



June 15, 2015

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US Department of Labor
200 Constitution Ave., NW
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Washington, DC 20210

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Veterans and Military Families Task Force [hereafter referred to as the “task force”] submit the following comments on the Notice of Proposed Rulemaking RIN 1205-AB73 - 20 CFR Parts 603, 651, 652, 653, 654, 658, 675, 679, 680, 681, 682, 683, 684, 685, 686, 687, and 688 concerning the Workforce Innovation and Opportunity Act (WIOA) - Employment and Training Administration RIN 1205-AB74 - 20 CFR Parts 676, 677, and 678 pertaining to Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability and the One-Stop System Joint Provisions RIN 1820-AB70 - 34 CFR Parts 361, 363 and 397– State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage.

CCD is a coalition of more than 100 disability rights, advocacy, consumer, and provider organizations representing the 56 million Americans with disabilities. Most of its work is done through task forces and this task force is involved with policies, legislation, and regulations affecting veterans and military family members with disabilities.

WIOA contained a number of provisions intended to strengthen services by the workforce development system to veterans with disabilities. Our task force continues to be concerned that, without appropriate attention, many of the provisions of WIOA intended to ensure these veterans receive all benefits to which they are entitled will be overlooked unless spelled out in the final regulations.

The Department of Labor’s (DOL) Local Veterans Employment Representatives (LVERs) and Disabled Veterans Outreach Program Specialists (DVOPs) should be key in efforts to ensure that veterans with disabilities are appropriately served by the workforce system. Since 1944, LVERs’ duties have included outreach to employers and facilitating employment, training, and placement services furnished to veterans.

DVOPs were created in 1977 to provide special employment services to any veteran according to the following priorities: “special disabled and other disabled veterans, as defined by 38 USC 4211, and to other eligible veterans” as directed by the Secretary of the Department of Veterans Affairs (VA). In April 2014, DOL issued guidance (TEGL 19-13), however, directing that LVERs are no longer allowed to perform any casework for individual veterans and DVOPs are no longer allowed to serve veterans with non-service-connected disabilities, even if these staffers have time to do so.

As a result, it is very possible that a veteran on Social Security Disability Insurance with a significant non-service-connected disability could be denied the services of a DVOP or LVER in favor of a veteran with a 10 percent service-connected disability. Without access to these veteran-specific employment personnel, veterans with non-service-connected disabilities will rely more heavily on the generic workforce development system. Also, the state vocational rehabilitation systems are the primary vocational rehabilitation option for non-service-connected veterans. As such, it is vital that the final regulations foster as much as possible the coordination of all workforce development programs, training of workforce system personnel, and evaluation of workforce system performance to benefit all veterans with disabilities.

RIN 1205-AB73 - 20 CFR Parts 603, 651, 652, 653, 654, 658, 675, 679, 680, 681, 682, 683, 684, 685, 686, 687, and 688 concerning the Workforce Innovation and Opportunity Act (WIOA) - Employment and Training Administration

Part 652 – Establishment and Functioning of State Employment Services

Section 652.100 Services for veterans. Veterans receive priority of service for all DOL-funded employment and training programs as described in 20 CFR part 1010. The Department’s Veterans’ Employment and Training Service (VETS) administers the Jobs for Veterans State Grants (JVSG) program under chapter 41 of title 38 of the U.S. Code and other activities and training programs which provide services to specific populations of eligible veterans. VETS’ general regulations are located in parts 1001, 1002, and 1010 of this title.

Comment – this section restates veterans’ priority of service as applied to state employment services and is similar to the statement found in Section 680.650 as applied to adult and dislocated worker programs. The task force believes the importance of veterans’ priority of service cannot be overstated and agrees with its inclusion in this section.

Part 679-Statewide and Local Governance of the Workforce Investment System under Title I of WIOA

This part deals with state workforce development boards, local workforce boards, and creation of regional workforce planning systems, as well as their functions and membership.

Under **§ 679.110(b)(3)(ii)(A) through (D)**, no less than 20 percent of the members of the State Board can be representatives of the workforce. This proposed section also encourages representation from community based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of “individuals with barriers to employment across the State including organizations that *serve veterans* or that provide or support competitive, integrated employment for individuals with disabilities....”

