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**Workforce Development Agency, State of Michigan (WDASOM)**  
**Policy Issuance (PI): 11-11**

**Date:** October 21, 2011

**To:** Michigan Works! Agency (MWA) Directors

**From:** Gary Clark, Director, Office of Talent Development Services  
Workforce Development Agency  
**(SIGNED)**

**Subject:** Employment Service (ES) Manual

**Programs**

**Affected:** Wagner-Peyser ES  
Veterans' Employment and Training Service

**Rescissions:** WDASOM PI 10-32 issued July 5, 2011

**References:** The Wagner-Peyser Act of 1933, as amended by the Workforce Investment Act of 1998

The Michigan Employment Security (MES) Act  
Local Michigan Works! System Plans  
The Workforce Investment Act (WIA) of 1998

Priority of Service for Covered Persons; Final Rule: 20 CFR Part 1010, Federal Register, Volume 73, Number 245, Friday, December 19, 2008

Bureau of Workforce Transformation PI 06-31 and its changes: Criteria for Obtaining a Waiver of Unemployment Insurance (UI) Eligibility Requirements

5 CFR 900.603, 900.604



**Workforce Development Agency, State of Michigan**

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**Background:** The Wagner-Peyser Act provided for the establishment of the United States Employment Service (USES) to provide employment service to the universal population. USES is a nationwide labor exchange system that is administered in each state by State Employment Security Agencies. “Such public labor exchange services shall be part of the One-Stop customer service system of each state, as mandated in Section 49b(c)(1) of the Wagner-Peyser Act, amended in 1998 by the WIA.” The Workforce Development Agency, State of Michigan (WDASOM) administers the labor exchange in Michigan through local MWAs. The MWAs represent Workforce Development Boards throughout Michigan. Each MWA subcontracts with one or more public, merit-staffed service providers to deliver employment services in their local areas.

The Wagner-Peyser Act and related regulations require the ES labor exchange to provide the following minimum services:

- Assistance for job seekers in finding employment.
- Assistance for employers in filling jobs.
- Facilitating the match between job seekers and employers.
- Participation in a system for clearing labor between the states, and
- Meeting the work test requirements of the state unemployment compensation system.

The ES Manual provides guidance for local and state level ES administration as mandated by the Wagner-Peyser Act, the MES Act, the WIA, and other state and federal statutes and regulations.

**Policy:** MWAs are to implement the directives of this policy issuance in the local operation of ES programs in the One-Stop Service Centers.

**Action:** Questions regarding this policy issuance should be directed to Mr. Brian Marcotte at (517) 335-5858.

The information contained in this policy issuance will be made available in alternative format (large type, audio tape, etc.) upon special request received by this office.

**Expiration**

**Date:** Continuing

GC:MD:pv  
Attachments

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**EMPLOYMENT SERVICE MANUAL**  
**SECTIONS: 001-060**  
**STATE OF MICHIGAN LABOR EXCHANGE**

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**001 The State Of Michigan Labor Exchange****001-A Labor Exchange: Overview**

The Wagner-Peyser Act provided for the establishment of the United States Employment Service (USES). USES is a nationwide labor exchange system that is administered in each state by State Employment Security Agencies. “Such public labor exchange services shall be part of the one-stop customer service system of each state, as mandated in Section 49b(c)(1) of the Wagner-Peyser Act, amended in 1998 by the Workforce Investment Act (WIA).”

The Workforce Development Agency, State of Michigan (WDASOM) administers the labor exchange in Michigan through local Michigan Works! Agencies (MWAs). The MWAs represent Workforce Development Boards (WDBs) throughout Michigan. Each MWA subcontracts with one or more public, merit-staffed service providers to deliver employment services in their local areas.

Wagner-Peyser services are available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, and other immigrants authorized to work in the United States.

The Wagner-Peyser Act and related regulations require the Employment Service (ES) labor exchange to provide the following minimum services:

Assistance for job seekers in finding employment,

Assistance for employers in filling jobs,

Facilitating the match between job seekers and employers,

Participation in a system for clearing labor between the states, and

Meeting the work test requirements of the state unemployment compensation system.

Bringing together job seekers and employers is the core of this labor exchange system. ES regulations state that the labor exchange system must meet the following requirements:

Accept a job application from any job seeker without regard to his or her place of residence, current employment status, or occupational qualifications.

Obtain only that information which is necessary to determine the job seeker's qualifications for employment and facilitate job placement, plus any additional information that is needed to evaluate, plan, and improve programs.

Implement priority of service for veterans and eligible spouses of veterans. See Section 405 for further detail on procedures related to veterans' priority of service.)

Extend no preference in services to any job seeker or group of job seekers, except in accordance with legal requirements.

Provide no services directly or indirectly in filling a job that is vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, or involves an issue in a labor dispute.

Provide no services directly or indirectly in filling a job that involves picketing an employer's establishment.

Provide no services to an employer who is known to unlawfully discriminate.

Ensure delivery of ES to Migrant and Seasonal Farm Workers (MSFWs) on a basis that is qualitatively equivalent and quantitatively proportionate to services provided non-Migrant and Seasonal Farm Workers. See Sections 500-599 for further information about services for agricultural workers.

This manual provides guidance for local and state level ES administration as mandated by the Wagner-Peyser Act, the Michigan Employment Security (MES) Act, the WIA, and other state and federal statutes and regulations, as listed in Section 030.

A variety of laws and regulations govern the state labor exchange in Michigan. All labor exchange opportunities and services, including applications, job listings, and complaint resolution, must meet the standards specified in the following laws and regulations:

Wagner-Peyser Act of 1933, as amended by the Workforce Investment Act of 1998

MES Act of 1936, as amended

The Federal Fair Labor Standards Act of 1938

The Equal Pay Act of 1963

The Older Americans Act of 1965, as amended (47 USC 3001 and 3056 et seq.)

The Pregnancy Discrimination Act, Title VII of the Civil Rights Act (CRA) of 1964

The Age Discrimination in Employment Act of 1967 (ADEA)

The CRA of 1968, Title VIII (42 USC 300 et seq.), PL 90-284

The Vocational Rehabilitation Act of 1973, as amended by the WIA of 1998

Sections 501 and 505 of the Rehabilitation Act of 1973

The Age Discrimination Act of 1975, as amended (29 USC 621), PL 9 & 135

The Elliott-Larsen CRA of 1976, Public Act 453 of 1976 (formerly the Michigan Fair Employment Practices Act of 1966)

The Civil Service Reform Act of 1978

The Immigration and Naturalization Act of 1986 (8 USC 1324a), PL 99-603

Title I and Title V of the Americans with Disabilities Act (ADA) of 1990

The CRA of 1991

The Civil Rights Restoration Act of 1991 (20 USC 1686-1688), (29 USC 706 and 709), (42 USC 2000(d)-4 [9] and 6107), PL 100-259

The Family and Medical Leave Act of 1993 (29 USC 2601), PL 103-3

Title 20 CFR 98

U.S. Department of Labor (USDOL), Employment and Training Administration (ETA) Regulations and the Code of Federal Regulations (CFR) Title 20, Parts 651-654 and 658

Title 20 CFR, Part 653

Title 29 CFR, Chapter 14, Part 1620, known as the Equal Pay Act

The nondiscrimination and equal opportunity requirements, including complaint processing, compliance reviews, etc., as provided by Title 29 CFR, Part 31 and Part 32

Title 29 CFR, Part 98, which requires an annual Certification Regarding Debarment, Suspension, and Other Responsibility Matters. See Title 13 CFR, Part 145.

Title 29 CFR, Part 98, which requires an Annual Drug Free Work-Place Certification

The requirements for veterans' services cited in Title 38 CFR, Part 41 and Title 38 CFR, Part 43

The regulations cited in Title 41 of the CFRs with respect to costs incurred under the State Plan and approved by the Regional Administrator, except as may be waived

The Uniformed Services Employment and Reemployment Rights Act

### **020 Provision of Wagner-Peyser ES by Merit-Based Staffed Organizations**

Wagner-Peyser employment services must be delivered by merit-based staffed organizations. Standards for merit-based staffing are defined below, in accordance with federal regulation 5 CFR 900.603.

In accordance with federal regulation 5 CFR 900.603, promulgated pursuant to Sections 4728 and 4763 of the federal intergovernmental Personnel Act of 1970, as amended, standards for merit staffing are defined as follows:

- a. Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
- b. Providing equitable and adequate compensation.
- c. Training employees, as needed, to assure high quality performance.
- d. Retaining employees on the basis of the adequacy of their performance, and separating employees whose inadequate performance cannot be corrected.
- e. Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age, or handicap, and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.
- f. Assuring that employees are protected against coercion for partisan political purposes and prohibiting the use of their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

All MWA ES providers must be a unit of the State of Michigan, a local unit of government, special purpose unit of government, school district, intermediate school district, public community college, public college, or public university. MWAs shall not use a competitive selection process that excludes or penalizes bids or proposals submitted by, or contracts with, WDASOM for ES.

In accordance with federal regulation 5 CFR 900.604, MWAs must maintain on file a certification from each of its ES providers confirming that the organization maintains a system of personnel administration in conformance with the 5 CFR 900.603 merit staffing standards described above. This documentation must be made available to the WDASOM and/or the

federal Office of Personnel Management if requested. MWAs must hold their ES providers responsible for the validity of these certifications.

### **030 Federal Law Relative to Michigan Talent Bank (MTB) Job Orders and Resumes**

The MTB's policies regarding job orders and resumes are based on the following federal regulations:

“Each state shall retain basic documents\* for the [following] minimum period: Work Application: 1 year, Job Order: 1 year.” See Title 20 CFR, Part 652.8 (5) (i, ii).

“States shall . . . assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification.” Title 20 CFR, Part 652.8 (j)(2). See Section 102-B.

“State agencies [receiving Wagner-Peyser funding] shall make no job referral on job orders . . . in a labor dispute involving a work stoppage.” See Title 20 CFR, Part 652.9(a).

Job orders should contain adequate information to help the Unemployment Insurance Agency (UIA) determine suitable employment, according to the MES Act 28 (5), 29 (6), 29 (7), and 64 (8). See Section 201-B for further information about the Unemployment Insurance Work Test.

“Neither the ETA nor the state agencies are guarantors of the accuracy or truthfulness of information submitted by employers.” (Title 20 CFR, 653.501(a).)

\* **Note:** MWA paper records are not official documents and need not be retained. The MTB registration form, DLEG-BWP 200-01, should be retained for a period of five business days only and then shredded when discarded. The MTB system will retain all other records for the required minimum period.

For additional information regarding labor exchange job order policies, see Section 101-E.

**040 Chart of Required Labor Exchange Activities and Applicable Laws**

Required Activity	Applicable Laws		
	Wagner-Peyser Act	Code of Federal Regulations	Other
Provide labor exchange services as part of one-stop system	Wagner-Peyser		
Provide job search and placement services to job seekers and employers	Wagner-Peyser	Title 20, Chapter V, Part 652.3(a)	
Provide recruitment and special technical services for employers	Wagner-Peyser	Title 20, Chapter V, Part 652.3(b)	
Facilitate match between job seekers and employers		Title 20, Chapter V, Part 652.3(c)	
Participate in clearance activities between states		Title 20, Chapter V, Part 652.3(d)	Workforce Investment Act Sec. 465
Administer work-test for Unemployment Agency	Wagner-Peyser	Title 20, Chapter V, Part 652.3(e)	
Retain job orders and applications for one (1) year		Title 20, Chapter V, Part 652.8(d)	
Prohibit job seeker referrals to fill strike created vacancies		Title 20, Chapter V, Part 652.9(a)	
Prohibit job seeker referrals to agencies charging a fee	Wagner-Peyser		
Designate a specialist to work with disabled persons	Wagner-Peyser		
Notify job seekers of strikes or lockouts before job referral	Wagner-Peyser	Title 20, Chapter V, Part 652.9(b)	
Prohibit discriminatory job orders		Title 20, Chapter V, Part 653, Subpart b	
Offer full employment services to Migrant and Seasonal Farm Workers (MSFWs)		Title 20, Chapter V, Part 653.101(a)	

Required Activity	Applicable Laws		
	Wagner-Peyser Act	Code of Federal Regulations	Other
Serve both non-MSFWs and MSFWs		Title 20, Chapter V, Part 653.101(b)	
Provide information to MSFW about all available job orders		Title 20, Chapter V, Part 653.102	
Determine MSFW status		Title 20, Chapter V, Part 653.103(a)	
Explain full employment services to MSFWs		Title 20, Chapter V, Part 653.103(b)	
Provide list of services available through employment services to MSFWs		Title 20, Chapter V, Part 653.103(c)	
Assist MSFWs to complete applications		Title 20, Chapter V, Part 653.103(d)	
Register entire family or crew for MSFWs		Title 20, Chapter V, Part 653.104(a)	
Verify Farm Labor Contractor/Farm Labor Contractor Employee (FLC/FLCE) status of MSFWs		Title 20, Chapter V, Part 653.104(b)	
Secure a job order before referring MSFWs		Title 20, Chapter V, Part 653.104(c)	
Provide outreach services to MSFWs		Title 20, Chapter V, Part 653.107	
Designate Complaint Coordinator		Title 20, Chapter V, Part 658.413	
Administer Employment Service Complaint System		Title 20, Chapter V, Part 658.410	
Accept Federal Contractor Job Listing (FCJL) job orders on behalf of veterans		Title 41, Chapter 60, Part 250.4, and Title 38, part 42	

Required Activity	Applicable Laws		
	Wagner-Peyser Act	Code of Federal Regulations	Other
Initiate contacts with new FCJL businesses on behalf of veterans		Title 41, Chapter 60, Part 250.43, and Title 38, Part 42	
Provide job development for veterans (State Delivery Points)		Title 20, Chapter IX, part 1001.120, and Title 38	
Provide registration and career guidance for veterans at military hospitals		Title 20, Chapter IX, Part 1001.120, and Title 38	
Provide military installations employment and training opportunities for veterans		Title 20, Chapter IX, Part 1001.120	
Provide information to veterans concerning community resources		Title 20, Chapter IX, Part 1001.120	
Implement priority of service for covered persons (veterans and eligible spouses of veterans)		Title 20, Part 1010, Volume 73, Number 245  Jobs for Veterans Act (JVA): P.L.107-288, 38 USC 4215  Title 20, Chapter IX, Part 1001.120, and Title 38	
Provide certification information to workers on Trade Adjustment Assistance (TAA)		Title 20, Chapter V, Part 617.4(a)	
Provide assistance to workers under TAA and NAFTA-TAA certifications		Title 20, Chapter V, Part 617.4(b)	

Required Activity	Applicable Laws		
	Wagner-Peyser Act	Code of Federal Regulations	Other
Provide TAA and NAFTA-TAA certification information to state vocational education agencies		Title 20, Chapter V, Part 617.4(c)	
Provide written individual and newspaper notices on TAA and NAFTA-TAA certifications, only if workers cannot be contacted by direct mail		Title 20, Chapter V, Part 617.4(d)	
Provide advice and assistance to workers, including working with dislocated workers' unit, workers when they file claims, and interviews with workers regarding training opportunities under TAA and NAFTA-TAA certifications		Title 20, Chapter V, Part 617.4(e)	
Unemployment Insurance Agency: Make Trade Readjustment Allowance payments as appropriate for TAA and NAFTA-TAA eligible workers		Title 20, Chapter V, Part 617.11	
Unemployment Insurance Agency: Apply Employment Benefit (EB) Work Test to those not in training, only under TAA certification		Title 20, Chapter V, Part 617.11	
Refer adversely affected workers to reemployment services certified under TAA and NAFTA-TAA		Title 20, Chapter V, Part 617.20(a)	
Interview, advise, and refer TAA and NAFTA-TAA eligible adversely affected workers		Title 20, Chapter V, Part 617.20(b)(1)	
TAA-Register adversely affected worker for work		Title 20, Chapter V, Part 617.20(b)(2)	
TAA and NAFTA-TAA: Inform each adversely affected worker of reemployment services		Title 20, Chapter V, Part 617.20(b)(3)	
TAA and NAFTA-TAA: Determine whether suitable employment is available		Title 20, Chapter V, Part 617.20(b)(4)	
TAA and NAFTA-TAA: Provide counseling, testing, placement and supportive services		Title 20, Chapter V, Part 617.20(b)(5)	

Required Activity	Applicable Laws		
	Wagner-Peyser Act	Code of Federal Regulations	Other
TAA and NAFTA-TAA: Provide self-directed job search training, as necessary		Title 20, Chapter V, Part 617.20(b)(6)	
TAA and NAFTA-TAA: Provide training, job search and relocation assistance		Title 20, Chapter V, Part 617.20(b)(7)	
TAA and NAFTA-TAA: Develop individual training plan		Title 20, Chapter V, Part 617.20(b)(8)	
TAA and NAFTA-TAA: Determine which training institutions offer most appropriate training programs		Title 20, Chapter V, Part 617.20(b)(9)	
TAA and NAFTA-TAA: Document standards and procedures used to select occupations and training institutions in which training is approved		Title 20, Chapter V, Part 617.20(b)(10)	
TAA and NAFTA-TAA: Make referrals and monitor training programs		Title 20, Chapter V, Part 617.20(b)(11)	
TAA: Monitor progress of workers in approved training programs		Title 20, Chapter V, Part 617.20(b)(12)	
TAA: Develop, review and update reemployment plans for adversely affected workers		Title 20, Chapter V, Part 617.20(b)(13)	
TAA: Develop and implement a procedure for reviewing training waivers every 30 days		Title 20, Chapter V, Part 617.29(b)(14)	
TAA: Coordinate the administration and delivery of employment services, benefits, training, and supplemental assistance for adversely affected workers with programs under the Act and under Title III of WIA		Title 20, Chapter V, Part 617.20 (b)(15)	
TAA: Provide transportation and subsistence allowances to trainees		Title 20, Chapter V, Part 617.27 and 28	
TAA-Provide Job Search allowances		Title 20, Chapter V, Part 617.31	

<b>Required Activity</b>	<b>Applicable Laws</b>		
	<b>Wagner-Peyser Act</b>	<b>Code of Federal Regulations</b>	<b>Other</b>
TAA: Determine eligibility for Job Search allowances		Title 20, Chapter V, Part 617.32	
TAA: Provide Relocation Allowances		Title 20, Chapter V, Part 617.40	
TAA: Determine eligibility for Relocation allowances		Title 20, Chapter V, Part 617.42	

**050 Information Sharing****050-A Information Sharing: Background**

It is the policy of the WDASOM to comply with the MES Act, which requires that information gathered about job seekers and employers be kept confidential. Information may be shared with appropriate agencies to facilitate labor exchange activities only to assure compliance with federal and state regulations.

Section 11(b) of the MES Act details the confidentiality and information standards for the ES Agency. Section 54 details penalties (both fines and imprisonment) for improper use of job seeker and employer information. These sections of the MES Act are the basis for the procedures followed by the WDASOM, and the MWAs.

**050-B Information Sharing Policy**

Information entered by employers and job seekers into the MTB may be accessed by employers, job seekers, MWA labor exchange staff, WDASOM-ES staff, and the WDASOM state administrative office staff.

In general, ES information gathered and maintained by ES staff, i.e., MWA ES Service Provider staff, Agricultural Employment Specialists (AES), Michigan Rehabilitation Services (MRS) interviewers, vocational counselors, Local Veterans Employment Representatives (LVER), and Disabled Veterans Outreach Workers (DVOW), is confidential. Information may, however, be shared with the following groups under the following circumstances:

**Partners:** Information may be shared with partners with whom there is a signed agreement that ensures no further disclosure of the information and assures the use of the information only for the purposes intended; that is: to meet the customers' ES needs, including job training through other workforce development programs and the delivery of supportive services through other workforce development programs. These supportive services require the sharing of information between the UIA and MWAs. Form DLEG-BWP 350 authorizes the release of claimant information to the MWA staff, in order to facilitate the delivery of services to UIA claimants receiving Trade Readjustment Allowance payments. Form DLEG-BWP 350 is available from the UIA.

**State Rehabilitation Agencies:** Staff may share information with MRS and the Michigan Commission for the Blind (MCB) about job seekers who have been referred to them for assistance. Information about other job seekers may be shared only with the job seeker's written consent. The WDASOM has entered a cooperative relationship with MRS and the MCB by authority of PL 113, the Vocational Rehabilitation Act of 1973, PL 92-112, and the Wagner-Peyser Act.

**Enforcement Agencies:** Information may be given to any duly authorized representative of the following agencies:

- The Internal Revenue Service of the U.S. Department of the Treasury.
- The Social Security Administration.
- State agencies responsible for providing public assistance to the unemployed.

Information can be released only under the following circumstances:

- If the purpose is not inconsistent with the purposes of the MES Act.

- If the requesting agency has submitted a written request to an MWA or the WDASOM stating the specific information requested, how the information will be used, and the name of the person authorized to receive the information.

Agencies involved in Anti-discrimination Enforcement, Contract Compliance, and Fair Employment Practices: MWAs and the WDASOM must cooperate fully with all governmental agencies that enforce fair employment practices, contract compliance, anti-discrimination laws, executive orders, and ordinances. This cooperation is not limited by any restrictions on disclosure of information from ES records.

Failure to cooperate with these agencies can mean failure to comply with the Wagner-Peyser Act, the CRA of 1964, the ADEA, the Elliott-Larsen CRA of 1976, also known as Public Act 453 of 1976, and other legislation.

These governmental enforcement agencies must be given access to WDASOM records, and they may also photocopy records. Representatives of these agencies may be asked to provide identification.

Employers: Employment-related information is already contained in the job seeker's MTB resume. Additional disclosure must be limited to qualifications for the job and must be non-discriminatory. If the employer considers restricted information (e.g., age, gender, race), the employer may apply to the Michigan Civil Rights Commission for an exemption on pre-employment inquiries.

Other Employment Security Agencies: Information obtained from employers and job seekers in administering the MES Act may be made available to any agency of this state, or any other state, or any federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices. Only information necessary for the proper administration of related laws or maintenance of such a system will be revealed.

Law Enforcement Agencies or Officials: Information must not be given to local law enforcement agencies or officials of this or any other state or the federal government. Inquiries from law enforcement agencies should be referred to the local MWA directors.

Subpoenas: Subpoenas directed to MWAs or MWA service providers are to be responded to by the respective MWA and its legal advisors.

If the subpoena specifically involves the WDASOM, the MWA is to submit a copy of the subpoena to the Director of the WDASOM for review and consultation with the Attorney General's office, upon which a course of action will be communicated to the MWA.

Subpoenas not specifically involving the WDASOM that are directed to the WDASOM will be referred back to the MWA.

### **055 Disclosure of Information**

The Freedom of Information Act (FOIA) of 1976 requires the WDASOM, MWAs, and ES service provider employees to accept requests from the public for copies of public records prepared, owned, or used which are in the possession of the WDASOM, the MWAs, or the ES service provider. Established procedures for releasing this information must be followed.

**055-A Disclosure of Information: Policy**

It is the policy of the WDASOM to disclose information in accordance with the FOIA of 1976 and subsequent amendments. The FOIA regulates and sets requirements for the disclosure of public records by all “public bodies” in the state. All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are covered. Any program primarily funded by the state or local authority is also covered.

**055-B Disclosure of Information: Background**

In general, all records except those specifically cited as exceptions are covered by the FOIA. The records covered include working papers and research material, minutes of open and closed meetings, officials’ voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written statements which implement or interpret laws, rules, or policy, including, but not limited to, guidelines, manuals, and forms with instructions adopted or used by the agency in the discharge of its functions, are also included.

A public body may, but is not required to, withhold from public disclosure certain categories of public information under the FOIA. The following categories of information may be withheld:

- Specific information about an individual’s private affairs, if their right to have the information protected from public scrutiny is greater than the public’s right to the information.
- Investigative records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
  - Interfere with law enforcement proceedings,
  - Deprive a person of the right to a fair trial or impartial administrative adjudication,
  - Constitute an unwarranted invasion of privacy,
  - Disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source, or
  - Endanger the life or physical safety of law enforcement personnel.

