

NASHVILLE CAREER ADVANCEMENT CENTER

DATE: December 1, 2009

POLICY TITLE: VETERANS' PRIORITY PREFERENCE PROVISIONS FOR THE JOBS FOR VETERANS ACT:

PURPOSE

As prescribed in section 2(a) (1) of the Jobs for Veterans Act (JVA), the Veterans' Employment and Training Services (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 policy 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 provided by NCAC, or its sub recipient contractors, which are directly funded, in whole or in part, by DOL.

BACKGROUND

The Jobs for Veterans Act, enacted into Public Law 107–288 on November 7, 2002 made a number of amendments to encourage Veterans access to services within an integrated one-stop service delivery system. A new section of the law established a priority of service requirement applicable to all Department of Labor programs offering employment and training related services. (P.L. 107–288 Section 4215 (b)). Changes were also made to veterans programs established under the Wagner Peyser Act.

New reporting requirements to account for representation of veterans in programs in proportion to incidence of their representation in the labor market were also enacted. The Secretary of Labor was directed to evaluate whether veterans and other covered persons are receiving priority of services and are being fully served. (P.L. 107–288 Section 4215 (c)).

This document provides policy for NCAC administered program regarding these requirements.

EFFECTIVE DATE

This policy is effective on the date of issuance and shall remain in continuous effect.

POLICY

There are twenty 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 requirements 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. It is required that NCAC 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 priority of service can be applied. The following guidelines shall be used 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 10-09 provides specific guidance on (a) the interaction of the veteran's priority with the 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.

The priority of service regulations refer to those veterans and spouses who are eligible for priority of services as "covered persons" and refer to those not eligible for priority of service as "non-covered persons." For purposes of this policy, the term 'veterans priority of service' means that a covered person shall be given priority over non-veterans for the receipt of employment, training, and placement services provided under that program, notwithstanding any other provision of law.

Veterans and other covered persons must first meet the WIA program's eligibility requirements. A covered person who is determined eligible for WIA services shall receive priority over non-veterans, except for the priority of service established by law such as for the WIA adult program. Within WIA Title I-B, the Adult program has a priority provision established by law, and therefore is considered a mandatory priority. Veterans are to be served within the context of giving priority to public assistance and low-income persons for intensive and training services. Other targeting provisions for any WIA Title I funded programs, whether established by the Governor or by regulation (but not by law) are considered discretionary or optional priorities. In these cases, veterans would receive priority in advance of the opportunities and services provided to the "targeted" population group.

The veterans' priority is not intended to displace the core function of the WIA program. The exact manner in which the veteran's priority will be applied may vary depending upon the construct of the program and the services offered. In a sequential service delivery model, when services are limited due to available funding, priority of services should be applied. For example, if there was only sufficient money to provide services to one individual and a veteran is in the pool, the veteran must receive priority.

Identifying and Informing a Covered Person

Requirement: 20 CFR Part 1010.300 establishes that a process is implemented to identify covered persons who physically access service delivery points or who access virtual service delivery programs or Websites in order to provide covered persons with timely and useful information on priority of service at the point of entry.

Procedure: This requirement provides 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.

A "covered person" is one of the following:

Veteran who is an individual who served at least one day in the active military, naval, or air service, and who was discharged or released from such service under conditions other than dishonorable, as specified in 38 U.S.C. 101 (2); 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 the National Guard personnel who are mobilized by State rather than Federal authorities.

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. A veteran who died of a service-connected disability;
- b. Any member of the Armed Forces serving on active duty who, at time of spouse's application for 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
 - 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. 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 definition includes two key criteria: Service in the active military, naval, or air service, and discharge under conditions other than dishonorable. 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 specifies that priority of service means the right of eligible covered persons take precedence over eligible non-covered persons in obtaining services. The regulation 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 targeted group members before other eligible individuals, and statutory targeting programs that are mandated by federal law to provide priority 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 occur in accordance with the NCAC Monitoring Manual describing the frequency of review, review instruments and identifies actions for non-compliance with priority of service.

Procedure: the NCAC Monitoring Manual(s) shall periodically be reviewed and updated to ensure compliance with the goals and objectives of the manual, and specifically for compliance with the 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; TEGL 10-09, "Priority of Service for Veterans and Eligible Spouses"; as amended.

Data Collection and Reporting on Priority of Service

Requirement: 20 CFR Subpart C section 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; and the employment outcomes experienced by covered and non-covered persons receiving services".

Procedure: Programs identified as meeting the threshold of service levels shall be required to (a) implement reporting on covered entrants; (b) apply the new definitions for veterans and eligible spouses in their existing reporting system on covered participants. However, until such time as the State provided data collection system is modified to meet ICR reporting criteria, NCAC shall adopt on-site monitoring procedures to help ensure that veterans and eligible spouses are receiving priority for publicly funded workforce services.