilitation Act, including under sections 113 and 511 regarding pre-employment transition services and limitations on use of subminimum wages, respectively. Upon the client's or applicant's request, the CAP program will provide assistance and advocacy in pursuing legal, administrative, or other appropriate remedies to ensure the protection of the rights of such individuals under the Rehabilitation Act and to facilitate access to the services funded under the Rehabilitation Act through individual and systemic advocacy. The CAP program's assistance and advocacy services may be directly related to facilitating the employment of the individual. The CAP program also provides information on available services and benefits under title I of the Americans with Disabilities Act of

1990 as well as the Rehabilitation Act, especially with regard to individuals with disabilities who have traditionally been unserved or underserved by VR programs. According to the Annual Client Assistance Program Report (RSA-227), CAP offices responded to 28,709 requests for information and referral in FY 2019. They also provided direct services, including assistance and advocacy, to 4,359 individuals with disabilities that year.

The WIOA amendments to the Rehabilitation Act placed heightened emphasis on expanding quality employment and career advancement opportunities for individuals with disabilities, with a focus on competitive integrated employment as defined in the Rehabilitation Act. Consistent with WIOA's amendments to the Rehabilitation Act, the State VR program operates under the principle that individuals with disabilities, including those with significant and the most significant disabilities, are capable of quality employment outcomes when provided appropriate services, skills, and supports. WIOA places certain limitations on subminimum wage employment. WIOA also emphasizes pre-employment transition services for students with disabilities, supported employment for individuals with the most significant disabilities, customized employment, and coordinated strategies such as career pathways and apprenticeships to help individuals with disabilities realize employment goals consistent with

their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. At the same time, WIOA recognizes the need to reach traditionally unserved or underserved groups and individuals.

Many of the WIOA provisions and priorities are reflected in the Combined and Unified State Plans developed in coordination with State and local workforce development boards. Some States are also implementing innovative approaches, including rapid engagement and progressive employment, to help individuals with disabilities to pursue quality employment outcomes.

State VR agency personnel have experienced several challenges in implementing the WIOA expanded provisions. As of November 13, 2020, 25 of 78 VR agencies were unable to serve all eligible individuals due to a lack of financial and staff resources and have thus introduced orders of selection, closed one or more priority categories, and limited the provision of services to eligible individuals based on the significance of their disabilities. Five of these VR agencies have closed all priority categories, meaning that they are not providing services to new applicants for the VR program. VR agencies are implementing orders of selection for two main reasons, one being the inability to provide the non-Federal share required as match for the VR program, which prevents them

from accessing all available Federal VR program funds, and the other being the requirement to reserve at least 15 percent of Federal VR program funds for providing pre-employment transition services to eligible and potentially eligible students with disabilities, which restricts the amount of VR program funds available to serve all other eligible individuals with disabilities. These trends may be impacting the nature, scope, and timeliness of the VR services as well as the number of eligible individuals served.

The CAP professionals play a vital role in helping VR clients and applicants to access the expanded opportunities under WIOA, even in the midst of the challenges the State VR agencies face, through individual information and advocacy services, systems change activities, and outreach to traditionally unserved or underserved populations. To fulfill their role effectively, CAP professionals must be knowledgeable about the enhanced opportunities, VR service-provision requirements, and CAP program's roles and responsibilities under the Rehabilitation Act. Also, CAP professionals must understand the specific needs of individuals with disabilities, the challenges State VR agencies face, and the roles of the State Rehabilitation Council, community rehabilitation programs, and workforce development partners in their States. Further, CAP professionals must possess effective individual and systems

advocacy, leadership, relationship-building, and outreach skills. Finally, the CAP programs require strong strategic planning and resource management capabilities.

The purpose of this priority is to provide high-quality and relevant training and technical assistance to increase CAP professionals' knowledge, skills, competencies, and capabilities in these critical areas.

The project must be awarded and operated in a manner consistent with the nondiscrimination requirements mandated by the U.S. Constitution and Federal civil rights laws.

