

TULARE COUNTY WORKFORCE INVESTMENT BOARD, INC. WORKFORCE INVESTMENT ACT TITLE I ACTIVITIES	DATE: October 17, 2001
	SUBJECT: Selective Service Registration

WIB DIRECTIVE

WIBD-01-7

TO: Tulare County Workforce Investment Board, Inc. (TCWIB) Service Providers and Tulare County Workforce Investment Department (TCWID) Staff

SUBJECT: SELECTIVE SERVICE REGISTRATION

EXECUTIVE SUMMARY

Purpose:

The Workforce Investment Act (WIA) in Section 189(h) requires the Secretary of Labor to ensure that any individual participating in the program has not violated Section 3 of the Military Selective Service Act (50 U.S.C. App. 453).

Scope:

This directive requires that all TCWIB Service Providers and TCWID staff expending WIA funds shall comply with federal, state, *and local* regulations and policies.

Effective Date:

This directive is effective on date of issue.

REFERENCES:

- EDD/WIAD01-4 Selective Service
- EDD/WIAD01-2 Title I Eligibility
- WIA Section 189(h)
- Title 20 Code of Federal Regulations (CFR), Final Rule, Sections 667.250
- 50 U.S.C. App. 453 §3
- PL 99-661, §1366
- USDOL TEGL No. 8-98
- ETA Memo JRB#27-98
- WIB Contracts with subrecipients (Service Providers)

TULARE COUNTY WORKFORCE INVESTMENT BOARD, INC., (TCWIB) – IMPOSED REQUIREMENTS:

TCWIB-imposed requirements are printed in bold, italic type.

FILING INSTRUCTIONS:

Retain this directive until further notice.

BACKGROUND:

Only those males who are subject to, and have complied with, the registration requirements of Military Selective Service Act (MSSA), are eligible for participation in WIA-funded programs and services. Section 3 of the MSSA requires that every male citizen, and every other male residing in the United States must register with the Selective Service System between their 18th and 26th birth dates.

In 1986, the MSSA was amended by PL 99-661, Sec. 1366 to require the registration status to be examined and confirmed as follows:

- (g) A person may not be denied a right, privilege, or benefit under Federal law by reason of failure to present himself for and submit to registration under section 3 [50 U.S.C. App. 453] if - -
 - (1) the requirement for the person to so register has terminated or become inapplicable to the person; and
 - (2) the person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register.

The Conference Report to the amendment clarified “that a nonregistrant is not to be denied any Federal benefit if he can demonstrate that his failure to register was not knowing or willful.” This provision was added “in order not to penalize an individual with an obvious disqualifying handicap, such as total paralysis of the limbs, or an individual who has been honorably discharged from the armed services.”

Occasionally, males who were subject to Selective Service System (SSS) registration, but did not register and are now beyond their 26th birth date, will apply for assistance from the WIA program. The Selective Service has been issuing “status information letters” since January of 1995. This practice is pursuant to SSS’s determination that final decisions for disbursing federally financed domestic benefits, services, rights, or training, rests solely with the various provider agencies which disburse them. In the case of WIA these provider agencies are the local workforce investment areas and their subrecipients.

In determining the eligibility of males over the age of 26 who failed to register with the Selective Service System (SSS), staff must consider whether the failure to register was knowing and willful when evaluating the documentation and statements provided by the applicant. Persons with less than honorable discharges from the armed forces and less than total paralysis may be determined eligible by demonstrating that they did not knowingly and willfully fail to register with the SSS.

POLICY:

The local workforce area has the responsibility for deciding the above cases and determining eligibility for services or benefits on a case-by-case basis.

- (a) Males between the Ages of 18 and 26. Individuals who are required to register, but have not registered, and have not yet reached their 26th birth date, should be referred to SSS for registration prior to enrollment in WIA.

