

State Policy

Workforce Innovation and Opportunity Act (WIOA)

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	Programs and Services
	Effective date
	<pending>
	Supersedes
	Priority Populations and Priority of Service (effective date December 19, 2016)

Priority of Service: WIOA Title IB and Title III Programs and JVSG Program

REFERENCE

Federal and state laws, regulations, rules, and other guidance and documentation relied upon for the development of this policy are cited in footnotes.

BACKGROUND¹

The key purpose of WIOA Title IB is to increase access to and opportunities for individuals to receive the employment, education, training, and support services necessary to succeed in the labor market, with a particular focus on individuals with barriers to employment, including individuals with disabilities and out-of-school youth. In addition, NDOL and local areas, as recipient and subrecipients of US Department of Labor funding for the provision of qualified job training programs, are subject to Federal priority-of-service laws and regulations regarding priority of service for Veterans and eligible spouses of Veterans.²

CHANGES

Once finalized, this draft policy will supersede and cancel the State's policy titled *Priority Populations and Priority of Service* (effective date December 19, 2016) and will establish the following material changes regarding priority of service.

¹ WIOA Sec. 102(b)(2)(C)(vi); 20 CFR §§ 675.100(a) and 680.660; TEGLs 19-16, 10-09, 22-04; VPL 07-09

² 38 USC §§ 101 and 4215; TEGL 22-04

The Action Section has been revised to clarify responsibilities of:

1. local boards regarding priority of service requirements for Title I adult, dislocated worker, and youth programs; and
2. NDOL-administered programs:
 - a. Title III Wagner-Peyser Employment Service (Wagner-Peyser); and
 - b. Jobs for Veterans State Grant (JVSG).

ACTION

Questions and comments on this policy may be submitted by email to the Nebraska Department of Labor at ndol.wioa_policy@nebraska.gov.

Title IB programs

Each local board must establish policies and procedures that address implementation of priority-of-service for Title I adult, dislocated worker, and youth programs. The local board's policies and procedures must, at a minimum:

1. describe how the local board ensures that:
 - a. Title IB program staff perform outreach to the potential adult, dislocated worker, and youth program participants; and
 - b. potential and enrolled adult, dislocated worker, and youth program participants are aware of their entitlement to priority of service;
2. describe how potential adult, dislocated worker, and youth program participants are:
 - a. identified at the point of entry into the local one-stop delivery system to ensure the provision of timely and useful information on priority of service, whether individuals access services in person or through technology; and
 - b. given an opportunity to take full advantage of priority of service;
3. clearly define processes or steps Title IB program staff must take to ensure priority of service for potential and enrolled adult, dislocated worker, and youth program participants.

In addition, each local board must:

- ensure its WIOA local plan addresses the requirements of Section I of this policy;
- maintain and implement local area priority-of-service policies and procedures at all one-stop centers in its local area; and

- make local area priority-of-service policies and procedures readily available to the general public in accessible format (posted on local area websites in screen-readable format, available in printed format, prominently posted in each one-stop center, etc.).

NDOL-administered programs

Administrators of Wagner-Peyser and JVSG programs must ensure that the programs adhere to the requirements established under Federal laws and regulations, as well as this policy.

POLICY

This policy establishes priority of service requirements for WIOA Title IB adult, dislocated worker, and youth programs and Wagner-Peyser and JVSG programs.

This policy has three sections and one appendix.

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Section I. WIOA Title IB priority of service

(a) Adult program priority of service

Title IB programs must prioritize delivery of career and training services to Veterans, eligible spouses of Veterans, and non-Veterans. Services to adult program participants must be provided in the following order:³

1. First, to Veterans and eligible spouses of Veterans who are:
 - a. recipients of public assistance;
 - b. low-income; or
 - c. basic-skills deficient;
2. Second, to individuals who are not Veterans and eligible spouses of Veterans but are:
 - a. recipients of public assistance;
 - b. low- income; or
 - c. basic-skills deficient

³ WIOA Sec. 134(c)(3)(E); TEGLs 19-16 and 10-09; VPL 07-09

3. Third, to Veterans and eligible spouses of Veterans who are not:
 - a. recipients of public assistance;
 - b. low- income; or
 - c. basic-skills deficient
4. Last, to persons who are non-Veterans and spouses of non-Veterans:
 - a. recipients of public assistance;
 - b. low- income; or
 - c. basic-skills deficient.

