

U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND
REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, D. C. 20202

TECHNICAL ASSISTANCE CIRCULAR
RSA-TAC-06-02
DATE: September 7, 2006

- ADDRESSEES:** ALTERNATIVE FINANCING PROGRAMS SUPPORTED UNDER THE ASSISTIVE TECHNOLOGY ACT OF 1998
- SUBJECT:** Ensuring the appropriateness of loans to individuals with disabilities through Alternative Financing Programs (AFPs).
- BACKGROUND:** Title III of the Assistive Technology Act of 1998, as in effect prior to the amendments of 2004 (former AT Act), authorized the secretary of the U.S. Department of Education (the Secretary) to award grants to states to pay for the federal share of the cost of the establishment, administration and expansion of AFPs to allow individuals with disabilities and their family members, guardians, advocates and authorized representatives to purchase assistive technology (AT) devices and services. Section 4(b)(2)(D) of the Assistive Technology Act of 1998, as amended (current AT Act), also allows the Secretary to award grants for fiscal year 2005 in accordance with Title III of the former AT Act. Thus, all AFP grantees, whether funded under Title III of the former AT Act or under Section 4(b)(2)(D) of the current AT Act, must abide by the AFP requirements in the former AT Act.
- AFPs may feature one or more alternative financing mechanisms, including: low-interest loan funds; interest buy-down programs; revolving loan funds; loan guarantee or insurance programs; programs operated by a partnership among private entities for the purchase, lease or other acquisition of AT devices or AT services; or other mechanisms that meet the requirements of the former AT Act and that are approved by the Secretary.
- A number of AFP grantees have contacted the Rehabilitation Services Administration (RSA) with questions regarding whether certain devices or services are considered AT devices or AT services for which AFP loans can be provided. They have expressed concern about violating AFP requirements if they provide a loan to an individual for a device or service that is not considered AT.

Grantees have some discretion when making decisions about the general operation of their programs, including determining whether an AFP loan is appropriate and whether a particular device or service should be considered AT. This discretion, however, must be exercised in a manner that is consistent with the requirements of the former AT Act and the notice of final priorities for the AFP and the Access to Telework programs published in the *Federal Register* on September 30, 2003, (68 FR 56274). In addition to satisfying these specific statutory and regulatory requirements, grantees must abide by the conditions contained in their grant awards and the Office of Management and Budget (OMB) circulars A-21 and A-87, as appropriate, as well as applicable provisions of the Education Department General Administrative Regulations (EDGAR).

This TAC provides guidance to grantees on how to appropriately develop their own policies and processes for determining whether a device or service should be considered AT for purposes of providing an AFP loan.

GUIDANCE:

Purpose of AFP Loans

Section 301(a) of the former AT Act makes clear that AFP loans are intended specifically “to allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase assistive technology devices and assistive technology services.” This means that an AFP loan must be provided to an individual with a disability (or a representative or family member of that individual) for the purpose of enabling the individual with a disability to purchase or acquire an AT device or AT service. AFP loans are not intended to provide general financial support for individuals with disabilities so that they can meet basic needs unrelated to AT.

AFP loans are intended to serve as an alternative source of funding for AT for individuals with disabilities. It should be noted that AFP grantees are not required to provide loans for AT devices or AT services simply because the requesting individual can demonstrate that funding for a desired AT device or AT service is unavailable from other sources. Thus, an individual’s inability to obtain funding for AT from another source is not a justification in and of itself for the provision of an AFP loan.

Determining the Appropriateness of a Loan

Once it has been determined that an individual requesting a loan has a disability or represents an individual with a disability, an AFP grantee should determine whether the device or service for which the loan is requested meets the statutory definition of AT device or AT service, as applicable (see Section 3(a)(3) and (a)(4) of the former AT Act).

AT Devices

Definition of AT Device

Under Section 3(a)(3) of the former AT Act, an AT device is “any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.”

Based on this definition, an AT device to be purchased with an AFP loan must meet the following two criteria:

- (1) It must be an “item, piece of equipment, or product system;” and
- (2) It must be “used to increase, maintain, or improve functional capabilities of individuals with disabilities.”

To determine whether a particular item meets these criteria, AFP grantees should develop and implement a policy and process that examines requests on a case-by-case basis using a functional approach. Under a functional approach, the determination of whether a device is AT is based on how it will be used by the specific individual for whom it will be purchased or acquired. Under this approach, grantees should examine the nature of the individual’s disability and how the requested device increases, maintains or improves his or her functional capabilities.

In using a functional approach, grantees should have an identifiable process in place for making case-by-case decisions. In other words, grantees should not adopt a policy or process that identifies specific devices as always being AT, because whether a device is AT depends on the specific functional capabilities of the individual for whom it is purchased or acquired. A device may be considered AT for one individual with a disability but not another. Therefore, RSA recommends that AFP grantees take into account at least the following:

1. Whether the device being requested through the loan is something the individual needs because of his or her disability.
 - Grantees should evaluate whether the requested device will be used to increase, maintain or improve functional capabilities that have been limited because of the individual’s disability. In other words, there should be a connection between the device an individual wishes to acquire and a disability-related need (as opposed to a general need) of the individual.

