

**State Policy**

**Workforce Innovation and Opportunity Act (WIOA)**

Nebraska Department of Labor (NDOL) Office of Employment and Training 550 South 16 <sup>th</sup> Street Lincoln, NE 68508 402.471.2022 <a href="mailto:ndol.wioa_policy@nebraska.gov">ndol.wioa_policy@nebraska.gov</a>	<table border="1"> <tr> <td data-bbox="808 373 1166 436"> </td> <td data-bbox="1166 373 1433 436"> <b>Policy category</b>                      Programs and Services                 </td> </tr> <tr> <td data-bbox="808 436 1166 499"> </td> <td data-bbox="1166 436 1433 499"> <b>Effective date</b>                      December 19, 2016                 </td> </tr> <tr> <td data-bbox="808 499 1166 556"> </td> <td data-bbox="1166 499 1433 556"> <b>Supersedes</b>                      Not applicable                 </td> </tr> </table>		<b>Policy category</b> Programs and Services		<b>Effective date</b> December 19, 2016		<b>Supersedes</b> Not applicable
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**Priority Populations and Priority of Service**

**REFERENCE**

Workforce Innovation and Opportunity Act (WIOA) Sections 3, 134, 188, and 225; 10 USC Chapter 106; 20 CFR §§ 681.250 and 681.410; 38 USC Chapters 13, 20, 21, 32 and 35 and §§ 4211 and 4213; 42 USC §§ 11302, 11434, and 14043; TEGL 08-15, 03-15, 10-09, and 22-04; VPLs 04-14, 03-14 Change 1, and 07-09

**BACKGROUND**

Each state must develop policies for the delivery of priority of service to priority populations by state workforce agencies, local workforce development boards (local boards), and one-stop center staff.<sup>1</sup>

Definitions of key terms are provided in [APPENDIX I. Definitions](#).

**ACTION**

This policy will be final after a 10-day review period. Questions and comments must be submitted in writing to the WIOA policy mailbox at [ndol.wioa\\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

Each local board must establish a policy (or policies) that addresses the provisions of this policy.<sup>2</sup> The local board’s policy (or policies) must, at a minimum:

1. describe how the local board and one-stop center staff will perform outreach to the priority population groups to ensure that the groups are aware of their entitlement to priority of service;

<sup>1</sup> TEGL 10-09; VPL 07-09

<sup>2</sup> Ibid.

2. describe how individuals from the priority population groups are:
  - a. identified at the point of entry into the local workforce delivery system, including one-stops, to ensure the provision of timely and useful information on priority of service, including individuals who:
    - i. physically access service delivery points; and
    - ii. access service delivery through technology;
  - b. given an opportunity to take full advantage of priority of service;
3. be clear on the process or “steps” the local board and one-stop partner staff must take to ensure priority of service for individuals from the priority population groups; and
4. describe the review and analysis process the local board will conduct to ensure priority of service.

In addition, each local board:

5. must ensure its local area WIOA plan addresses the requirements of this policy;
6. should maintain the local area priority of service policy (or policies) at all workforce service delivery points; and
7. should make the local area priority of service policy (or policies) easily accessible to the general public (posted on the website, identified in published materials, etc.).

## POLICY

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This policy establishes priority requirements for the use of WIOA Title IB (Adult, Dislocated Worker, and Youth programs), Title III (Wagner-Peyser Employment Services program), and Jobs for Veterans State Grant (JVSG) funds allocated to NDOL for:

- adult employment and training activities;
- dislocated worker employment and training activities;
- youth workforce investment activities;
- Wagner-Peyser employment services; and
- Veterans’ employment and training services.

This policy is organized in eight (8) sections and has one (1) appendix.

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## Section I. Priority of Service

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Priority of service means certain priority population groups are entitled to precedence for service delivery over non-priority population groups.

## Section II. Priority Requirement for Use of WIOA Title IB Adult Funds

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One-stop partner staff must give priority for career services, training, and employment services to Veterans, eligible spouses of Veterans, and non-Veterans who are:<sup>3</sup>

- recipients of public assistance;
- other low-income individuals; or
- individuals who are basic-skills deficient.

**NOTE:** The definition for “low-income individual” is provided in [APPENDIX I](#).

Services to eligible WIOA Adult Program participants must be provided in the following order:<sup>4</sup>

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. 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 not:
  - a. recipients of public assistance;
  - b. low-income; or
  - c. basic-skills deficient.

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<sup>3</sup> WIOA Sec. 134(c)(3)(E). Under WIA, priority was required to be given to public assistance recipients and low-income individuals when states and local areas determined that allocated funds were limited. Under WIOA, priority must be provided regardless of the level of funds.

<sup>4</sup> TEGL 10-09; VPL 07-09

**NOTE:** When past income is an eligibility determinant for Federal employment or training programs for Veterans and eligible spouses of Veterans, the following must be disregarded:<sup>5</sup>

- 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.

