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

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PROGRAM YEAR 2020

July 1, 2020 through June 30, 2021

**NOTICE:** This report reflects the National Monitor Advocate's (NMA) role under [20 CFR 658.602](#) to serve as a monitor and an advocate within the Employment Service. The conclusions, concerns, and recommendations described in this report are attributable to the NMA and do not necessarily reflect the positions or plans of the Department.

THE UNITED STATES DEPARTMENT OF LABOR  
EMPLOYMENT AND TRAINING ADMINISTRATION

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## EXECUTIVE SUMMARY

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 Employment Service (ES) regulations at [20 CFR 658.602](#). The report provides an assessment of State Workforce Agencies’ (SWA) compliance with ES regulations affecting Migrant and Seasonal Farmworkers (MSFW) in Program Year (PY) 2020, between July 1, 2020 and June 30, 2021. The 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 collected between 2021 and 2022. The report includes a quantitative and qualitative analysis of the NMA’s findings and the implementation of the NMA’s recommendations by state and Federal officials.<sup>1</sup>

**NOTICE: This report reflects the NMA’s role to serve as a monitor within the ES and as an advocate to improve services. As part of the oversight and transparency required in the ES regulations, this report from the NMA to the OWI Administrator, the ETA Assistant Secretary, and the National Farm Labor Coordinated Enforcement Committee is made available to the public. This report describes the NMA’s recommendations rather than Departmental implementation plans. The Department publishes proposed regulations for public comment under the Administrative Procedures Act and recently did so in [87 FR 23700](#).**

### I. Executive Summary Table: NMA Recommendations

The following summary table provides an overview of key issues and recommendations, which are described in greater detail throughout this report.

Cross-Reference to Details of Concern	Concerns	Recommendations
Page (9)	<b>CONCERN 1</b> Low amount of SWA MSFW outreach contacts may contribute to farmworkers largely not being aware of employment-related rights, fear of retaliation, and incidents of employment-related law and ES violations.	ETA regional offices should review all SWAs to determine whether there are adequate outreach staff and, if not, complete corrective action plans.
Page (12)	<b>CONCERN 2</b> The majority of SWAs are not meeting several Equity Ratio Indicators. Most SWAs	ETA regional offices should implement corrective action plans for all SWAs not meeting Equity Ratio Indicators and conduct

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

National Monitor Advocate Annual Report on Services to MSFWs

Cross-Reference to Details of Concern	Concerns	Recommendations
	<p>are providing MSFWs with equitable access to basic career services but are not providing MSFWs equitable access to higher-level staff assisted services.</p>	<p>monitoring reviews, where appropriate, to determine and correct causes of these conditions.</p>
<p>Page (17)</p>	<p><b>CONCERN 3</b>                      Several SWAs do not have SMAs or do not have a full-time SMA. Many SWAs have part-time SMAs who are responsible to monitor work they are also required to perform, which creates conflict of interest.</p>	<p>ETA regional offices should implement corrective action plans with all SWAs that do not have SMAs or whose SMAs devote less than full time to SMA duties without approval. Regional offices should require SWAs to maintain adequate separation of duties to remove potential conflicts of interest in the SMA role.</p> <p>The NMA also conducted training to SMAs on internal controls and conflict of interest in PY 2021.</p>
<p>Page (20)</p>	<p><b>CONCERN 4</b>                      SWAs reported that they processed only two complaints and six apparent violations involving trafficking, though advocacy organizations report labor trafficking in agriculture occurs at much higher rates. SWAs reported only one complaint and one apparent violation related to pesticides. ES staff may not be adequately trained to identify and process complaints and apparent violations involving trafficking or pesticides.</p>	<p>In PY 2021, the NMA published a webcast training to help ES staff identify and process complaints and apparent violations involving trafficking. The NMA also recommends ETA regional offices and SWAs provide training to ES staff to ensure they are adequately trained on trafficking and pesticide-related violations.</p>
<p>Page (21)</p>	<p><b>CONCERN 5</b>                      SWAs may not be adequately testing local labor markets or obtaining factual information that they anticipate shortages of local workers prior to approving temporary agricultural clearance orders, including orders connected to the H-2A visa program, which may allow the program to adversely affect U.S. workers.</p>	<p>ETA regional offices should monitor SWAs to determine and correct any issues with SWAs meeting their responsibilities to test the local labor market prior to approving clearance order requests, including requests placed in connection with the H-2A visa program.</p> <p>SWAs should develop and implement written policy and procedures regarding how they will make determinations under 20 CFR 653.501(a) to ensure U.S. workers are not adversely affected by H-2A petitions.</p> <p>The NMA provided training to SMAs in PY 2021 to assist them in establishing and implementing effective policies and</p>

Cross-Reference to Details of Concern	Concerns	Recommendations
		procedures. Training also included SWA responsibilities under the ARS.

While this report details several areas for improvement, it is important to recognize that national-level data shows MSFWs are receiving services on an equitable basis compared to non-MSFWs.<sup>2</sup> Additionally, in PY 2020 SWAs improved performance in the following four Minimum Service Level Indicators on a national basis, compared to PY 2019 performance.

Indicator	Percent Improvement
Individuals Placed in a Job	+ 20 %
Reviews of Significant Offices	+ 42 %
Field Checks Conducted	+ 52 %
Timely Processing of ES Complaints	+ 12 %

These improvements may be a result of increased SMA monitoring as well as training conducted by ETA and SMAs. SMA Annual Summaries for PY 2020 report frequent trainings and technical assistance SMAs provided to SWAs throughout the PY.

## BACKGROUND

### I. Monitor Advocate System Structure and Objectives

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>3</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. At the Federal level, each ETA regional office has an RMA, who provides support to SMAs and also monitors SWA compliance. One NMA oversees the entire system.

The Wagner-Peyser Act authorizes funding for the Monitor Advocate System. ETA regulations regarding the Monitor Advocate System and MSFW services are located at 20 CFR [651](#), [653](#), [654](#), and [658](#). These regulations provide a compliance-based framework to help ensure MSFWs receive equitable access to ES compared to non-MSFWs. Monitor Advocates at the state and Federal levels work within their agencies and with external partners to monitor SWA compliance, advocate for improvements,

<sup>2</sup> Cumulative, national-level data shows SWAs are meeting Equity Ratio Indicators, though state-level data shows that not all states are individually meeting each measure. See cross-reference: Page [12](#).

<sup>3</sup> Court Order Filed August 13, 1974, NAACP v. Brennan (Civil Action No. 2010-72).

report on services, and liaise with government officials, farmworkers, farmworker groups, employers, and partners. Their work is designed to help ensure MSFWs have full access to ES, through which MSFWs may find and maintain employment, access training, and connect with supportive service providers. The compliance framework is also critical to worker protection because it includes procedures SWAs must follow upon receiving complaints about the ES and about employers, involving ES regulations or employment-related laws. Among other SWA functions, Monitor Advocates also monitor SWA compliance with requirements for processing temporary agricultural clearance orders, including clearance orders placed in connection with H-2A petitions, which allow employers to seek nonimmigrant foreign workers when there are not sufficient able, willing, and qualified U.S. workers available to perform temporary and seasonal agricultural work. Monitor Advocates monitor the SWA's worker protective activities including, but not limited, MSFW outreach, field checks to determine employer compliance with the terms of clearance orders, MSFW complaints and apparent violations, and the SWA's responsibility to discontinue ES to employers who meet the bases described in 20 CFR 658.501.

## **II. New NMA Appointment**

The previous NMA retired in September 2020 and ETA appointed acting NMAs while ETA worked to fill the position, in compliance with [20 CFR 658.602\(g\)](#). ETA officially appointed Laura Tramontana to be the new NMA beginning June 21, 2021, just before the close of PY 2020. Therefore, this report describes conditions in PY 2020, prior to NMA Tramontana's appointment. NMA Tramontana completed this report, including the conclusions and recommendations the report documents.

