

TRAINING AND EMPLOYMENT NOTICE	NO. 10-23
	DATE November 24, 2023

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARDS
LABOR COMMISSIONERS
AMERICAN JOB CENTERS
STATE MONITOR ADVOCATES
ALL ETA GRANTEEES

FROM: LAURA P. WATSON *LPW*
Deputy Assistant Secretary

SUBJECT: Announcing the Release of the *Wagner-Peyser Act Staffing* Final Rule

1. **Purpose.** The purpose of this Training and Employment Notice (TEN) is to announce the publication of the *Wagner-Peyser Act Staffing* final rule, which makes changes to the regulations regarding the Wagner-Peyser Act Employment Service (ES). Additionally, this TEN provides information to states seeking to implement the revisions provided in the final rule as part of their Workforce Innovation and Opportunity Act (WIOA) Unified or Combined State Plan submission for 2026.
2. **Action Requested.** Please share this information with interested stakeholders and review the regulations and information collections. This final rule is effective on January 23, 2024. States have 24 months from that effective date to comply with the final rule, that is, until January 22, 2026.
3. **Summary and Background.**
 - a. **Summary** – On November 24, 2023, the U.S. Department of Labor published the *Wagner-Peyser Act Staffing* Final Rule (88 FR 82658, November 24, 2023) that requires states (with the exception of Colorado, Massachusetts, and Michigan) to use state merit staff to provide ES services, including those states that began using alternative staffing models under the January 2020 *Wagner-Peyser Act Staffing Flexibility* Final Rule (2020 Final Rule). The merit staffing final rule also strengthens the provision of services to migrant or seasonal farmworkers (MSFWs) and enhances the protections afforded by the Monitor Advocate System and the ES and Employment-Related Law Complaint System (Complaint System).
 - b. **Background** – The Wagner-Peyser Act of 1933, 29 U.S.C. 49 et seq., established the ES program, a nationwide system of public employment offices that provide public

labor-exchange services. The ES program seeks to improve the functioning of the nation's labor markets by matching job seekers with employers that are seeking workers. The Department's implementing regulations for the ES program are prescribed at 20 CFR parts 651, 652, 653, 654, and 658. In addition to describing overall requirements for ES services, the ES regulations contain requirements for how State Workforce Agencies (SWA) must provide ES services to MSFWs, including conducting MSFW outreach, State Monitor Advocates (SMA) responsibilities, recordkeeping and reporting, and operation of the Complaint System, among other requirements. For decades, the Department required state merit staff to deliver ES services with limited exceptions. The January 2020 *Wagner-Peyser Act Staffing Flexibility* Final Rule (85 FR 592, January 6, 2020) removed the requirement that ES services be provided only through state merit staff. On April 20, 2022, the Department published a Notice of Proposed Rulemaking (NPRM) that proposed to again require that state merit staff deliver ES services, for all states. (87 FR 23700, April 20, 2022)

The merit staffing final rule, with limited exceptions, now requires states to use state merit staff to provide ES services, including services and activities under parts 653 and 658. The final rule also amends regulations in 20 CFR parts 651, 652, 653, and 658. The Department received many comments from the public and nonprofit sectors, as well as private citizens, in response to the April 2022 NPRM. The Department considered these comments, and the final rule reflects changes made in response to the public comments.

4. Final Rule Changes. The *Federal Register* published the *Wagner-Peyser Act Staffing* Final Rule on November 24, 2023, available at (<https://www.federalregister.gov/documents/2023/11/24/2023-25372/wagner-peyser-act-staffing>). The final rule amends several portions of the ES regulations. The *Wagner-Peyser Act Staffing* final rule makes the following changes related to state merit staffing and MSFW-related ES regulations. Please note that this TEN does not provide an exhaustive list of all changes.

a. State Merit Staffing.

