

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Workforce System
	CORRESPONDENCE SYMBOL OWI
	DATE January 3, 2013

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 11-12

TO: STATE WORKFORCE AGENCIES
 STATE WORKFORCE ADMINISTRATORS
 STATE WORKFORCE LIAISONS
 STATE AND LOCAL WORKFORCE INVESTMENT BOARD DIRECTORS
 COMPREHENSIVE AND AFFILIATE AMERICAN JOB CENTER
 DIRECTORS
 AMERICAN JOB CENTERS

FROM: JANE OATES *Jane Oates*
 Assistant Secretary

SUBJECT: Using Funds Authorized Under Section 7(a) of the Wagner-Peyser Act of 1933 for Intensive Services as Defined by the Workforce Investment Act

- Purpose.** This guidance is a reminder that funds authorized under section 7(a) of the Wagner-Peyser Act must be used to provide core services (as defined in section 134(d)(2) of the Workforce Investment Act of 1998 (WIA) (codified at 29 USC § 2864(d)(2)) and 20 CFR 662.240) and may be used to provide intensive services (as defined in section 134(d)(3)(C) of the WIA (codified at 29 USC § 2864(d)(3)(C)) and 20 CFR 663.200.) This issuance also provides guidance to states to ensure that this flexibility does not compromise the purpose of the Wagner-Peyser Act.¹
- Background.** The Wagner-Peyser Act of 1933 established a nationwide system of public employment offices, known as the Employment Service. The Wagner-Peyser Act was amended in 1998 in Title III of WIA. In amending the Wagner-Peyser Act in Title III of WIA, Congress intended to encourage coordination in the planning and delivery of Wagner-Peyser Act and WIA Title I services, while retaining state agency administration of a separate Wagner-Peyser Act program and funding stream for the delivery of services through One-Stop Career Centers, also known as American Job Centers. As part of the American Job Center network, the Employment Service provides universal access to labor exchange services including job search assistance, job referral, and placement assistance for job

RESCISSIONS None	EXPIRATION DATE Continuing
----------------------------	--------------------------------------

seekers, re-employment services to unemployment insurance claimants, and recruitment services to employers with job openings. The Wagner-Peyser Employment Service is also an integral part of the public workforce system, providing workers, job seekers and businesses access to WIA funded services and referrals to services available through One-Stop Career Center partners.

During 2011, the Wagner-Peyser Employment Service provided nearly 22 million individuals with access to labor exchange opportunities and assisted almost 7.5 million individuals to enter employment. Demand for employment services is likely to remain high through 2013. Simultaneously, states are facing budget cuts that require them to enhance efficiencies through program and policy alignment. This guidance is intended to serve as a reminder of states' flexibility to use funds authorized by section 7(a) of the Wagner-Peyser Act to provide intensive services as defined by WIA, in addition to providing required services that comprise the basic labor exchange system. This flexibility is intended to support service delivery alignment and eliminate potential redundancies while upholding the scope and purpose of the Wagner-Peyser Act.

3. **Overview of Relevant Statute and Regulations.** States must consider the relevant statute and regulations to maintain the integrity of the Wagner-Peyser Employment Service. This section provides a synopsis of the statute and regulations to which states must conform.

How can funds authorized by Section 7(a) of the Wagner-Peyser Act be used? Section 7(a) of the Wagner-Peyser Act (codified at 29 USC § 49f) authorizes states to use 90 percent of funds for labor exchange services such as job search and placement services to job seekers; appropriate recruitment services for employers; program evaluation; developing and providing labor market and occupational information; developing management information systems; and administering the work test for unemployment insurance claimants.ⁱⁱ As part of the services provided, states must maintain, at a minimum, a basic labor exchange system, which, according to the regulation,ⁱⁱⁱ has the capacity to:

- (a) Assist jobseekers in finding employment;
- (b) Assist employers in filling jobs;
- (c) Facilitate the match between jobseekers and employers;
- (d) Participate in a system for clearing labor between the states, including the use of standardized classification systems issued by the Secretary, under section 15 of the Act; and
- (e) Meet the work test requirements of the state unemployment compensation system.

Beyond the basic labor exchange functions described above, this guidance is a reminder that states have discretion to use funds authorized by section 7(a) of Wagner-Peyser Act to provide intensive services consistent with the needs of job seekers and businesses in the local labor market. Specifically, funds authorized by section 7(a) of the Wagner-Peyser Act **must** be used to provide core services^{iv} and **may** be used to provide intensive services.^{v,vi} This means that, in accordance with 20 CFR 652.206, states have the flexibility to use a portion of funds authorized under section 7(a) of the Wagner-Peyser to fund WIA intensive services defined in section 134(d)(3)(C) of WIA and discussed at 20 CFR 663.200. Specifically,

states may use Wagner-Peyser 7(a) funds to provide intensive services, including those enumerated in section 134(d)(3)(C) of WIA (i.e. comprehensive and specialized assessments, development of an individual employment plan, group and individual counseling, case management for participants seeking training services, and short-term prevocational services) and to provide other intensive services, as stated in 20 CFR 663.200 (i.e. literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience may be provided, based on an assessment or individual employment plan.)

The regulations require that core and intensive services be provided consistent with the requirements of the Wagner-Peyser Act, meaning that the services are provided: (1) consistent with the needs of job seekers and employers; (2) in accordance with a local Memorandum of Understanding;^{vii} and (3) ensuring universal access and maintaining the basic labor exchange system described above.

