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**NATIONAL MONITOR ADVOCATE ANNUAL REPORT**  
**ON SERVICES TO MIGRANT AND SEASONAL FARMWORKERS**

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PROGRAM YEAR 2019

July 1, 2019 through June 30, 2020

THE UNITED STATES DEPARTMENT OF LABOR  
EMPLOYMENT AND TRAINING ADMINISTRATION

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## EXECUTIVE SUMMARY

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This document contains the United States Department of Labor (The Department), Employment and Training Administration's (ETA) National Monitor Advocate (NMA) Annual Report to the Office of Workforce Investment (OWI) Administrator, the ETA Assistant Secretary, and the National Farm Labor Coordinated Enforcement Committee, as required by ETA regulations at 20 CFR 658.602. The report provides an assessment of State Workforce Agencies (SWA) compliance with Employment Service (ES) regulations affecting Migrant and Seasonal Farmworkers (MSFW) in Program Year (PY) 2019, between July 1, 2019 and June 30, 2020. The acting NMA's assessments are based on information from Regional Monitor Advocates (RMA) and State Monitor Advocates (SMA), program performance data, reports from ETA regional offices, state on-site reviews, and other relevant reports prepared by ES staff. The report includes a quantitative and qualitative analysis of the acting NMA's findings and the implementation of the NMA's recommendations by state and federal officials.<sup>1</sup>

The NMA retired in September 2020 and ETA appointed an acting NMA while ETA worked to fill the position, in compliance with [20 CFR 658.602\(g\)](#). This report describes conditions in PY 2019, prior to the NMA's retirement. However, the acting NMA completed this report, including the conclusions and recommendations that the report documents.

PY 2019 marks the end of the four-year Agricultural Outreach Plan (AOP) cycle from PY 2016 through PY 2019. Therefore, the report compares PY 2016 performance data to PY 2019 performance data to identify national trends and SWA achievements. The report also compares data from PY 2015 to identify longer-term trends, which are not affected by abnormalities in PY 2019.

The report identifies several significant successes; however, it also points out state-level compliance issues that require corrective action, involving provision of equitable services, state agency staffing, and the Agricultural Recruitment System (ARS). The report notes actions RMAs are already taking and provides recommendations for further action, where appropriate.

## BACKGROUND

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The Monitor Advocate System is a federal-state monitoring system, which reviews the provision of ES, benefits and protections to MSFWs, the functioning of state complaint systems, and compliance of state ES offices with applicable laws, regulations, and directives.<sup>2</sup> The Department created the Monitor Advocate System to carry out requirements of the Judge Richey Court Order, which was a result of *NAACP v. Brennan* (Civil Action No. 2010-72). The Department's implementing regulations require SWAs to designate an SMA who reviews state MSFW services on an ongoing basis. One National

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<sup>1</sup> [20 CFR 658.602\(j\)](#) requires the NMA's Annual Report address information obtained from the sources identified in this section.

<sup>2</sup> Court Order Filed August 13, 1974, *NAACP v. Brennan* (Civil Action No. 2010-72).

Monitor Advocate oversees the entire system. Additionally, at the federal level, there are five RMAs, who provide support to SMAs and also monitor SWA compliance.

The Wagner-Peyser Act funds the Monitor Advocate System. ETA regulations regarding the Monitor Advocate System and MSFW services are located at 20 CFR [651](#), [653](#), [654](#), and [658](#).

## **CONDITIONS AFFECTING SERVICES IN PY 2019**

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This report covers services provided between July 1, 2019 and June 30, 2020. For many portions of the United States, the third quarter of each program year (January 1 through March 31) represents a period of low agricultural activity due to cold weather. For that reason, SWAs usually report less MSFW service activity in the third quarter. However, in PY 2019 SWA MSFW service activity dipped below normal levels in the third and fourth quarters as SWAs responded to the novel Coronavirus COVID-19 pandemic.

In March 2020, state governors throughout the United States declared states of emergency and stay-at-home orders. To reduce the spread of COVID-19, SWAs temporarily closed ES offices to the public and stopped providing certain services, including in-person outreach to MSFWs. SWAs in Significant MSFW States,<sup>3</sup> as well as states that are not considered Significant MSFW States, reassigned MSFW outreach staff and SMAs to work on Unemployment Insurance claims. To address these concerns, ETA published COVID-19 Frequently Asked Questions, which clarified that SWA responsibilities in providing the full range of employment and training services to MSFWs had not changed due to the COVID-19 pandemic. The FAQs further explained states must maintain the required functions of the SMA in their positions and provided examples of how SWA staff may complete required outreach and ES services virtually.<sup>4</sup>

Though the NMA and RMAs educated SWAs on their continued obligations, many SWAs continued to use MSFW outreach staff and SMAs for the Unemployment Insurance program until the end of PY 2019, resulting in fewer MSFW outreach contacts than average. In PY 2019, SWAs reported 252,852 MSFW contacts by ES staff,<sup>5</sup> which represents an approximate 25 percent decrease from the 339,258 MSFW contacts reported in PY 2018 (86,406 fewer contacts).

ETA further addressed staffing requirements in PY 2020, through Training and Employment Guidance Letter (TEGL) 5-20.<sup>6</sup> TEGL 5-20 states that “ETA requires SWAs maintain SMAs in their positions and meet the requirements in 20 CFR 653.108(d). Significant MSFW States must maintain their full-

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<sup>3</sup> Significant MSFW States are those States designated annually by the Department and must include the 20 States with the highest number of MSFW participants. [20 CFR 651.10](#). The list of Significant MSFW States for PY 2019 is available at <https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/performance>.

