



**Division of Workforce  
Development and Adult Learning  
(DWDAL)**  
Policy Issuance



PI 2026-04 Migrant and Seasonal Farmworker Program | January 30, 2026

<b>TO</b>	Division of Workforce Development and Adult Learning (DWDAL) staff	
<b>FROM</b>	DWDAL Maryland Department of Labor (MD Labor)	
<b>SUBJECT</b>	Maryland’s Migrant and Seasonal Farmworker Program	
<b>PURPOSE</b>	To provide policy guidance on processes related to Maryland’s Workforce Innovation and Opportunity Act (WIOA) Title III Wagner-Peyser Migrant and Seasonal Farmworker services.	
<b>ACTION</b>	Local Workforce Development Area (Local Area) Directors, American Job Center (AJC) Reemployment Program Directors, and central office managers will ensure all employees are aware of and receive copies of this policy. DWDAL policies are available on the <a href="#">MD Labor website</a> .	
<b>EXPIRATION</b>	Until Cancelled.	
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## CANCELLATIONS

The following are hereby cancelled, replaced, and archived by this policy issuance: Policy Issuance 2018-04, "Migrant and Seasonal Farmworker Services," dated July 16, 2018.

Archived policies are available at <http://www.labor.maryland.gov/employment/mpi/>.

## EXECUTIVE SUMMARY

The Maryland Department of Labor (MD Labor)'s Migrant and Seasonal Farmworker (MSFW) Program, administered by the Division of Workforce Development and Adult Learning (DWDAL), provides policy guidance on the delivery of Workforce Innovation and Opportunity Act (WIOA) Title III Wagner-Peyser services. This program is designed to support Maryland's agricultural sector by connecting MSFWs with the State's workforce resources and helping them transition to stable employment with sustainable wages. The policy ensures compliance with the Judge Richey Court Order, which requires that MSFWs receive workforce services that are qualitatively equivalent and quantitatively proportionate to those provided to non-farmworkers on a non-discriminatory basis.

Under this policy, American Job Centers (AJCs) must offer MSFWs a full range of career and supportive services. To facilitate access, the State utilizes a specialized service team comprising a State Monitor Advocate (SMA), Reemployment Program Directors, and Outreach Workers who conduct ongoing engagement in the field. Outreach efforts prioritize hiring multilingual staff or individuals with MSFW backgrounds to ensure effective communication of available workforce development services and farmworker rights.

The Program maintains a robust Employment-Related Law Complaint System to capture and process allegations of legal or regulatory violations. MD Labor is responsible for ongoing monitoring and data collection regarding outreach activities, job placements, and participant outcomes to ensure performance goals are met. All records must be retained for at least three years, and the program operates in strict adherence to fair practices, accessibility, and non-discrimination standards.

By integrating MSFW service providers into the AJC system, Maryland remains committed to providing equal access to public services for individuals with limited English proficiency.

## GENERAL INFORMATION

### WORKFORCE INNOVATION AND OPPORTUNITY ACT

WIOA was signed into law on July 22, 2014 and went into effect July 1, 2015. WIOA supersedes the Workforce Investment Act of 1998 and amends the Adult Education and Family Literacy Act, the Wagner-Peyser Act, and the Rehabilitation Act of 1973. To help both businesses and job seekers meet their needs, the workforce system established under WIOA is integrated by design. WIOA envisions connecting businesses with job seekers through meaningful partnerships among workforce, education, human services, and economic development entities to ensure optimum results and leveraging of resources. The law addresses the needs of job seekers by establishing a workforce system that helps them access employment, education, training, and support services to succeed in the labor market. Through the American Job Centers (AJCs), WIOA works to address employer needs by matching them to the skilled workers they need to compete in the global economy. Among the services delivered by the AJC network are services under the nationwide system of public employment offices established under the Wagner-Peyser Act, known as the Employment Service (ES). As the designated State agency responsible for implementing WIOA in Maryland, the Maryland Department of Labor (MD Labor) supports the success of Maryland's agricultural sector by connecting work-authorized migrant and seasonal farmworkers (MSFWs) with the resources of the State's workforce system.

### REQUIREMENTS TO PROVIDE WIOA SERVICES FOR MIGRANT AND SEASONAL FARMWORKERS

In 1972, a group of plaintiffs filed a complaint alleging discriminatory treatment of MSFWs within the Wagner-Peyser ES. This complaint led to a court order in 1974 that is commonly referred to as the Judge Richey Court Order (Richey Order).<sup>1</sup> This court order requires the U.S. Department of Labor (USDOL) to implement and maintain a federal and state monitoring and advocacy system to ensure the delivery of employment and training services, benefits, and protections to MSFWs on a non-discriminatory basis. The Richey Order further requires that MSFWs receive workforce system services in a manner that is qualitatively equivalent and quantitatively proportionate to those provided to non-farmworkers. The MSFW monitoring and advocacy system is governed by regulations set forth under WIOA's Title III, the Wagner-Peyser Act.<sup>2</sup> Under the monitoring and advocacy system, each state workforce agency has a State Monitor Advocate, who reviews state MSFW services on an ongoing basis.<sup>3</sup>

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<sup>1</sup> *NAACP, W. Region v. Brennan*, 360 F. Supp. 1006, 1010 (D.D.C. 1973).

<sup>2</sup> *See, e.g.*, 2 C.F.R. Parts 651, 652, 653, 654, 658.

<sup>3</sup> There are also other services, in addition to WIOA services, that are provided to MSFWs that are not addressed in-depth in this policy. For example, MD Labor also works closely with Maryland's grantee for the National Farmworker Jobs Program (NFJP), a program of services for MSFWs that offers specialized programming and supportive services. Maryland's NFJP grantee works as an integral part of the State's workforce system to counter the chronic unemployment and underemployment experienced by farmworkers. In addition, some MSFWs may also be workers under the H-2A temporary agricultural program. The H-2A program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Maryland's H-2A program is operated by MD Labor's State Rural Services Coordinator. Although this policy does not focus on either the NFJP program or the H-2A program, a brief summary of those programs is included below.

## **MARYLAND'S APPROACH TO SERVING MSFWS**

MD Labor is committed to meeting the letter and spirit of the Richey Order and complying with all WIOA regulations set forth to govern the provision of MSFW services across Maryland's workforce system. MD Labor strives to:

1. Fully engage Maryland's MSFW population to reach those who can benefit from WIOA services;
2. Assist eligible MSFWs in transitioning to stable employment opportunities that pay a sustainable wage, in either agricultural or non-agricultural occupations, based on the individual's career interests;
3. Integrate the full spectrum of MSFW service providers into the AJC system; and
4. Develop linkages and collaborative efforts with other non-traditional service providers to enhance opportunities for eligible MSFWs to benefit from training and education resources.

