

# DIRECTIVE

## WORKFORCE SERVICES

Number: WSD08-10

Date: June 29, 2009

69:184:cs:12720

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: FINAL RULE ON PRIORITY OF SERVICE FOR VETERANS AND  
ELIGIBLE SPOUSES

### EXECUTIVE SUMMARY:

#### Purpose:

As prescribed in section 2(a)(1) of the Jobs for Veterans Act (JVA), the Veterans' Employment and Training Service (VETS) of the U.S. Department of Labor (DOL) has issued final rule (Title 20 CFR Part 1010) articulating how priority of service for veterans and eligible spouses is to be applied across all existing and new DOL qualified job training programs. The purpose of this directive is to provide guidance on how these federal regulations implementing priority of service are to be applied to all workforce preparation, development or delivery programs or services that are directly funded, in whole or in part, by DOL.

#### Scope:

This directive applies to all Local Workforce Investment Areas and all other recipients that expend Title I Workforce Investment Act funds.

#### Effective Date:

This directive is effective on the date of issuance.

### REFERENCES:

- Veterans' Benefits, Health Care, and Information Technology Act of 2006 (P.L. 109-461)
- Jobs for Veterans Act of 2002 (P.L. 107-288)
- Workforce Investment Act (WIA) of 1998; Title I: Workforce Investment System
- Title 20 Code of Federal Regulations (CFR) Part 1010, Articulating Priority of Service for Covered Persons
- Training and Employment Guidance Letter (TEGL) 22-04, Serving Military Service Members and Military Spouses under the WIA Dislocated Worker Formula Grant

*EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Special requests for services, aids, and/or special formats need to be made by calling (916) 654-8055 (Voice). TTY users, please call the California Relay Service at 711.*

- TEGL 5-03, Implementing the Veterans' Priority Provisions of the "Jobs for Veterans Act" (September 16, 2003)

#### **STATE-IMPOSED REQUIREMENTS:**

This directive contains no State-imposed requirements.

#### **FILING INSTRUCTIONS:**

This directive finalizes Workforce Services Draft Directive WSDD-23, issued for comment on June 3, 2009. The Workforce Services Division received no comments during the draft comment period. Retain this directive until further notice.

#### **BACKGROUND:**

On November 7, 2002, former President Bush signed the Jobs for Veterans Act (JVA) to revise and improve employment, training, and placement services furnished to veterans. JVA Section 2(a) amended 38 U.S.C. 4215(a) by mandating priority of service for veterans (and eligible spouses) "who otherwise meet the eligibility requirements for participation" in DOL programs. Since the passage of the JVA, the DOL has provided policy guidance to the workforce investment system regarding the implementation of priority of service, including Training and Employment Guidance Letters (TEGL) 22-04 and TEGL 05-03 which applied to a majority of the job training programs impacted by priority of service. The Veterans' Benefits, Health Care, and Information Technology Act of 2006 (P.L. 109-461) followed-up on the JVA by requiring DOL to issue regulations governing the application of priority of service.

These regulations have now been issued by the DOL's Veterans' Employment and Training Service (VETS) in a final rule articulating priority of service for veterans and eligible spouses. The new regulations became effective January 19, 2009, and apply to "any workforce preparation, development or delivery program or service that is directly funded, in whole or in part, by the Department of Labor," as provided by the JVA.

#### **POLICY AND PROCEDURES:**

There are 20 DOL funded workforce programs that are covered under JVA Section 4215. For many of the DOL affected programs, there should be little difficulty in implementing these requirements. However, in a few cases the veteran's priority will compete with existing statutory priorities that favor certain population groups. This includes the Workforce Investment Act (WIA) funded Adult and Youth programs. The veterans' priority of service requirement does not change basic eligibility criteria for individual programs as an individual must first qualify for a specific program before priority of service is applied. Therefore, it is important to review specific program requirements for the individual program.

In addition, Local boards must ensure that veterans are afforded priority for DOL-funded employment and training services, if they meet the existing eligibility requirements. Veterans' priority is required under federal law; however, it is not intended to displace existing eligibility requirements for WIA. An individual must first qualify for WIA before a priority of service can be applied. Local boards must use the following guidelines when determining when a veteran or their spouse can receive priority for DOL-funded services:

- If the existing provisions are mandatory, a veteran or eligible spouse must meet both the existing provisions and the veterans' provisions to receive priority.
- If the existing provisions are optional, a veteran or eligible spouse receives priority

TEGL 5-03 provides specific guidance on (a) the interaction of the veteran's priority with existing program requirements that target specific groups, and (b) makes note of the fact that local programs are not required to change their allocations among services to reserve funds for veterans but (c) are required to ensure that eligible veteran workers are given priority over non-veterans for all available services. Additional guidance and detailed examples for a specific program is available at [Jobs for Veterans Act Q&A Guidance](#) Web page.

### **Identifying and Informing Covered Persons**

**Requirement:** 20 CFR Part 1010.300 requires all recipients of funds for qualified job training programs to “implement processes to identify covered persons who physically access service delivery points or who access virtual service delivery programs or Web sites in order to provide covered persons with timely and useful information on priority of service at the point of entry”.

