

# **COWIB Policy on Enforcing Compliance with the Military Selective Service Act**

**Pursuant to TEGL #11-11, Change 2  
October, 2012**

*(Approved by the COWIB Board ... October 17, 2012)*

**PURPOSE:** To ensure compliance with State and Federal policy guidance with regard to Section 189(h) of the Workforce Investment Act.

**AUTHORITY:** The authority for this local policy derives from OSWDI #02-2012 and TEGL #11-11, Change 2.

**BACKGROUND:** Section 189(h) of the Workforce Investment Act places the following responsibility on the U.S. Secretary of Labor:

*“(h) Enforcement of Military Selective Service Act.--The Secretary shall ensure that each individual participating in any program or activity established under this title, or receiving any assistance or benefit under this title, has not violated section 3 of the Military Selective Service Act (50 U.S.C. App. 453) by not presenting and submitting to registration as required pursuant to such section. The Director of the Selective Service System shall cooperate with the Secretary to enable the Secretary to carry out this subsection.”*

Men born on or after January 1, 1960 are required to register with Selective Service within 30 days of their 18th birthday (i.e. 30 days before or 30 days after their birthday.) This includes males who are:

- Citizens of the U.S.;
- Non-citizens, including illegal aliens, legal permanent residents, seasonal agricultural workers, and refugees, who take up residency in the U.S. before their 26th birthday; and/or
- Dual nationals of the U.S. and another country regardless of whether they live in the U.S.

In order to participate in a program established by or receiving assistance under Title I of WIA, all males born on or after January 1, 1960, must present documentation showing compliance with the Selective Service registration requirement. Acceptable documentation to determine a person’s Selective Service registration status includes:

- Selective Service Acknowledgement letter;

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- Form DD-214 “Report of Separation”;
- Screen printout of the Selective Service Verification site: [www.sss.gov/RegVer/wfVerification.aspx](http://www.sss.gov/RegVer/wfVerification.aspx). For males who have already registered, this website can be used to confirm their Selective Service number as well as the date of registration, by entering a last name, social security number, and date of birth;
- Selective Service Registration Card;
- Selective Service Verification Form (Form 3A); and/or
- Stamped Post Office Receipt of Registration.

It is not unusual, from time to time, for an individual to present himself at a Workforce Oklahoma center with no record of having registered with the Selective Service System. In such an instance, our workforce development professionals are obligated to assist the customer to assure compliance with the registration requirements of the Military Selective Service Act.

If the customer is under the age of 26, then the Selective Service registration requirement can be easily satisfied. All that is required is for the individual to register online at [www.sss.gov](http://www.sss.gov).

However, if the individual is age 26 or older, the Selective Service System will not allow them to register.<sup>1</sup> In such an instance, it is a bit more difficult to demonstrate that the customer has not violated the registration requirement of the Military Selective Service Act.

In these cases, demonstrating compliance with the Selective Service registration requirement is more difficult -- but only by a matter of degree. Section 462 of the Military Selective Service Act provides some basic guidance:

***“(g) [Knowing and Willful Failure to Register] 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... 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.”***

**STATE & FEDERAL REQUIREMENTS:** In developing a local policy on compliance with the Military Selective Service Act, the Central Oklahoma Workforce Investment Board,

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<sup>1</sup> This is because the Selective Service System is authorized to register men until they reach the age of 26, but not later. The Military Selective Service Act states that, “*It shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who... is between the ages of eighteen and twenty-six, to present himself for and submit to registration....*” (50 U.S.C. App. 453)

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its One-Stop Operator, and One-Stop Center staff must be mindful of the requirements of our State and Federal funding sources.

**Federal Policy:** The latest guidance from the U.S. Department of Labor on this topic is given in TEGL 11-11, Change 2, “Selective Service Registration Requirements for Employment and Training Administration Funded Programs.”<sup>2</sup>

The TEGL (Training and Employment Guidance Letter) includes this directive:

***“Registration Requirements for Males 26 Years and Over***

***“Before enrolling in WIA Title I-funded services, all males, 26 years of age or older, must provide (1) documentation of compliance with the Selective Service registration requirement; (2) documentation showing they were not required to register; or (3) if they were required to but did not register, documentation establishing that their failure to register was not knowing and willful.”***

The TEGL continues by referring to a resource that may be used to help in the process of making a determination regarding “knowing and willful” failure to register. The use of a Status Information Letter is mentioned:

***“The grantee, subgrantee, or contractor that enrolls individuals in WIA Title I-funded activities may require that males 26 years and over, who failed to comply with the Selective Service registration requirement, request a Status Information Letter before making a determination that the failure to register was knowing and willful. Alternatively, an entity may initiate its process to determine if the failure to register was knowing and willful without first having the potential program participant request the Status Information Letter. The second option may be preferable for entities that have time limits for enrolling participants (e.g. individuals recently released from incarceration).”***

A Status Information Letter is a letter from Selective Service to the individual indicating whether the customer was required to register. In requesting a Status Information Letter, the individual describes, in detail, the circumstances that prevented him from registering, and he provides documentation of those circumstances.

It is possible that the Status Information Letter will indicate that an individual was not required to register for the Selective Service. For example, men are not required to register if they were incarcerated or hospitalized or institutionalized for medical reasons.<sup>3</sup> If the letter indicates that the customer was not required to register with Selective Service, then he is eligible to enroll in a WIA-funded service.

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<sup>2</sup> Issued May 16, 2012. Find a copy online:  
[http://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_11-11\\_change2-Acc.pdf](http://wdr.doleta.gov/directives/attach/TEGL/TEGL_11-11_change2-Acc.pdf)

<sup>3</sup> For a categorical list of men who are required to register, see the chart given in Attachment A, “Who Must Register?”

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On the other hand, the Status Information Letter may simply state that the individual was required to register and now cannot because he is 26 or older. In this case, the customer is presumed to be disqualified from participation in WIA-funded activities and services until it can be determined whether his failure to register was not knowing and willful.<sup>4</sup>

The TEGL also states:

***“This guidance clarifies that grantees, subgrantees, or contractors funded or authorized by Title I of WIA must set a policy for potential participants who are males 26 years old or older that failed to register with the Selective Service. The policy may either (1) request a Status Information Letter from a potential participant before making a determination of knowing and willful failure to register; or (2) initiate the process to determine if the potential participant’s failure to register was knowing and willful without the first requesting a Status Information Letter....”***

**State Policy:** The latest guidance on this topic from the Oklahoma Department of Commerce is given in Oklahoma Strategic Workforce Development Issuance (OSWDI) #02-2012, “Final Data Validation, Program Eligibility and Document Uploader Requirements for Adult programs.”<sup>5</sup>

The guidance in OSWDI 02-2012 follows the general direction given in TEGL 11-11. For example, this statement is given on Page 5 of the OSWDI:

***“A male over the age of 26 who is not registered with the Selective Service is not eligible for participation in the WIA Adult, DLW or NEG programs and should not be co-enrolled until they have requested and received a Status Information Letter from the Selective Service. A copy of the Status Information Letter will then be reviewed by designated staff that will make the final determination regarding the participant’s eligibility to receive services.”***

OSWDI 02-2012 does not seem to mention the alternative process to determine if the failure to register was knowing and willful without first having the potential program participant request the Status Information Letter.

### **LOCAL POLICY:**

It shall be the policy of the Central Oklahoma Workforce Investment Board (COWIB) and its Board of Local Elected Officials (LEO) that all Workforce Investment Act Title I-funded services shall be delivered in a manner that fully complies with the WIA law and regulations.

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<sup>4</sup> All costs associated with grant-funded services provided to non-eligible individuals may be disallowed.

<sup>5</sup> Published July 12, 2012. Find a copy online here: [http://okcommerce.gov/assets/files/workforce-development/OSWDI\\_02\\_2012-Data\\_Validation\\_Program\\_Eligibility\\_and\\_Document\\_Uploader.pdf](http://okcommerce.gov/assets/files/workforce-development/OSWDI_02_2012-Data_Validation_Program_Eligibility_and_Document_Uploader.pdf)

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**Finding:** COWIB notes that the Selective Service System has a stated goal of maintaining "at least a 90% or greater registration compliance rate for men ages 18 through 25."<sup>6</sup> In 2011, the compliance rate was about 91%.<sup>7</sup>

This means that up to about 1 in 10 draft age males fails to register, for one reason or another, before they reach the age of 26. Failure to register seems to be a common problem.

