

DEPARTMENT OF LABOR**Veterans' Employment and Training Service****20 CFR Part 1001**

RIN 1293-AA11

Funding Formula for Grants to States

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is issuing a final rule to implement section 4(a)(1) of Public Law 107-288, the Jobs for Veterans Act (Act), which amends 38 U.S.C. 4102A. This final rule establishes formula criteria for making funds available for veterans' employment services and the Transition Assistance Program (TAP). This rule replaces the Interim Final Rule and covers the second phase-in year of fiscal year 2005 and the permanent program beginning in fiscal year 2006.

DATES: This final rule takes effect June 16, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Robertson, Legislative Analysis Division, VETS, U.S. Department of Labor, Room S-1325, 200 Constitution Avenue NW., Washington, DC 20210, or by e-mail at robertson.paul@dol.gov or call 202-693-4714.

SUPPLEMENTARY INFORMATION: The Preamble to this Final Rule is organized as follows:

- I. Background—provides a brief description of the development of the Final Rule.
- II. Authority—cites the statutory provisions for the Final Rule.
- III. Section-by-Section Review of the Rule—summarizes pertinent aspects of the regulatory text, describes its purposes and application, and summarizes and responds to comments received on the Notice of Proposed Rulemaking published July 6, 2004 (69 FR 40724).
- IV. Administrative Information—sets forth the applicable information as required by law.

This Final Rule is published following a 60-day comment period during which comments were received from three individuals/organizations. Those comments are addressed in the appropriate sections of this Final Rule. We are grateful for the effort a concerned individual took to submit comments through Regulations.gov. We appreciate the commenter's interest in programs serving veterans. However, because the comments do not specifically relate to the provisions of this Rule, we will not address them in this Preamble.

I. Background

The President signed the Jobs for Veterans Act (Pub. L. 107-288) into law on November 7, 2002. The Act amends title 38 of the United States Code to revise and improve employment, training, and placement services furnished to veterans. This rule implements the provisions of 38 U.S.C. 4102A(c) as amended by section 4 of the Act that establishes a new funding formula for making funds available to each State, with an approved State Plan, to support the Disabled Veterans Outreach Program (DVOP) and the Local Veterans Employment Representative (LVER) programs. Additionally, funding will be made available to support TAP and respond to exigent circumstances.

Congress allowed for the phasing in of the new statutory funding formula "over the three fiscal-year period" beginning in fiscal year (FY) 2003, which started on October 1, 2002 (38 U.S.C. 4102A(c)(2)(B)(ii)). Because of the late enactment of the law, funding for year one of the phase-in had already occurred by the date of enactment. Congress intended that the formula be phased-in and fully implemented by the beginning of fiscal year 2006, which is October 1, 2005. The phase-in provision was not intended to delay the anticipated date of full implementation of the formula.

In order to adhere to the implementation expectations of Congress, the phase-in process began in fiscal year 2004, through publication of an Interim Final Rule amending 20 CFR part 1001 on June 30, 2003 (68 FR 39000). The Interim Final Rule set forth the funding criteria to be used in fiscal year 2004. In order to ensure full public comment and adequate public notice of the new funding criteria applicable after fiscal year 2004, the Interim Final Rule was set to expire on September 30, 2004, and the Department committed to issuing a Notice of Proposed Rulemaking to establish the funding formula to be used in fiscal year 2005 and the future.

Accordingly, on July 6, 2004, a Notice of Proposed Rulemaking with a request for comments was published in the **Federal Register**, at 69 FR 40724. The Notice of Proposed Rulemaking used the same formula and data sources as the Interim Final Rule for making allocations among States. We thoroughly reviewed every comment on the proposed rule received during the comment period. These comments are summarized and responded to in section III of this Preamble.

This Final Rule applies the same funding criteria and data sources as that

established in the Notice of Proposed Rulemaking and the Interim Final Rule. These criteria were used as the basis for allocating Fiscal Year 2005 funds (initially made available under a series of Continuing Resolutions) among the States. By so doing we were able to continue funding these programs without harm to the States or to veterans seeking services.

