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Federal Regulations**

Title 38, Part 21

*Vocational Rehabilitation and Education*

**Veterans Benefits Administration**

Supplement No. 93

Covering period of *Federal Register* issues  
through July 1, 2020

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# GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

## Supplemental Materials for *Book G*

Code of Federal Regulations

Title 38, Part 21

*Vocational Rehabilitation and Education*

## Veterans Benefits Administration

Supplement No. 93

5 July 2020

Covering the period of Federal Register issues  
through July 1, 2020

When **Book G** was originally prepared, it was current through final regulations published in the *Federal Register* of 25 February 1992. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which is at page G-8 of Book G, *Vocational Rehabilitation and Education*.

**To ensure accuracy and timeliness of your materials,  
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page G-8) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page G-2.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page G-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
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To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

<b>FILING INSTRUCTIONS</b>
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**Book G, Supplement No. 93  
July 1, 2020**

*Remove these  
old pages*

*Add these  
new pages*

*Section(s)  
Affected*

**Do not file this supplement until you confirm that all prior supplements have been filed**

21.440-1 to 21.446-1

21.440-1 to 21.446-1

§§21.441, 21.442 and  
21.445

**Be sure to complete the  
*Supplement Filing Record* (page G-8)  
when you have finished filing this material.**

## HIGHLIGHTS

### Book G, Supplement No. 93 July 1, 2020

**Supplement Highlights references:** Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

**Supplement frequency:** This Book G (*Rehabilitation and Education*) was originally supplemented six times a year, in February, April, June, August, October, and December. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

### Modifications in this supplement include the following:

1. On 24 June 2020, the VA published a final rule, effective that same day, to establish a grant program (Veterans Employment Pay for Success (VEPFS)) to award grants to eligible entities to fund projects that are successful in accomplishing employment rehabilitation for Veterans with service-connected disabilities. VA will award grants on the basis of an eligible entity's proposed use of a Pay for Success (PFS) strategy to achieve goals. This final rule adopts with changes an interim final rule that established regulations for awarding a VEPFS grant, including the general process for awarding the grant, criteria and parameters for evaluating grant applications, priorities related to the award of a grant, and general requirements and guidance for administering a VEPFS grant program. Changes:

- In §21.441, revised the definitions for *Employment outcome*, *Outcomes payments*, and *Project partnership*,
- In §21.442, revised paragraph (c),
- In §21.445, revised paragraph (b).



### Veterans Employment Pay for Success Grant Program

Authority: 38 U.S.C. 501(a), ch. 18, 31, and as noted in specific sections.

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#### §21.440 Purpose and scope.

Sections 21.440 through 21.449 establish and implement the Veterans Employment Pay for Success (VEPFS) grant program, which provides grants to eligible entities to fund outcomes payments for projects that are successful in accomplishing employment rehabilitation for Veterans with service-connected disabilities. These sections apply only to the administration of the VEPFS grant program, unless specifically provided otherwise. (Authority: 38 U.S.C. 501(d), 3119)

[81 FR 52775, July 11, 2016]

**Supplement *Highlights* Reference:** 90(1)

**§21.441 Definitions.**

For the purposes of §§21.440 through 21.449, and any Notices of Funding Availability (NOFA) issued pursuant to §§21.440 through 21.449, the following definitions apply:

*Applicant* is an eligible entity that submits an application for a VEPFS grant announced in a NOFA.

*Eligible entity* is a public or nonprofit agency, to include institutions of higher learning.

*Employment outcome* is the employment or earnings of a participant in an intervention group or control or comparison group during or after the service period. Improving employment outcomes means creating positive impact in terms of these outcomes, where the results for individuals that receive the intervention are better than the results for a valid control or comparison group that did not receive the intervention.

*Intervention* is a service or technology that is provided to individuals and is intended to achieve certain results.

*Outcomes payments* are funds that are paid to an investor or service provider and that are released only for the achievement of outcomes, as compared to those of a control or comparison group, that meet target levels that have been agreed to in advance of the provision of intervention (i.e., if positive impact has been created by the intervention in terms of these outcomes). When investors have provided the upfront capital for the project, these payments generally cover repayment of the principal investment and provide a modest return on investment for any associated risks of paying for the intervention upfront.

*Pay for Success (PFS) agreement* is a multi-party agreement to deliver an innovative or evidence-based intervention intended to improve outcomes for a targeted population signed by the entities that constitute the project partnership.