Yet, there is little evidence that this phenomenon is the result of a widespread "knowing and willful" refusal to comply with the law. For example, we are not aware of any recent prosecutions or convictions for a young man's knowing and willful failure to register.<sup>8</sup>

The Selective Service System seems to regard it primarily as a problem that can be overcome by increased levels of public awareness.

Over the course of the last several years, the COWIB's WIA service providers have occasionally encountered draft-eligible young men who failed to register before reaching the age of 26. In these cases, as required in previous State and Federal policy, our workforce professionals have required the customer to request a Status Information Letter from the Selective Service System.

We are not aware of any instance in which a Status Information Letter was returned to a customer with a definitive finding that the individual's failure to register was a "knowing and willful" violation of the law.

In this regard, we believe the value of the Status Information Letter is marginal. Furthermore, we recognize that it requires an expenditure of time and effort to request a Status Information Letter.

The value of the letter must be balanced with the cost to the customer who is seeking needed employment and training services. A delay of services can sometimes be crucial – especially if a customer is facing a deadline for entry into training, etc.

The Selective Service System acknowledges that the preparation and delivery of a Status Information Letter can be time-consuming. This statement appears on the website of the Selective Service System:

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<sup>6</sup> "Selective Service System Performance Budget Justification FY 2013," downloaded 8-10-12 from: <http://www.sss.gov/PDFs/FY%202013%20Budget%20Justification.PDF>

<sup>7</sup> See "Quick Facts and Figures" from the Selective Service website: <http://www.sss.gov/QUICK.HTM>

<sup>8</sup> Wikipedia reports that: "In 1980, men who knew they were required to register and did not do so could face up to five years in jail or a fine up to \$50,000 if convicted. The potential fine was later increased to \$250,000. Despite these possible penalties, government records indicate that from 1980 through 1986 there were only 20 indictments, of which 19 were instigated in part by self-publicized and self-reported non-registration.... The last prosecution for non-registration was in January 1986, after which many believed the government declined to continue enforcing that law when it became apparent that the trials were themselves causing a decline in registration." ([http://en.wikipedia.org/wiki/Selective\\_Service\\_System](http://en.wikipedia.org/wiki/Selective_Service_System))

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***“...Due to the upsurge in volume of requests for ‘status information letters’ verifying a man’s registration status with Selective Service, the turnaround time for such letter from Selective Service is approximately 90 days.”<sup>9</sup>***

Consequently, we believe it makes sense to take advantage of the alternative determination process described in TEGL 11-11, Change 2, whenever possible. That is, we believe it is in the best interest of the customers we serve (job-seekers, employers, and the taxpaying citizen) to use eligibility determination processes that: (a) Are effective; (b) Are cost efficient; and (c) Avoid delays in the delivery of valuable workforce development services.

### **(1) Procedure for Determining the Eligibility of Males who are 26 years old or Older that Failed to Register with the Selective Service.**

Pursuant to TEGL #11-11, Change 2, the following procedure shall be used in order to determine the eligibility of potential participants who are males, 26 years old and older.

Before enrolling in WIA Title I-funded services, all males, 26 years of age or older, must provide (1) documentation of compliance with the Selective Service registration requirement; (2) documentation showing they were not required to register; or (3) if they were required to but did not register, documentation establishing that their failure to register was not knowing and willful.

**(a) Choice of Method.** For any such customer who failed to comply with the Selective Service registration requirement, the COWIB’s WIA service provider(s) may initiate a process to determine if the failure to register was knowing and willful.

This process may be initiated in either of two ways:

1. Without a Status Information Letter. Based on a written statement provided by the customer (as well as any other evidence he may present), the WIA Service Provider will make a determination as to whether the customer’s failure to register represented a “knowing and willful” violation of the Military Selective Service Act.

This method may proceed according to the directions given in part (b), below.

This method (Without a Status Information Letter) is considered to be the preferred option for reviewing the failure to register because it can be completed in a timely fashion. However, the customer may choose to use the second method described below.

2. With a Status Information Letter from Selective Service. This method may be used if the customer chooses to have a written statement from the Selective Service System prior to the WIA Service Provider’s determination regarding

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<sup>9</sup> <http://www.sss.gov/Status.html> (Accessed 8-10-12)

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“knowing and willful.” This method is not generally recommended because of the lengthy delay that may be introduced into the enrollment process. It can take 90 days or more to receive a Status Information Letter from the Selective Service System. However, the customer may believe that the Status Information Letter will help to establish that he is in compliance with the Military Selective Service Act (and so is eligible to receive WIA program services). The choice of which method to use rests with the customer.

