

Division 91, off-site teleworker, Armonk, New York.

Signed in Washington, DC, on this 23rd day of May, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011-13788 Filed 6-2-11; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Employment and Training Administration Program Year (PY) 2011 Workforce Investment Act (WIA) Allotments to Outlying Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice announces PY 2011 WIA Title I Youth, Adult and Dislocated Worker Activities program allotments for outlying areas. The WIA allotments for the outlying areas are based on a formula determined by the Secretary. As required by WIA section 182(d), on February 17, 2000, a Notice of the discretionary formula for allocating PY 2000 funds for the outlying areas (American Samoa, Guam, Marshall Islands, Micronesia, Northern Marianas, Palau, and the Virgin Islands) was published in the **Federal Register** at 65 FR 8236 (February 17, 2000). The rationale for the formula and methodology was fully explained in the February 17, 2000, **Federal Register** Notice. The formula for PY 2011 is the same as used for PY 2000 and is described in the section on Youth Activities program allotments. Comments are invited on the formula used to allot funds to the outlying areas.

DATES: Comments on the formula used to allot funds to the outlying areas must be received by July 5, 2011.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Financial and Administrative Management, 200 Constitution Ave., NW., Room N-4702, Washington, DC 20210, Attention: Mr. Kenneth Leung, Telephone: (202) 693-3471 (this is not a toll-free number). Fax: (202) 693-2859. E-mail: Leung.Kenneth@dol.gov.

FOR FURTHER INFORMATION CONTACT: WIA Youth Activities allotments—Evan Rosenberg at (202) 693-3593 or LaSharn Youngblood at (202) 693-3606; WIA Adult and Dislocated Worker Activities allotments—Mike Qualter at (202) 693-

3014; Workforce Information Grant allotments—Anthony Dais at (202) 693-2784.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing PY 2011 WIA Youth, Adult and Dislocated Worker program allotments to outlying areas. The allotments are based on the funds appropriated in the Full-Year Continuing Appropriations Act, 2011, Public Law 112-10, signed April 15, 2011. This appropriation requires an across-the-board rescission of 0.2 percent to all Federal Fiscal Year (FY) 2011 discretionary program funding. Included in this Notice are tables listing the PY 2011 allotments (including the 0.2 percent rescission) for programs under WIA Title I Youth Activities (Table A), Adult Activities (Table B) and Dislocated Worker Employment and Training Activities (Table C).

On December 17, 2003, Public Law 108-188, the Compact of Free Association Amendments Act of 2003 ("the Compact"), was signed. The Compact provided for consolidation of WIA Title I funding for the Marshall Islands and Micronesia into supplemental education grants provided from the Department of Education's appropriation. See 48 USC 1921d(f)(1)(B)(iii). The Compact also specified that the Republic of Palau remained eligible for WIA Title I funding. See 48 USC 1921d(f)(1)(B)(ix). The Consolidated Appropriations Act, 2010 (Pub. L. 111-117) (in the Department of Education's General Provisions at Section 309, Title III, Division D) amended the Compact to extend the availability of WIA Title I funding to Palau through FY 2010. Section 1104 of the Full-Year Continuing Appropriations Act, 2011, further extended the same funding to Palau through FY 2011.

Youth Activities Allotments. PY 2011 Youth Activities funds for outlying areas total \$2,064,785 (including the 0.2 percent rescission). Table A includes a breakdown of the Youth Activities program allotments for States (as previously shared) and each of the five outlying areas. Before determining the amount available for States, the total funding available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Youth Activities (after the 0.2 percent rescission).

The methodology for distributing funds to all outlying areas is not specified by WIA, but is at the Secretary's discretion. The methodology used is the same as used since PY 2000, i.e., funds are distributed among the

remaining outlying areas by formula based on relative share of number of unemployed, a 90 percent hold-harmless of the prior year share, a \$75,000 minimum, and a 130 percent stop-gain of the prior year share. As in PY 2010, data for the relative share calculation in the PY 2011 formula were from 2000 Census data for all outlying areas, obtained from the Bureau of the Census (Bureau) and are based on 2000 Census surveys for those areas conducted either by the Bureau or the outlying areas under the guidance of the Bureau.

