

State of Florida
Workforce Investment Act
Waiver Request:
WAGNER-PEYSER “MERIT STAFFING”

Pursuant to WIA Section 189 (i)(4)(B) and the WIA federal regulations at 20 CFR 661.420, the State of Florida requests any waiver approval or pilot project authorization or exception to standing policy necessary to allow the State to allocate Wagner-Peyser (WP) staffing funds to our Local Workforce Investment Boards (in Florida named Regional Workforce Boards—RWBs) and allow those funds to be used to hire staff to provide WP services without being on the payroll of the State of Florida and part of the State “merit system” (named Career Service or Selected Exempt Service) in Florida.

A. Statutory or Regulatory Requirements to be Waived

There is no direct federal statutory mandate in the Wagner-Peyser Act; however, pursuant to 20 CFR Sections 652.215 and 652.216, the Secretary has required State merit-staff employees to provide labor exchange services, asserting that such interpretation is “authorized by and consistent with the provisions of sections 3(a) and 5(b) of the Act and the Intergovernmental Personnel Act (42 U.S.C. 4701 *et seq.*). However, in the Federal Register commentary regarding the regulations in Part 252, the comments note [at p. 49386] that “...the Department has authorized demonstrations of the effective delivery of Wagner-Peyser services utilizing non-state agency employees in the states of Colorado, Massachusetts, and Michigan” as exceptions to the policy, but stating a decision that no further exceptions would be approved. “While we continue to promote uniformity in administrative procedure, we find that variation from delivery by State merit-staff does not negatively affect the effectiveness and efficiency of the Wagner-Peyser Act-funded Employment Service program.”

B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted

Florida has made great strides in restructuring its workforce service delivery system to move away from the programmatic and financial “silos” inherent in a fragmented delivery system and to achieve a truly integrated network of One-Stop Career Centers and services. A large part of that movement has been to empower Regional Workforce Boards, decentralize service-delivery decision-making, push funding downward, and then to hold the RWBs strictly accountable for outcomes and performance. In so doing, the State has distributed the maximum levels of funding and day-to-day operational flexibility to the Regions and their contracted One-Stop providers. This has included Workforce Investment Act (WIA) funds, Temporary Assistance to Needy Family (TANF) funds, Food Stamp Employment and Training (FSET) funds, Trade Adjustment Act (TAA) funds, and certain WP and Unemployment Compensation (UC) funds, allowing the local boards/providers to decide what employees to hire, what skill level to recruit, how to train, supervise, discipline, direct and terminate as needed.

The only exception has been the WP staffing funds, where locals are required to continue with an arrangement where a portion of their key staff are on an external payroll and ultimately accountable to an out-of-town authority that is not subject to the performance requirements of the region. The State agency and the RWBs and One-Stop Career Center providers have been largely successful in developing processes and agreements to work around a wide variety of impediments (such as disparate wages, working hours, employee benefits, and other working conditions for One-Stop staff). These challenges exist for all One-Stop Career Center partners that are employed by different entities. There have been multiple reports from RWBs of morale and disciplinary problems due to disparate wages, hours, benefits and other working conditions for One-Stop staff who are essentially doing the same customer service work.

However, it is in the delivery of WIA and WP services within the One-Stop Career Center where the greatest disconnect and challenge exists. Unlike other One-Stop Career Center partner services, WP and WIA unassisted and assisted core services are virtually indistinguishable as it relates to customer service. The continued separation of the staff performing those services creates an unintended but persistent disconnect for customers. WP state merit staff can serve WIA customers in part, but then the customer must be “passed off” to a WIA-funded staff member for other employment and training services.

Florida has succeeded in transferring all basic program services (WIA, TANF, FSET, certain UC support functions, TAA, etc.) to the RWBs and their One-Stop Career Centers’ competitively procured vendors. Only the WP funded positions (including veterans’ services positions) remain outside of this service delivery mechanism. However, interestingly and importantly, the WP program services are central to the delivery of the customer services provided under WIA, TANF, the FSET and UC support services. It is the single common thread throughout the service continuum, and yet it must be funded and staffed separately.

In some cases, proposed local bonuses, promotions and other incentives could not be awarded uniformly or not at all because of state human resource limitations. There have been instances in the face of approaching hurricanes, floods and other natural disasters where local RWB and One-Stop managers could not legally release AWI-payroll employees on administrative leave until permission was granted by state authorities in Tallahassee. (They were released based on local emergency management instructions; however the situation then had to be justified after the fact to comply with state HR/payroll requirements.)