- i. Requires the use of state merit staff for all ES services, including services provided to MSFWs under 20 CFR parts 653 and 658, although Colorado, Massachusetts, and Michigan may continue to use alternative staffing models to the same extent the Department previously authorized prior to the 2020 Final Rule. The Department is requiring that SMA functions at § 653.108 be performed by state merit staff in all states, including Colorado, Massachusetts, and Michigan.
- ii. Requires Colorado, Massachusetts, and Michigan to participate in rigorous multistate evaluation activities to be conducted by the Department.

b. ES Services to MSFWs.

- i. Revises several defined terms at § 651.10, including the definition of:
 - *Complaint System Representative* to specify that Complaint System Representatives must be trained.

- *Field Checks* to replace the term *job order* with *clearance order*, to specify that field checks may be conducted by non-ES state staff, in addition to ES or federal staff, where the SWA has entered into an arrangement with a state or federal enforcement agency (or agencies) for enforcement agency staff to conduct field checks, and to remove the word *random* to clarify that field checks may be targeted, where necessary, to respond to known or suspected compliance issues.
 - *Field Visits* to clarify that field visits are announced and may be conducted by the monitor advocates and that the purpose of an SMA field visit is to discuss the SWA’s provision of ES services and obtain input on the adequacy of those services, not to provide direct ES as well as to specify that field visits include discussions of farmworker rights and protections and that field visits may also occur at places where MSFWs gather.
 - *Interstate and Intrastate Clearance Order* to replace the term *job order* with *clearance order* in both definitions and to clarify that an intrastate clearance order must be circulated to all ES offices within the state.
 - *Outreach Staff* to clarify that SMAs are not outreach staff and that SMAs cannot fulfill the SWA’s responsibility to provide outreach staff under § 653.107(a).
 - *Significant MSFW States* and *Significant MSFW One-Stop Centers* to remove requirements that ETA make these designations annually and that *Significant MSFW One-Stop Centers* include ES offices where MSFWs account for 10 percent or more of reportable individuals in the ES annually and broadens the criteria for *Significant MSFW States*.
- ii. *Adds a new definition of apparent violation.*
- iii. Removes the exclusion of full-time students in the definition of *migrant farmworker* and *seasonal farmworker*.
- iv. Removes the definition of *Significant Multilingual MSFW One-Stop Centers* because all such centers must comply with the comprehensive language access requirements in 29 CFR 38.9.
- v. Strengthens the provision of all services of the workforce development system to MSFWs by:
- Clarifying that the provision of services for MSFWs must be available to all job seekers in an equitable “and nondiscriminatory” fashion. This addition is intended to clarify that SWAs must not discriminate against farmworkers either because they are farmworkers or because of any characteristics protected under the nondiscrimination and equal opportunity provisions of WIOA.
 - Specifying that ES staff must tailor ES services in a way that accounts for individual MSFW preferences, needs, skills, and the availability of job and training opportunities.
- vi. Strengthens outreach to MSFWs by:
- Requiring that SWAs must seek and put a strong emphasis on qualified candidates who speak the language of a significant proportion of the state MSFW

population, who are from MSFW backgrounds, or who have substantial work experience in farmworker activities.

- Requiring that SWAs must inform farmworker organizations and other organizations with expertise concerning MSFWs of outreach staff job openings and encourage them to refer qualified applicants to apply.
- Clarifying that outreach staff must conduct outreach on an ongoing basis and that National Farmworker Job Program grantee activities do not substitute for SWA outreach responsibilities.
- Establishing that SWA outreach responsibilities include conducting thorough outreach and follow-up in all states, not only in supply states.
- Requiring states to conduct outreach to MSFWs in all service areas and to contact a majority of the MSFWs in the state annually.
- Requiring that in Significant MSFW States, there must be full-time, year-round outreach staff to conduct outreach duties and explaining that full-time means each individual outreach staff person must spend 100 percent of their time on outreach responsibilities. In the remainder of the states, there must be year-round part-time outreach staff, and during periods of the highest MSFW activity, there must be full-time outreach staff.
- Adding that the SMA's Annual Summary must include a summary and analysis of outreach efforts, the results of those efforts, and an analysis of whether the outreach levels and results were adequate.

