| EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM<br>U.S. DEPARTMENT OF LABOR<br>Washington, D.C. 20210 | CLASSIFICATION<br>Priority of Service for Veterans and Eligible Spouses |
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| | CORRESPONDENCE SYMBOL<br>OWI |
| | DATE<br>November 10, 2009 |

**TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 10-09**

**TO:** STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS
ONE-STOP CAREER CENTERS
WORKFORCE INVESTMENT ACT SECTION 166 INDIAN AND NATIVE AMERICAN GRANTEES
WORKFORCE INVESTMENT ACT SECTION 167 MIGRANT AND NATIONAL FARMWORKER JOBS PROGRAM GRANTEES
WORKFORCE INVESTMENT ACT SECTION 204 SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM (SCSEP) GRANTEES
EMPLOYMENT AND TRAINING ADMINISTRATION REGIONAL ADMINISTRATORS
SUB-RECIPIENTS OF DEPARTMENT OF LABOR FUNDS

**FROM:** JANE OATES
Assistant Secretary
Employment and Training Administration

RAYMOND M. JEFFERSON
Assistant Secretary
Veterans' Employment and Training Service

**SUBJECT:** Implementing Priority of Service for Veterans and Eligible Spouses in all Qualified Job Training Programs Funded in whole or in part by the U.S. Department of Labor (DOL)

| RESCISSIONS | EXPIRATION DATE |
|---|---|
| Training Employment and Guidance Letter 5-03 | Continuing |

1. **Purpose.** The purpose of this Training and Employment Guidance Letter (TEGL) is to provide information to assist and support those agencies and other grantees that receive funds from the Department to operate qualified job training programs in the implementation of the Priority of Service for Veterans and Eligible Spouses Final Rule. This joint guidance is being issued concurrently by the Employment and Training Administration (ETA) and the Veterans' Employment and Training Service (VETS). Veterans' Program Letter 07-09 is the VETS guidance that corresponds to this TEGL.

2. **References.**
   - Veteran's Benefits, Title 38, United States Code (U.S.C.), Section 101(2) (38 U.S.C. 101(2))
   - Eligibility Requirements for Veterans Under Federal Employment and Training Programs, 38 U.S.C. 4213,
   - The Jobs for Veterans Act (JVA) of 2002, Public Law (P.L.) 107-288, section 2(a) codified at 38 U.S.C. 4215,
   - Veterans' Benefits, Health Care and Information Technology Act of 2006, P.L. 109- 461
   - Priority of Service for Covered Persons Final Rule, 20 CFR Part 1010, Fed. Reg. 78132 Dec.19, 2008
   - Training and Employment Guidance Letter (TEGL) 5-03 (rescinded by this TEGL)

3. **Background.** On November 7, 2002, the Jobs for Veterans Act (JVA), Public Law (P. L.) 107-288 was signed into law. One provision of the JVA, codified at 38 U.S.C. 4215, establishes a priority of service requirement for covered persons (i.e., veterans and eligible spouses, including widows and widowers, as defined by this statute) in qualified job training programs.

   Since the passage of the JVA, ETA and VETS have provided policy guidance to the workforce investment system regarding the implementation of priority of service, including ETA's issuance of TEGL 05-03 in September 2003. On December 22, 2006, the Veterans' Benefits, Health Care, and Information Technology Act of 2006 (P.L. 109-461) was enacted. Section 605 of that statute requires the Department to implement priority of service via regulation, and 20 CFR Part 1010, published on December 19, 2008, reflects the Department's response to that statutory requirement.

   The Final Rule took effect on January 19, 2009. While recipients of DOL funds for qualified job training programs have been required to provide priority of service since 2002, the publication of the Final Rule signals that those recipients subject to the regulations should review, and if necessary, enhance their current policies and procedures to ensure that adequate protocols are in place.

4. **Scope of the Requirement.** Recipients (and sub-recipients) of DOL funds for qualified job training programs are subject to the priority of service regulations, and are required by law to provide priority of service to veterans and eligible spouses. The Final Rule defines: a) "recipient" to mean an entity to which Federal financial assistance, in whole or in part, is awarded directly from the Department or through sub-award for any qualified job training program; and, b) "qualified job training program" to mean any program or service for workforce preparation, development, or delivery that is directly funded, in whole or in part, by the Department of Labor (20 CFR 1010.110). For the purpose of this guidance, the term "program operator" is intended to refer to a recipient or a sub-recipient of DOL funds for a qualified job training program.

   Agreement by a program operator to implement priority of service is a condition of receipt of DOL funds. Therefore, the requirement to provide priority of service applies to all Workforce Investment Act (WIA) and Wagner-Peyser funded activities, including technology-assisted activities; the Senior Community Service Employment Program (SCSEP); Indian and Native American Programs (INAP); National Farmworker Job Training Programs (NFJP); Trade Adjustment Assistance Programs (TAA); job training programs funded through the Women's Bureau, and any other current or future qualified job training program. Additionally, all program operators are required to ensure that priority of service is applied by all sub-recipients of DOL funds. All program activities issued or executed by program operators, regardless of how they are procured, must be administered in compliance with priority of service requirements.

5. **Role of States and Local Areas under the Workforce Investment Act (WIA).** Under the Final Rule and WIA planning guidelines (TEGL 14-08), States are required to address priority of service in their comprehensive strategic plan for the State's workforce investment system. To meet this requirement, each State, District, or U.S. territory must develop policies for the delivery of priority of service by the State Workforce Agency or Agencies, Local Workforce Investment Boards, and One-Stop Career Centers for all qualified job training programs delivered through the State's workforce system. The policy or policies must require that processes are in place to ensure that veterans and eligible spouses are identified at the point of entry and given an opportunity to take full advantage of priority of service. The purpose of these processes is to ensure that veterans and eligible spouses are aware of: (1) their entitlement to priority of service; (2) the full array of employment, training, and placement services available under priority of service; and (3) any applicable eligibility requirements for those programs and/or services. States' policies must require each Local Workforce Investment Board to develop and include in its strategic local plan, policies and procedures implementing priority of service for the local One-Stop Career Centers and for service delivery by local workforce preparation and training providers. Written copies of local priority of service

policies should be maintained at all service delivery points and, to the extent practicable, should be posted in a way that makes it possible for members of the general public to easily access them.

