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ABSTRACT

Implementation of section 13(b)(1) of the Wagner-Peyser Act pertaining to referrals of Employment Service applicants to private agencies was examined. It was found that the statute's language did not specifically require states, but only the U.S. Department of Labor, to make referrals. This study also determined whether additional actions might be taken to ensure that private employment agency resources are appropriately used in federally funded efforts to reduce unemployment. Private agency referrals generally had not occurred because of the continuing, noncooperative relationship between state Employment Services and private agencies. Advantages of referrals included increased placements, reduced time taken to find jobs, or both. The review disclosed no convincing reasons why state Employment Services could not or should not seek and make available to jobseekers the job information and assistance of private employment agencies, provided jobseekers are not required to pay for this assistance. Regulations requiring referrals to private agencies were recommended. (Eight appendixes follow the seven-page report; they provide: a description of scope and methodology; information on how public and private employment agencies operate; detailed discussions of why referrals have not occurred, advantages of referrals, and barriers and approaches to increasing referrals; Department of Labor comments; comments from the Assistant Secretary for Employment and Training; and a discussion proposal from Employers' National Job Service Committee officials.) (YLB)

GAO

United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division
B-222193

March 31, 1986

The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This report is submitted in response to your May 28, 1985, request that we examine implementation of section 13(b)(1) of the Wagner-Peyser Act (29 U.S.C. 49(l)) and determine whether additional actions might be taken to better ensure that private employment agency resources are appropriately utilized in federally funded efforts to reduce unemployment. As agreed with your office, we did not address a second issue raised in your letter—duplication of efforts among publicly funded job matching programs—which will be the subject of a separate study.

Th Wagner-Peyser Act of 1933 established the Employment Service system, a federal-state partnership program funded by federal payroll taxes on employers and administered by the Employment and Training Administration of the Department of Labor. Labor provides grants to 54 state and territorial agencies (Employment Services) to operate about 2,000 local offices. These offices solicit job openings from employers and refer qualified jobseekers to them at no charge to the jobseekers. About 10,000 private sector employment agencies perform the same services. Private agencies, however, charge fees to employers or jobseekers and do not get paid unless they successfully make placements. Employers pay the fees for about 70 percent of all private agency placements.

Historically, there has been a competitive, noncooperative relationship between state Employment Services and private employment agencies. Before 1982, a Labor regulation prohibited state Employment Services from referring their jobseekers to private employment agency job openings even when the jobseekers would not be charged fees.

In 1982, the Congress enacted the Job Training Partnership Act (Public Law 97-300), which contained amendments to the Wagner-Peyser Act, including section 13(b)(1), which provides that "Nothing in this Act shall be construed to prohibit referral of any [Employment Service] applicant to private agencies as long as the applicant is not charged a fee." This section is contrary to the prior Labor regulation prohibiting such referrals.

Labor has taken the position that 13(b)(1) is binding only upon the Department and that states are neither required to make referrals nor restricted in the manner in which they may choose to implement the section, consistent with law and regulations. We agree that the statute's language does not specifically require states to make referrals. We note, however, that the Congress, in enacting 13(b)(1), was concerned that all sources of job information and assistance, including private employment agencies, be available to Employment Service jobseekers, as long as jobseekers were not charged fees. Moreover, under section 12 of the Wagner-Peyser Act, the Secretary of Labor could address this concern by issuing regulations that would require private agency referrals be made to achieve the objective of giving Employment Service jobseekers exposure to more employment opportunities. Labor has not issued such regulations. We discuss this in greater detail in appendix III.

In conducting our review from May 1985 through early March 1986, we

- obtained information on relevant policies and practices of all the state Employment Services and Labor in implementing section 13(b)(1),
- assessed results from welfare program experiments in the Pittsburgh area and in Texas that referred jobseekers to private agencies,
- obtained estimates from the private employment agency industry on the potential job placements it could make if Employment Service jobseekers were referred to its employer-paid-fee job openings, and
- solicited the views of Employment Service officials and other experts on barriers and approaches to increasing the use of private agencies.

Details on the scope and methodology of our review appear in appendix I. Our review was conducted in accordance with generally accepted government auditing standards.

Private Agency Referrals Generally Have Not Occurred

There has been little effort on the part of either Labor or the federally funded state Employment Services to use private employment agency resources. Only one state, Maryland, has adopted (in February 1986) a plan to regularly make such referrals, and only seven others have done so in isolated instances. The remaining states have made no referrals, and 20 states have policies and practices explicitly prohibiting referrals to private agencies even when jobseekers are not charged fees.

The principal reason for these policies and practices, according to most experts and officials with whom we spoke, is the continuing competitive, noncooperative relationship between state Employment Services

and private agencies, based largely on a concern of the Employment Services that increased referrals to private agencies could lead to displacement of Employment Service offices and staff. Thus, in the absence of Labor regulations requiring states to make such referrals, states have declined to do so. Detailed discussion of these issues appears in appendix III.

Advantages of Referring Jobseekers to Private Agencies

Increased placements, reduced time taken to find jobs, or both resulted when two welfare programs referred jobseekers to private employment agencies, paying fees to the agencies instead of or in addition to contracting with state Employment Services. As a result of using private agencies, about 5 percent more program clients either got jobs or found them more quickly, Texas and Pennsylvania welfare officials said, based on their experience and program evaluations. These results would have been better, they told us, except that program funds available to pay placement fees were limited.

Their evaluations of these programs, which we reviewed but did not assess for validity, indicated that private agency placements were at least as cost effective as placements under their contracts with state Employment Services. In these two programs, they said, private agencies were a useful supplement to state Employment Services because private agencies had additional job openings and, unlike state Employment Services, were not paid unless they placed jobseekers successfully for a specified time. Our statistical sampling of 838 placements made by private employment agencies in these programs showed that 88 percent of them were in job openings not listed with the Employment Service. Ninety-seven percent of the placements were in unskilled or semiskilled occupations (e.g., assembly, service, and general clerical), and at hourly rates at or about a dollar above the minimum wage. These are the occupational types and pay ranges in which the Employment Service places the bulk of its jobseekers.

The National Association of Personnel Consultants, a private agency association, conducted a nationwide survey of its 2,000 members in 1985. Of the 575 responding firms, 72 percent indicated they wanted their employer-paid fee job openings listed with state Employment Services. They believed they could place 24 percent of state Employment Service jobseekers referred to them this way and estimated that 82 percent of their job openings were not listed with state Employment Services.

Although the results of the two state welfare programs are not statistically projectable to the Employment Service program nationally, and the private industry survey was not based on a random sample, we believe they provide evidence that increased referrals of state Employment Service jobseekers to private agency openings could increase placements, reduce the time taken to obtain employment, or both.

