
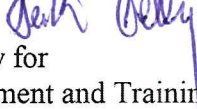


EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Wagner-Peyser/VETS
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 2-13

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS
AMERICAN JOB CENTERS
EMPLOYMENT AND TRAINING ADMINISTRATION REGIONAL
ADMINISTRATORS

FROM: ERIC SELEZNOW 
Acting Assistant Secretary
Employment and Training Administration

KEITH KELLY 
Assistant Secretary for
Veterans' Employment and Training

SUBJECT: Implementation of the Uniform National Threshold Entered Employment Rate (UNTEER) for Veterans and Eligible Persons in the Wagner-Peyser Employment Service and Jobs for Veterans State Grants (JVSG).

1. **Purpose.** To inform the workforce system of the implementation of the Final Rule establishing the UNTEER for veterans and eligible persons for use in evaluating States' performance in assisting veterans to meet their employment needs.
2. **References.**
 - The Jobs for Veterans Act (JVA) of 2002, Pub. L. 107-288, enacted November 7, 2002, relevant provision codified at Title 38 United States Code (U.S.C.) Section 4102A (38 U.S.C. 4102A);
 - The Workforce Investment Act (WIA) of 1998 (Pub. L. 105-220) (as amended), codified at 29 U.S.C. 2801, *et. seq.*;
 - Title 20, Code of Federal Regulations (CFR) 1001.160-1001.167, Final Rule;
 - Notice of Proposed Rulemaking (NPRM): 20 CFR Part 1001, Uniform National Entered Employment Rate for Veterans, 76 FR 9517;

RESCISSIONS None	EXPIRATION DATE Continuing
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- Veterans' Program Letter (VPL) 03-11, "Negotiating Performance Goals for Services to Veterans for Program Year 2011," dated June 14, 2011;
- Training and Employment Guidance Letter (TEGL) 17-05, "Common Measures Policy for the Employment and Training Administration's (ETA) Performance Accountability System and Related Performance Issues"; and
- TEGL 7-12, "Implementing the Veterans-Related and Other Reporting Change Requirements in the Labor Exchange Reporting System (LERS)."

3. **Background.** 38 U.S.C. 4102A requires the Secretary of Labor to establish by regulation an UNTEER for veterans applicable to State employment service delivery systems. On February 18, 2011, the Secretary published a NPRM proposing a Rule to establish this UNTEER. (76 FR 9517) All comments to the NPRM received during the comment period were posted on www.regulations.gov, and addressed in the preamble to the Final Rule. The Final Rule was published on March 11, 2013 and became effective on May 10, 2013. (78 FR 15283) It is codified at 20 CFR 1001.160-1001.167.

38 U.S.C. 4102A, as amended by Section 4(a)(1) of the JVA, required the Secretary of Labor to "[e]stablish, and update as appropriate, a comprehensive performance accountability system . . . and carry out annual performance reviews of veterans employment, training, and placement services provided through employment service delivery systems, including through disabled veterans' outreach program [DVOP] specialists and through local veterans' employment representatives [LVERs] in States receiving grants, contracts, or awards under this chapter." (38 U.S.C. 4102A(b)(7)). Further, 38 U.S.C. 4102A(c)(3)(B) requires that "the Secretary shall establish in regulations a uniform national threshold entered-employment rate for veterans for a program year (PY) by which determinations of deficiency may be made . . ." Section 1001.160 (a) of the final rule clearly indicates that "The purpose of this part is to fulfill the requirement of 38 U.S.C. 4102A(c)(3)(B) to establish a uniform national threshold entered employment rate (UNTEER) achieved for veterans and eligible persons by the State employment service delivery systems."