II. Authority

The statutory authority for this Final Rule is 38 U.S.C. 4102A(c)(2)(B), as amended by the Jobs for Veterans Act, enacted November 7, 2002, as Public Law 107-288.

III. Section-by-Section Review of the Rule*A. Funding Formula—Basic Grant*

The Act requires the Secretary to make funds available to each State, upon approval of an "application" (*i.e.*, a State Plan), to support the DVOP and LVER programs designed to provide employment services to veterans and transitioning servicemembers (38 U.S.C. 4102A(c)(2)(B)). The Act further allows the Secretary to use such criteria as the Secretary may establish in regulation, including civilian labor force and unemployment data in determining the funding levels (38 U.S.C. 4102A(c)(B)(i), as amended by the Act). The statute requires that the amount of funding available to each State reflect the ratio of: (1) The total number of veterans residing in the State who are seeking employment; to (2) the total number of veterans seeking employment in all States (38 U.S.C. 4102A(c)(B)(i)(I) and (II)). Additionally, the Act permits the Secretary to establish minimum funding levels and hold-harmless criteria, in order to mitigate the impact upon States whose funding levels may be significantly affected by the implementation of the new formula (38 U.S.C. 4102A(c)(B)(iii)).

The Act states that the use of this formula will be phased-in over the three fiscal-year period beginning October 1, 2002. Since the statute was not enacted until November 7, 2002, after the beginning of fiscal year 2003, we interpret this to mean that the first phase-in year for the funding formula was fiscal year 2004, which began on October 1, 2003. This will only allow a two-year phase-in period, fiscal years 2004 and 2005, instead of the three years as contemplated by the statute. To give the States the maximum phase-in period possible, an Interim Final Rule was published on June 30, 2003, which expired September 30, 2004. This Final Rule replaces the Interim Final Rule and

covers the second phase-in year of fiscal year 2005 and the permanent program beginning in fiscal year 2006. It applies the same funding criteria and data sources as that established in the Notice of Proposed Rulemaking and the Interim Final Rule. These criteria were used as the basis for allocating Fiscal Year 2005 funds (initially made available under a series of Continuing Resolutions) among the States.

1. Basic Grant Funding Formula and Data and Methodology

We are using the same data sources as those used in the FY 2004 formula established by the Interim Final Rule. The ratio of the number of veterans seeking employment in each State to the number of veterans seeking employment in all States is best determined using data collected through the Current Population Survey (CPS) and the Local Area Unemployment Statistics (LAUS), both of which are administered by the Bureau of Labor Statistics (BLS). We are using LAUS data to determine the number of unemployed persons in the civilian labor force because LAUS data are considered to be the most reliable data on the levels of general unemployment at the State level; and the Office of Management and Budget (OMB) requires Agencies allocating Federal funds, that include unemployment as a factor, to use LAUS as the indicator of unemployment unless the authorizing statute specifies otherwise (OMB Statistical Policy Directive 11). We are using the CPS data to determine the number of veterans in the civilian labor force because the CPS is considered to be the most reliable source of data on the levels of veteran participation in the civilian labor force at the State level. A subset of the CPS data on veterans in the civilian labor force does provide State level estimates of the number of unemployed veterans. However, because the sample size of the unemployed veteran subgroup at the State level is so small, these estimates are subject to large sampling errors. Therefore, the funding levels would be subject to undue variability/volatility if that subset of the CPS data were used alone to determine the number of unemployed veterans at the State level.

Because LAUS data are based on the total unemployment level for a State, we concluded that LAUS data are the best available measure of persons who are seeking work. Accordingly, we concluded the number of veterans seeking employment in each State can be best determined by using a ratio of the general unemployment level in each State compared to the general unemployment level in all States (LAUS

for the individual States/LAUS for all States), in combination with the number of veterans in the civilian labor force in each State compared to the number of veterans in the civilian labor force in all States (CPS for the individual States/CPS for all States). The result of these two ratios is averaged and converted to a single ratio of the number of veterans seeking employment in each State compared to the number of veterans seeking employment in all States. Three-year averages of the CPS and LAUS data are used in calculating the funding formula to stabilize the effect of annual fluctuations in the data in order to avoid undue fluctuations in the annual amounts allocated to States.

