

**Nevada Department of Employment, Training and Rehabilitation
(DETR)
Workforce Innovation and Opportunity Act (WIOA)
State Compliance Policy (SCP)**

Policy Number: 1.18

Originating Office: DETR; Workforce Investment **Innovation** Support Services (WISS)

Subject: Serving Veterans and Priority of Service to Veterans

Issued: NEW; replacing WIA State Compliance Policy 1.18; **Ratified XX-2023**

Purpose: To provide Local Workforce Development Boards (LWDBs), Chief Elected Officials (CEOs) and American Job Centers (AJC) of Nevada (One-Stop Career Center Operators) with the Workforce Innovation and Opportunity Act (WIOA) requirements for Priority of Service to Veterans.

State Imposed Requirements: This directive contains some state-imposed requirements. These requirements are printed in **bold, italic type**.

Authorities/References: Workforce Innovation and Opportunity Act P.L. 113-128; 20 CFR § 680.650-680.660; 20 CFR 1010, TEGL 22-04, TEGL 10-09, TEGL **3-15 19-16**, TEGL 4-16, **TEGL 22-04, Change 1**, Title 38 United States Code (U.S.C.), Jobs for Veterans Act (JVA) of 2002, Public Law(P.L.) 107-288, SCP 1.6, **SCP 1.8, SCP 1.17 and SCP 2.1.**

ACTION REQUIRED:

Upon issuance, bring this guidance to the attention of all WIOA service providers, LWDB members and any other concerned parties. Any LWDB's policies, procedures, and or contracts affected by this guidance are required to be updated accordingly.

Background:

On November 7, 2002, the Jobs for Veterans Act (JVA), Public Law (P. L.) 107-288 was signed into law. One provision of the JVA, 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. 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. Veterans and eligible spouses, including widows and widowers as defined in the statute and regulations, are eligible for 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. The priority of service regulations refers 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.”

A veteran or eligible spouse still must meet each WIOA program’s eligibility criteria to receive services under this employment and training program.

The purpose of these processes is to ensure that veterans and eligible spouses are aware of:

- (1) their entitlement to priority of service;
- (2) the full array of employment, training, and placement services, including referral’s to partnering programs, available under priority of service; and
- (3) any applicable eligibility requirements for those programs and/or services.

It is important to note that state and local program operators do not have the discretion to establish further priorities within the overall priority established by the regulations. The Jobs for Veterans Act reserves that authority to the Secretary of Labor and it was not exercised in the current regulations.

Policy and Procedure: TEGL 19-16

Veterans and Adult Priority

~~Veterans and eligible spouses continue to receive priority of service for all DOL-funded job training programs, which include WIOA programs. However, as described in TEGL 10-09, when programs are statutorily required to provide priority for a particular group of individuals, such as the WIOA priority described above, priority must be provided in the following order:~~

~~(i) First, to veterans and eligible spouses who are also included in the groups given statutory priority for WIOA adult formula funds. This means that veterans and eligible spouses who are also recipients of public assistance, other low income individuals, or individuals who are basic skills deficient would receive first priority for services provided with WIOA adult formula funds.~~

~~(ii) Second, to non-covered persons (that is, individuals who are not veterans or eligible spouses) who are included in the groups given priority for WIOA adult formula funds.~~

~~(iii) Third, to veterans and eligible spouses who are not included in WIOA’s priority groups.~~

~~(iv) Last, to non-covered persons outside the groups given priority under WIOA.~~

~~Veterans and eligible spouses continue to receive priority of service for all DOL-funded job training programs, which include WIOA programs. However, as described in TEGL 10-09, when programs are statutorily required to provide priority for a particular group of individuals, such as the WIOA priority for adult funds described above, priority must be provided in the order described~~

below. A veteran must meet each program's eligibility criteria to receive services under the respective employment and training program. For income-based eligibility determinations and for determining priority of service, military pay or allowances paid while on active duty or paid by the Department of Veterans Affairs (VA) for vocational rehabilitation, disability payments, or related VA-funded programs are not to be considered as income, in accordance with 38 U.S.C. 4213 and 20 CFR § 683.230.

Priority must be provided in the following order:

- i. First, to veterans and eligible spouses who are also included in the groups given statutory priority for WIOA Adult formula funding. This means that veterans and eligible spouses who are also recipients of public assistance, other low-income individuals, or individuals who are basic skills deficient would receive first priority for services with WIOA Adult formula funds for individualized career services and training services.
- ii. Second, to non-covered persons (that is, individuals who are not veterans or eligible spouses) who are included in the groups given priority for WIOA adult formula funds.
- iii. Third, to veterans and eligible spouses who are not included in WIOA's priority groups.
- iv. Fourth, priority populations established by the Governor and/or Local WDB.
- v. Last, to non-covered persons outside the groups given priority under WIOA.

