



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

Report Prepared for

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PART I: INTRODUCTION

Part I of the paper is divided into four sections. The first section sets out the background of the order of selection provision included in Title I of the Rehabilitation Act (vocational rehabilitation program) by tracing the legislative history of the provision. The second section describes the purposes of the policy analysis of the order of selection provision. The third section describes the approach and methodology used to conduct the policy analysis of the order of selection provision. The final section describes the organization of the remainder of the paper.

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. PURPOSES OF THE POLICY ANALYSIS

Over the past several years various stakeholder groups, including the Council of State Administrators of Vocational Rehabilitation (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.

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 “best practices” for prioritizing and providing services to individuals with the most significant disabilities when the State VR agency cannot serve all eligible individuals. The RRTC must contribute to this outcome by conducting research on the administration and implementation of an order of selection in serving individuals with the most significant disabilities by their respective State VR programs, and identifying best practices among State VR programs for ensuring that individuals with the most significant disabilities receive services on a priority basis.

The purpose of this policy analysis is to help inform policymakers and other stakeholders, including State VR agencies, State Rehabilitation Councils (SRC), community rehabilitation providers, and individuals with disabilities and their representatives, about alternative approaches for addressing order of selection policy when a State VR agency anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all individuals eligible for vocational rehabilitation services. Under order of selection, individuals with the most significant disabilities are selected first for the provision of vocational rehabilitation services.

III. 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 the recent Order of Selection Survey conducted by CSAVR and the papers prepared and used by the Future's Workgroup over the past two years 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.

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.

The states selected for the policy analysis included California, Iowa, Massachusetts, Michigan, Tennessee, Virginia, West Virginia, and Wisconsin. The states were selected jointly by RRTC project staff and CSAVR staff based on a review of responses to a national survey of all State VR agencies. In the survey, we explained that for purposes of the OOS policy analysis we were looking for State VR agencies that had the broadest breadth of

experience determining whether to establish an order of selection and designing, implementing and administering order of selection. Thus, a primary criterion used to select states was whether the State VR agency had developed written policies, guidelines, tools, and training materials. We also inquired as to whether a state had established an order of selection, had ever been in an active order of selection where the state assigned individuals to OOS categories, and whether a state used its order of selection to waitlist eligible individuals.

Once the states were selected, I undertook a policy analysis using a template I developed, with input from CSAVR, for categorizing the state information based on the key elements of the federal policy framework.

Finally, I analyzed the key policy elements identified in the template but this time I conducted the analysis 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 the selected states addressed each element and included specific examples of state policies.

IV. ORGANIZATION OF THE PAPER

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

Part II of the paper includes a description of the federal policy framework governing the order of selection provision. The first section provides an overview of the order of selection policy. The second section describes the standards governing the determination of whether a State vocational rehabilitation (VR) agency must establish an order of selection. The third 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 regarding the order or selection requirement.

Part III of the paper includes a comprehensive description of the policy framework for each of the eight states included in the policy analysis. The description of the policy framework for each state uses the same template of key policy elements:

- Determination of Whether to Establish an Order of Selection.
- Establishment of order of selection, including establishment of priority categories and 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, case closure and maintenance of records, monitoring and oversight, and role of State Rehabilitation Council.

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

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

Part II of the paper provides 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 provides an overview of the order of selection policy. The second section describes the standards governing the determination of whether a State VR agency must establish an order of selection. The third 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 regarding the order or selection requirement.

I. OVERVIEW OF THE ORDER OF SELECTION POLICY

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]

II. 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)]:

- A determination by qualified personnel that the applicant has a physical or mental impairment.
- 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.
- 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.
- 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]*

III. 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. Process Used to Establish An Order of Selection

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:

- Any duration of residency requirement, provided the individual is presently in the state;
- Type of disability;
- Age, gender, race, color, or national origin;
- Source of referral;
- Type of expected employment outcome;
- The need for specific services or anticipated cost of services required by an individual; or
- 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. Process Used to Implement Order of Selection

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. Process Used to Administer Order of Selection

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. Case Closure and 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]*

IV. 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 REGARDING ORDER OF SELECTION

Part III of the paper includes a comprehensive description of the policy framework for each of the eight states included in the policy analysis:

- California
- Iowa
- Massachusetts
- Michigan
- Tennessee
- Virginia
- West Virginia
- Wisconsin

The description of the policy framework for each state uses the same template of key elements:

- Determination of Whether to Establish an Order of Selection.
- Establishment of Order of Selection, including:
 - Establishment of Priority Categories and Terminology;
 - Acceptable and Unacceptable Factors;
 - 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;
 - Case Closure and Maintenance of Records;
 - Monitoring and Oversight; and
 - Role of state Rehabilitation Council.

CALIFORNIA ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes California's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, 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. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

Prior to the beginning of each fiscal year, the Department shall [California Code of Regulation (CCR) 7052]:

- project the cost of determining eligibility for all applicants for vocational rehabilitation services in the next fiscal year; and
- project the cost of serving, in the next fiscal year, the projected number of individuals with IWRPs in place at the end of the current fiscal year; and
- project the cost of serving, in the next fiscal year, individuals whose IWRPs will be put in place in that year.

The Director shall declare the Department under Order of Selection for Vocational Rehabilitation Services when the budget information available indicates that the projected resources available for vocational rehabilitation services are not adequate to meet all the projected costs.

After the start of a fiscal year, the Director shall declare the Department under Order of Selection for Vocational Rehabilitation Services when the budget information available indicates that the projected resources available for vocational rehabilitation services for the remainder of the fiscal year, are not adequate to meet all projected costs for the remainder of the year.

II. ESTABLISHMENT OF ORDER OF SELECTION

The purpose and intent of the order of selection policy is [CCR 7050; *Rehabilitation Administrative Manual Section 30080*]:

1. To provide an organized and equitable method to serve individuals with disabilities, if it is anticipated that all eligible individuals who apply for vocational rehabilitation services cannot be served, by:
 - determining the need for an Order of Selection for Vocational Rehabilitation Services;
 - timing the establishment of an Order of Selection for Vocational Rehabilitation Services;
 - developing priority categories for an Order of Selection for Vocational Rehabilitation Services;
 - implementing and monitoring an Order of Selection for Vocational Rehabilitation Services; and
 - determining a priority category for each eligible individual.
2. To manage the resources available for the provision of vocational rehabilitation services for each fiscal year.
3. To assure that first priority for vocational rehabilitation services is given to individuals with the most significant disabilities as defined herein.
4. To assure the state wideness of the Order of Selection for Vocational Rehabilitation Services.
5. To define the circumstances under which the Department will not require an Order of Selection for Vocational Rehabilitation Services.

A. Establishment of Priority Categories.

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

If the number of individuals eligible to receive vocational rehabilitation services must be limited, the following Order of Selection for Vocational Rehabilitation Services shall be implemented [CCR 7053, *Rehabilitation Administrative Manual Section 30081*]:

PRIORITY CATEGORY 1. Eligible individuals determined to be most significantly disabled, beginning with the earliest application date.

PRIORITY CATEGORY 2. Eligible individuals determined to be significantly disabled beginning with the earliest application date.

PRIORITY CATEGORY 3. All other eligible individuals determined to be disabled beginning with the earliest application date.

B. Terminology

The following definitions are used for purposes of the order of selection policy [7051].

1. **“Accommodation”** for the purpose of evaluating the impact in a functional capacity area means any type of assistance required as a result of an impairment including, but not limited to, work site adaptation, job restructuring, assistive technology devices, personal assistance services, prescribed medication, alternate media, or prosthesis.
2. **“Assess” or “assessment,”** for the purposes of Order of Selection for Vocational Rehabilitation Services only, means quantifying the impact of the limitations presented by an individual's disability considered in a full range of environments. This assessment takes place after an individual has been determined to be eligible for services from the Department of Rehabilitation.
3. **“Extended period of time”** means more than six months.
4. **“Functional Capacity Area”** means communication, interpersonal skills, mobility, self-care, work skills, and work tolerance, which are impacted by an individual's disability.
 - a. **“Communication”** means the ability to use, give and/or receive information.
 - b. **“Interpersonal Skills”** means the ability to establish and/or maintain appropriate interactions with others.
 - c. **“Mobility”** means the ability to move from place to place.
 - d. **“Self-Care”** means the ability to plan and/or perform activities of daily living.
 - e. **“Work Skills”** means the ability to learn and/or perform work functions.
 - f. **“Work Tolerance”** means the ability to sustain the required level of work functions.
5. **“Level of significance of disability”** means one of the following: disabled, significantly disabled, or most significantly disabled as determined by the following criteria:
 - a. **“Disabled”** means an eligible individual:
 - who has no serious limitation in terms of an employment outcome in any functional capacity area; or
 - whose vocational rehabilitation is not expected to require multiple vocational rehabilitation services; or
 - whose vocational rehabilitation is not expected to require an extended period of time.

b. **“Significantly disabled”** means an eligible individual:

1) who meets the following criteria:

- who has a serious limitation in terms of an employment outcome in at least one functional capacity area; and
- whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services; and
- whose vocational rehabilitation can be expected to require an extended period of time; and
- who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, acquired traumatic brain injury, heart disease, hemiplegia, hemophilia, HIV infection, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, 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; or

2) who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 USC 401 et seq. and 1381 et seq.). If the Department is serving only individuals who are the Most Significantly Disabled under Order of Selection, the Department shall complete a form DR 213A, Significance of Disability Instrument (New 06/01), incorporated by reference herein, pursuant to Section 7054, for individuals who have a disability or are blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 USC 401 et seq. and 1381 et seq.) to determine whether they are Most Significantly Disabled.

c. **“Most significantly disabled”** means an eligible individual:

1) who meets the following criteria:

- who has a serious limitation in terms of an employment outcome in at least four functional capacity areas; and
- whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services; and
- whose vocational rehabilitation can be expected to require an extended period of time; and
- who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral

palsy, cystic fibrosis, deafness, head injury, acquired traumatic brain injury, heart disease, hemiplegia, hemophilia, HIV infection with clinical evidence of immunosuppression, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, 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; or

- 2) who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 USC 401 et seq. and 1381 et seq.) and who has a serious limitation in terms of an employment outcome in at least four functional capacity areas.
6. **“Multiple vocational rehabilitation services”** means two or more vocational rehabilitation services, excluding counseling and guidance, services to family members, and transportation.
7. **“Priority Category”** means the order in which individuals will be served. The category shall be established, first, based on their level of significance of disability, and second, their date of application.
8. **“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.
9. **“Transportation,”** for the purposes of Order of Selection for Vocational Rehabilitation Services only, means the use of public or private modes of travel. The purchase of a vehicle, vehicle modification, repair, and mobility evaluation are not defined as transportation for purposes of determining the need for multiple vocational rehabilitation services.

C. Acceptable and Unacceptable Factors

Order of Selection for Vocational Rehabilitation Services shall **not** be based on the following [CCR 7050(b)]:

1. Any geographical location of residency within the state;

2. Any duration of residency requirement, provided the individual is present in the state;
3. Type of disability;
4. Sex, race, age, religious creed, color, ancestry, national origin, sexual orientation, or marital status;
5. Source of referral;
6. Type of expected employment outcome;
7. The particular service needs or anticipated cost of services required by an individual; and
8. The income level of an individual or an individual's family.

D. Ranking Individuals Within a Priority (Waiting Lists)

Eligible individuals within a priority category shall begin with the earliest application date.

When eligible individuals determined to be significantly disabled can be served, all eligible individuals determined to be most significantly disabled shall be served regardless of the date of application. When eligible individuals determined to be disabled can be served, all eligible individuals determined to be significantly disabled shall be served regardless of the date of application. Individuals who are not included in the priority category (ies) being served shall be placed on a waiting list. [CCR 7053; *Rehabilitation Administrative Manual Section 30081*]

III. IMPLEMENTATION OF ORDER OF SELECTION

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection 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. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

A. Statewide Basis

Upon a determination that an Order of Selection for Vocational Rehabilitation Services must be implemented, the Department shall establish a statewide waiting list of eligible individuals in priority categories. [CCR 7055]

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

When the Director of the Department has declared the Department in Order of Selection for Vocational Rehabilitation Services, at least a quarterly review will be done to determine whether the projected resources available to serve individuals in priority category/ies currently being served are adequate to meet all projected costs for such individuals for the remainder of the fiscal year. [CCR 7053.5]

If the review indicates that the projected resources are inadequate to serve individuals in priority categories currently being served, the priority categories being served will be reduced accordingly. Individuals in a priority category no longer being served, whose IWRP was written and signed prior to implementation of the reduction shall continue to receive services including additional services subsequently identified as necessary to complete their IWRP. [CCR 7053.5]

If the review indicates that the projected resources are adequate to serve only individuals in priority categories currently being served, no change will be made in the priority categories being served. If the review indicates that the projected resources are adequate to serve individuals in additional priority categories, those categories will be served. [CCR 7053.5]

The Director shall make a declaration of any change in priority categories. [CCR 7053.5]

When the Department determines that the available resources are adequate to fund vocational rehabilitation services to all eligible individuals, it will begin to provide vocational rehabilitation services to all priority categories. All individuals on the waiting list will be notified, in writing, within thirty (30) days of the determination to end Order of Selection for Vocational Rehabilitation Services, that the Department is no longer under an Order of Selection for Vocational Rehabilitation Services. If the individual chooses, a designated representative may receive notification on his/her behalf. The Department will continue to complete the level of significance of disability determination with each eligible individual and maintain its priority category information. [CCR 7057]

C. Continuation of Services

Upon implementation of the Order of Selection for Vocational Rehabilitation Services [CCR 7053]:

- Individuals whose IWRP was written and signed prior to implementation or an order of selection shall continue to receive services including additional services subsequently identified as necessary to complete their IWRP.
- Individuals who were determined eligible prior to implementation, but for whom the IWRPs have not been written and signed, shall be assigned to a priority category.

IV. ADMINISTRATION OF ORDER OF SELECTION

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the state Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

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, the Department must conduct an assessment in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions. [CCR 7062; *Rehabilitation Administrative Manual Section 30084*] When the Department is operating under an Order of Selection, the Department must base its priority category assignments on---

- A review of the data that was developed under (g) and (h) (see below) to make the eligibility determination; and
- An assessment of additional data, including data developed under (i) (see below) to the extent necessary.