**Procedure:** 20 CFR Part 1010.300(c)(1) requires all recipients of funds for qualified job training programs (any program or service for workforce preparation, development, or delivery that is directly funded in whole or in part by DOL) to identify covered persons at the point of entry to programs and/or services so they can take full advantage of priority of service. Point of entry includes physical locations, such as One-Stop Career Centers, as well as Web sites and other virtual service delivery resources. The regulations require all recipients to implement policies to ensure that covered persons are aware of their entitlement to priority of service, the full array of programs and services available to them, and any applicable eligibility requirements for those programs and/or services. The processes for identifying covered persons are not required to verify the status of an individual as a veteran or eligible spouse at the point of entry unless they immediately undergo eligibility determination and enrollment in a program.

**Definitions:** At 20 CFR Part 1010.110 the regulations adopt and apply the statutory term covered person, which includes eligible spouses as previously defined by statute and veteran, as defined by the regulations. The regulations specify that the definition for veteran at 38 U.S.C. 101(2) applies across all qualified job training programs for the purpose of priority of service. That definition includes two key criteria: Service in the active military, naval, or air service, and discharge under conditions other than dishonorable. This regulation affirms previously established definitions for the purposes of applying veterans priority of service. The regulations further specify that active service includes full-time duty in the National Guard or a Reserve component, other than full-time duty for training purposes. The definition of veteran specified by the regulations for priority of service is functionally equivalent to the definition enacted by the WIA and codified at 29 U.S.C. 2801(49)(A).

## **Implementing Priority of Service**

**Requirement:** 20 CFR Subpart C section 1010.310 states that recipients “must ensure that priority of service is implemented throughout the full array of services provided to covered persons by the qualified job training program. Three categories of qualified job training programs affect the application of priority of service: universal access, discretionary targeting and statutory targeting. To obtain priority, a covered person must meet the statutory eligibility requirement(s) applicable to the specific program from which services are sought.”

**Procedure:** 20 CFR Subpart C section 1010.310 specifies that priority of service means the right of eligible covered persons to take precedence over eligible non-covered persons in obtaining services. The regulations further specify that taking precedence may mean that the covered person receives access to the service or resource earlier in time than the non-covered person or, if the service or resource is limited, the covered person receives access to the service or resource instead of or before the non-covered person. The regulations specify how priority of service is to be applied across three different types of qualified job training programs including universal access programs that do not target specific groups, discretionary targeting programs that focus on certain groups but are not mandated to serve target group members before other eligible individuals, and statutory targeting programs that are mandated by federal law to provide priority or preference to certain groups. The priorities are as follows:

Universal access programs (do not target specific groups):

- first priority: covered persons
- second priority: non-covered persons

Discretionary targeting programs:

- first priority: covered persons (whether within discretionary targeting or not)
- second priority: non-covered persons within discretionary targeting
- third priority: non-covered persons outside discretionary targeting

Statutory targeting programs:

- first priority: covered persons who meet the statutory priorities or spending requirements
- second priority: non-covered persons who meet the statutory priorities or spending requirements
- third priority: covered persons outside the statutory priorities or spending requirements
- fourth priority: non-covered persons outside the statutory priorities or spending requirements

## **Monitoring Compliance with Priority of Service**

**Requirement:** 20 CFR Subpart B section 1010.240 indicates that DOL will monitor recipients of funds for qualified job training programs to ensure that covered persons are made aware of and provided priority of service. Monitoring will be performed jointly by the VETS and the DOL agency responsible for administering the program. If monitoring identifies non-compliance with priority of service, the results of the monitoring: (1) will be handled in accord with each program’s compliance review procedures and, (2) may lead to imposition of a corrective action plan.

Procedure: Local Boards shall review their procedures to assure that recipients of funds for qualified job training programs capture and report required data on veterans priority of service.

### **Data Collection and Reporting on Priority of Service**

Requirement: 20 CFR Subpart C sections 1010.330(a)(1)(i) and (ii) describe the two broad categories of information that recipients of funds for qualified job training programs must collect. First, for certain specified qualified job training programs, “information must be collected on covered persons from the point of entry” to include “individual record data for all covered entrants”. Second, for all qualified job training programs, “information must be collected on covered and non-covered persons who receive services”. 20 CFR Subpart C section 1010.330(c)(1)(i-iv) specifies the information to be collected which includes, but is not limited to: “the covered and non-covered person status of all persons receiving services; The types of services provided to covered and non-covered persons; the dates that services were received by covered and non-covered persons; and the employment outcomes experienced by covered and non-covered persons receiving services”.

Procedure: The regulations refer to covered persons at the point of entry as covered entrants. Those qualified job training programs that have served an average of 1,000 or more covered persons per year over the three most recent years of operation are required to collect and report data on covered entrants. 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. The Information Collection Request (ICR) accompanying the regulations provides that those programs that meet the size threshold will be required to: (a) implement reporting on covered entrants; and, (b) apply the new definitions for veterans and eligible spouses in their existing reporting on covered participants. The ICR further provides that programs below the size threshold will be required to apply the new definitions for veterans and eligible spouses in their existing reporting on covered participants.

### **ACTION:**

Please bring this directive to the attention of all relevant parties.

### **INQUIRIES:**

If you have any questions, please contact Kent Kjelstrom at (916) 654-0858.

/S/ BOB HERMSMEIER  
Chief  
Workforce Services Division

Attachment is available on the internet:

[Federal Register 20 CFR Part 1010 Priority of Service for Covered Persons: Final Rule](#)