NMA Tramontana enters the position with prior experience at all levels of the Monitor Advocate System. She has served at the SWA level as full-time MSFW outreach staff in a Significant MSFW State. In her previous outreach staff role, NMA Tramontana provided direct services to MSFWs in the field to promote and facilitate use of the American Job Center (AJC) system and Wagner-Peyser Act services. She has also worked in a local ES office and provided services to MSFWs in that setting. She later became an SMA and was responsible to monitor the same state's services to MSFWs, of which she had previously been a part. NMA Tramontana then joined the United States Department of Labor, where she served as the RMA for ETA Regions 1 and 2 for five years. NMA Tramontana has also served as a Federal Project Officer (FPO) for many ETA grant programs that are important partners to the Monitor Advocate System. Specifically, she has been an FPO for the National Farmworker Jobs Program (NFJP), YouthBuild, Apprenticeship, and multiple H-1B funded programs. NMA Tramontana is also a licensed attorney. NMA Tramontana's experience at all levels of the Monitor Advocate System and with other ETA programs help shape her approach to monitoring, advocacy, and technical assistance at the ETA National Office.

## CONDITIONS AFFECTING SERVICES IN PY 2020

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This report covers services provided between July 1, 2020 and June 30, 2021. In March 2020, four months before the beginning of PY 2020, SWAs began to close ES offices to the public and temporarily stopped providing certain services, including in-person outreach to MSFWs, in efforts to reduce the spread of COVID-19. Many SWAs either stopped conducting outreach or only conducted outreach through virtual methods like phone, email, postal mail, and other remote strategies. SWAs in Significant MSFW States,<sup>4</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 help ensure ES continued to be available to MSFWs, ETA published guidance on its website that addressed COVID-19 Frequently Asked Questions<sup>5</sup> and also issued 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-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 NMA office also held a call with SMAs and RMAs in November 2020 to train Monitor Advocates on these requirements.

NMA and RMA efforts to educate SWAs on their continued obligations appear to have had some positive impact on the amount of outreach SWAs conducted in PY 2020. Specifically, SWA MSFW contact levels dipped at the beginning of the pandemic in PY 2019 but increased in PY 2020, following ETA guidance and training. In PY 2019, SWAs reported 252,852 MSFW contacts by ES staff,<sup>7</sup> which represented an approximate 25 percent decrease from the 339,258 MSFW contacts reported in PY 2018 (86,406 fewer contacts). Outreach contacts improved in PY 2020, as SWAs reported 279,758 MSFW contacts (26,906 more contacts than SWAs reported in PY 2019). This means that in PY 2020, SWAs reported approximately an 18 percent decrease compared to the pre-pandemic outreach contacts documented in PY 2018, which is a seven percent improvement compared to PY 2019. The following graphs demonstrate how MSFW outreach contacts have begun to recover since the beginning of the pandemic.

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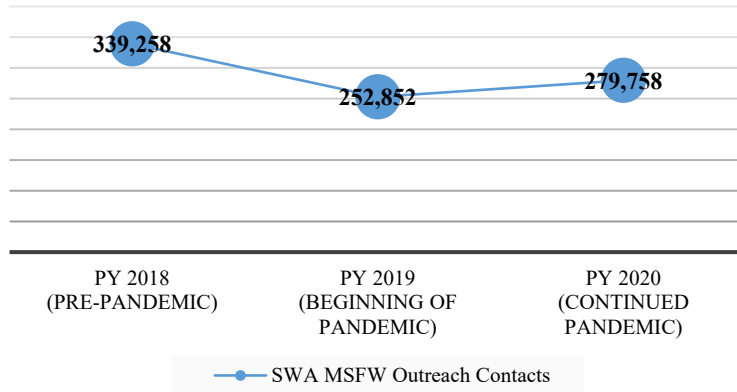
<sup>4</sup> Significant MSFW States are those States designated annually by the Department and must include the 20 States with the highest number of MSFW participants. [20 CFR 651.10](#). The list of Significant MSFW States for PY 2020 is available on the [Monitor Advocate System Performance and Reporting page](#).

<sup>5</sup> See [COVID-19 Frequently Asked Questions for the Wagner-Peyser Act Monitor Advocate System](#).

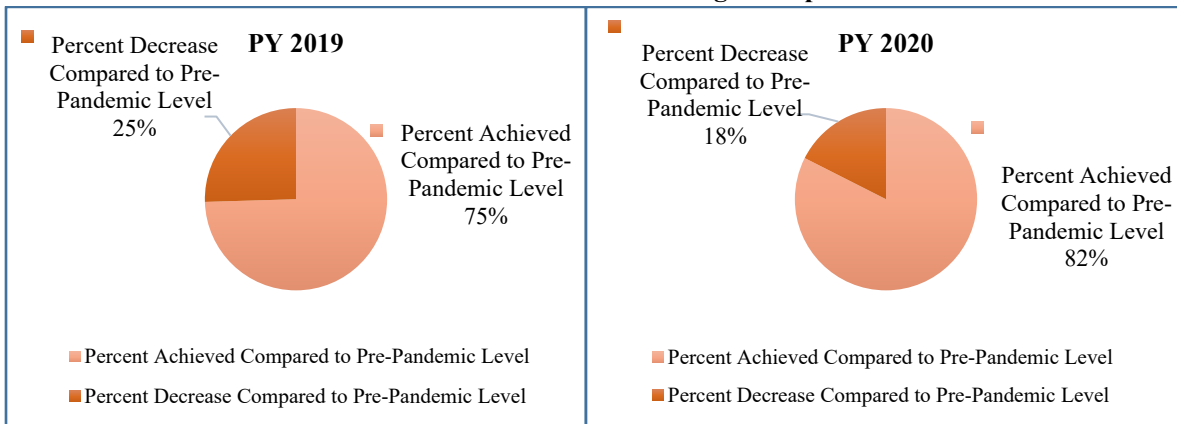
<sup>6</sup> [TEGL 5-20](#).

<sup>7</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](#).

**SWA MSFW Outreach Contacts**



**SWA MSFW Outreach Contacts Achievement Percentage Compared to Pre-Pandemic Rate**



While it is encouraging to see that SWAs increased their outreach contacts in PY 2020 compared to PY 2019 and are getting closer to meeting their pre-pandemic contact rate, it is critical to understand that the pre-pandemic contact rate may not have been adequate. To estimate the number of MSFWs in the United States, the NMA looks to the U.S. Department of Agriculture’s (USDA) Census of Agriculture, which was last published for 2017.<sup>8</sup> The USDA Census of Agriculture reports that in 2017 there were 1,437,093 farmworkers who worked less than 150 days, which indicates their work may have been temporary or seasonal.<sup>9</sup> The USDA Census of Agriculture only includes farmworkers who were directly hired by employers, which means that individuals employed through farm labor contractors (FLC) are not included in the Census of Agriculture data. To help account for this gap, the NMA adds H-2A certifications issued for agents and FLCs to the Census of Agriculture number. The ETA Office of Foreign Labor Certification’s (OFLC) public disclosure data indicates there were 144,044 H-2A certifications issued involving agents and FLCs, resulting in at least 1,581,137 estimated MSFWs

<sup>8</sup> [United States Department of Agriculture Census of Agriculture.](#)

<sup>9</sup> Note, the number of temporary or seasonal farmworkers may be greater than 1,437,093 because this number does not account for farmworkers who may have worked more than 150 days but less than 365 days in the year.



total in PY 2018.<sup>10</sup> In PY 2020, OFLC issued 23,813 H-2A certifications involving agents,<sup>11</sup> resulting in at least 1,460,906 estimated MSFWs total. This means SWAs contacted approximately 21 percent of MSFWs in PY 2018 and approximately 19 percent of MSFWs in PY 2020. Actual SWA contact percentages are likely smaller in these years because the baseline estimates of MSFWs in the United States described above do not capture all MSFWs (e.g. MSFWs hired by FLCs who do not file H-2A petitions are not captured in available surveys and reports).

## **NMA CONCERN 1**

The NMA has received information from farmworker organizations that most farmworkers have never experienced outreach contacts from SWAs or been present during SWA field checks. This information agrees with the data described above, which shows SWAs are not contacting the majority of MSFWs. Farmworkers and advocates report that farmworkers are not aware of their employment-related rights, that they fear retaliation for reporting violations, and that they experience many violations of employment-related law and ES regulations. Farmworker advocates also report that farmworkers and advocates do not trust that SWAs will actually provide help. The NMA believes the low amount of outreach contacts that occurred in PY 2020 as well as before the pandemic are directly related to these conditions. ETA regulations require ES staff to educate farmworkers about their rights, to be alert to observe working conditions, and to document and process apparent violations and complaints observed during outreach and field checks.<sup>12</sup> However, because SWAs are completing low outreach and field checks, MSFWs are largely unaware of their rights and the services and protections available to them. Because farmworkers and advocates have few interactions with outreach staff, there are few opportunities to witness how the SWA can provide necessary help.

