

Page/column/Paragraph	NPRM Text	Comment
Pp 23701, 1 st column, 1 st paragraph	The ES program seeks to improve the functioning of the nation's labor markets by bringing together individuals seeking employment with employers seeking workers. Section 3(a) of the Wagner-Peyser Act directs the Secretary of Labor (Secretary) to assist States by developing and prescribing minimum standards of efficiency and promoting uniformity in the operation of the system of public employment-services offices.	<p>This regulatory change creates siloed funding and practices without benefit to job seekers and employers. Since 1998, MI's demonstration model has created a stronger, more cohesive workforce system that has exceeded performance metrics and surpassed the national median. Performance data on the U.S. DOL website provides comparative data of MI's performance against the national average.</p> <ul style="list-style-type: none"> • PY 2019 <ul style="list-style-type: none"> ○ Employment Rate 2nd Qtr After Exit: <ul style="list-style-type: none"> ▪ MI - 71.8%; National - 68.6% ○ Employment Rate 4th Qtr After Exit: <ul style="list-style-type: none"> ▪ MI - 71.9%; National - 68.8% ○ Median Earnings 2nd Qtr After Exit: <ul style="list-style-type: none"> ▪ MI - \$6,901; National - \$5,912 • PY 2020 <ul style="list-style-type: none"> ○ Employment Rate 2nd Qtr After Exit: <ul style="list-style-type: none"> ▪ MI - 66.4%; National - 61.2% ○ Employment Rate 4th Qtr After Exit: <ul style="list-style-type: none"> ▪ MI - 66.4%; National - 62.6% ○ Median Earnings 2nd Qtr After Exit: <ul style="list-style-type: none"> ▪ MI - \$6,425; National - \$6,193 <p>The proposed rules prioritize a transactional system over a transformational system, for both employers and job seekers.</p>
Pp 23701, 1 st column, 1 st paragraph	This NPRM would amend regulations in 20 CFR parts 651, 652, 653, and 658, and provide States with a uniform standard of ES services provision.	<p>The goal to have trained ES staff to provide UI support for claim determination and adjudication in an unprecedented pandemic is unrealistic. The proposed rules turns back the clock to outdated, inefficient, unnecessary, and overly burdensome regulations. Additionally, the proposed rules negates the value of leveraging funding so that services reach more job seekers and employers.</p>

		<p>The NPRM does not consider the 25 years of system development, practice, and partnerships developed under Michigan’s demonstration status.</p> <ul style="list-style-type: none"> • It is estimated the MI Wagner-Peyser allocation would support approximately 100 State merit employees. • There are currently 99 AJCs. That amounts to 1 ES worker per center. <ul style="list-style-type: none"> ○ If those workers are reassigned to UI work, who provides employment and labor exchange services during this time? ○ Who provides employment and labor exchange services when there is a vacancy? ○ Rural areas would be disproportionately affected by a decrease in workers providing ES services. • MI’s model, which integrates ES and leverages numerous other funding streams has 400 public merit staff providing Wagner-Peyser funded services, providing over 500,000 services PY 21 year-to-date alone. <ul style="list-style-type: none"> ○ Which customer group, job seekers or employers, will no longer receive services under the proposed rules? <p>There is insufficient funding and staff to maintain the level of services that MI’s system has developed over a 25-year history. The proposed rules, not allowing any alternative delivery models, will set the public workforce system up for negative feedback, less than stellar customer service, underperformance, and an inability to meet local community needs.</p>
Pp 23701, 1 st column, 1 st paragraph	These proposed revisions are intended to ensure that State Workforce Agencies (SWAs) provide	Under MI’s demonstration status, ES services are made available to MSFWs. MSFW state-merit staff are partners in

	MSFWs with adequate access to ES services and that the role of the State Monitor Advocate (SMA) is effective	the service centers. The proposed rules de-couples integrated services, funding, and practices.
Pp 23701, 1 st column, 2 nd paragraph	Thereafter, in 1998, the Department permitted Michigan to use State and local merit-staff employees to deliver ES services, pursuant to a settlement agreement arising out of Michigan v. Herman, 81 F. Supp. 2d 840 (W.D. Mich. 1998).	<p>Michigan is requesting that the Administration reconsider the option for States to deliver ES through alternative methods including local merit-based staffing. MI has 25 years of experience of providing employment services to job seekers and employers. Dismantling a successful delivery model for the sole purpose of propping up the UI system in the event of another pandemic does not account for the on-going employment service needs of job seekers during such events.</p> <p>Moreover, in 1998 the State of Michigan sued the U.S. Department of Labor in federal court seeking a declaration that the Wagner-Peyser Act does not require the use of a state civil servant, merit-based system. The lawsuit was eventually resolved by way of a negotiated, binding settlement agreement under which Michigan has utilized the current demonstration model, without a sunset date and not expressly subject to subsequent regulatory changes. As a result of the binding settlement agreement, the State of Michigan's appeal to the U.S. Court of Appeals for the Sixth Circuit was dismissed by mutual stipulation of the parties on August 26, 1998. The proposed rules, if formally implemented, would constitute a breach by the U.S. Department of Labor of the binding settlement agreement between it and the State of Michigan that resolved the 1998 litigation (Michigan v. Herman).</p>
Pp 23701, 2 nd column, started at the bottom of column 1. The last sentence of the text carried over to the 2 nd column.	Accordingly, under current regulations, States may use a variety of staffing models to provide ES services.	<p>This option should be retained. To propose rules that do any different hurts job seekers, employers, and local economies.</p> <p>The proposed rules prioritize a transactional system over a transformational system.</p>