Under 38 U.S.C. 4102A(f), the standards and measures used to assess performance of veterans programs must be consistent with State performance measures applicable under Section 136(b) of the Workforce Investment Act. The entered employment rate (EER) is one of the three common measures implemented in TEGL 17-05 for the WIA Adult and Dislocated Worker programs, and for the Trade Act, JVA, and Wagner-Peyser Act program performance measures and most recently described in VPL 03-11. TEGL 17-05 provides the methodology and operational parameters for calculating the EER, and provides further discussion of the EER, which is defined as:

Of those who are not employed at the date of participation:

The number of adults who are employed in the first quarter after the exit quarter divided by the number of adults who exit during this quarter.

The UNTEER for veterans and eligible persons is a national threshold EER for veterans served in the Jobs for Veterans State Grants (JVSG) program and the Wagner-Peyser funded

Employment Service. The UNTEER excludes services provided solely through WIA resources. Section 1001.160 (b) of the final rule specifies that “This part is applicable to all State agencies that are recipients of Wagner-Peyser State Grants, and/or Jobs for Veterans State Grants.”

4. **UNTEER Calculation.** The UNTEER for Veterans and Eligible Persons is an identifier of potential deficiencies in outcomes for veterans and eligible persons served. 20 CFR 1001.164 establishes the UNTEER to be 90 percent of the National EER for veterans and eligible persons. The Department will calculate the UNTEER from the Labor Exchange Reporting System (LERS) which collects Wagner-Peyser Act program data inclusive of JVSG program data.

As provided by 20 CFR 1001.163, this policy guidance establishes the method of calculating the National Entered Employment Rate (EER). The National EER for veterans is:

Of those veterans and eligible persons who are not employed at the date of participation:
The number of veterans and eligible persons who are employed in the first quarter after the exit quarter divided by the number of veterans and eligible persons who exit during this quarter.

The Department will calculate the National EER by dividing the sum of all of the States' EER numerator fields by the sum of all of the States' EER denominator fields for veterans and covered persons, to calculate a National veterans' and eligible persons' EER. This method is similar to the calculation for each individual State on their respective ETA 9002D Form.

The UNTEER is 90 percent of the PY National EER for veterans and eligible persons. Refer to 20 CFR 1001.164(a). For example, if the National veterans and eligible person EER is 50 percent, the UNTEER for that year's PY would be 45 percent ($.5 \times .9 = .45$ or 45 percent). All States whose veterans and eligible persons EER are 45 percent or above will have met the UNTEER for the PY. It is important to note that often an UNTEER may be set with one decimal point (e.g., a National veterans and eligible persons' EER is calculated to be 53 percent, 90 percent of that would be 47.7 percent). All calculations involving the UNTEER and each State's Veterans and Eligible Persons' EER will be rounded to the nearest tenth of a percent. Refer to 20 CFR 1001.163(d) and 1001.164(b).

In instances where the UNTEER is set with a decimal point, the State Workforce Agency's veterans and eligible persons EER will be rounded to the nearest tenth of a decimal. Unlike negotiated targets which are set before the start of a new PY, the UNTEER for each PY will be calculated after the PY has completed. For example, the UNTEER for PY 2013 will not be calculated until PY 2014 has begun. When practicable, the Veterans' Employment and Training Service (VETS) will publish the UNTEER for a given PY by the end of December of the calendar year in which that PY ends (e.g., PY 2013's UNTEER will be published by December of 2014). Refer to 20 CFR 1001.165. Information on the publishing of the UNTEER will be provided outside of this guidance.

5. **UNTEER Implementation.** The UNTEER Final Rule took effect on May 10, 2013, with PY 2013 (July 1, 2013 – June 30, 2014) being the first year in which data collected will be used to calculate the UNTEER. Each PY’s UNTEER will be different because the National EER for veterans and eligible persons will be different for each PY. Every UNTEER will be a “look back” on the previous year’s performance, and should not be used as a new PY goal for the State’s EER for veterans and eligible persons. The UNTEER is a new performance calculation for States that does not replace or modify annual goal-setting negotiations that take place between VETS and state JVSG recipients or ETA and Wagner-Peyser Act grantees.