Among the benefits which could be expected from increased or more rapid placement of Employment Service jobseekers are reduced unemployment insurance and welfare outlays and increased tax revenues from their earnings. Including private agency jobs in state Employment Service listings, according to several experts, might beneficially broaden the Employment Services' base of openings and jobseekers, helping them serve a more useful clearinghouse function similar to multiple listing services in the real estate industry. Employment Service officials in Maryland, which in February 1986 began a program of regularly referring their jobseekers to private agency openings, believe the costs of soliciting and including these openings in their existing listings and making referrals to them will be negligible and that such referrals will require no new staff.

Conceivably, increased private agency referrals could cause displacement of some state Employment Service staff. However, Maryland officials, private agency representatives, and outside experts told us that the Employment Service should not be significantly affected because private agencies could not profitably place all Employment Service jobseekers. They believe that, instead, the Employment Service would be better able to target its resources on harder-to-place jobseekers. We present a more detailed discussion of these matters in appendix IV.

Other Barriers and Approaches to Using Private Agency Resources

We solicited the views of Employment Service officials and experts on other barriers to increasing private employment agency referrals and asked what approaches beyond section 13(b)(1) might encourage private agency referrals. Organized labor and some federal and state Employment Service officials expressed concern that private agencies might not comply with equal employment opportunity requirements in assisting jobseekers. Most other experts we spoke with, however, noted that this could be easily overcome by monitoring of private agencies. Some employers voiced apprehension about possibly having to pay fees to private agencies in addition to the taxes they now pay to support the Employment Service. But again, most experts noted that the instances of employers "paying twice" would not necessarily occur any more than

now when employers list job openings with private agencies rather than the Employment Service.

Other ways to increase the use of private agency resources for placing state Employment Service jobseekers were suggested by experts and officials. Some state Employment Service officials believe that private agencies should split employer-paid fees with the state Employment Service if it supplied jobseekers for private agency job openings. Some employers said that, if the Employment Service received a share of employer-paid fees, employers should receive partial credit against their tax contributions that already go to support the Employment Service. A National Governors' Association official, among others, suggested allowing Unemployment Insurance funds to be used to pay private agencies for placing Unemployment Insurance beneficiaries. A summary of our discussions with experts appears in appendix V.

Detailed analysis of these approaches was beyond the scope of our review, but we believe they have sufficient merit to warrant further investigation. Such alternatives would require changes to section 13(b)(1) as well as to other legislation now governing the Employment Service and the Unemployment Insurance program.

Conclusion

Our review disclosed no convincing reasons why state Employment Services could not or should not seek and make available to jobseekers the job information and assistance of private employment agencies, provided that jobseekers are not required to pay for this assistance.

Since states by and large have not made referrals to private agencies, we conclude that Labor regulations are prerequisite to such referrals being made.

Recommendations

Since there is congressional concern that all job information and assistance be available to Employment Service jobseekers, and in our opinion, Labor has authority to issue regulations requiring referrals to private agencies, we recommend that the Secretary of Labor

- develop regulations and guidelines that require state Employment Services to solicit job openings from private employment agencies and refer jobseekers to them so long as the jobseekers are not charged fees and

- evaluate, in consultation with affected parties, additional approaches for increasing the use of private employment agency resources to place Employment Service jobseekers.

Matters for Congressional Consideration

If the Secretary of Labor does not issue such regulations, the Congress may want to amend 13(b)(1) of the Wagner-Peyser Act to require specifically that state Employment Services solicit private employment agency job openings and refer jobseekers to them so long as the jobseekers are not charged fees. Pending consideration of amendments to the Wagner-Peyser Act, the Congress may want to consider, as an interim measure, language in Labor's annual Appropriations Act providing that grants to state Employment Services are conditional on their soliciting and making such referrals to private agency job openings.

Labor Comments and Our Evaluation

In a March 13, 1986, response (see app. VII) to a draft of this report, the Assistant Secretary for Employment and Training commented that Labor has deferred to the states responsibility for developing Employment Service operational procedures consistent with the act and regulations. In discussing the Assistant Secretary's comments, Labor officials told us that, since the statute does not specifically require that referrals be made by state Employment Services, they believe this should be a matter of state discretion and that, if the Congress wished to require such referrals to be made, it could amend section 13(b)(1). In response to our recommendation to issue regulations requiring referrals, the Assistant Secretary did not comment. He said, however, that the Employment and Training Administration would

- issue to the states a field directive encouraging them to contact private employment agencies for the purpose of expanding job openings and increasing placement efforts of jobseekers and
- encourage states to work with their employer community to develop plans for improving the quality of services to these employers, through use of private employment agencies.

We believe the actions proposed by Labor are steps in the right direction, reflecting the Employment and Training Administration's recognition that the Employment Service system's mission could be better served by increasing referrals of its jobseekers to private employment agency openings if they were not charged fees. However, we believe that, in view of the historical competitive, noncooperative relationship between state Employment Services and private employment agencies,

encouragement alone will not be sufficient and regulations requiring referrals to private agencies are necessary. In the absence of regulations, states generally have chosen not to make such referrals. (App. VI contains a discussion of the Department of Labor's comments and our evaluation.)

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 21 days from the date of its issuance. At that time, we will send copies of this report to the House and Senate Committees on Appropriations, the Senate Committee on Labor and Human Resources, the House Committee on Education and Labor, the Secretary of Labor, the Director of the Office of Management and Budget, and other interested parties, and will make copies available to others on request.

Sincerely yours,

Edward A Densmore

for Richard L. Fogel
Director

Contents

Abbreviations

CBO	Congressional Budget Office
ETA	Employment and Training Administration
FUTA	Federal Unemployment Tax Act
NAPC	National Association of Personnel Consultants
UI	Unemployment Insurance

Scope and Methodology

In conducting our review, we obtained information on the policies and practices of all the states and the Department of Labor in implementing 13(b)(1) of the Wagner-Peyser Act (29 U.S.C. 49(l)), assessed results of two state welfare programs that refer jobseekers to private agencies, obtained estimates from the private employment agency industry on how many Employment Service jobseekers they could place, and solicited the views of experts on barriers and approaches to increasing the use of private agencies. Our review was conducted between May 1985 and early March 1986 in accordance with generally accepted government auditing standards.

Employment Service System and Private Agency Operations Examined

We examined current applicable legislation, regulations, and Labor, state, and industry data on Employment Service and private agency operations. To develop background on referral procedures of the Employment Service system and the private employment agency industry and their relationship to one another, we also interviewed responsible Labor headquarters and regional officials, state officials, and industry representatives.