We received one comment on the use of these data sources in response to the issuance of the Notice of Proposed Rulemaking. The commenter expressed the concern that the "number of unemployed persons" is different than that required by the Act. They offer "[t]he term 'veterans seeking employment' could refer to veterans who are seeking employment because (1) they are unemployed and receiving Unemployment Insurance (UI) benefits; (2) they are out of work, but don't qualify for UI benefits; (3) they are looking for a better job than their current job; or (4) they are preparing for separation from the service."

Response: All individuals, including veterans, who are classified in LAUS as unemployed are considered to be seeking employment, both those who receive UI benefits and those who do not qualify for UI benefits (items 1 and 2, as specified in the comment). Thus, these two groups also are considered in the formula through the use of LAUS data. Currently, there is no valid data source that collects and measures those individuals who are looking for a better job than their current one (item 3, as specified in the comment). However, since these individuals are employed, they are considered a part of the civilian labor force and thus are included in the formula. Individuals who are preparing for separation from military service are not part of the civilian labor force nor are they veterans (item 4, as specified in the comment). Therefore they are properly omitted from the formula. It is noted that separating servicemembers may be served and are served through the Transition Assistance Program (TAP) and funding for services to those individuals is provided in this Final Rule through amounts made available for TAP services based on a State's plan. Therefore, no change is being made.

The same commenter suggested that rather than use "LAUS data for the total number of unemployed persons in each

State, VETS should work with the Employment and Training Administration to ensure that States report data regarding their veterans more consistently in all DOL administered programs."

Response: OMB Statistical Policy Directive 11 requires any federal agency allocating federal funds that include unemployment as a factor to use LAUS as the indicator of unemployment, unless the authorizing statute specifies otherwise. Additionally, it has been determined by the BLS that LAUS data are the most reliable data for determining unemployment at the State level. While we agree that the availability of a more reliable source of information on unemployed veterans would be desirable, we submit that in the absence of such a data source we must use the most reliable data currently available. Accordingly, no change is being made.

An additional comment by the same commenter expressed an opinion that the use of a three-year average is contrary to the express intent of the Act. They further stated, "The change in the prior funding formula was made in order to ensure that the nation's resources for serving veterans are allocated in proportion to the nation's veterans who are seeking employment. The Act authorizes only the use of a hold-harmless criteria and minimum funding levels."

Response: In our view, the Secretary is clearly authorized to include the 3-year average criterion in the formula established under 38 U.S.C. 4102A(c)(2)(B). The Secretary is authorized to use "such criteria as the Secretary may establish" within the parameters of that section (*i.e.*, the required data sources and ratio). The 3-year average criterion is used for sound statistical reasons. The State level data employed in the funding formula on the number of veterans in the civilian labor force are based entirely on the CPS. The State level data employed in the funding formula on the number of unemployed individuals are based upon the LAUS data, which are based partially on the CPS. All CPS data are derived from a survey that is conducted with a statistical sample of households. Like all data derived from statistical samples, the results of the CPS include sampling error. Therefore, the CPS results for a given State can vary from one year to the next simply due to the sampling error, without any change occurring in the underlying labor force characteristic being measured.

When the funding formula methodology was under development, funding allocations for basic grants were

initially estimated based upon the CPS and LAUS data for the most recent year, as suggested by the commenter. These initial estimates clearly indicated that "statistical noise" due to sampling error would have introduced a disruptive pattern of unnecessary annual fluctuations in funding levels, in addition to the desirable shifts in funding attributable to changes in the labor force characteristics being measured. Further development suggested that the three-year average provided the best available means of capturing the underlying labor force trends, while suppressing the year-to-year statistical variation. BLS staff members with specialized expertise related to the CPS and LAUS data sources were consulted during the development of this approach and concurred that the approach and its underlying rationale are technically sound. Based upon this technical foundation, it was concluded that this approach enables each State, and the workforce development system as a whole, to respond to relevant labor force changes in the most orderly manner. Therefore, the three year average is retained in the Final Rule.