**055-C Disclosure of Information: Definitions**

Person

Public Body

Public Record

Unusual Circumstances

Written Documentation

**Person:**

*Person* refers to an individual, corporation, partnership, firm, organization, or association.

**Public Body:**

**Public body** refers to a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof. The following constitute a Public Body:

An agency, board, commission, or council in the legislative branch of the state government,

A county, city, township, village, inter-county, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof, or

Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

**Public Record:**

**Public record** refers to a written document that is prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function. The FOIA separates public records into two classes: (1) those that are exempt from disclosure under section 13, and (2) all other records that are subject to disclosure under this act.

**Unusual Circumstances:**

**Unusual circumstances** refers to any one or a combination of the following, but only to the extent necessary for the proper processing of a request:

The need to search for, collect, appropriately examine, or review a voluminous amount of separate and distinct public records pursuant to a single request.

The need to collect the requested public records from numerous field offices, facilities, or other establishments that are located apart from the particular office receiving or processing the request.

**Written Documentation:**

**Written documentation** refers to handwriting, typewriting, printing, photostating, photocopying, and every other means of recording. It includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

**055-D Disclosure of Information: WDASOM Procedures**

When the WDASOM, an MWA, or ES provider receives a written request (including fax or e-mail) for information under the FOIA, the request should be immediately forwarded to the local FOIA coordinator for handling.

The following procedures, which are consistent with the requirements outlined in Section 3(3) of the FOIA, were established by the WDASOM to prevent excessive and unreasonable interference with the discharge of the WDASOM daily functions:

- ***Obtain the name and address of requestor:*** All persons requesting information under the FOIA must make their request in writing (including fax or e-mail) and must provide their name, address, and the date of request. This is necessary for the WDASOM to document that a request has been made and properly processed. It also assists the WDASOM in determining repeated requests for the same information. Requests from organizations, associations, etc., that do not identify an individual will not be processed.
- ***Allow inspection of Records by appointment only:*** Any person requesting to inspect WDASOM records under the FOIA must make an appointment during regular business hours. This is necessary so that the WDASOM can make appropriate arrangements to:
  - Find and gather the requested information, if available,
  - Provide reasonable facilities for inspection and examination,
  - Provide adequate protection of public record, and
  - Coordinate regular the WDASOM functions.
- Under the FOIA, the WDASOM is not required to:
  - Compile, summarize, or report information,
  - Create a new public record, or
  - Produce edited copies of an already existing public record.

The WDASOM has instituted the following procedures for the collection of fees generated by requests for information made under the Freedom of Information Act:

- Government agencies are permitted to charge fees for processing requests received under the FOIA, but the fees must be limited to actual duplication, mailing and clerical labor costs. The first \$20.00 of work must be free for a person who is on welfare or presents an affidavit showing inability to pay because of indigence. Individuals representing public interest groups may have the entire fee waived. Determination of eligibility for fee waivers will be made by the FOIA Coordinator. The WDASOM may, in some instances, charge a fee to FOIA requestors who are seeking only to inspect public records. Fees will be charged for the inspection of public records only in those instances when the failure to collect a fee would result in unreasonably high costs to the WDASOM due to the nature of the request.
- If the cost of complying with a request is expected to exceed \$50.00, a good faith deposit of fifty percent will be required from the requestor. In such instances, the WDASOM FOIA coordinator will contact the requestor to inform him or her of the estimated cost and determine whether the requestor wishes the WDASOM to proceed with the request. In order to reduce the time and labor costs required to process a request, the WDASOM FOIA Coordinator may invite the requestor to come on-site to review non-exempt materials and/or determine which specific documents the requestor wishes to have copied.

**Note:** The WDASOM may also charge for on-site visits when it is determined that the WDASOM must devote significant time to search, examine, review, delete and separate exempt from non-exempt information. If the requestor declines to participate in such an on-site review, the WDASOM will normally charge the full amount of costs permitted under the FOIA.

- The WDASOM may occasionally deny a request for a record under the FOIA. If a request for a record is denied, written notice of the denial must be provided to the requestor within five days, or within 15 days under unusual circumstances. A failure to respond within the time limits, or a failure to respond at all, also amounts to a denial. When a request is denied, the public body must provide the requestor with a full explanation of the reasons for the denial and the requestor's right to seek judicial review. Notification of the right to judicial review must include notification of the right to receive attorney's fees and collect damages.

#### **055-E Disclosure of Information: WDASOM Fee Schedule**

The WDASOM will periodically update and publish its fee schedule to specify the rates that the WDASOM will charge for labor, photocopying, and other expenses allowed under the FOIA. This fee schedule shall remain in effect until rescinded, modified or superseded.

Professional labor costs based on the lowest paid hourly wages/benefits (General Office Assistant 6) and/or based on employee capable of retrieving information (variable).	\$18.36
Copy Costs (per page)	.10
Mailing (postage, insurance, etc.)	Actual Cost
Special Fees (electronic data exchange, photographs, magnetic media, etc.)	Actual Cost

#### **055-F Disclosure of Information: MWA Procedures**

Each MWA or ES provider must respond to FOIA requests under their own established FOIA policies and procedures pursuant to state law. The WDASOM is not responsible or authorized to respond to FOIA requests specifically addressed to non-WDASOM employees or agencies.

### **060 The Employment Service Complaint System**

#### **060-A ES Complaint System: Policy**

Federal ES regulations, as described in Title 20 CFR, Part 658, mandate that the ES establish and maintain a complaint system. This system is the formal mechanism for processing complaints from a customer who believes that his or her employment-related rights have been denied, or that he or she has been unjustly treated in an employment-related instance. The MWA is responsible for following the complaint through this system.

#### **060-B ES Complaint System: Background**

The ES complaint system was established to serve all ES customers, whether they are job seekers or employers, as long as the alleged violation does not involve Unemployment Insurance (UI) or WIA regulations. Complaints involving UI or WIA regulations are handled according to the procedures established by the respective federal and state regulations.

**060-C ES Complaint System: Definitions**

ES-Related Complaint

Non ES-Related Complaint

H-2A Employer

Migrant and Seasonal Farmworker (MSFW)

Respondent

Hearing

**ES-Related Complaint:**

An ES-related complaint is a complaint that meets any of the following criteria:

- It alleges a violation of ES regulations by the service deliverer, through an act or omission, and the complaint is filed within 12 months of the alleged incident. ES regulations pertain to such areas as employer relations, counseling, occupational analysis, labor market information, and services to special populations, including veterans, migrant and seasonal farm workers, youth, minority groups, persons with disabilities and older workers.
- A job seeker alleges a violation of the terms and conditions of a job order, or a violation of employment-related laws, after a referral to the employer by the Michigan Works! One Stop Service Center (MWOSSC) or state ES staff. The alleged incident must occur within 12 months of the application to the employer, and it must be reported to the MWOSSC within 12 months of occurrence. ES related complaints filed 12 months after incident are handled as non-ES related.

The following are some examples of situations that could result in ES-related complaints:

- A job seeker is denied services at an MWOSSC.
- A job seeker who was referred to a job by MWOSSC or state staff is paid less than the wage rate that was posted in the job order, in the Michigan Talent Bank (MTB), by the employer, MWOSSC or state staff.

See: Title 20 CFR, Part 658.401(a), (b), and (c)

The following are common types of ES-related complaints:

- Complaints against an employer about a specific job to which the job seeker was referred or the job order was posted on the MTB that involve violations of the terms and conditions of the job order or employment-related law.
- Complaints about MWOSSC or state staff actions or omissions under ES regulations.

The complaint procedures are not applicable to the UIA or the WIA. Complaints alleging violations of UIA or WIA regulations should be handled within the procedures set forth in the respective regulations.

**Non ES-Related Complaint:**

Complaints are considered non ES-related for any of the following reasons:

- The complaint is filed more than 12 months after the alleged incident.
- The complaint involves the UIA or the Workforce Investment Act (WIA).
- The complainant files a complaint against an employer for employment he/she obtained on their own, the job was not posted in the Michigan Talent Bank (MTB) and the MWOSSC had no involvement with the complainant obtaining the job.

**Note:** When a complaint is filed for an alleged incident that occurred more than 12 months after a referral to the employer by ES, the complaint is to be treated as non ES-Related and processed accordingly:

1. If the complaint is not ES-related, a determination is made whether or not the complainant is a MSFW.
2. If the complainant is a MSFW, the complaint is taken on form ETA 8429, or signed written letter, which is then sent to the agency having jurisdiction over the complaint. The complaint is recorded on the complaint log, DELEG-BWT 301, and submitted at the end of the month to the State Complaint Specialist with form DELEG-BWT 302.
3. If the complainant is not a MSFW, the MWOSSC Complaint Coordinator refers the complaint to the appropriate governing body such as Occupational, Safety and Health Administration (OSHA), the United States Department of Labor (USDOL) Wage and Hour Division, the United States (U.S.) Civil Rights Commission, or the U.S. Department of Agriculture for resolution. The complaint is recorded on form DELEG-BWT 301 and submitted at the end of the month to the State Complaint Specialist, along with form DELEG-BWT 302.

The following are some examples of non ES-related complaints:

- A job seeker is denied wages after working for an employer to whom neither MWOSSC nor state staff referred him/her.
- A job seeker complains about health or safety issues for an employer to whom he/she was not referred by either the MWOSSC or state staff.

**H-2A Employer:**

An H-2A employer is an employer who requests and receives labor certification from the U.S. Department of Labor (USDOL) to import non-immigrant alien agricultural workers. Complaints filed against H-2A employers are referred to USDOL Wage and Hour, and a copy sent to the State Complaint Specialist. Complaints that are filed and allege that an employer discouraged an eligible U.S. worker from applying, failed to hire, discharged, or otherwise discriminated against

an eligible U.S. worker, or discovered violations involving the same, can be simultaneously referred to the U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices, and the USDOL Wage and Hour Division.

**MSFW:**

(Migrant and Seasonal Farmworker)

- MSFW means a *migrant farmworker*, a *migrant food processing worker*, or a *seasonal farmworker*.
- *Migrant farmworker* is a seasonal farmworker who had to travel to do the farmwork so that he/she was unable 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.
- *Migrant food processing worker* means a person who during the preceding 12 months has worked at least an aggregate of 25 or more days or parts of days in which some work was performed in food processing (as classified in the North American Industry Classification System (NAICS) 311411, 311611, 311421 for food processing establishments), earned at least half of his/her earned income from processing work and was not employed in food processing year round by the same employer, provided that the food processing required travel such that the worker was unable to return to his/her permanent residence in the same day. Migrant food processing workers who are full-time students but who travel in organized groups rather than with their families are excluded.
- *Seasonal farmworker* means a person who during the preceding 12 months worked at least an aggregate of 25 or more days or parts of days in which some work was performed in farmwork, earned at least half of his/her earned income from farmwork, and was not employed in farmwork year round by the same employer. For the purposes of this definition only, a farm labor contractor is not considered an employer. Non-migrant individuals who are full-time students are excluded.

**Respondent:**

A respondent refers to the person or the employer against whom a complaint is made.

**Hearing:**

A hearing refers to a formal hearing procedure similar to the appeal process used in UI.

**060-D ES Complaint System: Handling of Complaints-Policy**

Only complaints that are received within one year of the alleged occurrence are investigated through resolution. Complaints by veterans alleging employer violations of the mandatory listing requirements under Title 38 U.S.C. Part 20 are not handled in this section. Title 20 CFR, Part 652.100 states that “services for veterans are administered by the Office of the Assistant Secretary for Veterans’ Employment and Training.” Issues related to veterans are covered in Section 405 of this policy issuance.

The WDASOM complaint policy is as follows:

- All complaints, both ES-related and non ES-related, must be taken in written form, as long as they contain sufficient information for the complaint coordinator to initiate the process. Complaints are not accepted via the telephone, e-mail or voice mail. Complaints may be faxed but must be signed. Additional procedures for submitting complaints are described below.
- Complaints from MSFWs alleging violations of employment-related law must be taken in writing and referred to the appropriate enforcement agency.
- All records of complaints and actions taken on complaints must be kept on file for a period of three years from the date of final resolution of the complaint.
- All MWA service centers must report all complaints to the WDASOM State Complaint Specialist on a monthly basis, using form DELEG-BWT 302 and 301.

### **060-E ES Complaint System: Handling of Complaints-Procedures**

The process flow of complaints that are non-ES-related and those that are ES-related is described below. The question of whether or not the complainant is a MSFW is embedded within each of the two procedures.

#### Handling of Non ES-Related Complaints

1. A complainant brings a complaint to the service desk of an MWOSSC.
2. The MWOSSC service desk staff refers the complaint to the MWOSSC Complaint Coordinator or designated staff person. Each MWOSSC should have one or more persons designated as Complaint Coordinators, so that every service center location has a Complaint Coordinator.
3. The Complaint Coordinator logs in the complaint on form DELEG-BWT 301.
4. The Complaint Coordinator determines whether or not complaint is ES-related.
5. If the complaint is ES-related, see the process below titled “Handling of ES-Related Complaints” and follow the steps outlined there.
6. If the complaint is not ES-related, a determination is made whether or not the complainant is a MSFW.
7. If the complainant is a MSFW, the complaint is taken on form ETA 8429, or signed written letter, which is then sent to the agency having jurisdiction over the complaint. The complaint is recorded on the complaint log, form DELEG-BWT 301, and submitted at the end of the month to the State Complaint Specialist on form DELEG-BWT 302.

8. If the complainant is not a MSFW, the MWOSSC Complaint Coordinator refers the complaint to the appropriate governing body such as OSHA, the USDOL Wage and Hour Division, the U.S. Civil Rights Commission, or the U.S. Department of Agriculture for resolution. The complaint is recorded on form DELEG-BWT 301, and submitted at the end of the month to the State Complaint Specialist on form DELEG-BWT 302.

### Handling of ES-Related Complaints

The complainant brings the complaint to the service desk of the MWOSSC:

1. The MWOSSC service desk staff refers the complaint to the MWOSSC Complaint Coordinator or another designated staff person. Each MWOSSC should have one or more persons designated as Complaint Coordinators, so that every service center location has a Complaint Coordinator.
2. The Complaint Coordinator logs in the complaint on form DELEG-BWT 301.
3. The Complaint Coordinator determines whether or not the complaint is ES-related.
4. If the complaint is not ES-related, see the process titled “Handling of Non ES-Related Complaints” and follow the steps outlined there. If the complaint is ES-related, see the process titled, “Handling of ES-Related Complaints.”
5. If the complaint is ES-related, the complaint is taken on form ETA 8429, or in written form signed by the complainant.
6. A determination is made whether or not the complaint involves any of the following:
  - A violation of employment-related law
  - A Migrant, Seasonal Farm Worker (MSFW) or Migrant Food Processor
7. If the complaint involves a violation of employment-related law, the Complaint Coordinator refers it to the appropriate governing body for resolution and sends a copy of the complaint and the complaint log to the State Complaint Specialist.
8. The State Complaint Specialist follows up in 30 days and writes a status report to inform the complainant of progress toward resolution of the complaint.
9. The complaint is either resolved or is not resolved. If the complaint is resolved, the process ends here.
10. If the complaint is not resolved after thirty days, the State Complaint Specialist conducts another 30-day follow-up to determine the status of the complaint. This process is continued until the complaint is resolved to the satisfaction of the complainant. If the complainant

cannot be satisfied, the State Complaint Specialist will issue a written determination that the complainant may appeal to the State Hearing Official for review.

11. If the complainant is a MSFW, five working days are allowed to investigate and resolve the complaint.
12. If the complainant is not a MSFW, 15 working days are allowed to investigate and resolve the complaint.
13. The Complaint Coordinator, or other designated staff, annotates the DELEG-BWT 301 (Complaint Log).
14. An attempt is made to resolve the complaint, and all activity expended in the attempt to resolve the complaint is recorded on the Complaint Log.
15. If the complaint is resolved, the result is recorded in the Complaint Log, which is submitted on a monthly basis to the State Complaint Specialist for review.
16. If the complaint is not resolved within the designated time period, it is referred to the State Complaint Specialist.
17. The State Complaint Specialist advises both the complainant and the respondent of the referral in writing.
18. The State Complaint Specialist annotates the Complaint Log.
19. The State Complaint Specialist reviews the complaint materials, renders a determination, and records all activity taken on the complaint.
20. The complaint is either resolved or unresolved. If the complaint is resolved, the process is complete. If the complaint is not resolved, an appeal process for a formal hearing may be requested.

### **Handling of Unlawful Discrimination Complaints**

ES-related discrimination complaints are to be forwarded to the designated local EO Officer and are to be processed in accordance with the uniform discrimination complaint procedures.

**060-F ES Complaint System: Formal Hearings on Complaints-Appeal Process**

The following is from Title 20 CFR, Part 658.417, revised as of April 1, 2001.

**Hearings:**

Hearings shall be held by state hearing officials, as designated by the WDASOM Director. A state hearing official may be any state official authorized to hold hearings under state law. They may be, for example, the same referees who hold hearings under state unemployment compensation law or any official of the state agency authorized by state law to preside at state administrative hearings.

The state hearing official may decide to conduct hearings on more than one complaint concurrently if he or she determines that the issues are related or that the complaints will be handled more expeditiously in this fashion.

The state hearing official, upon the referral of a case for a hearing shall:

1. Notify all involved parties of the date, time and place of the hearing.
2. Re-schedule the hearing, as appropriate.

In conducting a hearing, the state hearing official shall:

1. Regulate the course of the hearing.
2. Issue subpoenas, if empowered to do so under state law, if necessary
3. Assure that all relevant issues are considered.
4. Rule on the introduction of evidence and testimony.
5. Take any other action that is necessary to insure an orderly hearing.
6. The testimony at the hearing shall be recorded and may be transcribed when appropriate.
7. The parties shall be afforded the opportunity to be present, examine, and cross-examine witnesses.
8. The state hearing official may elicit testimony from witnesses, but shall not act as advocate for any party.
9. The state hearing official shall receive and include in the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof shall be made available by the party submitting the document to other parties to the hearing upon request.

10. Technical rules of evidence shall not apply to hearings conducted pursuant to this section. However, rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the state hearing official. The state hearing official may exclude irrelevant, immaterial, or unduly repetitious evidence.
11. The case record, or any portion thereof, shall be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.
12. The state hearing official shall, if feasible, resolve the dispute by conciliation at any time prior to the conclusion of the hearing.
13. At the state hearing official's discretion, other appropriate individuals, organizations, or associations may be permitted to participate in the hearing as amicus curiae (friends of the court) with respect to specific legal or factual issues relevant to the complaint. Any documents submitted by the amicus curiae shall be included in the record.
14. The following standards apply to the location of hearings involving parties in more than one state or in locations within a state that are separated geographically so that access to the hearing location is extremely inconvenient for one or more parties as determined by the state hearing official.
  - Whenever possible, the state hearing official shall hold a single hearing, at a location convenient to all parties or their representatives wishing to appear and present evidence, and with all such parties or their representatives present.
  - If a hearing location cannot be established by the state hearing official, the state hearing official may conduct, with the consent of the parties, the hearing by a telephone conference call from a state agency office with all parties and their representatives not choosing to be present at that location permitted to participate in the hearing from their distant locations.
  - Where the state agency does not have the facilities to conduct hearings by telephone, the state agencies in the states where the parties are located shall take evidence and hold the hearing in the same manner as used for appealed interstate unemployment claims in those states, to the extent that such procedures are consistent with 20 CFR 658.416, Action on JS-related complaints.

**060-G ES Complaint System: WDASOM and MWOSSC Requirements for ES Complaint System**

The following is from Title 20 CFR, Part 658.410(c)(1).

“State agencies shall ensure that centralized control procedures are established for the handling of complaints and files relating to the handling of complaints. The (MWA Complaint Coordinator) shall ensure that a central complaint log is maintained, listing all complaints received, and specifying for each complaint: (i) The name of the complainant, (ii) the name of the respondent (employer or state agency), (iii) the date the complaint is filed, (iv) whether the complaint is by or on behalf of an MSFW, (v) whether the complaint is ES-related, (vi) if the complaint is ES-related, whether it is employer-related or agency-related, (vii) if the complaint is non ES-related, the information required by 658.414(c) (see next paragraph for this information), and (viii) the action taken, including for ES-related complaints, whether the complaint has been resolved.”

The following concerns the referral of non ES-related complaints, as covered by Title 20 CFR, Part 658.414(c).

“For all non ES-related complaints received, . . . the (MWOSSC Complaint Coordinator) shall record the referral of the complaint and . . . the agency or agencies [and individual(s), if known] to which the complainant and the complaint . . . were referred on the complaint log specified in 658.410(c).”

- If an employer is found to have violated ES regulations, a statement that there will be discontinuation of services will be sent to the employer, and the employer will be given an opportunity to request a hearing. Discontinuation of Services is discussed in Section 113-C of the ES Manual.
- If the complaint is against the MWOSSC or the WDASOM, an offer to request a hearing will be given to the complainant after an unsuccessful attempt at resolution. In both situations where an offer to request a hearing is made, the complainant must respond within 20 working days.
- If a complaint concerns an employer in another state, it will be referred to the other state agency for processing.
- If a complaint involves more than one MWOSSC area, or alleges statewide practices in violation of the regulations, or involves the WDASOM Administrative Office, it will be resolved by the appropriate authority, as designated by the WDASOM Director. Typically this will be the Solicitor General’s office in the USDOL Regional Office.

**060-H ES Complaint System: Resolution of Complaints**

A complaint is considered to be resolved when any of the following conditions are met, as delineated in Title 20 CFR, Part 658.412:

- The complainant indicates satisfaction with the outcome.
- The complainant chooses not to elevate the complaint to the next level.
- The complainant or the complainant's authorized representative fails to respond within 20 working days or in cases where the complainant is an MSFW, 40 working days of a written request by the appropriate local or state office.
- The complainant exhausts the final level of review.
- A final determination has been made by the enforcement agency to which the complaint was referred.

The complainant may be asked to provide additional information. The request must be in writing, and the complainant is allowed 20 working days to respond in writing, or 40 working days if the complainant is a MSFW. When a complainant makes a timely response to the written request, new time frames are established.

**Note:** If a complaint is filed for an incident that allegedly occurred more than twelve months prior to the date when the complaint is filed, the complaint is treated as non ES-related and is processed accordingly.

**060-I ES Complaint Systems: Posters Required to be Displayed by MWOSSCs**

Required posters must be prominently displayed in all MWOSSC locations. The required posters are listed below:

- "Equal Employment Opportunity is the Law" (Federal poster number EEOC-P/E-1 {English} and EEOC-P/S-1 {Spanish} (<http://www.eeoc.gov/>)
- "If You Have a Complaint About" (State form DLEG-BWP 305) (<http://web.michworks.org/ESA/forms.htm>)
- "Have You Been Discriminated Against?" (Federal flyer in English and Spanish on blue paper) (<http://web.michworks.org/ESA/forms.htm>)
- "Michigan Law Prohibits Discrimination" (State form CR-487-E, available in Arabic, English, and Spanish) ([http://www.michigan.gov/documents/CRposter-E\\_115448\\_7.pdf](http://www.michigan.gov/documents/CRposter-E_115448_7.pdf))
- "Notice to Applicants" (State form DELEG-BWT 300-B) (<http://web.michworks.org/ESA/forms.htm>)
- "Your Rights Under the Fair Labor Standards Act" (Federal poster that shows the Federal Minimum Wage) (<http://www.dol.gov/whd/regs/compliance/posters/minwage.pdf>)

Additional copies of any of these posters may be printed by accessing the Web sites in parentheses; contact the State Complaint Specialist if unable to access Web sites.