Implementation of Section 13(b)(1) Evaluated

We analyzed Labor regional office assessments of state agencies' activities in carrying out section 13(b)(1). These assessments, conducted between November 1984 and July 1985, were the latest available at the time of our review. They were part of Labor's annual monitoring of state Employment Services' federally funded activities under the Wagner-Peyser Act and were approved by Labor headquarters. We reviewed the criteria and procedures both Labor regional offices and Labor headquarters used in determining compliance or noncompliance with 13(b)(1). Where we had questions about state actions taken or policies referred to in the assessments, we contacted state or Labor regional officials to obtain written or oral clarification. We compared the standards used by all regional offices and Labor headquarters in the assessments.

Advantages of Private Agency Referrals Evaluated

To evaluate the advantages of the Employment Service referring jobseekers to private employment agencies, we obtained and analyzed data from two state welfare programs (Pennsylvania and Texas). We examined these programs, which refer some of their clients to private employment agencies instead of or in addition to the Employment Service, because they were the only current examples of government programs using such agencies we could identify. We believed they could

provide insight on potential advantages of increasing such referrals by Employment Services.

In particular, we tried to determine whether

- the jobs that private employment agencies found for these two programs' welfare clients were similar in type to those the Employment Service lists and
- the specific job openings the agencies found for them were listed in the state Employment Services' job files.

To do so, we looked at random statistical samples of 207 private employment agency client placements drawn from the total of 838 such placements (470 in Texas and 368 in Pennsylvania), made over different 1-year periods in each state during 1984 and 1985. The Texas sample was drawn from statewide data, although 66 percent of the placements were in the El Paso area where the program was most active. The Pennsylvania sample was drawn from Allegheny County (Pittsburgh and environs) because program information was decentralized by county. We also examined and discussed with state welfare officials their agencies' evaluations of these programs. Although we did not assess the validity of the evaluations, the general methodology appeared sound.

Additionally, we obtained and analyzed data from a 1985 survey of about 2,000 private employment agencies conducted by an industry association, the National Association of Personnel Consultants. The survey, to which 575 firms responded, dealt with members' views on the likelihood and desirability of their placing Employment Service jobseekers as well as the number and salaries of these private employment agencies' placements. We analyzed the results of the survey but did not assess its validity. We note, however, that the survey was not based on a random sample and thus may not be representative of the industry nationally.

Barriers and Approaches to Increasing Private Agency Referrals Examined

Finally, we obtained the views of interested parties and academic and industry experts on barriers and approaches to increasing use of private agencies in placing Employment Service jobseekers. We spoke with officials, staff, or members of the Interstate Conference of Employment Security Agencies, the Employers' National Job Service Committee, the National Alliance of Business, the National Association of Manufacturers, the National Governors' Association, the AFL-CIO (American Federation of Labor-Congress of Industrial Organizations), the American

Society for Training and Development, the Corporation for Enterprise Development, the International Association of Personnel in Employment Security, the Office of Management and Budget, the Congressional Budget Office, and academic experts.

How the Public and Private Employment Agencies Operate

The Employment Service system, established in 1933 by the Wagner-Peyser Act, is a federal-state partnership program financed through taxes authorized under the Federal Unemployment Tax Act (FUTA) levied on employers. The Employment Service solicits job openings from employers and refers qualified jobseekers to them at no cost to the jobseekers. It is administered by the Department of Labor, which provides 54 state and territorial agencies with grants to operate about 2,000 local offices. About 10,000 private employment agencies—some specializing in particular occupations or industries—perform the same services. Private agencies, however, charge fees to employers or jobseekers and are not paid unless they successfully make placements. Employers pay the fees for about 70 percent of all private agency placements.

Most persons who find employment do so through newspaper ads, family and friends, or direct application to employers. According to a 1975 study[1] given us by Labor, the Employment Service and private agencies together accounted for about 20 percent of all placements in the economy. Currently, the Employment Service makes about 5 million placements annually (including multiple placements of the same persons in short-term positions), and private agencies are estimated to make about the same amount. Both sectors place about one in every four jobseekers who come to them for assistance.

Data from a recent study[2] for the Office of Technology Assessment indicate that in the last 10 years the number of private agencies has grown by more than 60 percent, while Employment Service funding (about $700 million in fiscal year 1986), staffing, and the number of local offices have declined about 15 percent since 1981. Placements by the Employment Service over this period also have declined somewhat and have been concentrated in lower-skilled, lower-paying jobs, making the Employment Service less attractive than private agencies to some jobseekers and employers.

Historically, the relationship between state Employment Services and private agencies has been competitive and noncooperative. Although the Wagner-Peyser Act was silent on the matter of private agency referrals, prior to 1982 Labor had regulations providing that state Employment

[1]The Relationship Between the Public Employment Service and the Private Employment Agencies, prepared for the United States Employment Service, H. Carter Castilow, Washington, DC, 1975.

[2]Public and Private Employment Agency Roles in Providing Labor Market Information and Job Search Assistance: Past, Present, and Future, David W. Stevens, Human Resources Data Systems, Inc., Columbia, MO, 1985.

Services could ". . . make no referral as a result of which a charge would be made to either the worker or the employer for filling the job." (20 C.F.R. 604.1(h)) Thus, without specific statutory language requiring it, the Secretary of Labor used his general rulemaking authority, conferred upon him by section 12 of the Wagner-Peyser Act, to prohibit Employment Service jobseekers from being referred to private employment agencies even when jobseekers would not be charged.

In 1982, however, the Congress enacted the Job Training Partnership Act (Public Law 97-300), which contained amendments to the Wagner-Peyser Act, including section 13(b)(1) that provides that "Nothing in this Act shall be construed to prohibit the referral of any [Employment Service] applicant to private agencies as long as the applicant is not charged a fee."

Private Agency Referrals Generally Have Not Occurred

In July 1983, using the rulemaking authority conferred under section 12 of the Wagner-Peyser Act, Labor proposed regulations to implement several of the amendments enacted the previous year, but not section 13(b)(1). Private agency representatives asked Labor to also write regulations that would give states guidance on section 13(b)(1) but Labor declined, saying that the language of this new provision was "explicit and warrants no additional explanation or interpretation."

Although over 3 years have passed since the Congress enacted section 13(b)(1), we found that:

- Only one state, Maryland, solicits and refers Employment Service jobseekers to employer-paid fee job openings on a regular basis. However, even Maryland's system, implemented in February 1986, contains some disincentive for referrals to private agencies. Local Employment Service offices receive only half as much credit toward their performance goals for such placements as they do for placements made directly with employers. One other state, North Carolina, is exploring a system for referring jobseekers to private agencies, but as of February 1986, had not yet developed a specific plan. Only seven other states have made referrals to private agencies in isolated instances.
- Twelve states permit referrals only to temporary help services (which are employers, not agencies).
- Eight states prohibit referrals to private employment agencies that charge fees to either employers or jobseekers, even though the 1982 amendment only mentions prohibitions on charging fees to jobseekers.
- The remaining 25 states and territories, while not having formal policies prohibiting such referrals, nonetheless do not solicit or make referrals to private employment agency job openings.