The *Request for Status Information Letter* form can be accessed at <http://www.sss.gov/PDFs/infoform.pdf>, and the instructions can be accessed at <http://www.sss.gov/PDFs/instructions.pdf>. The individual will need to describe, in detail, the circumstances that prevented him from registering (e.g., hospitalization, institutionalization, incarceration, and/or military service from age 18 through 25.) and provide documentation of those circumstances. The documentation should be specific as to the dates of the circumstances.

***After the Status Information Letter is received:*** If the Status Information Letter indicates that an individual was not required to register for the Selective Service, then he is eligible to enroll in services authorized or funded by Title I of WIA. The customer’s compliance with the Military Selective Service Act should be validated according to the instructions given in OSWDI #02-2012.

If the Status Information Letter indicates that the individual was required to and did not register, he is presumed to be disqualified from participation in WIA Title I-funded activities and services until it can be determined that his failure to register was not knowing and willful. In this case, the process proceeds according to the directions given in part (b), below.

**(b) Determining Knowing and Willful Failure to Register.** If the individual was required to but failed to register by his own acknowledgment (or as determined by a Status Information Letter), the individual may only receive services if he can establish by a preponderance of the evidence that the failure to register was not knowing and willful.

The COWIB’s WIA Service Provider is responsible for evaluating the evidence presented by the individual and determining whether the failure to register was a knowing and willful failure.

Evidence presented may include the individual’s written explanation and supporting documentation of his circumstances at the time of the required registration and the reasons for failure to register. The individual should be encouraged to offer as much evidence and in as much detail as possible to support his case.

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The following are examples of documentation that may be of assistance in making a determination in these cases:

- Service in Armed Forces. Evidence that a man has served honorably in the U.S. Armed Forces such as DD Form 214 or his Honorable Discharge Certificate. Such documents may be considered sufficient evidence that his failure to register was not willful or knowing.
- Third Party Affidavits. Affidavits from parents, teachers, employers, doctors, etc. concerning reasons for not registering, may also be helpful to grantees in making determinations in cases regarding willful and knowing failure to register.

In order to establish consistency regarding the implementation of the requirement, the WIA Service Provider should consider the following questions when determining whether a failure to register is knowing and willful.

### ***In determining whether the failure was “knowing,” the WIA Service Provider should consider:***

- Was the individual aware of the requirement to register?
- If the individual knew about the requirement to register, was he misinformed about the applicability of the requirement to him (e.g., veterans who were discharged before their 26th birthday were occasionally told that they did not need to register)?
- On which date did the individual first learn that he was required to register?
- Where did the individual live when he was between the ages of 18 and 26?
- Does the status information letter indicate that Selective Service sent letters to the individual at that address and did not receive a response?

### ***In determining whether the failure was “willful,” the WIA Service Provider should consider:***

- Was the failure to register done deliberately and intentionally?
- Did the individual have the mental capacity to choose whether or not to register and decided not to register?
- What actions, if any, did the individual take when he learned of the requirement to register?

**“Preponderance of Evidence.”** As noted above, it is the burden or responsibility of the individual customer (applicant for WIA program services) to show by a preponderance of the evidence that his failure to register was not knowing and willful.

COWIB interprets the phrase “Preponderance of Evidence” to mean that there is enough evidence to show that his failure to register was probably not knowing and willful. That is, the customer’s assertion of his innocence is more likely to be true than not true.

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This standard of evidence is sometimes known as the “balance of probabilities.” As a standard of legal proof, it is not the same as – that is, not as strict nor as stringent as -- the “beyond reasonable doubt” standard which is typically used in criminal proceedings. Logically, then, a WIA Service Provider may have a reasonable doubt about the customer’s assertion – and yet, if the customer has presented a “preponderance of evidence,” then the customer’s assertion should be upheld.

Likewise, the “Preponderance of Evidence” standard is not as the same as having “Clear and Convincing” proof. Some of the customer’s evidence may not be completely clear. Some of it may not be completely convincing. Yet, it must be evaluated in comparison to any countervailing evidence.

Countervailing evidence, in this sense, would be any evidence that the customer acted in a knowing and willful manner to resist the registration requirement of the Military Selective Service Act.