2. Whether the individual's disability-related needs differ from the needs of individuals without disabilities.
 - An individual's ability to meet his or her basic needs is affected by a variety of different factors, including economic factors, educational experience and age. RSA expects that an individual's need for AT to be related, at least in part, to the individual's disability, not exclusively to other factors.
3. In the case of a loan related to a home or vehicle, whether the requested device modifies the home or vehicle for the purpose of increasing or enhancing accessibility or functionality for the individual with a disability, rather than for other purposes such as repair, general maintenance, or general improvement.
 - Over time, all homes and vehicles require repair and maintenance, and many homeowners make improvements to their homes to enhance livability. However, there is a difference between general repair, maintenance and improvement, on the one hand, and items that modify a home or vehicle to make it usable for an individual with a disability on the other. Accordingly, grantees should consider whether the requested device would modify the home or vehicle in a manner that will improve or maintain the functional capabilities of the individual as opposed to improving the home or vehicle. RSA expects that, in some cases, the nature of the requested AT device may require that improvements be made in order for the AT device to fulfill its function. For example, in order to modify a bathroom shower, it may be necessary to remove and replace the floor tiles. Replacement of tiles in this situation may be covered as part of the overall loan, while replacement of bathroom tiles unrelated to a modification for accessibility would not be.
4. Some devices that require a medical procedure in order to be used (such as cochlear implants) serve the same purpose as devices that would be considered AT but do not need a medical procedure to be used (such as hearing aids). Grantees should consider the difference between a device that is considered AT because it improves or maintains an individual's functional capabilities that have been limited as a result of his or her disability, on the one hand, and a device that is part of general medical care or that is necessary to keep an individual alive (such as a pacemaker) because of a particular medical condition on the other. RSA expects that grantees will make AFP loans for the former but not the latter. See "Definition of AT Service" below for information related to the appropriateness of using an AFP loan to pay for a medical procedure related to an AT device.

AT Services

Definition of AT Service

According to Section 3(a)(4) of the former AT Act, an AT service is “any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.” Such term includes:

- (A) the evaluation of the assistive technology needs of an individual with a disability, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the individual in the customary environment of the individual;
- (B) services consisting of purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;
- (C) services consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;
- (D) coordination and use of necessary therapies, interventions or services with assistive technology devices, such as therapies, interventions or services associated with education and rehabilitation plans and programs;
- (E) training or technical assistance for an individual with disabilities or, where appropriate, the family members, guardians, advocates or authorized representatives of such an individual; and
- (F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers or other individuals who provide services to, employ or are otherwise substantially involved in the major life functions of individuals with disabilities.”

The above definition of AT service lists some but not all services that could be considered AT services. As a result, when assessing a service that is not specifically listed in the definition, grantees must determine whether the service “directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.” Thus, to justify a service as an AT service, a grantee first must establish that the device for which an individual needs the service is an AT device. Accordingly, grantees must ensure that there is a connection between the requested service and a device that is considered an AT device rather than being a service intended to meet a basic need of the individual unrelated to AT.

As with AT devices, to determine whether a particular service meets the statutory definition of an AT service, AFP grantees should develop and implement a policy and process that examines requests on a case-by-case basis. Grantees should not adopt a policy or process that identifies specific

services as always being an AT services because whether a service is an AT service depends on the underlying AT device that is being selected, acquired or used. Accordingly, a service may be considered an AT service for one individual with a disability but not another. Therefore, RSA recommends that AFP grantees take into account at least the following:

1. Whether the service is meant to address a functional need of an individual with a disability directly or whether the functional need is addressed through an AT device.
 - An individual with a disability who uses AT may need many services. Only those services directly related to the selection, acquisition or use of an AT device should be considered for an AFP loan.
2. In the case of a request for a loan for a medical procedure, whether the requested medical procedure makes it possible for an individual with a disability to select, acquire or use an AT device.
 - A grantee must distinguish between medical procedures directly related to AT devices that improve or maintain an individual's functioning and medical procedures not related to an AT device. A general medical procedure that does not directly assist an individual with a disability in the selection, acquisition or use of an AT device is not considered an AT service.
3. In the case of a request for a service animal, whether the service animal will assist the individual to use an AT device.
 - While a service animal is not an AT device, in some cases a service animal may assist an individual in the use of an AT device. In such cases, a service animal may be an AT service.

Grantees should note that they are not required to provide any particular AFP loan simply because they have determined, using a functional approach, that the device or service being requested can be considered an AT device or AT service. In addition, nothing in this TAC should be interpreted as requiring grantees to expand what they currently consider to be AT. Even when using a functional approach, AFP grantees continue to have the discretion to deny loans based on the capacity of their loan fund, the creditworthiness of the applicant, and other factors. That said, a grantee's AFP loan policies and processes should be applied equitably to all its loan applicants. Therefore, RSA recommends that grantees consider what precedent a decision in one case may have for decisions in future cases.

SUMMARY
GUIDANCE:

Within the confines of AFP requirements, AFP grantees have some discretion to set their own policies for determining whether a device or service qualifies as an AT device or an AT service for which an individual would be eligible to obtain an AFP loan. As outlined in this TAC, a recommended policy would provide for making case-by-case decisions using a functional approach. A grantee should be prepared to justify each AFP loan it makes based on the purposes, definitions and requirements of the former AT Act, the notice of final priorities for the AFP and the Access to Telework programs published in the *Federal Register* on September 30, 2003 (68 FR 56274), and the conditions contained in its grant award.

AUTHORITY:

Section 3(a)(2)-(4), Section 101(b)(3)(A), and Title III of the Assistive Technology Act of 1998, as in effect prior to October 25, 2004, and Section 4(b)(2)(D) of the Assistive Technology Act of 1998, as amended.

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Delegated the Authority to Perform the
Functions of the Commissioner for the
Rehabilitation Services Administration

cc: Rehabilitation Engineering and Assistive Technology Society of North America
Association of Assistive Technology Act Programs