One commenter pointed out that State Plans are prepared in response to estimated allocation amounts based upon a projection of the appropriation for a given fiscal year. This commenter requested clarification regarding the policies to be followed if: (a) The actual appropriation was higher than the projection; and (b) The actual appropriation was lower than the projection by a small amount.

Response: In response to these comments, we have revised § 1001.150. A new paragraph (d) sets forth the criteria that the Secretary will apply when the appropriation varies from the projection.

Projecting an appropriation amount for each fiscal year is central to the process prescribed by the Act for calculating and awarding basic grants for veterans' employment services to State Workforce Agencies. At the National level, the funding formula prescribed by the Act is applied to the projected appropriation amount in order to calculate the estimated amounts of the basic grant allocations for each State. At the State level, in turn, these estimated basic grant allocation amounts provide the fiscal foundation for the preparation of State Plans.

The sequence of activities undertaken to estimate basic grant allocation amounts and to prepare State Plans involve application of staff effort and consume calendar time on the part of the State and Federal agencies involved

in this process. Further, in recent years, the timing of the enactment of appropriations generally has made it expedient to award grants to State agencies as soon as possible after the appropriations are enacted and administrative allotments have been completed. Therefore, paragraph (d) of § 1001.150 provides that, if the actual appropriation varies from the projection, the Secretary will make every reasonable effort to avoid recalculating the estimated basic grant allocation amounts, in order to maintain the delivery of services to veterans and to minimize the administrative workload required to recalculate grant allocations and to revise State Plans. For all these reasons, upon enactment of an appropriation, it is the Department's intent to proceed by awarding the estimated basic grant allocation amounts to State agencies, unless the difference between the projection and the appropriation creates a compelling reason to do otherwise. The Department is able to cover small shortfalls between the appropriation and the projection by adjusting the funds set aside for TAP workload and exigent circumstances.

Paragraph (d)(2) provides that if the actual appropriation exceeds the projection, the Secretary will determine whether the higher appropriation creates a compelling reason to recalculate the States' basic grants by reapplying the formula to the amount of funds so appropriated. If there is no compelling reason to recalculate, the increased amount available for basic grants will be retained as undistributed funds, separate from the funds retained for TAP workload and other exigencies. The intent will be to award these undistributed basic grant funds to States during the applicable fiscal year as basic grant supplements, in response to circumstances that arise during that fiscal year. Similarly, paragraph (d)(3) provides that if the appropriation falls below the projection, the Secretary will determine whether the lower appropriation creates a compelling reason to recalculate the States' basic grants. If awarding States the estimated allocation amounts for basic grants would reduce the level of unallocated funds below the threshold amount required for TAP and other exigencies, a compelling reason to recalculate would exist. Therefore, the basic grant allocation amounts will be recalculated in response to a reduced appropriation to the extent that it is necessary to do so to assure the availability of sufficient funding for TAP workload and other exigencies. In cases where the appropriation is insufficient to meet the

hold-harmless provisions, we will follow the procedure outlined in section 1001.152(d).