Discussions with local, state, and Labor officials, as well as outside experts, indicated that the principal reason for these policies and practices is the continuing competitive, noncooperative relationship between state Employment Services and private employment agencies, based largely on a concern of state Employment Services that private agency referrals could lead to displacement of Employment Service offices and staff.

From November 1984 through July 1985, Labor regional offices reviewed state Employment Service agencies to determine whether they were in compliance with Wagner-Peyser Act provisions, including 13(b)(1), and made recommendations for corrective action based on findings of noncompliance. During these reviews, Labor regional offices

found the above-mentioned state agency practices and policies, which explicitly prohibit or effectively preclude referrals to private agencies even when jobseekers are not charged fees, to be in compliance with the amendment. Labor headquarters staff, which reviewed the regional office determinations prior to their being forwarded to the states, concurred with these findings.

Regional offices also used varying criteria in assessing state policies and practices. For example, some regional offices required states to have written policies on implementation while other regional offices did not. In another instance, a regional office found in compliance California's prohibition of referrals to agencies that charged fees to employers as well as those that charged jobseekers. But the regional office reviewing Massachusetts' similar policy questioned whether it conformed with the act. Labor headquarters approved these conflicting regional office findings.

In none of its recommendations to states for corrective action did Labor regional offices give them substantive interpretation of section 13(b)(1). For instance, where they required states to have written policies, they did not say what these should contain. Similarly, in the case of Massachusetts' prohibition of referrals to agencies that charged employers fees, the Labor regional office provided no specific guidance, but recommended that the state itself decide whether its policy was in conformance with the act. Labor headquarters staff concurred in these recommendations.

State practices and policies and Labor's inconsistent treatment of them are summarized in table III.1.

Table III.1: Labor's Compliance Determinations on State Referral Policies and Practices

State policy or practice	Found in compliance	Found not in compliance	Total
Did not regularly solicit or refer to private agency openings	53	0	53
Had not made referrals	46	0	46
Had no written policy	21	10	31
Referred only to temporary help services	12	0	12
Did not refer to agencies that also charged employers	7	1	8

The state policies and practices summarized in table III.1 either explicitly prohibit or effectively preclude referrals of Employment Service

jobseekers to private employment agencies. They limit the opportunities for job referrals. In response to this finding, Labor told us it believes section 13(b)(1) is binding only upon the Department and that, within the confines of the language of the section itself, states are neither specifically required to make such referrals nor restricted in the manner in which they may choose to implement the section. Labor did note, however, that state policies must be consistent with the statute and Labor regulations.

The Congress, in enacting 13(b)(1), indicated its concern that ". . . all forms of job information and assistance should be available to [Employment Service] applicants . . ." including private employment agencies. (Senate Report 97-469, 97th Congress, 2nd Session at 31.) This concern may be addressed most effectively by Labor issuing regulations requiring state Employment Services to make referrals to private employment agency job openings as long as jobseekers are not charged fees. Under section 12 of the Wagner-Peyser Act, the Secretary may issue such regulations to effectuate the general purposes of the act, including increasing private agency referrals. As noted earlier, however, Labor has to date declined to do so. Thus, because of the absence of Labor regulations, and given the competitive, noncooperative relationship between state Employment Services and private employment agencies, nearly all states have chosen not to make such referrals.

Advantages of Referring Employment Service Jobseekers to Private Agencies

No state Employment Service (other than Maryland's, beginning in February 1986) has regularly made referrals of Employment Service jobseekers to private employment agency job openings. But two state welfare programs (Pennsylvania and Texas) do refer some of their clients to private employment agencies instead of or in addition to the Employment Service. These programs, authorized under the Omnibus Budget Reconciliation Act of 1981, make payments to private agencies for successful placements, rather than paying the Employment Service with whom they normally contract for placement services. We examined these programs' activities for insights into the potential benefits and cost-effectiveness of referring Employment Service jobseekers to private agencies. We limited our review of Pennsylvania's operations to the Pittsburgh area, where one-fourth of all placements occurred, because records were maintained throughout the state at the county level. In Texas, we sampled statewide because Employment Service records were centralized. However, 66 percent of the placements in that sample were in the El Paso area where the program was most active.

Of the sampled jobs that private agencies found for welfare clients in these localities during 1984 and 1985, 97 percent were in unskilled or semiskilled occupations (e.g., assembly, service, general clerical work) or pay levels at or about a dollar above the minimum wage. These characteristics are similar to jobs in which the Employment Service places the bulk of its jobseekers. Also, our random statistical samples of 207 of the 838 private agency placements made in these two programs showed that 182 of them or 88 percent were in job openings local Employment Service offices did not have listed in their files. These findings contradicted the views of local Employment Service staff who said that private agencies did not list the same types of jobs the Employment Service listed and that, if they did, the Employment Service probably knew of them.

In both states, welfare and private agency employment officials told us that private agencies have so many openings the local Employment Services knows nothing about because they can devote a substantial portion of their resources to soliciting employers for job openings, and do not rely on employers contacting them to the same extent as does the Employment Service.

The use of private agencies resulted in about 5 percent more clients getting jobs or finding them more quickly, welfare agency officials told us

they believed, based on their experiences and program evaluations.[1] These results would have been better, the officials said, except that welfare funds available for payments to private employment agencies limited the programs' size. Their evaluations of these programs, which we reviewed but did not assess for validity, indicated private agency placements were at least as cost effective as placements under their contracts with the Employment Service. Also in these two programs, private agencies were a useful supplement to the Employment Service, according to the welfare officials, because private agencies have additional job openings and, unlike the Employment Service, are not paid unless they place jobseekers successfully for a specified time.

Although the Texas and Pennsylvania welfare agencies' self-evaluations indicated that private agency referrals were beneficial, the design and scope of the programs and client characteristics prohibit our projecting their results to the Employment Service more generally. But we believe that these welfare program experiences suggest that private agencies, by virtue of their access to job openings not listed with the Employment Service, could be a source of added or more rapid placements. Maryland Department of Employment and Training officials told us in February 1986 that 15 private employment agencies had responded to their initial request for participation in the first week. Also, they said, about 20 percent of the job openings submitted by the private agencies were in skill and pay categories that its local offices generally served, although the sample was too small to project. None of the jobs were previously known to the local offices.