vii. Strengthens the status of the SMA and clarifies the SMA's role within the ES by:

- Requiring SWAs to seek and put a strong emphasis on hiring qualified candidates as SMAs who meet the criteria provided at § 653.108(b).
- Requiring that the SMA:
 - Be a senior-level ES official with the authority necessary to effectively carry out their duties,
 - Report directly to the state administrator or their designee,
 - Have the knowledge, skills, and abilities necessary to fulfill the responsibilities as described in the rule, and
 - Have sufficient authority, staff, resources, and access to top management necessary to effectively fulfill the role.
- Prohibiting SMAs and SMA staff from performing work that conflicts with any of the SMA's duties, such as outreach, complaint processing, or Agricultural Recruitment System processing.
- Prohibiting the state administrator or ES staff from retaliating against an SMA for performing required monitoring activities.
- Requiring the SMA to establish an ongoing liaison with the state-level Equal Opportunity Officer to enhance equity and inclusion for farmworkers.

viii. Increases MSFW data available to SWAs, SMAs, and ETA by requiring that SWAs must record MSFW status of reportable individuals.

- ix. Revises the Complaint System regulations by:
 - Shifting responsibility from the SMA to a different Complaint System Representative for MSFW-related complaints to remove potential conflicts of interest.
 - Broadening the scope of contact methods complainants may provide when filing complaints to include any other helpful means of contact.
 - Removing language requiring SMAs to take direct actions (such as making determinations and referrals) on complaints.
 - Broadening § 658.411(c) to apply to all complaints alleging discrimination and reprisal.
 - Requiring SWAs and ES offices to refer complaints and apparent violations involving nondiscrimination laws and reprisals to their state-level EO Officer.
 - Clarifying that ES Office Managers must ensure apparent violations are documented in the Complaint System log.

- x. Revises the responsibilities of ETA Regional and National Offices by:
 - Requiring that if an ETA Regional Office receives a complaint alleging violations of nondiscrimination laws, the complaint must be logged and immediately referred to the appropriate state-level EO Officer(s).
 - Revising § 658.420(c) to clarify that when an ETA Regional Office receives an employment-related law complaint, it should process the complaint in accordance with § 658.422.
 - Revising Regional Monitor Advocate (RMA) training requirements so that the RMA must participate in training sessions offered by the National Office.
 - Removing the word *random* from the requirements for the Regional Administrator (RA) and National Monitor Advocate (NMA) to participate in field checks of migrant camps or work sites where MSFWs have been placed.
 - Revising the procedures for Federal Application of Remedial Action to SWAs and requiring the RA to increase notifications to RMAs regarding MSFW-related findings and noncompliance, to notify the RMA and the NMA of decertification proceedings.
 - Specifying that any SWA that has received a Notice of Remedial Action may request a hearing by filing a written request with the RA within 20 business days of the notice.

The final rule impacts associated information collections, notably for the WIOA State Plans. Due to the allowable period of compliance, however, the WIOA State Plan requirements for the Wagner-Peyser portion of the plan will not be impacted until the Program Year (PY) 2026 submission cycle. For the PY 2024 WIOA State Plan, states must use the requirements identified in the OMB approved State Plan ICR. The Department encourages, but does not require, states to include a description of any planned activities or milestones for transitioning back to a state merit-staff service delivery model and for implementing the new MSFW ES requirements, described in detail above, for PY 2024.

5. **Inquiries.** Please direct inquiries to the appropriate ETA Regional Office.

6. References.

- Wagner-Peyser Act Staffing Final Rule (88 FR 82658, November 24, 2023)
- Wagner-Peyser Act Staffing Flexibility Final Rule
- The Wagner-Peyser Act of 1933, 29 U.S.C. 49 et seq
- WIOA Regulations at 20 CFR parts 651, 652, 653, and 658

7. Attachment(s). N/A