

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> Monitor Advocate System
	<b>CORRESPONDENCE SYMBOL</b> OWI
	<b>DATE</b> March 1, 2017

**ADVISORY:**           **TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 20-16**

**TO:**                   ALL STATE WORKFORCE AGENCIES  
ALL STATE WORKFORCE ADMINISTRATORS  
ALL STATE WORKFORCE LIAISONS

**FROM:**             Byron Zuidema /s/  
Deputy Assistant Secretary

**SUBJECT:**         Designation of Significant Migrant and Seasonal Farm Worker (MSFW)  
States, Significant MSFW One-stop Centers, and Significant Multilingual  
MSFW One-stop Centers

1. **Purpose.** To transmit the Employment and Training Administration’s (ETA) Program Year (PY) 2016 designation of:

- Significant MSFW States;
- Significant MSFW One-stop centers; and
- Significant Multilingual MSFW One-stop centers.

This guidance also transmits updated Minimum Service Level Indicators of Wagner-Peyser Employment Service (ES) services to MSFWs for the Significant MSFW States, and transmits guidance on State Workforce Agencies (SWA) responsibilities in serving MSFWs.

The U.S. Department of Labor (Department) announced the publication of the Workforce Innovation and Opportunity Act (WIOA) final regulations in the Federal Register, on Friday, August 19, 2016. These regulations became effective October, 18, 2016 and included updates to the Wagner-Peyser regulations. The updated guidance also provides clarification on the responsibilities of SWAs for the designated:

- Significant MSFW States;
- Significant MSFW One-stop centers; and
- Significant MSFW Multilingual One-stop centers

2. **References.**

- Wagner-Peyser (W-P) Act, as amended (29 U.S.C. 49 *et seq.*);
- Workforce Innovation and Opportunity Act (WIOA), P.L. 113-128;

<b>RESCISSIONS</b> TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 13-13	<b>EXPIRATION DATE</b> Continuing
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- 20 C.F.R. parts 651 and 653;
- TEGL 26-15, *Negotiating Performance Goals for the WIOA Title I Programs and the Wagner-Peyser Employment Service as amended by Title III, for Program Year (PY) 2016 and PY 2017* (June 29, 2016);
- TEGL 26-02, *Publication of Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons* (May 29, 2003); and
- Executive Order No. 13166, *Improving Access to Services for Persons with Limited English Proficiency*, 65 Fed. Reg. 50121 (Aug. 11, 2000).

3. **Background.** States have a responsibility under the W-P Act regulations to provide employment services, benefits, and protections to MSFWs on a basis that is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

In order to ensure that employment services are appropriately provided to MSFWs, ETA designates particular states and one-stop centers as Significant MSFW States, Significant MSFW one-stop centers, and Significant Multilingual MSFW one-stop centers, in accordance with the number of MSFWs who participate or are estimated to be available to participate in the employment services provided in those states and through those one-stop centers. Particular requirements apply to the State Workforce Agencies (SWAs) responsible for those designated states and one-stop centers, in addition to the general responsibilities of all SWAs.

*Significant MSFW State Designation* - Annually, ETA designates Significant MSFW States. These states so designated must include the 20 states with the highest number of MSFW participants. PY 2016 designation factors included registrations, referrals to employment, referrals to supportive services, career guidance, job search activities, and referrals to WIA services as reported in the Labor Exchange Reporting System (LERS) 9002A report for PY 2014. These Significant MSFW States are required to meet minimum levels of service to MSFWs, as noted under Section 4 of this TEGL. The attachment to this TEGL provides the updated list of the Significant MSFW States for PY 2016.

*Significant MSFW one-stop center<sup>1</sup> Designation* - Annually, ETA also designates Significant MSFW one-stop centers (now branded as American Job Centers). These are those centers where MSFWs account for 10 percent or more of annual participants in ES activities and also include centers that the Office of Workforce Investment (OWI) Administrator determines should be included due to special circumstances such as an estimated large number of MSFWs in the service area. In no event may the number of Significant MSFW one-stop centers be less than 100 centers on a nationwide basis. The attachment to this TEGL provides the updated list of Significant MSFW one-stop centers for PY 2016.

