

# **VIRGINIA EMPLOYMENT COMMISSION**



## **SERVICES TO MIGRANT AND SEASONAL FARMWORKERS**

### **ANNUAL REPORT PROGRAM YEAR 2020**

#### **VIRGINIA STATE MONITOR ADVOCATE'S ANNUAL REPORT OF SERVICES TO MIGRANT AND SEASONAL FARMWORKERS FOR PROGRAM YEAR 2020**

20 CFR 653.108(t)

August 12, 2021

The Virginia Employment Commission's services to MSFWs and the associated performance indicators were affected by the COVID-19 Pandemic for Program Year 2020. In response to Executive Orders by the Governor of the Commonwealth of Virginia, many local offices were closed to the public throughout the program year and outreach services were provided in accordance with state directives on a limited basis.

In accordance with 20 CFR 653.108, the following annual summary reflects our Agency's actions with respect to services provided to Migrant and Seasonal Farmworkers for the period July 1, 2020 through June 30, 2021.

1. Activities Undertaken by the Virginia Employment Commission's (VEC) State Monitor Advocate pertaining to her responsibilities as set forth in 20 CFR 653:
  - a. Throughout PY 20, the VEC State Monitor Advocate (SMA) reviewed the services provided to MSFWs on a statewide basis and advised the Agency of any problems, deficiencies and/or improper practices as appropriate. She advised Agency Management on means to improve the delivery of services to MSFWs and made recommendations for corrections when needed.
  - b. In PY 20, the State Monitor Advocate formally reviewed one significant MSFW local office. The Winchester office was reviewed September 29 to October 1, 2020. The Eastern Shore office was reviewed by desk audit as it was closed to the public. The reviews were guided by the content and procedures described in the U.S. Department of Labor Technical Assistance Guide, *Review of JS Services to MSFWs*, which implemented the Federal Regulations listed at 20 CFR 651, 653 and 658, dated June 10, 1980. No deficiencies were noted that required formal corrective actions in either office. The State Monitor Advocate coordinated, when needed, with the Agency Equal Opportunity Manager.
  - c. The SMA received and reviewed monthly reports outlining the outreach activities of the Farm Placement Specialists in our eight Agricultural Service Areas. In spite of the pandemic and staff vacancies, the Virginia Employment Commission met the statewide outreach goal for PY 20.
  - d. The Virginia Employment Commission's State Monitor Advocate is responsible for the management of the Employment Service Complaint System on a statewide basis and is identified as the Agency Complaint Specialist. During PY 20, the State Monitor Advocate monitored the performance of the Employment Service Complaint System, as set forth at 20 CFR 658.400, reviewed the local office managers' resolution of complaints, as well as local office complaint logs. Recommendations, to include consultation with the Agency EO Manager and additional training has been provided to local office Management regarding the ES complaint system administration.
  - e. In PY 20, the State Monitor Advocate worked continuously to improve services for MSFWs within the workforce services system and provided guidance and technical assistance regarding the integration of services to MSFWs within the Virginia Career Works one-stop locations in accordance with the Workforce Innovation and Opportunity Act of 2014.
  - f. The VEC, on behalf of and supported by the SMA, has an established Memorandum of Understanding (MOU) with the NFJP grantee, Telamon, and during PY 20, the VEC and Telamon worked together in accordance with the MOU to serve MSFWs throughout Virginia. Ten collaborative meetings/exchanges were held between the SMA and Telamon Management and staff during PY 20.