### **060-J ES Complaint System: MWOSSC Complaints-Procedures**

- All complaints must be logged by MWOSSC staff using the form titled “Employment Service Complaint System Log,” form DELEG-BWT 301. This includes ES and non-ES-related complaints in which the complainant is referred elsewhere. Dates are entered in the Date Filed, Referred, Pending, and Resolved columns.
- If the complainant is referred to some place other than the Federal Employment Standards Administration or the Occupational Safety and Health Administration (OSHA), administered in Michigan by the Michigan Occupational Safety and Health Administration, Bureau of Safety and Regulation, indicate the name of the agency and the individual at the agency to whom the complaint is referred, if known, in the Comments column. The “Pending” column is used for unresolved ES or non-ES-related complaints.
- A copy of the log is sent to the State Complaint Specialist monthly, as required in the CFRs, Title 20 CFR, Part 658.410(c)(2). The log should be sent to the State Complaint Specialist no later than the 20<sup>th</sup> day following the end of the month.
- Complaints taken in writing must be on form ETA 8429, “Employment Service Complaint Referral Record,” and signed by the complainant. If a written complaint is received that is not on this form, but is signed and contains sufficient information to begin an investigation, the ETA 8429 is not needed.
- The complainant completes Part I, Items 1-10 on form ETA 8429, with assistance from the MWOSSC staff if necessary. Confidentiality must be maintained at all times.
- Item 8 on the ETA 8429 should contain the description of the complaint. If an additional sheet of paper is needed to complete the item, a diagonal line should be drawn from the last word on the additional sheet to the end of page, to assure that no further comments are added to the original statement. If the complainant refuses to sign the complaint, he or she will be advised, in writing, that no further action can be taken on the complaint. The complainant must also sign any additional sheets used. Part II, Items 1-12, are completed by the staff member who takes the complaint.
- Item 6 applies only to Title 7 CFR discrimination complaints.
- Item 7 notes whether or not follow-up procedures are mandated, when follow-up should occur, and the date of the first follow-up.
- Item 9 provides space for comments. Comments should include information about any other services provided to the complainant from the time the complaint was made.
- If the space provided for any of the items is insufficient, enter the words, “see reverse of form,” and enter the additional information on the reverse side.
- In addition to the completed complaint form, the file for each complaint must contain a date log of actions taken, with a record of all related correspondence and phone calls.

- All records of complaints and follow-up actions taken must be kept on file for a period of three years from the date of final resolution of the complaint. The State Complaint Specialist will maintain follow-up and communication regarding complaint resolution.
- The original of form ETA 8429 remains in the local office, except for complaints involving discrimination, interstate complaints, or complaints against other MWOSSCs. The originals of these three types of complaints are sent to the State Complaint Specialist. A copy of the complaint form, verifying that the referral was made must be given to the complainant.
- Monthly reporting of all complaints to the State Complaint Specialist is required. The report reflects the status of complaints during the specific reporting period. The report is cumulative, and is due by the 20<sup>th</sup> of the month following the reporting period. Failure to submit form DELEG-BWT 302 is a grant compliance issue.
- Complaints of the following nature must be immediately elevated to the State Complaint Specialist at the WDASOM Administrative Office. A copy of the complaint is also retained for the MWOSSC office files:
  - Complaints concerning an employer in another state
  - Complaints involving more than one MWOSSC area
  - Complaints involving statewide violation of regulation practices
  - Complaints against State of Michigan Employees

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**EMPLOYMENT SERVICE MANUAL**  
**SECTIONS: 100–110**  
**SERVICES TO EMPLOYERS**

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**101 Labor Exchange Services for Employers****101-A Labor Exchange Services for Employers: Policy**

Employment services consist of a variety of employment-related public labor exchange services to job seekers and employers. The WDASOM helps employers find qualified workers by making the MTB accessible and by providing employers with self, facilitated and mediated levels of service through the 25 MWAs, as necessary and appropriate.

**101-B Labor Exchange Services for Employers: Background**

Accessibility to the MTB, an online, self-service database that lists job seeker resumes and various job openings, is one of the labor exchange services provided by the State of Michigan to the public. The MTB facilitates employers' recruitment and selection of qualified job applicants.

The MTB database includes listings for all of the following:

Job seeker resumes

Employer job orders

Web-based resources such as:

- State Agencies
- Local Agencies
- Resume Systems
- Career Information
- Resume Writing
- Cover Letter Writing
- Job Interviewing
- Salary Negotiation
- Job Search Guides
- Business Locator

**101-C Labor Exchange Services for Employers: MWA Procedures**

- MWAs are to provide employers with access to the MTB for self-entry of job listings.
- MWAs are to provide employers with access to the MTB for self-entered searches for qualified applicants.
- Upon employer request, MWAs are to run an automated search of the MTB to provide the employers who are registered MTB users with resumes that match stated job specifications. MWAs have the option to screen or contact job seekers on behalf of employers if they wish to do so, provided that the screening procedures used do not violate federal employment laws. See Section 403-F: Compliance with Applicable Laws.
- MWAs are to provide employers with instructions for using the MTB as follows:
  - Employers must register on-line through the MTB to search through the resumes.

- Employers who are registered MTB users may post job openings directly by accessing the MTB.
- Employers who are registered MTB users may search through the job seeker resumes posted on the MTB.

#### **101-D Labor Exchange Services for Employers: WDASOM Procedures**

The WDASOM will:

- Perform random checks of job listings to assure they meet legal requirements.
- Contact employers who have entered listings with illegal components to correct the posted information.
- Take necessary action if the employer refuses to change the illegal components.

#### **101-E Labor Exchange Services for Employers: Job Order Policy**

##### **General Information**

- All job orders must be entered in the MTB.
- The MTB will be used for unsuppressed job orders. Other means of publicizing job orders are permitted, as long as they are first listed on the MTB.
- Unscreened results of MTB searches, based on an employer's search criteria will be provided to employers who are registered MTB users, but who do not wish to post unsuppressed job orders.

##### **Veterans' Preference**

- The MTB assures veterans' preference in the listing of the search results of job seekers who are available to employers. See Section 405.
- The MTB allows MWA service providers and the WDASOM staff to refer qualified veterans only for 24 clock hours after a job order is listed. During this period, no non-veterans may be referred. Job seekers and the general public will not be able to access these job orders during this 24-hour period.

##### **Job Development Activities**

- MWA service providers and WDASOM staff may develop job orders on behalf of specified targeted groups in accordance with state and federal law and make referrals prior to the order being entered into the MTB.
- When all job development referrals cannot be made within two business days, or thereafter are not filled by target group job seekers, an unsuppressed job order will be entered into the MTB. Alternatively, the unscreened results of an MTB search made using the employer's criteria will be sent to the employer, if the employer does not wish to list an unsuppressed job order; provided the employer is a registered MTB user.
- Job development orders that are filled with targeted group referrals will be entered into the MTB and immediately inactivated as an "in-and-out" order.

**101-F Labor Exchange Services for Employers: MWA Employer Database Policy**

MWAs may elect to maintain databases of information about employers with whom they do business frequently. If an MWA chooses to maintain such a database, it must not contain confidential information about the employer.

Any employer databases maintained by MWAs must not contain confidential information that is the property of the employer. Confidential information includes the employer's Federal Employer Identification Number and the employer's MTB User ID and password. The MTB User ID and password are for the sole use of the employer and must never be used by WDASOM-ES staff, MWA staff, or MWA service provider staff.

**102 MTB Business Registrations****102-A MTB Business Registrations: Background**

The State of Michigan has an obligation to the job seekers who use the MTB to ensure that the job orders that appear there represent legitimate job openings with genuine companies. The employer validation process is one of the safeguards that helps assure the integrity of the MTB system.

**102-B MTB Business Registrations: Policy**

Employers who wish to use the MTB to post job openings or to search for job seeker resumes must register with the MTB and create a User ID and password. Suppressed business registrations are not permitted. Business registrations must contain the employer's name, address, and contact information.

A suppressed business registration results when one of the following occurs:

- A WDASOM-ES staff member, MWA staff member, or MWA service provider staff member enters a business registration on an employer's behalf and does not enter complete and accurate information regarding the employer's name, address, and contact information.
- A WDASOM-ES staff member, MWA staff member, or MWA service provider staff member enters a business registration under an MWA account.

If a WDASOM-ES staff member, MWA staff member, or MWA service provider staff member enters a business registration on behalf of an employer, he/she must do so using the staff MTB menu item in the One-Stop Management Information System (OSMIS).

**103 Job Orders on the MTB****103-A MTB Job Orders: Policy****Suppressed Job Orders:**

All job orders received from employers by WDASOM-ES staff, MWA staff, or MWA service provider staff must immediately be entered into the MTB. The State of Michigan does not permit the suppression of job orders. Staff must not hold back a job order at the request of an employer, or for any other reason. The suppression of a job order is a violation of State of Michigan policy and potentially violates many state and federal laws that impact labor exchange activities. Omitting the required identifying information for the employer from a job order also constitutes a suppressed job order.

If an employer does not wish to enter an unsuppressed job order into the MTB, staff should advise the employer that they are not able to assist the employer with their job order request. Staff may, however, provide employers who are registered in the MTB with the unscreened results of searches conducted on the employer's behalf and based on the employer's search criteria, or direct these employers to the MTB to search for qualified applicants.

If a WDASOM-ES staff member, MWA staff member, or MWA service provider staff member enters a job order into the MTB on behalf of an employer, he/she must do it through the staff MTB-menu item in the OSMIS.

Other means of publicizing job orders are permitted, as long as the job orders are first listed on the MTB.

**Veterans' Preference:**

The MTB assures veterans' preference in the listing of job seekers who are available to employers. See Section 101-E for additional information about veterans' preference and Section 405 for more information about laws pertaining to veterans.

**Job Orders for Independent Contractors:**

Businesses sometimes place job orders for workers who will function as independent contractors (Self-employed status for tax purposes reported on an IRS 1099-MISC form). However, the WDASOM does not allow access to the MTB for businesses seeking independent contractors, and all such job orders will be removed by WDASOM administration staff.

**Job Orders Containing Union Specifications:**

Job orders specifying membership or non-membership in a labor organization as a condition of employment may be in violation of a federal, state, or local law. For example, it is contrary to the provisions of the National Labor Relations Act for an employer who is subject to the Act to place an order that specifies that a job seeker must be either a member or non-member of a labor organization in order to be hired.

An order that requires an employee, pursuant to an employer's agreement with a labor organization, which meets the conditions of the National Labor Relations Act, to join such an organization on or after the 30<sup>th</sup> day (7<sup>th</sup> day in the construction industry) of employment, does not violate the provisions of the Act.

**Job Orders for Third Party Employers**

When dealing with job orders for third party employers, it is important to distinguish between private employment agencies and employee leasing services. The primary difference is the employer-employee relationship:

- A private employment agency acts as an agent of the actual employer, i.e., the employer of record, by recruiting, screening, and referring a job seeker for a job opening. When the job seeker is hired, they are on the payroll of the employer of record.
- An employee leasing service provides workers to employers on a contractual basis. When the job seeker is hired, the employer of record is the employee leasing service, regardless of the company for which the employee performs the work.

Job orders from third parties who are not the employer of record are not considered bona fide job orders. These job orders can be accepted only if the third party provides a letter of authorization

from the employer of record, verifying the third party as their agent. For additional information about non bona fide job orders, see Section 104.

Third party job orders must not be entered into the MTB unless the following conditions are met:

- The third party must provide a letter from the employer of record specifically delegating hiring authority to the third party. Job orders from hidden third parties cannot be serviced.
- The third party cannot charge the job seeker a fee.
- There must be a specific job opening. The MTB cannot accept a job order for a position in development.
- Job orders must indicate, and the job seeker must be informed, of the employer of record and the location where the work will take place.
- If the job order is being placed by a private employment agency, it must contain the name of the agency and the address of the interview location.

**Job Order from a Labor Organization:**

When a job order is received from any organization for workers to picket an establishment, no referral or placement shall be made. The USES has determined that a picket is, in reality, standing in for a striking worker and is, therefore, taking the union's position in the labor dispute. The policy of the USES and its affiliated state agencies is to remain neutral in labor disputes. Job orders from labor organizations on behalf of an employer are treated as third party job orders.

See Section 103 for a discussion of third party job order requirements.

**Job Orders Involving the Use of Polygraph Examinations:**

Most private employers cannot use lie detector tests either for pre-employment screening or during the course of employment. Specified occupations are exempted from the law, but these examinations are subject to strict standards concerning their conduct and length. Details of the Employee Polygraph Protection Act are available from the Employment Standards Administration on the USDOL's Web site.

**Job Orders to Build Up Lists for Future Use:**

Job seekers should be referred only to immediate job openings on valid job orders. The MTB provides a source of qualified job seekers for all registered employers.

**Job Orders Requiring Monetary Investment:**

MWAs will not provide referral and placement services to job orders that require a substantial sum of money from the job seeker to qualify for employment.

**Job Orders Advertising Business Opportunities:**

The MTB does not post job orders for positions that are business opportunities. In order for a job order to be posted in the MTB, it must meet the following criteria:

The job posted must be for an immediate opening. Business opportunities are not considered immediate openings.

Taxes must be reported on a W-2 form. The W-2 form establishes the employer-employee relationship. If the job seeker receives only a 1099-MISC earnings statement, the job seeker is considered self-employed.

No significant monetary investment can be required of the jobseeker.

Customary licensing fees or certifications are acceptable. Application fees, purchasing kits, and work-from-home plans are not acceptable.

**Job Orders from Employers About Whom There Is Evidence or Information of Discriminatory Employment Practices:**

If MWA staff know or have reasonable grounds for believing that an employer engages in discriminatory employment practices, all services to that employer must be suspended until the employer provides the WDASOM with reasonable assurances that such practices do not or will no longer occur. MWAs should contact the State Equal Opportunity Officer at the WDASOM Administrative Office. The State Equal Opportunity Officer will investigate and take appropriate action.

Some job orders that appear discriminatory may, in fact, contain bona fide occupational qualifications (BFOQ). See Section 103-B. In the absence of BFOQ, the following federal laws prohibit discriminatory practices.

Title VII of the CRA of 1968 (Title VII) prohibits discrimination on the basis of race, color, religion, sex, or national origin.

The ADEA of 1967 prohibits age discrimination against individuals who are 40 years of age or older.

Title I of the ADA of 1990 prohibits employment discrimination against qualified individuals with disabilities.

The EPA of 1963 prohibits wage discrimination between men and women in substantially equal jobs within the same establishment.

Information about these federal laws can be found on the Web site of the EEOC.

Michigan law also protects against employment discrimination because of religion, race, color, national origin, sex, age, marital status, height, weight, arrest record, and physical and mental disabilities. The following laws apply specifically to discriminatory employment practices:

The Michigan Constitution of 1963

Michigan Public Act 453 of 1976

Michigan Public Act 220 of 1976

Further information about these laws can be found on the Michigan Department of Civil Rights Web site.

**Job Orders from Employers with Questionable Business Address:**

Job seekers should not be referred to employers whose addresses are not normal places of business, such as a hotel room or a motel.

**Job Orders from Federal Contractor Job Listings (FCJL) Employers:**

All FCJL must go into the MTB immediately in accordance with federal law imposed on the employer, under Title 41 CFR, Part 60-250.2. The only exceptions are job development job orders. The employer's address used in the job order must match the address as listed on the FCJL.

Contractors and sub-contractors with openings for jobs, other than executive or top management positions, positions that are to be filled from within the contractor's organization, and positions lasting three days or less, must list them with the MTB.

This requirement applies to vacancies at all locations of a business not otherwise exempt under the company's federal contract. Qualified targeted veterans receive priority for referral to federal contractor job openings listed at those locations.

The following procedures must be observed when processing any job orders received from FCJL contractors and subcontractors:

- The job order must be listed immediately.
- The job order must be unsuppressed.
- Veterans' preference must be observed and qualified veterans must be referred for the job opening.

Failure to follow this policy could result in compliance findings against the FCJL employers by the Office of Federal Contract Compliance Programs (OFCCP). See Section 103-B, Job Order Definitions. The OFCCP monitors employers who are required to list their job openings with the local employment service as part of their contractual obligation. When the WDASOM receives requests for job order information from the United States Veterans' Employment and Training Services, the WDASOM administrative staff check the MTB for the employer's registration and for any job orders entered into the system under that employer's name. If no records are found, the WDASOM notifies the OFCCP that the employer is not using the system.

Referrals to and placements made with FCJL employers must be reported. If a person is hired by an FCJL employer, it is important to enter his or her information into the OSMIS.

**103-B Job Orders: Definitions****BFOQ****Federal Contractor****Bona fide Occupational Qualification (BFOQ):**

A **BFOQ** means that an employment decision or request based on age, sex, national origin, or religion is based on a finding that such a characteristic is necessary to the individual's ability to perform the job in question.

**Federal Contractor:**

A **federal contractor** is defined in Title 41 CFR, Part 60-250.2 as any party entering into an agreement or modification thereof in the amount of \$100,000 or more for the procurement of supplies or personal property and non-personnel services, including construction, with any department or agency of the United States.

Any contractor or subcontractor with a contract of \$100,000 or more with the federal government must take affirmative action to hire and promote qualified targeted veterans, which include special disabled veterans, recently separated veterans, and any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

#### **104 Non-Bona Fide Job Orders**

The following types of employer requests constitute *non-bona fide* job orders. Services may not be provided to employers under any of these conditions:

Job orders that pre-designate which applicants may be referred cannot be serviced. For example, if the names of certain individuals, such as all former employees, are specified, the job order is not a bona fide job order. Only occupational specifications can be used as a basis for selection and referral.

Job orders from a third party, who is not the actual employer or in the employ of the employer, are non-bona fide job orders. These orders may not be serviced unless the third party presents a letter from the employer specifically delegating hiring authority to the third party.

Job orders for a hidden third party employer will not be serviced. Job orders must indicate and the job seeker must be informed of the employer of record, that is: on whose payroll the worker will be, the name of the company for whom the work will be performed, and the location where the work will take place. The identity of the actual employer must be known. This policy derives from the definition of an employer in [Title 20 CFR, Part 651.10](#) and from the role of the ES in administering the complaint process, enforcing nondiscrimination in service, and barring referrals in labor disputes.

Job Orders furnishing any organization, private or nonprofit, with the names of applicants for possible referral to another business firm when no specific job openings exist are contrary to the policy of the WDASOM.

#### **105 Job Order Referral Card**

When making job order referrals for job seekers, a referral card, form DLEG-BWP 200-508, is completed and given to the applicant. This referral card serves to introduce the applicant to the employer. The applicant should give the DLEG-BWP 200-508 to the employer. After making a hiring decision, the employer should complete the information on the inside right portion of the card, and return the postage-free card to the originating MWA service center.

#### **106 Out-of-State Employers on the MTB**

##### **106-A Out-of-State Employers on the MTB: Background**

Out-of-state employers request three types of job orders:

- Job orders to recruit Michigan job seekers for an employer who has a Michigan business location or who is relocating or opening a new business in Michigan.
- Job orders to recruit Michigan job seekers for a job in another state.
- Job orders to recruit Michigan job seekers covered by the TAA for a job in another state.

**106-B Out-of-State Employers (Non-Agricultural) on the MTB: Definitions****Clearance Process:**

*Clearance process* refers to out-of-state employers who work through their state's public employment service agency to recruit workers from Michigan for jobs in their state. Even though employment-related laws and regulations may vary from state to state, employers must submit job listings that comply with Michigan's laws and regulations. With the advent of the Internet, most employer recruitment from out-of-state is now done directly.

**106-C Out-of-State Employers (Non-Agricultural) on the MTB: Policy- Jobs in Michigan**

Out-of-state employers who have an existing business location in Michigan, are relocating, or are opening a new business in Michigan may register online to use the MTB by following the standard registration process. They will be contacted by MTB administrative staff, however, to verify that they have Michigan jobs and to inform them of policies that apply to them. These include assurance that there are no labor disputes, that Michigan workers will not displace workers, and that they pay the same wages for the same work. These employers may search resumes and post job orders.

**Jobs in Out-of-State Contiguous Labor Market Areas**

Out-of-state employers who are recruiting Michigan workers for a job in another state may not register to use the MTB unless the job is in a contiguous labor market area. Contiguous labor market areas include Michigan counties that border Indiana, Ohio, and Wisconsin. These out-of-state employers post their jobs using the nearest city in Michigan as the job location. In the first line of the job description, the job order must also state the actual out-of-state work location. These employers are also contacted regarding the policies mentioned above.

**Out-of-State Jobs for Job Seekers Covered by TAA**

MWAs may assist out-of-state employers who wish to recruit Michigan job seekers covered by TAA/NAFTA for a job in another state. In such situations, the employer is not given access to the MTB. The MWA posts the job order, indicating that the contact person, the application method, and any referrals are all managed through the MWA. The MWA must manage this process to ensure that TAA requirements are met.

This section applies to only non-agricultural out-of-state jobs. See Section 613 for a discussion of policies and procedures on the use of the MTB by out-of-state employers for the recruitment of agricultural workers.

**107 Non-discrimination and Servicing Affirmative Action Job Orders****107-A Servicing Affirmative Action Job Orders: Background**

Federal provisions in Title 20 CFR, Part 652.8 address the issues of non-discrimination and affirmative action. The law says that states shall:

“. . . Assure that no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any services or activities authorized under the Act in violation of any applicable nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief.”

“ . . . Assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ).”

“ . . . Assure that employers' valid affirmative action requests will be accepted and a significant number of qualified applicants from the target group(s) will be included to enable the employer to meet its affirmative action obligations.”

### **107-B Servicing Affirmative Action Job Orders: Policy**

Even if an employer is operating under an affirmative action plan, other qualified job seekers must not be excluded from referral. The work order should indicate that referrals with targeted characteristics (e.g., minority, female, or persons with disabilities) are in response to an affirmative action plan, and the employer's request for any combination of job seekers within the protected classes should be indicated. Veterans' preference must still be observed.

The only exception is when the employer is acting under court order. Job orders for the exclusive referral of a specified group of job seekers may be serviced when the employer provides proof of the court order. Qualified job seekers cannot be refused referral; however, on the basis of their not being a member of the requested group.

### **107-C Servicing Affirmative Action Job Orders: Definitions**

#### **Affirmative Action Job Order:**

An *Affirmative Action job order* is one that seeks qualified members of specified groups who have previously been discouraged from entering certain occupational fields for non-occupationally valid reasons, and that result from one of the following laws:

Executive Order No. 11246, as amended (women and minorities),

Section 503 of the Rehabilitation Act, as amended,

Section 402 of the Vietnam-Era Veterans Readjustment Assistance Act of 1974.

A court order resulting from a decision in which there was a finding of employment discrimination. An employer may indicate a job order for an exclusive group to comply with a court order.

A conciliation agreement as authorized by Title VII, CRA of 1964.

Provisions of federal, state, and local fair employment practice, law, and/or an affirmative action plan adopted pursuant to the EEOC's Guidelines on Affirmative Action.

### **107-D Servicing Affirmative Action Job Orders: Procedures**

Affirmative action job orders from employers will be serviced according to the following instructions:

- Each such job order shall contain the statement, “Affirmative Action: All qualified applicants will be referred. Target group members, e.g., women, Hispanics, etc. are encouraged to apply.”
- MWA or WDASOM staff must explain the affirmative action policy to employers and job seekers, as follows:

- MWA and WDASOM staff who provide mediated services will provide veterans' preference in referral on all job orders regardless of any other requirement of these provisions. Staff will provide veterans' preference in the following order of referral priority:
  1. Special Disabled Veterans
  2. Vietnam-Era Veterans
  3. Other Disabled Veterans
  4. Other Veterans
  5. Non-Veterans
- Within these specific veteran categories, priority may be given to women, minority members, and individuals with disabilities. If there are no qualified veterans, non-veterans will be referred.
- A job order for exclusive referral of the members of any group cannot be taken, except when specifically required by a court order.
- All criteria for selection must have a direct relationship to the tasks to be performed on the job.
- The order must be kept open long enough for MWA or WDASOM mediated staff to conduct call-in recruiting. At the time of referral, staff will explain the affirmative action nature of the order to job seekers.
- MWA or WDASOM mediated staff should maintain contact with the employer. If openings remain, staff will assure the employer that applicants may continue to be referred.

