




---

# **Administrative Conference of the United States**

## **Coordination of Migrant and Seasonal Farmworker Service Programs**

---

**David A. Martin**  
 Henry L. & Grace Doherty Professor of Law  
 University of Virginia

**Philip Martin**  
 Professor of Agricultural Economics  
 University of California

**April 1992**

This report was prepared for the consideration of the Administrative Conference of the United States, at the request of the National Commission on Migrant Education. The views expressed are those of the authors and do not necessarily reflect those of the members of the National Commission, the Conference, or its committees, except where formal recommendations of the Conference are cited.

---

## **Administrative Conference of the United States**

**The Administrative Conference of the United States was established by statute as an independent agency of the federal government in 1964. Its purpose is to promote improvements in the efficiency, adequacy, and fairness of procedures by which federal agencies conduct regulatory programs, administer grants and benefits, and perform related governmental functions.**

**To this end, the Conference conducts research and issues reports concerning various aspects of the administrative process and, when warranted, makes recommendations to the President, Congress, particular departments and agencies, and the judiciary concerning the need for procedural reforms. Implementation of Conference recommendations may be accomplished by direct action on the part of the affected agencies or through legislative changes.**

**Administrative Conference of the United States  
2120 L Street NW  
Suite 500  
Washington, DC 20037**

Preface	i
Executive Summary	1
I. Introduction	1
A. The Migrant Population	1
B. Federal Programs	3
C. The Outline of this Report	4
D. Conclusions	5
II. The Major Programs: Background and Current Issues	6
A. Migrant Education	6
1. The Framework	6
a. The Chapter I program for disadvantaged children	6
b. The Migrant Education program: framework	6
c. The funding formula	8
d. The definition	9
2. Current issues	10
a. Funding for population and not for services	10
b. "Formerlies" and "currentlies"	11
c. Age ranges	13
d. Coordination	14
3. HEP and CAMP	14
B. Migrant Health	15
1. Legislative History	15
2. Institutional Framework	17
3. Coordination	19
C. Migrant Head Start	19
1. Statutory Framework	19
2. Program Operations	20
3. Definitions	21
D. Job Training for Migrant and Seasonal Farmworkers (JTPA 402)	22
1. Background and Statutory Framework	22
2. Program Administration and Operation	23
3. Definitions and Eligibility	25
4. Current Issues	27
E. Other Federal Programs Serving Farmworkers	28
III. Coordination at the State and Local Level	30
A. Existing Coordination	30
1. State Level	30
a. Indiana	30
b. Iowa	31
c. Illinois	31
d. New York	32
2. Local Level	32
B. Functions and Obstacles	32
C. Definitional Issues	33
D. Recommendations	35
IV. Data and Definitions: Toward a Uniform Core Definition	37
A. Migrant Worker Data and Definitions	37
1. Introduction	37
2. The Harvest of Confusion	38
3. The Number and Distribution of Migrants	39
B. Estimating the Farm Labor Population	41
1. Farm Labor Data	41
2. Definitional and Conceptual Issues	42
3. USDA Interpretations of Farm Labor Concepts	44

C.	Steps in Defining the Population and Determining Eligibility for Services	47
1.	The Process	47
2.	Improving the System: A Uniform Core Definition	48
V.	Coordination at the National Level: Current Realities and Future Needs	52
A.	Existing Coordination Mechanisms	52
1.	The Interagency Committee on Migrants	52
2.	The Farmworker Interagency Coordinating Council	53
3.	The Migrant Inter-Association Coordinating Committee and Coalition	54
4.	Smaller-scale Initiatives	54
B.	Evaluation and the Objectives of National-Level Coordination	55
1.	Information-sharing	55
2.	Wise use of limited resources	56
a.	Geographic targeting	56
b.	Minimizing overlap and promoting efficiency	57
c.	Provision of comprehensive services	59
3.	Summary: what is needed in the ideal coordinating entity	59
VI.	Coordination at the National Level: Alternative Models	61
A.	A Unified Information Clearinghouse: The National Center for Migrant Affairs	61
B.	A Separate Department or Agency Unifying All Migrant Service Programs	62
C.	Improved Interagency Council	64
D.	A Coordinator for Migrant and Seasonal Farmworker Programs	67
1.	Models	67
a.	The Office of National Drug Control Policy	67
b.	The Office of Science and Technology Policy	68
c.	The Coordinator for Refugee Affairs	68
2.	A Proposed MSFW Coordinator	69
E.	Recommendation	71
	Appendices	