# MIGRANT AND SEASONAL FARMWORKER SERVICES

## IDENTIFYING CHARACTERISTICS OF THE MSFW POPULATION

Maryland's MSFW service team should consider two questions when identifying the MSFW population: 1) is the individual a farmworker? and 2) if the individual is a farmworker, is the individual a migrant or seasonal farmworker?

### 1. Whether the individual is a farmworker

WIOA regulations<sup>4</sup> define a "farmworker" as an individual employed in farmwork. "Farmwork," in turn, is defined as the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. "Farmwork" also includes any service or activity covered under 20 CFR § 655.103(c) or 29 CFR 500.20(e) and any service or activity identified as farmwork through USDOL guidance.

### 2. If the individual is a farmworker, whether the individual is a migrant or seasonal farmworker

WIOA regulations<sup>5</sup> define "seasonal farmworker" as an individual who is employed, or was employed in the past 12 months, in farmwork of a seasonal or other temporary nature and is not required to be absent overnight from their permanent place of residence. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. Workers who move from one seasonal activity to another, while employed in farmwork, are employed on a seasonal basis even though they may continue to be employed during a major portion of the year. Workers are employed on a temporary basis where they are employed for a limited time only or their performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

WIOA regulations<sup>6</sup> define "migrant farmworker" to mean a seasonal farmworker who travels to the job site so that the farmworker is not reasonably able to return to their permanent residence within the same day.

## MSFW SERVICE OFFERINGS

Per 20 CFR § 653.101, each AJC must offer eligible MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs. In providing such services, AJCs must consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

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<sup>4</sup> 20 CFR § 651.10.

<sup>5</sup> 20 CFR § 651.10.

<sup>6</sup> 20 CFR § 651.10.

The supportive services to which MSFWs are entitled include services that are necessary to enable an individual to participate in activities authorized under WIOA or the Wagner Peyser Act. These services may include, but are not limited to: linkages to community services; assistance with transportation; assistance with child care and dependent care; assistance with housing; needs-related payments; assistance with educational testing; reasonable accommodations for individuals with disabilities; referrals to health care; assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear; assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and payments and fees for employment and training-related applications, tests, and certifications.

## **ACCESS TO SERVICES FOR MSFWS**

The right of MSFWs to access workforce system services is protected by various laws including WIOA Section 188, which prohibits discrimination on the basis of race, color, religion, sex, national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I-financially assisted program or activity.<sup>7</sup>

MSFW rights to system access are also protected under Title VI of the Civil Rights Act of 1964 and associated guidance.<sup>8</sup> MSFWs who are English Language Learners (ELLs) must receive, free of charge, the language assistance necessary to afford them meaningful access to workforce system programs, services, and information offered by AJCs.

Reinforcing and strengthening federal law, Md. Code Ann. State Government Article, §§ 10-1101 - 10-1106 recognizes that the inability to speak, understand, or read the English language is a barrier that prevents access to public services provided by state departments, agencies, and programs. It is the policy of the State that its departments, agencies, and programs shall provide equal access to public services for individuals with limited English proficiency. Under Md. Code Ann., State Government Article § 10-1103, specified state agencies, including MD Labor, must develop a language access plan; take reasonable steps to provide equal access to public services for individuals with limited English proficiency who need language assistance, including any oral, written, and sign language services; and arrange for the translation of vital documents ordinarily provided to the public into any language spoken by any limited English proficient population that constitutes 3% of the population within the geographic area served by a local office of a State program.

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<sup>7</sup> See also 29 CFR Part 38.

<sup>8</sup> See, e.g., Appendix to 29 CFR 38.9 -Guidance to Recipients, available at <https://www.ecfr.gov/current/title-29/subtitle-A/part-38>.

# MSFW STAFF ROLES AND RESPONSIBILITIES

Maryland's MSFW service team includes staff in five roles:

1. The Secretary of MD Labor, serving as the State Administrator (SA)
2. MD Labor's Division of Workforce Development and Adult Learning (DWDAL) serving as the State Workforce Agency (SWA);
3. The State Monitor Advocate (SMA);
4. The Reemployment Program Director (RPD) or another supervisor to oversee MSFW service delivery in the Local Workforce Development Areas (Local Areas); and
5. Outreach Workers based in the Local Area AJCs.

Individuals in all of the MSFW staff roles are required to work collaboratively and with other partner organizations, as appropriate, to achieve the State's goals for MSFW services. The following section describes roles and expectations in detail.<sup>9</sup>

## MD SECRETARY OF LABOR - SA

As the SA of Maryland's SWA, the MD Secretary of Labor designates the DWDAL Director of the Office Workforce Development as the party responsible for recruiting qualified staff with expertise in the farmworker population and overseeing statewide implementation of MSFW services. Additionally, the SA appoints a SMA in accordance with requirements set forth at 20 CFR § 653.108.

## MD LABOR DWDAL - SWA

As the implementing agency for Wagner Peyser in Maryland, MD Labor's DWDAL serves as the SWA. In the SWA role, DWDAL oversees and is accountable to USDOL's Employment and Training Administration (ETA) for effective delivery of MSFW services within the State. Unless otherwise noted, the responsibilities of the SWA are led by the MD Secretary of Labor and are carried out by DWDAL's Assistant Secretary, who has delegated MSFW responsibilities to the Director of the Office of Workforce Development.

## DWDAL DIRECTOR OF THE OFFICE OF WORKFORCE DEVELOPMENT

The Director of the Office of Workforce Development (or designee) must take the following actions with respect to services for MSFWs:

1. Ensure that Wagner Peyser ES staff at AJCs offer eligible MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs.
2. Ensure that ES staff at the AJCs tailor ES services in a way that accounts for individual MSFW preferences, needs, skills, and the availability of job and training opportunities, and that ES staff provide assistance to MSFWs to access job order information easily and efficiently so that eligible MSFWs are reasonably able to participate in the ES.
3. Make sure that job order information is conspicuous and available to MSFWs by all reasonable means. Such information must, at minimum, be available through internet labor exchange systems and through the AJCs.

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<sup>9</sup> See 20 CFR Parts 653 and 658 for more detail on the respective responsibilities of each role.