## **108 Foreign Labor Certification**

### **108-A Foreign Labor Certification: Policy**

The WDASOM will provide federally mandated services in connection with the importation of foreign labor for permanent employment.

### **108-B Foreign Labor Certification: Background**

U.S. Immigration law allows a foreign worker to become a permanent resident of the U.S. based on a job offer, only if it can be shown that qualified U.S. workers (citizens, nationals, permanent resident foreigners, temporary residents, refugees, and those granted asylum) are not available and willing to perform the job. Employers must use the foreign labor certification process to document that their hiring needs cannot be met by U.S. workers.

Procedures governing foreign labor certification found in Title 20 CFR, Part 656, spell out the employer's responsibility to recruit U.S. workers at prevailing wages and working conditions under the direction of the WDASOM. All employee applications for labor certification must meet the following requirements:

- The application must be for full-time work for an employer other than oneself.

- The application must describe a specific job opening and detail work duties, work schedule, wage offer, and minimum job requirements.

The U.S. Citizenship and Immigration Services (USCIS) of the U.S. Department of Justice advises employers that labor certification is a prerequisite for a foreign laborer to obtain a permanent resident visa (green card).

### **108-C Foreign Labor Certification: Purpose**

Section 212 (a)(14) of the Immigration and Nationality Act states that foreigners who wish to immigrate to the U.S. solely for the purpose of employment may obtain a visa only if the U.S. Secretary of Labor certifies to the U.S. Secretary of State and to the U.S. Attorney General that the following conditions have been met:

- There are no U.S. workers available who are able, willing, and qualified to perform the work.
- The employment of the foreign worker will not adversely affect the wages and working conditions of U.S. workers in similar jobs.

### **108-D Foreign Labor Certification: Definitions**

H-1B Labor Condition Application Certification

H-2A Temporary Agricultural Certification

H-2B Temporary Certification

Permanent Labor Certification

Prevailing Wage Rate

All of the forms described in the following sections may be obtained by contacting Foreign Labor Certification (FLC).

#### **H-1B Labor Condition Application Certification:**

The *H-1B Labor Condition Application Certification* allows employers to bring foreign workers, who have a Bachelor of Science Degree or higher, into the U.S. on a temporary basis. The initial review is done at the USDOL Regional Office and requires that form ETA 9035 be submitted in duplicate. FLC provides Prevailing Wages upon request. The review must be completed and mailed within seven calendar days. The approval is good for three years and can be renewed once.

#### **H-2A Temporary Agricultural Certification:**

*H-2A Temporary Agricultural Certification* refers to the process of obtaining one or more foreign workers during a specific activity period. For temporary agricultural work status, employers must file form ETA 9142 and ETA 790, the Food Processing Clearance Form with the USDOL Regional Office. An additional copy must be sent to the WDASOM. The Regional Office contacts FLC to place a job clearance order and to obtain a prevailing wage survey for the particular job in the area of intended employment.

#### **H-2B Temporary Certification:**

*H-2B Temporary Certification* refers to the process of bringing one or more foreign workers into the U.S. to work on a temporary non-agricultural basis. Employers must file form ETA 9142 in duplicate with FLC for initial review. The FLC transmits the application to the USDOL Regional Office for final review and determination. Form I-129 INS must accompany the application when it is submitted to the Immigration and Naturalization Service (INS) for

temporary work status. Temporary Labor Certification is good for one year. Seasonal applications must be filed at least 60, but not more than 120 days, prior to the start date of the job.

**Permanent Labor Certification:**

*Permanent Labor Certification* refers to the process of bringing a foreign worker into the U.S. to work on a full time permanent basis. Employers must obtain a Labor Certification form from the USDOL prior to filing for permanent residency with the USCIS. The Labor Certification process requires an employer to file Forms ETA 9089 by mail (USDOL, ETA, 844 N. Rush Street 12<sup>th</sup> Floor, Chicago, IL 60611) or online. View or download ETA 9089 on the USDOL Web site, or learn more about the application process by visiting USDOL's Permanent Labor Certification page.

**Prevailing Wage Rate:**

A *prevailing wage rate* for an area is the arithmetic mean of wages paid to a representative sample of employed workers in the area. Prevailing wage rates are determined by contacting, in the area where the job is located, employers who hire workers performing the same or similar activities. If there are not enough employers in the immediate area, the geographic area is extended to include an adequate number of employers in the same labor market.

**108-E Foreign Labor Certification: MWA Procedures**

Refer the employer or the employer's legal representative to FLC.

**108-F Foreign Labor Certification: WDASOM Procedures**

- When an employer, or an employer's agent, requests assistance in securing a labor certification for temporary work on behalf of a foreign worker, FLC will process the application.
- Upon request, FLC will provide employers with the form ETA 750A, Offer of Employment.

Employers will be instructed to send all completed forms to the FLC.

- Upon request by FLC, the Meeting Employer Needs Division conducts a prevailing wage survey to determine wages if the job is **not** covered by one of the following acts or agreements:
  - The Davis-Bacon Act.
  - McNamara-O'Hara Act.
  - An organized collective bargaining agreement.
  - A current area wage survey (within the preceding year).
- Job seekers are interviewed and the results reported to FLC.
- Employers and foreign workers may have agents represent them in the labor certification process. Employers and foreign workers using agents must sign the following forms:
  - U.S. Department of Justice G-28

- ETA 750 A
- Upon receipt of the application from the employer, FLC will verify the completeness of the forms and determine if the job offer meets all of the following requirements:
  - Prevailing wages,
  - Working conditions, and
  - Allowable minimum requirements of education, training and experience.
- After review of the application package, FLC will process the application.
- The USDOL Regional Office will issue a determination to the employer and the foreign worker. Advance copies of the decision are sent to FLC. If the request for certification is not approved, the employer is given appeal process instructions.

## **109 Fidelity Bonding**

### **109-A Fidelity Bonding: Policy**

A Fidelity Bond is a business insurance policy of the Travelers Property Casualty Insurance Company that protects an employer against employee stealing, forgery, larceny, or embezzlement. The Fidelity Bonding program is an incentive for employers to hire job seekers who are qualified, but who are considered high risk because of some factor in their personal background. The program allows employers to obtain workers without taking a risk and allows high-risk job seekers to find work. The WDASOM sponsors this program and will provide Fidelity Bonding for job seekers who have a bona fide offer of employment.

Those eligible for this program include the following individuals:

Ex-offenders

Former substance abusers

At-risk youth

Public Assistance recipients

People with poor credit histories

Those lacking a work history

Those who have been dishonorably discharged from military service

Anyone else who cannot be commercially bonded

### **109-B Fidelity Bonding: Procedures**

Either the employer or the job seeker can request the bond. A bond can be issued to the employer as soon as the job seeker has an offer. Workers must be of legal working age in order to qualify. Self-employed people, independent contractors and entrepreneurs are not eligible for this program. Workers must be paid wages with federal withholding taxes automatically deducted to be eligible for Fidelity Bonding. Fidelity bonding is free for the first six months coverage. The employer determines the amount of the bond based on job liability, ranging from

\$5,000 to \$25,000 with no deductible amount, although bond requests over \$5,000 must be justified with an explanation of why the higher bond amount is necessary.

- MWA staff who assist job seekers and employers in the bonding process will request the following:
  - A letter written on the employer's letterhead offering the job seeker full-time employment of at least 30 hours per week and at least six months duration. The letter must state the job title, rate of pay, conditions of work, i.e., the job duties and responsibilities, and the employment starting date. The job seeker's name and address, including the city and zip code, are also required. The letter must state that the offer of employment is conditional upon the job seeker receiving a Fidelity Bond. The letter must be signed with the original signature of the person who has the authority to hire the job seeker, and the name and position of the hiring authority, for example, Owner, President, Chief Executive Officer, Hiring Manager, etc., must be typed beneath the signature.
  - If an additional dollar amount is necessary, the employer must include a justification statement in the offer of employment letter that supports the need for a larger bond in multiples of \$5,000, to a maximum of \$25,000.
- MWA staff should complete the Fidelity Bond Certification form DLEG-BWP 100-150 and forward it, by mail, to WDASOM's Fidelity Bonding Coordinator. The original form must be sent for processing. Facsimile copies are not acceptable.
- The bond request will be entered into the bonding database, an "Official Bond Insurance Stamp" will be affixed, and the bond will be forwarded to the McLaughlin Company, the agent for the Travelers Property Casualty Insurance Company.
- MWA staff will notify both the employer and the job seeker in writing that the form has been processed and that written acknowledgment will come from the McLaughlin Company.

It is important to screen all bond application inquiries so that only bona fide offers of employment are processed.

The free-of-charge bond is mailed directly to the employer. The job start date is the effective date of the bond insurance. The bond insurance expires after six months; however, the employer may purchase continued coverage from the Travelers Property Casualty Insurance Company. The employer may contact the insurance company, or an MWA office to extend the bonding insurance coverage.

MWA staff should keep records to monitor the end of the first six months coverage, to remind the employer and to offer assistance in extending the insurance coverage.

## **110 Discontinuation and Reinstatement of Services to Employers**

### **110-A Discontinuation and Reinstatement of Services to Employers: Policy**

The WDASOM will provide employment services to all employers, consistent with federal and state laws and regulations. Employers may be denied use of the MTB for illegal or prohibited activities. All services will be discontinued to employers who misuse them until such time as the prohibited activity is corrected or ended.

Employers are notified of pending discontinuance of services.

Services will be reinstated if the employer submits evidence demonstrating that the prohibited activities have ended and that policies to prevent their recurrence have been instituted.

Services may be discontinued immediately and without warning if, in the opinion of the WDASOM or its designees, immediate action is necessary to prevent substantial harm to a significant number of job seekers.

### **110-B Discontinuation and Reinstatement of Services to Employers: Definitions**

#### Employment-related laws

#### USDOL or WDASOM Regulations

#### **Employment-related laws:**

*Employment-related laws* refer to a variety of federal and state laws that provide for non-discriminatory consideration and equal employment opportunities for members of protected classes, such as minority group members, individuals with disabilities, older workers, etc. The term also includes laws governing the general workplace, such as minimum wage laws, child labor laws, safety and environmental protection acts, laws governing organized labor activities, etc. Rather than list all of the applicable laws, Title 20 CFR, Chapter 5 refers to them in the collective as "employment-related laws." Employers are responsible for knowing these laws and applying them to their individual employment practices as required.

#### **USDOL or WDASOM Regulations:**

*USDOL or WDASOM regulations* refers to policies, procedures, or operating instructions developed by USDOL or the WDASOM to carry out the mandates of a particular piece of legislation. These regulations are typically issued in the CFR and in state level policy manuals.

### **110-C Discontinuation and Reinstatement of Services to Employers: Background**

The basis for discontinuance of services to employers and the reinstatement of services is summarized in Title 20 CFR, Chapter 5. Reasons for discontinuance of services include:

- Refusing to alter or withdraw a job listing that contains specifications contrary to employment-related laws,
- Refusing to provide assurances that the job offered is in compliance with employment-related laws,
- Failure to comply with assurances made in a job listing,
- Misrepresenting the terms or conditions of employment in a job listing,
- Refusing to cooperate with the investigation of a complaint alleging misrepresentation of employment terms or conditions,
- Being discovered to be in violation of employment-related laws by an appropriate enforcement agency, provided that the enforcement agency notifies the WDASOM of the violation,
- Refusing to accept qualified workers referred through the clearance process,
- Repeated violations that cause discontinuance actions to be initiated, or
- Violating USDOL or WDASOM regulations.

**110-D Discontinuation and Reinstatement of Services to Employers:  
WDASOM Procedures**

- MWA staff will monitor job listings for compliance with employment related laws and regulations and assist employers to modify illegal listings.
- If the employer is unable or unwilling to modify the job listing, MWA staff will request the employer to withdraw the listing from the MTB. Should the employer refuse to modify or withdraw the listing, the staff will notify the Talent Bank Help Desk who will immediately suspend services for 20 days or until a decision regarding permanent termination is made.
- If the employer does not respond in an affirmative manner, the WDASOM Director, or their designee, will terminate services to that employer as follows:
  - Revoke the employer's password to MTB,
  - Inactivate all of the employer's current job listings in MTB, and
  - Notify other enforcement agencies, where appropriate, for further follow-up with the employer.
- The WDASOM Director, or their designee, will notify the ETA Regional Office immediately of discontinuance of service in the case of an employer subject to FCJL requirements.
- To ensure due process and protection of the employer's rights in an action to discontinue services, all actions taken by the WDASOM are subject to the following appeal process:
  - The Director of the WDASOM will promptly schedule a hearing at which the parties may present their contentions on the issue, to be conducted under federal rules Title 20 CFR, Part 658.417 and Title 20 CFR, Part 658.418.
  - The Director may, at his or her sole discretion, suspend or defer any notices or actions pending against the employer pending the outcome of a scheduled hearing.
  - If either party is unwilling to accept the results of the hearing, an action may be instituted by them in any Michigan court of competent jurisdiction.

The appeal process described in this section is intended to provide an administrative remedy for disagreements resulting from discontinuation of services to an employer. It is not intended to limit or otherwise constrain the parties from pursuing any other remedy they may have before the law.

**110-E Discontinuation and Reinstatement of Services to Employers: MWA Procedures**

MWAs will monitor job listings of employers in their respective areas and will immediately notify the MTB Help Desk if any job listing meets any of the following criteria. MTB staff may remove any job listings that:

Seek to fill a position involved in a labor dispute, including filling a vacancy caused by a worker on strike, or for the purpose of picketing an employer involved in a labor dispute,

Would require a job seeker to pay a fee to be referred to an employer,

Would require a significant monetary investment by the job seeker,

Are posted when there is no immediate vacancy,

Require the job seeker to perform an illegal activity,

Contain explicit sexual or vulgar language,

Indicate that the job seeker will not be paid according to Michigan's minimum wage laws,

Indicate the job seeker will not receive overtime pay for working over 40 hours in any week,  
unless the position is considered exempt, or

Contain discriminatory specifications that would exclude applicants based on race, color,  
religion, national origin, sex, or age; or, that ask job seekers to report to an address that is not  
a normal place of business, such as a hotel or motel room.

**EMPLOYMENT SERVICES MANUAL**  
**SECTIONS: 200–204**  
**SERVICES TO JOB SEEKERS**

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## 200 Talent Bank Registration

### 200-A Talent Bank Registration: Policy

Any job seeker, whether collecting UI or not, may enter his or her resume into the MTB. When a claim is filed for UI, the claimant must have a resume in the MTB in order to receive compensation, unless this requirement has been waived by the UIA. Under Wagner-Peyser regulations, every customer who visits a One-Stop Service Center is also eligible for mediated services. Therefore, the MTB resume entry process includes a step in which a mediated services registration is automatically created for all users who enter their resume into the system through any MWA computer.

The MWA staff must provide assistance if a job seeker is unable to enter a resume on his or her own. Staff must also assist job seekers in resolving any records' conflicts that might arise and prevent their mediated services registrations from being entered into the OSMIS database.

### 200-B Talent Bank Registration: Definitions

#### Person with a Disability

#### Qualified Disabled Job Seeker

#### **Person with a Disability:**

A *person with a disability* is described as any person who has a physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, walking, seeing, learning, etc. A person is also considered disabled if there is a record of such a disability. If a person is denied employment because of the employer's conclusion that he or she is a potential risk, the person may also be considered disabled.

#### **Qualified Disabled Job Seeker:**

A *qualified disabled job seeker* is a person with a disability who is capable of performing the essential duties of the job for which he or she is being considered, with reasonable accommodation to the particular disability.

### 200-C Talent Bank Registration: MWA Procedures

- To be considered for employment and registered for work, a job seeker must enter his or her resume into the MTB. If a job seeker needs assistance with this process, the MWA staff will provide the necessary help.
- The registration process consists of entering a page of confidential demographic information, entering contact information, choosing a User ID, creating a Personal Identification Number (PIN), and creating a resume. To insure privacy, the registration is a secure transaction to the Talent Bank.
- Information needed to enter a resume into the Talent Bank includes\*:
  - **Confidential demographic information:** This includes the applicant's Social Security Number (SSN), as well as other personal information. The information on this confidential page is private and is not accessible to employers or other MTB users.

**Personal information:** This includes only the personal contact information that is necessary for the completion of the resume, including name, complete address, and a phone number where the applicant can be contacted by potential employers.

- **Job title and occupation:** Up to three job titles may be entered, but at least one must be entered.
- **Job Objective:** A brief description of the type of work desired.
- **Job Location:** Cities or zip codes in which one wishes to work.
- **Employment history:** Employer, address, dates employed.
- **Education, licenses, and certificates:** Schooling, training, and any appropriate licenses or certificates.
- **Honors and activities:** May include civic awards, clubs, and organizations.
- **Availability and salary:** Desired pay and employment type. (Regular, Temporary, Seasonal, Internship) and employment availability (full-time, part-time).
- **Notes and other information:** Free flow area to add information such as “willing to relocate.”

\*The confidential demographic information, personal information, employment objective, job location, job title, education and desired employment type information are required. The other data fields within the resume are optional.

- A job seeker may update or change his or her resume at any time, either when it is being initially entered or after it is in the MTB.
- A job seeker’s resume remains active in the MTB, as long as he/she continues to update it. However, if a job seeker does not update his/her resume within one year, the system will automatically inactivate the resume. The inactive resume can still be accessed by the job seeker for one year if he/she chooses to reactivate it. However, after one full year of inactivity, the system will delete the resume permanently from the database. If the job seeker is collecting UI and is required to register for work, their resume must remain in the MTB while unemployment compensation is being collected. It is recommended that the job seeker update his/her resume every 30 days, as employers may conduct resume searches that exclude resumes that have not been recently updated.
- Assistance in completing a resume will be provided if the job seeker cannot enter a resume on his or her own. The MWA staff will only question the job seeker for information that is pertinent to employment. At this time, the staff member may also determine the need for counseling, testing, or other services and may refer the job seeker to the appropriate resource.
- All MSFWs are entitled to the full range of services, including testing, counseling, and job and training referral services.

- AES can assist MSFWs with MTB and with locating supportive services. The MWA staff will facilitate resume entry and an MTB search, as necessary.
- Staff must make reasonable accommodations to assure services are accessible to those job seekers who may need them.

## **201 ES Registration Verification for UI Claimants**

### **201-A ES Registration Verification for UI Claimants: Policy**

The WDASOM is responsible for the administration of the work test required by the Michigan UI system.

### **201-B ES Registration Verification for UI Claimants: Background**

The WDASOM is responsible for administration of the UI work test. The work test helps to assure that UI claimants receive exposure to job opportunities and helps to demonstrate that claimants are meeting the basic requirements for receiving UI benefits: they are able, available, and seeking employment and did not refuse any suitable employment.

### **201-C ES Registration Verification for UI Claimants: Registering For Work- Procedures**

#### **Resume Entry:**

To register for work, claimants must enter a resume of their job experience and education into the MTB Web site.

The resume can be entered at an MWA office or from any Internet connection available to the claimant. Regardless of where the resume is data entered, all claimants must take their resume application and registration verification form, UIA 1222-M, available from the UIA, and report in-person at an MWA location. The UIA advises claimants to complete a resume and report to an MWA location *within five (5) business days of filing their claim*. Resumes placed on the MTB remain active for one year. Claimants are instructed to update their resume each time a new claim is filed.

#### **Verification of Claimant Registration:**

Although claimants can data enter their resume into the MTB on any PC terminal with an Internet connection, claimants must go in person to an MWA office where the MWA staff will view the claimant's online MTB resume before verifying to the WDASOM that the claimant has registered for work. After the claimant reports to the MWA office, the MWA staff sends an electronic file transmitting the claimant's validated registration data to the WDASOM. This data is then downloaded into the UI mainframe, where the MWA registration date is posted to the claimant's UI records.

It is the entry of a registration date that allows benefit payment. If a claimant enters his or her resume into the MTB but fails to report in-person to the MWA, the UI system will not allow benefit payment, even though the claimant is registered for work.

The following steps will be taken during the MWA visit:

- After the claimant completes the entry of his or her resume into the MTB, he or she must inform an MWA staff person that the resume is entered and that he or she is a claimant for unemployment benefits.

- The MWA staff will verify that the resume is in the MTB and enter the claimant's SSN, check digit, UIA branch office number, and the registration date into the OSMIS. The SSN, check digit and branch number are provided in the "Office Use Only" section of the MTB application by UIA staff. This information must be reported in the OSMIS system prior to 6:30 p.m. each day. This assures that the claimant's UI checks are not delayed due to failure to send registration verification.
- The MWA must retain the MTB Worksheet, form DLEG-BWP 200-01, for five business days and must date-stamp UIA form UA 1222 and return it to the claimant for use as back-up verification of their registration. After five days, provided that the claimant's resume has been successfully posted to the MTB, the MWA may discard the MTB Worksheet by shredding it. The worksheet must be shredded when it is discarded due to the confidential information that it contains.
- Each evening the WDASOM prepares an electronic file containing claimant registration data for downloading into the UIA automated system. The file is electronically transmitted into the UIA automated system on the same day that the claimant registers for work. The UI system matches the SSNs in the electronic file with the SSNs on the UI claim records. When a match is found, the UI system enters the registration date onto the appropriate UI claim records based on the transmitted SSNs.

#### **201-D ES Registration Verification for UI Claimants: Retrieving MTB User IDs and PINs for UI Claimants- Background**

The MTB has a Lookup utility that allows MWA staff to retrieve lost or forgotten User IDs and PINs for job seekers. MWA staff may request access to the MTB Lookup utility through the OSMIS contact person in their office, or through their MWA director.

#### **201-E ES Registration Verification for UI Claimants: Retrieving MTB User IDs and PINs for UI Claimants: Policy**

User IDs and PINs are strictly confidential and may only be revealed to the job seeker. Failure to comply with the state policy governing the use of the MTB Lookup utility is a violation of the confidentiality requirements mandated by the WDASOM. See Section 050.

The following rules must be complied with when making use of the MTB Lookup utility:

- A job seeker's User ID and PIN may never be released to anyone other than the job seeker.
- A job seeker's User ID and PIN may never be given to a spouse, an employer, or any other third party.
- If a job seeker requests their User ID and PIN in person, a valid form of identification, such as a driver's license or a student ID, must be provided.
- If the job seeker does not have valid identification available, he or she must provide the address or phone number that matches the address or phone number on the resume record in the MTB.
- If the job seeker cannot produce the required identification, or provide the address or phone number on their resume record, the User ID and PIN cannot be released. The applicant must

complete a new registration and resume in the MTB if they wish to continue to use the system.

- The MTB Lookup utility may not be used for any purpose other than providing a User ID or PIN to a job seeker. It may never be used to access a resume without the job seeker's permission.

For additional information about using the MTB Lookup utility, contact the MTB Help Desk.

### **201-F ES Registration Verification for UI Claimants: UIA Work Test Non-compliance-Procedures**

The UIA work test helps to assure that UI claimants are able, available, and seeking employment and did not refuse any suitable employment. These are the basic requirements for receiving UI benefits. It is the responsibility of the ES provider to report to the UIA any incident of claimant non-compliance. Claimant non-compliance includes not being able to work, not being available to work, not seeking work, or refusing offers of suitable work.

If an MWA provides a job referral for a claimant and the claimant fails to respond to the referral or to report for a job interview, or if it otherwise comes to the attention of the MWA that a UI claimant is in violation of work test requirements, the MWA must report the non-compliance to the UIA using form DELEG BWT 303, the Claimant Advice Slip.

It is solely the responsibility of the UIA to advise UI claimants regarding Unemployment Insurance benefits eligibility. MWAs are not to attempt to explain the UIA work test requirements to claimants. Claimants are to be advised to address all inquiries about the work test and UIA eligibility requirements to the UIA and be provided referral to UIA-written materials.