Adult Employment and Training Activities Allotments. The total appropriated funds for PY 2011 for Adult Activities are \$770,921,920 of which \$1,927,305 is for outlying areas (including the 0.2 percent rescission). Table B includes a breakdown of the Adult Activities program allotments for States (as previously shared) and each of the five areas. Table B shows the PY 2011 Adult Employment and Training Activities allotments and comparison to PY 2010 allotments by State. Like the Youth Activities program, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Adult Activities (after the 0.2 percent rescission). As discussed in the Youth Activities paragraph, beginning in PY 2005, WIA funding for the Marshall Islands and Micronesia is no longer provided; instead, funding is provided in the Department of Education's appropriation. The Adult Activities funds for grants to the remaining outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the areas by the same principles, formula and data as used for outlying areas for Youth Activities.

Dislocated Worker Employment and Training Activities Allotments. Appropriated funds for PY 2011 for the Dislocated Worker Activities program total \$1,287,544,000, with \$3,218,860 for outlying areas (including the 0.2 percent rescission). Table C includes a breakdown of the Dislocated Worker program allotments for States (as previously shared) and each of the five outlying areas. The total appropriation includes formula funds for the States, National Reserve funds for the distribution of National Emergency Grants, technical assistance and training, demonstration projects, and the outlying areas' Dislocated Worker allotments. Like the Youth and Adult Activities programs, the total available for the outlying areas was reserved at 0.25 percent of the full amount appropriated for Dislocated Worker

Activities (after the 0.2 percent rescission). WIA funding for the Marshall Islands and Micronesia is no longer provided, as discussed above. The Dislocated Worker Activities funds for grants to outlying areas, for which the distribution methodology is at the

Secretary's discretion, were distributed among the remaining areas by the same pro rata share as the areas received for the PY 2011 WIA Adult Activities program, the same methodology used in PY 2010.

Signed: At Washington, DC on this 27th day of May, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

U.S. Department of Labor, Employment and Training Administration

TABLE A—WIA YOUTH ACTIVITIES STATE ALLOTMENTS

[Comparison of PY 2011 vs PY 2010]