<sup>4</sup> See [https://www.dol.gov/agencies/eta/coronavirus#WP\\_SMA](https://www.dol.gov/agencies/eta/coronavirus#WP_SMA).

<sup>5</sup> Outreach contact means each MSFW that receives the presentation of information, offering of assistance, or follow-up activity from outreach staff. [20 CFR 651.10](#).

<sup>6</sup> TEGL 5-20 is available at [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5852](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5852).

time, year-round outreach staff to conduct outreach duties as described in 20 CFR 653.107(b). Non-significant MSFW states may allow outreach staff to conduct other activities that promote farmworker safety, including housing inspections, when they are not in peak harvest season.” The ETA National Office also held a call with SMAs and RMAs in November 2020 to help ensure SWAs complete requirements in PY 2020, which they may not have completed in PY 2019. TEGL 5-20 also encourages SWAs to collaborate with National Farmworker Jobs Program (NFJP) partners to provide information regarding measures to support health and safety for MSFWs and agricultural employers.

Though SWAs reported fewer MSFW contacts in PY 2019, RMAs reported that SMAs were instrumental in developing executive orders, work plans, policies, procedures, and guidelines for farmworkers to address the impact of COVID-19. SMAs also reported that SWAs implemented new strategies to accomplish outreach and ES objectives. The following examples demonstrate positive ways SMAs and SWAs responded to the pandemic.

WASHINGTON

The Washington SMA moved quickly to ensure MSFWs continued to receive support from American Job Center offices. In collaboration with the Wagner-Peyser program operator, Washington’s SMA developed guidelines for MSFW outreach staff, requiring that they continue to provide services to MSFWs virtually.

VIRGINIA

The Virginia SMA drafted recommendations and worked with the governor’s office regarding safety measures related to migrant labor camp operation.

NORTH CAROLINA

North Carolina’s Agricultural Services Unit collaborated with the North Carolina Department of Health and Human Services to provide approximately 120,000 facemasks and other supplies to the farm community. At first, staff met employers and farmworkers at NC Works Career Center parking lots. As demand grew, staff worked with additional partners to mail supplies, along with Centers for Disease Control and Prevention guidelines and a state resource guide, to employers and farmworkers. North Carolina’s SMA reported hearing from one farmworker who expressed appreciation, saying he “feels grateful and valued.”

MINNESOTA

The Minnesota SMA developed an electronic MSFW application to assist with outreach efforts during COVID-19. Staff received training on how to use the electronic application and methods to conduct virtual outreach. Minnesota encouraged staff to think creatively to conduct successful outreach.

## STATE WORKFORCE AGENCY SERVICES TO MSFWs

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### I. Equitable Services to MSFWs

ETA regulations require that MSFWs receive services on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.<sup>7</sup> To monitor compliance, SWAs submit quarterly performance data to ETA through the Labor Exchange Agricultural Reporting System (LEARS) ETA 5148 Report. This section provides a summary of services provided in PY 2019, using ETA 5148 Report data SWAs submitted. Because PY 2019 marks the end of the four-year AOP cycle, this section compares PY 2016 performance data to PY 2019 performance data. This section also compares PY 2015 data to identify longer-term national performance trends. This report does not include LEARS data for PY 2017 and PY 2018 because in those years many SWAs experienced system-generated errors and could not certify reports. In PY 2017, 38 states did not submit reports. In PY 2018, 46 states did not submit reports.

Note on the Integrity of PY 2019 Data: The following conditions affect the reliability of data available for PY 2019.

- RMAs reported that Alabama, Georgia, Arkansas, and Oklahoma routinely documented participant MSFW statuses incorrectly due to their Management Information Systems (MIS) having incorrect MSFW identification instructions. As a result, the states underreported MSFW ES participants.
- In early 2020, the NMA identified that states inconsistently reported Equity Ratio and Minimum Service Level Indicator data throughout the United States. Some states reported quarterly data, while other states reported data cumulatively, program year to date.
- The Region 3 RMA identified that some states recorded staff-assisted services incorrectly.
- The Region 6 RMA identified that California did not collect information on three Minimum Service Level Indicators.
- The District of Columbia, the U.S. Virgin Islands, and North Carolina did not submit one or all of their ETA 5148 Reports in PY 2019.

ETA has already begun to address the data validity issues mentioned above through several ways during PY 2020. First, RMAs are providing technical assistance and have required corrective actions through state monitoring processes. Second, ETA National Office updated the ETA 5148 Report,<sup>8</sup> issued written technical assistance instructions to SMAs, and trained SMAs and RMAs on the new report form. The new ETA 5148 Report form will implement updated Minimum Service Level Indicators, as described in TEGL 14-18. ETA National Office is also developing further technical assistance to help states understand key reporting requirements. This includes differences between the definitions of MSFW for Wagner-Peyser ES (Participant Individual Record Layout (PIRL) data element 413) and Eligible MSFW

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<sup>7</sup> [20 CFR 653.100\(a\)](#).

<sup>8</sup> See OMB Approval Number 1205 - 0039 Expiration Date: July 31, 2023.

(PIRL data element 808), which is used to record barriers to employment. Additionally, starting in PY 2020, ETA will use data states report in the Workforce Integrated Performance System (WIPS) to monitor compliance with Equity Ratio Indicators and some of the Minimum Service Level Indicators, instead of obtaining that data through LEARS. This change will reduce the burden on states and reduce the opportunity for user error because states will no longer have to report certain MSFW-related data in two different reporting systems.

