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## **Proposed Amendment to the Vocational Rehabilitation (VR) Services portion of the Kentucky 2024-2027 Combined State Plan**

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### **Introduction**

An Order of Selection (OOS) is a process to follow when an agency has determined there are not enough available resources to serve all individuals with disabilities in the state. The Office of Vocational Rehabilitation's implementation of OOS is governed by 782 KAR 1:030(3). By this process, individuals with the most significant disabilities are given priority over those with less significant disabilities. Kentucky has four (4) Priority Categories with the highest priority being Category 1. This Category gives priority to individuals with the most significant disabilities as defined by having limitations with three (3) or more functional capacities. The Office of Vocational Rehabilitation will close Priority Categories 2, 3 and 4 under the proposed implementation of OOS; however, Priority Category 1 will remain open to ensure those individuals with the most significant disabilities are served first.

Below you will find the amended Sections A, F, and G of the VR Services portion of the KY 2024-2027 Workforce Innovation and Opportunity Act Combined State Plan. The sections will discuss input from the State Rehabilitation Council (SRC), amended estimates for the Federal Fiscal Year (FFY) 2025, a justification for the proposed change, the defined Priority Categories and how the order will be administered.

## **Section A. State Rehabilitation Council.**

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**A. 4. In accordance with the requirements in Section 101(A)(21)(A)(II)(III) of the Rehabilitation Act, include a summary of the Council's input (including how it was obtained) into the State Plan and any State Plan revisions, including recommendations from the Council's annual reports, the review and analysis of consumer satisfaction and other Council reports.**

The Office of Vocational Rehabilitation must consult with the State Rehabilitation Council (SRC) when the agency has determined it will not be able to serve all eligible individuals who apply for services. In accordance with the SRC bylaws, a special meeting for the Executive Committee was called by the SRC Chairperson to discuss the agency's need to implement an OOS. The meeting was held on January 13, 2025, and a quorum was established. A representative from the Client Assistance Program (CAP) was invited to the special meeting and was in attendance. Cora McNabb, Executive Director, gave an overview of the agency's current and projected fiscal data, spending patterns, cost over the last four years and staffing variables contributing to the need for an OOS. All Priority Categories were explained, how the OOS would work and the implications of the order. Other measures put in place were briefly discussed, such as the establishment of a waitlist, cost sharing and providing information and referrals. The Executive Committee was assured that the decision was not taken lightly, and that the agency had consulted the U.S. Department of Education's Rehabilitation Services Administration (RSA), received technical guidance from the Vocational Rehabilitation Technical Assistance Center for Quality Employment (VRTAC-QE) and informed Cabinet leadership regarding the decision. Executive Committee members asked questions and engaged in discussions. Overall, the Executive Committee viewed the need to implement the OOS as necessary given the information received.

On January 27th, the full SRC quarterly meeting was held, and a quorum was established. During the meeting, the Chairperson provided a summary of the

Executive Committee special meeting. The Executive Director, Cora McNabb, provided a detailed PowerPoint presentation regarding the need to implement order of selection, the implications of the Order and how it would be implemented. The Director of Field Services further provided information regarding how cases would be managed, definitions of categories and what an OOS might look like. The SRC members asked questions and made comments. Answers were provided by various staff. A representative from the fiscal department was at the meeting to provide members an opportunity to ask questions regarding the projected funds. Two representatives from the CAP, including the Executive Director of CAP, was present. A motion to approve the agency's decision to implement OOS was passed.

## Section F. Annual Estimates

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Sections 101(a)(15) and 101(a)(23) of the Rehabilitation Act require all VR agencies to annually conduct a full assessment of their resources and ability to serve all eligible individuals before the start of the Federal fiscal year. In accordance with 34 C.F.R. § 361.29(b), annual estimates must include the following projections:

### 1. Estimates for next Federal fiscal year—

#### A. VR Program

For Federal Fiscal Year (FFY) 2025, OVR has projected that it will not have adequate available funds to serve all eligible individuals with disabilities.

Below are previous estimates for FFY 2025 by category. The changes stated in bold print will occur when an OOS is implemented.

**Priority Category 1:** Eligible individuals with a most significant disability that limits three (3) or more functional capacities.

Previous Estimates: The estimated number of individuals eligible for services was 22,459; the number of eligible individuals expected to receive VR services was the same, indicating that we would be able to serve all those in this category eligible for VR services.