- g. In addition to Telamon, the State Monitor Advocate worked with other organizations serving farmworkers and employers including Central Virginia Legal Aid's Farmworker Assistance Project, Virginia Agricultural Growers Association and the Frederick County Fruit Growers Association. She also coordinated the activities of the Governor's Migrant and Seasonal Farmworker Interagency Policy Committee, which met as needed to address MSFW and agricultural employment-related issues in Virginia.
  - h. During PY 20, the State Monitor Advocate made field visits on a limited basis and conducted outreach to provide information on VEC services, the employment service complaint system and other employment-related programs to MSFWs, farm labor contractors, and agricultural employers. She made recommendations to Agency management and developed policies for the protection of MSFWs in response to the Covid-19 pandemic.
  - i. During PY 20, the State Monitor Advocate participated, as requested, in meetings with the U.S. Department of Labor, Wage and Hour Division, and presented information on VEC services to other Agencies, employers and groups with interest in MSFWs.
  - j. The State Monitor Advocate trained new staff and accompanied them on outreach visits to MSFWs' working and living areas in to ensure compliance with 20 CFR 653.107. She also provided training to new managers.
  - k. The State MSFW Monitor Advocate reviewed, on monthly basis, all MSFW-related statistical data reported state-wide and by MSFW local offices in order to ensure continued compliance with regulations at §653, and provided technical assistance as needed to ensure accurate reporting.
  - l. The State Monitor Advocate reviewed, commented on and made recommendations as appropriate regarding proposed VEC Employment Service directives. She also formulated policy directives and worked as an Advisor to the Commissioner and VEC management on matters related to MSFWs.
  - m. The State Monitor Advocate authored, updated and approved the Virginia Employment Commission's Agricultural Outreach Plan (AOP) portion of the WIOA Combined State Plan for Program Years 20-24.
  - n. The State Monitor Advocate provided training to Farm Placement Specialists, Local Office Managers and other Agency Management as needed on employment services to MSFWs, outreach and the employment service complaint system. She reviewed outreach workers' daily logs and other reports, including those showing or reflecting staff activities in the Virginia Workforce Connection system.
2. The Virginia State Monitor Advocate position reports directly to the Deputy Commissioner for Workforce Services of the Virginia Employment Commission. The Agency hereby assures that the State Monitor Advocate has direct ongoing access, whenever she finds it necessary, to the

Commissioner and the SMA has the status and compensation approved by the civil service classification system.

3. The Virginia Employment Commission hereby assures that the Virginia State Monitor Advocate works full time in the performance of the duties of said position.
4. The following provides a summary of the monitoring reviews conducted by the SMA during PY 20.
  - a. As previously noted, there was one in-person formal monitoring review conducted during PY 20. The federally-designated significant local office at Winchester was reviewed by the State Monitor Advocate September 29-August 1, 2020. The scope of the review covered the program year performance for PY 19. The review is scheduled each year to coincide with the height of apple harvest, which peaks in late September to early October. The outreach staff was evaluated on outreach techniques. Her performance was exceptional. She was comfortable with both workers and employers and demonstrated competency with describing services available at the Virginia Career Works one-stop, worker rights and responsibilities and the employment service complaint system. There were no violations of federal regulations noted that required corrective actions. The FPS exceeded her office's outreach goal during PY 20 in spite of the outreach restrictions due to the Covid-19 pandemic and statistical equity was achieved in all five equity indicators and in all six minimum service level indicators
  - b. The federally-designated, significant bilingual office on the Eastern Shore of Virginia was reviewed by desk audit for the Eastern Shore office because of office closure due to the Covid-19 pandemic. There were no violations found. The office exceeded projected goals for services to MSFWs. The Eastern Shore outreach staff contacted 956 MSFWs during PY 20 and his outreach efforts helped the state to meet the state's outreach goal in spite of the pandemic restrictions. Statistical equity was achieved in all equity indicators and minimum service level indicators. The outreach staff has a long-standing good relationship with both workers and employers in the service area. He is fully bilingual, is Hispanic and is from a MSFW background.
  - c. The Bristol Local office was informally reviewed by the State Monitor Advocate and the Agricultural and Foreign Labor Certification Manager October 1-3, 2020 following the identification of complaints related to a large employer's failure to properly address a Covid 19 outbreak among workers. Referrals were made to enforcement agencies and the Virginia Department of Health regarding MSFWs living in uninspected housing locations utilized by the employer. Technical assistance was provided to staff and management on outreach, MSFW services and registration, the H-2A program requirements and housing standards.
  - d. 20 CFR 653.108 (d) states that the State Monitor Advocate must have ES staff necessary to fulfill effectively all of the duties set forth in the subpart describing outreach activities and services for MSFWs. The State Monitor Advocate, with the support of Agency Management, addressed deficiencies with respect to outreach staffing and hiring practices.