Despite the known data validity issues, this report analyzes and draws conclusions using LEARS data because the ETA 5148 Reports contain relevant insight into state MSFW services. To draw more accurate conclusions, the analysis does not include states that reported zero Wagner-Peyser ES applications or states that did not complete ETA 5148 Reports.

**A. Equity Ratio Indicators**

All states are required to meet equity indicators that address provision of ES services, including individuals referred to a job, receiving job development, and referred to supportive or career development. To meet the equity performance standards, the percentage of services provided to MSFWs must be equal to or greater than the percentage of services offered to non-MSFWs.

Table 1 documents the national cumulative totals and percentages served for all states at each equity level, as reported by SWAs through ETA 5148 Reports for quarter ending June 30, 2020. Note, on a national level, all the equity ratio indicators are being met except for job development contact, which missed equity by only .04%.

<b>Table 1: Equity Ratio Indicators of Non- MSFWs and MSFWs in PY 2019</b>				
<b>Equity Indicators</b>	<b>Total Non-MSFWs</b>	<b>Percentage Served</b>	<b>Total MSFWs</b>	<b>Percentage Served</b>
Total Participants	12,192,999		124,584	
Referred to Jobs	2,264,253	18.57%	32,489	26.08%
Received Staff Assisted Services	5,022,579	41.19%	70,190	56.34%
Referred to Supportive Services	327,379	2.68%	28,776	23.10%
Career Guidance	1,956,643	16.05%	28,936	23.23%
Job Development Contact	1,988,106	16.31%	20,273	16.27%

Table 2 documents how many states met each equity level, as reported by SWAs through ETA 5148 Reports for quarter ending June 30, 2020.<sup>9</sup>

<b>Table 2: Equity Ratio Indicators</b>					
*Data only includes states that reported MSFW Wagner-Peyser ES applications. <sup>10</sup>					
	Referred to Jobs	Received Staff Assisted Services	Referred to Support Service	Career Guidance	Job Development Contact
Number of states that met the measure in PY 2019	34	41	38	32	29
Percent of states meeting the measure/success rate <sup>11</sup> in PY 2019	68% (34/50)	82% (41/50)	76% (38/50)	64% (32/50)	58% (29/50)
Percent increase/decrease from PY 2016 to PY 2019	+ 6% (62% in PY16)	+ 3% (79% in PY16)	+ 4% (72% in PY16)	- 1% (65% in PY16)	- 9% (67% in PY16)
Percent increase/decrease from PY 2015 to PY 2019	- 7% (75% in PY15)	-2% (84% in PY15)	- 4% (80% in PY15)	+ 3% (61% in PY15)	- 12% (70% in PY15)

Over the last five years, equity levels have trended down in four of the five indicators. Most notably, there was a 7 percentage-point decrease in states that referred MSFWs to jobs on a quantitatively proportionate basis in PY 2019 compared to PY 2015. Only 68 percent of states provided MSFWs with referrals to jobs at a rate that was equal to or greater than the number of non-MSFWs referred to jobs. Fourteen of the 20 Significant MSFW States met the measure, which equals a 70 percent success rate among Significant MSFW States. The COVID-19 pandemic likely had some impact on the Equity Ratio Indicators in PY 2019, but because equity has been trending down for the last five years, the pandemic is not the only cause.

Two states submitted comments with their ETA 5148 Reports, which indicated their SWAs had difficulty meeting Equity Ratio Indicators because most MSFW ES participants are registered as a part of the Unemployment Insurance claims process and do not want ES services, including referrals to jobs. Instead, the SMAs stated MSFWs choose to be unemployed during winter months and return to seasonal jobs when work resumes in the spring. However, ETA 5148 Report data does not support this reasoning. The Report data shows other states which also experience significant change in weather during the winter, including Washington, Montana, Oregon, Wyoming, North Dakota, South Dakota,

<sup>9</sup> The PY 2018 NMA Annual Report analyzed the total number of MSFWs who received each service compared to non-MSFWs receiving the same service, nationally, as reported in the Workforce Integrated Performance System (WIPS). Due to updates in WIPS, national totals were reported in LEARS for PY 2019.

<sup>10</sup> Delaware reported zero MSFW Wagner-Peyser ES applications on the ETA 5148 Report and therefore they are not included in the outcomes, Delaware

<sup>11</sup> The denominator is 50 because it does not include Delaware that reported zero MSFW Wagner-Peyser ES applications on the ETA 5148 Report. Additionally, The U.S. Virgin Islands and The District of Columbia did not submit reports in PY 2019. The denominator does include Puerto Rico, which submitted reports.



Nebraska, Iowa, Indiana, Ohio, Pennsylvania, New York, and Massachusetts, met the Equity Ratio Indicator for MSFWs referred to jobs. Additionally, many of the 16 states that did not meet the measure are located in the southern United States, where agricultural work is available throughout the year. Therefore, on a national level, the failure to meet the measure does not appear related to MSFW desire to remain unemployed in cold winter months.

Failure to meet Equity Ratio Indicators has two main contributing factors: (1) states that did not meet the indicators may not offer services in a way that is appropriate to the unique needs of MSFWs; and (2) outreach staff may not meaningfully offer to provide services onsite to MSFWs who cannot or do not wish to visit local one-stop centers.