6. **Eligibility for Priority of Service.** Veterans and eligible spouses, including widows and widowers as defined in the statute and regulations, are eligible for priority of service. For the purposes of implementing priority of service, the Final Rule requires that program operators use the broad definition of veteran found in 38 U.S.C. 101(2). Under this definition, the term "veteran" means a person who served at least one day in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable, as specified in 38 U.S.C. 101(2). Active service includes full-time Federal service in the National Guard or a Reserve component. This definition of "active service" does not include full-time duty performed strictly for training purposes (i.e., that which often is referred to as "weekend" or "annual" training), nor does it include full-time active duty performed by National Guard personnel who are mobilized by State rather than Federal authorities (State mobilizations usually occur in response to events such as natural disasters).

   "Eligible spouse" as defined at section 2(a) of the JVA (38 U.S.C. 4215[a]) means the spouse of any of the following:
   a. Any veteran who died of a service-connected disability;
   b. Any member of the Armed Forces serving on active duty who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
      i. Missing in action;
      ii. Captured in the line of duty by a hostile force; or
      iii. Forcibly detained or interned in the line of duty by a foreign government or power;
   c. Any veteran who has a total disability resulting from a service-connected disability, as evaluated by the Department of Veterans Affairs; or
   d. Any veteran who died while a disability was in existence. A spouse whose eligibility is derived from a living veteran or service member (i.e., categories b. or c. above) would lose his or her eligibility if the veteran or service member were to lose the status that is the basis for the eligibility (e.g. if a veteran with a total service-connected disability were to receive a revised disability rating at a lower level). Similarly, for a spouse whose eligibility is derived from a living veteran or service member, that eligibility would be lost upon divorce from the veteran or service member.

   The priority of service regulations refer to those veterans and spouses who are eligible for priority of service as "covered persons" and refer to those not eligible for priority of service as "non-covered persons." In the interest of specificity, this

guidance refers to those eligible as "veterans and eligible spouses." However, in the interest of brevity, this guidance also adopts the regulatory terminology by referring to those who are not eligible as "non-covered persons."

7. **Understanding What it Means to Provide Priority of Service.** Priority of service means that veterans and eligible spouses are given priority over non-covered persons for the receipt of employment, training, and placement services provided under a qualified job training program. Priority means that veterans and eligible spouses are entitled to precedence over non-covered persons for services. This means that a veteran or an eligible spouse either receives access to a service earlier in time than a non-covered person or, if the resource is limited, the veteran or eligible spouse receives access to the service instead of or before the non-covered person.

   It is important to note that state and local program operators do not have the discretion to establish further priorities within the overall priority established by the regulations. The Jobs for Veterans Act reserves that authority to the Secretary of Labor and it was not exercised in the current regulations.

   For a service such as classroom training, priority of service applies to the selection procedure, as follows. First, if there is a waiting list for the formation of a training class, priority of service is intended to require a veteran or eligible spouse to go to the top of that list. Second, priority of service applies up to the point at which an individual is both: a) approved for funding; and, b) accepted or enrolled in a training class. Therefore, once a non-covered person has been both approved for funding and accepted/enrolled in a training class, priority of service is not intended to allow a veteran or eligible spouse who is identified subsequently to "bump" the non-covered person from that training class. Section 10 of this policy guidance provides additional detail regarding the ways that priority of service applies in the context of other statutory and discretionary priorities.

8. **Identifying Veterans and Eligible Spouses.** The workforce system and other program operators must enable veterans and eligible spouses to identify themselves at the point of entry to the system or program, and veterans and eligible spouses must be given the opportunity to take full advantage of the priority. When identifying veterans and eligible spouses, One-Stop Career Centers and other grantees and sub-grantees must ensure that veterans and eligible spouses are made aware of:
   - Their entitlement to priority of service;
   - The full array of employment, training and placement services available; and,
   - Applicable eligibility requirements for programs and services.

Program operators must develop and implement processes to identify veterans and eligible spouses who physically access service delivery points or who access service delivery programs through the Internet in order to provide veterans and eligible spouses with timely and useful information on priority of service at the point of entry. Point of entry may include reception through a One-Stop Career Center, as part of an application process for a specific program, or through any other method by which veterans and eligible spouses express an interest in receiving services, either in-person or virtually. Section 2 of Attachment A describes the types of interactions intended to take place between those workforce programs required to provide priority of service, on the one hand, and the Jobs for Veterans State Grants Program, on the other hand.

9. **Verifying Status.** The Final Rule does not change or add to pre-existing program requirements regarding verification of the eligibility of a veteran or eligible spouse. It is neither necessary nor appropriate for program operators to require verification of the status of a veteran or eligible spouse at the point of entry, unless the individual who self-identifies as a veteran or eligible spouse: a) is to immediately undergo eligibility determination and be registered or enrolled in a program; and, b) the applicable federal program rules require verification of veteran or eligible spouse status at that time. Even in those instances in which eligibility determination and enrollment occur at the point of entry, a veteran or eligible spouse should be enrolled and provided immediate priority and then be permitted to follow-up subsequently with any required verification of his or her status as a veteran or eligible spouse. For programs or services that cannot rely on self-attestation (e.g., classroom training), verification only needs to occur at the point at which a decision is made to commit outside resources to one individual over another. In contrast, the commitment of program staff effort does not require verification of status by a veteran or eligible spouse. For example, if a veteran or eligible spouse self-identifies, program staff should be permitted to deliver any appropriate intensive services, while permitting the veteran or eligible spouse to follow-up subsequently with verification of his or her status. Section 1.b of Attachment A provides supplementary information related to verification of veteran status for program eligibility purposes.

