

**A DESCRIPTION AND ANALYSIS OF STATE  
POLICY FRAMEWORKS REGARDING ORDER OF  
SELECTION  
UNDER TITLE I OF THE REHABILITATION ACT**

**Report Prepared for**

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## **PART I: INTRODUCTION**

### **I. PURPOSES OF THE POLICY ANALYSIS**

The Office of Special Education and Rehabilitation Services (OSERS), U.S. Department of Education, in announcing the funding opportunity for the Rehabilitation and Research Training Center (RRTC) on vocational rehabilitation, specified that the RRTC must focus on increasing knowledge of the order of selection provision used for prioritizing and providing services to individuals with the most significant disabilities when the State VR agency cannot serve all eligible individuals with disabilities under Title I of the Rehabilitation Act. The RRTC must contribute to this outcome by conducting research on the administration and implementation of the order of selection requirement.

The purpose of this paper is to describe the key policy elements included in the order of selection requirement and then analyze how the various states address each element. It is my expectation that this paper will help inform policymakers and other stakeholders about the OOS federal policy framework and policies currently used by states. It is not the purpose of this policy analysis to determine or judge the merits of any particular state policy and thus the descriptions of state policies included in this paper should not be construed as constituting “best practices” among State VR programs.

### **II. APPROACH AND METHODOLOGY**

The approach and methodology used to conduct the policy analysis of the order of selection provision included the following components. First, I reviewed a recent Order of Selection Survey conducted by the Council of State Administrators of Vocational Rehabilitation (CSAVR) and the papers prepared and used by the “Future’s Workgroup” on the topic of “order of selection” and the definitions of “individual with a significant disability” and “individual with the most significant disability” under Title I of the Rehabilitation Act. Over the past several years, various stakeholder groups, including CSAVR, community rehabilitation providers and representatives of individuals with disabilities have been meeting as part of what is known as the “Future’s Workgroup on the Definition of Most Significant Disability” (Workgroup). The Workgroup’s stated mission is to discuss, among other things, whether and how to modify the order of selection policy and whether Congress should prescribe a national definition for persons with the most significant disabilities and if so, what criteria should Congress adopt. The overall intent of the Workgroup is to increase the national VR program order of selection consistency and portability of services.

Second, I used these documents as the platform from which to conduct my policy analysis. In order to ensure that the analysis would be of maximum utility to stakeholders interested in the issues of “order of selection” and the definition of “individual with the most significant disability”, I scheduled regular and frequent communications with representatives from CSAVR and other stakeholders before the policy analysis design was finalized.

Third, I researched and described the federal policy framework concerning the establishment, implementation, and administration of “order of selection” including definitions of the terms

“individual with a significant disability” and “individual with the most significant disability.” The analysis included a review of the legislation, regulations, and policy guidance issued by the U.S. Department of Education in general and the Rehabilitation Services Administration in particular.

Fourth, I researched and described state policy frameworks concerning the establishment, implementation, and administration of “order of selection” including a description of state policies relating to the definitions of the terms “individual with a significant disability” and “individual with the most significant disability” (state-by-state analysis). The state-by-state descriptions were based on a review of state regulations, policy guidelines, handbooks, manuals, and training materials. Each state description included a review of key policy elements, including elements relevant to the design/establishment, implementation, and administration of order of selection. In October 2008, I completed a paper entitled *A Description and Analysis of the Federal and Selected State Policy Frameworks Regarding Order of Selection under Title I of the Rehabilitation Act* (underline added). The states selected for the October 2008 policy analysis included California, Iowa, Massachusetts, Michigan, Tennessee, Virginia, West Virginia, and Wisconsin.

For purposes of this paper, I reviewed policies frameworks in all 40 states plus the District of Columbia (Washington, D.C.) that reported to CSAVR and me that they have in place an order of selection policy. A separate paper—*A Compendium of State Policy Frameworks Regarding Order of Selection Under Title I of the Rehabilitation Act* includes descriptions of these 41 policy frameworks.

Finally, I analyzed the key policy elements included in the order of selection requirement across the states i.e., identified the key policy elements and then described how the various states addressed each element (thematic analysis). Under each key policy element, I described the applicable federal policy and then described how various states addressed each element and included specific examples of state policies.

### **III. ORGANIZATION OF THE PAPER**

**Part I** of the paper includes the introductory sections of the paper.

**Part II** of the paper includes background information relating to and a description of the federal policy framework governing the order of selection provision.

**Part III** of the paper analyzes each of the key policy elements of the order of selection requirement. Under each key policy element, the applicable federal policy is described followed by a description of how various states address the element, including specific examples of state policies/approaches.

## **PART II: THE FEDERAL POLICY FRAMEWORK GOVERNING THE ORDER OF SELECTION REQUIREMENT**

Part II of the paper provides the background relating to and a description of the Federal policy framework governing the requirement set out in Title I of the Rehabilitation Act of 1973 (the Act) that each State VR agency must implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all individuals eligible for vocational rehabilitation services.

The first section describes the background of the order of selection provision in the statute. The second section provides an overview of the order of selection policy. The third section describes the standards governing the determination of whether a State VR agency must establish an order of selection. The fourth section describes the standards governing the establishment, implementation, and administration of an order of selection. The final section describes the responsibility of the State VR agency to consult with the State Rehabilitation Council (SRC) regarding the order or selection requirement.

### **I. BACKGROUND**

The Vocational Rehabilitation (VR) program authorized under Title I of the Rehabilitation Act of 1973, as amended, is a microcosm of the quintessential U.S. social policy dilemma: should resources be devoted to serving those “most in need” or those “most able to benefit”? With respect to the VR program, Congress has made a clear choice—a State VR agency must implement an “order of selection” when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all individuals eligible for vocational rehabilitation services. Under an order of selection, individuals with the most significant disabilities are selected first for the provision of VR services.

Over the years, Congress has refined the order of selection provision, including the definition of the term “person with the most significant disability”. The Rehabilitation Act of 1973 specified that the state plan must contain plans, policies, and methods to be followed in carrying out the state plan and in its administration and supervision, including in the event that vocational rehabilitation services cannot be provided to all eligible handicapped individuals who apply for such services, show the order to be followed in selecting individuals to whom vocational rehabilitation services will be provided and the outcomes and service goals and the time within which they may be achieved for the rehabilitation of such individuals, which order of selection for the provision of vocational rehabilitation services shall be determined on the basis of serving first those individuals with the most severe handicaps and shall be consistent with priorities in such order of selection so determined, and outcome and service goals for serving handicapped individuals, established in regulations prescribed by the Commissioner.

The Rehabilitation Act Amendments of 1986 (P.L. 99-506) included three amendments to strengthen the policy of serving persons with the most significant disabilities and the order of selection provision. First, the 1986 Amendments specified that the state plan must include the results of a comprehensive, state-wide assessment of the rehabilitation needs of all individuals with severe handicaps residing within the state and the state’s response to the assessment.

Second, the 1986 Amendments amended the order of selection provision to direct the state plan to not only “show” the order to be followed but to “show and provide the justification for” the order to be followed. The 1986 Amendments also specified that the state plan must “show” the outcome and services goals and the time within which they will be achieved.

The House bill accompanying the 1986 Amendments (H. Rpt. No. 99-571) explains that the current regulations include a section (34 CFR 361.36(b) (1985) that is inconsistent with the amendment and current law relating to order of selection and therefore should be modified. This section of the regulations states that “the state plan must assure that those groups of individuals with the most severe handicaps are selected for services before any other groups of handicapped individuals.” The report explains, “This section is inconsistent with the Act because it focuses on ‘groups’ rather than individuals.” [Page 20]

The Rehabilitation Act Amendments of 1992 (P.L. 102-569) includes two substantive amendments to the order of selection provision. First, the 1992 Amendments Act adds the requirement that the state plan must include an “explanation of the methods by which the state will provide vocational rehabilitation services to all individuals with disabilities within the state who are eligible for such services”.

Second, the 1992 Amendments Act clarifies that the determination regarding serving first those individuals with the most significant disabilities are to be made “in accordance with criteria established by the state”. The Senate Report accompanying the 1992 Amendments Act makes it clear that “the Committee does not intend for the Commissioner to prescribe criteria in this regard. It is the Committee’s intent that determinations pertaining to ‘order of selection’ and the definition of the term ‘individuals with the most severe disabilities’ will be made by the designated state unit after obtaining input from individuals with disabilities, their families, and organizations advocating on their behalf, particularly input from the newly established State Rehabilitation Advisory Council”. [S. Rpt. No. 102-357 at pages 27-28]

It should be noted that the 1992 Amendments Act directs the Secretary to “promulgate regulations regarding the requirements for the implementation of an order of selection for vocational rehabilitation services under section 105(a)(5)(A) if such services cannot be provided to all eligible individuals with disabilities who apply for such services.” It should also be noted that the 1992 Amendments substitutes the phrase “community rehabilitation providers” for the phrase “rehabilitation facilities”.

Title IV of the Workforce Investment Act of 1998 [P.L. No. 105-220] includes amendments to the Rehabilitation Act in general and the order of selection provision in particular. The short title of Title IV is “the Rehabilitation Act Amendments of 1998”. The 1998 Amendments Act streamlined and modified the state plan provisions and the provisions specifically applicable to order of selection. The primary substantive change was to specify the obligation of State VR agencies to eligible individuals not selected i.e., “provide that eligible individuals, who do not meet the order of selection criteria, shall have access to services provided through the information and referral system...” The Conference Report [H. Rpt. No. 105-659] explains [page 352] that:

“The intent is to alleviate the backlog of eligible individuals who do not receive services from the state vocational rehabilitation program because they do not meet the state’s order of selection criteria. Many of these individuals do not receive services from the state workforce system and are inappropriately referred back to the state vocational rehabilitation program because they have a disability. The Conferees expect that through the changes made throughout the Conference agreement in integrating the state workforce system, states will serve individuals with disabilities throughout the entire state workforce system, not only through the state vocational rehabilitation program.”

The current provision in the Rehabilitation Act, as amended, specifically applicable to order of selection reads as follows:

“In the event that vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in the state who apply for the services, the state plan shall—

- (A) Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;
- (B) Provide justification for the order of selection;
- (C) Include an assurance that, in accordance with criteria established by the state for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and
- (D) Provide that eligible individuals, who do not meet the order of selection criteria, shall have access to services provided through the information and referral system, implemented under paragraph (20).”

Over time, the Rehabilitation Services Administration (RSA) has issued regulations and developed guidelines implementing the order of selection policy consistent with the changes to the statute.

