Migrant Seasonal Farmworker (MSFW) Program

Increasing MSFW access to employment services through outreach

Apple Harvest – Cashmere, WA

HANDBOOK

May 2017
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Agricultural employer: Any employer as defined in this part who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal farmworker or any agricultural employer as described in 29 U.S.C. 1802(2).

Career services: Services described in sec. 134(c)(2) of the Workforce Innovation and Opportunity Act (WIOA) and §678.430 of this chapter

Complainant: The individual, employer, organization, association, or other entity filing a complaint.

Complaint: A representation made or referred to a State or ES office of an alleged violation of the ES regulations and/or other Federal laws enforced by the Department's Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other Federal, State, or local agencies enforcing employment-related law.

Employer: A person, firm, corporation, or other association or organization which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises, and otherwise controls the work of such employees. An association of employers is considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, is considered as a joint employer with the employer member if either shares in exercising one or more of the definitional indicia.

Employment and Training Administration (ETA): The component of the Department of Labor that administers Federal government job training and worker dislocation programs, Federal grants to States for public ES programs, and unemployment insurance benefits. These services are provided primarily through State and local workforce development systems.

Employment-related laws: Those laws that relate to the employment relationship, such as those enforced by the Department's WHD, OSHA, or by other Federal, State, or local agencies.

Employment Service (ES) office: A site in a local WDB where staff of the State Workforce Agency, consistent with the requirements of §652.215 of this chapter, provide Wagner-Peyser Act services as a one-stop partner program. A site must be co-located with a one-stop center consistent with the requirements of §§678.305 through 678.315 of this chapter.

Employment Service (ES) regulations: The Federal regulations at this part and parts 652, 653, 654, 658 of this chapter, and 29 CFR part 75.

Farmwork: The cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purposes of this definition, agricultural commodities means all commodities produced on a farm including crude gum (oleoresin) from a living tree.
products processed by the original producer of the crude gum (oleoresin) from which they are derived, including
gum spirits of turpentine and gum rosin. Farmwork also means any service or activity covered under §655.103(c) of
this chapter and/or 29 CFR 500.20(e) and any service or activity so identified through official Department guidance
such as a Training and Employment Guidance Letter.

**Farmworker**: An individual employed in farmwork, as defined in this section.

**Field checks**: Random, unannounced appearances by State Workforce Agency personnel at agricultural worksites
to which ES placements have been made through the intrastate or interstate clearance system to ensure that
conditions are as stated on the job order and that the employer is not violating an employment-related law.

**Field visits**: Appearances by Monitor Advocates or State Workforce Agency outreach personnel to the working and
living areas of migrant and seasonal farmworkers (MSFWs), to discuss employment services and other
employment-related programs with MSFWs, crew leaders, and employers. Monitor Advocates or outreach
personnel must keep records of each such visit.

**Job development**: The process of securing a job interview with a public or private employer for a specific
participant for whom the ES office has no suitable opening on file.

**Job information**: Information derived from data compiled in the normal course of ES activities from reports, job
orders, applications, and the like.

**Job opening**: A single job opportunity for which the ES office has on file a request to select and refer participants.

**Job order**: Document containing the material terms and conditions of employment relating to wages, hours,
working conditions, worksite and other benefits, submitted by an employer.

**Job referral**: (1) The act of bringing to the attention of an employer a participant or group of participants who are
available for specific job openings or for a potential job; and (2) The record of such referral. “Job referral” means
the same as “referral to a job.”

**Migrant farmworker**: A seasonal farmworker (as defined in this section) who travels to the job site so that the
farmworker is not reasonably able to return to his/her permanent residence within the same day. Full-time
students traveling in organized groups rather than with their families are excluded.

**Migrant food processing worker**: See Migrant Farmworker.

**MSFW**: A migrant farmworker or a seasonal farmworker.

**One-stop center**: A physical center within the one-stop delivery system, as described in sec. 121(e)(2)(A) of WIOA.

**One-stop delivery system**: A one-stop delivery system described in sec. 121(e) of WIOA.

**One-stop partner**: An entity described in sec. 121(b) of WIOA and §678.400 of this chapter that is participating in
the operation of a one-stop delivery system.

**Outreach contact**: Each MSFW that receives the presentation of information, offering of assistance, or follow-up
activity from an outreach worker.

**Participant**: A reportable individual who has received services other than the services described in §677.150(a)(3)
of this chapter, after satisfying all applicable programmatic requirements for the provision of services, such as
eligibility determination. (See §677.150(a) of this chapter.)

(1) The following individuals are not Participants, subject to §677.150(a)(3)(ii) and (iii) of this chapter:
(i) Individuals who only use the self-service system; and
(ii) Individuals who receive information-only services or activities.

(2) Wagner-Peyser Act participants must be included in the program's performance calculations.

**Placement:** The hiring by a public or private employer of an individual referred by the ES office for a job or an interview, provided that the employment office completed all of the following steps:
(1) Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific participant;
(2) Made prior arrangements with the employer for the referral of an individual or individuals;
(3) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;
(4) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and
(5) Appropriately recorded the placement.

**Reportable individual:** An individual who has taken action that demonstrates an intent to use Wagner-Peyser Act services and who meets specific reporting criteria of the Wagner-Peyser Act (see §677.150(b) of this chapter), including:
(1) Individuals who provide identifying information;
(2) Individuals who only use the self-service system; or
(3) Individuals who only receive information-only services or activities.

**Respondent:** The employer, individual, or State agency (including a State agency official) who is alleged to have committed the violation described in a complaint.

**Seasonal farmworker:** An individual who is employed, or was employed in the past 12 months, in farmwork (as defined in this section) of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence. Non-migrant individuals who are full-time students are excluded. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in farmwork, is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year. A worker is employed on other temporary basis where he/she is employed for a limited time only or his/her performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

**Secretary:** The Secretary of the U.S. Department of Labor or the Secretary's designee.

**Significant MSFW offices:** Those designated annually by the Department and include those ES offices where MSFWs account for 10 percent or more of annual participants in employment services and those local ES offices which the administrator determines must be included due to special circumstances such as an estimated large number of MSFWs in the service area. In no event may the number of significant MSFW one-stop centers be less than 100 centers on a nationwide basis.

**Significant MSFW states:** Those States designated annually by the Department and must include the 20 States with the highest number of MSFW participants.

**Significant multilingual MSFW offices:** Those designated annually by the Department and include those significant MSFW ES offices where 10 percent or more of MSFW participants are estimated to require service provisions in a language(s) other than English unless the administrator determines other one-stop centers also must be included due to special circumstances.

**State Administrator:** The chief official of the SWA.
**State agency or State Workforce Agency (SWA):** The State ES agency designated under sec. 4 of the Wagner-Peyser Act.

**Supportive services:** Services that are necessary to enable an individual to participate in activities authorized under WIOA or the Wagner-Peyser Act. These services may include, but are not limited to, the following:

1. Linkages to community services;
2. Assistance with transportation;
3. Assistance with child care and dependent care;
4. Assistance with housing;
5. Needs-related payments;
6. Assistance with educational testing;
7. Reasonable accommodations for individuals with disabilities;
8. Referrals to health care;
9. Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;
10. Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and
11. Payments and fees for employment and training-related applications, tests, and certifications.

**Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES):** The national system of public ES offices described under the Wagner-Peyser Act. Employment services are delivered through a nationwide system of one-stop centers, and are managed by State Workforce Agencies and the various local offices of the State Workforce Agencies, and funded by the United States Department of Labor.