### **Section III. Priority Requirement for Use of WIOA Title IB Dislocated Worker Funds**

Services to eligible WIOA Dislocated Worker Program participants must be provided in the following order:<sup>6</sup>

1. First, the individual must meet the eligibility criteria described in WIOA Section 3(15) (see the current NDOL policy on dislocated worker eligibility); and
2. Second, if the individual meets the dislocated worker eligibility criteria *and* is a Veteran or eligible spouse of a Veteran, the individual must be given priority over dislocated workers who are non-Veterans.

#### **(a) Serving Separating Services Members and Military Spouses**

Service members exiting the military, including recipients of Unemployment Compensation for Ex-Military members (UCX), generally qualify as dislocated workers.<sup>7</sup> Military spouses of service members exiting the military may also qualify as dislocated workers.<sup>8</sup>

To determine the eligibility of a service member exiting the military or a military spouse of a service member exiting the military, please refer to the current NDOL policy on dislocated worker eligibility.

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<sup>5</sup> 38 USC § 4213

<sup>6</sup> TEGL 22-04

<sup>7</sup> Ibid.

<sup>8</sup> TEGL 03-15

## Section IV. Priority Requirement for Use of WIOA Title IB Youth Funds

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WIOA prioritizes expenditures and enrollment of individuals in the WIOA Youth Program:<sup>9</sup>

- at least seventy-five (75) percent of Youth program funds must be spent to provide services to OSY;<sup>10</sup> and
- all ISY must be low-income individuals, except as described directly below in Section IV(a) of this policy.

### (a) Low-income Eligibility Exception for Youth

Up to five (5) percent of all youth (ISY and OSY) enrolled during a given program year do not need to meet the low-income requirement for eligibility.<sup>11</sup>

**EXAMPLE:** A local area enrolled 200 youth and 100 of those youth were OSY who were not required to meet the low-income criteria, 50 were OSY who were required to meet the low-income criteria, and 50 were ISY.

In this example, the 50 OSY required to be low income and the 50 ISY are the only youth factored into the 5 percent low-income exception calculation.

Therefore, in this example 5 of the 100 youth who ordinarily would be required to be low-income do not have to meet the low-income criteria based on the low-income exception.

## Section V. Priority Requirement for Use of WIOA Title III Wagner-Peyser Employment Services Funds

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Veterans and eligible spouses of Veterans must receive priority of service over all other Wagner-Peyser Employment Services program participants.<sup>12</sup>

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<sup>9</sup> 20 CFR § 681.250(a)-(b)

<sup>10</sup> 20 CFR § 681.410; Local areas must spend a minimum of 75 percent of youth funds on OSY, with the exception that local area administrative expenditures are not a part of the 75 percent OSY minimum expenditure calculation.

<sup>11</sup> TEGL 8-15

<sup>12</sup> TEGL 10-09; VPL 07-09

## Section VI. Priority Requirement for Use of Jobs for Veterans State Grant (JVSG) Funds

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

- special disabled Veterans;<sup>13</sup>
- other disabled Veterans;<sup>14</sup> and
- and other eligible Veterans who are economically or educationally disadvantaged.<sup>15</sup>

Further, DVOP specialists must limit their activities to providing services to eligible Veterans and eligible spouses who:<sup>16</sup>

- meet the definition of an individual with a Significant Barrier to Employment (SBE);<sup>17</sup> or
- are Veterans ages eighteen (18) through twenty-four (24).

## Section VII. Local Area Compliance and Monitoring

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Compliance with the priority requirements of this policy must be monitored by the local board or its designated local area monitor in accordance with its local area policy on monitoring. Monitoring must include a review of the process(es) set forth in the local area policy on ensuring priority of service.

Local area compliance will be reviewed as part of routine program monitoring conducted by the NDOL State Monitor.

## Section VIII. Nondiscrimination<sup>18</sup>

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All programs and activities funded or financially assisted in whole or in part under WIOA must comply with all laws on the prohibition against discrimination on the basis of age, disability, or sex, or on the basis of race, color, national origin, or political affiliation or belief.

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<sup>13</sup> See definition [11. special disabled veteran](#)

<sup>14</sup> See definition [2. disabled veteran](#)

<sup>15</sup> See definition [4. eligible Veteran](#); The Secretary of Labor does not interpret the statutes to require priority to be given in the order that these groups are listed. Instead, DVOP specialists must provide the same priority to serving special disabled, other disabled and other Veterans prioritized by the Secretary, including those the Secretary has identified as having Significant Barriers to Employment.

<sup>16</sup> 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.

<sup>17</sup> See definition [X. significant barrier to employment](#)

<sup>18</sup> WIOA Sec. 188 *et seq.*

Participation in programs and activities funded under WIOA must be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.

## **DISCLAIMER**

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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.

