

National Monitor Advocate Annual Report

Services to Migrant and Seasonal Farmworkers Program Year 2010



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SERVICES TO MIGRANT AND SEASONAL FARMWORKERS

The National Monitor advocate system and regulations regarding services to migrant and season farmworkers originated from a court ruling in the 1970s. In 1972, the NAACP Western Region brought a lawsuit against the U.S. Department of Labor (DOL) on the basis that the Rural Manpower Service (RMS) offices and its services were unlawfully discriminatory. At that time, as part of the United States Employment System (USES), which is Federally-funded under the Wagner-Peyser Act, the RMS offices were established apart from regular Employment Service offices to take job applications and job orders for agricultural labor. The discrimination occurred when farmworkers, a substantial number of whom were African-American and Hispanic, went into a regular Employment Service office to seek employment but were sent for services to an RMS office and were referred to agricultural employment only. Plaintiffs, consisting of 17 organizations and 88 African-American and Hispanic migratory farm laborers, alleged that RMS officials allowed and perpetuated discriminatory conduct in the operation and staffing of RMS offices and that such discriminatory conduct was in violation of the Wagner-Peyser Act, Title VI of the Civil Rights Act of 1964, and the Fifth Amendment to the Constitution.

After various adverse rulings, DOL entered into a settlement with the plaintiffs. The separate RMS offices were eliminated and, in response to the August 1974 Court Orders¹, the Department issued regulations for:

- 1) Providing the full range of employment and training services to farmworkers;
- 2) Placing requirements and standards for interstate and intrastate agricultural clearance job orders;
- 3) Establishing a system of monitor advocates at the state, regional, and national levels;
- 4) Hiring additional farm labor specialists in DOL's Occupational Safety and Health Administration and Wage and Hour Division;
- 5) Establishing a complaint system for the Employment Service system; and
- 6) Coordinating at the national and regional level the enforcement of DOL's farm labor protective statutes.

Wagner-Peyser program regulations at 20 CFR 653 Subpart B mandate that the full range of employment and training services be provided to migrant and seasonal farmworkers (MSFWs) on a basis that is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. Furthermore, the preamble in 20 CFR 652 reminds the workforce investment community that the states are required to make the services of the One-Stop Career Center system available to all job seekers in an equitable fashion. Thus, the services available from the Workforce Investment Act (WIA) Adult and Dislocated Workers program, the Employment Service or Job Service (JS), and all other DOL-funded workforce investment system partners in the states, must be available to farmworkers in an equitable fashion and appropriate to their needs as job seekers as well as to their needs as farmworkers.

¹ The court order became known in the farm worker community as the "Judge Richey" Court Order.

Wagner-Peyser program regulations also established a Monitor Advocate system, with responsibilities at the national, regional and state levels, to help ensure MSFWs are served equitably.

- The State Monitor Advocates (SMAs) conduct ongoing reviews of the delivery of services and protections afforded to MSFWs by the State Workforce Agency (SWA) and local offices. Per regulations set forth in 20 CFR 653 and 658, the focus of these State Monitor Advocate reviews is on the services to MSFWs primarily provided through Wagner-Peyser local offices.
- The Regional Monitor Advocates (RMAs) review the effective functioning of the State Monitor Advocates in their regions, and review the performance of state agencies in providing the full range of JS services to MSFWs.
- The National Monitor Advocate (NMA) reviews the effective functioning of the Regional and State Monitor Advocates. The NMA monitors and assesses state agency compliance with JS regulations affecting MSFWs on a continuing basis using information provided by Regional and State Monitor Advocates and program performance data.

The NMA analyzed the Program Year (PY) 2010 data reported by SMAs via the Labor Exchange Agricultural Reporting System (LEARs) and found that most SWAs provided the full range of employment and training services to MSFWs above and beyond those provided to non-MSFWs.

The cumulative report on services to MSFWs for PY 2010 is found in Appendix 1.

