

**DEPARTMENT OF EDUCATION****34 CFR Chapter III**

[Docket ID ED-2020-OSERS-0009]

**Proposed 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:** Proposed priorities and definitions.

**SUMMARY:** The Assistant Secretary for the Office of Special Education and Rehabilitative Services proposes 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 Assistant Secretary 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:** We must receive your comments on or before April 24, 2020.

**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](http://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 about the proposed priorities and definitions, address them to RoseAnn Ashby, U.S. Department of Education, 400 Maryland Avenue SW, Room 5151, Potomac Center Plaza (PCP), Washington, DC 20202-2500.

*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](http://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:** RoseAnn Ashby. Telephone: (202) 245-7258. Email: [RoseAnn.Ashby@ed.gov](mailto:RoseAnn.Ashby@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 and definitions. To ensure that your comments have maximum effect in developing the notice of final priorities and definitions, we urge you to identify clearly the specific priorities and definitions 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 these proposed priorities and definitions. 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 and definitions by accessing *Regulations.gov*. You may also inspect the comments in person in Room 5151, PCP, 400 Maryland Avenue 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 document. 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 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.

**PROPOSED PRIORITIES:** This document contains two proposed priorities.

*Background:*

Vision loss, due to such conditions as diabetic retinopathy, cataracts, glaucoma, and macular degeneration, can greatly affect the ability of older individuals to function independently in the home and to participate fully in the community. As people lose vision, they often isolate themselves and do not believe that they can still maintain an active, independent lifestyle.

According to the Centers for Disease Control and Prevention’s 2016 National Health Interview Survey (NHIS),<sup>1</sup> 7.3 million American adults 65 years and older report having vision loss. That number will increase significantly in the coming decades, as nearly 75 million Americans who make up the baby-boomer generation get older. According to the American Foundation for the Blind,<sup>2</sup> experts predict that by 2030, rates of vision loss will double within the country’s aging population.

Currently, Medicaid, Medicare, and private insurance do not provide coverage for any rehabilitative services or tools for individuals who are blind, such as white canes; assistive technology, including computer software with text enlargement or text-to-speech capabilities; or everyday items such as talking clocks, tactile medication dispensers, and kitchen safety items. Furthermore, insurance does not provide coverage for instruction in adaptive skills that will allow a person experiencing significant vision loss to perform the activities of daily living (ADLs) that are necessary to an individual’s ability to remain in the home and community.

If an older individual with significant vision loss does not have the services, tools, or skills to perform ADLs, a nursing facility or in-home care may be the only options. According to the Department of Health and Human Services, Administration for

<sup>1</sup> See: <https://afb.org/research-and-initiatives/past-initiatives/21st-century-agenda-aging-and-vision-loss>.

<sup>2</sup> See: <https://afb.org/research-and-initiatives/aging/special-report-aging-vision-loss>.

Community Living (HHS–ACL),<sup>3</sup> the national average cost of care in a private room within a nursing facility is \$253 per day, \$7,698 per month, or \$92,376 per year. Alternatively, the national average cost of in-home care is \$20.50 per hour. Therefore, services and strategies that delay or eliminate the need for older individuals who are blind, or who have low vision, to enter a nursing home would be cost effective, as would reducing the number of hours of in-home care these individuals require to maintain their independence.

OIB services are provided to help persons served under this program adjust to their blindness by increasing their ability to care for their individual needs. Therefore, it is essential that DSAs responsible for providing these services and other service providers that receive OIB program funding from DSAs to provide these services are able to effectively address this vital need.

We are proposing priority 1 to establish an OIB Training and Technical Assistance Center (Center) to provide universal, targeted, and intensive training and technical assistance to DSAs funded under the OIB program and to any service providers that DSAs fund to provide services directly to consumers.

The Center will provide training and technical assistance in the following areas identified by surveying the training and technical assistance needs of DSAs: (a) Community outreach; (b) promising practices; (c) program performance; and (d) financial and management practices.

Federal funding to OIB grantees is not enough, nor was it intended to be enough, to address all the service needs of OIB consumers. Therefore, it is imperative that OIB grantees develop effective strategies for collaborating with other systems and professions that work with the OIB population. OIB grantees must be knowledgeable about available State and local resources and must implement strategies to effectively leverage the use of those resources to meet the service needs of OIB consumers.

The second proposed priority focuses on providing technical assistance to DSAs, and other service providers that receive OIB program funding from DSAs to provide services to consumers, on partnering with other systems that work with individuals who are aging and individuals with disabilities to facilitate the sharing of information and leveraging of resources. This will require communication and

coordination, 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.

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

This proposed 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 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, including the development and dissemination of relevant materials to facilitate the delivery of effective 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 proposed 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 proposed priority. 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 proposed 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 on the four general topic areas in this proposed 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 proposed 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 practice<sup>4</sup> 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 a minimum of one in-person conference annually 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.

<sup>3</sup> See: <https://longtermcare.acl.gov/costs-how-to-pay/costs-of-care.html>.

<sup>4</sup> See: <http://www.sedl.org/pubs/catalog/items/dis104.html>.

(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.

*Proposed Priority 2—Identify and Demonstrate how Specific 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 proposed 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)).

**PROPOSED DEFINITIONS:**

*Background:*

We propose the following definitions for use with these proposed priorities. We propose these definitions to ensure that applicants have a clear understanding of how we are using these terms.

*Proposed Definitions:*

The Assistant Secretary proposes 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 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.

*Final Priorities and Definitions:*

We will announce the final priorities and definitions in the **Federal Register**. We will determine the final priorities and definitions after considering responses to the proposed priorities and definitions 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 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, 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 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 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 proposed regulatory action is not significant, the requirements of Executive Order 13771 do 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 and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. The Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

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.

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 have noted these benefits in the background section of this document.

#### *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 and definitions 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 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 proposed priorities. We believe that the costs imposed on an applicant by the proposed priorities and definitions would be limited to paperwork burden related to preparing an application and that the benefits of these proposed 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 proposed priorities and definitions would not impose a burden on a significant number of small entities.

**Paperwork Reduction Act of 1995:** The proposed 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 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](http://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](http://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.*

[FR Doc. 2020-06060 Filed 3-24-20; 8:45 am]

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