## APPENDIX I. Definitions

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### 1. basic skills deficient

An individual who is *basic skills deficient* is an individual that:<sup>19</sup>

- has English reading or writing skills or computing skills at or below the 8<sup>th</sup> 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:<sup>20</sup>

- 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 of a Veteran

*Eligible spouse of a Veteran* means the spouse of any of the following:<sup>21</sup>

- 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
- 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.

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<sup>19</sup> WIOA Sec. 3(5)

<sup>20</sup> 38 USC § 4211(3)

<sup>21</sup> TEGL 10-09

#### 4. eligible Veteran

*Eligible Veteran* means a person who:<sup>22</sup>

- served on active duty for a period of more than one-hundred eighty (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 the individual meets one (1) or more of the criteria described in Table 1.<sup>23</sup>

*Table 1. Criteria for determining an individual is homeless*<sup>24</sup>

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"><li>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"><li>i. a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;</li><li>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</li><li>iii. 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</li></ul></li><li>b. has no subsequent residence identified; and</li><li>c. lacks the resources or support networks needed to obtain other permanent housing;</li></ul>

<sup>22</sup> 38 USC § 4211(4)

<sup>23</sup> 42 USC 11302(a)

<sup>24</sup> WIOA Sec. 3(36)

Criteria for determining an individual is homeless
6. unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who: <ol style="list-style-type: none"> <li>a. have experienced a long term period without living independently in permanent housing;</li> <li>b. have experienced persistent instability as measured by frequent moves over such period; and</li> <li>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.</li> </ol>

## 6. low-income individual

A *low-income individual* is an individual who meets one (1) or more of the criteria described in Table 2.

*Table 2. Criteria for determining an individual is low-income<sup>25</sup>*

Low-income Eligibility Criteria
1. The individual currently receives or is a member of a family currently receiving assistance through: <ol style="list-style-type: none"> <li>a. Supplemental Nutrition Assistance Program;</li> <li>b. Temporary Assistance for Needy Families Program;</li> <li>c. Supplemental Security Income through the Social Security Administration; or</li> <li>d. state or local income-based public assistance.</li> </ol>
2. In the past six (6) months, the individual has received or is a member of a family that has received assistance through: <ol style="list-style-type: none"> <li>a. Supplemental Nutrition Assistance Program;</li> <li>b. Temporary Assistance for Needy Families Program;</li> <li>c. Supplemental Security Income through the Social Security Administration; or</li> <li>d. state or local income-based public assistance.</li> </ol>
3. The individual is in a family whose total family income does not exceed the higher of: <sup>26</sup> <ol style="list-style-type: none"> <li>a. the current Federally-established poverty line; or</li> <li>b. seventy (70) percent of the Federally-established lower living standard income level (LLSIL).</li> </ol>
4. The individual is a homeless individual who: <sup>27</sup> <ol style="list-style-type: none"> <li>a. lacks a fixed, regular, and adequate nighttime residence; <b>and is</b> <ol style="list-style-type: none"> <li>i. sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;</li> <li>ii. living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;</li> <li>iii. living in an emergency or transitional shelter; or</li> <li>iv. awaiting foster care placement;</li> </ol> </li> <li>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;</li> <li>c. is a migratory youth who is living in circumstances described in Sections 4.a. and 4.b. of this Table 2;</li> <li>d. lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or training stations, or similar settings; or</li> <li>e. is a runaway.</li> </ol>
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.

<sup>25</sup> WIOA Sec. 3(36)

<sup>26</sup> 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.

<sup>27</sup> 42 USC §§ 14043e-2(6) and 11434a(2)

Low-income Eligibility Criteria
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 <b>3.a.</b> or <b>3.b.</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.<sup>28</sup>

#### 8. recently separated service member

*Recently separated service member* means any Veteran within the three (3) year period beginning on the date of Veteran's discharge or release from active duty.<sup>29</sup>

#### 9. 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.

#### 10. 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 (1) of the following categories of criteria:<sup>30</sup>

- a special disabled or disabled veteran;
- homeless;<sup>31</sup>
- a recently-separated service member who at any point in the previous twelve (12) months has been unemployed for twenty-seven (27) or more weeks in the previous twelve (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.<sup>32</sup>

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<sup>28</sup> WIOA Sec. 225(e)(2)

<sup>29</sup> 38 USC § 4211(6)

<sup>30</sup> VPL 03-14 Change 1

<sup>31</sup> See definition [5. homeless](#) above

<sup>32</sup> See definition [6. low-income individual](#) above

## 11. special disabled Veteran

*Special disabled Veteran* means:<sup>33</sup>

- 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.

## 12. Veteran

*Veteran* means a person who served at least one (1) day in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable.<sup>34</sup>

*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.<sup>35</sup>

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<sup>33</sup> 38 USC § 4211(1)

<sup>34</sup> TEGL 10-09

<sup>35</sup> State mobilizations usually occur in response to events such as natural disasters.