

DEPARTMENT OF LABOR**Office of the Secretary****[Secretary's Order 3-2004]****Delegation of Authority and Assignment of Responsibilities to the Assistant Secretary of Labor for Veterans' Employment and Training**

1. *Purpose.* To delegate authority and assign responsibility to the Assistant Secretary of Labor for Veterans' Employment and Training, and to consolidate those responsibilities regarding veterans into one Order.

2. *Authority and Directives Affected.* This Order is issued pursuant to 5 U.S.C. 301; 5 U.S.C. 5315; 29 U.S.C. 551, *et seq.*; additional authorities are listed in Paragraph 4.A.(1) and 4.A.(2) of this Order. This Order supersedes Secretary's Orders 1-83, 4-83, and 8-83. This Order does not affect Secretary's Order 4-2001 or Secretary's Order 4-75, both of which remain in effect.

3. *Background.* Several Secretary's Orders exist that delegate responsibilities to the Assistant Secretary of Labor for Veterans' Employment and Training. Congress established the position of an Assistant Secretary of Labor for Veterans' Employment in 1980. *See* Public Law 96-466, § 504, 94 Stat. 2171 (1980) (now 38 U.S.C. 4102A). Among other things, Secretary's Order 4-83 (March 24, 1983) redesignated the Office of the Assistant Secretary of Labor for Veterans' Employment as the Veterans' Employment and Training Service. In 1986, Congress formally redesignated the position to be the Assistant Secretary of Labor for Veterans' Employment and Training. Public Law 99-619, § 2(b)(3), 100 Stat. 3491 (1986).

Under the current statutory terms, the Assistant Secretary of Labor for Veterans' Employment and Training is appointed by the President with the advice and consent of the Senate and "shall formulate and implement all departmental policies and procedures to carry out (A) the purposes of this chapter [chapter 41], chapter 42, and chapter 43 of this title [title 38], and (B) all other Department of Labor employment, unemployment, and training programs to the extent they affect veterans." 38 U.S.C. 4102A(a). The Assistant Secretary of Labor for Veterans' Employment and Training is the principal advisor to the Secretary of Labor regarding veterans' issues. While the title, authorities, and responsibilities previously assigned and encompassed by statute will remain with the Assistant Secretary of Labor for Veterans'

Employment and Training under this Secretary's Order, the Department and the public are better served by a single delegation encompassing all responsibilities.

4. *Delegation of Authority and Assignment of Responsibilities.* A. Except as hereinafter provided, the Assistant Secretary of Labor for Veterans' Employment and Training is delegated the authority (including the authority to re-delegate) and assigned the responsibilities of the Secretary of Labor:

(1) Under 38 U.S.C. 4102A, including any amendments.

(2) Under the following statutes, including any amendments:

(i) Administrative Redress for Preference Eligibles under Veterans Employment Opportunities Act of 1998 (VEOA), 5 U.S.C. 3330a;

(ii) Transition Assistance Program (TAP), 10 U.S.C. 1144;

(iii) Veterans' Workforce Investment Programs (VWIP), Workforce Investment Act of 1998, 29 U.S.C. 2913;

(iv) Homeless Veterans Reintegration Program (HVRP), Homeless Veterans Comprehensive Assistance Act of 2001, 38 U.S.C. 2021;

(v) Incarcerated Veterans Transition Program, Homeless Veterans Comprehensive Assistance Act of 2001, 38 U.S.C. 2023;

(vi) President's National Hire Veterans Committee, 38 U.S.C. 4100 note;

(vii) State Directors for Veterans' Employment and Training (State DVETs), 38 U.S.C. 4103;

(viii) Disabled Veterans' Outreach Program (DVOP), 38 U.S.C. 4102A, 4103A;

(ix) Local Veterans' Employment Representatives (LVERs), 38 U.S.C. 4102A, 4104;

(x) Establishment of Administrative Controls and Application of Performance Standards, 38 U.S.C. 4107(a) and (b);

(xi) National Veterans' Employment and Training Services Institute, 38 U.S.C. 4109;

(xii) Advisory Committee on Veterans Employment and Training, 38 U.S.C. 4110(e)(4);

(xiii) Performance Incentive Awards for Quality Employment, Training and Placement Services, 38 U.S.C. 4112;

(xiv) Outstationing of Transition Assistance Program Personnel, 38 U.S.C. 4113;

(xv) Veterans' Employment Emphasis under Federal Contracts—Federal Contractor Veterans' Employment Report (VETS-100), 38 U.S.C. 4212(d) (2002 & Supp. 2004), and determination of compliance pursuant to 20 CFR 1001.130 regarding Federal contractor

priority of employment referral and employment listings under 38 U.S.C. 4212(a)(2)(B) and (C) (2002 & Supp. 2004) (**Note:** Secretary's Order 4-2001 remains in effect, which, in part, delegates authority and assigns responsibility to the Assistant Secretary for Employment Standards for the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, including 38 U.S.C. 4212(a)(1), 4212(a)(2)(A), and 4212(b) (2004) and 38 U.S.C. 4212(a) and (b) (2002). Subject to the above delegation to VETS, Secretary's Order 4-75 also remains in effect, which, in part, delegates authority and assigns responsibility to the Assistant Secretary for Employment and Training for administration of Federal contractor priority of employment referral and employment listing services under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, now 38 U.S.C. 4212(a)(2)(B) and (C));

(xvi) Electronic Delivery of Services to Covered Persons, 38 U.S.C. 4215 note.