MSFW SERVICE LEVELS AND OUTCOMES

Federal regulations at 20 CFR Part 653 require all SWAs to provide MSFWs with services that are qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. To help assess whether SWAs are fulfilling this requirement, in 1980 DOL's Employment and Training Administration (ETA) established program performance indicators reflecting equity indicators and indicators measuring minimum levels of service to MSFWs.²

The Equity Ratio Indicators address outputs for which JS is responsible and include:

- Farmworkers referred to jobs
- Farmworkers who received staff assisted services
- Farmworkers referred to supportive services
- Farmworkers who received career guidance
- Job development contacts

² Appendix 2 provides the aggregate data for the Equity Ratio Indicators, while Appendix 3 provides the aggregate data for the Minimum Service Level Indicators.

The Minimum Service Level Indicators address other services that include:

- Farmworkers placed in a job
- Farmworkers placed at or above the Adverse Effect Wage Rates (AEWR)
- Farmworkers placed in long-term non-agricultural jobs
- Reviews of significant offices
- Field checks conducted
- Outreach contacts per staff day worked
- Timely processing of Job Service (JS) complaints

States submit data on the services provided to MSFWs using ETA 5148 Reporting Form via the Web-based Labor Exchange Agricultural Reporting System (LEARS). Regional and National Monitor Advocates review the statistical data reported on the 5148 reports to determine the extent to which the SWA has complied with regulations at 20 CFR 653.100. These reviews also assist the SMAs, RMAs, and NMA identify local areas and states with inadequate compliance.

The aggregate data for the Equity Ratio indicators indicate that 16 out of the 49 states reporting did not meet at least four of the equity indicators. Out of the twenty significant states, only four states did not meet at least four of the minimum service level indicators.³

This program year the NMA will focus on providing additional technical assistance to those states that did not meet the required indicators, with emphasis on providing technical assistance to the RMAs. The NMA will also be reviewing the LEARS reporting structure and will recommend changes to align it better with the required elements that are reported by the SWAs in the Wagner Peyser program. This proposal will adjust the reporting structure to identify the impact of the Monitor Advocate system on SWAs, workers, and employers; it will streamline the process to analyze the data reported on services to MSFWs; and it will eliminate the duplication of effort in reporting structures.

Table 1 provides information on the total number of participants for both the non-MSFWs and the MSFWs, as well as the totals for the services that are captured on the 9002A Report. The data indicates that the services being provided to MSFWs are on a qualitatively equivalent and quantitatively proportionate level as those services provided to non-MSFWs, except in the workforce information services area, for which services to MSFWs is only two percentage points below those services provided to non-MSFWs.⁴

³ Per regulations at 20 CFR 651.10, ETA designates the twenty significant states using the total number of participants reported on the Labor Exchange Reporting System (LERS) 9002A report. Significant states are those states with the highest number of MSFW applicants.

⁴ Appendix 4 contains the full 9002A report for PY 2010

TABLE 1: 9002A SERVICES PROVIDED TO NON-MSFWs AND TO MSFWs				
	Non-MSFWs	% Served Non-MSFWs	Total MSFWs	% Served MSFWs
Total Participants	19,781,538		172,133	
Received Workforce Information Services	8,164,084	41%	67,966	39%
Received Staff Assisted Services	11,872,611	60%	122,641	71%
Career Guidance	3,396,427	17%	39,341	23%
Job Search Activities	6,194,907	31%	61,934	36%
Referred to Employment	5,165,111	26%	65,393	38%
Referred to WIA Services	1,556,111	8%	13,103	8%

Although the percentage of MSFWs being referred to WIA services is comparable to the services provided to non-MSFWs, the number is low for both groups (8%). This may be an indication that additional technical assistance is needed in either the reporting of these services or in establishing better relationships among the One-Stop partners. This can also be an indication of “self referrals” to WIA services for both groups, in which case these services would not be reported.

It is noteworthy that 71% of all MSFWs registered in the Wagner-Peyser program are being provided staff-assisted services. Typically these services are offered as part of the comprehensive resources centers located in One-Stop Career Centers, and this level of service indicates a promising level of services to MSFWs in the One-Stop system.