For the past several years, SWAs and RMAs have reported that many SWAs are understaffed in their MSFW outreach positions. SWAs report issues with hiring freezes, funding, and lack of qualified candidates as causes of this condition. The NMA is concerned that many MSFW outreach staff vacancies have existed for years in some states without remedy.

## **RECOMMENDATION TO ADDRESS CONCERN 1**

To address this problem, ETA regional offices should review all SWAs to determine whether there are adequate outreach staff and, if not, complete corrective action plans requiring increased staffing.

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<sup>10</sup> [ETA Office of Foreign Labor Certification Disclosure Data](#) queried for PY 2018 using data files for fiscal year (FY) 2018 and 2019 yield 271,515 H-2A workers certified for the employment begin dates between July, 1 2018 – June, 30 2019 and queried for PY 2020 using data files for FY 2020 and 2021 yield 300,696 H-2A workers certified for the employment begin dates between July, 1 2020 – June, 30 2021.

<sup>11</sup> The PY 2020 OFLC public disclosure data does not identify FLCs, which may be why this number is smaller than the PY 2018 total.

<sup>12</sup> See regulations at [20 CFR 653.107\(b\)\(1\)\(iv\)](#), [653.107\(b\)\(6\)](#).

While the national data shows that SWAs are not completing adequate outreach overall, it is important to recognize that a few SWAs are exceeding their goals. The following positive example shows that it is possible for SWAs to achieve higher numbers of MSFW outreach contacts when they employ adequate MSFW outreach staff.

**COLORADO** | Colorado was fully staffed in PY 2020. Despite COVID-19 related restrictions and American Job Center closures, the State exceeded its outreach goal of 360 days with a total of 435 days of outreach. Outreach staff made considerable efforts to provide in-person and alternative methods of outreach. All outreach staff are full-time, come from agricultural background, speak Spanish, and spend the majority of their time in the field.

The issue of low MSFW outreach contacts appears in the background section of this report because it is relevant to understanding the staffing and service level conditions under which SWAs have been operating. Low outreach activity also directly impacts many of the other services this report discusses. Specially, if MSFWs are not aware of ES services and protections, they cannot access them. This results in the following low MSFW activities for ES registrations, complaints, and apparent violations.

**PY 2020 National Data**

MSFW ES Registrations	26,427
MSFW Complaints	194
Apparent Violations (MSFW and Non-MSFW)	476

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## 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>13</sup> To monitor compliance, SWAs submit quarterly performance data to ETA through the Labor Exchange Agricultural Reporting System (LEARS) using ETA Form 5148 and the Workforce Integrated Performance System (WIPS) using ETA Form 9173. This section provides a summary of services provided in PY 2020 based on data that SWAs submitted to ETA through these reports.

The NMA’s PY 2019 Annual Report noted several conditions that negatively affected reliability of data available for PY 2019, which ETA addressed in PY 2020 through the following means.

- RMAs provided technical assistance and required corrective actions through state monitoring processes.

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<sup>13</sup> [20 CFR 653.100\(a\)](#).

- ETA updated the ETA 5148 Report,<sup>14</sup> issued written technical assistance instructions to SMAs, and trained SMAs and RMAs on the new report form. The new ETA 5148 Report form implemented updated Minimum Service Level Indicators, as described in TEGL 14-18.
- The NMA implemented training on differences between the definitions of MSFW for Wagner-Peyser ES (Participant Individual Record Layout (PIRL) data element 413) and Eligible MSFW (PIRL data element 808), which is used to record barriers to employment.
- ETA began to use data states report in 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 reduced the burden on states and reduced the opportunity for user error because states no longer have to report certain MSFW-related data in two different reporting systems.
- The NMA held three “LEARS 5148 Reporting Office Hours” calls at the end of each quarter for SWA staff, during which NMA staff provided training and opportunity for SWAs and SMAs to ask questions regarding reporting.
- The NMA conducted quarterly reviews of data SWAs reported, then created and provided RMAs and SMAs with summary reports of Equity Ratio Indicators and Minimum Service Level Indicators to support their monitoring activities. SMAs provided feedback that the summary reports have been useful to their monitoring objectives.

While the NMA continues to identify apparent errors in ETA 5148 Reports, RMAs have been working with SMAs and SWAs to correct identified errors in a timely manner. To support resolution and compliance, the NMA flags and communicates conditions like data discrepancies, low complaints and apparent violations, low outreach, low referrals and placements on clearance orders for RMAs. RMAs then work with SWAs to address apparent errors and concerns.

### **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 for quarter ending June 30, 2021. Note, using national-level cumulative data, the combined states met all Equity Ratio Indicators.

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<sup>14</sup> See OMB Approval Number 1205 - 0039 Expiration Date: July 31, 2023.

**Table 1: Equity Ratio Indicators National Cumulative Outcomes PY 2020**

Equity Indicators	Total Non-MSFWs	Percentage Served	Total MSFWs	Percentage Served
Received Basic Career Services	2,230,998	92.8%	25,298	95.7%
Received Individual Career Services	1,009,222	42.0%	12,296	46.5%
Received Staff Assisted Career Guidance Services	737,541	30.7%	12,221	46.2%
Received Staff Assisted Job Search Activities	1,453,251	60.5%	19,699	74.5%
Received Unemployment Insurance (UI) Claim Assistance	247,085	10.3%	7,193	27.2%
Referred to Employment	932,579	38.8%	14,403	54.5%
Referred to Federal Training	80,916	3.4%	7,549	28.6%
Referred to Other Federal or State Assistance	196,581	8.2%	15,558	58.9%

Note: There were 2,403,313 non-MSFW participants and 26,427 MSFW participants in PY 2020.

Table 2 documents how many states met each Equity Ratio Indicator Level for quarter ending June 30, 2021.

**Table 2: Number of States Meeting Equity Ratio Indicators PY 2020<sup>18</sup>**

	Received Basic Career Services	Received Individual Career Services	Received Staff Assisted Career Guidance Services	Received Staff Assisted Job Search Activities	Received Unemployment Insurance (UI) Claim Assistance	Referred to Employment	Referred to Federal Training	Referred to Other Federal or State Assistance
Number of states that met the measure	46	23	23	29	18	33	21	25
Percent of states meeting the measure/success rate	88% (46/52)	44% (23/52)	44% (23/52)	56% (29/52)	48% (18/37) <sup>15</sup>	63% (33/52)	47% (21/45) <sup>16</sup>	56% (25/45) <sup>17</sup>

**NMA CONCERN 2**

Like prior years, while the national-level data in Table 1 reflects that SWAs are cumulatively meeting Equity Ratio Indicators, state-level data shows that the majority of SWAs are not meeting several measures. The apparent compliance in the national totals may exist because data from a few larger SWAs that are compliant with these measures compensates for many other SWAs that are not meeting

<sup>15</sup> 15 states did not report this indicator for MSFWs or non-MSFWs and are therefore not included in the data.

<sup>16</sup> 7 states did not report this indicator for MSFWs or non-MSFWs and are therefore not included in the data.

<sup>17</sup> 7 states did not report this indicator for MSFWs or non-MSFWs and are therefore not included in the data.

<sup>18</sup> Table 2 includes data for Guam and the District of Columbia but does not include Puerto Rico and the U.S. Virgin Islands, which did not submit MSFW-related data for these indicators.

the measures. The data also shows that most SWAs are providing MSFWs with equitable access to basic career services but are not providing MSFWs equitable access to higher-level staff assisted services. This condition is particularly concerning because it may impact the ability of MSFWs to access training and employment opportunities necessary to attain and maintain gainful and secure employment. The NMA is also concerned that several states are not reporting all required indicator data.

## **RECOMMENDATION TO ADDRESS CONCERN 2**

The NMA recommends ETA regional offices implement corrective action plans for all SWAs not meeting Equity Ratio Indicators or reporting all required data elements and conduct monitoring reviews, where appropriate, to determine and correct causes of these conditions. The NMA has already notified ETA regional offices and applicable SWAs of instances where SWAs are not meeting Equity Ratio Indicators or reporting all required data elements.