State	PY 2010	PY 2011	Difference	Percent difference
Total	\$924,069,000	\$825,913,862	(\$98,155,138)	- 10.62
Alabama	11,777,698	12,455,574	677,876	5.76
Alaska	2,755,418	2,216,462	(538,956)	- 19.56
Arizona	15,982,731	15,326,190	(656,541)	- 4.11
Arkansas	8,446,520	6,794,393	(1,652,127)	- 19.56
California	136,875,948	117,952,080	(18,923,868)	- 13.83
Colorado	11,132,070	9,788,025	(1,344,045)	- 12.07
Connecticut	8,869,254	8,060,872	(808,382)	- 9.11
Delaware	2,269,744	2,028,651	(241,093)	- 10.62
District of Columbia	2,779,082	2,402,872	(376,210)	- 13.54
Florida	43,352,872	50,372,277	7,019,405	16.19
Georgia	28,251,785	24,305,197	(3,946,588)	- 13.97
Hawaii	2,690,193	2,272,811	(417,382)	- 15.51
Idaho	2,950,667	3,428,419	477,752	16.19
Illinois	43,545,632	36,086,031	(7,459,601)	- 17.13
Indiana	19,697,136	16,043,006	(3,654,130)	- 18.55
Iowa	4,750,212	5,519,334	769,122	16.19
Kansas	5,930,458	5,248,975	(681,483)	- 11.49
Kentucky	14,303,105	12,514,937	(1,788,168)	- 12.50
Louisiana	14,009,636	11,269,372	(2,740,264)	- 19.56
Maine	3,476,520	2,887,584	(588,936)	- 16.94
Maryland	11,311,383	10,073,999	(1,237,384)	- 10.94
Massachusetts	17,387,925	15,988,686	(1,399,239)	- 8.05
Michigan	51,768,509	41,642,666	(10,125,843)	- 19.56
Minnesota	14,264,509	11,474,392	(2,790,117)	- 19.56
Mississippi	13,081,892	10,523,093	(2,558,799)	- 19.56
Missouri	17,781,382	14,549,044	(3,232,338)	- 18.18
Montana	2,344,418	2,174,750	(169,668)	- 7.24
Nebraska	2,518,508	2,288,141	(230,367)	- 9.15
Nevada	7,654,897	8,303,837	648,940	8.48
New Hampshire	2,269,744	2,253,475	(16,269)	- 0.72
New Jersey	20,938,294	20,362,826	(575,468)	- 2.75
New Mexico	4,365,301	4,775,669	410,368	9.40
New York	51,835,670	46,253,787	(5,581,883)	- 10.77
North Carolina	25,351,154	24,598,968	(752,186)	- 2.97
North Dakota	2,269,744	2,028,651	(241,093)	- 10.62
Ohio	39,313,893	31,915,350	(7,398,543)	- 18.82
Oklahoma	6,970,582	6,877,913	(92,669)	- 1.33
Oregon	13,707,810	11,026,583	(2,681,227)	- 19.56
Pennsylvania	31,871,328	29,506,561	(2,364,767)	- 7.42
Puerto Rico	29,722,110	23,908,509	(5,813,601)	- 19.56
Rhode Island	4,531,698	3,767,218	(764,480)	- 16.87
South Carolina	17,299,897	13,916,063	(3,383,834)	- 19.56
South Dakota	2,269,744	2,028,651	(241,093)	- 10.62
Tennessee	18,716,506	16,288,215	(2,428,291)	- 12.97
Texas	57,404,782	52,833,195	(4,571,587)	- 7.96
Utah	3,547,273	4,121,624	574,351	16.19
Vermont	2,269,744	2,028,651	(241,093)	- 10.62
Virginia	13,127,843	13,540,444	412,601	3.14
Washington	17,997,280	15,992,583	(2,004,697)	- 11.14
West Virginia	3,924,261	4,315,932	391,671	9.98
Wisconsin	13,963,286	13,099,180	(864,106)	- 6.19
Wyoming	2,269,744	2,028,651	(241,093)	- 10.62
State Total	907,897,792	811,460,369	(96,437,423)	- 10.62
American Samoa	131,813	117,342	(14,471)	- 10.98
Guam	1,072,924	955,133	(117,791)	- 10.98
Northern Marianas	397,035	353,447	(43,588)	- 10.98
Palau	75,000	75,000	0	0.00
Virgin Islands	633,401	563,863	(69,538)	- 10.98

TABLE A—WIA YOUTH ACTIVITIES STATE ALLOTMENTS—Continued
[Comparison of PY 2011 vs PY 2010]

State	PY 2010	PY 2011	Difference	Percent difference
Outlying Areas Total	2,310,173	2,064,785	(245,388)	- 10.62
Native Americans	13,861,035	12,388,708	(1,472,327)	- 10.62

U.S. Department of Labor, Employment
and Training Administration

TABLE B—WIA ADULT ACTIVITIES STATE ALLOTMENTS
[Comparison of PY 2011 vs PY 2010]