4. Comply with the language access and assistance requirements at 29 CFR 38.9 with regard to all individuals with limited English proficiency, including MSFWs who are limited English proficient individuals. This includes ensuring ES staff comply with these language access and assistance requirements.
5. Ensure outreach staff conduct outreach on an ongoing basis. Ensure outreach staff communicate the full range of workforce development services to MSFWs and conduct thorough outreach efforts with extensive follow-up activities.
6. When hiring or assigning outreach staff, ensure hiring officials seek and put a strong emphasis on hiring and assigning qualified candidates who speak the language of a significant proportion of the State MSFW population; and who are from MSFW backgrounds; or who have substantial work experience in farmworker activities. Inform farmworker organizations and other organizations with expertise concerning MSFWs of job openings and encourage them to refer qualified applicants to apply.
7. Ensure that there are an adequate number of outreach staff employed in the State to conduct MSFW outreach in each service area of the State and to contact a majority of MSFWs in the State annually.<sup>10</sup>
8. Publicize the availability of ES services through such means as newspaper and electronic media publicity. Contacts with public and private community agencies, employers and/or employer organizations, and MSFW groups also must be utilized to facilitate the widest possible distribution of information concerning employment services.
9. Ensure each outreach staff member is provided with an identification card or other materials identifying them as representatives of the State.
10. Ensure the SMA and outreach staff coordinate activities with WIOA Title I sec. 167 grantees as well as with public and private community service agencies and MSFW groups.
11. Ensure Maryland's MSFW service team implements the strategic and operational service goals and plans described in the Agricultural Outreach Plan (AOP) integrated into Maryland's WIOA State Plan.
12. When an on-site review of an AJC results in a corrective action plan, assure and document that the ES office is in compliance within the time period designated in the plan.

The Director of the Office of Workforce Development (or designee) must take the following actions with respect to monitoring and data collection:

1. Monitor the State's compliance with ES regulations in serving MSFWs on an ongoing basis. Not retaliate against staff, including the SMA, for self-monitoring or raising any issues or concerns regarding noncompliance with the ES regulations.
2. Submit to the appropriate ETA regional office copies of any onsite review reports and corrective action plans for ES offices.
3. Collect career service indicator data for the career services specified in WIOA sec. 134(c)(2)(A)(xii).
4. Collect data, in accordance with applicable ETA Reports and Guidance, on the topics required under 20 CFR 653.109(b).
5. Provide necessary training to ES staff on techniques for accurately reporting data.
6. Collect and submit data on MSFWs required by the Combined State Plan, as directed by USDOL.
7. Periodically verify data required to be collected, take necessary steps to ensure its validity, and submit the data for verification to USDOL, as directed by USDOL.
8. Submit additional reports to USDOL as directed.
9. Meet equity indicators that address ES controllable services and include, at a minimum, individuals referred to a job, receiving job development, and referred to supportive or career services.
10. Upon receipt of a data request, if the Director, or designee, cannot supply the requested data within 10 business days after receipt of the request, the Director, or designee, must respond to the

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<sup>10</sup> In accordance with the specifications at 20 CFR §§ 653.107, 108 and 111.

requestor in writing, giving the reason for the delay and specifying the date by which they expect to be able to comply.

11. Review reports and documentation, as required, and facilitate the timely filing and transmittal of reports and documentation between state, regional, and national MSFW Monitor Advocates.

The Director of the Office of Workforce Development (or designee) must take the following actions with respect to the establishment and maintenance of a complaint system:

1. Establish and maintain a Complaint System. Have overall responsibility for the operation of the Complaint System, including responsibility for the informal resolution of complaints.
2. Work with the SMA and RPDs to ensure centralized control procedures are established for the processing of complaints and apparent violations.
3. Ensure a central complaint log is maintained, listing all complaints taken and apparent violations identified by ES staff, and specifying for each complaint or apparent violation: (a) The name of the complainant (for complaints); (b) The name of the respondent (employer or State agency); (c) The date the complaint is filed or the apparent violation was identified; (5) Whether the complaint is made by or on behalf of a migrant and seasonal farmworker (MSFW) or whether the apparent violation affects an MSFW; (6) Whether the complaint or apparent violation concerns an employment-related law or the ES regulations; and (7) The actions taken (including any documents sent or received and the date of each such action(s)), and whether the complaint or apparent violation has been resolved, including informally.<sup>11</sup>
4. Ensure information pertaining to the use of the Complaint System is publicized, which must include, but is not limited to, the prominent display of an ETA-approved Complaint System poster in each AJC.
5. Assign complaints to a trained Complaint Service Representative. Complaints must not be assigned to the SMA. Ensure any action taken by the Complaint System Representative, including referral on a complaint from an MSFW, is fully documented and contains all relevant information, including a notation of the type of each complaint pursuant to USDOL guidance, a copy of the original complaint form, a copy of any ES-related reports, any relevant correspondence, a list of actions taken, a record of pertinent telephone calls, and all correspondence relating thereto.
6. Establish a referral system for cases where a complaint is filed alleging a violation that occurred in the same State but through a different ES office.
7. Follow the procedures set forth at 20 CFR 658.411 regarding action on complaints.
8. Ensure that RPDs are trained on the Complaint System procedures under 20 CFR Part 658, subpart E. Training related to Complaint System procedures must be formulated pursuant to uniform guidelines developed by ETA and the SMA must be given an opportunity to review and comment on the State's program.

The Director of the Office of Workforce Development (or designee) must take the following actions with respect to the discontinuation of services to employers by the Wagner-Peyser Act ES:

1. Initiate procedures for discontinuation of services to employers who meet the conditions described at 20 CFR 658.501, including providing the notification to employers described at 20 CFR 658.502 and following the procedures under 20 CFR 658.503 and 658.504.

The Director of the Office of Workforce Development (or designee) must take the following actions with respect to the review and assessment of SWA compliance with ES regulations:

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<sup>11</sup> See 20 CFR § 658.410(b), and (c).

1. Establish and maintain a self-appraisal system for ES operations to determine success in reaching goals and to correct deficiencies in performance. The self-appraisal system must meet the requirements at 20 CFR Part 658.

The Director of the Office of Workforce Development (or designee) must also ensure compliance with 20 CFR Part 653 Subpart F, to the extent intrastate or interstate job clearance orders are sought to find U.S. workers to perform farmwork on a temporary, less than year-round basis.

## **STATE MONITOR ADVOCATE**

The SMA is the full-time, central coordinator responsible for managing and monitoring MSFW services across the State. The SMA's role focuses on monitoring outreach efforts, reporting, documentation, partner coordination, complaint handling, and professional development. The SMA is a MD Labor official and a senior-level ES employee. The SMA must have the knowledge, skills, and abilities necessary to fulfill the responsibilities of the role. The SMA must also have sufficient authority, staff, resources, and access to top management to monitor compliance with the ES regulations. Detailed information on each area of responsibility is provided in this section.

The SMA must perform the following general activities:

1. Devote full-time staffing to SMA functions.
2. Serve as an advocate to improve services for MSFWs.
3. Not perform work that conflicts with any of the SMA's duties, such as outreach responsibilities required by 20 CFR § 653.107, Agricultural Recruitment System processing under subpart F of 20 CFR Part 653, and complaint processing under subpart E of 20 CFR part 658. These same requirements apply to SMA staff.