### **201-G ES Registration Verification for UI Claimants: Waivers of Eligibility Requirements for UI Claimants**

In order for a UI claimant to continue to collect unemployment benefits while attending training or school, the claimant must be available for and seeking full-time work. A claimant who is not available and seeking work due to enrollment in training may have those requirements waived if the training meets the criteria outlined in BWT Policy Issuance 06-31 and its changes. Waivers of eligibility requirements exempt claimants from the requirement that they be available and seeking full-time work each week. MWAs are responsible for verifying whether the training meets the criteria outlined in BWT Policy Issuance 06-31 and its changes and advising the UIA as to whether or not a waiver should be granted. Final approval for a UI eligibility waiver is made by the UIA, after the UIA receives all required eligibility waiver request forms and documentation from the MWA. Procedures and the associated forms for processing UI waiver requests are outlined in BWT Policy Issuance 06-31 and its changes.

## **202 Unemployment Insurance (UI) Claimant Services**

### **202-A UI Claimant Services: Background**

Effective December 1, 2004, the UIA and the WDASOM entered into a Memorandum of Understanding stating that, as One-Stop partners, the UIA and WDASOM shall work collaboratively to provide certain basic services to the public served by both agencies, thus

providing a basis for each party to provide occasional basic services to the customers of the other party.

### **202-B UI Claimant Services: Policy**

Individuals who visit an MWA service center seeking assistance with a claim for unemployment benefits must be provided certain accommodations. These accommodations include the use of office equipment, such as telephones, fax machines, computers, and photocopying equipment, and the provision of basic information. The MWA director has sole discretion to determine when the use of office equipment by a UI claimant is needed for the UIA program. The MWA director may also suspend an individual's use of office equipment if it is determined that the equipment is being misused. It is appropriate, however, to allow a UI claimant access and use of service center equipment to make contact with the UIA.

### **202-C UI Claimant Services: Procedures**

MWAs must verbally provide information and/or make printed materials available in One-Stop service centers describing unemployment compensation matters. MWAs must not provide information of a technical or a legal nature; however, regarding unemployment compensation, including how to file an UI claim. MWAs and the WDASOM may not provide any advice to UI claimants regarding their claims. MWAs, when approached by UI claimants with questions regarding unemployment compensation, may only provide a referral to the printed materials or to one of the following:

- The Claims Filing/Inquiry Line at: 1-866-500-0017 or at: 1-866-366-0004 for TTY callers
- The Claimant Customer Relations Hotline at: 1-800-638-3995
- The Michigan Automated Response Voice Interactive Network (MARVIN) at: 1-866-638-3993
- The UIA Web site at: <http://www.michigan.gov/uia>
  - A UIA Problem Resolution Office. Addresses of UIA Problem Resolution Offices can be found at the UIA Web site listed above.

## **203 Profiling Unemployment Insurance Claimants**

### **203-A Profiling Unemployment Insurance Claimants: Background**

As a condition for receiving Title III grants, states are required by federal law to implement and utilize a system of profiling for all new regular Unemployment Compensation claimants. Profiling identifies UI claimants considered most likely to have an extended duration of unemployment or to exhaust their benefits before finding a job. Early intervention, through profiling, can help claimants find suitable employment before their UI benefits are exhausted. Profiling focuses on claimants who will receive a UI payment within five weeks of filing.

### **203-B Profiling Unemployment Insurance Claimants: Policy**

- MWAs must provide reemployment services to UI claimants who are designated as mandatory-profiled claimants by the state UIA. MWAs do not have the flexibility to choose to not provide reemployment services to mandatory profiled claimants. Each MWA will receive a weekly profiling list from the UIA. Those UI claimants whose names are marked

with an asterisk on the profiling list must be scheduled to receive reemployment services within a week to ten days.

- MWAs may also choose to provide reemployment services to additional individuals from the profiling list (voluntary-profiled claimants). Doing so is not required under the terms of the state's profiling policy.
- Reemployment services for profiled claimants must be funded with Wagner-Peyser ES 7(a) dollars.
- An Individual Service Strategy (ISS) must be created for all mandatory profiled claimants who can benefit from employment services.
- Claimants may be included in services at another location as necessary. Travel to another location is not to exceed fifty miles, or one hour, one-way.
- Under no circumstances can an MWA excuse a mandatory-profiled claimant from a profiling information session. Mandatory-profiled claimants with schedule conflicts at their assigned times cannot be rescheduled. Those who are working, but under-employed are still obligated to participate in profiling information sessions. For all mandatory-profiled claimants, failure to attend the session must be noted on the Profiling Services screen in the One-Stop Management Information System (OSMIS) and reported to the UIA. Claimants may contact the UIA regarding the scheduling conflict as explained in the UIA letter. Only the UIA can determine whether a claimant had good cause for failure to attend.

### **203-C Profiling Unemployment Insurance Claimants: Procedures**

In accordance with Policy Issuance 07-25 and subsequent changes, MWAs must perform the following:

1. Receive the weekly profiling list from the UIA, type in the date, time and location of the profiling session that each claimant is to attend; and return the list to the UIA;
2. Hold Profiling Information sessions for claimants;
3. Identify claimants who can benefit from employment services, assist these claimants in creating an ISS, and implement the ISS activities; and
4. Ensure data collection on mandatory-profiled claimants in the OSMIS.

### **203-D Profiling Unemployment Insurance Claimants: Reporting**

To comply with federal requirements, a Mediated Service Registration must be created for all mandatory-profiled claimants, as well as, voluntary-profiled claimants who attend a profiling information session.

The MWAs must verify that claimants have a Mediated Service Registration entered in the OSMIS and must update each registration by entering the correct profiling membership code, from the Membership Code Maintenance page. The Mandatory-Profiled membership code must be entered for all mandatory-profiled claimants. The Voluntary-Profiled membership code must be used for voluntary-profiled claimants who choose to participate.

The MWAs must report attendance to UIA on the original profiling list spreadsheet by marking “Attended” or “Did Not Attend” for each mandatory-profiled claimant. The spreadsheet must then be returned to the UIA profiling coordinator within three days of the profiling information session.

For mandatory-profiled claimants who will benefit from employment services, the MWAs must enter the ISS into the OSMIS. For mandatory-profiled claimants who will not benefit from employment services, the MWAs must note in the OSMIS that the claimant is excused.

The MWAs must enter all employment services provided using the Assistance box on the Enter Wagner-Peyser Services page in the OSMIS within three days of the time of the service. The MWAs must enter the actual date that the services are provided.

Once the ISS has been completed, the MWA must use the Profiling Services screen in the OSMIS to report completion and must update the ISS to indicate when the plan was completed.

If the claimant has been designated as a mandatory participant by the UIA, any failure on the part of the claimant to participate in the orientation or the scheduled services must be documented in the OSMIS.

It is the responsibility of the UIA Profiling Coordinators to determine any action that will be taken against an individual’s claim in the event of non-compliance with profiling requirements.

## **204 Vocational Rehabilitation Services**

### **204-A Vocational Rehabilitation Services: Policy**

Vocational rehabilitation services are available to every job seeker with a physical or mental disability that may:

- Interfere with the job seeker's adjustment to a work situation,
- Prevent the job seeker from obtaining or retaining employment that fully utilizes his or her abilities, or
- Cause the job seeker to experience difficulty maintaining steady employment.

### **204-B Vocational Rehabilitation Services: MWA Procedures**

- All standard services are available to the disabled job seeker, with or without assistance from the MWA staff. Service to persons with disabilities should be provided in the most integrated setting possible. This means no separate or different treatment is provided, unless it is requested or required in order to provide equally effective services. Equally effective means equivalent, but does not necessarily imply equal results, identical treatment, or identical results. If available, a MRS staff person can assist disabled persons in their employment search and in locating supportive services and training programs.
- Staff should describe to persons with disabilities which services are available and where to obtain them.
- Staff should not use criteria to assess or refer the job seeker that may result in discrimination because of a disability.
- Referral should be made to MRS for assessment and specific information regarding available rehabilitation services.
- All job seekers with disabilities referred from MRS must be provided with placement assistance as part of the rehabilitation process.

**EMPLOYMENT SERVICE MANUAL**  
**SECTIONS: 300–303**  
**COUNSELING AND ASSESSMENT**

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### **301 Counseling and Assessment**

#### **301-A Counseling and Assessment: Policy**

It is the policy of the WDASOM that MWAs provide counseling services to veterans, MSFWs, and persons with disabilities, as well as other job seekers who can benefit from these services. Career counseling is available only in areas where an Employment Counselor is employed. WDASOM Vocational Counselors are also available to provide consultation services to MWA service providers.

#### **301-B Counseling and Assessment: Definitions**

Career Guidance

Employment Counseling

Individual Service Strategy

##### **Career Guidance**

*Career guidance* is the process whereby trained individuals give information and advice to job seekers to help them answer questions or find information about vocational topics, career Web sites, and other self service job search tools.

##### **Employment Counseling:**

*Employment Counseling* is the process whereby professionally qualified, fully trained individuals help job seekers gain a better understanding of self in relation to the world of work. Employment counseling enables job seekers to choose or change occupations realistically and to make appropriate career decisions. Employment counselors explore and evaluate the job seeker's education, training, work history, interests, skills and personal traits, and arrange for interest, aptitude and other tests when appropriate. Employment counselors assist job seekers in identifying other work related issues and make referrals to appropriate agencies for assistance. They also work with individuals to develop job search skills and assist job seekers in locating and applying for jobs.

##### **Individual Service Strategy (ISS):**

An *ISS* is an electronic or a written document that specifies a planned series of actions leading to employment. See Section 301-D.

#### **301-C Counseling and Assessment: MWA Employment Counseling Procedures**

Veterans or Migrant, Immigrant, and Seasonal Workers who appear to need career guidance should be referred to the local veteran's representative or the migrant services worker, as appropriate, for this service. Job seekers with disabilities and other job seekers in need of in-depth services should be referred by the MWA staff to a bona fide employment counselor.

Job seekers who may benefit from counseling include the following:

Those who are inexperienced and have no, or questionable, vocational goals.

Those who are experienced but who wish or need to change occupations.

Those who need training.

Those who need services from other agencies.

Those who encounter difficulty finding employment.

**301-D Counseling and Assessment: Career Guidance Procedures**

WDASOM-Veterans Representatives, WDASOM-Migrant Service Workers, or other staff employed by Michigan Works! partners may provide career guidance to job seekers who are in need of assistance in general job search information after being successfully trained in career guidance. Career guidance includes helping job seekers as they explore careers through such tools as O\*NET OnLine, Michigan Occupational Information System, America's Career Infonet, or Labor Market Information. Career guidance also consists of exploring educational sites for training information and selection, assisting job seekers with resumes, cover letters and letters of applications, interviewing techniques, and discovering employers suitable for the work they are seeking.

**302 Adverse Impact****302-A Adverse Impact: Definition**

*Adverse impact*, in a pre-employment screening situation, occurs when a particular race, sex, or ethnic group experiences a substantially lower rate of selection.

**302-B Adverse Impact: Background**

In 1978, the EEOC, the Civil Service Commission (now the U.S. Office of Personnel Management), the Department of Labor (DOL), and the Department of Justice jointly issued the Uniform Guidelines on Employee Selection Procedures. Under certain conditions, the Guidelines prohibit the use of a test or selection procedure that creates adverse impact.

The Guidelines state, in CFR 29, Volume 4, Chapter XIV, Part 1607.10, that the use of a private or a state employment agency, "...does not relieve an employer or labor organization or other user of its responsibilities under federal law to provide equal employment opportunity . . . ." The Guidelines also state that, "Where an employment agency or service is requested to administer a selection procedure which has been devised elsewhere and to make referrals pursuant to the results, the employment agency should maintain and have available evidence of the impact of the selection and referral procedures which it administers."

The method for calculating the presence of adverse impact is the four-fifths or 80 percent rule. Adverse impact exists when the selection rate of a protected group is less than 80 percent of the group with the highest selection.

**302-C Adverse Impact: Policy**

If an MWA agrees to screen applicants for an employer, that MWA is legally responsible for ensuring that the selection criteria used in the screening process does not have an adverse impact on any group of job seekers. They are also responsible for retaining a record of the applicants and the criteria used for referring them to the employer and for establishing referral criteria that are consistent with the following requirements:

Criteria must be applied fairly and consistently.

The established criteria must not discriminate against any applicant on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation.

The criteria must be based only on qualifications needed for the job.

Criteria that are acceptable are:

Education  
Type of degree  
Licenses  
Certifications  
Years of experience

### **302-D Adverse Impact: Testing and Adverse Impact Policy**

Title I of the Civil Rights Act of 1991 prohibits score adjustments, the use of difference cut-off scores for different groups of test takers, and the alteration of employment-related test results based on the demographics of the test taker. Race or within-group norming procedures are unacceptable practices for avoiding adverse impact.

Please be advised that Wagner-Peyser funds **may** be used to administer WorkKeys assessments and/or other similar assessments to identify job seekers' skill levels, competencies, and abilities. Such assessments may be used to assist employers in identifying appropriate candidates for jobs, as well as assisting in the development of an individual's ISS.

If an MWA chooses to use assessment scores to assist an employer with its candidate selection process, scores used are to be used in conjunction with other appropriate selection criteria, not as the sole criterion. If an MWA agrees to screen applicants on an employer's behalf, the MWA is to retain records of assessment scores and all other selection criteria used, in order to provide documentation that a fair and reasonable selection process was conducted.

## **303 Occupational Testing of People with Disabilities**

### **303-A Occupational Testing of People with Disabilities: Policy**

In general, individuals with physical disabilities that seriously affect test performance should not be tested. The American With Disabilities Act of 1990 (ADA) (PL 101-336) prohibits employers from discriminating against individuals on the basis of actual or perceived disabilities and requires employers to reasonably accommodate individuals with disabilities.

The ADA has major implications for testing practices:

Job seekers with disabilities are responsible for informing the test administrator that an accommodation is needed. MWAs may request documented proof that an accommodation is needed and the type of accommodation, but the MWA may not inquire about the nature of the disability.

Reasonable accommodation may involve making the test site accessible or using an alternative test procedure. Under the terms of the ADA, it is prohibited to administer employment tests to individuals with disabilities that require those individuals to make use of their impaired abilities. This is true unless the tests in question are intended to measure one of these abilities. If a test serves to systematically screen out individuals with disabilities, it must be shown that the test is job-related and is a business necessity.

Decisions related to ADA accommodations for testing are made only after direct consultation with the Director of the Accelerating Employment Division.

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**EMPLOYMENT SERVICE MANUAL**  
**SECTIONS: 400–405**  
**EMPLOYMENT SERVICE SYSTEM, SPECIAL GROUPS**

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**400 Employment Service (ES) System****400-A ES System: Introduction**

In accordance with CFR 652.2, the basic purpose of the employment service system is to improve the functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking workers. In accordance with CFR 652.207, a state must have the capacity to deliver labor exchange services to employers and job seekers, as described in the Wagner-Peyser Act, on a statewide basis through self-service; facilitated self-help service; and staff-assisted/mediated service. These services are described in the following sections.

**400-B ES System: Self Services**

The state's employment service system must assist job seekers in finding employment by providing access to the MTB and giving them instruction in how to use the system. Job seekers' resumes are maintained in the MTB for up to one year. It is the responsibility of the job seeker to renew his or her registration in the MTB system every twelve months.

Employers are also to be provided access and direction in how to use the MTB system.

**400-C ES System: Facilitated Services**

If a job seeker or an employer has difficulty using the MTB labor exchange system due to lack of literacy or computer familiarity, a disability, lack of access to the system, or some other barrier, *facilitated* access must be offered to the job seeker or employer.

**400-D ES System: Mediated Services**

MWAs and ES staff members also must make available *mediated* services. The mediated services to be made available to jobseekers include:

- Job development.
- Job search planning.
- Job search workshops.
- Assessment and testing services.
- Career guidance.
- Specific labor market information.
- Resume writing assistance.

The services above must be provided through contracted, public merit-staffed employees. The WDASOM and the MWAs provide additional services for veterans, migrant, immigrant, and seasonal workers, persons with disabilities, and others.

Documentation and reports to the federal government are required for all mediated services. Examples and definitions of facilitated and mediated services are provided in Section 401.

**401 Facilitated and Mediated Services: Definitions and Examples**

The following list defines the various facilitated and mediated services to be provided for job seekers and employers by ES personnel.

**Job Seeker Resume Entry:**

The *facilitated services* to be made available to those wishing to enter a resume in the MTB include:

Demonstration of the resume entry process.

Advice on the selection of a password or a user ID.

Assistance with Internet navigation.

Assistance with key entry.

Data entry of the job seeker's resume into the system for those unable to do so.

Printing of the resume for the job seeker.

Making copies of the resume for the job seeker.

The *mediated services* to be made available to those wishing to enter a resume in the MTB include:

Providing instructions to job seekers on the content and format of resumes and cover letters.

Assisting job seekers with the development of resumes and cover letters.

**Job Seeker Search Activities:**

The *facilitated services* to be made available to jobseekers that wish to search the MTB for employment include:

Demonstrating how the database search function works.

Assistance with navigation.

Suggesting search alternatives.

Explaining different types of searches.

Helping select appropriate search criteria.

Entering the search for job seekers, based on criteria defined by the job seeker, for job seekers who are unable to do so.

Giving directions on how to reach the employer's location.

Faxing a resume to an employer at the job seeker's request.

The *mediated services* to be made available to job seekers include:

**Job Search Workshops:** Job Search Workshops provide instruction on resume writing, preparation of job applications, interviewing skills, and development of job leads as an organized group activity.

**Job Finding Clubs:** Job Finding Clubs are similar to Job Search Workshops; however, Job Finding Clubs also include a structured, supervised application component that typically lasts

from one to two weeks. During this time, job seekers apply what they learned in the workshop and attempt to obtain jobs.

***Specific Labor Market Information:*** The MWA is to provide information to job seekers concerning occupational staffing patterns, hiring patterns, working conditions, and the rates of pay for specific employers or industries.

***Job Search Planning:*** The MWA is to develop, with and for job seekers, a plan outlining a series of actions designed to lead to employment as appropriate. Job Search Plans include the steps necessary and the timetables required to obtain employment in a specific occupation, industry, or geographic area. Job Search Plans also specify the employment and training services that the job seeker needs in order to obtain a job. Job Search Plans are not necessarily written documents.

***Job Development:*** MWA employees are to contact specific public or private employers in person, by telephone, or by mail to solicit a job interview for a specific job for a qualified job seeker for whom there is no suitable job opening in the MTB.

### **Job Orders**

The ***facilitated services*** to be made available to employers wishing to enter a job order in the MTB include:

Demonstrating the employer registration and job order entry process.

Assisting with navigation or directly entering the employer registration into the MTB.

Assisting with or entering unsuppressed job orders for MTB registered employers who do not have Internet access.

Accepting job orders over the phone or by fax for entry into the MTB for MTB registered employers who do not have Internet access.

Advising employers on local wage rates.

Advising employers of labor market characteristics or of the availability of labor.

The ***mediated services*** that are to be made available to employers who enter a job order in the MTB include:

Conducting searches, screening resumes, and only sending a selected group of job seekers to the employer. See Section 403-F: Compliance With Applicable Laws.

Contacting job seekers who have been identified in a search to tell them about the opening and to make referrals.

Contacting job seekers who have been identified in a search to make interview appointments.

Contacting job seekers who have been identified in a search to conduct additional screening at the employer's request. See Section 403-F: Compliance With Applicable Laws.

### **Employer Search of the MTB:**

The ***facilitated services*** to be made available to employers who wish to conduct a search of the MTB include:

Demonstrating the MTB search capabilities.

Advising employers of search alternatives to refine or expand the number of matches.

Assisting employers to navigate through the search screens.

Entering searches for employers who do not have Internet access using criteria specified by the employer.

Downloading, printing, mailing or faxing all resumes that match the employer search criteria.

#### **Miscellaneous ES:**

Miscellaneous *facilitated services* that are to be made available to employers by the MWA include:

Assisting employers with recruitment by advertising job openings and conducting job fairs.

Distributing and collecting employer applications. See Section 403-F: Compliance With Applicable Laws.

Posting casual/day labor job openings on bulletin boards in resource areas for job seeker self-selection and referral.

Posting state, county, and local civil service job opportunities.

Miscellaneous *mediated services* that may be provided to employers by the MWA include:

Conducting reference checks of selected job seekers.

Administering proficiency tests and other testing\*\*.

**\*\*Note:** Although various MWA staff members may administer proficiency and aptitude tests, only a qualified Employment Counselor may interpret these tests and other measuring instruments for the purpose of assisting the job seeker in obtaining his or her employment goals.

#### **Miscellaneous Job Seeker Services**

Miscellaneous *facilitated services* to be made available to job seekers by the MWA include:

The distribution of Civil Service applications.

Allowing the use of office equipment, where available, to practice typing and word processing skills.

Assisting with access to self-assessment tools.

Miscellaneous *mediated services* to be made available to job seekers by the MWA include:

Making referrals to supportive service agencies: The MWA is to refer job seekers as appropriate to any agency that may provide supportive services, e.g., the Area Council on Aging, the Department of Human Services, Migrant Services, the Urban League, the Red Cross, MRS, the Veteran's Administration, etc.

Bonding Assistance: See Section 112: Bonding Procedures.

The MWA is to provide several types of career guidance to job seekers:

*Career Guidance:* See Section 301: Counseling and Assessment.

*Individual Service Strategy (ISS):* See Section 301: Counseling and Assessment.

*Referral to Training:* The MWA is to refer job seekers to local community, state, or federally funded job training programs as appropriate.

## **402 Instructions for Mediated Services Reporting**

The OSMIS is used to report services provided to jobseekers by ES providers at MWAs. All mediated services are reported online. Some of the mediated services that are reported on the OSMIS include ISS, job development, job referrals, and placements. Talent Bank registrations and claimant non-compliance can also be reported using the OSMIS. For additional information about the OSMIS and instructions or training for using the system, the WDASOM manager of the One-Stop Management Information System section is to be contacted.

## **403 Referral of Job Seekers for Placement**

### **403-A Referral of Job Seekers for Placement: General Information**

Referral of job seekers for placement on job orders is one of the services MWAs may choose to provide under Wagner-Peyser Act labor exchange funding.

### **403-B Referral of Job Seekers for Placement: Background**

The CFRs, Title 20 CFR, Parts 651-658, specifies a number of requirements that must be met for Wagner-Peyser labor exchange referral and placement. The code provides specific definitions for activities such as job referral, placement, and entered employment.

### **403-C Referral of Job Seekers for Placement: Definitions**

#### Entered Employment

#### Job Referral

#### Placement

#### **Entered Employment:**

*Entered employment* is defined by the ET Handbook No. 406 (ETA 9002 Data Preparation Handbook) as the count of registered job seekers who, in the quarter of registration, or in the first or second quarter following the registration quarter, received staff-assisted services, and who in the first or second quarter following the registration quarter, earned wages from a new or different employer than that from which the registered job seeker earned wages in the quarter prior to registration.

#### **Job Referral:**

*Job referral* means the act of bringing to the attention of an employer, an applicant or group of applicants who are available for specific job openings and the record of such a referral. Job referral applicants are those selected through a screening process as best fitting the employer's hiring requirements. This is distinguished from simply sending the employer all the results of a MTB search without additional screening. Using mass mailing or e-mail for the purpose of notifying applicants of a job opening should not be considered a job referral.

#### **Placement:**

*Placement* means the hiring by a public or private employer of an individual referred by the employment office or by other cooperating, co-located, or out-stationed staff, provided that the employment office completed all of the following steps:

Placed a job order on the MTB on behalf of an employer, or accessed one placed through self-service on the MTB prior to the referral, except in the case of a job development contact on behalf of a specific job seeker. See Section 401 for further information about job development activities.

Made prior arrangements with the employer for the referral of one or more job seekers.

Referred a job seeker who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker.

