

DEPARTMENT OF LABOR**Veterans' Employment and Training Service****20 CFR Part 1010**

RIN 1293-AA15

Priority of Service for Covered Persons**AGENCY:** Veterans' Employment and Training Service, Labor**ACTION:** Final rule.

SUMMARY: The Veterans' Employment and Training Service (VETS) of the Department of Labor (Department or DOL) is issuing this final rule to implement priority of service in qualified job training programs prescribed in section 2(a)(1) of the Jobs for Veterans Act (JVA). DOL issued a notice of proposed rulemaking (NPRM) on August 15, 2008 outlining proposed provisions implementing priority of service for covered persons in qualified DOL job training programs.

DATES: *Effective Date:* The final rule will become effective on January 19, 2009.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This preamble contains three sections. Section I provides general background information on the development of the final rule. Section II discusses the comments received on the NPRM and the related regulatory provisions included in the final rule. Section III addresses the administrative requirements for the final rule, as mandated by statute and executive order.

I. Background

On August 15, 2008, the Department published an NPRM (73 FR 48086) proposing regulations to implement priority of service in qualified job training programs prescribed in section 2(a)(1) of the JVA. We invited comments for a 60-day period, which closed on October 14, 2008. All comments received during the comment period have been posted on www.regulations.gov.

On November 7, 2002, President Bush signed the Jobs for Veterans Act, Public Law (Pub. L.) 107-288 (Nov. 7, 2002). One provision of the JVA, codified at 38 United States Code (U.S.C.) Section

4215, creates a priority of service requirement for covered persons in qualified DOL job training programs. Since the passage of the Act, the Department has provided policy guidance to the workforce investment system regarding the implementation of priority of service, including the Department's Employment and Training Administration (ETA) issuance of Training and Employment Guidance Letter (TEGL) No. 05-03 in September 2003. TEGL No. 05-03 applies to a majority of the job training programs impacted by priority of service. On December 22, 2006, President Bush signed the Veterans' Benefits, Health Care, and Information Technology Act of 2006 (Pub. L. 109-461). Section 605 of that statute requires the Department to implement priority of service via regulation. The final rule implements priority of service in response to that requirement.

The JVA provides that veterans and eligible spouses of veterans (as defined in § 1010.110) are identified as covered persons and are entitled to priority over non-covered persons for the receipt of employment, training, and placement services provided under new or existing qualified job training programs, notwithstanding any other provision of law. The JVA defines qualified job training programs as "any workforce preparation, development or delivery program or service that is directly funded, in whole or in part, by the Department." 38 U.S.C. 4215(a)(2). Currently, such programs are offered by many agencies within the Department, including, but not limited to, ETA, VETS, the Women's Bureau, and the Office of Disability Employment Policy (ODEP).

The JVA, and the priority of service it requires, is an important acknowledgment of the sacrifices of the men and women who have served in the U.S. armed forces. The Department's strategic vision for priority of service to covered persons honors veterans and eligible spouses of veterans as our "heroes at home" and envisions that DOL-funded employment and training programs, including the publicly-funded workforce investment system, will identify, inform and deliver comprehensive services to covered persons as part of strategic workforce development activities across the country. Veterans and eligible spouses possess unique attributes and contribute greatly in the workplace. They are an important source of highly skilled and experienced talent and play an important role in regional workforce development strategies. They are highly sought after by employers and they

make excellent employees.

Implementation of priority of service is designed to provide covered persons with clear entry points into high-growth, high wage civilian jobs and easily accessible post-secondary education and training to support their advancement along career pathways which will benefit regional economies.

One-Stop Career Centers are the delivery point for a significant percentage of qualified job training programs and services covered by the JVA and are required to implement priority of service. All One-Stop Career Centers should have clear strategies for providing veterans and eligible spouses of veterans with the highest quality of service at every phase of services offered. This can range from basic functions of the One-Stop System, such as assistance with job search and identification of needed skills, to more customized initiatives such as creating career pathways, with corresponding competency assessments and training opportunities, or other strategies which allow covered persons to advance their careers in high growth sectors of the economy. The Department expects that the One-Stop System will draw on all available resources to support the reemployment needs of covered persons.

Veterans and their eligible spouses have specific needs and concerns that can be addressed by DOL-funded employment and training program providers developing strategies for serving covered persons. When military service has ended, a major concern for many veterans is getting a good job. Some veterans may experience particular difficulty, both in finding employment and in readjusting to civilian work environments. DOL-funded employment and training programs should work with employers to ensure that the value a veteran brings to the table is understood and to address any concerns that employers may have about hiring veterans.

Those veterans who have sustained injuries or illnesses as a result of their military service may require additional support in developing skills to secure employment. Similarly, those spouses of recently separated veterans who are eligible for priority also may need employability development assistance. DOL, the Department of Defense and the Department of Veterans Affairs are collaborating in closely monitoring the rehabilitation of wounded and injured veterans assessing their job readiness and assisting their preparations for civilian employment. In those instances in which civilian employment does not appear to be a realistic objective for the

veteran, employability development activities should, if appropriate, focus upon the spouse who is eligible for priority. These “heroes at home” should be immediately provided the full array of employment and training services to ensure that they make a successful transition into employment that supports their economic independence.

In addition to assisting recently separated veterans and eligible spouses to meet the challenges of their specific situation, priority of service also is intended to assist those veterans and eligible spouses for whom military service concluded some time ago. These veterans and eligible spouses are likely to have significant civilian labor market experience. However, they may experience dislocation or find that they are underemployed relative to their skills and experience. Priority of service is intended to assist all veterans and eligible spouses to improve their civilian sector employment and earnings.

Priority of service does not change a program’s intended functions; covered persons still need to meet all statutory eligibility and program requirements for participation. Some DOL-funded employment and training programs have only general program eligibility requirements and do not statutorily target specific groups. These programs require only a straightforward implementation of priority of service. However, some DOL-funded employment and training programs do carry existing statutory targeting provisions that must be taken into account when applying priority of service. The purpose of this final rule is to articulate how priority of service is to be applied across all existing and new qualified DOL job training programs.

II. Discussion of the Comments and Regulatory Provisions

Summary of Comments

The Department received 28 submissions commenting on the NPRM by the close of the comment period. All comments were carefully reviewed. Of the 28 comments, 17 were from organizations with an interest in veterans’ employment services. Of the 17 comments from organizations, 13 were from State Workforce Agencies, one was from a State veterans’ commission, one was from a local Workforce Investment Board (WIB), one was from a private non-profit service provider and one was from a national association of State Workforce Agencies. Of the 11 comments from individuals, three identified themselves as employees of State Workforce Agencies.

A number of comments supported the proposed rule for implementing priority of service to veterans and eligible spouses of veterans in all employment and training programs funded in whole or in part by DOL. We discuss these comments here, but otherwise have no formal response to them. One commenter suggested that many veterans experience extreme hardships financially and physically due to their service to our country. This commenter suggested that veterans deserve to receive priority assistance to reintegrate back into civilian life. A second commenter was supportive of informing veterans of their entitlement to priority of service at the point of entry. A third commenter pointed out that priorities for veterans already exist in DOL programs. Two other commenters fully supported DOL efforts to ensure that veterans and their eligible spouses receive priority access to employment, training, and placement services. Another commenter agreed with DOL’s efforts to ensure covered persons receive priority to employment, training, and placement services. This commenter indicated that his State already has a process for veterans to identify themselves upon check-in, with the help of front-line staff.

In addition to the comments that supported the proposed rule, nearly all the comments offered suggestions to facilitate the provision of priority of service to veterans and other eligible persons. All relevant comments are discussed below.

Discussion of Comments on Subpart A—Purpose and Definitions

This subpart addresses the purpose and scope of these regulations (§ 1010.100) and the definitions that apply for the purpose of these regulations (§ 1010.110). We received no comments in reference to § 1010.100 but we did receive some comments regarding § 1010.110. Those comments and our responses follow.