## **II. OVERVIEW**

A State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. [Section 101(a)(5)(A) of the Rehabilitation Act of 1973 (Act) and 34 CFR 361.36(a)(1)] The decision to establish and implement an order of selection must be made prior to the beginning of each fiscal year and reevaluated whenever changed circumstances indicate that the agency’s resources are not sufficient to fully serve all eligible individuals. [34 CFR 361.36(c)]

An order of selection consists of priority categories to which eligible individuals are assigned based on the significance of their disability. [34 CFR 361.36(d)(1)] Under an order of selection, individuals with the most significant disabilities are selected first for the provision of vocational rehabilitation services. [Section 101(a)(5)(C) of the Act and 34 CFR 361.36(a)(3)(iv)(A)] An “individual with a significant disability” is defined in Section 7(21)(A) of the Act and 34 CFR 361.5(b)(31) as an individual with a disability –



- Who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- Who has one or more listed physical or mental disabilities or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

An “individual with a most significant disability” is defined by each State VR agency, using criteria consistent with the statutory definition of “individual with a significant disability.” [Section 101(a)(5)(C) and 34 CFR 361.36(a)(3)(iv)(A)] The order of selection must be based on a refinement of the three criteria in the definition of “individual with a significant disability.” [34 CFR 361.36(d)(1)] No other factors, including type of disability, referral source, and income, can be used to determine significance of disability or assignment to a priority category. [34 CFR 361.36(d)(2)]

If a State VR agency establishes an order of selection, but does not implement the order at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. [34 CFR 361.36(c)(3)]

In a state operating under an order of selection, the individualized plan for employment (IPE) will be developed and implemented only for those eligible individuals to whom the State VR agency is able to provide services. Thus, an IPE will not be developed for individuals on waiting lists. [Section 101(a)(9)(A) of the Act and 34 CFR 361.45(a)(1)] Eligible individuals who do not meet the State VR agency’s order of selection criteria, i.e., individuals on waiting lists, must be provided with access to the services available through the agency’s information and referral system. [Section 101(a)(5)(D) of the Act and 34 CFR 361.37]

### **III. DETERMINING WHETHER TO ESTABLISH AN ORDER OF SELECTION**

#### **A. In General—Circumstances Under Which Order of Selection is Not Required.**

The designated state unit is not required to establish an order of selection if it can demonstrate that it is able to provide the full range of vocational rehabilitation services, as appropriate, to all “eligible individuals.” [34 CFR 361.36(a)]

An “eligible individual” means an applicant for vocational rehabilitation services who meets the following eligibility requirements. The designated state unit’s determination of an applicant’s eligibility for vocational rehabilitation services must be based only on the following requirements [34 CFR 361.42(a)]:

1. A determination by qualified personnel that the applicant has a physical or mental impairment.
2. A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.
3. A determination by a qualified vocational rehabilitation counselor employed by the designated state unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
4. A presumption that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

**B. Bases for Determining the Ability of the Designated State Unit to Provide the Full Range of VR Services to All Eligible Individuals.**

The determination that an agency does not need to establish an order of selection because it can serve all eligible individuals is made on the basis of an assurance and a determination that the State VR agency's projected fiscal and personnel resources are sufficient to enable the agency to:

- Continue to provide services to all individuals currently receiving services under an individualized plan for employment (IPE) who are expected to continue to need services during the coming fiscal year;
- Provide assessment services to all individuals expected to apply for services during the coming fiscal year;
- Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and
- Meet all other program requirements. *[34 CFR 361.36(a)(2)]*

To support the determination that the State VR agency can fully serve all eligible individuals during the current fiscal year, the agency must have, in fact:

- Provided assessment services to all applicants and the full range of services, as appropriate, to all eligible individuals;
- Made referral forms widely available throughout the state;
- Conducted outreach efforts to identify and serve unserved or underserved persons; and
- Not delayed, through waiting lists or other means, determinations of eligibility, the development of IPEs for individuals determined eligible for vocational rehabilitation services or the provision of services for eligible individuals for whom IPEs have been developed. *[34 CFR 361.36(b)(1)]*

An agency determination that it can serve all eligible individuals during this current fiscal year must also have met these requirements during the previous fiscal year *[34 CFR 361.36(b)(1)]* or must meet additional requirements related to changed circumstances. In accordance with *34 CFR 361.36(b)(2)*, an agency that did not meet the applicable requirements during the previous fiscal year, but determines that it can serve all eligible individuals during the current fiscal year, must describe the changed circumstances that support the determination that it can fully serve all individuals.

The description of changed circumstances must include *[34 CFR 361.36(b)(2)(i)]*:

- 1) An estimate of the number of and projected costs of serving, in the next fiscal year, individuals with existing individualized plans for employment;
- 2) The projected number of individuals with disabilities who will apply for services and will be determined eligible in the next fiscal year and the projected costs of serving those individuals;
- 3) The projected costs of administering the program in the next fiscal year, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies; and
- 4) Projected revenues and projected number of qualified personnel for the program in the next fiscal year.

The determination that the designated state unit is able to provide a full range of services to all eligible individuals in the next fiscal year may also be based on any relevant comparable data from previous years and explanations for increases and decreases in costs and resources; and a determination that, for the current fiscal year, the projected revenues and personnel are adequate to cover the projected costs and to provide the full range of services to all eligible individuals. *[34 CFR 361.36(b)(2)(ii) and (iii)]*

The determination by the designated state unit whether to establish an order of selection must be made prior to the beginning of each fiscal year. *[34 CFR 361.36(c)(1)]*

### **C. Reevaluation.**

If the designated state unit determines that it does not need to establish an order of selection, it must reevaluate this determination whenever changed circumstances during the course of the fiscal year indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals. *[34 CFR 361.36(c)(2)]*

Changed circumstances may include decreases in fiscal or personnel resources or increases in program costs. *[34 CFR 361.36(c)(2)]* Increases in program costs may occur because of increased services costs and/or an increase in the number of individuals referred to the VR program. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 15]*

#### **IV. ESTABLISHMENT, IMPLEMENTATION, AND ADMINISTRATION OF AN ORDER OF SELECTION.**

##### **A. In General—State Plan Provisions.**

If the designated state unit is unable to provide the full range of vocational rehabilitation services to all eligible individuals in the state who apply for the services, the state plan must—

- Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;
- Provide a justification for the order of selection;
- Identify services and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order and
- Assure that
  - In accordance with criteria established by the state for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and
  - Individual who do not meet the order of selection criteria will have access to services provided through the information and referral system. *[34 CFR 361.36(a)(3)]*

The state plan must also include the results of a comprehensive, statewide assessment describing the rehabilitation needs of individuals with disabilities residing within the state, particularly the vocational rehabilitation service needs of individuals with the most significant disabilities, including their need for supported employment services. *[34 CFR 361.29(a)]*

In addition, the state plan must assure that the state will annually submit a report to the Secretary that includes, among other things, estimates of the number of individuals to be served under each priority category within the order if the designated state agency uses an order of selection. *[34 CFR 361.29(b)]*

Furthermore, the state plan must identify the goals and priorities of the state in carrying out the program, including, service and outcome goals for categories in the order of selection. If the designated state agency uses an order of selection, the state plan must identify the state's service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order. *[34 CFR 361.29(c)]*

##### **B. Establishment of Order of Selection Policy.**

Establishing an order of selection for services provides an organized and equitable method for State VR agencies to serve individuals with disabilities if it is anticipated that the agency will not have enough fiscal or personnel resources to serve all eligible persons. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 5]* Under the order of selection requirements, first priority for services is given to individuals with the most significant disabilities. *[Section 101(a)(5)(C) of the Act and 34 CFR 361.36(a)]* Individuals are determined to be “individuals with the most significant disabilities”

in accordance with criteria established by the State VR agency. *[Section 101(a)(5)(C) of the Act and 34 CFR 361.36(a)(3)]*

The State VR agency's definition for "individuals with the most significant disabilities" and its descriptions of its priority categories must meet the requirements of *34 CFR 361.36(d)*:

- the order of selection must be based on a refinement of the three criteria in the definition of "individual with a significant disability" and
- no other factors may be used.

An individual with a disability means an individual—

- Who has a physical or mental impairment;
- Whose impairment constitutes or results in substantial impediment to employment; and
- Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. *[34 CFR 361.5(b)(28)]*

The term "substantial impediment to employment" used in the definition of "individual with a disability" means a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with an individual's abilities and capabilities. *[34 CFR 361.5(b)(52)]*

The term "employment outcome" used in the definition of "individual with a disability" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, in the integrated labor market; supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. *[34 CFR 361.5(b)(16)]*

An "individual with a significant disability" means an individual with a disability—

- Who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- Who has one or more listed physical or mental disabilities or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation. *[34 CFR 361.5(b)(31)]*

The criteria that may be refined by the State VR agency include the number and degree of functional limitations in terms of an employment outcome (an impairment seriously limits one or

more functional capacities), the number of vocational rehabilitation services needed (whose vocational rehabilitation can be expected to require multiple vocational services), and the amount of time needed for the VR services (over an extended period of time). The purpose of the criteria is to link the nature and depth of the individual's functional limitations with the need for multiple services that require an extended time period for completion. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

An agency may also establish functional capacities in addition to the seven capacity areas listed in the definition of "individual with a significant disability." In addition, the State VR agency may develop definitions for terms such as "severe" physical or mental impairment that "seriously" limits one of more functional capacities". In establishing the additional criteria, the State VR agency must:

- Apply the criteria equitably to all eligible individuals;
- Ensure consistency with the three criteria in the definition of "individual with a significant disability"; and
- Meet all other program requirements. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

An order of selection may not be based on any other factors, including:

- i. Any duration of residency requirement, provided the individual is presently in the state;
- ii. Type of disability;
- iii. Age, gender, race, color, or national origin;
- iv. Source of referral;
- v. Type of expected employment outcome;
- vi. The need for specific services or anticipated cost of services required by an individual; or
- vii. The income level of an individual or the individual's family. *[34 CFR 361.36(d)(2)]*

Individuals who are receiving SSI and SSDI benefits as a result of having been determined by the Social Security Administration to be disabled or blind are considered to be at least "individuals with significant disabilities" *[Section 102(a)(3)(A) of the Act and 34 CFR 361.42(a)(3)]* and should be evaluated to determine whether they meet the state's criteria for "individuals with the most significant disabilities". There is no statutory authority for assigning a special priority category for individuals receiving SSI and SSDI benefits or for selecting these individuals before other individuals with most significant or significant disabilities.

A State VR agency can establish a policy for ranking individuals within a priority category. The policy should be based on use of an equitable and reasonable factor, such as the individual's date of application. This provides a method for selecting individuals from a waiting list for a priority category when the agency has enough resources to serve some, but not all, individuals in that

priority category. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

The VR counselor determines the significance of the individual's disability and the individual's priority for services based on a review of the data developed to make the eligibility determination and an assessment of additional data, to the extent necessary. *[34 CFR 361.42(g)]* Determinations made by officials of other agencies, such as the Social Security Administration and education officials, can be used to assist the VR counselor in determining the extent of the individual's disability and the extent to which an individual meets one or more of the agency's criteria for the various priority categories. *[Section 102(a)(4)(B) of the Act and 34 CFR 361.42(d)]* To assure consistency in applying agency criteria to individuals, the agency may need to develop guidance materials and provide training for VR counselors. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

### **C. Implementation of Order of Selection Policy.**

The order of selection provides a management tool for preventing the depletion of agency resources before the end of the fiscal year, assuring that once an eligible individual begins to receive VR services under an individualized plan for employment (IPE), sufficient resources will be available to continue to serve that individual. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

State VR agencies implementing an order of selection must

- Implement the order of selection on a statewide basis;
- Notify all eligible individuals of the priority categories in a state's order of selection, their assignment to a particular priority category, and their right to appeal this assignment;
- Continue to provide all needed services to any eligible individual who has begun to receive services under an IPE prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and
- Ensure that its funding arrangements for providing services under the state plan, including third-party arrangements and awards under the establishment authority are consistent with the order of selection. *[34 CFR 361.36(e)]*

Implementing an order of selection on a statewide basis means that, within the state, the same priority categories are closed in all State VR agency offices. State VR agencies must notify all eligible individuals of their priority category assignment and their right to appeal the assignment. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

State VR agencies have the authority to open and close priority categories as needed, so long as the order of the categories is maintained and continuity of services to all individuals selected for services is assured. In determining whether to open priority categories, an agency should ensure that sufficient resources are available throughout the year to serve individuals in higher priority

categories. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

A State VR agency that establishes an order of selection but does not implement the order by keeping all priority categories open, must continue to be able to provide the full range of services, as appropriate, or it must implement the order of selection by closing one or more priority categories. *[34 CFR 361.36(c)(3)]* In other words, a State agency that is operating on an order of selection with all priority categories open must meet the same requirements as an agency that did not establish an order of selection or must close one or more categories. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 16]*

With respect to funding arrangements, contributions may be earmarked for providing particular services (e.g., rehabilitation technology) serving individuals with certain types of disabilities (e.g., individuals who are blind). The contributions, however, must be used in a manner consistent with the state's order of selection, if applicable. Similarly, contributions may be earmarked to provide services to special groups that state and federal law permits (e.g., students with disabilities who are receiving special education services so long as the contributions are used in a manner consistent with the state's order of selection, if applicable. *[See example following 34 CFR 361.60, 66 Fed. Reg. at page 4414 (January 17, 2001)]* In other words, an agency that receives third-party funding to serve individuals from a particular disability group or referral source may not serve any of those individuals that fall outside of the priority categories being served under the order of selection and must renegotiate any funding arrangements that are not consistent with the order of selection requirements. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

#### **D. Administration of Order of Selection Policy.**

##### **1. Assessment for Determining Eligibility and Priority for Services.**

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the state is operating under an order of selection), the designated state unit must conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice. *[34 CFR 361.42; 34 CFR 361.5(b)(6)]*

If the designated state unit is operating under an order of selection for services, the state unit must base its priority assignments on a review of the data that was developed to make the eligibility determination and an assessment of additional data, to the extent necessary. *[34 CFR 361.42(g)]*

In sum, State VR agencies must use and follow the eligibility process in determining whether an individual is eligible to receive VR services. In accordance with *34 CFR 361.42* an individual is eligible to receive VR services if he or she is "an individual with a disability" i.e., the individual has an impairment that results in a substantial impediment



to employment and can benefit in terms of an employment outcome from VR services. The individual also must require VR services in order to prepare for, secure, retain, or regain employment. *[State Vocational Rehabilitation Services Program; Final Rule 66 Fed. Reg. at page 7255 (January 22, 2001)]* In addition, the Act establishes a clear priority for serving persons with the most significant disabilities (through the order of selection requirements).

