

(c) Every effort should be made by the State agency administrator and the SDVETS to resolve all issues informally before proceeding with the formal process.

(d) If it is determined by the ASVET that certain State agencies are not complying with the performance standards at §§1001.120–1001.125 of this part, such State agencies shall be required to provide documentary evidence to the ASVET that their failure is based on good cause. If good cause is not shown, the ASVET, pursuant to subpart H of 20 CFR part 658, shall formally designate the State agency as out of compliance, shall require it to submit a corrective action plan for the following program year, and may take other action against the State agency pursuant to subpart H of 20 CFR part 658.

[49 FR 12919, Mar. 30, 1984. Redesignated and amended at 54 FR 39353, Sept. 26, 1989]

§ 1001.131 Secretary's annual report to Congress.

The Secretary shall report, after the end of each program year, on the success of the Department and State agencies in carrying out the provisions of this part.

[49 FR 12919, Mar. 30, 1984. Redesignated at 54 FR 39353, Sept. 26, 1989, and amended at 54 FR 39354, Sept. 26, 1989]

Subpart E—Standards of Performance Governing the Disabled Veterans Outreach Program (DVOP)

SOURCE: 49 FR 12919, Mar. 30, 1984, unless otherwise noted. Redesignated at 54 FR 39353, Sept. 26, 1989.

§ 1001.140 Administration of DVOP.

(a) The ASVET shall negotiate and enter into grant agreements within each State to carry out the requirements of 38 U.S.C. 2003A for support of a Disabled Veterans Outreach Program (DVOP) to meet the employment needs of veterans, especially disabled veterans of the Vietnam era.

(b) The ASVET shall be responsible for the supervision and monitoring of the DVOP program, including moni-

toring of the appointment of DVOP specialists.

(c) DVOP specialists shall be in addition to and shall not supplant local veterans' employment representatives assigned under §1001.123 of this part.

[49 FR 12919, Mar. 30, 1984. Redesignated at 54 FR 39353, Sept. 26, 1989, and amended at 54 FR 39354, Sept. 26, 1989]

§ 1001.141 Functions of DVOP staff.

Each DVOP specialist shall carry out the duties and functions for providing services to eligible veterans according to provisions of 38 U.S.C. 2003A (b) and (c).

§ 1001.142 Stationing of DVOP staff.

DVOP specialists shall be stationed at various locations in accordance with 38 U.S.C. 2003A(b)(2).

Subpart F—Formula for the Allocation of Grant Funds to State Agencies

SOURCE: 70 FR 28406, May 17, 2005, unless otherwise noted.

§ 1001.150 Method of calculating State basic grant awards.

(a) In determining the amount of funds available to each State, the ratio of the number of veterans seeking employment in the State to the number of veterans seeking employment in all States will be used.

(b) The number of veterans seeking employment will be determined based on the number of veterans in the civilian labor force and the number of unemployed persons. The civilian labor force data will be obtained from the Current Population Survey (CPS) and the unemployment data will be obtained from the Local Area Unemployment Statistics (LAUS), both of which are compiled by the Department of Labor's Bureau of Labor Statistics.

(c) Each State's basic grant allocation will be determined by dividing the number of unemployed persons in each State by the number of unemployed persons across all States (LAUS for the individual States / LAUS for all States) and by dividing the number of veterans in the civilian labor force in each State

§ 1001.151

20 CFR Ch. IX (4-1-09 Edition)

by the number of veterans in the civilian labor force across all States (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 will be 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 basic grant amounts allocated to States.

(d) State Plans are prepared in response to estimated basic grant allocation amounts prepared by the Department of Labor, based upon a projection of the appropriation. Variations from Department of Labor projections will be treated as follows:

(1) If the actual appropriation varies from the projection, the Secretary will make every reasonable effort to avoid recalculating the estimated basic grant allocation amounts, in order to maintain the delivery of services to veterans and to minimize the administrative workload required to recalculate grant allocations and to revise State Plans. Therefore upon enactment and allotment of an appropriated amount, it is the Department's intent to proceed by awarding the estimated basic grant allocation amounts to State agencies, unless the difference between the projection and the appropriation creates a compelling reason to do otherwise.

(2) If the actual appropriation exceeds the projection, the Secretary will determine whether the appropriation and the projection is large enough to warrant recalculating the State basic grant amounts. In such case, state basic grant amounts will be recalculated in accordance with paragraphs (a) through (c) of this section. If it is determined that no compelling reason to recalculate exists, the increased amount available for basic grants will be retained as undistributed funds. These undistributed basic grant funds will be retained separately from the funds retained for TAP workload and other exigencies, as established by §1001.151(a). The intent will be to award these undistributed basic grant funds

to States as basic grant supplements, in response to circumstances arising during the applicable fiscal year.