JOB SERVICE COMPLAINT SYSTEM

The Job Service (JS) Complaint System was developed as a mechanism to handle complaints that involve allegations of employment-related violations of laws administered by the U.S. Department of Labor, Wage and Hour Division (WHD) and the Occupational Safety and Health Administration (OSHA). Although the JS Complaint System was established primarily to provide farmworkers a place where they could file complaints, this system is available to anyone who alleges any type of employment-related violation. SWAs establish and maintain the complaint system as a uniform way of accepting, investigating, resolving, and referring complaints and apparent violations of labor laws to enforcement agencies.

Table 2 below shows the trend over the last three program years of the total complaints filed in local One-Stop Career Centers by MSFWs and non-MSFWs. The totals are broken down by region and for the nation. Between PY 2008 and 2009, MSFW complaints filed increased by 17%. This increase in complaints can be attributed to the NMA’s significant emphasis on informing MSFWs of their labor rights and their right to and the procedures to file a JS complaint. However, in PY 2010, there was a 16% decrease in the number of complaints filed by MSFWs in comparison to PY 2009.

A large portion of this drop can be attributed to ETA’s San Francisco Region, or Region 6, where complaints filed by MSFWs dropped 13%. One possible contributing factor for this drop could be the compliance seminars that the states of Arizona and California conduct every year. Approximately 200 farm labor contractors, foremen and

agricultural employers from Arizona and California attend a bi-state employer seminar in California organized by the State Monitor Advocates from Arizona and California.

MSFW complaints in California dropped from 248 in PY 2008 to 216 in PY 2010. In Arizona, MSFW complaints dropped from 136 to 60 from PY 2008 to PY 2010. The NMA will continue to monitor the employer seminars and will look at the possible correlation between the drop of MSFW complaints and agricultural compliance conferences, which could warrant the facilitation of forums with other states and other regions so these conferences can be replicated⁵.

The NMA also continues to remind State Monitor Advocates of the two webinars on the complaint system that are archived at Workforce3one so that staff can listen to these webinars as part of their capacity building.⁶

Region⁷	PY	Total	MSFW	Non-MSFW
1	2008	198	1	197
	2009	215	6	209
	2010	173	52	121
2	2008	6	1	5
	2009	35	12	23
	2010	50	1	49
3	2008	98	23	75
	2009	112	27	85
	2010	120	47	73
4	2008	1,857	22	1,835
	2009	1,594	74	1,520
	2010	1,960	43	1,917
5	2008	262	43	219
	2009	183	52	131
	2010	241	63	178
6	2008	1,281	488	793
	2009	1,111	518	593
	2010	968	371	597
National Totals	2008	3,702	578	3,124
	2009	3,250	689	2,561
	2010	3,512	577	2,935

⁵ 20 CFR 653.108 (k)

⁶ Webinars on the Job Service Complaint System are archived at <https://www.workforce3one.org/view/5000917349406002907/info>
<https://www.workforce3one.org/view/5001102841163069486/info>

⁷ States: Region 1-CT, MA, ME, NH, NJ, NY, PR, RI, VT
 Region 2-DE, MD, PA, VA, WV
 Region 3-AL, GA, FL, KY, MS, NC, SC, TN
 Region 4-AR, CO, LA, MT, ND, OK, SD, WY, NM, TX, UT
 Region 5-IA, IL, IN, KS, MI, MN, MO, NE, OH, WI
 Region 6-AK, AZ, CA, HI, ID, NV, OR, WA

OUTREACH TO MIGRANT AND SEASONAL FARMWORKERS

Regulations set forth in 20 CFR 653.107 require that SWAs operate an outreach program in order to locate and to contact MSFWs who are not being reached by the normal intake activities conducted by the local offices. In most states, the state agency allocates part of their Wagner-Peyser funding for dedicated outreach worker positions. In smaller states where there is less agricultural activity, the outreach is usually conducted by the State Monitor Advocates. State agencies also coordinate their outreach efforts with those of public and private community service agencies and MSFW groups, referred to as cooperating agencies, including the organizations that receive funding through ETA's National Farmworker Jobs Program (NFJP). Outreach is also conducted by Regional and National Monitor Advocates when conducting site visits and reviews of states, as they accompany outreach workers and State Monitor Advocates on field visits.