The UNTEER rule requires VETS to identify the State agencies (including those for the District of Columbia, Puerto Rico, and Virgin Islands), that fail to attain the threshold beginning with PY 2013. In the Labor Exchange Reporting System (LERS), each quarterly report reflects the previous four-quarters’ activities and outcomes. The Department will base each subsequent UNTEER calculation off each PY’s fourth quarter report. States falling below the UNTEER for the respective PY are subject to a DOL review to determine whether the PY EER for Veterans and Eligible persons in that State is deficient or whether an EER below the UNTEER is attributable to other factors beyond the State’s control. Refer to 20 CFR 1001.166(a).

Under 20 CFR 1001.166(b), for each State whose PY Veterans and Eligible Persons’ EER is subject to review to determine deficiency, the review will consider the degree of difference between the State’s PY veterans and eligible persons’ EER and the UNTEER for the PY, as well as the annual unemployment data for the State as compiled by the Bureau of Labor Statistics.

- a) The review also may consider other relevant measures of prevailing economic conditions and regional economic conditions, as well as other measures of the performance of workforce programs and/or any information the State may submit.
- b) The review will include consultation with VETS and ETA field staff about findings from their on-site reviews and desk audits of State agency implementation of policies and procedures for services to veterans and also may include consultation with staff affiliated with other agencies of DOL, as appropriate.

Requirement of a Corrective Action Plan (CAP)

As provided in 20 CFR 1001.166(c), after review by VETS in consultation with ETA, a State whose PY EER is determined not to be deficient will be notified that a CAP will not be required; a State whose PY Veterans and Eligible Persons’ EER is determined to be deficient will be required to submit a CAP to improve the State’s performance in assisting veterans to meet their employment needs as a condition of receiving its next-due JVSG.

- a) Any State whose PY Veterans and Eligible Persons’ EER has been determined to be deficient will be notified by March 31 of the year following the calendar year in which the PY under review ended (e.g., if a CAP based on PY 2013 UNTEER is required, the State will be informed by March 31, 2015).

- b) For states required to submit a CAP, VETS will provide technical assistance (TA), with input from ETA, on the development of the CAP. States must submit the CAP to the JVSG Grant Officer's Technical Representative, VETS' Director for Veterans' Employment and Training (DVET) for that State by June 30 of the year following the calendar year in which the PY under review ended (e.g., if a CAP based on PY 2013 UNTEER is required, the CAP must be submitted by June 30, 2015).
- c) VETS will review the CAP submitted by the State with input from ETA's Federal Project Officer (FPO) for that State and determine within 30 days of State submittal, whether to approve it or to provide additional TA to the State.
 - i. If VETS approves the CAP, the State must expeditiously implement it.
 - ii. If VETS does not approve the CAP, VETS will take such steps as are necessary to implement corrective actions to improve the State's Veterans and Eligible Persons' EER.
- d) If a State fails to take the actions VETS imposes, the Assistant Secretary for Veterans' Employment and Training (ASVET) may take any actions available to remedy non-compliance under 20 CFR 1001.130(a) (referring to the compliance measures discussed in 20 CFR part 658, subpart H).

6. **Policy and Guidance.** As provided in 20 CFR 1001.166, this guidance explains how the UNTEER for Veterans and Eligible Persons will be compared with the actual EER achieved by each State and used as part of the review process for determining whether a State's PY EER is deficient. This guidance also identifies certain factors, in addition to the UNTEER, that will be included in DOL's review to determine whether an EER below the UNTEER reflects a deficiency in the State's performance, or is attributable to other factors beyond the State's control as provided in 20 CFR 1001.166(b)(1). Finally, in those cases where a State's EER is determined to reflect a deficiency in a State's performance, this guidance provides the procedure for the submission and review of a CAP, the delivery of TA, and the initiation of the necessary steps to implement corrective actions to improve the State's performance in assisting veterans to meet their employment needs. Refer to 20 CFR 1001.166(c).