Section 679.320 outlines the required members of the Local Workforce Development Board and reiterates in §679.320 (c)(3) the provision that these local boards “may include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training or education needs of individuals with barriers to employment, including organizations that serve veterans or provide or support competitive integrated employment for individuals with disabilities...”

Comment - Inclusion of organizations serving veterans and people with disabilities are permissive under the rule as directed by the statute. They are not required – nor is there any reference to including veterans and other people with disabilities themselves on these boards. Given the degree to which veterans and other people with disabilities face significant barriers to employment, this task force strongly recommends that the Department urge representation of these populations on state and local workforce boards.

Section 679.370 outlines the responsibilities of the local workforce boards.

Comment - Proposed §679.370 guides the work to be done by the local boards under WIOA. Local boards will be critical in creating linkages between workforce systems and regional employment needs. Subparagraph (e) explains the role of the local boards in engaging employers and promoting business representation on the board. The regulatory language about the functioning of local boards should reflect the significant economic opportunities associated with federal contractors doing business in local areas. This task force recommends that the language of § 679.370 be amended to remind local boards about the regulations implementing the Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA), which requires federal contractors to take affirmative action to recruit, hire, and retain veterans, in particular veterans with disabilities. Connecting local boards with employers, serving the needs of veterans with barriers to employment, and satisfying the promise of VEVRAA will create a synergy that can economically benefit local areas.

Part 680 – Adult and Dislocated Worker Activities Under Title I of WIOA

Section 680.140 outlines the Title I adult and dislocated worker services that local boards are required and permitted to provide. Subsection (b) details job seeker and employer services and coordination activities that **may** also be offered by local boards. Among the additional job seeker services specified under (b)(1)(i) are: Customer

support to enable individuals with barriers to employment (including individuals with disabilities) and veterans, to navigate among multiple services and activities (WIOA sec. 134(d)(1)(A)(iv)). Under (b)(3) coordination activities include: (v) Improving services and linkages between the local workforce investment system (including the local one-stop delivery system) and employers and (vi) Strengthening linkages between the one-stop delivery system and the unemployment insurance. Subsection (b)(5) refers to “Technical assistance for one-stop operators, partners, and eligible training providers on the provision of service to individuals with disabilities in local areas, including staff training and development, provision of outreach and intake assessments, service delivery, service coordination across providers and programs, and development of performance accountability measures (WIOA sec. 134(d)(1)(A)(v)).”

Comment – The task force is pleased that the proposed rule sets out so extensively the variety of services for people with disabilities for which Title I WIOA funds may be used – as called for in the statute. However, these services are permissive and not mandatory. Several of these services are of particular importance to veterans with disabilities to help them navigate between programs that serve them as people with disabilities and programs that serve them as veterans. Because Wagner-Peyser employment offices can no longer serve as stand-alone one-stops, training of one-stop staff and operators becomes important to their understanding of the multiple programs that may serve veterans with disabilities. This task force, therefore, recommends that additional language be added to urge local boards to focus their optional services on this population.

Under §680.140(a), which specifies the required services to be provided, reference should be made to veterans’ priority of service given that this information would be particularly pertinent to (b)(1)(i) and to the training to be provided to staff mentioned under (b)(5).

Section 680.600 outlines the priorities that must be given to low income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under Title I. Section 680.600(c) stipulates, however, that any priority given to populations must be “consistent with priority of service for veterans (see § 680.650).”

Comment – The task force appreciates the appropriate reference to veterans’ priority of service which takes precedence in all DOL funded programs.

Section 680.630 outlines the manner in which individuals qualify for career and training services as “displaced homemakers.” It references the law’s definition that includes dependent spouses of members of the Armed Forces whose family income is “significantly reduced” because of “the service-connected death or disability of the member.”

Comment – The task force believes this is an important provision of the law and recommends that the Department urge states to highlight these particular displaced military spouse homemakers in dissemination of information about services to this population.