In light of these criteria, a counselor's decision **not** to serve an individual with a disability on the basis that the individual cannot achieve integrated employment would mean, in effect, that the counselor has concluded that the individual cannot benefit in terms of an employment outcome under the VR program (i.e., integrated work) from VR services. The regulations, however, state that any individual seeking VR services is "presumed [able] to benefit in terms of an employment outcome from VR services. Moreover, for the state agency to overcome this presumption, it must demonstrate by clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome under the VR program due to the severity of the applicant's disability. Finally, in order to establish the requisite "clear and convincing evidence" the agency must explore the individual's abilities, capabilities, and capacity to perform in work situations by affording the individual trial work experiences under 34 CFR 361.42. *[State Vocational Rehabilitation Services Program; Final Rule 66 Fed. Reg. at page 7255 (January 22, 2001)]*

Thus, in the absence of clear and convincing evidence following a trial work assessment of the individual's abilities or as appropriate an extended evaluation, State VR agencies must consider each individual, including those with the most significant disabilities, capable of achieving integrated employment. In other words, the Act establishes the general expectation that individuals with the most significant disabilities, if given necessary services and supports, are able to work in integrated settings. These regulations ensure that every opportunity is afforded so that this expectation is realized. *[State Vocational Rehabilitation Services Program; Final Rule 66 Fed. Reg. at page 7255 (January 22, 2001)]*

## **2. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection.**

The state plan must assure that an IPE is developed and implemented in a timely manner for each individual determined eligible for vocational rehabilitation services, or if the designated state unit is operating under an order of selection, for each eligible individual whom the state unit is able to provide services. *[34 CFR 361.45(a)]*

The designated state unit must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual, or, if the state is operating under an order of selection, for each eligible individual to whom the state is able to provide services. The purpose of the assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the IPE. *[34 CFR 361.45(b)]*

### **3. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection Criteria.**

Agencies implementing an order of selection must ensure that an eligible individual who does not meet the criteria for the open categories of the order of selection has access to services provided under the information and referral system. *[Section 101(a)(5)(D) of the Act and 34 CFR 361.36(a)(3)(iv)]* Information and referral services include: (a) providing vocational rehabilitation information and guidance to assist individuals in achieving employment; and (b) appropriately referring individuals to other Federal and state programs, including other statewide workforce investment programs, that are best suited to meet the individual's specific employment needs. *[Section 101(a)(20)(A) of the Act and 34 CFR 361.37]*

When making a referral, the agency must provide the individual with:

- A notice of the referral;
- Information about a specific point of contact within the program to which the individual is being referred; and
- Information and advice about the most suitable services for assisting the individual to prepare for, secure, retain, or regain employment. *[Section 101(a)(20)(B)(ii) of the Act and 34 CFR 361.37(b)(2)]*

The individual's service record must include documentation on the nature and scope of information and referral services provided by the State VR agency to the individual and documentation on the referral itself. *[34 CFR 361.47(a)(13)]*

As part of its reporting under section 101(a)(10)(c)(ii)(I) of the Act and *34 CFR 361.37*, agencies must report annually on the number of eligible individuals who received information and referral services (not under an IPE) because they did not meet the order of selection criteria.

### **4. Maintenance of Records.**

The designated State unit may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete an assessment for determining eligibility and priority for services, and the state unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation. *[34 CFR 361.44]*

The designated State unit must maintain for each applicant and eligible individual a record of services that include, to the extent pertinent, the following documentation:

- Documentation supporting a determination that the individual is eligible;
- Documentation supporting a determination that the individual is ineligible;

- Documentation that describes the justification for closing an applicant's or eligible individual's record of services; and
- Documentation supporting a determination that an individual is an individual with a significant disability or an individual with the most significant disability. [34 CFR 361.47]

## **V. ROLE OF THE STATE REHABILITATION COUNCIL**

The designated state unit must consult with the State Rehabilitation Council regarding the—

- (1) Need to establish an order of selection, including any reevaluations of the need;
- (2) Priority categories of the particular order of selection;
- (3) Criteria for determining individuals with the most significant disabilities; and Administration of the order of selection. [34 CFR 361.17(h) and 34 CFR 361.36(f)]

### **PART III: STATE POLICY FRAMEWORKS RELATING TO KEY ELEMENTS OF ORDER OF SELECTION**

Part III of the paper analyzes state interpretations of the key policy elements of the order of selection requirement i.e., the establishment, implementation, and administration of order of selection. Under each key element, I describe the applicable federal policy and then describe how the states address the element and include specific examples of state policies and approaches.

The key policy elements of the order of selection requirement are as follows:

- Determination of Whether to Establish an Order of Selection.
- Establishment of Order of Selection, including:
  - Establishment of Priority Categories;
  - Terminology;
  - Acceptable and Unacceptable Factors; and
  - Ranking Individuals Within a Priority (Waiting Lists).
- Implementation of Order of Selection, including:
  - Statewide Basis;
  - Authority to Open and Close Priority Categories, as Needed;
  - Continuation of Services; and
  - Funding Arrangements.
- Administration of Order of Selection, including:
  - Assessment for Determining Eligibility and Priority for Services;
  - Notification of Eligible Individuals;
  - Responsibilities to Individuals Who Meet Open Categories Under OOS;
  - Responsibilities to Individuals Who Do Not Meet Open Categories Under OOS;
  - Maintenance of Records;
  - Monitoring; and
  - Role of State Rehabilitation Council.

#### **I. Determination of Whether to Establish an Order of Selection.**

The federal policy framework specifies that a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. [*Section 101(a)(5)(A) of the Rehabilitation Act of 1973 (Act) and 34 CFR 361.36(a)(1)*] The decision to establish and implement an order of selection must be made prior to the beginning of each fiscal year and reevaluated whenever changed circumstances indicate that the agency's resources are not sufficient to fully serve all eligible individuals. [*34 CFR 361.36(c)*]

The states implement this provision through varying approaches ranging from statements in the state plan (e.g., Virginia and Wisconsin) to actual provisions in official state regulations (e.g., Ohio and California). Michigan established a work group to determine “red flags/indicators to determine how the State VR agency would know if the state is approaching an order of selection. Red flags are indicators that require interventions to correct. Triggers would be insufficient money or staff to provide assessment or IPE services anywhere in the state that cannot be rectified by a shift in staff, resources, or other means.

## **II. Establishment of Order of Selection.**

### **A. Establishment of Priority Categories.**

The federal policy framework explains that establishing an order of selection for services provides an organized and equitable method for State VR agencies to serve individuals with disabilities if it is anticipated that the agency will not have enough fiscal or personnel resources to serve all eligible persons. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 5]* Under the order of selection requirements, first priority for services is given to individuals with the most significant disabilities. *[Section 101(a)(5)(C) of the Act and 34 CFR 361.36(a)]* Individuals are determined to be “individuals with the most significant disabilities” in accordance with criteria established by the State VR agency. *[Section 101(a)(5)(C) of the Act and 34 CFR 361.36(a)(3)]*

Twenty-eight (28) states use a three priority category system for establishing an order of selection; nine (9) states, including Washington, DC (Arkansas, Illinois, Indiana, Minnesota, Oregon, Tennessee, West Virginia, Virginia and Washington D.C.) use a four priority category system; and four (4) states (Georgia, Kentucky, Louisiana, and North Carolina) use a priority category system that provides for more than four categories.

### NUMBER OF PRIORITY CATEGORIES

THREE PRIORITY CATEGORIES (28)	FOUR PRIORITY CATEGORIES (9)	MORE THAN FOUR PRIORITY CATEGORIES (4)
Alaska	Arkansas	Georgia (7)
Arizona	Illinois	Kentucky (6)
California	Indiana	Louisiana (5)
Colorado	Minnesota	North Carolina (6)
Connecticut	Oregon	
Delaware	Tennessee	
Florida	Virginia	
Idaho	Washington, DC	
Iowa	West Virginia	
Kansas		
Maine		
Maryland		
Massachusetts		
Michigan		
Mississippi		
Missouri		
Nebraska		
Nevada		
New York		
Ohio		
Oklahoma		
Pennsylvania		
Rhode Island		
South Dakota		
Utah		
Vermont		
Washington (State)		
Wisconsin		

## 1. States with 3 Priority Categories.

With respect to those states that use **three** priority categories, the categories generally are as follows:

Priority Category 1: Eligible individuals determined to have a **most significant disability**.

Priority Category 2: Eligible individuals determined to have a **significant disability**.

Priority Category 3: All **other eligible individuals** determined to have a disability.

## 2. States with 4 Priority Categories.

Below are descriptions of the states that use a **four** priority category system.

Arkansas uses the following categories: “most significantly disabled”, “significantly disabled”, “non-significantly disabled needing multiple services and non-significantly disabled”.

Illinois uses the following categories: “most significant disabilities”, “very significant disabilities”, “significant disabilities”, and “have disabilities”.

Indiana uses individuals with the most significant disabilities that result in a serious limitation in three or more functional capacities; individuals with a significant disability that results in a serious limitation in two functional capacities; individuals with a significant disability that results in a serious limitation in one functional capacity, and individuals who do not satisfy the requirements for the other three categories.

Minnesota uses the following categories: “most significant disability that results in serious functional limitations in three or more functional areas”, “significant disability that results in serious functional limitations in two functional areas”, “individuals with a significant disability that results in a serious functional limitation in one functional area”, and “all other eligible individuals”.

Oregon uses 2 categories of most significant disability (three or more and two or more functional limitations), 1 category for significant disability and 1 category for others.

Tennessee uses a category for “eligible individuals determined to have a most significant disability,” a category for “eligible individuals determined to have a significant disability,” and includes two categories for “other eligible individuals” i.e., eligible individuals who do not have a significant disability and whose vocational rehabilitation is expected to require multiple services; and eligible individuals who do not have a significant disability and who cannot be classified into a higher priority category.

West Virginia uses a category for “most significantly disabled”, a category for “significantly disabled” and then includes two categories for “other eligible individuals” i.e., eligible applicants with non-significant disabilities which result in “permanent” functional limitation; and eligible applicants with non-significant disabilities which do not result in permanent functional limitations.