**(1) Efforts to Meet the Unique Needs of MSFWs**

The regulations at [20 CFR 653.100\(a\)](#) explain the requirement that all services of the workforce development system be available to all job seekers in an equitable fashion “includes ensuring MSFWs have access to these services in a way that meets their unique needs.” The following positive examples from Arizona, Idaho, and Washington show how states may make services appropriate to MSFW needs.

ARIZONA

Arizona collaborated with the City of San Luis, the NFJP grantee, Arizona at Work Employment Services, and Yuma Private Industry Council to conduct a recruitment event for Dole Fresh Vegetables. Of the 164 MSFWs who attended the event, the employer hired 25 MSFWs on the same day. Arizona also participated in recruitment events for several other employers, which resulted in interviews and job placements, including permanent employment opportunities for MSFWs.

Each year, Arizona’s MSFW outreach staff works with the City of San Luis, migrant education agencies, and farmworker advocacy groups to plan, develop, and execute an annual event for farmworkers called “Día Del Campesino.” ES staff from across the State hand out clothing, blankets, shoes, socks and other items to MSFWs. Arizona’s MSFW outreach staff also use this opportunity to provide ES information to MSFWs. Approximately 3,000 MSFWs and their families participate in the celebration each year. The event celebrates farmworkers and recognizes their economic and cultural contributions to the community.

IDAHO

The outreach staff for the Burley, Idaho office partners with a local radio station to provide a weekly Spanish language radio program, which discusses available services at the local Idaho Department of Labor office. In the Pocatello area, the State collaborates with education partners to provide English Language Learning classes. Some classes are customized to help employers and their current MSFW employees learn vocational English related to the job, which enables current employees to progress in their jobs to earn higher earnings wages or other promotions.

In collaboration with Big Bend Community College and agricultural community leaders, the SMA contributed to developing an agricultural leadership program certificate. The program will provide MSFWs opportunity to enhance their skills, a greater understanding of H-2A regulations, Labor and Industry requirements, and human resource principles they can apply to supervisory roles.

## (2) On-Site Services to MSFWs During Outreach

ETA regulations require outreach workers provide certain services to MSFWs during outreach, if the MSFW cannot or does not wish to visit the local one-stop center.<sup>12</sup> These services include, but are not limited to, assistance in the preparation of applications for ES, assistance in obtaining referrals to current and future employment opportunities, and referrals to supportive and/or career services. Additionally, outreach staff must make follow-up contacts as necessary and appropriate to provide the assistance mentioned above.

Many states have tools available to enable outreach staff to provide services in the field. These tools include portable computers, field registration forms, and scanning devices. However, states have not reported that outreach staff have used the tools to prepare applications for ES or to help MSFWs obtain referrals to employment opportunities to a statistically significant degree; therefore, the acting NMA recommends that ETA begin tracking the use and outcomes of these tools.

One reason SWAs document low ES provided during outreach may be because states typically perform outreach to MSFWs at their worksites during work hours. As noted in training for SMAs and RMAs, outreach to MSFWs is not a “nine to five” job. For outreach to be appropriate to MSFW needs, it may need to occur outside of the MSFW’s workday. This is especially important because many MSFWs work by the piece rate, earning more money depending on their productivity. It may disadvantage an MSFW to stop working so they may engage with outreach staff during their shift. For this reason, it is more appropriate to conduct outreach outside of working hours and at locations other than the worksite, including labor camps, community service agencies, religious organizations, and other MSFW gathering areas. During non-work hours at non-worksites, MSFWs may be more likely to accept outreach staff offers to provide ES.

Additionally, states that are not providing outreach during non-work hours can struggle to meet Equity Ratio Indicators. For example, the Region 3 RMA identified that at least half of the SWAs in Region 3 struggled to meet Equity Ratio Indicators in PY 2019. To address the issue, the RMA and NMA educated Region 3 SMAs on information outreach staff need to collect when taking MSFW ES applications in the field. The National Office intends to expand this training to all SMAs in PY 2020.

<sup>12</sup> See [20 CFR 653.107\(b\)\(4\) and \(5\)](#).

**B. Minimum Service Level Indicators**

Significant MSFW States are required to meet minimum levels of service to MSFWs. In PY 2019, states reported the following Minimum Service Level Indicators through ETA 5148 Reports: individuals placed in a job; individuals placed \$.50 above minimum wage; individuals placed long-term (150 days or more) in a non-agricultural jobs; reviews of Significant MSFW Offices; field checks conducted; outreach contacts per staff day worked; and timely processing of ES complaints.<sup>13</sup>

The regulations at [20 CFR 653.109\(h\)](#) stipulate that “only significant MSFW SWAs will be required to meet minimum levels of service to MSFWs.” However, all states should at least meet the minimum service level for reviews of Significant MSFW Offices because [20 CFR 653.108\(g\)\(3\)](#) requires the SMA “ensure all Significant MSFW One-Stop Centers<sup>14</sup> not reviewed onsite by federal staff are reviewed at least once per year by a SWA official.” Additionally, all states should meet the standard for timely processing of ES complaints because [20 CFR 658.411](#) requires that SWAs process ES-related complaints within 45 days.

Table 3 documents how many states met each Minimum Service Level Indicator, as reported by SWAs through ETA 5148 Reports for quarter ending June 30, 2020.

