

# **National Monitor Advocate Report**

## **Program Year 2013**



**U.S. Department of Labor Mission: To foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.**

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## 1) Executive Summary

Pursuant to 20 CFR 658.602 (f), this is the National Monitor Advocate's (NMA) Annual Report on services to migrant and seasonal farm workers (MSFWs) covering the period from July 1, 2013 to June 30, 2014 (PY 2013). This report includes the NMA's quantitative and qualitative analyses of the services provided to MSFWs through the One Stop system, which indicate that overall, state workforce agencies provided the full range of employment and training services to MSFWs above and beyond those provided to non-MSFWs. The report also covers the responsibilities and accomplishments of the State, Regional, and National Monitor Advocates.

## 2) Introduction

In 1972, the National Association for the Advancement of Colored People (NAACP) sued the U.S. Department of Labor (DOL) in the case NAACP Western Region, et. al. v. Brennan et. al, No. 2010-72, 1974 WL 229 (D.D.C. Aug. 13, 1974) alleging the DOL was discriminating against farmworkers. The case resulted in a detailed court order referred to as the Judge Richey Court Order (Richey Order).<sup>1</sup> The Richey Order required DOL to implement and maintain a federal and State monitoring and advocacy system and set forth requirements to ensure the delivery of employment and training services (ES services), benefits, and protections to migrant and seasonal farmworkers (MSFWs) on a non-discriminatory basis, and to provide such services in a manner that is qualitatively equivalent and quantitatively proportionate to those provided to non-farmworkers. One key component of the Richey Order was the establishment of the Monitor Advocate system which works to ensure that MSFWs have equal access to ES services, opportunities, and protections throughout the United States. Monitor Advocates at the State, Regional, and National level facilitate outreach, monitoring, advocacy, and the Complaint System<sup>2</sup> to help MSFWs gain access to resources, ensure their voices are heard, and that they have a safe place to file complaints alleging any violations of the ES regulations and/or other federal, State, or local employment-related laws.

The DOL drew upon the authority of the Wagner-Peyser Act (WPA) to codify the requirements of the Richey Court. Such requirements can be found at 20 CFR 653, 654, and 658. The definitions pertaining to these requirements are found at 20 CFR 651.

This report satisfies the requirement at 20 CFR 658.602 (f)(3) for the National Monitor Advocate to submit an Annual Report. The Department acknowledges however, that due to the passing of the Workforce Investment and Opportunity Act (WIOA) and the subsequent rewrite of the WPA regulations, there was limited time to analyze program participant, service, and outcome data needed to publish the PY 2013 within its normal publication period. While special circumstances contributed to the delayed publication of this report, the Department notes that aside from other unforeseen circumstances, it intends to publish all subsequent reports on an annual and timely basis pursuant to relevant regulations.

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<sup>1</sup> See the Judge Richey Court Order at: <http://www.vec.virginia.gov/vecportal/employer/pdf/richeyorder.pdf>

<sup>2</sup> The Job Service Complaint System was established to ensure farm workers would have a safe place to file complaints alleging employment-related violations. For details on the Complaint System, see 20 CFR 658 Subpart E.

The PY 2013 Annual Report provides a qualitative and quantitative analysis of the services provided to MSFWs pursuant to the Richey Order and the aforementioned regulations, and covers the period from July 1, 2013 through June 30, 2014.

### **3. State Workforce Agency (SWA) Responsibilities & Accomplishments**

Among many other responsibilities, SWA Administrators of the Wagner-Peyser program must:<sup>3</sup>

1. Establish a system to monitor their own compliance with the employment service regulations governing services to MSFWs, including special services to ensure that MSFWs receive the full range of employment related services (self-appraisal system);
2. Operate an outreach program dedicated to locating and contacting MSFWs who are not being reached by the normal intake activities conducted by the local offices;
3. Appoint a State Monitor Advocate (SMA) who will, among many other responsibilities, conduct an ongoing review of the delivery of services and protections afforded by job service (JS) regulations to MSFWs by the State agency and local offices. The SMA, without delay, shall advise the State agency and local offices of (i) problems, deficiencies, or improper practices in the delivery of services and protections afforded by these regulations (including progress made in achieving affirmative action goals and timetables), and (ii) means to improve such delivery. In order for SWAs to be in compliance with 20 CFR 653.108 (d)(1), SMAs must devote full time<sup>4</sup> to the Monitor Advocate functions, except in the cases where ETA's Office of Workforce Investment (OWI) Administrator has approved a plan for less than full-time work in states of low MSFW activity;
4. Collect data on MSFWs as specified at 20 CFR 653.109; and
5. Establish and maintain a JS complaint system. The State Administrator shall have overall responsibility for the operation of the State agency JS complaint system. At the local office level, the local office manager shall be responsible for the management of the JS complaint system.

