**WorkforceGPS**

**An Overview of the Wagner-Peyser Act Staffing Flexibility Final Rule**

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*Transcript by*

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JON VEHLOW: Welcome to Wagner-Peyser Act Employment Service Staffing Flexibility under the 2020 Final Rule. So without further ado, I'd like to kick things off to our moderator today, Kim Vitelli, acting administrator, ETA Office of Workforce Investment. Kim?

KIM VITELLI: Thanks, Jon. Welcome, everyone, to the Wagner-Peyser Act Employment Service webinar on Staffing Flexibility under the 2020 Final Rule. I can see lots of you logging in, lots of state friends and state leadership. We're very excited to talk to you all today. We're particularly glad that we can start our discussion this morning with two leaders from the Department of Labor; Assistant Secretary John Pallasch and Assistant Secretary John Lowry.

John Pallasch was confirmed as the Assistant Secretary for Employment and Training on July 11, 2019, and was sworn in on July 24, 2019. This position marks Assistant Secretary Pallasch's triumphant return to the U.S. Department of Labor where he previously served in the department's office of Administration and Management and as deputy assistant secretary in the Mine Safety and Health Administration.

Before joining us here at the ETA, Assistant Secretary Pallasch was the assistant director of the Kentucky Department of Labor's Office of Employment and Training where he led initiatives similar to those that we're about to discuss today and that we continue to work on here at the Employment and Training Administration to improve outcomes for workforce and education programs, to increase accountability and performance of programs, and to streamline the administration of job training and workforce programs. An Illinois native, Assistant Secretary Pallasch has a Bachelor's of Science degree from Ohio State University, a Juris Doctor from Pepperdine University School of Law. Welcome, Assistant Secretary Pallasch.

JOHN PALLASCH: Thank you, Kim. And thank you, everybody, for joining on the phone. When the final rule was published last month, I asked Kim and her team to put together this webinar so that we could share with you some of the insights, some of the changes, and some of the additional flexibility to create it within the rule.

Shortly after we had scheduled the webinar, John Lowry joined the department. And I asked him to join this webinar so that he was able to share with you some additional flexibility coming out of the Veterans Program. So Jonathan, if it's OK with you, I'll turn it over to you to talk a little bit about your flexibility. And then I'll go into the Wagner-Peyser rule.

JOHN LOWRY: Great. Thanks, John. So great to be here. I've done five weeks into the role leading VETS. And we are fully aligned with ETA here to make sure that we are driving the kind of flexibility to make it easier for state workforce systems and our other partners to be able to really improve the employment prospects for our nation's transitioning service members, Veterans and their spouses.

I then spent a fair amount of time in my early days just getting out and about. I've been to some AJCs and that was the partners in the Midwest, as well as here locally. And it's been really uplifting to see the level of partnership in the field. And that's just trying to align and support what you're doing, John, to drive that flexibility to that end.

We just published a Veterans' Program Letter number 1 track 20. Hopefully, if you've seen it, subject – (inaudible) – Disabled Veterans Program Outreach program specialist dev-ops and Local Veterans Employment Representative, LVER. Staff positions is the subject line.

And what this program letter does is clarify the process for the state workforce agencies to consolidate the dev-op specialist and the LVER staff and do a full-time consolidated dev-op LVER position. This is sort of follow-up guidance from what was published previously. I think, Maria, later will talk about the details of it.

But basically, what it does is it allows you to have more flexibility, and it removes no more than 10 percent expectation than we had previously published. So as long as you're meeting the criteria, which is basically making sure that the consolidation of the position is helping more efficiently administer the service and does not hinder the provision of service in any way, then this is something that we're certainly in support of.

Our hope is that we'll give you the necessary flexibility to do your job. And that's just a preview of other things to come in this thing. And again, we'll welcome any questions you might have on that. And I appreciate it. So, John, I'll kick it back to you.

MR. PALLASCH: Thanks, John. Yeah. And this is an issue that was near and dear to my heart while I was in Kentucky. And I appreciate Assistant Secretary Lowry's leadership on this. Like he said, he's been here five weeks and he's already issuing VPL, Veterans' Program Letter. So good luck to you and thank you for that additional flexibility. That's a nice segue into the Wagner-Peyser rule and what we were trying to accomplish with the Wagner-Peyser rule.

Kim, with the rest of the folks, we'll go into more detail, but I just wanted to give you a high level of what the thinking was from my office in terms of getting this rule out there, is allowing you at the state level to have the maximum flexibility to staff your Wagner-Peyser program, whether that's using state staff, whether that's using contract staff, whether that's using some combination thereof.

Just making sure that we were not imposing upon you administrative requirements that were not necessary for you all to administer the program efficiently. For those of you that are avid readers of rules and regulations coming out of the Department of Labor, you'll notice we issued a notice of proposed rulemaking for the trade program.