		The proposed rules revert to outdated, inefficient, unnecessary, and overly burdensome regulations.
Pp 23701, 2 nd column, 1 st paragraph	<p>The Department has reassessed the approach adopted in the 2020 Final Rule and has determined that alignment of ES and UI staffing, which would allow ES staff to respond to surges of demand in UI, is more important than the efficiencies that flexibility may promote.</p> <p>Accordingly, as discussed below, the Department is proposing to require, with no exceptions, that States use State merit-staff employees to provide ES services.</p>	<p>To suggest the strategy is to meet UI surges, does not account for surges in the need for ES services when UI rises. While the pandemic was unprecedented, MI has had experience in UI surges, specifically 2008-2010, and was able to meet the ES needs under the demonstration.</p> <p>The proposed rule is draconian and does not consider the years to develop an efficient and cohesive workforce system that operates under the authority and vision of a local Workforce Board.</p> <p>Not allowing for exceptions from the mandated use of state merit staff employees penalizes both job seekers and employers. It builds a “siloe” system that is not cohesive, responsive, or adequately funded.</p> <ul style="list-style-type: none"> • Approximately 75% of the staff that are funded by Wagner-Peyser funding would be subject to layoff if this proposed rule becomes final. • 62% of Michigan Works! Agencies (MWAs) report the number of centers in their region may have to be reduced. At least 20 of the 99 AJC locations would close, primarily in rural areas. • Almost half of the 99 AJC locations in Michigan would have to reduce the hours they are open to support job seekers and employers. • Over 87% of MWAs will be forced to reduce their services offered, while 12% will be forced to eliminate essential services entirely.

		<ul style="list-style-type: none"> ○ 100% of MWAs report staffing and referrals to other programs would be impacted. ○ 100% of MWAs report that virtual services would be impacted. ○ 93% of MWAs report greeting the public and connecting them to the right starting point services will be impacted. ○ 87% of MWAs report answering customer questions and requests by phone would be impacted. ○ 81% of MWAs report computer availability and resource room resources would be impacted. <p>The cost of the proposed rules for job seekers and employers includes longer commutes for services, fewer services including job search assistance and supports to assist customers to become labor attached as quickly as possible.</p> <p>In the past four years, the Michigan Works! System has provided more than 141,000 services to businesses. 88% of MWAs state that services provided to businesses will be reduced without this funding, while one said these services would be eliminated. Providing services to employers is a key function and critical component to a successful labor exchange system.</p> <p>This rule does not account for the need for surging ES when UI is surging.</p> <ul style="list-style-type: none"> • Who provides ES services when ES staff have been re-assigned to UI adjudication and claim processing? • Where do job seekers go to register for work, a condition of unemployment eligibility?
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Pp 23701, 2 nd column, 2 nd paragraph	The ES system is designed to “promote the establishment and maintenance of a national system of public employment service offices,” and the UI and ES systems together provide a basic level of employment support for more than 4 million job seekers per year to enter and reenter the workforce. The Department thinks that it is vital that the ES be administered so that services are delivered effectively and equitably to UI beneficiaries and other ES customers.	<p>This rule does not account for the need for surging employment services when UI is surging.</p> <ul style="list-style-type: none"> Who provides these ES services when ES staff have been re-assigned to UI adjudication and claim processing? <p>In MI’s current structure, services are customized to individual need and operates as a pipeline to additional services and resources. The Wagner-Peyser funds allocated to MI are insufficient to continue with customized services for individuals. The job seeker loses under the proposed rules.</p>
Pp 23701, 2 nd column, 3 rd paragraph	Further, State merit ES staff are best positioned to and often do provide surge capacity for UI administration and adjudication.	<p>In MI’s current structure, services are customized to individual need and operates as a pipeline to additional services and resources. During the height of the pandemic, the Michigan model had 447 Michigan Works! staff apply their skills to assist the Michigan Unemployment Insurance agency by:</p> <ul style="list-style-type: none"> Fielding 1.3 million phone calls, Supporting 6,447 claims filed, and Unlocking 64,375 accounts. <p>Providing support to the UI agency has been done and can be done under an alternative delivery method.</p>
Pp 23701, 2 nd column, 3 rd paragraph	<p>ES supports the work-test for UI, whereby UI recipients must demonstrate as a condition of continued UI receipt that they are workforce attached.</p> <p>... State merit ES staff are best positioned to and often do provide surge capacity for UI administration and adjudication</p>	<p>In MI’s current structure, services are customized to individual need and operates as a pipeline to additional services and resources. This includes providing hands-on support and assistance when completing the work test and conducting job searches.</p> <p>This rule does not account for the need for surging ES when UI is surging.</p> <ul style="list-style-type: none"> Who provides ES services when ES staff have been re-assigned to UI adjudication and claim processing?

		<ul style="list-style-type: none"> How will the work test be completed on time for claimants when ES staff are reassigned? This issue will only be exacerbated in times of high unemployment.
PP 23701, 3 rd column, top of column.	The proposed rule ensures States are universally equipped to use cross-trained ES staff to assist in processing UI claims, assist UI claimants, and promote reemployment in times of high demand for such services. For example, the recent stress placed upon State UI systems in response to the coronavirus disease 2019 (COVID–19) pandemic served to highlight the necessity of States to be able to rely on eligible State merit staff who are already cross-trained or able to be quickly cross-trained to assist UI claimants during times of high demand placed on State UI systems.	<p>This rule does not account for the need for surging employment services when UI is surging.</p> <ul style="list-style-type: none"> Who provides those services when ES staff have been re-assigned to UI adjudication and claim processing? <p>This proposed rule appears to be reactionary to the pandemic and does not account for the myriad of structures that have successfully met surge demands in the past.</p>
Pp 23701, 3 rd column, bottom of the column	Although the COVID–19 pandemic is an historically unprecedented event, in addition to disaster response, the UI system has been a key economic stabilizer in times of need such as the Great Recession, whereby State UI systems benefitted from cross-trained ES staff to provide extra capacity for UI administration and adjudication. Historical data from 1971 through 2021 indicates regular and periodic increases in the number of UI initial claims and first payments in which having ES staff who are already cross-trained or able to be quickly cross-trained to assist UI claimants would be beneficial. The adjudication of UI claims is work that must be performed by State merit staff.	<p>The proposed rule undermines the 25 years of workforce system development Michigan has experienced. Michigan’s model using local merit-based staff has a long history of providing effective and successful employment services to both job seekers and employers.</p> <p>If ES staff are used to supplement UI staff, they are not going to be familiar with UI practices during a surge nor will there be ES staff to provide job seeker or employer services at the AJC.</p> <p>The first payment indicator will be compromised if ES staff are reassigned and unable to administer the work test in a timely manner.</p>
PP 23702, 1 st column, 1 st paragraph	In response to the COVID–19 pandemic, emergency legislation related to COVID–19 provided States the ability on a limited and temporary emergency basis to recruit staff on a non-merit basis	Emergency legislation was appropriate to meet the unprecedented demand. Michigan had 447 local employees that supported UI, in addition to pivoting to new employment service delivery models to provide those much-needed