In accordance with these requirements, Tables 1A through 1C demonstrate the total services provided to all participants and to MSFWs in the Wagner-Peyser program for PY 2011 through PY 2013. By comparing the numbers over a three year period, the following trends are relevant:

- The total number of MSFW participants (289,161) in PY 2013 increased by 46% from the previous two years average (154,846); while the total number of outreach contacts (346,448) in PY 2013 increased by 12% from the previous two years average (306,091). The increase in outreach contacts and the increase in total number of

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<sup>3</sup> Note this is not an exhaustive list of SWA responsibilities regarding the Wagner-Peyser program. For more information see 20 CFR 652, 653, and 658.

<sup>4</sup> In this context, "full time" means one staff position/full-time equivalent (FTE).

MSFWs registered in Wagner Peyser could be attributed to the increase in trainings provided by the NMA, RMAs, and SMAs. SMAs provided training to outreach workers and local office staff on a continuous basis. In one region, all outreach workers attended a 3-day spring outreach training, and all outreach workers in the six significant offices were members of their Migrant Coalitions in their geographic areas.

- SWAs provided more Wagner-Peyser services to MSFWs than to non-MSFW in all areas tracked except Job Search activities<sup>5</sup> and those referred to Workforce Investment Act services. SWAs provided 25% of MSFWs a Job Service and provided 30% of non-MSFWs a Job Service. Only 3% of MSFWs received a referral to WIA services versus 7% of the non-MSFWs. The drop in Job Search Activities and Referral to WIA services could be attributed to the high number of MSFWs that were referred to employment (57% MSFWs versus 22% of the non-MSFWs referred to employment). Another possible reason for the drop could be that local One-Stop centers may not be offering these services to MSFWs. Future training sessions to SMAs will include an emphasis on the provision and delivery of the full range of employment and training services to MSFWs.

All other Wagner Peyser services provided to MSFWs were quantitatively proportionate to the service provided to non-MSFWs. In some cases the services to MSFWs were significantly higher than the services provided to non-MSFWs. For instance, 57% of MSFWs were referred to employment versus 22% of non-MSFWs receiving the same service; 86% of MSFW received Staff Assisted Services while 57% of non-MSFWs received this same service; and 46% of MSFWs received career guidance, while only 15% of non-MSFWs received this same service.

The NMA team will continue to provide technical assistance and training to the RMAs and SMAs to ensure that all States are providing quantitatively proportionate services to all MSFWs. The technical assistance and training will focus on improving the provision of Job Service activities and referrals to the services provided by WIOA partners.

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<sup>5</sup> Job search activities include: resume preparation assistance, job search workshops, job finding clubs, and development of a job search plan.

**TABLE 1A: WAGNER-PEYSER PROGRAM SERVICES PROVIDED to NON-MSFWs AND TO MSFWs FOR PY 2011<sup>6</sup>**

	<b>Total Non-MSFWs</b>	<b>Percent Served Non-MSFWs</b>	<b>Total MSFWs</b>	<b>Percent Served MSFWs</b>
Total Participants	17,109,102		155,447	
Received Workforce Information Services	8,233,533	48%	60,613	39%
Received Staff Assisted Services	10,832,139	63%	106,436	68%
Career Guidance	2,653,901	16%	35,142	23%
Job Search Activities <sup>7</sup>	5,948,310	35%	55,157	35%
Referred to Employment	4,822,570	28%	56,720	36%
Referred to Workforce Investment Act Services	1,742,492	10%	10,621	<b>7%</b>

<sup>6</sup> Source: Labor Exchange Reporting System, 9002A Report, Services to Participants, PY 2011, and from the Workforce Investment Performance Reports (ETA FORM 9132) for TX and PA.

**TABLE 1B: WAGNER-PEYSER PROGRAM SERVICES PROVIDED to NON-MSFWs AND to MSFWs FOR PY 2012<sup>8</sup>**

	<b>Total Non-MSFWs</b>	<b>Percent Served Non-MSFWs</b>	<b>Total MSFWs</b>	<b>Percent Served MSFWs</b>
Total Participants	18,448,541		154,245	
Received Workforce Information Services	9,601,616	52%	90,892	59%
Received Staff Assisted Services	12,662,422	69%	140,248	91%
Career Guidance	2,826,501	15%	35,935	23%
Job Search Activities	5,153,841	28%	60,032	39%
Referred to Employment	4,586,505	25%	51,451	33%
Referred to Workforce Investment Act Services	1,449,881	8%	12,529	8%

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<sup>9</sup> LEARS Cumulative Report (Attached)

**TABLE 1C: WAGNER-PEYSER PROGRAM SERVICES PROVIDED TO NON-MSFWs AND TO MSFWs FOR PY 2013**

	<b>Total Non-MSFWs</b>	<b>Percent Served Non-MSFWs</b>	<b>Total MSFWs</b>	<b>Percent Served MSFWs</b>
Total Participants	16,878,178		289,161	
Received Workforce Information Services	10,230,651	61%	191,000	66%
Received Staff Assisted Services	9,487,287	56%	253,013	87%
Career Guidance	2,500,801	15%	132,154	46%
Job Search Activities	4,982,271	30%	71,032	<b>25%</b>
Referred to Employment	3,706,059	22%	166,259	57%
Referred to Workforce Investment Act Services	1,172,169	7%	7,580	<b>3%</b>