(g) Except as provided in (h) and (i) of this section, the Department—

(1) Must base its determination of each of the basic eligibility requirements in (a) of this section on—

(A) A review and assessment of existing data, including:

- Counselor observations including, but not limited to, observation of an obvious impairment, as in the case of loss of a limb.

- Medical records
- Education records.
- Information provided by the individual or the individual's family, particularly information used by education officials.
- Determinations made by officials of other agencies.

(B) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible.

(2) Must base its presumption under (d)(1) of this section that an applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act satisfies each of the basic eligibility requirements in (a) of this section on determinations made by the Social Security Administration.

(h) Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in an integrated setting due to the severity of the individual's disability, the Department must conduct trial work experience as defined in Section 7029.1 of these regulations to determine whether or not there is clear and convincing evidence to support such a determination.

(i) Under limited circumstances if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the Department is able to determine whether the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome in an integrated setting, or whether there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in an integrated setting due to the severity of the individual's disability, the Department must conduct an extended evaluation as defined in Section 7014 of these regulations.

Assessing the level of significance of disability shall be [*CCR 7054*]:

- a collaborative effort on the part of departmental staff and the individual with a disability and, as appropriate, his/her family, or advocates, or designated representative; and
- based on information collected from a wide variety of sources; and
- based on a review of the individual's daily life, including community, home, school, and work, considering an individual's ability to participate in major life activities, as they impact an employment outcome; and

- a consideration of the impact of an individual's impairment/s in each of the functional capacity areas (communication, interpersonal skills, mobility, self-care, work skills and work tolerance).

When assessing the functional impact of the disability, departmental staff shall, in collaboration with the individual and/or the individual's representative, complete a form DR 213A, Significance of Disability Instrument (New 06/01), indicating whether any serious limitation in terms of an employment outcome exists in each of the functional capacity areas. [CCR 7054; *Rehabilitation Administrative Manual Section 30082, 30084; Level of Significance of Disability*]

The following factors are to be considered in determining if a serious limitation in terms of an employment outcome exists in each functional capacity area. The factors listed below and on the form DR 213A, Significance of Disability Instrument (New 06/01) for each of the functional capacity areas are not considered to be all-inclusive or fully comprehensive.

A serious limitation in terms of an employment outcome is indicated in the area of **communication** when, as a result of the physical and/or mental impairment the individual requires accommodation to use, give and/or receive verbal/auditory information; or the individual requires accommodation to use, give and/or receive visual information.

A serious limitation in terms of an employment outcome is indicated in the area of **mobility** when, as a result of the physical and/or mental impairment the individual requires accommodation to move from place to place; or the individual is limited in terms of distance and/or terrain that can be traveled.

A serious limitation in terms of an employment outcome is indicated in the area of **interpersonal skills** when, as a result of the physical and/or mental impairment, the individual requires accommodation to establish and/or maintain appropriate interactions with others.

A serious limitation in terms of an employment outcome is indicated in the area of **self-care** when, as a result of the physical and/or mental impairment, the individual requires accommodation to plan and/or perform activities of daily living.

A serious limitation in terms of an employment outcome is indicated in the area of **work skills** when, as a result of the physical and/or mental impairment the individual requires accommodation to learn and/or perform work functions; or the individual requires accommodation to plan, problem solve and/or organize work functions.

A serious limitation in terms of an employment outcome is indicated in the area of **work tolerance** when, as a result of the physical and/or mental impairment the individual requires accommodation to sustain the required level of work function; or the individual is restricted from working in certain work environments which may include, but are not limited to, cold, heat and noise.

Individuals on the waiting list may request a re-evaluation of his/her priority category placement at anytime he/she believes that his/her situation has changed sufficiently to place him/her in a different priority category. The Department shall conduct a re-evaluation and notify individuals of the results within thirty (30) days of the request. If the re-evaluation takes longer than thirty (30) days, the rehabilitation counselor shall inform the client of the reason for the delay, and the estimated date the re-evaluation shall be completed. [CCR 7055; *Rehabilitation Administrative Manual Section 30086*]

B. Notification of Eligible Individuals

All eligible individuals assigned to a priority category, who do not have a signed IWRP, shall be notified, in writing, of the Department's intention to implement Order of Selection for Vocational Rehabilitation Services. If the individual chooses, a designated representative may receive notification on his/her behalf. [CCR 7053; *Rehabilitation Administrative Manual Section 30090*]

The Department, through the local offices, shall notify each individual placed on the waiting list, or his/her designated representative, in writing, of all of the following [CCR 7055; *Rehabilitation Administrative Manual Section 30090*]:

- The priority category to which he/she has been assigned.
- The priority category (ies) that are currently being served.
- His/her appeal rights as specified in Sections 7350 through 7361.
- His/her right to a re-evaluation of his/her priority category placement per Section 7055(f).

Ninety (90) days after an individual is placed on the waiting list and in ninety (90) day increments thereafter, the Department shall contact the individual, in writing, to inform him/her of the priority category to which he/she has been assigned, the priority category (ies) that are currently being served, and his/her waiting list status in order to determine if he/she wishes to remain on the waiting list. [CCR 7055]

If an individual does not respond within thirty (30) days of contact to the information contained in the ninety (90) day notice, the individual will be notified that his/her case will be closed if there is no contact with the rehabilitation counselor within the next sixty (60)

days. If the individual chooses, a designated representative may receive notification on his/her behalf. If departmental staff is unable to contact the individual, or if the individual declines to remain on the waiting list, a notice of case closure letter will be sent to the individual or to his/her designated representative. [CCR 7055]

C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection

Eligible individuals with disabilities who meet open categories under the order of selection shall receive vocational rehabilitation services set out in the individual's IPE.

D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection

If the Department determines that an applicant is ineligible for vocational rehabilitation services from the Department or determines that an eligible individual receiving services under an Individualized Plan for Employment (IPE) is no longer eligible for services, the Department must refer the individual to other programs that are part of the One-Stop service delivery system under the Workforce Investment Act of 1998 (29 USC 2841) that can address the individual's training and employment related needs [CCR 7098]

E. Case Closure and Maintenance of Records

The individual shall receive a copy of form DR 213, Significance of Disability Determination (Rev. 07/01) within 30 days of determination of the level of significance of disability. The individual, or the individual's designated representative, and the counselor shall sign the form and it shall be included in the individual's record of services. [CCR 7054]

F. Monitoring and Oversight

The Department shall review at least annually the order of selection for all eligible individuals in priority categories, including those being served and those on the waiting list. This review shall be conducted to assure that [CCR 7056; *Rehabilitation Administrative Manual Section 30091*]:

- 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 the factors specified in Section 7050(b) of these regulations.

If the Department's review discloses the Order of Selection for Vocational Rehabilitation Services is barring or discriminating against any eligible individual(s) based on inappropriate factors the Department shall remedy that situation by promulgating emergency regulations within 90 days. [CCR 7056]

G. Role of the State Rehabilitation Council

Section 105(c) of the Rehabilitation Act of 1973, as amended, requires that the SRC review, analyze, and advise the Designated state Unit (DSU) regarding the performance of the responsibilities of the unit under this title, particularly responsibilities relating to eligibility (including Order of Selection).

The SRC was actively involved in the development and review of the Order of Selection Process as well as both the current and previous process to determine level of significance of disability.

IOWA ORDER OF SELECTION POLICY

This section of the paper describes Iowa's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, 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. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state of Iowa.

A. Establishment of Priority Categories

At any time that the state vocational rehabilitation program cannot serve all eligible individuals who apply, it must develop a waiting list for services based on significance of disability. [*Preliminary Assessment for Determining Eligibility and Waiting List Placement (August 2007)*]

PRIORITY 1: Individual with a Most Significant Disability (MSD).

PRIORITY 2: Individual with a Significant Disability (SD).

PRIORITY 3: Other eligibles.

All MSDs must be served before any SD can be served. All SDs must be served before Other Eligible groups can be served. [*Preliminary Assessment for Determining Eligibility and Waiting List Placement (August 2007)*]

B. Terminology

The following definitions are used for purposes of the (waiting list) order of selection policy.

1. **Individual with a disability**—means an individual (i) Who has a physical or mental impairment as identified in RSA Coding; (ii) Whose impairment constitutes or results in a substantial impediment to employment; and (iii) Who can benefit in terms of an employment outcome from vocational rehabilitation services. (citation to federal regulations) [*Status 10-Accepted for Services; Status 04-0—Accepted for Services; Does not Meet Severity Category Being Served (August 2007)*]

2. **Individual with a most significant disability**—means an individual who is seriously limited in **three or more** functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or cognitive/motor skills) in terms of an employment outcome. 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 a most significant disability. [*Preliminary Assessment for Determining Eligibility and Waiting List Placement (August 2007)*] In addition, the individual must require multiple vocational rehabilitation services over an extended period of time. [*Final Factsheet, updated 1/12/07*]
3. **Individual with a significant disability**—means an individual who has a **significant** physical or mental impairment which seriously limits **one or more functional capacities** (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome. [*Preliminary Assessment for Determining Eligibility and Waiting List Placement (August 2007)*] In addition, the individual must require multiple vocational rehabilitation services over an extended period of time. [*Final Factsheet, updated 1/12/07*]
4. **Other eligibles** include individuals who have been determined eligible but whose disability is not considered serious.
5. **Eligibility**—refers to a certification that an individual:
 - has a physical or mental impairment which for that individual constitutes or results in a substantial impediment to employment;
 - can benefit in terms of an employment outcome; and
 - requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment. [*Standards for Eligibility (August 2007)*]

Individuals receiving SSDI or SSI are presumed to be eligible. [*Status 10—Accepted for Services; Status04-0 Accepted for Services, Does Not Meet Severity Category Being Served (August 2007)*]

Note: State policy adopts the federal definitions for the terms employment outcome, physical or mental impairment, and substantial impediment to employment. [*Standards for Eligibility*]

6. **Serious functional limitations**—A serious 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.

7. **Most serious limitation**—A serious limitation in one area that has caused the individual to have lost employment due to the disability, has never been employed due to functional limitations related to the disability or the employer reports the individual is unable to perform essential functions of the job due to functional limitation complications of the disability. [*Final Factsheet, updated 1/12/07*]
8. **Functional limitation areas include** [*Severity of Disability Guidance Manual (1/10/07)*]:
- a. **Mobility**—means moving about from place to place or moving the body in various positions. The individual’s ability to move the whole body from place to place or from position to position within a particular setting (home, school, or work) in the performance of essential activities. Includes travel to and from usual destinations in the community for activities of daily living, training, or employment.
 - b. **Communications**—means effectively exchanging (giving and receiving) information through written or spoken words or concepts.
 - c. **Self-care**—means ability to manage and take control of one’s self-care in the areas of personal, social, economic, and work life. The ability to perform activities of daily living related to self-care in order to become or maintain employment. Referral to the Independent Living program is appropriate when the sole purpose of services is to enhance the individual’s ability to live independently.
 - d. **Self-direction**—means the ability to manage and take control of one’s personal, social, and work life. The ability to plan, initiate, organize, or carry out purposeful activities related to working. Self-direction relates to the capacity to know, plan, and act on a course of action.
 - e. **Interpersonal skills**—mean the individual’s ability to establish and maintain working relationships impacting their ability to acquire and maintain competitive employment. Working relationships could involve personal, family, social and/or community interactions that directly relate to a person’s job performance and/or ability to maintain employment.
 - f. **Work tolerance**—means the capacity to perform consistently, given the level of physical, environmental or psychological demands commonly found in work settings.
 - g. **Work skills**—means possessing the work skills needed to procure employment and perform jobs which exist in the economy. For younger individuals or those entering the workforce after prolonged absence, learning the work skills needed to obtain and maintain employment which exist in the economy.
9. **Multiple Vocational Rehabilitation Services**—The term “multiple vocational rehabilitation services” means more than one service is required in order for the individual to be competitively employed.
10. **Extended Period of Time**—The term “over an extended period of time” means needing VR services for a duration of longer than one year.

C. Acceptable and Unacceptable Factors

In determining whether an individual has a serious limitation in a functional area, the limitation must be directly related to the disability. 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, they should not be the basis of the limitation for purposes of defining a significant disability. [*Severity of Disability Guidance Manual (01/10/07)*]

D. Ranking Individuals Within a Priority (Waiting Lists)

Individuals are placed on the waiting list in order of the date of their application (replacing policy which placed individuals on the waiting list in the order of their eligibility). Individuals are taken off in the same manner. [*Waiting List-Title I (August 2007)*]

III. IMPLEMENTATION OF ORDER OF SELECTION

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection 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. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

A. Authority to Open and Close Priority Categories, as Needed

The appropriateness of the category to which a client is assigned can be reassessed at any time. [*Waiting List-Title I (August 2007)*] An individual may be determined to be SD or MSD at any time after eligibility is determined. Once determined to be SD or MSD an individual classification is never downgraded during the time that the file is open. [*Status 10-Accepted for Services; Status 04-0-Accepted for Services; Does Not Meet Severity Category Being Served (August 2000); Waiting List-Title I (August 2007)*]

B. Continuation of Services

When a waiting list is implemented, all current clients will continue to receive services until the file is closed. [*Waiting List-Title I (August 2007)*]

C. Funding Arrangements

Third party agreements specify that only clients who are eligible to actively receive services and are not on the waiting list may receive services under the agreement.

IV. ADMINISTRATION OF ORDER OF SELECTION

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

A. Assessment for Determining Eligibility and Priority for Services

Records must be collected and assessed to determine if an individual meets the criteria for eligibility. If the individual is eligible, appropriate placement on the waiting list must be determined. Preliminary assessment services will assist the counselor in determining for which waiting list the client qualifies. If the counselor determines that the impediments to employment are of a serious nature and constitute a need for services in order to prepare for, obtain, and retain employment, then the counselor determines which waiting list category should be assigned to the case. [*Preliminary Assessment for Determining Eligibility and Waiting List Placement*] Additional assessments for purposes of determining the proper waiting list placement can be done. [*Status 04-0-Accepted for Services, Does not Meet Severity Category Being Served (August 2007)*]

B. Notification of Eligible Individuals

The waiting list is explained to each applicant as a part of the application process. [*Waiting List (August 2007)*] Individuals who are determined eligible for services but are placed on a waiting list can receive Information and Referral Services. At the time of eligibility determination, individuals will be advised of and offered services under Information and Referral. [*Status 10-Accepted for Services; Status 04-0-Accepted for Services; Does Not Meet Severity Category Being Served (August 2007)*]

On a yearly basis, all clients who had been on the waiting list for at least one year receive a letter and are advised that they remain on the waiting list. The letter asks the client to contact the agency if they wish to have their name remain on the waiting list, otherwise their case is closed.