	<p>to quickly process UI applications and claims.</p> <p>However, relying on such time limited legislative action is not a viable, long-term solution, particularly as providing adequate training for UI adjudicators takes several months to a year. Furthermore, emergency legislation related to COVID–19 does not provide flexibility in future emergencies.</p> <p>Requiring ES labor exchange services to be provided by State merit staff will help ensure that States have the ability to shift staff resources during future exigencies affecting State-level functions and UI claims where time-limited legislative solutions are not available and there is a pressing need to have cross-trained staff who are legally permitted to assist with UI services.</p>	<p>employment services. It has been estimated the current funding would support around 100 state-merit based staff.</p> <ul style="list-style-type: none"> • Again, who provides the employment services when ES staff are re-assigned to UI? <p>The pandemic surge is not an everyday occurrence and is temporary. Emergency legislation is most appropriate to meet those demands when they occur. Upending current systems is very disruptive for both job seekers, employers, and the workforce entity at state and local levels.</p> <p>The Department recognizes the UI adjudicators take several months to a year to train. Therefore, it is unrealistic to consider that ES staff can maintain adequate knowledge to be able to fill this role in a moment’s notice. The needs of UI and ES are distinct and require on-going training for both to effectively provide customer service. And when ES staff are reassigned to UI, who provides the surging need for employment services?</p>
Pp 23702, 2 nd column, last sentence of the carry over paragraph from column 1.	And, as noted previously, it is important that the States use State merit staff to deliver ES services because of the critical alignment between the ES and UI programs.	In MI’s model, the critical alignment is to the local workforce system so that unemployed individuals receive customized services across a broad swath of programs to ensure labor attachment with the least amount of UI benefits paid out.
Pp 23702, 2 nd column, 3 ^d paragraph	...the proposed merit-staffing requirement would align the staffing of ES services with the staffing that States are required to use in the administration of UI programs. This would allow cross-trained ES staff to assist States in processing and adjudicating UI claims, and assisting claimants with work search and reemployment services, particularly in times of high need, such as during the pandemic.	<p>This rule does not account for the need for surging employment services when UI is surging.</p> <ul style="list-style-type: none"> • Who provides these services when ES staff have been re-assigned to UI adjudication and claim processing? <p>UI benefits are time limited. With a reduction in the number of ES staff delivered by state-merit staff, access to services will diminish with fewer staff and this creates a potential hardship</p>

		<p>for job seekers. Michigan’s model is to attach UI claimants to employment and other appropriate services including training, resulting in quicker labor attachment.</p> <p>MI’s model provides for delivery on all employment service requirements.</p>
Pp 23702, 3 rd column, 1 st paragraph	...the Department is proposing this change to ensure that more workers will be available in the States if needed to back up the UI system.	<p>The UI system has only needed “backup” one time in the last 25 years. Emergency legislation was appropriate to meet this unprecedented demand. Michigan had 447 local employees that supported UI, in addition to pivoting to new employment service delivery models to provide those much-needed employment services. It has been estimated the current funding would support around 100 state-merit based staff. Who provides the employment services when ES staff are re-assigned to UI?</p>
Pp 23702, 3 rd column, 1 st paragraph	In the section-by- section discussion that follows, the Department further explains why it is proposing to require that States use State merit-staff employees to provide ES services, acknowledges the reliance interests of States that would need time to come into compliance with this requirement, and addresses those interests by proposing an 18-month transition period.	<p>While we feel that 18 months is insufficient to revamp a system that has been built over 25 years, we recommend that MI retains their demonstration status; therefore, the proposed regulations would not be implemented in MI.</p> <p>Whatever period of transition is established, it should align to the beginning of a new program year.</p>
Pp 23703, 3 rd column, 2 nd paragraph	The Department proposes to amend the definition of applicant holding office to replace “a Wagner-Peyser Employment Service Office” with “an ES office.” The definition of Wagner- Peyser Act Employment Service (ES) also known as Employment Service (ES) explains that ES offices refers to ES offices described under the Wagner- Peyser Act. Additionally, the definition of ES office explains that	<p>The language in the rules should be explicit that employment services and ES staff should be a part of the local AJC. Separate stand-alone offices undermine the WIOA One-Stop concept and hinders access to comprehensive services for job seekers and employers.</p>