Virginia uses a category for “most significantly disabled”, then divides the “significantly disabled” into two distinct categories (i.e., an individual with a significant disability that results in serious functional limitation in 2 functional areas and who requires 2 or more substantial vocational rehabilitation services for at least 6 months (category 2) and an individual with a significant disability that results in a serious function limitation in 1 functional area and who requires 2 or more substantial vocational rehabilitation services for at least 6 months (category 3)); with a fourth category for “other eligible individuals.”

### **3. States with More than 4 Priority Categories.**

With respect to states that use **more than four** priority categories:

Georgia uses 7 categories (two categories for most significant disability, two categories for significant disability, and then the remainder). Louisiana uses 5 categories (two categories for most significant disability, 2 categories for significant disabilities, and 1 category for those who do not meet categories 1-4. North Carolina uses 6 categories (two categories for most significant disability, two categories for significant disability, and two categories for other). Kentucky uses 6 categories (one category for most significant disability, three categories for significant disability, and two categories for other eligible individuals with disabilities).

Below is a more comprehensive description of the categories used in Georgia and Kentucky.

#### GEORGIA:

##### **Priority Category A:**

An eligible client shall be classified in this category if he/she has been determined by the VR Program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 2 or more functional capacities in terms of an employment outcome; and
3. Which requires 2 or more primary services with at least 2 of these services requiring provision over an extended period of time.

NOTE: Priority Category A meets the program’s criteria for Most Significant Disability. Refer to [306.1.06A](#) and Glossary: [Person with a Most Significant Disability](#).



**Priority Category B:**

An eligible client shall be classified in this category if he/she has been determined by the VR Program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 2 or more functional capacity in terms of an employment outcome;
3. Which requires 2 or more primary services, with 1 of these services requiring provision over an extended period of time.

NOTE: Priority Category B meets the program's criteria for Most Significant Disability. Refer to [306.1.06A](#) and Glossary: [Person with a Most Significant Disability](#).

**Priority Category C:**

An eligible client shall be classified in this category if he/she has been determined by the VR program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 1 functional capacity in terms of an employment outcome; and
3. Which requires 2 or more primary services;
4. With at least 2 of these services requiring provision over an extended period of time.

NOTE: Priority Category C meets the criteria for Significant Disability. Refer to [306.1.06B](#) and Glossary: [Person with a Significant Disability](#).

**Priority Category D:**

An eligible client shall be classified in this category if he/she has been determined by the VR Program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 1 functional capacity in terms of an employment outcome;
3. Which requires 2 or more primary services;
4. With one of these services requiring provision over an extended period of time; or
5. Is a recipient of Social Security Disability Benefits (SSDI) or Supplemental Security Income (SSI)?

NOTE: Priority Category D meets the criteria for Significant Disability. Refer to [306.1.06B](#) and Glossary: [Person with a Significant Disability](#).

**Priority Category E:**

An eligible client shall be classified in this category if he/she has been determined by the VR Program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 1 functional capacity in terms of an employment outcome;  
and
3. Which requires 2 or more primary services;
4. None of which require provision over an extended period of time.

**Priority Category F:**

An eligible client shall be classified in this category if he/she has been determined by the VR Program to be an individual who:

1. Has a permanent physical or mental impairment(s);
2. Which seriously limits 1 functional capacity in terms of an employment outcome;  
and
3. Which requires only 1 primary service;
4. With this services requiring provision over an extended period of time.

**Priority Category G:**

An eligible client who does not meet the criteria for classification in the above categories shall be classified in this priority category.

**KENTUCKY:**

Category 1: Eligible individuals who have the most significant disabilities.

Category 2: Eligible individuals with significant disabilities who have limitations in three (3) major areas of functional capacities.

Category 3: Eligible individuals with significant disabilities who have limitations in two (2) major areas of functional capacities.

Category 4: Eligible individuals with significant disabilities who have limitations in one (1) major area of functional capacity

Category 5: Eligible individuals with non-significant disabilities that result in permanent functional limitations.

Category 6: All other eligible individuals whose disabilities are non-significant.

## **B. Terminology**

### **1. Eligible individual.**

According to the federal legal framework, an “eligible individual” means an applicant for vocational rehabilitation services who meets the following eligibility requirements. The designated state unit’s determination of an applicant’s eligibility for vocational rehabilitation services must be based only on the following requirements [34 CFR 361.42(a)]:

- a) A determination by qualified personnel that the applicant has a physical or mental impairment;
- b) A determination by qualified personnel that the applicant’s physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.
- c) A determination by a qualified vocational rehabilitation counselor employed by the designated state unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- d) A presumption that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

In general, the states use and then adopt the federal definition of “eligible individual.”

### **2. Individual with a disability.**

According to the federal policy framework, an individual with a disability means an individual—

- Who has a physical or mental impairment;
- Whose impairment constitutes or results in substantial impediment to employment; and
- Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services? [34 CFR 361.5(b)(28)]

The term “**substantial impediment to employment**” used in the definition of “individual with a disability” means a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) that hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with an individual’s abilities and capabilities. [34 CFR 361.5(b)(52)]

The term “**employment outcome**” used in the definition of “individual with a disability” means, with respect to an individual, entering or retaining full-time or, if appropriate,

part-time competitive employment, in the integrated labor market; supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. [34 CFR 361.5(b)(16)]

In general, the states adopt the federal definition of "individual with a disability".

### **3. Individual with a significant disability.**

According to the federal policy framework, an "individual with a significant disability" means an individual with a disability—

- Who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- Who has one or more listed physical or mental disabilities or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation. [34 CFR 361.5(b)(31)]

Individuals who are receiving SSI and SSDI benefits as a result of having been determined by the Social Security Administration to be disabled or blind are considered to be at least "individuals with significant disabilities" [Section 102(a)(3)(A) of the Act and 34 CFR 361.42(a)(3)] and should be evaluated to determine whether they meet the state's criteria for "individuals with the most significant disabilities". There is no statutory authority for assigning a special priority category for individuals receiving SSI and SSDI benefits or for selecting these individuals before other individuals with most significant or significant disabilities.

Under the federal policy framework, in developing a definition for the term "individual with a significant disability," the criteria that may be refined by the State VR agency include:

- the number and degree of functional limitations in terms of an employment outcome (an impairment seriously limits one or more functional capacities),
- the number of vocational rehabilitation services needed (whose vocational rehabilitation can be expected to require multiple vocational services), and
- the amount of time needed for the VR services (over an extended period of time).

An agency may also establish functional capacities in addition to the seven capacity areas listed in the definition of “individual with a significant disability.” In addition, the state agencies may develop definitions for terms such as “severe” physical or mental impairment that “seriously” limits one of more functional capacities”.

As explained above, most states include a single category for “individuals with significant disabilities” and thus include a single definition using the following categories—limitations in functional capacity (most states use 1 functional limitation), need for multiple services (most states use 2 or more) and the amount of time needed over an extended period of time (most states use 6 months or more). However, there are a number of states (e.g., Georgia, Indiana, Kentucky, Louisiana, North Carolina, Minnesota, and Virginia) that include more than one priority category for “individuals with significant disabilities” and thus adopt multiple definitions with variations in terms of functional areas, multiple services, and/or extended period of time.

It should be noted that Nebraska does not include reference to individual with a significant disability but rather makes reference to an eligible individual who, among other things, has a severe physical or mental impairment that results in a low or very low rating in one functional area.

Several states include unique criteria for defining the term “individual with a significant disability “ that clarify and supplement the criteria included in the federal policy framework. For example, in Maryland, an individual shall be certified as having a significant disability when:

- a. The individual has a severe physical or mental impairment which **seriously limits** one or more functional capacities such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills, in terms of an employment outcome. The individual’s vocational rehabilitation can be expected to require multiple vocational rehabilitation services: at least two from the main services of guidance and counseling, medical rehabilitation services including technology services, job placement and vocational training; and
- b. The individual's vocational rehabilitation is projected to require an extended period of time of at least 6 months.
- c. Any individual meeting the above criteria may be determined to have at least a significant disability. An individual is deemed to **automatically** meet the above criteria when:
  1. The individual is a recipient of Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI) payments by reason of blindness or disability; or
  2. The individual is in Special Education and receiving the majority of educational/academic supports in a self-contained classroom and/or facility; or

3. The individual has one of the major disabling conditions automatically meeting the definition of "significant" disability or "most significant" disability, specified on the [VR Priority Guide](#).

Below is a chart that describes the variations among states in defining “individual with a significant disability” or “significantly disabled”. The chart includes:

- the number of functional areas in which there is a serious limitation in terms of an employment outcome;
- multiple vocational rehabilitation services; and
- extended period of time.

## INDIVIDUAL WITH A SIGNIFICANT DISABILITY

State	Functional Capacity areas	Multiple Services	Extended Period
Alaska	1 or more	Multiple services	6 months or more*
Arizona	1 or more	2 or more	6 months or more with 90 day follow up
Arkansas	At least 1	2 or more	90 days or more
California	At least 1	2 or more	More than 6 months
Colorado	2 or fewer	2 or more	At least 5 months
Connecticut	1 or more	1 or more in addition to guidance and counseling	6 months or more
Delaware	1 or 2	At least 1 primary in addition to counseling, guidance and placement	6 months or more
Florida	1 or 2	2 or more primary	6 months or more
Georgia	At least 1	2 or more	With at least 2 required over extended period of time (category (C) and at least 1 required over an extended period (Category D)
Idaho	1 or more	Multiple services	6 months**
Illinois	At least 1	1 or more in addition to routine services	At least 6 months
Indiana	#1: 1 or more #2: 2 or more	2 or more	9 months or longer
Iowa	1 or more	More than 1	More than 1 year
Kansas	1 or more	More than 1	At least 4 months
Kentucky	At least 3 or more (category 2); At least 2 or more (category 3); and At least 1 or more (category 4)	Multiple services one of which assumed to be rehab counseling and guidance. At least 1 additional service expected to continue over extended period of time.	Over an extended period
Louisiana	#3: 2 or more #4: 1 or more	Multiple services	Over an extended period
Maine	At least 2 or 3	2 or more	Over an extended period
Maryland	1 or more	At least 2	At least 6 months
Massachusetts	At least 1	Multiple services	No less than 6 months
Michigan	1 or more	More than 2	At least 6 months
Minnesota	At least 2 (category 2) At least 1 (category 3)	Multiple services	Over an extended period
Mississippi	1 or more	Multiple services	Over an extended period
Missouri	At least 1	Multiple services	Over an extended period
Nebraska	At least 1	Multiple services	Over an extended period
Nevada	At least 1	2 or more	More than 6 months
New York	1 or 2	Multiple services	6 months or more
North Carolina	#3: 2 #4: 1	2 or more core services	9 months or requires permanent PAS, rehabilitation technology or extended services
Ohio	1 or 2	2 or more	Over an extended period
Oregon	At least 1	At least 2	Over an extended period***
Oklahoma	At least 1 but not more than 2	Guidance and counseling plus 2 or more VR services	6 months or more
Pennsylvania	1 or more	Multiple services	Over an extended period
Rhode Island	1 or more	2 or more	6 months or more
South Dakota	1 or more	3 or more	6 months or more
Tennessee	At least 1	2 or more	6 months or more
Utah	1 or more	3 or more	6 months or more
Vermont	At least 1	Guidance and counseling plus one other service	6 months or more
Virginia	#2: 2 #3: 1	2 or more	Longer than 6 months
Washington (state)	1 to 3	2 or more	12 months
Washington, DC	1 or more	2 or more	6 months or more
West Virginia	1 or more	2 or more	6 months or more
Wisconsin	1 or more	2 or more	6 months or more

### **FOOTNOTES FOR THE CHART**

\***Alaska's** policy specifies that the VR agency has not specifically defined the number of months constituting "extended period of time". The VR counselor must consider each person's circumstances to determine the estimated length of time required to deliver needed services. Six months may be used as a general guideline for an "extended period of time", but should not be applied as an absolute minimum.