## Preface

This report results, ultimately, from the longstanding desire of those who assist migrant farmworkers to improve the services they can provide. It derives more specifically from the statutory mandate of the National Commission on Migrant Education (NCME). The statute that chartered the Commission in 1988<sup>1</sup> directed it to examine a long series of questions, relating primarily to the present functioning and the future needs of the Migrant Education program administered by the Department of Education. But the statute also asked the Commission to cast a wider glance, and to consider how the Migrant Education program might be better integrated and coordinated with other migrant assistance programs.<sup>2</sup>

To carry out this task, in March 1991 the Commission contracted with the Administrative Conference of the United States (ACUS) to study the coordination of federal programs that serve migrants, including close consideration of the differing definitions of "migrant" that these programs employ. The Commission was aware of ACUS' reputation as a government think-tank that has amassed an estimable record of studies and recommendations on improving federal government procedures and structures. During the course of its 25-year history, ACUS has often considered interagency coordination questions. Knowing that coordination proposals can often tread on the sensitivities of the affected agencies, the Commission has indicated that it turned to ACUS to help assure a high degree of impartiality in the recommendations that would ultimately result.

As the consultants invited to undertake this study, we have done our best to live up to these expectations and the high standards of the two bodies. We present the study in the hope that it, and any ACUS and NCME recommendations or conclusions to which it might contribute, will help improve the delivery of services to migrant and seasonal farmworkers.

One further note: veterans in the farmworker service program would use a host of acronyms that have become like a second language. For those who have not yet been initiated into the secrets of this tongue, we provide a glossary of acronyms in Appendix A.

David A. Martin  
Philip Martin

April 1992

---

<sup>1</sup>Pub. L. No. 100-297, §1001, 102 Stat. 193 (1988), codified at 20 U.S.C. §2839 (1988).

<sup>2</sup>20 U.S.C. §2839(c)(4) specifically directs the Commission to examine interagency coordination, but the Commission also found that coordination issues relate in some way to nearly all of the questions it was asked to consider.

## **Executive Summary**

Migrant farmworkers are among the poorest of America's residents, and since the 1960s, the federal government has launched several service programs to help meet their needs. Migrants have been considered a uniquely federal responsibility, both because of their interstate movement (which makes it hard for the workers and their families to qualify for local assistance and disrupts other services such as schooling for their children), and because of their relative powerlessness in state and local politics. As these programs have evolved, many have come to serve nonmigrant seasonal farmworkers as well.

The programs to meet the health, education, housing, job training and other needs of migrant and seasonal farmworkers (MSFWs) have developed separately. There are approximately ten MSFW-specific service programs, and farmworkers also draw upon the assistance of other general programs such as food stamps or legal services. Each program has its own definition of migrant and/or seasonal farmworker, as well as other eligibility standards. The result is a potential for overlap of some services and gaps in others, and Congress has made inadequate provision for coordination among programs. At the request of the National Commission on Migrant Education, this study examines regulatory and definitional barriers that impede coordination among MSFW service programs, with special attention to the "Big Four" programs (ME, MH, MHS, and JTPA 402), which expend about \$500 million annually to assist MSFWs.

