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September 2, 2025

Lori Frazier Bearden  
Acting Assistant Secretary, Employment and Training Administration  
U.S. Department of Labor  
200 Constitution Avenue  
Washington, DC 20210

Re: Proposed Rule: Wagner-Peyser Act Employment Service Staffing, RIN 1205–AC22

Dear Ms. Bearden:

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 in the Federal Register on July 1, 2025. The Department's notice would remove the longstanding merit-based<sup>1</sup> staffing rule for the ES and would permit private entities to receive *Wagner-Peyser Act*<sup>2</sup> funding. The proposal 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 Unemployment Insurance (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' actions to protect merit staffing in the ES since the law's New Deal-era passage demonstrate congressional intent and support of merit staffing for ES. Unlike the proposed rule, which provides little reliable or detailed data justifying the proposed changes, ample data exists to show the benefits of merit-based staffing. For example, a 2004 study found that contracting out ES functions by states to private entities resulted in the underperformance in referrals, placements, job openings, and registrations.<sup>3</sup> Further, the study concluded that the merit-based comparison

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<sup>1</sup> In this letter, "merit staffing" is meant to refer to "the requirement to employ individuals consistent with the Federal standards for merit personnel systems.", *Wagner-Peyser Act Staffing Flexibility*, 84 Fed. Reg. 29433 (Jun. 24, 2019).

<sup>2</sup> 29 U.S.C. §§ 49-49I-2

<sup>3</sup> 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 (Feb. 2004),

states benefits exceeded costs by as much as two to three times.<sup>4</sup> 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.<sup>5</sup>

The Department's reliance on the cost-benefit analysis in the 2020 proposed rule<sup>6</sup> is inadequate, as its estimates for wage savings methodology include 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.<sup>7</sup> The Department's analysis also does not compare similar workers in both private and public sectors, and relies on Occupational Employment Statistics (OES) data that, according to the Bureau of Labor Statistics, are inappropriate for this comparison.<sup>8</sup> Worse still, the proposed rule removes the requirements from the 2024 final rule<sup>9</sup> that three demonstration States conduct an evaluation on the delivery of ES services. So not only is the Department relying on poor data collection to justify its cost-savings, but it is also eliminating any future source of data needed to inform future policy decisions.

The proposed rule also fails to describe the contracting process. This 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.

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 rule.

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**  
Ranking Member

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[https://wdr.doleta.gov/research/FullText\\_Documents/Evaluation%20of%20Labor%20Exchange%20in%20One-Stop%20Delivery%20System%20-%20Final%20Report.pdf](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.

<sup>4</sup> *Id.*

<sup>5</sup> Marios Michaelides, Eileen Poe-Yamagata, Jacob Benus, and Dharmendra Tirumalasetti, "Impact of the Reemployment And Eligibility Assessment (REA) Initiative In Nevada" (Jan. 2012), [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP\\_2012\\_08\\_REA\\_Nevada\\_Follow\\_up\\_Report.pdf](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 (2010), [https://research.upjohn.org/up\\_press/205/](https://research.upjohn.org/up_press/205/).

<sup>6</sup> Wagner-Peyser Act Staffing Flexibility, *supra*, note 1.

<sup>7</sup> Jeffrey Keefe, "Public-sector workers are paid less than their private-sector counterparts—and the penalty is larger in right-to-work states," Economic Policy Institute (Jan. 14, 2016), <https://www.epi.org/publication/public-sector-workers-are-paid-less-than-their-private-sector-counterparts-and-its-much-worse-in-right-to-work-states/#:~:text=underlying%20the%20figure,-.Source%3A%20Eliminating%20fair%20share%20fees%20and%20making%20public%20employment%20%E2%80%99Crightright.local%20government%2C%20by%20Jeffrey%20Keefe.&text=In%20right%2Dto%2Dwork%20states%2C%20public%2Dsector%20employees,than%20their%20private%2Dsector%20counterparts.>

<sup>8</sup> "Frequently Asked Questions: Can OES data be used to compare private and government pay for similar work?," Occupational Employment Statistics, Bureau of Labor Statistics, last visited July 17, 2019, [https://www.bls.gov/oes/oes\\_ques.htm](https://www.bls.gov/oes/oes_ques.htm).

<sup>9</sup> Wagner-Peyser Act Staffing, 88 Fed. Reg. 82658 (Nov. 24, 2023).