\*\***Idaho's** policy specifies that no specific time frame for "extended period of time" is defined in statute or regulation. The VR counselor must consider each participant's unique circumstances to determine whether the needed services can reasonably be expected to require an extended period of time. For this purpose, 6 months may be used as a general benchmark but may not be applied as an absolute limit since each individual's circumstances must be uniquely considered.

\*\*\***Oregon's** policy specifies that it is presumed that if the individual requires substantial services due to the severity of disability, these services will be required over an extended period of time. Therefore, counselors are not asked to consider exact length of time specific services may be needed unless it is clear that the services required are brief, in which case it is possible that the functional capacity limitations and priority level must be reassessed.



#### **4. Individual with the most significant disability.**

According to the federal policy framework, the State VR agency's definition for "individuals with the most significant disabilities" and its descriptions of its priority categories must meet the requirements of *34 CFR 361.36(d)*:

- the order of selection must be based on a refinement of the three criteria in the definition of "individual with a significant disability" and
- no other factors may be used.

In other words, in developing a definition for the term "individual with the most significant disability," the criteria that may be refined by the State VR agency include:

- the number and degree of functional limitations in terms of an employment outcome (an impairment seriously limits one or more functional capacities),
- the number of vocational rehabilitation services needed (whose vocational rehabilitation can be expected to require multiple vocational services), and
- the amount of time needed for the VR services (over an extended period of time).

There is a degree of variation among the states with respect to the definition of the term "individual with the most significant disability," particularly with respect to the number of functional limitations that must exist. With respect to the number of functional limitations, eleven (11) states use 2 or more functional limitations, twenty-two (22) states use 3 or more functional limitations, and eight (8) states use 4 or more functional limitations. [The states are identified in the chart below]

With respect to the number of vocational rehabilitation services needed, most states specify either 2 or 3 or more services; however it should be noted that there is a degree of variation regarding how the term multiple services is defined. [See discussion below under definition of "multiple services"]. With respect to the criteria "over an extended period of time" most states specify 6 months or more.

Below is a chart that describes the variations among states in defining "individual with the most significant disability" or "most significantly disabled." The chart includes:

- the number of functional limitation areas in which there is a serious limitation in terms of an employment outcome;
- multiple vocational rehabilitation services; and
- extended period of time.

Following the chart, I include unique state definitions that specify presumptions and specific criteria in addition to functional limitations.

## INDIVIDUAL WITH THE MOST SIGNIFICANT DISABILITY

State	Functional Capacity	Multiple Services	Extended Period
Alaska	3 or more	Multiple services	6 months or more*
Arizona	3 or more	2 or more	6 months or more with 90 days follow up
Arkansas	2 or more	2 or more	
California	At least 4 areas	2 or more	More than 6 months
Colorado	3 or more	2 or more	At least 5 months
Connecticut	3 or more*	1 or more in addition to guidance and counseling	6 months or more
Delaware	3 or more	At least 1 primary in addition to counseling, guidance, and placement	6 months or more
Florida	3 or more	3 or more primary services	At least 12 months
Georgia	2 or more	2 or more	At least 2 services over at least 6 months (A); at least 1 services over at least 6 months (B)
Idaho	3 or more	Multiple services	6 months**
Illinois	3 or more**	2 or more in addition to routine services	At least 6 months
Indiana	3 or more	2 or more	9 months or longer
Iowa	3 or more***	More than 1 service	Longer than 1 year
Kansas	2 or more	More than 1	At least 4 months
Kentucky	4 or more****	Multiple services one of which assumed to be rehab counseling and guidance. At least 1 additional service expected to continue over extended period of time.	Over an extended period
Louisiana	#1: 4 or more #2: 3 or more	Multiple services	Over an extended period
Maine	4 or more	2 or more	Over an extended period
Maryland	3 or more*****	At least 2	6 months or more
Massachusetts	3 or more	2 or more separate and distinct	Not less than 6 months
Michigan	2 or more	More than 2	At least 6 months
Minnesota	3 or more	Multiple services	Over an extended period of time
Mississippi	2 or more	Multiple services	Over an extended period
Missouri	3 or more	Multiple services	Over an extended period
Nebraska	2 or more*****	Multiple services	Over an extended period
Nevada	At least 4	2 or more	More than 6 months
New York	3 or more	See footnote	6 months or more
North Carolina	#1: 4 #2: 3	2 or more core services	9 months or requires permanent PAS, rehabilitation technology or extended services
Ohio	3 or more	2 or more	Over an extended period
Oklahoma	3 or more	Guidance and counseling plus 2 or more VR services	At least 6 months
Oregon	#1: 3 or more #2: 2	2 or more	Extended period of time***
Pennsylvania	3 or more	Multiple services	Over an extended period
Rhode Island	3 or more	2 or more	6 months or more
South Dakota	2 or more	3 or more	6 months or more
Tennessee	2 or more	2 or more	6 months or more
Utah	2 or more	3 or more	6 months or more
Vermont	2 or more	Guidance and counseling plus one other service	6 months or more
Virginia	3 or more	2 or more	6 months or more
Washington (state)	4 or more	2 or more	12 months
Washington, DC	4 or more	2 or more	6 months or more
West Virginia	2 or more	2 or more	9 months or more
Wisconsin	3 or more	2 or more	6 months or more

## **Footnotes Regarding Functional Capacity**

\*Connecticut: as an alternative to the 3 or more functional limitations, the state includes the following criteria: “will require significant ongoing disability-related services on the job in order to maintain employment following case closure with the bureau.”

\*\*Illinois most significant category is 3 or more; very significant disability in two or more functional capacities.

\*\*\*Iowa: Prior to March 2009, Iowa included the following policy: “In addition to serious limits in 3 or more functional capacities, Iowa includes an additional criteria—if an individual is seriously limited in **one** functional area to the degree it caused him/her to lose a job, to have never worked, or to only be able to work intermittently (due to the disability), then the individual is considered to have one of the most significantly disabling conditions and is considered an individual with the most significant disability.” This policy was repealed, effective March 2009 in response to concerns raised by RSA. Iowa was told to remove reference to how the limitation impacted employment; the definition may only consider functional limitations and the need for services.

\*\*\*\*Kentucky: An individual who has a most significant disability is an individual who has a significant disability and requires intensive long term support to facilitate the performance of work activities on or off the job which would typically be performed independently if the individual did not have the disability or has limitations in four or more areas of major functional capacities. Long-term support may include but is not limited to the need for: a personal care attendant, supported employment or a disability related case manager. An eligible individual with a significant disability who requires long-term support as defined above meets the definition of most significant disability regardless of how many areas of major functional capacities have limitations. Individuals with a significant disability who do not require long term support are considered most significantly disabled if they have limitations in four or more areas of major life functioning, if in the professional judgment of the counselor, such limitations constitute a most significant disability.

\*\*\*\*\*Maryland:

- a. An individual with a "most significant" disability is an individual who is available and willing to participate in the DORS Vocational Rehabilitation program and meets the definition of significant disability (see [Section 503.01](#)) and has a disability which seriously affects **three (3)** or more functional capacities (see [Section 503.01](#)).
- b. Individuals who automatically meet the definition of individual with a significant disability (see [VR Priority Guide](#)) may also meet the definition of individual with a most significant disability, if **three** capacities are seriously affected.

- c. Refer to the [VR Priority Guide](#) for disabilities/circumstances which are considered to automatically meet the definition of individual with a most significant disability.
- d. Individuals who are eligible for long-term supports of DDA or MHA and are pursuing competitive or supported employment are presumed to be individuals with a most significant disability. (See [Section 501.01\(d\)](#).)
- e. Staff is required to enter in the first text box on the Eligibility Determination page of **AWARE** a description of the justification of the priority category of Most Significant Disability. Staff shall either:
  - 1. Indicate the disability and state that it is "automatic" according to the [VR Priority Guide](#); or
  - 2. State how at least three capacities checked on the list on the Eligibility Determination page are **seriously affected** by the disability.

\*\*\*\*\*Nebraska: does not include reference to individual with the most significant disability but rather makes reference to an eligible individual who, among other things, has a severe physical or mental impairment that results in a low or very low rating in two or more functional areas.

#### **Footnotes Regarding Extended Period of Time**

\***Alaska's** policy specifies that the VR agency has not specifically defined the number of months constituting "extended period of time." The VR counselor must consider each person's circumstances to determine the estimated length of time required to deliver needed services. Six months may be used as a general guideline for an "extended period of time", but should not be applied as an absolute minimum.

\*\***Idaho's** policy specifies that no specific time frame for "extended period of time" is defined in statute or regulation. The VR counselor must consider each participant's unique circumstances to determine whether the needed services can reasonably be expected to require an extended period of time. For this purpose, 6 months may be used as a general benchmark but may not be applied as an absolute limit since each individual's circumstances must be uniquely considered.

\*\*\***Oregon's** policy specifies that it is presumed that if the individual requires substantial services due to the severity of disability, these services will be required over an extended period of time. Therefore, counselors are not asked to consider exact length of time specific services may be needed unless it is clear that the services required are brief, in which case it is possible that the functional capacity limitations and priority level must be reassessed.

## 5. Multiple vocational rehabilitation services.

The states include varying definitions of the term. States include reference to “primary services,” “core services,” “main or major services” “substantial services” or reference to specified services in addition to other categories of services. Below are examples.

Arizona specifies that two or more “primary” services are needed to achieve a successful employment outcome.

Arkansas includes 2 or more “major” services i.e., physical or mental restoration, training, counseling and guidance, or placement.

California excludes counseling and guidance, services to family members, and transportation.

Colorado includes two or more **core** vocational services. In identifying the number of core services, the DVR counselor does not count those services which are supportive to another service, such as transportation and maintenance, and would not be provided if not to support a necessary core service. **Core vocational rehabilitation services** includes all vocational rehabilitation services other than supportive services (maintenance, transportation, services to family members, and personal assistance services); services secondary to core vocational rehabilitation services, such as training materials and supplies when training is being provided as a core vocational rehabilitation service; or, generalized counseling, guidance, and placement which are provided during the vocational rehabilitation process in connection with the provision of vocational rehabilitation services but are not identified as a needed vocational rehabilitation service on the IPE.

Connecticut includes one or more VR services (in addition to guidance and counseling) that are required to achieve an employment outcome.

Florida uses the term “primary services”. **Primary Services:** Major services which are necessary to prepare the eligible individual for employment. Primary services include counseling and guidance, training, treatment and job placement. Primary services must be both appropriate and reasonable. Primary services do not include assessment services cited in the IPE. Each service, if provided alone, could reasonably be expected to directly benefit the individual in terms of an employment outcome. ([See List of Primary and Support Services](#))

**Support Services**: Services which support a primary service. Support services are never provided alone, but are provided in conjunction with a primary service. Support services must be both appropriate and reasonable.

Illinois defines the term to mean **substantial** VR services, in addition to the routine services of counseling and guidance, and information and referral, to ensure a successful employment outcome.