**WIOA:** The Workforce Innovation and Opportunity Act (codified at 29 U.S.C. 3101 et seq.).
**MSFW program – the big picture & program objective**

As the Washington State Workforce Agency (SWA), the Employment Security Department (ESD) is required to ensure that all services of the workforce development system be available to all job seekers in an equitable fashion. This mandate (20 CFR 653.100) includes ensuring that Migrant Seasonal Farmworkers (MSFWs) have access to these services in a way that meets their unique needs. Each WorkSource site, as a one-stop career center, must provide services to MSFWs on a basis which is qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. MSFWs experience barriers that often prevent them from being reached through normal office intake activities. Because of this, federal regulations require the SWA to conduct outreach to MSFWs to the places where they live, work, and gather.

ESD's MSFW program is aimed at increasing MSFW access to one-stop career services so that they have the opportunity to acquire new job skills in occupations that offer higher wages and more stable employment. The program is focused on using outreach to provide this access. At least one full-time MSFW outreach staff person is stationed in each of Washington’s nine “agriculturally-significant” offices. MSFW outreach staff are tasked with performing “vigorous” outreach to the MSFWs not visiting WorkSource Offices. The objective of outreach is to communicate the full range of workforce development services (including referrals to training, supportive services, and specific employment opportunities), information on the Employment Service (ES) Complaint System, information on other organizations serving MSFWs in the area, and a basic summary of farmworker rights.

**Purpose of handbook**

The purpose of this handbook is to communicate the background, requirements, and processes associated with ESD’s MSFW Program. It is aimed to serve as a resource for new employees, MSFW Program staff, non-MSFW staff, and all persons serving MSFWs. Additionally, this handbook is useful for those interested in learning about ESD’s delivery of this program.

The handbook will be updated as federal regulations and agency processes change. The guidance in this handbook complies with federal regulation and Washington state law.

**Background & structure of Washington state’s MSFW program**

**History & significance of MSFW program – Judge Richey court order**

The employment and training services offered through the WorkSource system are just as crucial today as they were more than 40 years ago, when Judge Charles R. Richey ordered that DOL establish requirements to ensure that MSFWs receive the full range of services through the public workforce system as non-MSFWs.

ESD staff, including: the Washington State Monitor Advocate (SMA), MSFW Outreach Specialists, local office managers, front-line staff, partner agencies, and the National Farmworker Jobs Program 167 grantee (OIC of Washington) all perform crucially important work to support MSFW access to and obtainment of employment service opportunities and protections.

When MSFWs visited a local employment offices prior to 1971, they may have encountered:
• Separate offices or separate applications;
• Separate menu of services;
• Limited exposure to non-agricultural job referrals;
• Problems with substandard wages;
• Civil Rights Violations; and
• No support services.\(^1\)

However, in 1971, 16 organizations and 398 individuals petitioned then U.S. Secretary of Labor Peter J. Brennan with allegations of exploitation of farmworkers by state employment offices across the U.S. The Petitioners alleged that the U.S. Department of Labor, which funds state workforce agencies through the Wagner-Peyser Act, and state agencies serving minority farmworkers subjected them to racial discrimination and denied them the employment services to which they were entitled.

Specifically, the petitioners alleged that MSFWs had experienced:

• Denial of the full range of employment services;
• Racial, National Origin, Sex, and Age Discrimination in Recruiting and Referring Applicants for Employment;
• Substandard day-haul placement services and facilities;
• Job Orders that allowed employers to pre-designate MSFWs by race, national origin, sex, and age;
• Referral to employers who violated minimum wage and child labor laws, and failed to make social security payments to worker accounts;
• Referrals to jobs where living and working conditions were unlawful; and
• State workforce agency unresponsiveness to worker complaints.

U.S. District Court Judge Charles R. Richey granted an injunction in the case and ordered an investigation that yielded a concession from Secretary Brennan that a number of the allegations were true. In 1974, Judge Richey signed a consent order requiring DOL to change its service delivery and implement federal regulations prescribing how MSFWs would be equitably served.

The consent order, commonly known as the “Judge Richey Court Order” mandated that service delivery to MSFWs be:

- Equivalent in quality and kind to services provided to non-MSFWs; and
- Proportionate in quantity and amount to service given to non-MSFWs.

The settlement agreement established criteria for serving MSFWs in equity to non-MSFWs and required DOL and SWAs to monitor their own compliance, thereby establishing the Monitor Advocate System.

**MSFWs in Washington state**

Washington state’s distinct seasons, diverse geography, abundant natural rivers and lakes, and its varied climate zones provide ideal conditions for agricultural production. As of the 2012 U.S. Department of Agriculture’s census, Washington had 37,249 farms in operation producing over 300 different commodities and adding $51 billion in overall value to Washington’s economy.\(^2\) Washington, ranking first in eleven agricultural commodities including apples, sweet cherries, pears, and hops, exports over $15.1 billion in agricultural products, making it the third

\(^2\) Washington State Department of Agriculture Publication 103-126 (R2.15).
largest agricultural export state in the United States. Washington’s most valuable crops are also some of the most labor intensive and as such, Washington’s farm labor force employs approximately 160,000 farmworkers during peak season. The vast majority of these workers are migrant seasonal farmworkers (MSFWs). The contribution that MSFWs make to the viability of Washington’s agriculture industry and ultimately, the state’s overall economy, is crucial.

Farm labor is concentrated in the arid and sunny central and eastern regions of the state. Additionally, berry crops are cultivated extensively on the western side of the state, mainly in Skagit and Whatcom counties.

MSFWs are essential for a large part of Washington agricultural production and are vital especially in the critical peak months of July through September. The availability of farm labor has raised concerns which will likely continue in the coming years. As a result, Washington has seen a spike in the use of the H-2A program by apple, pear, cherry, and berry growers.

**Role of Department of Labor, Wagner-Peyser, Employment Security Department and National Farmworker Jobs Program**

**Department of Labor:** The Department of Labor (DOL), through its Employment and Training Administration (ETA) Department, is responsible for administering Federal job training and worker dislocation programs, including the Migrant Seasonal Farmworker Program and Monitor Advocate System. DOL makes federal grants to States for public Employment Service (ES) programs, and unemployment insurance benefits. These services are provided through State and local workforce development systems. (20 CFR 651.10).

**Wagner-Peyser Act Employment Service (ES):** Wagner-Peyser Act Employment Service means the national system of public ES offices described under the Wagner-Peyser Act. Employment services are delivered through a nationwide system of one-stop centers, and are managed by State Workforce Agencies and the various local offices of the State Workforce Agencies, and funded by the DOL. (20 CFR 651.10).

**Washington State Employment Security Department:** Washington state’s workforce agency is responsible for operating the one-stop delivery system in Washington state, including establishing and operating a comprehensive MSFW outreach program designed to assure compliance with regulatory requirements. ESD must report performance data on a quarterly basis to DOL.

**National Farmworker Jobs Program “NFJP”:** Nationally-directed, locally administered program of services for MSFWs and includes 52 employment and training grants, and 17 housing grants in the United States and Puerto Rico. The NFJP is an integral part of the public workforce system and partner in the nationwide network of One-stop Career Centers. Opportunities Industrialization Centers of Washington (OIC of Washington) is the Washington state grantee for this program.

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3 Washington State Department of Agriculture Publication 103-126 (R2.15).
**Workforce Innovation & Opportunity Act (WIOA)**

The bipartisan Workforce Innovation and Opportunity Act (WIOA) signed by President Obama on July 22, 2014 created a new vision for how America prepares an educated and skilled workforce that expands opportunity for workers and employers. With WIOA, which replaced the Workforce Innovation Act (WIA), changes were made to support coordination between MSFW programs and other workforce programs to facilitate co-service delivery and co-enrollment. These changes included: expansion of the ES complaint system, required sexual harassment, assault and human trafficking training for outreach workers, changes to MSFW housing standards, and a mandatory Memorandum of Understanding (MOU) between the State Monitor Advocate and the National Farmworker Jobs Program 167 grantee.

