

“Priority of Service” Provision in the Workforce Innovation and Opportunity Act: Targeting Funding to Serve More High-Need Adults

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The Workforce Innovation and Opportunity Act of 2014 (WIOA)ⁱ requires priority be given to “public benefits recipients, other low-income individuals, and individuals who are basic skills deficient” when providing career and training services using WIOA Title I Adult funds. This priority is needed; in Program Year 2013, under the Workforce Investment Act of 1998 (WIA), only 48 percent of those receiving intensive or training services were low-income, including only 27.5 percent who were receiving any form of public assistance benefits,ⁱⁱ and a paltry 3.8 percent who were recipients of cash assistance under Temporary Assistance for Needy Families (TANF).ⁱⁱⁱ

This paper discusses the priority of service provision in the WIOA statute, briefly analyzes the recently released draft regulations, and makes six policy recommendations. In summary, we recommend:

1. The U.S. Department of Labor (DOL) should define “priority of service” more clearly and set expectations for state and local implementation;
2. DOL should interpret the interaction between the law’s expanded definition of “basic skills deficient” and the provision ensuring “priority of service” to avoid designating otherwise high-functioning individuals as “basic skills deficient” because they lack specific skills needed for a particular job;
3. DOL should clarify the rule for designating “other eligible individuals” for priority of service, ensuring that targeted high-need adults and veterans come first in priority;
4. DOL should use its existing guidance and requirements for priority of service for veterans as a model for its protocols for implementing priority of service for targeted high-need adults;^{iv}
5. DOL should compile examples of states and local areas that are successfully implementing priority of service and use this information in technical assistance to the field; and
6. DOL should set benchmarks to show improvement in the percentage of targeted high-need individuals who receive services from WIOA Title I Adult funds and tie discretionary grant funding to progress on this goal.

Background

WIOA is the first update to the nation’s landmark workforce development legislation since WIA in 1998. This new act, signed into law by President Obama on July 22, 2014, is intended to improve and strengthen the public workforce system and help Americans—especially youth and adults with significant barriers to employment—obtain skills, postsecondary credentials, and employment. It includes many provisions that create opportunities for success for low-income and lower-skilled individuals. Further, it underscores the importance of coordination with other federal education and training programs, including TANF employment and training services, among others.^v

Strengthened “Priority of Service” in statute

One provision of WIOA that holds great promise for creating opportunities for low-income and lower-skilled individuals to succeed is the requirement that specific groups of high-need adults should be given “priority of service” for career and training services under the Title I Adult funding stream. The statute requires that priority for career and training services be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. Below, we will refer to individuals in the provision’s three categories as “targeted high-need adults.” In the past, under WIA, this priority would go into effect only if the local area determined in its local policy that funding “was limited,” but many local areas chose not to trigger this provision. Without such a determination, the priority of service provision was not implemented. WIOA strengthens this provision by removing the “limited funding” exception, making the priority of service automatic for all WIOA Adult funding.

| Comparison of Priority of Service provisions in WIOA and WIA | |
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| Workforce Innovation and Opportunity Act of 2014 | Workforce Investment Act of 1998 |
| Sec. 134(c)(3)(E) Priority.--With respect to funds allocated to a local area for adult employment and training activities under paragraph (2)(A) or (3) of section 133(b), priority shall be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient for receipt of career services described in paragraph (2)(A)(xii) and training services. The appropriate local board and the Governor shall direct the one-stop operators in the local area with regard to making determinations related to such priority. | Sec. 134(d)(4)(E) Priority.--In the event that funds allocated to a local area for adult employment and training activities under paragraph (2)(A) or (3) of section 133(b) are limited, priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services. The appropriate local board and the Governor shall direct the one-stop operators in the local area with regard to making determinations related to such priority. |

In addition, WIOA makes TANF a required partner in the WIOA one-stop system, unless the Governor opts out. This sends a strong signal that individuals in greatest need should be served under WIOA in a way that is well coordinated with TANF. The law’s combination of strengthening the priority of service provision and adding TANF as a required partner is clearly intended to increase the number of high-need adults in career and training services.

However, two additional new provisions may dampen this intent. First, the priority of services in WIOA adds “individuals who are basic skills deficient” to the list of prioritized populations. The definition of basic skills deficient in WIOA has been expanded to include individuals with English reading, writing, or computing skills at or below the 8th grade level, and also “youth or adults that are that are unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society.” This broader definition, which is a useful reform when considered on its own, could inadvertently weaken the intent of priority of service, as it could be interpreted to expand the priority of services to individuals who could be defined as lacking the specific skills needed to function on a particular job that they are seeking, even if those individuals

are already high functioning for many other occupations. Such a broad interpretation of the “basic skills deficient” definition could potentially encourage local areas to prioritize services for individuals who are generally high functioning and do not face the most intensive barriers to employment.

