

July 24, 2019

Submitted electronically to <https://www.regulations.gov/comment?D=ETA-2019-0004-0001>

Adele Gagliardi
Administrator, Office of Policy Development and Research
U.S. Department of Labor
200 Constitution Avenue
Washington, D.C. 20210

Re: Proposed Rule: Wagner-Peyser Act Staffing Flexibility, RIN 1205-AB87

Dear Ms. Gagliardi:

On behalf of the Coalition on Human Needs (CHN), I am submitting comments strongly opposed the Department of Labor's (DOL) proposed Wagner-Peyser Staffing Flexibility rule, which would remove the longstanding, legally required, merit-based staffing rule for the Employment Service (ES) and would permit private entities to receive Wagner-Peyser Act funding. The Coalition on Human Needs is an independent nonprofit alliance of 100 national-scope organizations, including human service providers, groups representing many faiths, policy experts, civil rights, labor, and other groups advocating to meet the needs of low-income and vulnerable people at the federal level. The members and affiliates of CHN's member groups are located in every state, and number in the millions.

CHN strongly opposes the privatization of state employment services and is gravely concerned regarding the effect such a rule would have on people who rely on these services, including the unemployed, veterans, people with disabilities, and other vulnerable populations, including the poor and near-poor.

While we recognize that the federal government contracts with private service providers for a large range of services, there are functions we believe should be carried out by government employees. The Employment Service administers the UI work test to establish whether claimants are able and available to work and are actively seeking employment. That role places the ES worker in the position of determining eligibility for UI benefits as well as referring them to job services. We believe that eligibility determination is a government function properly carried out by merit-based staff.

We note that the proposed rule would allow states to use contractors, other private sector personnel, or a combination of private and public employees, in the administration of the ES program. These rule changes could result in the privatization of multiple ES activities, including job-search assistance, job-referral and placement assistance for jobseekers, reemployment services for unemployment insurance (UI) claimants, and recruitment services for employers with job openings. Allowing states to use private sector staff to administer some or all of ES services would also remove the requirement of merit-based staffing. However, the history of the Wagner-Peyser Act and the inherently governmental nature of its functions reveal the intention of the Act's authors to require merit staffing as a foundation of the ES system. Moreover, Congress's actions to protect merit staffing in the ES since the law's passage over 80 years ago also support the authors' original intent. The lack of an independent assessment showing the effectiveness of alternative, nonmerit staffing of ES programs—juxtaposed against overwhelming evidence of the success of merit staffing models—demonstrate the importance of a merit personnel system in providing employment services and maintaining accountability for UI systems nationwide.

In the midst of the Great Depression, Congress passed the 1933 Wagner-Peyser Act in response to massive unemployment. The Act set up local public employment offices—the Employment Service—to connect jobseekers to employment, initially in public works programs established by the New Deal. Before passage of the Wagner-Peyser Act, widespread corruption, political patronage, and inequities had plagued private employment offices nationwide. In passing the Act, Congress envisioned a state merit system to prevent favoritism and promote equality in the delivery of employment services. Ultimately, the 1939 Social Security Amendments established merit standards for UI and required unemployment compensation payment only through the public employment offices.

Ever since passage of the Wagner-Peyser Act, there have been attempts, some serious, some less so, to privatize employment services, and Congress repeatedly has demonstrated its intent that this not happen. For example, in 2006, in response to a Bush Administration proposal, Congress used the appropriations process to prevent ES privatization. It prohibited DOL from finalizing the Bush-era rules until the Obama Administration withdrew the regulations. This pattern of Congressional action to halt efforts to privatize ES reveals Congress' critical role in supporting and maintaining ES merit staffing requirements since the program's inception. In addition, CHN contends that DOL [lacks discretion](#) to privatize ES. In 2013 guidance, DOL posed the question, "Must core and intensive services funded by the Wagner-Peyser Act be provided by merit staff?" The document cites "...the requirement that state merit staff employees deliver labor exchange services provided under the Wagner-Peyser Act. Under the longstanding practice of the Department of Labor, Employment Services that are not performed by state merit staff cannot be charged to the Wagner-Peyser Act grant. Therefore, core and intensive services funded under the Wagner-Peyser Act must be performed by state merit staff."

Selecting highly qualified, politically unbiased state government employees for the provision of employment services and performance of the UI work test remains central to reducing unemployment. For UI claimants, a referral to a job is as valuable as a cash benefit. By allowing private entities to provide those services, this proposal could introduce a profit motive that might interfere with the job referral process. For example, contractors evaluated and paid based on the total number of job placements might have little incentive to consider whether they are referring candidates of diverse nationalities and races or simply referring the most employable workers. The public ES has always been the "people's employment service" and outsourcing the labor exchange function carries risks for the longstanding ES commitment to serving disadvantaged and low-income workers who typically require greater levels of service but have historically been underserved.

Furthermore, the notice uses broad, questionable methodology in its cost-benefit analysis. It claims that pilot projects in Massachusetts, Michigan and Colorado provide evidence in favor of privatizing the Employment Service. However, a [2004 study](#) that compared these states with North Carolina, Oregon, and Washington, all of whom operate with merit-based staffing, found that the merit-based states outperformed the privatized ES operations in tasks such as referrals, placements, and registrations. In the merit-based states, benefits exceeded costs by two to three times, far exceeding the cost-benefit ratio in the pilot states. More recently, a [study](#) of Nevada's Reemployment Eligibility and Assessment Program in 2012 showed that when merit-based staff carried out all program components, outcomes improved for claimants, who were connected to jobs more rapidly, with resulting reduced total benefit costs.

There are other examples of failed privatization attempts, especially where determination of eligibility for benefits is concerned. In Texas, starting in 2006, there were attempts to privatize eligibility and benefits determination in order to modernize the eligibility and enrollment processes for Food Stamps (now called the Supplemental Nutrition Assistance Program, or SNAP), Medicaid, the Children's Health Insurance Program (CHIP), and Temporary Assistance for Needy Families (TANF). Texas substantially privatized eligibility and benefits determination. In an analysis at the time by the [Center for Public Policy Priorities](#) in Texas, "The children, elderly, and persons with disabilities who rely on these services have suffered through a frustrating enrollment process, been caught in long backlogs, and often been wrongly denied benefits...The number of children receiving health care through Medicaid and the Children's Health Insurance Program dropped by more than 127,000 (6%) between December 2005, when the new contractor took over, and April 2006." The analysis found that the state did not save money in its privatized contracts, while access to services dramatically declined.

Similarly, efforts to privatize services within Temporary Assistance for Needy Families (TANF) in Wisconsin resulted in examples of incentivizing less investment in client services because the contractors could keep some of the unspent funds. A [review](#) of several privatization efforts including Wisconsin found: "During the initial contract period \$238 million out of \$651 million budgeted remained unspent because of declining caseloads, and contracting agencies retained some \$65 million in unrestricted profits. Private contractors were not required to disclose how they spent these profits."

CHN strongly encourages far more study of the negative experiences with privatization, including their failure to prove cost-effective as well as problems with adequate service delivery. Given the potential harmful, far-reaching effects of ending the longstanding legal requirement of merit-based staffing in the ES, and the lack of evidence of the effectiveness of privatization, we urge you to withdraw this proposed regulation. We also strongly suggest that you extend the comment period for a period of no less than 30 days.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact me at dweinstein@chn.org if you require additional information.

Sincerely,

Deborah Weinstein
Executive Director
Coalition on Human Needs