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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED-2020-OSERS-0009]

Final priorities and definitions--Independent Living Services for Older Individuals Who Are Blind--Training and Technical Assistance

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

ACTION: Final priorities and definitions.

SUMMARY: The Department of Education (Department) announces priorities and definitions under the Independent Living Services for Older Individuals Who Are Blind (OIB) program, Catalog of Federal Domestic Assistance (CFDA) number 84.177Z. The Department may use one or more of these priorities and definitions for competitions in fiscal year (FY) 2020 and later years. We take this action to focus Federal financial assistance on an identified national need. We intend the priorities and definitions to improve the administration, operation, and performance of the OIB program.

DATES: These priorities and definitions are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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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:

Purpose of Program: The purpose of this program is to provide training and technical assistance to designated State agencies (DSAs)--the State agencies that provide vocational rehabilitation services to individuals who are blind--that receive grant funding under the OIB program and to other service providers that receive OIB program funding from DSAs to provide services to consumers. The training and technical assistance are designed to improve the operation and performance of programs and services for older individuals who are blind resulting in their enhanced independence and self-sufficiency.

Program Authority: 29 U.S.C. 796j-1.

Applicable Program Regulations: 34 CFR part 367.

We published a notice of proposed priorities and definitions (NPP) for this competition in the *Federal*

Register on March 25, 2020 (85 FR 16920). The NPP contained background information and our reasons for proposing the particular priorities and definitions.

We made changes to the definition of "intensive training and technical assistance" and to Proposed Priority 1 to recognize that in-person services and conferences may need to be supplemented or replaced by virtual offerings during the COVID-19 pandemic. There are otherwise no substantive differences between the NPP and these final priorities and definitions.

Public Comment: In response to our invitation in the NPP, eight parties submitted comments on the proposed priorities and definitions.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make. In addition, we do not address general comments that raise concerns not directly related to the proposed priorities and definitions.

Analysis of Comments and Changes: An analysis of the comments related to the proposed priorities and definitions follows.

Proposed Priority 1--Independent Living Services for Older Individuals Who Are Blind (OIB) Training and Technical Assistance.

Comment: One commenter stated that the proposed priority does not go far enough to enhance the capacity of OIB and similar programs to access additional funding to address the unmet need for OIB services. The commenter further stated that, if the OIB Training and Technical Assistance Center (Center) merely suggests funding streams and methods of collaboration and does not actually undertake educational and other initiatives that enhance the capacity of OIB and similar programs to access additional funds, this technical assistance will be a largely cosmetic undertaking.

Discussion: We do not fully agree with the commenter's characterization of the activities contemplated for the Center. Through implementation of Priority 1, the Center can train OIB grantees on how to identify State and local resources and implement strategies to acquire and effectively leverage the use of those resources, where appropriate, to meet the unmet service needs of OIB consumers. To that end, the Center will be responsible for identifying State and local resources available to the OIB program as well as promising practices that facilitate the acquisition, sharing, and leveraging of those resources within a State. This will require communication and coordination, on an ongoing basis, with other federally

funded training and technical assistance projects and State OIB programs.

Changes: None.

Comment: One commenter suggested a more targeted assessment of the four core areas reflected in this proposed priority and suggested utilizing a survey of the DSAs to identify training content that would best benefit their staff.

Discussion: RSA has conducted surveys of DSAs since FY 2015 to identify their training and technical assistance needs, pursuant to the requirements of section 751A(b) of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA) (29 U.S.C. 796j-1). Survey information is captured through the OIB annual performance reports. The four core areas reflected in Priority 1 are based on survey information gathered through the OIB annual performance reports since FY 2015.

Changes: None.

Comment: One commenter recommended changes to the proposed priority in four areas: (1) Virtual and remote services and assistance; (2) Best practices; (3) Evaluating program performance; and (4) Modifying information technology (IT) platforms.

Regarding virtual and remote services and assistance,

the commenter suggested offering flexibility to provide training on remote or virtual service delivery practices to help maintain and expand service provision, particularly in large or rural service areas. Further, the commenter suggested the Department provide flexibility to the Center with respect to the form of service delivery in unusual circumstances that represent higher risks to the older people who are served by the OIB programs.

Regarding best practices, the commenter noted that the term "best practices" used in Priority 1, general topic area (b), in the OIB program FY 2015 grant competition was changed to "promising practices" in Proposed Priority 1. The commenter suggested, to the extent that best practices exist, technical assistance and training should be based on best practices, and the final priority should make this clarification.

Regarding evaluating program performance, the commenter suggested that training and technical assistance should be provided on the evaluation of programs, client progress, and outcomes, and recommended changing general topic area (b), to read "Promising practices, including the development, dissemination, and evaluation of relevant materials to facilitate delivery of effective services" and changing general topic area (c) to include evaluation and

to read "Program performance, including data reporting, evaluation, and analysis."

