

MassWorkforce Issuance

Workforce Issuance No. 12-67

☒ **Policy** ☐ **Information**

To: Chief Elected Officials
Workforce Investment Board Chairs
Workforce Investment Board Directors
Title I Administrators
Career Center Directors
Title I Fiscal Officers
DCS Operations Managers

cc: WIA State Partners

From: Alice Sweeney, Acting Director
Department of Career Services

Date: December 20, 2012

Subject: **Implementing Veterans' Priority of Service - REVISED**

Purpose: To provide policy guidance to Local Workforce Investment Boards (LWIBs), One-Stop Career Center Operators and other local workforce investment partners and providers of federally-funded employment and training program services with regard to implementing Veterans' priority of service. Please note: this policy replaces MassWorkforce Policy No. 09-02.

Background: The Jobs for Veterans Act (JVA), Public Law 107-288 (38 USC 4215) requires priority of services to all "covered persons" (Veterans and certain spouses of Veterans) for the receipt of federal employment and training funds. Training and Employment Guidance Letter (TEGL) No. 05-03, Implementing the Veterans' Priority Provisions of the "Jobs for Veterans Act" (9/16/03) (see link below) provided general guidance on the scope of the Veterans priority statute and its effect on current employment and training programs.

http://ows.doleta.gov/dmstree/tegl/tegl2k3/tegl_05-03.htm

Additionally, on December 19, 2008 the U.S. Department of Labor (USDOL) published the regulations (Final Rule - 20CFR part 1010) in the Federal Register for the implementation of Veterans' priority of service for all applicable USDOL programs. The regulations require that the provision of priority of service begin

at the *point of entry* for each USDOL program, whether the point of entry is a physical location or a web site or other virtual service. Click on the following link to access the Final Rule:

<http://edocket.access.gpo.gov/2008/pdf/E8-30166.pdf>

The Commonwealth is committed to assuring the provision of Veterans' priority of service with regard to federal employment and training programs and services accessed through the state's One-Stop Career Center System. This issuance describes a policy framework for local WIBs, career center operators and other local service providers to follow in order to develop and implement local policies and procedures consistent with the Veterans' priority of service requirement of the Jobs for Veterans Act.

Policy:

Local WIBs, One-Stop Career Center Operators and other local providers of Federally-funded employment and training programs/services will assure the provision of Veterans' priority of service for all covered persons in a manner consistent with the requirements of the Jobs for Veterans Act and the guidance provided herein. Assurance will also be made that Veterans' priority of service will be implemented and provided *at the point of entry* for each federally-funded employment and training program.

Eligibility for Priority of Service

Per TEGL No. 10-09, <http://wdr.doleta.gov/directives/attach/TEGL/TEGL10-09.pdf>, 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 services, 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 Veteran 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”.

WIA Adult and Dislocated Worker Program

Eligibility requirements for the WIA Adult and Dislocated Worker program are not changed by the Veterans’ priority. The Jobs for Veterans Act provides that priority of service applies only to those covered persons who meet the WIA Adult and Dislocated Worker programs’ eligibility requirements. TEGL No. 5-03 provides specific guidance on: (a) the interaction of the Veterans’ 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 covered persons are given priority over non-Veterans for all available services.

Dislocated workers who are covered persons will receive priority over non-Veterans. Covered persons who are not dislocated workers can not be served with dislocated worker funds. In the WIA Adult and Dislocated Workers Program, the current law requires that first priority for intensive and training services be given to public assistance recipients and low-income individuals when adult funds allocated to a local area are limited.

In regard to covered persons, the priority of provision of services would be established as follows: Available funds would not change. First to be served would be public assistance recipients and low-income individuals who are also covered persons. The second group to be served would be public assistance recipients and low-income non-Veterans. Among participants who are not public assistance recipients or low-income individuals, covered persons will receive priority over non-Veterans.

Wagner-Peyser Employment Services

Wagner-Peyser program providers (in their capacity as part of the United States Employment Service – USES) have historically provided Veterans' priority of service in the public labor exchange system. This priority includes, but is not limited to: registration; counseling; referral to supportive services, and job development. Extensive changes in the provision of Wagner-Peyser labor exchange services are not anticipated.

Universal access to services remains unaffected as there are no program eligibility requirements for Wagner-Peyser Act funded labor exchange services.

WIA Title I Youth Program

Eligibility for the WIA Youth program is not affected by the Veterans' priority. The Jobs for Veterans Act provides priority service only to covered persons who meet the program's eligibility requirements.

The priority will not result in extensive changes, but changes will be necessary. It is likely that program operators may need to do things such as design registration forms and other program materials to capture covered persons' status if this is not already being done, and modify ways of doing business in order to carry out the intent of the law.

TEGL No. 5-03 (a) provides specific guidance on the interaction of the Veterans' 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 covered person workers are given priority over non-Veterans for all available services.

Generally, WIA youth funds are available to serve low-income youth age 14 to 21 with one or more barriers to employment. The priority provision found at WIA sec. 129 (c)(4) requires, with limited exceptions, that program operators ensure that at least 30 percent of local area funds be used to serve out-of-school youth. The Veterans' priority does not change these requirements. In providing services to both in-school and out-of-school youth, priority should be given to any covered persons who qualify under the WIA eligibility requirements. However, a person's status as a covered person does not permit the program to avoid the 30 percent out-of-school youth requirement (that is, a program may not exceed 70 percent of expenditures for in-school youth on account of Veteran status).

TAA/TRA Program

Eligibility requirements for the TAA/TRA program are not changed by the Veterans' priority. The Jobs for Veterans Act provides that priority of service applies only to those covered persons who meet TAA /TRA eligibility requirements. TEGL No. 5-03 provides specific guidance on the interaction of the Veterans' priority with existing program requirements that target specific groups, but are required to ensure that eligible covered persons are given priority over non-Veterans for all services available under the program.

TAA/TRA customers who are covered persons will receive priority over non-Veterans. Covered persons who are not dislocated workers can not be served with TAA funds or receive TRA benefits.

NOTES:

1. No Waiver for Priority of Service

Waiver of Veterans' priority of service is not applicable to any federally-funded employment and training program and the priority can not be superseded or negated by any state or local statute, regulation, order or policy (including any locally imposed residency requirement).

2. Unemployment Insurance Related to Priority of Service

Veterans' priority of service is not applicable to the Unemployment Insurance program.

3. National Guard and Reserves

The Jobs for Veterans Act specifies that National Guard and Reserve personnel who served in active duty and who were released with other than a dishonorable discharge would qualify as Veterans for purposes of the priority of service requirement.

Action

Required: Please assure that all appropriate staff, including all LVER and DVOP staff are knowledgeable of the content of this issuance. Local WIBs, One-Stop Career Center Operators and other local providers of federally-funded employment and training programs should review all policies and procedures to assure compliance with the Veterans' priority of service requirements, including the assurance of priority of service requirements at each point of entry for all applicable employment and training programs.

Effective: Immediately

Inquiries: Please email all questions to PolicyQA@detma.org. Also, indicate Issuance number and description.