2. Minimum Funding Levels and Hold-Harmless Criteria

The Act authorizes the Secretary to establish hold-harmless criteria and minimum funding levels (38 U.S.C. 4102A(c)(2)(B)(iii)). This Final Rule establishes a hold-harmless rate of eighty percent for the second phase-in year (fiscal year 2005) to mitigate the impact of the most significant reductions to States' prior funding levels. This is the same rate as that set forth in the Interim Final Rule for Fiscal Year 2004. With the eighty percent hold-harmless during fiscal year 2005 each State will be provided no less than eighty percent of its previous year's allocation. The eighty percent hold-harmless rate will allow the reduction of funding, to those States impacted, to be implemented incrementally. After the funding phase-in period is completed in fiscal year 2005, a ninety percent hold-harmless rate will be applied, ensuring each State will receive at least ninety percent of their previous year's allocation. This will align the hold-harmless level with the hold-harmless level established by Section 6 of the Wagner-Peyser Act (29 U.S.C. 49e(b)(2)). In addition to the hold-harmless provisions in any year, a State minimum funding level of 0.28 percent (.0028) of the prior year's total funding level for all States will be applied, meaning that no State may receive less than that amount. This is the same percentage applied in Section 6 of the Wagner-Peyser Act (29 U.S.C. 49e(b)(3)).

One commenter, noting that State Plans are prepared in response to estimated basic grant allocations based upon a projection of the appropriation for a given fiscal year, requested clarification of the policy that the Department would follow if the actual appropriation fell so far below the projection that sufficient funding was not available to comply with the 90 percent hold-harmless provision.

Response: In response to this comment, a new paragraph (d) has been added to § 1001.152. Section 1001.152 provides that two basic steps would be followed in this instance. In the first step, the Department would confirm or refine, as appropriate, the accuracy of the States' estimates of TAP workload and would reserve sufficient funds from the total amount available for allocation to the States for that purpose. Beyond TAP workload, no funds would be reserved for exigent circumstances because the shortfall in the

appropriation would be the primary exigent circumstance to be addressed.

In the second step, the Department would apply proportionally the remaining balance available for basic grant allocations to the States for that fiscal year. The proportion would be calculated by dividing the remaining balance available for basic grant allocations by the total estimated basic grant allocations for that fiscal year. The proportion resulting from that calculation would be applied to each State's estimated basic grant allocation to calculate the amount to be awarded. For example, if the balance available was 79% of the total estimated basic grant allocations, each State would be awarded 79% of its estimated basic grant allocation for that fiscal year.

B. Other Funding Criteria

In addition to requiring the Secretary to use civilian labor force and unemployment data in establishing States' funding levels, the Act states that the Secretary "shall make available to each State * * * an amount of funding * * * using such criteria as the Secretary may establish in regulation * * *" (38 U.S.C. 4102A(c)(2)(B)(i)). Accordingly, the rule provides that in addition to the amount awarded based on the basic grant funding formula, described in section IV.A.1 of this document, the Secretary may distribute up to four percent of the total amount available for allocation based on TAP workload and exigent circumstances (38 U.S.C. 4102, 4102A(b), and 10 U.S.C. 1141).

A commenter asked us to clear up a perceived inconsistency between the Preamble statement that " * * * the Secretary may distribute up to four percent of the total amount available for allocation" in reference to § 1001.151(a) which states that "[f]our percent of the total amount at the national level will be available" for TAP and exigencies.

Response: The intent of the regulation is to provide that the Secretary has authority to use "up to four percent of the total amount available for allocation will be available for distribution based on Transition Assistance Program (TAP) workload and other exigencies." To avoid any confusion, the regulation has been revised accordingly. The funds set aside for TAP are available for programs in States and overseas.

1. Transition Assistance Program (TAP) Workload

The Act requires the Secretary to implement programs to ease the transition of servicemembers to civilian careers (38 U.S.C. 4102. See also 10 U.S.C. 1141). TAP workshops provide

such employment services for transitioning servicemembers. Because active military personnel are not included in the CPS civilian labor force data, or in the LAUS unemployment data, the level of need for TAP workshops is not reflected in the funding formula for the basic grants. Therefore, supplemental funding is needed in order to ensure adequate funding is available to provide TAP workshops. In the Final Rule, the allocation to the States for TAP workshops is proportional to each State's TAP workload as identified in its State Plan. Policy guidance was provided to States to assist them in determining the amounts needed for this additional workload, which is calculated on a per-workshop basis as identified in the State Plan.

We received one comment supporting the method for allocating TAP workshop funds.

