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## DEPARTMENT OF LABOR AND EMPLOYMENT

DIVISION OF EMPLOYMENT & TRAINING

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Category: Veterans
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 (USDOL)
Source: Federal
Revise/Replace: Policy Guidance Letter 04-17-V
Contact: State Veteran Program Coordinator
Distribution: All Directors, Managers: Workforce Regional Field Directors, Workforce Center Directors, Employment & Training Program and Administrative Staff to include: Disabled Veterans Program Specialist (DVOP), Local Veterans Employment Representative (LVER), and Employment Service (ES) professionals.
Colorado One-Stop System Policy Guidance Letter: 10-05-V
Date: March 22, 2010

### I. REFERENCE(S) :

Title 38, United States Code Section 101(2) (38U.S.C. 101(2)); 38 U.S.C., Chapters 41 and 42; 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 Information Technology Act of 2006, P.L. 109-461; Priority of Service Final Rule, 20 CFR Part 1010, Fed Reg. 78132 December 19, 2008. Training and Employment Guidance Letter 10-09 (November 10, 2009); Veterans' Program Letter 07-09 (November 10, 2009).

### II. PURPOSE:

To provide information to assist and support Local Workforce Regions and Local Workforce Investment Boards and other grantees that receives funds from the U.S. Department of Labor/Colorado Department of Labor and Employment to operate qualified job training programs in the implementation of the Priority of Service for Veterans and

for Veterans and Eligible Spouses Final Rule.

### **III. BACKGROUND:**

On November 7, 2002, the Jobs for State Veterans Act (JVSG), Public Law (P.L.) 107-288 was signed into law. One provision of the JVSG, 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 JVSG, ETA has 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.

### **IV: 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 U.S. Department of Labor 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 Farm-worker Jobs 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.

## **V. 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:
  - Missing in action;
  - Captured in line of duty by a hostile force; or
  - Forcibly detained or interned in line of duty by a foreign government or

c. Any veteran who has a total disability resulting from a service-connected disability, as evaluated by the Department of Veterans Affairs

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

#### **VI. 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 local program operators do not have the discretion to establish further priorities within the overall priority established by the regulations. In addition, local program operators do not have the authority to "hold" or prevent veterans from registration into workforce development programs regardless whether the local program operators are currently accepting registrations or not. The Jobs for Veterans Act reserves that authority to the Secretary of Labor.

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.

#### **VII. 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
- 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 includes reception through a One Stop Career Center or Workforce 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.

#### **VIII. 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:

a) The individual who self-identifies as a veteran or eligible 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 resources to one individual over another. In contrast, the commitment of program staff 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.

#### **IX. 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.

**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.

**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:

- Enrollment in the program
- Receipt of priority for enrollment
- 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:

- Statutory
- Discretionary

The following two subsections provide guidance on how priority of service interacts with these two types of priorities.

**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

**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.

**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.

**X. MONITORING:** As stated in the Final Rule, USDOL 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 at the State level will be performed by the Colorado Department of Labor & Employment (CDLE), in conjunction with the

United States Department of Labor/Veterans' Employment and Training Service (USDOL/VETS).

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 required that local regions review and revise their local service delivery operations to ensure that their internal policies and procedures result in compliance with the priority of service requirements.

**XI. ACTION REQUIRED:** Program operators are directed to develop policies and procedures for delivery of priority of service to veterans and eligible spouses. 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.

The Priority of Service Final Rule regulations require that program operators implement policies and procedures that:

- Identify veterans and eligible spouses at point of entry (physical locations, web sites, and other virtual service delivery resources)
- Advise veterans and eligible spouse of their entitlement to priority of service
- Makes veterans and eligible spouses aware of the full array of employment, training and placement services available
- Identifies applicable eligibility requirements for programs and services

The Workforce Region's success in achieving priority of service for veterans within each affected program will be measured by comparing the percentage of veterans who applied to the program and were accepted versus the non-vets who applied to the same program and were accepted.

Additionally, regions/local program operators are required, in accordance with, **Priority of Service Final Rule 20 CFR Part 1010, TEGL 10-09, and VPL 07-09 to forward their written policies and procedures to the State Veteran Program Coordinator by June 30, 2010.** The State Veteran Program Coordinator in collaboration the Field Operations Office will review region policies and procedures to ensure they comply with the Priority of Service Final Rule regulations.

The State Veteran Program Coordinator will notify regions no later than **September 30, 2010**, that their local polices and procedures are in compliance with regulatory requirements.

Local policies and procedures regarding veterans' priority of service may be approved by local Workforce Investment Boards, after receiving favorable feedback from the State Veteran Program Coordinator.

**XII. IMPLEMENTATION DATE:**

Immediately

**XIII. INQUIRIES:**

Please direct inquiries to Brian Gault, 303-318-8821 or [brian.gault@state.co.us](mailto:brian.gault@state.co.us)

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