

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

§ 653.100 Purpose and scope of subpart.

(a) This subpart sets forth the principal regulations of the Wagner-Peyser Act Employment Service (ES) concerning the provision of services for MSFWs consistent with the requirement that all services of the workforce development system be available to all job seekers in an equitable fashion. This includes ensuring MSFWs have 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.

(b) This subpart contains requirements that State Workforce Agencies (SWAs) establish a system to monitor their own compliance with ES regulations governing services to MSFWs.

(c) Established under this subpart are special services to ensure MSFWs receive the full range of career services as defined in WIOA sec. 134(c)(2).

§ 653.101 Provision of services to migrant and seasonal farmworkers.

Each one-stop center must offer MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs. In providing such services, the one-stop centers must consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

§ 653.102 Job information.

All SWAs must make job order information conspicuous and available to MSFWs by all reasonable means. Such information must, at minimum, be available through internet labor exchange systems and through the one-stop centers. One-stop centers must provide adequate assistance to MSFWs to access job order information easily and efficiently. In designated significant MSFW multilingual offices, such assistance must be provided to MSFWs

in their native language, whenever requested or necessary.

[81 FR 56341, Aug. 19, 2016, as amended at 85 FR 626, Jan. 6, 2020]

§ 653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.

(a) Each one-stop center must determine whether participants are MSFWs as defined at § 651.10 of this chapter.

(b) All SWAs will ensure that MSFWs who are English Language Learners (ELLs) receive, free of charge, the language assistance necessary to afford them meaningful access to the programs, services, and information offered by the one-stop centers.

(c) One-stop centers must provide MSFWs a list of available career and supportive services in their native language.

(d) One-stop centers must refer and/or register MSFWs for services, as appropriate, if the MSFW is interested in obtaining such services.

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§§ 653.104–653.106 [Reserved]

§ 653.107 Outreach and Agricultural Outreach Plan.

(a) *State Workforce Agency (SWA) outreach responsibilities.* (1) Each SWA must provide an adequate number of outreach staff to conduct MSFW outreach in their service areas. SWA Administrators must ensure State Monitor Advocates (SMAs) and outreach staff coordinate their outreach efforts with WIOA title I sec. 167 grantees as well as with public and private community service agencies and MSFW groups.

(2) As part of their outreach, SWAs must ensure outreach staff:

(i) Communicate the full range of workforce development services to MSFWs.

(ii) Conduct thorough outreach efforts with extensive follow-up activities in supply States.

(3) For purposes of providing and assigning outreach staff to conduct outreach duties, and to facilitate the delivery of employment services tailored to the special needs of MSFWs, SWAs must seek qualified candidates who

speak the language of a significant proportion of the State MSFW population; and

(i) Who are from MSFW backgrounds; or

(ii) Who have substantial work experience in farmworker activities.

(4) In the 20 States with the highest estimated year-round MSFW activity, as identified in guidance issued by the Secretary, there must be full-time, year-round outreach staff to conduct outreach duties. For the remainder of the States, there must be year-round part-time outreach staff, and during periods of the highest MSFW activity, there must be full-time outreach staff. All outreach staff must be multilingual, if warranted by the characteristics of the MSFW population in the State, and must spend a majority of their time in the field.

(5) The SWA must publicize the availability of employment services through such means as newspaper and electronic media publicity. Contacts with public and private community agencies, employers and/or employer organizations, and MSFW groups also must be utilized to facilitate the widest possible distribution of information concerning employment services.

(6) SWAs must ensure each outreach staff member is provided with an identification card or other materials identifying them as representatives of the State.

(b) *Outreach staff responsibilities.* Outreach staff must locate and contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices. Outreach staff responsibilities include:

(1) 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 readily understood by them, the following:

(i) The services available at the local one-stop center (which includes the availability of referrals to training, supportive services, and career services, as well as specific employment opportunities), and other related services;

(ii) Information on the Employment Service and Employment-related Law Complaint System;

(iii) Information on the other organizations serving MSFWs in the area; and

(iv) A basic summary of farmworker rights, including farmworker rights with respect to the terms and conditions of employment.

(2) Outreach staff must not enter work areas to perform outreach duties described in this section on an employer's property without permission of the employer unless otherwise authorized to enter by law; must not enter workers' living areas without the permission of the workers; and must comply with appropriate State laws regarding access.

(3) After making the presentation, outreach workers must urge the MSFWs to go to the local one-stop center to obtain the full range of employment and training services.

(4) If an MSFW cannot or does not wish to visit the local one-stop center, the outreach worker must offer to provide on-site the following:

(i) Assistance in the preparation of applications for employment services;

(ii) Assistance in obtaining referral(s) to current and future employment opportunities;

(iii) Assistance in the preparation of either ES or employment-related law complaints;

(iv) Referral of complaints to the ES office Complaint System Representative or ES Office Manager;

(v) Referral to supportive services and/or career services in which the individual or a family member may be interested; and

(vi) As needed, 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.

(5) Outreach staff must make follow-up contacts as necessary and appropriate to provide the assistance specified in paragraphs (b)(1) through (4) of this section.

(6) Outreach staff 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 staff member observes or receives information about apparent violations (as described in § 658.419 of this chapter), the outreach staff member must document and refer the information to the appropriate ES Office Manager.