<b>Table 3: Minimum Service Level Indicators</b>							
*Data for placed in job, placed \$.50 above minimum wage, and placed in log-term non-ag. job only includes states that reported MSFW Wagner-Peyser ES applications.							
	Placed in a Job	Placed \$.50 Above Minimum Wage	Placed in Long-Term Non-Ag. Job	Reviews of Significant Offices	Field Checks Conducted	Outreach Contacts per Staff Day Worked	Timely Processing of ES Complaints
<b>Significant MSFW States</b>							
Number of Significant MSFW States that met the measure in PY 2019	10	5	13	8	11	16	17
Percent of Significant MSFW States meeting the measure/success rate in PY 2019 <sup>15</sup>	52% (10/19)	26% (5/19)	68% (13/19)	42% (8/19)	58% (11/19)	84% (16/19)	89% (17/19)

<sup>13</sup> ETA updated the Minimum Service Level Indicators through TEGL 14-18 Attachment 5: Monitor Advocate, available at [https://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_14-18\\_Attachment-5\\_Acc.pdf](https://wdr.doleta.gov/directives/attach/TEGL/TEGL_14-18_Attachment-5_Acc.pdf). States will begin reporting data for the new indicators in PY 2020. In PY 2019, LEARS was not yet updated to include the indicators and related compliance levels listed in TEGL 14-18. Therefore, this report measures performance using the compliance levels that were documented in LEARS in PY 2019.

<sup>14</sup> For the purposes of this report, Significant MSFW One Stop Center has the same meaning as Significant MSFW Office.

<sup>15</sup> The denominator for Significant MSFW States is 19 because North Carolina did not submit ETA 5148 Reports in PY 2019 Quarter 4.

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All States (Significant and Non-Significant States Combined)							
Total number of States that met the measure in PY 2019	20	13	25	10	20	34	39
Percent of total states meeting the measure/success rate in PY 2019	44% (20/45)	29% (13/45)	55% (25/45)	46% (10/22) <sup>16</sup>	40% (20/50) <sup>17</sup>	68% (34/50)	78% (39/50)
Percent increase/decrease from PY 2016 to PY 2019	+ 10% (34% in PY16)	- 3% (32% in PY16)	+ 15% (40% in PY16)	- 21% (67% in PY16)	- 8% (48% in PY16)	- 3% (71% in PY16)	- 5% (83% in PY16)
Percent increase/decrease from PY 2015 to PY 2019	- 3% (47% in PY15)	- 16% (45% in PY15)	+ 6% (49% in PY15)	- 22% (68% in PY15)	- 15% (55% in PY15)	- 7% (75% in PY15)	- 8% (86% in PY15)

The data in Table 3 show Significant MSFW States performed considerably below required levels for five of the seven Minimum Service Level Indicators in PY 2019. The total success rates for all states were similar, with rates that were slightly lower than Significant MSFW States in five of the seven indicators. In the last five years, performance decreased in six of the seven indicators. The most significant decrease was in reviews of Significant MSFW ES Offices.

The acting NMA is particularly concerned that only 42% of Significant MSFW States and 46% of all states met the indicator for reviews of Significant MSFW Offices because that indicator is a fundamental feature of the Monitor Advocate System, as established by the Judge Richey Court Order. [20 CFR 653.108\(g\)\(2\)](#) requires that as a part of the SMA’s on-site reviews, “the SMA or review staff must study: (A) program performance data; (B) reports from previous reviews.” If properly completed, SMA onsite reviews should identify the same downward trends that Table 3 shows and result in corrective action plans to resolve findings of noncompliance. The low rates of Significant MSFW Office reviews completed, therefore, directly relates to the low rates of compliance with Equity Ratio Indicators and Minimum Service Levels.

Additionally, 23 of the 50 states that submitted ETA 5148 Reports in PY 2019 (46 percent) did not conduct any office reviews (including offices that are considered significant and non-significant). Many SMAs stated that they were not able to conduct office reviews in PY 2019 because offices were closed due to the COVID-19 pandemic. In PY 2016, 18 of the 48 states that submitted ETA 5148 Reports (37 percent) did not conduct any office reviews, which represents a nine percentage-point decrease in reviews from PY 2016 to PY 2019. Based on that data, office closures do appear to have affected SMA ability to conduct reviews to small degree, but the number of states that did not review any offices prior to the pandemic is still problematic.

<sup>16</sup> Denominator for total states meeting Significant MSFW ES Office reviews is 22 because in PY 2019 23 states had Significant MSFW ES Offices and North Carolina did not submit ETA 5148 Report in Quarter 4.

<sup>17</sup> Denominator for field checks conducted, outreach contacts per staff day worked, and timely processing of ES complaints is 50 because 50 states submitted reports in PY 2019.

The acting NMA believes the cause of this issue may be that many SMAs misunderstand ETA’s SMA monitoring requirements. Specifically, SMAs may believe they are only required to monitor Significant MSFW Offices. 20 CFR 653.108(g)(3) requires the SMA “ensure... those ES offices in which significant problems are revealed by required reports, management information, the Complaint System, or other means are reviewed as soon as possible.” These regulations do not limit the SMA’s monitoring responsibilities to Significant MSFW Offices. [20 CFR 653.108\(g\)\(2\)](#) further states that SMAs must “participate in on-site reviews on a regular basis.” Therefore, SMAs are not sure if they have to conduct on-site review on a regular basis of non-significant offices or if they are required to only monitor Significant MSFW Offices.

To address this issue, the acting NMA recommends ETA provide guidance and training to RMAs and SMAs regarding monitoring requirements. The acting NMA recommends RMAs complete corrective action plans with all states that consistently did not complete any office reviews between PY 2016 and PY 2019, which aligns with the last AOP four-year cycle. To further resolve the issue, states may borrow the following positive example from Arizona, which, despite the COVID-19 pandemic, completed 13 office reviews in PY 2019, including reviews of offices that were Significant MSFW Offices and offices that were not considered significant.