| Comparison of definitions of “basic skills deficient” in WIOA and WIA | |
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| Workforce Innovation and Opportunity Act (WIOA) of 2014 | Workforce Investment Act (WIA) of 1998 |
| <p>Sec. 3(5) Basic skills deficient.--The term “basic skills deficient” means, with respect to an individual—</p> <p>(A) who is a youth, that the individual has English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test; or</p> <p>(B) who is a youth or adult, that the individual is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society.</p> | <p>Sec. 101(4) Basic skills deficient.--The term “basic skills deficient” means, with respect to an individual, that the individual has English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test.</p> |

Second, WIOA allows local areas to transfer up to 100 percent of funding between WIOA Adult and WIOA Dislocated Worker programs, allowing flexibility to serve the two groups according to the need in the area. While this flexibility was previously available through a waiver under WIA, this statutory flexibility could potentially encourage local areas to transfer funding away from the WIOA Adult program, which specifies priority for targeted high-need adults, to the Dislocated Worker program, which does not include such a priority.

Some positive steps in draft regulations

Both WIA and WIOA statutes give the appropriate local board and the Governor the responsibility for directing the one-stop operators on how to make determinations related to the priority for targeted high-need adults served with Title I Adult funding. However, nothing in either the old or new statute defines “priority of service.”

In regulations issued after the passage of WIA in 1998, DOL chose not to clarify the intent or protocols governing priority of service, except to pass that responsibility to the states. Many states simply transmitted the provisions, without clarification, to the local areas. Across the country the priority of service policies and results were varied and often ineffective. DOL did not issue guidance to clarify the issue.

In the recently released draft regulations for WIOA, DOL again does not define priority of service, but does require states and local areas to establish criteria by which the one-stop operator will apply the priority. Furthermore, the proposed regulations would require local plans to include direction given by the Governor and the local board to the one-stop operator to ensure priority for the targeted high-need adults. CLASP has advocated for and strongly supports this proposed regulatory provision because it elevates the importance of priority of service to the local plan level, where it is more easily monitored by stakeholders.

| Workforce Innovation and Opportunity Act (WIOA) of 2014 | Workforce Investment Act (WIA) of 1998 |
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| <p>§ 680.600 What priority 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?</p> <p>(a) WIOA states, in sec. 134(c)(3)(E), that priority for individualized career services (see § 678.430(b)) and training services funded with title I adult funds must be given to recipients of public assistance, other low-income individuals, who are basic skills deficient (as defined in WIOA sec. 3(5)(B)) in the local area.</p> <p>(b) States and local areas must establish criteria by which the one-stop operator will apply the priority under WIOA sec. 134(c)(3)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.</p> <p>(c) The priority established under paragraph (b) of this section does not necessarily mean that these services may only be provided to recipients of public assistance, other low-income individuals, and individuals without basic work skills. The Local Board and the Governor may establish a process that also gives priority to other individuals eligible to receive such services, provided that it is consistent with priority of service for veterans (see § 680.650).</p> | <p>§663.600 What priority must be given to low-income adults and public assistance recipients served with adult funds under title I?</p> <p>(a) WIA states, in section 134(d)(4)(E), that in the event that funds allocated to a local area for adult employment and training activities are limited, priority for intensive and training services funded with title I adult funds must be given to recipients of public assistance and other low-income individuals in the local area.</p> <p>(b) Since funding is generally limited, States and local areas must establish criteria by which local areas can determine the availability of funds and the process by which any priority will be applied under WIA section 134(d)(2)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.</p> <p>(c) States and local areas must give priority for adult intensive and training services to recipients of public assistance and other low-income individuals, unless the local area has determined that funds are not limited under the criteria established under paragraph (b) of this section.</p> <p>(d) The process for determining whether to apply the priority established under paragraph (b) of this section does not necessarily mean that only the recipients of public assistance and other low income individuals may receive WIA adult funded intensive and training services when funds are determined to be limited in a local area. The Local Board and the Governor may establish a process that gives priority for services to the recipients of public assistance and other low income individuals and that also serves other individuals meeting eligibility requirements.</p> |

These additional regulatory provisions are positive proposals, but given the history of States and local areas choosing not to implement the priority of service under WIA, we urge DOL to further clarify what priority of service means and how the Department will be monitoring WIOA implementation to ensure that the system puts meaningful protocols in place. Specifically, the Department should clarify that policies and protocols developed by the states and local areas must identify the target populations, the outreach methods, the delivery strategies targeted to meet the needs of each population, and the mechanisms to be used in support of the prioritized population. States and local areas should be required to exercise transparency by making clear the priorities, policies, and progress in achieving the goal of serving low-income, lower-skilled individuals with significant barriers to employment.