### **B. Minimum Service Level Indicators**

Wagner-Peyser program 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 must meet the Minimum Service Level Indicators for *reviews of Significant Offices* because [20 CFR 653.108\(g\)\(3\)](#) requires the SMA “ensure all Significant MSFW One-Stop Centers<sup>19</sup> not reviewed onsite by Federal staff are reviewed at least once per year by a SWA official.” All states must also meet the standard for *timely processing of ES complaints* because [20 CFR 658.411](#) requires that SWAs process ES-related complaints within 45 days. Additionally, all states must meet the indicator for *field checks conducted* because that indicator mirrors the requirement in [20 CFR 653.503\(b\)](#), which requires that all SWAs conduct the minimum number of field checks described in the regulation each quarter.

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, 2021.

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<sup>19</sup> For the purposes of this report, Significant MSFW One Stop Center has the same meaning as Significant Office.

**Table 3: Minimum Service Level Indicator Outcomes for PY 2020** <sup>20</sup>

	Individuals Placed in a Job	Median Earnings of Individuals in Unsubsidized Employment	Individuals Placed in Long Term Non-Agricultural Jobs	Reviews of Significant Offices	Field Checks Conducted	Outreach Contacts per Week	Timely Processing of ES Complaints
<b>Significant MSFW States</b>							
Number of Significant MSFW States that met measure	14	6	5	15	Q1: 17/19 Q2: 17/19 Q3: 14/18 Q4: 18/19	Q1: 12/19 Q2: 11/19 Q3: 10/18 Q4: 14/19	Q1: 18/19 Q2: 15/19 Q3: 14/18 Q4: 16/19
Percent of Significant MSFW States meeting measure/success rate	74% (14/19) Missing: PR	32% (6/19) Missing: PR	29% (5/17) N/A: NC, NM Missing: PR	74% (14/19) Missing: NC	Q1: 89% Q2: 89% Q3: 78% Q4: 95% Missing: NC (Q1-4), KY (Q3)	Q1: 63% Q2: 58% Q3: 56% Q4: 74% Missing: NC NC (Q1-4), KY (Q3)	Q1: 95% Q2: 79% Q3: 78% Q4: 84% Missing: NC NC (Q1-4), KY (Q3)
<b>All States (Significant and Non-Significant States Combined)</b>							
Total number of States that met measure	34	16	14	45	Q1: 47/50 Q2: 46/50 Q3: 43/49 Q4: 48/50	Q1: 15/50 Q2: 11/50 Q3: 10/49 Q4: 17/50	Q1: 46/50 Q2: 44/50 Q3: 44/49 Q4: 46/50
Percent of total states meeting measure/success rate	64% (34/53) Missing: PR Includes: GU, VI, DC	30% (16/53) Missing: PR Includes: GU, VI, DC	30% (14/46) <sup>21</sup> N/A: DC, GU, IN, NC, NH, NM, WV, Missing: PR, Includes: VI	88% (44/50) Missing: NC Includes: PR	Q1: 94% Q2: 92% Q3: 88% Q4: 96% Missing: NC, KY (Q3) Includes: PR	Q1: 30% Q2: 22% Q3: 20% Q4: 34% Missing: NC, KY (Q3) Includes: PR	Q1: 92% Q2: 88% Q3: 90% Q4: 92% Missing: NC, KY (Q3) Includes: PR

The data in Table 3 show Significant MSFW States performed considerably below required levels for **median earnings of individuals in unsubsidized employment and individuals placed in long term non-agricultural jobs**. Success rates for all states in the three indicators all states are required to meet (**reviews of Significant Offices, field checks conducted, and timely processing of ES complaints**) were slightly higher than the results for Significant MSFW States.

The NMA continues to be concerned that Significant MSFW States are not meeting all Minimum Service Level Indicators and that the remainder of the states are not meeting **reviews of Significant**

<sup>20</sup> “Missing” indicates that the state did not submit the necessary report to be included in the indicator. Note that NMA concern 2 addresses recommended regional office action regarding SWAs who have failed to report.

“N/A” indicates that the state did not report the MSFW or non-MSFW data to be included in the indicator.

“Includes” indicates territories included in the indicator’s calculation that are not states.

<sup>21</sup> “N/A” indicates that the state did not report the MSFW or non-MSFW data to be included in the indicator.

**Offices, field checks conducted, and timely processing of ES complaints.** However, in PY 2020, SWAs considerably improved compliance regarding **reviews of Significant Offices**. In PY 2019, 42 percent of Significant MSFW States and 46 percent of the remainder of the states meeting the measure. In PY 2020, 74 percent of Significant MSFW States and 88 percent of the remainder of the states met the measure. As mentioned in the NMA’s PY 2019 report, if properly completed, SMA onsite reviews should identify the same issues that Table 3 shows and result in corrective action plans to resolve findings of noncompliance. The data shows that SWAs improved in the following four Minimum Service Level Indicators.

**Table 4: Minimum Service Level Indicator Improvements in PY 2020 Compared to PY 2019 (All States Data)**

Indicator	Percent Improvement
Individuals Placed in a Job	+ 20 %
Reviews of Significant Offices	+ 42 %
Field Checks Conducted	+ 52 %
Timely Processing of ES Complaints	+ 12 %

These improvements may be a result of increased SMA monitoring as well as training conducted by ETA and SMAs. SMA Annual Summaries for PY 2020 report frequent trainings and technical assistance they provided to SWAs throughout the PY. Additionally, while NMA Tramontana was still serving as the RMA for ETA regions 1 and 2 in PY 2020, she conducted a series of trainings on core SMA and SWA competencies, to which the regions invited all SMAs. SMAs from nearly all SWAs attended the events and were highly engaged. Trainings covered the following topics.

Topic	Date
1. SMA 101	April 23, 2021
2. MSFW Outreach (including best practices for effective outreach, internal planning, and collaboration with other stakeholders)	April 30, 2021
3. SMA Monitoring	May 7, 2021
4. Complaints and Apparent Violations	May 14, 2021
5. The Agricultural Recruitment System (including clearance order processing, housing inspections, and field checks)	May 21, 2021
6. Understanding Wagner-Peyser ES for SMAs	May 28, 2021
7. Understanding the Workforce Innovation and Opportunity Act (WIOA) and key partners including NFJP	June 4, 2021
8. State Plans: Wagner-Peyser Agricultural Outreach Plans	June 11, 2021
9. Discontinuation of ES to Employers	June 18, 2021

To further improve SWA Minimum Service Level Indicator performance, the NMA intends to continue to provide frequent training for SMAs and SWAs, including quarterly “office hour” opportunities, as well as more formal training. Training planned for PY 2021 includes development of soft skills to help SMAs accomplish their monitoring and advocacy goals, including strategies for how to effect institutional change and overcome obstacles to achieve greater compliance. Prior training approaches have focused primarily on regulatory requirements. While the NMA will continue to train on regulatory requirements, the NMA plans to add concepts to help SMAs address professional challenges they have reported. SMAs reported professional challenges including difficulty working with SWA officials who may be resistant to change and who may see SMAs as adversaries instead of partners.

## **II. 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, many SMAs still devote less than full time to Monitor Advocate duties.

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. RMAs for Regions 1, 2, and 6 reported the following information in their Annual Summaries for PY 2020.

**GUAM** | In PY 2021, the Region plans to work with Guam Department of Labor to ensure compliance with SMA regulations.

**THE U.S. VIRGIN ISLANDS** | In PY 2020, the U.S. Virgin Islands did not report on MSFW activities, however, the Region plans to discuss its strategy to improve the U.S. Virgin Island’s engagement with the Monitor Advocate System.

**THE DISTRICT OF COLOMBIA** | The District of Columbia did not participate in reporting of outreach for the program year, making an assessment of any progress challenging. The Regional Office is developing its strategy to discuss the District’s engagement in the Monitor Advocate System.

**PUERTO RICO** | Puerto Rico lacked outreach activity during the last three years due to insufficient staff designation. Therefore, the goals set in its Agricultural Outreach Plan (AOP) were not met. Only one of the six Significant Offices has direct staff supervision which hinders the implementation of the AOP as planned. The SWA is committed to share and discuss the AOP with the Significant Office staff to ensure the implementation could begin during PY 2021.