Many private agencies also believe they can increase or hasten Employment Service jobseeker placements. In 1985, the National Association of Personnel Consultants (NAPC), a private industry association representing a reported 2,000 firms nationally, conducted a survey[2] of its members. NAPC asked them whether they were interested in having their employer-paid-fee job openings listed with the Employment Service and whether they felt they could place Employment Service jobseekers referred to them. Survey results indicated that 72 percent of NAPC's 575 responding member firms wanted their openings included in Employment Service job listings so that Employment Service jobseekers could

[1]Final Evaluation Report, Job Search Field Test. Texas Department of Human Resources. Austin, TX. 1984; and Private Employment Agency Program Study. Allegheny County Assistance Office. Pittsburgh, PA. 1985.

[2]NAPC Questionnaire—Government Cooperation/Government Competition. National Association of Personnel Consultants. Alexandria, VA. 1985

be referred to them. These firms also estimated that the Employment Service did not know of 82 percent of their job openings, which is about the same as the percentage we found in Texas and the Pittsburgh area. They believed, based on their occasional contact with Employment Service jobseekers, that they could place 24 percent of those referred to them in response to their listings. Additionally, 70 percent of the responding private agencies also wanted referred to them jobseekers whom the Employment Service had not been able to place. Even if the firms did not have current openings for these jobseekers, they estimated they could find jobs for about 21 percent of jobseekers sent to them.

Those private agencies that were more likely (compared to other survey respondents) to want their job openings listed with the Employment Service and which believed they could place a higher percentage of Employment Service jobseekers generally were those that had a higher proportion of lower-paying job openings. They also tended to be larger firms in terms of annual placements.

We did not assess the validity of the NAPC survey, but note that, as it was not based on a random statistical sample of all private agencies, it may not be representative of the industry nationally. It does provide evidence, however, that many private agencies are willing to and believe they can successfully place Employment Service jobseekers at no charge to the jobseekers, if given the opportunity. Finally, we note that the survey did not mention as a possible incentive payments to private employment agencies, such as those provided in the welfare programs. Had such payments been suggested, agencies' interest might have been even greater.

The benefits of increased or quicker Employment Service placements could be expected to include reduced welfare and unemployment insurance payments and increased tax revenue. As to the cost, precise data are not available. The Secretary of Maryland's Department of Labor, however, told us he believed the costs of soliciting and including private agency job openings in his Employment Service's files and making referrals to them would be small. Because Employment Service offices already solicit, list, and make referrals to job openings on a large scale, adding private agency job listings would, in his view, require no additional staff.

Barriers and Approaches to Increasing Private Agency Referrals: Summary of Discussions With Officials and Experts

As discussed earlier, the principal reason private agency referrals have not occurred is the competitive relationship between state Employment Services and private agencies. We solicited views on other barriers to increasing private agency referrals. Barriers cited (and those expressing the views) were:

- Private agencies might not comply with equal employment opportunity requirements in making referrals or might improperly try to get jobseekers to accept employee-paid-fee positions (organized labor and some federal and state Employment Service officials).
- Current systems measuring performance of state Employment Service offices generally count only referrals or placements made directly with employers and would not credit those made through private employment agencies (some state Employment Service officials).
- Private agencies might obtain freely lists of jobseekers identified by the Employment Service, and employers might have to pay fees to private employment agencies in addition to their FUTA (Federal Unemployment Tax Act) payments, which support the Employment Service (some employers who serve on committees that advise the Employment Service on policy).

Most experts with whom we spoke said these additional barriers either were inconsequential or could be overcome easily by monitoring of private agencies and appropriate technical changes in Labor and state regulations. A National Governors' Association official, among others, noted that the instances of employers "paying twice" would not necessarily arise any more than now when employers list job openings with private agencies rather than the Employment Service. Conceivably, increases in private agency referrals could cause some displacement of Employment Service staff, but Maryland officials, private agency representatives, and outside experts told us that the Employment Service should not be affected significantly because private agencies could not profitably place all Employment Service jobseekers. Rather, they believe, the Employment Service would be better able to target its staff and funding resources on harder-to-place jobseekers.

Several experts, including an official of the American Society for Training and Development, said that greater use of private agency resources might even benefit the Employment Service by giving it better quality job listings. In time, such listings could attract more highly qualified jobseekers to the Employment Service, they believe, improving its image and usefulness to employers who do not now use it. Also by including private agency openings in its job listings, it was suggested,

the Employment Service might undertake a role similar to that of multiple listing services in the real estate industry. This would provide a new and perhaps needed clearinghouse function in the increasingly complex and changing domestic labor market, it was thought.

In our discussions, we also asked what approaches beyond section 13(b)(1) might encourage more private agency referrals. Some suggestions (and their sources) were:

- Private agencies should split employer-paid fees with the Employment Service if it supplied jobseekers for private agency job openings, some state Employment Service officials believe. (This is what private agencies currently do among themselves when they pool resources to match jobseekers with openings.) Such fee-splitting would be an acceptable concept, private agency industry representatives told us.
- If the Employment Service received a share of employer-paid fees, employers should receive at least partial credit against their FUTA tax contributions, which already go to support the Employment Service. This was suggested by representatives of the Employers' National Job Service Committee, an organization of about 28,000 businesses that use and make policy recommendations to the Employment Service on both the federal and state levels. They further proposed for discussion the concept of a reciprocal procedure whereby private agencies in return would gain access to Employment Service job openings the Service had not been able to fill, with employers' FUTA tax payments used to pay a portion of the private agencies' fees for filling these openings. (See app. VIII for a discussion of this proposal.)
- It might be advantageous to allow Unemployment Insurance (UI) cash benefit funds also to be used for payments to private agencies that place jobseekers receiving UI compensation (paralleling such use of welfare program funds in Texas and Pennsylvania). This suggestion came from a National Governors' Association official among others.

Such approaches would require changes to section 13(b)(1), as well as to other legislation now governing the Employment Service and UI programs. Bills introduced in recent Congresses would have designated a portion of Employment Service funding for private agency placements or allowed use of UI funds for training and reemployment vouchers payable to employers. These bills, however, did not provide for fee-splitting, which may be an equitable approach to placements accomplished through cooperation between Employment Service and private agencies.

Costs associated with these approaches would vary. According to the Congressional Budget Office (CBO),[1] using UI funds for reemployment vouchers, if limited to sums already paid to recipients in cash benefits, would appear to impose no additional costs. We believe the same would be logically true for using FUTA funds. And, if the Employment Service were to receive a share of the fees employers paid private agencies for the jobseekers it supplied, this could provide it with alternative or supplemental funding and lower costs to the federal budget. Some of those savings, however, would in turn be offset if credits were allowed to employers against taxes they pay to support the Employment Service.

While we believe these approaches have sufficient merit to warrant their further investigation by Labor and the Congress, more detailed analysis of their effects was beyond the scope of our review.

[1] A 1985 CBO study discussed factors involved in using UI funds for reemployment vouchers, rather than only for income maintenance cash benefits (Promoting Employment and Maintaining Incomes with Unemployment Insurance, CBO, Washington, DC).

