

July 24, 2019



Ms. Adele Gagliardi
Administrator
Office of Policy Development and Research
United States Department of Labor
200 Constitution Avenue N.W., Room N-5641
Washington, DC 20210

RE: Docket Number ETA-2019-0004 for Regulatory Information Number 1205-AB87

Dear Administrator Gagliardi:

The Association of Farmworker Opportunity Programs (AFOP) submits the following comments in regard to the United States Department of Labor (DOL) Employment and Training Administration's (ETA) Notice of Proposed Rulemaking (NPRM) to permit State Workforce Agencies (SWAs) to forego merit-staff requirements for certain Employment Service (ES) activities under the Wagner-Peyser Act and in the staffing of State Monitor Advocates (SMA). AFOP appreciates ETA's consideration of these comments.

AFOP strongly supports the Judge Richey Order and subsequent DOL rulemaking mandating DOL provide the full range of employment and training services to migrant and seasonal farmworkers (MSFWs) on a basis that is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. While AFOP applauds ETA for restating in the NPRM DOL's continuing commitment to preserving the spirit of the Richey Order, AFOP is concerned that these proposed changes would erode the Order by allowing SWAs to utilize less experienced individuals with little or no knowledge of the MSFW population to conduct MSFW outreach and perform required monitoring activities, all to the detriment of farmworkers. In that same vein, AFOP also questions the rule's provision to allow SWAs to divert Regional Monitor Advocate efforts away from MSFW-related work to non-MSFW matters.

Should ETA move to adopt this proposed rule, AFOP recommends ETA first include a provision that would require any SWA availing itself of this proposed staffing flexibility to demonstrate before doing so how alternative staffing would deliver the same merit-personnel benefits listed in the preamble of the Workforce Innovation and Opportunity Act final rule as "promoting greater consistency, efficiency, accountability, and transparency" and restated in the NPRM. Furthermore, AFOP urges ETA and its Regional Administrators make it a point of emphasis to ensure qualified and experienced staff are doing farmworker-related work, and, in doing so, recognize that the National Farmworker Jobs Program (NFJP) grantees would be exceptionally qualified partners to perform MSFW outreach. Few, if any, know farmworkers like the NFJP grantees.

In closing, AFOP would like to stress that the need for qualified staff is real. As the National Monitor Advocate stated in his 2011 annual monitoring report:

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Although the provision of the full range of employment and training services to MSFWs is a considerable improvement to how these services were provided prior to the Judge Richey Court Order, MSFWs still experience some of the same employment-related violations they faced 30 years ago.

Regrettably, the farmworker's plight has not improved much in the intervening years since the report's release. MSFWs still suffer from tremendous barriers, discrimination, wage theft, and other abuses. The last thing this government should be doing is making changes to regulations that may very well deny them access to qualified staff to help the workers find self- and family-sustaining employment. While AFOP understands ETA's intention to improve the efficiency of SWAs employment services, unless the SWAs can demonstrate that a change in the staffing model is merited and will not undermine the obligations of the Richey Order through a "greening" of staff, AFOP does not believe ETA should adopt this rule.

AFOP appreciates ETA's consideration of the AFOP comments.

Sincerely,



Daniel Sheehan
Executive Director