(1) Based on observations and evaluations of outreach staff and the demographics of MSFWs in Virginia, the State Monitor Advocate asserted that in order to adequately serve the MSFW population in Virginia, the outreach staff must be bi-lingual in English and Spanish. This is particularly important with respect to the availability and use of the employment service complaint system by MSFWs. Following the USDOL Enhanced Desk Monitoring Review of the Virginia Employment Commission's MSFW Program conducted on August 25-27, 2020, the Agency restructured the Agricultural Outreach Program. Four Agricultural Outreach Specialist positions were created. Those positions are dedicated to full time, year round outreach activities. To date, one position has been filled and the three others are in recruitment. The Agricultural Outreach Specialist are required to be bilingual in English and Spanish. The Agency has implemented corrective action measures whereby the State Monitor Advocate and the Agriculture and Foreign Labor Certification Manager are to be directly involved with the hiring of Agricultural Outreach Specialists and Agriculture and Foreign Labor Specialist staff.

5. A summary of the outreach efforts undertaken by all significant and non-significant MSFW Employment Services (ES) offices:

During PY 20, the VEC provided specialized employment services to the Migrant and Seasonal Farmworker (MSFW) population living and working in Virginia. The provision of services was available to MSFWs on an equal basis in each of our Virginia Career Works One-Stop offices. Within the Commonwealth during PY 20, the VEC had eight Agricultural Service Areas and restructured its MSFW program. The Agency began the process to employ four full time Agricultural Outreach Specialists (AOS). One position has been filled and three others are in recruitment. Each AOS will work full time and year round in the conduct of outreach to MSFWs. The positions are assigned to Petersburg, Bristol, Harrisonburg and Danville and will cover the corresponding agricultural service areas. The VEC also employs six Agriculture and Foreign Labor Specialist (FPS) positions, which are assigned to Bristol, Charlottesville, Eastern Shore, Emporia, Fredericksburg, and Winchester. Those positions provide employment services to MSFWs, including outreach and complaint assistance, and will also be responsible for tasks associated with H-2A requests.

The table below denotes VEC’s estimates for peak seasonal and migrant farmworkers by office for PY 20 and the individual and state outreach goals:

**VIRGINIA EMPLOYMENT COMMISSION**  
**MSFW OUTREACH GOALS BY OFFICE**  
**PY 20**

| <b>OFFICE</b>          | <b>PEAK SEASONAL</b> | <b>PEAK MIGRANT</b> | <b>PEAK TOTAL</b> | <b>OUTREACH GOAL</b> |
|------------------------|----------------------|---------------------|-------------------|----------------------|
|                        |                      |                     |                   |                      |
| <b>Bristol</b>         | 427                  | 152                 | 579               | 192                  |
| <b>Charlottesville</b> | 593                  | 130                 | 723               | 239                  |
| <b>Danville</b>        | 418                  | 215                 | 633               | 209                  |
| <b>Eastern Shore</b>   | 500                  | 1310                | 1810              | 598                  |
| <b>Emporia</b>         | 282                  | 190                 | 472               | 156                  |
| <b>Fredericksburg</b>  | 1935                 | 256                 | 2191              | 724                  |
| <b>Petersburg</b>      | 495                  | 225                 | 724               | 239                  |
| <b>Winchester</b>      | 411                  | 185                 | 596               | 197                  |
| <b>State</b>           | <b>5,061</b>         | <b>2,663</b>        | <b>7,724</b>      | <b>2549</b>          |
|                        |                      |                     |                   |                      |

The below table reflects outreach performance by office for PY 20:

| OFFICE         | OUTREACH GOAL<br>PY 20 | OUTREACH ACHIEVED<br>PY 20 | STATUS |
|----------------|------------------------|----------------------------|--------|
| BRISTOL        | 192                    | 216                        | MET    |
| FISHERSVILLE   | 239                    | 156                        | DNM    |
| EASTERN SHORE  | 598                    | 1171                       | MET    |
| EMPORIA        | 156                    | 439                        | MET    |
| FREDERICKSBURG | 724                    | 291                        | DNM    |
| LYNCHBURG      | 209                    | 293                        | MET    |
| PETERSBURG     | 239                    | 332                        | MET    |
| WINCHESTER     | 197                    | 279                        | MET    |
| STATE          | 2549                   | 3437                       | MET    |

6. **A summary of the Virginia Employment Commission’s actions taken under the complaint System** as described in 20 CFR 658, Subpart E:

**Challenges**

- MSFW continue to be reluctant to file complaints in writing for fear of retaliation by the employer or of not being hired in the future.
- U.S. Department of Labor’s Wage and Hour Division investigation information is not readily provided in regard to follow-up on complaint referrals. During PY 20, to our knowledge, the Agency did not conduct in person investigation of complaint referrals made to them by our Agency.
- The transitory nature of MSFW employment and the lengthy investigative process inhibits satisfactory complaint resolution.