Verified from a reliable source, preferably the employer, that the job seeker had entered the job.

Recorded the placement appropriately.

#### **403-D Referral of Job Seekers for Placement: Procedures**

**Record Keeping:** Records of job seeker referrals are kept through the OSMIS reporting system. Paper backups of records may be kept locally but can be destroyed after entry.

#### **403-E Referral of Job Seekers for Placement: Policies**

The WDASOM is committed to the following general policies that govern procedures involved in the referral and placement process:

- To accept an application on the MTB from any job seeker, without regard to their place of residence, current employment status, or occupational qualifications.
  - To obtain from job seekers only that information that is necessary to determine qualifications for employment and facilitate placement in a job, and such additional information as may be required by the government.
  - To give priority in referral and selection to qualified veterans and to give disabled veterans priority over other veterans.
  - To extend no preference in referral to any job seeker or group of job seekers except in accordance with legal requirements.
  - To ensure, so far as practicable, that job seekers suitably qualified for job openings are referred to employers or matched with job orders through the MTB.
  - To require documentation of job seeker qualifications for job openings only when the employer's requirements are performance related, and when obtaining evidence of qualifications is not an undue hardship for the job seeker.
  - To make no referral that would result in a fee being charged to the job seeker.
  - To make no referrals, or assist either directly or indirectly, in filling a job that is available because:
    - The former occupant is on strike or is being locked out in the course of a labor dispute.
    - The job is an issue of a labor dispute.
    - An individual may be referred to fill an undisputed job at a place of employment where a labor dispute exists; however, provided the job seeker signs form DLEG-BWP 200-503, acknowledging that they have been informed of the existence of the dispute.
-

- To make no referral to a position in which the services to be performed or the terms or conditions of employment are contrary to federal, state, or local law.
- To recruit no workers for employment in which the wages, hours, or other conditions of work are substantially inferior to those prevailing for similar work in the same locality.
- To give equal consideration on the basis of qualifications, insofar as practicable, to all job seekers who have indicated their availability for employment, without regard to their presence in the office at the time of selection.
- To recruit agricultural workers within the state, for employment in another part of the state, only if a valid order exists.
- After due process, to discontinue all services to employers who fail to comply with ES regulations and employment-related laws regarding job specifications and employment conditions. See Section 110-C, Discontinuance of Service to Employers.

#### **403-F Referral of Job Seekers for Placement: Compliance with Applicable Laws**

MWAs may distribute and collect employer application forms as a facilitated service for employers. Employers whose application forms are distributed and collected by an MWA, or who are provided with screening, referral, and placement services through the Wagner-Peyser funded labor exchange must be in compliance with employment-related laws, regulations, fair employment practices, and statutory requirements of the USDOL ETA and WDASOM.

#### **Distributing and Collecting Employer Application Forms:**

Distributing and collecting employer applications and returning the completed, unscreened applications to the employer is a facilitated service that is available to all employers who have a job order posted on the MTB. If an MWA agrees to distribute and collect application forms for an employer; however, it is responsible for the content of those forms and for ensuring that no inappropriate information, such as age, sex, race, national origin, religion, marital status, disability, or political affiliation is requested on the form by the employer.

If an MWA agrees to distribute and collect application forms for an employer, it must also sort the collected applications and submit all of the known veterans' applications first to insure that veterans' preference is observed.

#### **Screening Employer Application Forms:**

When an MWA elects to screen applications or resumes for an employer, that MWA is acting as the employer's agent, and, as such, is responsible for ensuring that state and federal employment-related laws are not violated during the course of the screening process.

MWAs are also responsible for knowing whether employers for whom they conduct screening have an affirmative action plan in place, for abiding by the requirements of the employer's affirmative action plan, and for establishing fair and consistent screening criteria. These criteria are:

- Level of education
- Type of degree
- Licenses or certifications
- Years of experience

- Skills and abilities

Records must be retained by the MWA to document the criteria used and the methods employed to conduct the screening. MWAs are also responsible for retaining any records relevant to the determination of whether unlawful employment practices were committed as a result of the screening process, including, but not limited to, a list of all the job seekers who applied for the position.

MWAs that agree to screen applications for employers accept responsibility for compliance with state and federal employment regulations. This does not apply exclusively to Wagner-Peyser funded activities, but is true regardless of which funding source is used to finance these types of labor exchange services.

#### **403-G Referral of Job Seekers for Placement: Wages**

Wages, pay rates, and payments for labor in Michigan are governed by two laws:

- The federal Fair Labor Standards Act of 1938, as amended, that applies to employers engaged in the production of goods for interstate or foreign commerce. It also applies to state and local government employees engaged in traditional government activities. Specific information is available on the USDOL Web site.
- The Michigan Minimum Wage Law of 1964, as amended, established regulations for all of the following for employees covered by the law:
  - Minimum wages
  - Overtime pay
  - Equal pay
  - Record keeping

Specific information is available from the Wage and Hour Division of the State Web site.

#### **403-H Referral of Job Seekers for Placement: Prevailing Wage Laws**

Contractors who perform work on state construction projects financed in whole or in part by state funds or federal funds in excess of \$2000, must pay their employees no less than the prevailing wages in the locality where the work is performed. Prevailing rates are generally determined by occupation and by county. The relevant state law is No. 166, Public Acts of 1965. The relevant federal law is known as the Davis-Bacon Act.

Information may be found on these laws by contacting the WDASOM.

#### **403-I Referral of Job Seekers for Placement: Veteran Preference in Referral**

MWA service providers and WDASOM staff may refer only covered persons (veterans and eligible spouses) for a period of 24 clock hours after employer job orders are listed on the MTB.

#### **403-J Referral of Job Seekers for Placement: Job Orders**

Most job orders found on the MTB are placed there directly by the employer, although MWAs do occasionally enter job orders on the MTB at an employer's request. When an MWA enters a job order, the accuracy and legality of the information contained in the order is held to a higher standard than on a self-service job order. MWAs may deny referral and placement services to employers whom they determine are not acting in good faith. They may not deny employers

access to MTB self-service. See Section 101-C. For a detailed description of the various types of job orders found on the MTB, see Section 103.

#### **404 Job Order Referral Follow-Up**

- Reported referrals and placements must include the associated Job Order Number. In the MTB, when a Job Order is accessed, the Job Order Number appears in the upper right hand corner of the Web page. Referrals and placements submitted without a Job Order Number will be returned for completion prior to data entry.
- Job Development Referrals may be reported in two ways:
  - Report the Job Development (JD) attempt, or
  - Write a job order and record a referral.
- If the job seeker is hired as a result of a JD attempt, an order must be written to report the referral and placement.
- Referrals to and placements made with FCJL employers must be reported. The latest revision to form DLEG-BWP 200-517 includes a column for indicating if an employer is an FCJL employer. A listing of all FCJL employers is distributed on a monthly basis per the Michigan Works! System Job Order Policy issued on August 18, 1998.

#### **405 Veterans**

##### **405-A Veterans: Background**

Federal and state legislation provides for special attention to veterans' access to USDOL-funded workforce development services, including Wagner-Peyser funded employment services. This legislation includes:

- **Jobs for Veterans Act (JVA): P.L.107-288, 38 USC 4215**

The JVA provides that veterans and eligible spouses of veterans are identified as covered persons and are entitled to priority over non-covered persons for the receipt of employment, training, and placement services provided under new or existing qualified job training programs, notwithstanding any other provision of law.
- **The Wagner-Peyser Act, as amended by the WIA of 1998:**

The Wagner-Peyser Act designates the WDASOM as the state agency vested with all powers necessary to cooperate with the USES, including services to veterans under the applicable laws.
- **Title 38, U.S. Code, Veterans Benefits:**

Title 38 CFR, Chapter 41 requires that counseling and training, when available, as well as job placement services be provided for all veterans in each state and directs the Secretary of Labor to establish policies and procedures for carrying out the mandates of Title 38 CFR. It also provides for the LVER and the DVOW.

Title 38 CFR, Chapter 42 requires federal contractors to list jobs with the state job service and provide hiring preference for veterans (FCJL program). It also makes veterans eligible for federally funded training programs, such as WIA and Economic Dislocation and Worker

Adjustment Assistance Act, by requiring that military pay and allowances be disregarded as income.

- **Veterans Right to ES Act: P.A. 39, 1994:**

The Veterans' Right to ES Act provides that: "an agency or department that administers a federally or state funded ES or job training program, including a service or program administered under the WIA, P.A. 97-300, 96 Stat. 1322, shall to the extent permitted by federal law, provide to a veteran who is a candidate for a program or service both of the following:

- Effective and equitable services, including effective and equitable employment and training services.
- Referral assistance and a pamphlet prepared by the WDASOM that identifies employment services, job training services, and related benefits available to that veteran through other agencies or departments. The contents of the pamphlet are available for review in the Forms section of the ES Web site, <http://web.michworks.org/ESA/forms.htm>. MWAs may obtain copies of the pamphlet by contacting the State Veterans' Coordinator. A veterans' benefits postcard in 4" x 6" format describing the various benefits and resources that are available to eligible veterans is also available on the ES Web site. MWAs may use the file on the Web site to print their own supply of postcards, if they so desire.

- **Priority of Service for Covered Persons; Final Rule: 20 CFR Part 1010, Federal Register, Volume 73, Number 245, Friday, December 19, 2008**

20 CFR Part 1010 implements priority of service in qualified job training programs prescribed in section 2 (a) (1) of the JVA. 20 CFR Part 1010 adopts and applies the term *covered person*, which includes *veterans*, as defined by the statute, and *eligible spouses*, as defined by the statute. 20 CFR Part 1010 requires that covered persons are identified at the *point of entry*, and requires that processes are implemented to ensure that covered persons are aware of: (i) Their entitlement to priority of service; (ii) The full array of employment, training, and placement services available under priority of service; and (iii) Any applicable eligibility requirements for those programs and/or services.

The WDASOM shall prepare and submit to the standing committee for the Department of Military and Veterans' Affairs an annual written report that identifies:

Each of the ES, or job training services, or programs provided by the department to veterans,

The procedures employed by the department to ensure compliance with the act.

**405-B Veterans: Definitions**

Active Duty

Covered Person

Disabled Veteran

Eligible Veteran

Local ES Office

Other Covered Veteran

Other Eligible Person

Recently Separated Veteran

Special Disabled Veteran

Veteran

Veterans Employment and Training Service

Vietnam Era Veteran

**Active Duty:**

Under federal law, *active duty* is defined as full-time duty in the Armed Forces, other than duty for training in the reserves or National Guard. Any period of duty for training in the reserves or National Guard, during which an individual was disabled from a disease or injury incurred or aggravated in the line of duty, is considered “active duty.”

**Covered Person:**

In accordance with 20 CFR Part 1010, covered persons include eligible spouses and veterans, as defined by federal regulations.

**Disabled Veteran:**

Under federal law, a *disabled veteran* is defined as either of the following:

- A veteran who is entitled to compensation or, but for the receipt of military retirement pay, would be entitled to compensation under the laws administered by the Department of Veterans Affairs, and who is not classified as a special disabled veteran.
  - A veteran who was discharged or released from active duty because of a service-connected disability.

**Eligible Veteran:**

Under federal law, an *eligible veteran* is defined as either:

- A person who served on active duty for a period of more than 180 days and was discharged or released from service with other than a dishonorable discharge.
- A person who was discharged or released from active duty because of a service-connected disability.

**Local ES Office:**

A *Local ES Office* is a service delivery point at which ES are offered in accordance with the Wagner-Peyser Act.

**Other Covered Veteran:**

Under federal law, an *other covered veteran* is defined as any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge was authorized. Examples include Haiti, Somalia, and Grenada. This also included members of the Reserve and the National Guard.

**Other Eligible Person:**

Under federal law, an *other eligible person* is defined as one of the following:

- The spouse of a veteran who died of a service-connected disability.
- The spouse of any member of the Armed Forces serving on active duty who, at the time of application for assistance, has been listed in one of the following categories for more than ninety days:
  - Missing in action.
  - Captured in line of duty by a hostile force.
  - Forcibly detained or interned in the line of duty by a foreign government or power.
- The spouse of any person who has a total disability that is permanent in nature resulting from a service-connected disability.

**Recently Separated Veteran:**

A *recently separated veteran* is defined as a veteran whose date of discharge was within 12 months of the date when services were requested.

**Special Disabled Veteran:**

Under federal law, a *special disabled veteran* is defined as a veteran entitled to disability compensation, or as one who would be entitled to disability compensation, except for the receipt of military retirement pay, under the laws administered by the Department of Veterans Affairs, for a disability rated in one of the following ways:

- 30 percent or more.
- 10 or 20 percent in the case of a veteran who has been determined under United States Code (USC) Title 38 CFR to have a serious employment disability.
- A service-connected disability that resulted in a release or discharge from active duty.

**Veteran:**

Under federal law, a *veteran* is defined as any of the following:

- A person who served on active duty for a period of more than 180 days and was discharged or released from service with other than a dishonorable discharge.
- A person who was discharged or released from active duty because of a service-connected disability. In this case, there is no duration of service requirement.

- A person who served on active duty during a period of war, or in a campaign for which a campaign badge was authorized, and was discharged or released from such duty with other than a dishonorable discharge.

The definition of *veteran* specified by the regulations for priority of service is functionally equivalent to the definition enacted by the WIA and codified at 29 U.S.C. 2801(49)(A).

### **Veterans Employment and Training Service:**

The *Veterans Employment and Training Service* refers to the Veterans Employment and Training Service of the ETA of the USDOL.

### **Vietnam Era Veteran:**

Under federal law, a *Vietnam era veteran* is defined as any veteran who meets one of the following requirements:

- One who served on active duty in the Vietnam theatre of operations during the period from 02/28/1961 to 05/07/1975, inclusive.
- One who served on active duty during the Vietnam era but did not serve in the Vietnam theatre of operations during the period from 08/05/1963 to 05/07/1975, inclusive.

**Notes:** These definitions are based on the veterans' definitions found in Title 38 CFR, Chapter 1, Part 4, Sections 4.1 and 4.2. See that document for additional information. A complete listing of those periods and theaters of operations for which campaign badges were authorized is available on the Veterans' Preference System Web site. For additional information about veterans and veterans' benefits, see the Veterans' Program Letter.

### **405-C Veterans: Policy and Application of Priority of Service**

It is the policy of the WDASOM to provide mandated services to veterans in accordance with federal and state laws, rules, and regulations and to provide veterans with access to the same services as the universal population. WDBs are contracted to provide services to all job seekers, including veterans. The MWA must provide self, facilitated, and *mediated services* for veterans and other eligible persons at MWA locations, including priority in referral to employment, qualified job training programs, and special programs for veterans.

In accordance with the JVA and 20 CFR 1010, priority of service to covered persons (veterans and eligible spouses) must be implemented in all qualified job training programs, including Wagner-Peyser-funded employment services. As defined in section 2(a) of the JVA (38 U.S.C. 4215(a)) "priority of service" means, with respect to any "qualified job training program," that a covered person shall be given priority over a non-covered person for the receipt of employment, training, and placement services provided under that program, notwithstanding any other provision of the law.

Federal regulations define a "qualified job training program" as any program or service for workforce preparation, development, or delivery that is directly funded, in whole or in part, by the Department of Labor. The Wagner-Peyser/Employment Service program is considered a qualified job training program.

Priority in the context of providing priority of service to veterans and eligible spouses of veterans in qualified job training programs means the right to take precedence over non-covered persons in obtaining services.

Depending on the type of service or resource being provided, taking precedence may mean:

- 1) The covered person receives access to the service or resource earlier in time than the non-covered person; or
- 2) If the service or resource is limited, the covered person receives access to the service or resource instead of or before the non-covered person.

Accordingly, MWAs are to grant covered persons priority over non-covered persons in the provision of employment services, including the provision of job search assistance, resume preparation, interviewing assistance, referral to employment, and referral to other qualified job training programs.

For programs with existing targeted provisions, veterans' priority must be applied by assessing a person's status in light of both the veterans' priority and the existing provisions. It is important to distinguish between targeting provisions that are statutory and mandatory and those that are regulatory and/or optional. For example, certain targeting provisions are derived from a statutory mandate which requires a priority or preference for a particular group of participants or requires spending a certain portion of program funds on a particular group of participants. These are mandatory priorities. Veterans' priority is a statutory mandate, but one that is not intended to displace the core function of the program. For these programs, veterans' priority is applied as follows:

An individual meeting both the veterans' and the mandatory priorities or spending requirement or limitation would obtain the highest preference for the program.

Non-veterans within the program's mandatory priority would receive preference over eligible veterans outside the program-specific mandatory priority or spending requirement or limitation.

Eligible veterans outside the program-specific mandatory priority or spending requirement or limitation would receive priority over non-veterans outside the priority or spending requirement or limitation once the spending requirement or limitation is met.

Other targeting provisions may require the program to focus on a particular group of participants, or to make efforts to provide a certain level of service to such a group, but do not specifically mandate that the favored group be served before other eligible individuals. These are discretionary or optional priorities. In the case of all such discretionary priorities, veterans' priority takes precedence over them. Veterans priority must be implemented in advance of the opportunities and services provided to the population group covered by the optional priority.

In the case of the Worker Profiling Program, veterans' priority of service must be applied as follows: Claimants with the highest probabilities of exhaustion, including veterans, will still be referred to services first. This means that non-veterans with a higher probability of exhaustion will be referred ahead of veterans with a lower probability of exhaustion. However, in cases where the statistical model produces identical probabilities for a number of claimants, veterans will receive priority in referral to service.

#### **405-D Veterans: MWA Policy**

Federal and state legislation provides for special attention to veterans' employment problems and requires that both self-service and mediated services be provided to veterans and other eligible persons. This legislation includes, but is not limited to:

Wagner-Peyser Act.

Title 38 USC, Chapter 41, Veterans Benefits.

Veterans Right to Employment Services Act: P.A. 39, 1994.

Title 38 as amended by PL 107-288, "The Jobs For Veterans Act."

MWAs must provide priority in referral to employment, priority in referral to training programs, and special programs for veterans at all MWA locations.

The MTB assures veterans' preference in the listing of employers' search results through the priority listing of resumes. The MTB also suppresses posted job orders from access by the general public for 24 clock hours to allow MWA service providers and WDASOM staff to refer only qualified veterans during this time period. Within this time frame, no non-veterans may be referred.

The following is a list of some of the services that must be provided to veterans by MWAs.

- The MWA will provide equitable access to employment and training services for veterans at one or more service delivery points in each local MWA service area.
- The MWA will also provide a pamphlet identifying employment services, job training services, and related benefits available to veterans through other agencies or departments, and referral assistance to veterans in accessing those services. MWAs may obtain copies of the state pamphlet by contacting the WDASOM State Veterans' Coordinator. The contents of the pamphlet are available for review in the Forms section of the ES Web site.
- A veterans' benefits postcard in 4" x 6" format describing the various benefits and resources that are available to eligible veterans is also available on the ES Web site. MWAs may use the file on the Web site to print their own supply of postcards, if they so desire. Additionally, local Veterans' Representatives should be able to supply eligible veterans with a list of local services and contacts.
- The MWA will provide facilitated access for veterans if the veteran has difficulty or is unable to participate in the MTB due to lack of computer familiarity, literacy, disability, lack of access to the system, or some other barrier.
- The MWA will provide physical space and facilities for WDASOM staff co-located within MWA service delivery points.
- WDBs and MWAs are expected to provide mediated services to veterans.

Also see Section 001 for specific policy relative to veterans' preference on job orders.

### **Identification at the Point of Entry**

Pursuant to 20 CFR 1010, MWAs are required to implement processes to identify covered persons at **the point of entry** to ensure that covered persons are provided the opportunity to take full advantage of priority of service. In addition to identifying covered persons at the point of entry, MWAs must ensure that covered persons are informed of their:

- (i) Entitlement to priority of service;
- (ii) The full array of employment, training, and placement services available under priority of service; and
- (iii) Any applicable eligibility requirements for those programs and/or services.

In addition to providing covered persons the information above, MWAs are to provide covered persons the state-developed pamphlet identifying employment services, job training services, and related benefits available to veterans through other agencies or departments, and referral assistance to veterans in accessing those services. MWAs may obtain copies of the state pamphlet by contacting the WDASOM State Veterans' Coordinator. The contents of the pamphlet are available for review in the Forms section of the ES Web site.

### **405-E Veterans: WDASOM Policy**

The USDOL Veterans' Employment and Training Service (VETS) has advised states that their ES are required to provide preference to eligible veterans in all of their workforce development programs. The Michigan Talent Bank system is designed to implement system-wide veterans' priority in compliance with these federal requirements.

The WDASOM will assist in carrying out all federal mandates for the provision of services to veterans. A description of these federal policies as found in Title 38 USC, Chapter 41 is provided here.

The Title 38, CFR, Chapter 41, 4103 (b) (2) mandates provide for the following activities by the Secretary of Labor:

- The Secretary of Labor will appoint and assign a State Director of VETS, as provided in Title 38 USC. The Director of VETS (DVET) shall be attached to the public employment service of the state while remaining responsible to the Secretary.
- The Secretary of Labor will monitor and functionally supervise, through the assignment of the DVET and the DVET staff, the expenditure of Disabled Veteran Outreach Program (DVOP) and LVER funds.

The Title 38 CFR, Chapter 41, 4103 (c), Chapter 1, Part 41 provides for the following activities by the DVET:

- The DVET will promote and facilitate veteran participation in federal and federally funded employment and training programs. The DVET will also be responsible for directly

monitoring the implementation and operation of such programs to ensure that eligible veterans, recently separated veterans, disabled veterans, and eligible persons receive such priority or other special consideration as is required by law or regulation.

- The DVET is also responsible for ensuring that complaints under the FCJL are resolved in a timely fashion.
- The DVET will provide assistance with the improvement of working conditions and promote the employment of eligible veterans and eligible persons.
- The DVET will evaluate the services provided to eligible veterans and eligible persons at each local employment service office at least once a year and make recommendations for improvements, as necessary.

The Title 38 CFR, Chapter 41 federal mandates provide for the appointment and assignment of full-time LVERs. Funding for the state's associated administrative expenses is provided by contract or grant in each state.

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**EMPLOYMENT SERVICE MANUAL**  
**SECTIONS: 500–523**  
**AGRICULTURAL LABOR EXCHANGE**

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## 500 Agricultural Labor Exchange

This section contains information about regulations affecting the recruitment, selection, and referral of agricultural workers. The topics covered include:

Domestic and migrant agricultural workers, and migrants and seasonal farm workers (MSFWs).

The conditions and regulations affecting the importation of foreign workers.

The development of relationships and working agreements with employers, workers, local, state and federal agencies.

The requirement for collection, gathering, and distributing agricultural labor market data.

The extensive 1980 federal MSFW regulations have also been interpreted to assure statewide consistency of application. The services and protections awarded are tightly controlled and closely monitored. All MSFWs applying for ES must have a resume placed in the MTB.

### 500-A Agricultural Labor Exchange: Background

The Wagner-Peyser Act and federal Title 20 CFR, 651-658 describes the major objectives of the agricultural placement program as follows:

To serve all agricultural employers and job seekers without discrimination or preference, except as may be required by law or regulations, and

To ensure delivery of employment and supportive services to MSFWs on a basis that is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

### 500-B Agricultural Labor Exchange: Definitions

Agricultural Worker

Migrant Farm Worker

Migrant Food Processing Worker

Seasonal Farm Worker

#### **Agricultural Worker:**

An *agricultural worker* is a worker whose primary work experience has been farm work in industries classified in the 2002 North American Industry Classification System (NAICS) [formerly the 1987 Standard Industrial Classification (SIC) Manual] under Major Group 11: Agriculture, Forestry, Fishing and Hunting, or Group 311: Food Manufacturing. This definition of an agricultural worker applies whether the individual is a citizen or an alien who is legally allowed to work in the U.S.

#### **Migrant Farm Worker:**

A *migrant farm worker* is a seasonal farm worker who must travel to do the farm work so that he or she is unable to return to his or her permanent place of residence within the same day.