And there were similar flexibilities proposed in that rule. Now the trade rule is not yet final, but you can see a theme throughout the things we're trying to do here in DC, which is provide the State's and the local's maximum flexibility to set up a workforce system that works for you. I started to talk about this idea of one workforce and realizing that ETA is not the workforce agency, nor is the Department of Labor.

Workforce is the Department of Labor and the Department of Education and the Department of Transportation and the Department of Veterans Affairs. All of these departments have workforce programs, so how can we as a Federal community continue and talk more about speaking with one voice?

And that's flexibility with regard to the consolidated position, our flexibility with regards to the Wagner-Peyser rule, the proposed flexibility in the trade rule, those are all steps towards trying to provide maximum flexibility for you, the folks who are actually serving the customers, to focus more on serving the customer rather than on administrative and compliance burdens that we've placed upon you to meet these very strict guidelines of you must do X and Y and you can only do it in this way, hoping to help you to kind of pivot your focus on what do we need to do to best serve our customers? So I appreciate the attention to this.

I think John mentioned there's 450 people online. So it's great that there's a lot of folks here listening to this message, because I do think there is great flexibility in this rule. And we will, as long as I am sitting in this chair, continue to work towards more flexibility for you and at the state and local level to better serve those customers.

We have other ways to hold you all accountable. We will do that through data and performance. I don't want to use regulations that impose unnecessary burdens on you in terms of staffing to hold you accountable. That doesn't really positively impact outcomes for our customers. And that's really what we're after.

So with that, I will thank everybody on the phone. I will turn it back over to Kim and allow her to walk you through along with some folks on her team exactly what this rule is and how we hope you take advantage of it. And if you've got questions, I encourage you to raise them with Kim. And if you log off and you go home and you think of another question, then I encourage you to reach out to your regional administrators.

I made it very clear to the regional administrators that they are to help facilitate and to help really serve the states and make sure that they've got those relationships built and that they're interacting and that they're providing you the technical assistance you all need. So, please, don't be afraid to reach out to Kim or any of the RAs, because we're all on the same page in terms of where we're trying to go with workforce. So with that, I'll stop talking, Kim.

MS. VITELLI: Thank you, Assistant Secretary Pallasch and Lowry. And thank you also for your service, Assistant Secretary Lowry. Mr. Lowry is a Marine Corps veteran who served more than 15 years on active duty and an additional 10 years in the Marine Corps reserve, retiring at the rank of colonel. So we're really glad to have such esteemed leaders here at the department to provide more flexibility for States.

We're going to shift to walking through the rule and talking about some of the changes that we want you to be aware of. The speakers for today's webinar include Andy Ridgeway, the unit chief for Adult Services at ETA's Office of Workforce Investment; Juan Regalado, our national monitor advocate, also in the Office of Workforce Investment here in the Employment and Training Administration; and Maria Temiquel, the director of grants and training at the Veterans' Employment and Training Service, our sister agency.

And I think that we're actually going to just dive right into it. Go ahead, Andy.

ANDY RIDGEWAY: Thanks, Kim. And thanks to Assistant Secretary Pallasch and Assistant Secretary Lowry. Today's objectives are, as we discussed, we're going to describe changes to the 2020 final rule to allow states flexibility in the delivery of the Wagner-Peyser Act-funded services. Without further ado, we'll start that again.

During this time, I want to encourage you to submit any questions throughout the webinar. We'll try to answer them at the end. As far as Assistant Secretary Pallasch, we'll try to address them later if we can't address them at the end of today's session.

And we'll find a way to try to answer your questions, because we want to work with you as you decide how you want to implement this rule and what flexibility you want to pursue as you do that.

As mentioned earlier, the Wagner-Peyser Act staffing flexibility final rule was published in the Federal Register on January 6, 2020, with a 30-day effective date. So that means tomorrow, February 5, the rule goes into effect. The requirement the states must provide Wagner-Peyser Act employment service activities through state merit staff is no longer required beginning tomorrow, February 5, 2020.

This doesn't mean that anything has to change tomorrow, but the requirement from UI that it goes into place, that you have to do it is gone. This means that state workforce agencies can begin using alternative staffing arrangements for the delivery of employment services under the Wagner-Peyser Act. And we'll talk a little bit about what those are and some of the other options and changes that the rule has going forward. So moving long, we have some key differences here.

The flexibility granted by the final rule allows states to stack employment service activities, including labor exchange services, in innovative and efficient ways. We can turn enhanced resources available to serve America's workers and employers. Wagner-Peyser Act itself does not mandate specific stacking requirements and Section 3 of the act requires sector waivers of assistant coordinating the ES offices by developing and prescribing minimum standards of efficiency.