**Complaint trends-** PY 20 MSFW complaints and non-MSFW, ES-related complaints remained steady. We received 23 complaints and all were resolved timely.

**Tracking resolution of complaints-** Outreach Staff and Agency Management performed well in resolving complaints at the local level and resolved many before they rose to the level of a formal written complaint. The Agency’s EO staff worked closely with the SMA to assist with internal complaint resolutions, to provide training and guidance, and to provide technical assistance as needed.

**Findings from reviews of the complaint system-** An electronic Statewide Complaint Log data share file has been implemented and is operational for use by each Local Office Manager and Agency Management. Virginia Career Works complaint logs are to be uploaded by the Local

Office Manager to the Agency’s shared drive. Training of management staff on the ES complaint system is ongoing.

**Trainings-**The State Monitor Advocate provided training to AOS and AFLS staff and to Agency Management on the Complaint System, the associated policy, outreach requirements and provided written materials and power point presentations that staff may refer to when working with complaints. The State Monitor Advocate also attended all training conducted by USDOL.

**Steps taken to inform MSFWs employers and farmworker advocacy groups about the complaint system-** The Virginia Employment Commission operates the Employment Service Complaint System in accordance with 20 CFR 658. The State Monitor Advocate is the VEC official designated as the Agency Complaint System Manager. At the local office level, the Virginia Career Works Local Office Manager is responsible for handling complaints. Whenever an individual indicates an interest in filing a complaint, the individual receiving the complaint explains the operation of the complaint system, takes the complaint in writing on the ETA 8429 form and each local office maintains a complaint log in which all complaints are recorded. During PY 20, the State Monitor Advocate in conjunction with the Agency EO Manager and EO staff, provided training to staff and management on the requirements regarding the processing of complaints. In order to publicize the Employment Service Complaint System to both MSFWs and the general public, each local office prominently displays the Employment Service Complaint Poster. Each AOS and AFLS provides written materials in both English and Spanish regarding the Complaint System, and explains it verbally during outreach. Each local office complaint log lists all complaints taken by the office and the logs contain all of the following information:

- **Complainant name**
- **Respondent name**
- **Date the complaint was filed**
- **Whether the complaint is by or on behalf of MSFW(s)**
- **Whether the complaint concerns employment-related law or the ES regulations (if it is “ES-related”)**
- **Action taken and whether the complaint was resolved**

For PY 20, LEARS report data reflects that the State Monitor Advocate received a total of 23 complaints. The following reflects the breakdown of those complaints:

**MSFW-ES Related 16**

**MSFW Non-ES Related 1**

**Non-MSFW-ES Related 5**

**Non-MSFW-Non-ES Related 1**

During PY 20, the State Monitor Advocate continued to meet quarterly with Farmworker Advocacy groups in order to receive and help resolve complaints. She made referrals of alleged violations to enforcement agencies as appropriate.

7. A summary of how the SMA is working with Workforce Innovation and Opportunity Act (WIOA) sec. 167 NFJP grantee and other organizations serving farmworkers, employers and employer organizations and an assurance that the SMA is meeting at least quarterly with representatives of these organizations:

During PY 20, the State Monitor Advocate worked with Telamon and many other Virginia organizations serving farmworkers and employers, including Central Virginia Legal Aid's Farmworker Assistance Project, Virginia Agricultural Growers Association, the Eastern Shore Vegetable and Potato Growers Association, Virginia Cooperative Extension and the Frederick County Fruit Growers Association. She met with Telamon and facilitated interactions and teamwork between VEC AOS and AFLS staff and Telamon staff 10 times during PY 20. During the significant office reviews, the SMA and AOS and AFLS staff met with the Telamon staff serving in the area. She also coordinated the activities of the Governor's Migrant and Seasonal Farmworker Interagency Policy Committee, which met as needed to address MSFW and agricultural employment-related issues in Virginia. As previously noted, the VEC, on behalf of and supported by the SMA, has an established Memorandum of Understanding (MOU) with the NFJP grantee, Telamon, and during PY 20, the VEC and Telamon worked together in accordance with the MOU to serve MSFWs throughout Virginia.