	ES offices provide ES services as a one-stop partner program.	
Pp 23705, 3 rd column, 2 nd paragraph	The Department proposes to remove these specific requirements for significant multilingual MSFW one stop centers because all one-stop centers must comply with the language access requirements in 29 CFR 38.9, which prohibit discrimination on the basis of national origin, including limited English proficiency (LEP).	MI's model has significant multi- staff, MSFW and others, in the one-stops and we agree that is the appropriate placement to provide access to a broader set of services.
Pp 23706, 2 nd column, continued paragraph from column 1.	The regulation at 41 CFR 60–300.84 requires ES offices to refer qualified protected veterans to fill employment openings required to be listed with ES offices by certain Federal contractors; give priority to qualified protected veterans in making such referrals;	MI's model accommodates this need with a 24-hour hold on all job orders. This gives veterans priority to jobs and opportunities.
Pp 23706, Pp 23706, 2 nd column, continued paragraph from column 1.	The Department reminds SWAs that they have an affirmative outreach obligation under 29 CFR 38.40 that requires them to take appropriate steps to ensure they are providing equal access to services and activities authorized under the Wagner Peyser Act, as well as any other WIOA title I-financially assisted programs and activities.	MI has efficiencies in place for outreach efforts via coordination with WIOA partners. Equal access also entails providing access to services in predominate languages for limited English proficiency individuals.
Pp 23707, 1 st column, continued paragraph – top of column.	<p>Prior to 2020, in support of its longstanding State merit staff requirement for ES services, the Department explained that the benefits of merit-staffing in promoting greater consistency, efficiency, accountability, and transparency are well established.</p> <p>As explained earlier in this preamble, in the 1990s, the Department approved limited exemptions from</p>	<p>A “siloe” program delivery model undermines good customer service practices and lacks a local strategic WDB (Workforce Development Boards) vision.</p> <ul style="list-style-type: none"> • Fewer AJCs, • Longer commutes for job seekers • Fewer services for both job seekers and employers • Increased costs for all programs for language services for limited English proficient individuals.



	<p>the merit-staffing requirement for three States (Colorado, Massachusetts, and Michigan) during the establishment of the one-stop delivery system to test alternative service-delivery models, but subsequently noted that no additional exemptions would be authorized.</p>	<ul style="list-style-type: none">○ Siloed funding eliminates the opportunity to leverage funds to increase service capacity.● Government at its worst.
<p>Pp 23707, 1st column, 1st paragraph 1</p>	<p>In the 2020 Final Rule, the Department changed its longstanding policy and determined that granting States flexibility in staffing potentially would give States flexibility to meet the unique needs of ES customers, free up resources to serve employers and job seekers, and better integrate ES services with other WIOA programs. The Department also stated that similar programs operated successfully with flexible staffing arrangements and, therefore, staffing flexibility should be provided under the Wagner-Peyser Act. However, the recent stress placed upon State UI systems in response to the COVID–19 pandemic served to highlight the necessity of States to be able to rely on State merit staff who are already cross-trained or able to be quickly cross-trained and legally permitted to assist UI claimants during times of high demand placed on State UI systems.</p> <p>...the Department has reassessed the factors it weighed in the 2020 Final Rule and has determined that the alignment of ES and UI staffing is more important than the efficiencies that flexibility may promote, and that it is vital that the ES be administered so that quality services are delivered effectively and equitably to UI beneficiaries and other ES customers.</p>	<ul style="list-style-type: none">● Michigan had 447 local employees that supported UI during the COVID pandemic. Michigan Works! staff:● Fielded 1.3 million phone calls● Filed 6,447 unique UI claims● Unlocked 64,375 unique accounts <p>Michigan Works! staff were able to accomplish all of this while pivoting to new employment service delivery models to provide vital employment services.</p>

	...the Department is now proposing to require, with no exceptions, that States use State merit staff employees to provide ES services.	
Pp 23707, column 2, continued paragraph – top of page	This proposed rule ensures States are universally equipped to use cross-trained ES staff to assist in processing and adjudicating UI claims, and assisting claimants with work search and reemployment services	MI is poised to enter into an MOU between the SWA and UIA to establish the parameters for workforce to support the Unemployment Insurance Agency, if a need arises. This will keep staff trained for the next pandemic or disaster and will preserve the current delivery system for employment services.
Pp 23707, 2 nd column, 2 nd paragraph	The Department also proposes to add a new paragraph (c), which specifies a compliance date for proposed § 652.215 (i.e., the date on which the requirements of this section would become enforceable) of 18 months after the effective date of the final rule.	<p>Advocating for flexibility but if the proposed rules stand, 18 months is insufficient to revamp a delivery system that has been developed over 25 years.</p> <p>For any period allowed for transition, it must be to align with a new program year. 18 months would be the bare minimum.</p> <p>The national average of employee turnover rates runs 17-18%. It is estimated that each of MI's 99 AJCs would have one position, the average turnover rate suggests 18 open ES positions at any one time.</p> <ul style="list-style-type: none"> Who provides the employment services for individuals at those 18 vacant positions?
Pp 23707, 3 rd column, 1 st paragraph	<p>Colorado and Michigan both use only merit-staffing to deliver ES services, but they employ merit staff at both the State and local level to deliver services. For these States, the proposed regulation would require that they discontinue their use of local merit staff and use only State merit staff</p> <p>Accordingly, while disruption in service delivery may occur due to this change, the Department anticipates that disruption to these States' ES service delivery will be minimal. As noted in the regulatory impact analysis, prior to publication of this NPRM,</p>	The destruction of the successful one-stop service delivery model that Michigan has cultivated over the course of 25 years will result in reduced or eliminated services for thousands of Michigan's job seekers across the state. In addition to reduced or eliminated services, Michigan will be forced to reduce the