The SMA must complete the following monitoring activities:

1. Conduct an ongoing review of the delivery of services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices. This includes monitoring compliance with 20 CFR § 653.111; monitoring the ES services that the SWA and AJCs provide to MSFWs to assess whether they are qualitatively equivalent and quantitatively proportionate to the services that the SWA and AJCs provide to non-MSFWs; and reviewing the appropriateness of informal resolution of complaints and apparent violations as documented in the complaint logs.
2. Without delay, advise the Director of the Office of Workforce Development (or designee) and ES offices of problems, deficiencies, or improper practices in the delivery of services and protections afforded by these regulations and, if warranted, specify the corrective action(s) necessary to address these deficiencies. When the SMA finds corrective action(s) necessary, the ES Office Manager or other appropriate ES staff must develop a corrective action plan in accordance with the requirements identified at 20 CFR 653.108(h)(3)(v). The SMA also must advise the SWA on means to improve the delivery of services.
3. Participate in on-site reviews<sup>12</sup> of AJCs on an annual basis. Before beginning an onsite review, the SMA or review staff must study program performance data; reports of previous reviews; corrective action plans developed as a result of previous reviews; complaint logs, as required by the regulations under 20 CFR Part 658, including logs documenting the informal resolution of

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<sup>12</sup> The SMA may delegate the review to the SMA's staff, if the SMA finds such delegation necessary. In such event, the SMA is responsible for and must approve the written report of the review. SMAs conduct onsite reviews at local AJCs whether or not an Outreach Worker is based at the location. SMAs conduct reviews to assess how MSFWs are being served at the AJC. If there is an Outreach Worker based in the office, the SMA may review the Outreach Worker's services, however it is important to understand that onsite reviews are about more than just reviewing the Outreach Worker's performance. They are about reviewing the AJC to make sure that services are accessible to MSFW customers.

complaints and apparent violations; and complaints elevated from the office or concerning the office. The SMA must ensure that the onsite review format, developed by ETA, is used as a guideline for onsite reviews. Upon completion of an onsite monitoring review, the SMA must hold one or more wrap-up sessions with the ES Office Manager and staff to discuss any findings and offer initial recommendations and appropriate technical assistance.

- a. DWDAL requires that the SMA review all comprehensive AJCs in the State at least once annually. All reviews must be logged on a centrally managed AJC monitoring tracking sheet overseen by the SMA. The SMA must coordinate with DWDAL's Monitoring and Compliance Unit to ease burden on local AJC staff, however, the SMA's review must be conducted independently of other monitoring activities.
4. After each review, conduct an in-depth analysis of the review data. The conclusions, including findings and areas of concern and recommendations of the SMA, must be put in writing and must be sent to the RPD/supervisor for the local Outreach Worker, the DWDAL Director of the Office of Workforce Development, and the MD Secretary of Labor within 30 calendar days of the completion of the review. All updates must be noted on the centrally managed AJC tracking sheet overseen by the SMA.
5. If the review results in any findings of noncompliance with the regulations under this chapter, the SMA's report must include the necessary corrective action(s).
6. Ensure that, if necessary, those ES offices in which significant problems are revealed by required reports, management information, the Complaint System, or other means are reviewed as soon as possible.
7. Oversee the central outreach staff log, including regular reviews of the log and other reports including those showing or reflecting the outreach staff's activities.
8. Conduct frequent field visits to the working, living, and gathering areas of MSFWs, and discuss the SWA's provision of ES services and other employment-related programs with MSFWs, crew leaders, and employers.<sup>13</sup> Records must be kept of each such field visit.
9. Monitor the extent to which the SWA has complied with its obligations under 20 CFR 653.111(a) to staff AJCs in a manner facilitating the delivery of ES services tailored to the unique needs of MSFWs.

The SMA must complete the following reporting and documentation activities:

1. Lead the development of the AOP,<sup>14</sup> a required component of Maryland's WIOA State Plan.
2. Review on at least a quarterly basis all statistical and other MSFW-related data reported by ES offices in order to determine the extent to which the SWA has complied with the ES regulations and to identify the areas of non-compliance. This includes submission of the quarterly USDOL Form 5148 report through the Labor Exchange Agricultural Reporting System (LEARS) system.
3. Have full access to all statistical and other MSFW-related information gathered by SWAs and ES offices and may interview ES staff with respect to reporting methods. After each review, the SMA must consult, as necessary, with the SWA and ES offices and provide technical assistance to ensure accurate reporting.
4. Review and comment on proposed State ES directives, manuals, and operating instructions relating to MSFWs and must ensure that they accurately reflect the requirements of the regulations; and that they are clear and workable. The SMA also must explain and make available at the requestor's cost, pertinent directives and procedures to employers, employer organizations, farmworkers, farmworker organizations, and other parties expressing an interest in a readily identifiable directive or procedure issued and receive suggestions on how these documents can be improved.

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<sup>13</sup> Per 20 CFR § 653.107(b)(2), Maryland's MSFW service team staff may not enter work areas to perform outreach duties on an employer's property without permission of the employer unless otherwise authorized by law; must not enter workers' living areas without the permission of the workers; and must comply with appropriate state laws regarding access.

<sup>14</sup> Each State must develop an AOP every 4 years as part of the Unified or Combined State Plans required under sec. 102 or 103 of WIOA. The AOP must meet the requirements set forth at 20 CFR 653.107(d).

5. Participate in Federal reviews conducted pursuant to 20 CFR Part 658, subpart G, as requested by the Regional or National Monitor Advocate.
6. Prepare for the State's MSFW service delivery team, the Regional Monitor Advocate, and the National Monitor Advocate an Annual Summary describing how the State provided ES services to MSFWs within the State based on statistical data, reviews, and other activities as required under 20 CFR 653.108(u).
7. Provide any other relevant documentation requested from the SWA by the Regional Monitor Advocate or the National Monitor Advocate.

The SMA must complete the following activities related to partner coordination:

1. Establish an ongoing liaison with WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees and other organizations serving farmworkers, employers, and employer organizations in the State.
2. Establish an ongoing liaison with the State-level Equal Opportunity (E.O.) Officer.
3. Meet quarterly, at minimum with representatives of NFJP grantees and the State-level E.O. officer, to receive input on improving coordination with ES offices or improving the coordination of services to MSFWs. Meetings may occur virtually or in-person, however, at least one in-person meeting must occur annually. To foster such collaboration, the SMAs must communicate freely with these organizations. The SMA must also establish and maintain Memorandums of Understanding (MOUs) with the NFJP grantees and may establish MOUs with other organizations serving farmworkers as appropriate.
4. Participate in the appropriate regional public meeting(s) held by the Department of Labor Regional Farm Labor Coordinated Enforcement Committee, other Occupational Safety and Health Administration and Wage and Hour Division task forces, and other committees as appropriate.