Historically, the department has used the authority in this provision to require states to provide services with state merit staff. However, in finalizing this rule, the department of adopting interpretation allows states to use flexibility to use staffing arrangements that best suit their needs.

This flexibility will allow states to provide Wagner-Peyser services through state merit staff, other state staff, or through subrecipient agreements, the local governments or private entities, or some combination of these arrangements or other allowable staffing solutions, by the uniform administrative requirements, cost principles, and audit requirements for Federal awards.

One clarifying note that we'd like to discuss here is how Wagner-Peyser Act and unemployment insurance program intersect. We do note that only merit staff employees may make determinations about an individual's eligibility or non-eligibility for unemployment benefits.

So nothing about this rule changes the UI requirements for eligibility determination. States will need to have appropriate referral pathways in place to ensure this continued requirement is met. So we just want to make sure that people know about that UI overlap.

So in addition to removing a state merit staffing requirement at the Federal level, the rule made some other changes that were necessary to better align the Wagner-Peyser Act definitions with the new flexibility and also to improve alignment with other WIOA programs.

It's in the final rule, but just to give you some examples we added or changed definitions that include the complaint system representative. That's for the complaints in the Wagner-Peyser Act. Primarily, it's for the monitor advocate system, but also for the rest of the Wagner-Peyser Act. We changed the definition of the employment service office. We've changed the definition of employment service office manager.

And then the monitor advocate specific terms – the field checks definition, field visits, outreach contact, outreach staff, respondent, and state workforce agency official. Those are all terms that have either changed or been slightly modified or added to address some of the other changes in the rule. So I wanted to flag that for you.

And then, additionally, more specifically, the rules have a couple minor changes to clarify the difference between who must be a state workforce agency official, or a state employee, and who may be providing Wagner-Peyser/ES activities, employment service activities.

ES staff definition has been adjusted to account for all of the staffing arrangements and who may be providing those services. So as you can see in the definition here, ES staff means individuals including, but not limited to, state employees and staff on the subrecipient where funded in whole or in part by Wagner-Peyser Act funds straight-out activities authorized under the Wagner-Peyser Act.

So throughout the final rule for Wagner-Peyser, it uses the term ES staff. The rule continues to use that term. However, the definition of the term has been adjusted to account for the increased state flexibility in who may be providing those services. So those – (inaudible) – were made so that the rule reads consistently throughout.

Also note, the state workforce agency official means an individual employed by the state workforce agency working under the subdivisions. So in places where SWA official is used, that does mean that they still have to be a state employee or they're required a Federal a state employee.

You'll see that a lot in the monitor advocate sections, as well as the complaint sections of the ranks in 653 and 658. We talked about how you can flexibly arrange the services whether it's ES staff, or Juan in a little bit will talk about the monitor advocate flexibility. But what requirements are there when you take these funds and provide them to a local government or to a private vendor?

There are still some requirements consistent with the Uniform Guidance. If a state chooses to not use state staff or state merit staff to provide some or all of their ES activities, those arrangements would be considered subawards under the Uniform Guidance. And if you're familiar with the Uniform Guidance, subawards have their own definition and their own meaning. So under the Uniform Guidance, states have the flexibility to enter into contracts or any forms of a legal agreement with their Wagner-Peyser service providers.

However, the Uniform Guidance considers all these arrangements, regardless of the form of the arrangement between the state and its Wagner-Peyser Act service provider, to be a subaward, subrecipient relationship.

Because the Wagner-Peyser Act service provider will be a subrecipient, the service provider will be subject to the requirements of the Uniform Guidance including the financial and program management, monitoring, and cost principle requirements. Uniform Guidance is applicable to all recipients and subrecipients of DOL awards including commercial or for-profit entities.

The Department of Labor obtained approval from OMB to expand the definition of – (inaudible) – at 2CFR 2900.2 to include commercial for-profit entities. And 2CFR 2900 is the Uniform Guidance, is the shorthand for it.

All subrecipients must adhere to the salary and bonus limitations, which means anyone being directly or indirectly paid from subaward cannot make more than a Federal executive level 2 salary. And additional information can be found at the Office of Personnel Management website or in TEGL 05-06. And this requirement comes for our annual appropriation from Congress every year. So this applies for anyone who may be a subrecipient of Wagner-Peyser funds.

Lastly on this, consistent with 20CFR 683.400 – the last bullet there – the department will continue to conduct monitoring to ensure states and its subrecipients are complying with all the requirements of the Wagner-Peyser Act – (inaudible) – regulations and the Uniform Guidance.

So that was a lot. I think a lot of you are familiar with it how WIOA works with contracting for services. And I know this is a little new for the Wagner-Peyser space, but it should be pretty consistent with how you do it for the WIOA Title I programs. But we do know this is kind of new for Title III under Wagner-Peyser.