10. **Applying Priority of Service.** The application of priority of service varies by program depending on the eligibility requirements of the particular program. Qualified job training programs fall into two basic categories: universal access programs and programs that require prospective participants to meet specified eligibility criteria. The first two subsections below describe how priority of service applies to these two basic types of programs.

    a. Universal access programs. For workforce programs that operate or deliver services to the public as a whole without targeting specific groups,

veterans and eligible spouses must receive priority of service over all other program participants. For example, the primary universal access services are the "core" services delivered through the One-Stop system under the Wagner-Peyser and WIA programs. Veterans and eligible spouses receive the first level of priority in universal access programs.

b. Programs with Eligibility Criteria. Eligibility criteria identify basic conditions that each and every participant in a specific program is required to meet. For example, for the Senior Community Service Employment Program (SCSEP) every participant is required to meet four criteria: a) age 55 or over; b) low-income; c) resident of a designated area; and, d) not job-ready. It is important to note that a veteran or eligible spouse must first meet any and all of the statutory eligibility criteria in order to be considered eligible for: a) enrollment in the program; b) receipt of priority for enrollment in the program; and c) priority for receipt of services.

In addition to the eligibility criteria that all participants are required to meet, some programs also have priorities that establish a rank order to be observed in enrolling or serving participants. These priorities can be of two types: a) statutory; or, b) discretionary. The following two subsections provide guidance on how priority of service interacts with these two types of priorities.

I. *Programs with Statutory Priorities*. Some programs are required by law to provide a priority or preference for a particular group of individuals or require the program to spend a certain portion of program funds on a particular group of persons. An example of this type of priority is the priority for low-income individuals and for recipients of public assistance for the WIA adult formula programs. For programs with this type of *mandatory* priority, program operators must determine the status of each individual veteran or eligible spouse and apply priority of service as described below:

i. Veterans and eligible spouses who meet the mandatory priorities or spending requirement or limitation must receive the highest level of priority for the program or service;

ii. Non-covered persons who meet the program's mandatory priority or spending requirement or limitation then receive the second level of priority for the program or service;

iii. Veterans and eligible spouses outside the program-specific mandatory priority or spending requirement or limitation then receive the third level of priority for the program or service; and

iv. Non-covered persons outside the program-specific mandatory priority or spending requirement or limitation then receive the fourth level of priority for the program or service.

II. *Programs with Discretionary Priorities.* Some qualified job training programs may include a focus on a particular group or make efforts to provide a certain level of service to a particular group without the authorizing law specifically mandating that the target group be served before other eligible individuals. Because a discretionary focus of this type is not a statutorily mandated priority or targeting requirement, veterans and eligible spouses must receive the highest priority for programs or services with a discretionary targeting requirement. Non-covered persons within the discretionary targeting group then receive the second level of priority. Non-covered persons outside the discretionary targeting group receive the third level of priority. With respect to priority of service, the only feature that distinguishes discretionary targeting programs from universal access programs is the additional application of the discretionary targeting criterion to the non-covered persons. Therefore, for veterans and eligible spouses, priority of service applies to discretionary targeting programs and services the same way that it applies to universal access programs, i.e., veterans and eligible spouses first.

Prior policy guidance on priority of service and the recently published regulations gave considerable attention to the application of priority of service to programs with discretionary priorities. However, a review of qualified job training programs conducted in conjunction with the development of this guidance did not identify any prominent examples of programs that currently have discretionary priorities. There were examples of programs of this type in the past and there may be other examples in the future. It also is possible that the recent review failed to identify a specific program or service that currently includes a discretionary priority. For those reasons, the guidance on this topic is retained here for application by program operators, as appropriate.

For additional guidance on the ways that priority of service interacts with eligibility criteria and statutory priorities see Attachment A of this TEGL. In particular, Section 1.a of Attachment A provides specific information about how income and benefits derived from military service relate to the statutory low-income priority that applies to certain workforce programs. Section 3 of Attachment A points out that the GI Bill and other education and training benefits administered by the Department of Veterans Affairs are not required to be coordinated with WIA training (i.e., veterans and

eligible spouses cannot be required to exhaust their VA benefits prior to gaining access to WIA training). Section 4 of Attachment A identifies the implications of priority of service for the processes of some specific workforce programs that are impacted by this requirement.

11. **Data Collection and Reporting Requirements.** The Office of Management and Budget approved the information collection request that accompanied the priority of service regulations (OMB Control Number - 1205-0468). The approved reporting requirements for priority of service apply at two levels. First, all qualified job training programs are required to adopt the definitions for veterans and eligible spouses that appear in the regulations for their reporting on the services provided to veterans and eligible spouses and to non-covered persons. Second, those qualified job training programs that served, at the national level, an average of 1,000 or more veterans per year during the three most recent years of program operation are required to implement additional reporting requirements for "covered entrants" (i.e., veterans and eligible spouses at the point of entry to the workforce system).

    Six programs currently meet the size threshold for reporting on covered entrants: (1) WIA Adult; (2) WIA Dislocated Worker; (3) National Emergency Grants; (4) Wagner-Peyser State Grants; (5) Trade Adjustment Assistance (TAA); and (6) Senior Community Service Employment Program (SCSEP). Attachment C provides a look forward to the Individual Data Elements to be collected for covered entrants. Attachment D provides a look forward to the Quarterly Report format to be submitted for covered entrants. Additional documents related to the reporting on covered entrants and OMB's approval of this requirement can be accessed at: http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200812-1205-003.