ARIZONA

The SMA developed a monitoring checklist for local office reference, which ensures offices are aware of federal requirements for posters, services to farmworkers, and the complaint system. The SMA proactively issued a yearly monitoring calendar and works with offices to correct existing deficiencies and to prevent future deficiencies from occurring.

## II. State Workforce Agency Staffing

### A. State Monitor Advocate Full-Time Devotion

According to [20 CFR 653.108\(d\)](#), “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.” Based on SMA and RMA Annual Summaries, 20 SMAs devote less than full time to Monitor Advocate duties. Most ETA regional offices do not maintain records documenting that states have demonstrated to the Regional Administrator that the SMA function can be effectively performed with part-time staffing. The acting NMA recommends all ETA regional offices implement procedures to document all SMA functions will be effectively performed in all states that propose part-time SMA staffing. For example, the Region 5 RMA requires that all states in Region 5 submit letters documenting the SMA’s full-time status, which is saved in ETA’s official system of record.

Additionally, Section 2 of the Wagner-Peyser Act defines “state” as “any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.” The District of Columbia, the U.S. Virgin Islands, and Guam do not have assigned SMAs. The RMA Annual

Summary for ETA Regions 1 and 2<sup>18</sup> states that “the Virgin Islands and the District of Columbia should share [their] plan to perform SMA functions and ensure compliance with ETA’s MSFW-related regulations.” The acting NMA agrees with this statement and recommends it be expanded to include Guam because, though the activity in those SWA service areas may not require a full-time SMA, it is important to ensure safeguards the Monitor Advocate System carries out exist for individuals in the service areas.

SMA and RMA reports indicate several SMAs are responsible for work of the Foreign Labor Certification grant and, in some cases, work of the MSFW outreach program. As noted in the Region 1 and 2 RMA Annual Summary:

An inherent apparent conflict of interest exists when the SMA is responsible to review its own work and performance. This conflict exists when an SMA acts as an MSFW outreach worker under 653.107 then must review its own work in the capacity of SMA under 653.108. It is good practice for all states to establish and maintain a separation of duties such that SMAs are not in a position to review their own performance. Therefore, if a state proposes part-time SMA devotion, the other portion of the SMA’s time should not include MSFW outreach under 653.107, instead it may include responsibilities equal to the SMA’s status and compensation level (e.g. supervision of other programs). Further, if the SMA supervises other programs, the programs must also not conflict with the SMA role. For example, a different conflict would exist if the SMA were also a director of Wagner-Peyser ES.

Additionally, the acting NMA believes part-time status is not appropriate for SMAs in any states where Equity Ratio Indicators, Minimum Service Level Indicators, MSFW outreach, and SMA responsibilities are not currently compliant. Rather, SMAs in states that are not meeting Equity Ratio Indicators or other key requirements should devote increased time to Monitor Advocate functions, including monitoring and corrective action planning.

## **B. SMA Role**

[20 CFR 658.602\(1\)](#) requires “If the NMA receives information that the effectiveness of any SMA has been substantially impeded by the State Administrator, a State or Federal ES official, or other ES staff, he/she must, in the absence of a satisfactory informal resolution at the regional level, report and recommend appropriate actions directly to the OWI Administrator.” In PY 2019, four SMAs shared information that they were concerned they might experience negative employment actions in retaliation for performing the full set of Monitor Advocate duties at [20 CFR 653.108](#).<sup>19</sup> Unfortunately, the acting NMA has received other anecdotal information from SMAs that indicates the concern is somewhat common throughout the United States. SMAs function in a difficult position where they monitor the

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<sup>18</sup> ETA Regions 1 and 2 are considered “paired regions,” which have one Regional Administrator and one RMA. The Regions submitted one RMA Annual Summary, which covered activities in Region 1 and Region 2 states.

<sup>19</sup> Identifying information for the affected SMAs will be made available to the OWI Administrator under separate cover.

same agencies for which they work. Fear of retaliation may substantially impede SMA ability to effectively monitor, report, and advocate for improved services to MSFWs.

In one instance, Region 2 took appropriate action regarding retaliation allegations an SMA reported. To resolve the issue, the Region directly addressed the SMA's concerns with state leadership, explained the SMA's required monitoring and reporting duties, and conducted an on-site monitoring review, which resulted in several findings and a corrective action plan. The acting NMA recommends other regional offices respond to specific concerns SMAs raise in a similar manner.

The acting NMA further recommends ETA provide training to all State Administrators and SMAs on the SMA's role in the Workforce Development System. This training should specifically reinforce the requirements at [20 CFR 653.108](#), which include, but are not limited to:

- The SMA must have direct, personal access, when necessary, to the State Administrator.
- The SMA must have ES staff necessary to fulfill effectively all of the duties set forth in [20 CFR 653 Subpart B](#).
- The SMA must provide any relevant documentation requested from the SWA by the RMA or NMA.
- The SMA must serve as an advocate to improve services for MSFWs.
- The SMA must have full access to all statistical and other MSFW-related information gathered by SWAs and ES offices, and may interview SWA and ES office staff with respect to reporting methods.
- The SMA must review and comment on proposed State ES directives, manuals, and operating instructions relating to MSFWs.
- The SMA must prepare for the State Administrator, the RMA, and the NMA an Annual Summary describing how the state provided employment services to MSFWs based on statistical data, reviews, and other activities as required.