The applicable federal regulations governing ESD’s MSFW Program are as follows:

- 20 CFR 651: General Provisions Governing the Wagner-Peyser Act Employment Service (Definitions)
- 20 CFR 652: Establishment and Functioning of the State Employment Service (Wagner-Peyser Act Service)
- 20 CFR 653: Services of the Wagner-Peyser Act Employment Service System (Services for MSFWs and the Agricultural Recruitment System)
- 20 CFR 654: Special Responsibilities of the Employment Service System (Farmworker Housing)
- 20 CFR 658: Administrative Provisions Governing the Wagner-Peyser Employment Service (Complaints)

**Federal performance measures & quarterly reporting**

As the SWA, ESD is required to meet performance standards set by the ETA. Program performance data is gathered and submitted on a quarterly basis to the DOL by the State Monitor Advocate (SMA). Accurate data demonstrating compliance with federal standards is imperative to maintaining Washington’s status as an MSFW Significant State.
and ensuring continued federal funding for the MSFW Program. A discussion regarding the specific federal performance standards is included in a later section of this handbook.

MSFW significant states & offices

Designation of MSFW significant states

MSFW significant states are the 20 states with the highest number of MSFWs as designated by DOL’s Employment and Training Administration (ETA). The ETA designates the top 20 states with the highest number of MSFW participants based on data reported by state and local offices. As of 2014, Washington MSFW activity ranks third nationally based on Wagner-Peyser services reported on the LEARS 9002A report, including applicant registrations, referrals to employment and to supportive services, career guidance, job search activities and referrals to WIOA services.

Designation of MSFW significant one-stop centers (WorkSource offices)

MSFW significant offices are designated annually by the ETA and include local offices where MSFWs account for 10% or more of annual participants in employment services. In addition, DOL may choose to designate as significant those local offices located in an area where a large number of MSFWs are present in the service area, even if MSFWs do not account for 10% of applications.

As of Program Year 2017, Washington state has nine MSFW significant offices as follows:

- WorkSource Skagit, Mount Vernon, WA
- WorkSource Central Basin, Moses Lake, WA
- WorkSource Okanogan, Omak, WA
- WorkSource Wenatchee, East Wenatchee, WA
- WorkSource Yakima, Union Gap, WA
- WorkSource Sunnyside, Sunnyside, WA
- WorkSource Columbia Gorge, White Salmon, WA
- WorkSource Columbia Basin, Kennewick, WA
- WorkSource Walla Walla, Walla Walla, WA
DOL requires that each MSFW significant office in the 20 states with the highest estimated year-round MSFW activity employ full-time, year-round staff to conduct outreach duties. MSFW outreach staff must locate and contact MSFWs who are not being reached by the normal intake activities conducted in WorkSource offices. Outreach staff responsibilities are listed in 20 CFR 653.107(b)(1)-(11) and detailed in a later section in this handbook.

**Designation of multilingual MSFW one-stop centers (WorkSource offices)**

Multilingual MSFW one-stop centers are designated annually by the ETA and include those significant MSFW ES offices where 10% or more of MSFW participants are estimated to require service provisions in a language other than English.

**Identifying migrant seasonal farmworkers**

The Workforce Innovation and Opportunity Act (WIOA) expanded the definition of “Seasonal Farmworker” and “Farmwork” to include additional industries and farm tasks, including food processing workers. Local office staff must be trained in determining whether a customer is a MSFW, as defined in 20 CFR 651.10 at the time of service. As subject matter experts, MSFW outreach workers are best equipped to train other front-line staff on the proper coding of MSFWs.

**MSFW status**

MSFW status is based on information obtained from the customer for the previous 12 months at the time of service. MSFW status is subject to change over time, and must be re-determined on an ongoing basis for each customer each time the customer receives desk side assistance.
A MSFW is either a Seasonal Farmworker or Migrant Seasonal Farmworker. *(The definition of “Farmwork” is below).*

**Seasonal farmworker** – A person who, is employed, or was employed in the past 12 months, in farmwork (see “Farmwork” definition below), of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence.

![Fig. 3: Seasonal Farmworker Requirements](image)

- Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year.
- A worker who moves from one seasonal activity to another, while employed in farmwork, is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year.
- A worker is employed on other temporary basis where he/she is employed for a limited time only or his/her performance is contemplated for a particular piece of work, usually of short duration.
- Generally, employment which is contemplated to continue indefinitely is not temporary.

**Migrant farmworker** – A seasonal farmworker (see above), who travels to the job site so that the farmworker is not reasonably able to return to his/her permanent residence within the same day.

![Fig. 4: Migrant farmworker requirements](image)

**Farmwork** – The cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities.

- Raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.
- Also includes the handling, planting, drying, packing, packaging, processing, freezing or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.
As subject matter experts, local MSFW staff or other locally designated staff must provide training at least once a year to office staff on MSFW identification procedures.

MSFW status is based on information obtained from the customer for the previous 12 months at the time of service. MSFW status is subject to change over time, and must be re-determined on an ongoing basis for each customer each time the customer receives desk side assistance.
Serving farmworkers: roles & responsibilities

Introduction

This section discusses the unique roles and responsibilities of the State Workforce Agency (SWA), the Agricultural Services Unit (ASU), MSFW outreach Staff, WorkSource office staff, WorkSource office administrators and the State Monitor Advocate with regard to serving MSFWs in Washington state.

State Workforce Agency role (ESD)

The State Workforce Agency (SWA) is responsible for ensuring that services of the workforce development system be available to all job seekers in an equitable fashion. This includes ensuring that MSFWs have equitable access to these services in a way that meets their unique needs. MSFWs must receive services on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. The SWA must also establish a system to monitor its own compliance with ES regulations governing services to MSFWs and its performance in meeting standards set by the Department of Labor. The SWA in Washington is the Employment Security Department (ESD).

The SWA must also operate and oversee an outreach program aimed at locating and serving MSFWs who are not being reached by normal local office intake activities.

Per 20 CFR 653.100-111, the SWA must:

1. **Service Delivery**
   - Offer, at each one-stop center, MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs,
• Make job order information conspicuous and available to MSFWs. Staff assistance must be available to MSFWs in their native language, if requested.
• Determine, at each one-stop center, whether participants are MSFWs, as defined in 20 CFR 651.10;
• Provide, at each one-stop center, MSFWs a list of available career and supportive services in their native language;
• Refer and register MSFWs for services at each one-stop center;
• Employ an adequate number of outreach workers to conduct MSFW outreach in their service areas and ensure that the State Monitor Advocate and outreach workers coordinate their outreach efforts with NFJP 167 grantees as well as private community services agencies and MSFW groups; and
• Develop an Agricultural Outreach Plan (AOP) every four years.

2. Self-Monitoring
• Monitor its own compliance with Wagner-Peyser regulations in serving MSFWs on an ongoing basis.
• Appoint a qualified State Monitor Advocate;
• Collect and report data to DOL for performance accountability measures;
  o Meet Equity Indicators that address ES controllable services and include, at a minimum: Individuals referred to a job, receiving job development, and referred to supportive or career services.
  o Meet Minimum Levels of Service which include: Individuals placed in a job, individuals placed long-term (150+ days) in a non-agricultural job, a review of significant MSFW ES offices, field checks conducted, outreach contacts per week, and processing of complaints.
  o Disclose this data, when requested, to the public.