    The SCSEP will begin collecting and reporting on covered entrants for Program Year 2009. For the other five programs that meet the size threshold, implementation of reporting on covered entrants is temporarily deferred. In response to new statutory requirements, the New Trade Act Participant Report was recently developed and approved by OMB. The specifications for that report include the Data Elements presented in Attachment C. However, the collection of covered entrant data for TAA will commence at the time of reporting implementation for the other four programs. The temporary deferral of reporting on covered entrants does not relieve the five programs, or any other qualified job training programs from implementing policies and procedures specifically designed to deliver priority of service to veterans and eligible spouses.

12. **Monitoring.** As stated in the Final Rule, the Department will monitor the implementation of priority of service to ensure that veterans and eligible spouses are made aware of and afforded priority of service. Monitoring will be performed by

the Veterans' Employment and Training Service and the Departmental agency responsible for the qualified job training program's administration and oversight.

Program operators are required to ensure that priority of service is applied throughout their respective service delivery systems, including service delivery points maintained by all sub-recipients. It is expected that program operators will monitor local service delivery operations to ensure that their internal policies and procedures result in compliance with the priority of service requirements.

13. **Action Requested.** Program operators are directed to review their existing priority of service policies and procedures and make any changes necessary to implement priority of service consistent with the Final Rule. If any program operators do not have policies and procedures in place, they are required to do so now.

14. **Inquiries.** All inquiries should be addressed to the appropriate DOL agency's regional office or to the respective DOL national office.

**Attachments:**

- Attachment A: Aspects of Workforce Programs That Relate to Priority of Service
- Attachment B: Frequently Asked Questions and Answers
- Attachment C: Individual Record Data Elements Minimum Data Fields
- Attachment D: Report Format

**ATTACHMENT A**

**Aspects of Workforce Programs That Relate to Priority of Service**

This attachment identifies some aspects of workforce programs that are outside the direct scope of priority of service but that relate to the implementation of priority of service in an operational environment, including:

- Program eligibility and priority of service;
- Relevance of the Jobs for Veterans State Grants to priority of service;
- Exclusion of VA funded training from coordination with WIA training; and,
- Implications of priority of service for other workforce programs and processes.

These four topics are treated in the sections that follow.

## 1) PROGRAM ELIGIBILITY AND PRIORITY OF SERVICE

Two aspects of program eligibility relate to effective implementation of priority of service. The first is the exemption of military income from consideration in determining eligibility for those programs that have a statutory requirement to serve low-income individuals. The second is the verification of the status of veterans and eligible spouses that is required by some workforce programs as part of their eligibility determination and enrollment processes. Both aspects are treated below.

a) Exemption of Military Service-Related Income. Program operators responsible for programs that include income criteria in the eligibility rules or targeting policies (such as the WIA formula programs) should note that many types of income related to military service are not to be included when determining if a covered person meets "low income" eligibility standards or targeting policies. The WIA regulations (20 CFR 667.255) state, in accordance with 38 U.S. Code Part 4213, that "any amounts received as military pay or allowances by any person who served on active duty, and certain other specified benefits must be disregarded when determining if a person is a 'low-income individual' for eligibility purposes."

All pay and/or financial allowances earned while a veteran was on active duty are exempt. Title 38 U.S.C. 4213 also exempts from inclusion in "low income" calculations any financial benefits received by a covered person under the following Chapters of Title 38 of the U.S. Code:

11. Compensation for service-connected disability or death.
13. Dependency and indemnity compensation for service-connected deaths.
30. All-volunteer force educational assistance program.

31. Training and rehabilitation for veterans with service-connected disabilities.
35. Survivors' and dependents' educational assistance.
36. Administration of educational benefits

Also excluded from "low income" calculations are benefits received under Chapter 106 of Title 10 U.S. Code, Educational assistance for members of the selected reserve.

In contrast to the various types of military income and benefits identified above that are exempt from inclusion in low-income calculations, certain other types of military-related income are not exempt. Specifically, pension payments authorized by Title 10 U.S. Code, such as those received by military retirees whether or not their retirement was based on disability, are not exempt and are to be included in "low income" calculations. Also not exempt are pension benefits paid under Chapter 15 of Title 38 U.S. Code.

b) Verification of the Status of Veterans and Eligible Spouses. As indicated in the guidance document, verification of status for veterans and eligible spouses is not required in order to provide priority of service. However, to the extent that the programs providing priority of service have their own requirements regarding verification of the status of veterans and eligible spouses, it is a matter that relates to the effective implementation of priority of service by those programs. Accordingly, some preliminary guidance is provided below.

The status of a veteran or an eligible spouse can be verified by referring a variety of official documents, including, but not limited to:

- A DD 214 (issued following separation from active duty);
- An official notice issued by the Department of Veterans Affairs that establishes entitlement to a disability rating or award of compensation to a qualified dependent;
- An official notice issued by the Department of Defense that documents the eligibility of an individual, based on the missing or detained status of that individual's active duty spouse; or
- An official notice issued by a State veterans' service agency that documents veteran status or spousal rights, provided that the State veterans' service agency requires Federal documentation of that information.

To mitigate the burden of establishing proof of covered person status, States also may establish other means for verifying status, such as electronic communication with official databases, such as those maintained by State veterans' service agencies, provided that the organizations responsible for those sources can

certify the accuracy of their records and have effective procedures for matching their records with the covered persons seeking services. As indicated in the Preamble to the regulations, the Department intends to issue further guidance on this matter in the future.