Section 680.650 explicitly states that veterans are to receive priority of service under all DOL-funded training programs. A veteran must still meet each program’s eligibility criteria to receive services under the respective employment and training program. For income-based eligibility determinations, amounts paid while on active duty or paid by VA for vocational rehabilitation, disability payments, or related VA-funded programs are not to be considered as income in accordance with 38 U.S.C. 4213 and 20 CFR 683.230.

Comment – The task force commends the Department for including this definitive statement of veterans’ priority of service because of the importance in assuring that veterans with disabilities can benefit from all aspects of the workforce system. We recommend that references to §680.650 be included in other relevant portions of the regulations.

Part 683 – Administrative Provisions Under Title I of WIOA

Section 683.230 reflects statutory requirements pertaining to veterans when income is a factor in eligibility determinations. The proposed rule notes that, when past income is an eligibility determinant for federal employment or training programs, any amounts received as military pay or allowances by any person who served on active duty, and certain other specified benefits must be disregarded for the veteran and for other individuals for whom those amounts would normally be applied in making an eligibility determination. This applies when determining if a person is a “low-income individual” for eligibility purposes. Also, it applies when income is used as a factor when a local area provides priority of service for “low-income individuals” with Title I WIOA funds (see 20 CFR 680.600 and 20 CFR 680.650). The proposed rule goes on to refer “questions regarding the application of 38 U.S.C. 4213...to the Veterans’ Employment and Training Service.”

Comment – The task force appreciates the inclusion of this subsection but is concerned that simply referring questions to VETS without further guidance could create problems in processing veterans’ participation in WIOA programs. The need to apply properly these special income eligibility rules for veterans reinforces the need for specific training of one-stop operators and one-stop staff outlined in §680.140. We believe that procedures for eligibility determinations should explicitly state this exception.

Part 688 – Provisions Governing the YouthBuild Program

Section 688.310 notes that special rules apply to veterans for determining income eligibility for this program and references those rules found at 20 CFR

683.230 and the priority of service provisions for qualified persons found in 20 CFR part 1010.

Comment – The task force appreciates the reference to the special income rules for veterans and veterans’ priority of service contained in this section.

RIN 1205-AB74 - 20 CFR Parts 676, 677, and 678 pertaining to Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability and the One-Stop System Joint Provisions

Part 676 and Subpart D of Part 361 – Unified and Combined State Plans Under Title I of WIOA

The purpose of the Unified and Combined State Plans is to provide the framework for states to outline how their workforce development systems will achieve the purposes of the law. Provisions of Part 676 and Subpart D of Part 361 describe the general requirements for Unified State Plans and Combined State Plans. Unified State Plans cover the three major Title I WIOA programs, Adult Education and Family Literacy Act programs, state employment services, and state vocational rehabilitation programs. A state may choose to develop and submit a Combined State Plan in lieu of the Unified State Plan that would include the six core WIOA programs and one or more of the optional programs and activities described in §103(a)(2) of WIOA. Among the optional programs that may be included in a Combined State Plan as described in §676.140 are “(6) Services for veterans authorized under chapter 41 of title 38, United States Code.”

Comment – The Jobs for Veterans Act (JVA), P.L. 107-288, signed into law on November 7, 2002, requires that there be priority of service for veterans and eligible spouses in any workforce preparation, development, or delivery program or service directly funded in whole or in part, by DOL (38 U.S.C. 4215). The Priority of Service regulations, codified at 20 CFR 1010, were issued December 19, 2008, and require qualified job training programs to implement priority of service for veterans and eligible spouses, effective January 19, 2009. Protocols for implementing priority of service were issued by DOL in 2010 (<http://wdr.doleta.gov/directives/attach/TEN/ten2010/ten15-10a1.pdf>). This protocol states that, “service providers should have processes in place at the point of entry to the system to identify veterans and eligible spouses who are entitled to priority of service. Priority of service means the right of veterans and eligible spouses to take precedence over a non-covered person in obtaining all employment and training services. Depending on the type of service, this may mean veterans and eligible spouses receive services earlier in time or instead of non-covered persons.”

Because DOL is strictly interpreting the statutory authorization for DVOPs and LVERs, veterans’ priority of service becomes more important for veterans with non-service-connected disabilities.