During PY 2010, a total of 290,405 MSFWs were contacted through outreach activities. Of this total, 231,228 were contacted by state workforce agency staff, and 59,177 by NFJP grantee staff. The total for PY 2010 was a five percent increase over the total for PY 2009 (275,891).

TABLE 3: MSFW Outreach Contacts PY 2009		
SWA Contacts	NFJP Contacts	Total
233,824	42,067	275,891
85%	15%	
MSFW Outreach Contacts PY 2010		
SWA Contacts	NFJP Contacts	Total
231,228	59,177	290,405
80%	20%	

Outreach workers and staff from cooperating agencies provide information in Spanish on the full range of services offered by their respective agencies. An example of the type of services offered to MSFWs was observed by the National and Regional Monitors Advocate when they accompanied the outreach worker on field visits in Central California during the comprehensive review of the state of California in August 2010. The packet that the outreach worker provides to MSFWs included information on all of the One-Stop services, legal services, adult education, and information on how to file for Unemployment Insurance benefits. The outreach worker was well prepared and appeared to be well connected to the agricultural employers and community-based organizations.

STATE MONITOR ADVOCATES AND FOREIGN LABOR CERTIFICATION PROGRAMS

During PY 2010, the NMA continued to participate in monthly calls that ETA's Office of Foreign Labor Certification (OFLC) conducts with SWAs to provide updates and technical assistance on the H-2A program.⁸ The NMA continues to encourage full participation of all RMAs and SMAs in these calls. Technical assistance provided to SWAs included: the processing of the job orders attached to an H-2A application; the referral and verification required of these job orders; the complaint system when it involves an H-2A employer; and the type of acceptable language to approve in the H-2A job orders.

OFLC's first line of support when it comes to visiting those employers who submit H-2A applications are the State Monitor Advocates and outreach workers. These individuals conducted a total of 2,027 field checks in PY 2010, (most of these done on H-2A job orders).⁹ Field checks are conducted randomly and unannounced at a significant number of agricultural worksites to which JS placements have been made through the intrastate or interstate clearance system. As part of these field checks, both the employees and the employer are consulted by those individuals making these field checks to determine and document whether wages, hours, working and housing conditions are as specified in job orders.

In some states, State Monitor Advocates are also tasked with the responsibility of making site visits to the agricultural worksites to verify outcome of referrals, and conduct regular outreach. These activities are conducted in support of OFLC's efforts to have continuous contact with the agricultural employers who are planning to bring in or have already brought in foreign workers to help in the harvesting of their crops.

At the National Monitor Advocate Training Forum conducted concurrent with the MAFO national conference held in March 2011 in San Antonio Texas, the NMA conducted a workshop on the responsibilities of the SWAs in the job order process as it relates to job orders attached to an H-2A application for foreign workers. MAFO, formerly known as Midwest Association of Farmworker Organizations, and now known simply as MAFO, is a farmworker organization that plans and conducts this event every year in collaboration with the National Monitor Advocate.

NATIONAL FARMWORKER JOBS PROGRAM (NFJP)

In PY 2010, NFJP grantees and SMAs continued to collaborate as evidenced by different activities that took place across the nation, regionally, and within states. For example, as mentioned in the Outreach Activities section of this report, NFJP grantees collaborated with SWAs by conducting outreach to and reporting 59,177 MSFW contacts to complement the efforts of SMAs. This equates to an increase of 41% over the 42,067 MSFWs contacts reported by NFJP grantees for PY 2009. This significant increase could be attributed to an intensive effort on the part of the NMA and Regional

⁸ The H-2A temporary agricultural program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.