Note, while each state is required to have an SMA and to conduct outreach to MSFWs, the staffing levels for these positions in states with low MSFW activity may be proportionately less compared to



other states. [20 CFR 653.108\(d\)](#) provides for scenarios where a SWA may demonstrate to its ETA Regional Administrator that the SMA function can be effectively performed with part-time staffing. However, in all cases, it is necessary for the SWA to have an SMA, who is either full-time or has approval from the Regional Administrator to devote less than full time to SMA functions. In all states, all SMA monitoring, reporting, advocacy, and liaison functions are important and required. For example, the SMA's monitoring duties include reviewing the ES and Employment-Related Law Complaint System (Complaint System) to ensure it is compliant. This function helps ensure that the Complaint System appropriately identifies, processes, and tracks significant issues like human trafficking, worker exploitation, workplace injuries, and other issues. The SMA also reviews the SWA's actions regarding discontinuation of ES under [20 CFR 658 subpart F](#) to help ensure the SWA does not continue to serve noncompliant employers.

Similarly, [20 CFR 653.107\(a\)\(1\)](#) requires each SWA must provide an adequate number of outreach staff to conduct MSFW outreach in their service areas. The number of outreach staff should be appropriate to the number of MSFWs there are to contact and serve in the state. In states with few agricultural employers, there may be fewer outreach staff compared to other states. However, in all cases there must be enough outreach staff to effectively perform all duties described at [20 CFR 653.107\(b\)](#). It is important to remember that the [20 CFR 651.10](#) definition of MSFW does not include any specification that the individual is a resident of the state, rather it specifically includes individuals who are migrant and may, therefore, be nonresidents. In states with few agricultural employers, the SWAs may conduct outreach to migrant farmworkers who are passing through the service area, whether or not they are currently employed in farmwork in the state. Such outreach might occur in collaboration with service providers (e.g. at service provider locations or events), at community and other public places, or other locations where MSFWs may visit. It is critical that all SWAs, including SWAs with few agricultural employers, attempt to contact MSFWs who reside in or pass through the state to ensure the full range of ES is available to them. This includes explaining a basic summary of rights with respect to the terms and conditions of employment, as [20 CFR 653.107\(b\)\(1\)\(iv\)](#) requires. Ensuring that outreach occurs in all states increases the number of potential contact points MSFWs have with the ES system, which directly impacts their awareness of and access to services, including remedies available through the Complaint System.

### **NMA CONCERN 3**

The NMA renews the concern, which was also stated in the PY 2019 Annual Report, that several SWAs do not have SMAs or do not have full-time SMAs. The NMA is concerned about all states in which the SMA is part-time and also works on SWA responsibilities they are required to monitor. The NMA maintains that an inherent conflict of interest exists when the SMA is responsible to review their own performance. For example, this conflict exists when an SMA acts as an MSFW outreach worker under 653.107 then must review their own work in the capacity of SMA under 653.108. ETA program regulations require that grant recipients maintain effective internal controls, which includes adequate separation of duties.<sup>22</sup> Therefore, if a SWA proposes part-time SMA devotion, the other portion of the SMA's time must not include any duties that the SMA is responsible to monitor, instead it may include

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<sup>22</sup> [2 CFR 200.303\(a\)](#) requires that ETA grantees, which includes SWAs that receive ES grants, "establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award."

other responsibilities equal to the SMA’s status and compensation level (e.g. supervision of other programs the SMA does not monitor).

The 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.

**RECOMMENDATION TO ADDRESS CONCERN 3**

ETA regional offices should implement corrective action plans with all SWAs that do not have SMAs or whose SMAs devote less than full time to SMA duties without approval. Regional offices should require SWAs to maintain adequate separation of duties to remove potential conflicts of interest in the SMA role.

The NMA also conducted training to SMAs on internal controls and conflict of interest in PY 2021.

**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>23</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 5 and the graph below provide national totals of complaints taken in PY 2020.

**Table 5: Total Complaints in PY 2020**

	<b>ES-Related Against an Employer</b>	<b>ES-Related Against an ES Office</b>	<b>Employment-Related Law</b>
<b>MSFW</b>	94	2	98
<b>Non-MSFW</b>	598	132	1,449

<sup>23</sup> See [20 CFR 658 subpart E](#).

### TYPES OF COMPLAINTS

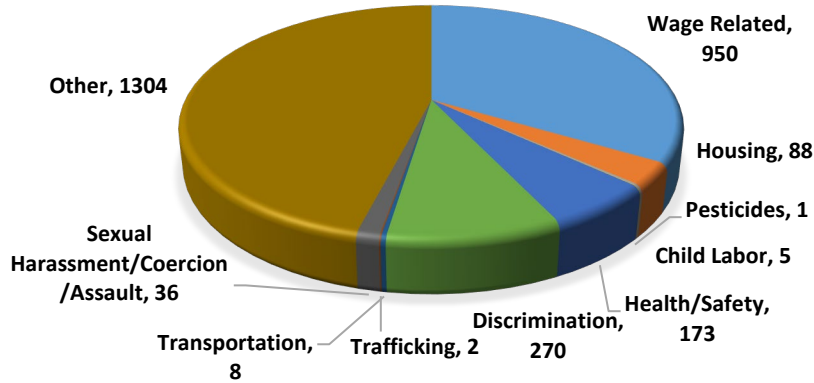
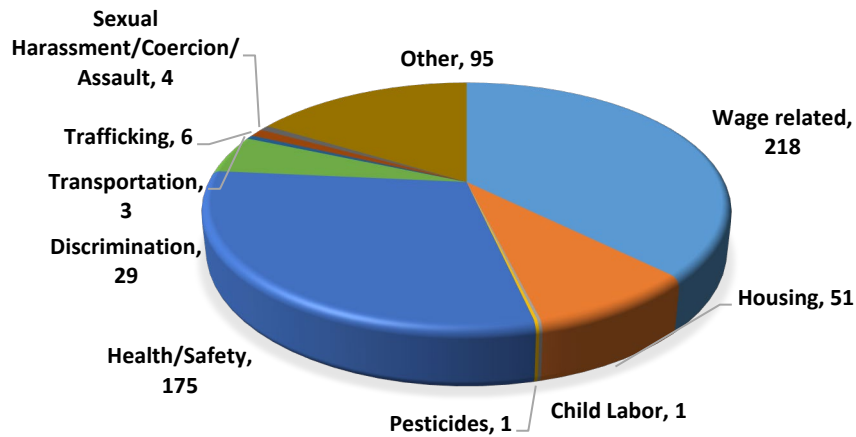


Table 6 and the graph below provide national totals of apparent violations taken in PY 2020.

**Table 6: Total Apparent Received in PY 2020**

ES-Related Against an Employer	ES-Related Against an ES Office	Employment-Related Law
273	2	202

### TYPES OF APPARENT VIOLATIONS



In PY 2020, ETA implemented changes to ETA Form 5148, which now require SWAs to report quarterly data to ETA on the types of complaints and apparent violations they process. This new data improves ETA’s ability to identify and track complaints and apparent violations related to specific topics. The graphs above show that the majority of complaints involved wages, discrimination, health and safety, and other issues that do not fall within the defined categories, in that order. The majority of apparent violations involved wages, health and safety, issues outside of the defined categories, and housing, in that order.

**NMA CONCERN 4**

In PY 2020, SWAs reported that they processed only two complaints and six apparent violations involving trafficking nationally. Comparatively, the NMA office’s communications with advocacy organizations shows that labor trafficking in agriculture occurs at much higher rates. It is important to note that ETA Form 5148 only captures trafficking-related situations that SWAs process as complaints or apparent violations, therefore SWA reports will reflect a smaller fraction of trafficking in the United States. However, because the number of trafficking-related complaints and apparent violations is so low, the NMA is concerned that ES staff may not be adequately trained to identify and process trafficking-related complaints and apparent violations. Similarly, SWAs only reported one complaint and one apparent violation related to pesticides. The NMA is also concerned that ES staff require training to identify and process pesticide-related violations.