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 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.

Note: When past income is an eligibility determinant for Federal employment or training programs, any amounts received as military pay or allowances by any person who served on active duty, and certain other specified benefits must be disregarded for the veteran and for other individuals for whom those amounts would normally be applied in making an eligibility determination. Military earnings are not to be included when calculating income for veterans or transitioning service members for this priority, in accordance with 38 U.S.C. 4213.

Additionally, the WIOA Final Rule at 20 CFR § 680.230, require coordinating WIOA funded training with "other grant assistance", such as Federal Pell Grants. Some service providers have interpreted these provisions to mean that veterans or spouses who are eligible for the GI Bill or other forms of VA funded education or training are required to coordinate their entitlement to those benefits with their eligibility for WIOA funded training. Some have further interpreted the coordination requirement to mean that the VA funded training 11 entitlement must be exhausted

before the veteran or eligible spouse can be enrolled in WIOA funded training. However, VA benefits for education and training services do not constitute “other grant assistance” under WIOA’s eligibility requirements. Therefore, eligibility for VA benefits for education or training services do not preclude a veteran or the veteran’s eligible spouse from receiving WIOA funded services, including training funds. Similarly, WIOA program operators may not require veterans or spouses to exhaust their entitlement to VA funded training benefits prior to allowing them to enroll in WIOA funded training.

Service Delivery: WIOA Sec 121(b)(1), 134(d) and TEGL 4-16

WIOA establishes a number of required partners in the one-stop delivery system.

Under WIOA, partner programs and entities that are jointly responsible for workforce and economic development, educational, and other human resource programs collaborate to create a seamless customer-focused one-stop delivery system that integrates service delivery across all programs and enhances access to the programs' services. Emphasis should be placed on local policies rich in partnering referrals to ensure veterans and their eligible spouses are aware of the full array of employment, training, and placement services available in each location. With the new focus under WIOA on serving low-income individuals who face barriers to employment, including veterans, this is an opportunity for human service providers and advocates to engage workforce programs to improve the services available to their common customers. (WIOA Sec. 134(d)(iv)) Beginning in Program Year (PY) 2016, Veterans Employment and Training Services (VETS) require the grantees serving homeless veterans to enroll all participants in the public workforce system through the local AJC while these participants are receiving services through VETS’ homeless veteran’s program grantees. This is to create a sustainable partnership in which grantees understand each other’s services and participants’ employment needs are met. (TEGL 4-16)

Eligibility:

WIOA Program Eligibility can be found in State Compliance Policy 1.6, and 2.1 and as indicated below;

General Eligibility as in Age (WIOA Sec. 3(2), Employment Authorization, Selective Service Registration (WIOA Sec. 189)

WIOA Adult Program: WIOA Sec. 3(2), 20 CFR § 680.120, 20 CFR § 680.130, 20 CFR § 680.210,

WIOA Dislocated Worker Program: WIOA Sec. 3(15), 20 CFR § 680.120, 20 CFR § 680.130, 20 CFR § 680.210, 20 CFR § 680.660

WIOA Displaced Homemaker: WIOA Sec. 3(16), 20 CFR § 680.120, 20 CFR § 680.600, 20 CFR § 680.630

WIOA Youth Out of School: WIOA Sec. 129 and 20 CFR § 681

Career Services: WIOA Sec. 134(c)(2), 20 CFR § 680.120-680.130

Training Services: WIOA Sec. 134(c)(3), 20 CFR § 680.210

Priority and Special Populations: WIOA Sec. 134(c)(3)(E); 20 CFR § 680.600; 20 CFR § 680.640; 20 CFR § 680.650

Veteran, as defined under WIOA Sec. 3(63)(A) and 38 U.S.C. 101, receive priority of service in

all Department of Labor-funded training programs under 38 U.S.C. 4215 and described in 20 CFR Part 1010. (20 CFR § 680.650)

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). (TEGL 10-09)

The term “recently separated veteran” means any veteran who applies for participation under this Act within 48 months after the discharge or release from active military, naval, or air service. (WIOA sec. 3(63)(B))