Defining Key Terms (§ 1010.110)

Veteran

Comment: Seven comments suggested that program administration by the States would be facilitated if the definition of veteran that appears at 38 U.S.C. 4211(4) were substituted in place of the definition that appears at 38 U.S.C. 101(2) and is specified in § 1010.110 of these regulations. One commenter stated that in his opinion expanding the definition to give priority of service to non-disabled veterans who served less than 180 days would dilute the concept of priority of service and result in the diversion of priority away

from those veterans who truly deserve priority in an environment of limited resources.

Response: We have not changed the definition of “veteran” for purposes of providing priority to DOL-funded employment and training programs because we are bound by law to use the definition proposed. In our view, Congress clearly intended that priority be made available to a broad category of former service members. The statute is quite clear at 38 U.S.C. 4215(a)(1)(A) that “covered person” for purposes of priority includes a “veteran” rather than the more narrow definition of “eligible veteran” that is applied, for example, to statutory reporting requirements for Wagner-Peyser State Grants and to program eligibility requirements for Jobs for Veterans State Grants. Since section 4215 does not specifically define the term “veteran” for purposes of applying the priority, we are required to look to title 38’s general definition of that term in section 101. *See, Florida Dept. of Banking and Finance v. Board of Governors of the Federal Reserve System*, 800 F. 2d 1534, 1536 (11th Cir 1986) (“It is an elementary precept of statutory construction that the definition of a term in the definitional section of a statute controls the construction of that term wherever it appears throughout the statute.”). The definition we proposed in § 1010.110, comes from 38 U.S.C. 101(2) which provides the broad definition of “veteran” that is required to be used for purposes of title 38.

We recognize that the definition of veteran to be applied for the purposes of the priority differs from and is broader than the definition of eligible veteran, which is applied for program eligibility for Jobs for Veterans State Grants, but we also note that section 4215 and these regulations do not change eligibility for such services nor for any other program. Section 1010.210(b) of this rule clearly provides that covered persons still must meet the statutory eligibility requirements applicable to qualified job training programs. Similarly, the definition of veteran to be applied for the purposes of the priority does not alter the statutory reporting requirements for Wagner-Peyser State Grants, which require application of the more narrowly defined definition of eligible veteran.

While we are unable to change the definition of veteran for purposes of the priority, we acknowledge the concerns of several commenters that the broad definition used in § 1010.110 fails to take into account such factors as length of service, nature of separation, combat

experience, etc. We have determined that it would impose undue burdens on the workforce system and on covered persons to establish further priorities among covered persons at this time (see discussion of § 1010.310 below). Therefore, we intend to focus on implementing the regulations as proposed, while anticipating that these types of factors will inform our consideration of additional priorities among covered persons in the future.

Comment: Four comments pointed out that program administration by the States would be facilitated by using one definition common to all, rather than the several different definitions of “veteran” in use for various DOL and other federally funded programs.

Response: A benefit of using a definition of veteran that replicates the definition in 38 U.S.C. 101(2) is that it is the one that is most compatible with the affected DOL programs’ respective other eligibility criteria. In effect, adoption of this definition of veteran is expected to result in the maximum feasible amount of the commonality or standardization that is recommended by these comments.

With respect to the different definitions of veteran established by statute for eligibility for certain workforce programs, such as the broad definition established for eligibility under the Workforce Investment Act (WIA) and the narrow definition established for eligibility under the Jobs for Veterans State Grants, the Department does not have the authority to revise these definitions through these regulations. The Department is aware that Government Accounting Office (GAO) recently recommended (GAO-07-594) that the Congress consider standardizing the veteran definition applicable for eligibility in all workforce programs.

Comment: Three comments cited the need to clarify the veteran definition in the regulations to assure that it is understood that an individual must serve a period of “active duty” to be considered a “veteran,” and that National Guard members and Reservists may be considered “veterans” if they served on active duty.

Response: We agree with the commenters that the rule will be improved by clarifying the eligibility for priority of National Guard members and Reservists who served on active duty. As described above, we look to 38 U.S.C. 101 for the definition of the term “veteran” because it is not specifically defined in sec. 4215. Among the requirements to qualify as a veteran under sec. 101(2), an individual must have served in “active military, naval or

air service.” Participation in such service is determined by the standards in definitions at section 101(21), (22), (23) and (24). Those subsections define “active military, naval or air service” and the meanings of active duty, active duty for training, and inactive duty for training relevant to National Guard and Reserve members. These provisions establish that full-time National Guard and Reserve duty, other than full-time duty for training purposes, qualifies as active duty. Accordingly, we are revising the definition of “veteran” in § 1010.110 by adding a new sentence at the end to state: “Active service includes full-time duty in the National Guard or a Reserve component, other than full-time duty for training purposes.”

Comment: Other comments on the definition of “veteran” questioned whether it matters if National Guard members served domestically or overseas or if an individual left the armed forces prior to completion of training.

Response: In both cases, these circumstances are irrelevant to the determination of veteran status for purposes of applying priority. Under § 1010.110, as amended in the final rule, the location of the service of a National Guard member, a member of the Reserve forces, or for that matter, by a member of the regular Armed Forces, is irrelevant with respect to his or her status as a veteran. The determining factor is whether the person has a qualifying period of “active duty” as provided in § 1010.110. Similarly, it is the nature of the discharge (other than dishonorable) not the details of the person’s service career that is the determining factor in the definition of “veteran.”

Comment: One comment proposed simplifying the definition of “veteran” to, “any veteran with a DD-214 with a discharge status other than dishonorable is a covered person.”

Response: We have determined that such a change would not be beneficial and we have not revised the definition of veteran. It would codify in regulations reliance upon a single document, which could be replaced or change over time and which may not be the only reliable source for verifying veteran status. As discussed below in the response to a comment on § 1010.300, DOL intends to identify supplementary documents that provide equivalent verification of veteran status and to establish in policy guidance their acceptability for this purpose. That guidance is expected to be revised over time as the agencies responsible for maintaining the supplementary

documentation modify their procedures. Codification of the DD-214 in these regulations as the sole criterion for veteran status would preclude this flexibility and impose practical burdens, both upon the persons intended to be the beneficiaries of this statute and the agencies that administer the affected programs.

Eligible Spouse

Five comments suggested that, in the final rule, the Department should add to the list of “covered persons” defined in section 1010.110 the spouses of persons who died while on active military duty.

Response: DOL is sympathetic to that proposal but finds no evidence that Congress intended the definition of “eligible spouse” enacted in the Jobs for Veterans Act to be interpreted to include the spouses of those who died while on active duty. The law clearly delineates the circumstances in which a spouse may qualify as a covered person:

(1) Any veteran who died of a service-connected disability;

(2) 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 line of duty by a hostile force; or

(iii) Forcibly detained or interned in line of duty by a foreign government or power;

(3) Any veteran who has a total disability resulting from a service-connected disability, as evaluated by the Department of Veterans Affairs;

(4) Any veteran who died while a disability, as indicated in paragraph (3) of this section, was in existence.

From this list, we can only infer that had the statute intended to cover the spouses of service members who died while on active duty, it would have done so explicitly.

Comment: One comment requested further clarification as to what defines a “spouse” by asking whether State law, Federal law, or military law is the statutory authority, and also asked the corollary question about documentation that would be required to prove the spouse status.

Response: Existing Departmental policy guidance to the States regarding programs affected by the priority of service regulation gives the States the authority to determine marital status issues in accordance with State law, unless the relevant Federal law governing a program is prescriptive in those respects, and also, therefore, to determine the appropriate form(s) of

documentation required as proof of eligibility for services or benefits that are based on marital status. We think it unnecessary to embed such guidance in these regulations.