State	PY 2010 (Pre-FY 2011 0.2% Rescission)	PY 2011	Difference	Percent difference
Total	\$861,540,000	\$770,921,920	(\$90,618,080)	- 10.52
Alabama	11,546,269	12,090,307	544,038	4.71
Alaska	2,630,761	2,118,648	(512,113)	- 19.47
Arizona	15,227,363	14,638,503	(588,860)	- 3.87
Arkansas	7,946,421	6,399,544	(1,546,877)	- 19.47
California	131,676,574	113,937,862	(17,738,712)	- 13.47
Colorado	10,028,610	8,838,405	(1,190,205)	- 11.87
Connecticut	7,899,746	7,208,528	(691,218)	- 8.75
Delaware	2,148,465	1,922,487	(225,978)	- 10.52
District of Columbia	2,416,917	2,040,921	(375,996)	- 15.56
Florida	44,003,639	50,666,671	6,663,032	15.14
Georgia	26,468,737	22,840,137	(3,628,600)	- 13.71
Hawaii	2,786,714	2,375,218	(411,496)	- 14.77
Idaho	2,793,005	3,112,389	319,384	11.44
Illinois	40,399,352	33,485,477	(6,913,875)	- 17.11
Indiana	17,396,927	14,120,139	(3,276,788)	- 18.84
Iowa	3,329,069	3,872,586	543,517	16.33
Kansas	4,907,309	4,349,496	(557,813)	- 11.37
Kentucky	14,765,556	12,990,026	(1,775,530)	- 12.02
Louisiana	13,633,150	10,979,275	(2,653,875)	- 19.47
Maine	3,276,134	2,730,113	(546,021)	- 16.67
Maryland	10,691,615	9,553,233	(1,138,382)	- 10.65
Massachusetts	15,779,759	14,398,404	(1,381,355)	- 8.75
Michigan	48,336,592	38,927,229	(9,409,363)	- 19.47
Minnesota	12,498,015	10,065,109	(2,432,906)	- 19.47
Mississippi	12,175,592	9,805,450	(2,370,142)	- 19.47
Missouri	16,419,448	13,419,717	(2,999,731)	- 18.27
Montana	2,281,343	2,120,862	(160,481)	- 7.03
Nebraska	2,148,465	1,922,487	(225,978)	- 10.52
Nevada	7,675,248	8,185,256	510,008	6.64
New Hampshire	2,148,465	1,922,487	(225,978)	- 10.52
New Jersey	20,803,661	20,215,513	(588,148)	- 2.83
New Mexico	4,166,386	4,573,434	407,048	9.77
New York	51,297,403	45,933,685	(5,363,718)	- 10.46
North Carolina	23,389,183	22,906,147	(483,036)	- 2.07
North Dakota	2,148,465	1,922,487	(225,978)	- 10.52
Ohio	36,633,264	29,608,861	(7,024,403)	- 19.17
Oklahoma	6,516,603	6,455,261	(61,342)	- 0.94
Oregon	12,848,682	10,347,514	(2,501,168)	- 19.47
Pennsylvania	29,034,229	26,995,920	(2,038,309)	- 7.02
Puerto Rico	31,530,340	25,392,538	(6,137,802)	- 19.47
Rhode Island	3,919,536	3,245,983	(673,553)	- 17.18
South Carolina	16,317,914	13,141,414	(3,176,500)	- 19.47
South Dakota	2,148,465	1,922,487	(225,978)	- 10.52
Tennessee	18,105,616	15,820,576	(2,285,040)	- 12.62
Texas	53,798,899	49,503,599	(4,295,300)	- 7.98
Utah	2,816,695	3,276,560	459,865	16.33
Vermont	2,148,465	1,922,487	(225,978)	- 10.52
Virginia	11,828,202	12,422,005	593,803	5.02
Washington	16,563,114	14,762,815	(1,800,299)	- 10.87
West Virginia	4,058,158	4,403,989	345,831	8.52
Wisconsin	11,729,145	11,261,887	(467,258)	- 3.98
Wyoming	2,148,465	1,922,487	(225,978)	- 10.52
State Total	859,386,150	768,994,615	(90,391,535)	- 10.52

TABLE B—WIA ADULT ACTIVITIES STATE ALLOTMENTS—Continued
[Comparison of PY 2011 vs PY 2010]

State	PY 2010 (Pre-FY 2011 0.2% Rescission)	PY 2011	Difference	Percent difference
American Samoa	122,595	109,235	(13,360)	- 10.90
Guam	997,885	889,140	(108,745)	- 10.90
Northern Marianas	369,268	329,026	(40,242)	- 10.90
Palau	75,000	75,000	0	0.00
Virgin Islands	589,102	524,904	(64,198)	- 10.90
Outlying Areas Total	2,153,850	1,927,305	(226,545)	- 10.52

TABLE C—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION WIA DISLOCATED WORKER
ACTIVITIES STATE ALLOTMENTS
[Comparison of PY 2011 vs PY 2010]

