

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)(1)(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 X. of VPL 07-09.

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: (1) 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 VPL 07-09, 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.