	<p>the Department surveyed the demonstration States on any transition costs that may be incurred by the proposed State merit staffing requirement. While the Department acknowledges that there may be some cost to these three States due to this change, the Department believes that the rationale for requiring the use of State merit staff applies equally to the demonstration States, and that the long-term benefits of having cross-trained ES staff outweigh the cost to these States of transitioning to the use of State merit staff.</p> <p>The Department seeks comment on the benefits and costs of transitioning to a State merit-staffing requirement in instances where States are using staff other than State merit staff to deliver services.</p> <p>In addition, the Department seeks comment on any positive or negative impact this change would have in terms of the quality of services provided within the American Job Centers—including those funded by WIOA.</p>	<p>number of service centers across the state. Employers will not receive the assistance they need to post job openings, fill those openings, or have access to trained, job-ready candidates in today's hot job market. The level of services provided to both job seekers and business will be significantly reduced and as such will have a negative impact on Michigan's labor market and overall economic health.</p> <p>In the past four years, more than 3,600 services have been provided by MWAs to Industry-Led Collaboratives. 87% of MWAs would be forced to reduce these services without Wagner-Peyser funding.</p> <p>In the past four years, more than 7,500 job fairs have been held by MWAs to support employers' hiring activities. 100% of MWAs would be forced to reduce the number of job fairs they could provide. More than half of those MWAs would reduce job fairs by at least 50%.</p> <p>62% of MWAs report that the number of centers in their region may have to be reduced. It is estimated that at least 20 of the 99 AJC locations would close, primarily in rural areas.</p> <p>Almost half of the 99 AJC locations in Michigan would have to reduce the number of hours they can operate. We fail to see any benefits and only costs in the proposed rule.</p> <ul style="list-style-type: none"> • Fewer AJCs • Fewer services • Longer commutes for the unemployed • Outreach and marketing to redirect services in a model that has a 25-year record of accomplishment, transparency, consistency, and effective services.
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Pp 23707 – 23708, 3 rd column, 2 nd paragraph	...the Department proposes to provide 18 months for States to implement the State merit-staffing requirement in order to provide States with adequate time to consider and implement any necessary changes to come into compliance, including time to resolve outstanding contractual obligations and align changes with the timed financial allotments. The Department is open to adjusting this time period and, accordingly, it seeks comments from States regarding whether 18 months is sufficient time to comply with this requirement.	18 months is insufficient to revamp a delivery system that has been developed over 25 years. If these rules become effective, this transition period should be increased. For any time allowed for transition, it must be to align with a new program year. Requesting the administration re-evaluate their position on no exceptions, alternatives, etc. States should determine the most appropriate delivery method to meet the needs across their state.
Pp 23708, 2 nd column, 2 nd paragraph	The Department proposes to amend § 653.101 by revising the first sentence to clarify that the SWA is the primary recipient of Wagner-Peyser Act funds and, therefore, is the entity responsible for ensuring that ES staff offer MSFWs the full range of career and supportive services. This clarification is proposed because it is ultimately incumbent upon the SWA to ensure ES staff at one-stop centers are carrying out the appropriate duties with their Wagner-Peyser Act funds	Under MI's model, the SWA would continue to be the entity to ensure that a full range of career services are provided to MWWF by Wagner-Peyser funded staff. Michigan conducts one stop center reviews to ensure compliance. Staff training is provided to keep staff abreast of changes.
Pp 23708, 3 rd column, 2 nd paragraph	In addition to the existing requirement to determine whether participants, as defined at § 651.10, are MSFWs, the Department proposes to require that ES offices must determine whether reportable individuals, also defined at that section, are MSFWs.	The current MI system is prepared to implement this provision of the proposed rules.
Pp 23712, 2 nd column, 1 st paragraph	The Department additionally proposes several revisions to §653.108(c) to strengthen the status of the SMA, as many SMAs have reported difficulty in	This regulation appears as a duplicative effort by aligning the status of the SMA and EO Officer.

	their ability to fully carry out their duties due to insufficient status within the SWA. With these proposed changes, the Department seeks to align the status of the SMA with that of the Equal Opportunity (E.O.) Officer because the SMA's role is similar to the E.O. Officer's role.	
Pp 23714, 1 st column, 1 st paragraph	The Department proposes to redesignate §653.108(g)(2) to be §653.108(h)(3) and to clarify that SMAs must conduct onsite reviews of one-stop centers regardless of whether or not the one-stop center is designated as a significant MSFW one-stop center.	<p>Requiring the SMA to conduct onsite reviews of one stop centers regardless of whether the one-stop center is designated as a significant MSFW one-stop center is an overreach and is duplicative of current monitoring reviews that are done.</p> <p>Monitoring of one-stop center can be accomplished without dismantling the current MI model.</p>
Pp 23723, 3 rd column, 1 st paragraph	E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits.	<p>The Department has determined that the alignment of ES and UI staffing is more important than the efficiencies that flexibility may promote, and that it is vital that the ES be administered so that quality services are delivered effectively and equitably to UI beneficiaries and other ES customers.</p> <p>Implementing this proposed rule will have a devastating impact on job seekers due to the lack of staffing and funding resulting in AJC closures. Unemployed individuals will have to drive farther to access services and WP funds do not allow supportive services such as transportation costs.</p> <p>Additionally, employers will receive fewer services and support with a state-merit staff model. There will be fewer job seekers and job order matches. Employers will no longer have the support to post job orders, search for labor, etc. Any reduction in service levels undermines global competition and success. Having significantly fewer ES staff (75% less) will mean</p>

		that job seekers and employers will receive—at best-- only a minimum level of service.
Pp 23724, 1 st column, 1 st paragraph	The benefits of the merit-staffing provisions in the proposed rule would include the ability for States to shift staff resources during future surges in UI claims when time-limited legislative flexibilities in the delivery of UI services are not available.	As the need for unemployment services rise, so does the need for employment services. <ul style="list-style-type: none"> • While this shifting of staff takes place, who provides employment services to job seekers so they can become labor attached as quickly as possible? • Who aids companies to fill their talent pool vacancies? • Efficiency will be difficult to achieve when the FTEs for WP funded services are reduced so significantly.
Pp 23724, 3 rd column, 1 st paragraph	<p>The Department is not able to quantify the transition costs to the four States due to the lack of data. The Department is seeking additional input from the four States on their potential transition expenses such as recruitment, training, or technology costs, as well as costs related to the State budgeting process.</p> <p>The Department is also seeking input on the potential costs associated with service interruptions during the time period in which the State is making staff changes to comply with the provisions of this proposed rule.</p>	<p>DOL can implement rules but does not have appropriate funding to support rule changes.</p> <ul style="list-style-type: none"> • How will the department ensure adequate funding levels are appropriated to successfully make this transition? <p>Service interruption during a period to comply with the provisions of this proposed rule is difficult to quantify, but if a customer, either job seeker or employer gets poor customer service or no customer service, this erodes the value of workforce programming in the public eye. According to Bryan Robinson, Ph.D. (2016, October, 16, Forbes, https://www.forbes.com/sites/bryanrobinson/2020/10/16/10-ways-the-3-to-1-positivity-ratio-can-advance-your-career/?sh=5112a5f470c4), it takes three positive actions to neutralize one negative action. Other authors have suggested that it is a higher ratio.</p>
Pp 23726, 2 nd column, 2 nd paragraph	The Department calculated the difference between the fully loaded wage rates of the 192 current non-State-merit staff and 192 potential State merit staff.	MI's Wagner-Peyser funded staffing is 400, equating to 220 FTEs. Therefore, the numbers reported are low and do not represent what is needed to mirror the current FTEs or actual number of staff providing Wagner-Peyser services.