**a. Outreach**

Pursuant to Section 3 responsibility #2 listed above 20 CFR 653.107, SWAs are charged with operating an outreach program dedicated to locating and contacting MSFWs who are not being reached by the normal intake activities conducted by the local offices. The objectives of the outreach program are to: provide basic employment and training services where MSFWs work, live, or gather; inform MSFWs of the full range of services available at the American Job Centers (AJCs); and provide needed supportive services and referrals to other service providers on an as-needed-basis.

i. Reviews

As mentioned in Section 3 responsibility #3 above, SMAs conduct an ongoing review of the delivery of services and protections afforded by JS regulations to MSFWs by the State agency and local offices. When conducting on-site reviews, SMAs place special emphasis on MSFW equity of services, partnerships with other local AJC service providers, and staff training. When

SMAAs cannot conduct on-site reviews they conduct desk reviews of local offices regarding MSFW services.

In some States, as is the case in Arizona, in addition to the SMA, the Employment Service supervisor conducts reviews of system reports, weekly outreach plans, and monthly reports. Contacts with MSFWs, agricultural and non-agricultural employers are factored into the ongoing monitoring process.

SMAAs identify staff training needs in the areas of MSFW designation, H-2A job orders, and the JS complaint system. SMAAs also provide immediate technical assistance to local office managers and staff, including AJC staff. For example, in one State the SMA created a new complaint form and protocol to develop effective and sustainable training for local office staff.

ii. Partnerships

While each SWA is required to conduct outreach, it may supplement such outreach by partnering with the National Farmworker Jobs Program (NFJP) grantees in the area. This combination of outreach demonstrated that outreach workers contacted 346,448 MSFWs in PY 2013.

The number of MSFWs contacted in PY 2013 demonstrates a 9% increase from PY 2012 (when 261,375 MSFWs were contacted) and a 19% increase from PY 2011 (when 233,663 MSFWs were contacted). This trend may be due to the increase in focus from the National Office to ensure outreach is taking place in all local offices. Additionally, Regional Monitor Advocates hold regular SMA peer-to-peer calls to support the work of the SMAAs in all areas, but specifically regarding outreach activities.

Many States are also increasing their focus on outreach. In North Dakota for example, outreach workers in the Grafton and Fargo offices attended Migrant Networking Meetings to share information about the various services offered to MSFWs. Some of the organizations in attendance included Migrant Health Services, Motivation, Education, & Training Inc., Tri-Valley Opportunity Council (Migrant & Seasonal Head Start), Southern Minnesota Regional Legal Services, Legal Services of Northwest Minnesota, and Job Service North Dakota.

In addition to outreach to MSFWs, outreach activities include reaching out to agricultural employers. For example, in Puerto Rico, the outreach workers brought together coffee growers and Department of Labor Wage and Hour representatives to brief growers on federal regulations that govern the Fair Labor Standard Act (FLSA) and the Migrant and Seasonal Agricultural Protection Act (MSPA).

A few States were found to have insufficient outreach programs. RMAAs worked with these States to identify specific remedies to their incompliance such as the complaint system, reviews of local offices, and outreach activities. One state's program in particular was in critical

condition. As part of its Corrective Action Plan to come into compliance, the State will hire additional outreach staff in PY2014.

Table 2 demonstrates the number of MSFWs contacted by SWAs, and by NFJP grantees for PY2011, PY2012, and PY2013. Table 2 also demonstrates the total contacts made by SWAs and NFJPs combined. Together SWAs and NFJPs reached out to almost 10% more MSFWs in PY 2013 than in PY 2012.

<b>TABLE 2: MSFW Outreach Contacts PY 2011</b>		
SWA Contacts	NFJP Contacts	Total
233,663	64,769	298,459
78%	22%	
<b>MSFW Outreach Contacts PY 2012<sup>9</sup></b>		
SWA Contacts	NFJP Contacts	Total
261,375	51,651	313,723
83%	17%	
<b>MSFW Outreach Contacts PY 2013</b>		
SWA Contacts	NFJP Contacts	Total
287,952	58,496	346,448
83%	17%	

<sup>9</sup> LEARS Cumulative Report (Attached)

b. **State Monitor Advocate (SMA) Responsibilities & Accomplishments**

Pursuant to Section 3 #1 and #4 SWA responsibilities listed above, State Administrators must appoint a SMA. Each State in the United States (including Puerto Rico but excluding Alaska and the District of Columbia) has a SMA. The SMAs are charged with, among many other responsibilities:<sup>10</sup>