**Note:** Full-time students who are not traveling as members of a family group are excluded.

**Migrant Food Processing Worker:**

A *migrant food processing worker* is a person who meets the criteria of a *migrant farm worker* but who works in food processing, as classified in the 2002 NAICS (formerly the 1987 SIC Manual).

**Seasonal Farm Worker:**

A *seasonal farm worker* is any worker who was employed in the following manner during the preceding 12 months:

Worked at least 25 days, or parts of days, doing farm work.

Earned at least half of his or her earned income from seasonal farm work.

Was not employed in farm work year-round by the same employer.

**Note:** Full-time students are excluded from this definition.

**500-C Agricultural Labor Exchange: ES Procedures**

Each local WDASOM service delivery location will offer MSFWs the same facilitated services that are offered to non-MSFWs, except in cases where mediated services are provided to MSFWs only. In providing such services, the MWA service center staff shall consider and be sensitive to the preferences, needs and skills of individual MSFWs and the availability of job and training opportunities.

When a MSFW applies for ES or is contacted by an AES the available services will be explained to the MSFW. This explanation of services shall be made in Spanish, if necessary or requested.

**501 MTB Resume****501-A MTB Resume for Agricultural Workers: Policy**

A MTB resume is required of MSFWs in order for them to be eligible for ES services. If the MSFW wishes to register for the full range of available ES services, the resume that they enter into the MTB must be complete. An AES or designated MWA staff person may assist the MSFW in entering their resume, if assistance is required. In order for MSFWs to qualify for all available ES services, their searchable resume must include the following information:

All significant work history.

Training and educational background.

Type of work wanted and job title.

Locations in which they are available to work.

Other required and pertinent information.

Job order information must be conspicuous and available to MSFWs in all offices.

Each significant MSFW office must provide adequate staff assistance to every MSFW to facilitate or mediate the use of the MTB.

In offices that are designated as significant MSFW bilingual offices, such assistance must be provided to MSFWs in both Spanish and English, whenever requested or necessary, during any period of substantial MSFW activity.

Resumes will be reviewed periodically to ensure their accuracy and quality. The resume-taking process and self-registration of MSFWs into the MTB will also be reviewed during state and federal on-site reviews by the state and federal MSFW Monitor Advocates and/or the review staff. These reviewers will verify overall accuracy and quality, and offer technical advice regarding corrections or improvements.

A resume in the MTB is not needed under the following circumstances:

When the MSFW requests referral to seasonal agricultural work only and immediate seasonal agricultural work is available.

The MSFW is unable to provide enough information for a complete resume in the MTB.

The job application is taken at the job or farm site other than an employment service location.

### **501-B MTB Resume for Agricultural Workers: Procedures**

- If a MSFW is not currently interested in the full range of available ES services, an oral explanation of all available services must be provided. In addition, the MSFW must be given a copy of form DLEG-BWP 300-B, Notice to Job seekers, which includes a list, in both Spanish and English, of the circumstances under which a MTB resume is, and is not, required.
- An exemption from completing a MTB resume should be requested by the MSFW and not initiated by the AES or MWA staff person. Because this exemption limits access to jobs to referrals for agricultural work, it should be used sparingly, and only as a tool to facilitate expedient delivery of services to the MSFW.
- MSFWs must be afforded the chance to choose between completing a mediated service registration only, or also completing a full resume in the MTB *in a language that they can readily understand* (typically English or Spanish). A paper resume can be completed in Spanish, but not on the electronic system.
- The MSFW shall be advised that he or she may complete a resume in the MTB at any time in the future.

**Note:** If a MSFW has a complete resume in the MTB and the resume is active, the resume must be linked with the MSFW's mediated services registration.

If the MSFW does not complete a resume, ES staff must do the following:

- Select "Field Work Only" on the mediated services registration.
- Record the fact that the Notice to Job seekers, form DLEG-BWP 300-B, has been given to the MSFW by reporting a "Specific Labor Market Information" service in the mediated services reporting system and by annotating in the comments section that a DLEG-BWP 300-B has been provided.

### **501-C MTB Resume: Resume Entry for Crews and Family Groups**

A family or crew may not be referred to a job unless *all* working members (including the family head or crew leader, if a working member) have a completed mediated services registration and a MTB resume, if desired. However, general information, such as types of crops, may be provided to the leader or family head prior to registration of all working members.

**501-D MTB Resume: Resume Entry for Farm Labor Contractors**

A Mediated Services registration shall not be accepted from an individual for employment as a Farm Labor Contractor (FLC) unless the individual shows or obtains a valid “FLC Certification of Registration.” If a copy of this document is not already on file, AES staff shall make two copies of the document: one for their files and one to be sent to the State Monitor Advocate. Failure to obtain proof of certification as a FLC or Farm Labor Contract Employee (FLCE) is a violation of federal law. All such violations will be reported to the USDOL Wage and Hour Inspector.

**502 Crews and Crew Leaders****502-A Crews and Crew Leaders: Policy**

- MSFWs are not to be referred to a FLC or FLCE who does not possess an FLC Certificate of Registration or FLCE Identification Card for the current calendar year. If a copy of these documents is not already on file, AES staff must make two copies of the documents: one for their files and one to be sent to the State Monitor Advocate. Failure to obtain proof of certification as a FLC or FLCE is a violation of federal law. Such violations will be reported to the USDOL Wage and Hour Inspector.
- Staff may refer MSFWs to a registered FLC, provided that a job order clearly specifying all of the terms and conditions of employment and showing the FLC as the employer of record has been placed in the MTB.
- Before staff may refer workers to an FLC who is offering employment in another area of the state or in another state, one of the following requirements must be met:
  - A valid interstate clearance order must be on file in the office.
  - An intrastate order must be on file from another area of the state that is not within commuting distance of the office where the FLC is recruiting workers. See Section 502 B.
- Unless either one of these conditions exists, workers may only be referred to registered FLC employers who are placing local job orders.
- Whenever a job order involving a registered FLC includes the provision of transportation and/or housing, an FLC certificate authorizing transportation and/or housing must be shown before workers are referred on the order.
- Each working member of a MSFW family or crewmember must be registered in mediated services and have a resume in the MTB, if desired, before being referred on an order. This includes the family head or crew leader if he or she is a working member.

**502-B Crews and Crew Leaders: Verification of Housing Compliance**

MSFWs in need of housing must not be referred to an employer until verification has been received that the employer’s housing has been inspected and licensed for the current year. The verification may be made by checking the Inspection Report of the Michigan Department of Agriculture. If the housing, or camp, has not been inspected, or has been designated as “not recommended,” referrals cannot be made until it can be verified that a “temporary” or a “full” license has been issued.

**502-C Crews and Crew Leaders: Verification of Housing and Job Openings**

When referring MSFWs to agricultural jobs where housing is to be provided as a condition of employment, AESs or MWA staff must contact the employer by phone, in the presence of the MSFW, to verify the job openings and the housing. If the employer cannot be reached, the staff person will inform the MSFW of the inability to verify that the job openings and housing still exist with this employer. The MSFW may be referred under these conditions if they so desire. Form DLEG-BWP 2524, Agricultural Job Order Information, should be marked “No” in the Section labeled “Contacted Employer To Verify Job Opening.”

**502-D Crews and Crew Leaders: Intrastate Orders**

MSFWs may not be referred to employers who are too far away for a daily commute unless the agricultural job order provides housing. Sixty-five miles is considered commuting distance. Job orders that require workers to travel more than 65 miles are considered intrastate orders, due to the necessity to provide housing

**502-E Crews and Crew Leaders: Day Haul Responsibilities**

- WDASOM staff shall not participate in the establishment, operation, or supervision of any agricultural day-haul facilities unless exceptional circumstances warrant such action and prior approval is obtained from the Regional Administrator (RA).
- No individuals shall be referred to a non-ES operated day-haul facility, unless the individual is referred on a specific job order and is provided with a checklist that provides information and assistance. The State Monitor Advocate will provide monitoring of these activities.
- AES staff shall visit all ES and non-ES operated day-haul facilities where substantial numbers of MSFW are employed during the hours of their operation. The purpose of these visits is to provide MSFWs with information and assistance. The State Monitor Advocate will provide monitoring of these.

**503 Local Orders: Procedures**

When workers are referred to an agricultural employer on a job order, the AES staff person prepares form DLEG-BWP 2524, Agricultural Job Order. This form can be obtained by contacting the State Monitor Advocate. A copy of this form is given to the worker, family head, or crew leader, as the case may be. A second copy is annotated to record the name of the individual to whom the first copy was given and is retained for the office files.

**504 Intrastate and Interstate Clearance Orders: Policy**

- Any worker or other interested party to a Michigan agricultural intrastate or interstate clearance order must, upon request, be given a completed copy of form DLEG-BWP 2524.
- Federal regulations require employers to supply each worker who is obtained through an agricultural intrastate or interstate clearance order with a copy of the work contract in the worker’s fluent language.
- Some employers have adopted a Spanish version of their work contract. For those who have not, the WDASOM will furnish the employer with sufficient copies of a bilingual form, similar in format to the DLEG-BWP 2524, which omits all references to BWP. The state administrative office of the WDASOM will maintain a supply of these Agricultural Job Order forms and will furnish local offices with sufficient copies upon request.

- Title 20 CFR, Section 653.501 states under the section entitled “Requirements for Accepting and Processing Clearance Orders” that, “In view of the statutorily established basic function of the job service as a no-fee labor exchange, . . . neither the ETA nor the state agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited . . . constitute a contractual job offer to which the ETA or a state agency is in any way a party.”

### **505 Order Taking: Policy**

Employers will enter their own job orders into the MTB according to procedures developed by the WDASOM and WDBs. However, WDASOM staff will be expected to provide mediated services to assist individual employers with this process. In relation to Michigan’s agricultural employers, there are certain requirements and expectations regarding the job orders that they create.

#### **505-A Order Taking: Housing Standards Policy**

When taking agricultural job orders, in every case housing must comply with the standards set forth in the Michigan Department of Agriculture Inspection Report regarding minimum standards. If these standards are not met, staff must enter the employer’s job order with the following annotation: “No approved housing, refer to drive-outs only.”

#### **505-B Order Taking: FLC and Farm Labor Contractor Employee (FLCE) Orders**

- Staff will not accept an agricultural job order submitted by a FLC without a valid Certificate or Identification Card. If a copy of these documents is not already on file, the AES staff must make two copies of the documents: one for their files and one to be sent to the State Monitor Advocate. Failure to obtain proof of certification as an FLC or a FLCE is a violation of federal law. All such violations will be reported to the USDOL Wage and Hour Inspector, who will conduct an investigation into the matter of proper registration. When a copy of a job order is provided to a MSFW, the number of the Certificate or Identification Card should be noted. The employer must be clearly identified as a FLC or a FLCE.

#### **505-C Order Taking: Minimum Wage Requirements for Job Orders**

- Local job orders cannot be accepted if the wage rate offered is below the federal or state minimum, whichever is greater. Interstate and intrastate job orders may not show a wage rate less than the prevailing rate offered in the area of employment or the federal or state minimum rate, whichever is greater.
- **No Cost** housing is required on all interstate and intrastate clearance orders. On local orders, deductions for housing are allowed, provided the amount does not exceed what is allowed under state law. Any deductions that would take the net wage rate below the minimum legal rate are subject to stringent regulations. For additional information, contact the State Monitor Advocate.

#### **505-D Order Taking: Piecework Rates on Job Orders**

- Employers covered by the Fair Labor Standards Act (FLSA) may offer any piecework rate desired, but must pay at least the higher of the federal or state minimum hourly rate.

Employers who are not covered by FLSA, but who are covered by the Michigan Minimum Wage Law and who are offering piecework rates, must pay at least the state minimum hourly rate.

For job orders where a piecework rate is offered, the following information should be entered on the job order in MTB:

The dollar amount

The unit of measurement

A brief description of the size or capacity of the unit of measurement. If there is a recognized standard size for the industry, the standard size may be indicated on the job order. However, a brief description of the standard size must be available to those workers who request it.

A statement as to whether or not the employer is covered by FLSA. If the employer is not sure of coverage under FLSA, a statement should be included as to whether or not the employer will guarantee the federal minimum wage or some other minimum hourly wage guarantee.

Any coverage or guarantee under state minimum wage laws, if higher than the federal minimum wage.

The following are some examples of what might be shown in the Comments section of the MTB job order regarding piecework wages:

\$2.00 per 27-pound lug – FLSA employer. Employer guarantees minimum hourly wage.

\$.50 per bushel – Employer not covered by FLSA wage laws, but guarantees state minimum hourly wage.

\$.11 per pound – Employer not covered by FLSA and offers no minimum guarantee for piece rate but guarantees state minimum wage.

### **505-E Order Taking: Agricultural Reporting Areas- Definition**

An *agricultural reporting area* is a geographic division within Michigan that is defined as follows:

An area that is reasonably integrated in terms of rural economic characteristics.

An area with boundaries that follow, as closely as possible, the boundary lines of the AESs areas of responsibility.

An area that may have a significant supply of, or demand for, MSFWs hired by agricultural employers.

Agricultural Reporting Areas are federally defined and used for prevailing wage purposes only. Each agricultural reporting area is given an agricultural reporting name and number for purposes of identification. The names and numbers of Michigan's agricultural reporting areas are as follows:

***The East Central Agricultural Reporting Area (05-26-03):*** This area comprises the counties of: Arenac, Bay, Genesee, Gladwin, Huron, Lapeer, Macomb, Midland, Oakland, Saginaw, Sanilac, Shiawassee, St. Clair, and Wayne.

***The Northern Agricultural Reporting Area (05-26-02):*** This area comprises the counties of: Alcona, Alpena, Antrim, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Grand Traverse, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montmorency, Newaygo, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, and Wexford.

***The South Central Agricultural Reporting Area (05-26-04):*** This area comprises the counties of: Barry, Branch, Calhoun, Clinton, Eaton, Gratiot, Hillsdale, Ingham, Ionia, Isabella, Jackson, Lenawee, Livingston, Monroe, Montcalm, and Washtenaw.

***The Southwest Agricultural Reporting Area (05-26-01):*** This area comprises the counties of: Allegan, Berrien, Cass, Kalamazoo, Kent, Muskegon, Oceana, Ottawa, St. Joseph, and Van Buren.

### **506 Wage Information and Prevailing Wage Findings\***

*\* This section applies to WDASOM staff only.*

#### **506-A Wage Information and Prevailing Wage Findings: Agricultural Wage Data Background**

Agricultural Wage Data are essential to effective operation of the labor exchange in serving agricultural employers and workers. Wage data is used for the following purposes:

To implement the Secretary of Labor's regulations on the interstate recruitment of agricultural workers.

To evaluate job orders and to facilitate recruitment and placement.

To make an analysis of earnings.

#### **506-B Wage Information and Prevailing Wage Findings: Definitions**

Employers

Operations

Prevailing Wage Finding

Wage Finding Class

Wage Reporting Area

#### **Employers:**

***Employers*** are growers, buyers, shippers, packers, labor contractors, labor or market associations, and others who hire workers, establish wage levels, and pay wages.

#### **Operations:**

Some crop activities involve a number of different ***operations***. For example, in harvesting tomatoes, some workers pick the tomatoes and place them in containers, while others load the containers on trucks. "Picking" and "loading" are different operations. Separate wage rates are usually paid for different operations or combinations of operations. The decisive factor is whether the work is different enough to justify the differences in the wage structure. For wage survey purposes, the different operations or jobs related to a specific crop activity should be identified and listed separately, if the wages for them are paid at different rates.

#### **Prevailing Wage Finding:**

The ***prevailing wage finding*** refers to the prevailing wage rate being paid to workers recruited in a particular state reporting area. The prevailing wage finding may also refer to the prevailing wage rate being paid to workers recruited out of state, if the out-of-state rate is higher than the instate wage.

**Wage Finding Class:**

*Wage finding class* refers to a specific phase of activity within an operation such as an apple harvest. For instance, within the crop activity described as an “Apple Harvest” there are a number of different stages, such as “spot pick,” “regular pick,” or “pick-up drops” in apple harvest. These different job title designations are wage-finding classes. Another example of wage finding classes are the different usages of a particular crop, such as “processing” or “fresh market” in a tomato harvest.

**Wage Reporting Area:**

The *wage reporting area* is the same as the Agricultural Reporting Area, and is the basic unit within which wage survey data are collected.

**506-C Wage Information and Prevailing Wage Findings: Agricultural Wage Survey Policy**

A wage survey is required under the following conditions:

If 100 or more workers were recruited through interstate clearance for employment in an activity during the previous season, or 100 or more are expected to be employed in the activity during the current season.

Temporary alien workers were employed during the previous season and may be hired during the current season, and there is reason to believe that H-2A certification will be sought for the coming season.

The crop activity has an unusual wage structure, or there are other factors affecting the prevailing rate that can best be assessed by a wage survey.

The crop or activity has been designated as a major crop or activity, either because of the importance of the production to the national economy, or because of the large number of workers employed in different areas of the country.

**506-D Wage Information and Prevailing Wage Findings: Agricultural Wage Survey Procedures**

- Each Agricultural Reporting Area covered by a prevailing wage plan will be designated by the name and number of the area, i.e., Southwest Agricultural Reporting Area, 05-26-01, followed by a list of crop activities in order of occurrence. Crop activity terms used should be adequately descriptive of the activity. The plan should contain the following information:
  - The expected beginning and ending dates for the crop activity and the period of peak activity.
  - The number of workers estimated to be employed in the activity during the peak season.
- To assure that the survey will yield representative results, the plan should specify the sources and the criteria to be used in collecting the samples for each activity. The information should include the size of the sample and any area characteristics that might have a bearing on the wage rates paid.

- If necessary, information should be included in the “Comments” section of the plan explaining any conditions or situations, not otherwise accounted for, that might be beneficial in interpreting the reported data.

### **507 Sources for the Collection of Wage Information\***

*\* This section applies to WDASOM staff only.*

The sources used for the collection of hourly wage information are restricted to wages paid to adult workers. Adult workers are defined, for this purpose, as workers who are 16 years of age or older, provided that special rates are not negotiated for family groups employed on an hourly basis. Wages paid on a piece-rate are not so restricted. The source of the data used for wage surveys is not limited to employers using the employment service. Data for wage surveys should be collected from small, medium, and large employers from all sections of the area being surveyed and should conform to probability sampling methods.

Payroll records offer the most accurate information on wage rates and should be used for wage surveys whenever available. Wage surveys must include a preponderance of personal employer interviews. An average of ten percent of the workers included in the sample for each wage survey must be interviewed. This ten percent representation should include employees from as many of the different surveyed employers as possible, as a means of verifying the employer-supplied data. Acceptable sources for the collection of wage information include the following:

Employers may be used as a source of wage information. Individual association members may be included, if the members are directly paying the workers.

Crew Leaders and Labor Contractors may provide information about the actual pay received by the workers, as well as deductions for food and transportation, and advances or loans, but excluding deductions by crew leaders and labor contractors as their share for supervision.

Local Organizations may also have significant information to contribute on farm wages. Wage survey visits should be planned. Check the information and contacts made during the previous year. Also check employer records so that, whenever possible, other business may be combined, thus making the visit as productive as possible.

### **508 Maintenance of Wage Survey Records: Procedures\***

*\* This section applies to WDASOM staff only.*

Records of all data and sources of information used in making wage surveys should be maintained for at least two years subsequent to the date of the finding.

### **509 Frequency and Duration of Wage Surveys: Policy\***

*\* This section applies to WDASOM staff only.*

- WDASOM is responsible for the consolidation of wage survey information and for submitting wage data for the area to the Regional and National USDOL offices. Wage data should be collected often enough to reflect any significant changes in wage rates and to permit the current findings to be useful in the employment of agricultural workers.
- The pre-season wage survey plan of action should be followed as much as possible. If a survey fails to produce data from which a prevailing rate determination can be made, another survey should be made as soon as possible. Surveys should normally be completed in as short a period of time. Under no circumstances should they exceed one week (seven days).

**510 Size of Wage Survey Samples: Policy\***

\* *This section applies to WDASOM staff only.*

The number of workers surveyed for each activity should be consistent with the numbers specified in the information below. If the number of workers surveyed does not meet the standards outlined in the following table, an explanation for the deficiency must accompany the survey data.

<b>Wage Survey Sample Size Requirements</b>	
If the number of workers employed during the survey period is:	Then the percentage of workers in the sample should be no less than:
50 – 349	100%
350 – 499	60%
500 – 799	50%
800 – 999	40%
1,000 - 1,249	35%
1,250 - 1,599	30%
1,600 - 2,099	25%
2,100 - 2,999	20%
3,000 or more	15%

**511 Field Wage Surveys\***

\* *This section applies to WDASOM staff only.*

**511-A Field Wage Surveys: Procedures\***

\* *This section applies to WDASOM staff only.*

- Interviewing employers and workers through field visits is the approved method of gathering information for wage surveys. The employer-farmer or crew leader, depending on who supervises and pays the workers, is always informed of the purpose of the interview. WDASOM staff must complete form ETA 232A, Wage Survey Interview Record, during the actual wage survey contact. This form can be obtained by contacting the State Monitor Advocate. Note: ETA 232A should be maintained in a confidential manner, since it identifies specific employers and contains information that is confidential in nature.
- Should the employer refuse to give the information, the staff should obtain basic data covering the identity of the employer, the county of employment, and the number of workers employed. Reports of refusals to provide wage information must be submitted along with the rest of the wage survey data.

- Once completed, the record surveys will identify, by crop area and crop activity, the number of domestic and foreign workers in the area and the wage rates paid to them. The surveys will also identify data related to productivity and the average hourly earnings of piece-rate workers.
- All items on the form must be completed with no change in format. If the space provided on the form is not adequate, complete information must be provided on a separate attached sheet, with the items numbered to correspond to the items on the form.

### **511-B Use and Distribution of Field Wage Survey Records \***

*\* This section applies to WDASOM staff only.*

Form ETA 232A, the Wage Survey Interview Records, when compiled, provides accurate farm wage data that is used by WDASOM staff as the basis for making prevailing wage rate findings for the areas covered by the report. See Section 512 and Section 513.

### **512 Finding Prevailing Wage Rates: Background\***

*\* This section applies to WDASOM staff only.*

The WDASOM reviews survey data within two weeks after the completion of the field survey and compiles the collected wage information on ETA 232, the Domestic Agricultural In-Season Wage Report, available from the office of the State Monitor Advocate. The data is then used as the basis for making prevailing wage rate findings for the agricultural area covered by applying the following formulas outlined in Section 512-A

#### **512-A Finding Prevailing Wage Rates: The 40 Percent Rule\***

*\* This section applies to WDASOM staff only.*

The prevailing wage rate is defined as a single rate or schedule that accounts for wages paid to 40 percent or more of domestic seasonal workers. If there are two such rates or schedules, the one accounting for the greater number of domestic seasonal workers becomes the prevailing rate. If two rates or schedules are paid to an equal number of workers and each rate accounts for 40 percent of the workers, then both rates or schedules are considered to be prevailing rates.

#### **512-B Finding Prevailing Wage Rates: The 51 Percent Rule\***

*\* This section applies to WDASOM staff only.*

If no single rate or schedule accounts for 40 percent or more of the workers and the rates are all in the same unit of payment (e.g., per hour, per pound, per lug), array the rates in descending order and then count the cumulative number of workers, starting with the lowest rate in the array, until 51 percent of the workers covered in the survey are included. The rate reached at this point is the prevailing rate.

#### **512-C Finding Prevailing Wage Rates: More Than One Unit of Payment\***

*\* This section applies to WDASOM staff only.*

If no single rate is being paid to at least 40 percent of the workers and there is *more than one unit of payment*, determine the unit that is applicable to the largest number of workers. Using this unit of payment, determine the prevailing rate in accordance with Section 512-A or Section 512-B above. If there are different units of payments and each one accounts for an equal number of workers, make a separate prevailing rate finding for each unit.