C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection

Individuals who are determined eligible for VR services are provided a comprehensive assessment of VR needs as the basis for determining of the nature and scope of services to be provided to accomplish their vocational goals and objectives. If the comprehensive assessment has not been completed prior to eligibility, it must be formally initiated to facilitate planning and development of the IPE. [*Status 10—Accepted for Services (August 2007)*]

D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection

Individuals who are determined eligible for services but are placed on a waiting list can receive Information and Referral Services. Individuals can be referred to other federal and state programs, including programs carried out by other entities in the statewide workforce investment system. The program the individual is being referred to should be notified that the referral is being made. The individual should be provided the specific contact point within the agency to which they are being referred and information and guidance regarding the most suitable services to assist the individual reach employment. [*Status 10-Accepted for Services; Status04-0-Accepted for Services; Does Not Meet Severity Category Being Served (August 2007)*]

An agency representative may participate with IEP Team in planning for a student. If this is done before the case file is opened it is considered technical assistance. If it is done while the student is on the waiting list it is considered Information and Referral. The agency representative may participate in the staffing of a waiting list client if they are already in the building to serve non-waiting list clients. [*August 2007 Information and Referral Services*]

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;
- No participation in VR agency Job Club is allowed. However, if a class is being provided and a waiting list client desires to sit in on a class with available room, then the client may participate but no materials or specialized instruction is allowed. However, if there are not enough clients available to have a class, the class is not conducted just so waiting list clients can attend. [*Status 10-Accepted for Services; Status04-0-Accepted for Services; Does Not Meet Severity Category Being Served (August 2007)*]

E. Case Closure and Maintenance of Records

The counselor must make a narrative entry in the R-413 section of the case file analyzing how the disability causes limitations and impediments to employment. [*Status 10-Accepted for Services; Status04-0-Accepted for Services; Does Not Meet Severity Category Being Served (August 2007)*]

F. Role of the State Rehabilitation Council

The SRC is involved in all policy changes for input and direction to reach final approval, including recent changes regarding eligibility criteria.

MASSACHUSETTS ORDER OF SELECTION POLICY

This section of the paper describes Massachusetts' policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, 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. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

Prior to instituting or amending order of selection or a related waiting list, the Commission will ensure that its actions comply with applicable state and federal statutory and regulatory requirements. [107 CMR 4.08]

II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

A. Establishment of Priority Categories

Order of selection refers to the process of selecting eligible individuals with disabilities who can be provided vocational rehabilitation services when the Commission has determined that resources are inadequate to provide services to all eligible individuals. [107 CMR 4.08 (1)] All eligible individuals will be assigned to [107 CMR 4.08 (1)]:

PRIORITY I: if they have been determined to be individuals with the most significant disabilities;

PRIORITY II: if they have been determined to be individuals with significant disabilities;
or

PRIORITY III: if they have been determined to be individuals with disabilities.

First priority in selection for service will be given to individuals with the most significant disabilities. Eligible individuals with the most significant disabilities will be first selected to be provided vocational rehabilitation services. [107 CMR 4.08 (3)] Second priority in selection for service will be given to individuals with significant disabilities. Eligible individuals with significant disabilities may be selected *only* after determination that funds are available to provide vocational rehabilitation services to all eligible individuals with the

most significant disabilities. [107 CMR 4.08 (4)] Last priority in selection for service will be given to other eligible individuals with disabilities. Eligible individuals with disabilities may be selected *only* after determination that funds are available to provide vocational rehabilitation services to all eligible individuals with most significant disabilities and all eligible individuals with significant disabilities. [107 CMR 4.08 (5)]

B. Terminology

The following definitions are used for purposes of the order of selection policy.

1. **Individual with a disability** means an individual with a disability when he or she has a physical or mental impairment which constitutes or results in a substantial impediment to employment and can benefit in terms of an employment outcome from vocational rehabilitation services. [107 CMR 4.08 (2)]
2. **Individual with a significant disability** means an individual with a significant disability when he or she has [107 CMR 4.08 (2)]:
 - a. a significant physical or mental impairment which seriously limits at least one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
 - b. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
 - c. who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cognitive dysfunction, cystic fibrosis, deafness, head injury, heart disease, hemiplegic, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability or end-stage renal disease that causes comparable substantial functional limitation.

An individual who has been recently determined to have a disability by the Social Security Administration under Title II [SSDI] or Title XVI [SSI] of the Social Security Act is considered to have a physical or mental impairment which constitutes or results in a significant physical or mental impairment which seriously limits one or more functional capacities in terms of an employment outcome.

3. **Individual with a most significant disability** [107 CMR 4.08 (2)] means an individual with a most significant disability who has a significant physical or mental impairment which seriously limits three 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 and whose vocational rehabilitation can be expected to require:

- a. Vocational rehabilitation services **over an extended period of time** of no less than six months; and
- b. **Two or more separate and distinct vocational services** within the following categories:
 - a. Interpreter or CART services provided by qualified personnel for individuals who are deaf or hard of hearing;
 - b. Services within 107 CMR 4.08(2)(c) 2.a and/or 107 CMR 4.08 (2) (c) b. through i, the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;
 - c. Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;
 - d. Diagnosis and treatment of physical and mental impairments;
 - e. Occupational licenses, tools, equipment and initial stocks and supplies;
 - f. Technical assistance and other consultation services to conduct market analyses; develop business plans and otherwise provide resources to pursue self-employment or telecommuting or establishing a small business operation as an employment outcome.
 - g. Rehabilitation technology, including vehicle modification, telecommunications, sensory, and other technological aids and devices;
 - h. Supported employment services; and
 - i. Specific post-employment service in 107 CMR 4.08(2) (c) a. through j, necessary to assist an individual with a disability to, retain, regain, or advance in employment;
 - j. Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the following definition:
 - Transportation means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems;
 - k. Rehabilitation teaching services, and orientation and mobility services;
 - l. Job placement assistance of a specialized nature including job seeking skills, job club, purchased direct placement assistance and job retention services;
 - m. Transition services in accordance with the following definition:

Transition services means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment(including supported employment), continuing and adult education, adult services, independent living or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional; vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome, and

n. Personal assistance services in accordance with the following definition:

Personal assistance services means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

Please note that the following do **not** qualify as distinctive services in determining an individual with a most significant disability [*Instructional Memorandum Reference Number: 4.08*]:

- (1) Assessment for determining eligibility and vocational rehabilitation needs;
- (2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;
- (3) Referral and other services to secure needed services from other agencies if such services are not available under the Vocational Rehabilitation Program;
- (4) Job-related services not of a specialized nature including job search and placement assistance, follow-up and follow-along services;
- (5) Maintenance while receiving services under an individualized plan for employment

4. Functional areas include mobility, communications, self-care, self-direction, interpersonal skills, work tolerance, and work skills [*MRC OOS FUNCTIONAL CAPACITIES; OOS Functional Capacities Checklist*].

MOBILITY—The ability to move from one place to the other and/or to physically manipulate the environment. Includes, but is not limited to: ambulation, access and egress, transportation, stair climbing, bending, reaching, navigation and orientation, range of motion, lifting and carrying.

COMMUNICATION—The ability to give and receive information. Includes, but is not limited to: speaking, writing, reading, perceiving, understanding, and hearing.

SELF-CARE—The capacity to perform tasks that involve caring for self and living environment. The ability to manage physical, emotional and safety needs. Includes, but is not limited to: health, food preparation, nutrition, grooming, hygiene, transportation, housing, home-making, money-management, medication-administration and medical appointments.

SELF-DIRECTION—The ability to plan and initiate activities that will reach a stated goal. Includes, but is not limited to: organizing, planning, initiating, goal-setting, problem solving, reasoning, time management and judgment.

INTERPERSONAL SKILLS—The ability to interact in a socially acceptable and mature manner with co-workers, supervisors and customers to facilitate normal flow of work activities. Includes, but is not limited to; interacting with others appropriately, understanding social cues, eye contact, handshakes, respecting others personal boundaries, empathizing, and managing anger.

WORK TOLERANCE—The ability to carry out required physical and cognitive work tasks in an efficient and effective manner over a sustained period of time.

WORK SKILLS—The ability to do specific job tasks based on acquired vocational, educational, and work experience.

C. Ranking Individuals Within a Priority (Waiting Lists)

Based upon a determination that funds are insufficient to provide vocational rehabilitation services to all individuals determined eligible for such services, the Commission may institute or amend a statewide waiting list of eligible individuals who have not been selected to receive vocational rehabilitation services. A statewide waiting list of eligible individuals who have not been selected to receive vocational rehabilitation services will be maintained, and will list individuals by order of selection priority category assignment and the date of the signed application for vocational rehabilitation services. [107 CMR 4.08 (6)]

III. IMPLEMENTATION OF ORDER OF SELECTION

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection 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. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

A. Authority to Open and Close Priority Categories, as Needed

The Commission will periodically, but at least quarterly, determine which eligible individuals who have not been selected to receive vocational rehabilitation services may be selected. Commission staff will be notified in writing of such determinations. Counselors will advise those individuals who are selected and take actions necessary to provide vocational rehabilitation services. [*Instructional Memorandum Reference 4.08*]

B. Continuation of Services

The order of selection by priority category will not affect vocational rehabilitation services to eligible individuals with disabilities who have been selected to receive vocational rehabilitation services and for whom an individualized plan for employment has been developed, agreed to, and approved until such time as the individualized plan for employment is terminated for reasons other than achievement of the employment objective of the individual. [*107 CMR 4.08 (10)*]

IV. ADMINISTRATION OF ORDER OF SELECTION

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

A. Assessment for Determining Eligibility and Priority for Services

The determination of an individual's eligibility, order of selection priority and vocational rehabilitation needs will, as much as possible, be based upon a review of existing data and documentation that may be provided directly by the individual or, as appropriate the individual's family or representative. With the individual's consent it may be obtained from the Social Security Administration, education officials, or from other service sources. The Commission will obtain only that data and information which is necessary to determine eligibility, order of selection priority and vocational rehabilitation needs. All information will be obtained and maintained in accordance with the Commission's confidentiality requirements. [*107 CMR 4.05 Assessments for Determining Eligibility, Order of Selection Priority, and Vocational Rehabilitation Needs*]

The review of existing data and preliminary assessment must be documented in the individual's record and include an appraisal of the current general health status of the individual, and existing medical records as necessary and available. If existing information does not describe the current functioning of the individual, is unavailable, inappropriate or insufficient for a vocational rehabilitation counselor to determine eligibility, order of selection priority or to identify an eligible individual's vocational rehabilitation needs, a comprehensive assessment must be done. The assessment may include trial work experiences, assistive technology devices and services, personal assistance services and any other supports that are necessary to determine whether an individual is eligible. *[107 CMR 4.05 Assessments for Determining Eligibility, Order of Selection Priority, and Vocational Rehabilitation Needs]*

In other words, the order of selection does not apply to assessments necessary to make determination of eligibility, order of selection priority assignment, and vocational rehabilitation needs. All applicants may receive goods and services during such assessments, to the extent necessary to make determination of eligibility and determination of order of selection priority assignment. *[107 CMR 4.08 (13); Instructional Memorandum Reference Number 4.08]*

Order of selection priority category assignment of eligible individuals with disabilities will be determined after certification of eligibility and will be based on the review of existing data to the maximum extent possible. A certification of order of selection assignment will include reasons for the priority category determination. *[107 CMR 4.08 (14)]*

Order of selection of eligible individuals who have not been selected to receive vocational rehabilitation services may be amended if there has been a change in the nature and severity of a physical or mental impairment which results in a change in functional capacities, changes to expected requirement for multiple vocational rehabilitation services over an extended period of time or the priority category assignment was a consequence of a misclassification. *[107 CMR 4.08 (15)]*

B. Notification of Eligible Individuals

At the time of determination or change of order of selection assignment the individual (or, as appropriate, a representative of the individual) will be notified in writing of the determination of order of selection assignment, the appeal rights available to the individual including the availability of services provided by the Client Assistance Program. *[107 CMR 4.08 (16)]*

Order of selection priority category classification or reclassification may be appealed in writing within 30 days of notification of priority category classification or reclassification. *[107 CMR 4.08 (17)]*

C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection

An eligible individual selected to receive vocational rehabilitation services may receive vocational rehabilitation services necessary to render such individual employable consistent with an individualized plan for employment and subsequent amendments. [107 CMR 4.08 (11)]

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 objective or available funds have been exhausted. Selected individuals will receive vocational rehabilitation services necessary to render them employable consistent with an IPE and any amendments. An IPE may be developed for individuals assigned to Priority Category I. However, receipt of services may be delayed due to the implementation of the waiting list. [Instructional Memorandum Reference 4.08]

D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection

Eligible individuals with disabilities **not** selected to receive vocational rehabilitation services are limited to assessment for determining eligibility and vocational rehabilitation needs, referral and other services designed to assist individuals with disabilities in securing needed services from federal, state, and local public agencies providing services related to the rehabilitation of individuals with disabilities, and counseling, guidance, and referral for job placements. IPEs may not be implemented for eligible individuals with disabilities assigned to Priorities II and III. [107 CMR 4.08 (12); Instructional Memorandum Reference Number 4.08]

E. Role of the State Rehabilitation Council

A decision that resources are inadequate to provide vocational rehabilitation services to all eligible individuals with disabilities will be reviewed by the Commission at least annually. The Commissioner will report the findings of such review to the Commission's state Rehabilitation Council. [107 CMR 4.08 (7)]

MICHIGAN ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes Michigan's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, 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. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The State VR agency is required to implement an order of selection when it expects that the state will *have insufficient 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)) [Basic Order of Selection Facts-Frequently Asked Questions]* The decision to establish and implement an order of selection has to 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)) [Basic Order of Selection Facts-Frequently Asked Questions]*

A State agency may establish an order of selection, but doesn't have to implement the order at the beginning of the fiscal year. However if it doesn't implement, it must serve all eligible individuals. Otherwise it has to implement the order by closing one or more priority categories. State VR agencies may have one, some, or all priority categories closed. *(34 CFR 361.36(c)(3)). [Basic Order of Selection Facts-Frequently Asked Questions]* The Agency director is responsible for determining how many priority categories and how many eligible clients within each priority category shall receive services at any given time based on the resources available. The decision to provide services to fewer than all priority categories is reviewed periodically throughout the fiscal year. A full review of the need for an order-of-selection-for-services (OSS) occurs as part of the annual planning process. *[Order of Selection for Services, General Policies (2300)]*

A workgroup established by the State VR agency meets to monitor red flags i.e., indicators to determine how State VR agency would know if the state is approaching an OSS *[Email from Harold Wasner (August 29, 2008)]*:

- Red flags:
 - 1) Number of days from referral to orientation (informing the individual of the application process) – 90 days maximum by policy – but business practice is within 30. Current red flag is a medium time of greater than 30 days.
 - 2) Number of days from application to eligibility is within 60 days of application – red flag would be if that median time exceeds 45 days.