⁹ Total field checks reported on Services to MSFWs Cumulative Report Appendix 1

Monitor Advocates to have SWAs develop cooperating agreements between Wagner-Peyser staff and the NFJP grantees to share outreach contact information.¹⁰

Outreach workers provide farmworkers with information about the workforce system in English and Spanish. These outreach activities involve SWAs, NFJP grantees, and other cooperating agencies. In some states, as in Arkansas, the local NFJP grantee staff solely conducts outreach under agreement with the SWA. More and more SWAs are developing and signing cooperative agreements with their NFJP grantees to coordinate outreach activities and share outreach contacts in order to maximize resources.

Another example of collaboration between NFJP grantees and the Monitor Advocate network is the forums conducted by three ETA regional offices in PY 2010. The Regional Monitor Advocates were aware that with limited resources, it was imperative for State Monitor Advocates and the NFJP grantees to collaborate more effectively. Regions 3 (Atlanta), 5 (Chicago), and 6 (San Francisco) conducted regional forums that brought together NFJP grantees and State Monitor Advocates to discuss issues affecting services to MSFWs. All three regional forums had National Office representation. The theme for these forums was, "*Better Outcomes through Partnerships.*" At these forums, several of the SMAs met with their NFJP counterparts for the first time.

The workshops conducted at the forums included updates from ETA, Wage and Hour and from grantees, discussions of improving outcomes through sector partnerships and through improved operations, partnerships between monitor advocates and NFJP grantees, outreach, strategic recruiting and retention, fiscal issues, data validation and reporting, and America's Job Link Alliance¹¹.

SERVICES TO EMPLOYERS

In serving MSFWs, SWAs have a responsibility to also serve agricultural employers as part of their Wagner-Peyser grants. Services provided to agricultural employers focus on facilitating the match between the employer and job seekers, primarily done via the SWA's basic labor exchange services. During PY 2010, an important and critical service to the agricultural employers centered on the job order process as it relates to the H-2A program. The NMA, along with staff from the Office of Foreign Labor Certification (OFLC), provided training via teleconferences to the SWAs on the proper handling of job orders that are attached to H-2A applications for temporary foreign workers, including the appropriate language that is acceptable on these job orders. During this program year, the NMA also worked closely with OFLC staff on developing the curriculum for the training that was provided on this subject to the SWAs in Chicago during August 2011. A summary of this training will be provided in the PY 2011 annual report.

¹⁰ [20 CFR 653.107 Outreach](#): "Wherever feasible, State agencies shall coordinate their outreach efforts with those of public and private community service agencies and MSFW groups."

¹¹ America's Job Link Alliance (AJLA) is a consortium of state workforce agencies and program operators. The Alliance was formed in 2001 with the goal of designing an affordable information management system to support the operations of one-stop workforce development centers.

Another way of serving agricultural employers is by holding seminars targeted to this segment of our customer base. The employer forums, also discussed in the PY 2009 National Monitor Advocate report, continue to surface as noteworthy items.

- Agricultural Employer Forums in Arizona

Each year in September, approximately 200 Federal labor contractors, foremen and agricultural employers from Arizona and California attend a bi-state employer seminar in either Arizona or California organized by the SMAs from these two states. Local, state, Federal, and private partners desiring to help employers attain and retain a viable workforce, while ensuring optimum working conditions through voluntary employer compliance provided labor enforcement and employer-related information.

- Agriculture Employer Forum in Texas

Each year in August, the Lower Rio Grande Local Workforce Development Area, with the assistance of the Texas Monitor Advocate, hosts the Agricultural Employer Forum in McAllen, Texas. This forum is endorsed by the Texas Produce Association, Texas Vegetable Association, Texas Citrus Mutual, and Texas AgriLIFE Extension Service. Approximately 60 agricultural employers attend the conference including some of the major farmers and packing operators in the Lower Rio Grande Valley.

Both of these forums focus on pertinent and current issues that affect both agricultural employers and farmworkers, and on laws that affect the agricultural industry sector. At these conferences agricultural employers are able to get training in labor laws and state and Federal regulations. These events help in developing a better working relationship between agricultural employers, employees, farm labor community, and federal and state enforcement agencies.