OK. So now we'll move into how to address the final rule flexibilities in your state plans, which are quickly coming down the line. So now that we talked about how alternative staffing arrangements are addressed in the Uniform Guidance, we're going to talk about the state planning process for 2020.

We know that many states are well on their way to being ready to submit their state plans. The final rule did make some changes to the Wagner-Peyser section of the state plan ICR. For those of you out there, it's probably more of a portal that you need to look at that the state plan portal includes these changes already. But ultimately, it's the ICR that lays out the requirements.

We just wanted to note that DOL along with its partners has also recently released yesterday additional guidance on the state plan submission process in TEGL 10-19. So please take a look at that as well. We can quickly talk through how this applies to Wagner-Peyser. And hopefully, this doesn't create too much heartburn for anyone. We hope it won't.

So the major changes to the ICR now ask for states to describe how they're staffing labor exchange services under the Wagner-Peyser Act. This is an opportunity for the state to discuss they're going through these alternative staffing models, or also it can signal to the department that they are retaining their state merit staff.

The ICR also made some minor changes to the agricultural outreach plan section. And all these changes can be seen in the training and employment notice that the department issued a couple weeks ago, TEN 13-19. Attachment 1 of that TEN does have a state plan ICR and bolded the things that changed or are new.

So if you haven't looked at it yet, I'd encourage you to do that. It's also on the file share along with the BPL that our colleagues and VETS talked about that final show as well. The other change to the ICR is that the requirement the states assure that Wagner-Peyser Act-funded staff be state merit staff has been removed.

There used to be a requirement that the state had to assure that they were complying with the regulation as it was. It's not a requirement anymore, so we removed it as an assurance that the states have assure to. There has now been an assurance that's been added that addresses services to migrant seasonal farm workers, though. So we do want to point that out. And I'm sure Juan will talk a little bit more about that when we get to the state monitor advocate section of the presentation.

We know you're very well on your way to probably submitting your state plans in the next month or so. But as far as if you want to implement this early or not, we kind of have some instructions for how you can do this.

We know some states may be eager to implement these changes, and others may study it to take some time to decide how they want to proceed. And while there's many continue with the state merit staff in their state, we want to support you in whatever decision you make. If you are wanting to pursue the flexibility immediately, we do ask that you describe how you are doing it as part of your state plan submission.

We also note that for activity – (inaudible) – state monitor – (inaudible) – system, that the state workforce agency must provide the proposed agricultural outreach plan to the grantees and other organizations to allow for at least 30 days of review element.

That's not a new requirement based on the final rule, but it is something associated with the state plan that you have to deal with, so we wanted to make sure that you knew of that going forward. States interested in implementation should ensure all aspects of the state plan have had all the requirements, and states seeking implementation can contact the appropriate regional office for additional technical assistance.

So that's for if you want to start now immediately, those are some tips for how to proceed with the state plan. So we want to take a look at this, we want to study this rule, we want to dive in and see if this is right for us, right for our state, or to what degree we want to implement it. Do we want to implement it part of the way?

For many, states may decide to pursue the flexibility after the 2020 state plan's in process. States will need to submit a modification for their state plan that describes how they are staffing the labor exchange services under the Wagner-Peyser Act in accordance with the state plan ICR, which is a state plan portal.

So if you go ahead and keep your merit staff for now and then in the future you want to explore it, you just need to submit a mod to your approved state plan after 2020 and it'll be reviewed through the normal modification process.

So we anticipate probably a lot of states may do it this way. I just want to make sure folks know about that. And lastly, if you are not opting to use the flexibility currently or in the future, we do note that the final rule does not require states to change their staffing arrangements. There is no requirement that you change anything regarding that. States may continue to utilize state merit staff if they choose.

We do note that if your state does not need to change the staffing arrangements, that you will still need to address how you are providing labor exchange services in the state plan with state merit staff. So for this year's process, we do not expect a lengthy description given the time constraints.

So you can indicate that you are continuing to utilize state merit staff in the state plan portal if that's how you're proceeding for PY 2020. With that, I will now turn it over to Juan Regalado, the national monitor advocate at ETA, who will walk through some of the specific changes made to the monitor advocate system under this final rule. Juan, I turn it over to you.

JUAN REGALADO: Thank you, everybody. Thank you and hello, everyone. The changes also give states the flexibility to staff employment – (inaudible) – services and what each state finds the most effective and efficient way using a combination of state employees, local government employee service providers in other staffing models, in a way that makes the most sense for them. This includes how the state workforce agency provides staff to conduct the outreach and how its staff significant MSFW One Stop Centers.

As mentioned about the state workforce agency official definition, the state monitor must be a state workforce agency official, which means an individual employed by the state workforce agency or any of its subdivisions. We will discuss the informal resolution change later in this presentation.