- 1) Conducting an ongoing review of the delivery of services and protections afforded by JS regulations to MSFWs by the State agency and local offices. The State Monitor Advocate, without delay, shall advise the State agency and local offices of (i) problems, deficiencies, or improper practices in the delivery of services and protections afforded by these regulations (including progress made in achieving affirmative action goals and timetables), and (ii) means to improve such delivery.
- 2) Participating in onsite local office MSFW formal monitoring reviews on a regular basis.
- 3) State MSFW Monitor Advocate may be assigned the responsibility as the complaint specialist. The State Monitor Advocate shall participate in and monitor the performance of the complaint system, as set forth at 20 CFR 658.400 *et seq.*
- 4) Advocating to improve services for MSFWs within JS. The State Monitor Advocate shall establish ongoing liaison with WIA 167 National Farmworker Jobs Program and other organizations serving farmworkers, and employers and/or employer organizations, in the State. The State Monitor Advocate shall meet frequently with representatives of these organizations to receive complaints, assist in referrals of alleged violations to enforcement agencies, and receive input on improving coordination with JS or improving JS services to MSFWs.
- 5) The State Monitor Advocate shall conduct frequent field visits to the working and living areas of MSFWs, and shall discuss JS services and other employment-related programs with MSFWs, crew leaders, and employers. Records shall be kept of each such visit.

Pursuant to these requirements, for PY 2013 SMAs accomplished the following:

i. **Reviews/Site Visits**

Pursuant to 653.108(g)(1), SMAs conducted over 50 compliance reviews for PY 2013. These reviews consist of in person on-site reviews and desk reviews.

Through reviews, the following issues arose frequently in local offices across the country: clarification on the Agricultural Recruitment System (ARS), processing complaints in the Complaint System, and registering MSFWs appropriately in job banks. In light of these findings, SMAs offered a variety of technical assistance. Regarding the ARS, one State, for example, reported difficulties accurately reflecting the number of agricultural job postings in its job bank. The SMA provided targeted technical assistance and training to local office staff and outreach workers. They are now able to identify open agricultural positions properly.

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<sup>10</sup> For a full list of SMA responsibilities see 20 CFR 653.108.

Regarding registering MSFWs appropriately in job bank systems, one Regional Monitor Advocate (RMA) explained, to improve efficiency, SWAs have increased their use of on-line self-registration. While self-registration is effective with many populations, it is often a challenge for MSFWs due to their many barriers, including, but not limited to, low education levels and inexperience with computers. With on-line self-registration many non-MSFWs do not understand the protocol questions States put in place to identify MSFWs. When MSFWs self-register, they often fail to properly register their MSFW status. As a result, miscoding of participants' MSFW status continues to be a problem. In one State, for example, this issue was prevalent. As a result, the SMA planned to provide additional training to staff to identify and correct errors and to participants on the input of accurate job bank information. The RMA also planned to provide technical assistance and work with the state to determine if the job bank system could be enhanced to provide better information to help clients identify their MSFW status.

Some SMAs also conduct farm worker housing inspections. For instance, Delaware's SMA conducted on-site monitoring visits for 13 camps prior to occupancy and completed unscheduled visits to the same camps during occupancy.

ii. Partnerships.

Pursuant to 652.108(k) SMAs must establish ongoing liaison with NFJP grantees and other organizations serving farmworkers, and employers and/or employer organizations in the State. The SMA must also meet frequently with representatives of these organizations to receive complaints, assist in referrals of alleged violations to enforcement agencies, and receive input on improving coordination with JS or improving JS services to MSFWs. For PY2013 the SMAs garnered numerous valuable relationships with other MSFW service providers. The following offer positive examples of SMA relationships in various States:

- In Florida, the SMA represents the Florida Workforce Agency in the Florida Interagency Human Trafficking Workgroup and the Big Bend Coalition Against Human Trafficking. The Workgroup hosted the annual Human Trafficking Summit in Tampa, Florida on October 3, 2013. The SMA also provided training to local staff on human trafficking indicators at the annual Workforce Professional Development Academy in Orlando in early December. A representative from the Equal Employment Opportunity Commission co-presented. The Florida Department of Economic Opportunity (DEO) promoted human trafficking awareness by introducing training opportunities for staff, providing staff with resources and information, encouraging partnerships with local task forces, and posting human trafficking materials in H-2A labor camps inspected by DEO.

- In Connecticut, the SMA increased cooperation with the New England Farm Workers Council that led to more MSFW registrations in the State.
- In Virginia, the SMA held a joint training session for its State staff and the NFJP grantee. The Maryland SMA and NFJP grantee, the Telamon Corporation, jointly visited labor camps and provided workforce information to workers. SMAs and grantees from the States of Virginia and Maryland also collaborated and delivered training sessions at their regional conference in August, 2013.
- In Pennsylvania, the SMA maintained an open channel of communication with other agencies that serve or advocate for the farm working community, and in particular, with PathStone, the NFJP grantee. These agencies frequently requested information such as labor camp status, location, and worker needs and they referred farm worker complaints, and wage discrepancies to the SWA. These matters were then referred to the appropriate State or Federal agencies when applicable.
- In Montana, the SMA developed “Agricultural Community Meetings” across the State. The meetings connected the NFJP grantee, the Montana Migrant Council, Montana Legal Services, and the local AJCs to help provide information to agricultural employers.
- The New Mexico and Texas SMAs hosted a regional Agricultural Employer Forum in El Paso, TX, in partnership with the Upper Rio Grande Workforce Solutions, New Mexico Department of Workforce Solutions, the Upper Rio Grande Workforce Board, and the Texas Workforce Commission. The SMAs provided the expertise needed to present MSFW information to local employers. The focus of the forum was to address issues identified by agricultural employers and workers, and discuss the laws that affect the agricultural industry sector. Agencies in attendance included the Equal Employment and Opportunity Commission (EEOC), OSHA, WHD, New Mexico Center on Law and Poverty, Project Amistad-Affordable Care Act, El Paso County Water Improvement District #1, Social Security Administration, and the Centers for Medicare – Health and Human Services Commission (CMS-HHSC).