- 3) Number of days from eligibility to plan – 90 days – if frequently exceeded would be an indicator.
 - 4) Average months from intake to closure – exceeds XX months.
 - 5) Median caseload size exceeds criterion value.
 - 6) Days to fill civil service counselor vacancies – longer than 60 days between post and hire.
 - 7) Number of blended staff – exceeds 25% of MRS Agency rehabilitation counselors.
 - 8) Significant loss of case service dollars—to be determined annually.
 - 9) Loss of state dollars match greater than 5%—current FY GF Match.
 - 10) Customer complaints – direct and from CAP and MRC, ombudsperson, advocates-significant increase in those.
 - 11) Delay in services – reports of increase from
 - ombudsperson and CAP, e.g., seeing a jump in complaints that XXXX location is delaying cases to next fiscal year; check budget of XXXXX; check other sources to validate.
 - District/Site managers—budget is running short and not able to fund cases in the fall or high cost case told to wait.
 - 12) Advocates complaints – Bureau Director e.g., multiple advocacy groups are complaining that services are being delayed; conduct immediate review of issue to determine intervention.
- Red flags are indicators that require interventions to correct. Triggers would be insufficient money or staff to provide assessments or IPE services anywhere in the state that can't be rectified by a shift in staff, resources or other means.

II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

A. Establishment of Priority Categories

At any time Agency resources do not permit all eligible individuals to be served, an order of selection for services shall be implemented giving first priority to individuals with the most significant disabilities. Second priority shall be given to individuals with significant disabilities and third priority to those with non-significant disabilities. If all eligible clients within a priority category cannot be served, they shall be served in the order in which they applied. [*Order of Selection for Services, General Policies (2300)*]; [*Basic Order of Selection Facts-Frequently Asked Questions*]

PRIORITY CATEGORY 1: Most Significantly Disabled.

PRIORITY CATEGORY 2: Significantly Disabled.

PRIORITY CATEGORY 3: Not Significantly Disabled.

B. Terminology

The following definitions are used for purposes of the order of selection policy. [*Order of Selection for Services, General Policies (2300); Disability Priority Job Aid (2300a)*]

1. **Most Significant Disability**—individuals with a severe physical or mental impairment that **seriously limits 2 or more functional capacities** in terms of an employment outcome **and** whose vocational rehabilitation can be expected to require **more than 2 i.e., 3 or more** primary vocational rehabilitation services over **at least six months**.
2. **Significant Disability**—Individuals with a severe physical or mental impairment that **seriously limits 1 or more of the functional capacities** listed below in terms of an employment outcome **and** whose vocational rehabilitation can be expected to require **more than 2 i.e., 3 or more** primary vocational rehabilitation services over **at least six months**.
3. **Not significantly disabled**—all clients who do not meet the criteria for "most significant disability" or "significant disability."
4. **Functional areas** include mobility, communications, self-care, self-direction, interpersonal skills, work tolerance, and work skills.

Mobility—The physical and psychological ability to move about from place to place inside and outside the home compared to people with normal mobility. This includes travel to and from usual destinations in the community for activities of daily living, training, or work. This includes limitations due to risks a vulnerable person or the effects of psychological or cognitive factors. [*Disability Priority—Serious Limitations Job Aid*]

Communications—The ability to effectively exchange (give and receive) information through spoken words or concepts (*writing, speaking, listening, sign language, or other adaptive methods*). The emphasis is on limitations resulting from an impairment-related communication difficulty, not a communication problem resulting from a language or cultural difference. [*Disability Priority—Serious Limitations Job Aid*]

Self-care—The ability to manage self or living environment (i.e., *eating, toileting, grooming, dressing, and money management*), as they affect an individual's ability to participate in training or work-related activities. This includes an individual's management of any special health and safety needs which exist—for example, medication management. Limitations may occur because of physical, cognitive, or emotional impairments, and could extend to all tasks or only specific tasks. [*Disability Priority—Serious Limitations Job Aid*]

Self-direction—The ability to plan, initiative, problem solve, organize or carry out goal-directed activities related to self-care, socialization, recreation, and working independently. This does not relate to the worth of an individual’s goals or plans, but the capacity to know, plan and act on a course of action based on personal values or goals. [*Disability Priority—Serious Limitations Job Aid*]

Interpersonal skills—The individual’s ability to establish and maintain personal, family, and community relationships as it affects (*it is likely to affect*) job performance and security. [*Disability Priority—Serious Limitations Job Aid*]

Work tolerance—Capacity to effectively and efficiently perform jobs requiring various levels of physical and/or psychological demand. Limitations may be due to physical disability, stamina/fatigue, effects of medication, or psychological factors. [*Disability Priority—Serious Limitations Job Aid*]

Work skills—The ability to do specific tasks required to carry out job functions as well as the capacity to benefit from training in the necessary skills. [*Disability Priority—Serious Limitations Job Aid*]

5. **Multiple Vocational Rehabilitation Services**—The term “multiple vocational rehabilitation services” includes primary vocational rehabilitation services. [*Disability Priority Job Aid (2300a)*]
6. **Extended Period of Time**—The term “over an extended period of time” means needing VR services for a duration over at least six months.
7. **Seriously limits**—means 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. [*Disability Priority Job Aid (2300a); 2300b Disability Priority—Serious Limitations Job Aid*]
 - a. **Mobility**—A serious limitation indicates that most common life and work activities are impaired or prevented and/or the person usually (more than half the time) requires assistance from others to get around in the community, and/or their range of travel is severely limited, and/or they require modifications, adaptive technology, and/or “accommodations” (not typically made for other workers) in order to move around the community.
 - b. **Communications**—A serious limitation indicates that the individual is not able to communicate effectively, or is dependent upon a person, service, device or alternate mode of communicating and/or augmentation in order to communication and may not be readily understood by others, or understand others, on their first contact (*strangers*) and/or they require modifications, adaptive technology, and/or

“accommodations” (*not typically made for other workers*) in order to communicate with others in the training or work environment.

- c. **Self-care**—A serious limitation indicates that the individual is dependent upon others, or a service or device to complete these activities.
 - d. **Self-direction**—A serious limitation indicates the individual requires supervision on an ongoing basis or has episodes during which they require supervision (for example, a person with a bipolar effective disorder) in order to begin and carry through on tasks, monitor one’s own behavior and make decisions, and/or is confused and disoriented and requires constant supervision.
 - e. **Interpersonal skills**—A serious limitation indicates the individual difficulty in establishing and maintaining relationships at all levels (personal, family and community), and/or exhibits behaviors which detract from the performance of other workers, as well as the individual’s performance and employability, and requires more than normal intervention on the part of the supervisor.
 - f. **Work tolerance**—A serious limitation indicates the individual will require modification, adaptive technology, and/or accommodations (*not typically made for other workers*) in terms of capacity or endurance.
 - g. **Work skills**—A serious limitation indicates the individual, due to their impairment, is not able to obtain or maintain employment normally available to persons of equivalent age and education, and has no skills which could be readily used on a job which exists in the local economy, or an economy to which the individual is willing to relocate, resulting in limited vocational options, and/or the individual, due to their impairment, will require more training and supervision (*not typically given to other trainees*) to obtain/maintain work skills, and/or due to their impairment, the individual will require accommodations (*not typically made for other trainees*) in order to participate in and benefit from training.
8. **Accommodations**—are special working conditions, rehabilitation technology, or substantial support and/or supervision. [2300b, *Disability Priority-Serious Limitations Job Aid*]

C. Acceptable and Unacceptable Factors

No factor can be used to determine eligibility and priority order other than those in law, regulation and policy, including the type of disability, referral source, age, race, ethnicity, income, location or any other social or environmental factors to determine significance of disability or priority category. [Statewide Conference Call (April 30, 2008); [Basic Order of Selection Facts-Frequently Asked Questions]

While limitations may result from or be compounded by external factors, such as geographical location, poor public transportation, or lack of training; these factors should **not** be the basis of the limitation for purpose of defining significant impairment. [2300b *Disability Priority—Serious Limitations Job Aid*]

D. Ranking Individuals Within a Priority (Waiting Lists)

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 is typically managed centrally. The waiting list for those in the highest priority order are exhausted first, then the waiting list for the next highest priority order is exhausted and so on. [*Order of Selection for Services, General Policies (2300)*]; [*Basic Order of Selection Facts-Frequently Asked Questions*]

III. IMPLEMENTATION OF ORDER OF SELECTION

Under the federal policy framework, if a State agency establishes an order of selection, but does not implement the order of selection 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. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

A. Statewide Basis

Order of selection requires a statewide waiting list for services—it cannot be limited to a certain area of the state. [*Statewide Conference Call (April 30, 2008)*] The full range of VR services must be available to all customers served in all parts of the state. [*Basic Order of Selection Facts-Frequently Asked Questions*]

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

The Agency director will notify Agency staff and major statewide agencies and organizations of the priority categories it is expected the Agency will be able to serve in the new fiscal year. Any changes in the priority categories to be served during the fiscal year will also be communicated in writing by the State director to Agency staff and pertinent others. [*Order of Selection for Services, General Policies (2300)*]

C. Continuation of Services

An order-for-selection does not apply to clients who already have an IPE. [*Order of Selection for Services, General Policies (2300)*] Customers whose IPEs are being *implemented* the date the OOS is initiated are not affected by the order of selection. [*Basic Order of Selection Facts-Frequently Asked Questions*]

D. Funding Arrangements

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 re-negotiated. [Basic Order of Selection Facts-Frequently Asked Questions]

IV. ADMINISTRATION OF ORDER OF SELECTION

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

A. Assessment for Determining Eligibility and Priority for Services

For purposes of disability priority, rehabilitation counselors must use the *Disability Priority—Serious Limitations Job Aid (2300b)*. The document defines each of the seven functional areas (mobility, communications, self care, self direction, interpersonal skills, work tolerance, and work skills), defines serious limitations in each of the functional areas and then provides a checklist for each of the functional areas. The definitions are set out above (Establishment of Order of Selection, terminology); set out below are materials from the checklist used to assess disability priority.

Mobility: Regularly requests any of the following to get around in the community

Modifications

Rehabilitation Technology

Accommodations

Assistance from others

Range of travel is severely limited.

Communications: Can't participate in one-to-one conversation without lip reading, sign language, or other aids (*augmentative communication devices, written aids, etc.*) or can't interpret telephone conversation even when amplified.

Not readily understood by others on first contact.

Talks excessively, interrupts inappropriately to the point that natural conversation is impeded.

Below fifth grade level in reading or written expression.

Limited to single words or short phrases.

Doesn't readily understand others.

Self-care: Requires assistance for personal needs on the job from others.

Places self at risk due to poor decision-making, reasoning, judgment.

Requires special attention or monitoring to prevent accident or injury.

Unable to handle money/paycheck.

Self-Direction: Requires supervision on a frequent or ongoing basis to begin and carry through with goals and plans, job tasks, to monitor own behavior, or make decisions.

Confused or disoriented and requires constant supervision.

Highly distractible/short attention span/severe difficulty concentrating on work.

Unaware of consequences of behavior.

Interpersonal skills: Work history includes recent negative references, firings or multiple short term jobs or other evidence of work adjustment problems.

Serious problems in interpreting and responding appropriately to the behavior and communications with others

Unable to understand acceptable levels and types of personal interaction appropriate to the work site

Social isolation/withdrawal or rejected by co-workers

Frequent conflict with co-workers or supervisors

Conversation is rambling/halting, weak or pressured; may be illogical, irrelevant or obscure

Work Tolerance: Unable to climb a flight of stairs walk 100 yards on a level surface with pausing.

Can't lift more than 20 lbs (*occasionally*) or carry more than 10 lbs. (*frequently*)

Requires modification, adaptive technology and/or accommodations not typically made for others in terms of capacity or endurance, (e.g. special rest periods, *adjustment in starting or ending time, shorter day or week*)

Likely to be absent from work three or more days per month.

Work Skills: Unable to obtain or maintain employment normally available to persons of equivalent age and education and has no skills which could readily be used on a job which exists in the economy.

Can only learn tasks which are routine and repetitive

Requires accommodations or rehabilitation technology to participate in training to develop work skills.

Speed of performing simple manual tasks is significantly impaired

Serious impairment in the ability to recall instructions or the appropriate task sequence

Requires more training and supervision than other trainees to obtain/maintain work skills

B. Notification of Eligible Individuals

The State VR agency will inform each eligible individual with disabilities which priority group he/she has been assigned at the time eligibility is determined. The eligible individual will be told whether he or she will need to wait for services or if the State VR agency is able to serve the individual right away. [*Order of Service*]

C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection

Customers served under an IPE will be able to obtain a full range of services. [*Statewide Conference Call (April 30, 2008)*] The full range of VR services must be available to all customers under an order of selection. Regulations do not permit provision of partial services, for example, only placement services. [*Basic Order of Selection Facts-Frequently Asked Questions*]

D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection

No IPE needs to be developed for those on waiting list. Cost-services cannot be provided to those on the waitlist, only counseling regarding referrals to other agencies. [*Statewide Conference Call (April 30, 2008)*]; [*Basic Order of Selection Facts-Frequently Asked Questions*]

If the Agency Director determines that vocational rehabilitation services must be provided under an order of selection, an information and referral system will be implemented. This will ensure that eligible individuals with disabilities who do not meet order of selection priority categories will be referred to the local Michigan Works! Program for assistance with core, intensive and training services, or for other services as appropriate. [*Order of Selection for Services, General Policies (2300)*]; [*Basic Order of Selection Facts-Frequently Asked Questions*]

Eligible individuals who do not meet the order of selection priority criteria shall, at a minimum, be referred to other federal and state programs, including the Michigan Works! Program. Referrals are to be made to those programs best suited to address the specific employment needs of an individual with a disability. Each referred individual shall have a notice of referral to present to the agency carrying out the program; information identifying a specific point of contact within the agency carrying out the program and; information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment. [*Order of Selection for Services, General Policies (2300)*]

E. Role of the State Rehabilitation Council

Michigan Rehabilitation Council members are a part of the Order of Selection monitoring workgroup. They sponsor “Myths and Facts on Order of Selection” Workshops in several parts of the state. A decision to enter into an Order of Selection would be made in conjunction with the review, analysis, and advice of the Rehabilitation Council.