The acting NMA recommends ETA collaborate with the U.S. Department of Labor Civil Rights Center to adopt training concepts used for Equal Employment Opportunity Officers that may also be appropriate for SMAs. Such concepts may include general investigative skills and effective methods for monitoring the agency in which SMAs work. The acting NMA also recommends SMAs receive regular ethics training to identify conflicts of interest and potential protections for required reporting.

### **C. Outreach Staffing**

[20 CFR 653.107\(a\)](#) requires "Each SWA must provide an adequate number of outreach staff to conduct MSFW outreach in their service areas." The preamble to 20 CFR 653.107 further explains "All States (significant and non-significant) are required to hire outreach workers to locate and contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices. Each non-significant State must determine, through fact-based research, which time of year hosts the peak number of

MSFWs, and the State must hire full-time outreach staff during such periods. Wagner-Peyser Act funds must be used to hire such outreach workers.”

RMA Annual Summaries highlight the following concerns involving inadequate MSFW outreach staffing.

REGIONS  
1 AND 2

Regions 1 and 2 issued monitoring findings in PY 2019 to Pennsylvania and Virginia for inadequate MFSW outreach staffing.

REGION 3

Several Region 3 states do not conduct adequate MSFW outreach. Kentucky, Tennessee, Alabama, and Mississippi do not hire or designate minimum levels of staff to conduct MSFW outreach during peak season. Tennessee does not have any outreach staff. Alabama documented only five MSFW outreach contacts and 10 outreach staff days. Kentucky did not document any MSFW outreach contacts or outreach staff days. The RMA appropriately noted, “inadequate outreach can cause low levels of MSFW enrollment in the [Wagner-Peyser] program.”

REGION 4

South Dakota, Oklahoma, and Wyoming continued to struggle to meet the outreach staff requirement due to budget constraints. New Mexico does not currently conduct outreach to MSFWs.

REGION 5

Indiana, Minnesota, Ohio, and Illinois demonstrated inadequate outreach staffing levels and the Regional Office cited those states for inability to effectively conduct outreach due to a lack of assigned MSFW outreach staff. Minnesota raised concern that outreach staff do not perform outreach duties on a full-time year-round basis. Indiana also identified several areas with high concentrations of MSFWs, but has been unable to make contact and register the MSFWs due to a lack of staff. The Regional Office continues to work with the Indiana SMA toward resolution of this issue.

REGION 6

Nevada documented no MSFW outreach contacts or staff days by ES staff in PY 2019.

Though the pandemic affected SWA ability to conduct outreach in the second half of PY 2019, many of the noted staffing deficiencies existed prior to the pandemic. As mentioned earlier in this report, ETA published technical assistance guidance, which confirmed SWA responsibilities in providing the full range of employment and training services to MSFWs had not changed due to the COVID-19 pandemic and provided examples of how SWAs may conduct virtual outreach.

RMA Annual Summaries document that staffing deficiencies are either already being addressed through monitoring or will be addressed through corrective action.



### III. Employment Service and Employment-Related Law Complaint System

Each state must establish and maintain an Employment Service and Employment-Related Law Complaint System (Complaint System). The Complaint System covers complaints related to the Wagner-Peyser ES regulations and other employment-related laws.<sup>20</sup> While the Complaint System is available to all workers (whether they are MSFWs or not MSFWs), this section focuses on how the Complaint System specifically served MSFWs.

Table 4 compares total number of complaints taken by states over the last five years. The data shows the total number of annual complaints taken has increased by 820 complaints since PY 2015, and the total number of annual MSFW complaints only slightly decreased by 26 complaints. The table demonstrates mostly consistent performance for national totals, which indicates SWAs are making the Complaint System available to MSFWs throughout the United States on average. This may be a result of ETA’s consistent training on the Complaint System at national and regional events.

<b>Table 4: Total Complaints Received by Employment Service Offices National Totals</b>			
<b>PY</b>	<b>Total</b>	<b>MSFWs</b>	<b>Non-MSFWs</b>
2019	3,967	<b>368</b>	3,599
2018	3,053	<b>332</b>	2,721
2017	3,502	<b>447</b>	3,055
2016	2,957	<b>472</b>	2,485
2015	3,147	<b>394</b>	2,753

It is important to note that because Table 4 represents national totals, states with more complaint activity compensate for states with little to no activity. At least eight states did not report any MSFW complaints in PY 2019. The Region 3 RMA identified the following concerns.

Underreporting of complaints and/or farmworker unawareness of the ES and Employment-Related Law Complaint System are potential issues. In general, states with adequate MSFW outreach workers are reporting complaints and apparent violations.<sup>21</sup> States with insufficient or minimally compliant numbers of MSFW outreach staff are reporting very few complaints and apparent violations because of low levels of interaction with the farmworker community.

<sup>20</sup> See [20 CFR 658 Subpart E](#).

<sup>21</sup> [20 CFR 658.419](#) defines apparent violation as when SWA, ES office employee, or outreach staff 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, except as provided at 20 CFR 653.503 (field checks) or 20 CFR 658.411 (complaints).

The following success stories occurred in PY 2019:

REGION 6

Over the past few years, Arizona has placed an emphasis on developing a highly skilled Complaint System process. According to the SMA’s Annual Summary, “We have aggressively trained and developed over 80 state and 20 partner staff to fill any gap to this most crucial service. For program year 2019, the State of Arizona processed and referred 209 complaints which was a slight decrease from the 291 we took in program year 2018... In addition, our highly-trained staff are experts at the mediation process (informal resolution) and were able to recover \$102,000 on behalf of our clients this program year.” Arizona also trains one-stop partners and the NFJP grantee on the Complaint System.