(xvii) Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Pub. L. 103-353, 38 U.S.C. 4301-4333 (2000) and its predecessor, the Veterans' Reemployment Rights provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. 4301-4307 (as set forth in the Codification Note preceding 38 U.S.C. 4301 (1994));

(xviii) Priority of Service for Veterans in DOL Job Training Programs, 38 U.S.C. 4215, with respect to job training programs that are administered by the ASVET. This delegation does not include authority for priority of service of veterans in job training programs that are administered by the Assistant Secretary for Employment and Training;

(xviv) As directed by the Secretary, such additional Federal acts similar to or related to those listed in paragraphs (i) through (xviii), above, that from time to time may assign additional authority or responsibilities to the Secretary.

(3) to invoke all appropriate governmental privileges, arising from the functions of the Veterans' Employment and Training Service, following his/her personal consideration of the matter and in accordance with the following guidelines:

(i) Generally Applicable Guidelines. The Assistant Secretary may not re-delegate the authority to invoke a privilege. The privilege may be asserted only with respect to specifically described information and only where the Assistant Secretary determines the privilege is applicable. In asserting a privilege, the Assistant Secretary shall

articulate in writing specific reasons for preserving the confidentiality of the information.

(ii) Informant's Privilege (to protect from disclosure the identity of any person who has provided information to the Veterans' Employment and Training Service in cases arising under the statutory provisions listed in paragraph 4.A.(1) and 4.A.(2) of this Order that are delegated or assigned to the Veterans' Employment and Training Service). To assert this privilege, the Assistant Secretary must first determine that disclosure of the privileged matter may: (A) Interfere with the Veterans' Employment and Training Service's investigation or enforcement of a particular statute for which it exercises investigative or enforcement authority; (B) adversely affect persons who have provided information to the Veterans' Employment and Training Service; or (C) deter other persons from reporting violations of the statute.

(iii) Deliberative Process Privilege (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations, in cases arising under the statutory provisions listed in paragraph 4.A.(1) and 4.A.(2) of this Order including: the analysis and evaluation of facts; written summaries of factual evidence; and recommendations, opinions, or advice on legal or policy matters). To assert this privilege, the Assistant Secretary must first determine that: (A) The information is not purely factual and does not concern recommendations that the department expressly adopted or incorporated by reference in its ultimate decision; (B) the information was

generated prior to and in contemplation of a decision by a part of the Department; and (C) disclosure of the information would have an inhibiting effect on the Department's decision-making processes.

(iv) Privilege for Investigative Files Compiled for Law Enforcement Purposes (to withhold information that may reveal the Veterans' Employment and Training Service's confidential investigative techniques and procedures). To assert this privilege, the Assistant Secretary must first determine that disclosure of the privileged matter may have an adverse impact upon the Veterans' Employment and Training Service's enforcement of the statutory provisions listed in paragraph 4.A.(1) and 4.A.(2) of this Order, by: (A) Disclosing investigative techniques and methodologies; (B) deterring persons from providing information to the Veterans' Employment and Training Service; (C) prematurely revealing the facts of the Department's case; or (D) disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(v) Prior to filing a formal claim of privilege, the Assistant Secretary shall personally review the information sought to be withheld, including all the documents sought to be withheld (or, in cases where the volume of information is so large all of it cannot be personally reviewed in a reasonable time, an adequate and representative sample of such information) and a description or summary of the litigation in which the disclosure is sought.

(vi) The Assistant Secretary may comply with any additional requirements imposed by local court rules or precedent in asserting a governmental privilege.

(vii) In asserting a governmental privilege, the Assistant Secretary may ask the Solicitor of Labor or the Solicitor's representative to prepare and file any necessary legal papers or documents.

B. The Solicitor of Labor is delegated authority and assigned responsibility for providing legal advice and assistance to all officials of the Department relating to the authorities of this Order, for bringing appropriate legal actions on behalf of the Secretary, and representing the Secretary in all civil proceedings.

5. *Reservation of Authority.* A. The submission of reports and recommendations to the President and the Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary.

B. This Secretary's Order does not affect the authorities and responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 2-90 (January 31, 1990).

6. *Effective Date.* This Order is effective immediately.

Dated: September 10, 2004.

Elaine L. Chao,

Secretary of Labor.

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