### **c. Complaint System**

Pursuant to 658.410(a), whereby “Each State agency shall establish and maintain a Job Service complaint system...,” there were 688 MSFW complaints filed nationally for PY 2013. The Department does not track the type of complaints filed, however, all SMAs agree that the majority of those complaints were related to the nonpayment of wages. The majority of complaints were referred to the appropriate enforcement agency and some were resolved at the local level.

In order to maintain the Complaint System and ensure local offices are up-to-date on all appropriate procedures, SMAs often conduct trainings. The West Virginia SMA for example, presented at three training sessions offered to local AJC Employment Service Managers to educate them and update others on the Job Services Complaint System.

Table 3 below demonstrates the total number of JS complaints by regional office for PYs 2011 through 2013. In PY 2013, the total number of MSFW complaints decreased 13% over the total number of MSFW complaints from the previous program year. The most notable drops by region were in regions 5 and 6 with a 72% and 26% decrease respectively. The overall drop in MSFW complaints could be attributable to many new SMAs who have been hired in the past few years across the nation. When SMAs are new, it takes them time to learn how the Complaint System works, to work with the local offices and outreach staff to appropriately identify and log complaints and apparent violations, and to understand the system well enough to provide technical assistance on how to improve the system. The NMA team will continue to provide technical assistance and training to SMAs on identifying, logging, and referring complaints and apparent violations. The team will also issue guidance for further clarification.

<b>TABLE 3: Total Complaints Received by Job Service Offices for Program Years 2011 to 2013</b>				
<b>Region<sup>11</sup></b>	<b>PY</b>	<b>Total</b>	<b>MSFW</b>	<b>Non-MSFW</b>
<b>1</b>	2011	120	35	85
	2012	73	24	49
	<b>2013</b>	<b>189</b>	<b>85</b>	<b>104</b>
<b>2</b>	2011	43	18	25
	<b>2012</b>	<b>8</b>	<b>0</b>	<b>8</b>
	<b>2013</b>	<b>27</b>	<b>6</b>	<b>21</b>
<b>3</b>	2011	198	69	129
	<b>2012</b>	<b>245</b>	<b>78</b>	<b>167</b>
	<b>2013</b>	<b>178</b>	<b>73</b>	<b>105</b>
<b>4</b>	2011	2,016	65	1,951
	<b>2012</b>	<b>1,821</b>	<b>64</b>	<b>1,757</b>
	<b>2013</b>	<b>1915</b>	<b>111</b>	<b>1804</b>
<b>5</b>	2011	178	56	122
	<b>2012</b>	<b>388</b>	<b>282</b>	<b>193</b>
	<b>2013</b>	<b>222</b>	<b>78</b>	<b>144</b>
<b>6</b>	2011	1,042	434	608
	<b>2012</b>	<b>942</b>	<b>454</b>	<b>488</b>
	<b>2013</b>	<b>1022</b>	<b>335</b>	<b>687</b>
<b>National Totals</b>	2011	3,597	677	2,920
	<b>2012</b>	<b>3,519</b>	<b>897</b>	<b>2,662</b>
	<b>2013</b>	<b>3553</b>	<b>688</b>	<b>2865</b>

**d. Overall Performance Outcomes**

Pursuant to 20 CFR 653.112, ETA established program performance indicators reflecting equity indicators and indicators measuring minimum levels of service to MSFWs which the significant MSFW State agencies<sup>12</sup> are required to meet. Equity indicators address Employment Service

<sup>11</sup> States: Region 1: CT, MA, ME, NH, NJ, NY, PR, RI, VT --- Region 2: DE, MD, PA, VA, WV  
Region 3: AL, GA, FL, KY, MS, NC, SC, TN --- Region 4: AR, CO, LA, MT, ND, OK, SD, WY, NM, TX, UT ---  
Region 5: IA, IL, IN, KS, MI, MN, MO, NE, OH, WI --- Region 6: AK, AZ, CA, HI, ID, NV, OR, WA

<sup>12</sup> For PY 2013 these were the designated MSFW significant states: California, Florida, Washington, Texas, Michigan, Oregon, North Carolina, Iowa, Arizona, Georgia, South Carolina, Idaho, Ohio, Illinois, Utah, Pennsylvania, New Mexico, Virginia, Colorado, and Nebraska

(ES) controllable services and include, at a minimum, individuals referred to a job; receiving counselling; receiving job development; receiving some service; and referred to supportive service. All states are required to achieve the equity levels. To meet the equity performance standard the percentage of services provided to MSFWs must be equal to or greater than the percentage of services offered to non-MSFWs