Comment: One comment stated that only a spouse with U.S. citizenship married to the veteran at the time of discharge or retirement should be eligible for assistance.

Response: The JVA does not exclude from eligibility spouses who were not citizens at the time that the veteran was discharged or retired, nor does it stipulate that a spouse had to be married to the veteran at the time of his or her discharge or retirement. Therefore, the Department sees no compelling reason to deny assistance to any spouse on either basis. However, covered persons are required to meet all program eligibility requirements, which may include legal authorization to engage in employment.

Comment: One comment inquired about any time limits that apply to the "eligible spouse" status, and also about the impact of re-marriage following death of the veteran on the eligibility of the widow(er) to be considered a covered person.

Response: Although we are not revising the rule in response to this comment, we appreciate the comment, recognize the need to clarify through policy guidance the distinctions identified below and we intend to do so. Criteria (1) and (4) of the eligible spouse definition (spouse of a veteran who died of a service-connected disability or while a service-connected total disability was in existence) clearly imply that the spouse becomes eligible under those two criteria upon the death of the veteran. The JVA does not include a disqualification clause pertaining to re-marriage following the death of the veteran and we see no reason to assume that one was intended. Similarly, if a widow(er) who qualifies under either of those criteria does not lose eligibility through remarriage, we cannot envision any other type of time limit that might apply.

In contrast, criteria (2) and (3) of the eligible spouse definition (spouse of a service member who is missing in action, etc., or of a veteran who has a total disability resulting from a service-connected disability) clearly imply that the eligibility of the spouse is based upon the status of a service member or veteran who is still living. In the case of criterion (2), which is based upon the status of an active duty service member, the statutory wording makes it clear that the spouse is eligible only during the time that the service member remains in that status. Similarly, in the case of

criterion (3), which is based upon the disability status of a living veteran, it is clear that the statute intends to confer eligibility on the spouse based on a marriage that is currently in effect. Therefore, if a spouse who is eligible under criterion (3) becomes divorced from the disabled veteran, the spouse would lose the eligibility to priority at that point. Similarly, if a spouse is eligible on the basis of a total disability, as defined by criterion (3), and the veteran were to lose the total service-connected disability rating, the spouse would lose the eligibility to priority at that point.

Discussion of Comments on Subpart B—Understanding Priority of Service

This subpart addresses what priority of service is (§ 1010.200), the programs affected by priority of service (§ 1010.210), the implementation of priority of service by recipients (§ 1010.220), the responsibilities of States and their subdivisions (§ 1010.230), the monitoring of priority of service (§ 1010.240), and the possibility of waiving priority of service (§ 1010.250). We received no comments on § 1010.230 or § 1010.250; but we did receive comments on the other four sections of this subpart. Those comments and our responses follow.

Identifying Qualified Job Training Programs (§ 1010.210)

Comment: Two of the comments raised questions regarding the application of priority of service to non-DOL program partners in One-Stop Career Centers. One commenter requested a clarification of how priority of service applies to any non-DOL program partner and a second commenter suggested the inclusion of Vocational Rehabilitation programs among the programs required to provide priority of service.

Response: The Department will not modify this section in response to these comments because the priority only applies to qualified job training programs funded in whole or in part by the Department of Labor, as defined in sec. 4215(a)(2). The Department does not have the authority to impose priority of service on programs funded by non-DOL sources. However, the Department, through policy guidance and technical assistance, will encourage all partners in One-Stop Career Centers to focus on providing services to veterans as a standard operating procedure within their respective service delivery strategies.

Comment: One comment questioned why Unemployment Insurance (UI) was not included in the regulations as a

program impacted by priority of service, apparently referring to the fact that UI recipients who are considered likely to exhaust their eligibility for UI benefits are referred to employment services through a process known as worker profiling.

Response: The Department did not include UI because it is an income benefit program and not a qualified job training program, as defined in sec. 4215(a)(2) of the JVA. With respect to worker profiling, the Department issued guidance following the passage of the JVA (Training and Employment Guidance Letter No. 5–03, as well as program-specific guidance and technical assistance) explaining that priority of service requires that veterans, whose likelihood of benefit exhaustion qualifies them for referral to employment services, must be referred to employment services prior to or in conjunction with the referral of non-veterans. That policy remains in effect and is not affected by these regulations.

Implementing Priority of Service (§ 1010.220)

Funding Constraints

Comment: Two comments expressed concerns about providing priority of service in a limited funding environment, particularly if large numbers of additional veterans choose to access the services of the One-Stop Career system. One commenter asserted that more resources for all DOL core workforce programs will be required to ensure that veterans and other workers receive the help they need. A second commenter expressed particular concern about the current resource capacity for their Management Information System.

Response: The Department acknowledges that the publicly-funded workforce investment system is operating under a tight Federal budget, which means that Federal resources must be used strategically to meet a variety of competing local, regional, and State priorities. Given that priority of service has been in effect since 2003 and transitioning veterans have been provided information on accessing One-Stop Career Centers through the Transition Assistance Program for many years, DOL does not anticipate a significant increase in veteran customers. With regard to new reporting requirements associated with this rule and the companion Information Collection Request (ICR) package (ICR Reference Number 200805–1205–001), DOL acknowledges that the new data to be collected will require some changes. However, DOL has attempted to

minimize the changes required by utilizing, to the maximum extent possible, existing data collection processes to collect the new data.

Service Delivery Processes

Comment: A number of comments addressed the provision of priority of service at the point of entry to the workforce system. Three commenters indicated a need to assist front-line staff in applying regulations and policies at the point of entry and called for a more detailed explanation of the regulations and their impact on One-Stop operations. Other commenters requested guidance on how to handle priority of service affirmation during self-registration, whether at program operators' sites or from remote locations. One commenter pointed out that modifications to electronic technologies may be required to ensure the same point of entry data being collected in physical locations is also collected for those accessing services remotely.

Response: DOL intends to provide extensive guidance and technical assistance on implementing priority of service under this rule. This may include policy guidance, webinars, question and answer documents, and highlights of best practices, and will address issues such as self-registration.

Comment: Several comments identified service delivery procedures that may be impacted by the regulations. One commenter stated that implementing priority of service for covered persons would be unmanageable for certain services that are usually provided through personal appointments with service provider staff and also may create bad feelings or ill-will among non-covered customers. A second commenter asked for guidance regarding the processes that State agencies could use if they have to "bump" a non-veteran in order to give priority to a covered person. Another commenter objected to implementing priority of service as a "cut in line" policy.

Response: It is important to note that priority of service under the JVA has been in effect since 2003 and recipients should already have policies and procedures in place to ensure priority of service to veterans. As part of implementation of this rule, recipients will need to reexamine their policies and procedures and change them if necessary to ensure priority of service is provided to covered persons. For example, program operators might consider adjusting policies to leave appointment slots open for covered persons, or designating staff to see

covered persons on a walk-in basis on certain days. Regarding the creation of bad feelings or ill-will toward covered persons, customers of DOL-funded services need to be made aware which populations receive priority. Clearly posting this information is likely to decrease ill-will. DOL will provide extensive guidance and technical assistance in how to implement priority of service under this rule.

Interference With the Intent of Priority of Service

Comment: One comment asked what is to prevent Workforce Investment Boards from developing a plan that minimizes the participation of covered persons by placing the majority of program funds into training that might be of minimal interest to veterans, such as basic computer training and nurse's aide training.

Response: DOL believes this scenario is extremely unlikely to occur. First, whichever occupations are targeted by local workforce areas, covered persons would still receive priority of service. Second, local workforce areas are governed by Workforce Investment Boards (WIBs) and the majority of WIB members are representatives of business. Based on local labor market conditions, WIBs determine the industries and occupations that will be a focus for training programs. Third, since local workforce areas must meet performance targets under the Workforce Investment Act for entered employment, employment retention and average earnings, it is unlikely that they would choose occupations not in demand, as this could result in not meeting their performance goals. Finally, if selected recipients do interfere with the intent of priority of service by emphasizing occupational areas unattractive to veterans, it is likely that the unusually low rates of participation by veterans in those programs or services will be documented through reporting and remedied through monitoring and any follow-up activities determined to be warranted.