When past income is an eligibility determinant for qualified programs for Veterans and eligible spouses of Veterans, the following income and benefits must be disregarded:⁴

- any amounts received as military pay or allowances by any person who served on active duty;
- any amounts received by a Veteran or eligible spouses of Veterans, under 38 USC:
 - Chapter 30 for wartime disability or death compensation;
 - Chapter 30 for peacetime disability or death compensation;
 - Chapter 13 for service-connected deaths;
 - Chapter 30 for educational assistance;
 - Chapter 31 for training and rehabilitation for Veterans with service-connected disabilities;
 - Chapter 32 for Post-Vietnam Era Veterans' education assistance; and
 - Chapter 35 for survivors' and dependents' educational assistance;
- any amounts received by a Veteran or eligible spouse of a Veteran under 10 USC Chapter 106 for educational assistance for members of the selected reserve; and
- any amounts received by transitioning service members.

(b) Dislocated worker program priority of service

Services to potential dislocated worker program participants must be provided as follows.⁵

⁴ 38 USC § 4213

⁵ TEGL 22-04

- First, individuals must meet eligibility criteria described in the State's program eligibility policy for the dislocated worker program.⁶
- Second, if individuals meet the dislocated worker eligibility criteria defined in the State's program eligibility policy *and* are Veterans or eligible spouses of Veterans, the individuals must be given priority over dislocated workers who are non-Veterans or spouses of non-Veterans.

(c) Youth program priority of service

(1) Low-income eligibility requirement

As described in the State's youth program policy,⁷ WIOA Title IB requires that all youth program participants be low-income individuals.⁸ However, up to five percent of a local area's youth program participants enrolled during a given program year (in-school (ISY) and out-of-school (OSY) combined) do not need to meet the low-income eligibility requirement.⁹

(2) OSY expenditure priority

As described in the State's youth program policy, local youth programs must expend at least 75 percent of youth funds allocated for a given program year on the provision of services to OSY.¹⁰

(3) Work experience priority

As described in the State's youth program policy, local boards must ensure that their local youth programs expend at least 20 percent of youth program funds allocated for a given program year on paid and unpaid work experiences.¹¹

(d) Compliance and monitoring of Title IB priority of service

Local boards must ensure compliance with priority-of-service requirements described above in Sections I(a) through I(c). Monitoring must include a review of local area policies and procedures required above under the Action Section, as well as local area Title IB service provider policies and procedures for implementation of priority-of-service requirements.

Local area compliance with Title IB priority-of-service requirements will be evaluated by the State Monitoring Unit during monitoring.

⁶ The State's policy manual is accessible at <https://dol.nebraska.gov/ReemploymentServices/Training/WIOA/Policies>.

⁷ Ibid.

⁸ WIOA Sec. 129(a)(1)(B)(iii); 20 CFR § 681.250(a)-(b)

⁹ WIOA Sec. 129(a)(3)(A); 20 CFR § 681.250(c)

¹⁰ 20 CFR § 681.410

¹¹ WIOA Sec. 129(c)(4); 20 CFR § 681.590; TEGLs 8-15 and 21-16

Section II. WIOA Title III Wagner-Peyser Employment Service priority of service

Veterans and eligible spouses of Veterans who are Wagner-Peyser program participants must receive priority of service over all other Wagner-Peyser program participants.¹²

Section III. Jobs for Veterans State Grant (JVSG) program priority of service

Disabled Veterans Outreach Program (DVOP) Specialists must provide career services to eligible Veterans and eligible spouses of Veterans. DVOP specialists must prioritize service delivery to:

- special disabled Veterans;
- other disabled Veterans; and
- other eligible Veterans who are economically or educationally disadvantaged.

