



International Association of Workforce Professionals

February 8, 2007

Ms. Maria Flynn, Administrator  
Office of Policy Development and Research,  
Employment and Training Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW.,  
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RE: Comments of the International Association of Workforce Professionals (IAWP)  
Regarding the Workforce Investment Act Amendments Notice of Proposed  
Rulemaking.

Dear Administrator Flynn:

On December 20, 2006, the U.S. Department of Labor (DOL) published proposed revisions of the federal regulations governing the U.S. Employment Service and the Workforce Investment Act (WIA). These new rules would eliminate the federal requirement for Wagner-Peyser employment service staff to be merit system employees and would require that all Employment Service functions be provided in local one-stop offices, rather than continuing the state option to offer such services through freestanding Employment Service offices.

Additional changes proposed by this NPRM address several other issues that have arisen during consideration of the reauthorization of the Workforce Investment Act, including:

- Effectively eliminating a mandated sequence of services by allowing immediate training and other services in the order or combination appropriate for individual clients.
- Giving State Workforce Investment Boards authority over policies governing the operation of a state's One-Stop system.
- Giving states greater flexibility in setting Eligible Training Provider standards.

The NPRM also seeks input regarding the definition of administrative costs under WIA, as well as the size and composition of Workforce Investment Boards. As you know, IAWP is a nonprofit educational association representing 13,000 professionals worldwide who work in public and private workforce development programs. IAWP is dedicated to advancing the field of workforce development through education, research, legislative action, financial support, international networking, and useful publications.

IAWP has a long history of focusing a significant portion of its education, research and professional development services upon the public labor exchange function. Knowing that many others will provide thoughtful comment on other aspects of this NPRM, at this time we will focus our comments exclusively on the on the NPRM proposals affecting Wagner-Peyser Act funded service delivery and staffing.

Integration of Wagner-Peyser Act Funded Services

The Secretary is charged with assisting in the coordination and development of the public labor exchange which is required by sec. 7(e) of the Wagner-Peyser Act. The Act's regulations state that local Employment Service offices may not exist outside the One-Stop service delivery system, but provide states with flexibility to permit Employment Service offices to operate as affiliated sites provided that certain conditions are met.

At least nineteen states operate stand-alone Employment Services offices and thirteen states operate what could be described as parallel systems. The NPRM proposes to modify regulations to require that local Employment Service offices be located in comprehensive One-Stop Career Centers, and that employment services under the Wagner-Peyser Act must be fully integrated with services in comprehensive One-Stop Career Centers. In addition, it proposes to amend regulations to provide that stand-alone Employment Service offices will no longer qualify as affiliated One-Stop Career Centers.

IAWP supports effective integration of employment services to meet the diverse needs of a wide variety of customers. It is a hallmark of our federal system, and it has been a rhetorical priority of the current administration, that states are granted significant flexibility in determining the best ways to effectively respond to diverse service demands. The fact that nearly two in five states have determined that a freestanding Employment Service system is their preferred means of providing the mandated public labor exchange function reflects this hallmark of our federal system. It is also true that numerous states have effectively and efficiently integrated Wagner-Peyser and WIA employment services to the benefit of their customers without an inflexible “one-size-fits-all” federal mandate.

IAWP recommends maintaining flexibility for states in determining the best state system for effective employment services delivery.

### Merit Staffing

The NPRM proposes changing a time honored and time tested interpretation of the Wagner-Peyser Act that has been sustained by Secretaries of Labor across the history of the Act. Current Wagner-Peyser Act regulations reflect this time honored interpretation by requiring that job finding, placement, and reemployment services funded under the Act be delivered by state merit-staffed employees. This interpretation of the Act and the resulting merit staff requirement is sustained by the Secretary’s authority under sections 3(a) and 5(b)(1) of the Act, enabling the Secretary to prescribe minimum standards of efficiency for public Employment Services administered by states and to promote uniformity in their administrative procedures.

The NPRM indicates the current Secretary has reconsidered this time honored and time tested interpretation of the Act based on a stated interest in providing maximum flexibility to states. IAWP notes the irony of this justification in light of the fact that the immediate previous section of the NPRM justifying changes regarding freestanding Employment Service operations proposes to significantly limit state flexibility and choice. IAWP also notes that the merit staffing requirement under the current regulation is reflected in Office of Personnel Management (OPM) regulations under the Intergovernmental Personnel Act, which identifies the Wagner-Peyser Act as among the federal programs including statutory merit-staffing requirements. (5 CFR part 900, subpart F, Appendix A). IAWP also notes that our members have substantial experience with state Wagner-Peyser funded job finding, placement, and reemployment services being successfully administered and provided by merit-staffed employees working side- by-side with WIA employees in a fully integrated state system.

Removal of merit-staffing requirements for the delivery of taxpayer-funded services is no small matter. The history of merit service reforms is long and their effect upon the advancement of effective government with the highest ethical standards has been critical.

One of the oldest examples of a merit-based civil service was in the Imperial bureaucracy of China during the Oin Dynasty. After the fall of that dynasty, the Chinese bureaucracy regressed into political and aristocratic patronage and its effectiveness seriously declined until a later dynasty restored the merit system. The Chinese merit-based civil service became known to Europeans in the mid-18th century and influenced the development of the European and American systems. The first merit-based European civil service was set up in India by the East India Company. The system then spread to the United Kingdom and to the United States, where it was codified by the Pendleton Civil Service Act of 1883. Previously in our federal, state and local governments, the spoils system ensured that jobs were used to support the political party in power at the time. This was changed at the federal level, step-by-step, beginning with the Pendleton Act and continuing with subsequent laws so that, by the 1950s, federal civil servants were appointed based on merit, with qualifications measured by tests. Beginning with the Hatch Act in 1939, federal civil servants were also not allowed to engage in political activities on the job. The federal system was last comprehensively reformed with the passage of the Civil Service Reform Act of 1978 which reaffirmed the essential requirement for a merit service by the establishment of the federal Merit Systems Protection Board. Over the course of this same era, all state and most local governments in the US reformed their own patronage and spoils systems by adopting merit-based civil service systems modeled on the federal system.

IAWP views these matters, and others addressed by this NPRM, as major and - in the matter of merit staffing requirements - historic changes in federal policy. For this reason, and for reasons stated above, IAWP considers that such changes should only be made with the consent of the Congress and urges that no such changes be promulgated until reviewed and approved by Congress.

Thank you for receiving and considering our comments.

Sincerely,

The International Association of Workforce Professionals