Indiana specifies a list of services that should be included toward meeting the multiple services requirement. The list includes (1) Vocational counseling and guidance, if the anticipated counseling and guidance will require significant interaction between the Vocational Rehabilitation Counselor and the individual over the course of the individual's participation in his or her vocational rehabilitation program and is required for, and is expected to contribute substantially to, the individual's achievement of an integrated employment outcome; (2) Physical and mental restoration services (except physical and mental restoration services provided for the purpose of an assessment for determining eligibility and priority for services or an assessment for determining vocational rehabilitation needs), if the anticipated physical and mental restoration services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated employment outcome; (3) Rehabilitation technology services, consisting of rehabilitation engineering, assistive technology devices, and/or assistive technology services, if the anticipated rehabilitation technology services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated employment outcome; (4) Training services, consisting of postsecondary training, on-the-job training, Randolph-Sheppard vending facility training, rehabilitation teaching or orientation and mobility training for individuals who are blind, or other training (except training provided for an assessment for determining eligibility and priority for services, trial work experiences, an extended evaluation, or supported employment), if the anticipated training services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated employment outcome; (5) Job-related services, consisting of job search, job development, job placement assistance, job retention services, and follow-up and follow-along services (except when such services are provided for an assessment for determining eligibility and priority for services, trial work experiences, an extended evaluation, or supported employment services), if the anticipated services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated employment outcome;

(6) Supported employment services (including supported employment job development, job placement, job coaching, job retention, transitional employment, and extended services), if the anticipated services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated supported employment outcome; or (7) Consultation and technical assistance to conduct market analyses, develop business plans, and secure operating capital, and the provision of other goods and services (including licenses and permits, tools and equipment, and initial stocks and supplies) to assist individuals who are establishing a small business

enterprise or other self-employment business operation as an employment outcome, if the anticipated services are required for, and are expected to contribute substantially to, the individual's achievement of an integrated employment outcome.

Indiana also includes a list of services that should not be included: (1) the assessment for determining eligibility and priority for services, or any service provided for purposes of completing the assessment (including services provided during trial work experiences or an extended evaluation); (2) the assessment for determining vocational rehabilitation needs, or any service provided for purposes of completing the assessment; (3) any counseling and guidance which is limited to types of counseling and guidance which must be provided universally, to all program participants (such as the provision of information to assist an individual in exercising his or her informed choice); (4) information and referral services; (5) any supporting service, including Vocational Rehabilitation Program maintenance or transportation, services to family members, or personal assistance services (attendant, interpreting, note taking, or reading services); (6) job-related follow-up and follow-along limited to the 90-day closure requirement for rehabilitation (60 days for supported employment closures), unless substantive interventions are provided to assure job maintenance and stabilization; or (7) routine case management activities, such as the processing of required fiscal documents.

Iowa defines the term to mean services required in order for the individual to be competitively employed. Iowa considers maintenance and transportation as auxiliary services that must be provided only in combination with specific service categories.

Kansas specifies that “multiple services” means more than one service as listed on the IPE. Support services (maintenance, transportation, and services to family members) may not be counted toward multiple services. Routine counseling and guidance to facilitate participation in the VR process may not be counted toward multiple services. Significant services which are not provided by RS but which are related to the disability and employment outcome, and which are essential to the accomplishment of the IPE may be counted toward multiple services.

Kentucky specifies that in order to be considered “significantly disabled”, an individual is expected to require multiple vocational rehabilitation services one of which is assumed to be vocational rehabilitation counseling and guidance. At least one additional service must be expected to continue over an extended period of time as defined by the definition of expanded services.

Maryland specifies that at least two from the main services of guidance and counseling, medical rehabilitation services, including technology services, job placement and vocational training.

New York specifies that only services that are necessary, as a direct result of the disability, to reduce the impact of limitations to functional capacity on an employment outcome are included in the determination of significance of disability. This includes services that are provided by others as comparable benefits. Specialized

vocational or other training designed for individuals with disabilities, physical and mental restoration services, special transportation, rehabilitation technology, job search, placement assistance and job retention services are examples of services that are to be counted in this determination. Counseling and guidance services and placement services provided by VESID staff to all consumers, vocational and other training services required by all individuals to meet a specific employment goal, and assessment services to determine eligibility are examples of services that may be required by the individual to meet an employment outcome but are not counted toward significance of disability. Generic training, education or other services that are required by all individuals to meet an employment goal are not considered when determining significance of disability.

Ohio specifies that “multiple services” means more than one vocational rehabilitation service which is necessary, as a result of a person’s disability, in order to reach an employment goal. These include services that are provided by others as comparable benefits, but do not include ancillary services such as transportation, maintenance, and services to family members. Specialized vocational or other training, physical and mental restoration services, rehabilitation technology, job search, placement assistance and job retention services are examples of services that are to be counted in this determination. For vocational rehabilitation counseling and guidance to be counted as one of the multiple services, it means discrete therapeutic counseling and guidance services that are necessary for an individual to achieve an employment outcome, including personal adjustment counseling, counseling that addresses medical, family, or social issues, vocational counseling, and any other form of counseling and guidance that is necessary for an individual with a disability to achieve an employment outcome. This service is distinct from the general counseling and guidance relationship that exists between the counselor and the individual during the entire rehabilitation process.

Oklahoma specifies that “multiple services” means the counseling and guidance provided as a routine part of case management plus two or more VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a significant disability, even if two or more services are included in the package.

Oregon specifies that in order to be in Priority Levels 1, 2, or 3, an individual must require at least two vocational rehabilitation services over an extended period of time. For purposes of determining priority level, only substantial vocational rehabilitation services should be counted.

**Substantial services include:**

- Training (including Work Adjustment Training, OJT, Supported Employment, Self-Employment);
- Specialized placement;
- Job development;



- Mobility aids or equipment;
- Assistive technology;
- Vehicle/worksite/home modifications;
- Physical or mental restoration;
- Long-term support planning (in Supported Employment); and
- Substantial counseling/guidance.

**Secondary services** are not counted as a substantial service. Secondary services are things such as child care, non-specialized job related services (i.e., additional clothing, advocacy for filing SSDI claim, pre-vocational services, etc.), car repair, transportation, increased maintenance, and referrals to other agencies.

Rhode Island specifies that the term "multiple VR services" means two (2) or more "primary" services (except assessment for determining eligibility and vocational rehabilitation needs and the customary guidance and counseling provided during the management of VR cases). The term "primary VR services" means those services which reduce the impact of functional limitations on employment outcome (physical and mental restoration services, vocational and other training services, placement services, interpreter and reader services, recruitment and training in public service, rehabilitation teaching, orientation and mobility services, occupational licenses, tools, equipment, and initial stocks and supplies, rehabilitation technology, telecommunication, sensory, and other technological aids and devices, referral services, and supported employment services) as opposed to supportive services which complement the provision of primary services (transportation, including van modification; maintenance; services to family members; personal assistance services (on or off the job) provided while an individual with a disability is receiving primary services).

Tennessee excludes support services such as transportation, maintenance, and the routine counseling and guidance that should take place for every case.

Virginia includes ongoing guidance and counseling, placement assistance, and other services which address the substantial loss of functional capacity.

Vermont includes vocational rehabilitation counseling, guidance and placement services plus at least one other service such as health services, training, and adaptive aids as part of a vocational rehabilitation program. These services do not have to be provided by the Division.

West Virginia includes physical restoration, mental health services, rehabilitation training, counseling, placement, rehabilitation technology and assessment.

Wisconsin includes services needed to achieve a successful rehabilitation outcome.

## **6. Extended period of time.**

As set out above in the charts describing the criteria for significant and most significant disability, most states define extended period in terms of 6 months. There are some states that specify a different time period. For example, Arkansas specifies 90 days or more from the date services are initiated, Colorado specifies at least 5 months, Iowa specifies 1 year, Kansas specifies at least 4 months, and West Virginia specifies 6 months for significant disability and 9 months for most significant disability. Also, as explained above several states (e.g., Alaska and Idaho specify a number of months as a benchmark rather than as an absolute number).

## **7. Functional capacity areas.**

Most of the states include the 7 categories identified in the federal regulations (i.e., mobility, communication, interpersonal skills, self-care, self-direction, work skills, and work tolerance). California and Nevada include 6 categories i.e., they do not include self-direction. Georgia includes 14 categories (ambulation, breathing, cognition, communication, endurance/work tolerance, hearing, interpersonal skills, mobility, self-care, self-direction, speech, upper-lower extremity functioning, vision, and work skills). Indiana includes 9 functional areas (cognitive and learning skills, communication, interpersonal skills, mobility, motor skills, self care, self direction, work skills, and work tolerance). Louisiana includes 8 functional capacity areas (adds motor skills to the federal list).

Several states include definitions for each functional capacity area. Definitions may specify what is included and in some states what is not included as well as examples. (See e.g., Colorado, Connecticut, Florida, Illinois, Louisiana, Maryland, Minnesota, Nebraska, Pennsylvania, South Dakota).

Several states have developed comprehensive manuals and guides related to the functional capacity areas (e.g., Florida, Iowa, and Minnesota) and checklists (e.g., Georgia, Massachusetts).

## **8. Serious limitation in terms of employment.**

Several states include varying definitions for the term “serious limitations” in terms of employment. Several states define the term as a reduction of one’s capacity to the degree that the individual requires services or accommodations not typically provided to others in order for the individual to work. Some states use criteria such as consistency (always or almost always limits the individual’s functioning) and substantiality (disability has a major, significant impact on functioning) and the individual cannot perform the activity or finds it very difficult to perform the activity. Other states use criteria such as “extremely or markedly limited to the extent that the functional capacity cannot be performed independently or can only perform the function with an aid or accommodation. Several states include specific definitions of serious limitation for each of the functional areas. Some states define the term by including external factors that may not be considered in determining a serious limitation.

Below are state-by-state examples.

Alaska: As a result of a severe physical, mental or cognitive impairment, a reduction of one's capacity to perform to the degree that the individual requires services or accommodations, not typically provided to others, in order for the individual to work.

California defines the term to mean a reduction of one's capacity to perform, due to severe physical or mental impairment, to the degree that the individual requires services or accommodations in order for the individual to work or be a fully functioning member of the community.

Colorado: A "serious limitation" means a reduction in functioning, due to a severe impairment, to the degree that the individual requires goods and services or special working conditions, such as job re-engineering, assistive technology, substantial on-the-job support or intensive supervision, not typically provided for other individuals in order to prepare for, enter, engage in or retain employment in previous jobs, usual line of work and/or occupations usually available to people of equivalent age, education and capacities who do not have disabilities. External factors, such as geographical location, availability of public transportation, lack of financial resources or training, are not considered when determining whether or not a limitation meets the criteria for "serious".

Illinois: The rehabilitation counselor or instructor shall use the criteria of consistency and substantiality when evaluating the degree of limitation to functional capacity. "Consistency" means that the individual's disability always or almost always limits the individual's functioning. "Substantiality" means the individual's disability has a major, significant impact on functioning and that the individual cannot perform the activity or finds it very difficult to perform the activity.

Iowa explains that a "serious functional limitation" in a functional area is indicated when the individual's functioning in the area is well below common expectations, or that the individual due to the disability, may require employability/work accommodations not typically made for other individuals. A serious limitation must be directly related to the disability. Iowa also specifies that in determining whether an individual has a serious limitation in a functional area, the limitation must be directly related to employment. Limitations may result from or be compounded by external factors, such as geographical location, poor public transportation, or lack of training; but if they are not disability-related should not be the basis of the limitation for purposes of defining significant disability.

Kentucky: "serious limitation" means that the individual frequently requires assistance from others, personal adaptations, assistive technology and/or accommodations not typically needed for other workers to participate in employment.

Maine: "Serious limitation in terms of an employment outcome" means a reduction of one's capacity to perform, due to severe physical or mental impairment, to the degree that the individual requires services or accommodations in order for the individual to work or be a fully functioning member of the community

Michigan defines "seriously limits" to mean that the individual's impairment limits function in a functional area to poor or well below what is typically expected, or that the individual requires accommodations (such as special working conditions, rehabilitation technology or substantial support or supervision) typically not made for other individuals in training or employment.

Minnesota: "Serious functional limitation" means that, due to a severe physical or mental impairment, one or more of an individual's functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills is restricted to the degree that the individual requires services or accommodations not routinely made for other individuals in order to prepare for, secure, retain, or regain employment. Accommodations are defined as special working conditions, job re-engineering, rehabilitation technology, or substantial support and/or supervision.

