

<b>TRAINING AND EMPLOYMENT NOTICE</b>	<b>NO.</b> 13-19
	<b>DATE</b> January 13, 2020

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

**FROM:** JOHN PALLASCH /s/  
Assistant Secretary

**SUBJECT:** Announcing the Release of the *Wagner-Peyser Act Staffing Flexibility* Final Rule and Amended Information Collections Associated with this Rulemaking

1. **Purpose.** The purpose of this Training and Employment Notice (TEN) is to announce changes to the Workforce Innovation and Opportunity Act (WIOA) regulations as part of the implementation of the *Wagner-Peyser Act Staffing Flexibility* final rule. Additionally, this TEN provides information to states seeking to adopt the flexibilities provided in this rulemaking as part of their WIOA Unified or Combined State Plan submissions for 2020.
2. **Action Requested.** Please share this information with interested stakeholders and review the regulations and information collections.
3. **Summary and Background.**
  - a. Summary – On January 6, 2020 the Employment and Training Administration (ETA) released the *Wagner-Peyser Act Staffing Flexibility* final rule to give states increased flexibility in their administration of Employment Service (ES) activities funded under the Wagner-Peyser Act. The final rule removes the requirement that states hire state merit staff for ES activities provided under the Wagner-Peyser Act. This flexibility applies to the grants allocated to the states for the traditional labor exchange and related services, and for the employment services in support of the foreign labor certification program, including the placement of employer job orders, inspection of housing for agricultural workers, and the administration of prevailing wage and practice surveys.

The final rule amends *Department of Labor-only WIOA final rule* provisions governing the Wagner-Peyser Act at 20 CFR 651, 652, 653, and 658, and is available at 85 FR 592. The final rule is effective February 5, 2020.

This TEN also announces the approved amendatory information collections associated with this final rule:

- OMB Control Number 1205-0522, *Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act*, and
- OMB Control Number 1205-0039, *Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form*.

Lastly, this TEN provides information to states on the changes to the state planning requirements for the Wagner-Peyser Act beginning with the Program Year (PY) 2020-2023 WIOA Unified or Combined State Plan planning cycle.

- b. Background – The Wagner-Peyser Act established the ES program, which is a nationwide system of public employment offices that provide labor exchange services. The ES program is designed to improve the functioning of the nation’s labor markets by bringing together individuals seeking employment with employers seeking workers. On June 24, 2019, ETA issued a Notice of Proposed Rulemaking (NPRM) to amend regulations in 20 CFR parts 651, 652, 653, and 658 to allow states flexibility in how they engage in ES activities. 84 Fed. Reg. 29433 (June 24, 2019). ETA took into consideration the public comments from the NPRM, and made some changes based on those comments, which are addressed in the final rule.

4. **Final Rule and State Planning.** The final rule includes several changes to the Information Collection Request (ICR) for OMB Control Number 1205-0522, *Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act*. These changes were also announced in the NPRM. 84 Fed. Reg. at 29448–49. Specifically, the Department of Labor updated requirements for the Wagner-Peyser Act portion of the State Plan to reflect the flexibility provided by the final rule; these ICR changes can be found in Attachment I: Wagner-Peyser Act Program (Employment Service) Requirements for State Plans.

The primary change to the ICR for ES activities asks a state how it plans to staff the provision of labor exchange services under the Wagner-Peyser Act. The ICR requires states seeking to use the flexibility provided by the final rule to describe how these services will be provided, such as through a subrecipient arrangement, or a combination of state merit-staff and subrecipients.

The Department also made changes to the Agricultural Outreach Plan (AOP) section of the State Plan ICR. Addressing the AOP requirements discussed in Attachment I is a necessary part of State Plan submissions. Note that, pursuant to the continued requirements at 20 CFR 653.107(d)(3), no change has been made to the requirement that SWAs solicit information and suggestions for the AOP from WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees, other appropriate MSFW groups, public agencies, agricultural employer organizations, and other interested organizations. In addition, at least 45 calendar days before

submitting its final AOP to the Department—as has been required in the past—the SWA must provide the proposed AOP to NFJP grantees, public agencies, agricultural employer organizations, and other organizations expressing an interest and allow at least 30 calendar days for review and comment.

Lastly, the Department made a change to the Assurances section of the Wagner-Peyser Act part of the State Plan ICR to remove the assurance that Wagner-Peyser Act-funded staff be state merit-staff employees. This was replaced with an assurance addressing services to migrant and seasonal farmworkers discussed in Attachment I.

**a. Early Implementation**

States seeking to implement the final rule’s flexibility for the beginning of PY 2020 need to describe their planned implementation activities in the PY 2020-2023 State Plan submission, as is required by the changes to the State Plan ICR, which are described in Attachment I. States interested in early implementation must ensure all aspects of the State Plan have met public comment requirements. States seeking early implementation can contact the appropriate ETA Regional Office for additional technical assistance.

**b. Implementation after July 1, 2020 - Modification to 2020 State Plan**

States wishing to implement the flexibility later than the beginning of PY 2020 or subsequent to the approval of their PY 2020-2023 WIOA Unified or Combined State Plan may submit a State Plan modification any time after they receive such notification of approval, as with any modification to a State Plan. Similarly to early implementer states, states submitting a modification to their State Plan will need to describe their implementation strategy, as is required by the changes made to the State Plan ICR, which are described in Attachment I.

**c. States Opting Not to Use Flexibility in the Rule**

Under the final rule, states may continue to use state merit staff as they have previously done. States not seeking to change their staffing will still need to address the changes made to the State Plan ICR described in Attachment 1, but can simply notify ETA that the state will continue to use state merit-staffing in question (a)(1) under the Wagner Peyser Act section in the state plan, as is stated in the State Plan ICR.

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

**6. References.**

- Wagner-Peyser Act, as amended (29 U.S.C. 49 et seq.);
- The Workforce Innovation and Opportunity Act (WIOA) of 2014 (Pub. L. 113-128) Title I and III, enacted July 22, 2014;
- WIOA Regulations at 20 CFR parts 651, 652, 653, and 658;

- Wagner-Peyser Act Staffing Flexibility final rule (85 FR 592, available at <https://www.govinfo.gov/content/pkg/FR-2020-01-06/pdf/2019-27260.pdf>)

**7. Attachments.**

- Attachment I: Wagner-Peyser Act Program (Employment Service) Requirements for State Plans