Monitoring Priority of Service (§ 1010.240)

Comment: One comment noted that, although the preamble of the NPRM refers to the measure mentioned in the JVA about covered persons being represented in affected programs in proportion to their incidence in the labor market, the proposed rule does not include specific performance standards related to that comparison. This commenter suggested that serving covered persons in proportion to their

incidence in the labor market should be specified as a minimum achievement level for priority of service.

Response: The Department has concluded that it would be premature at this point to attempt to establish performance targets for priority of service in these regulations. With respect to the labor market criterion that is specified in the JVA and noted in the comment, we interpret that criterion to be primarily applicable to the overall performance of the Department in implementing priority of service at the national level. While this criterion also could be applied to the specific performance of the recipients of DOL funds, its application at lower levels is limited by the fact that the estimates of the incidence of veterans in sub-national labor markets are less statistically precise. This issue is discussed further in our response to a comment received about § 1010.320.

In light of these considerations, the Department has determined that enhanced data collection and reporting, coupled with joint monitoring, offer the most appropriate avenues currently available to ensure compliance with priority of service. Specifically, for those programs serving over 1,000 covered persons annually, data collection systems will be modified to accommodate new priority of service data elements and analysis of that information will be a key component of monitoring.

Comment: One comment suggested that the VETS State Directors monitor the implementation of priority of service in partnership with the State agency officials who coordinate or supervise the operations of the Jobs for Veterans State Grants program.

Response: While the Department is generally supportive of the type of cooperative Federal-State relations between grantor and grantees that is conceptualized in this comment, we do not believe that it is appropriate to include a requirement of this type in regulations. These regulations have established, in § 1010.240(b), that federal monitoring will be conducted jointly by a representative of the administering federal agency and a representative of VETS. We believe that the combined perspectives of these designated officials are fully adequate for federal monitoring purposes. Since states also will have their own monitoring responsibilities, we would have no objection if states exercised their option to apply the suggested approach for state monitoring purposes.

Comment: One comment noted that the preamble language in the NPRM stated that submission of a corrective

action plan “will” be required if a recipient is found not to be in compliance with the priority of service requirement, but the regulatory text itself states that a corrective action plan “may” be required. The commenter suggested that we change the regulatory text to require a corrective action plan.

Response: The Department will not change the regulation. The regulatory language is correct and it provides DOL with the authority to require a corrective action plan, when appropriate. There may be circumstances where minimal technical assistance will result in correction of a priority of service issue. Where any substantial changes to a program operator's policies or business practices are required, a formal corrective action plan will be required.

Comment: One comment included a number of questions related to the Department's monitoring of the implementation of and compliance with the priority of service rule. The questions include whether the joint responsibility for oversight by ETA and VETS extends to the review of the State and local plans and any impact on State grant funds if a State ignores the requirements of the rule.

Response: The Department believes that these concerns are adequately addressed by existing provisions of these regulations. Therefore, we do not intend to modify the rule in response to these comments. With respect to State and local planning, § 1010.230(a) requires the inclusion of priorities and procedures addressing priority of service in State plans, while § 1010.230(b) requires States to impose similar requirements for local plans. In addition, review of these plans by DOL staff as a monitoring activity is authorized by § 1010.240(a). With respect to the potential impact of non-compliance with priority of service on State grant funds, a grantee's non-compliance will be handled in accordance with the respective program's established compliance review processes, as required by § 1010.240(c).

Discussion of Comments on Subpart C—Applying Priority of Service

This subpart addresses identifying covered persons (§ 1010.300), applying priority of service to programs with differing eligibility requirements (§ 1010.310), reporting on priority of service (§ 320), and collecting and maintaining data on priority of service (§ 1010.330). We received comments on all four sections of this subpart. Those comments and our responses follow.

Identifying Covered Persons (§ 1010.300)

We received a number of comments about the inter-related subjects of Identifying Covered Persons (§ 1010.300) and Collecting and Maintaining Data (§ 1010.330). For ease of organization, the responses to comments are treated under those two topic areas. However, these two sections should be read in conjunction with one another. In § 1010.300, we primarily discuss when and how a covered person is identified. In § 1010.330, we provide detailed information on collection processes that occur simultaneously with that identification.

Comment: One comment stated that, due to a variety of factors, affected programs will not be able to enroll covered persons in numbers sufficient to attain the proportion of such persons in the labor market, unless all program operators subject to the priority of service regulations are mandated to conduct outreach efforts to recruit covered persons.

Response: The commenter did not provide, and the Department does not have from other sources, evidence to support the contention that affected program operators will not attract covered persons as applicants for services in the numbers equal to or in excess of their incidence in the local labor markets. In addition, the JVA does not include provisions about outreach. Therefore, other than requiring (in §§ 1010.230 and 1010.300) that program operators identify covered persons and inform them about the priority, the Department will not compel program operators through regulations to commence or enhance outreach efforts, as suggested by the commenter. However, the Department encourages all program operators to assess the adequacy of their sources of candidates for services and, if that assessment indicates that implementing outreach to covered persons would be beneficial, the Department encourages them to do so.

Comment: One comment suggested that State agencies should be authorized to verify covered persons' status through means other than obtaining an official copy of a DD-214 document. The commenter suggested several other available sources.

Response: As indicated in our prior response to a comment on § 1010.110, the Department does not oppose allowing DOL-supported program agencies to use alternative sources, such as databases maintained by State veterans affairs divisions or commissions, to verify an individual's

claim of veteran's status, as long as those other sources can certify the veracity of their records and have effective procedures for matching the covered person with those records. However, addressing the specifics of such verification sources is more appropriate for policy guidance than for regulations; we intend to address that topic in detail in future guidance.

Comment: One comment claimed that, in order to prove his or her right to “priority of service” at the initial point of entry into the State Workforce Agency's network of program services, a covered person would have to provide personal information not required of non-covered persons. The commenter stated that such requirements could cause some customer satisfaction issues.

Response: It is the Department's intent that individuals identified as covered persons will not be required to verify their status as veterans or eligible persons at the point of entry unless they immediately undergo eligibility determination and formal enrollment in a program. To clarify that the requirement to identify covered persons at the point of entry does not imply that verification of covered person status is required at that point, a new paragraph (b) has been added to § 1010.300 of the final rule. Even in those instances in which eligibility determination and enrollment take place at the point of entry, the Department believes that the covered person should be enrolled and given immediate priority and then be permitted to follow-up subsequently with any required verification of his/her status as a covered person.

In the more common instances in which eligibility determination and enrollment do not take place at the point of entry, the only procedures applicable to covered persons at that point (i.e., assignment of a unique identifier and deciding whether or not to respond voluntarily to the questions required to be asked for EEO purposes) are minimally burdensome. In addition, those procedures are equally applicable to non-covered persons at the point of participation.

Comment: Two comments inquired how covered persons will be identified in a self-registration system.

Response: Recipients will be required to have processes by which individuals who reach the point of entry to universal access programs through electronic technologies will be provided the opportunity to indicate their covered person status. However, DOL will not require documents that verify their status (e.g., DD-214 discharge form) at this stage. However, proof of status will be required during formal

determination for program eligibility. The DD-214 discharge form is considered the "gold standard" document for verification purposes. However, DOL will be developing a list of acceptable alternatives that correspond to WIA definition of covered person. This will be especially important for any new documentation needed for covered spouses. Covered spouses whose eligibility is based on the disability of the veteran should receive the relevant documentation from the Department of Veterans Affairs. Covered spouses whose eligibility is based on one of the three specific statuses of an active duty service member should receive the relevant documentation from the Department of Defense.