State	PY 2010 (Pre-FY 2011 0.2% Rescission)	PY 2011	Difference	Percent difference
Total	\$1,413,000,000	\$1,287,544,000	(\$125,456,000)	- 8.88
Alabama	17,669,335	16,128,630	(1,540,705)	- 8.72
Alaska	2,187,095	1,804,590	(382,505)	- 17.49
Arizona	22,788,184	21,992,101	(796,083)	- 3.49
Arkansas	6,867,051	6,535,066	(331,985)	- 4.83
California	192,413,016	170,303,818	(22,109,198)	- 11.49
Colorado	14,509,305	13,969,269	(540,036)	- 3.72
Connecticut	11,850,579	12,117,862	267,283	2.26
Delaware	2,778,921	2,526,887	(252,034)	- 9.07
District of Columbia	2,990,511	2,592,780	(397,731)	- 13.30
Florida	83,019,633	81,270,552	(1,749,081)	- 2.11
Georgia	40,912,792	35,502,366	(5,410,426)	- 13.22
Hawaii	3,268,124	2,539,205	(728,919)	- 22.30
Idaho	4,536,856	4,240,518	(296,338)	- 6.53
Illinois	54,673,396	52,391,500	(2,281,896)	- 4.17
Indiana	27,257,656	22,971,198	(4,286,458)	- 15.73
Iowa	5,888,367	6,222,410	334,043	5.67
Kansas	6,855,442	5,780,312	(1,075,130)	- 15.68
Kentucky	18,089,024	14,985,351	(3,103,673)	- 17.16
Louisiana	9,812,674	8,768,499	(1,044,175)	- 10.64
Maine	4,578,544	3,599,239	(979,305)	- 21.39
Maryland	15,543,289	14,302,198	(1,241,091)	- 7.98
Massachusetts	22,706,846	21,065,395	(1,641,451)	- 7.23
Michigan	64,544,036	51,285,260	(13,258,776)	- 20.54
Minnesota	18,020,939	12,889,304	(5,131,635)	- 28.48
Mississippi	9,867,047	10,150,118	283,071	2.87
Missouri	22,223,344	19,187,040	(3,036,304)	- 13.66
Montana	2,174,950	2,047,301	(127,649)	- 5.87
Nebraska	2,428,300	2,059,689	(368,611)	- 15.18
Nevada	14,124,712	14,332,064	207,352	1.47
New Hampshire	3,181,956	2,764,686	(417,270)	- 13.11
New Jersey	33,365,324	32,250,359	(1,114,965)	- 3.34
New Mexico	4,093,214	5,179,814	1,086,600	26.55
New York	65,534,311	55,889,913	(9,644,398)	- 14.72
North Carolina	44,039,515	35,096,512	(8,943,003)	- 20.31
North Dakota	690,086	499,920	(190,166)	- 27.56
Ohio	51,610,221	44,079,882	(7,530,339)	- 14.59
Oklahoma	6,905,534	6,917,377	11,843	0.17
Oregon	20,167,658	15,077,317	(5,090,341)	- 25.24
Pennsylvania	39,561,993	37,972,551	(1,589,442)	- 4.02
Puerto Rico	17,054,847	13,696,022	(3,358,825)	- 19.69
Rhode Island	6,227,600	5,104,108	(1,123,492)	- 18.04
South Carolina	23,089,893	19,186,456	(3,903,437)	- 16.91
South Dakota	1,000,388	840,914	(159,474)	- 15.94
Tennessee	26,930,077	22,128,000	(4,802,077)	- 17.83
Texas	61,378,563	62,020,936	642,373	1.05
Utah	4,625,970	6,063,094	1,437,124	31.07
Vermont	1,787,950	1,243,942	(544,008)	- 30.43
Virginia	18,472,220	18,481,552	9,332	0.05
Washington	24,271,171	22,272,901	(1,998,270)	- 8.23
West Virginia	4,551,211	4,558,971	7,760	0.17

TABLE C—U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION WIA DISLOCATED WORKER
ACTIVITIES STATE ALLOTMENTS—Continued
[Comparison of PY 2011 vs PY 2010]

State	PY 2010 (Pre-FY 2011 0.2% Rescission)	PY 2011	Difference	Percent difference
Wisconsin	19,934,322	17,345,523	(2,588,799)	– 12.99
Wyoming	786,008	1,201,048	415,040	52.80
State Total	1,183,840,000	1,063,432,320	(120,407,680)	– 10.17
American Samoa	201,066	182,437	(18,629)	– 9.27
Guam	1,636,618	1,484,984	(151,634)	– 9.27
Northern Marianas	605,632	549,518	(56,114)	– 9.27
Palau	123,006	125,260	2,254	1.83
Virgin Islands	966,178	876,661	(89,517)	– 9.27
Outlying Areas Total	3,532,500	3,218,860	(313,640)	– 8.88
National Reserve	225,627,500	220,892,820	(4,734,680)	– 2.10

[FR Doc. 2011–13806 Filed 6–2–11; 8:45 am]

BILLING CODE 4510–FN–P

MERIT SYSTEMS PROTECTION BOARD

[MSPB Docket Numbers SF–3330–09–0570–B–1 and SF–3330–09–0725–B–1.]

