

## TEXAS WORKFORCE COMMISSION LETTER

<b>ID/No:</b>	WD 35-11
<b>Date:</b>	November 3, 2011
<b>Keyword:</b>	All Programs; Veterans
<b>Effective:</b>	Immediately

**To:** Local Workforce Development Board Executive Directors  
Commission Executive Offices  
Integrated Service Area Managers



**From:** Laurence M. Jones, Director, Workforce Development Division

**Subject:** **Priority of Service for Eligible Veterans—*Update***

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### **PURPOSE:**

To provide Local Workforce Development Boards (Boards) with information and guidance on applying priority of service within all new and existing qualified job training programs for eligible veterans, specifically:

- definitions;
- applicability of priority of service;
- identifying and informing eligible veterans;
- priority order;
- priority of service for support services;
- required documentation;
- data collection; and
- local policies and procedures.

**This WD Letter provides Boards with the following updates:**

- **Information on Senate Bill (SB) 431, enacted by the 82nd Texas Legislature, Regular Session (2011), which mandates criminal penalties for falsifying military records in order to receive priority of service; and**
- **New Sample Self-Attestation Form (Attachment 1), which includes a statement regarding criminal penalties under SB 431.**

**Additionally, information on priority of service for foster youth is now set forth in WD Letter 43-11, issued November 3, 2011, and entitled “Priority of Service for Eligible Foster Youth.”**

### **CHANGES TO WD LETTER 04-09, CHANGE 3:**

New information in this WD Letter is in **bold** typeface, which indicates new or clarifying language.

## **BACKGROUND:**

On December 19, 2008, the U.S. Department of Labor Veterans' Employment and Training Service issued its final rule (20 CFR Part 1010), implementing Priority of Service for Covered Persons, as set forth in the Jobs for Veterans Act, and as specified by the Veterans' Benefits, Health Care, and Information Technology Act of 2006.

Additionally, Texas Labor Code §302.152 requires that state qualified veterans receive priority of service for training or assistance under a job training or employment assistance program or service.

## **PROCEDURES:**

Boards must ensure that the following definitions are used when implementing priority of service:

**NLF**

Eligible Veteran—any one of the following:

- *Federal/state qualified veteran*—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 at 38 U.S.C. 101(2). Active services include full-time duty in the National Guard or a Reserve component, other than full-time for training purposes. [*Note: This definition does not apply to eligibility for services provided by Disabled Veterans' Outreach Program/Local Veterans' Employment Representatives staff.*]
- *Federal qualified spouse*—the spouse of:
  - (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 U.S. Department of Veterans Affairs;
  - (4) any veteran who died while a disability, as indicated in paragraph (3) of this section, was in existence.

Boards must be aware that the spouse of a living veteran or service member (definitions 2 or 3 above) will lose his or her eligibility if the veteran or service member loses the status that is the basis for eligibility. For example, the spouse of a veteran with a total service-connected disability will not be eligible if the veteran's disability is revised to a lower level. Similarly, a spouse whose eligibility is derived from a living veteran or service member will lose his or her eligibility upon divorce from the veteran or service member.

**NLF**

- *State qualified spouse*—a spouse:
  - (1) who meets the definition of federal qualified spouse; or
  - (2) of any member of the armed forces who died while serving on active military, naval, or air service.

Noneligible person—an individual who does not meet the definition of eligible veteran or the definition of eligible foster youth.

Point of entry—may include reception through a Workforce Solutions Office, as part of an application process for a specific program, or through any other method by which eligible veterans express an interest in receiving services, either in person or online.

### **Applicability of Priority of Service**

Boards must be aware that requirements for priority of service apply to all workforce service programs funded in whole or in part by U.S. Department of Labor Employment and Training Administration or state funds.

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Specifically, priority of service applies to the following three categories of qualified job training programs:

- Universal access programs (e.g., Wagner-Peyser–funded services) that deliver services as a whole and that do not target specific groups;
- Discretionary targeting programs (e.g., Workforce Investment Act–funded services) that focus on certain groups but do not specifically mandate that target groups be served before other eligible individuals; and
- Statutory targeting programs (e.g., Temporary Assistance for Needy Families–funded services) that are mandated by federal law to provide priority or preference to certain groups or spending requirements or limitations.

### **Identifying and Informing Eligible Veterans**

Boards must ensure that eligible veterans are:

- identified at the point of entry; and
- informed of:
  - their right to priority of service;
  - the full array of employment, training, and placement services available under priority of service; and
  - any applicable eligibility requirements for those programs and services.

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**Boards must be aware that Senate Bill 431 amends the Texas Penal Code by adding §32.54, which makes it a Class C misdemeanor to falsely use or claim to hold a military record for the purpose of receiving priority of service.**

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**Boards must ensure that eligible veterans are informed of the penalties associated with proclaiming eligible-veteran status that is fraudulent, fictitious, or has been revoked.**

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## **Priority Order**

Boards must determine each individual's eligible-veteran status and apply priority of service as described below:

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- Eligible veterans who meet the mandatory priorities or spending requirement or limitation must receive the highest priority for the program or service;
- Noneligible persons within the program's mandatory priority or spending requirement or limitation must receive priority for the program or service over eligible veterans outside the program-specific mandatory priority or spending requirement or limitation; and
- Eligible veterans outside the program-specific mandatory priority or spending requirement or limitation must receive priority for the program or service over noneligible persons outside the program-specific mandatory priority or spending requirement or limitation.