7. **Veterans Population Calculated in the UNTEER.** As provided in 20 CFR 1001.162, for PY 2013 outcomes, the UNTEER for veterans and eligible persons will be calculated using the definition of "eligible veteran" in 38 U.S.C. 4101(4) and 4211(4) that applies to services provided by DOL's VETS under 38 U.S.C. chapter 41. An "eligible veteran" is a person who served on active duty in the military for a period of more than 180 days and was discharged under conditions other than dishonorable. The definition also includes some other smaller group of veterans, for example, those who were released from active duty because of a service-connected disability.

However, beginning in PY 2014 the Department will calculate the UNTEER, as described in detail in Section 1001.162 (b) of the final rule using the less restrictive priority of service definition of "veteran" specified in 38 U.S.C. 101(2) (See TEGl 10-09, "Implementing Priority of Service for Veterans and Eligible Spouses in all Qualified Job Training Programs Funded in whole or in part by the U.S. Department of Labor (DOL)"). Refer to 20 CFR

1001.162(b), which states the new definition of veteran will be collected “the first day of the program year that begins two years after the first day of the program year that State grantees begin collecting and maintaining data as required by 20 CFR 1010.330(c).” States began collecting the new definition of veteran in PY 2012 (See TEGL 7-12, “Implementing the Veterans-Related and Other Reporting Change Requirements in the Labor Exchange Reporting System (LERS)”). Under this definition, a “veteran” is a person who served at least one day in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable.

“Eligible persons” are also counted as part of the UNTEER calculation. “Eligible persons” are those spouses listed in 38 U.S.C. 4101(5) and fully described in Section 1001.161 of the final rule. Information regarding services to eligible persons will continue to be collected for the ETA-9002 and VETS-200 series reports in the manner prescribed in the Employment and Training 406 Handbook.

8. **Actions Requested.** States should familiarize themselves with the UNTEER calculation outlined in this TEGL, and review their current Veterans and Eligible Persons’ EER. States that report in the LERS can review whether their Veterans and Eligible Persons’ EER would meet the UNTEER in previous years by visiting http://www.doleta.gov/performance/results/wagner-peyser_act.cfm. Each State’s Entered Employment Rate for Veterans and Eligible Persons is published along with the National rate. States can calculate the 90 percent of the National Veterans’ and Eligible Persons EER and see what their previous performance has been, leading up to the UNTEER.
9. **Inquiries.** Please direct questions regarding this directive to the appropriate ETA or VETS regional office through your respective Federal Project Officer or Director for Veterans’ Employment and Training.
10. **Attachment.** Uniform National Threshold Entered Employment for Veterans, Final Rule.

Uniform National Threshold Entered Employment Rate Regulations (UNTEER)

Reference: Title 20 CFR, Chapter IX, Subpart G., Sections 1001.160 through 1001.167
Federal Register, Volume 78, Issue 47, Pages 15283 – 15292, March 11, 2013.

List of Subjects in 20 CFR, Part 1001

Employment, Grant programs--Labor, Veterans.

For reasons stated in the preamble, 20 CFR Chapter IX is amended as follows:

PART 1001--SERVICES FOR VETERANS

1. The authority citation for part 1001 continues to read as follows:

Authority: 29 U.S.C. 49k; 38 U.S.C. chapters 41 and 42.

2. Add subpart G, consisting of Sections 1001.160 through 1001.167, to read as follows:

Subpart G--Purpose and Definitions

Section:

1001.160 What is the purpose and scope of this part?

1001.161 What definitions apply to this part?

1001.162 How does the Department define veteran for purposes of this subpart?

1001.163 What is the national entered employment rate (EER) and what is a State's program year EER for purposes of this part?

1001.164 What is the uniform national threshold EER, and how will it be calculated?

1001.165 When will the uniform national threshold EER be published?

1001.166 How will the uniform national threshold EER be used to evaluate whether a State will be required to submit a Corrective Action Plan (CAP)?

1001.167 In addition to the procedures specified in this part, will the Department be conducting any other monitoring of compliance regarding services to veterans?