Because the new definition of staff includes ES staff, subrecipients may provide outreach activities as described at 20 CFR 653.107B. The state monitor must remain a state worker agency official with the continued extensive responsibility which did not change with this rule, the extensive responsibilities identified at the 20 CFR 653.108.

The staffing flexibility for outreach staff in the current regulations, at least for the next 12 hours, the criteria for hiring outreach workers was this – they either have to come from MSFW backgrounds, or they have to speak a language common among the MSFWs, or they have to be racially or ethnically representative of the MSFWs in the service area.

It is important to note that outreach staff now must speak the language of a significant proportion of the State's MSFW population and either come from MSFW backgrounds, or have substantial work experience in farmworker activities. And the staffing for ES staff at significant MSFW One Stop Centers.

The state workforce agencies must continue to implement and maintain the program for staffing and significant MSFW One Stop Centers by providing ES staff in a manner facilitating the delivery of employment services tailored to the special needs of MSFWs including the same criteria I just went over for the outreach staff.

Please note that the department removed all affirmative action language at 20 CFR 653.111. However, the department added a provision stating that state workforce agencies remain subject to all applicable Federal laws prohibiting discrimination and protecting equal employment opportunity.

The staffing flexibility for the state monitor advocates – In appointing a state monitor advocate, the state administrator must inform farmworker organizations and other organizations with expertise concerning MSWFs of the opening and encourage them to refer qualified applicants to apply. Among qualified applicants, the state workforce agencies must seek persons who are from MSFW backgrounds, or who speak the language of a significant proportion of the State's MSFW population, or who have substantial work experience in farmworker activities.

The two changes to the informal resolution of complaints are one, the responsibility of this process rests with the state administrator; and two, the informal resolution of complaints must now be documented in the complaint logs. A reminder – informal resolution means the complaint is resolved at the local level without the need for referring the complaint to an enforcement agency. If we remember, the complaint must still be signed by the complainant.

State workforce agencies will now be reporting to the department the total number of complaints that were resolved informally. This is a new data element that will be reported in the labor exchange agriculture reporting system or the LEARS reports.

Now I will turn it over to Maria, who will go over the Jobs for Veterans state Grants, or JVSG. Thank you.

MARIA TEMIQUEL: Great. Thank you, Juan. Hi. My name is Maria Temiquel and I'm with VETS. I did want to just give you a couple pieces of information here for our VPL. It is a Veterans program whether it's for 0120. And it is streamlining the process for our JVSG grantees to request consolidated positions.

So we talked about in our original document back in 2016, we provided some guidance that we were looking for. But in this new 2020 policy, we've streamlined it. So the grantees can just submit an area or a justification on why the consolidated positions are going to promote a more efficient administration of services to Veterans.

And so that will be coming up through the normal grant modification process. So if there are JVSG grantees who would like to request consolidated positions, be sure that you're applying the guidelines in VPL 0120 and we'll entertain those and process them as normal. Thanks a lot. And we're going to pass it right back to Andy.

MR. RIDGEWAY: Thanks, Maria and thanks, Juan. Yeah. We've actually moved pretty quickly through the presentation. We'll have some time here to go over some of the resources from the other takeaways from it. We'll have a little bit of time to try and answer some of your questions.

So feel free to continue to type questions in as they come in. No problem looking into all of them, but we will try and answer some of them and then get the rest of the answers one way or another. So just in short, we threw a lot at you, so just a quick summary. Will this impact the quality of career and labor change services delivered through the AJCs?

Our stand is that, no. It won't. The quality should still be there. In fact, it could improve it. We're basically putting the responsibility on the state, who know their systems best, to be able to identify what works best, whether that is through the continued use of state merit staff, whether it's through maybe state staff who are non-state merit staff – it's their complicated term that we'll try to get answers to you if you have questions and that will weather through February we're doing for the subrecipient relationship similar to how it's done on a WIOA, the WIOA Title I programs.

So the rule just simply removes the one-size-fits-all, Federally-mandated merit system personal requirement. We still require that appropriate standards and quality and service delivery are maintained.

In administrating the ES program, states are required to follow Uniform Guidance at 2 CFR parts 200 and 2900. If a state takes advantage of the state staffing flexibility, this rule provides – it has another entity provided Wagner-Peyser ag-funded services – that entity is considered a subrecipient under the Uniform Guidance. That's what that means basically.

So if the state receives the money from DOL, and if you at the state level do a contract or some arrangement, that is considered a subaward for the purposes of the rule they have to follow regarding the money. So I just wanted to make sure that point was clear. And then with that, all the Uniform Guidance's requirements for subrecipients apply including all monitoring financial and performance requirements.

And a final note – there's a requirement the state must change their staffing arrangements, but it just removes the Federal requirement if they do so. So now I'll turn this back over to Kim Vitelli, our moderator for this, to move us along.