Applying Priority of Service (§ 1010.310)

Comment: Several comments suggested or implied that a tiered system of sub-priorities should be established within the overall priority. For example, one comment included a detailed treatment of the nature of military discharges, e.g., honorable, other than honorable, dishonorable, bad conduct, etc., and proposed, within the universe of covered persons, institution of a tiered priority system that would reward those who are honorably discharged above all others. Another comment included a recommendation that priority of service be given first to veterans who actually served in combat zones and who were assigned to military occupational specialties directly oriented toward combat, such as infantry. A third comment expressed support for priority for service-connected disabled veterans, but pointed out that for many years, women in the military were kept out of combat zones, so giving priority to combat zone veterans would discriminate against veterans who were not allowed to earn that benefit and, in effect, perpetuate discrimination against women. This commenter expressed her belief that priority should be given on the basis of need, rather than disability.

Response: Section 4215(b)(2) of the JVA states that "The Secretary of Labor may establish priorities among covered persons * * *". However, we do not intend to revise the rule at this time to specify sub-priorities within the overall priority. The principal factor underlying that decision is the Department's determination that specifying further sub-priorities within the overall priority at this time is very likely to be unduly burdensome, both to the system responsible for serving covered persons and to those covered persons intended to benefit from a sub-priority. Although

the requirement to provide priority is not new, six major workforce programs will be required to implement new data collection procedures for covered persons at the point of entry under new reporting requirements that accompany these regulations. In addition, these regulations are expected to take effect at a time that is characterized by an expectation of increased demand for services over the near term in response to deteriorating economic conditions. In that context, the Department believes that implementing tiered sub-priorities at this time would impose an unreasonable burden by requiring: (a) Workforce professionals (or electronic systems) to make distinctions at the point of entry among sub-priorities within the overall priority; and, (b) covered persons to affirm their eligibility for differing levels of priority at the point of entry, based on distinctions of considerable complexity and subtlety. In summary, the Department believes that imposition of those burdens at this time would be very likely to generate results that are directly contrary to the intent of the statute and these regulations.

The Department also recognizes that the intent of these regulations and the accompanying data collection requirements are likely to be assimilated by the workforce system over time. Therefore, the Department acknowledges that, at a future time and under more favorable conditions, it may be appropriate to undertake a revision of these regulations to further specify certain sub-priorities within the overall priority.

Comment: One comment requested information on how income would be considered in determining eligibility for priority of service.

Response: Income is not a relevant factor for a priority determination. For purposes of eligibility for the underlying programs, all income eligibility determinations should be based on the requirements of the program in which services are being sought. For example, in the Workforce Investment Act programs, the regulation at 20 CFR 667.255 states that, "any amounts received as military pay or allowances by any person who served on active duty, and certain other specified benefits must be disregarded. This applies when determining if a person is a 'low-income individual' for eligibility purposes."

Reporting on Priority of Service (§ 1010.320)

Comment: A comment stated that in order to measure whether or not covered persons are being represented in

affected programs in proportion to their incidence in the labor market, the Department needs to clarify exactly what is meant by "the labor market."

Response: This comment refers to section 4215(d) of the JVA, which requires the Secretary to report to Congress annually on priority of service. The referenced section of the statute includes language requiring the Secretary to evaluate, "whether the representation of veterans in such programs is in proportion to the incidence of representation of veterans in the labor market * * *". The requirements included in §§ 1010.320, 1010.330 and the accompanying ICR are expected to enhance the Secretary's capacity to fulfill that Congressional reporting responsibility. Since enactment of the JVA, the Department has fulfilled this requirement by comparing the rate of veteran participation in workforce programs nationally with the incidence of veteran representation in the labor market at the national level. The rate or incidence of veterans in the labor market has been determined each year based upon data provided by the Bureau of Labor Statistics and derived from the Current Population Survey.

When the comparison described above is made at the national level, it represents a measure of the performance of the Department rather than a measure of the performance of the recipients of DOL funding. If a similar comparison were to be made below the national level (e.g., for a State workforce system), the Department would first need to identify the source of valid and reliable data on the rate of incidence of veterans within the labor market, at the level at which the comparison is to be made.

Collecting and Maintaining Data (§ 1010.330)

Subsections (a) and (b) of § 1010.330 and the ICR associated with this regulation establish new reporting requirements for those programs that serve over 1,000 covered persons per year nationally, including: WIA Adult, WIA Dislocated Worker, Wagner-Peyser Employment Service/Jobs for Veterans State Grants, National Emergency Grants (NEGs), Trade Adjustment Assistance (TAA), and the Senior Community Service Employment Program (SCSEP). All other qualified job training programs are exempt from this information collection but will be required to adopt the covered, non-covered, veteran and eligible spouse definitions as outlined in the JVA the next time their reporting requirements are renewed.

The new reporting requirements for those job training programs that serve

over 1,000 persons annually are described more fully in the associated ICR (ICR Reference Number 200805-1205-001) but primarily involve: (1) Identifying covered persons at the point of entry, which is the earliest point that a covered person contacts the system in either a physical location (e.g., One-Stop Career Center or affiliate site) or remotely through electronic technologies; and (2) the collection of individual entrant records for all covered persons. Note: These new reporting requirements exempt the collection of information for non-covered persons.

In order to fully appreciate the context, it is helpful to review the discussion that follows in conjunction with the responses treated previously under the subheading Identifying Covered Persons (§ 1010.300), since the new collection is based largely on identifying covered persons at the point of entry. The specific comments on (§ 1010.300) and our responses follow.

Comment: Four comments raised questions around self-registration of covered persons. Of these, one commenter specifically asked about what type of client inquiry would trigger the collection of data.

Response: Paragraphs (a) and (b) of § 1010.330 require that programs that serve over 1,000 covered persons nationally per year must identify and capture data on covered persons at the initial point of entry. This is the earliest point that a covered person first makes contact with the workforce investment system and is triggered by entry at either a physical location (e.g., One-Stop Career Center or affiliate site) or remotely through electronic technologies. DOL acknowledges that program operators will need to adjust manual and electronic intake processes to accommodate the new reporting requirements.

Comment: Three comments addressed the covered person entry date. Of those, two commenters expressed the need for clarification in the definition and one commenter asked whether this information should be tracked retroactively for persons who entered the system years ago.

Response: Although these comments were submitted in response to the NPRM, they treat topics that are not specifically addressed in § 1010.330 of the rule, but are addressed in the ICR associated with these regulations. Therefore, the Department will address these issues through the ICR clearance process and through the issuance of guidance on the implementation of the new data collection procedures, if necessary.

Comment: Several comments raised concerns about the difficulty in making programming changes to the current MIS systems to capture the individual entrant record data elements. One commenter also expressed concerns over the logistics, including the short timeframe to implement the new reporting requirements, stating it will place an undue hardship on the State.

Response: DOL acknowledges that information technology adjustments will need to be made to accommodate the new data fields and is aware that such adjustment can be a challenge, given resource constraints. Consequently, the Department has kept the data elements to a minimum in order to reduce the number of required modifications and to keep costs in check. DOL is examining the feasibility of coordinating the application of the new priority of service reporting requirements with the implementation of the new Workforce Investment Standardized Performance Reporting (WISPR) system. The Department will be issuing additional guidance on the implementation timeframes for these two new and related sets of reporting requirements.

Comment: We received ten comments that focused on the perceived burdens that would be placed on the States by the new data collection requirements. Eight commenters specifically alluded to cost burdens. One commenter noted that the introduction of new client classifications will require changes to the current ETA 9002 and VETS 200 performance reports. Another commenter recommended that the implementation of priority of service reporting occur simultaneously with implementation of the WISPR requirement to avoid the cost of making multiple changes to reporting systems. Another commenter recommended that changes be compatible with the existing Workforce Investment Act Standardized Record Data (WIASRD).

