

ActionBrief

Wagner Peyser Funded Activities Under WIA

Background

The Workforce Investment Act (WIA) envisions that all workforce development activities at the local level will be provided through a state One-Stop system. In many states, this transition to One-Stops threatens to expand privatization efforts, to undermine merit system requirements as applied to the U.S. Employment Service (ES) and other public agencies, and to merge the functions of workers who deliver services locally by shifting responsibilities among agencies. These shifts can have a devastating impact on the job security and working conditions of these state agency staffs.

1. Wagner Peyser-Funded Activities

Section 112(b) (8) of the Workforce Investment Act of 1998 requires that states describe how their workforce development system will coordinate with Wagner Peyser activities in the state. The “Planning Guidance for State Plans” requires States to provide more detail on how this coordination will occur. More specifically each of the following should be described in the State Plan:

- How Wagner-Peyser and Unemployment Insurance (UI) services will be integrated into the system
- The priority of service for veterans, agricultural communities and persons with disabilities
- The role of the Employment Service, as a required partner in the One-Stop system including responsibilities in local MOUs
- How the “work test” requirements of Wagner Peyser for UI recipients will be met
- How the state will coordinate Wagner Peyser funds to avoid the duplication of labor exchange activities



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Union Proposals in Ohio

Rather than segregate Employment Services (ES) functions, the approach of the union (OCSEA/ AFSCME local 11) was to combine the claims and ES categories into a new position called customer service representative. While difficult for the workers in the short-term, in the long-term this approach made it possible in the long-run to prevent contracting out of services, especially the claims positions which are often viewed as most vulnerable to bidding by private contractors. Unfortunately the State of Ohio is now in the process of devolving these state positions to the county level.

- How Wagner Peyser services will be delivered to employers
- The state strategy for the three tiered labor exchange requirements of Wagner Peyser
- The state's approach to improving staff/technical capacity to provide customer services
- State certification that Wagner-Peyser-funded labor exchange activities will be provided by merit-based public employees¹

The AFL-CIO strongly supports the concept that State Employment Service agencies must continue to administer and operate Wagner Peyser services. Using private entities to perform the services currently provided by ES could result in standards not being upheld and in system goals not met.

Three states, Massachusetts, Michigan, and Colorado are running “pilot programs”, sanctioned by the U.S. Department of Labor, that are providing Wagner Peyser services either through the counties or some privatized entity. These are specific exclusions from the general requirement, based on a circuit court decision and clarified in the Final WIA Regulations - that the Department intends that the term “merit-staff employees” means *state merit-staff employees*.²

Role of labor representatives on WIBs

Many Labor representatives who serve on state and local workforce boards assisted in the drafting of State Plans. They are in position to review the language in these Plans on Wagner Peyser and other public employee issues. In addition, as a required One-Stop partner, the UI program has the right to have a representative on the local workforce board.³ Some states have questioned whether or not this representative can be a public employee because of conflict of interest issues, but many are allowing public employees to serve in this capacity.

2. Privatization of Public Services, Mergers and Contracting Out

In Ohio, Michigan, Massachusetts and elsewhere, effective labor campaigns to defeat privatization efforts and protect workers disrupted by the transition to One-Stops have focused on mobilizing the community and making a strong documented case for the value of a publicly-run workforce development system.

In Ohio, the Save Our Services organizing and education campaign included valuable documentation of the merits and cost effectiveness of a publicly-run system. “Developing a World Class Workforce system in Ohio: OCSEA AFSCME Perspective.” Specific tactics to address the job security of public sector workers are also being developed.

In Los Angeles, Milwaukee, Massachusetts and elsewhere, where private sector temp agencies and non-profits have bid for placement and one-stop contracts, there has been significant opposition by

unions and community groups. The impact of these campaigns has been especially effective in documenting the failings of these private sector efforts, including poor quality of services, cost overruns and a lack of long-term commitment to the community.

Cost savings required

In several states, including Maryland, Maine, Connecticut, and California, legislation has been enacted that helps control against privatization. Most importantly, these laws require that the contracts establish a set level of cost savings.

In Maryland, for example, the costs savings must be at least 20% (Md. Ann. Code Art. 64A Section 57A-63). In California, the cost savings may not be based solely on lower contractor pay rates or benefits and wages and may not significantly undercut state pay rates (Cal. Government Code Sections 19130-19132). These state laws also regulate what may be considered “included costs” for the purposes of calculating proposed savings. Next, as discussed in more detail below, these laws include significant protections against displacement of current workers or, alternatively, the agency seeking to contract out must submit a plan of assistance to the adversely affected workers, which includes efforts to place the workers in other government jobs, provisions for the contractor to hire displaced workers, advance notice and other measures.

Other proposed protections

A range of other legal protections may also be included, such as strong control mechanisms to insure that the contract terms are upheld, guarantees that government affirmative action efforts are not adversely affected, language to the effect that the economic advantage to privatization must not be outweighed by the public’s interest in having in-house services, participation on the part of the unions reviewing proposed contracts including documentation of cost savings, etc., and specific provisions pertaining to the quality of the staff. These suggestions are described in more detail in a piece prepared by the Service Employees International Union, entitled “Suggestions for State Privatization Language.”