*Significant Multilingual MSFW One-Stop Center Designation* - Annually, ETA also designates Significant Multilingual MSFW one-stop centers. These are centers where 10 percent or more of MSFW participants are estimated to require service provisions in a language(s) other than English, unless the OWI Administrator determines other one-stop centers also should be included due to special circumstances.

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<sup>1</sup> The terms “one-stop center” “American Job Center” and “local office” are used interchangeably in this guidance.

#### **4. Responsibilities of State Workforce Agencies (SWAs).**

##### *Responsibilities of all SWAs in serving MSFWs:*

Certain service requirements apply to all SWAs, including the obligation to conduct outreach activities to MSFWs; the obligation to make all job order information conspicuous and available to MSFWs by all reasonable means, including providing such information in their native language as requested or necessary; and the obligation for one-stop center staff to provide MSFWs a list of available career and supportive services in their native language.

In particular, all SWAs must ensure that MSFWs receive the full range of career services as defined in WIOA sec. 134(c)(2). To this end, staff at all one-stop centers must provide MSFWs a list of available career and supportive services in their native language. In addition to providing the list of career services, staff at one-stop centers must offer MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs. The services include the provision of:

- labor exchange services, including job search and placement assistance;
- career counseling and individual counseling;
- information on in-demand industry sectors and occupations;
- information on nontraditional employment;
- referrals to and coordination of activities with other programs and services; and
- workforce and labor market employment statistics information.

SWAs must ensure that MSFWs have access to these services in a way that meets their unique needs as job seekers as well as farmworkers.

Furthermore, all SWAs must provide MSFWs the full range of services of the workforce development system on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. In order for states to be in compliance with these requirements, all states are required to meet the equity indicators that address provision of ES services, including individuals referred to a job, receiving job development, and referred to supportive or career development. The data collection and performance accountability measures that apply to all SWAs are set forth in 20 C.F.R. 653.109(a)-(g). Pursuant to 20 C.F.R. 653.109(g), the Department has established equity indicators, applicable to all SWAs that measure the outcomes of providing ES services.

To determine if states are in compliance with the equity service level indicators, ETA will track the services provided to MSFWs versus non-MSFWs through the ETA-established reporting of WIOA career services provided to all participants.

To meet the equity performance standards the percentage of services provided to MSFWs must be equal to or greater than the percentage of services offered to non-MSFWs. For example, if there are 100 non-MSFWs and 50 MSFWs registered for services in the local ES office, and 50 of the non-MSFW participants are referred to employment, the local office must refer at least 25 (50%) of the MSFWs in order for that office to meet this equity ratio indicator.

Pursuant to 20 CFR 653.107(a)(4), the 20 States with the highest estimated year-round MSFW activity must hire and/or assign, in accordance with State merit staff requirements, full-time, year-round staff to conduct outreach duties. The remainder of the States must hire and/or assign year-round part-time staff to outreach duties and, during the periods of highest MSFW activity (e.g., during the peak planting or harvest season) must hire and/or assign full-time outreach staff. All outreach staff must be multilingual if warranted by the characteristics of the MSFW population in the State, must spend a majority of their time in the field, and must conduct outreach activities described at 20 CFR 653.107(b).

SWAs may assess the number or proportion of English Language Learners (ELLs) from the MSFW population in each designated local office to determine appropriate language assistance services. The assessment may include conducting surveys in each of the local offices and facilities to obtain information about the public that it serves. SWAs can obtain various resources in assessing the ELL MSFW communities in their local offices at [www.lep.gov](http://www.lep.gov).

*SWA responsibilities for designated Significant MSFW States:*

*Minimum Service Level Indicators* - In 1980, the Department established the minimum service level indicators to encourage the provision of more services to MSFWs and to prevent a reduction of such services by the Significant MSFW States.