MS. VITELLI: Thanks, Andy and Juan and Maria. We want to share with you some resources as you digest all this information. The first one is, of course, the actual final rule on Wagner-Peyser Act staffing flexibility at 85 FR 592. And they provide a link there for you on how you can get directly to the text of the final rule.

Training and Employment Notice 13-19 shared with everybody. That republished the final rule, and it has some additional information in it, such as an explanation of how the state plan question requirement changed, pulling some text out to make it a little bit easier for you to read.

There's no new requirement in the training employment notice. It just explains within the final rule and how you can find what you need. And then, of course, the state plan ICR – which is the information collection request – that's a list of questions that states should be answering in their state plans that they're already hard at work on and often nearly complete on as the required element for the submission of the unified or combined state plan. And we provide a link there for you also, as well as uploaded service program letter into the webinar news.

Thank you, everybody, for your attention in listening to us. And for our speakers today, we're going to shift to questions. So if you haven't already typed in your question, you sure can now. It looks like there's already some in the queue.

And we'll take the first couple that we see. And then we'll also look for additional questions to make sure we're answering everything. One of the first ones that we noticed was a question on whether there will be restrictions on funding that can be allocated to (severance ?) at the end at WIOA Title I allocations where 85 percent go to local workforce development areas.

So, of course, many of you are very familiar with WIOA, the Workforce Innovation and Opportunity Act, Title I funds. The states may reserve up to 15 percent of their state allotment. You might hear it called the governor's reserve. And of the carry on required an optional Statewide activity. The rest goes to local areas, which is also a subtle word.

When the state sends half the money down to the local area, that's a subtle word. And the local areas are the subrecipient. So final ties actually also allow states to reserve 10 percent of their funds in Wagner-Peyser at Section 7A and 7B. And they can reserve that 10 percent for varying activities. That's not anything changed by the rule.

It's up to the state whether or not they take that 10 percent reserve and how they use it within the boundaries of the law. So a state can continue to keep their Wagner-Peyser funds at the state level and deliver services with state merit staff. States under the final rule can subaward their funds down to the local level if they wish to do that to deliver employment services at the local level similar to how it's done in WIOA Title I.

States can offer some other mechanism by which they then deliver employment services. The final rule allows a fair amount of flexibility as long as states continue to follow the Uniform Guidance and the Wagner-Peyser Act itself. So hopefully, that helps a little bit. Andy, I think you had another one.

MR. RIDGEWAY: Yes. I can do a couple here. I think we probably covered this one. There was a question about what the BPL number was discussed regarding the disabled veterans outreach program specialist and local veterans employment representative positions.

Maria went over that I think and addressed it, but it's a BPL 1-20. And it is in a file share. We did include it in a file share, so you can download that as part of this webinar. So just quickly covered that one.

Another question we got is can a state who has stayed with a merit worker have the flexibility to hire a temporary worker? So under the rule, you're no longer required to use state merit staff. You would be able to do a temporary worker arrangement as far as the rules requirement is. As long as you fit your state policies and hiring requirements, there's no Federal requirement to do that.

We did get a question on what does state merit staff mean? That is a very complicated answer, but it is a definition from the Office of Personnel Management regarding how states have certain criteria for the hiring of their workers that meet certain merit criteria.

It is defined, and we can share that definition with you outside the webinar and make sure that you get an answer if you have a question about it. I think probably most of the states know what that means. But if you don't, that is something you can get a specific definition on. It's the Office of Personnel Management that defines that term.

We did get a question. Also under the previous regulations there was an allowance for three demonstration states or exceptions to the merit staffing requirement. One of those states asked us a question about continuing their current arrangement using county merit and state merit staff and if they can continue that arrangement. That is, of course, fine. They asked, I think for the purposes of the state plan, do they need to say that they will continue to use those staff?

I think it would be if you say how you're staffing it. I mean, you don't have to do a super in-depth description if you are a demo State. But I think it is helpful to describe that process and how you're doing it. And if you know that you received a demonstration or exemption under the previous regulation, I think that is fine as well.

MS. VITELLI: And there's even a question in the state plan portal that will prompt all states to explain whether and how they'll take advantage of holiday staffing employment services. So states that previously had a demonstration story, if they just want to type right in there, we're going to keep how we're doing it, that's fine.

And actually, it's no longer a demonstration. It's best using flexibility. So if any of the three states that were following the specific requirements in their demonstration agreement with the Department of Labor, they now can use all of the flexibility that's in the merit staffing flexibility rule.

HEATHER BLACK: Can I clarify something?

MS. VITELLI: Sure.

MS. BLACK: This is Heather Black. I work on the WIOA state plans here at ETA. And I just want to clarify that if you're concerned about the public comment requirements – because I know some states may have already sent their plan out for public comment – as it relates to the relatively new requirements around staffing, I think it's OK just to say, we are continuing with our current arrangement.