**RECOMMENDATION TO ADDRESS CONCERN 4**

To address the trafficking-related concern, PY 2021 the NMA collaborated with Polaris to create and publish a webcast training on labor trafficking, which is intended to help staff identify and respond to trafficking indicators and to understand their role in referring potential trafficking to enforcement agencies. Polaris is a non-governmental organization, which receives funding from the U.S. Department of Health and Human Services to operate the U.S. National Human Trafficking Hotline. The webcast is for SWA staff, including SMAs, outreach staff, and other ES staff. Through the webcast, Polaris provided information the U.S. National Human Trafficking Hotline, explained a broad overview of human trafficking, including criminal law definitions, and presented data on labor trafficking in agriculture. The webcast provided tips for staff who may contact farmworkers, including trafficking indicators and positive practices for interacting with persons who may be in trafficking situations.<sup>24</sup> In addition to this training, the NMA recommends ETA regional offices and SWAs provide training to ES staff to ensure staff are adequately trained on trafficking and pesticide violations.

**IV. The Agricultural Recruitment System**

ETA continues to see low numbers of U.S. workers referred to temporary agricultural clearance orders placed through the Agricultural Recruitment System (ARS) for U.S. workers, including clearance orders placed in connection with H-2A applications. In PY 2020, SWAs reported that they only placed 1,963 U.S. workers on local agricultural job orders. For the entire country, SWAs placed U.S. workers on only 66 clearance orders.

**PY 2020 U.S. Workers and Temporary Agricultural Clearance Orders**

U.S. workers referred to local agricultural job orders and clearance orders	14,827
U.S. workers placed on local agricultural job orders and clearance orders	1,963
Clearance orders with U.S. workers placed	66

<sup>24</sup> [Labor Trafficking in U.S. Agriculture: Information to Help ES Staff Respond to Potential Trafficking webcast](#)

## **NMA CONCERN 5**

Low U.S. worker referrals and placements on local agricultural job orders and clearance orders may be a result of the fact that SWAs are not meeting many Equity Ratio Indicators on a state-by-state basis. As previously mentioned, the Equity Ratio Indicator data shows that most SWAs are providing MSFWs with equitable access to basic career services but are not providing MSFWs equitable access to higher-level staff assisted services. This condition may impact the ability of MSFWs to access training and employment opportunities necessary to attain and maintain gainful and secure employment. Specifically, only 56 percent of SWAs met the indicator for received staff assisted job search assistance and 63 percent of SWAs met the indicator for referred to employment.

The majority of temporary agricultural clearance orders SWAs process are placed in connection with the H-2A visa program. As described at [20 CFR 655.100](#), the H-2A visa program allows employers to request to hire nonimmigrant foreign workers when there are not sufficient able, willing, and qualified U.S. workers available to perform the temporary and seasonal agricultural employment and the employment of H-2A workers will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. SWAs process ARS clearance orders that employers petitioning to use the H-2A visa program must file along with their H-2A petitions. The SWA's role in this process is to ensure the ARS clearance order complies with Wagner-Peyser regulations at [20 CFR 653 subpart F](#). A critical first issue is that no ES office or SWA may place any job order seeking workers to perform farmwork into intrastate or interstate clearance unless: (1) the ES office and employer have attempted and have not been able to obtain sufficient workers within the local labor market area; or (2) the ES office anticipates a shortage of local workers.<sup>25</sup> The NMA is concerned that state-level Equity Ratio Indicator data showing low compliance regarding staff assisted job search assistance and referral to employment might mean that SWAs are not meeting the requirement to attempt to find sufficient workers within the local labor market area and that they may not have factual information to anticipate shortages of local workers. Failure of SWAs to “test the market” in these ways may directly contribute to U.S. workers being adversely affected by the H-2A visa program.

## **RECOMMENDATION TO ADDRESS CONCERN 5**

The NMA recommends that ETA regional offices monitor SWAs to determine and correct any issues with SWAs meeting their responsibilities to test the local labor market prior to approving clearance order requests, including requests placed in connection with the H-2A visa program. The NMA recommends SWAs develop and implement written policy and procedures regarding how they will make determinations under 20 CFR 653.501(a) to ensure U.S. workers are not adversely affected by H-

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<sup>25</sup>See requirement at [20 CFR 653.501\(a\)](#).

2A petitions. The NMA also plans to provide training to SMAs in PY 2021 to assist them in establishing and implementing effective policies and procedures. Training will also include SWA responsibilities under the ARS.

## **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.

The following represents highlights of regional office activities. Note, the information below is not intended to be an exhaustive list of activities.

### **REGIONS 1 AND 2<sup>26</sup>**

- The Regions held a virtual technical assistance session for discretionary and formula grant recipients, including SMAs, which addressed WIOA grievances, EEO and the Employment Service and Employment-Related Law Complaint System. The intent of the session was to increase awareness and understanding of process requirements and remedies available. It was also intended to connect partners to the SWA or other grant entities to facilitate grievance/complaint referrals to help ensure resolution and greater compliance of employers and grant organizations.
- The Regions held joint quarterly SMA calls to establish and grow the SMA peer community within the Regions through the sharing of information and best practices. To ensure the challenges SMAs encountered with the LEARS system that were identified in PY19 were addressed, technical assistance on LEARS was incorporated into the quarterly calls.
- The Regions conducted three West Virginia Grantee Connections sessions which included both discretionary and formula grantees (state MSFW staff included) to increase information sharing, service to underrepresented populations (i.e. MSFWs), and cross-program referrals.
- Based on the high level of engagement of grantees in the West Virginia Connections sessions, Region 2 also conducted a Delaware Grantee Connections session in June of 2021 to increase collaboration that could lead to an increase in cross-program referrals and services provided to underrepresented populations like MSFWs. Formula grantees (state MSFW staff) participated in the session.

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<sup>26</sup> During PY 2020, ETA Regions 1 and 2 were considered “paired regions,” which had one Regional Administrator and one RMA. Therefore, for PY 2020, the Regions submitted one RMA Annual Summary, which covered activities in Region 1 and Region 2 states. In PY 2021, the Regions appointed individual RMAs to serve in each Region.

- The RMA developed and delivered a nine-part training series for SMAs in Regions 1 and 2. The RMA invited SMAs from all regions to attend the series.<sup>27</sup>

### **REGION 3**

- The Region experienced transition in RMA appointments in PY 2020. Despite the transition, the Region conducted monitoring of several SWAs, which resulted in important corrective actions and technical assistance.

### **REGION 4**

- The Region continued technical assistance to the Arkansas SMA in the development of MSFW policies and procedures, MSFW definition updates to its American Job Link Alliance (AJLA) management information system (MIS). The Region also provided technical guidance to the SWA's complaint appeal hearing official regarding the handling of a MSFW complaints.
- The Region worked with the NFJP Federal Project Officer for New Mexico to hold an introductory call between New Mexico's new NFJP partner, Motivating, Educating, & Training (MET), and the SMA to discuss Memorandum of Understanding (MOU) requirements and outreach collaboration.
- The Region followed-up on the technical assistance onsite visit for Oklahoma conducted in 2020, to discuss the status of the SMA's MOU with the NFJP partner and other MSFW activities, including an outdated MSFW definition in the State's MIS.
- The RMA conducted one-on-one meetings, as a result of quarterly desk reviews, accompanied at times by the ETA Regional Performance Lead to address reporting discrepancies and performance reporting requirements per 20 CFR 653.109, and TEGL 14-18. The RMA also held a bi-regional (Regions 4 and 6) SMA video call to discuss PY 2020 MSFW Annual Summaries.

### **REGION 5**

- The RMA held 12 technical assistance calls with SMAs and SWA managers. Regional representation from NFJP as well as national-level staff from the Occupational Safety and Health Administration (OSHA), the U.S. Department of Labor Wage and Hour Division (WHD), and the NMA were invited and present on most calls. Topics included, but were not limited to, how to determine the number of MSFWs in the state, changes to Monitor Advocate System staffing levels, MSFW outreach, complaints and apparent violations, partnerships that benefit MSFWs, Monitor Advocate System monitoring efforts, and upcoming events and training.
- The RMA provided training on TEGL 14-18.
- The RMA provided an "SMA refresher training" to SMAs and SWA managers. The training provided an overview of regulations pertaining to the following topics: SWS and SMA responsibilities, outreach and AOP, ARS for U.S. workers, the ES and Employment-Related Law Complaint System, and discontinuation of ES to employers.
- The RMA served as an advocate to improve service for MSFW's within the ES by promoting resources to assist MSFWs related to the COVID-19 vaccine, discussing protective ARS requirements, and facilitating peer-to-peer strategies sharing to promote MSFW health and safety. The RMA invited enforcement agencies to all monthly calls with SMAs and SWA

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<sup>27</sup> As mentioned earlier, the RMA for ETA Regions 1 and 2 was NMA Tramontana prior to her appointment to NMA in June 2020.

managers to ensure that WHD and OSHA were able to provide technical assistance and guidance to resolve MSFW issues related to wages and workplace safety.