Another useful precedent is the San Jose Living Wage resolution, passed by the City Council last year. “A Resolution of the Council of the City of San Jose Adopting the Living Wage Policy” (Resolution No. 68554.) City contractors submit to the Living Wage resolution must also abide by a number of labor protections that target the growing reliance on contractors and subcontractors by City government as an effort to undermine the bargaining power of municipal workers and their unions. If the contract is for services that are currently being offered, the contractor or subcontractor is required to provide for continued employment of the workers subject to the “employee retention requirements” of the resolution. For example,

employment “shall be offered to all qualified retention workers” and qualified workers of the prior employer cannot be discharged without good cause for at least 90 days. Equally important, the resolution requires that all contracts subject to a competitive bidding process are subject to “third tier review,” where the City considers the bidder’s history as an employer and working condition commitments in evaluating the proposals. This includes, most notably, a “service disruption\labor peace” provision that specifically requires the City to make a determination as to “the level of vulnerability of the proposed contract to service or labor disputes and the degree to which labor peace is essential to the proprietary interests of the City.”

Maintaining Individualized Services

The shift to “co-location” of government services and increased reliance on the Internet and other technology-based resources can be a valuable process and tool for some individuals. However others could need services that are more individualized and involve direct contact with customer representatives and counselors. The quality of services provided for those in need should include personal counseling, translation assistance, and the like.

Technology can be both an asset and a barrier to service. For example, as a result of the increased reliance on telephone technology to perform many UI and ES services, including claims taking and work-search verification, more ES offices are being closed in the process which could mean a decrease in the individualized direct services many workers need.

One approach to addressing this problem is to actually mandate face-to-face services such as counseling, as required in New Jersey. Under New Jersey law, “No individual shall receive employment and training services paid for with federal job training funds unless the individual first receives counseling. . . .” (New Jersey Labor & Workers’ Compensation, Chapter 15B, Section 34:15B-35.) In Massachusetts, a law was recently enacted in response to a state proposal to close down most of the state’s UI offices and shift entirely to telephone claims taking as many states have already done. The Massachusetts law now mandates that at least fifteen UI offices around the state remain open and that a full range of multilingual services be provided for immigrant workers who are accessing both the in-person and technology-based services. (Mass. Gen. Laws Chap. 151A, Section 62A.)

First Source and Hiring Hall Requirements

In New Haven, Connecticut and Boston, the Living Wage campaigns also included a targeted focus on workforce development and the One-Stops in particular. This led to ordinances in both these cities where the one-stops serve as “hiring halls” between the workers served by the One-Stop and employers covered by the Living Wage ordinance. Specifically, the employers covered by the Living Wage law must enter into a “first source hiring agreement” with the One-Stop

requiring that the employers first post all job openings with the One-Stop (or other recognized “referral” agencies) and not publicize the job opening for a given period of time, thus giving preference to community residents served by the One-Stop. Thus, as with most first source hiring agreements, the private employer agrees to use the public sector as the “first source” for hiring in selected jobs. The government then acts as the “job developer,” identifying potential workers. While the employer is usually obligated to at least interview applicants referred by the agency, the company is usually under no legal obligation to hire them.

First source hiring is quite common in many economic development projects supported by federal, state and local government funds. See Corporation for Enterprise Development, Accountability: *The Newsletter of the Business Incentives Clearinghouse*, Vol. 1, No. 3 (March 1999), issue entitled “Linking Incentives and Employment Programs.”

The National Association of State Workforce Agencies (NASWA) has also developed training curricula and supporting materials aimed at providing front line staff in One-Stop offices. The materials have been developed by nationally recognized trainers and have been pilot tested in states. The materials were paid for through grants from the Department of Labor in cooperation with Iowa Workforce Development and the Kansas Department of Human Resources (www.icesa.org)*.

3. Employment Service

The WIA makes it clear that Congress intended a central role for the State agency designated to administer Wagner Peyser funds to provide job finding and placement services to job seekers. While local public Employment Service (ES) offices may not exist outside the One-Stop delivery system, the state must maintain Wagner Peyser funds separately to ensure a statewide delivery system of public labor exchange services.

WIA regulations specify that the Wagner Peyser agency retains responsibility for and oversight of all Wagner Peyser services provided through the One-Stop system. Each of the three tiers of labor exchange must be available: self-service, facilitated self-service and staff assisted service. The relationship between Wagner Peyser and UI agencies is strengthened in the WIA, which requires close coordination between UI and reemployment services in the One-Stop system.⁴

The WIA includes numerous requirements for coordination between Wagner Peyser and other One-Stop services. Because of these requirements for coordination, partners in the One-Stop system can agree through a MOU to have staff receive guidance from the One-Stop operator regarding the provision of labor exchange services. Personnel matters for Wagner Peyser staff, such as compensation, personnel actions, terms and conditions of employment and performance standards remain with the Wagner Peyser state agency.

*Note: OCSEA/AFSCME bargained contract language to protect unionized employees from being eroded by non-unionized workers. The contract language protects against displacement of incumbent workers and requires comparable wages for all workers.

¹ “Guidance and Instructions for Submission of the Strategic Five Year Plan for Title I of the Workforce Investment Act of 1998 and the Wagner Peyser Act”, www.usworkforce.org/siteindex

² “Workforce Investment Act Final Regulatory Process Update Summary”, p.3, (12-8-99).

³ “WIA Implementation Questions and Answers - Set Three”, www.usworkforce.org/q&a, (10-7-99)

⁴ U.S. DOL Unemployment Insurance Program Letter No.21-99, “Unemployment Insurance and the Workforce Investment Act”, www.itsc.org/ui_manage, (3-23-99).



The AFL-CIO Working for America Institute works with unions and their allies to create and retain good jobs and build strong communities through promoting high road economic strategies for individuals; employers and industrial sectors; and public economic and workforce development systems.

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