The SMA must complete the following activities related to handling complaints:

1. Monitor the performance of the Complaint System, as set forth at 20 CFR §§ 658.400 and 658.401. The SMA must review the ES office's informal resolution of complaints relating to MSFWs and must ensure that the ES Office Manager transmits copies of the Complaint System logs pursuant to 20 CFR part 658, subpart E, to the SWA. This includes ensuring RPDs have access to and are regularly updating and reviewing the central complaint log.
2. Work with Outreach Workers and RPDs to ensure that information pertaining to the use of the Employment Services and Employment-Related Law Complaint System is publicized, which must include, but is not limited to, the prominent display of the USDOL-approved Complaint System poster in each AJC and at agricultural worksites where MSFWs are employed.
3. Ensure each complaint filed by an MSFW alleging violation(s) of employment-related laws has been referred appropriately for prompt action.
4. Ensure that complaints submitted by non-MSFWs to Outreach Workers alleging violation(s) of employment-related laws are logged and referred to the appropriate enforcement agency for prompt action, and that the complainant is informed of contacts with the enforcement agency to which the complaint was referred.

The SMA must complete the following activities related to professional development:

1. Attend training session(s) offered by the Regional Monitor Advocate(s) and National Monitor Advocate and their staff and those necessary to maintain competency and enhance the SMA's understanding of the unique needs of farmworkers. Such trainings must include those identified by the SMA's Regional Monitor Advocate and may include those offered by the Occupational Safety and Health Administration, the Department's Wage and Hour Division, U.S. Equal Employment Opportunity Commission, the Immigrant and Employee Rights Section of the Department of

Justice's Civil Rights Division, USDOL's Civil Rights Center, and other organizations offering farmworker-related information. The SMA must document all trainings attended annually.

2. Develop and implement an annual professional development plan for all staff on the MSFW service team that satisfies requirements for initial staff training and ensures that staff stay current on policies, procedures, job duties, and best practices.

## **REEMPLOYMENT PROGRAM DIRECTORS**

The RPDs, who serve as the ES Office Managers, provide direct supervision and support to Outreach Workers based in AJCs in Maryland's Local Workforce Development Areas.

In their supervisory role, RPDs must:

1. Ensure that MSFWs are offered the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs.
2. Facilitate communications between Outreach Workers and the SMA.
3. Assist Outreach Workers with complaint handling, informal resolution of complaints, and appropriate referrals, which may include involving the SMA to support completion of MSFW-specific complaints.
4. Ensure there is appropriate staff available during regular office hours to take complaints.
5. If an SMA's report on a site visit includes a requirement for corrective action, develop and propose a written corrective action plan. The plan must be approved, or appropriately revised, by SWA officials and the SMA. The plan must include the actions required to correct any compliance issues within 30 business days or, if the plan allows for more than 30 business days for full compliance, the length of and the reasons for the extended period and the major interim steps to correct the compliance issues must be specifically stated. The RPD and SMA must work together to ensure corrective action plans are followed and all findings are resolved.
6. Ensure that all documentation (e.g., central, complaint, and report logs) is filed and transmitted to the SMA and is maintained for three years, in accordance with MD Labor's record retention policy.<sup>15</sup> For shared logs, ensure that logs are updated regularly and are fully up-to-date at minimum by the end of each quarter.
7. Ensure the central report log is updated monthly and shared with the SMA summarizing the outreach efforts of the Outreach Worker(s) based in their Local Area. Note: Monthly reports must summarize Outreach Workers' Daily Logs, and must include an assessment of the overall quality and productivity of Outreach Workers, including the services they provided and the methods and tools they used. Performance must not be judged solely by the number of contacts made by the outreach staff. The monthly reports and daily outreach logs must be made available to the SMA and federal on-site review teams.
8. Ensure the appropriate operation of the Complaint System.
9. Ensure that complaints are processed by a trained Complaint System Representative.
10. Ensure compliance with 20 CFR Part 653 Subpart F, to the extent intrastate or interstate job clearance orders are sought to find U.S. workers to perform farmwork on a temporary, less than year-round basis.

## **OUTREACH WORKERS**

Outreach Workers are the primary access point to Maryland's workforce system for MSFWs. Outreach Workers must engage in outreach activities to locate and contact MSFWs who are not being reached by the normal intake activities conducted in and through AJCs.

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<sup>15</sup> MD Labor's Record Retention policy can be found at <https://labor.maryland.gov/employment/mpi/>.

In Maryland, there must be year-round part-time outreach staff, and during periods of the highest MSFW activity, there must be full-time outreach staff. These staffing levels must align with and be supported by information about the estimated number of farmworkers in the State and the farmworker activity in the State as demonstrated in the State's AOP. All outreach staff must be multilingual, if warranted by the characteristics of the MSFW population in the State, and must spend a majority of their time in the field.

Outreach Workers must:

1. Determine whether participants and reportable individuals are MSFWs as defined at 20 CFR § 651.10.
2. Provide MSFWs a list of available career and supportive services.
3. Provide MSFWs with job referrals to employment opportunities.
4. Refer and/or register MSFWs for services, as appropriate, if the MSFW is interested in obtaining such services.
5. Explain to MSFWs at their working, living, or gathering areas (including day-haul sites), by means of written and oral presentations either spontaneous or recorded, the following:
  - a. The services available at the local AJC (which includes the availability of referrals to training, supportive services, and career services, as well as specific employment opportunities), and other related services;
  - b. Information on the ES and Employment-related Law Complaint System;
  - c. Information on the other organizations serving MSFWs in the area; and
  - d. A basic summary of farmworker rights, including farmworker rights with respect to the terms and conditions of employment.
6. Not enter work areas to perform outreach duties on an employer's property without permission of the employer unless otherwise authorized to enter by law; must not enter workers' living areas without the permission of the workers; and must comply with appropriate State laws regarding access.
7. After making an outreach presentation, urge the MSFWs to go to the local AJC to obtain the full range of employment and training services.
8. If an MSFW cannot or does not wish to visit the local AJC, outreach staff must offer to provide on-site the following:
  - a. Assistance in the preparation of applications for ES services;
  - b. Assistance in obtaining referral(s) to current and future employment opportunities;
  - c. Assistance in the preparation of either ES or employment-related law complaints;
  - d. Referral of complaints to the ES office Complaint System Representative or ES Office Manager;
  - e. Referral to supportive services and/or career services in which the individual or a family member may be interested; and
  - f. As needed, assistance in making appointments and arranging transportation for individual MSFW(s) or members of their family to and from local AJCs or other appropriate agencies.
9. Make follow-up contacts as necessary and appropriate.
10. Be alert to observe the working and living conditions of MSFWs. If an outreach staff member observes or receives information about apparent violations, the outreach staff member must document and refer the information to the appropriate RPD.
11. Be trained in AJC procedures and in the services, benefits, and protections afforded MSFWs by the ES, including training on protecting farmworkers against sexual harassment, sexual coercion, assault, and human trafficking. Such trainings are intended to help outreach staff identify when such issues may be occurring in the fields and how to document and refer the cases to the appropriate enforcement agencies.
12. Be trained in the Complaint System procedures under 20 CFR Part 658, subpart E, and be aware of the local, State, regional, and national enforcement agencies that would be appropriate to receive referrals.