Pursuant to 20 C.F.R. 653.109(h), the requirement to meet minimum level of service to MSFWs only applies to SWAs for Significant MSFW States. Minimum level of service indicators now include individuals placed in a job, individuals placed long-term (150 days or more) in a non-agricultural job, a review of significant MSFW one-stop centers, field checks conducted, outreach contacts per week, and processing of complaints. The determination of the minimum service levels required of Significant MSFW States for each year is based on past SWA performance in serving MSFWs, and on the need for services to MSFWs in the upcoming year.

Consistent with the transformations of the workforce development system under WIOA, which has introduced performance accountability measures that focus on employment and earnings, the Department has determined that the compliance level for the minimum level of service indicators regarding employment placement indicators shall be the same as the actual results observed in each state for the participants in the Wagner-Peyser program. The Department has also determined that, in lieu of the prior indicator measuring placement of individuals in employment paying \$0.50/hour or more above minimum wage, the Department will establish a minimum service level indicator comparing median earnings of program participants in the second quarter after exit.

The metrics for measuring compliance with the minimum service level indicators for the other indicators – review of significant MSFW one-stop centers, field checks conducted, outreach contacts per week, and processing of complaints – remain unchanged, except that the Department has added an additional indicator regarding field checks conducted when 10 or fewer job orders have been placed through the Agricultural Recruitment System.

The Department has established the following compliance levels for the minimum service level indicators, as set forth in Table 1. In order to provide for comparison of services

provided for MSFWs with services provided for W-P participants who are not MSFWs, the minimum service indicator for number of individuals placed in a job shall be measured by the proxy of the employment rate in the second quarter after exit, the minimum service indicator for the number of placements according to wage rate shall be measured by the proxy of median wage in the second quarter, and the minimum service indicator the number of placements in non-agricultural jobs according to duration shall be measured by the proxy of retention with the same non-agricultural employer in the second and the fourth quarter. SWAs in all MSFW Significant States are required to meet at least four out of the seven minimum service level indicators listed below:

<b>Table 1: Minimum Service Level Indicators</b>		
<b>Minimum Service Level Indicators</b>	<b>Performance Outcome for Measuring the Indicator</b>	<b>Compliance Levels</b>
Individuals placed in a job	The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program.	Parity with the actual results for the W-P program in each state.
Median earnings of individuals in unsubsidized employment	The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program.	Parity with the actual results for the W-P program in each state.
Individuals placed long term in non-agricultural jobs	The percentage of program participants who retain unsubsidized employment with the same employer in a non-agricultural job in the second and fourth quarter after program exit.  <i>Note:</i> This is only measured with respect to individuals for whom a non-agricultural occupational code is recorded.	Parity with the actual results for the W-P program in each state.
Reviews of Significant MSFW one-stop centers	Reviews of significant MSFW one-stop centers	100%

<b>Table 1: Minimum Service Level Indicators</b>		
<b>Minimum Service Level Indicators</b>	<b>Performance Outcome for Measuring the Indicator</b>	<b>Compliance Levels</b>
Field checks conducted when 10 or more job orders have been placed through the Agricultural Recruitment System	Field checks conducted when 10 or more job orders have been placed through the Agricultural Recruitment System	25%
Field checks conducted when 9 or fewer job orders have been placed through the Agricultural Recruitment System	Field checks conducted when 9 or fewer job orders have been placed through the Agricultural Recruitment System	100%
Outreach contacts per week	Outreach contacts	40 contacts per week
Processing of complaints	Timely processing of ES complaints	100%

*SWA responsibilities for designated Significant MSFW one-stop centers:*

- **Affirmative Action Program**

Pursuant to 20 C.F.R. 653.111(a), in order for SWAs to comply with affirmative action programs for staffing in Significant MSFW one-stop centers, the SWAs must employ ES staff in a manner facilitating the delivery of the full range of employment and training services tailored to the special needs of MSFWs, including:

- The positioning of multilingual staff in offices serving a significant number of Spanish-speaking or ELL participants; and
- The hiring of staff members from the MSFW community or members of community-based migrant programs.