Response: As indicated above, DOL agrees that it would be advantageous if WISPR and the proposed priority of service reporting requirements were to take effect on the same date, and DOL is considering the feasibility of implementing the priority of service requirements in conjunction with the implementation of WISPR. If the implementation of the new priority of service reporting is coordinated with the implementation of WISPR, challenges with the ETA 9002 and VETS 200 reports will be eliminated. That is because those two sets of reports will be replaced by other reports under WISPR. Similarly, changes to existing reporting systems will be avoided if the new

priority of service reporting is implemented in conjunction with WISPR, because the priority of service requirements will be included in WISPR from the outset (i.e. there would be no “retrofitting” of existing reporting systems to accommodate the priority of service reporting).

In the absence of coordinated implementation of priority of service reporting and WISPR, reporting entities will be required to amend existing reporting systems. Guidance will be forthcoming on the implementation processes and timeframes applicable to these two related reporting requirements, along with significant technical assistance in support of their implementation.

Comment: Two comments raised questions about the adequacy of this data collection. One of the commenters recommended that the data collection be expanded to include non-covered persons so a comparison could be made with the covered person information. Another commenter suggested that there is no mechanism for determining whether, on the whole, covered persons received priority in obtaining employment enhancing services or, conversely, the frequency with which non-veterans did.

Response: DOL considered including non-covered persons and realizes the advantages in helping to draw comparisons between the two populations, but determined that the benefits did not outweigh the potential costs and burden. The workforce system currently serves about 15 million individuals and about ten percent of those served are covered persons. Tracking the estimated 1.5 million covered entrants gives a narrower lens for analysis but provides the additional data point to illustrate the numbers of veterans accessing the workforce system. This data point, combined with normal participant data, will help the Department to better determine which of our covered person customers go on to receive services (or conversely, do not receive services). In addition, DOL intends to supplement this data by sponsoring random surveys of covered and non-covered persons accessing the workforce system to assist in comparing the delivery of services to the two groups. DOL agrees that the covered entrant data alone will not tell the complete story of priority of service but it will add crucial information that has been missing from the discussion. Based on this information, the Department will be able to determine the number of veterans who enter the system compared to the number who receive services. This indicator will help us to

determine if the system is, in fact, serving those who come to our system and are entitled to priority. To complete the assessment, DOL will apply information gathered through the priority of service evaluation, random surveys of covered and non-covered persons, and additional monitoring to help ensure that covered persons are receiving priority for publicly-funded workforce services.

III. Administrative Information

Regulatory Flexibility Analysis, Executive Order 13272, and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. Chapter 6, requires the Department to evaluate the economic impact of this final rule with regard to small entities. The RFA defines small entities to include small businesses, small organizations including not-for-profit organizations, and small governmental jurisdictions. The Department must determine whether the rule imposes a significant economic impact on a substantial number of such small entities.

The Department has determined that there is no significant economic impact resulting from this final rule. The JVA mandates that veterans receive priority of service in all qualified job training programs. The purpose of this rule is to implement the JVA's priority of service requirement. It defines the program and reporting requirements for ongoing programs funded by the Department (and any new programs created in the future) and administered by funding recipients. The priority of service provisions in the JVA do not create any new job training programs; rather, the programs affected by the priority of service are ongoing. The final rule requires that these programs give priority to veterans for the services provided by the programs. The rule requires funding recipients to do certain things, such as implement processes to identify covered persons at the point of entry and report on priority of service. However, the Department funds these programs and the funds are meant to include such activities as administration and reporting. Although certain funding recipients that operate qualified job training programs may be small entities, the Department certifies that this final rule does not have a significant economic impact on a substantial number of small entities under the provisions of the RFA and also under

the provisions of Executive Order 13272.

Finally, the Department has also determined that this final rule is not a "major rule" for purposes of The Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. Chapter 8, which requires agencies to take certain actions when a "major rule" is promulgated. SBREFA defines a "major rule" as one that has or is likely to result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for, among other things, State or local government agencies; or in significant and adverse effects on the U.S. business climate. For the reasons already discussed, this final rule will not have any significant financial impact. Accordingly, none of the definitions of "major rule" apply in this instance.

Executive Order 12866

Executive Order 12866 requires that for each "significant regulatory action" proposed by the Department, the Department conduct an assessment of the proposed regulatory action and provide the Office of Management and Budget (OMB) with the proposed regulation and the requisite assessment prior to publishing the regulation. A significant regulatory action is defined to include an action that will have an annual effect on the economy of \$100 million or more, as well as an action that raises a novel legal or policy issue.

The priority of service implemented by this final rule will not have an annual effect on the economy of \$100 million or more, for the reasons outlined above. While much of the rule is consistent with current DOL policy, certain portions may raise novel policy issues. Accordingly, OMB has reviewed this final rule.

Paperwork Reduction Act

The final rule for 20 CFR part 1010 titled Priority of Service for Covered Persons contains information collection (paperwork) requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA-95), 44 U.S.C. 3501 et seq., and OMB's regulations at 5 CFR part 1320. PRA-95 defines "collection of information" as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format * * *" (44 U.S.C. 3502(3)(A)). The information collection requirements

contained in the proposed rule for 20 CFR Part 1010 were submitted to OMB on August 15, 2008. On September 19, 2008, OMB instructed the Department to consider comments submitted in response to the Notice of Proposed Rulemaking and to resubmit the Information Collection Request (ICR) to OMB at the Final Rule stage.

Pursuant to OMB's instructions and in accordance with the requirements of the PRA, the Department submitted an ICR to OMB requesting approval for the information collection requirements contained in this Final Rule. OMB approved the ICR on December 17, 2008, under OMB Control Number 1205-0468 which will expire on July 31, 2011.

The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provision of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

In response to the publication of the ICR, four comments were submitted to OMB and transmitted to DOL. Three of these comments also had been submitted to DOL in response to the NPRM and duplicates of those comments were separately submitted to OMB. The fourth comment was submitted only to OMB and specifically addressed the ICR. Based on that comment, one data item was added to the Quarterly Aggregate Report and the burden estimate has been revised to reflect that addition.

The Department has summarized and responded to those comments that addressed the general data collection and reporting provisions included in section 1010.330 of the rule in Section II of this preamble, as part of the summary and responses to comments on that section of the rule. Similarly, the Department has summarized and responded to those comments that addressed the specific data collection and reporting provisions of the ICR in conjunction with Item A.8 of the revised Supporting Statement.

The final ICR estimates the number of respondents and burden hours as follows:

Respondents	Number of respondents	Units of time per respondent	Burden hours
Covered Entrants	1,586,815	3.15 minutes	83,308
New Covered Participants	151,530	22.4 minutes	56,571
Grantees	237	82.49 hours	19,550
Total	159,429

Total Estimated Burden Hours:
159,429

Total Estimated Cost Burden: \$0
Executive Order 13132

The Department has reviewed this final rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have “federalism implications.” The rule does not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This rule implements the priority of services for qualified job training programs. Although States are recipients of funds for many qualified job training programs, this rule does not have a substantial direct effect on the States; it merely establishes certain conditions on the receipt of program funds. This rule does nothing to alter either the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Accordingly, this final rule does not have “federalism implications.”

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act (UMRA) of 1995, this final rule does not include any Federal mandate that may result in increased expenditures by State, local and tribal governments, or by the private sector. This rule merely establishes that recipients of qualified job training funds must provide priority of service to veterans served with such funds. As this final rule does not impose any unfunded Federal mandate, the UMRA is not implicated.

Executive Order 13045

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This rule implements the priority of service provisions for qualified job training programs funded by the Department. This final rule has no impact on safety or health risks to children.

