



FEB 05 2016

The Honorable Richard Snyder
Governor of Michigan
P.O. Box 30013
Lansing, MI 48909

Re: Requirement for State Merit-Staffing of Agricultural Employment Services Outreach Workers

Dear Governor Snyder:

This letter is to inform you that the State of Michigan is not in compliance with the requirements for State merit-staffing of Wagner-Peyser (W-P) Act agricultural employment services outreach workers. Wagner-Peyser employment services to migrant and seasonal farmworkers (MSFWs) must be provided by State merit-staffed employees.

As of December 5, 2015, Michigan terminated the State employment of its thirteen W-P agricultural employment services outreach workers, and transferred those positions to local Michigan Works! agencies. This action violated both the express terms of a settlement agreement between Michigan and the Department of Labor ("Department") regarding Michigan's merit staffing of W-P services as well as the applicable regulations governing provision of W-P services.

On July 31, 1998, Michigan, through Governor John Engler, and the Department, through Secretary Alexis M. Herman, signed a settlement agreement (1998 Settlement Agreement) under which Michigan agreed to reinstate merit staffing of employees providing W-P employment services, to drop its appeal of a lawsuit regarding merit staffing then pending in federal court, and to not pursue other legal, legislative, or policy challenges to the merit staffing requirement. In this settlement, the Department granted Michigan a limited waiver of the W-P merit staffing requirement.

In particular, the 1998 Settlement Agreement permits Michigan to use either State or local merit staff for many traditional W-P services, but explicitly requires State merit staffing for services to particular populations, including provision of W-P employment services to MSFWs as noted in the 1998 Settlement Agreement, at pp. 2-3 (*italics added*).

Effective July 1, 1999 and thereafter, [Michigan Jobs Commission (M.J.C.)] will utilize as service providers for Wagner-Peyser Employment Service, TAA and NAFTA-TAA

services only merit-staffed State employees or merit-staffed local government employees. Merit-staffed local government employees shall be limited to employees of local units of government, special purpose units of government, school districts, intermediate school districts, public community colleges, and public colleges and universities.

Effective upon the approval of M.J.C.'s PY 1998 Wagner-Peyser Plan of Service and continuing after July 1, 1999, M.J.C. will use *State employees to provide Wagner-Peyser employment services* to veterans, *migrant and seasonal farmworkers*, disabled individuals and to certify registrations for the UI work test.

The Department has not expanded this limited waiver, which remains in effect unchanged. *See* Letter from Portia Wu to Rick Snyder (July 1, 2015) (noting that, “to prevent significant disruptions in service-delivery and to help facilitate implementation of WIOA, the Secretary has elected to continue all current exemptions to the Wagner-Peyser merit staffing requirement. . . which remain subject to the conditions under which they were initially granted.”).

Furthermore, both the current and proposed regulations regarding provision of W-P employment services require that these services be provided by State merit staff. The existing regulations for implementing the W-P Act, as amended by the Workforce Investment Act of 1998 (WIA), plainly require that “labor exchange services provided under the authority of the [Wagner-Peyser Act, as amended by the Workforce Investment Act of 1998 (WIA)], including services to veterans, be provided by State merit-staff employees.” 20 C.F.R. § 652.215.

The proposed regulations for implementing the W-P Act, as amended by the Workforce Innovation and Opportunity Act of 2014 (WIOA) explicitly state that the § 652.215 requirement for State merit-staffing is not changed, save for the technical alteration of “WIOA” for “WIA.” 80 Fed. Reg. 20689, 20939 (Apr. 16, 2015) (setting forth the text of the proposed 20 C.F.R. § 652.215, which “stipulates that only State merit staff may provide Wagner-Peyser services”). Furthermore, § 653.107(a)(4) of the proposed regulation would additionally require that “[t]he 20 States with the highest estimated year-round MSFW activity, as identified in guidance issued by the Secretary, must assign, in accordance with State merit staff requirements, fulltime, year-round staff to conduct outreach duties.” 80 Fed. Reg. at 20940. Historically, Michigan is among such States. Therefore, though Michigan is obligated to comply with the terms of the 1998 Settlement Agreement, it is pertinent to note the core consistency between the settlement and the regulations. The only difference is that the regulations require that only State merit staff provide W-P Act services, while the 1998 Settlement Agreement allows general W-P Act service to be provided by local merit staff, but requires that W-P Act services to designated populations—among them MSFWs—be provided by State merit staff.

For all these reasons, the existing and continuing obligation of Michigan to employ State merit-staff employees to provide W-P services is clear.

In a conversation between ETA staff and representatives of the Michigan Workforce Development Agency on December 10, 2015, Michigan asserted that, consistent with the terms of the 1998 Settlement Agreement, it may employ local merit-staffed employees, overseen by a State merit-staffed State Monitor Advocate (SMA), to provide W-P employment services to MSFWs. Such an arrangement conflicts with both the settlement and the regulations, and is therefore non-compliant.

The 1998 Settlement Agreement explicitly dictates that Michigan “will use State employees to provide Wagner-Peyser employment services to . . . migrant and seasonal farmworkers.” Provision of direct services to MSFWs by local merit staff is simply not contemplated by the settlement. In addition, the responsibilities of MSFW outreach workers include substantial field-based outreach work, while the SMA has a supervisory, monitoring role. *Compare* 20 C.F.R. §§ 653.107(i)-(j) *with* 20 C.F.R. §§ 653.108(g)-(t). In as much as the Michigan Workforce Development Agency is the successor of the Michigan Jobs Commission this agreement continues to apply to Michigan. Therefore, it is insufficient for Michigan to merely employ a State merit-staffed SMA, with the MSFW employment services delivered via local merit staff.

The Department therefore requires that Michigan reopen and hire State merit-staff positions for provision of Wagner-Peyser employment services to migrant and seasonal farmworkers within sixty (60) days.

Sincerely,



Portia Wu
Assistant Secretary

Enclosed: 1998 Settlement Agreement