3. Staffing & Outreach
• Hire qualified outreach staff;
  o As one of the top 20 states with the highest estimated year-round MSFW activity, ESD must hire full-time year-round staff to conduct outreach duties.
• As part of outreach, SWAs must:
  o Communicate the full range of workforce development services to MSFWs;
  o Conduct thorough outreach efforts with extensive follow-up activities to supply States; and
  o Implement and maintain an affirmative action program for staffing in significant MSFW one-stop centers and employ ES staff in a manner facilitating the delivery of employment services tailored to the special needs of MSFWs.
• As one of the top five states serving MSFWs, Washington state ESD must assign at least one full-time, year-round employee for each MSFW significant office. This employee will conduct outreach duties as noted in 20 CFR 653.107(i).

4. Federal Reporting & Performance Data
As mentioned above, the SWA is responsible for collecting and reporting data on a quarterly basis to DOL regarding its service delivery to MSFWs. ESD submits state-level aggregate data to report equity and minimum-service level indicators on DOL’s 5148 Reporting Form via the web-based Labor Exchange Agricultural Reporting System (LEARS). The State Monitor Advocate (SMA) submits the data quarterly, no later than 45 days after each quarter concludes. Data is obtained from MSFW outreach and complaint logs, ETO reports, and ESD’s Labor Market & Performance Analysis (LMPA) Division. Upon submission, DOL’s regional and national offices review the LEARS to evaluate the state’s compliance with regulations at 20 CFR 653.100.

The State Monitor Advocate, in collaboration with local administrators, is responsible for monitoring equity and service-level indicators at the local level, with a focus on designated MSFW significant offices.
The two types of performance data are:

1. **Equity Indicators**

<table>
<thead>
<tr>
<th>Equity Indicator Type</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td># of MSFWs who Received Staff-Assisted Services;</td>
<td># MSFWs who were provided with some service.</td>
</tr>
<tr>
<td># of MSFWs who Received Career Guidance</td>
<td># MSFWs provided with career guidance</td>
</tr>
<tr>
<td># of MSFWs Assisted in Job Development Contact</td>
<td># MSFWs for whom job development contacts were made</td>
</tr>
<tr>
<td># of MSFWs Referred to Jobs</td>
<td># MSFWs who were referred to jobs</td>
</tr>
<tr>
<td># of MSFWs Referred to Support Services</td>
<td># MSFWs referred to supportive services</td>
</tr>
</tbody>
</table>

- No less than 4/5 Equity Indicators must be met for compliance.

2. **Minimum Levels of Service Indicators**

<table>
<thead>
<tr>
<th>Minimum Levels of Service Indicator Type</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td># of MSFWs Placed in a Job</td>
<td>Calculate the percentage of registered MSFWs that were placed in a job (For example, if 1,000 MSFWs were registered and 900 were placed in employment, 90% is actual level). <em>Compliance Level = 42.5%.</em></td>
</tr>
<tr>
<td># of MSFWs Placed $.50 Above (Federal) Minimum Wage</td>
<td>Calculate the percentage of registered MSFWs that were placed in a job paying $.50 above the Minimum Wage. (For example, if 1,000 MSFWs were registered and 150 were placed in jobs paying $.50 above the minimum wage, 15% is actual level). <em>Compliance level is 14%.</em></td>
</tr>
<tr>
<td># of MSFWs Placed in a Long-Term Non-Ag. Job</td>
<td>Calculate the percentage of registered MSFWs that were placed in a non-agricultural job with a duration of more than 150 days.</td>
</tr>
<tr>
<td># of Reviews of Significant Offices (SMA)</td>
<td>According to Federal regulations at 20 CFR 653.108(g)(3), States with significant local offices must monitor and review all those offices at least once every year unless monitored by Federal staff. <em>Compliance level is 100% of local offices reviewed.</em></td>
</tr>
<tr>
<td># of Field Checks Conducted (SMA)</td>
<td>These are required on at least 25% of the clearance orders in which “domestic” worker placements are made. (20 CFR 653.503)</td>
</tr>
</tbody>
</table>
| # of Outreach Contacts Per Staff Day Worked        | A minimum of five contacts per staff day should be performed by outreach workers. An eight hour workday is considered a staff day (20 CFR 653.107). Actual levels should equal the number of MSFW contacts made cumulatively divided by number of (outreach) staff days worked cumulatively rounded to the nearest whole
number. For example, 879 contacts made in 19 staff days is 46.2 or 46 contacts per staff day worked. If the number is 46.7 for example, then it is rounded to 47.

| Timely Process of ES Complaints | Minimal compliance levels must reflect timeliness as prescribed by 20 CFR 658.400. Actual levels are cumulative of unresolved complaints at the end of each reporting period. No more than 10% of all ES-related complaints should be left unresolved after 45 days from the date received, unless the complaints were referred to an enforcement agency and are only awaiting a hearing or determination. Compliance level is 90% of complaints resolved within 45 days. |

- No less than 4/7 Minimum Service Indicators must be met for compliance.

**MSFW outreach staff: role & responsibilities**

The main function of MSFW outreach staff is to locate and contact MSFWs who are “not being reached by the normal intake activities conducted by the ES offices. Per 20 CFR 653.107, outreach staff are also responsible for:

1. **Informative presentation of services**
   - Explaining to MSFWs at their working, living, or gathering areas (including day-haul sites), by means of written and oral presentations, either spontaneous or recorded, in a language understood by them, the following:
     - Services available at the local one-stop center (which includes the availability of referrals to training, supportive services, as well as specific employment opportunities) and other related services;
     - Information on the ES and employment-related law Complaint System;
     - Information on the other organizations serving MSFWs in the area; and
     - A basic summary of farmworker rights, including farmworker rights with respect to the terms and conditions of employment.

2. **Service delivery in the field**
   - If an MSFW cannot or does not want to visit the local one-stop center, the outreach worker must offer to provide on-site the following:
     - Assistance in the preparation of applications for employment services;
     - Assistance in obtaining referral(s) to current and future employment opportunities;
     - Assistance in the preparation of either ES or employment-related law complaints;
     - Referral of complaints to the ES office Complaint Specialist or ES office manager;
     - Referral to supportive services and/or career services in which the individual or a family member may be interested; and
- Assistance in making appointments and arranging transportation for individual MSFW(s) or members of his/her family to and from local one-stop centers or other appropriate agencies.

3. **Observing and reporting unlawful conditions**

- Outreach workers must be alert to observe the working and living conditions of MSFWs and, upon observation or upon receipt of information regarding a suspected violation of Federal or State employment-related law, document and refer information to the ES office manager for processing in accordance with §658.411 of this chapter.

- Additionally, if an outreach worker observes or receives information about apparent violations (as described in §658.419 of this chapter), the outreach worker must document and refer the information to the appropriate ES office manager.

4. **Record keeping**

The MSFW Program utilizes ESD’s Sharepoint (shared drive site) as a repository for the outreach and complaint log spreadsheets discussed below. Sharepoint can be accessed from the InsideESD homepage as follows:

```
InsideESD homepage → Popular Links → Sharepoint workgroup sites → Agricultural services (MSFW/H-2A)
```

- Outreach workers must maintain complete records of their contacts with MSFWs and the services they perform. These records must include a daily log, a copy of which must be sent monthly to the ES office manager and maintained on file for at least 2 years. These records must include the number of contacts, the names of contacts (if available), and the services provided (e.g., whether a complaint was received, whether a request for career services was received, and whether a referral was made).

- Outreach workers also must maintain records of each possible violation or complaint of which they have knowledge, and their actions in ascertaining the facts and referring the matters as provided herein. These records must include a description of the circumstances and names of any employers who have refused outreach workers access to MSFWs pursuant to paragraph (b)(2) of this section.