WIOA Adult Program and Priority

For income-based eligibility determinations, amounts paid while on active duty or paid by the Department of Veterans Affairs (VA) for vocational rehabilitation, disability payments, or related VA-funded programs are not to be considered as income, in accordance with 38 U.S.C. 4213 and 20 CFR § 683.230 of this chapter. This applies when determining if a person is a “low-income individual” for eligibility purposes (for example, in the WIOA youth, or NFJP programs). It also applies when income is used as a factor when a local area provides priority of service for “low-income individuals” with Title I WIOA funds. (20 CFR § 680.600 and § 680.650, TEGL ~~3-15~~ 19-16, TEGL 10-09 Attachment A for a complete list)

Military Spouses: TEGL 22-04, Change 1

The Department has previously issued guidance on permissible ways to apply this authority with regard to military spouses. As outlined in TEGL No. 22-04, a military spouse who leaves his/her job to follow his/her spouse to a new duty assignment can be served with WIA Dislocated Worker formula grant funds in certain circumstances. When the spouse is unable to continue an employment relationship due to the service member’s permanent change of military station, or the military spouse loses employment as a result of the spouse’s discharge from the military, then the cessation of employment can be considered to meet the termination component of the WIA definition of dislocated worker (WIA Section 101(9)(A)(i). As provided in TEGL No. 22-04, military spouses in such circumstances must still be determined to be “unlikely to return to a previous industry or occupation” in order to qualify as a dislocated worker.

This policy guidance further clarifies that the spouse’s cessation of employment, due to the service member’s permanent change of military station or his/her discharge from the military, can also be considered to meet the “unlikely to return to a previous industry or occupation” criterion of the WIA definition of dislocated worker outlined in Sec. 101(9)(A)(iii). This portion of the definition of a dislocated worker recognizes the breadth of job types and considers whether the individual is likely to return to either his/her prior industry or (not “and”) occupation. Furthermore, the phrase

specifically uses the term “unlikely” to return; thus, the standard for determining the likelihood of return is not absolute, but rather a matter of judgment based on relevant circumstances. In the majority of cases, the circumstances in which military spouses are required to leave a job/occupation as a result of the military member’s transfer do not position the spouse to return immediately to his/her previous occupation or industry, particularly at the same level for the following reasons:

- Spouses are generally not resuming employment with the same employer.
- Even if a spouse resumes employment with the same employer, the employment is in a new location, and occupations/jobs will generally not be the same structurally or organizationally as in the prior location.
- When military spouses do get jobs in their new locations, it is likely, as new employees, that they will start at lower levels of seniority than the levels of their positions in their prior locations.
- There is frequently a gap in employment as spouses make the move and search for new employment, which may lessen their likelihood of returning to the same level of occupation or type of job.

20 CFR § 680.630(b)-(d)

(b) Displaced homemakers also may qualify for career and training services with adult funds under Title I if the requirements of this part are met (see §§ 680.120 and 680.600).

(c) Displaced homemakers also may be served in statewide employment and training projects conducted with reserve funds for innovative programs for displaced homemakers, as described in § 682.210(c) of this chapter.

(d) The definition of displaced homemaker includes the dependent spouse of a member of the Armed Forces on active duty (as defined in sec. 101(d)(1) of title 10, United States Code) and whose family income is significantly reduced because of a deployment, a call or order to active duty under a provision of law referred to in sec. 101(a)(13)(B) of title 10, United State Code, a permanent change of station, or the service-connected death or disability of the member.

WIOA Dislocated Worker Program

Dislocated Worker funds under Title I can help separating service members to enter or reenter the civilian labor force.

Eligibility as a Dislocated Worker must be consistent with the statutory definition in WIOA Sec. 3(15).

Service members exiting the military, including, but not limited to, recipients of Unemployment Compensation for Ex-Military members (UCX), generally qualify as dislocated workers. (TEGL ~~3-15~~ 19-16, TEGL 22-04, Change 1)

20 CFR § 680.660

If the separating service member is separating from the Armed Forces with a discharge that is anything other than dishonorable, the separating service member qualifies for dislocated worker activities based on the following criteria:

(a) The separating service member has received a notice of separation, a DD–214[Member 4] from

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the Department of Defense, or other documentation showing a separation or imminent separation from the Armed Forces to satisfy the termination or layoff part of the dislocated worker eligibility criteria in WIOA Sec. 3(15)(A)(i);

(b) The separating service member qualifies for the dislocated worker eligibility criteria on eligibility for or exhaustion of unemployment compensation in WIOA Sec. 3(15)(A)(ii)(I) or (II); and,

(c) As a separating service member, the individual meets the dislocated worker eligibility criteria that the individual is unlikely to return to a previous industry or occupation in WIOA Sec. 3(15)(A)(iii).