We don't necessarily want to create a situation where you have to put your plans back up for public comment if you are not making any changes in how you're staffing your program. So I just wanted to clarify that.

MR. RIDGEWAY: Thank you. And that actually was a question that we got, so thanks for covering that. I did see one on what is a subaward? What is a subrecipient? I think we covered that in the presentation, but it is in the Uniform Guidance 2 CFR 200, those terms are defined.

The giving of the money to an entity is a subaward. The entity receiving that money is the subrecipient, and then all the definitions that apply with that. I will now turn it over to Juan for questions. Juan, do you want to do the next one?

MR. REGALADO: Thank you, Andy. There are a couple of questions. One is in regards to eCFR and how soon the Code of Federal Regulations website will be updated. I often think that we give 30 days between the time we publish the regulations to the time it becomes effective to prepare the States.

But sometimes I think we also want to prepare the Federal Register for the change. So we hope that the eCFR, the electronic Code of Federal Regulations, is updated as soon as possible. They are updating it on a daily basis, so we'll take a look at what they have for tomorrow. But it should be rather quickly.

There's also another question regarding the final rule and new definition of outreach worker – outreach staff now. Means that non-SWA employees have reasonable access under the H-2A assurances to MSFWs. Nothing in those requirements changed. The employers will still have to submit their agricultural clearance job order with all the assurances. So that has not changed.

They will need to continue providing that assurance state workforce agency employees, but they will be being paid with Wagner-Peyser funds. So the employers will continue to provide them reasonable access not just on the job order, but also when we conduct the field checks. The field checks will also need to be conducted.

And if I may, Andy, just one more. Please indicate how the NFJP partners are mandated partners. You know, along with that question, there's another question that was asked about whether the NFJP partner can be the recipient of the funds to conduct outreach? Yes. They can. It would be a perfectly allowable activity. Used to be, from what I hear, it's a perfect marriage to go in and conduct the outreach activities using your NFJP grantees. So definitely they can be a subrecipient.

However, if that happens, then of course, you have to go back to work with your states to develop your agricultural outreach plan and how that will be submitted and how that will be reviewed, because one of the requirements is that the agricultural outreach plan be provided, as Andy mentioned, to your NFJP grantees along with other farmworker advocacy groups. So you need to make some changes in that in how the state monitor advocate would be involved in approving those and continue to approve the agricultural outreach plans.

MR. RIDGEWAY: Thanks, Juan. I think Heather addressed one of the questions that we got about the comment period. Another part of that question was could the state opt to use the flexibility maybe for the activities but still keep the monitor advocate state merit staff? Yeah. That's allowable. You can do some or all of the flexibility.

You could do as much as the rule allows. Or you could decide that if you want to keep the monitor advocate system as state merit staff. You could define the opposite if you wanted as long as it's consistent with the rule. So really it's up to you and your State.

You could also decide you want to do it in some local areas and not others. I think those would all be allowable activities. So you really have the maximum flexibility to pursue an arrangement that works best for you and your State. We did get the question, what states are currently using subrecipients rather than state staff? Maybe I touched on this a little bit. There were three exceptions, like demonstrations, under the existing or under the previous Wagner-Peyser guidance or Wagner-Peyser rule, sorry.

So the three demo states were Colorado, Massachusetts, and Michigan. And each of them did it a little bit differently. But those are the three demo States. And it may be helpful – I don't want to put them on the spot – but they have some great experience maybe in doing that. Not to put those three states on the spot, but they have currently been operating with some exceptions to this requirement for a while now.

MS. VITELLI: And then there's been questions too, states are thinking about what kind of models are out there and how the demonstration states have operated in the past. That's a great conversation to have with your regional administrator who can facilitate conversations.

And of course, you can reach out to your friends. But that information is available. And you're not limited to just those kind of models. Those are models that those states put into place. And you're free to use something like that or to do something different.

MR. RIDGEWAY: Another good question here – will states be able to directly procure for non-Wagner-Peyser contractors, or we'll have to go through the workforce boards for proper procurement? I assume that this question meant service providers and not non-Wagner-Peyser contractors. You're not required to give the local boards like in WIOA Title I. There's no requirement.

Of course, that may be the best way to do it, is to do a contractor subaward to the local workforce board. But it's not a requirement like it is in WIOA, so you have the flexibility to identify the service provider that is best for your state or your local area depending on how to state arranges it.

There's a question about the difference between a SWA official and a state merit staff employee. So the SWA official, without getting into the weeds, the definition is in the regulation. They do not have to be a state merit staff employee. Oftentimes, they may be an appointed person. But the key difference is that they are a state employee.

So they may or may not have state merit principles. But they do have to be a state employee. The term state merit staff is honestly not used in the current, in the new regulations at all, to my knowledge, other than in responding to commented questions. So it's really just whether or not you have to use a state employee or not for the purposes of how the regulations are described.