TENNESSEE ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes Tennessee's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, 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. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

A. Establishment of Priority Categories

The major purpose of an order of selection is to provide an organized, equitable method of serving individuals with disabilities if all eligible persons who apply cannot be served. The first priority is given to individuals with the most significant disabilities. [2001.02]

The following priority categories are established as a means of determining which individuals may be served. [2001.05]

PRIORITY CATEGORY 1– Eligible individuals who are most significantly disabled.

PRIORITY CATEGORY 2 – Eligible individuals who are significantly disabled.

PRIORITY CATEGORY 3– Eligible individuals who are not significantly disabled whose vocational rehabilitation is expected to require multiple services.

PRIORITY CATEGORY 4 – Eligible individuals who are not significantly disabled and who cannot be classified into a higher priority category.

B. Terminology [2001.06]

The following definitions are used for purposes of the order of selection policy.

1. **“Individual with a most significant disability”** means an individual who meets the criteria for “individual with a significant disability” but whose physical or mental impairment seriously limits two or more functional capacities in terms of an employment outcome.
2. **“Individual with a significant disability”** means an individual who meets the following three criteria:
 - a. The individual has a severe physical or mental impairment which seriously limits at least one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome, and
 - b. The individual has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease 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 limitations, and
 - c. The individual’s vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

Any individual who is receiving Social Security Disability Insurance benefits (SSDI) or Supplemental Security Insurance benefits (SSI) as a result of disability or blindness is presumed to satisfy ALL of the criteria for having a significant disability and is also presumed to meet all of the eligibility criteria for vocational rehabilitation services, **provided the individual intends to achieve an employment outcome.**

NOTE: If an individual who is documented as receiving or having received SSI/SSDI based on disability is over age 65 at the time of application, do not presume eligibility. Since disability benefits are converted to Social Security retirement benefits at age 65, we cannot presume eligibility.

3. **“Seriously limits functional capacities in terms of employment outcome”** means serious limitations due to or attributable to the individual’s disability as follows:
 - a. **Mobility**—Unable to use available public transportation because of a physical disability; **OR** unable to operate a motor vehicle because of a physical disability; **OR** has limited or no independent mobility (e.g. requires use of a wheelchair, walker, prosthesis, etc.).

Documentation: A mobility impairment will, under most circumstances, require documentation from a physician or other medical source. If the seriousness of the mobility impairment is readily apparent (for example, the individual uses a wheelchair and the limbs are atrophied, a prosthesis is evident, etc.), the Counselor may document the mobility impairment by outlining the basis for the observation in Part 2 of the eligibility determination. [3003.09]

- b. **Communication**—Has severely impaired expressive and/or receptive communication, either oral or written; **OR** has speech that is unintelligible to non-family members.

Documentation: A communication impairment must be documented through a report by a physician, psychologist, speech therapist, audiologist, or other appropriate professional, depending on the nature of the disability. If the individual has a specific learning disability (SLD) involving communication, there must be documentation of severe deficits in 3 of the communication (not math) areas. Under certain circumstances, the Counselor may be able to document through observation (for example, the individual is deaf and communicates through sign language only, or the individual has had a stroke or brain injury and is unable to speak). However, in most of these cases, there will be medical or related documentation in the file to document the disabling condition. [3005.09]

- c. **Self-Care**—Restricted to the extent that he/she is unable to carry out most activities of daily living; **OR** lacks basic skills of managing personal resources or planning for self-sufficiency; **OR places self at risk** because of poor impulse control, poor judgment, or decision-making skills.

Documentation: The inability to carry out activities of daily living (ADL's) because of mental retardation must be documented through a psychological report that includes a Vineland, AAMR (American Association of Mental Retardation Adaptive Behavior Scale), Independent Living Scales (ILS) and/or Street Survival Skills Questionnaire (SSSQ). Inability to carry out ADL's because of severe mental illness may be documented in the mental status portion of the psychological report or in a separate description of the range and sufficiency of the client's daily activities. Inability to carry out ADL's because of a physical disability is documented through medical reports, which may include a physical therapy or occupational therapy report, indicating that personal care assistance or adaptive equipment are required for ADL's. [3005.09]

The lack of skills of managing resources or planning for self-sufficiency; or placing self at risk because of poor impulse control, poor judgment, or poor decision-making skills may be documented through a vocational evaluation, situational assessment, existing psychological report, or school records. In addition, the lack of skills of managing resources or planning for self-sufficiency

may be documented through evidence that the individual has a court-appointed conservator or guardian. [3005.09]

- d. **Self-Direction**—Has limited ability to set vocational goals or choose appropriate/realistic employment; AND lacks job seeking skills.

Documentation: Limitations in setting vocational goals or choosing realistic employment may be documented through a vocational evaluation, a testing instrument such as the A.A.M.R. (American Association of Mental Retardation Adaptive Behavior Scale), or existing psychological report. The lack of job-seeking skills should be documented through a vocational evaluation. [3005.09]

- e. **Interpersonal Skills**—Has limited ability to interact with others in a socially acceptable manner or is unable to relate to peers or co-workers without exhibiting inappropriate behaviors.

Documentation: Limitations may be documented through a vocational evaluation, situational assessment, school records, or psychological evaluation. [3005.09]

- f. **Work Tolerance**—Unable to perform sustained work activity for 4 hours; **OR** unable to sit or stand for more than 3 hours.

Documentation: Must be substantiated by medical documentation. [3005.09]

- g. **Work Skills** —Has limited or minimal work experience due to the disability; **OR** has minimal or no marketable skills due to the disability; **OR** has poor work habits due to the disability; **OR** is unable to retain employment or sustain an employment routine without special supervision.

Documentation: Limited or minimal work experience may be documented on the application, backed up by the Tennessee Clearinghouse report. The issue of the limited or minimal work experience being related to the disability would be evidenced by medical reports, existing psychological reports, or other objective documentation, depending on the nature of the disability. Minimal or no marketable skills, poor work habits, or being unable to work without special supervision may be documented through a vocational evaluation or situational assessment. Minimal or no marketable skills would not be an appropriate determination if the individual has transferable skills as determined through a vocational evaluation. Documentation that the client receives SSI or SSDI-based on his/her own disability or blindness may also be accepted as evidence that the individual has minimal or no marketable skills due to the disability, since the Social Security Administration has determined that these individuals meet the disability listing requirement that precludes them from working for at least 12 months. [3005.09]

NOTE: Limitations to functional capacities must be documented. See VRPM [3005.09](#)(3) – (6) for documentation requirements.

4. **“Multiple Vocational Rehabilitation Services”** means two or more major vocational rehabilitation services, i.e. physical or mental restoration, training, counseling and guidance, or placement. Excluded are support services such as transportation, maintenance, and the routine counseling and guidance that should take place in every case.
5. **“Extended period of time”** means 6 months or more from the date that services are initiated. These 6 months of service encompass Statuses 16 through 20 only, unless significant services such as job coaching are anticipated in Status 22.

C. Acceptable and Unacceptable Factors

1. Basis for order of selection

An order of selection must be based on a refinement of the three criteria in the definition of “individual with a significant disability”.

2. Factors that cannot be used in determining order of selection of eligible individuals:

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

- a. Any duration of residency requirement, provided the individual is present 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 an individual's family.

D. Ranking Individuals Within a Priority (Waiting Lists)

If the Division cannot continue to serve all new Priority Category 1 cases, services will be provided to new PC 1 cases based on the date of application for services. Likewise, if the Division is able to open a closed Priority Category, but is not able to serve all cases awaiting services in the category, services will be provided based on the date of application for services. [2001.03]

III. IMPLEMENTATION OF ORDER OF SELECTION

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection 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. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

A. In General

The Agency director shall determine when and if an order of selection will be implemented, and which priority categories are open and may be served.

If an order of selection is implemented, individuals who are already receiving services under an IPE shall continue to receive services. The order of selection shall not affect the provision of diagnostic services to determine eligibility or the provision of post-employment services.

Upon implementation of an order of selection:

1. The Agency will continue to accept referrals and applications;
2. All eligibility determinations shall be made on a timely basis;
3. Individuals placed in a closed priority category must be referred to other federal and state programs to assist the individual in efforts to prepare for, secure, retain, or regain employment;
4. An appropriate referral must be made to the federal or state programs, including other components of the statewide workforce investment system, best suited to address the specific employment needs of the individual with a disability.
5. Required procedures include:
 - Notification to the individual of the referral;
 - Notification of the specific contact person or point of contact within the agency receiving the referral; and
 - Information and guidance regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.
6. The counselor must assign a priority category at the time that the individual is determined eligible and placed into Status 10.

B. Statewide Basis

The order of selection shall be implemented on a statewide basis.

C. Authority to Open and Close Priority Categories, as Needed

The Agency director shall determine when and if an order of selection will be implemented, and which priority categories are open and may be served. [2001.03]

D. Continuation of Services

The order of selection will ensure that services are continued for cases already receiving services under an Individualized Plan for Employment (IPE), as well as provide services to new clients in an open priority category. It will also ensure that adequate funds are conserved to provide diagnostic services for all new applicants to determine their eligibility. [2001.02]

If an order of selection is implemented, individuals who are already receiving services under an IPE shall continue to receive services. The order of selection shall not affect the provision of diagnostic services to determine eligibility or the provision of post-employment services. [2001.03]

E. Funding Arrangements

The funding arrangements for providing services under the state plan, including third-party arrangements and awards under the establishment authority, must be consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the Division of Rehabilitation Services must renegotiate these funding arrangements so that they are consistent with the order of selection.

IV. ADMINISTRATION OF ORDER OF SELECTION

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

A. Assessment for Determining Eligibility and Priority for Services

Upon implementation of an order of selection, the Agency will continue to accept referrals and applications and all eligibility determinations shall be made on a timely basis. [2001.03]

Counselors are required to complete the Client Master Record—Part 3—Acceptance Data which includes, among other things, narrative explanation of both the nature of the disability and how it impedes employment, whether the individual has a significant disability or a most significant disability, and documentation explaining how a person's disability seriously limits functional capacities in terms of employment. [3005.09]

Each case determined eligible must be classified into a priority category prior to development of an IPE. A client must be assigned the highest priority category that is justifiable. A client should be reclassified into a higher priority category any time circumstances justify the

reclassification. However, a client may not be reclassified into a lower priority category once the IPE has been developed and signed. [2001.04]

B. Notification of Eligible Individuals

Clients assigned to a closed priority category will be notified in writing (See Attachment A). [2001.03] Clients whose cases have been placed in a closed priority category will be informed through Attachment A that they should contact the counselor if [2001.03]:

- Their condition has changed and they would like a re-evaluation to determine if they can be reclassified 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.
- They have changed their address or telephone number.
- They no longer need or want Vocational Rehabilitation services and want their case to be closed.

C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection

If the priority category is open, services may be provided. [2001.03]

D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection

If the priority category is closed, the case will be held open in Status 10, with no IPE completed, until the priority category is opened, the order of selection is lifted, the individual no longer needs services, or the individual requests that the case be closed. [2001.03]

Individuals placed in a closed priority category must be referred to other federal and state programs to assist the individual in efforts to prepare for, secure, retain, or regain employment. An appropriate referral must be made to the federal or state programs, including other components of the statewide workforce investment system, best suited to address the specific employment needs of the individual with a disability. Required procedures include [2001.03]:

- Notification to the individual of the referral;
- Notification of the specific contact person or point of contact within the agency receiving the referral; and
- Information and guidance regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

- The information and referral efforts must be documented in the case file through use of Attachment A, found at the end of this section.

All clients whose cases are placed in a closed priority category must be referred to other Federal and State programs for assistance in preparing for or entering employment. Attachment A, which follows, serves as a referral letter. Attachment A is to be printed on office letterhead on one page (front and back). It must be completed on both sides and must be signed and dated by the counselor. It should be given to the client in person when possible and should be explained in a manner that is understandable to the client. A copy must be retained in the file. [2001.07]

The Agency is required to give specific agency addresses and telephone numbers. Each office will develop a list of local agency addresses and telephone numbers based on the list as shown on the reverse of Attachment A. A specific contact person should be shown whenever possible. [2001.07]

E. Case Closure and Maintenance of Records

The information and referral efforts must be documented in the case file through use of Attachment A, found at the end of this section. [2001.03]

F. Role of the State Rehabilitation Council

The state Agency must consult with the State Rehabilitation Council regarding the:

1. Need to establish an order of selection, including any reevaluation 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.

VIRGINIA ORDER OF SELECTION POLICY

This section of the paper describes Virginia's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, 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. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The state Plan for Vocational Rehabilitation Services indicates whether or not the VR agency is under an order of selection. [*Chapter 2.2 ORDER OF SELECTION, POLICY 1. Order of Selection Status*]

II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

A. Establishment of Priority Categories

When the full range of vocational rehabilitation services cannot be provided to all individuals determined eligible for the VR program, the agency, under the direction of the DRS Commissioner and in consultation with the State Rehabilitation Council, shall implement the order of selection policy and procedures as is the state's option under federal regulations. [*Chapter 2.2 ORDER OF SELECTION, POLICY 1. Order of Selection Status*]

If the agency is operating under an order of selection, the counselor shall assign individuals determined eligible to one of the priority categories, shall document the placement rationale in the case record, and shall explain to the individual through appropriate modes of communication (per 2001 federal regulation [34 CFR § 361.57\(e\)](#)) the placement and avenues to appeal the placement. Only those assigned to an open category will be served. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, A2*]

If an individual no longer meets the criteria for the priority category to which he or she is currently assigned, the counselor may reassign the individual to a higher/lower category and must document the rationale for the new assignment in the case record.