## 2) RELEVANCE OF THE JOBS FOR VETERANS STATE GRANTS PROGRAM

The Veterans' Employment and Training Service (VETS) provides Jobs for Veterans State Grants (JVSG) to the States to support the program activities and services provided by the One-Stop Career Centers for veterans. The JVSG funds support the appointment and assignment of Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans Employment Representatives (LVERs). The definitions of veterans and "other eligible persons" applicable to services provided by DVOP and LVER staff are different from and narrower than those which are applicable within the priority of service "covered person" definition (e.g., for veterans other than those whose service time was limited by discharge due to disability, 181 days or more of active duty time is required). So, the universe of individuals eligible for services by the DVOP and LVER staff is a sub-set of the broader universe of individuals entitled to priority of service by the Jobs for Veterans Act.

Operators of programs subject to the priority of service regulations are strongly encouraged to establish effective linkages with the State JVSG program staff, for two-way referrals of individuals for services. Such linkages would be advantageous to the individuals in need of services, and also to the program operators. The JVSG program staff members perform case management services for veterans and other eligible persons who require intensive employability development services, and also focus on employer relations activities to develop jobs for veterans and other eligible persons. Another significant aspect of the JVSG program is the partnering of those specialists with the military services to provide transition services to men and women leaving active duty and returning to civilian life, and involvement in Reserve and National Guard units' de-activation activities when those personnel end their active duty stints and return to civilian life. Effective linkages between those veterans program specialists and all qualified job training programs subject to the priority of service requirements would help to achieve the underlying purpose of the priority of service requirements, by establishing effective means of outreach to a significant portion of the universe of covered persons, and communication of information about employment and training opportunities offered in local communities by qualified job training programs.

## 3) EXCLUSION OF VA FUNDED TRAINING FROM "OTHER GRANT ASSISTANCE" IN COORDINATION WITH WIA FUNDED TRAINING

Section 134(d)(4)(B) of WIA, as well as the WIA regulations at 20 CFR 663.310 refer to the requirement to coordinate WIA funded training with "other grant assistance," such as Pell grants. In some service delivery environments, these provisions have been interpreted to mean that veterans or spouses who are eligible for the GI Bill or other forms of VA funded education or training are required to coordinate their entitlement to those benefits with their eligibility for WIA funded training. In some circumstances, this has been further interpreted to mean that the VA funded training entitlement must be exhausted before the veteran or spouse can be enrolled in WIA funded training. VA benefits for education and training services clearly are not included in the statutory and regulatory category of "other grant assistance." Therefore, veterans and spouses are not required to coordinate their entitlement to those benefits with any concurrent eligibility that they may have for WIA funded training (and therefore, should not preclude them from receiving WIA funded services). Similarly, WIA program operators may not require veterans or spouses to exhaust their entitlement to VA funded training benefits prior to allowing them to enroll in WIA funded training.

## 4) IMPLICATIONS OF PRIORITY OF SERVICE FOR OTHER WORKFORCE PROGRAMS AND PROCESSES

Below are some of the programs and processes that are impacted by priority of service.

a) Unemployment Insurance Programs That Interface with Services. The Worker Profiling and Reemployment Services (WPRS) program and the Reemployment and Eligibility Assessments (REA) each apply specified criteria to identify certain categories of Unemployment Insurance (UI) claimants who are required to report in-person to a service delivery location, typically a One-Stop Career Center. Claimants are directed to report to a specific location at a specific time and the failure to comply with the requirement to report as directed raises an issue on the claim, which must be resolved. This may lead to disqualification for an extended period or a determination of ineligibility for a shorter time. The intent of the requirement to report is to reinforce compliance with eligibility requirements including ability to work, availability for work and actively seeking work, and other requirements for eligibility.

Prior guidance applicable to WPRS referred to the requirement to report as a "referral." That designation implied delivery of a service, which would result in the application of priority of service at this step of the call-in process. This guidance clarifies that, for both WPRS and the REAs, the requirement to report, including the written notice provided to claimants, is not considered to be a service and, therefore, priority of service does not apply at this point in the selection process. Policy guidance directs that both WPRS and REA claimants should be referred to services as appropriate, thus some claimants may receive

reemployment services and others may not. This distinction is based both on the availability of reemployment services and on the needs of the claimant. This guidance clarifies that, upon reporting in-person to a service delivery location, those claimants required to report under WPRS or REA who are veterans or eligible spouses are entitled to priority of referral to available reemployment services or to any other qualified job training program for which they are eligible.

Priority of service applies to all referrals to any qualified job training program(s) for which a veteran or eligible spouse is eligible, regardless of the organizational affiliation or funding source of the staff members who come into contact with claimants who are veterans or eligible spouses at the service delivery location. In addition, upon referral to a qualified job training program, the priority of service requirement includes priority for enrollment in the program, as well as priority for participation in the full range of services available through the program.

b) One-Stop Career Center Services. Because One-Stop Career Centers offer various types of services including staff-assisted services as well as guidance and materials, State and local boards must immediately assess their current operations for compliance purposes and improvement opportunities, if they have not already done so.

c) National Programs. National programs that statutorily target certain segments of the population must ensure the implementation of the principles outlined in this guidance in order to assure that the dual intentions of Congress - service to targeted population(s) and priority of service to veterans and eligible spouses - are simultaneously accomplished.

d) Self-Service Tools. Any informational or service delivery Web site developed with funding from a qualified job training program or grant will be expected to provide information on priority of service for veterans and eligible spouses, and how to access assistance from any applicable program or grant via the nearest One Stop Career Center. It is important to note that self-service instructions will be expected to go beyond mention of or referral to Local Veterans' Employment Representatives and Disabled Veterans' Outreach Program specialists.