And I see a question about the staffing flexibility pursue their TAA and RNCA as being done through subawards and subrecipients. We won't comment on the trade rule that's still open. So we won't be able to necessarily address that now.

And then RESEA, I believe that they have the flexibility to then follow similar to this. But we can get a clarification on that from them. And on trade, that'll probably be answered on a rule that is still in the process. So Juan, I'll turn it back to you.

MR. REGALADO: OK. Thank you, Andy. Thank you, Kim. The question is this – if you are working with your monitor advocate system, are you able to share the cost of an outreach worker under the flexibility such as NFJP paying for the staff, state doing training, and providing office space, travel, etc., a shared employee.

You know, this question is – if the subrecipient will be conducting outreach activities, you have to enter it into the contract. And you're going to have the activities must continue – the subrecipient must continue to adhere to the outreach activities described at 20 CFR 653.107B. So nothing of those responsibilities change with this final rule.

However, in the way the question was asked, some of those activities should already be included in your MOU and the MOU between the NFJP grantee and the state monitor advocate. So those are going to be two different processes – the MOU versus the contract of being a subrecipient.

So you do have to delineate those activities. But if the NFJP people continue to or will start providing outreach activities, they have to still comply with 653.107B. I believe there was another one before I turn it over back to you, Andy.

The flexibility act change allowed for outreach staff Wagner-Peyser to assist in the review of the H-2A contracts posting job orders for such. If you remember in the preamble we mentioned that the Foreign Labor Certification grant that goes up to the states part of the Wagner-Peyser grant, so states could possibly also subcontract these activities.

However, if you do, you have to provide it again in your agricultural outreach fund. Not only that, but also in the manual plan that the states submit to the Office of Foreign Labor Certification. So you will need to take care of that and work within your state in these two areas. OK, Andy.

MR. RIDGEWAY: Thanks, Juan. I got a question about what type of timeline would states be allowed to implement these changes? Really you can follow your own timeline. There was another question that I saw later, too, that kind of combines this about maybe phasing it out as maybe state merit staff retire or leave then maybe starting many up there.

You have the flexibility to do all of those things. You don't have to decide right now forever we're doing it this way or that way. You always have the ability under this rule to transition or change. All we're doing is just removing the requirement at our level.

So you can set the timeline that works best for you. We definitely encourage you to think it out, plan it out, address all of issues that you have, and do that. There's no, you have to do it within a year or you'll never have a chance again.

This is definitely something that is basically at your discretion as to how you do it. All we ask is that if you do decide to do it, that you discuss it in your state plan. And if it's not during the state planning cycle, that you do a modification of your state plan that does describe it when you decide to do it.

So I don't want to muddy the waters on that. This is in effect for now, so you can just address it as you wish. So this is just a tool for you to begin starting to add to your conversations to see what is the best way to serve job seekers and employers in your two days.

MR. REGALADO: Another one, Andy. This one again. The state monitor advocate is still required to conduct outreach. If they connect with NFJP as a subrecipient to conduct their outreach, will the state monitor advocate and NFJP outreach be combined in the AOP?

Again, the state monitor advocate because it's still a state workforce agency official, state merit staff, or state employee will be conducting the outreach, and that's fine. And the outreach activities by the subrecipient that say this NFJP grantee, that's fine. You have a plan. You can combine activities of what will the state monitor advocate be? What kind of outreach will be conducted? And what kind of outreach activities will be subrecipient NFJP be AOP?

MS. VITELLI: Thanks, Juan, for answering all these questions. We know that there's still a few questions finishing up our time here. So where we can tell who the question is from, we'll be glad to get back to you.

And further, of course, our regional offices stand ready to help you navigate these questions where you still have questions or you think of ones later. So please do feel free to reach out to them for any questions and reiterating special issues if there's questions on a BPL.

Absolutely. Working with your state director in your regional office, please submit your questions. We did identify that there's a couple questions here that we can follow up with as well. So thank you, everybody, for your time and attention. And, Jon, do you have any parting words?

MR. VEHLOW: I do, Kim. Thank you. I just want to thank all of our participants and presenters today for joining us. If you could please just stay logged into the room for just a minute longer and provide feedback, you'll see that feedback window. You can let us know what you thought of today's webinar.

So please take a second now, share with us your thoughts. Let us know what you liked, or what we can improve on. There is also an additional topic window where you can let us know what you'd like to hear in future webinars.

Just a reminder, a recording of today's webinar, as well as a transcript and executive summary will be made available on WorkforceGPS in about three business days.

All to better connect with your WorkforceGPS colleagues, please take a few minutes to sign up for that member directory on WorkforceGPS. That link is located at the top of the feedback window.

So we want to thank everyone for joining us today. And with that, have a wonderful day, everybody.

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