13. Maintain complete records of contacts with MSFWs and the services they perform. These records must be included on the central log within seven calendar days of the activity. Outreach workers must provide monthly updates of any additions to the central log to the RPD. The central log must be maintained on file for at least 3 years. These records must include the number of contacts, the names of contacts (if available), and the services provided (e.g., whether a complaint was received and if the complaint or apparent violation was resolved informally or referred to the appropriate enforcement agency, and whether a request for career services was received).
14. Maintain records of each possible violation or complaint of which they have knowledge, and their actions in ascertaining the facts and referring the matters as provided herein. These records must include a description of the circumstances and names of any employers who have refused outreach staff access to MSFWs.
15. Not engage in political, unionization, or anti-unionization activities during the performance of their duties.
16. Carry and display, upon request, identification cards or other material identifying them as representatives of the State.
17. Conduct pre-occupancy housing inspections or work with partner agencies to ensure pre-occupancy housing inspections are completed as required by 20 CFR § 653.501(b)(3). Note that Local Workforce Development Boards will be required to specify the party responsible for conducting MSFW housing inspections in their area in the Wagner Peyser section of their WIOA plan.<sup>16</sup> If needed, the State Rural Services Coordinator may conduct MSFW housing inspections, but must bill time correctly to the MSFW program. Regardless of which party conducts the pre-occupancy housing inspections, they MUST follow ETA requirements described in 20 CFR § 654 Subpart E. MD Labor will conduct, at minimum, one pre-occupancy housing inspection per season, per employer, for agricultural workers who were recruited through an inter- or intra– state job order, including both MSFWs and H-2A workers. Additional inspections may be required if MD Labor finds issues, non-compliance, etc.<sup>17</sup> For example, if an agricultural employer initially hires MSFWs through inter or intra-state job orders, MD Labor will conduct a pre-occupancy housing inspection for those workers. If, during the same season, that employer also hires H-2A workers, the results of the pre-occupancy housing inspection conducted for the MSFW will be applied.
18. Conduct random, unannounced field checks to agricultural worksites where MSFWs have been placed through the intrastate or interstate recruitment system, to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law.
19. Ensure that wages and working conditions offered to MSFWs are not less than the prevailing wages and working conditions among similarly employed farmworkers in the area of intended employment or the applicable federal or state minimum wage, whichever is higher.<sup>18</sup>

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<sup>16</sup> The SMA is responsible for ensuring that the Local Workforce Development Board is aware of their responsibilities related to housing inspections and for ensuring their process is established in the Board’s Local Plan.

<sup>17</sup> All inspections and their results must be recorded on the inspection log. The SMA must coordinate with the State Rural Services Coordinator to ensure that the log is up-to-date and contains all inspection information.

<sup>18</sup> Per 20 CFR § 653.501(c)(2)(i). Additional information can be found on the USDOL website, at: [www.dol.gov/whd/regs/compliance/hrg.htm](http://www.dol.gov/whd/regs/compliance/hrg.htm). Current minimum wage laws in Maryland can be viewed at: [www.dol.gov/whd/minwage/america.htm#Maryland](http://www.dol.gov/whd/minwage/america.htm#Maryland).

## EMPLOYMENT-RELATED LAW COMPLAINT SYSTEM<sup>19</sup>

WIOA regulations require MD Labor to establish and maintain an ES and Employment-Related Law Complaint System, to capture and process employment-related complaints made by individuals, employers, organizations, associations, or other entities. A complaint is an allegation or a representation made or referred to a State or local AJC of a violation of the WIOA regulations and/or other federal, state, or local employment related law.

Detailed guidance on the use of the ES and Employment Related Law Complaint System is included in the annual mandatory MSFW training delivered to staff state-wide by Maryland's SMA. Detailed information can also be found at 20 CFR Part 658.

### COMPLAINT FORM AND LOG

MD Labor has ensured that centralized control procedures are established for the processing of complaints and apparent violations. MD Labor maintains a central complaint log, listing all complaints taken by the staff and apparent violations identified by staff.

When an individual indicates interest in filing a complaint, MD Labor will follow the procedures set forth at 20 CFR 658.411. Specifically, whenever an individual indicates an interest in filing a complaint with an ES office, the SWA, or outreach staff, the individual receiving the complaint must offer to explain the operation of the Complaint System and must offer to take the complaint in writing. During the initial discussion with the complainant, the staff taking the complaint must: (a) Make every effort to obtain all the information they perceive to be necessary to investigate the complaint; (b) request that the complainant indicate all of the physical addresses, email addresses, telephone numbers, and any other helpful means by which they might be contacted during the investigation of the complaint; and (c) request that the complainant contact the Complaint System Representative before leaving the area if possible, and explain the need to maintain contact during the investigation. The staff must ensure the complainant (or their representative) submits the complaint on Form ETA-8429.

The staff must offer to assist the complainant in filling out the form and submitting all necessary information and must do so if the complainant desires such assistance. If the complainant also represents several other complainants, all such complainants must be named. The complainant, or their representative, must sign the completed form in writing or electronically. The identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint must be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. A copy of the completed complaint submission must be given to the complainant(s), and the complaint form must be given to the appropriate Complaint System Representative.

Form ETA 8429 must be used for all complaints, except that any complaint in a reasonable form (letter or email) which is signed by the complainant, or their representative, and includes sufficient information to initiate an investigation must be treated as if it were a properly completed Form 8429 filed in person. A letter (via hard copy or email) confirming the complaint was received must be sent to the complainant and the document must be sent to the appropriate Complaint System Representative. The Complaint System Representative must request additional information from the complainant if the complainant has not

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<sup>19</sup> For more details regarding the complaint process see 20 CFR § Part 658.

provided sufficient information to investigate the matter expeditiously. Complaints must not be assigned to the SMA.

