

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

RIN 1293-AA10

**Funding Formula for Grants to States**

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Department of Labor is issuing an interim final rule implementing the Jobs for Veterans Act (Act). This rule establishes formula criteria for making funds available to each State. This rule will add a new Subpart F to 20 CFR part 1001.

**DATES:** This interim final rule is effective on July 30, 2003. The Department is requesting comments to be considered on this interim final rule. Comments will be considered and a final rule published as quickly as possible. To ensure consideration, comments must be received on or before August 29, 2003. This interim final rule expires September 30, 2004. A notice of proposed rulemaking will be published and the final rule will be issued before September 30, 2004, which addresses funding beyond fiscal year 2004.

**ADDRESSES:** Comments shall be sent to Paul Robertson, Legislative Analysis Division, VETS, U.S. Department of Labor, Room S-1325, 200 Constitution Avenue NW., Washington, DC 20210. Electronic mail is the preferred method for submitting comments. Comments must be clearly identified as pertaining to the interim final rule and sent to *robertson-paul@dol.gov*. Brief comments, limited to ten pages or fewer may be transmitted by facsimile (FAX) at (202) 693-4754. Individuals with hearing impairments may call (800) 670-7008 (TTY/TDD).

Where necessary, hard copies of comments also may be delivered to Paul Robertson, Legislative Analysis Division, VETS, U.S. Department of Labor, Room S-1325, 200 Constitution Avenue NW., Washington, DC 20210. Because of heightened security measures, mail in Washington, DC is sometimes delayed. For this reason we will only consider comments, postmarked on or before the deadline for comments.

Receipt of submissions, whether by e-mail, FAX transmittal, or U.S. Mail, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693-4714, or by making a request for confirmation

(separate from the submission) via the above e-mail.

Comments will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this interim final rule will be made available in the following formats: large print, electronic file on computer disk, and audiotape. To schedule an appointment to review the comments and/or to obtain the interim final rule in an alternate format, contact VETS at the e-mail address, telephone number, or mail address listed above.

**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*.

**SUPPLEMENTARY INFORMATION:** The preamble to this interim final rule is organized as follows:

- I. Background—provides a brief description of the development of the interim final rule.
- II. Authority—cites the statutory provisions and rationale supporting the interim final rule.
- III. Section-by-Section Review of the Rule—summarizes pertinent aspects of the regulatory text and describes its purposes and application.
- IV. Regulatory Flexibility and Regulatory Impact Analysis—sets forth the applicable regulatory requirements.

**I. Background**

The President signed the Jobs for Veterans Act (Pub. L. 107-288) into law on November 7, 2002. The statute 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) program.

**II. Authority**

The statutory authority for this interim 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. Congress allowed for the phasing in of this requirement "over the three fiscal-year period" beginning in fiscal year 2003, which started on October 1, 2002 (38 U.S.C. 4102A(c)(2)(B)(ii), as amended by

the Act). Because of the late enactment of the law, one year of the phase-in had already lapsed on the date of enactment. There are only two years, therefore, to phase-in the funding formula. Congress intended that the formula will be phased-in and be 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. The only practical way to adhere to the implementation expectations of Congress is to begin the phase-in process in FY 2004. The Secretary of Labor (Secretary) is publishing an interim final rule for the first phase-in year, to be followed by a notice of proposed rulemaking, because full notice and comment to begin implementation of the statutory phase-in period would result in impracticable delay and would be contrary to the public interest. Full notice and comment would be impracticable because the statutory duty to execute the law in a timely manner cannot be accomplished by strictly adhering to such requirements.

Solely using full notice and comment would be contrary to the public interest because enacting a requirement in one year that, by statutory design, was to take effect over a three-year period would unduly impact States. The effective date of the law caused a reduction of the phase-in to two years. If there are further delays brought about through a full notice and comment period, then the second year of the three-year phase-in period would be lost and the States would lose even more of the benefit intended by the phase-in provision. Because the new funding formula required by the Act will result in significant changes to States' funding allocations, the Secretary has determined it is in the public interest to act expediently to ensure States receive as much of the benefit of the phase-in period as possible. This will enable those States whose funding will be reduced more time to adjust to the reduced funding and will avoid disruptions in service to the greatest extent possible. It will also permit States, which gain funding to more sensibly plan how to administer their programs.

These concerns provide a sufficient good cause basis to forgo full notice and comment requirements for the first year in which the new formula will be phased-in. To accommodate a full notice and comment period and implement the formula beyond the first phase-in year, a notice of proposed rulemaking will be published. The upcoming notice of proposed