Subpart G--Purpose and Definitions

Sec. 1001.160 What is the purpose and scope of this part?

(a) The purpose of this part is to fulfill the requirement of 38 U.S.C. 4102A(c)(3)(B) to establish a uniform national threshold entered employment rate (UNTEER) achieved for veterans and eligible persons by the State employment service delivery systems. We will use the UNTEER as part of the review process for determining whether a State's program year EER is deficient and a Corrective Action Plan (CAP) is required of that State employment service delivery system.

(b) This part is applicable to all State agencies that are recipients of Wagner-Peyser State Grants, and/or Jobs for Veterans State Grants.

Sec. 1001.161 What definitions apply to this part?

Department means the United States Department of Labor, including its agencies and organizational units and their representatives.

Eligible person, as defined at 38 U.S.C. 4101(5), means:

- (1) The spouse of any person who died of a service-connected disability;
- (2) The spouse of any member of the Armed Forces serving on active duty who, at the time of application for assistance under this chapter, is listed, pursuant to 37 U.S.C. 556 and regulations issued thereunder by the Secretary concerned, in one or more of the following categories and has been so listed for a total of more than ninety days:
 - (i) Missing in action,
 - (ii) Captured in line of duty by a hostile force, or
 - (iii) Forcibly detained or interned in line of duty by a foreign government or power;or
- (3) The spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while a disability so evaluated was in existence.

Employment service delivery system, as defined at 38 U.S.C. 4101(7), means a service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act.

Jobs for Veterans Act (JVA) means Public Law 107-288, 116 Stat. 2033 (2002), codified at 38 U.S.C. chapters 41 and 42.

Jobs for Veterans State Grant (JVSG) means an award of Federal financial assistance by the Department to a State for the purposes of the Disabled Veterans' Outreach Program or the Local Veterans' Employment Representative Program.

Program year is the period from July 1 of a year through June 30 of the following year and is numbered according to the calendar year in which it begins.

Sec. 1001.162 How does the Department define veteran for purposes of this subpart?

The Department applies two definitions of veteran for the purposes of this subpart and has established two stages for the implementation of these definitions.

(a) The first stage of implementation begins with application of this subpart G to the first program year following May 10, 2013. As of that date, veteran is defined as it is in 38 U.S.C. 4211(4), as a person who:

- (1) Served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge;
- (2) Was discharged or released from active duty because of a service-connected disability;
- (3) As a member of a reserve component under an order to active duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 12302, or 12304, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge; or
- (4) Was discharged or released from active duty by reason of a sole survivorship discharge (as that term is defined in 10 U.S.C. 1174(i)).

(b) The second stage of implementation begins with the first day of the program year that begins two years after the first day of the program year that State grantees begin collecting and maintaining data as required by 20 CFR 1010.330(c). As of that date, veteran will be defined as it is in 20 CFR 1010.110:

- (1) A person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable, as specified in 38 U.S.C. 101(2).

(2) Active service includes full-time Federal service in the National Guard or a Reserve component, other than full-time duty for training purposes.

(c) During the second stage of implementation, any veteran who meets the definition specified in paragraph (a) of this section will be considered to meet the definition specified in paragraph (b) of this section.

(d) We will notify State grantees when they are required to begin implementing 20 CFR 1010.330(c).

Sec. 1001.163 What is the national entered employment rate (EER) and what is a State's program year EER for purposes of this part?

(a) For purposes of this part, we use the EER for veterans and eligible persons. This is the EER as applied to veterans (as defined in Sec. 1001.162) and eligible persons (as defined in Sec. 1001.161) who are participants in State employment service delivery systems.

(b) The EER for veterans and eligible persons measures the number of the participants described in paragraph (a) of this section who are employed after exiting an employment service delivery system compared to the total number of those participants who exited. We will issue policy guidance to establish the method of calculating the EER.