Pp23726, 2 nd column, 3 rd paragraph	In total, the proposed rule is expected to have annual transfer payments of \$10,109,091 for Delaware, Massachusetts, and Michigan (=-\$2,225-\$378,387 + \$10,489,704).	It is our estimate that this calculation is too low. <ul style="list-style-type: none"> • Where does the funding for this come from? • And if there isn't additional funding how does the Department proposes to close the gap?
Pp23726, 2 nd column, 4 th paragraph	This proposed rule may impact the demographic composition of the staff delivering ES labor exchange services.	MI's model is diversified, equitable, and has multilingual staff that support many programs and services including employment service. Demographic composition depends on the population surrounding the assigned workstation.
Pp 23726, 3 rd column, 1 st paragraph	<p>The Department is proposing to reinstate the longstanding requirement that States use only State merit staff to deliver ES labor exchange services, with no exceptions. The COVID-19 pandemic placed an enormous burden on State UI programs due to the significant increase in UI claims from the massive number of unemployed workers. The number of continued claims rose from fewer than 2 million before the pandemic to more than 20 million in the week ended May 9, 2020. It became evident to the Department that, during a crisis that displaces a large number of workers in a short time, it could become imperative for States to shift staff resources from ES services to support urgent UI services. Being able to do so, however, would require that ES labor exchange services be provided only by State merit staff because UI services are required to be delivered solely by State merit staff pursuant to sec. 303(a)(1) of the Social Security Act.</p> <p>Requiring labor exchange services to be provided by State merit staff will help ensure that States have the flexibility to shift staff resources during future</p>	<p>This rule does not account for the need for surging employment service when unemployment is surging.</p> <ul style="list-style-type: none"> • Who provides ES services when ES staff have been re-assigned to UI or when there is a staff vacancy? <p>MI is a Right to Work state and union participation has been waning since 2013 when the law was implemented.</p> <p>Michigan has proven its current method of Wagner-Peyser employment service delivery is best-in-class. Michigan is</p>



	<p>surges in UI claims where time-limited legislative flexibilities to UI services are not available.</p>	<p>consistently outpacing the national median for performance, all at one of the lowest costs per participant in the country.</p> <p>During the pandemic, 447 local staff shifted their roles and applied their skills to assist the Michigan Unemployment Insurance Agency. This same effort could be formalized with an MOU between UI and the SWA.</p>
<p>Pp 23726, 3rd column, 2nd paragraph</p>	<p>Yet, in addition to States benefiting from the availability of State merit staff to assist with a surge in UI services, benefits also accrue to individuals accessing labor exchange services delivered by State merit personnel.</p>	<p>In MI's model, the critical alignment is to the local workforce system so that unemployed individuals receive customized services to ensure labor attachment with the least amount of UI benefits.</p> <p>Michigan's model always provides support to UI including the leveraging of funds to expand staff availability during times of surges; assisting with filing UI claims; assisting customers with their work test and job search requirements, etc.</p>
<p>Pp 23727, 1st column, 3rd paragraph</p>	<p>Under this alternative, the Department would return to the pre- 2020 Wagner-Peyser Act regulations, reinstituting the State merit-staffing requirement for all States except for the three States previously operating as exceptions: Colorado, Massachusetts, and Michigan. After careful consideration, the Department is not pursuing this alternative. These States operate ES by devolving it to the local level where it can be managed alongside WIOA title I services. While such alignment with WIOA title I has some value, it is outweighed by the benefits of aligning ES staffing with UI administration and adjudication, which would allow ES staff to provide surge capacity for UI administration and adjudication during times of high need. Therefore, the</p>	<p>Respectfully we argue that the Department should reconsider this alternative for CO, MA, and MI. Michigan has had 25 years to develop a best-in-class system that is responsive, efficient, maximizes available funding, operates under the guidance and vision of a local Workforce Board, and meets the needs of both job seekers and employers.</p>