One additional provision in the WIOA draft regulations is potentially problematic: while priority must be given under WIOA Title I Adult funds to the targeted populations, the local board and Governor may establish a process that also gives priority to other individuals, as long as it is consistent with priority of service for veterans (proposed § 680.600(c)). In saying that States and local areas can add other priority populations, as long as they are consistent with the veterans priority—and remaining silent on whether they have to be consistent with the priority for targeted high-need adults—it may be possible to adopt policies that set higher priorities for populations other than public assistance recipients, other low-income individuals, and individuals who are basic skills deficient. In its final regulations, DOL should clarify that any additional priorities must be consistent with both the veterans' priority and the targeted high-need adult priority, meaning that other prioritized populations would come after veterans and the targeted high-need adults.

The final regulations also should clarify the expanded definition of “basic skills deficient” as it interacts with the priority of service, so that the priority cannot be expanded to those who are generally high-functioning.

Beyond regulations: Guidance for the field

Implementing priority of service provisions is not new to DOL, and the Department should use its experience in applying priority of service in other contexts to its WIOA guidance. DOL addressed the issue of implementing priority of services following enactment of both the American Recovery and Reinvestment Act (ARRA) [Public Law 111-5] and the Jobs for Veterans Act of 2002 [Public Law 107-288]. In both instances, it was important that services be prioritized to the target populations.

The DOL Employment and Training Administration (ETA) released guidance specifically drawing attention to targeting priority populations as a key provision of the ARRA legislation. It encouraged states and local areas to pay particular attention to these populations in the development of implementation strategies, and it encouraged State, regional, and local strategies to include robust approaches for providing access to training and employment services to these priority populations.

Upon passage of the Jobs for Veterans Act of 2002, the DOL's final rule and guidance provided immediate clarification and extensive implementation support for implementing the veterans' priority of service, including:

- Requiring states to address priority of service in the comprehensive state plan
- Requiring states to develop policies governing state, regional, and local boards and one stops
- Requiring policies to identify eligible individuals at point of entry
- Identifying how eligible individuals would be informed
- Requiring all local plans to articulate policies and protocols
- Requiring policies to be made publically available and accessible
- Defining in detail what it means to provide priority of service

- Requiring federal monitoring of this provision in the final rule
- Requiring reporting on priority of service as part of the annual report.^{vi}

Priority of service for recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient should be just as robust and detailed as priority of service for veterans.

Technical Assistance

The Department should identify states and local areas that have prioritized targeted populations and achieved positive outcomes. In addition, DOL should identify what combinations of training and wraparound services are most useful for targeted adults. This information should be used as part of ongoing technical assistance to help states and local areas better implement the priority of services.

Setting goals for serving more targeted high-need adults

While it is clearly not the intent that services provided through the WIOA Adult funding stream be limited to only targeted high-need adults, the Department should set a benchmark to monitor effective implementation of this provision, preserving local flexibility while encouraging increases in the level and quality of services to these groups. One approach could be to set a system-wide goal for priority of service that is above the current national average (e.g., setting a goal that 60 percent of Title I Adult participants should be low-income). States could use these goals to measure the progress of local areas in implementing effective protocols. As an incentive for states and local areas that are already performing well against the goals, the Department should give priority in its federal discretionary grant funds to those states and local areas that have achieved the aspirational goal for priority of service. To further encourage states and local areas to be more purposeful in their outreach and planning for targeted low-income populations, the Department should also restrict those states or local areas that have fallen well short of the goals from being considered for discretionary grants. DOL should consider revisiting and recalibrating the goals every few years.

Conclusion

The strengthened priority of service provision in WIOA provides an opportunity for more low-income and lower-skilled individuals to succeed. This opportunity can only be realized through strong regulations and implementation guidance that reinforce the law's intent for state and local workforce development systems to serve more adults who are most in need of employment and training services. Federal, state, and local stakeholders in the workforce development system now have a once-in-a-decade opportunity to make priority of service a reality.

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ENDNOTES:

ⁱ The Workforce Innovation and Opportunity Act (WIOA) supersedes the Workforce Investment Act of 1998 (WIA) and is the first legislative reform of the public workforce program in 16 years.

ⁱⁱ Other public assistance includes General Assistance (GA) (State/local government), Refugee Cash Assistance (RCA), Food Stamp Assistance (SNAP), or Supplemental Security Income (SSI-SSA Title XVI). Does not include foster child payments.

ⁱⁱⁱ U.S. Department of Labor, Employment and Training Administration, Program Year 2013 WIASRD Databook, http://www.doleta.gov/performance/results/pdf/PY_2013_WIASRD_Data_Book.pdf

^{iv} U.S. Department of Labor, Employment and Training Administration, Training and Employment Guidance Letter (TGL) 10-09, Implementing Priority of Service for Veterans and Eligible Spouses, http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2816

^v Helly Lee, WIOA: What Human Service Agencies and Advocates Need to Know Advancing economic opportunities for low-income adults and youth, CLASP, 2015, <http://www.clasp.org/resources-and-publications/publication-1/WIOA-and-Human-Services-FINAL.pdf>

^{vi} ETA TEGL 10-09