TEGL ~~3-15~~ 19-16

It is appropriate to provide career services to separating service members who will be imminently separating from the military, provided that their discharge will be anything other than dishonorable. Lastly, ETA policy generally dictates that a separating service member meets the dislocated worker requirement that an individual is unlikely to return to his or her previous industry or occupation.

WIOA expands the definition of dislocated workers to include military spouses who have lost employment as a direct result of a relocation to accommodate a permanent change in duty station of the spouse.

WIOA Youth Out of School

Reference WIOA Sec. 129 and 20 CFR § 681.210 for program eligibility requirements.

Definitions

Eligible Spouse (of Veteran) TEGL 10-09:

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 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 (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.

Veteran: 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)

Veteran with Significant Barrier to Employment (SBE): Is a term used in the Jobs for Veterans State Grant (JVSG). When people present with any of the following criteria, a mandatory referral to the nearest Job Connect office is required in order to register in the state MIS and track progress through workforce partnerships.

- Veterans between the age of 18-24
- Veterans with service-connected disabilities (entitled to compensation from the Veteran Administration (VA) or was discharged or released from active duty for a service connected disability)
- The Homeless Veterans' Reintegration Program (HVRP) is authorized under 38 U.S.C. 2021, as added by Section 5 of Public Law 107-95, the Homeless Veterans Comprehensive Assistance Act of 2001. Homelessness is defined in the McKinney-Vent Homeless Assistance Act (b) of Section 103. The purpose of the HVRP grant is to provide services to assist in reintegrating homeless veterans into meaningful employment within the labor force and to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans. (TEGL 04-16)
- The Homeless Female Veterans and Veterans with Families Program (HFVWWF) is authorized under 38 U.S.C. 2021A, as added by Section 202(a) of Public Law 111-275, the Veterans' Benefits Act of 2010. The purpose of grants funded under HFVWWF is to provide job training, counseling, placement services, and childcare services to expedite the reintegration of homeless women veterans and homeless veterans with children into the labor force. (TEGL 04-16)
- The Incarcerated Veterans Transition Program (IVTP) is authorized under Title 38 U.S.C. 2023, as added by Section 5 of Public Law 107-95. The purpose of the IVTP grant is likewise to provide referral and counseling services to assist veterans who are at risk of homelessness as they transition from institutional living. (TEGL 04-16)
- Currently experiencing low-income levels as they relate to the Lower Living Standard Income Level (LLSIL)
- Lacking a high school diploma or equivalent certificate.
- Recently separated service member within the last three years who at any point in the previous twelve months has been unemployed for 27 or more weeks.
- A member of the Armed Forces who is wounded, ill or injured and receiving treatment in a military treatment facility or warrior transition unit.
- A spouse or caregiver (as defined in Title 38 U.S.C. 1720G) of an active-duty service member or a service member in the process of being separated who sustained injuries while on active duty that necessitates the soldiers' separation from active duty.

Local Board Policy Requirements: TEGL 10-09, TEGL ~~3-15~~ 19-16

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.

Local Boards must have written policy and procedures and have these available and maintained at each service delivery point for public access describing, at a minimum the following;

- How this priority will be obtained in the local area at the applicants point of entry.
- How the local area will ensure that veterans and eligible spouses will be made aware of their entitlement to priority of service, the full array of employment, training, and placement services available under the priority and in each location, including referrals to other available appropriate programs including ~~Job Connect~~ **EmployNV Career Hub** JVSG-DVOP services (SBE).
- How the board will monitor the local service delivery operations to ensure that their internal policies and procedures result in compliance with priority of service for veterans (TEGL ~~3-15~~ **19-16**).
- How the above populations can be eligible for each WIOA program. This should include all eligibility documentation requirements for the participant case file.
- How the written policy will be updated as necessary and available for on-site public access.

Reference SCP 1.6 Eligibility for WIOA Adult and Dislocated Worker programs, SCP 1.17 Documenting Veteran Status and SCP 1.8 WIOA Adult Programs, Career and Training Services Design and Data and Performance Desk Reference at <https://owinn.nv.gov/GWDB/Policies/WIOA-StateCompliancePolicies/> <http://detr.state.nv.us/workforce-investment-pages/workforceinvestment.htm> for program definition, required eligibility documents, file content, data entry requirements and priority for WIOA Funds.