- **Qualified, Permanent Minority Staff**

Pursuant to 20 C.F.R. 653.111(b), the SWA must hire sufficient numbers of qualified, permanent, minority staff in Significant MSFW one-stop centers. Qualified candidates may include those who:

- Are from MSFW backgrounds;
- Speak a language common among MSFWs in the State; or
- Are racially or ethnically representative of the MSFWs in the service area.

SWAs will determine whether a “sufficient number” of staff has been hired by conducting a comparison between the characteristics of the staff and the workforce and determining if the composition of the local office staff(s) is representative of the racial and ethnic characteristics of the workforce in the local office service area(s). ETA encourages SWAs to use Workforce Labor Market Information Grants (WIGS) funds to determine this composition. SWAs with significant MSFW one-stop centers must undertake special efforts to recruit MSFWs and persons from MSFW backgrounds for their staff.

Pursuant to 20 C.F.R. 653.111(b)(2), if a Significant MSFW one-stop center does not have a sufficient number of qualified minority staff, the SWA must establish a goal to achieve sufficient staffing at the one-stop center. The SWA also must establish a reasonable timetable for achieving the staffing goal by hiring or promoting available, qualified staff in the under-represented categories.

- Outreach

Pursuant to 20 C.F.R. 653.107(b)(11), outreach workers in Significant MSFW one-stop centers must conduct especially vigorous outreach in their service areas.

- On-site Reviews

Pursuant to 653.108(g)(3), the State Monitor Advocate (SMA) must ensure all significant MSFW one-stop centers not reviewed onsite by Federal staff are reviewed at least once per year by State staff, and 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.

*SWA responsibilities for designated Significant MSFW Multilingual One-stop centers:*

- English Language Learners

Pursuant to 20 C.F.R. 653.102, all SWAs must make job order information conspicuous and available to MSFWs by all reasonable means. Such information must, at minimum, be available through internet labor exchange systems and through the one-stop centers. One-stop centers must provide adequate staff assistance to MSFWs to access job order information easily and efficiently. In designated Significant MSFW Multilingual one-stop centers, such assistance must be provided to MSFWs in their native language, whenever requested or necessary.

While all SWAs are required to ensure that MSFWs who are ELLs receive, free of charge, the language assistance necessary to afford them meaningful access to the programs, services, and information offered by all one-stop centers, this is especially important for designated Significant MSFW Multilingual one-stop centers. SWAs may satisfy this requirement by making interpretive language phone lines available and free of charge to the individual who needs or requests such services. See Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” and TEGL 26-02, “Publication of Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons” for further guidance.

- Qualified, Permanent Minority Staff

As all Significant MSFW Multilingual one-stop centers are also designated as Significant MSFW one-stop centers, Significant MSFW Multilingual one-stop centers are also subject to the requirement, stated above, to hire sufficient numbers of qualified, permanent minority staff. Such qualified staff may include those who speak a language common among MSFWs in the State.

5. **Action Requested.** SWA administrators are required to comply with the procedures outlined in this TEGL and the regulations set forth at 20 C.F.R. parts 651, 652, 653, 654, and 658. Administrators must ensure that SMAs and all other appropriate staff are familiar with the requirements in this TEGL and the aforementioned regulations.
6. **Inquiries.** Any questions concerning this TEGL should be directed to the appropriate ETA Regional Monitor Advocate or the National Monitor Advocate listed on the Monitor Advocate website at: [Monitor Advocate National Directory \(https://doleta.gov/programs/MSFW/pdf/NATIONAL\\_MSFW\\_MONITOR\\_ADVOCATE\\_DIRECTORY.pdf\)](https://doleta.gov/programs/MSFW/pdf/NATIONAL_MSFW_MONITOR_ADVOCATE_DIRECTORY.pdf).
7. **Attachment.** PY 16 Significant MSFW States, Significant MSFW one-stop centers, and Significant MSFW Multilingual one-stop centers