Executive Order 13175

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian tribal governments. The order requires Federal agencies to take certain actions when regulations have “tribal implications.” Required actions include consulting with Tribal Governments prior to promulgating a regulation with tribal implications and preparing a tribal impact statement. The order defines regulations as having “tribal implications” when they have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Department has reviewed this final rule and concludes that it does not have tribal implications. Although tribal governments are recipients of some qualified job training program funds, this rule merely establishes certain conditions on the receipt of program funds. Indian tribes will not even be required to perform the new reporting duties described in this rule because the programs they administer do not serve an average of 1000 covered persons per year. The rule does nothing to affect either the relationship or the distribution of power and responsibilities between the Federal Government and Indian tribes. Therefore, this final rule does not have tribal implications for purposes of Executive Order 13175.

Environmental Impact Assessment

The Department has reviewed this final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department’s NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and thus the Department has not prepared an environmental assessment or an environmental impact statement.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), requires the Department to assess the impact of this rule on family well-being. A rule that is determined to have a negative affect on families must be supported with an adequate rationale. The Department has assessed this final rule and has determined that it will not have a negative effect on families.

Privacy Act

The Privacy Act of 1974 (5 U.S.C. 552a) provides safeguards to individuals concerning their personal information which the Government collects. The Act requires certain actions by an agency that collects information on individuals when that information contains personally identifying information such as Social Security Numbers or names. Because this final rule does not require a new collection of personally-identifiable information, the Privacy Act does not apply in this instance.

Executive Order 12630

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

Executive Order 12988

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Executive Order 13211

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

Plain Language

The Department drafted this final rule in plain language.

Catalogue of Federal Domestic Assistance Number

This final rule is not program-specific; rather it applies across a broad spectrum of qualified job training programs. Therefore, designation of a listing in the Catalog of Federal Domestic Assistance would not be appropriate.

List of Subjects in 20 CFR Part 1010

Employment, Grant programs—Labor, Veterans.

■ For reasons stated in the preamble, 20 CFR Ch. IX is amended by adding part 1010 to read as follows:

PART 1010—APPLICATION OF PRIORITY OF SERVICE FOR COVERED PERSONS

Subpart A—Purpose and Definitions

Sec.

1010.100 What is the purpose and scope of this part?

1010.110 What definitions apply to this part?

Subpart B—Understanding Priority of Service

1010.200 What is priority of service?

1010.210 In which Department job training programs do covered persons receive priority of service?

1010.220 How are recipients required to implement priority of service?

1010.230 In addition to the responsibilities of all recipients, do States and political subdivisions of States have any particular responsibilities in implementing priority of service?

1010.240 Will the Department be monitoring for compliance with priority of service?

1010.250 Can priority of service be waived?

Subpart C—Applying Priority of Service

1010.300 What processes are to be implemented to identify covered persons?

1010.310 How will priority of service be applied?

1010.320 Will recipients be required to collect information and report on priority of service?

1010.330 What are the responsibilities of recipients to collect and maintain data on covered and non-covered persons?

Authority: Pub. L. 109–461 (Dec. 22, 2006), section 605 [38 U.S.C. 4215 Note]; 38 U.S.C. 4215.

Subpart A—Purpose and Definitions

§ 1010.100 What is the purpose and scope of this part?

(a) Part 1010 contains the Department regulations implementing priority of service for covered persons. Priority of service for covered persons is

authorized by section 2(a)(1) of JVA (38 U.S.C. 4215). These regulations fulfill section 605 of the Veterans Benefits, Health Care, and Information Technology Act of 2006, Pub. L. 109–461 (Dec. 22, 2006), which requires the Department to implement priority of service via regulation.

(b) As provided in § 1010.210, this part applies to all qualified job training programs.

§ 1010.110 What definitions apply to this part?

The following definitions apply to this part:

Covered person as defined in section 2(a) of the JVA (38 U.S.C. 4215(a)) means a veteran or eligible spouse.

Department or DOL means the United States Department of Labor, including its agencies and organizational units and their representatives.

Eligible Spouse as defined in section 2(a) of the JVA (38 U.S.C. 4215(a)) means the spouse of any of the following:

(1) Any veteran who died of a service-connected disability;

(2) 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 line of duty by a hostile force; or

(iii) Forcibly detained or interned in line of duty by a foreign government or power;

(3) Any veteran who has a total disability resulting from a service-connected disability, as evaluated by the Department of Veterans Affairs;

(4) Any veteran who died while a disability, as indicated in paragraph (3) of this section, was in existence.

Grant means an award of Federal financial assistance by the Department of Labor to an eligible recipient.

Jobs for Veterans Act (JVA) means Public Law 107–288 (2002). Section 2(a) of the JVA, codified at 38 U.S.C. 4215(a), provides priority of service for covered persons.

Non-covered person means any individual who meets neither the definition of “veteran,” as defined in this section, nor the definition of “eligible spouse” as defined in this section.

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

Recipient means an entity to which federal financial assistance, in whole or

in part, is awarded directly from the Department or through a sub-award for any qualified job training program.

Secretary means the Secretary of the Department of Labor.

Veteran means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable, as specified in 38 U.S.C. 101(2). Active service includes full-time duty in the National Guard or a Reserve component, other than full-time duty for training purposes.

Subpart B—Understanding Priority of Service

§ 1010.200 What is priority of service?

(a) As defined in section 2(a) of the JVA (38 U.S.C. 4215(a)) “priority of service” means, with respect to any qualified job training program, that a covered person shall be given priority over a non-covered person for the receipt of employment, training, and placement services provided under that program, notwithstanding any other provision of the law.

(b) Priority in the context of providing priority of service to veterans and other covered persons in qualified job training programs covered by this regulation means the right to take precedence over non-covered persons in obtaining services. Depending on the type of service or resource being provided, taking precedence may mean:

(1) The covered person receives access to the service or resource earlier in time than the non-covered person; or

(2) If the service or resource is limited, the covered person receives access to the service or resource instead of or before the non-covered person.

§ 1010.210 In which Department job training programs do covered persons receive priority of service?

(a) Priority of service applies to every qualified job training program funded, in whole or in part, by the Department, including:

(1) Any such program or service that uses technology to assist individuals to access workforce development programs (such as job and training opportunities, labor market information, career assessment tools, and related support services); and

(2) Any such program or service under the public employment service system, One-Stop Career Centers, the Workforce Investment Act of 1998, a demonstration or other temporary program; any workforce development program targeted to specific groups; and those programs implemented by States

or local service providers based on Federal block grants administered by the Department.

(b) The implementation of priority of service does not change the intended function of a program or service. Covered persons must meet all statutory eligibility and program requirements for participation in order to receive priority for a program or service.

§ 1010.220 How are recipients required to implement priority of service?

(a) An agreement to implement priority of service, as described in these regulations and in any departmental guidance, is a condition for receipt of all Department job training program funds.

(b) All recipients are required to ensure that priority of service is applied by all sub-recipients of Department funds. All program activities, including those obtained through requests for proposals, solicitations for grant awards, sub-grants, contracts, sub-contracts, and (where feasible) memoranda of understanding or other service provision agreements, issued or executed by qualified job training program operators, must be administered in compliance with priority of service.

§ 1010.230 In addition to the responsibilities of all recipients, do States and political subdivisions of States have any particular responsibilities in implementing priority of service?

(a) Pursuant to their responsibility under the Workforce Investment Act of 1998, States are required to address priority of service in their comprehensive strategic plan for the State's workforce investment system. Specifically, States must develop policies for the delivery of priority of service by the State Workforce Agency or Agencies, Local Workforce Investment Boards, and One-Stop Career Centers for all qualified job training programs delivered through the State's workforce system. The policy or policies must require that processes are in place to ensure that covered persons are identified at the point of entry and given an opportunity to take full advantage of priority of service. These processes shall be undertaken to ensure that covered persons are aware of:

(1) Their entitlement to priority of service;

(2) The full array of employment, training, and placement services available under priority of service; and

(3) Any applicable eligibility requirements for those programs and/or services.

