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Division of Workforce Services

Issuance Number PY 19-05

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TO: Local WIOA Workforce Development Area Administrators/Service Providers

SUBJECT: Serving Migrant and Seasonal Farmworkers

1. Purpose:

To provide an overview of individuals who are identified as Migrant or Seasonal Farmworkers, as defined in title III of the Workforce and Opportunities Act (WIOA), and to outline the responsibilities of the staff of the local offices of the Division of Workforce Services and the Arkansas Workforce Centers concerning interacting with and providing services to such individuals.

2. References:

WIOA §§ 134(c)(2) & 167
WIOA §§ 301-308
20 CFR parts 651-654 & 658
20 CFR 655.103 & 678.430
29 CFR 500.20(e)
TEGLs 10-16, Change 1; 20-16; and 14-18
1974 Judge Richey Court Order

3. Definitions:

For the purposes of title III of the Workforce and Opportunities Act (WIOA) and 20 CFR parts 651, 652, 653, 654, and 658, the following definitions apply to migrant or seasonal farmworkers. Selected definitions are included in this issuance; these and other definitions may be found at 20 CFR 651.10. *(Note that these definitions may or may not apply to other WIOA programs and WIOA titles.):*

Farmwork means the cultivation and tillage of the soil; dairying; and the production, cultivation, growing and harvesting of any agricultural or horticultural commodities. This includes the raising, shearing, feeding, caring for, training, and management of livestock, bees, fur-bearing animals, poultry, and wildlife; the farming of fish; 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 includes employment of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a storm, if the major part of such service is performed on a farm. It includes the ginning of cotton and, in the connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes. 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. For purposes of this definition, agricultural commodities means all commodities produced on a farm, including crude gum (oleoresin) from a living tree and products processed by the original producer of the crude gum (oleoresin) from which the gum is derived, including gum spirits of turpentine and gum rosin. The definition includes the pressing of apples for cider on a farm. It includes operations associated with felling and moving trees and logs from the stump to the point of delivery, such as, but not limited to, marking danger trees and trees/logs to be cut to length, felling, limbing, bucking, debarking, shipping, yarding, loading, unloading, storing, and transporting machines, equipment and personnel to, from and between logging sites.

20 CFR 651.10 states that *farmwork* also means any service or activity covered under 20 CFR 655.103(c) and/or 29 CFR 500.20(e) and any service or activity so identified through official U.S. Department of Labor (DOL) guidance, such as a Training and Employment Guidance Letter (TEGL). Information from 20 CFR 655.103(c), 29 CFR 500.20(e), and DOL guidance as of the date of the issuance has been incorporated into the above list.

Farmworker, as related to this issuance, means an individual employed in farmwork, as defined in this issuance.

Migrant farmworker, for the purposes of title III, means a seasonal farmworker (as defined in this issuance) who travels to the jobsite so that the farmworker is not reasonably able to return to his/her permanent residence within the same day. Full time students traveling in organized groups rather than with their families are excluded. *(Note that this definition differs from the definition of MSFW in WIOA title I-D (Sec. 167).)*

Migrant food processing worker means a migrant farmworker.

MSFW, for the purposes of WIOA title III, means a migrant farmworker or a seasonal farmworker, as defined in 20 CFR 651.10 and this issuance.

Participant means a reportable individual who has received services that trigger participation for WIOA title III. (See the latest Participation Level Services Chart for a detailed list.) Services that do not trigger participation are self-service and information-only services and activities.

Reportable individual means an individual who (1) has taken action that demonstrates an intent to use Wagner-Peyser Act services and (2) has provided identifying information.

Seasonal Farmworker, for the purposes of title III, means an individual who is employed, or was employed in the past 12 months, in farmwork (as defined in this issuance) of seasonal or other temporary nature and is not required to be absent overnight from his or her permanent place of residence. Non-migrant full-time students are excluded. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is 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. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is 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. A worker who moves from one seasonal activity to another, although employed in farmwork, is employed on a seasonal basis even though her or she may continue to be employed during a major portion of the year. A worker is employed on other temporary basis where he or she is employed for a limited time only or his or her performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary. *(Note that this definition differs from the definition of MSFW in WIOA title I-D (Sec. 167).)*

Supportive services, for the purposes of this issuance, means 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 childcare 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.

Wagner-Peyser Act Employment Service (ES), also known as Employment Service (ES), means the national system of public ES offices described under the Wagner-Peyser Act. Employment services are delivered through the Arkansas Workforce Centers.