**No Changes: Number of Eligible Individuals Not Receiving Services: 0  
(All eligible individuals will receive services)**

**Priority Category 2:** Eligible individuals with a most significant disability that limits two (2) functional capacities.

Previous Estimates: The estimated number of individuals eligible for services was 6,677; the number of eligible individuals expected to receive VR services was the same, indicating that we would be able to serve all those in this category eligible for VR services.

**Changes: There will be eligible individuals not receiving services.**

**Priority Category 3:** Eligible individuals with a significant disability that limits one (1) functional capacity.

Previous Estimates: The estimated number of individuals eligible for services was 1,062; the number of eligible individuals expected to receive VR services was the same, indicating that we would be able to serve all those in this category eligible for VR services.

**Changes: There will be eligible individuals not receiving services.**

**Priority Category 4:** Eligible individuals with a non-significant disability.

Previous Estimates: The estimated number of individuals eligible for services was 152; the number of eligible individuals expected to receive VR services was the same, indicating that we would be able to serve all those in this category eligible for VR services.

**Changes: There will be eligible individuals not receiving services.**

## **B. Supported Employment Program.**

Supported Employment will not be affected by OOS.

## Section G. Order of Selection

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**1. Pursuant to Section 101(A)(5) of the Rehabilitation Act, this description must be amended when the VR agency determines, based on the annual estimates described in description (f), that VR services cannot be provided to all eligible individuals with disabilities in the State who apply for and are determined eligible for services.**

The VR agency is implementing an OOS with one or more priority categories closed.

**2. For VR agencies that have defined priority categories describe—**

### **A. The justification for the order**

After careful review of the agency's current and projected fiscal and personnel resources, a determination has been made to implement an OOS. The projected available funds are not adequate to provide the full range of VR services to all eligible individuals with a disability. Factors influencing this decision include analysis of short- and long-term budgetary outlook, staffing projections, VR counselor's caseload size and expenditures, the needs of individuals with the most significant disabilities in the state's comprehensive needs assessment, population data related to disability incidence, and the State Rehabilitation Council (SRC). Based on these factors, the agency has predicted that it will be unable to provide VR services to all eligible individuals with disabilities who apply for services. When an agency determines after assessing available projected funds and resources that it will not be able to provide services to all qualifying individuals, the agency must implement an OOS to ensure that individuals with the most significant disability are prioritized.

The following factors will not be considered: duration of residency; type of disability; age, sex, race, color, or national origin; source of referral; type of expected employment outcome; the need for specific services except those

services provided in accordance with 361.36(a)(3)(v), or anticipated cost of services required by an individual; or income level.

**B. The order (Priority Categories) to be followed in selecting eligible individuals to be provided VR services ensuring that individuals with the most significant disabilities are selected for services before all other individuals with disabilities; and**

OVR, in consultation with the State Rehabilitation Council (SRC), has determined that it will not be able to serve all eligible individuals with a disability and must implement an OOS. Based on factors stated in the justification for implementing an OOS in this section, the agency will prioritize those individuals with the most significant disability by the assurance of being served, first.

The agency has the following four (4) priority categories to be followed in selecting eligible individuals to be provided VR services to ensure those individuals with the most significant disabilities are selected for services before other individuals with disabilities:

<b>Priority Category</b>	<b>Definition</b>	<b>Status</b>
<b>Category 1</b>	Eligible individuals with a most significant disability and that limit three (3) or more functional capacities	Will remain open
<b>Category 2</b>	Eligible individuals with a most significant disability that limit two (2) functional capacities.	Will be closed
<b>Category 3</b>	Eligible individuals with a significant disability that limit one (1) functional capacity.	Will be closed
<b>Category 4</b>	Eligible individuals with a non-significant disability.	Will be closed

**Functional Capacity** means the capacity to perform tasks required in employment including a.) mobility; b.) communication; c.) self-care; d.) self-direction; e.) interpersonal skills; f.) work tolerance; or g.) work skills.

**Non-significant disability** means a disability that does not limit a functional capacity.

**C. The VR Agency's goals for serving individuals in each Priority Category, including how the agency will assist eligible individuals assigned to closed priority categories with information and referral, the method in which the VR Agency will manage waiting lists, and the projected timelines for opening priority categories. Note: Priority categories are considered open when all individuals in the Priority Category may be served.**

The agency, in consultation with the State Rehabilitation Council (SRC), has determined that the agency lacks available projected funds and personnel resources to serve all consumers. The agency shall follow an OOS to give priority for services according to a ranking of categories of consumers based on the severity of the disability.