Regarding modifying IT platforms, the commenter indicated that ample platforms exist to support dissemination of information on training and technical assistance and suggested focusing on the channels that already exist, to the greatest extent possible, in order to maximize limited resources available for the Center and the OIB programs.

Discussion: In the area of virtual and remote services and assistance, we believe that development of training on remote or virtual service delivery practices can be accomplished under Final Priority 1, activity (b)(2). We used the term "promising practices" rather than "best practices" because "best practices" would rely on a higher level of evidence than is currently available in the area of serving older individuals who are blind. The term "promising practices" aligns with the definition of "promising evidence" in 34 CFR 77.1(c). However, where there are relevant evidence-based practices, we encourage the Center to provide training and technical assistance based on such practices.

Regarding the suggestions to change the language in general topic area (c), as noted earlier, the four general

topic areas under Final Priority 1 are based on the results of surveys of the DSAs to determine their training and technical assistance needs. Furthermore, we believe that general topic area (c) is sufficiently flexible to allow for the provision of technical assistance on the areas of evaluation of programs, client progress, and outcomes if it is determined that these issues need to be addressed.

Regarding IT platforms, this priority allows for the development of new IT platforms or systems if existing platforms and systems cannot be effectively modified to support webinars, podcasts, video conferences, teleconferences, and other virtual methods of dissemination of information and training and technical assistance.

Changes: None.

Definitions

Comment: One commenter stated that the definition of "intensive training and technical assistance" lacks detail. The commenter stated that the definition could be improved and clarified by presenting methods and examples that represent the level of training received in order to differentiate between the types of training and technical assistance provided.

Discussion: We recognize that the definition of "intensive training and technical assistance" is broad; however, this

is intentional given the range of issues that OIB agencies may encounter in their implementation of the OIB program. OIB grantees, in collaboration with this Center, will determine the type and level of intensive training and technical assistance needed. We believe that the definition offers applicants the flexibility they need to demonstrate how they would apply the definition of "intensive training and technical assistance" to meet the varying needs of the OIB grantees. The definition of "intensive training and technical assistance" used in this priority is the standard definition used for the Rehabilitation Services Administration's (RSA's) training and technical assistance centers to provide this flexibility.

Changes: None.

Comment: None.

Discussion: As a result of disruptions to in-person services arising from the COVID-19 pandemic, the Department believes it is advisable to provide for the possibility that intensive training and technical assistance might sometimes be provided through remote delivery, as needed and appropriate.

Changes: We have revised the definition of "intensive training and technical assistance" to allow the Center to

provide intensive training and technical assistance through remote delivery as appropriate.

General

Comment: A few commenters stated that the proposed priorities could benefit from clearer descriptive labeling and language, use of shorter sentences and smaller sections to facilitate ease of reading and clarity, and hyperlinks to improve understanding, but the commenters did not offer specific suggestions or examples to improve the clarity of the proposed priorities.

Discussion: We appreciate the value of using plain language in the priorities and believe the current language is clear.

Changes: None.

FINAL PRIORITIES:

Priority 1--Independent Living Services for Older Individuals Who Are Blind (OIB) Training and Technical Assistance.

This priority supports a cooperative agreement to establish an OIB Training and Technical Assistance Center (Center) to provide universal, targeted, and intensive training and technical assistance to designated State agencies (DSAs) funded under the OIB program and to any service providers that DSAs fund to provide services

directly to consumers. The Center will develop and provide training and technical assistance in the following general topic areas:

(a) Community outreach methods and strategies to identify potential recipients of services.

(b) Promising practices, based on "promising evidence" as defined in 34 CFR 77.1(c), including the development and dissemination of relevant materials to facilitate the delivery of high-quality services.

(c) Program performance, including data reporting and analysis.

(d) Financial and management practices, including practices to ensure compliance with grant administration requirements.

To meet the requirements of this priority, the Center must, at a minimum, conduct the following activities:

(a) Annually provide intensive training and technical assistance to a minimum of three DSAs or other service providers on the four general topic areas in this priority. Intensive training and technical assistance may be provided through remote delivery as appropriate. The technical assistance must be--

(1) Consistent with the project activities and tailored to the specific needs and challenges of the DSA or

other service provider receiving intensive training and technical assistance;

(2) Provided under an agreement with each DSA or other service provider that, at a minimum, details the purpose, intended outcomes, and requirements for subsequent evaluation of the training and technical assistance; and

(3) Assessed 90 days after completion to ensure that the DSAs and other service providers receiving intensive training and technical assistance are applying it effectively, and to address any issues or challenges in its implementation.

(b) Provide a range of targeted training and technical assistance and universal training and technical assistance products and services on the four general topic areas in this priority. The training and technical assistance must include, at a minimum, the following activities:

(1) In each year of the project, provide a minimum of 10 webinars, podcasts, video conferences, teleconferences, or other virtual methods of dissemination of information and training and technical assistance on the four general topic areas in this priority to describe and disseminate information about emerging promising practices.