Minimum level of service indicators address other services to MSFWs and include, at a minimum, individuals placed in a job; placed in a job with a wage exceeding the Federal minimum wage by at least 50 cents/hour; placed long-term (150 days or more) in a non-agricultural job; review of significant MSFW local offices; field checks on agricultural clearance orders; outreach contacts per staff day; and processing of complaints. Only the MSFW Significant States are required to meet four of the seven minimum service level indicators.

i. Equity Ratio Indicators (ATTACHMENT I)

Overall, the equity ratio indicators not met for PY 2013 are as follows:

- Referred to jobs: 12 out of the 50 States did not meet this indicator.
- Received staff assisted services: 7 out of the 50 states did not meet this indicator.
- Referred to support service: 15 out of the 50 states did not meet this indicator.
- Career guidance: 12 out of the 50 states did not meet this indicator.
- Job Development Contacts: 11 out of the 50 states did not meet this indicator.

Many factors can contribute to these high numbers, including possible reporting issues, new RMAs, new SMAs, and the fact that MSFWs may not be fully aware of how to navigate through the states' electronic labor exchange systems. The NMA team will continue to train the RMAs and SMAs on providing equitable services to MSFWs in all offices.

ii. Minimum Service Level Indicators (ATTACHMENT II)

Only two of the 20 significant MSFW States did not meet the required four out of seven minimum service level indicators. However, it appears that in most cases the SMAs may be under-reporting on the "placed in a job" and "placed above minimum wage" data elements. The NMA team will review with the RMAs and SMAs and will provide technical assistance as needed.

e. Best Practices

- The New York State Department of Labor (NYSDOL), Division of Immigrant Policies and Affairs (the agency that administers the MSFW program) implemented

a service to MSFWs in which NYSDOL assists Spanish-speaking MSFWs to interview for jobs available in the State. The goal of the referral and interview procedure is to ensure that Spanish-speaking MSFWs in NY and Puerto Rico are not barred from job opportunities due to limited English proficiency. Since implementation, over ten MSFWs have achieved employment placements with the assistance of this service.

- In NY, the AgLP has created a Job Order Tracker, an Excel spreadsheet that contains up-to-date information on agricultural job openings in the State. The tracker is supplemented with information on non-agricultural jobs that require little-to-no experience. The two documents are designed to be carried into the field so that outreach workers can provide immediate referrals to registered job seekers. The lists are used to actively promote employment opportunities in all industries during outreach, which helps MSFWs realize their potential to transition out of farm work if they so desire.
- In Virginia, the Virginia Employment Commission improved “Services to MSFWs” and “Services to Agricultural Employers” on the agency Internet homepage at: <http://www.vec.virginia.gov>. Agency Farm Placement Specialist staff and locations were listed. Topics and related hot links included the Immigration Reform and Control Act, the H-2A program, migrant labor camps, field sanitation, the Migrant and Seasonal Agricultural Worker Protection Act, minimum wage requirements, unemployment insurance, workers' compensation, Virginia Occupational Safety and Health Law, and federal and state tax regulations.

#### **4. ETA Regional Office Responsibilities**

Pursuant to 20 CFR 658.603, the Regional Administrator shall, among many other responsibilities:

- Have responsibility for the regular review and assessment of State agency performance and compliance with JS regulations;
- Assess the overall performance of State agencies on an ongoing basis through desk reviews and the use of required reporting systems and other available information.

##### **a. Regional Monitor Advocate (RMA) Responsibilities & Accomplishments**

The Regional Administrator shall appoint a RMA who shall devote full time to the duties set forth 20 CFR 658.603. The RMA must, among many other responsibilities:

- Review the effective functioning of the SMAs in his/her region;

- Review the performance of State agencies in providing the full range of JS services to MSFWs;
- Take steps to resolve JS-related problems of MSFWs which come to his/her attention;
- Recommend to the Regional Administrator changes in policy towards MSFWs;
- Review the operation of the JS complaint system; and
- At the regional level, the RMA shall have primary responsibility for (i) monitoring the effectiveness of the JS complaint system set forth at subpart E of 20 CFR 658; (ii) apprising appropriate State and ETA officials of deficiencies in the complaint system; and (iii) providing technical assistance to SMAs in the region;
- At the ETA regional level, the RMA shall have primary responsibility for ensuring that State agency compliance with JS regulations as they pertain to services to MSFWs is monitored by the regional office. He/she shall independently assess on a continuing basis the provision of JS services to MSFWs.

#### i. Reviews

Pursuant to the aforementioned responsibilities, the RMAs conduct desk reviews and on-site reviews and peak harvest visits. These activities ensure SWAs and AJCs are providing the full range of employment and training services to MSFWs.

Region 2, for example, conducted 20 desk reviews. For the quarter ending June 30, 2014, four States were deemed low risk and one State was deemed medium risk due to the transition of the SMA back into her role.