(b) The State's policy or policies must require Local Workforce Investment Boards to develop and include in their

strategic local plan, policies implementing priority of service for the local One-Stop Career Centers and for service delivery by local workforce preparation and training providers. These policies must establish processes to ensure that covered persons are identified at the point of entry so that covered persons are able to take full advantage of priority of service. These processes shall ensure that covered persons are aware of:

(1) Their entitlement to priority of service;

(2) The full array of employment, training, and placement services available under priority of service; and

(3) Any applicable eligibility requirements for those programs and/or services.

§ 1010.240 Will the Department be monitoring for compliance with priority of service?

(a) The Department will monitor recipients of funds for qualified job training programs to ensure that covered persons are made aware of and afforded priority of service.

(b) Monitoring priority of service will be performed jointly between the Veterans' Employment and Training Service (VETS) and the DOL agency responsible for the program's administration and oversight.

(c) A recipient's failure to provide priority of service to covered persons will be handled in accordance with the program's established compliance review processes. In addition to the remedies available under the program's compliance review processes, a recipient may be required to submit a corrective action plan to correct such failure.

§ 1010.250 Can priority of service be waived?

No, priority of service cannot be waived.

Subpart C—Applying Priority of Service

§ 1010.300 What processes are to be implemented to identify covered persons?

(a) Recipients of funds for qualified job training programs must implement processes to identify covered persons who physically access service delivery points or who access virtual service delivery programs or Web sites in order to provide covered persons with timely and useful information on priority of service at the point of entry. Point of entry may include reception through a One-Stop Career Center established pursuant to the Workforce Investment Act of 1998, as part of an application process for a specific program, or

through any other method by which covered persons express an interest in receiving services, either in-person or virtually.

(b)(1) The processes for identifying covered persons at the point of entry must be designed to:

(i) Permit the individual to make known his or her covered person status; and

(ii) Permit those qualified job training programs specified in § 1010.330(a)(2) to initiate data collection for covered entrants.

(2) The processes for identifying covered persons are not required to verify the status of an individual as a veteran or eligible spouse at the point of entry unless they immediately undergo eligibility determination and enrollment in a program.

(c) The processes for identifying covered persons must ensure that:

(1) Covered persons are identified at the point of entry to allow covered persons to take full advantage of priority of service; and

(2) Covered persons are to be made aware of:

(i) Their entitlement to priority of service;

(ii) The full array of employment, training, and placement services available under priority of service; and

(iii) Any applicable eligibility requirements for those programs and/or services.

§ 1010.310 How will priority of service be applied?

(a) Recipients of funds for qualified job training programs must implement processes in accordance with § 1010.300 to identify covered persons at the point of entry, whether in person or virtual, so the covered person can be notified of their eligibility for priority of service. Since qualified job training programs may offer various types of services including staff-assisted services as well as self-services or informational activities, recipients also must ensure that priority of service is implemented throughout the full array of services provided to covered persons by the qualified job training program.

(b) Three categories of qualified job training programs affect the application of priority of service: universal access, discretionary targeting and statutory targeting. To obtain priority, a covered person must meet the statutory eligibility requirement(s) applicable to the specific program from which services are sought. For those programs that also have discretionary or statutory priorities or preferences pursuant to a Federal statute or regulation, recipients must coordinate providing priority of

service with applying those other priorities, as prescribed in paragraphs (b)(2) and (b)(3) of this section.

(1) *Universal access programs* operate or deliver services to the public as a whole; they do not target specific groups. These programs are required to provide priority of service to covered persons.

(2) *Discretionary targeting programs* focus on a particular group, or make efforts to provide a certain level of service to such a group, but do not specifically mandate that the favored group be served before other eligible individuals. Whether these provisions are found in a Federal statute or regulation, priority of service will apply. Covered persons must receive the highest priority for the program or service, and non-covered persons within the discretionary targeting will receive priority over non-covered persons outside the discretionary targeting.

(3) *Statutory targeting programs* are programs derived from a Federal statutory mandate that requires a priority or preference for a particular group of individuals or requires spending a certain portion of program funds on a particular group of persons receiving services. These are mandatory priorities. Recipients must determine each individual's covered person status and apply priority of service as described below:

(i) Covered persons who meet the mandatory priorities or spending requirement or limitation must receive the highest priority for the program or service;

(ii) Non-covered persons within the program's mandatory priority or spending requirement or limitation, must receive priority for the program or service over covered persons outside the program-specific mandatory priority or spending requirement or limitation; and,

(iii) Covered persons outside the program-specific mandatory priority or spending requirement or limitation must receive priority for the program or service over non-covered persons outside the program-specific mandatory priority or spending requirement or limitation.

§ 1010.320 Will recipients be required to collect information and report on priority of service?

Yes. Every recipient of funds for qualified job training programs must

collect such information, maintain such records, and submit reports containing such information and in such formats as the Secretary may require related to the provision of priority of service.

§ 1010.330 What are the responsibilities of recipients to collect and maintain data on covered and non-covered persons?

(a) *General Requirements.* Recipients must collect information in accordance with instructions issued by the Department.

(1) Recipients must collect two broad categories of information:

(i) For the qualified job training programs specified in paragraph (a)(2) of this section, information must be collected on covered persons from the point of entry, as defined in § 1010.300(a), and as provided in paragraph (b) of this section; and,

(ii) For all qualified job training programs, including the programs specified in paragraph (a)(2) of this section, information must be collected on covered and non-covered persons who receive services, as prescribed by the respective qualified job training programs, as provided in paragraph (c) of this section.

(2) For purposes of paragraph (a)(1) of this section, qualified job training programs that served, at the national level, 1,000 or more veterans per year for the three most recent years of program operations (currently the Wagner-Peyser, WIA Adult, WIA Dislocated Worker, WIA National Emergency Grant, and Senior Community Service Employment Programs) must collect information and report on covered entrants. The Trade Adjustment Assistance Program must collect information and report on covered entrants on the effective date of the next information collection requirement applicable to that program, whether that is for a renewal of an existing approved information collection or for approval of a new information collection.

(3) For purposes of this section, covered persons at the point of entry are referred to as "covered entrants." This group includes two further subgroups: veterans and eligible spouses as defined in § 1010.110.

(b) *Collection and Maintenance of Data on Covered Entrants.* In accordance with instructions issued by the Department, recipients of assistance for the programs specified in paragraph

(a)(2) of this section must collect and report individual record data for all covered entrants from the point of entry.

(c) *Collection and Maintenance of Data on Covered and Non-Covered Persons Who Receive Services.* In accordance with instructions issued for individual qualified job training programs, all recipients must collect and maintain data on covered and non-covered persons who receive services, including individual record data for those programs that require establishment and submission of individual records for persons receiving services.

(1) The information to be collected shall include, but is not limited to:

(i) The covered and non-covered person status of all persons receiving services;

(ii) The types of services provided to covered and non-covered persons;

(iii) The dates that services were received by covered and non-covered persons; and;

(iv) The employment outcomes experienced by covered and non-covered persons receiving services.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, for persons receiving services, recipients must apply the definitions set forth in § 1010.110 to distinguish covered from non-covered persons receiving services and, within covered persons, to distinguish veterans from eligible spouses.

(ii) Until qualified job training programs adopt the definitions for covered and non-covered persons set forth at § 1010.110 through the publication of requirements pursuant to the Paperwork Reduction Act, recipients must collect data on the services provided to and the outcomes experienced by veterans (however defined) and non-veterans receiving services in accord with regulations, policies and currently approved information collections.

(d) All information must be stored and managed in a manner that ensures confidentiality.

Signed at Washington, DC, this 15th day of December 2008.

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