	Department is proposing that all States, including those that previously operated as demonstration States, come into compliance with the merit-staffing requirement.	
Pp 23731, 1 st column, 3 rd paragraph	<i>Employment Service (ES) office</i> means a site that provides ES services as a one-stop partner program. A site must be collocated in a one-stop center consistent with the requirements of §§ 678.305 through 678.315 of this chapter.	Support for the clarification of colocation of the employment service office in a one-stop center. This is a current practice of MI's model. <ul style="list-style-type: none"> Will ES staff be relocated to UIA offices for UIA training and for the provision of UI services during surges, etc.?
Pp 23731, 1 st column, 4 th paragraph	<i>Employment Service (ES) Office Manager</i> means the ES staff person in charge of ES services provided in a one-stop center.	The term Employment Service Office Manager that is used throughout the proposed rules is misleading and implies greater authority than what may be appropriate for onsite one-stop center ES staff.
Pp 23731, 1 st column, 5 th paragraph	<i>Employment Service (ES) staff</i> means State government personnel who are employed according to the merit-system principles described in 5 CFR part 900, subpart F—Standards for a Merit System of Personnel Administration, and who are funded, in whole or in part, by Wagner-Peyser Act funds. ES staff includes a State Workforce Agency (SWA) official.	The benefit of implementing the proposed rules based on the purpose of alignment of ES and UI staffing, which would allow ES staff to respond to surges of demand in UI, is more important than the efficiencies that flexibility may promote does not consider the cost to job seekers and employers. Michigan has 25 years of experience under the demonstration provisions, and to dismantle the current system with the sole purpose that ES staff can respond to UI surges of demand does not consider the following: <ul style="list-style-type: none"> Who provides the surging employment services when UI is surging? The factors of the pandemic were unprecedented, and with the estimated number of ES staff that would be onboarded under the proposed rules, only covering 25% of the current number of staff that provide WP employment services. Staff skill sets to serve job seekers vs employers is vastly different. To suggest that staffing under the proposed rule would be well equipped to serve both

		<p>customer sectors does not consider the needs of either sector and has the potential to be disastrous.</p> <ul style="list-style-type: none"> • MI's workforce system has been a key partner with UIA, during both the 2008-2010 recession and during the height of the pandemic. • Over a one-year period (May 2020 – April 2021) 447 workforce staff provided support to UI during the height of the pandemic by: <ul style="list-style-type: none"> ○ 447 local workforce staff provide WP funded services. The number of staff to assist is greater than the 100 projected ES staff under the proposed rule. ○ The workforce system answered 1.3 million UI related phone calls during this time, when customers could not get to a UI representative. This allowed UI staff to focus on claims and adjudication. ○ The workforce system assisted with 6,447 claims filed. This action got much needed money/benefit into bank accounts quicker. • Michigan's UI system is a secure system, resulting in account lockouts, lost user IDs, and forgotten passwords. The workforce system supported the UI agency during the pandemic by providing the following: <ul style="list-style-type: none"> ○ 22,535 accounts unlocked ○ 13,759 User IDs looked up ○ 23,385 reset passwords ○ 4,696 access codes generated
Pp 23731 3 rd column, 1 st paragraph	Placement means the hiring by a public or private employer of an individual referred by the ES office for a job or an interview, provided that the ES office completed all the following steps: (1) Prepared a job	How do we continue to provide placement services for both job seekers and employers when/if ES staff are deployed to support UI?

	<p>order form prior to referral, except in the case of a job development contact on behalf of a specific participant; (2) Made prior arrangements with the employer for the referral of an individual or individuals; (3) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;</p> <p>(4) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and (5) Appropriately recorded the placement.</p>	
<p>Pp 23732, 2nd column, 1st paragraph</p> <p>Pp 23732, 2nd column, § 652.207(a)</p>	<p>(j) Nondiscrimination requirements. States must:</p> <p>(1) * * *</p> <p>(2) Assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000e–(2)(e) and 29 CFR parts 1604, 1606, and 1625. (3) Assure that ES offices are in compliance with the veteran referral and job listing requirements at 41 CFR 60–300.84.</p> <p>(a) A State has discretion in how it meets the requirement for universal access to ES services. In exercising this discretion, a State must meet the Wagner-Peyser Act’s requirements.</p>	<p>Michigan has a proven record of accomplishment while implementing and adhering to the requirements of (2) and (3). Requiring ES to be provided by state merit-based staff is more likely to be unable to implement (2) and (3) due to fewer staff.</p> <p>Michigan has a proven record of accomplishment while providing universal access to ES services. Implementation of the proposed rules will make access more difficult for universal access. The unemployed will have to travel farther to access services and if the ES staff have been reassigned to UI, employment services including support for the UI work-test will be harder for the unemployed job seeker.</p> <p>Currently funding is leveraged to maximize services and staffing. The proposed rules would halt this practice, leaving fewer ES staff to provide universal access, reducing the number of AJCs particularly in rural areas resulting in longer</p>

		<p>commutes for unemployed job seekers, reduced hours at other centers, and increased costs for multi-lingual staff to serve their communities. If certain services can be transitioned to primarily virtual/remote, those in rural areas may not have the resources necessary to access services remotely.</p> <p>ES would need multilingual staff as would other workforce programs, particularly WIOA would need to employ multilingual staff. Currently in some areas of the state, there are more than 18 predominate languages spoken by limited English proficient (LEP) individuals. The proposed rule jeopardizes the array of and access to services available to LEP individuals.</p>
Pp 23732, 3 rd column, § 652.215(a)	<p><i>Staffing requirement.</i> The Secretary requires that the labor exchange services described in § 652.3 be provided by ES staff, as defined in part 651 of this chapter.</p>	<p>The minimum services described in § 652.3 include:</p> <ul style="list-style-type: none"> (a) Assist job seekers in finding employment, including promoting their familiarity with the Department's electronic tools; (b) Assist employers in filling jobs; (c) Facilitate the match between job seekers and employers; (d) Participate in a system for clearing labor among the States, including the use of standardized classification systems issued by the Secretary, under sec. 15 of the Wagner-Peyser Act; (e) Meet the work test requirements of the State unemployment compensation system; and (f) Provide labor exchange services as identified in § 678.430(a) of this chapter, sec. 7(a) of the Wagner-Peyser Act, and sec. 134(c)(2)(A)(iv) of WIOA. <p>Currently Michigan operates with over 400 staff providing the services required in § 652.3.</p>