- (b) Males Over the Age of 26 Who Did Not Register. Any male over 26 years old who possesses a "Status Information Letter" from the SSS indicating that he was required to register, but did not, and now cannot be registered because the law does not allow for registration after the age of 26, is presumptively disqualified from participation in WIA-funded services and activities. The burden then falls on the applicant to provide evidence explaining why he failed to register with the SSS.

This could include a written explanation from the applicant, stating his circumstances at the time of the required registration, and his reasons for not registering, together with supporting documentation.

Since the WIA grantee is now authorized to make these determinations for eligibility purposes, the WIA staff should evaluate the evidence presented by the applicant and make a determination regarding whether or not the applicant's failure to register with the SSS when he was required to register is consistent with the above cited amendment to P.L. 99-661, Sec. 1366. If after reviewing the evidence, the local workforce investment area determines that the preponderance of the evidence shows that a man's failure to register was not a knowing and willful failure and he is otherwise eligible, services may be granted. If the determination is that the evidence shows the applicant's failure to register was knowing and willful, WIA services must be denied. Applicants denied services, should be advised of the available grievance procedures under WIA. Decisions by the local program are appealable to the State.

The Selective Service Status Information Letter

Upon request from the applicant, the SSS will forward a Status Information Letter (SIL) directly to the applicant. The local areas should request a copy of the SIL for review. The letter will contain a code that will be helpful in eligibility determination – and a photocopy of the letter should be kept in the eligibility file.

Status Information Letter Codes

[Employment and Training Administration Memo JRB#27-98]

- | | |
|---------------|---|
| Codes E1 – E7 | "General Exemptions"
The applicant's documentation indicates he was not required to register or was exempt for the entire time period (age 18 through 26). |
| Code RR | "Required To Register – Is Not"
<i>The applicant indicates he attempted to register but Selective Service has no record that he registered.</i> |
| Code RL | "Required To Register – Compliance Letter Sent"
<i>The applicant's documentation indicates he was required to register but Selective Service has no record that he registered. Also, Selective Service records indicate he was sent one or more compliance letter(s) requesting his compliance during the period he was required to register.</i> |
| Code RD | "Required To Register – He stated he did not"
The applicant did not register, nor did he provide valid reasons or documentation why he failed to register. |

Determining “Knowing and Willful” Failure to Register

When the status information letter code is as follows, a possible local interpretation may be:

E1 – E7

He has been determined exempt from registration and is not required to provide additional documentation or clarification with regard to his Selective Service registration status.

If he is otherwise eligible, he may be considered an acceptable candidate for WIA-funded services.

RR

He will be required to provide proof that his failure to comply with the MSSA was not “knowing and willful” failure to register for Selective Service.

In this instance, SSS has investigated and determined that the applicant claims to have attempted to register. The SSS has no proof that this applicant “knowingly and willfully” failed to register. Documentation will need to demonstrate the reason for his noncompliance with the MSSA.

RL

He will be required to provide proof that his failure to comply with the MSSA was not *knowing and willful* failure to register for Selective Service.

In this instance, SSS has investigated and determined that the applicant was required to register, did not comply with this requirement, and was sent one or more compliance letter(s) requesting his registration. Further investigation is warranted.

Documentation will need to demonstrate the reason for his noncompliance with the MSSA. This applicant’s clarification must address the fact that Selective Service records indicate compliance letters were sent. Without a reasonable explanation, this applicant will not likely be determined eligible for services.

RD

He will be required to provide proof that his failure to comply with the MSSA was not *knowing and willful* failure to register for Selective Service.

In this instance, SSS has investigated and determined that the applicant was required to register and did not comply with this requirement. However, there is no indication that his failure to register was *knowing and willful*. Further investigation is warranted. Documentation will need to demonstrate the reason for his noncompliance with the MSSA. This applicant may or may not be deemed eligible for services.