(7) Outreach staff must be trained in local office procedures and in the services, benefits, and protections afforded MSFWs by the ES, including training on protecting farmworkers against sexual harassment. While sexual harassment is the primary requirement, training also may include similar issues, such as sexual coercion, assault, and human trafficking. Such trainings are intended to help outreach staff identify when such issues may be occurring in the fields and how to document and refer the cases to the appropriate enforcement agencies. They also must be trained in the procedure for informal resolution of complaints. The program for such training must be formulated by the State Administrator, pursuant to uniform guidelines developed by ETA. The SMA must be given an opportunity to review and comment on the State's program.

(8) Outreach staff 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 and if the complaint or apparent violation was resolved informally or referred to the appropriate enforcement agency, and whether a request for career services was received). Outreach staff 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 staff access to MSFWs pursuant to paragraph (b)(2) of this section.

(9) Outreach staff must not engage in political, unionization, or anti-unionization activities during the performance of their duties.

(10) Outreach staff must be provided with, carry, and display, upon request, identification cards or other material identifying them as representatives of the State.

(11) Outreach staff in significant MSFW local offices must conduct especially vigorous outreach in their service areas.

(c) *ES office outreach responsibilities.* Each ES Office Manager must file with the SMA a monthly summary report of outreach efforts. These reports must summarize information collected, pursuant to paragraph (b)(8) of this section. The ES Office Manager and/or other appropriate staff must assess the performance of outreach staff by examining the overall quality and productivity of their work, including the services provided and the methods and tools used to offer services. Performance must not be judged solely by the number of contacts made by the outreach staff. The monthly reports and daily outreach logs must be made available to the SMA and Federal on-site review teams.

(d) *State Agricultural Outreach Plan (AOP).* (1) Each SWA must develop an AOP every 4 years as part of the Unified or Combined State Plans required under sec. 102 or 103 of WIOA.

(2) The AOP must:

(i) Provide an assessment of the unique needs of MSFWs in the area based on past and projected agricultural and MSFW activity in the State;

(ii) Provide an assessment of available resources for outreach;

(iii) Describe the SWA's proposed outreach activities including strategies on how to contact MSFWs who are not being reached by the normal intake activities conducted by the one-stop center;

(iv) Describe the activities planned for providing the full range of employment and training services to the agricultural community, including both MSFWs and agricultural employers, through the one-stop centers; and

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(v) Provide an assurance that the SWA is complying with the requirements under § 653.111 if the State has significant MSFW one-stop centers.

(3) In developing the AOP, the SWA must solicit information and suggestions from WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees, other appropriate MSFW groups, public agencies, agricultural employer organizations, and other interested organizations. In addition, at least 45 calendar days before submitting its final AOP to the Department, the SWA must provide the proposed AOP to NFJP grantees, public agencies, agricultural employer organizations, and other organizations expressing an interest and allow at least 30 calendar days for review and comment. The SWA must:

(i) Consider any comments received in formulating its final proposed AOP.

(ii) Inform all commenting parties in writing whether their comments have been incorporated and, if not, the reasons therefore.

(iii) Transmit the comments and recommendations received and its responses to the Department with the submission of the AOP. (If the comments are received after the submission of the AOP, they may be sent separately to the Department.)

(4) The AOP must be submitted in accordance with paragraph (d) of this section and planning guidance issued by the Department.

(5) The Annual Summaries required at § 653.108(s) must update the Department on the SWA's progress toward meetings its goals set forth in the AOP.

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§ 653.108 State Workforce Agency and State Monitor Advocate responsibilities.

(a) State Administrators must ensure their SWAs monitor their own compliance with ES regulations in serving MSFWs on an ongoing basis. The State Administrator has overall responsibility for SWA self-monitoring.

(b) The State Administrator must appoint an SMA who must be a SWA official. The State Administrator must inform farmworker organizations and

other organizations with expertise concerning MSFWs of the opening and encourage them to refer qualified applicants to apply. Among qualified candidates, the SWAs must seek persons:

(1) Who are from MSFW backgrounds; or

(2) Who speak the language of a significant proportion of the State MSFW population; or

(3) Who have substantial work experience in farmworker activities.

(c) The SMA must have direct, personal access, when necessary, to the State Administrator.

(d) The SMA must have ES staff necessary to fulfill effectively all of the duties set forth in this subpart. The number of ES staff positions must be determined by reference to the number of MSFWs in the State, as measured at the time of the peak MSFW population, and the need for monitoring activity in the State. The SMA must devote full time to Monitor Advocate functions. Any State that proposes less than full-time dedication must demonstrate to its Regional Administrator that the SMA function can be effectively performed with part-time staffing.

(e) All SMAs and their staff must attend, within the first 3 months of their tenure, a training session conducted by the Regional Monitor Advocate. They also must attend whatever additional training sessions are required by the Regional or National Monitor Advocate.

(f) The SMA must provide any relevant documentation requested from the SWA by the Regional Monitor Advocate or the National Monitor Advocate.

(g) The SMA must:

(1) Conduct an ongoing review of the delivery of services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices (including efforts to provide ES staff in accordance with § 653.111, and the appropriateness of informal complaint and apparent violation resolutions as documented in the complaint logs). The SMA, without delay, must advise the SWA and local offices of problems, deficiencies, or improper practices in the delivery of services and protections afforded by these regulations and may