Proposed Priority:

Rehabilitation Short-Term Training--Client Assistance Program (CAP Training).

The Department proposes to establish this Rehabilitation Short-Term Training-Client Assistance Program (CAP Training) priority to provide CAP professionals the necessary knowledge, competencies, and skills to help VR clients and applicants access expanded education, training, and employment opportunities under WIOA, and to address obstacles or barriers that VR clients and applicants may encounter.

Under this priority, grantees must provide comprehensive and in-depth training and technical assistance activities that provide updated information about CAP program duties and responsibilities under the Rehabilitation Act; expanded VR service provisions in the

Rehabilitation Act, including section 113 on pre-employment transition services and section 511 regarding limitations on subminimum wages; and on other education, training, and employment opportunities under WIOA, including career pathways, apprenticeships, and customized employment. In providing the training and technical assistance, grantees must consider the challenges that State VR agencies face in implementing WIOA's expanded provisions and opportunities and the roles of the State Rehabilitation Council, community rehabilitation programs, workforce development partners, and other stakeholders, as reflected in the Unified or Combined State Plans. The training and technical assistance must enhance CAP professionals' individual and systems advocacy competencies and their leadership, relationship-building, and outreach skills. In addition, the training and technical assistance must strengthen the institutional effectiveness of the CAP programs in the individual States through strategic planning and resource management capacity-building activities.

Under this priority, the Secretary will fund only applications that meet the project requirements outlined below. Applicants must describe major implementation activities, timelines, and milestones for each of the following project requirements:

(1) Training and technical assistance to increase CAP professionals' knowledge, skills, and competencies in the four broad subject areas and related topics, including, but not limited to:

(a) Rehabilitation Act in the context of WIOA

(i) CAP program duties and responsibilities under section 112(a) of the Rehabilitation Act;

(ii) VR service provision requirements in the Rehabilitation Act and related regulations, policy guidance, and legal decisions, including those regarding section 113 on pre-employment transition services and section 511 regarding limitations on subminimum wages;

(iii) Expanded training, education, and employment opportunities under WIOA, including but not limited to pre-employment transition services, work-based learning, apprenticeships, customized employment, career pathways, and focus on postsecondary credential attainment, including advanced degrees;

(iv) Challenges and successes that VR agencies experience in making the opportunities under WIOA available to individuals with disabilities in their States;

(v) Obstacles that individuals with disabilities experience in accessing VR services, including the new and expanded services available through the VR program as a result of WIOA, particularly individuals with the most significant disabilities, students and youth with

disabilities, members of traditionally unserved or underserved groups, and individuals in economically disadvantaged communities; and

(vi) Key stakeholder roles, including State Rehabilitation Councils (SRC), community rehabilitation programs, and workforce development boards, as reflected in the Unified or Combined State Plans.

(b) Discrete skills related to CAP duties and responsibilities

(i) Individual advocacy;

(ii) Systems advocacy;

(iii) Alternate dispute resolution; and

(iv) Leadership, relationship building, and outreach.

(c) Strategic planning

(i) Assessments of VR program challenges, needs, and opportunities in the State, including the State VR agency's own innovative approaches as well as the expanded provisions under WIOA. Strategic assessments include targeted reviews of the RSA-227, Unified or Combined State Plans, RSA monitoring reports, and feedback from VR clients, applicants, and other key stakeholders;

(ii) Development of the individual CAP programs' strategic goals and action plans (including their particular training or technical assistance needs, based on their identified State VR program challenges, needs, and opportunities; and

(iii) Strategic outreach and engagement with State VR agencies, the SRC, and workforce development partners, among others.

(d) Resource management

(i) Budgeting and financial oversight practices in support of strategic goals and objectives, consistent with Generally Accepted Accounting Practices; and

(ii) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at 2 CFR part 200, pertinent to CAP and VR program operations.

