

## **Information on Order of Selection (OOS) and associated substantive policy changes ahead of establishment and implementation at IDVR**

Idaho Division of Vocational Rehabilitation is engaged in substantive modifications to agency policies requiring public comment per § 34 CFR 361.20(2)(v-vi). The purpose of this period of comment is to provide interested an opportunity to understand proposed changes and present comment and recommendations regarding the establishment and implementation of Order of Selection and modifications to the Customer Financial Participation agreement.

This document contains additional information on specific changes to the program proposed by IDVR. Additionally, the revised Order of Selection Policy is attached.

Proposed changes within these policies are detailed below:

The Idaho Division of Vocational Rehabilitation is working to establish and implement an Order of Selection (OOS) as the Division does not have the spending authority necessary to serve all anticipated eligible VR customers in the coming fiscal year:

The Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), otherwise known as the Rehabilitation Act, requires the Vocational Rehabilitation (VR) program to serve individuals with the most significant disabilities first when there are not enough resources to serve everyone who is eligible for VR services. Individuals with the most significant disabilities are given priority over those with less significant disabilities, which is a process called an order of selection (OOS).

In this event, an OOS process must be developed and included in the VR services portion of the Unified or Combined State Plan which must describe the order to be followed in selecting eligible individuals to be provided VR services. (34 C.F.R. § 361.36(a)(1))

### **Steps the agency must take before OOS can be established:**

1. Review agency's financial and staffing resources, including use of long-range fiscal forecasting and personnel projections which indicate that the "full range of services" can no longer be provided to all clients eligible for the VR program. (complete)
2. Notify and consult with the Rehabilitation Services Administration (RSA), and draft and submit State Plan language changes for review and approval. (consultation in progress, state plan update had been submitted)
3. Consult with the State Rehabilitation Council (SRC), Client Assistance Program (CAP) and other administrators in and outside agency, as needed, regarding timelines, etc. (initiated and ongoing)
4. Hold public meetings to inform VR applicants and clients of the order to be implemented. (This step)
5. Choose OOS priority category assignment tool to be used, which includes breakdowns and descriptions of OOS categories. (complete)
6. Notify staff and partners, including the SRC and CAP, regarding OOS implementation plan and date.  
(TBD, dependent on approval from RSA)
7. Provide statewide training to staff, partners and others regarding OOS implementation and use of OOS tool(s). (Training to begin next Friday with OOS 101 will continue to develop and disseminate).
8. Determine how agency's case management system will capture, maintain and report out on OOS wait list. (Complete)
9. Develop a comprehensive plan for clients on wait list to receive counseling and guidance and referrals to American Job Center partner services. (In progress)
10. Consider and train on delivery of Pre-Employment Transition Services to be provided in an OOS. (In progress)

34 CFR 361.20 requires public meetings for substantive changes to the VR program. This process allows the public to provide comment on policies and procedures.

Substantive changes are those that directly impact the nature and scope of services provided to individuals with disabilities. Order of Selection and modifications to the Financial Participation Assessment (FPA) process are both federally defined as substantive and therefore require public meetings will take place June 10-14, 2024.

Major changes for review include modifications to the Order of Selection and FPA policies.

**Substantive changes within these policies:**

- Establishment of Order of Selection
- Order of Selection Priority categories (unchanged but for SRC consideration):
  - Waitlist policy established (2-tier)
- Financial Participation Changes
  - Reduced application of FPA to four services (all other VR services are exempt from FPA), significantly reducing complexity of tool.
  - Increased plan participation percentage to 90 and 100 percent of plan for high income tiers for these four services only
  - Eliminated second high-cost calculation as in practice the threshold was not being hit and alternative processes exist for customers on very high-cost plans where financial participation would effectively deny a service (VR would provide a partial or full exception in these cases as required by WIOA).

**OOS Establishment and Implementation:**

IDVR is working to establish and implement an Order of Selection. OOS will impact new applicants to the program following implementation. Those individuals currently on a plan will continue to be served regardless of Order or priority status as required by 34 CFR 361.36(e)(3)(i). All individuals who have received a Pre-Employment Transition Service (Pre-ETS) will continue to receive Pre-ETS per 34 CFR 361.36(e)(3)(ii).

Additionally, new potentially eligible students can receive Pre-ETS prior to application to the VR program.

Disability priority will impact newly eligible customers following the establishment and implementation of Order. New plans developed on existing customers will be subject to FPA following the reimplantation of FPA and institutionalization of Order. New eligibilities will be assessed for disability priority and be assigned to Order as applicable.

### **OOS priority categories:**

#### **Determining Significance of Disability:**

At the time a customer is determined eligible for Vocational Rehabilitation services, a Vocational Rehabilitation Counselor (VRC) will determine the significance of the disability and, based upon the determination, will then assign the customer to a priority category.