4. Background:

The Wagner-Peyser Act, as amended by the Workforce Innovation and Opportunities Act of 2014 (WIOA) title III (Sections 301-308); 20 CFR Parts 651-654 & 658; TEGL 10-16, Change 1, and TEGL 14-18 outline the provision of services to be provided to MSFWs, as well as the monitoring and evaluation of these services and outcomes. The 1974 Judge Richey Court Order established the Monitor Advocate System, which ensures that farmworkers have equal access to the public workforce system. TEGL 14-18 describes the performance accountability indicators and performance reporting requirements for the Monitor Advocate System to evaluate and report the effectiveness and equity of the title III Employment Service in serving MSFWs.

WIOA requires ES to offer to MSFWs the full range of employment services, benefits and protections on a basis which are qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs. In addition, ADWS must provide special services to ensure that MSFWs receive the full range of career services as defined in WIOA sec. 134(c)(2) and WIOA § 678.430, considering and being sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities. The Arkansas Division of Workforce Services (ADWS) must establish a system to monitor their own compliance with ES regulations governing services to MSFWs.

5. Action Required:

Each Arkansas Workforce Center must create a system to regularly contact individuals who indicate in AJL that they might be MSFWs to determine whether they are indeed MSFWs, as defined by either WIOA title I-D (sec. 167) or WIOA title III. Staff of the center must then refer and/or register each MSFW for services, as appropriate, if the MSFW is interested in obtaining such services [20 CFR 653.103]. Information concerning all reportable individuals and participants must be recorded appropriately into Arkansas Job Link (AJL), including all co-enrollments.

Arkansas Workforce Centers must offer to MSFWs the full range of career and supportive services listed in WIOA sec. 134(c)(2), all benefits and protections, and all job and training referral services that are provided to non-MSFWs. In providing these services, the Arkansas Workforce Centers must be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities [20 CFR 653.101]. A list of available career and supportive services must be provided to MSFWs in Spanish, the predominate language of individuals who are English-language learners [20 CFR 653.103(c)]. Workforce Center staff must refer and/or register MSFWs for services, as appropriate, if the MSFW needs such services [20 CFR 653.103(d)]. All information and services, including referrals and co-enrollment, must be recorded in Arkansas Job Link (AJL).

The State Monitor Advocate will establish an Employment Service and Employment-Related Law Complaint System (Complaint System) to be used in each Arkansas Workforce Center.

Complaints may be accepted at any Arkansas Workforce Center, by an outreach worker, or by ADWS. The State Monitor Advocate will train Complaint System representatives to handle MSFW-related complaints in accordance with 20 CFR 658.410.

ADWS-ES local offices must make job order information conspicuous and available to MSFWs by all reasonable means. At a minimum, job order information must be available through Arkansas Job Link and through the Arkansas Workforce Systems [20 CFR 653.102]. All local offices must ensure that MSFWs who are English Language Learners have the opportunity to receive, free of charge, the language assistance necessary to afford them meaningful access to the programs, services, and information offered by the Arkansas Workforce Center [20 CFR 653.103(b)].

ADWS will seek staff to conduct outreach to MSFWs through targeted areas throughout the state. In selecting outreach staff, ADWS will seek individuals who (a) are from MSFW backgrounds, (b) speak a language common among MSFWs in the State, or (c) are racially or ethnically representative of the MSFWs in the service area. Such outreach staff will coordinate their efforts with WIOA sec. 167 (title I-D) grantees, as well as with public and private community service agencies and MSFW groups. This outreach will include information about the full range of services available through the Arkansas Workforce System and encouragement to MSFWs to seek services through the Arkansas Workforce Centers [20 CFR 653.107(a) & 653.107(b)(3)].

ADWS will publicize the availability of employment services to MSFWs through such means as newspaper and electronic media publicity. In addition, contacts with public and private community agencies, employers, and/or employer organizations, and MSFW groups will be used to facilitate the widest possible distribution of information concerning employment services [653.107(a)(5)].

Outreach staff will attempt to locate and contact MSFWs who are not being reached by the normal intake activities conducted by the local ES offices. They will explain to MSFWs at their working, living, or gathering areas, either by means of written or oral presentations, in a language readily understood by the MSFWs:

- Services available at the Arkansas Workforce Centers;
- Information on the Employment Service and Employment-Related Law Complaint System (Complaint System);
- Information on other organizations serving MSFWs in the area;
- A basic summary of farmworker rights, including farmworker rights with respect to the terms and conditions of employment [653.107(b)(1)]; and
- Encouragement to attend an Arkansas Workforce Center [653.107(b)(3)].

As resources are available, the following services may be provided to MSFWs who are unable to visit a Workforce Center:

- Assistance in the preparation of applications for employment services;

- Assistance in obtaining referrals to current and future employment opportunities;
- Assistance in the preparation of either ES or employment-related complaints;
- Referral of complaints to the proper office;
- Referral to supportive services and/or career services in which the individual or family member may need;
- Assistance in making appointments and arranging transportation to and from local Arkansas Workforce Centers or other appropriate agencies [653.107(b)(4)]; and
- Follow-up contacts to ensure that the needs of the MSFWs are/were met [653.107(b)(5)].