When an MSFW submits a complaint, the Complaint System Representative must follow up monthly on the processing of the complaint and must inform the complainant of the status of the complaint.

## **PROCESSING OF COMPLAINTS**

### **Complaints regarding an employment-related law**

When a complaint is filed regarding an employment-related law with an ES office or a SWA, and the complaint does not allege unlawful discrimination or reprisal for protected activity in violation of nondiscrimination laws, MD Labor will follow the procedures set forth at 20 CFR 658.411(b).

### **Complaints alleging unlawful discrimination or reprisal for protected activity**

All complaints received by an ES office or a SWA alleging unlawful discrimination or reprisal for protected activity in violation of nondiscrimination laws, such as those enforced by the Equal Employment Opportunity Commission (EEOC) or USDOL's Civil Rights Center (CRC), or in violation of the Immigration and Nationality Act's anti-discrimination provision found at 8 U.S.C. 1324b, must be logged and immediately referred to the State-level E.O. Officer. The Complaint System Representative must notify the complainant of the referral in writing.

### **Complaints regarding the ES regulations (ES complaints)**

When an ES complaint is filed with an ES office or a SWA, and the complaint does not allege unlawful discrimination or reprisal for protected activity in violation of nondiscrimination laws, MD Labor will follow the procedures set forth at 20 CFR 658.411(d).

## **DETERMINATIONS AND HEARINGS**

MD Labor must provide the complainant and respondent a written determination on the complaint as set forth at 20 CFR 654.411. If the complaint is against the SWA, MD Labor will offer the complainant a hearing under the circumstances set forth at 20 CFR 654.411(d)(5), 658.417, and 658.418. Notifications must include the results of any investigation related to the allegations of the complaint and the conclusions reached. In cases where the complaint was not resolved, MD Labor must provide the complainant with an explanation. If the Director of the Office of Workforce Development or designee determines that the employer has not violated the WIOA regulations, the Director or designee must advise the complainant that the complainant has the opportunity to request a hearing within 20 business days after the certified date of receipt of the notification.<sup>20</sup>

## **COMPLAINT RESOLUTION**

A complaint is considered resolved when:

1. The complainant indicates satisfaction with the outcome via written correspondence;
2. The complainant chooses not to elevate the complaint to the next level of review;
3. The complainant or the complainant's authorized representative fails to respond to a request for information within 20 business days or, if MSFW, 40 business days, of a written request issued either by the local RPD/supervisor, SMA, or Director of Workforce or designee;

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<sup>20</sup> 20 CFR § 658.411(d)(5)(ii)

4. The complainant exhausts all available options for review; or
5. A final determination has been made by the enforcement agency to which the complaint was referred.

In cases where the complaint is closed because the complainant or their representative failed to respond to a written request for information, the complainant or their representative may reopen the case within one year after MD Labor closed the case.

## APPARENT VIOLATIONS<sup>21</sup>

“Apparent violation” means a suspected violation of employment-related laws or ES regulations by an employer, which an ES staff member observes, has reason to believe, or regarding which an ES staff member receives information (other than a complaint). If any staff member observes, has reason to believe, or is in receipt of information regarding an apparent violation,<sup>22</sup> the staff member must document the apparent violation and refer this information to the RPD, who must ensure the apparent violation is documented in the Complaint System log.

If the employer has filed a job order with the ES office within the past 12 months, the initial approach should be to reach an informal resolution of complaints. If the employer has not filed a job order with the MSFW service team during the past 12 months, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing. Apparent violations of nondiscrimination laws must be processed according to the procedures described in 20 CFR 658.411(c).

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<sup>21</sup> Apparent Violations are an internal process. Staff may witness a violation or learn of one in some other way (i.e., by reading about the issue or hearing about it). If staff hears about a potential issue from an individual, staff should offer to explain the complaint system to that person to see if they wish to make a complaint. If the person does not wish to make a complaint, staff should treat the information internally as an Apparent Violation. Staff should not offer the person/source an option to treat the information as either a complaint or an Apparent Violation. Staff still have a duty to act, having received information that appears to violate an employment-related law or regulations.

<sup>22</sup> Except as provided at 20 CFR § 653.503 for field checks or 20 CFR § 658.411 for complaints.

## AGRICULTURAL RECRUITMENT SYSTEM<sup>23</sup>

The Agricultural Recruitment System (ARS) is designed to help agricultural employers find qualified U.S. workers on a temporary or seasonal basis by recruiting and referring qualified workers from within and outside of Maryland. Operational responsibilities for the ARS rest with MD Labor Office of Workforce Development.

20 CFR § 653.500, Subpart F includes the requirements for the acceptance of intrastate and interstate job clearance orders which seek U.S. workers to perform farmwork on a temporary, less than year-round basis. Orders seeking workers to perform farmwork on a year-round basis are not subject to the requirements of Subpart F. Subpart F affects all job orders for workers who are recruited through the employment service intrastate and interstate clearance systems for less than year-round farmwork, including both MSFWs and non- MSFW job seekers.

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<sup>23</sup> 20 CFR Part 653, Subpart F.

## RELATED PROGRAMS

High-level information on the Foreign Labor Certification (FLC) program, the National Farmworker Jobs Program, and the Migrant and Seasonal Agricultural Worker Protection Act is provided in this section because these programs serve the same or closely-related populations. The information is not intended to offer comprehensive, detailed coverage of the featured programs.

### **FOREIGN LABOR CERTIFICATION: H-2A TEMPORARY AGRICULTURAL PROGRAM**

FLC programs are designed to assure that the admission of foreign workers to the U.S. on a permanent or temporary basis will not adversely affect the job opportunities, wages, and working conditions of American workers.<sup>24</sup> The H-2A temporary agricultural program is an FLC program designed to allow agricultural employers to address a shortage or anticipated shortage of domestic workers by bringing nonimmigrant foreign workers to the United States using H-2A visas. Maryland's H-2A agricultural program is operated by MD Labor's State Rural Services Coordinator.

H-2A workers must be provided with the same information on farmworker rights, complaint processes, and supportive services delivered to MSFWs. H-2A workers served through MSFW outreach activities must be counted as MSFWs. To ensure time is billed properly between the two programs, staff must document their services in adherence with federal cost principles, clearly indicating the population served.

### **NATIONAL FARMWORKER JOBS PROGRAM**

The NFJP is a nationally-directed, locally-administered grant program that supports employment and training services and housing assistance for MSFWs.<sup>25</sup> The purpose of the NFJP is to strengthen the ability of eligible MSFWs and their dependents to obtain or retain stable, unsubsidized employment, and achieve economic self-sufficiency, including upgraded employment. To strengthen coordination between the MSFW service team and the NFJP, an MOU must be in place between Maryland's SMA and the NFJP grantee. Local Workforce Development Areas where the NFJP grantee is active should also have separate MOUs in place. MSFW Outreach Workers should thoroughly understand NFJP offerings, and should refer MSFWs to the program, when appropriate.