**MSFW outreach – guidance & expectations**

The Workforce Innovation and Opportunity Act (WIOA), published in the Code of Federal Regulations (CFR) clarified the roles, responsibilities and expectations for MSFW outreach workers. Specifically, it emphasized outreach to MSFWs as the primary function of MSFW outreach staff. 20 CFR 653.107(11) states that: “Outreach workers in significant MSFW local offices must conduct especially vigorous outreach in their services areas. DOL prescribes a national threshold that MSFW staff make at least five (5) MSFW contacts per day within an 8 hour workday. The 20 states with the highest estimated year-round MSFW activity… Must assign...full-time, year-round staff to conduct outreach duties”. 20 CFR 653.107(a)(4). In the WIOA Final Rule, DOL stated that “when outreach workers are “hired as full-time, year-round staff, they must dedicate all such time to outreach activities described at 653.107(b).

"In the WIOA Final Rule, DOL stated that “when outreach workers are “hired as full-time, year-round staff, they must dedicate all such time to outreach activities described at 653.107(b).”"

The Washington ASU Director has directed Administrators of Agriculturally Significant Offices to support MSFW outreach staff in dedicating their full work time to MSFW outreach duties. Outreach must be conducted at places
where MSFWs “live, work and gather”. The intent of the MSFW outreach program is to reach those MSFWs who are not accessing WorkSource services in the office. Under limited circumstances, “follow-up” contact with MSFWs previously contacted in during field outreach may occur in the office.

**Additional expectations**

Per 20 CFR 653.107, MSFW staff must carry and display identification cards identifying them as a SWA employee, and must not engage in political, unionization, or anti-unionization activities during the performance of their duties.

**Record keeping**

**MSFW Daily Outreach Log**

20 CFR 653.107 requires that outreach workers maintain complete records of their contacts with MSFWs and the services provided. These records must include the MSFW Daily Outreach Log, a copy of which must be submitted monthly to the State Monitor Advocate (SMA) and kept on file for at least two years after the last recorded activity. The fillable template for this log is found on ESD’s Sharepoint site.

*See above “Record Keeping” section on pg. 19 for information regarding the Sharepoint shared drive. MSFW staff must keep logs current for review by the State Monitor Advocate.*

The log must include: number of contacts, names of contacts (where applicable), and the services provided (e.g., complaints, applications or referrals). DOL requires names of MSFWs to be recorded on the daily logs when an outreach worker:

- Registers the contact;
- Makes a referral to a job; or
- Takes a complaint.

Other than when noted above, the outreach log does not require the name of a contact. Social Security numbers are never required in the outreach log. Outreach contacts must be performed during outreach (except for those instances where follow up contact is made in the WorkSource office with a MSFW who was contacted in the field – discussed above), and are not limited to particular services.

Outreach may be performed to a group of MSFWs, oftentimes at worksites, gathering places, housing and migrant camps. Even so, the names of MSFW contacts must be recorded when services include one or more of the above.

**Quarterly Narrative Report of MSFW Outreach Activities**

Each quarter, MSFW outreach staff must complete a “Quarterly Report of MSFW Outreach Activities”, providing written highlights of outreach activities performed during the previous quarter, issues impacting the staff member’s outreach region (including crop conditions, labor market trends, etc.), and other issues that the outreach staff finds noteworthy. The highlights from each region are reviewed quarterly by the State Monitor Advocate who then condenses and summarizes the highlights in her reporting to DOL.

*Each MSFW significant office has a SharePoint folder containing a fillable template of the Quarterly Narrative Report. MSFW staff must complete the quarterly report at the end of each quarter and save it to SharePoint for review by the State Monitor Advocate.*

**Complaints & the Complaint Log**

As stated above, during outreach, outreach staff should be alert to observe the working and living conditions of MSFWs to ensure that they are in compliance with state and federal law. Outreach workers must be educated
about the ES Complaint System. Per 20 CFR 658.411, whenever an individual indicates an interest in filing a complaint with an ES office, SWA representative, or outreach worker; ES staff must offer to explain the operation of the Complaint System and to take the complaint in writing (DOL 8429 Complaint Form).

During the initial discussion with the complainant, the staff taking the complaint must:

1. Make every effort to obtain all the information he/she perceives to be necessary to investigate the complaint;
2. Request that the complainant indicate all of the physical addresses, email and telephone numbers through which he/she might be contacted during the investigation of the complaint; and
3. Request that the complainant contact the Complaint System representative before leaving the area if possible, and explain the need to maintain contact during the investigation.

If a complaint meets certain criteria as outlined in 20 CFR 658.411, local WorkSource staff may be able to attempt informal resolution of the complaint, if possible during a specified time. If the complaint is not eligible for informal resolution, WorkSource staff must refer the complaint for further action as prescribed in 20 CFR 658.411.

Likewise, apparent violations are received when the SWA, ES office employee, or an outreach worker has 1) reason to believe, or 2) is in receipt of information – regarding an alleged violation of employment-related laws or ES regulations by an employer. Per 20 CFR 658.419, ESD employees must document the suspected violation and refer the information to the WorkSource Administrator. WorkSource staff may then attempt informal resolution of apparent violations only if certain criteria are met.

The definitions of a Complaint and Apparent Violation are as follows:

<table>
<thead>
<tr>
<th>Complaint (20 CFR 651.10)</th>
<th>Apparent Violation (20 CFR 658.419)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A representation made or referred to a State or ES office of an alleged violation of the ES regulations and/or other Federal laws enforced by the Department’s Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other Federal, State, or local agencies enforcing employment-related law.</td>
<td>Violation of Wagner-Peyser regulations or employment-related laws by an employer, where an ESD representative observes, has reason to believe, or is in receipt of information, regarding a suspected violation of employment related laws or ES regulations by an employer.</td>
</tr>
</tbody>
</table>

A complaint log is kept of apparent violations received by ESD staff and complaints received from customers. When ESD staff become aware of an apparent violation or when a complaint is filed, the issue must be recorded in the local office’s Complaint Log, a copy of which is submitted to the SMA on a monthly basis. The Complaint Log must include the following information:

- Name of Complainant (person making the complaint);
- Name of the Respondent (usually an employer);
- Date complaint filed or apparent violation observed or received;
- Whether the complaint or apparent violation is by a MSFW;
- Whether the complaint concerns an employment related law or ES regulation;
- Action taken on complaint; and
- Whether the complaint has been resolved.

See above “Record Keeping” section on pg. 19 for information regarding the Sharepoint shared drive. MSFW staff must keep logs current for review by the State Monitor Advocate.
Please note that ESD staff must adhere to the federal regulations and WorkSource policy, as contained in the WorkSource Complaint Handbook, when receiving, recording, resolving and referring complaints and apparent violations. The section above contains general information, only, and is not meant as a substitute for the specific processes outlined in the WorkSource Complaint Handbook. As of the date of this MSFW Program Handbook, the WorkSource Complaint Handbook is being updated to reflect changes as per WIOA.

If you have questions about how to handle Complaints and Apparent Violations, please refer to the WorkSource Complaint Handbook, your local Complaint Specialist, and the State Monitor Advocate for guidance.

Referral of applicants to H-2A employment – record keeping in WorkSourceWA

All WorkSource Staff

WorkSource is responsible for recruiting and tracking the placement of domestic workers referred to agricultural clearance orders, including H-2A job orders. The recruitment of domestic workers is documented in WorkSourceWA.com. When a domestic worker applies online to a job order, a notification email is received by the order holding WorkSource office. WorkSource office staff must immediately review the applicant’s application and resume to determine whether the applicant has the required experience. If the applicant appears to be qualified for the job, staff must contact the applicant and verify that they are able, willing and available for the entire period of the contract prior to making a referral. For H-2A applicants, staff must determine whether the applicant is qualified and then contact the applicant by phone and/or email to either 1) invite the applicant to the office to receive the required written notifications, or if he or she prefers – 2) email the required notifications to the applicant.