If the WIA Service Provider determines the customer’s failure to register was not a *knowing and willful* failure, and if the individual is otherwise eligible, then WIA program services may be provided.

If the WIA Service Provider determines that the individual’s failure to register was knowing and willful, WIA services must be denied.

In either case, a written determination should be given to the customer, with a copy uploaded to the participant’s OSL record (as described in OSWDI #02-2102).

(c) **Disputes.** Individuals denied services must be advised of available WIA grievance procedures. The WIA Service Provider must keep documentation related to evidence presented in determinations related to Selective Service.

### **(2) Procedure for Determining the Selective Service Compliance of Males who are 18 to 25 Years of Age.**

Before being enrolled in WIA Title I-funded services, all males who are not registered with the Selective Service and have not reached their 26th birthday must register through the Selective Service website at [www.sss.gov](http://www.sss.gov). If a male turns 18 while participating in any applicable services, registration with Selective Service must be completed no later than 30 days after he becomes 18 in order to continue to receive WIA Title I-funded services. If a man under the age of 26 refuses to register with the Selective Service, WIA Title I-funded services must be suspended until he registers.

The customer’s registration must be validated according to the instructions given in OSWDI #02-2012.

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**Policy Addenda.** The COWIB Chief Executive Officer is authorized to issue additional instructions, guidance, forms, etc., to further implement the requirements of this policy.

Inquiries about this policy may be directed to the COWIB's Program Operations Manager at (405) 622-2030.

**Attachment A.**

**“Selective Service – Who Must Register”**

**With only a few exceptions, the registration requirement applies to all male U.S. citizens and male aliens residing in the United States who are 18 through 25 years of age.**

**The chart on the following page is taken from the website of the Selective Service System:**

**A copy can be found online here ...**

**[www.sss.gov/FSwho.htm](http://www.sss.gov/FSwho.htm)**

# Selective Service - Who Must Register

With only a few exceptions, the registration requirement applies to all male U.S. citizens and male aliens residing in the United States who are 18 through 25 years of age.

Category	YES	NO
All male U.S. citizens born after December 31, 1959, who are 18 but not yet 26 years old, except as noted below:	X	
<b>Military-Related</b>		
Members of the Armed Forces on active duty (active duty for training does not constitute "active duty" for registration purposes)		X*
Cadets and Midshipmen at Service Academies or Coast Guard Academy		X*
Cadets at the Merchant Marine Academy	X	
Students in Officer Procurement Programs at the Citadel, North Georgia College and State University, Norwich University, Virginia Military Institute, Texas A&M University, Virginia Polytechnic Institute and State University		X*
National Guardsmen and Reservists not on active duty	X	
Delayed Entry Program enlistees	X	
ROTC Students	X	
Separatees from Active Military Service, separated for any reason before age 26	X	
Men rejected for enlistment for any reason before age 26	X	
Civil Air Patrol members	X*	
<b>Aliens**</b>		
Lawful non-immigrants on visas (e.g., diplomatic and consular personnel and families, foreign students, tourists with unexpired Form I-94, or Border Crossing Document DSP-150)		X
Permanent resident aliens	X	
Special (seasonal) agricultural workers (I-688)	X	
Special agricultural workers (I-688A)		X
Refugee, parolee, and asylee aliens	X	
Undocumented (illegal) aliens	X	
Dual national U.S. citizens	X	
<b>Confined</b>		
Incarcerated, or hospitalized or institutionalized for medical reasons		X*
<b>Handicapped physically or mentally</b>		
Able to function in public with or without assistance	X	
Continually confined to a residence, hospital, or institution		X

\*Must register within 30 days of release unless already age 26.

\*\*Residents of Puerto Rico, Guam, Virgin Islands, and Northern Mariana Islands are U.S. citizens. Citizens of American Samoa are nationals and must register when they are habitual residents in the United States. Habitual residence is presumed whenever a national or a citizen of the Republic of the Marshall Islands or the Federated States of Micronesia resides in the United States for more than one year in any status, except as a student or employee of the government of his homeland.

**NOTE:** Immigrants who did not enter the United States or maintained their lawful non-immigrant status by continually remaining on a valid visa until after they were 26 years old, were never required to register. Also, immigrants born before 1960, who did not enter the United States or maintained their lawful non-immigrant status by continually remaining on a valid visa until after March 29, 1975, were never required to register.