WIOA stipulated that the contents of the Unified State Plan must include a description of “how the State will implement the priority of service provisions for veterans in accordance with the requirements of section 4215 of title 38, United States Code” [§102 (b)(2)(C)(vi)]. Therefore, regulations for Unified State Plans should ensure that states address priority of service for both veterans with service-connected and non-service-connected disabilities in their strategic planning [§102 (b)(1)] and operational planning [§102(b)(2)]. There do not appear to be any references, however, to states addressing veterans’ priority of service in their Combined or Unified State Plans under the above two sections. The task force believes this issue must be addressed in the final rule.

Part 677 – Performance Accountability Under Title I of WIOA

This part outlines the performance accountability measures under Title I of WIOA. The explanatory statement on page 20583 for 20 CFR Parts 676, 677 and 678 states that, “With a few exceptions, including the local accountability system under sec. 116(c) of WIOA, the performance accountability requirements apply across all of the core programs.” Under §677.160, states are directed to disaggregate participants by “individuals with barriers to employment.” Section 677.165 allows states to identify additional indicators of performance but these must be included in their state plans.

The explanatory statement goes on to state – “In addition, WIOA requires additional programs, including Job Corps, Native American programs, the Migrant and Seasonal Farmworker programs, and the YouthBuild program, to use the same performance accountability indicators as the core programs. This will better align both the core programs and other education and training programs across the workforce system. Further, DOL plans to include other workforce programs under its purview in this streamlining effort, including the Jobs for Veterans State Grants (JVSG) program as authorized by the Jobs for Veterans Act, other formula and applicable competitive grant programs administered by DOL”.

Comment – This task force urges DOL to issue the accountability measures for JVSG as soon as possible upon completion of the WIOA regulations to ensure that workforce system performance addresses the needs of veterans with disabilities. We further recommend that states be encouraged to establish additional performance accountability measures for veterans with service-connected and non-service-connected disabilities.

Part 678 – Description of the One-Stop System Under Title I of WIOA

Section 678.315 sets forth the statutory prohibition against stand-alone Wagner-Peyser employment services offices. In those cases where Wagner-Peyser employment services are located in an affiliated site, “there must be

at least one other partner in that affiliated site whose staff is physically present more than 50 percent of the time the center is open.” Certain partner programs cannot be considered the “other partner” when determining whether Wagner-Peyser employment services are stand-alone. These partner programs are: LVERs, DVOPs, or unemployment compensation staff. LVERs and DVOPs, also referred to collectively as JVSG programs, are typically provided alongside Wagner-Peyser employment services programs.

As the explanatory statement on page 20599 conveys, “When a veteran does not receive services through the disabled veterans’ outreach program, that veteran is served by the Wagner-Peyser employment service. To provide individuals with the full range of employment, training, and education services available, it is important to connect both the JVSG programs and the Wagner-Peyser employment service with the rest of the one-stop system. The Departments expect that the entity that administers the Wagner-Peyser employment service, in consultation with Local Boards and one-stop partners, will need to make the changes needed to comply with the proposed rule.”

Comment – WIOA’s objective is to integrate workforce programs to provide seamless access to all programs for which an individual may be eligible. The task force believes this provision is a positive step in that direction.

RIN 1820-AB70 - 34 CFR Parts 361, 363 and 397 – State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage.

Finally, the task force wishes to bring to the Department of Education’s attention the following provision in WIOA. Section 417 (a)(3)(B) of the law amended ED’s monitoring and review responsibilities to include providing “technical assistance to other programs under the title to integrate veterans who are individuals with disabilities into their communities and to support the veterans to obtain and retain competitive integrated employment.”

Comment – There does not appear to be any reference to this section of the law in the NPRM document governing the Rehabilitation Services Administration. The final regulations should address this portion of the law given the importance of state vocational rehabilitation programs to veterans with non-service-connected disabilities. Reference could be made to programs such as Centers for Independent Living, Client Assistance Programs, Rehabilitation Training Program personnel or Title I programs such as one-stop operators, partner programs, adult and dislocated worker programs and youth programs.

Sincerely,
ACCSES
Easter Seals Inc.
National Association of State Head Injury Administrators
National Disability Rights Network
National Organization on Disability
Paralyzed Veterans of America
Vietnam Veterans of America