Further, DVOP Specialists must limit their service-delivery activities to providing services to eligible Veterans and eligible spouses of Veterans who meet the definition of an individual with a Significant Barrier to Employment (SBE) or are Veterans ages 18 through 24.¹³

DISCLAIMER

This policy is based on NDOL's reading of the applicable statutes, regulations, rules and guidance released by the U.S. Government and the State of Nebraska. This policy is subject to change as revised or additional statutes, regulations, rules and guidance are issued.

¹² TEGL 10-09; VPL 07-09

¹³ VPL 04-14. In recent years, Veterans ages 18-24 have experienced a higher rate of unemployment than other Veterans as well as non-Veterans of the same age. The Department of Labor is anticipating an increase in the number of Veterans 18-24 transitioning from active military service. This group of Veterans may also possess limited civilian work history, which can make transitioning to the civilian labor force more difficult. Based on these facts, the Secretary has determined Veterans between the ages of 18 and 24 may need and benefit from the intensive services provided by a DVOP specialist.

APPENDIX I. Definitions

PURPOSE. Definitions in this appendix are provided as supplemental information that supports the provisions of the policy. The terms and phrases defined in this appendix should be read and understood in the context in which they are used in the policy and not as stand-alone information independent of that context.

1. basic skills deficient

An individual who is *basic skills deficient* is an individual that:¹⁴

- has English reading or writing skills or computing skills at or below the 8th grade level on a generally accepted standardized test; or
- is unable to compute or solve problems, or read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society.

2. disabled Veteran

Disabled Veteran means:¹⁵

- a Veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary; or
- a person who was discharged or released from active duty because of a service-connected disability.

3. eligible spouse

Eligible spouse means the spouse of any of the following:¹⁶

- any Veteran who died of a service-connected disability;
- 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 ninety (90) days:
 - missing in action;
 - captured in the line of duty by a hostile force; or
 - forcibly detained or interned in the line of duty by a foreign government or power;
- any Veteran who has a total disability resulting from a service-connected disability, as evaluated by the Department of Veterans Affairs; or

¹⁴ WIOA Sec. 3(5)

¹⁵ 38 USC § 4211(3)

¹⁶ TEGL 10-09

- any Veteran who died while a disability was in existence.

Note. A spouse whose eligibility is derived from a living Veteran or service member 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 spouse's eligibility would be lost upon divorce from the Veteran or service member.

4. eligible Veteran

Eligible Veteran means a person who:¹⁷

- served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge;
- was discharged or released from active duty because of a service-connected disability;
- as a member of a reserve component under an order to active duty served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge; or
- was discharged or released from active duty by reason of a sole survivorship discharge

5. homeless

An individual is *homeless* when they meet one or more of the criteria described in Table 1.¹⁸

Table 1. Criteria for determining an individual is homeless¹⁹

Criteria for determining an individual is homeless	
1.	an individual or family who lacks a fixed, regular, and adequate nighttime residence;
2.	an individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
3.	an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);
4.	an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she temporarily resided;
5.	an individual or family who: <ul style="list-style-type: none"> a. will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, as evidenced by: <ul style="list-style-type: none"> i. a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;

¹⁷ 38 USC § 4211(4)

¹⁸ 42 USC 11302(a)

¹⁹ WIOA Sec. 3(36)

Criteria for determining an individual is homeless	
ii.	the individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or
	credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause; and
b.	has no subsequent residence identified; and
c.	lacks the resources or support networks needed to obtain other permanent housing;
6. unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who:	
a.	have experienced a long term period without living independently in permanent housing;
b.	have experienced persistent instability as measured by frequent moves over such period; and
c.	can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.

6. low-income individual

A *low-income individual* is one who meets one or more of the criteria described in Table 2.