Criteria for the following priority categories are consistent with federal requirements and prohibitions. If the agency is operating under order of selection, the priority categories, from highest to lowest, shall be [*Chapter 2.2 ORDER OF SELECTION, Policy 2, A2*]:

PRIORITY I: An individual with the most significant disability in accordance with the DRS definition of most significant disability.

PRIORITY II: An individual with a significant disability that results in serious functional limitations in two (2) functional areas and who requires two (2) or more substantial vocational rehabilitation services for at least six (6) months.

PRIORITY III: An individual with a significant disability that results in a serious function limitation in one (1) functional area and who requires two (2) or more substantial vocational rehabilitation services for at least six (6) months.

PRIORITY IV: All other individuals determined eligible for the VR program.

The counselor must classify individuals determined eligible who receive Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) in either Priority I, II, or III, since they are presumed to have a significant disability that results in serious functional limitations in one or more functional areas (per 2001 federal regulation [34 CFR § 361.42\(a\)\(3\)](#)). They must be assigned to at least Priority III. They may be assigned to Priority I or II only if they meet all the criteria for that category. [*Chapter 2.2 ORDER OF SELECTION, Policy 2, A2*]

B. Terminology

The following definitions are used for purposes of the order of selection policy [*Chapter 3. DISABILITY CRITERIA*].

CRITERIA FOR SIGNIFICANT DISABILITY.

The counselor shall code the individual's disability as significant when the individual with a disability meets all three (3) of the following criteria (per 2001 federal regulation [34 CFR § 361.5\(b\)\(31\)](#)):

- i) Severe physical or mental impairment that seriously limits one or more functional capacities in terms of an employment outcome,
- ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time, and
- iii) Who has one or more physical or mental disabilities determined on the basis of an eligibility determination assessment and needs assessment to cause comparable substantial functional limitation).

The counselor shall automatically code as significant (versus not significant) disability the cases of all individuals who receive Supplemental Security Income (SSI) or Social

Security Disability Insurance (SSDI), since they are presumed to meet all three criteria for significant disability (per 2001 federal regulation [34 CFR § 361.42](#)). The counselor shall code the disability of SSI and SSDI recipients as most significant only when the counselor documents that the individual meets the criteria for most significant disability.

1. **Physical or mental impairment**—means i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine, or ii) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities (per 2001 federal regulation [34 CFR § 361.5\(b\)\(41\)](#)).
2. **Serious functional limitation**—means a reduction in the capacity of the individual to the degree that the person requires services or accommodations not typically made for other individuals in order to prepare for, enter, engage in, or retain employment.
3. **Requires Multiple VR Services over Extended Period of Time**—DRS defines **multiple vocational rehabilitation services** to mean ongoing guidance and counseling, placement assistance, and other services which address the substantial loss of functional capacity. DRS defines **extended period of time** to mean longer than six (6) months from the date of Employment Plan initiation. The services provided may extend beyond DRS case closure and may be provided through auspices other than the DRS Vocational Rehabilitation program.
4. **One or More Physical or Mental Disabilities Determined By Assessment to Cause Comparable Substantial Functional Limitation**—Physical or mental disabilities means disability resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegic, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders, (including stroke and epilepsy), spinal cord conditions, (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an eligibility determination assessment and needs assessment to cause comparable substantial functional limitation (per 2001 federal regulation [34 CFR § 361.5\(b\)\(31\)](#)).
5. **Serious Limitation in Functional Capacity in Terms of an Employment Outcome.** Functional areas include: mobility, communications, self-care, self-direction, interpersonal skills, work tolerance, and work skills.

Mobility. The physical, cognitive and psychological ability to move from place to place inside and outside the home.

Definition of serious functional limitation: A serious limitation exists if, due to a disability, the person is unable to get around in the community, home, or workplace without assistance from others; or failed attempts to prepare for or obtain a driver's

license without special adaptations, accommodations, or special training; or requires specialized transportation; or is unable to learn to use or access public transportation needed for employment; or is dependent on adaptive equipment.

Self-Direction. The ability to plan, initiate, problem-solve, organize, or independently carry out goal-directed activities as relates to independent living and work.

Definition of serious functional limitation: A serious limitation exists if, due to a disability, the individual requires supervision on a constant basis; or requires supervision to begin and finish tasks, monitor own behavior, or make decisions; or has serious difficulty working independently resulting in job loss; or has serious difficulty shifting focus from one activity or task to the next without prompting, or has serious difficulty adjusting to new situations or changes to the daily routine; or is easily distracted/short attention span leading to repeatedly poor task completion; or is unaware of negative consequences of decisions resulting in repeated poor task completion or job loss.

Self Care (Independent Living Skills). The physical, cognitive, and emotional ability to manage self or living environment as they affect the individual's ability to participate in training or work-related activities.

Definition of serious functional limitation: A serious limitation exists if, due to a disability, the individual cannot perform hygiene functions without assistance from others; or needs reinforcement or reminders to maintain appropriate personal hygiene; or cannot dress without assistance; or cannot feed self without assistance; or cannot comply with meds/treatment without assistance or prompting; or cannot handle money or budgeting without assistance; or requires attendant care, assistive technology, or other devices for self care; or cannot live independently without supports.

Interpersonal Skills. The individual's ability to establish and maintain personal, family, and community relationships.

Definition of a serious functional limitation: A serious limitation exists when, due to a disability, the individual has significant social withdrawal that has resulted in an inability to prepare for or succeed in work; or has significantly poor relationships, in appropriate behaviors, or frequent conflicts with peers, co-workers, supervisors, and others leading to the inability to prepare for or succeed in work; or has serious problems interpreting and responding appropriately to behavior/communication of others or fails to understand obvious social cues; or does not understand acceptable levels and types of interaction appropriate to the worksite; or requires frequent intervention from a teacher or supervisor in order to manage behavior; or personal behaviors have led to frequent legal problems; or deformity, disfigurement, or disability related behavior causes others to avoid relationships or interactions..

Communication. The ability to effectively exchange information through words or concepts (writing, speaking, listening, sign language, or other adaptive methods). The

emphasis is on limitations resulting from a disability-related communication difficulty, not from a communication problem resulting from a language or cultural difference.

Definition of serious functional limitation: A serious limitation exists if, due to a disability, the individual has severely impaired expressive or receptive communication, either oral or written; or has serious difficulty conversing without speech-reading, sign language, or other visual cues; or is dependent upon adaptive technology to communicate effectively; or has difficulty engaging in telephone conversations even with amplification; or is not be readily understood by others on first contact.

Work Tolerance. Capacity to perform effectively and efficiently jobs that require various levels of physical, emotional, and/or psychological demands of work..

Definition of serious functional limitation: A serious limitation exists when, due to a disability, the individual does not have the capacity or endurance to perform duties without modifications, adaptive technology, and/or accommodations not typically made for others; or cannot perform at a consistent pace as required to meet production/quality standards; or needs frequent breaks to compose and organize self in order to maintain work; or cannot tolerate sitting/standing/bending/reaching to do a job which others without a disability could tolerate.

Work Skills. The ability to perform specific tasks required to carry out job functions, the capacity to benefit from training in the necessary skills, and the capacity to practice the work habits needed to stay employed.

Definition of serious functional limitation: A serious limitation exists when, due to a disability, the individual needs significantly more support or supervision to learn and perform a job than normally required of persons of equivalent age, education, training, or experience; or cannot learn work skills without rehabilitation technology, accommodations, or modifications; or exhibits poor work habits resulting in a history of job loss (problems with attendance, timeliness, following instructions, etc.).

CRITERIA FOR MOST SIGNIFICANT DISABILITY

The individual's disability shall be considered to be most significant when the counselor documents that the individual meets all three (3) of the following criteria:

- i. Is an individual with a significant disability, and
- ii. Has a physical or mental impairment that seriously limits three (3) or more functional capacities in terms of an employment outcome, and
- iii. Whose vocational rehabilitation can be expected to require multiple core vocational rehabilitation services for six months or more.

Note 1: This definition is used to establish the need for Supported Employment services (and priority category if DRS is on an order of selection).

C. Acceptable and Unacceptable Factors

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. [Chapter 3. DISABILITY CRITERIA]

D. Ranking Individuals Within a Priority (Waiting Lists)

Individuals who are placed in an open category may be served by date of application. [Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, C]

III. IMPLEMENTATION OF ORDER OF SELECTION

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection 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. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

A. In General

If the agency is operating under an order of selection, all cases assigned to a closed priority category shall be placed on a waiting list within its priority category. [Chapter 2.2 ORDER OF SELECTION, Policy 2. Order of Selection Criteria and Procedures and Scope of Services, C1]

B. Statewide Basis

If the state agency's status changes regarding order of selection, the DRS commissioner or a designee will provide written notification to all field offices indicating the date on which to implement (or discontinue) the order of selection. [Chapter 2.2 ORDER OF SELECTION, POLICY 1. Order of Selection Status]

C. Authority to Open and Close Priority Categories, as Needed

The DRS commissioner or designee may close one or more priority categories at any time. [Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, C]

D. Continuation of Services

The DRS commissioner or designee may close one or more priority categories at any time. Individuals who have begun services under an Employment Plan (case in Service status in AWARE) before the closure date of the priority category will continue to receive services until case closure. Individuals assigned to an open category will continue to receive services until case closure. All other existing or new cases assigned to the closed priority category shall be moved into Delayed status in AWARE. **Example:** DRS had been serving priority categories I, II, and III. Due to lack of resources the DRS Commissioner closes category III. The counselor shall continue to serve cases in category III in Eligible Status. The counselor shall follow order of selection waiting list procedures for all new cases of applicants who are determined eligible but who do not meet the criteria for priority categories I or II. [Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, C]

The DRS commissioner or designee may open one or more priority categories at any time. Individuals who are placed in an open category may be served by date of application. Cases that are moved from Delayed status to Eligible status are processed the same as other Eligible status cases. [Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, C]

Employment Plans may be developed for cases that were placed into Eligible status prior to the closing of their priority category. Cases in Service status or higher shall continue to be served under the Employment Plan and any amendments made after the order of selection implementation date. [Chapter 2.2 ORDER OF SELECTION, Policy 2, Order of Selection Criteria and Procedures and Scope of Services, A2]

IV. ADMINISTRATION OF ORDER OF SELECTION

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the state Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

A. Assessment for Determining Eligibility and Priority for Services

All applicants shall receive diagnostic and evaluation services necessary to determine eligibility for the Vocational Rehabilitation program (and to assign the priority category when DRS is operating under order of selection). [*Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, B*]

While on the waiting list, if the individual provides medical or other evidence that the disability has become more severe, the counselor shall reassess the priority category assignment. If warranted, the counselor shall update the Disability and Eligibility Determination screens in AWARE. If the disability has not changed, the case may remain on the waiting list in Delayed status or may be closed at the individual's request. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2 Order of Selection Criteria and Procedures and Scope of Services, C*]

B. Notification of Eligible Individuals

If the agency is operating under an order of selection, the counselor shall document the placement rationale in the case record, and shall explain to the individual through appropriate modes of communication (per 2001 federal regulation [34 CFR § 361.57\(e\)](#)) the placement and avenues to appeal the placement. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2, A2*]

After 12 months in Delayed status, the counselor shall notify the individual in writing of the opportunity to remain on the waiting list and provide information on agencies and organizations (including the One Stop Centers) that may be best suited to address the individual's specific employment needs, and describe the avenues to appeal case closure (including the Client Assistance Program). If the individual contacts the counselor and requests the case be closed, the counselor closes the case in Closed – Other status with closure reason “refused VR services” (or “cannot locate” if the waiting list closure letter is undeliverable). The counselor does not send the RS-5c. After a case is closed in "Closed–Other status", the individual may reapply for vocational rehabilitation services at any time. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, C*]

The counselor shall use the Order of Selection letters, brochure, and regional list of One Stops to notify the client that the case is on the waiting list, the priority category assignment, avenues to appeal the category assignment (including the Client Assistance Program), and information on other agencies and organizations, including the One Stop Centers, that may be best suited to address the individual's specific employment needs (per Rehabilitation Act of 1973 as amended in 1998 and 2001 federal regulation [34 CFR § 361.37](#)) [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, C*]

C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection

Only those assigned to an open category will be served. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2,A2*] Post-employment services are exempt from order of selection. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, B*]

D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection

After 12 months in Delayed status, the counselor shall provide information on agencies and organizations (including the One Stop Centers) that may be best suited to address the individual's specific employment needs. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, C*]

While a case is in Delayed status, counselors are limited to providing only additional diagnostic, assessment, and evaluation services needed to reevaluate the priority category assignment. If needed to access diagnostic services, the counselor may provide support services (transportation, child care, personal assistance services) and interpreter for the deaf. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2. Order of Selection Criteria and Procedures and Scope of Services, B*]

Any services not specifically allowed in the above paragraph are prohibited in Delayed status 04. The counselor shall not provide services needed to develop the Employment Plan or services needed to eliminate or reduce the impediment to employment (i.e., AT assessment, home modification assessment, driver evaluation, vehicle modification assessment, trial college semester, vocational evaluation, PAS assessment, etc.) since the Employment Plan will not be developed. This includes "no cost" services (e.g., job placement, rehabilitation engineering, vocational counseling and guidance, certification for deferment of a student loan, etc.) The counselor shall not provide maintenance and goods (i.e. AT devices, hearing aids, eyeglasses, wheelchairs, etc.). [*Chapter 2.2 ORDER OF SELECTION, POLICY 2.m Order of Selection Criteria and Procedures and Scope of Services, B*]

If the agency is operating under an order of selection, the counselor shall document the placement rationale in the case record. [*Chapter 2.2 ORDER OF SELECTION, POLICY 2,A2*]

E. Role of the State Rehabilitation Council

The criteria for most significant were established by DRS in consultation with the State Rehabilitation Council as required by federal regulations [34 CFR § 361.5\(b\)\(30\)](#) and [34 CFR § 361.36\(d\)](#). When the full range of vocational rehabilitation services cannot be provided to all individuals determined eligible for the VR program, the agency, under the direction of the DRS Commissioner and in consultation with the State Rehabilitation Council, shall implement the order of selection policy and procedures as is the state's option under federal regulations. [*Chapter 2.2 ORDER OF SELECTION, POLICY 1. Order of Selection Status*]

WEST VIRGINIA ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes West Virginia's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, 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. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The agency must preserve enough funds to assure that it can continue to provide services to all individuals who are already receiving services under an individualized plan for employment (IPE) and must assure that it can determine eligibility and assess VR needs for all individuals expected to apply for services during a fiscal year. [*Order of Selection; Director's Letter 2006-19 (June 23, 2006)*]

II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

A. Establishment of Priority Categories

The Division's Director will determine whether resources are going to be available to provide vocational rehabilitation (VR) services to all eligible individuals throughout the program year. If not, consistent with state and federal law and regulation, the Director will establish restrictions regarding priority categories for selecting the order in which otherwise eligible individuals may be served. Only the Director may establish an order of selection (OS). [2601]

Following are the order of selection categories currently applicable to the Division's VR program [2603]:

PRIORITY CATEGORY 1: Eligible applicants with the most significant disabilities.