EXAMPLES OF DOCUMENTATION / EVIDENCE WHICH COULD BE PROVIDED BY THE APPLICANT:

A nonregistrant should be encouraged to offer as much evidence and in as much detail as possible to support his case. Following are examples of documentation/evidence that may be of assistance to the local area in making a determination in these cases:

- (a) Service in Armed Forces. A man provides evidence that he served honorably in the U.S. Armed Forces by submitting a copy of his DD Form 214 attesting to his service, or a copy of his Honorable Discharge Certificate. Such documents may be considered prima facie evidence that his failure to register with the SSS was not willful or knowing.
- (b) Aliens Entering U.S. On or After Age 26. Alien males who entered the U.S. on or after attaining their 26th birthday are exempt from the Selective Service registration requirements. Immigration and Naturalization Service (INS) Form I-94 (Arrival/Departure Record) and INS Form I-551 (Alien Registration Receipt Card commonly called the "green card") held by aliens will show the birth date of the alien. Also, INS has granted legal status and employment authorization to some lawful Seasonal Agricultural Workers (SAWs) and some formerly illegal aliens under the 1986 immigration Reform and Control Act (IRCA).
- (c) Immigrant Aliens. Immigrant aliens, and refugees, parolees, asylees, SAWs, and IRCA-legalized aliens with work permits can be enrolled into WIA programs only after an SSS registration or exemption is established as outlined above. INS Form I-688 (Temporary Resident Card) will be helpful in establishing the alien's status.
- (d) Former Illegal Aliens. Male aliens 26 years of age or older who entered the U.S. illegally and who were subsequently granted legal status by the INS (IRCA-legalized aliens) or who were born after December 31, 1959, but who are not registered with the SSS can be enrolled into WIA only after a "status information" letter has been obtained from SSS. If SSS issues a status information letter that it has no evidence that such individuals knowingly and willfully failed to register, the individuals should provide the local workforce investment area reasons why SSS has no evidence of their registration, and in so doing, provide evidence to convince the local workforce investment area that they did not knowingly or willfully fail to register. The individuals can then be enrolled into WIA programs, if they are otherwise eligible.

If SSS is silent on this question, then the local workforce investment area must make the determination, as described above. (It is important to remember that participation of an alien without legal status from INS in WIA-funded activities and programs is prohibited, even if there is a determination that there is evidence to show the applicant did not knowingly and willfully fail to register with the SSS.

- (e) Non-Immigrant Aliens. Lawful non-immigrants on visas (e.g., diplomatic and consular personnel and families; foreign students; and tourists with unexpired Forms I-94, I-95 A or Border Crossing Documents I-185, I-186, I-586, or I-444) are not required to register with the Selective Service, but must be authorized to work in the United States under Sec. 188 (a)(5) to be eligible for WIA.
- (f) Third Party Affidavits. Third Party Affidavits from parents, teachers, employers, doctors, etc. concerning reasons for not registering, may also be helpful to the local workforce investment area in making determinations in cases regarding willful and knowing failure to register with the SSS.

The TCWIB Administrator or designee shall make the final determination of whether an applicant's failure to register with SSS was "knowing and willful".

GRIEVANCE/APPEAL PROCEDURES:

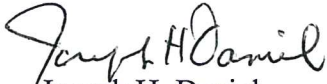
The WIA and its regulations provide a system for handling grievances, complaints, hearings and appeal rights under WIA. The specific procedures to be followed are developed at the local and State levels in accordance with the provisions of the WIA at Sec. 188 and the regulations at 20 CFR Part 667.275 and 29 CFR Part 37. The local workforce investment area is responsible for making sure that there is a process in place to handle WIA complaints/appeals. If a person does not receive a decision at the local level within 90 days of filing a complaint or grievance or is dissatisfied with the decision they receive, they have the right to request a review of their complaint by the Director of the Civil Rights Center.

ACTION:

Bring this directive to the attention of all affected TCWID staff and all TCWIB service providers.

INQUIRIES:

Please direct inquiries about this bulletin to the Workforce Investment Department Administrative office, at (559) 713-5200.


Joseph H. Daniel
Administrator

JHD:DM:wb:mb