### **MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT**

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping.<sup>26</sup> The MSPA also requires farm labor contractors to register with USDOL. Agricultural employers and agricultural associations which are subject to the MSPA must comply with all of the worker protections which are applicable under the MSPA to migrant or seasonal agricultural workers whom they recruit, solicit, hire, employ, furnish, or transport or, in the case of migrant agricultural workers, provide housing.

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<sup>24</sup> See 20 CFR Part 655.

<sup>25</sup> See 20 CFR Part 685.

<sup>26</sup> See 29 CFR Part 500.

## PERFORMANCE ACCOUNTABILITY

USDOL has expectations that the State of Maryland will use Wagner Peyser ES funding to provide the quality service that has been outlined within this policy. As such, MD Labor must commit to USDOL that it will monitor Local Areas to ensure performance goals are being met. Per USDOL guidance, the State shall take corrective action with any Local Area that is not meeting the State's expectations in terms of performance, tracking data in the MWE, and in reporting.

DWDAL must ensure that processes and procedures are in place to collect the following required data elements:

1. Career service indicator data for the career services specified in WIOA sec. 134(c)(2)(A)(xii);
2. Data required for USDOL ETA reports and guidance, on:
  - a. The number of MSFWs contacted through outreach activities;
  - b. The number of MSFWs and non- MSFWs registered for career services;
  - c. The number of MSFWs referred to and placed in agricultural jobs;
  - d. The number of MSFWs referred to and placed in non-agricultural jobs;
  - e. The percentage of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;
  - f. The median earnings of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;
  - g. The percentage of MSFW program participants who are in unsubsidized employment during the fourth quarter after exit from the program;
  - h. The number of MSFWs served who identified themselves as male, female, Hispanic or Latino, Black or African-American, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, or White;
  - i. Agricultural clearance orders (including field checks), MSFW complaints and apparent violations, and monitoring activities; and,
  - j. Any other data required by the Department.

Additionally, DWDAL must:

1. Provide members of Maryland's MSFW service team with necessary training on techniques for accurately reporting data;
2. Ensure processes and procedures are in place for members of the MSFW service team to collect and submit data on MSFWs required by Maryland's WIOA State Workforce Plan;<sup>27</sup>
3. Periodically verify data required to be collected under this section, take necessary steps to ensure its validity, submit the data for verification and any additional requested reports to USDOL.
4. Maintain documentation for the past performance of Maryland's MSFW service team, as reflected in on- site reviews and data collection.
5. Analyze data to forecast the need for services to MSFWs in the upcoming year, comparing prior and projected levels of MSFW activity.

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<sup>27</sup> Available at: <https://gwdb.maryland.gov/pub/pdf/2024-2028stateworkforceplan-wioacombined.pdf>

## MONITORING AND RECORD RETENTION

### MONITORING<sup>28</sup>

The State of Maryland acknowledges that the USDOL has the authority to conduct fiscal and/or programmatic monitoring related to WIOA Wagner Peyser services delivered to MSFWs. MD Labor, as it deems necessary, may supervise, evaluate, and provide guidance in the conduct of MSFW service activities. Monitoring may include desk and/or on-site monitoring. Failure of MD Labor to supervise, evaluate, or provide guidance and direction shall not relieve Local Areas of any liability for failure to comply with service requirements.

### RECORD RETENTION

In accordance with the Code of Federal Regulations, Maryland requires participating programs to retain records for at least three years following the date on which the final cost report charged to a program year's allotment is submitted, or until all audit and litigation issues are resolved, whichever is later. If any litigation, claim, or audit is started before the expiration of the three-year period, the records then must be retained until all litigation, claims or audit findings involving the records have been resolved and final action has been taken.

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<sup>28</sup> See 20 CFR § 658.603.

## FAIR PRACTICES AND ACCESSIBILITY

It is MD Labor's policy that all persons have equal opportunity and access to services and facilities without discrimination on the basis of race, religion, color, sex, marital status, genetic information, age, national origin or ancestry (including Limited English Proficiency), disability, veteran status, political affiliation or belief, and for beneficiaries, applicants, and participants only, on the basis of citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA. Interested parties may refer to MD Labor's Nondiscrimination Plan<sup>29</sup> and Language Access Plan<sup>30</sup> for more information on accommodations and services.

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<sup>29</sup> MD Labor's Nondiscrimination Plan can be found on MD Labor's website:

<https://labor.maryland.gov/employment/wioa-nondis.pdf>.

<sup>30</sup> MD Labor's Language Access Plan can be found on MD Labor's website:

<https://labor.maryland.gov/employment/wioa-access.pdf>.

## REFERENCES

### LAW

- [Workforce Innovation and Opportunity Act](#), 29 U.S.C. § 3101 et. seq.;
- [Title VI of the Civil Rights Act of 1964](#), 42 U.S.C. § 2000d et seq.; and
- [Md. Code Ann., State Government Article](#), § 10-1101 through 10-1106.

### REGULATIONS

- 20 C.F.R. Part 651, [General Provisions Governing the Wagner-Peyser Act Employment Service](#);
- 20 C.F.R. Part 652, [Establishment and Functioning of State Employment Service](#);
- 20 C.F.R. Part 653, [Services of the Wagner-Peyser Act Employment Service System](#);
- 20 C.F.R. Part 654, [Special Responsibilities of the Employment Service System](#);
- 20 C.F.R. Part 655, [Temporary Employment of Foreign Workers in the United States](#);
- 20 C.F.R. Part 658, [Administrative Provisions Governing the Wagner-Peyser Act Employment Service](#);
- 20 C.F.R. Part 685, [National Farmworker Jobs Program under Title I of the Workforce Innovation and Opportunity Act](#);
- 29 C.F.R. Part 38, [Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act](#); and
- 29 C.F.R. Part 500, [Migrant and Seasonal Agricultural Worker Protection](#).

### USDOL GUIDANCE

- Training and Employment Guidance Letter (TEGL), 19-14, [Vision for the Workforce System and Initial Implementation of the Workforce Innovation and Opportunity Act](#), dated February 19, 2015;
- [USDOL Training and Employment Guidance Website](#)

### OTHER RESOURCES

- [Maryland WIOA State Plan](#);
- [Maryland Local Plans](#);
- [MD Labor DWDAL Policy Issuances](#);
- [MD Labor's Nondiscrimination Plan](#);
- [DWDAL and Division of Unemployment Insurance Language Access Plan](#).