2. Exigent Circumstances

Supplemental funding will be made available for exigencies, including but not limited to, needs based on sharp or unanticipated fluctuations in State unemployment levels and services to transitioning servicemembers (as required by the Act). Economic and unemployment conditions projected at the time of the grant application may not reflect actual conditions. In such cases, program needs may warrant additional funding. These funds will be made available based on need.

IV. Administrative Information

Regulatory Flexibility and Regulatory Impact Analysis

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. "Small entities" are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided), and small governmental entities (those in areas with fewer than 50,000 residents). We have assessed the potential impact of this rule on small entities. This rule implements reforms to the funding of the State operated veterans' employment and training services and transitional assistance programs for separating servicemembers. Because the rule affects only the distribution of appropriated funds among the States, we have determined that the rule will not have a significant impact on a

substantial number of small governments or other small entities. We are transmitting a copy of our certification to the Chief Counsel for Advocacy for the Small Business Administration. In addition, while these rules govern the distribution and administration of funds appropriated by Congress, the rules themselves do not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises. Accordingly, under the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Department has determined that these are not "major rules," as defined in 5 U.S.C. 804(2).

Paperwork Reduction Act

This Final Rule does not require any information to be collected, therefore is not subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

Executive Order 12866, Regulatory Planning and Review

The Department of Labor has determined that this rule is a "significant regulatory action." However, it is not an economically significant rule, and therefore, does not fall under the cost/benefit assessment provisions of section 6(a)(3)(C) of Executive Order 12866. While this rule affects the distribution among States of funds appropriated by Congress, the rule itself will not materially alter the rights and obligations of the State recipients, particularly in light of the hold-harmless provisions included in the rule. Furthermore, the rule itself will not: materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency, or otherwise interfere with an action taken or planned by another agency. The rule may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, therefore it has been submitted to OMB for review.

Unfunded Mandates

Executive Order 12875—This rule does not create an unfunded Federal Mandate upon any State, local, or tribal government.

Unfunded Mandate Reform Act of 1995—This rule does not include any Federal mandate that may result in increased expenditures by State, local and tribal governments in the aggregate of \$100 million or more, or increased expenditures by the private sector of \$100 million or more.

Executive Order 13132, Federalism

We have assessed this rule under Executive Order 13132 and found that it will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order.

Executive Order 12988

This rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Effective Date

This final rule is effective June 16, 2005.

List of Subjects in 20 CFR Part 1001

Employment, Grant Programs, Labor, Reporting and Record Keeping Requirements, Veterans.

■ For the reasons set forth in the preamble, 20 CFR chapter IX is amended as set forth below.

PART 1001—SERVICES FOR VETERANS

■ 1. The authority for part 1001, subpart F continues to read as follows:

Authority: Sec. 4(a), Pub. L. 107-288; 38 U.S.C. 4102A.

■ 2. Part 1001 is amended by revising subpart F to read as follows:

Subpart F—Formula for the Allocation of Grant Funds to State Agencies

1001.150 Method of calculating State basic grant awards.

1001.151 Other funding criteria.

1001.152 Hold-harmless criteria and minimum funding level.

Subpart F—Formula for the Allocation of Grant Funds to State Agencies.**§ 1001.150 Method of calculating State basic grant awards.**

(a) In determining the amount of funds available to each State, the ratio of the number of veterans seeking employment in the State to the number of veterans seeking employment in all States will be used.

(b) The number of veterans seeking employment will be determined based on the number of veterans in the civilian labor force and the number of unemployed persons. The civilian labor force data will be obtained from the Current Population Survey (CPS) and the unemployment data will be obtained from the Local Area Unemployment Statistics (LAUS), both of which are compiled by the Department of Labor's Bureau of Labor Statistics.