*Project partnership* is a collaboration among entities that negotiate one or more agreements and execute a project to improve employment outcomes for Veterans with service-connected disabilities. The entities that may be involved in a project partnership include:

- (1) (i) *Outcomes payor*. Entity that receives a VEPFS grant and pays for outcomes of services that meet target levels that have been agreed to in advance of the provision of the intervention.

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- (ii) *Project coordinator*. Facilitates, coordinates, and executes a PFS agreement to improve employment outcomes for Veterans with service-connected disabilities. With respect to other PFS projects, project coordinators are sometimes referred to as intermediaries.

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- (iii) *Evaluator*. Independent entity that determines the impact of the services provided, including whether the services have resulted in employment outcomes that meet target levels that have been agreed to in advance of the provision of the intervention.

(iv) *Investor*. Person or entity that provides upfront capital to cover costs of providing services/delivering an intervention and other associated costs before a determination has been made as to whether certain employment outcomes have been achieved at pre-set target levels.

(v) *Service provider*. Entity that delivers an intervention designed to achieve improved employment outcomes for Veterans with service-connected disabilities.

(2) A full project partnership is a project partnership that includes an outcomes payor, evaluator, investor (if the PFS agreement involves PFS financing), and service provider. A partial project partnership includes an outcomes payor and at least one of the following: Evaluator, investor (if the PFS agreement involves PFS financing), or service provider.

*Recipient* is the entity that receives a VEPFS grant under §§21.440 through 21.449. The recipient is also the outcomes payor.

*Secretary* refers to the Secretary of Veterans Affairs.

*Service-connected disability* is a disability that is "service-connected" as defined in 38 CFR 3.1.

*Social finance strategy* is a method for securing financial resources using an investment approach that focuses on achieving positive social and/or environmental impact with some form of financial return.

*Strong evidence* constitutes results from previous studies, the designs of which can support causal conclusions (i.e., studies with high internal validity), that include enough of the range of participants and settings to support scaling up to the state, regional, or national level (i.e., studies with high external validity).

*Veteran* has the same definition as provided in 38 CFR 3.1.

*Veterans Employment Pay for Success (VEPFS) agreement* is a PFS agreement to deliver an innovative, evidence-based intervention intended to improve Veteran employment outcomes.

*Veterans Employment Pay for Success (VEPFS) project* is a project with a strategy for delivering a service with a goal to significantly improve a current condition with respect to unemployment of a target Veteran population and sufficient evidence to support the theory behind the project using a financial model that includes cost savings by funding the project only if it is successful.

*Work-plan* is a document that articulates tasks and milestones with regard to a particular project.

(Authority: 38 U.S.C. 3119)

[81 FR 52775, July 11, 2016; as amended at 85 FR 37755, June 24, 2020]

**Supplement *Highlights* References:** 90(1), 93(1)

**§21.442 VEPFS grants--general.**

- (a) VA may award a VEPFS grant only to an eligible entity selected under §21.446.
- (b) The amount of Federal funding available to be awarded in a VEPFS grant will be specified in the NOFA.
- (c) A VEPFS grant will be awarded for a minimum and maximum number of years that is specified in the VEPFS grant agreement, beginning on the date on which the VEPFS grant is awarded, with the availability of no-cost extensions.
- (d) As a condition of receiving a VEPFS grant, a recipient will be required to provide matching funds from non-Federal sources equal to or greater than the amount of Federal grant funds awarded, to be combined with the amount of Federal grant funds awarded and used as specified in §21.443.
- (e) A VEPFS grant award is not a Veterans' benefit. Decisions of the Secretary are final and not subject to the same appeal rights as decisions related to Veterans' benefits. (Authority: 38 U.S.C. 3119)

[81 FR 52776, July 11, 2016; as amended at 85 FR 37755, June 24, 2020]

**Supplement *Highlights* References:** 90(1), 93(1).

**§21.443 Permissible uses of VEPFS grant funds.**

(a) VEPFS grant funds may be used only to fund outcomes payments if an intervention achieves outcomes at a pre-set target level that has been agreed to in a PFS agreement before service delivery begins for a PFS project with a goal to improve employment outcomes for Veterans with service-connected disabilities.

(b) To pay for the indirect costs of administering a grant, regardless of whether an intervention achieves outcomes at a pre-set target level, a recipient may:

- (1) Use a Federally approved indirect cost rate (a rate already negotiated with the Federal Government);
- (2) Use a 10% de minimis rate of modified total direct costs;
- (3) Negotiate an indirect cost rate for the first time; or
- (4) Claim certain costs directly following 2 CFR 200.413.