## **REGION 6**

- The RMA provided technical assistance to the new SMAs for Alaska and Arizona, including training on MSFW policies and procedures.
- The RMA facilitated and coordinated with the California SMA and California's two new NFJP grantees for introductory calls to discuss MOU requirements and outreach collaboration. The RMA followed-up on technical assistance onsite visit conducted early 2020, to discuss the status of the SMA's MOU with the NFJP partner and other MSFW activities.
- The RMA provided technical assistance to the Hawaii SMA and management team on MSFW policies and procedures including assistance with LEARS.
- The RMA conducted one-on-one meetings, as a result of quarterly desk reviews, accompanied at times by the Regional Performance Lead with states regarding reporting discrepancies and performance reporting requirements per 20 CFR 653.109 and TEGL 14-18. The RMA also held a bi-regional (Region 4 & 6) SMA video call to discuss PY 2020 MSFW Annual Summaries in March 2021.

## **ETA NATIONAL OFFICE ACTIVITIES**

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The ETA National Office held its annual NMA training virtually in August PY 2020 due to the pandemic. Approximately 215 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 also held technical assistance conference calls with SMAs, which were issue-focused to SMA learning objectives. Additionally, National Office held calls with RMAs, which focused on the RMAs' roles in the Monitor Advocate System.



## **APPENDIX I: HIGHLIGHTED STATE ACCOMPLISHMENTS**

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While this report identifies several critical areas for improvement, the NMA recognizes that many states continue to make important accomplishments. The NMA wishes to highlight the important and impactful work that SWAs, ES staff, and SMAs are performing on a day-to-day basis, which meaningfully improves conditions for MSFWs. The following information is a snapshot of some of these successes.

### **MARYLAND**

Maryland is developing a new outreach tool (mail-in inquiry card) for MSFWs to request assistance and maintain privacy.

### **PENNSYLVANIA**

The SMA's access to necessary information has improved following regional office technical assistance and monitoring, which occurred in PY 2019. The SWA reports that the complaint system has been improved.

### **VIRGINIA**

Virginia implemented a centralized complaint log and both of the State's Significant MSFW One-Stop Centers exceed their outreach goals for the PY.

### **WEST VIRGINIA**

The SMA completed monitoring of the SWA's Significant MSFW One-Stop Center and provided technical assistance on improved job order tracking procedures.

### **NEW YORK**

The SMA conducted a virtual presentation for NFJP staff on New York's new rule on overtime, day of rest, and collective bargaining rights for farmworkers. The training was held via WebEx. The SMA also met quarterly with WHD, along with SWA management, to discuss outreach efforts and updates on referred cases.

### **RHODE ISLAND**

Rhode Island has an integrated MIS, which includes common intake, case management, and data tracking components to meet the data collection and reporting requirements of the Monitor Advocate System and other reportable One-Stop services.

### **PUERTO RICO**

The SWA hired four MSFW outreach staff and trained them with the SMA's assistance. The SMA also coordinated training for all Significant MSFW One-Stop Center ES managers and the NFJP about ARS, including the H-2A visa program, the role of WHD, and SMA and Foreign Labor Certification Office duties to liaise with these agencies and partners and promote integration.

## **COLORADO**

The Northern area, Greeley and Brighton, held eight events to honor MSFWs. One event served approximately 100-150 MSFWs during a three-hour period on August 30, 2020. It was held as a “drive through” event due to COVID-19 restrictions, with agencies disseminating information. At the end of the procession, each vehicle received food boxes and five pounds of frozen ground beef donated from a local meat packing plant.

The Delta Region held an event focused on COVID-19 immunization information. Outreach staff worked closely with the Promotora Network in all regions to distribute food boxes and information to farmworkers to ensure they received information related to legal rights, COVID-19 protection, complaint filing, personal protective equipment, and UI information.

The SWA continues to offer pesticide safety training through which the SWA is also able to access agricultural worksites. Employers request this service because they benefit from having their workers trained in this important safety information. This service also provides outreach staff with opportunities to register new MSFWs, enroll them in ES, and provide them with an explanation of all services available to MSFWs as described in 20 CFR 653.107(b)(1).

## **TEXAS**

For Fiscal Year 2021, the SWA approved \$254,000 in additional ES funding to supplement the ES outreach efforts in Significant MSFW One-Stop Center areas, and two other areas with large population of MSFWs. Texas will use these funds to promote and increase outreach and integration of all center workforce programs.

## **KANSAS**

Monitor Advocate System training was the main objective for the SMA throughout the program year. To help accelerate the SWAs understanding of the Monitor Advocate System, the SMA created a full training of the Monitor Advocate System (MAS Training) outlining the regulations found in 20 CFR chapter V for the SWA’s Regional Operation Managers. The SMA started to create the training in the beginning of Q2 and held the five-hour training in the last month of PY 2020 Q2. The biggest takeaway for the Regional Operation Managers from the MAS training was understanding that the Monitor Advocate System was not an additional program but a component under the Wagner-Peyser Act Program. This emphasized the responsibility of the SWA upholding the compliance of the Monitor Advocate System in the Local Workforce Offices. Furthermore, the training clarified the SMA’s role as a monitor and the person to contact for technical assistance regarding the Monitor Advocate System, not as the person responsible for administering the Monitor Advocate System in local offices. Another payoff from the MAS training was improved comprehension of the ES and Employment-Related Law Complaint System. The training opened the door to various conversations across the state with WIOA Title I and Title III partners.

## **MINNESOTA**

The SMA conducted trainings throughout the year for Migrant Labor Representatives (MLRs) on the complaint system, ARS, and data entry. These trainings were conducted via Microsoft TEAMS, as staff were still working from home. The SMA and MLRs advocated for the wellbeing and safety of

farmworkers during COVID-19 by attending meetings with various agencies including the MN Department of Health, MN Department of Industry, and providing data to MN Governor's office to educate and inform on the lack of safety for farmworkers and their families. Advocating for farmworkers created more awareness on this important issue and this advocacy helped to bring about Executive Order 21-14.<sup>28</sup>, which created a Committee on the Safety, Health, and Wellbeing of Agricultural and Food Processing Workers. The end-of-season training for MLRs was conducted December 15th, 16th, and 17th during non-peak season through Microsoft TEAMS. The SMA and Foreign Labor Certification staff worked together to provide input on the development of training videos for SWA staff on MSFW services, the H-2A program, and responsibilities of SWA staff. These videos are short and can be viewed at any time by staff during new staff training or as refresher training activity.

## **IOWA**

The SMA attended many onboarding events and made contact with hundreds of Iowa's MSFWs. During these events, COVID-19 testing was the main focus. In partnership with the local public health department, the first event of PY 2020 tested 140 migrant workers for COVID-19. The SMA attended daily meetings with the governor's office and other public health agencies to provide updates on the testing process throughout the summer. These testing events provided testing to over 3,000 MSFWs and resulted in 132 positive cases. Due to the rapid response to COVID-19, MSFWs in Iowa we were able to prevent large outbreaks in migrant camps. Iowa's SMA also assisted the local office with the hiring of two new outreach workers for the State. The SMA reviewed resumes and cover letters and assisted in the interviewing process. The SMA advised the State of the requirements for hiring outreach workers. Once the two individuals were hired, the SMA provided in-depth training on the duties of the outreach workers. The SMA also provided information on best practices for outreach, in addition to training on required reporting logs, and the importance of completing MSFW ES registrations.

## **MISSOURI**

The SMA reviewed complaints received by both Job Center staff and the Agricultural Employment Service (AES) outreach staff in order to identify trends within Missouri. As challenges changed, the SMA assisted outreach staff with updating literature to inform MSFWs of their rights and the services provided at the Job Center. Additionally, through the AES distribution list, Missouri provided compliance assistance to growers along with notifications of changes that could affect MSFWs, as informed by agencies such as OSHA, WHD, and the U.S. Department of Labor. The SMA continually worked to facilitate communication between the SWA and advocacy groups who also serve farmworkers such as Migrant Education Program (MEP), Legal Aid of Western Missouri—Migrant Farmworkers Project (MFP), Migrant Farmworker Assistance Fund (MFAF), SEMO Health Network, and UMOS and their Head Start program.