(c) Each State's basic grant allocation will be determined by dividing the number of unemployed persons in each State by the number of unemployed persons across all States (LAUS for all States) and by dividing the number of veterans in the civilian labor force in each State by the number of veterans in the civilian labor force across all States (CPS for the individual States / CPS for all States). The result of these two ratios will be averaged and converted to a percentage of veterans seeking employment in the State compared to the percentage of veterans seeking employment in all States. Three-year averages of the CPS and LAUS data will be used in calculating the funding formula to stabilize the effect of annual fluctuations in the data in order to avoid undue fluctuations in the annual basic grant amounts allocated to States.

(d) State Plans are prepared in response to estimated basic grant allocation amounts prepared by the Department of Labor, based upon a projection of the appropriation. Variations from Department of Labor projections will be treated as follows:

(1) If the actual appropriation varies from the projection, the Secretary will make every reasonable effort to avoid recalculating the estimated basic grant allocation amounts, in order to maintain the delivery of services to veterans and to minimize the administrative workload required to recalculate grant allocations and to revise State Plans. Therefore upon enactment and allotment of an appropriated amount, it is the Department's intent to proceed by awarding the estimated basic grant allocation amounts to State agencies, unless the difference between the

projection and the appropriation creates a compelling reason to do otherwise.

(2) If the actual appropriation exceeds the projection, the Secretary will determine whether the appropriation and the projection is large enough to warrant recalculating the State basic grant amounts. In such case, state basic grant amounts will be recalculated in accordance with paragraphs (a) through (c) of this section. If it is determined that no compelling reason to recalculate exists, the increased amount available for basic grants will be retained as undistributed funds. These undistributed basic grant funds will be retained separately from the funds retained for TAP workload and other exigencies, as established by § 1001.151(a). The intent will be to award these undistributed basic grant funds to States as basic grant supplements, in response to circumstances arising during the applicable fiscal year.

(3) If the actual appropriation falls below the projection, the Secretary will determine whether the lower appropriation creates a compelling reason to recalculate the State basic grant amounts. If it is determined that not recalculating the State basic grant amounts would jeopardize the availability of sufficient funding for TAP workload and other exigencies, a compelling reason to recalculate would exist. In that case, the State basic grant amounts will be recalculated under paragraphs (a) through (c) of this section in response to the reduced appropriation, to the extent required to assure that sufficient funding is available for TAP workload and other exigencies.

§ 1001.151 Other funding criteria.

(a) Up to four percent of the total amount available for allocation will be available for distribution based on Transition Assistance Program (TAP) workload and other exigencies.

(b) Funding for TAP workshops will be allocated on a per workshop basis. Funding to the States will be provided pursuant to the approved State Plan.

(c) Funds for exigent circumstances, such as unusually high levels of unemployment, surges in the demand for transitioning services, including the need for TAP workshops, will be allocated based on need.

§ 1001.152 Hold-harmless criteria and minimum funding level.

(a) A hold-harmless rate of 90 percent of the prior year's funding level will be applied after the funding formula phase-in period is completed (beginning fiscal year 2006 and subsequent years).

(b) A hold-harmless rate of 80 percent of the prior year's funding level will be applied for fiscal year 2005.

(c) A minimum funding level is established to ensure that in any year, no State will receive less than 0.28 percent (.0028) of the previous year's total funding for all States.

(d) If the appropriation for a given fiscal year does not provide sufficient funds to comply with the hold-harmless provision, the Department will:

(1) Update, as appropriate, the States' estimates of TAP workload and reserve

sufficient funds for that purpose from the total amount available for allocation to the States. Beyond TAP workload, no funds will be reserved for exigent circumstances because the shortfall in the appropriation will be the primary exigent circumstance to be addressed.

(2) Apply proportionally the remaining balance available for basic grant allocations to the States for that fiscal year. The proportion will be calculated by dividing the remaining balance available for allocation by the

total estimated State basic grant allocations for that fiscal year. The proportion resulting from that calculation will be applied to each State's estimated basic grant allocation to calculate the amount to be awarded.

Signed at Washington, DC, this 11th day of May, 2005.

Charles Ciccolella,

Deputy Assistant Secretary for Veterans' Employment and Training.

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