(2) Comprehensive plan for the delivery of training and technical assistance on the required subject areas and topics. The plan must describe the following:

(a) Subject areas and topics, specifically, how they will be prioritized and made available in the initial year and subsequent years of the project;

(b) Training activities, consisting of both established training modules and ad hoc training responsive to emerging circumstances or trends;

(c) Technical assistance, consisting of individualized information on identified subject areas and topics, as well as consultation on options for applying existing law, regulations, and RSA-issued guidance to specific factual circumstances that arise in the course of CAP professionals' individual or systems advocacy efforts;

(d) Training and technical assistance curricula, materials, and tools, which may include resources developed by RSA VR technical assistance centers and demonstration projects, available at the National Clearinghouse of Rehabilitation Training Materials;

(e) Information delivery methods, including in-person and virtual activities, communities of practice, social media, and searchable databases; and

(f) State-of-the-art communication tools and platforms, including an interactive project website, distance learning and convening technologies, and searchable databases.

The training and technical assistance plan must be based on a comprehensive review of CAP professionals' needs with respect to the required subject areas and topics outlined above. The comprehensive needs assessment may comprise reviews of the RSA-227, Unified or Combined State Plans, and RSA State monitoring reports as well as questionnaires, surveys, and interviews with CAP professionals and key stakeholders, among others.

(3) Quality control processes to ensure that training and technical assistance activities and materials are updated to reflect the statutory and regulatory changes in the Rehabilitation Act as amended by title IV of WIOA, the RSA policy guidance updates, and future reauthorizations of the Rehabilitation Act;

(4) Coordination with and leveraging the resources of RSA's vocational rehabilitation technical assistance centers and other Federal or non-Federal programs, including the recently funded RSA technical assistance centers on Quality Employment and Quality Management and the National Technical Assistance Center on Transition, in the development of CAP Training project activities, curriculum, materials, and tools;

(5) Coordination with the entity providing training and technical assistance to the Protection and Advocacy of Individual Rights program, consistent with section 509 of the Rehabilitation Act; and

(6) Project evaluation based on performance measures to be established in the notice inviting applications, consistent with the Government Performance and Results Act.

CAP Training performance will be assessed based on the following considerations:

(a) Quality, relevance, and usefulness of the training and technical assistance;

(b) Trends in pertinent CAP program services, including individual and systems advocacy; and

(c) Relationship between the observed CAP services trends and the training and technical assistance provided under this priority.

The performance assessment will be based on a variety of quantitative and qualitative data sources, including, but not limited to:

- (a) RSA-227;
- (b) Pre- and post-training assessments;
- (c) Questionnaires, surveys, and focus groups;
- (d) Success stories; and
- (e) Peer reviews.

The foregoing performance considerations and data sources must be incorporated in a comprehensive evaluation plan. The evaluation plan will include a logic model that outlines the proposed project activities, outputs, outcomes, baselines, and targets. The plan also will describe how the evaluation results will be used to promote continuous program improvement throughout the grant's period of performance.

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)(a)); 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)).

Final Priority: We will announce the final priority in a notice in the *Federal Register*. We will determine the final priority after considering responses to the proposed priority and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the *Federal Register*.

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.

OMB has determined that 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 2021, 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 priority would be used 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 OMB Office of Information and Regulatory Affairs 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 priority 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 these 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 provide training to CAP professionals.

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 the 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 proprietary institutions as small businesses if they are independently owned and operated,

are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 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 priority would be limited to paperwork burden related to preparing an application and that the benefits of this proposed priority would outweigh any costs incurred by the applicant. There are very few entities who could provide the type of training and technical assistance required under the proposed priority. For these reasons, the proposed priority would not impose a burden on a significant number of small entities.

Paperwork Reduction Act of 1995: The proposed priority contains 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 385. 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: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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.

David Cantrell,
*Deputy Commissioner, Office of
Special Education Programs.
Delegated the authority to perform
the functions and duties of the
Assistant Secretary for the Office
of Special Education and
Rehabilitative Services.*

[FR Doc. 2021-03422 Filed: 2/18/2021 8:45 am; Publication Date: 2/19/2021]