In one of the State reviews in Region 6, the NMA accompanied the RMA, and the two found a need for improved monitoring of the complaint system and the need to incorporate the complaint system procedures in the SWA's manual.

#### ii. Technical Assistance

Several RMAs conduct monthly calls with their respective SMAs to discuss any ongoing issues and concerns. RMAs also answer numerous policy questions from the SMAs.

On August 14-15, 2014, Region 2 hosted a joint SMA and National Farmworker Job Program WIA 167 (NFJP) grantee conference in Philadelphia, Pennsylvania. This was the first collaborative conference in the Region and it was a success with 100 percent representation from each State and grantee. The conference included presentations from Federal Partners from OSHA, Wage and Hour, and Job Corps, as well as housing inspections, and an action planning period that allowed the SMAs and grantees to plan collaborative activities for the coming year. The conference was received with praise from all attendees and the partnership between SMAs and NFJP grantees was strengthened.

The R2 RMA also participated in two on-site visits during the program year. The NMA and the RMA first visited Virginia and assisted in a local review of the Eastern Shore Bi-lingual Office.

They provided technical assistance as needed and addressed questions and concerns raised by grantees. During the site visit, they toured several work sites, including Limpan Produce, Tankard Nurseries, Chatham Vineyards and H.M. Terry. The Farm Placement Specialist conducted outreach activities and the NMA, RMA, and SMA spoke with H2-A workers, employers, and MSFWs. The second on-site visit was an official Monitoring Review of the Delaware MSFW program. The RMA reviewed the local office, and spoke with two employers. The RMA helped the SMA communicate the importance of clean living areas for the MSFWs to the employers and foremen.

The Region 5 RMA fostered an interagency workgroup consisting of Region 5 OSHA, Wage and Hour, EPA s to better assist the MSFW participants.

In Region 6, peer-to-peer learning is integral to MSFW program support. Region 6 conducted its annual conference for SMAs and NFJP grantees (both job training and housing grantees) in July 2014. Although the meeting was technically in PY 14, it was planned in PY 13. This annual meeting discussed relevant topics and helped to further encourage the dialogue between MSFW service providers.

The day before the conference the NMA team provided a “SMA 101 Training” for SMAs throughout the country.

## **5. ETA National Office Responsibilities**

Pursuant to 20 CFR 658.602, ETA shall, among many other responsibilities:

- Monitor ETA regional offices' carrying out of ES regulations;
- From time to time, conduct such special reviews and audits as necessary to monitor ETA regional office and State agency compliance with JS regulations;
- Offer technical assistance to the ETA regional offices and State agencies in carrying out ES regulations and programs;
- Develop tools and techniques for reviewing and assessing State agency performance and compliance with ES regulations.

### **a. National Monitor Advocate (NMA) Responsibilities & Accomplishments**

Pursuant to 20 CFR 658.602 (f) ETA shall appoint a National Monitor Advocate, who shall devote full time to the duties set forth at 20 CFR 658.602. The National Monitor Advocate must, among many other responsibilities:

4. Review the effective functioning of the Regional and State Monitor Advocates;
5. Review the performance of State agencies in providing the full range of ES services to MSFWs;

6. Take steps to resolve or refer ES-related problems of MSFWs which come to his/her attention;
7. Take steps to refer non ES-related problems of MSFWs which come to his/her attention; and
8. Recommend to the Administrator changes in policy toward MSFWs.

i) Reviews

The NMA accompanied the Region 6 RMA for one his state's reviews March 3-6, 2014. The purpose of the review was to determine if the SWA had key policies, procedures, and systems in place to promote quality services to MSFWs and agricultural employers; determine whether services provided to MSFWs are qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs; identify areas of need for technical assistance and/or policy guidance; determine whether there is coordination with other MSFW service providers; and to collect and disseminate best practices in serving MSFWs. Overall, the data reported on the Labor Exchange Agricultural Reporting System (LEARs) indicated that the SWA was providing the full range of employment and training services to MSFWs on a qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. However, the SWA was not in compliance with 20 CFR 658.500, the Job Service Complaint System. Also, the number of MSFW application was very low statewide compared with previous years. The SMA had a strong partnership with the NFJP grantee, as evidenced by the two had a cooperative agreement in place for several years. As a result, the SMA was able to report high numbers of MSFW contacts from the NFJP on a consistent basis.

The NMA also conducted a site review in Virginia during the month of June 2014. The purpose of this visit was to observe and learn about the services being provided to MSFWs in Virginia and to provide technical assistance to the SMA and outreach workers. The NMA was accompanied by the VA SMA during the visit to some local areas and while conducting a field check at an employer that was participating in the H-2A program.

The NMA and SMA also visited a farmworker housing site in Virginia. The employer built a new house for his H-2A workers (see photos below).



The employer's workers mentioned to the NMA and SMA that they were very happy to come home to a house like this after a hard day's work.

Unfortunately, not all farmworker housing is like the one above. The picture below is of farmworker housing on a tobacco farm which the employer is in the process of renovating.