PRIORITY CATEGORY 2: Eligible applicants with significant disabilities.

PRIORITY CATEGORY 3: Eligible applicants with non-significant disabilities which result in permanent functional limitations.

PRIORITY CATEGORY 4: Eligible applicants with non-significant disabilities which do not result in permanent functional limitations.

B. Terminology

The following definitions are used for purposes of the order of selection policy.

Significant disability—An individual with a disability:

1. Who has a significant 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; and,
2. Whose VR can be expected to require multiple VR services over an extended period of time (six months or more); and,
3. Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and VR needs to cause comparable substantial functional limitation; or,
4. Who is a Social Security Disability Income (SSDI) beneficiary; or,
5. Who is a Supplemental Security Income (SSI) recipient.

Most significant disability— An individual who has a significant physical or mental disability that seriously limits two or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and whose vocational rehabilitation can be expected to require multiple services (two or more core services) over an extended period of time (nine months or more).

Functional limitations that include the following are addressed on the Eligibility Certificate with examples of limitations that constitute the different categories and must be addressed before a determination of significant or most significant disability can be determined.

- a. Mobility
- b. Communications
- c. Self-care
- d. Self-direction
- e. Interpersonal skills
- f. Work tolerance
- g. Work skills

Permanent Functional limitation—An impairment of physical or mental activities or functions which either is not amenable to or is not likely to be eliminated through the provision of surgical or other medical services. This use of the term seeks to differentiate between those physical or mental conditions that usually are remedied through the provision of physical or mental health services and those other conditions that impose, or are likely to impose, a permanent loss or substantial reduction in activities or functions regardless of medical intervention. Sometimes, of course, it is not possible to ascertain the probable result(s) of future medical intervention(s). Therefore, an impairment should be considered as being permanent whenever the Rehabilitation Counselor determines that there is substantial doubt about whether or not the impairment is amenable to and/or likely to be eliminated through medical intervention. Examples of permanent functional limitations might include those resulting from amputations of body extremities, most significant visual disorders, and mental retardation. Examples of conditions resulting in functional limitations which, with medical treatment, usually are not permanent might include simple myopia, inguinal hernia, and gall stones.

Multiple Vocational Rehabilitation Services—the term “multiple vocational rehabilitation services” is defined as two or more core services that include physical restoration, mental health services, rehabilitation training, counseling, placement, rehabilitation technology and assessment.

Extended Period of Time—an “extended period of time” is defined as six months or more for designation as a significant disability and nine months or more for designation as a most significant disability.

C. Acceptable and Unacceptable Factors.

In implementing the OOS, the Division complies with all requirements of the federal regulations pertaining to factors that may not be considered in determining the establishment of a waiting list.

D. Ranking Individuals Within a Priority (Waiting Lists)

The Division has established a policy for ranking individuals within a priority category based on the individual’s date of application. This provides a method of selecting individuals from

a waiting list for a priority when the agency has enough resources to service some, but not all, individuals in that priority category. [*Order of Selection*]

III. IMPLEMENTATION OF ORDER OF SELECTION

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection 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. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

A. Statewide Basis

The Division's Director will determine whether resources are going to be available to provide vocational rehabilitation (VR) services to all eligible individuals throughout the program year. [2601]

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

The DRS Director has 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*]

C. Continuation of Services

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 individual begins to receive VR services under an IPE, sufficient resources will be available to continue to serve that individual. For example, an individual who is receiving college assistance as part of his or her preparation for employment will continue to receive assistance. However, individuals with disabilities needing assistance from DRS who have not developed a plan for employment with the Division prior to a specified date will be placed on a waiting list for services if determined eligible. [*Order of Selection; Director's Letter 2006-19 (June 23, 2006)*]

Any individual notified by the Rehabilitation Counselor of classification as a member of an open priority category shall be exempted should that category later be closed. [2602]

D. Funding Arrangements

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*]

IV. ADMINISTRATION OF ORDER OF SELECTION

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

A. Assessment for Determining Eligibility and Priority for Services

The Rehabilitation Counselor will determine the appropriate order of selection priority classification for each applicant at the earliest practical time in case development. [2605]

When Required. The determination may be completed at any time prior to eligibility determination. However, the Rehabilitation Counselor will complete the determination and assign the individual to the highest appropriate priority category prior to moving the case record into Status 10. In those instances where trial work experience is required prior to eligibility determination, priority classification may be deferred pending completion of the requisite services.

Basis. The assessment for eligibility determination usually will yield sufficient information to support an appropriate priority classification. As a minimum, the basis for priority classification should include an initial interview, an assessment of current health using the *Health Assessment Questionnaire*, and if appropriate, medical or psychological confirmation of the disability.

Reclassification. An individual whom the Rehabilitation Counselor determines has been misclassified may be reclassified into the highest appropriate priority classification at any time. However, any individual notified by the Rehabilitation Counselor of classification as a member of an open priority category shall be exempted from later reclassification into a closed category. In such instances, the Rehabilitation Counselor will note the circumstances in the *Counselor Comments* section of the case record, but the initial classification shall remain unchanged.

Documentation. The Rehabilitation Counselor will complete the appropriate block on the Eligibility Certificate based on the determination of priority classification or reclassification.

Cases placed into Status 04 may be reviewed at the request of the individual or the individual's representative but will be reviewed after twelve months. During the review, the individual or the individual's representative will be contacted to ascertain whether any change of the individual's disability or functional limitations indicate that the current classification may no longer be appropriate. [2606]

B. Notification of Eligible Individuals

The Rehabilitation Counselor shall provide both written notice and an oral explanation of the order of selection to each applicant, including a copy of the form *Information About the Order of Selection*. The *Application for Rehabilitation Services* will include a certification by the applicant that information about the order of selection was received and explained. [2604]

If the classification has been reviewed and continues to be appropriate after twelve months, the Rehabilitation Counselor will notify the individual in writing and close the case record into Status 38 by completing the *Status Change Report*. The written notice of case closure should encourage the individual to reapply for rehabilitation services should his/her disability or functional limitations become more significant. [2606]

An individual may be classified into a closed category which is later declared open. If this occurs while the case is in Status 04, and the individual desires to pursue rehabilitation services, then the Rehabilitation Counselor will notify the individual in writing and immediately move the case to Status 10 by completing the *Status Change Report*. [2606]

C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection

Eligible individuals with disabilities who meet open categories must receive VR services specified in their IPEs.

D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection

When an individual is classified into a closed category of the order of selection, the Rehabilitation Counselor will notify the individual and place the case record into the Pre-Service Listing, Status 04, by completing the *Status Change Report*. Members of closed categories do not receive rehabilitation services, regardless of whether provision of such services requires expenditure of funds. [2606]

Services necessary for determination of eligibility, assessment of rehabilitation needs, and post-employment services are exempted from the Division's OOS. No administrative exemption from the OOS shall be approved except by the Director or his/her designee. [2602]

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). Information and referral services include: (a) providing vocational rehabilitation information and guidance to assist the 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). [*Order of Selection*]

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 service for assisting the individual to prepare for, secure, retain, or regain employment (Section 101 (a)(20)(B)(ii) or the Act and 34 CFR 361.37(b)(2)).

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

E. Case Closure and Maintenance of Records

The *Application for Rehabilitation Services* must include a certification by the applicant that information about the order of selection was received and explained. [2604]

The Rehabilitation Counselor will complete the appropriate block on the eligibility statement based on the determination of priority classification or reclassification. [2605]

WISCONSIN ORDER OF SELECTION POLICY FRAMEWORK

This section of the paper describes Wisconsin's policy framework regarding order of selection (OOS), including state policies relating to whether to establish an order of selection and the establishment, implementation, and administration of the order of selection.

I. DETERMINATION OF WHETHER TO ESTABLISH AN ORDER OF SELECTION

Under the federal policy framework regarding order of selection, 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. The decision to establish and implement an order of selection must be made annually and re-evaluated under specified circumstances.

The State of Wisconsin completes an annual estimate of individuals to be served and costs of services. The assessment includes an estimate of the number of individuals in the state eligible for VR services, the number of eligible individuals who will receive services, and the costs of services for each priority category within the order of selection. *[WDVR State Plan FFY 2009, Attachment 4.11(c)(3); See also memorandum from Manuel Lugo to All DVR Staff re Directive—Changes to the DVR OOS Process (March 14, 2003), updated January 9, 2007]*

II. ESTABLISHMENT OF ORDER OF SELECTION

Under the federal policy framework, an order of selection established by a state consists of priority categories to which eligible individuals are assigned based on the significance of their disability. This section describes the priority categories and defines the key terms used by the state.

A. Establishment of Priority Categories

At any time that the Wisconsin Division of Vocational Rehabilitation (DVR) resources do not permit all eligible consumers to be served, an order of selection for services shall be implemented. *[WDVR State Plan FFY 2009, Attachment 4.11(c)(3); see also DVR Policy Manual at page 11]*

PRIORITY 1: First priority will be given to consumers with the **most significant disabilities**.

PRIORITY 2: Second priority shall be given to consumers with **significant disabilities**.

PRIORITY 3: Third priority will be given to **other eligible consumers**.

B. Terminology

The following definitions are used for purposes of the order of selection policy. *[WDVR State Plan FFY 2009, Attachment 4.11(c)(3); see also DVR Policy Manual at page 11]*

1. **Most significant disability**—A consumer has a most significant disability if a severe mental or physical impairment exists that seriously limits **three or more functional capacities** in terms of an employment outcome and whose vocational rehabilitation requires multiple services over an extended period of time.
2. **Significant disability**--A consumer has a **significant disability** if a severe mental or physical impairment exists that seriously limits **one or more functional capacities** in terms of an employment outcome and whose vocational rehabilitation requires multiple services over an extended period of time. An allowed SSDI or SSI recipient is automatically considered to be, at least, an individual with a significant disability.
3. **Other eligible consumers** include consumers who do not have a disability that seriously limits one or more functional capacities and do not require multiple services over an extended period of time.
4. **Functional areas** include mobility, communications, self-care, self-direction, interpersonal skills, work tolerance, and work skills.
 - **Mobility** means the physical, cognitive, and psychological ability to get to work from home and to move around a worksite or participate in work activity.
 - **Communications** means the physical, cognitive, and psychological ability to exchange information effectively when participating in work related activities.
 - **Self-care** means a physical, cognitive, and psychological ability to perform activities of daily living at a level which allows the individual to participate in work-related activities.
 - **Self-direction** means the physical, cognitive, and psychological ability to initiate, organize and make decisions in one's own best interest at a level allowing the individual to participate in work-related activities.
 - **Interpersonal skills** mean the physical, cognitive, and psychological ability to establish and maintain relationships with others at a level which allows the individual to participate in work-related activities.
 - **Work tolerance** means the physical, cognitive, and psychological ability to meet the demands of participating in work-related activities e.g., how long and under what circumstances can the individual work.
 - **Work skills** mean the physical, cognitive, and psychological ability to meet employment expectations for entry-level workers (or in the case of someone who is already employed, the expectations of employers for someone at that level of employment). In other words, is there a reasonable expectation that this person could obtain some kind of work or participate in work-related activities without training?
5. **Functional limitation.** Functional limitations are determined with the consumer's current accommodations in place. For example, if the consumer wears a hearing aid, the functioning with the hearing aid is the basis for determining which functional limitation currently exists. 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. [*Policy Definition—Functional Limitation (March 1, 2002) Tab18*]

6. **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. [*Policy Definition—Functional Limitation (March 1, 2002) Tab18*]
7. **Multiple Vocational Rehabilitation Services**—The term “multiple vocational rehabilitation services” means **two or more primary services** needed to achieve a successful rehabilitation outcome. [*WDVR State Plan FFY 2009, Attachment 4.11(c)(3)*]
8. **Extended Period of Time**—The term “over an extended period of time” means needing VR services for a duration of **six months or more** with a 90 day follow-up after achieving a successful outcome. [*WDVR State Plan FFY 2009, Attachment 4.11(c)(3)*]

C. Acceptable and Unacceptable Factors

State policies incorporate by reference federal regulations regarding acceptable and unacceptable factors in determining order of selection. [*Policy Definition—Functional Limitation (March 1, 2002) Tab18*]

D. Ranking Individuals Within a Priority (Waiting Lists)

DVR establishes a wait list of individuals who are eligible, but cannot be served due to lack of resources. When DVR determines it has adequate resources to serve more individuals on the waiting list, an individual may receive services depending on the individual’s category and date of application. [*Understanding Order of Selection, Tab 7*]

III. IMPLEMENTATION OF ORDER OF SELECTION

Under the federal policy framework, if a state agency establishes an order of selection, but does not implement the order of selection 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. This section describes the state policy framework used to implement the order of selection, including the obligation to: implement OOS on a statewide basis, notify individuals of the priority categories, continue to provide services to eligible individuals who began to receive services, and use of appropriate funding mechanisms.

- A. **In General** [*WDVR State Plan FFY 2009, Attachment 4.11(c)(3); See also memorandum from Manual Lugo to All DVR Staff re Directive—Changes to the DVR OOS Process (March 14, 2003), updated January 9, 2007*]

At least once a month, the Bureau of Consumers Services (BCS) and the Senior Leadership Team completes a statewide analysis of the resources available to DVR and determines the

number of eligible consumers that can be supported for IPE development. The resource analysis is based on current and the previous two year pattern of activations, closures and case aids spending, and projected forward 2 years with anticipated increases in revenue and costs. The 2 year prospective analysis is to account for the average period of IPE expenditure obligation for cases activated from the OOS wait list.

When current and projected resources make it possible, the Director of BCS will send a list of eligible consumers to be contacted to start IPE development activities. This list contains the names of consumers who have been determined eligible for DVR services on or before the date specified on the list. Consumer names are listed starting with those with the most significant disabilities (OOS Category 1) and **in the order that they applied** for DVR services.