**ATTACHMENT B**

**Frequently Asked Questions and Answers Regarding Priority of Service**

For ease of reference, the questions and answers have been arranged according to the following broad categories:

- Definitions
- Point of Entry
- Technical Assistance and Guidance
- Monitoring
- Promising Practices
- Applicability to Existing Priorities
- Data Collection and Reporting
- Miscellaneous

For ease of tracking and reference, questions and answers have been numbered sequentially.

*Definitions*

Q1. For determining eligibility for priority of service, why does the Labor Department (USDOL) require covered program operators to use a relatively broad definition of "veteran" rather than the more narrow definition that has been in use for many years by State Agencies that administer the Jobs for Veterans State Grants and Wagner-Peyser State Grants?

A1. The USDOL is bound by the Jobs for Veterans Act (JVA) to use the definition of a "covered person" set forth in 38 U.S.C. 4215(a)(l)(A), and review of the legislative history indicated that the Congress intended that a broad definition of veteran be applied with regard to priority of service in programs subject to the JVA. The pre-existing statutory definition of a "veteran" that most closely conforms to the implied definition in the JVA is the definition that appears in Section 101 (2) of Title 38, U.S. Code, and that essentially is what the Final Rule sets forth.

Q2. To be considered an "eligible veteran," must an individual have to have served overseas, or in a combat zone?

A2. No, the statute does not limit eligibility on the basis of where a person served on active duty.

Q3. Must an individual have an "honorable" discharge in order to be considered an "eligible veteran?"

A3. No. Only a discharge clearly categorized as "dishonorable" would bar a veteran from eligibility for this benefit.

Q4. Why not develop a uniform definition of "veteran" for all USDOL-funded employment and training programs?

A4. The authorizing legislation for each program, as amended by subsequent statutes, limits the Department's authority to establish a uniform definition of "veteran." The Jobs for Veterans Act does not authorize the Department to establish a uniform definition of "veteran" for all programs.

Q5. Are there any time limits pertaining to re-marriage following the death of a veteran that affect the eligibility of a widow(er) to be considered a "covered person?"

A5. The priority of service statute does not include a disqualification clause pertaining to re-marriage by a widow or widower.

Q6. Among those eligible spouses whose eligibility is derived from a deceased veteran (widows or widowers), why do the Federal Regulations limit eligibility for priority of service to the two specific types of "eligible spouses" identified?

A6. The Jobs for Veterans Act is explicit in citing the two categories of widows or widowers who are considered to be "eligible spouses;" they are persons who were spouses of veterans who succumbed due to a service-connected disability or who succumbed while a total service-connected disability (meaning 100% disabled as rated by the Department of Veterans Affairs) was in existence whether or not that disability was the cause of death.

Q7. Some Federal employment and training programs typically operative in One Stop centers, e.g., the Jobs for Veterans State Grants and Wagner-Peyser funded programs, require that priority for veterans be delivered on a tiered basis, that is, service-connected disabled veterans rated 30% or more receive the highest priority, then other service-connected disabled veterans, and so on. Are the other USDOL-funded employment and training programs supposed to make such distinctions in their implementation of the priority of service requirements?

A7. No, the statute does not require, nor does the Department expect recipients to make such distinctions within the universe of veterans eligible spouses for priority of service.

*Point of Entry*

Q8. How will veterans and eligible spouses be identified in a self-registration system?

A8. Entities that provide services funded by USDOL programs covered by these regulations are required to have user-friendly processes by which individuals at the point of entry to the service system can identify themselves as veterans and eligible spouses eligible for priority of service. The USDOL will not prescribe how that is to be done. However, program operators are reminded that self-registration systems are not to require veterans to produce documents (e.g., a DD-214 Discharge Form) to verify their status at this stage, unless the point of entry is also the point at which program eligibility determination and registration or enrollment also takes place.

*Technical Assistance and Guidance*
Q9. Will the Veterans' Employment and Training Service (VETS) and the Employment and Training Administration (ETA) issue joint policy and/or implementation guidance on behalf of USDOL?
A9. The Federal Regulations at 20 CFR Part 1010 that became effective on January 19, 2009, articulate a considerable body of USDOL policy guidance. The USDOL VETS and ETA agencies have established a formal inter-agency workgroup to develop and issue implementation guidance and technical assistance regarding priority of service requirements and concepts.

*Monitoring*
Q10. Do recipients have administrative responsibilities related to the delivery of priority of service to veterans and eligible spouses in addition to requirements to promulgate policies and plans applicable to program operations at their own service delivery points and those of sub-recipients of USDOL funds?

A10. Yes, recipients of USDOL funds are required to implement effective internal controls to ensure that priority of service policies and procedures are carried out at all program service delivery points.

Q11. How will the "joint monitoring" by the USDOL VETS and ETA agencies required by the regulations be coordinated and implemented?

A11. Joint monitoring by the VETS and ETA has already begun, with VETS staff having been added to the teams carrying out the ETA-administered review and approval processes of State Plans for the coming year's WIA and Wagner-Peyser programs. The two agencies also are currently in discussions regarding the development of appropriate monitoring policies and procedures consistent with §1010.240. When established, these will be communicated to the ETA and VETS staff as well as to USDOL-funded program operators.

*Promising Practices*
Q12. Will USDOL provide examples of effective implementation of priority of service for veterans and eligible spouses at the program/local levels?

A12. The inter-agency workgroup is currently in the process of compiling descriptions of "best" or promising program models and practices, and will begin making them available to interested members of the public through various media.

Q13. Will the USDOL provide examples of state policies and/or procedures that could be used as a starting point for developing state guidance that may not have previously existed?

A13. The inter-agency workgroup is currently in the process of compiling applicable state policies and will disseminate them.