(Authority: 38 U.S.C. 3119, 2 CFR 200.414)

[81 FR 52776, July 11, 2016]

**Supplement *Highlights* Reference:** 90(1)

**§21.444 Notice of funding availability.**

When funds are available for a VEPFS grant, VA will publish a NOFA in the *Federal Register* and on [Grants.gov](http://www.grants.gov) (<http://www.grants.gov>). The NOFA will identify:

- (a) The location for obtaining grant applications and the specific forms that will be required;
- (b) The date, time, and place for submitting completed grant applications;
- (c) The total amount and type of funds available and the maximum amount available to a single applicant;
- (d) Information regarding eligibility and the scoring process;
- (e) Any timeframes and manner for payments under the grant; and
- (f) Other information necessary for the VEPFS grant application process, as determined by VA, including contact information for the VA office that will oversee the VEPFS grant.

(Authority: 38 U.S.C. 501(d), 3119)

[81 FR 52776, July 11, 2016]

**Supplement *Highlights* Reference:** 90(1)

**§21.445 Application.**

To apply for a VEPFS grant, eligible entities must submit to VA a complete application package in accordance with the instructions in the NOFA and include the forms specified in the NOFA. Applications will be accepted only through [Grants.gov](http://www.grants.gov) (<http://www.grants.gov>). A complete grant application package, as further described in the NOFA, includes standard forms specified in the NOFA and the following:

(a) Project description, including a description of the intervention, the Veteran population to be served, and anticipated employment outcomes;

(b) Description of anticipated project partnership(s), including the responsibilities of each of the partner entities, the experience of any involved entities with serving Veteran populations, and other qualifications of the involved entities that may be relevant in carrying out responsibilities of the project partnership. In establishing the project partnership, entities, including the project coordinator, evaluator, and service provider, but excluding investors, must be procured following procurement standards set forth in 2 CFR 200.317 through 200.326;

(c) A work plan, including a budget and timelines;

(d) Description of applicant's expertise or experience with PFS or other social finance strategies or experience administering programs that serve Veterans with disabilities;

(e) Documentation of applicant's ability and capacity to administer the project;

(f) Proof of matching funds already secured, ability to secure matching funds, or commitments received; and

(g) Any additional information as deemed appropriate by VA and set forth in the NOFA.

(Authority: 38 U.S.C. 3119)

[81 FR 52777, July 11, 2016; as amended at 85 FR 37755, June 24, 2020]

**Supplement *Highlights* References:** 90(1), 93(1).

**§21.446 Scoring and selection.**

(a) *Scoring.* VA will score only complete applications received from eligible entities by the deadline established in the NOFA. VA will score applications using the following criteria:

(1) *Project description.* Applicant identifies and describes an intervention that is designed to improve employment outcomes for Veterans with service-connected disabilities through a PFS agreement and demonstrates with strong evidence the ability of the intervention to meet objectives. Project description should explain and justify the need for the intervention, and include concept, size and scope of the project, and the Veteran population to be served.

(2) *Project partnership.* Applicant provides a description of the partnership and the level of partnership (full, partial, or none) attained at the time of application.

(3) *Work plan and budget.* Applicant provides a work plan that describes in detail the timeline for the tasks outlined in the project description and proposed milestones. Applicant provides a budget that specifies amount of outcome payments and indirect and other relevant costs.

(4) *Expertise and capacity.* Applicant provides evidence of its past experience with PFS or other social finance strategies or experience administering programs that serve Veterans with disabilities, and of its ability and capacity to successfully administer the project.

(5) *Match.* Applicant provides evidence of secured cash matching (1:1) funds or of its ability to secure or commitments to receive such funds.

(b) *Selection of recipients.* All complete applications from eligible entities will be scored using the criteria in paragraph (a) of this section and ranked in order from highest to lowest total score. NOFA announcements may also clarify the selection criteria in paragraph (a). The relative weight (point value) for each selection criterion will be specified in the NOFA. Point values will be assigned according to the criterion's importance in ensuring the successful development and implementation of a VEPFS project. VA will award any VEPFS grant on the primary basis of scores but will also consider a risk assessment evaluation.

(Authority: 38 U.S.C. 3119)

[81 FR 52777, July 11, 2016]

**Supplement *Highlights Reference:* 90(1)**