

The National Governors Association writes today to express Governors' opposition to certain aspects of the U.S. Department of Labor's Employment and Training Administration (DOL-ETA) Wagner-Peyser Act Staffing Notice of Proposed Rulemaking (NPRM), Docket No. ETA-2022-0003, RIN: 1205-AC02, Document Number: 2022-07628.

### **Wagner-Peyser Act Staffing Flexibility:**

The NPRM, as drafted, would end the longstanding Wagner-Peyser Act employment services (ES) staffing flexibility for Colorado, Michigan and Massachusetts, flexibility these states have benefited from since the 1990s. Requiring these states to end their longstanding partnerships with non-State merit staff, including the ending of contracts with local areas, would cause harmful disruptions to the provision of ES services to those who are unemployed or disconnected to the workforce. In addition to service disruptions, the requirement to transition from non-State merit staff to State merit staff in these states would result in increased costs for service delivery, amounting to an unfunded mandate and may result in fewer services provided overall.

Further, the NPRM would reverse decisions made by Delaware and Missouri to take advantage of staffing flexibility made available to them in the Wagner-Peyser Act Staffing Flexibility rule. This rule, which went into effect in February 2020, provided states the opportunity to use non-State merit staff for ES services. Delaware has since made the decision to use non-State merit staff and Missouri was approved by DOL-ETA to use non-State merit staff in the summer of 2021 and included the change in the modification of their WIOA State Plan when it was submitted in March 2022. The back-and-forth decision to allow and then disallow Wagner-Peyser Act flexibility may cause unnecessary disruptions for these states as they have made plans to use, or are already using, non-State merit staff.

The final rule should preserve the longstanding staffing flexibility afforded to Colorado, Michigan and Massachusetts since the 1990s. Additionally, the final rule should also grandfather in Delaware and Missouri, each of whom have been approved to use non-State merit staff since the final rule for Wagner-Peyser Act Staffing Flexibility went into effect in 2020.

### **Employment Services Cross-Training:**

The NPRM would also require the cross-training of Wagner-Peyser Act ES staff to assist in processing unemployment insurance (UI) claims and assisting UI claimants, so that in times of high unemployment, ES staff are available to respond to the increase in UI claims. This new requirement to cross-train ES staff is problematic for a couple of reasons.

First, the requirement to cross-train ES staff does not come with any additional funding for states to conduct the training necessary to ensure ES staff can appropriately process UI claims and respond to claimants. As a result, states will be on the hook to cover these new costs, costs that will not merely be a one-time cost but a new cost for all current and future ES staff going forward. As such, this is an unfunded mandate that states would incur.

Second, the requirement to cross-train ES staff would inherently pull ES staff off their primary job function, which in the simplest terms is to help unemployed workers get back into the workforce. For example, during the COVID-19 pandemic, ES merit staff referred and placed individuals seeking employment with employers actively seeking workers, offering valuable information, counseling, and support to workers laid off, furloughed, or forced to work reduced hours. By pulling ES staff off their ES duties to assist with UI processing, state ES services will be inherently understaffed, which means those who rely on ES staff to get a job during economic downturns will

likely experience slower service delivery at a time when they need assistance the most. As a result, unemployed workers may remain unemployed for a longer time than they otherwise would be if ES staff were focused on ES service delivery, which means that businesses may face higher UI costs due to unnecessarily prolonged periods of unemployment for workers.

The final rule should reconsider the requirement in the NPRM to cross-train ES staff to carry out UI processing in times of an economic downturn. While well intentioned, this change stands to have significant unintended consequences for unemployed workers and amounts to an unfunded mandate that states would be required to cover now and into the future.

Thank you for your consideration and the ability to provide public comment on this proposed rule.