8. A summary of the statistical and other MSFW-related data and reports gathered by the State Workforce Agency (SWA) and ES Offices for the year including an overview of the SMA's involvement in the SWA's reporting systems.

The AOS and AFLS staff and State Monitor Advocate conducted an extensive assessment of the MSFW population in Virginia in PY 20 and developed estimates for each county. Based on this assessment, we estimate that there were approximately 13,347 farmworkers in Virginia during PY 20. The Virginia Workforce Connection (VWC) system reflects that 1,493 migrant and seasonal farmworkers were registered, 333 were referred to a job, and 109 were placed in a job.

During PY 20, the State Monitor Advocate was involved in the development of policy regarding services to MSFWs and monitored the performance of the local offices in serving MSFW using statistical data gathered through our Virginia Workforce Connection System, monthly reports submitted by the Local Office Managers and utilizing the Migrant Indicators of Compliance and WIOA reports. The Virginia Employment Commission Information Technology staff consulted with the State Monitor Advocate, as appropriate, when changes were implemented to our reporting systems and considered her input regarding changes that impacted MSFWs within the One Stop System.

9. A summary of the training conducted for SWA personnel on techniques for accurately reporting data:

All Farm Placement Specialists attended virtual training from November 17-19 2020. Training topics covered reporting requirements of the local offices, the AOS and AFLS staff and the oversight responsibilities of the Local Office Manager. Specific guidance and webinars were provided throughout the year. Training was provided to staff on a statewide basis by the Agriculture and Foreign Labor Certification Manager related to H-2A and H-2B program requirements and data reporting.

10. A summary of activities related to the Agricultural Outreach Plan and an explanation of how those activities helped the state reach the goals and objectives described in the AOP.

The Virginia Employment Commission’s Agricultural Outreach Plan for PY 16-20 set policies and objectives in providing workforce services to the agricultural community, MSFWs and agricultural employers, in accordance with 20 CFR 653 and the Workforce Innovation and Opportunity Act (WIOA). During PY 20, the Commonwealth of Virginia provided equitable services to MSFWs utilizing the Virginia Workforce System to ensure that the full range of employment, training and educational services were available on a basis which were qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

The following table reflects H-2A program use and FPS staff activities associated with its use:

| <b>Fiscal Year</b> | <b>H-2A Job orders received</b> | <b>No. of workers</b> | <b>No. of employers</b> |
|--------------------|---------------------------------|-----------------------|-------------------------|
| 2020               | 174                             | 4383                  | 309                     |
| 2019               | 158                             | 3,994                 | 298                     |
| 2018               | 145                             | 3,904                 | 327                     |
| 2017               | 126                             | 4,120                 | 302                     |

| FY                                   | 2020  | 2019  | 2018  | 2017  |
|--------------------------------------|-------|-------|-------|-------|
| H-2A staff assisted referrals        | 23    | 15    | 27    | 85    |
| Housing inspections completed        | 363   | 385   | 463   | 399   |
| # of sleeping units inspected        | 1,300 | 1,388 | 1,586 | 1,456 |
| Capacity of sleeping units inspected | 4,275 | 4,863 | 5,388 | 4,935 |

As shown, for FY 20 the Virginia Employment Commission received 174 H-2A agricultural clearance job orders. We continued to see an increase in H-2A submissions over the year and crop activity is diversifying. Staff completed 24 prevailing wage and 34 practice surveys in crop areas and completed 363 housing inspections with a total capacity for 4,275 workers. The Agriculture and Foreign Labor Certification Manager participated in employer conferences and seminars, and provided training to staff and technical assistance to employers utilizing the H-2A program to supplement their agricultural workforce. Use of the program is increasing as there has been a significant decrease over the past few years in the number of MSFWs within the Commonwealth.