WorkSource staff must keep in contact with job applicants and update the applicant’s status in WorkSourceWA in the “Status” pull down menu. It is imperative that staff be vigilant about following up with the referred applicant to confirm whether he or she was hired by the employer. For example, if a referred applicant was not hired by an H-2A employer, WorkSource staff must inquire with the applicant and/or employer as to the reason and report findings to the State Monitor Advocate immediately.

This section is a summary of WorkSourceWA record keeping. For a full description, please refer to the H-2A Handbook.

Touchpoint recording in ETO

All WorkSource Staff

ETO is the database that ESD utilizes for case management of job seekers, including MSFWs by WorkSource staff. ETO collects demographic information of customers, including names and social security numbers upon the customer’s registration in WorkSourceWA. Specifically, when a customer creates a WorkSourceWA registration, the customer’s registration entries are migrated into ETO creating a customer profile.

When a customer receives an employment service at WorkSource, staff are required to document these services as “Touchpoints” in ETO. Commonly provided Touchpoints include: assistance with customer registration, assistance with job applications and resumes, referrals to jobs and partner programs, and assistance with UI issues, to name a few. Aggregate data is used to analyze program performance and is regularly reported to DOL.

All customers must be registered in WorkSourceWA in order for Touchpoints to be recorded. Registration has proved to be a challenge for MSFW customers for various reasons including computer illiteracy and lack of access to technical support. WorkSource office and outreach staff must tackle this challenge by offering and providing technical support to customers, and by creating and utilizing innovative techniques to register MSFW customers in the office and out in the field.
1. **Agricultural Services Unit: role & responsibility**

The Agricultural Services Unit (ASU) is responsible for providing statewide coordination of the MSFW program. The State Monitor Advocate works closely with the ASU while preserving autonomy from its operations.

The unit must:

- Coordinate the development and implementation of the Wagner-Peyser Agricultural Outreach Plan in order to assist MSFW significant offices in setting annual targets for outreach and other MSFW service-related goals;
- Assist with preparing presentations, reports, issue papers, etc., that summarize MSFW services at the state level;
- Respond to technical-assistance requests from partners, employers, stakeholders and farmworkers;
- Facilitate Workforce & Career Development Division agricultural-services conference calls with ESD staff;
- Keep the Farmworker Services website up to date; and
- Coordinate and provide technical assistance for the H-2A & H-2B program. This includes receiving and reviewing ETA-790 applications and attachments, submitting application to the DOL, receiving and forwarding (to DOL) housing inspection results from DOH, and providing technical assistance to employers and employer associations.

2. **State Monitor Advocate: role & responsibilities**

Fig. 7: Agricultural Services Unit (ASU)
Judge Richey’s court order created the Monitor Advocate System requiring SWAs to monitor their own compliance with ES regulations serving MSFWs on an ongoing basis (20 CFR 653.108). Monitor Advocates exist at the national, regional and state levels. The State administrator must appoint a State Monitor Advocate whose responsibility it is to conduct an ongoing review of the delivery and services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices. In addition to the monitoring function, the State Monitor Advocate also has advocacy and field check functions, all listed at 20 CFR 653 (g)-(s) and are outlined below.

Fig. 7, State Monitor Advocate Functions

1. Monitoring function

- Devote full time to Monitor Advocate functions.
- Regularly participate in on-site local office MSFW formal monitoring reviews which shall include an annual review of the service delivery by WorkSource offices to assure continuing compliance with federal regulations and the state’s Agricultural Outreach Plan (AOP).
- Review the state agency’s Agricultural Outreach Plan.
- Participate in federal reviews of the state’s Wagner-Peyser program.
- Participate in, and monitor the performance of, the job-service (Wagner-Peyser) complaint system, ensuring it complies with WorkSource policy noted in the WorkSource Complaint Handbook. Additionally, the SMA must review ES offices’ informal resolution of complaints relating to MSFWs and must ensure that the ES office manager transmits copies of the Complaint System logs pursuant to part 658, subpart E, of this chapter to the SWA.
- On a random basis, review outreach workers’ daily logs and other reports including those showing or reflecting workers’ activities.
- At least quarterly, review all statistical and other MSFW-related data reported by significant MSFW local offices in order to: (1) determine the extent to which the state agency has complied in providing the full range of employment services to MSFWs, and (2) identify the areas of inadequate compliance.
- Review and comment on proposed state Wagner-Peyser directives, manuals, and operating instructions relating to MSFWs and ensure that they (1) accurately reflect the requirements of the regulations, and (2) are clear and workable.
- Submit the DOL’s 5148 Report via LEARS no later than 45 days after each quarter concludes.

2. Advocacy function
• Serve as an advocate to improve services for MSFWs within Wagner-Peyser.
• Advise the state agency and local offices of: (1) problems, deficiencies or improper practices in the service delivery and protections afforded by MSFW regulations, and (2) ways to improve service delivery.
• Prepare for the SWA administrator an annual summary of Wagner-Peyser services to MSFWs within his or her state, based on statistical data and his or her reviews and activities explained in 20 CFR Parts 653 and 658.
• Be an ongoing liaison with WIOA section 167 NFJP and other organizations serving farmworkers, and employers and employer organizations in the state.
• Meet frequently with representatives of farmworker-advocacy organizations to receive complaints, assist in referrals of alleged violations and receive input on improving coordination within the WorkSource system or improving services to MSFWs through WorkSource centers and affiliates.
• Conduct frequent field visits to the working and living areas of MSFWs, and discuss WorkSource services and other employment-related programs with MSFWs, crew leaders and employers.
• Receive MSFW Complaints and process complaints per WorkSource policy and the WorkSource Complaint Handbook.

3. Field check function

• Per 20 CFR 653.503(a), conduct random, unannounced Field Checks at worksites where placements have been made to ensure employment compliance with the state and federal regulations and the terms and conditions of work contracts.

WorkSource office administrators: role & responsibilities

WorkSource office administrators are responsible for implementing employment and training programs at the local-office level. Administrators must be knowledgeable about the requirements of a variety of programs, including those funded by Wagner-Peyser funds. Specifically related to serving MSFWs, administrators are responsible for ensuring all employees in their offices serve farmworkers equitably and in a non-discriminatory manner. Furthermore, those Administrators in MSFW significant offices must ensure they have sufficient non-MSFW staff available who are bilingual in English and Spanish, so that they are properly using MSFW outreach staff to conduct especially vigorous outreach to MSFWs not accessing WorkSource services in the WorkSource office.

"Furthermore, those Administrators in MSFW significant offices must ensure they have sufficient non-MSFW staff available who are bilingual in English and Spanish, so that they are properly using their MSFW outreach staff to conduct especially vigorous outreach to MSFWs not accessing WorkSource services in the WorkSource office."

With regards to MSFW outreach staff, administrators are responsible for monitoring the performance of MSFW employees in conducting outreach, maintaining a log of their outreach contacts, completing monthly summary reports on their activities, handling farmworker complaints and maintaining a complaint log. Administrators should ensure that MSFW outreach staff are regularly trained in receiving and informally resolving MSFW complaints and are informed about the services, benefits and protections afforded to MSFWs by federal and state law. Additionally, administrators must ensure that MSFW outreach staff is informed about and engaged with organizations and programs serving MSFWs in the local community.