Except as authorized by law, outreach staff must have the permission of an employer before entering a worksite, must have the permission of the workers before entering workers' living areas, and must comply with appropriate State laws regarding access [653.107(b)(2)].

In the course of their work, outreach staff must observe the working and living conditions of MSFWs and report suspected violations of Federal or State employment-related law or to the Local ES Office Manager for processing in accordance with 20 CFR 658.411 and 20 CFR 658.419 [653.107(b)(6)]. Outreach staff must be trained in local office procedures concerning the services, benefits, and protections available to MSFWs. Such training must include policies and procedures concerning possible sexual harassment, sexual coercion, assault, and human trafficking [653.107(b)(7)].

Outreach staff must carry (and provide upon request) identification cards and name badges identifying them as ADWS employees [653.107(b)(10)]. They must not engage in political, unionization, or anti-unionization activities during the performance of their duties [653.107(b)(9)].

Outreach staff must maintain logs of their contacts, requests for services, services given, possible violations, complaints, and information about employers who refused access of their workers to ADWS. Records must give a description of each situation. A copy of these records and logs must be sent to the Local Office Manager each month, who will send them to the State Monitor Advocate. These monthly records must be maintained for at least 2 years. The logs and monthly reports must be made available to ADWS and Federal onsite review teams [653.107(b)(8) & 20 CFR 653.107(c)]. Appropriate information must also be entered into AJL.

ADWS will develop a State Agricultural Outreach Plan (AOP) as part of the Combined State Plan, using guidelines provided in 20 CFR 653.107(d). In developing this state plan, they will solicit information and suggestions from the WIOA sec. 167 National Farmworker Jobs Program grantees and other appropriate MSFW groups, public agencies, agricultural employer organizations, and other interested organizations.

ADWS will periodically monitor the local offices for compliance with ES regulations governing services to MSFWs, complying with goals of the approved State Plan, and meeting performance indicators related to MSFWs. Details concerning the self-appraisal system are given in 20 CFR 658.601 [20 CFR 653.108(a) & 658.601].

ADWS will process orders for temporary farmworkers in compliance with 20 CFR 653.501. Housing provided to MSFWs will be inspected in compliance with 20 CFR 654. ADWS may discontinue services to employers of MSFWs for reasons given in 20 CFR 658.501. Procedures for discontinuing and continuing services to employers is given in 20 CFR 658.502-504.

ADWS will appoint a full-time State Monitor Advocate (SMA) in compliance with 20 CFR 683.108. The selected SMA will:

- Be from a MSFW background;
- Speak Spanish; or
- Have substantial work experience in farmworker activities [20 CFR 653.108(b & d)].

The SMA will be assigned staff as necessary to fulfill all the required duties effectively [20 CFR 653.108(e)].

Duties of the State Monitor Advocate include [20 CFR 653.108(g)]:

- Conducting an ongoing review of the delivery of services and protections afforded to MSFWs by ADWS and the ES offices;
- Advising ADWS concerning how to improve the delivery of services;
- Participating in on-site reviews on a regular basis, using the procedures in 20 CFR 653.108(g)(2);
- Reviewing and approving the ADWS Agricultural Outreach Plan;
- Randomly reviewing outreach workers' daily logs and monthly reports;
- Writing and submitting annual summaries and reports to the Director of ADWS or his or her designee, the Regional Monitor Advocate, and the National Monitor Advocate;
- Participating in Federal reviews;
- Participating in and monitoring the performance of the Complaint System, as described in 20 CFR 658;
- Serving as an advocate to improve services for MSFW;
- Serving as a liaison with and meeting at least quarterly with representatives of the WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees and other organizations serving farmworkers, employers, and employer organizations in the State;
- Conducting field visits to the working, living, and gathering areas of MSFWs to discuss employment services and other employment-related programs with MSFWs, crew leaders, and employers;
- Keeping records of field visits;
- Participating in the appropriate regional public meeting(s) of 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;
- Reviewing, at least quarterly, statistical and other MSFW-related data reported by ES to evaluate compliance of local areas with ES regulations; and
- Reviewing and commenting on all ES directives, manuals, and operating instructions relating to MSFWs.

Details concerning these responsibilities are given in 20 CFR 653.108.

ADWS will collect data required in 20 CFR 653.109 and TEGL 14-18. ADWS will disclose such data to the public, as required in 20 CFR 653.110.

6. **For Additional Information:** Contact Maria Garcia, State Monitor Advocate, at maria.garcia@arkansas.gov or by calling 501-682-1015.
7. **Expiration:** Continuing.