The proposed rule in the December 20, 2006 Federal Register exemplifies Florida’s quest for a truly, seamless One-Stop system by eliminating merit staffing requirements to provide maximum flexibility. Florida applauds the encouragement to be innovative and creative in the approach to delivering employment services with limited resources. The Department’s belief in “The policy of requiring all Wagner-Peyser services to be delivered by State merit-staffed employees limits flexibility in the delivery of services” encourages Florida to request this waiver once again.

C. State or Local Statutory of Regulatory Barriers

There is no state or local statutory or regulatory barrier to implementing the State's policy or any federal waiver necessary to implement the policy. The policy is in accord with the intent of State statutes enacted to implement WIA and to integrate the delivery of workforce services through the network of One-Stop Career Centers. Further, this waiver supports the WIA Reauthorization vision of the U.S. Department of Labor as described in the proposed rule in the December Federal Register. Additionally, the Agency for Workforce Innovation has annually secured state-level authority to accommodate any waiver approved by the Department.

D. Description of the Individuals Impacted by the Waiver

All WIA customers, as well as the state's regional workforce board, will be positively affected by the adoption of the above-referenced policy and improved integrated services. Elimination of dual payroll, human resources and related costs for maintaining two sets of overhead mechanisms will reduce overall administrative expenditure, thereby freeing up funds for additional training and workforce services for employers and job seekers.

Current state agency employees providing WP services on state payroll will be shifted to local payrolls and will then be eligible for the same benefits, wages, terms and conditions of employment as other One-Stop staff paid with WIA, TANF or other funds. Local One-Stop operators will benefit from having consistent and direct control and accountability for all staff providing services to the public and producing the performances for which RWBs and providers are held responsible. The transition will be achieved in the similar manner as when Private Industry Councils and state-staffed local direct services were divested and placed under contracted One-Stop operators, also noting that many former state "merit-staff" employees have already individually made such personal transitions. Several years ago, Florida successfully transitioned the TANF-funded services from State merit staff to the RWBs. In recent years, the Agency for Workforce Innovation has also transitioned FSET, TAA and certain UC support services to the boards as well. Only WP program staff (including veterans' program staff) remain outside of this system. Again, from the standpoint of customer service, One-Stop customers will benefit from the complete integration of WP into the service delivery scheme by the removal of artificial staff barriers to services. This applies not only to better integration with WIA customers, but also TANF, FSET, UC and TAA customers.

From the standpoint of State merit staff, the Agency has been very successful in transitioning State staff to One-Stop provider positions. Special job placement assistance has been provided in other instances where merit staff members were not hired by providers. Florida believes it has been a model for effectively transitioning State merit staff into the One-Stop delivery system.

E. Opportunity for Public Comment and the Process for Monitoring Implementation of the Waiver

The state's position favoring this waiver has been fully announced, discussed, debated and open to public comment since 1999 at least. The position has been endorsed by the majority of the Workforce Florida, Inc., Board repeatedly, including private sector, public sector, education and community-based members. The local/RWBs have also repeatedly endorsed the proposal, forcefully noting the administrative difficulties resulting from attempting to offer "seamless" integrated services provided partially by employees on the payroll of that third party.

This most recent waiver request was again disseminated for public comment, along with the Two-Year Plan and multiple other waiver requests. Dissemination includes preliminary email dialogue with RWBs and other partners on the list of proposed waivers in April-May, distribution of the draft plan and waiver requests by email and website posting in April-May, 2007, opportunity for email, or letter comment from April 17th through May 17, 2007 while the document is in review by the Governor's Office and the public hearing at the Workforce Florida, Inc., Board meeting in Orlando on May 17, 2007.

The implementation of this policy will be monitored by Workforce Florida, Inc., and the Agency for Workforce Innovation as they continue to monitor all WIA performance and the progress toward goals and objectives expressed in the State Plan. Information contained in the State's management information system and financial management tracking system will be reviewed and reported to the local areas and Workforce Florida, Inc., on a regular basis. Review of the implementation and application of the policy will regularly be placed on the agenda of public meetings of WFI State Board and regularly scheduled meetings of the WFI Board members and staff, with partner agencies, representatives of RWBs, One-Stop operators and other partners.