(c) The national EER for veterans and eligible persons is the EER achieved by the national State employment service delivery system for those veterans and eligible persons who are participants in all of the State employment service delivery systems for the program year under review. The national EER resulting from this calculation is expressed as a percentage that is rounded to the nearest tenth of a percent.

(d) A State's program year EER is the EER for veterans and eligible persons (as calculated in paragraph (b) of this section) achieved by a single State's employment service delivery system for those veterans and eligible persons who are included in the EER measure for that State's employment service delivery system for the program year under review. The program year EER resulting from this calculation is expressed as a percentage that is rounded to the nearest tenth of a percent.

Sec. 1001.164 What is the uniform national threshold EER, and how will it be calculated?

(a) The uniform national threshold EER for a program year is equal to 90 percent of the national EER for veterans and eligible persons (as defined in Sec. 1001.163(c)).

(b) The uniform national threshold EER resulting from this calculation is expressed as a percentage that is rounded to the nearest tenth of a percent.

Sec. 1001.165 When will the uniform national threshold EER be published?

When practicable, the Veterans' Employment and Training Service (VETS) will publish the uniform national threshold EER for a given program year by the end of December of the calendar year in which that program year ends.

Sec. 1001.166 How will the uniform national threshold EER be used to evaluate whether a State will be required to submit a Corrective Action Plan (CAP)?

(a) Comparison. Each State's program year EER will be compared to the uniform national threshold EER for that program year. State agencies that do not achieve a program year EER that equals or exceeds the uniform national threshold EER (90 percent of the national EER) for the year under review will be subject to a review by VETS, with input from the Employment and Training Administration (ETA), to determine whether the program year EER is deficient.

(b) Review. For each State whose program year EER is subject to review to determine deficiency, the review will consider the degree of difference between the State's program year EER and the uniform national threshold EER for that program year, as well as the annual unemployment data for the State as compiled by the Bureau of Labor Statistics.

(1) The review also may consider other relevant measures of prevailing economic conditions and regional economic conditions, as well as other measures of the performance of workforce programs and/or any information the State may submit.

(2) The review will include consultation with VETS and ETA field staff about findings from their on-site reviews and desk audits of State agency implementation of policies and procedures for services to veterans and also may include consultation with staff affiliated with other agencies of the Department, as appropriate.

(c) Requirement of a CAP. After review, a State whose program year EER is determined not to be deficient will be notified that a CAP will not be required; a State whose program year EER is determined to be deficient will be required to submit a CAP to improve the State's performance in assisting veterans to meet their employment needs as a condition of receiving its next-due JVSG.

(1) Any State whose program year EER has been determined to be deficient will be notified by March 31 of the year following the calendar year in which the program year under review ended.

(2) For any State that is required to submit a CAP, VETS will provide technical assistance (TA), with input from ETA, on the development of the CAP. The CAP must be submitted to the Grant Officer's Technical Representative by June 30 of the year following the calendar year in which the program year under review ended.

(3) We will review the CAP submitted by the State and determine, with input from ETA, whether to approve it or to provide additional TA to the State.

(i) If we approve the CAP, the State must expeditiously implement it.

(ii) If we do not approve the CAP, we will take such steps as are necessary to implement corrective actions to improve the State's EER for veterans and eligible persons.

(4) If a State fails to take the actions we impose under paragraph (c)(3)(ii) of this section, the Assistant Secretary for Veterans' Employment and Training may take any actions available to remedy non-compliance under 20 CFR 1001.130(a) (referring to the compliance measures discussed in 20 CFR part 658, subpart H).

Sec. 1001.167 In addition to the procedures specified in this part, will the Department be conducting any other monitoring of compliance regarding services to veterans?

Yes. We will continue to monitor compliance with the regulations on veterans' priority of service at 20 CFR 1010.240(b) jointly with the ETA. If a State's program year EER is determined to be deficient for a given program year, that deficiency would constitute information to be considered in monitoring priority of service, since failure to fully implement priority of service could be one of the contributors to a deficient program year EER.

Keith Kelly,

Assistant Secretary for Veterans' Employment and Training

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