(2) Develop new information technology (IT) platforms

or systems, or modify existing platforms and systems, as follows:

(i) Develop or modify, and maintain, a state-of-the-art IT platform sufficient to support webinars, podcasts, video conferences, teleconferences, and other virtual methods of dissemination of information and training and technical assistance; and

(ii) Develop or modify, and maintain, a state-of-the-art archiving and dissemination system that is open and available to the public, at no cost, and that provides a central location for later use of training and technical assistance products, including course curricula, audiovisual materials, webinars, examples of emerging and promising practices related to the four general topic areas in this priority, and any other training and technical assistance products developed by the grantee and others.

Note: All products produced by the Center must meet government and industry-recognized standards for accessibility.

(c) Conduct outreach to DSAs so that they are aware of, and can participate in, training and technical assistance activities.

(d) Establish a community of practice¹ that will act as a vehicle for communication, an exchange of information among DSAs and other service providers, and a forum for sharing the results of training and technical assistance activities that are in progress or that have been completed.

(e) Facilitate annually a minimum of one in-person conference, or, if health and safety reasons make an in-person conference infeasible, a virtual conference, for the purpose of dissemination of information related to emerging promising practices and ongoing technical assistance needs and activities.

(f) Communicate and coordinate, on an ongoing basis, with other federally funded training and technical assistance projects, particularly Department-funded projects, to ensure that training and technical assistance activities are complementary and non-duplicative.

(g) Conduct an evaluation to determine the impact of the Center's training and technical assistance on the DSAs and other service providers that received the Center's services.

Priority 2--Identify and Demonstrate how Specific

¹ See: www.sedl.org/pubs/catalog/items/dis104.html.

Technical Assistance Strategies Provided to OIB Grantees
will Facilitate Collaboration and Leveraging of Resources
at the State and Local Level.

To meet the requirements of this priority, the Center must, at a minimum, develop technical assistance focused on partnerships to facilitate the sharing of information and leveraging of resources from other systems that work with aging individuals and individuals with disabilities.

These technical assistance strategies must be designed to improve the capacity of OIB grantee staff, and staff from other service providers that receive OIB program funding from DSAs to provide services to the OIB population, to acquire and develop the skills and tools they need to help the OIB population sustain and increase their ability to live independently in their homes and communities.

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)).

FINAL DEFINITIONS:

The Department establishes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Intensive training and technical assistance means training and technical assistance provided to a DSA, or other service provider that receives OIB program funding from a DSA to provide services, primarily on-site or through remote delivery, as needed and appropriate, over an extended period. Intensive training and technical assistance is based on an ongoing relationship between the

training and technical assistance center staff and a DSA, or other service provider that receives OIB program funding from a DSA to provide services, under the terms of a signed intensive training and technical assistance agreement.

Targeted training and technical assistance means training and technical assistance based on needs common to one or more DSAs, or other service providers that receive OIB program funding from DSAs to provide services, on a time-limited basis and with a limited commitment of training and technical assistance center resources.

Targeted training and technical assistance are delivered through virtual or in-person methods tailored to the identified needs of the participating DSAs, or other service providers that receive OIB program funding from DSAs to provide services.

Universal training and technical assistance means training and technical assistance broadly available to DSAs, or other service providers that receive OIB program funding from DSAs to provide services, and other interested parties resulting in minimal interaction with training and technical assistance center staff. Universal training and technical assistance includes generalized presentations, products, and related activities available through a website or through brief contact with the training and

technical assistance center staff.

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these priorities and definitions, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined 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 final 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 regulation 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 regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this final 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 final priorities and definitions 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 also have 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.

In addition, we have considered the potential benefits of this regulatory action and noted these benefits in the NPP.

Regulatory Flexibility Act Certification: The Secretary certifies that this 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 regulatory action would affect are State and public or non-profit agencies and organizations and institutions of higher education (IHEs) that have the capacity to provide training and technical assistance in the provision of independent living services

for older individuals who are blind and have demonstrated through their application a capacity to provide the level of training and technical assistance necessary to meet the priorities and definitions. We believe that the costs imposed on an applicant by the priorities and definitions would be limited to paperwork burden related to preparing an application and that the benefits of these priorities and definitions would outweigh any costs incurred by the applicant. There are very few entities that could provide the type of technical assistance the Center aims to provide. For these reasons these priorities and definitions would not impose a burden on a significant number of small entities.

Paperwork Reduction Act of 1995: The priorities and definitions 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 Federal financial assistance.

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

Assessment of Educational Impact

In the NPP we requested comments on whether the proposed priorities and definitions would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the NPP and on our review, we have determined that these final priorities and definitions do not 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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