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July 24, 2019

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

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

Dear Ms. Gagliardi:

I write to express concern with the U.S. Department of Labor's (Department) proposed changes to the merit staffing requirement of the Employment Service (ES) published on June 24, 2019. The Department's notice would remove the longstanding meritⁱ-based staffing rule for the ES and would permit private entities to receive Wagner-Peyser Act funding. The proposal as described would allow states to continue the use of state and local employees, but would allow for contractors or other staffing models in the administration of the ES program. This could result in the loss of jobs for existing merit staff and mean the privatization of multiple ES activities, including job-search assistance, job-referral and placement assistance, and recruitment services for employers with job openings. Ending merit staffing could also impact the UI system, the Disabled Veterans' Outreach Program and the Local Veterans' Employment Representative staff, and the Trade Adjustment Assistance (TAA) case management services.

The history of the Wagner-Peyser Act and the inherently governmental nature of its functions carried out by merit staff are a foundation of the ES system. Congress's actions to protect merit staffing in the ES since the law's New Deal-era passage show Congressional intent and support of merit staffing for ES. Unlike the NPRM which provides little reliable or detailed data justifying the proposed changes, ample data exists to show the benefits of merit-based staffing, such as a 2004 study that showed that states contracting out ES functions to private entities resulted in the underperformance in referrals, placements, job openings, and registrations. Further, the study concluded that the merit-based comparison states benefits exceeded costs by as much as two to three times.ⁱⁱ Additionally, a 2012 study found that requiring merit-based staff to conduct all program components improved outcomes—connecting claimants to jobs more quickly and, as a result, lowering total benefit payouts.ⁱⁱⁱ

The Department's cost-benefit analysis is inadequate, as its estimates for wage savings methodology includes only eight states and is contradicted by a recent analysis that showed state and local government employees earn less than similar private-sector workers—and that the wage and compensation gap is larger in right-to-work states.^{iv} The Department's analysis also does not compare similar workers in both sectors, and relies on Occupational Employment Statistics (OES) data that, according to the Bureau of Labor Statistics, are inappropriate for this comparison.^v Further, existing evaluation shows that privatization is less cost-effective than employing merit-based personnel.^{vi} Such actions should be delayed until an independent assessment showing the effectiveness of alternative, non-merit staffing of ES programs is provided.

The notice also fails to describe the contracting process and leaves the ES open to potential conflicts of interest as a result of a lack of detail on who will make contracting decisions and how they will avoid a conflict of interest or introduction of profit motivations that interfere with the services provided. The NPRM also raises serious concerns with the application of affirmative action policies.

I am disappointed with the limited time available to comment on the Department's notice and its decision to refuse to extend the comment period. 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, I urge you to withdraw this proposed regulation. If you decide to move forward with this proposed regulation, I request that you provide the additional information to address the concerns raised above and reissue a new NPRM with a 60-day comment period.

Sincerely,



ROBERT C. "BOBBY" SCOTT

Chairman

ⁱ In this letter, "merit staffing" is meant to refer to "the requirement to employ individuals consistent with the Federal standards for merit personnel systems."

ⁱⁱ Louis Jacobson, Ian Petta, Amy Shimshak, and Regina Yudd Evaluation of Labor Exchange Services in a One-Stop Delivery System Environment," WESTAT, prepared for U.S. Department of Labor Employment and Training Occasional Paper 2004-09. February 2004, https://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20Labor%20Exchange%20in%20One-Stop%20Delivery%20System%20-%20Final%20Report.pdf. The Bush administration released the paper to the public in 2008.

ⁱⁱⁱ Marios Michaelides, Eileen Poe-Yamagata, Jacob Benus, and Dharmendra Tirumalasetti, "Impact of the Reemployment And Eligibility Assessment (REA) Initiative In Nevada," January 2012, Available at:

https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_08_REA_Nevada_Follow_up_Report.pdf. For additional evidence of REA's success, see Stephen A. Wandner, "Solving the Reemployment Puzzle: From Research to Policy," W.E. Upjohn Institute for Employment Research, Kalamazoo, MI, 2010, Available at: https://research.upjohn.org/up_press/205/.

^{iv} Jeffrey Keefe, "Public-sector workers are paid less than their private-sector counterparts—and the penalty is larger in right-to-work states,"

^v "Frequently Asked Questions: Can OES data be used to compare private and government pay for similar work?," Occupational Employment Statistics, Bureau of Labor Statistics, accessed July 17, 2019, https://www.bls.gov/oes/oes_ques.htm.