Advance Comments From the Department of Labor and Our Evaluation

The Assistant Secretary for Employment and Training (ETA) in a memorandum of March 13, 1986 (see app. VII), commented on a draft of this report. Below are the comments and our response.

Labor's Comment

"In response to the recommendations made on page 13 [now p. 6], ETA will respond as follows:

1. ETA will issue revised guidance to its regional offices to assure the use of consistent standards in conducting reviews of compliance with the provisions of section 13(b)(1).

2. ETA will issue to the states a field directive encouraging them to contact private employment agencies for the purpose of expanding job openings and increasing placement efforts of jobseekers.

3. Concurrently, ETA will encourage states to work with their employer community to develop plans for improving the quality of services to these employers through the use of private employment agencies."

GAO's Evaluation

The Assistant Secretary did not respond specifically to our recommendation that Labor issue regulations. We believe the actions proposed by Labor are steps in the right direction, reflecting ETA's recognition that the Employment Service system's mission could be better served by increasing referrals of its jobseekers to private employment agency openings when they would not be charged fees. However, we believe that because of the competitive, noncooperative relationship between state Employment Services and private employment agencies, encouragement alone will not be sufficient and that regulations requiring the use of private agencies are necessary. In the absence of regulations, states generally have chosen not to make referrals to private agencies.

Further, we note that section 13(b)(1) does not speak to improving the quality of services to employers but rather to improving opportunities for Employment Service jobseekers. Accordingly, development of state plans to increase use of private employment agencies would likely benefit, in our view, from participation by the private employment agency industry and organized labor in addition to the employer involvement that Labor proposes to encourage.

Regarding ETA's comment that it will issue revised guidance to its regional offices to assure use of consistent standards in conducting reviews of compliance, in our view Labor cannot meaningfully conduct such reviews without regulations specifically requiring such referrals.

In the absence of such regulations, states may, and likely will, continue to preclude such referrals.

The Department of Labor did not comment on our recommendation to evaluate additional approaches to increasing the use of private employment agency resources to place Employment Service jobseekers.

Labor's Comment

Labor said that our report suggests private employment agencies have been denied by the states opportunity to list openings when jobseekers would not be charged fees. If such data exists, Labor said, it should be provided this data so that it can take appropriate actions to resolve such a problem.

GAO's Evaluation

Our report notes, on page 3, that the NAPC survey indicates many private agencies believe they could place Employment Service jobseekers, without charging them fees, if given the opportunity. Our report further notes, on page 2, that nearly all states currently have policies and practices that deny them this opportunity. Data on these state policies and practices were derived from documents collected from state Employment Services by Labor during the course of its compliance reviews conducted in 1984 and 1985, and from supplemental documents obtained during our discussions with Labor regional offices and the states.

In our opinion, however, we do not believe Labor can take meaningful action to "resolve such a problem" unless it issues regulations requiring states to make referrals to private agencies. Again, in the absence of regulations states may, and probably will, continue to preclude such referrals.

Labor's Comment

Labor said our report "inaccurately reflects the State-Labor partnership relationship as embodied in the signed Secretary's/Governor's Agreement, in which the Department has deferred to the States responsibility for developing operational procedures consistent with the Act and regulations."

GAO's Evaluation

After receiving these comments, we asked Labor officials for clarification. They said the Secretary had agreements with governors to allow states to develop operational procedures for state Employment Services

so long as those procedures were consistent with federal law and regulations. In their view, private agency referrals were thus a matter of state discretion. However, as our report notes on page 2, Labor to date has declined to issue any regulations concerning private agency referrals with which states' operational procedures could be consistent. Our report further notes that it is precisely this absence of such regulations that, given the state Employment Services' existing relationships with private employment agencies and their concern about possible displacement, has allowed states to continue precluding referrals to private agencies. As for issuing such regulations, Labor officials told us that, if the Congress wished such referrals to be made, it could amend section 13(b)(1), but that otherwise, in their view, it should remain a matter of state discretion.

Labor's Comment

"The report should reflect that the Labor Solicitor's review and opinion of section 13(b)(1) indicates that the provisions neither require states to take specific action to implement nor restricts the manner in which states may choose to implement. The report implies, however, that some states may be in violation of this provision. GAO should clarify their position on this issue."

GAO's Evaluation

It was not our intention to imply that some states had violated section 13(b)(1). We have added a clarifying statement on page 2 that the statute's language does not specifically require states to make referrals to private agency job openings. We note, however, that state policies and practices that explicitly prohibit or effectively preclude such referrals limit exposure of Employment Service jobseekers to expanded job opportunities.

Finally, in our opinion, nothing in section 13(b)(1) or elsewhere in the act limits the Secretary from writing regulations requiring that state Employment Services make referrals to private agencies. Nor does the Solicitor's opinion assert that he may not do so. We note on page 2 that prior to the passage of 13(b)(1), Labor, while similarly without specific statutory direction, nonetheless issued regulations prohibiting states from making private agency referrals even when jobseekers would not be charged fees.

Labor's Comment

"ETA requests that the report give the source for the conclusions drawn on page 2 [now page 13, app. II] '20 percent of all placements. . .,' '3.5 million placements . . .' and 'the number of private agencies has grown . . .'"

GAO's Evaluation

Sources for these have been added (see p. 13, app. II) and the number of placements has been changed to 5 million to include multiple placements of the same persons in short-term positions.

Labor's Comment

"Similarly, ETA requests the source for the conclusion on page 3 [now p. 13, app. II] 'increasingly concentrated in lower-skilled, lower-paying jobs . . .'"

GAO's Evaluation

We have deleted the word "increasingly." The sentence now reads "Placements by the Employment Service over this period . . . have been concentrated in lower-skilled, lower-paying jobs . . ."

Labor's Comment

"We suggest that GAO include within the appendix the DOL Solicitor's opinion in response to ETA on implementing section 13(b)(1)."

GAO's Evaluation

This has been included in appendix VII.

Labor's Comment

"A statistical appendix would provide greater support for many of the generalizations made throughout the report. Therefore, it should be included."

GAO's Evaluation

In our opinion, the data as presented in the report sufficiently describe the extent to which referrals have not occurred and the advantages of referring jobseekers to private employment agencies.

Memorandum From Assistant Secretary for Employment and Training Dated March 13, 1986, With Attachments

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

MAR 13 1986

MEMORANDUM FOR: RICHARD L. FOGEL
Director, Human Resources Division
U. S. General Accounting Office

Attn: Chester Joy

FROM: ROGER D. SEMERAD
Assistant Secretary of Labor

SUBJECT: General Accounting Office (GAO) Draft Report--More Employment Service Jobseekers Could be Referred to Private Employment Agencies

The Employment and Training Administration (ETA) has reviewed the subject GAO Draft Report. The attached comments are provided for your consideration in finalizing the report. These comments confirm the conversation between ETA staff and Chester Joy on March 6.

