

Employment and Training Administration, Labor

§ 653.111

Monitor Advocate has responsibilities under these regulations. A copy of this summary shall be forwarded to the Regional Administrator by the State Administrator.

(Approved by the Office of Management and Budget under control number 1205-0039)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[45 FR 39459, June 10, 1980, as amended at 47 FR 145, Jan. 5, 1982; 71 FR 35518, June 21, 2006]

§ 653.109 Data collection.

State agencies shall: (a) Collect data on MSFWs, including data on the number (1) contacted through outreach activities, (2) registering for service, (3) referred to agricultural jobs, (4) referred to non-agricultural jobs, (5) placed in agricultural jobs, (6) placed in non-agricultural jobs, (7) referred to training, (8) receiving counseling, (9) receiving job development, (10) receiving testing, (11) referred to supportive service, (12) receiving some service, (13) placed according to wage rates, and (14) placed according to duration. The State agencies also shall collect data on agricultural clearance orders (including field checks), MSFW complaints, and monitoring activities, as directed by ETA. These data shall be collected in accordance with applicable ETA Reports and Guidance Letters.

(b) Collect data on the number of MSFWs who were served as to whether they were male, female, black, Hispanic, American Indian, Asian, or Pacific Islander.

(c) Provide necessary training to State agency, including local office personnel, to assure accurate reporting of data;

(d) Collect and submit to ETA as directed by ETA, data on MSFWs required by the PBP, and

(e) Periodically collect and verify data required under this subsection, take necessary steps to ensure its validity, and collect and submit data for verification to ETA, as directed by ETA; and

(f) Submit additional reports to the ETA at such times and containing such items as ETA directs.

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[45 FR 39459, June 10, 1980, as amended at 47 FR 145, Jan. 5, 1982; 71 FR 35518, June 21, 2006]

§ 653.110 Disclosure of data.

(a) State agencies shall disclose to the public, on written request, in conformance with applicable State and Federal law, the data collected by State and local offices pursuant to § 653.109, if possible within 10 working days after receipt of the request.

(b) If a request for data held by a State agency is made to the ETA national or regional office, the ETA shall forward the request to the State agency for response.

(c) If the requested data cannot be supplied within 10 working days of receipt by the State agency of the request, the State agency shall respond to the requestor in writing, giving the reason for the delay and specifying the date by which it expects to be able to comply.

(d) State agency intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the State agency and the ETA, however, to the extent that they contain statements of opinion rather than facts, may be withheld from public disclosure provided this reason for withholding is given to the requestor in writing. Similarly, documents or parts thereof, which, if disclosed, would constitute an unwarranted invasion of personal or employer privacy, may also be withheld provided the reason is given to the requestor in writing.

§ 653.111 State agency staffing requirements.

(a) On a statewide basis, staff representative of the racial and ethnic characteristics in the work force shall be distributed in substantially the same proportion among (1) all "job groups" (as that term is defined by the Office of Federal Contract Compliance

Programs), and (2) all offices in the plan(s).

(b)(1) As part of the PBP, each State agency shall develop and submit to the Regional Administrator affirmative action plans for all significant local offices within its jurisdiction (which, for the purposes of this provision, means those local offices representing the top 20 per cent of MSFW activity nationally). These affirmative action plans shall include goals and timetables and shall ensure that sufficient numbers of qualified, permanent minority staff are hired. Where qualified minority applicants are not available to be hired as permanent staff, qualified minority part-time, provisional, or temporary staff shall be hired in accordance with State merit system procedures, where applicable. These affirmative action plans shall be prepared on an individual office basis.

(2) The affirmative action plans shall include an analysis of the racial and ethnic characteristics of the work force in the local office service area. To determine the "work force" for the purpose of this paragraph, the State agency shall include the racial and ethnic characteristics of any MSFW population which is not a part of the permanent work force by computing an estimate of the total work years MSFWs collectively spend in the area and including a number of workers equivalent to this estimate as part of the permanent work force. This computation shall be made by calculating the average length of time, as a fractional part of a year, MSFWs stay in the area and then multiplying this figure by the total estimated MSFW population in the area during the previous year.

(3) The affirmative action plan also shall include an analysis of the local office staffing characteristics. The plan shall provide a comparison between the characteristics of the staff and the work force and determine if the composition of the local office staff(s) is representative of the racial and ethnic characteristics of the work force in the local office service area(s).