Administrators are also responsible for ensuring that all staff members in local offices are informed about the MSFW program and how to identify and serve MSFW customers. Additionally, all staff must be trained to receive complaints.

TEGL 3-13 (see Resources) provides guidance from DOL on the responsibilities for significant MSFW and bilingual offices. They are as follows:
• Each significant MSFW office must provide staff assistance to each MSFW participant in order for MSFWs to obtain specific and general information on where and how to find employment.

• Offices designated as significant MSFW bilingual offices must explain available services to MSFWs in Spanish (or other languages), if necessary or requested during any period of substantial MSFW activity, such as when there is an increase in MSFW applications or agricultural job orders.

• Significant MSFW offices must dedicate at least one staff person (MSFW outreach specialist) to conduct vigorous outreach a majority of their time to inform a large number of MSFWs in the office’s service area of the full range of employment and training services offered through WorkSource centers and affiliates.

Administrators are responsible for following DOL guidelines to ensure their offices are compliant with relevant regulations and must be knowledgeable about, and in compliance with, ESD policies and guidance. All local offices are required to determine whether an applicant is a MSFW at the time services are delivered, as defined by 20 CFR 651.10.

3. **WorkSource office staff (non-MSFW staff)**

All WorkSource staff members are responsible for serving MSFW customers and must be trained in identifying MSFWs, serving MSFWs, and making referrals to community resources. Because services provided to MSFWs must be qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs, service delivery to MSFWs must not be assigned to MSFW outreach staff, only. For example, it is unacceptable for a WorkSource staff person to defer serving an MSFW to MSFW outreach staff. This includes deferring service related to: filing complaints, translation, referrals to jobs, WorkSource services, etc. As stated above, significant MSFW offices must have sufficient bilingual staff available to serve MSFWs.

The interaction between Non-MSFW and MSFW staff is critical to the success of providing services to MSFW customers through the one-stop center system. MSFW staff are required to outreach to MSFWs currently not being reached by the WorkSource office. Because they are conducting outreach a majority of their time, MSFW staff are not the staff member an MSFW is likely to encounter in the WorkSource office. Spanish-speaking non-MSFW staff are as critical to providing the full spectrum of services to MSFWs as MSFW outreach staff. Significant offices are staffed with Spanish speaking non-MSFW staff in order to accommodate the large number of Spanish speaking MSFWs accessing services through the One-Stop Centers. All non-MSFW staff are trained on accessing language services in the event they encounter a MSFW or any job seeker speaking a foreign language. Administrators are responsible for monitoring the performance of non-MSFW employees as it relates to providing culturally and linguistically appropriate services to MSFWs in the WorkSource office.

**Conducting outreach to agricultural employers**

In order to help locate and contact MSFWs who are not being reached by normal WorkSource intake activities, MSFW outreach workers should strive to increase the number of agricultural employers using labor-exchange services. Outreach staff should develop relationships with these employers, which will help them locate, contact and provide more services and job opportunities for MSFWs.

It is important for Administrators, Supervisors, MSFW outreach staff and WorkSource staff to remember that the priority of MSFW outreach workers is to serve MSFWs. The main responsibility of other staff is to serve all employers, including agricultural employers.

As long as the focus remains on serving farmworkers, it is appropriate for MSFW outreach staff to work alongside other staff to serve employers by:
Obtaining job orders;
• Referring MSFWs to open jobs;
• Leading MSFWs to worksites;
• Developing job opportunities for MSFWs in both agricultural and non-agricultural workplaces;
• Verifying placements of MSFWs referred to jobs;
• Resolving MSFW or employer concerns or complaints;
• Providing wage and hour related information or referrals to other agencies; and
• Providing information on the Agricultural Recruitment System (ARS) and the H-2A program.

Conducting H-2A outreach field visits

MSFW outreach workers conduct outreach where MSFWs work, live and congregate. Under the H-2A Program, employers are required to submit form ETA 790, which includes assurances according to 20 CFR 653.501. When submitting the ETA 790, the employer is assuring that, (among other things), “outreach workers shall have reasonable access to the workers in the conduct of outreach activities.”

In addition to DOL guidance on conducting field visits, ESD expects MSFW outreach workers to conduct field visits to H-2A worksites after the work contract has begun and foreign workers are present. During field visits, MSFW outreach workers are expected to talk with farmworkers and employers in order to support administration of the H-2A program and serve as a resource for all involved parties.

MSFW outreach or other ESD staff must make arrangements with employers prior to a visit. Workers must check in with employers before entering the field or other worksites, in order to maintain good working relationships, respect for food-safety rules and other relevant laws. If an employer denies access to outreach workers, they should report this to their supervisor and the ASU.

For more information regarding ESD’s foreign labor certification procedures, please see the H-2A Handbook.

Coordinating outreach with community organizations serving MSFWs

MSFW outreach workers coordinate with other community organizations that serve farmworkers to build and increase strong partnerships in order to maximize the ability to provide jobs and resources to MSFWs. These partnerships increase workers’ knowledge of programs, resources and opportunities available to farmworkers, and also increase our partners’ knowledge of the services ESD provides.

• **Opportunities Industrialization Center (OIC):** OIC of Washington is the WIOA 167 grantee, administering the National Farmworker Jobs Program (NFJP). OIC assists qualified farmworkers and their families with training and support services. OIC is located in most MSFW significant areas throughout the state, and has many employees placed in WorkSource offices. OIC is a valuable resource for helping MSFWs train for and obtain stable, year-round employment.

• **Washington State Labor & Industries (L&I):** L&I serves both employers and workers. Their services include:
  • Helping employers meet safety and health standards through education programs and workplace inspections;
  • Administering the state’s workers’ compensation system, providing medical and limited wage-replacement coverage to workers who suffer job-related injuries and illness;
  • Managing rules and enforcement programs to help ensure workers are paid what they are owed, that children’s and teens’ work hours are limited, and consumers are protected from unsound building practices.
  • ESD and L&I work together to refer unresolved wage and hour complaints. MSFW outreach and business services staff also can work with L&I to present informational sessions to employers and
workers. L&I maintains a section of its website dedicated to agriculture, which provides great resource information for MSFW outreach staff.

- **Washington State Department of Health (DOH):** DOH is charged with licensing and inspecting temporary-worker housing, which is housing provided for migrant farmworkers to inhabit while they are in the area to work in agriculture-related jobs.

- **Washington State Division of Vocational Rehabilitation (DVR):** DVR helps individuals with disabilities participate fully in their communities and become employed. WorkSource staff can refer MSFWs to DVR for assessment and determination of eligibility for training, job placement assistance and accommodations in the workplace.

- **Northwest Justice Project (NJP):** NJP’s mission is to secure justice through high-quality legal advocacy that promotes the long-term well-being of low-income individuals, families and communities. NJP operates a toll-free intake and referral hotline called Coordinated Legal Education Advice and Referral (CLEAR). CLEAR serves as the statewide, centralized point of access for clients seeking free legal help, including advice, education, limited legal services, self-help materials and, where available, referrals for further representation.

- **Inspire Development Centers:** “Inspire” services are a network of inter-related programs, which have been identified over the years as needed services for seasonal, migrant, rural and economically disadvantaged clients. The program provides services in a holistic approach for the entire family. These services complement and enhance the array of options for families and clients.

Inspire programs include:
- Migrant Seasonal Head Start
- Early Head Start
- Region X Head Start
- Early Childhood Education and Assistance Program
- Child & Adult Care Food Program (USDA)

- **Columbia Legal Services (CLS):** CLS advocates for people living in poverty. It works directly, and in coordination with, the Alliance for Equal Justice to provide legal assistance in all civil justice forums to enable its clients to assert their rights. CLS helps farmworkers and those with issues related to workplace rights, homelessness and housing, limited English proficiency and civil rights.