Nebraska:

### **Very low, low, and low average functional capacities**

Use the following to rate the functions. As a result of the impairment the individual:

#### **VERY LOW**

Is extremely or markedly limited in performing the functional capacity as a result of an impairment to the extent that the functional capacity cannot be performed independently

OR

Can only perform the function with the aid of assistive technology, durable medical goods, medication, personal care assistance, supported employment services, interpreter services for the deaf and hard of hearing and/or other intensive assistive supported services.

#### **LOW**

Is considerably limited in performing the functional capacity thereby restricting the individual's ability to learn and perform essential work skills and tasks at the level expected of the average worker. This can include, but is not limited to, taking significantly longer to learn or perform a task or a series of tasks,

experiencing difficulty in tolerating common environmental factors, psychological stresses, and maintaining appropriate behaviors in the work place.

## LOW AVERAGE

Is limited, but not considerably so in performing the functional capacity.

A rating of low or very low in any sub-category within the seven major categories would translate into the same rating for the major category.

Nevada: A reduction of one's capacity to perform, due to severe physical or mental impairment, to the degree that the individual requires services or accommodation in order the individual to work or be a fully functioning member of the community. For purposes of evaluating the impact in a functional capacity area, **accommodation** means any type of assistance required as a result of an impairment, including, but not limited to, work site adaption, job restructuring, assistive technology devices, personal assistance services, prescribed medication, alternate media, or prosthesis.

New York: VESID must determine which functional capacities of an individual are seriously limited by reviewing and assessing available information/reports including information provided by the individual and the individual's family, and by counselor observation. "Seriously limits" means that the limitation in functional capacity results in significant behavioral consequences in terms of intensity, frequency, or duration in relation to achieving an employment outcome. The counselor must consider these elements when determining whether the impairment seriously limits a functional capacity.

Intensity - The degree to which the limitation affects the individual's ability to function.

Frequency- The number of times a given limitation affects the individual's ability to function within a set period of time.

Duration- The length of time the limitation has existed or is expected to last.

Ohio: "Seriously limited" means that the limitation in functional capacity results in significant behavioral consequences in terms of intensity, frequency, or duration in relation to achieving an employment outcome. The counselor must consider these elements when determining whether the impairment seriously limits a functional capacity.

Intensity - The degree to which the limitation affects the individual's ability to function.

Frequency - The number of times a given limitation affects the individual's ability to function within a set period of time.

Duration - The length of time the limitation has existed or is expected to last.

Oregon specifies that considering the consumer's current accommodations in place, a "serious functional limitation" is indicated when the consumer cannot perform function due to disability, the function is related to work, and is something general working population can do at work.

South Dakota: Seriously limits or substantial impediment to employment means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

Wisconsin takes an approach that differs from the other states. In Wisconsin, functional limitations are determined with the consumer's current accommodations and mitigating factors in place. For example, if the consumer wears a hearing aid, the functioning with the hearing aid is the basis for determining which functional limitations currently exist. If a person uses a wheelchair, functioning with the wheelchair is the basis for determining which functional limitations currently exist. A functional limitation is an activity which the consumer cannot perform which meets the following criteria: is caused by the disability, is related to work, and is something the general working population can do at work. Severe functional limitation meets all of the above criteria for functional limitation and in addition is something the general working population must do to obtain, maintain, or advance in employment.

Several states include **distinct definitions** for the term "serious functional limitation" applicable to each of the seven functional areas (e.g., Alaska, Maryland, Michigan, Minnesota, Oregon, and Nevada). For example, in Maryland, under each functional area the state includes a definition, a comprehensive description of what constitutes a serious limitation and examples of what does not constitute a serious limitation. For example, mobility refers to the ability to move from place to place inside and outside the home. A serious limitation in mobility exists if, due to the disability, the person requires assistance from others to get around in the community; or if the individual requires modifications, adaptive technology, or accommodations (not typically made for other workers) in order to move around the community; or if the person needs specialized training to learn to move around in the community. The following circumstances do not constitute serious, disability-related limitations in mobility, though they may be considered in rehabilitation planning as related factors: Absence of or limitations in public transportation available in a geographic area; loss of driving privileges because of accumulation of points and/or charges such as DWI; lack of a personal vehicle.

### **C. Acceptable and Unacceptable Factors.**

As explained above, under the federal policy framework, State VR agencies may develop definitions for terms such as "severe" physical or mental impairment that "seriously" limits one of more functional capacities". In establishing the additional criteria, the State VR agency must:

- Apply the criteria equitably to all eligible individuals;
- Ensure consistency with the three criteria in the definition of “individual with a significant disability”; and
- Meet all other program requirements. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

The federal policy framework also specifies that an order of selection may not be based on any other factors, including:

- a) Any duration of residency requirement, provided the individual is presently in the state;
- b) Type of disability;
- c) Age, gender, race, color, or national origin;
- d) Source of referral;
- e) Type of expected employment outcome;
- f) The need for specific services or anticipated cost of services required by an individual; or
- g) The income level of an individual or the individual’s family. *[34 CFR 361.36(d)(2)]*

Most states include or incorporate by reference factors set out in the federal policy framework. California, Nevada, and Minnesota add “sexual orientation” to the list. Minnesota also adds “status with regard to public assistance”. Nevada also adds “ancestry” and “marital status.” In addition, Colorado and Maryland include acceptable and unacceptable factors under each of the seven functional areas. Several states such as Alaska, Colorado, Idaho, Iowa, Minnesota, and Virginia also specify that for purposes of determining whether an individual has a significant disability under order of selection, while serious functional limitations may result from or be compounded by external factors such as geographical location, poor public transportation, or lack of training, these factors are not a basis for determining that an individual has a serious functional limitation.

#### **D. Ranking Individuals within a Priority (Waiting Lists).**

Under the federal policy framework, a State VR agency can establish a policy for ranking individuals within a priority category. The policy should be based on use of an equitable and reasonable factor, such as the individual’s date of application. This provides a method for selecting individuals from a waiting list for a priority category when the agency has enough resources to serve some, but not all, individuals in that priority category. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

The states with a policy adopt the individual’s date of application as an equitable and reasonable factor for ranking individuals within a priority (waiting list). Some states explain that individuals

are taken off the waiting list in the same manner (e.g., Colorado and Iowa). Several states define the term “application date.” For example, in Delaware the term means the date that a person signs the DVR application for services *and* meets with the assigned counselor. Oregon includes three specific criteria that must be satisfied before an application is considered complete. Applications will be completed in the same manner as before the invocation of the Order of Selection. Applications are not deemed complete until three conditions are satisfied:

- 1) An individual has requested services, either verbally or in writing;
- 2) The counselor has received information sufficient to initiate the assessment for eligibility and priority for services; and
- 3) The individual is in fact available to participate in the assessment process. Only once all three conditions are met should an individual be placed in Application status.

A key element to the application process is sitting down with the assigned vocational rehabilitation counselor. Meeting with a counselor is necessary to ensure that OVRS has sufficient information to conduct an accurate and thorough eligibility assessment and priority level determination. Meeting one-on-one with a counselor is also a necessary step in determining whether an individual is in fact available to complete the assessment process and is committed to pursuing vocational rehabilitation services. Therefore, individuals attending orientations who wish to complete the application form requesting services immediately, or otherwise complete an application requesting services prior to meeting with a counselor should be informed that they may do so, but their application date will be the date they meet individually with their assigned counselor and complete the application process.

### **III. IMPLEMENTATION OF ORDER OF SELECTION.**

#### **A. Statewide Basis.**

Under the federal policy framework, implementing an order of selection on a statewide basis means that, within the state, the same priority categories are closed in all State VR agency offices. State VR agencies must notify all eligible individuals of their priority category assignment and their right to appeal the assignment. [*ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10*]

All of the states explain that the order of selection must be implemented on a statewide basis. For example, Michigan policy explains that waiting lists are developed on a statewide basis for eligible individuals, regardless of location, based on their significance of disability priority order, and on the date of application. The order of selection is managed centrally. Effective October 1, 2009, RSC in Ohio will begin managing Order of Selection waiting list from a statewide level in accordance with federal requirements. The Code also requires that the Order of Selection is implemented on a statewide basis. The Bureau Director’s office shall be responsible for releasing consumers off of the statewide waiting list as the VR program, including Pathways, has capacity to serve individuals who are waiting.

#### **B. Authority to Open and Close Priority Categories, as Needed.**



Under the federal policy framework, State VR agencies have the authority to open and close priority categories as needed, so long as the order of the categories is maintained and continuity of services to all individuals selected for services is assured. In determining whether to open priority categories, an agency should ensure that sufficient resources are available throughout the year to serve individuals in higher priority categories. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

A State VR agency that establishes an order of selection but does not implement the order by keeping all priority categories open, must continue to be able to provide the full range of services, as appropriate, or it must implement the order of selection by closing one or more priority categories. *[34 CFR 361.36(c)(3)]* In other words, a state agency that is operating on an order of selection with all priority categories open must meet the same requirements as an agency that did not establish an order of selection or must close one or more categories. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 16]*

In general, state policies reflect the federal policy framework. For example, West Virginia specifies that the VR director has the authority to open and close priority categories as needed, so long as the order of the categories is maintained, continuity of services to all individuals selected for services is assured.

### **C. Continuation of Services.**

As explained above, under the federal policy framework, State VR agencies have the authority to open and close priority categories as needed, so long as the order of the categories is maintained and continuity of services to all individuals selected for services is assured. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

In general, states reiterate federal policy regarding continuation of services. For example:

California specifies that upon implementation of the order of selection for vocational rehabilitation services, individuals whose IPE was written and signed prior to implementation of an order of selection shall continue to receive services, including additional services subsequently identified as necessary to complete their IPE. Individuals who were determined eligible prior to implementation, but for whom the IPEs have not been written and signed, shall be assigned to a priority category.

Colorado specifies that diagnostic goods and services necessary to establish eligibility shall continue to be provided during an order of selection. Timeliness of eligibility determination and all eligibility requirements remain applicable under an order of selection. All goods and services, including post-employment services, shall be available to eligible individuals receiving planned vocational rehabilitation services under an order of selection insofar as they are necessary and appropriate to the individual's vocational rehabilitation needs. All requirements for provision of vocational rehabilitation services shall be applicable to eligible individuals receiving planned services under an order of selection. All policies governing the expenditure of vocational rehabilitation funds, the individual's financial participation and the use of comparable services

and benefits are applicable to eligible individuals receiving planned vocational rehabilitation services under an order of selection.

A number of states also specifically explain that postemployment services must continue. For example, Alaska specifies that OOS does not impact or alter the provision of post-employment services. Post employment services are considered an amendment of the IPE, and therefore, an individual who needs post employment services is not required to meet the highest priority category currently being served under an OOS nor is the individuals required to wait for services.

#### **D. Funding Arrangements.**

Under the federal policy framework, with respect to funding arrangements, contributions may be earmarked for providing particular services (e.g., rehabilitation technology) serving individuals with certain types of disabilities (e.g., individuals who are blind). The contributions however must be used in a manner consistent with the state's order of selection, if applicable. Similarly, contributions may be earmarked to provide services to special groups that state and federal law permits (e.g., students with disabilities who are receiving special education services so long as the contributions are used in a manner consistent with the state's order of selection, if applicable. *[See example following 34 CFR 361.60, 66 Fed. Reg. at page 4414 (January 17, 2001)]* In other words, an agency that receives third-party funding to serve individuals from a particular disability group or referral source may not serve any of those individuals that fall outside of the priority categories being served under the order of selection and must renegotiate any funding arrangements that are not consistent with the order of selection requirements. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

Several states include specific reference to third party funding arrangements. For example, Michigan explains that any third party funding arrangements must be consistent with the order of selection. If cooperative agreements are not consistent with order of selection, they must be renegotiated. In Arizona all clients of the Arizona VR program, regardless of funding source, are subject to the restrictions and requirements of the OOS. Kansas will ensure that it's funding arrangements, including grants, contracts, or cooperative agreements, are implemented consistent with the OOS. In Missouri all funding arrangements for providing services, including any third-party arrangements and awards by DVR shall be consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, DVR shall renegotiate these funding arrangements so that they are consistent with the order of selection. Idaho, Indiana, Iowa, Tennessee and West Virginia have similar policies.