The agency will close categories 2, 3 and 4, while category 1 for individuals with the most significant disability with 3 functional capacities will remain open. The Executive Director shall direct the OOS by designating in written memorandum, the Priority Category to be served. The following describes how the agency will assist eligible individuals assigned to closed priority categories and how the wait list, information and referral will be managed.

The OOS shall be implemented on a statewide basis.

The OOS shall be implemented to assure that eligible individuals with the most significant disabilities in Priority Category 1 are provided services before other eligible individuals.



The OOS will not use any of the following factors in determining eligible individual's residency duration, type of disability; age, gender, race, color, or national origin, source of referral, type of expected employment outcome, need for specific services or anticipated cost of services, or the income level of the individual or its family.

The OOS shall not affect: a) the acceptance of referrals and applicants; b) the provision of assessment services to determine whether an individual is eligible for vocational rehabilitation services; c) the individual's Priority Category assignment under the OOS; and d) services needed by any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the OOS, irrespective of the severity of the eligible individual's disability. The office will ensure that all funding arrangements for providing services under the State plan, including third-party arrangements and awards under the establishment authority, are consistent with the OOS.

The office shall conduct an assessment to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under the OOS. The VR Counselor determines the eligibility of the individual and their Priority Category based on a review of the data from the assessment.

On the day that Priority Categories 2, 3 and 4 closure occurs, the following will be true for these groups of consumers:

1. Individuals who have an Individualized Plan for Employment (IPE) that was implemented prior to the closure of priority categories, will continue to receive services as indicated on their IPE regardless of their Priority Category assignment.
2. Individuals who have been determined eligible and assigned to Priority Category 1, but do not yet have an IPE written, will move forward and complete an IPE then begin receiving services.
3. Individuals who have been determined eligible and assigned to Priority Categories 2, 3 or 4, will be placed on the wait list.

4. Individuals who have applied but have not yet been determined eligible and assigned a Priority Category, will have their eligibility determined and a Priority Category assigned to them.

The process for the waiting list is as follows:

Once an individual has been determined eligible and assigned to a closed Priority Category by the Vocational Rehabilitation Counselor, the individual will receive notification through the counselor in writing of:

- a. The individual's assignment to a Priority Category;
- b. The Priority Categories currently being served;
- c. The individual's right to appeal the Priority Category assignment and the availability of the Client Assistance Program (CAP);
- d. Information and referral services; and
- e. The individual is informed that they have been placed on a wait list until the time the agency is able to provide them with services.
- f. The contact information of their counselor so they may request additional information.

The waiting list will be maintained by the Director of Field Services and reviewed quarterly by both the Director of Field Services and the Regional Managers.

Consumers on the wait list will be contacted annually to inform them of the status of OOS and their specific Priority Category. The consumer will be asked regarding their preference for remaining on the waiting list.

At the time when funds become adequate and a Priority Category will be opened, the following sequence of action will occur for those individuals in a closed Category:

1. The office will assure that eligible individuals, who do not meet the OOS criteria for the Priority Categories, shall have access to services provided through the information and referral system in accordance with the 1973 Rehabilitation Act.

2. Consumers will be provided with contact information for other Federal and State programs including the statewide workforce investment programs.
  - a. Documentation of the nature and scope of information and referral services provided will be included in the individual service record and entered in the Case Management System (CMS).

Consumers who do not wish to remain on the wait list may contact their counselor and request that their case be closed. They will receive notification from their VR Counselor when the case has been closed and of their right to appeal the agency's decision, including information on how to contact CAP. The notification will include information on how they may reapply for services in the future if their circumstances change or if the agency makes changes to OOS.

Quarterly, the Executive Director, Executive Leadership Team, and SRC along with fiscal staff will reevaluate the agency circumstances to determine whether the agency's resources are sufficient in serving all individuals or if there is a need to implement, establish or make changes in OOS. At such time that the agency finds it is able to serve those individuals on the wait list, the consumer will be contacted to determine if they want to move forward with implementing an IPE. If the Agency finds that they have the resources to serve some individuals but not all individuals on the wait list, the date of application will be utilized as a criterion for ranking individuals within a Priority Category. The timeline for this would be a year, unless the agency's financial situation should change, drastically.

Circumstances that would allow this to occur include a decrease in the number of referrals or other sources that would result in additional funds, which could be utilized to serve these individuals.

When a Priority Category is to be opened for services, the Executive Director shall issue an implementing memorandum to staff, with instructions that appropriate services delayed under the OOS may be provided.