- **High School Equivalency Program and College Assistance Migrant Program (HEP/CAMP):** HEP and CAMP are educational programs which serve students from migrant or seasonal farmworker families. HEP helps students who have dropped out of high school get their GED, and CAMP helps students in their first year of college with academic, personal and financial support. HEP and CAMP serve more than 7,000 students annually.

- **Mas Labor:**
  For-profit employer’s association based in Virginia providing H-2A/H-2B services in the United States.

- **National Center for Farmworker Health (NCFH):** The NCFH, established in 1975, is dedicated to improving the health of farmworker families by providing information, services and products to a network of more than 500 migrant health centers in the U.S., as well as organizations, universities, researchers, and individuals involved in farmworker health.
• **Community Action Councils**: Non-profit organizations operating throughout Washington state. They administer a variety of programs funded by grants, including food banks, weatherization and energy assistance. The *National Community Action Partnership* website has links to local Community Action Councils.

• **Migrant and Bilingual Education**: The programs through the Office of the Superintendent of Public Instruction help migrant students and other youths meet academic challenges by overcoming obstacles created by frequent moves, educational disruption, cultural and language differences, and health-related problems.

• **Literacy Councils**: These organizations, found in most communities, provide assistance to individuals needing one-on-one tutoring to learn English or obtain their GED. MSFW outreach workers should locate and obtain contact information for Literacy Councils in their service-delivery area in order to appropriately refer farmworkers.

• **Community Support Centers & Shelters**: Community Support Centers provide help to individuals and families who are victims of abuse or other crimes. Many centers offer victims a safe place to live temporarily, connect with organizations offering legal support and, in some areas, help clients apply for and obtain special Visas. MSFW outreach workers should know how to contact support centers in their area and how to make appropriate referrals.

• **Washington Information Network 211 (WIN211)**: This is an easy-to-remember phone number for people to call for health and human-service information and referrals, and other assistance to meet their needs. WIN211 maintains a statewide database of community resources.

• **Washington Growers League**: Washington Growers League (WGL) is a resource for information on regulatory changes, employment services, labor management and safety requirements affecting agricultural employers. WGL also is a valuable resource for information about the H-2A guest worker program.

• **Washington Farm Bureau**: Farm Bureau is an independent, non-governmental organization governed by and representing farm and ranch families united for the purpose of analyzing their problems and formulating action to achieve educational improvement, economic opportunity and social advancement and, thereby, to promote the national well-being. Farm Bureau is local, county, state, national and international in its scope and influence and is non-partisan, non-sectarian and non-secret in character. The Washington Farm Bureau has more than 46,000 member families.

• **WAFLA (formerly Washington Farm Labor Association)**: Non-profit seasonal employer’s association based in Lacey, Washington providing H-2A/H-2B services. The association’s mission is to facilitate a legal and stable workforce for seasonal employers in the Pacific Northwest. WAFLA is the association that submits the most H-2A applications on behalf of their members.

**Suggested best practices**

In addition to federal and state regulations and policies, the following are useful suggestions for MSFW outreach workers. These suggestions are particularly helpful for new staff. New staff should start with familiarizing themselves with ESD services and all local community resources that assist MSFWs. WorkSource staff and one-stop
partners are the best contacts for information regarding other WorkSource or agency services, and other services in the workforce system.

ESD Staff Resources

- Reception and intake points in your office;
- Placement staff (CPP or business services staff);
- Case managers;
- Regional labor economists;
- Unemployment-insurance liaison;
- Veterans-employment representatives;
- Supervisors, operations manager, administrator;
- Central office Agricultural Services Unit;
- State monitor advocate; and
- MSFW complaint specialist.

As soon as you become aware of available services and have identified liaisons, determine where MSFWs live, shop, eat or meet to socialize.

Examples of MSFW gathering places:

- Local shopping areas;
- Labor camps;
- Churches;
- Housing Authority;
- Flea market;
- Restaurants that cater to farmworkers; and
- Laundromats.

- After you have located community resources, liaisons, and have determined where MSFWs congregate, begin to develop an outreach strategy tailored to your service-delivery area. Outreach is usually planned on a weekly basis taking into consideration factors including: weather conditions, growing season, events schedule.

- Distributing written material is a key outreach strategy. Prior to distributing, review all materials to make sure they are:
  - Current;
  - Understandable (both clearly stated and in a language the MSFW can understand); and
  - Pertinent to the needs of MSFWs.

- ESD has produced standard print marketing materials specifically pertaining to the MSFW and H-2A programs. These materials include: information on WorkSource services, farmworker rights, state agency resources and information regarding H-2A employment. MSFW outreach staff should talk with their Administrator about ordering these print materials from ESD Communications.

- Other basic documents you might distribute include:
  - Your business card;
  - Any information pamphlets on WorkSource services and unemployment-insurance;
  - Information regarding the ES Complaint System;
  - Local community service directory;
  - Department of Social and Health Services information;
  - Any agricultural information logs or guides for farmworkers;
  - Current WorkSource job listings;
• Information on the national 211 (WIN211) directory; and
• Daily work-hour booklet (L&I)
• Information on www.worksourcewa.com (Click “Farmworkers” from the “Resources” pull down menu on the home page).

• Additional documents you might distribute to MSFWs and employers include:
  • Generic employment applications;
  • H-2A program information;
  • Agricultural Recruitment System (ARS) information;
  • WorkSource or Employment Service Complaint Form; and
  • Referral cards to other agencies that serve MSFWs.

• Besides distributing written materials, it is important to use other mediums to disseminate information to MSFWs. Local-office administrators or supervisors should coordinate efforts with the ESD Communications Office whenever possible. The most useful mediums are:
  • Spanish-speaking (or other appropriate language) radio stations;
  • Local newspapers;
  • TV stations and cable companies;
  • Movie theaters;
  • PowerPoint presentations; and
  • ESD or local office Facebook pages.

• Finally, you should schedule:
  • Visits to community organizations and points where MSFWs congregate;
  • Outreach presentations to groups, farmworker seminars, open houses, etc.; and
  • Joint ventures with workers from other agencies and partners.

**Migrant and Seasonal Agricultural Worker Protection Act (MSPA)**
Because the MSPA provides employment-related protections to MSFWs, outreach workers should be aware of key portions of the act.

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) is administered and enforced by the Wage and Hour Divisions of the U.S. Department of Labor (DOL), and was amended in 1994 and 1997.

The MSPA protects MSFWs by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping. The MSPA also requires farm-labor contractors to register with the DOL.

Each farm-labor contractor, agricultural employer and agricultural association subject to the MSPA and which employs any MSFWs must post and keep posted in a conspicuous place at the place of employment a poster prepared by the DOL. The poster explains the rights and protections for workers required under the MSPA.

Based on the MSPA, MSFWs have the right to:

• Receive accurate information about wages and working conditions for prospective jobs;
  • Receive a written statement of earnings and all deductions from pay;
  • Receive this information in writing, in English, Spanish or other languages, as appropriate;
  • Have the terms of the working arrangement upheld.
    • Farmworkers must be paid the wages promised, but never less than the federal minimum wage.
• When state minimum wage is higher than federal minimum wage, state minimum-wage laws apply.
• Have farm-labor contractors show proof of registration at the time of recruitment;
• Safe housing or transportation, if provided by the employer;
• Safe and free drinking water, toilets and hand-washing facilities at the job site; and
• A safe workplace.

Note: Although DOL regulations provide protections for temporary foreign workers employed under the H-2A program, these workers are not covered under MSPA.