**512-D Finding Prevailing Wage Rates: Base Rate-Bonus- Procedures\***

\* *This section applies to WDASOM staff only.*

- For wage rates that include bonus rates in the same units as the base rates (e.g., 25 cents per pound plus a 5 cent bonus per pound), add the bonus to the base rate to determine the gross rate. Display the gross rates, including piece-rates without the bonus for the same unit, and the base rates within each gross rate in descending order.
- Each base rate-bonus combination and each piece-rate without bonus will be considered separate rates for purposes of determining the prevailing rate. For wages that include bonus rates in units different from the base unit (e.g., \$5.15 per hour plus 40 cents per box), treat each such rate-bonus arrangement as a different unit of payment.
- After the above steps are taken, the prevailing wage rate finding should be made as described in Section 512-A, Section 512-B, or Section 512-C above, whichever is applicable to the situation.
- Wage offers on interstate clearance orders must include a base rate component not less than the base rate component of the prevailing wage. This is illustrated in the following table.

Rate (per pound)	Gross Rate	Number of Workers
Total		1,000
\$.25 + \$.06 bonus	\$.31	100
\$.22 + .08 bonus	.30	50
\$.29 (no bonus)	.29	150
\$.23 + .06 bonus	.29	250
\$.22 + .07 bonus	.29	300
\$.21 + .08 bonus	.29	100
\$.24 (no bonus)	.24	50

- Since no single rate accounted for 40 percent of the workers, use the 51 percent rule to determine the prevailing wage is \$.29 per pound including a base rate of \$.23. The rates of \$.22 + \$.07 bonus and \$.21 + \$.08 bonus equal the \$.29 prevailing gross rate, and the rate of \$.22 + \$.08 exceeds it, but they are not acceptable for interstate clearance because the base rates are less than the prevailing rate of \$.23

When an employer pays according to a standard schedule, enter the word “schedule” on a single line in Column I just as if it were a separate rate. A copy of the schedule should be attached and a cross-reference. “See attached schedule,” should be entered on this line, unless a schedule submitted with a previous report is still applicable. If the latter is the case, enter a cross-reference, “See schedule previously submitted with report and date.” Piece-

rates with earnings guarantees represent a different method of payment from piece-rates without earnings guarantees, and should be listed separately.

- Base rates to which bonuses are attached should also be shown separately from rates without bonuses. Piece-rates should not be converted into hourly rates. Likewise, hourly rates should not be expressed in the form of a range or scale, even when the same rates are shown for different units. For example, if workers are receiving the same rates for different units, such as 25 cents for a 40-pound box and 25 cents for 50-pound box of apples, the rates for each weight unit should be listed separately.

### **513 Clearance of Intrastate and Interstate Workers**

#### **513-A Clearance of Intrastate and Interstate Workers: Background**

The process referred to as “clearance” deals with meeting the requirements for the acceptance and handling of intrastate and interstate job orders for seasonal employment. Orders requesting workers who are willing to relocate permanently to perform year-around agricultural or food processing work are not subject to the clearance requirements stated here.

The clearance requirements affect all workers who are recruited through the labor exchange and the intrastate and interstate clearance systems for less than year-round agricultural or food processing work.

#### **513-B Forms and Attachments**

Staff shall use the agricultural clearance form prescribed by the ETA and shall see that all necessary items are completed, including items on attachments to the form prescribed by ETA.

The order is taken on form ETA 790, Agricultural and Food Processing Clearance Order.

Attachments may be used in any situation where the terms, conditions, or circumstances surrounding the offer of employment will not fit in the space provided.

A separate attachment that contains an ES disclaimer and several statements of assurances required by federal regulations must be signed by the employer and included with the order.

Several attachments related to housing must be included. These forms can be obtained by contacting the State Monitor Advocate. They include:

- ETA 338, Employer Furnished Housing and Facilities.
- ES-008, Michigan Department of Agriculture, Field Report.
- Copy of letter of approval from ETA RA, when applicable.
- Signed request for conditional access when applicable.

#### **513-C Requirements for Accepting and Processing Clearance Orders**

No job order shall be placed in the MTB for intrastate or interstate clearance unless the employer and the MWA or WDASOM have attempted and have been unable to obtain sufficient workers within the local labor market area, or either agency anticipates a shortage of workers within the state. Interstate Clearance forms may be obtained on the Bureau of Citizenship and Immigration Services Web site.

## 514 Housing Regulations

All agricultural clearance orders must provide for “no cost” housing adequate for the number of workers requested. “No cost” means: no utility charges or any other fees in connection with the housing.

All housing offered in agricultural clearance job orders must meet either the full set of ETA standards described in Title 20 CFR Part 654 or the full set of OSHA standards in Title 29 CFR, Part 1910.142. Since April 3, 1980, all “new” agricultural housing meets the OSHA regulations. The ETA standards still apply only to “old” housing that meets one of the following conditions:

Housing built before April 3, 1980, relying on ETA standards.

Specific housing for which a contract for construction was signed before March 4, 1980, relying on ETA standards.

All housing must be inspected and fully licensed by the Michigan Department of Agriculture prior to writing the order (except where criteria for conditional access are met). Form ES-008 of the Michigan Department of Agriculture is the appropriate record and should be included as an attachment to the clearance order.

## 515 Conditional Access and Pre-Occupancy Inspections

When a clearance order is written during the winter months, the housing facilities cannot be expected to be in full compliance with the standards. Under such circumstances, the employer may request that conditional access to the clearance system be approved by the USDOL RA. The following information explains the procedures required for orders in which conditional access is requested and for orders without a conditional access request:

### 515-A Clearance Orders Requesting Conditional Access: Procedures

- No employer will be allowed conditional access unless the WDASOM can verify the employer’s record of compliance for the previous season.
- A pre-occupancy inspection will be conducted by WDASOM staff at the time that the order is written to assure that all structural aspects of the facility meet minimum standards. The employer must also submit a written request stating the following:
  - The housing was in full compliance with the applicable standards during the previous season, which must be verified by the order-holding office.
  - The housing will be in full compliance within 30 days prior to occupancy.
- Related attachments include the DOL Inter-Agency Migrant Housing Inspection Information form, which must be completed for each camp utilized for clearance, the ETA 338, the latest Department of Agriculture form ES-008 from the prior season, and the variance approval where applicable. These can be obtained by contacting the State Monitor Advocate.
- The 30-day pre-occupancy inspection must be conducted within *three days after the 30th day*. However, an employer may request an earlier preliminary inspection. If upon inspection, or on the 30th day, whichever is later, the housing does not meet the DOL standards, the job order will be immediately canceled, and a copy of the inspection report will be promptly forwarded to the State Administrative Office of the WDASOM.

**515-B Clearance Order with No Conditional Access Request: Policy**

For orders with no conditional access request, the housing facilities must meet DOL standards and be fully licensed by the Michigan Department of Agriculture at the time that the order is written.

A pre-occupancy inspection will be conducted by the Michigan Department of Agriculture.

The attachments required to be included with the order are the ETA-338, the ETA Interagency Migrant Housing Inspection Information, and the current ES-008 from the Michigan Department of Agriculture indicating fully licensed status. In addition, the letter of approval for variance should be attached where applicable.

**516 Recording Telephone Contacts for First-Week Wage Guaranty**

If the WDASOM receives a request from a MSFW for information about a specific employer who has placed a clearance order, the procedures outlined in the following paragraphs must be followed:

1. Determine from the worker which order-holding office to contact and the name of the employer. The worker should have a referral information form with all of the necessary information, including the telephone number of the WDASOM office. If the job seeker cannot provide sufficient information but wants assistance, call the State Monitor Advocate, and a staff person will attempt to gather the information needed from the order-holding office.
2. A WDASOM staff person will call the office that took the order and inquire whether the employer has notified them of any change in the anticipated start date. The job seeker should not be allowed to make the call, since the response must be recorded and verified by the WDASOM staff.
3. On WDASOM letterhead stationery, state all pertinent information pertaining to the order, including the date, the name of the person requesting the service, the number of workers represented in the crew or family group, the name of the order-holding office, the staff person contacted, and the response received. The staff person placing the call should sign the statement, making sure that the office is identified. Three copies of the statement will be required. The original is kept on file in the office, one copy is given to the worker, and the other copy is mailed to the order-holding office.

**517 Field Checks**

- WDASOM staff will conduct random, unannounced field checks at agricultural work sites to which ES placements have been made through the interstate clearance system. These field checks must include visits to the work site at a time when workers are present. Both the employees and the employer must be consulted, and the WDASOM staff must determine and document whether wages, hours, and the working and housing conditions are as specified in the job orders. WDASOM staff must keep records of all field checks, using the Field Check Worksheet.

- If the mandatory post-occupancy inspection has been conducted by the district health expert, include the findings from the Department of Agriculture Referral Information form ES-008 in the comments. Copies of the completed inspection form must be sent to the State Monitor Advocate. Keep the original on file with the original copy of the job order. If WDASOM staff observe, receive information, or otherwise have reason to believe that conditions are not as stated on the job order, or that an employer is violating an employment related law, document the findings and an informal resolution will be attempted. Violations of employment-related laws should be referred to appropriate enforcement agencies in writing.

## **518 Filing of FLC and FLCE Applications: Procedures**

### **518-A Filing of FLC and FLCE Applications: Required Forms**

A number of forms must be completed by job seekers and employers who wish to register as a FLCs or FLCEs. The following required forms can be obtained by contacting the State Monitor Advocate:

Form FD-258, Fingerprint Cards.

Form WH-530, Application for Farm Labor Contractor Certificate of Registration.

Form WH-512, Application for a Farm Labor Contractor Employee Certificate of Registration.

Form WH-514, Vehicle Mechanical Inspection Report Subject to Department of Transportation Requirements.

Form WH-514a, Vehicle Mechanical Inspection Report for Transportation Subject to Department of Labor Safety Standards.

Form WH-515, Doctor's Certificate for Driver.

Form WH-516, Migrant and Seasonal Agricultural Worker Protection Act Worker Information.

Form WH-521, Housing Terms and Conditions.

### **518-B Filing of FLC and FLCE Applications: Authorization for Transportation**

If a registrant is applying for authorization to transport migrant workers then, in addition to his or her application form and the fingerprint card, the following forms must be submitted:

***Doctor's Certificate, form WH-515:*** Any job seeker who will drive a vehicle used to transport workers must submit this form. Refer to Item #10 of form WH-530 or Item #15 of form WH-512. Contact the State Monitor Advocate to obtain copies of these forms.

***Vehicle Mechanical Inspection Report, form WH-514 or WH-514a:*** Form WH-514a, the DOL Safety Standards form, must be submitted for most passenger cars or station wagons. Other vehicles, such as vans or buses, may require submission of WH-514, the Department of Transportation Requirements form. It is up to the job seeker to know which regulations apply to his or her situation. Questions should be directed to the Federal Employment Standards Administration.

***Proof of Vehicle Liability Insurance:*** The automobile insurance required by law must cover both passengers and property. If the policy does not cover passengers, an accident policy must be obtained to protect them. The limits of liability must be as follows:

- Vehicles for 12 passengers or less: \$100,000

Passenger liability: \$300,000

Property damage: \$50,000.

- Vehicles for more than 12 passengers: \$100,000

Passenger liability: \$500,000

Property damage: \$50,000.

- The certificate of proof must include the identification of each vehicle covered, as well as the name of the FLC. Any licensed insurance agent can sell this insurance.

**Note:** Some job seekers may not be able to produce the necessary documents for Authorization to Transport at the time of filing for Certificate of Registration. In such cases, the transportation forms may be submitted at a later date with a request to amend the certificate to allow for transportation. It should be emphasized to job seekers that transporting workers without the required authorization can result in a heavy fine.

### **519 Foreign Labor Certification**

All requests for foreign labor must meet the employment certification requirements of the DOL. The same regulations, with the exception of the interstate clearance requirement, that govern non-agricultural industries also apply to permanent jobs in the agricultural and logging industries. The employer must complete form ETA 750A or ETA 750B, Application for Alien Employment Certification. Contact Foreign Labor Certification at the WDASOM for additional information.

### **520 Temporary Employment of Foreign Workers in Agriculture or Forestry**

#### **520-A Temporary Employment of Foreign Workers in Agriculture or Forestry: Policy**

An employer who wishes to employ temporary (no longer than 12 months) workers in agriculture or forestry must initially attempt to use workers who are native to the U.S. before filing for temporary agricultural labor certification with the USDOL RA. The U.S. Citizenship and Immigration Services may not grant an employer's petition to import non-immigrant foreign workers (H-2A) for the purpose of temporary employment, unless the employer has applied and received a labor certification from the U.S. Secretary of Labor.

The Secretary of Labor will grant such certification if the following conditions are met:

- There are not sufficient U.S. workers who are able, willing, and qualified, and who are available at the time and place needed to perform the services covered by the employer's application.
- The employment of foreign workers will not adversely affect the wages or working conditions of U.S. workers who are similarly employed.
- The employer's need for H-2A workers may not exceed 12 months, except in extraordinary circumstances. The job opportunity must have specified beginning and ending dates, and need not be an addition to the employer's existing work force, for example, permanent jobs that are temporarily vacant, may be filled under H-2A. It is the employer's need, and not the nature of the job, that determines whether a position is temporary.

**520-B Temporary Seasonal Employment of Foreign Workers in Agriculture or Forestry: Procedures**

- To hire immigrant workers for temporary employment, the employer must first file 4S Temporary Labor Certification Application including a job offer for U.S. workers with a Service Center. The employer must file such an application a minimum of 60 days before the estimated date of need for the workers.
- Where the application is timely and meets the regulatory standards, the WDASOM, the employer, and the DOL will recruit U.S. workers for 60 days. At the end of the 60 days, the USDOL RA grants the temporary H-2A labor certification if the RA finds that the employer has not offered foreign workers higher wages, better working conditions, or fewer restrictions than were offered to U.S. workers, and despite the employer's efforts, U.S. workers are not available for the employer's job opportunities.
- When the H-2A labor certification has been granted, in whole or in part, the USDOL RA will notify the employer via a letter that outlines the terms and conditions of the certification.
- The regulations in Title 20 CFR, Part 665.106(b)(I) state that the employer will be billed for receiving an H-2A labor certification at the time the certification is granted. Employers will be charged a fee of \$100 for each H-2A certification granted in whole or in part, plus an additional \$10 for each H-2A position certified by the RA, up to a maximum fee of \$1,000 per certification.
- If the temporary H-2A labor certification is denied, the employer may seek an administrative judicial review of the denial by a DOL hearing officer. The DOL then advises the INS of approvals and denials of temporary labor certifications. The INS may accept or reject this advice. INS makes the final decision as to whether or not to grant visas to the foreign workers, and for what type of visas they are qualified to apply.

**520-C Temporary Employment of Foreign Workers in Agriculture or Forestry: Application for Temporary Labor Certification Under H-2A**

An employer who anticipates a shortage of workers for agricultural or forestry employment may request a temporary labor certification for temporary foreign workers by filing, or by having an agent file, in duplicate, a temporary labor certification application signed by the employer with an office of the WDASOM or MWA in the area of intended employment. Under the H-2A program, the employer may request non-migrating aliens to be allowed to enter the country for a specified time period for a specific wage, etc., and then return to the alien's country of origin.

**521 Content of Job Offers to Temporary Foreign Labor: Policy**

The job offer for the employment of foreign workers must be such that it will not adversely affect the wages and working conditions of similarly employed U.S. workers. Each employer's job offer to U.S. workers must offer U.S. workers at least the same benefits which the employer is offering, intends to offer, or will afford to temporary foreign workers. Conversely, no job offer may impose on U.S. workers any restrictions or obligations which will not be imposed on the employer's foreign workers.

In general, job offers accompanying requests for temporary foreign workers must meet all the requirements for domestic agricultural interstate clearance. Some special requirements for alien job offers may apply, such as the three-fourths workdays guarantee and the transportation requirements described elsewhere in this section. All foreign worker job offers will be carefully reviewed by the DOL to assure that the minimal requirements of the regulations are satisfied.

#### **521-A Content of Job Offers to Temporary Foreign Labor: Seasonal Temporary Labor Housing Policy**

- The employer will provide the worker with housing without charge to the worker. The housing is to be fully licensed by the Michigan Department of Agriculture and must meet the full set of standards of USDOL, as set forth in Title 20 CFR, Part 620, or Title 29 CFR, Part 1910.142.
- When it is the prevailing practice in the area of intended employment to provide family housing, the employer will provide such housing to the workers. Conditional access to the interstate clearance system is available for those employers whose housing is temporarily out of compliance due to weather conditions or other extenuating circumstances but only for those employers who have used the interstate clearance system in the previous year and were in compliance with the applicable regulations. All others must have housing that meets the full set of requirements at the time that the application is submitted.
- When conditional access is granted, the housing facilities must be in full compliance 45 days prior to the date of occupancy. The Michigan Department of Agriculture is responsible for conducting inspections and verifying compliance within three days or by the 42<sup>nd</sup> day prior to occupancy. Copies of the inspection reports, form ETA 338 and ES 008, are to be mailed immediately to the Regional Office with photocopies to the State Monitor Advocate.

#### **521-B Content of Job Offers to Temporary Foreign Labor: Temporary Seasonal Labor Worker's Compensation Policy**

If the job opportunity is covered by the state workers' compensation law, the worker will be eligible for workers' compensation for injury and disease arising out of and in the course of their employment. If the job opportunity is not covered by the state workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of employment. This insurance must provide benefits at least equal to those provided under the state workers' compensation law for comparable employment.

#### **521-C Content of Job Offers to Temporary Foreign Labor: Three-Fourth Workdays Guaranty Policy**

- The employer guarantees to offer the worker employment for a least three-fourths of the workdays of the total period during which the work contract and all extensions thereof are in effect. This guaranty begins with the first workday after the arrival of the worker at the place of employment and ends on the termination date specified in the work contract or its extension, if any. For purposes of this guaranty, a workday shall mean any period consisting of 8 hours of work time.
- An employer will not be considered to have met the work guaranty if the employer has merely offered work on three-fourth of the workdays. Work must be offered for at least three-fourths of the eight-hour workdays (i.e.,  $3/4 \times \text{number of days} \times 8 \text{ hours}$ ). Therefore, if,

for example, the contract contains 20 workdays, the worker must be offered employment for 120 hours during the 20 workdays. A worker may be offered more than 8 hours of work on a single day. However, for purposes of meeting this guaranty, the worker is not required to work more than 8 hours per workday, or on the worker's Sabbath, or federal holidays. If the worker will be paid on a piece-rate basis, the employer will use the worker's average hourly earnings to calculate the amount due under the guaranty.

- Any hours which the worker fails to work when offered the opportunity to do so under the rules already mentioned and all hours of work actually performed, including voluntary work over 8 hours in a workday or on the worker's Sabbath, or a federal holiday, may be counted by the employer in calculating whether the period of guaranteed employment has been met.

#### **521-D Content of Job Offers to Temporary Foreign Labor: Temporary Seasonal Labor Wages, Deductions, and Paydays Policy**

- The wage rate offered must be equal to the Adverse Effect Wage Rate or the prevailing wage rate in the area of employment, whichever is greater. This rule applies to U.S. workers and H-2A workers equally. When a worker is paid at a piece-rate, this must be explicitly stated in the order. The unit of production should be clearly defined by weight or size, and if different than the standard unit, the standard unit equivalent piece-rate should be stated.
- An estimated hourly wage rate equivalent must be stated when piece-rates are paid. However, orders should specifically state that there is no guarantee that the worker will receive the estimated hourly rate equivalent. Such estimates are provided only as a guide for the job seeker's information.
- All deductions made from the workers' wages must be itemized, including deductions required by law, and all others, such as transportation advances.
- The frequency with which workers will be paid is to be governed by the prevailing practice in the area of intended employment, or at least bi-weekly, whichever is more frequent.
- Results must agree with local custom. If the practice of offering cash advances for workers on a particular crop is determined to be the prevailing practice among employers in the state who utilize the ES labor exchange system, a refusal to conform may result in a denial of services.

#### **521-E Content of Job Offers to Temporary Foreign Labor: Temporary Seasonal Labor Transportation Policy**

For U.S. workers and H-2A aliens, all transportation arrangements must be alike, and the result must agree with local customs. Transportation and subsistence must also be paid to U.S. and H-2A workers alike, from the point of recruitment to the employment site. This may be advanced, or payable upon completion of 50 percent of the contract.

The employer must also provide like transportation for workers between the work site and living quarters without cost to the workers, and such transportation will be in accordance with all applicable laws and regulations.

**521-F Content of Job Offers to Temporary Foreign Labor: Temporary Seasonal Labor Tools and Equipment Policy**

The employer will provide, without cost to the workers, all tools, supplies, and equipment that are required to perform the duties assigned. If any of these items are provided by the worker, the employer will reimburse the worker for the cost of the items so provided.

**521-G Content of Job Offers to Temporary Foreign Labor: Temporary Seasonal Labor Work Contract Policy**

The employer will provide each worker a copy of the work contract between the employer and the worker. The work contract shall contain all of the provisions required by the applicable federal regulations.

**522 Assurances**

The employer is required to sign a separate list of assurances as part of the temporary labor certification application. See Title 20 CFR, Part 655.203. In addition to those assurances enumerated on the form, the employer will be required to agree to additional requirements, such as providing subsistence and transportation to all U.S. workers who are recruited, once they leave their point of departure, regardless of any changes which may occur in the employer's situation.

**523 Agriculture and Child Labor Requirements: Policy**

The employment of youth (minors) in agriculture is subject to both federal and state laws. In the event of conflict, the more stringent of the two will apply.

**523-A Agriculture and Child Labor: WDASOM and MWA Responsibilities**

The following information describes the responsibilities of the WDASOM and MWA with regard to the enforcement of federal and state Child Labor regulations.

- The WDASOM and the MWA must ensure that youth are not referred in violation of the law with regard to minimum age restrictions, employment during school hours, and entitlement to wages on the basis of equal pay for equal work, offers of bonuses cannot be in the job order if such will deprive the youth of wages due because the youth returns to school.
- The WDASOM and the MWA must assure that all youth either have in their possession, or have made application for, a Social Security Card before referral is made.
- The WDASOM and the MWA must ascertain from the employer whether individual records are maintained on each youth, in accordance with Social Security and FLSA requirements.

**523-B Agriculture and Child Labor: Provisions**

- Farmers may employ minors who are 16 years old and over at any time in any farm job.
- A minor under 16 years of age may work at any time on the home farm for his or her own parents in any farm job.
- No minor under 16 years of age may work during school hours, except on the home farm for his or her parents.

- Minors under 16 years of age may work outside school hours in farm jobs that are not listed as hazardous by the FLSA. Hazardous occupations include such jobs as operating large equipment, using dynamite, working on ladders over 20 feet in the air, or handling chemicals.
- Minors 14 and 15 years of age, who have been trained under Vocational Agricultural programs, may work outside school hours on farm equipment for which they have been trained.
- Minors 11 years of age and over may be employed on golf courses as caddies.
- Minors 12 and 13 years of age may be employed only if both of the following conditions are met:
  - They have the written permission of their parents.
  - They are employed on the same farm as their parents.
- Minors under 12 years of age may not be employed, except when employed by their own parents.
- Youths of any age may work at any time in any job on a farm that is owned or operated by their parents.

#### **523-C Agriculture and Child Labor: School Hours**

School hours are those hours that school is in session where the child is living while employed. “School hours” do not apply in the spring to a child from another school district if the school he or she attended has closed for the school year. However, local attendance laws may require attendance even though the school first attended in another district is closed. Therefore, to be on the safe side, an employer should request authorization in writing, signed by the proper school authorities, to verify whether the “School Hours” for the local district covers children migrating from other districts.

#### **523-D Agriculture and Child Labor: Record Keeping**

Employers are required to maintain records on wages, hours, etc. in accordance with the requirements of the Social Security Act and the FLSA.