For PY 20, an extensive statewide survey of previous and projected agricultural and farmworker activity was conducted and an assessment of need was developed in conjunction with input from local office personnel, AOS and AFLS staff, extension agents, Telamon, and members of numerous other organizations with knowledge of MSFWs. Based on the assessment of need, and the number of MSFWs estimated to be in Virginia, outreach goals were established for each of our Agricultural Service Areas. AOS and AFLS staff were provided with clear expectations, as outlined in the Agricultural Outreach Plan, regarding services to MSFWs in the One Stop and their outreach performance was monitored by the State Monitor Advocate throughout PY 20. On an ongoing basis throughout PY 20, the State Monitor Advocate reviewed MSFW registration data, Migrant Indicators of Compliance reports, and monthly local office MSFW data and reports and compared actual performance to equity and minimum service level indicators. Quarterly LEARS data was reviewed and disseminated to Agency Management and AOS and AFLS staff so that they remained cognizant of their individual office performance in meeting AOP goals. Such ongoing review provided for early recognition of areas where improvement was needed.

Due to the Covid-19 pandemic the VEC did not meet all equity and minimum service level indicators. Specifically, for PY 20, the VEC met all equity indicators, six minimum service level indicators, and we exceeded our statewide outreach goal.

11. The following provides a synopsis of the Virginia Employment Commission’s achievements from PY 16 through PY 20 with respect to our Agricultural Outreach Plans.

| Program Year | State MSFW Outreach Goal | MSFW Outreach Performance | Equity Indicators Met | Minimum Service Level Indicators Met |
|--------------|--------------------------|---------------------------|-----------------------|--------------------------------------|
| 2016         | 2593 Contacts            | 3917 Contacts             | 5                     | 6                                    |
| 2017         | 2288 Contacts            | 3699 Contacts             | 5                     | 6                                    |
| 2018         | 2092 Contacts            | 3525 Contacts             | 5                     | 6                                    |
| 2019         | 2088 Contacts            | 2089 Contacts             | 4                     | 4                                    |
| 2020         | 2549 Contacts            | 3437 Contacts             | 5                     | 6                                    |

PY 16

Met Outreach Goal

Did not meet Placed in Jobs Categories

PY 17

Met Outreach Goal

Did not meet Placed in Jobs Categories

PY 18

Met Outreach Goal

Did not meet Placed in Jobs Categories

PY 19

Met Outreach Goal

Did not meet Career Guidance

Did not meet Placed in Jobs Categories

PY 20

Met Outreach Goal

USDOL WIPS data indicated that the Agency did not meet the Career Guidance and Staff Assisted Job Search Activities.

A review of the Virginia Employment Commission's performance for the Program Years of 2016 to 2020 shows that our state outreach goals were consistently met even with staff vacancies and limited resources. We note we consistently did not meet *placed in jobs categories*. We continue to assert that failure to meet the *placed in jobs categories* can be attributed to the lag time between referrals of workers to jobs and the capture of placements. Placements within our system are generated from employer's new hire reports. Another contributing factor is that significant portion of MSFWs in this country are undocumented. Those workers can register without proving work authorization status but be determined to be ineligible for hire by employers after they complete the e-verify or I-9 process. We would also note that wage tier data is likely inaccurate due to the inability to capture piece rate earnings calculations in our wage data reporting structure. Field visit and wage survey inquiries consistently demonstrate that most MSFWs in Virginia average between \$13 to \$15 per hour in piece rate crops like tomatoes and apples. For PY 20, the Covid-19 pandemic had a significant impact on service delivery to MSFWs due to office closures.

The Virginia Employment Commission is committed to providing equitable services for MSFWs living and working in Virginia. We are constantly working to improve our programs, formulating policy to correct deficiencies and collaborating with our partners to address issues that arise with farmworkers in Virginia. The Commissioner of the Virginia Employment Commission serves as the Chair of the Governor's MSFW Interagency Policy Committee, which brings together State and other Agencies and groups to address MSFW issues in Virginia. We seek guidance from the U.S. Department of Labor in order to satisfy our obligations under the Workforce Opportunity Innovation Act of 2014 and federal regulations related to MSFW employment. We will continue to address identified issue to improve our service delivery to MSFWs and agricultural employers.

We are also committed to making the Commonwealth of Virginia a safe and secure workplace for MSFWs and we will continue to work diligently to meet the employment-related needs of the agricultural employers and the Migrant and Seasonal Farmworker population within the Commonwealth.