*Applicability of Veterans' Priority of Service to Existing Priorities*

Q14. Reportedly, some states and local program operators have interpreted the WIA requirement in Section 134(d)(4)(E) that adults and dislocated workers who are public assistance recipients and other low-income individuals should receive priority for WIA intensive and training services to mean that the priority for veterans and eligible spouses is secondary to that priority. Is that the correct interpretation of the statute?

A14. No, the priority of service requirement for veterans and other eligible persons is not secondary. A veteran or eligible spouse must meet the statutory eligibility requirements(s) applicable to the specific program from which services are sought. So, for those programs that also have statutory priorities or preferences pursuant to a Federal statute or regulation, the program service providers must coordinate providing priority of service to veterans and other eligible persons with the application of those other priorities, as prescribed in paragraphs (b)(2) and (b)(3) of Section 1010.31 of the regulations and as explained in Section 10 of TEGL No.10-09

For the WIA Adult Program, which has statutory targeting of public assistance recipients and other low-income individuals, program operators are to implement priority of service in the following order: (l) program-eligible veterans and eligible spouses who are public assistance recipients or who meet the income requirements for the area would receive the highest priority for the program; (2) program-eligible individuals who are not covered persons who are public assistance recipients or who meet the income requirements for the area would receive the second-highest priority for the program; and (3) veterans and eligible spouses not on public assistance or whose income exceeds the "low income" standards for the area would receive priority over any individuals with comparable eligibility who are not covered persons.

Q15. What if a covered person eligible for priority of service is not interested (or otherwise suited) in participating in any of the training or employability development programs funded by the program operator in a particular area--is that covered person entitled by the "priority of service" statute to be provided a training program customized for him or her?

A15. The question implies that the JVA might confer to veterans and eligible spouses an entitlement similar to the entitlement conferred to service-connected disabled veterans by Chapter 31 of Title 38 of the U.S. Code for vocational rehabilitation program participation. The Department does not believe that the Jobs for Veterans Act provides such a broad entitlement to veterans and eligible spouses in USDOL-funded programs. However, States and local Workforce Investment Boards are not precluded by any rules from extending that degree of priority to any segment of the covered person universe.

*Data Collection and Reporting*

Q16. What is the status of the Information Collection Request or ICR and associated reporting instructions?

A16. Those programs that served less than 1,000 veterans per year at the national level, on average, for the past three years are not required to report on covered entrants but are required by the ICR to adopt the definitions in the regulations for veterans and eligible spouses, when their reporting systems next come due for approval by the Office of Management and Budget (OMB). For five of the six programs that are required by the ICR to report on covered entrants, (WIA Adult, WIA Dislocated Worker, WIA National Emergency Grants, Trade Adjustment Assistance and Wagner-Peyser State Grants), the implementation of data collection and reporting on covered entrants was intended to be concurrent with the implementation of the proposed Workforce Investment Streamlined Performance Reporting System (WISPR). Since the implementation of WISPR has been postponed, the implementation of the data collection and reporting on covered entrants also has been delayed. ETA and VETS are currently conferring with OMB to identify next steps with regard to the implementation of streamlined reporting in general, and reporting on covered entrants in particular. At this time, reporting on covered entrants has been waived for PY 2009 for the five programs identified above. The sixth program required to report on covered entrants, the Senior Community Service Employment Program, is implementing that reporting for PY 2009. In the meantime, ETA and VETS may supplement the information that can be collected with currently available systems through other means such as sampling and on-site monitoring to help ensure that veterans and eligible spouses are receiving priority for publicly-funded workforce services.

*Miscellaneous*

Q17. Can the income of veterans (such as disability pension benefits or lump-sum payments at time of separation for unused leave) be disregarded by WIA grant recipients and sub-recipients during eligibility determinations, which might enable younger veterans who are entitled to priority of service to take advantage of the increased age limit in the WIA youth program (from 14-24, instead of 14-21) for the purpose of implementing the American Recovery and Reemployment Act?

A17. Yes. As explained in Section 1.a of Attachment A to TEGL No. 10-09, income earned while on active military duty and/or financial benefits received by veterans and eligible spouses under a variety of authorized programs cannot be included in calculations of income for USDOL-funded programs which have income ceilings as criteria either for program eligibility or targeting.

**ATTACHMENT C**

## Individual Record Data Elements
## Minimum Data Fields for Determining Priority of Service at the Initial Point of Entry

| No. | Data Element Name | Data Type/ Field Length | Data Element Definitions/Instructions | Code Value |
|---|---|---|---|---|
| 01 | Covered Entrant Identifier | AN 12 | Record the unique identifier used for the covered entrant (i.e. an assigned numeric ID other than an SSN). | XXXXXXXXXXXX |
| 02 | Covered Person Entry Date | DT 8 | Record the date on which the covered person first made contact with the workforce system, either at a physical location or through an electronic resource | YYYYMMDD |
| 03 | Date 45 Days Following Covered Person Entry Date | DT 8 | Record the date that falls 45 days following the Covered Person Entry Date. | YYYYMMDD |
| 04 | Covered Person Status | IN 1 | Record 1 if the entrant served in the active military, naval, or air service, and was discharged or released therefrom under conditions other than dishonorable.<br>Record 2 if the entrant is the spouse of any of the following individuals: (a) Any veteran who died of a service-connected disability; (b) Any veteran who has a total disability resulting from a service-connected disability; (c) Any veteran who died while a disability so evaluated was in existence; or (d) Any member of the Armed Forces serving on active duty who, at the time of the spouse's entry is listed, pursuant to section 556 of title 37 and regulations issued thereunder, by the Secretary of Defense in one or more of the following categories and has been so listed for a total of more than 90 days: (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power. | 1 = Veteran<br>2 = Eligible Spouse<br>3 = Not a Covered Person |
| 05 | Date of Birth | DT 8 | Record the covered entrant's date of birth. | YYYYMMDD |
| 06 | Gender | IN 1 | Record 1 if the covered entrant indicates that he is male.<br>Record 2 if the covered entrant indicates that she is female.<br>If the covered entrant does not self-identify gender, leave "blank" or record 0. | 1 = Male<br>2 = Female |
| 07 | Individual with a Disability | IN 1 | Record 1 if the covered entrant indicates that he/she has any "disability," as defined in Section 3(2)(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102). Under that definition, a "disability" is a physical or mental impairment that substantially limits one or more of the person's major life activities. (For definitions and examples of "physical or mental impairment" and "major life activities," see paragraphs (1) and (2) of the definition of the term "disability" in 29 CFR 37.4, the definition section of the WIA non-discrimination regulations.)<br>Record 2 if the covered entrant indicates that he/she does not have a disability that meets the definition.<br>If the covered entrant does not wish to disclose his/her disability status, leave "blank" or Record 0. | 1 = Yes<br>2 = No |
| 08 | Race: American Indian or Alaska Native | IN 1 | Record 1 if the covered entrant indicates that he/she is a person having origins in any of the original peoples of North America and South America (including Central America), and who maintains cultural identification through tribal affiliation or community recognition.<br>If the covered entrant does not self-identify his/her race as American Indian or Alaska Native, leave "blank" or Record 0. | 1 = Yes |