REGION 4

Arkansas, North Dakota, Oklahoma, South Dakota, and Utah developed and implemented new complaint procedures. All other states in the Region have procedures in place.

#### IV. The Agricultural Recruitment System

ETA continues to see very few job orders cleared through the Agricultural Recruitment System (ARS) for U.S. workers and low numbers of U.S. workers placed on clearance orders. These issues may be due to the following serious conditions:

REGION 3

Region 3 identified Tennessee was not tracking placements or conducting field checks. Alabama and Kentucky referred workers for placement but did not report field checks or follow up on referrals. Mississippi and Alabama were not keeping records of field checks.

REGION 5

Region 5 identified Ohio and Minnesota, which are both Significant MFSW States, routed temporary agricultural jobs to the H-2A Coordinator and appear to immediately process the orders for H2A visa applications. Monitor Advocate staff are not aware of all orders processed and are consequently unable to complete U.S. worker referrals.

MSFW-serving ES staff assigned to work full-time for the Monitor Advocate System have been identified as performing functions outlined in 20 CFR 655 (temporary employment of foreign workers in the United States) and performing duties related to SWA Foreign Labor Certification (FLC) grants. Many States have cited a decrease in Wagner-Peyser funds as the cause for their inability to increase staffing to a level of compliance for the Advocacy System. This practice results in non-compliant staffing. The Regional Office has been unable to determine if these staff are properly charging FLC grants while performing FLC work. It is the goal of the RMA to ensure that proper and adequate staffing levels are in place to ensure a functional and effective MSFW-serving ES system in each State.

Region 5 cited nine states for ARS noncompliance.

REGION 6

The Region 6 RMA noted “lack of referral, follow-up, and placement of domestic workers... seems to be a systemic issue.”

Additionally, as mentioned earlier in this report, Significant MSFW States achieved compliance with the Minimum Service Level Indicator for field checks conducted at a rate of 58 percent and the compliance rate for all states combined was 44 percent in PY 2019.

The acting NMA notes that RMA Annual Summaries demonstrate RMAs are appropriately identifying deficiencies at the state level. The acting NMA recommends Regional Offices continue implementing corrective action plans with all states that are not meeting ARS requirements. The ETA National Office should provide further support to RMAs, as they work to resolve issues.

## ETA REGIONAL OFFICE ACTIVITIES

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Regional Offices provided technical assistance to SMAs and state staff through in-person and virtual events. All regions monitored each state through quarterly desk reviews. Additionally, the regions conducted on-site reviews and Enhanced Desk Monitoring Reviews, which resulted in findings of noncompliance involving many of the issues identified in this report. The regions resolved many of the findings and they are currently working to resolve the remaining findings.

REGIONS  
1 AND 2

Regions 1 and 2 held quarterly technical assistance calls with SMAs. The RMA also developed a new SMA training outline tool and delivered individualized training for new SMAs in the region. The RMA also developed a tool to help SMAs assess whether their Memorandums of Understanding with NFJP grantees comply with ETA regulations. The RMA shared these tools with other regions and National Office for their use.

REGION 3

The RMA addressed SMA challenges through quarterly conference calls with SMAs and the NMA. The RMA selected topics based on upcoming MSFW program activities and from Workforce Innovation and Opportunity Act operating guidance. Quarterly calls also include presentations by partner agencies and organizations that serve the farmworker community.

REGION 4

The RMA provided the following technical assistance during PY 2019:

- On-site technical assistance to the new SMAs in Oklahoma, North Dakota, and Utah,
- Training on MSFW system requirements to Arkansas, Montana, North Dakota, New Mexico, Oklahoma, Utah, and Wyoming,
- Monthly and individual conference calls with SMAs on AOP and WIPS requirements,
- Guidance on local job order reporting, including the intrastate, interstate, and H-2A-related clearance orders.

REGION 5

The Region held an on-site pre-season meeting in February, 2020. The RMA also held bi-weekly regional calls beginning in March, 2020. These calls included representation from the NMA team, U.S. Department of Labor Wage and Hour Division (WHD), and OSHA.

REGION 6

The Region held a regional MSFW convening for SMAs and NFJP grantees in August, 2019. Over 60 people attended the event. The convening featured sessions on serving youth, MOUs, increased partner collaboration, and a WHD presentation on current trends in farmwork. Throughout the year, the Region also held monthly calls with the NMA, RMAs, and SMAs to discuss ongoing issues and concerns.

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## ETA NATIONAL OFFICE ACTIVITIES

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The ETA National Office held its annual NMA training virtually in PY 2019 due to the pandemic. Approximately 300 people attended the event and received training on SMA responsibilities, ARS, MSFW outreach, and the Complaint System. The training also incorporated several break-out sessions where SMAs engaged in peer-to-peer learning.

National Office held at least five technical assistance conference calls with SMAs, which were issue-focused to SMA learning objectives. Additionally, National Office held at least five calls with RMAs, which focused on the RMAs' roles in the Monitor Advocate System.

Throughout PY 2019, the NMA also worked to develop new procedures for ETA 5148 Reports, including an updated report form and technical assistance for SMAs. States began to use the new report in PY 2020. However, the NMA's groundwork completed in PY 2019 is critical to enable states to smoothly transition to the new form. The new form will reduce duplicate reporting and capture new data points, which will improve data validity going forward and enable ETA to draw more effective conclusions from state data.