Boards must be aware that they do not have the authority to establish additional priorities within the priorities established by the regulations.

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## Priority of Service and Precedence

Boards must be aware of the following:

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- Priority of service means the right of eligible veterans to take precedence over noneligible persons in obtaining workforce services.
- Taking precedence can mean:
  - eligible veterans receive access to workforce services before noneligible persons; or
  - if workforce services are limited, eligible veterans receive access to workforce services instead of or before noneligible persons.

Boards also must ensure that noneligible persons who are currently receiving workforce services are not displaced in order to provide priority of service to eligible veterans. Boards must ensure that the next available workforce services are provided to eligible veterans.

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*Example 1:* An eligible veteran enters a Workforce Solutions Office to use a resource room computer for job search. However, all computers are being used by noneligible persons and there are several noneligible persons in line. In this case, the eligible veteran would receive priority by being moved to the front of the line, but does not displace one of the noneligible persons already using a computer.

*Example 2:* For a service such as classroom training, priority of service applies to the selection procedure, as follows:

- First, if there is a waiting list for the formation of a training class, the eligible veteran will receive priority by being moved to the top of that list.
- Second, priority of service applies when an individual is both:
  - approved for funding; and
  - accepted or enrolled in a training class.

Therefore, once a noneligible person has been both approved for funding and accepted or enrolled in a training class, an eligible veteran who is identified subsequently will not take the place of the noneligible person from that training class.

### **Priority of Service for Support Services**

To ensure that eligible veterans receive priority over all other equally qualified individuals in the receipt of workforce services, they also must have access to needed support services (e.g., child care, transportation, etc.).

Implementing priority of service for the majority of support services is not difficult; however, because child care services are unique, the following additional guidance is provided.

#### Child Care

Boards must be aware that the priority for child care services for eligible veterans is contingent upon the availability of the Texas Workforce Commission's (TWC) child care funds. Boards with a waiting list for TWC-funded child care services must not discontinue care for a child currently enrolled in child care services in order to serve a child of an eligible veteran.

**NLF**

TWC's Child Care Services rule §809.43(a)(1) establishes that the following populations are assured child care services and are not subject to the child care waiting list:

1. Choices child care as referenced in §809.45;
2. Temporary Assistance for Needy Families Applicant child care as referenced in §809.46;
3. Supplemental Nutrition Assistance Program Employment and Training child care as referenced in §809.47; and
4. Transitional child care as referenced in §809.48.

TWC rule §809.43(a)(2) provides that the following populations are served subject to the availability of funds, and include, in priority order:

1. children who need to receive protective services child care as referenced in §809.49;
2. children of a qualified veteran as defined in §801.23;
3. children of an eligible foster youth as defined in §801.23;
4. children of teen parents as defined in §809.2; and
5. children with disabilities as defined in §809.2.

### **Documentation Requirements**

Boards must ensure that eligible veterans receiving staff-assisted services sign a self-attestation form to certify that they meet the definition of eligible veteran. (Self-attestation is not required if a DD-214 is on file in the Workforce Solutions Office, the veteran presents a DD-214 upon arrival, or the veteran indicated their veteran status in WorkInTexas.com.)

**NLF**

Boards may use Attachment 1 or create their own self-attestation form.

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**Data Collection**

Boards must document the receipt of staff-assisted workforce services in The Workforce Information System of Texas (TWIST) or WorkInTexas.com.

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**Local Policies and Procedures**

Boards must ensure that local procedures are implemented:

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- to identify eligible veterans at the point of entry by allowing individuals to self-identify as eligible veterans (e.g., placing a “sign-in” sheet at the reception desk at Workforce Solutions Offices that prompts all customers to declare their eligible veteran status prior to receiving services); and
- that do not require completion of a self-attestation form.

Boards must ensure that written copies of local priority of service policies and procedures are maintained at all service delivery points and, to the extent practicable, posted in a way that makes it possible for the public to easily access them.

NLF

**INQUIRIES:**

Direct inquiries regarding this WD Letter to [wfpolicy.clarifications@twc.state.tx.us](mailto:wfpolicy.clarifications@twc.state.tx.us).

**ATTACHMENT:**

Attachment 1: Sample Self-Attestation Form

**RESCISSIONS:**

WD Letter 04-09, Change 3

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**REFERENCE:**

Workforce Investment Act  
Title 38 U.S.C. Chapter 42, as amended by Public Law 107-288, the Jobs for Veterans Act  
Title 38 U.S.C. Chapter 1, §101  
20 CFR Part 1010, Priority of Service for Covered Persons  
Training and Employment Guidance Letter No. 10-09, issued November 10, 2009, and entitled “Implementing Priority of Service for Veterans and Eligible Spouses in all Qualified Job Training Programs Funded in whole or in part by the U.S. Department of Labor (DOL)”  
Texas Labor Code, Chapter 302, Subchapter G)  
Senate Bill 431, enacted by the 82nd Texas Legislature, Regular Session (2011) (to be codified as Texas Penal Code §32.54)  
Texas Workforce Commission Local Workforce Development Boards Rules: 40 TAC, Chapter 801  
WD Letter 43-11, issued November 3, 2011, and entitled “Priority of Service for Eligible Foster Youth”

**FLEXIBILITY RATINGS:**

**No Local Flexibility (NLF):** This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by “must” or “shall.”

**Local Flexibility (LF)**: This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”