		<ul style="list-style-type: none"> • How will the state provide all these robust services with a projection of 25% of the current staffing level? What happens when the allocation is insufficient to provide all the services? • What services take priority, which customer sector does not get served? • How is it conceived these services are provided when ES staff are re-assigned to UI?
Pp 23732, 3 rd column, § 652.215 (c)	<i>Compliance date.</i> All obligations in this section become enforceable [18 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE].	<p>18 months is insufficient to revamp a system that has been developed over 25 years.</p> <p>While we feel that 18 months is insufficient to revamp a system that has been built over 25 years, we recommend that MI retains their demonstration status; therefore, the proposed regulations would not be implemented in MI.</p> <p>MI's experience of transitioning from state merit-based staff to local merit-based staff in 1998 was very painful. Lessons learned were:</p> <ul style="list-style-type: none"> ○ Lack of program delivery coordination ○ Lack of customer focus ○ Customer service was lacking, and customers were not gaining access to a full array of workforce development services. <p>Whatever period of transition is established, it should align to the beginning of a new program year.</p>
Pp 23732, 3rd column, § 653.100 (a)	... all services of the workforce development system be available to all job seekers in an equitable and nondiscriminatory fashion. This includes ensuring MSFWs have access to these services in a way that meets their unique needs. MSFWs must receive	Michigan has a proven record of accomplishment while making employment services available to all job seekers, including MSFWs in an equitable and nondiscriminatory fashion. We support that all services should be provided in an equitable and nondiscriminatory fashion. Implementing the

	services on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.	proposed rules has a chilling effect that services will not be provided in an equitable and nondiscriminatory fashion when job seekers must travel farther distances to access services. Fewer staff to provide services will impact accessibility and equity.
Pp 23732, 3 rd column, § 653.101	SWAs must ensure that ES staff at one-stop centers offer MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs. SWAs must ensure ES staff at the one-stop centers tailor such ES services in a way that accounts for individual MSFW preferences, needs, skills, and the availability of job and training opportunities, so that MSFWs are reasonably able to participate in the ES.	Under Michigan's demonstration model, local ES staff have been providing MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs.
Pp 23733, 1 st column, §653.103	Process for migrant and seasonal farmworkers to participate in workforce development activities.	Michigan's model accounts for this requirement and can conform to the requirement that the ES staff must determine whether participants and reportable individuals are MSFWs as defined at § 651.10 of this chapter. Complying with language access and assistance costs will soar because of the lack of utilization of multilingual staff across an array of workforce programs.
Pp 23733, 2 nd column, §653.107 (a)(3)(i)	SWAs must seek and put a strong emphasis on hiring and assigning qualified candidates who speak the language of a significant proportion of the State MSFW population;	This requirement is not limited to the MSFW population. 29 CFR Part 38.9 requires "A recipient must take reasonable steps to ensure meaningful access to each limited English proficient (LEP) individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity." These provisions also apply to Wagner-Peyser services.
Pp 23733, 3 rd column, 3 rd paragraph	(7) Outreach staff must be trained in one-stop center procedures and in the services, benefits, and protections afforded MSFWs by the ES, including training on protecting farmworkers against sexual	<ul style="list-style-type: none"> • Who provides the training and when? • What training will MSFW staff need on one-stop center procedures when they are housed at the one-stop centers. The proposed rules emphasize that

	<p>harassment, sexual coercion, assault, and human trafficking. Such trainings are intended to help outreach staff identify when such issues may be occurring in the fields and how to document and refer the cases to the appropriate enforcement agencies. Outreach staff also must be trained in the Complaint System procedures at part 658, subpart E, of this chapter and be aware of the local, State, regional, and national enforcement agencies that would be appropriate to receive referrals. The program for such training must be formulated by the State Administrator, pursuant to uniform guidelines developed by ETA. The SMA must be given an opportunity to review and comment on the State's program.</p>	<p>MSFW outreach staff should be out in the field during the height of the growing season, ensuring MSFWs are protected in their work environment.</p>
<p>Pp 23734, 3rd column, 5th paragraph</p>	<p>State Workforce Agency and State Monitor Advocate responsibilities.</p> <p>(3) Participate in on-site reviews of one-stop centers on a regular basis (regardless of whether or not they are designated significant MSFW one-stop centers) using the procedures set forth in paragraphs (h)(3)(i) through (vii) of this section.</p>	<p>The requirement of the SMA participating in on-site reviews of one-stop centers regardless of whether they are designated significant MSFW one-stop center is duplicative.</p> <p>We do not need a disconnected, duplicative program that does nothing but create confusion, and that is what IRAPs do," Walsh said (Employment and Training Reporter, pp. 415, May 23, 2022). That same sentiment can be considered of the proposed rules. The proposed rules create a disconnected program that does nothing but create confusion, slows customer service response time, increases all workforce system costs and is not flexible to meet the needs of local communities.</p>
<p>Pp 23737, 2nd column, §658.400 (a)</p>	<p>(a) * * * Specifically, the Complaint System processes complaints against an employer about the specific job to which the applicant was referred through the ES and complaints involving the failure to comply with the ES</p>	<p>Support the utilization of a complaint system.</p> <ul style="list-style-type: none"> Who will take those complaints when ES staff have been reassigned to UI?



	regulations under parts 651, 652, 653, and 654 of this chapter and this part. * * *	
Pp 23737, 3 rd column, §658.410(g)	All complaints filed through the local ES office must be processed by a trained Complaint System Representative.	Michigan's local complaint system representatives receive annual training from the SMA regarding the Complaint System.
Pp 23737, 3 rd column, §658.411	<i>Action on complaints</i>	<p>This section needs more clarification on the actions for complaints received from different sectors:</p> <ol style="list-style-type: none"> 1. MSFW complaints 2. Wagner-Peyser funded service complaints 3. Universal public complaints of a work situation that was not served by the public workforce system.
Pp 23738, 2 nd column, §658.411(c)	<i>Complaints alleging unlawful discrimination or reprisal for protected activity.</i>	Support
Pp 23741, 1 st column 1, §658.504	Reinstatement of services	A siloed program delivery does not support coordinated awareness across a multitude of workforce programs and does not promote equity and inclusion to all workforce programming.