If more consumers can be contacted for IPE development than the number of consumers in OOS Category 1, the IPE development contact list will include OOS Category 2 consumers, **by order of application date**. The same will be done with OOS Category 3 consumers, if we exhaust the names of OOS Category 2 consumers. The list also contains a due date by which staff are to contact and take action on each case.

This process automatically and seamlessly moves to the next OOS Category on the DVR Waiting List depending on how many consumers can be served with the resources available at the time.

B. Statewide Basis

DVR is a statewide program. All offices will serve the same open categories under order of selection. [*Understanding Order of Selection, Tab 7*]

C. Authority to Open and Close Priority Categories, as Needed

DVR establishes a wait list of individuals who are eligible, but cannot be served due to lack of resources. When DVR determines it has adequate resources to serve more individuals on the waiting list, an individual may receive services depending on the individual's category and date of application. [*Understanding Order of Selection, Tab 7*]

D. Continuation of Services

A consumer who has begun to receive services under an approved individualized plan for employment prior to the implementation date of order of selection, must continue to receive the services described in the IPE, including post-employment services.

In other words, if an individual is receiving VR services under an approved IPE when DVR suspends the individual's category, the individual will continue to receive services outlined in the IPE. [*Understanding Order of Selection, Tab 7*]

E. Funding Arrangements

The DVR is primarily responsible for assuring that services within the scope of VR services are available to assist eligible individuals with an IPE in achieving their employment goals. As needed to assure the timely and continuous provision of IPE services, the agency's financial responsibility priority will be to expend Title I-B operational and discretionary case aid funds to assure the timely and continuous availability and delivery of services to these individuals. In FFY 2009, a period where the DSU's Order of Selection actions will impact persons with significant disabilities, a minimum of 98% of the Title I-B funds, exclusive of carryover, the IPE obligation reserve, and funds allocated to operations shall be designated to the discretionary case aids budget to support IPE services and to develop and activate employment plans for eligible individuals with significant and most significant disabilities from the DVR wait list in a continuous and timely manner.

After the Division is assured that eligible individuals are adequately supported in their annual plan costs, and that Title I-B funds have been used to activate individuals with significant and most significant disabilities from the Order of Selection wait list in a timely manner, up to 2% of Title I-B funds may be used for other allowable purposes, if such purposes are funded under an interagency mechanism in accordance with the minimum financial responsibilities of a public or private partner. *[WDVR State Plan FFY 2009, Attachment 4.8(a), (b), (c) (d), & (e)] at page 3 of 11]*

IV. ADMINISTRATION OF ORDER OF SELECTION

Under the federal policy framework, IPEs will be developed only for those eligible individuals to whom the State VR agency is able to provide services under the order of selection. The state must conduct an assessment for determining eligibility and priority for services. IPE's will not be developed for individuals on waiting lists; these individuals must be provided access to services available through the agencies information and referral system. Records must be kept documenting the decisions. The State VR agency must consult with the State Rehabilitation Council regarding the OOS policy framework. This section describes the applicable state policies regarding the administration of OOS.

A. Assessment for Determining Eligibility and Priority for Services *[ORDER OF SELECTION—FUNCTIONAL LIMITATIONS AREAS (GUIDANCE FOR COUNSELORS; See Also Order of Selection Background Paper, Attachment B (May 21, 2003)]*

1. In General.

After a consumer is found eligible for VR services, an order of selection determination is completed. Additional evaluations or assessments to make this determination may be needed. The VR counselor and consumer jointly determine the consumer's order of selection priority category by evaluating the consumer's functional limitations, anticipated services needed and the duration those services.

The focus and purpose of the eligibility determination and the order of selection determination are different. To assess whether someone needs VR services because of a disability, the counselor needs to assess the impact of the disability on that individual's life. To determine whether one individual's functional limitations are more significant than the functional limitations of another individual, the counselor needs an entirely different perspective. To make the order of selection category placement determination, the counselor is no longer looking at the impact of the disability on the vocational potential of the individual. Now, the counselor is looking at how the person can function (functional assessment) given their disability, compared to the working population at large. In other words, compared to everyone else, how functionally impaired is the individual.

Each functional limitation can be considered in only one of the functional areas (mobility, communications, self-care, self-direction, interpersonal skills, work tolerance, and work skills) for each consumer. However, a single disabling condition can cause multiple functional limitations. *[See Order of Selection Background Paper, Attachment B (May 21, 2003)] [Tab 9]*

When considering whether a functional limitation exists in each of the functional areas, the counselor must assess the limitation with current accommodations and mitigating factors in place and limitations must derive from the disability and must also relate to work. In other words, the counselor must determine what problems does the individual have or is expected to have at work because of the disability with current accommodations/mitigating factors in place. For example if an individual's vision is 20/200 without glasses but the individual's vision with glasses is 20/20, DVR considers for OOS purposes that the individual's vision is 20/20.

This policy is fair because the whole purpose of order of selection is to identify those who need services most—the person who does not have a wheelchair needs services more than the person who does; the person who does not have parents to drive him/her back and forth to work needs services more than the person who does. *[See Order of Selection Background Paper, Attachment B (May 21, 2003)] [Tab 9]*

An individual may request a review of his or her assigned OOS category whenever new evidence is available by submitting the new evidence with a written request for a functional limitations review.

2. Special Issues in Eligibility Determinations and Order of Selection Category Placements [April 2001]

a. Temporary Disabilities

If the consumer is eligible for vocational rehabilitation services, functional limitations should be assessed based on current functioning, regardless of possible increased functioning as healing progresses.

b. Cyclic Disability (pattern of cyclic exacerbations)

If a review of the applicant's history over the past two years reveals a pattern of cyclic exacerbations, and this can be predicted to be an attribute of the disability, then any functional limitations which exist during these periods of exacerbation may be considered. If, however, the functional limitations are accommodated already, then they may not be considered.

c. Progressive Disability (applicant may be exhibiting few symptoms and limitations at the time of application, but the progression of the disease can be anticipated)

If the consumer is eligible for vocational rehabilitation services, functional limitations should be assessed based on current functioning. However, the psychological impact of the predictable progression of the disability on the consumer may create a functional limitation.

d. Legacy of Disability (applicant is not now exhibiting problems directly related to disability symptomology, but who has a history of problems related to the disability)

If the consumer is eligible for vocational rehabilitation services, functional limitations should be assessed based on current functioning. Regardless of the consumer's individual situation, the determination of the existence and severity of the limitations must be based on a comparison to the general working population.

e. Transition (School to Work) Without Significant Work History

If the consumer is eligible for vocational rehabilitation services, functional limitations should be based on current functioning. The determination of whether functional limitations exist and whether they are severe is generally based on a comparison to the general working population. The purpose of this comparison is to "level the playing field." In the case of transition students, however, the fairest comparison is to other students leaving high school. Therefore, the lack of a significant work history is not a major limitation to a high school student, because all high school students are at a place in their lives when they are not expected by employers to have much of a work history.

B. Notification of Eligible Individuals

All consumers must be officially notified of their individual order of selection determination. A notification letter is completed and sent to every consumer at the time the eligibility and OOS Category determination is made. DVR will contact each individual in a closed category at least annually to find out if his or her conditions have changed and if he or she is still interested in services. [*Understanding Order of Selection, Tab 7*]

[See Tab 8 for a copy of letter sent to eligible consumers not in OOS category for whom IPE's may be developed.]

C. Responsibilities to Individuals Who Meet Open Categories Under Order of Selection

When resources make it possible, DVR sends a list of eligible consumers to be contacted to start IPE development activities. This list contains the names of consumers who have been determined eligible for DVR services on or before the date specified on the list. Once an employment plan is initiated, DVR must avoid potential disruption of services. *[Order of Selection Information, Fall/Winter 2004, Tab 12]*

D. Responsibilities to Individuals Who Do Not Meet Open Categories Under Order of Selection

Consumers not immediately activated for development of an employment plan are offered referral services and the option to be placed on a waiting list until employment plan development services can be initiated.

E. Case Closure and Maintenance of Records

Each consumer on the OOS Wait List is contacted annually to determine if additional information is available. Consumers who no longer wish to remain on the Wait List are closed and notified in writing of the closure and their right to appeal the closure. This information is documented in the case record (IRIS).

The results of the Functional Assessment to determine OOS category placement and any changes in category placement are documented in IRIS. All letters, referrals to other agencies, and contacts with consumers regarding their OOS category determination and/or placement on the Wait List are also documented in IRIS.

F. Role of the State Rehabilitation Council

The Wisconsin Rehabilitation Council (WRC) provides advice on goals and priorities to DVR. DVR consults with WRC regarding the need to have and implement an Order of Selection as well as provides updates at least quarterly regarding the Order of Selection and Wait List. DVR also provides WRC with data regarding Order of Selection including caseload projections and resource projections. A WRC representative is also a member of the DVR Policy Academy along with statewide DVR staff representatives. This academy discusses, reviews, and recommends policy and procedures including policy and procedures related to Order of Selection.

PART IV: ANALYSIS OF STATE POLICIES RELATING TO KEY ELEMENTS OF ORDER OF SELECTION

Part I of the paper is the introduction. Part II describes the federal policy framework regarding order of selection. Part III describes the policy frameworks regarding order of selection developed by eight states (state policy frameworks) using a template of key elements. This part of the paper analyzes each of the key elements. The key elements include:

- Determination of Whether to Establish an Order of Selection.
- Establishment of Order of Selection, including:
 - Establishment of Priority Categories;
 - Terminology;
 - Acceptable and Unacceptable Factors;
 - 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;
 - Case Closure and Maintenance of Records;
 - Monitoring and Oversight; and
 - Role of State Rehabilitation Council.

Under each key element, I will first describe the applicable federal policy and then describe how the states address the element and include specific examples of state policies/approaches.

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., 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)]*

Several states (e.g., California, Iowa, Massachusetts, Michigan, and Wisconsin) use a three priority category system:

Priority Category 1: Eligible individuals determined to be most significantly disabled.

Priority Category 2: Eligible individuals determined to be significantly disabled.

Priority Category 3: All other eligible individuals determined to be disabled.

Three states use a four priority category system:

Tennessee uses a category for “most significant disability” and a category for “significant disability” and then includes two categories for “other eligible individuals”:

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: Eligible individuals who do not have a significant disability and whose vocational rehabilitation is expected to require multiple services.

Priority Category 4: Eligible individuals who do not have a significant disability and who cannot be classified into a higher priority category.

Similarly, West Virginia uses a category for “most significantly disabled”, a category for “significantly disabled” and then includes two categories for “other eligible individuals”:

Priority Category 1: Eligible applicants with the most significant disabilities.

Priority Category 2: Eligible applicants with significant disabilities.

Priority Category 3: Eligible applicants with non-significant disabilities which result in “permanent” functional limitation. A permanent functional limitation is an impairment of physical or mental activities or functions which either is not amenable to or is not likely to be eliminated through the provision of surgical or other medical services.

Priority Category 4: 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, with a fourth category for “other eligible individuals”:

Priority Category 1: An individual with the most significant disability.

Priority Category 2: 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.

Priority Category 3: 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.

Priority Category 4: All other individuals determined eligible for the VR program.

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 determination by qualified personnel that the applicant has a physical or mental impairment;

- 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.
- 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.
- 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—

- 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.”

Set out 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.

State	Functional Capacity	Multiple Services	Extended Period
California	At least 1	2 or more	More than 6 months
Iowa	1 or more	More than 1	More than 1 year
Massachusetts	At least 1		No less than 6 months
Michigan	1 or more	More than 2	At least 6 months
Tennessee	At least 1	2 or more	6 months or more
Virginia	1 or more	2 or more	Longer than 6 months
West Virginia	1 or more	2 or more	6 months or more
Wisconsin	1 or more	2 or more	6 months or more

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).

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

State	Functional Capacity	Multiple Services	Extended Period
California	At least 4 areas	2 or more	More than 6 months
Iowa	*3 or more	More than 1 service	Longer than 1 year
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
Tennessee	2 or more	2 or more	6 months or more
Virginia	3 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

*Iowa—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.

5. **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, with Iowa using 1 year, and West Virginia using 6 months for significant disability and 9 months for most significant disability.
6. **Functional capacity areas.** All of the states except California include the 7 categories identified in the federal regulations (i.e., mobility, communication, interpersonal skills, mobility, self-care, self-direction, work skills, and work tolerance). California does not include self-direction. No state included additional functional capacity areas. Several states include comprehensive definitions for each functional capacity area and required documentation (see e.g., Tennessee). States have developed comprehensive manuals related to functional capacity areas (e.g., Iowa) and checklist (e.g., Massachusetts).
7. **Multiple vocational rehabilitation services.** The states include varying definitions of the term.

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

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.

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.

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

Massachusetts includes a comprehensive list of 14 vocational services.

Wisconsin includes services needed to achieve a successful rehabilitation outcome.

8. **Serious limitation in terms of employment.** Several states included definitions for the term “serious limitations” in terms of employment.

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.

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 the disability. 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.

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. Michigan also includes specific definitions of serious limitation for each of the seven functional areas.

Tennessee and Virginia include distinct definitions applicable to each of the seven functional areas. Virginia also specifies 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.

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.

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:

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

Several states include or incorporate by reference factors set out in the federal policy framework. California adds "sexual orientation" to the list.

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]*

All of the states 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., Iowa).

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.

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]*

The states have adopted policies that 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. 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.

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]*

All of the states include the 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.

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 re-negotiated. 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.

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

Iowa has developed the *Preliminary Assessment for Determining Eligibility and Waiting list Placement*.

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

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

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

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

Wisconsin has 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.

Most states e.g., Iowa, 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 state policies generally restate the policies set out in the federal policy framework (see e.g., Tennessee and West Virginia) In addition, several states restate prohibitions regarding the use of Section 110 funds. For example, 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. Michigan policy specifies that cost-services cannot be provided to those on the waitlist; only counseling regarding referrals to other agencies. 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. Case Closure and 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 has adopted specific policy requiring the VR agency to review at least annually the 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.

G. Role of State Rehabilitation Council.

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

- (4) Need to establish an order of selection, including any reevaluations of the need;
- (5) Priority categories of the particular order of selection;
- (6) Criteria for determining individuals with the most significant disabilities; and
- (7) 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.