Merit Systems Protection Board (MSPB or Board) Provides Notice of Opportunity To File Amicus Briefs in the Matter of Michael B. Graves v. Department of Veterans Affairs

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: In *Graves v. Department of Veterans Affairs*, 114 M.S.P.R. 245 (2010), and *Graves v. Department of Veterans Affairs*, 114 M.S.P.R. 209 (2010), which involved appeals filed under the Veterans Employment Opportunities Act of 1998 (VEOA), the Board held that the agency's use of veterans' preference status as a "tie-breaker" in making selections for excepted service "hybrid" positions under 38 U.S.C. 7401(3), which includes the Medical Records Technician (MRT) positions at issue in these cases, was inadequate, and that the agency must comply with the competitive service veterans' preference requirements set forth in title 5 of the United States Code. The Board reasoned that although title 5 provisions such as those relating to veterans' preference rights do not apply to appointments listed under 38 U.S.C. 7401(1) (physicians, dentists, etc.) because those appointments are made "without regard to civil-service requirements," "hybrid" employees retain many title 5 rights, including the adverse action and reduction in force (RIF) rights mentioned in 38 U.S.C.

7403(f)(3). The Board noted that section 7403(f)(2) provides that "[i]n using such authority to appoint individuals to such positions, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5," and that section 7403(f)(3) provides that "the applicability of the principles of preference referred to in paragraph (2) * * * shall be resolved under the provisions of title 5 as though such individuals had been appointed under that title." Based on its reading of these two provisions, the Board concluded that title 5 competitive service veterans' preference requirements apply to appointments made to 38 U.S.C. 7401(3) positions such as MRTs. The Board also suggested in *Graves*, 114 M.S.P.R. 209, ¶¶ 12–15, that the agency violated veterans' preference requirements set forth in the Office of Personnel Management's Delegated Examining Operations Handbook and VetGuide, and that corrective action was therefore warranted.

The *Graves* cases are now before the Board on petition for review after remand. The agency has raised several arguments regarding the above findings. The agency asserts that 38 U.S.C. 7403(f)(3) does not address the appointment of individuals because its plain language refers multiple times to individuals who have already been appointed. Thus, the agency contends that the Board's decisions do not give effect to the word "appointed" in section 7403(f)(3), and under the statutory construction maxim *noscitur a sociis* (a word is defined by the company it keeps), the reference in section 7403(f)(3) to "matters relating to * * * the applicability of the principles of preference referred to in paragraph (2)" should mean matters relating to veterans' preference principles that

apply to individuals who have already been appointed, like "matters relating to" adverse actions, RIFs, part-time employees, disciplinary actions, and grievance procedures. The agency also contends that the legislative history for 5 U.S.C. 7403(f)(2)–(3) indicates that a Senate committee specifically intended for the agency to apply a tie-breaker principle to "hybrid" applicants, and that Congress did not intend to require the agency to apply title 5 rights to applicants for employment. The agency further asserts that in 1984 it provided notice in the **Federal Register** that it would be implementing the "principles of preference" requirement in the statute through an internal circular that called for the use of the "tie-breaker" principle that has been in effect from 1984 through the Board's decisions in *Graves*.

We also note that while section 7403(f)(2) calls for applying "the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5," such application appears to relate to the use of "such authority," *i.e.*, the "authority" mentioned in 38 U.S.C. 7403(a), which in turn calls for appointments to be made "without regard to civil-service requirements." See *Scarnati v. Department of Veterans Affairs*, 344 F.3d 1246, 1248 (Fed. Cir. 2003) (under 38 U.S.C. 7403(a), title 5 provisions, including those regarding veterans' preference rights, do not apply to appointments made "without regard to civil service requirements"). Further, deference is generally given to an agency's consistent, long-standing regulatory interpretation of an ambiguous statute as long as it is reasonable, *Rosete v. Office of Personnel Management*, 48 F.3d 514, 518–19 (Fed. Cir. 1995), and Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt