

rulemaking will address the funding formula for FY 2005 (the last year of the phase-in period) and subsequent years.

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), as amended by the Act). 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 that 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), as amended by the Act). 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)(i)(iii), as amended by the Act).

The Act states that the use of this formula 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 will be fiscal year 2004, which begins on October 1, 2003. This will only allow a 2-year phase-in period, fiscal years 2004 and 2005, instead of the 3 years as contemplated by the statute.

1. Basic Grant Funding Formula and Data and Methodology

It has been determined that the ratio of the number of veterans seeking employment in each State to the number of veterans seeking employment in all States can be 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). The CPS is the most reliable source of current State level data on the number of veterans in the civilian labor force. However, because the sample size of

veterans at the State level is so small, the use of CPS to determine veterans’ unemployment rates at the State level is subject to large relative sampling errors. LAUS data are considered as the most highly reliable data on the general rate of unemployment at the State level and do not contain the large sampling error found in the CPS. Therefore, we determined to use LAUS data to measure the State unemployment rate. Furthermore, 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). Since LAUS data is based on total unemployment for a State, we concluded that LAUS data is the best available measure of veterans who are seeking work. Accordingly, we concluded the number of unemployed veterans in each State can be best determined by using a ratio of the general unemployment level in each State to the unemployment level in all States (from LAUS for the individual States ÷ LAUS for all States) and the number of veterans in the civilian labor force in each State compared to the total number of veterans in the civilian labor force across all States (from 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 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.

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), as amended by the Act). This interim final rule establishes a hold harmless rate of eighty percent for the phase-in period for fiscal year 2004 to mitigate the impact of the most significant reductions to States’ prior funding levels. With the eighty percent hold harmless during fiscal year 2004 each State will be provided no less than eighty percent of its previous year’s allocation. The eighty percent hold harmless will allow the reduction of funding, to those States impacted, to be implemented incrementally. To give States the maximum available period to adjust to changes in funding, the Department is implementing the first

year’s hold harmless rate through this interim final rule and will propose a second year hold harmless rate in the notice of proposed rulemaking to be published later. Finally, a minimum funding level of 0.28 percent of the prior year’s total funding level will be applied, meaning that no State may receive less than that amount, which is the same percentage applied in section 6 of the Wagner-Peyser Act (29 U.S.C. 49e(b)(3)).

3. 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), as amended by the Act). In addition to the amount awarded based on the basic grant funding formula, described in section 1 of this document, the Secretary will distribute four percent of the total amount made available for allocation to the States based on Transition Assistance Program (TAP) workload and exigent circumstances (38 U.S.C. 4102, 4102A(b), and 4107(c)(1), and 10 U.S.C. 1141). These other funding criteria are discussed more fully below.

a. Transition Assistance Program 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). Transition Assistance Program workshops provide such employment services for transitioning servicemembers. Since active military personnel are not included in the CPS civilian labor force data, or in the LAUS unemployment data, the level of need for Transition Assistance Program workshops are not reflected in the funding formula for the basic grant. Therefore, in order to ensure that each State has adequate funding to provide Transition Assistance Program workshops, supplemental funding is warranted. This funding will be proportional to each State’s Transition Assistance Program workload as identified in its State plan. Policy guidance will be provided to States to assist them in determining the amounts needed for this additional workload, which will be calculated on a per workshop basis as identified in the State plan.