

Uniform National Threshold Entered Employment Rate Regulations (UNTEER)

Reference: Title 20 CFR, Chapter IX, Subpart G., Sections 1001.160 through 1001.167

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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:

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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.

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