If you have any questions, please contact Anna C. Hall on 376-6295.

Attachment

Comments for GAO Report:
More Employment Service Jobseekers Could be Referred to Private Employment Agencies

- In response to the recommendations made on page 13, ETA will respond as follows:

  1. ETA will issue revised guidance to its regional offices to assure the use of consistent standards in conducting reviews of compliance with the provisions of Section 13(b)(1).

  2. ETA will issue to the States a field directive encouraging them to contact private employment agencies for the purpose of expanding job openings and increasing placement efforts of jobseekers.

  3. Concurrently, ETA will encourage States to work with their employer community to develop plans for improving the quality of services to these employers, through the use of private employment agencies.

- GAO's discussion on pages 7-8, suggests that "the private agencies that were more likely to want their job openings listed with Employment Service..." have been denied by the States opportunity to list such openings. If data exists that indicates States have refused to accept such openings, such data should be provided to ETA, to enable ETA to take appropriate actions to resolve such a problem.

- The report inaccurately reflects the State-Labor partnership relationship as embodied in the signed Secretary's/Governor's Agreement (20 CFR 652.4(b)) in that the Department has deferred to the States responsibility for developing operational procedures, consistent with the Act and regulations.

- The report should reflect that the Labor Solicitor's review and opinion of Section 13(b)(1) indicates that the provisions neither require States to take specific action to implement nor restrict the manner in which States may choose to implement. The report implies, however, that some States may be in violation of this provision. GAO should clarify their position on this issue.

- ETA requests that the report give the source for the conclusions drawn on Page 2 -- "20 percent of all placements...," "3.5 million placements...," and "the number of private agencies has grown...."

- Similarly, ETA requests the source for the conclusion on page 3 -- "increasingly concentrated in lower-skilled, lower-paying jobs...."

- We suggest that GAO include within the appendix the DOL Solicitor's opinion in response to ETA on implementing Section 13(b)(1).

- A statistical appendix would provide greater support for many of the generalizations made throughout the report. Therefore, it should be included.

U.S. Department of Labor

Office of the Solicitor
Washington, D.C. 20210

JAN 23 1986

MEMORANDUM FOR: RICHARD C. GILLILAND
Director
United States Employment Service

FROM: WILLIAM H. DuROSS, III
Associate Solicitor for
Employment and Training

SUBJECT: Wagner-Peyser Act § 13(b)(1): Referral of Applicants to Private Employment Agencies

This is in response to the January 15, 1986, memorandum to me from Shirley V. Peterson, Administrator, Office of Employment Security (OES), on the above subject.

Wagner Peyser Act § 13(b)(1) states that "nothing in this Act shall be construed to prohibit the referral of any applicant to private agencies as long as the applicant is not charged a fee." OES has raised a number of questions regarding State employment service agency operations pursuant to § 13(b)(1). Our responses to those questions follow.

I. Background.

Section 13(b)(1) was added to the Wagner-Peyser Act by § 501(b) of the Job Training Partnership Act (JTPA), Pub. L. 97-300, 96 Stat. 1397, and subsequently amended by Pub. L. 97-404, § 5, 96 Stat. 2027. Prior to 1981, the regulations of the United States Employment Service stated the policy that State employment service agencies would "make no referral as a result of which a charge would be made either to the worker or the employer for filling the job." 20 CFR § 604.1(h) (1981). As interpreted, the regulation effectively precluded State employment service agencies from referring job applicants to private, permanent placement offices, although referral to temporary help agencies was allowable.

The private placement industry objected strenuously to the above regulation and interpretations. See memo-

ment and Training Policy, 1982: Joint Hearings Before the Subcommittee on Employment and Productivity of the Senate Committee on Labor and Human Resources and the Subcommittee on Employment Opportunities on the House Committee on Education and Labor, Part 2, 97th Cong., 2nd Sess. 836-44 (March 15, 1982) (statement of the National Association of Personnel Consultants). Suggesting cooperation between government and private placement firms, the private placement industry requested that Congress include in the job training legislation under consideration permission that they receive referrals from State employment service agencies. They argued that the government and private sector offices should cooperate by giving job applicants information to determine whether hiring a personnel consultant to represent her or him in the job search is appropriate. They also recommended leaving it up to the applicant whether he or she wished to be referred only to placement firms which do not charge fees to the applicants.

Responding to these requests, the Senate Committee on Labor and Human Resources included in the 1982 job training bill the language which eventually became § 13(b)(1) of the Wagner-Peyser Act. Sen. Rep. No. 97-469, 97th Cong., 2nd Sess. 31, 62, and 76 (June 9, 1982). The Committee stated that the bill, S. 2036,

> specifically permits the referral of an applicant to private employment agencies as long as the applicant is not charged the fee. The committee is of the opinion that all sources of job information and assistance should be available to applicants and the federal relief funded agencies should not be discouraged from working closely with all aspects of the private sector.
>
> [Sen. Rep. No. 97-469, 97th Cong., 2nd Sess. at 31.]

II. Questions Raised By OES.

1. Does § 13(b)(1) require any action by States?

Wagner-Peyser Act § 13(b)(1) is mandatory (and prohibitory) only as to the Department of Labor. The Department is prohibited from interpreting the Wagner-Peyser Act

as prohibiting the referral of any applicant to private agencies, as long as the applicant is not charged a fee. However, with respect to State employment service agencies the statute is permissive.

Many statutes which grant powers without imposing any obligation to exercise them are essentially permissive in the way they act. SUTHERLAND, STATUTORY CONSTRUCTION § 25.01 (4th ed.); cf. Califano v. Yamasaki, 442 U.S. 682, 683 n. 9 (1979) (contrasting permissive and mandatory statutes).

Thus, within the confines of the language in § 13(b)(1) state employment agencies do not appear to be required to refer applicants to private agencies. This is in line with the general tenor of the Act since its amendment by JTPA, permitting States great leeway in administering employment service programs, and with the regulations promulgated since the beginning of 1983 regarding activities by States under the Wagner-Peyser Act and JTPA. The agreements with Governors assuring that States comply with the Wagner-Peyser Act specify that guidelines, interpretations, and definitions adopted by the Governor, shall, to the extent that they are consistent with the Wagner-Peyser Act and applicable rules and regulations, be accepted by the Secretary of Labor. 20 CFR § 627.1; see 20 CFR § 652.4(b).

2. To what extent is a State obliged to implement § 13(b)(1)?

This question has been responded to in the response to Question No. 1 above.

3. If a State chooses to issue an implementing policy, may it limit either the type or number of applicants that may be referred?