### **IV. ADMINISTRATION OF ORDER OF SELECTION.**

#### **A. Assessment for Determining Eligibility and Priority for Services.**

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the state is operating under an order of selection), the designated state unit must conduct an assessment for determining eligibility and priority for services. The VR counselor determines the significance of the

individual's disability and the individual's priority for services based on a review of the data developed to make the eligibility determination and an assessment of additional data, to the extent necessary. [34 CFR 361.42(g)] If the designated state unit is operating under an order of selection for services, the state unit must base its priority assignments on a review of the data that was developed to make the eligibility determination and an assessment of additional data, to the extent necessary. [34 CFR 361.42(g)]

Determinations made by officials of other agencies, such as the Social Security Administration and education officials, can be used to assist the VR counselor in determining the extent of the individual's disability and the extent to which an individual meets one or more of the agency's criteria for the various priority categories. [Section 102(a)(4)(B) of the Act and 34 CFR 361.42(d)] To assure consistency in applying agency criteria to individuals, the agency may need to develop guidance materials and provide training for VR counselors. [ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]

States have developed comprehensive policies, procedures, manuals and checklists for conducting assessments for determining priority for services.

Alaska uses *The Significance of Disability Certificate*, the *Significance of Disability—Functional Limitations Worksheet*, and the *Significance of Disability Certificate*.

California uses the *California Code of Regulations* and the *Rehabilitation Administrative Manual—Level of Significance of Disability*.

Idaho uses the *SD/MSD Checklist* but explains that the Checklist is a form used to support the determination; however, and is not sufficient enough documentation to adequately describe the individual's limitations by itself.

Iowa has developed the *Preliminary Assessment for Determining Eligibility and Waiting list Placement*. Iowa includes a policy that specifies that once determined to be severely disabled or most severely disabled an individual classification is never downgraded during the time that the file is open.

Massachusetts uses the *Order of Selection Functional Capacities Checklist*.

Michigan uses the *Disability Priority—Serious Limitations Job Aid*.

Minnesota uses guidance materials that specifies for each of the functional areas specific criteria for determining whether a limitation is "serious." The guidance materials include for each of the functional areas an overall definition, a definition for serious limitation, and a checklist of needs, limitations.

Oregon uses *Functional Limitation Guidelines* that define serious limitation in each of the seven functional capacity areas and specify the documentation required as well as a nonexhaustive list of limitation in capacities.

Pennsylvania recently revised its policies to include comprehensive specifications for each functional area that includes a definition for each functional area, identifies possible assessment strategies for verifying functional limitations, and describes possible impact of various disability-related impacts on the individual's ability to perform in an employment setting.

South Dakota uses a comprehensive manual and checklist for conducting assessments, including specification of assessment strategies and what can and cannot be considered.

Tennessee adopted policies that specify specific documentation requirements for each of the seven functional capacity areas.

Vermont includes a policy that specifies that although a person's circumstances may change so that the individual is no longer eligible for a particular Priority Category, the person will remain in that category unless the change favors him/her. This will not apply to misclassification; a misclassified person, if move to a less favorable Priority Category, will be advised of the change in writing and provided with appeals rights and information on the Client Assistance Program.

Virginia adopted policies on documentation requirements for each type of disability and a checklist with descriptions to assist counselors in determining serious functional limitations.

Wisconsin developed a policy that highlights special issues in eligibility determinations and order of selection category placements e.g., temporary disabilities, cyclic disability, progressive disability, legacy of disability, and transition without significant work history.

## **B. Notification of Eligible Individuals.**

Under the federal policy framework, the State VR agency must notify all eligible individuals of the priority categories in a State's order of selection, their assignment to a particular category, and their right to appeal their category assignment. [34 CFR 361.36(e)(2)]

States provide notification to eligible individuals consistent with the federal policy framework. For example, California's policy and Administrative Manual specify that The Department, through the local offices, shall notify each individual placed on the waiting list, or his/her designated representative, in writing, of all the following:

- The priority category to which he/she has been assigned.
- The priority category (ies) that are currently being served.
- His/her appeal rights.
- His/her right to a re-evaluation of his/her priority category placement.

Tennessee's policy explains the responsibility to inform clients whose cases have been placed in closed categories that they should contact the counselor if:

- Their condition has changed and they would like a re-evaluation to determine if they can be re-classified into a higher priority category.

- They have been determined eligible for SSI or SSDI benefits, after determination of eligibility and assignment to a priority category.

Washington (state) has developed a comprehensive notification policy that includes, among other things, purpose of contact, methods of contact (e.g., letter, email, telephone, other mutually agreed upon method), and frequency of required contact.

Most states e.g., Iowa, Minnesota, Missouri, Virginia and Wisconsin have developed model Order of Selection letters for use by rehabilitation counselors.

### **C. Responsibilities to Individuals Who Meet Open Categories Under OOS.**

Under the federal policy framework, the state plan must assure that an IPE is developed and implemented in a timely manner for each individual determined eligible for vocational rehabilitation services, or if the designated state unit is operating under an order of selection, for each eligible individual whom the state unit is able to provide services. [34 CFR 361.45(a)] The designated state unit must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual, or, if the state is operating under an order of selection, for each eligible individual to whom the state is able to provide services. The purpose of the assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the IPE. [34 CFR 361.45(b)]

The states all include the policy specified in the federal policy framework. For example, Michigan specifies that customers served under an IPE must be able to obtain a full range of services. Regulations do not permit provision of partial services, for example, only placement services. Massachusetts policy specifies that vocational rehabilitation services to individuals for whom an IPE has been developed, agreed to, and approved will not be affected until such time as their IPE is terminated for reasons other than achievement of the employment objectives or available funds have been exhausted.

### **D. Responsibilities to Individuals Who Do Not Meet Open Categories Under OOS.**

Under the federal policy framework, agencies implementing an order of selection must ensure that an eligible individual who does not meet the criteria for the open categories of the order of selection has access to services provided under the information and referral system. [Section 101(a)(5)(D) of the Act and 34 CFR 361.36(a)(3)(iv)] Information and referral services include: (a) providing vocational rehabilitation information and guidance to assist individuals in achieving employment; and (b) appropriately referring individuals to other federal and state programs, including other statewide workforce investment programs, that are best suited to meet the individual's specific employment needs [Section 101(a)(20)(A) of the Act and 34 CFR 361.37].

When making a referral, the agency must provide the individual with:

- A notice of the referral;

- Information about a specific point of contact within the program to which the individual is being referred; and
- Information and advice about the most suitable services for assisting the individual to prepare for, secure, retain, or regain employment. *[Section 101(a)(20)(B)(ii) of the Act and 34 CFR 361.37(b)(2)]*

As part of its reporting under section 101(a)(10)(c)(ii)(I) of the Act and 34 CFR 361.37, agencies must report annually on the number of eligible individuals who received information and referral services (not under an IPE) because they did not meet the order of selection criteria.

The states generally restate the policies set out in the federal policy framework (see e.g., Tennessee and West Virginia) For example:

Idaho includes examples of I&R services provided to the individuals not receiving Title I services, including examples of counseling and referral for job placement.

Iowa policy explains that no special resources (money or staff time) may be provided to clients on the waiting list. No programs will be specifically created by the VR agency for this group of individuals. No purchase of services will be allowed under Information and Referral.

Kansas: Except for additional assessment or diagnostic services needed to analyze whether an individual can be moved to a higher category, VR services (purchased or provided by Staff) may not be provided for individuals on the waiting list. Exceptions to this provision are not allowed. In the event that one or more categories of services are closed through Order of Selection and a waiting list for services is established, RS shall provide information and referral services for those eligible individuals who cannot be served. The information and referral service provided should be adequate to ensure that the individual with a disability is provided accurate VR information and guidance, using appropriate modes of communication, to assist them in preparing for, securing, retaining or regaining employment. An appropriate referral shall be to federal, state or other programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of the individual with a disability. For each referral, the individual shall be given:

- A copy of the notice of referral that RS will send to the other program, including a specific point of contact within the other program.
- Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain or regain employment.

Kentucky includes a unique provision under which at the consumer's request, and IPE may be developed to the extent possible and held so that services may be initiated as quickly as possible if the OOS changes to serve that category.

Maryland specifies that services are limited to the following: guidance and counseling, career assessments, AT assessments, information and referral, and referral for job placement.

Michigan policy specifies that cost-services cannot be provided to those on the waitlist; only counseling regarding referrals to other agencies.

Mississippi policy specifies that an IPE cannot be developed for individuals in a closed priority category. However, the Order of Selection system does not preclude delivery of non-purchased services (i.e., counseling, guidance, placement, referral services, coordination of comparable benefits and services paid by a third party) for these individuals. Persons meeting eligibility requirements but in a closed category have access to a comprehensive information and referral system (see the *OVR/OVRB Resource Guide*).

Oregon includes a comprehensive description of the I&R services that must be provided, including the provision of counseling and guidance for referrals and job placement. Oregon also has a specific policy on youth in transition.

Virginia policy specifies that while a case is in “Delayed” status, counselors are limited to providing only additional diagnostic, assessment, and evaluation services need to re-evaluate the priority category assignment. If needed to access diagnostic services, the counselor may provide support services (transportation, child care, personal assistance services) and interpreters for the deaf. Any services not allowed by the previous sentence are prohibited. Virginia exempts post-employment services.

#### **E. Maintenance of Records.**

Under the federal policy framework, the individual’s service record must include documentation on the nature and scope of information and referral services provided by the State VR agency to the individual and documentation on the referral itself. [34 CFR 361.47(a)(13)] The designated state unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, documentation supporting a determination that an individual is an individual with a significant disability or an individual with the most significant disability. [34 CFR 361.47]

The states have adopted policies consistent with the federal policy framework.

#### **F. Monitoring and Oversight.**

California, Oregon, and Utah have adopted specific policies requiring the VR agency to monitor eligibility and priority determinations. For example, in California, a review is conducted at least annually with respect to order of selection for all eligible individuals in priority categories, including those being served and those on the waiting list. The review must be conducted to assure that services are being provided on a statewide basis and the determination of priority category does not bar or discriminate against any eligible individual based on proscribed factors. If the Department’s review discloses the order of selection is barring or discriminating against any eligible individuals based on inappropriate factors, the Department must remedy that situation by promulgating emergency regulations within 90 days.

## **V. Role of State Rehabilitation Council.**

Under the federal policy framework, the designated state unit must consult with the State Rehabilitation Council regarding the:

- (1) Need to establish an order of selection, including any reevaluations of the need;
- (2) Priority categories of the particular order of selection;
- (3) Criteria for determining individuals with the most significant disabilities; and
- (4) Administration of the order of selection. *[34 CFR 361.17(h) and 34 CFR 361.36(f)]*

All of the states have adopted policies consistent with the federal policy framework. For example, Tennessee policy reiterates verbatim the policy in the federal regulations. Missouri: DVR will consult and seek recommendations from the SRC on a regular basis or as needed about the following:

- (1) Need to establish an order of selection and review of state plan information and justification
- (2) Development or changes in policies or practices regarding the order of selection and how they affect persons with disabilities
- (3) Regular update on status of waiting lists numbers, waiting time for individuals on waiting lists and release of individuals from waiting lists to active services
- (4) Regular discussion of priority categories of the order of selection;
- (5) Assistance in defining the criteria for determining individuals with the most significant disabilities;
- (6) Discussion on the effectiveness of the Information and Referral process for individuals who are on waiting lists