## **WISCONSIN**

The State has been proactive in enacting protections for agricultural workers. On April 14, 2020 at the direction of the Governor of Wisconsin, the Secretary-designee of the Wisconsin Department of Health

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<sup>28</sup> See [https://mn.gov/governor/assets/EO\\_21-14\\_Final\\_tcm1055-472838.pdf](https://mn.gov/governor/assets/EO_21-14_Final_tcm1055-472838.pdf).

Services issued Emergency Order #25 to impose safety measures related to COVID-19 for migrant labor camps for the specific purpose of preventing exposure to COVID-19. This order expired on June 13, 2020. Because the risks associated with COVID-19 for migrant workers are likely to continue after Emergency Order #25 expired, an emergency rule was necessary for the preservation of public health, safety, and welfare. DWD Emergency Rule EmR2014 was effective June 12, 2020 and expires November 7, 2020. It imposes additional requirements from migrant camp operators under the State Migrant Labor Law – DWD Ch. 301. The agency is planning on requesting a 60-day extension.

WI Farmworker Coalition held an emergency meeting on April 1, 2020 and a committee was formed to promote and ensure a coordinated COVID-19 response statewide to protect and provide services to the farmworkers in our State.

The pandemic highlighted the need to provide services that job seekers could access from the safety of their homes. In December 2020 the agency launched virtual workshops. These workshops were delivered via WebEx and recorded for later viewing. Topics ranged from standard resume writing and interviewing to more specialized topics such as "Working in the Gig Economy" and "The Multi-generational Workplace". In January 2021, the agency procured a virtual job fair platform to connect job seekers and employers. More than 50 virtual hiring events have been held with 3,000 job seekers attending. Employers are realizing the benefits of virtual recruiting as well. More than 1,000 employers have participated in large and small recruitment events since the virtual job fair service was launched in January 2021.

## **ILLINOIS**

The Illinois SMA position was filled temporarily and reassigned to the former interim SMA. During this time, the focus was on monitoring efforts by the SMA. The interim SMA was able to develop and implement a monitoring procedure prior to the staffing change. The former SMA created an MSFW ES marketing video for outreach and education purposes.

The SMA worked closely with Indiana Department of Health (IDOH) to ensure MSFW had access to COVID-19 testing and the COVID-19 vaccine. The DWD MSFW unit assisted the IDOH in calling all agricultural labor camp operators and farm labor contractors to complete a questioner that would help the SWA determine how many MSFWs needed to be tested and vaccinated against COVID-19. Towards the last quarter of the PY, DWD & IDOH estimated that Indiana was able to vaccinate over 1,700 MSFWs.

## **OHIO**

The SMA collaborated with various state and Federal agencies to create guidance materials on COVID-19 prevention for MSFWs and growers. This included items such as: MSFW Rapid Response Guide, Farmworker Toolkit, and written guidelines for labor camps while working in the field and while shopping. Collaboration with NFJP PathStone along with other organizations and agencies to distribute

Personal Protective Equipment (PPE) to Ohio farmworkers. The SMA was part of the Agricultural workers Resource Team to create an MSFW Toolkit, an online resource housed in the Department of Agriculture website and promoted by other state agencies and partners websites, and social media outlets. Some of the resources include lists of agricultural labor camps, county health departments, links to coronavirus resources, farmworker coalition organizations, Latino faith leaders, Latino media, outreach liaisons, advocates, Ohio Grower's Association. Etc. Link: [Migrant & Seasonal Worker Toolkit](#).

The SWA Administrator and SMA collaborated with the Ohio Department of Health to create a coronavirus prevention video aimed for Farmworker's safety. These videos were shared with other state agencies and partners to assist agricultural employers and farmworkers in the prevention of spreading coronavirus in labor camps. The SWA created these videos in English and in Spanish: [Spanish English](#)

## **MICHIGAN**

The SMA conducted field visits, participated in a planning committee to host a third annual "MSFW Welcome/Bienvenido" event for MSFWs, and assisted in distributing food and ES service information to approximately 400 migrant farmworkers and their families. The SMA met and presented at a local fair board meeting to secure the grounds to host the event. The SMA has been very involved with COVID-19 Migrant Community COVID Assessment Workgroups in the state. Over 15,000 migrant farmworkers were tested for COVID. The SMA presented at the national and regional SMA trainings on conducting MSFW outreach during COVID-19.

## **NEBRASKA**

The SMA was newly appointed during PY 2020. Several administrative changes that will impact the Monitor Advocate System are also in the process of implementation.

## **CALIFORNIA**

The SWA approved \$150,000 in funding to supplement the referral of complaints by NFJP partners. The funds allow for training of NFJP staff and help pay for increased costs associated with referring complaints.

The SWA coordinated presentations on Radio Bilingue regarding topics such as COVID-19 Disability Insurance, COVID-19 Vaccines, Paid Family Leave, Taxes, Housing for Harvest, Supplemental Sick Leave, and the H-2A Worker Program.

## **OREGON**

Oregon MSFWs were designated essential workers but lacked the emergency provision of the Oregon OSHA health and safety measures implemented out in the fields. Monitoring health measures, sanitation and adequate housing were non-existent due to staffing issues. The SMA engaged with the Oregon Health Authority (OHA) MSFW Taskforce and signed a MOU allowing the sharing of Oregon Employment

Department (OED) MSFW data. This allowed OHA's Taskforce could quickly respond to COVID outbreak calls from MSFWs. Oregon also engaged in the distribution of Personal Protective Equipment (PPE), including tens of thousands of KN95 masks provided to the SWA by OHA and the Oregon Department of Agriculture. The SMA also advocated that Oregon OSHA adopt emergency temporary rules for agriculture workers to help ensure some protection against the COVID-19.

The SMA received high volumes of calls from MSFWs that had tested positive for COVID and were informed, by their employer that they needed to quarantine for two weeks without pay. MSFWs were entitled to the Families First Coronavirus Response Act (FFCRA), up to two weeks paid leave if employer met the required rules. Per the SMA's numerous calls to agriculture employers and providing them with FFCRA information, high numbers of MSFWs were reimbursed required wages to due to them during their quarantine.

The SWA's NFJP partner was instrumental in providing thousands of PPE masks to fight against the pandemic. The NFJP provided MSFWs food vouchers, utility assistance along with state grant dollars for rental assistance. OHA contributed to the partnership distribution, including 407,000 masks, 9,000 water canteens, and 2,390 air purifiers, of which the SWA was allocated 1,000 air purifiers for outreach distribution.

## **WASHINGTON**

The SWA hired two staff to manage the Wagner-Peyser (WP) grant. In coordination with the SMA, the new staff provide technical support to the office administrators, supervisors, labor exchange staff, and MSFW outreach staff. Through office reviews, the SMA, in conjunction with WP Program operators, provided technical support so the SWA and local office may operate according to the regulations. They reviewed outreach logs, complaint logs, and outreach staff assessments. They initiated the creation of standard operating procedures on the Monitor Advocate System requirements and training on new or revised state policies affecting the ES system. The SMA also worked with the State's system performance personnel to update the LEARS reports, pulling office-level data needed for Federal reporting.

## **APPENDIX II: ERI AND MSLI DATA BY SWA**

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Appendix II includes PY 2020 Equity Ratio Indicator (ERI) and Minimum Service Level Indicator (MSLI) detail data for each SWA. Appendix II is incorporated into this report by reference, in a separate file.

## **APPENDIX III: LEARS 5148 REPORT PART 1 DATA BY SWA**

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Appendix III includes PY 2020 LEARS 5148 Report Part 1 detail data for each SWA. The report details SWA-level data regarding activities for MSFW outreach, SMA monitoring, ARS, complaints, and apparent violations. Appendix III is incorporated into this report by reference, in a separate file.

## **APPENDIX IV: LEARS 5148 REPORT PART 1 NATIONAL DATA**

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Appendix IV includes PY 2020 LEARS 5148 Report Part 1 detail data for all states combined. The report details national-level data regarding activities for MSFW outreach, SMA monitoring, ARS, complaints, and apparent violations. Appendix IV is incorporated into this report by reference, in a separate file.