(4) If the staff under-represents any of these characteristics, the State agency shall establish a staffing goal at a level equivalent to the percentage of the characteristics in the work force

in the local office service areas. The State agency also shall establish a reasonable timetable for achieving the staffing goal by hiring or promoting available, qualified staff in the under-represented categories. In establishing timetables, the State agency shall consider the vacancies anticipated through expansion, contraction, and turnover in the office(s) and available funds, and all affirmative action plans shall establish timetables that are designed to achieve the staffing goal no later than December 31, 1983.

(c) In addition, each State agency which has significant local offices, shall undertake special efforts to recruit MSFWs and persons from MSFW backgrounds for its staff, shall document achievements, and shall include in the affirmative action plan(s) a complete description of specific actions which the agency will take and time frames within which these actions will be taken.

(d) In developing the affirmative action plan for significant local offices, the State agency shall solicit from WIA 167 National Farmworker Jobs Program and other appropriate MSFW groups, employer organizations and other interested organizations, estimates of the total MSFW population in each local office service area, and the average length of time the MSFWs stay in the area. In addition, State agencies shall solicit, consider, incorporate as appropriate, respond to and include copies of comments from WIA 167 National Farmworker Jobs Program, other appropriate MSFW groups, employer organizations, and other interested organizations, following procedures set forth for the annual outreach plan at § 653.107(d).

(e) As part of the annual Program and Budget Plan (PBP) process, the funding of State agencies which are required to develop and implement affirmative action plans for significant local offices shall be contingent upon the timely submittal of adequate affirmative action plans and the substantial and timely attainment of the goals and timetables contained in those plans. However, if the Regional Administrator makes a finding of good faith efforts, he/she may fund a State agency

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even though it did not achieve substantial and timely compliance.

(f) All State Workforce Agencies (SWAs) required to develop affirmative action plans for significant local offices shall keep accurate records of their employment practices for those offices, including information on all applications. These records shall be maintained in accordance with the recordkeeping requirements concerning affirmative action which are established by ETA and distributed to the SWAs. All records shall be made available to the State MSFW Monitor Advocate, EEO staff and Federal On-Site Review Teams.

(g) Affirmative action plans shall contain a description of specific steps to be taken for the adequate recruitment of MSFWs for all vacant positions in significant local offices and the central office. These steps shall include advertisements in newspapers, radio or other media, in a manner calculated to best reach the MSFW population, and contacts by outreach workers and the State MSFW Monitor Advocate with groups serving the MSFW population.

(h) State EEO staff shall have the responsibility for developing affirmative action plans. The State MSFW Monitor Advocate(s) shall comment on the plan to the State Administrator. Upon submission of the affirmative action plan as part of the State agency's PBP submittal, the Regional MSFW Monitor Advocate shall review the affirmative action plan(s) as it pertains to MSFWs and comment to the Regional Administrator. As part of his/her regular reviews of State agency compliance, the Regional MSFW Monitor Advocate shall monitor the extent to which the State has complied with its affirmative action plan(s) as it pertains to MSFWs. The Regional MSFW Monitor Advocate's finding as to the adequacy of the plan(s) and as to the State's compliance with the plan(s) shall be consid-

ered in PBP decisions involving future funding of the State agency.

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§ 653.112 State agency program budget plans.

(a) Each State agency, in its annual program budget plan, shall describe its plan to carry out the requirements of this subpart in the following year. The plan shall include, where applicable, the outreach and affirmative action plans required by §§ 653.107 and 653.111, respectively. For significant MSFW States, ETA shall establish program performance indicators reflecting equity indicators and indicators measuring minimum levels of service to MSFWs which the significant MSFW State agencies will be required to meet. These program performance indicator requirements shall be contained in the PBP Guidelines which ETA promulgates on an annual basis.

(b) Equity indicators shall address JS controllable services and shall include, at a minimum, individuals referred to a job; receiving counselling; receiving job development; receiving some service; and referred to supportive service.

(c) Minimum level of service indicators shall address other services to MSFWs and shall include, at a minimum, individuals placed in a job; placed in a job with a wage exceeding the Federal minimum wage by at least 50 cents/hour; placed long-term (150 days or more) in a non-agricultural job; review of significant MSFW local offices; field checks on agricultural clearance orders; outreach contacts per staff day; and processing of complaints. The determination of the minimum service levels required of significant MSFW States for each year shall be based on the following:

(1) Past State agency performance in serving MSFWs, as reflected in on-site reviews and data collected under § 653.109;

(2) The need for services to MSFWs in the following year, comparing prior and projected levels of MSFW activity;