#### **Priority Categories:**

##### ***Priority 1: Most Significant Disability (MSD)***

The customer meets the criteria established for a significant disability; and:

1. Experiences a severe physical and/or mental impairment that seriously limits three or more functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction, or work tolerance) in terms of an employment outcome; and
2. Requires multiple primary Individualized Plan for Employment (IPE) services over an extended period of time.

##### ***Priority 2 - Significant Disability (SD)***

The customer meets the criteria established for a disability; and:

1. Experiences a severe physical and/or mental impairment that seriously limits one or more functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance) in terms of an employment outcome; and
2. Requires multiple primary Individualized Plan for Employment (IPE) services over an extended period of time.

### ***Priority 3 - Disability (D)***

The customer has a physical or mental impairment; and:

- His/her impairment constitutes or results in a substantial impediment to employment; and
- Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

**Note:** Customers who are beneficiaries of Social Security Disability Insurance (SSDI) or recipients of Supplemental Security Income (SSI) for disability reasons are categorized as at least Significant Disability (SD), depending upon the extent of their functional limitations (per federal regulation). This presumption is then updated with more information (where applicable) to determine whether the applicant meets the definition of MSD.

#### **Waitlist Priorities and Administration:**

- First individuals will be removed from any closed or partially closed category first by:
  - Priority category (The Most Significant Disability priority is served first until all are off waitlist, then the Significant Disability priority may be served until all are off waitlist, then finally Disability priority cases can be served).
- The second factor for waitlist will be date of application. Individuals will be removed from the statewide waitlist by date of application (those who applied first within the highest priority category being served will be first off the list, then those who applied next within that same priority category will be served and so on). When using the second factor full days will be used to ensure all individuals who applied on that date within the category being served are all pulled from the waitlist together to meet federal requirements.
  - Application date provides a uniform basis for the waitlist that is common to all participants. This was selected instead of eligibility date as eligibility is more dependent upon receipt of supporting documentation and is a less stable element to use.

### **IDVR will Prioritize Serving Most Significant Disabilities:**

- WIOA allows a state to elect to serve lower priority applicants outside of the OOS policy if they need services to maintain employment, however IDVR did not opt to serve VR applicants outside of the OOS priority to focus resources on individuals with the greatest needs (those with the Most Significant Disabilities).
  - IDVR is striving to keep MSD open. Projections indicate this is potentially achievable and technical assistance providers and conversations with other states indicate this would be preferable to a closure of all categories. This decision to opt out of serving lower priority customers will help the agency toward meeting this goal of serving all eligible individuals with MSD priority and should allow the agency the ability to open other categories more quickly.

### **Changes to the Financial Participation Assessment (FPA) process:**

To coincide/immediately precede OOS implementation per policy:

- IDVR's FPA policy will trigger in the case the Division has to implement OOS due to limited financial resources.
  - The Division intends to reactivate the FPA immediately prior to OOS per policy.
- To promote compliance and reduce the complexity of the process the Division has:
  - Removed most services from being subject to the FPA process, while retaining services that have a higher impact on IDVR's overall expenditures. In the past, an FPA was required for all plans with non-exempt cost services. Under the new process, the FPA will only trigger for the following services (IDVR will pay for other costs for planned VR services in the absence of comparable benefits):
    - Hearing aids
    - Tuition and books
    - Tools and equipment
    - Maintenance (e.g. food/clothing)
      - Transportation

- Note: The services above are still exempt from the FPA for those individuals who are presumptively eligible for the VR program (SSI/SSDI) or those who can demonstrate participation in low-income programs recognized by IDVR.
- Removed the 'percentage of applicable income' cap in the FPA. The last active FPA weighed percentage of plan costs and percentage of applicable income to limit overall customer expenses on very high-cost plans. This threshold was difficult to hit and the value of having the additional equation provided overcomplication without additional practical value to the tool originally intended to achieve. Customers on very high-cost plans will still have a conversation with their counselor on their ability to meet costs, and where the costs are so high to effectively deny a service, IDVR will provide, as regulatorily required, additional resources toward that service via the exception path which already exists in policy. o Updated the poverty guidelines for 2024 to the 300 percent table.
- Added two new tiers of contribution for those making \$50,000 and \$55,000 above and beyond 300 percent of Federal Poverty Guidelines. The past FPA had capped customer contributions at 80 percent of plan costs regardless of income. This revision places plan participation for the four categories of FPA services at 90 percent and 100 percent of those costs for individuals. This means an individual in a household of one would contribute 90 percent of plan costs if they made over \$95,179 last year. This same individual would contribute 100 percent toward the costs of those four service categories if they had made \$105,180 or more in the past year. For comparison, for a family size of four, this 90 percent threshold would be reached at \$143,600 household income, and the 100 percent threshold would apply for household of four making more than \$148,599. In contrast a household of one making less than \$45,180 will not have an expected contribution to

their plan. Those making \$45,180-50,179 would have a 5 percent expected contribution to these same services. That same threshold for a family of four would be \$93,600 to trigger the 5 percent contribution expectation.