Wagner-Peyser Act § 13(b)(1) and the above-cited Senate Committee Report do not limit either by applicant, by type of job opportunity, or by type of private agency, the language of that section.

The representatives of the private agencies which testified before Congress in 1982 recommended that the State employment service agencies direct their services toward placing individuals who have benefited from federal employment and training assistance or who are among

the hard-to-place workers. They recommended that easy-to-place workers be directed toward private employment agencies. The private agencies stated that the referral to such agencies be left up to the individual job seeker, after that applicant has been given requisite information to make such a determination.

Congress did not adopt the industry's fee charging proposal. As stated above, though, they adopted an otherwise permissive provision. Since State employment service agencies are given great discretion in specifying guidelines, interpretations and definitions, to the extent they are consistent with the Wagner-Peyser Act and applicable rules and regulations, we see no reason why they cannot limit their participation in referrals to private agencies.

4. If a State chooses to issue an implementing policy, may it limit either the type or number of private agencies to which the State agency may refer applicants, rather than refer to any private agency not charging the applicant?

This question is answered in the answer to Question No. 3, above.

5. What evidence must the State agency require to assure that no fee is charged the applicant?

Within the terms of the guidelines adopted by the State employment service agency, the State may require any information it deems necessary to assure that the applicant is not charged a fee. Compliance would be assured by the same methods as are used for other Employment Service violations by employers. See 20 CFR §§ 658.500 et seq.

6. Does § 13(b)(1) preclude the private agency from referring applicants from the State agency to employers who pay the private agency but recoup all or part of the fee from the employee through any of several processes?

The language of § 13(b)(1) does not prohibit the private agency from charging a fee to the employer. Should the employer then charge a fee to the job applicant, the State employment service agency would have to determine, based on the facts and its own guidelines, whether

this would constitute the applicant being charged a fee.

7. Will State agency placement validation sampling of employers be sufficient to establish that the applicant/employee is not charged a fee?

The Federal-State system of public employment offices is not an enforcement program. The program responds to complaints (20 CFR Part 658, Subpart E), imposes upon State agencies the requirement to establish and maintain self-appraisal systems, (20 CFR § 658.601(a)), and requires the regional and national offices of the Employment and Training Administration to monitor the carrying out of the Employment Service Regulations. (20 CFR §§ 658.602-658.603). Placement validation sampling, along with the complaint system and monitoring activities, should be sufficient to assure general compliance with the restriction in § 13(b)(1) against charging fees to applicants.

8. Does the term "private agencies" in § 13(b)(1) include: "temporary help" agencies, and "casual labor" agencies?

It is this office' understanding that prior to the enactment of § 13(b)(1), the State employment service agencies referred workers to temporary help agencies, where such temporary help agencies were, in fact, the employers of the workers. This was cited in the private employment agencies' testimony before Congress, discussed above. We see no reason, therefore, for the Department to change its interpretations with respect to temporary help agencies and casual labor agencies.

9. Must the State agency assure that the private agency has a legitimate and appropriate job opening before referral?

In a general sense, the term "referral" can mean the directing of an applicant to a private agency, assisting a job seeker in finding employment and facilitating the match between the job seekers and employers. However, the Employment Service Regulations promulgated prior to the enactment of Wagner-Peyser Act § 13(b)(1) uses the term "referral" in a technical sense. In 20 CFR § 651.10, the term "job referral"

> means (1) the act of bringing to the attention of an employer an applicant or group of applicant who are available for specific job openings and (2) the record of such referral. "Job referral" means the same as "referral to a job."

On that basis, if the private agency does not have on file a legitimate and appropriate job opening for the applicant, the direction of an applicant to the private agency technically could not be "counted" as a referral for Employment Service purposes. Of course, such direction is explicitly permitted by the Act, and could be counted as something other than a "job referral" as defined in § 651.10.

> 10. What evidence should a State agency obtain to determine if placement by the private agency is within the legal limits of wage, duration, existing work stoppage, etc.?

It would be appropriate for the State agency to make such determinations on the same bases as it makes such determinations with respect to referrals to specific employers. See 20 CFR Part 652 and §§ 658.500 et seq.

> 11. Do private agencies which help to rehabilitate mentally, emotionally, or physically handicapped workers, or which do employment or career counseling, qualify as "private agencies" under § 13(b)(1), even if they refer those served to other agencies for job placement?

Wagner-Peyser Act § 8(d) requires that State plans for carrying out the provisions of the Act shall include provisions for the promotion and development of employment opportunities for handicapped persons and for job counseling and placement of such persons. When § 13(b)(1) of the Act is read in conjunction with § 8(d) of the Act, we see no legal impediment to referrals to private agencies which help to rehabilitate mentally, emotionally, or physically handicapped workers, or which do employment or career counselling, even if they refer those they serve to other agencies for job placements.

If you have any further questions regarding our responses to the above eleven issues, please contact Mr. Bruce Walter of this office at 523-7857.

Discussion Proposal From Employers' National Job Service Committee Officials

EMPLOYERS' NATIONAL JOB SERVICE COMMITTEE

January 31, 1986

U.S. General Accounting Office
Washington, D.C. 20548

On behalf of the Employers' National Job Service Committee, I would like to thank you for your participation at our Steering Committee Meeting in Atlanta, Georgia. I would also like to thank you for your frankness about this subject. As a result of your presentation we had some very lengthy discussions concerning the use of private agencies.

Based on the input that I have received from our membership today, I would like to present two concepts which I think could aid employers in getting their jobs placed, aid the Employment Service in gaining recognition, and in helping them place applicants on their files. They are as follows:

1. Private agencies would have access to any openings that are more than five days old, but would not have access to company names. The private agencies would then refer applicants to the Employment Service, if not already registered with the ES. A fee of 66% of normal fees would be charged to the employer and the employer would receive credit on the FUTA taxes.
   (The above allows greater exposure for an employers opening, keeps down the number of calls or contacts an employer has, gives ES a job placement, and adds no additional costs to the employer.)

2. The Employment Service gets access to private agency openings and refers applicants to the private agencies. In this case the fee would be at 66% of normal fees and would be paid by the employer with no credit, because he originally listed his job with the private agency. (In this case, applicants with the ES get a better exposure at being placed, plus ES gets credit for placement.)

We have reduced the fee in both cases to 66% because of the time and efforts the private agency would no longer have to put in because this is being handled by the Employment Service.

Unless a private agency is willing to work both ways with the Employment Service, it is felt that they should not be allowed to participate in this type of program.

We would also recommend that employers be given the opportunity to restrict their openings from being given to private agencies by the Employment Service, if they so wish.

We will have further discussions on this at our National Meeting, which will be held the last week of February.

If you have any further questions or comments on the above, please contact me at your convenience. Again, thank you for your participation.

Sincerely yours,

Herb Roach
Chairperson

HR/rs