## ii) Technical Assistance

The NMA team provides the following technical assistance to the RMAs SMAs, and outreach workers:

- Monthly training calls to the SMAs and RMAs;
- Daily email communications (i.e. answering questions, identifying and resolving issues, etc.;
- On-site State visits,
- One-on-one trainings with RMAs or SMAs; and
- Conducting workshops, presenting at conferences, conducting training webinar; distributing resources, facilitating partnerships, etc.;

In January 2014, the NMA presented at the Agricultural Employer Annual Forum sponsored by New Mexico and Texas. In attendance were agricultural employers and members of the local AJCs and staff from the local workforce investment boards.

The NMA also provided training to the SMAs and RMAs at the national training conference held for the first time ever in the DOL Frances Perkins Building in Washington, D.C. Almost all 50 of the SMAs and all six RMAs attended. The NMA organized the training which included the following topics:

- How to conduct State reviews
- ETA Monitoring Reviews
- Wage and Hour and OSHA Roundtable
- Human Trafficking, and
- How to conduct effective and safe outreach

In March 2014, the NMA presented three workshops at the MAFO national conference in McAllen, TX. The three workshops focused on, 1) the role of the SMAs within each state; 2) how to conduct safe outreach to MSFWs; and 3) how to conduct outreach to the agricultural

employers. The 60 participants in the workshops included six SMAs, NFJP grantees, local workforce system staff, vocational rehabilitation agency staff, and staff from other farmworker advocacy groups.

The NMA utilized three of the computer-based training modules to deliver the workshops. These computer-based training modules cover the following topics: outreach worker responsibilities; the Job Service Complaint System; the SMA responsibilities; and services to agricultural employers.

In December 2013, the NMA attended the 34th annual Farm Workers Appreciation Breakfast of Imperial County in Calexico, CA, and the 19th annual Dia Del Campesino, (Day of the Farm Worker) in San Luis, AZ. The NMA volunteered to help at both events. The volunteers started serving breakfast in Calexico at 2:00 a.m. and by 6:00 a.m. when the event ended, they had served over five thousand farmworkers breakfast. The event in San Luis started at 3:00 a.m. the following morning and by the end of the event at 7:00 a.m. it is estimated that over four thousand farm workers had been served. Besides receiving a hot breakfast, farm workers also received services ranging from information on employment and training, health, and other social services. Many of these agencies providing these services are partners of the AJC system. At the event in San Luis, staff from *Campesinos Sin Fronteras* (the host of the event) was available with computers to help farm workers choose among health insurance options under the Affordable Care Act.

## **6. Overall Challenges**

Many states reported that because farmers are increasingly utilizing equipment in place of workers, the number of MSFWs traveling to those States/areas has been decreasing. For example, North Dakota reported that the MSFWs traveling there each year to work in the Red River Valley continued to decline in PY 2013. This decline is attributed to farmers' use of new equipment that improves spacing between row crops, the use of modern farm practices, the increased use of Roundup Ready sugar beets, and more workers heading to North Dakota's oilfield for higher wages. In Oklahoma, the total farms employing MSFWs dramatically dropped from 919 farms in 2007 to only 189 farms in 2012. Much of this has been attributed to increased use of mechanization/automation in agriculture, herbicides and genetically superior seeds/plants, and a multi-year, severe to extreme drought.

## **7. Overall Best Practices**

In order to reach MSFWs outside local offices, New York's Agricultural Labor Specialists (AgLS), for example, visit MSFWs at their living and gathering areas, such as farm sites, labor camps, grocery stores, and churches. This method allows the AgLS to register workers in the NY workforce system, refer workers to both agricultural and non-agricultural jobs, provide

information on supportive services in the community with Community Resource Guides, and supply worker protection and labor standards rights information. Furthermore, New York is utilizing innovative ways of ensuring MSFWs have access to current job information by developing a Farm Jobs Bulletin that supplements the AgLP's outreach efforts by advertising job opportunities to MSFWs who are not reached through regular intake and outreach activities. In addition to listing agricultural job openings, the bulletin provides information related to where job seekers may find job openings in other industries. The bulletin references in-person, online, email, and telephone resources.

In Colorado, the SWA ensured its SMA, outreach workers, and select staff were trained and certified in federally required pesticide safety. As a result, Colorado staff provide training to prospective employees prior to employment in the farms and outreach workers can identify potential pesticide safety hazards when conducting outreach and can advise MSFWs how to protect themselves.

## **8. Conclusion**

The data and stories shared in this annual report demonstrate the commitment and passion that the Monitor Advocates bring to their jobs on a daily basis in order to make a difference in the lives of MSFWs. Overall there was an increase in equity of services provided to MSFWs from PY 12 to PY 13. More MSFWs are being serviced and more trainings were offered this year than in previous years. However, areas of concern such as the lower number of complaints taken in PY 2013, the lack of awareness of the Agricultural Recruitment System, and the incorrect designation of some MSFW applications remain and the NMA team will increase TA and reviews in order to address these issues.

The NMA team will continue to work collaboratively with the SMAs and RMAs to ensure the effective and equal delivery of the workforce development services to MSFWs.