| | | | | |
|---|---|---|---|---|
| 09 | Race: Asian | IN 1 | Record 1 if the covered entrant indicates that he/she is a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent (e.g., India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan). This area includes, for example, Cambodia, China, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.<br>If the covered entrant does not self-identify his/her race as Asian, leave "blank" or Record 0. | 1 = Yes |
| 10 | Race: Black or African American | IN 1 | Record 1 if the covered entrant indicates that he/she is a person having origins in any of the black racial groups of Africa.<br>If the covered entrant does not self-identify his/her race as Black or African American, leave "blank" or Record 0. | 1 = Yes |
| 11 | Race: Hawaiian Native or other Pacific Islander | IN 1 | Record 1 if the covered entrant indicates that he/she is a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.<br>If the covered entrant does not self-identify his/her race as Hawaiian Native or Other Pacific Islander, leave "blank" or Record 0. | 1 = Yes |
| 12 | Race: White | IN 1 | Record 1 if the covered entrant indicates that he/she is a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.<br>If the covered entrant does not self-identify his/her race as White, leave "blank" or Record 0. | 1 = Yes |
| 13 | Ethnicity Hispanic/Latino | IN 1 | Record 1 if the covered entrant indicates that he/she is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture in origin, regardless of race.<br>Record 2 if the covered entrant indicates that he/she does not meet any of these conditions.<br>If the covered entrant does not wish to respond, leave "blank" or Record 0. | 1 = Yes<br>2 = No |
| 14 | State Code | AN 2 | Record the 2-letter FIPS alpha code of the state in which the entrant made contact with the workforce system. For example, the State of Alabama would be represented as "AL." | XX |
| 15 | ETA-Assigned Local Workforce Board/Statewide Code | IN 4 | If the covered entrant first made contact with the workforce system at a physical location, record the 4-digit ETA-assigned Local Board/Statewide code where the entrant first made contact with the workforce system.<br>If the covered entrant only received remote or virtual self-service or informational activities, Record 9999 to indicate "statewide/virtual office." Record 0 or leave "blank" if not known. | 0000 |
| 16 | Date of Participation | DT 8 | Record the date on which the covered entrant received a service, either at a physical location or through an electronic resource | YYYYMMDD |
| 17 | Date Received Staff Assisted Core Service | DT 8 | Record the date on which the individual received his/her first staff assisted core service (excluding self-service and informational activities).<br><br>Otherwise, leave "blank" if the individual did not receive staff assisted core services. | YYYYMMDD |

**ATTACHMENT D**

## Reporting Format for the Priority of Service Quarterly Aggregate Report

| ITEM | Current Quarter | Cumulative Four Quarters |
|---|---|---|
| 1. Covered Entrants Who Reached the End of the Entry Period[i] | | |
| 2. Covered Entrants Who Received a Service During the Entry Period [ii] | | |
| 3. Covered Entrants Who Received a Staff-Assisted Service During the Entry Period [iii] | | |

### Report Definitions

[i] ***Covered Entrants Who Reached the End of the Entry Period*** – This count includes all those ***covered entrants*** for whom the ***entry period*** ends within the respective current quarter and four quarter reporting periods. Classification as a ***covered entrant*** occurs at the earliest point that a ***covered person*** contacts the system in either a physical location (e.g., One-Stop Career Center or affiliate site) or remotely through electronic technologies. Designation as a ***covered entrant*** occurs prior to receipt of a service. The ***entry period*** is the span of time that begins on the ***covered person entry date*** and ends on the date 45 days following the ***covered person entry date.***

[ii] ***Covered Entrants Who Received a Service During the Entry Period*** – This count includes those ***covered entrants*** for whom the ***entry period*** ends within the respective current quarter and four quarter reporting periods AND for whom there is a ***date of participation*** during the ***entry period.*** A ***covered entrant*** who receives a service becomes a ***participant,*** that is, an individual who is determined eligible to participate in the program (to the extent the program has eligibility requirements) AND receives a service funded by the program in either a physical location (One-Stop Career Center or affiliate site) or remotely through electronic technologies.

[iii] ***Covered Entrants Who Received a Staff-Assisted Service During the Entry Period*** – This count includes those ***covered entrants*** for whom the ***entry period*** ends within the respective current quarter and four quarter reporting periods AND for whom the ***most recent date received one or more staff assisted services*** falls within the ***entry period.***