

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

RIN 1293-AA17

**Funding Formula for Grants to States****AGENCY:** Veterans' Employment and Training Service (VETS).**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** In this advance notice of proposed rulemaking (ANPRM), VETS is requesting comments, including data and other information, on issues related to the funding formula applicable to the Jobs for Veterans State Grants that are administered by VETS as authorized by 38 U.S.C. 4102A(b)(5). The funding formula for these grants is governed by 38 U.S.C. 4102A(c) (2) (B) and 20 CFR part 1001, subpart F.

VETS plans to consider the information received in response to this notice in deciding whether or not to propose changes to those aspects of the funding formula that are within the Secretary's discretion.

**DATES:** Submit comments in response to this ANPRM by September 9, 2010.

**ADDRESSES:** Submit comments as follows:

- *Federal e-Rulemaking Portal:* Submit comments electronically at <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.
- *Fax:* Commenters may fax submissions, including attachments that are no longer than 10 pages in length, to Gordon Burke, at (202) 693-4755. VETS does not require hard copies of these documents.
- *Regular mail, express delivery, hand (courier) delivery, and messenger service:* Written comments, disk, and CD-ROM submissions may be mailed or delivered by hand delivery/courier to The Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-1325, Washington, DC 20210. Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Therefore, in order to ensure that comments receive full consideration, VETS encourages the public to submit comments via <http://www.regulations.gov> as indicated above.
- *Instructions:* Please submit your comments by only one method. All submissions must include the Agency name (VETS) and the RIN for this

rulemaking (i.e., RIN 1293-AA17). Submissions, including any personal information provided, are placed in the public docket without change and will be available online at <http://www.regulations.gov>. Therefore, VETS cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

- *Docket:* To read or download submissions or other material in the docket go to <http://www.regulations.gov>. VETS will make all the comments it receives available for public inspection during normal business hours at the above address. If you need assistance to review the comments, VETS will provide you with appropriate aids such as readers or print magnifiers. VETS will make copies of the ANPRM available, upon request, in large print or electronic file on computer disk. VETS will consider providing the ANPRM in other formats upon request. To schedule an appointment to review the comments and/or obtain the ANPRM in an alternate format, contact the office of Gordon Burke at (202) 693-4730 (VOICE) (this is not a toll-free number) or (202) 693-4760 (TTY/TDD). You may also contact Mr. Burke's office at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this ANPRM is available from Pamela Langley, Chief, Division of Grant Programs, Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-1312, Washington, DC 20210, [Langley.Pamela@dol.gov](mailto:Langley.Pamela@dol.gov), (202) 693-4708 (this is not a toll-free number).

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**I. Background**

The Jobs for Veterans Act, enacted November 7, 2002, as Public Law 107-288, amended DOL veterans program laws in 38 USC, chapters 41 and 42, and requires the Secretary of Labor to make funds available to each State, upon approval of an "application" (i.e., a State Plan), to support the Disabled Veterans' Outreach Program (DVOP) and the Local Veterans' Employment Representative (LVER) Program. These two programs provide employment services to veterans and transitioning service members. 38 U.S.C. 4102A (b)(5). The

annual formula grants to States for these programs are called the Jobs for Veterans State Grants (JVSGs).

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)(2)(B)(i)(I) and (II)). Additionally, the statute permits the Secretary to establish: (a) Minimum funding levels; and, (b) hold-harmless criteria; both of which have been included in the regulations. The minimum funding level seeks to assure small States of sufficient funds to support a basic level of services to veterans, while the 90 percent hold-harmless applied since FY 2006 seeks to mitigate the impact upon States whose funding may be significantly affected by fluctuations in the data applied to calculate funding levels. 38 U.S.C. 4102A(c)(B)(iii). The Secretary is authorized to establish by regulation the criteria, including civilian labor force and unemployment data, used to determine the funding levels. 38 U.S.C. 4102A(c)(B)(i). The Secretary exercised this authority by promulgating regulations at 20 CFR Part 1001.

This statutory formula was phased in over the fiscal years 2004 and 2005. An Interim Final Rule was published on June 30, 2003 (68 FR 39000), and a Notice of Proposed Rulemaking was published on July 6, 2004 (69 FR 40724). The Final Rule (20 CFR part 1001, subpart F) was published on May 17, 2005 (70 FR 28406). The final rule establishes the funding formula required by the statute and can be viewed from the following link: <http://www.dol.gov/vets/usc/20CFRPart1001SubpartF.pdf>.

A brief summary of the applicable sections of 20 CFR part 1001 is as follows:

*Section 1001.150 Method of Calculating State Basic Grant Awards*

- Explains how the number of veterans seeking employment is determined using civilian labor force data from the Current Population Survey (CPS) and unemployment data from the Local Area Unemployment Statistics (LAUS), both of which are compiled by DOL's Bureau of Labor Statistics.
- Specifies how each State's basic JVSG allocation is calculated.
- Identifies the procedures implemented if the actual appropriation is higher or lower than the projected appropriation, which provides the basis for estimating the basic grant allocation amount for each State.

### Section 1001.151 Other Funding Criteria

- Specifies that up to four percent of the amount available for allocation will be set aside to fund the Transition Assistance Program (TAP) and interventions that respond to exigent circumstances.
- Explains how TAP funding is allocated and distributed among the States.
- Identifies unusually high levels of unemployment and surges in the demand for transitioning services such as TAP workshops as examples of exigent circumstances.

### Section 1001.152 Hold-Harmless Criteria and Minimum Funding Level

- Specifies the 80 percent hold-harmless level that applied to the FY 2004 and FY 2005 phase-in period.
- Specifies the 90 percent hold-harmless level that applies from FY 2006 forward.
- Establishes the minimum funding level of 0.28 percent of the previous year's total funding for all States.
- Identifies the procedures followed if the amount appropriated does not provide sufficient funds to comply with the hold-harmless provision.

## II. Request for Data, Information, and Comments

VETS is providing the following questions to facilitate the collection of pertinent information and to facilitate public comment on relevant issues. Commenters are encouraged to address any aspect of the funding formula discussed in the regulations quoted above. VETS requests that commenters provide a detailed response to questions, including a rationale or reasoning for the position taken or proposed. Also, relevant data that may be useful to VETS' deliberations or that may assist it in conducting an analysis of the impacts of future grant funding actions should be submitted. To assess the costs, a benefit, or feasibility of any possible regulatory change, VETS needs any specific quantitative information that the commenter can provide about the impact(s) of the recommended change(s) upon grantees. Therefore, for those recommendations involving specific funding formula changes, any data in terms of costs and benefits associated with the recommendation would be helpful. To assist in analyzing comments, VETS requests commenters to reference their responses to one or more specific questions by labeling each response with the question number.

### A. Method of Calculating State Basic Grant Awards

Under current regulations, three-year averages of the most recent available data on veterans in the civilian labor force from the CPS and data on the number unemployed from the LAUS have been used in calculating the funding formula to stabilize the effect of annual fluctuations in the data and thereby avoid undue fluctuations in the annual basic grant amounts allocated to States.

1. Has the averaging approach accomplished the objective of stabilizing annual fluctuations in funding for the States?
2. Has the averaging approach produced other positive or negative outcomes for the States?
3. Are there compelling reasons to change the period of time involved in the averaging, e.g., to a longer or shorter period than the current three-year period?  
The current regulations implement the statutory provisions by accounting for two key differences among the States: (a) Each State's proportion, relative to other States, of veterans in the civilian labor force (i.e., the segment of the veteran population involved in employment), and, (b) each State's proportion, relative to other States, of those unemployed (i.e., the severity of the economic conditions faced by veteran jobseekers).

4. Are there economic factors other than unemployment, such as the cost of living or the average earnings level, which vary significantly among the States and could be considered for incorporation in the funding formula?

5. Are there geographic differences among the States, such as the dispersion or concentration of veterans, which could be considered for incorporation in the funding formula? For example, are there additional expenses associated with outreach to specific populations of veterans, such as Native American veterans, homeless veterans, and/or incarcerated veterans that should be considered for incorporation in the funding formula?

6. Are there characteristics of those veterans in need of services, such as the proportion of veterans with severe disabilities, the proportion of older veterans, or the proportion of economically disadvantaged veterans, which vary significantly among the States and could be considered for incorporation in the funding formula?

7. For those commenters who suggest additional factors, in response to questions 4 through 6, are there generally recognized, empirically-based

measures of the suggested factors that could be considered for inclusion in a revised version of the funding formula?

8. Should differences among States in the ability to expend annual grant funding be taken into consideration in the funding formula? Have some States been unable to expend their entire allocated grant funding, and if not, why not? Are there measures that capture these differences?

VETS has followed the procedure established in the current regulations to allocate funds to the States for FY 2004 through FY 2010. As the first step in this procedure, VETS annually provides the States with estimated allocations, which are prepared by applying updated CPS and LAUS data to the amount of the appropriation requested in the President's Budget. As the second step, VETS has implemented each year the regulatory provisions for adjusting funding when there were differences in the actual appropriations. When the actual appropriation has been less than the requested appropriation, VETS has reduced the amount of the set-aside for TAP and exigent circumstances in order to allocate to the States amounts consistent with the estimated allocations. When the actual appropriation has exceeded the requested appropriation, VETS has allocated to the States amounts consistent with the estimated allocations and has retained the excess funds as undistributed basic grant funds. As a third step, VETS may then distribute the undistributed basic grant funds to the States, in response to their requests, during the remaining months of the applicable fiscal years, and VETS has exercised that authority. Since VETS routinely reviews and reallocates funds during the course of each fiscal year, this third step of the procedure has been handled in conjunction with that pre-existing VETS practice when the actual appropriation has exceeded the requested appropriation.

The regulations also: (a) Provide VETS the authority to allocate revised amounts upon appropriation, if there is a compelling reason to do so; and, (b) specify the procedure to be followed if an actual appropriation is insufficient to comply with the hold-harmless provision. To-date, however, VETS has not exercised its authority to allocate revised amounts, nor has it received an actual appropriation that was insufficient to comply with the hold-harmless provision.

9. Have there been instances when VETS appears to have overlooked compelling reasons to exercise its authority to immediately allocate

increased amounts to States, upon receipt of an actual appropriation that exceeded the requested appropriation?

10. Have there been instances when VETS appears to have overlooked compelling reasons to exercise its authority to immediately allocate decreased amounts to States, upon receipt of an actual appropriation that fell short of the requested appropriation?

11. For those commenters who believe that compelling reasons have been overlooked, what criteria could be applied to determine that a compelling reason exists in any given instance?

#### B. Other Funding Criteria

Funding for TAP workshops is allocated on a per-workshop basis. Funding to the States is provided under the respective approved State Plans.

12. Should there be a different basis for the funding of TAP activities?

13. Should there be a different vehicle for providing funding for TAP activities?

14. For those commenters who believe that a different basis or vehicle should be implemented for funding TAP activities, what alternate basis or vehicle is suggested?

Funds for exigent circumstances, such as unusually high levels of unemployment or surges in the demand for transitioning services, including the need for TAP workshops, are allocated based on need.

15. Have there been instances when VETS appears to have overlooked exigent circumstances that warranted adjustments to the actual awards?

16. Are there specific examples of exigent circumstances that should be identified in Veterans' Program Letters or in other policy documents?

#### C. Hold-Harmless Criteria and Minimum Funding Level

A hold-harmless rate of 90 percent of the prior year's funding is the level currently established to limit the funding reduction that a State can experience in a single year. A minimum funding level of .28 percent (.0028) of the previous year's total funding for all States is the level currently established to provide small States with sufficient funds to support a basic level of services to veterans. Both of these rates reflect direct adoption of statutory provisions governing corresponding functions for Wagner-Peyser funding.

17. Is there a compelling reason to set the hold-harmless rate at a different level?

18. Is there a compelling reason to set the minimum funding level at a different level?

19. For those commenters who believe that there is a compelling reason to revise the hold-harmless rate or the minimum funding level, what alternatives are suggested and what justifications are offered to support implementation of those alternatives?

20. Is there a compelling reason to change the hold-harmless rate to be a fixed percentage of the prior year's expenditures rather than a fixed percentage of the prior year's funding?

#### D. Other Aspects of the Existing Regulations

If any commenters have concerns or suggestions that apply to aspects of the existing regulations that have not been identified in the preceding sections and questions, VETS will appreciate receiving comments that address any aspect of these regulations.

Signed in Washington, DC, this 4th day of June 2010.

**John M. McWilliam,**

*Deputy Assistant Secretary for Operations and Management, Veterans' Employment and Training Service.*

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**BILLING CODE 4510-79-P**

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## DEPARTMENT OF JUSTICE

### 28 CFR Parts 0 and 51

[CRT Docket No. 109; AG Order No. 3161-2010]

#### Revision of the Procedures for the Administration of Section 5 of the Voting Rights Act

**AGENCY:** Civil Rights Division, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Attorney General is considering amendments to the Department of Justice's "Procedures for the Administration of Section 5 of the Voting Rights Act of 1965." The proposed amendments are designed to clarify the scope of section 5 review based on recent amendments to section 5, make technical clarifications and updates, and provide better guidance to covered jurisdictions and minority citizens concerning current Department practices. Interested persons are invited to participate in the consideration of these amendments.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before August 10, 2010. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** You may submit written comments, identified by the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking, by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Fax:* 202-307-3961.

*Mail:* Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254-NWB, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

*Hand Delivery/Courier:* Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254-NWB, 1800 G Street, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** T. Christian Herren, Jr., Acting Chief, Voting Section, Civil Rights Division, United States Department of Justice, Room 7254-NWB, 950 Pennsylvania Avenue, NW., Washington, DC 20530, or by telephone at (800) 253-3931.

#### **SUPPLEMENTARY INFORMATION:**

*Posting of Public Comments:* Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above