(3) If the actual appropriation falls below the projection, the Secretary will determine whether the lower appropriation creates a compelling reason to recalculate the State basic grant amounts. If it is determined that not recalculating the State basic grant amounts would jeopardize the availability of sufficient funding for TAP workload and other exigencies, a compelling reason to recalculate would exist. In that case, the State basic grant amounts will be recalculated under paragraphs (a) through (c) of this section in response to the reduced appropriation, to the extent required to assure that sufficient funding is available for TAP workload and other exigencies.

§ 1001.151 Other funding criteria.

(a) Up to four percent of the total amount available for allocation will be available for distribution based on Transition Assistance Program (TAP) workload and other exigencies.

(b) Funding for TAP workshops will be allocated on a per workshop basis. Funding to the States will be provided pursuant to the approved State Plan.

(c) Funds for exigent circumstances, such as unusually high levels of unemployment, surges in the demand for transitioning services, including the need for TAP workshops, will be allocated based on need.

§ 1001.152 Hold-harmless criteria and minimum funding level.

(a) A hold-harmless rate of 90 percent of the prior year's funding level will be applied after the funding formula phase-in period is completed (beginning fiscal year 2006 and subsequent years).

(b) A hold-harmless rate of 80 percent of the prior year's funding level will be applied for fiscal year 2005.

(c) A minimum funding level is established to ensure that in any year, no State will receive less than 0.28 percent (.0028) of the previous year's total funding for all States.

(d) If the appropriation for a given fiscal year does not provide sufficient funds to comply with the hold-harmless provision, the Department will:

(1) Update, as appropriate, the States' estimates of TAP workload and reserve sufficient funds for that purpose from the total amount available for allocation to the States. Beyond TAP workload, no funds will be reserved for exigent circumstances because the shortfall in the appropriation will be the primary exigent circumstance to be addressed.

(2) Apply proportionally the remaining balance available for basic grant allocations to the States for that fiscal year. The proportion will be calculated by dividing the remaining balance available for allocation by the total estimated State basic grant allocations for that fiscal year. The proportion resulting from that calculation will be applied to each State's estimated basic grant allocation to calculate the amount to be awarded.

PART 1002—REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

Subpart A—Introduction to the Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994

GENERAL PROVISIONS

Sec.

- 1002.1 What is the purpose of this part?
- 1002.2 Is USERRA a new law?
- 1002.3 When did USERRA become effective?
- 1002.4 What is the role of the Secretary of Labor under USERRA?
- 1002.5 What definitions apply to USERRA?
- 1002.6 What types of service in the uniformed services are covered by USERRA?
- 1002.7 How does USERRA relate to other laws, public and private contracts, and employer practices?

Subpart B—Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

- 1002.18 What status or activity is protected from employer discrimination by USERRA?
- 1002.19 What activity is protected from employer retaliation by USERRA?
- 1002.20 Does USERRA protect an individual who does not actually perform service in the uniformed services?

1002.21 Do the Act's prohibitions against discrimination and retaliation apply to all employment positions?

1002.22 Who has the burden of proving discrimination or retaliation in violation of USERRA?

1002.23 What must the individual show to carry the burden of proving that the employer discriminated or retaliated against him or her?

Subpart C—Eligibility for Reemployment

GENERAL ELIGIBILITY REQUIREMENTS FOR REEMPLOYMENT

1002.32 What criteria must the employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

1002.33 Does the employee have to prove that the employer discriminated against him or her in order to be eligible for reemployment?

COVERAGE OF EMPLOYERS AND POSITIONS

1002.34 Which employers are covered by USERRA?

1002.35 Is a successor in interest an employer covered by USERRA?

1002.36 Can an employer be liable as a successor in interest if it was unaware that an employee may claim reemployment rights when the employer acquired the business?

1002.37 Can one employee be employed in one job by more than one employer?

1002.38 Can a hiring hall be an employer?

1002.39 Are States (and their political subdivisions), the District of Columbia, the Commonwealth of Puerto Rico, and United States territories, considered employers?

1002.40 Does USERRA protect against discrimination in initial hiring decisions?

1002.41 Does an employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

1002.42 What rights does an employee have under USERRA if he or she is on layoff, on strike, or on a leave of absence?

1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

1002.44 Does USERRA cover an independent contractor?

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

1002.54 Are all military fitness examinations considered "service in the uniformed services?"

1002.55 Is all funeral honors duty considered "service in the uniformed services?"