Must core and intensive services funded by the Wagner-Peyser Act be provided by merit staff? States should be aware that this guidance does not change the requirement that state merit staff employees deliver labor exchange services provided under the Wagner-Peyser Act.^{viii} Under the longstanding practice of the Department of Labor, Employment Services that are not performed by state merit staff cannot be charged to the Wagner-Peyser Act grant. Therefore, core and intensive services funded under the Wagner-Peyser Act must be performed by state merit staff.^{ix}

In order to more fully align service delivery, states may elect to allow American Job Center operators to provide guidance to state merit staff employees regarding the provision of labor exchange services in accordance with the Wagner-Peyser Act.^x As part of the local Memorandum of Understanding, the state agency, as a required One-Stop partner, may agree to have staff receive guidance from the American Job Center operator regarding the provision of labor exchange services. The guidance given to employees must be consistent with the provisions of the Wagner-Peyser Act, the local Memorandum of Understanding, and applicable collective bargaining agreements. Personnel matters, including compensation, personnel actions, terms and conditions of employment, performance appraisals, and accountability of state merit staff employees funded under the Wagner-Peyser Act, remain under the authority of the state agency.

Who makes the decisions about funding for core and intensive services? The state agency retains responsibility for all funds authorized under the Wagner-Peyser Act, including those funds authorized under section 7(a) required for providing the services and activities delivered as part of the American Job Center network.^{xi}

May states provide training under Section 7(a) of the Wagner-Peyser Act? Funds authorized under section 7(a) of the Wagner-Peyser Act may not be used for training as defined at section 134(d)(4)(D) of WIA.

4. **Guidance for Aligning WIA and Wagner-Peyser Funded Intensive Services.** The Department of Labor (the Department) supports states' efforts to align employment and training programs and braid various funding sources to enhance integration and streamline

service delivery. The Department is committed to promoting and encouraging the seamless delivery of services to employers and job seekers by designing the operational structure to integrate similar services across funding streams, reduce duplication, and ensure that job seekers have access to the full range of employment and training services for which they may be eligible. When deciding on whether to use Wagner-Peyser section 7(a) funds for intensive services, states must ensure that the services rendered are consistent with the needs of job seekers and employers. There are many circumstances where this flexibility will help to enhance integration and streamline service delivery.

In states that have full functional alignment between Wagner-Peyser-funded and WIA-funded staff in the American Job Centers, the use of Wagner-Peyser section 7(a) funds for WIA intensive services allows states to remove artificial service delivery barriers that result in participants being “handed off” to the WIA staff for intensive services. Participants would be able to access the same array of core and intensive services from Wagner-Peyser-funded and WIA-funded staff in the American Job Center. Many states have already moved toward a functional alignment of Wagner-Peyser, WIA, Trade Adjustment Act, and, in some cases, Unemployment Insurance, Supplemental Nutrition Assistance Program (SNAP) Employment and Training, and Temporary Assistance for Needy Families (TANF.) In a functionally aligned system, services are supervised and managed according to the functions performed, rather than based on the organizational affiliations of the staff assigned to perform the functions and the funding streams used to pay for services.

In states where the large number of job seekers who are in need of training exceeds the WIA training funds available, a local workforce investment board, in conjunction with the American Job Center operator and the Wagner-Peyser partner, could enter into a Memorandum of Understanding that provides for the provision of intensive services by Wagner-Peyser-funded staff. This would free up a greater portion of WIA funds for training.

There may be other circumstances where this flexibility will help to enhance integration and streamline service delivery; states should contact their Employment and Training Administration (ETA) regional office point of contact to discuss potential service delivery strategies using Wagner-Peyser funds.

Given limited resources, a state’s decision to use Wagner-Peyser section 7(a) funds for intensive services should support alignment efforts and improve services to job seekers and businesses; however, this goal must be balanced with the requirement to fulfill the core mission of the Wagner-Peyser Act to provide universal access to basic labor exchange services. To maintain this balance, states must adhere to all statutory and regulatory requirements when considering the use of Wagner-Peyser Act funds.

5. Inquiries. Please direct all inquiries to the appropriate ETA regional office.

¹ Please see 20 CFR 652.2 for full regulatory text.

ⁱⁱ The Wagner-Peyser Act also authorizes states to use ten percent of funds for (1) performance incentives; (2) services for groups with special needs; and (3) the extra costs of exemplary models for delivering labor exchange services. This guidance does not address section 7(b) or (c) of the Wagner-Peyser Act.

ⁱⁱⁱ Please see 20 CFR 652.3 for full regulatory text.

^{iv} Defined at Workforce Investment Act of 1998, section 134(d)(2) and 20 CFR 662.240.

^v Defined at Workforce Investment Act of 1998, section 134(d)(3)(C) and 20 CFR 663.200.

^{vi} Please see 20 CFR 652.206 *May a State use funds authorized under the Act to provide "core services" and "intensive services" as defined in WIA?* for applicable regulatory text.

^{vii} Please see 20 CFR 652.201(b)(2) and 20 CFR 662.300 for applicable regulatory text.

^{viii} Please see 20 CFR 652.215 for applicable regulatory text.

^{ix} Three states have received an exemption from the Employment Service merit staffing requirements under the Wagner-Peyser Act. Those three states are Colorado, Massachusetts, and Michigan.

^x Please see 20 CFR 652.216 for applicable regulatory text.

^{xi} Please see 20 CFR 652.203 for applicable regulatory text.