Table 2. Criteria for determining an individual is low-income²⁰

Low-income Eligibility Criteria	
1. The individual currently receives or is a member of a family currently receiving assistance through:	
a.	Supplemental Nutrition Assistance Program;
b.	Temporary Assistance for Needy Families Program;
c.	Supplemental Security Income through the Social Security Administration; or
d.	state or local income-based public assistance.
2. In the past 6 months, the individual has received or is a member of a family that has received assistance through:	
a.	Supplemental Nutrition Assistance Program;
b.	Temporary Assistance for Needy Families Program;
c.	Supplemental Security Income through the Social Security Administration; or
d.	state or local income-based public assistance.
3. The individual is in a family whose total family income does not exceed the higher of: ²¹	
a.	the current Federally-established poverty line; or
b.	70 percent of the Federally established lower living standard income level (LLSIL).
4. The individual is a homeless individual who: ²²	
a.	lacks a fixed, regular, and adequate nighttime residence; and is
i.	sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
ii.	living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;
iii.	living in an emergency or transitional shelter; or
iv.	awaiting foster care placement;

²⁰ WIOA Sec. 3(36)

²¹ The term “lower living standard income level” (LLSIL) means the income level determined annually by the Secretary of Labor based on the most recent lower living family budget issued by the Secretary. Refer to NDOL’s current issuance(s) for the current Federally established poverty line or LLSIL.

²² 42 USC §§ 14043e-2(6) and 11434a(2)

Low-income Eligibility Criteria	
b.	has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
c.	is a migratory youth who is living in circumstances described in Sections 4.a. and 4.b. of this Table 2;
d.	lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or training stations, or similar settings; or
e.	is a runaway.
5.	The individual receives or is eligible to receive a free or reduced-price lunch under the Richard B. Russell National School Lunch Act, unless the individual is a recipient of a secondary school diploma or its recognized equivalent.
6.	The individual is a foster child on behalf of whom state or local government payments are made.
7.	The individual is an person with a disability whose income meets the income requirement of Sections 3.a. or 3.b. of this Table 2.
8.	The individual lives in a high-poverty area.

7. offender

Offender means an individual who is charged with or convicted of any criminal offense.²³

8. qualified program

Qualified program means any program or service for workforce preparation, development, or delivery that is directly funded, in whole or in part, by the US Department of Labor.²⁴

9. recently separated service member

Recently separated service member means any Veteran within the three-year period beginning on the date of Veteran's discharge or release from active duty.²⁵

10. receives public assistance

Receives public assistance means assistance provided through programs like:

- Temporary Assistance for Needy Families (TANF);
- Supplemental Nutrition Assistance Program (SNAP);
- Supplemental Security Income through the Social Security Administration; or
- state or local income-based public assistance.

²³ WIOA Sec. 225(e)(2)

²⁴ 38 U.S.C. 4215(a)

²⁵ 38 USC § 4211(6)

11. significant barrier to employment

An eligible Veteran or eligible spouse of a Veteran is determined to have a *significant barrier to employment* (SBE) if the individual attests to belonging to at least one of the following categories of criteria:²⁶

- a special disabled or disabled Veteran;
- homeless;
- a recently separated service member who at any point in the previous 12 months has been unemployed for 27 or more weeks in the previous 12 months;
- an offender who is currently incarcerated or who has been released from incarceration;
- lacking a high school diploma or its equivalent; or
- low-income.

12. special disabled Veteran

Special disabled Veteran means:²⁷ a Veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary for a disability rated at 30 percent or more; or 10 or 20 percent in the case of a Veteran who has been determined under 38 USC § 3106 to have a serious employment handicap; or a person who was discharged or released from active duty because of service-connected disability.

13. Veteran

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.²⁸ *Active service* includes full-time Federal service in the National Guard or a Reserve component.

Active service does not include:

- full-time duty performed strictly for training purposes (i.e., weekend or annual training); or
- full-time active duty performed by National Guard personnel who are mobilized by state rather than Federal authorities.²⁹

²⁶ VPL 03-14 Change 1

²⁷ 38 USC § 4211(1)

²⁸ TEGL 10-09

²⁹ State mobilizations usually occur in response to events such as natural disasters.