## **The Major Programs**

### **Migrant Education (ME)**

Since 1966, Congress has provided special supplementary funding to state educational agencies (SEAs) based on their respective populations of school-age children in migrant farmworker families. Early estimates of the number of ME children in each state relied on Labor Department data but ME counts are now based on the more detailed records of the Migrant Student Record Transfer System (MSRTS). Congress appropriated \$286 million for Migrant Education in FY 1991, yielding an average grant of about \$500 per identified migrant child. SEAs have considerable flexibility in choosing how to use these supplements to enhance education for migrants.

Under the definition of migrant farmworker in the ME regulations, agriculture includes production and processing of crops, livestock, dairy products, and fisheries. Children are "currently migratory" if the family member made a qualifying move across school district lines in search of agricultural employment within the past 12 months. Thereafter, they may still receive ME services for up to five years as "formerly migratory," with the parents' consent. Currently migratory children are supposed to receive priority in ME programs, but the distinction often makes little difference in practice. ME has been criticized because each state's funding is based on the number of children recruited into the program, not the number of migrant students actually served. This situation was perhaps aggravated by a statutory change in 1988, which expanded the age range of eligible children to ages 3-21, from the former range of 5-17. Several persons interviewed also questioned the lengthy "look-back" period ME employs, the longest of any MSFW service program, resulting in eligibility for up to six years after a qualifying move.

### **Migrant Health (MH).**

Migrant Health is the oldest of the special federal programs for migrants, dating to 1962. It funds some 400 clinic sites in "high-impact areas" for migrant activity, operated by 102 grantees (mostly private nonprofit organizations) in 43 states. The FY 1991 appropriation was \$51.7 million. These clinics were originally authorized to serve only migrants and their dependents, but in 1970 Congress authorized services also for seasonal farmworker families, when the Secretary finds that the provision of such services would contribute to improving the health of migrants. Agriculture

(defined to include crops but not livestock) must be the "principal" employment of MH beneficiaries. To qualify as a migrant, a worker must have established a temporary abode for such work within the past 24 months.

### **Migrant Head Start (MHS).**

Head Start, a comprehensive preschool child development program operated by the Department of Health and Human Services (HHS), is perhaps the most effective of the programs launched by the War on Poverty. Migrant Head Start adapts the basic program to the special needs of migrant children, serving them from birth through age five. The 1990 appropriation of \$60.4 million funded services to 23,649 children in 33 states, through the efforts of 23 MHS grantees, mostly private nonprofit organizations. No definitions of the key terms appear in statute or current regulations, but in practice MHS serves the children only of those primarily employed in farmwork (crop and tree agriculture, not livestock). The family must have migrated within the last 12 months to be eligible and ordinarily must have an income below the federal poverty line.

### **Job Training (JTPA 402).**

The Department of Labor funds special job training programs for MSFWs and their dependents, through a nationally administered program established under Section 402 of the Job Training Partnership Act (JTPA). The FY 1991 appropriation was \$70.3 million. Funds are first allocated among the states based on decennial census figures (adjusted), and then renewable two-year grants are awarded to organizations that will provide the services in the state. The grantees in 1991 were 29 private nonprofit organizations and five public bodies. The most expensive training component of the program usually assists farmworkers in gaining the skills necessary to move into more stable, nonagricultural employment. But grantees may also spend up to 15 percent of their funds on "nontraining-related support services," a highly flexible category that can include transportation, health care, shelter, meals, and other services for MSFWs in the state.

The regulations provide for a 24-month look-back period, but an applicant must qualify as a seasonal farmworker by meeting more detailed specifications (primary employment in agriculture, with a minimum of 25 days worked or \$400 earned) for any consecutive 12-month period within the past 24. Migrants are those seasonals who were unable to return to their domicile within the same day as a result of their employment. Agriculture includes crop and livestock work. JTPA beneficiaries must also meet an income test and must be authorized to work in this country.

## **Coordination at the State and Local Level**

State level coordination among programs is often overseen or administered by a governor's board or task force, which may bring together growers' representatives, advocacy organizations, and officials of migrant service programs and other state agencies. Some local areas have created equivalent bodies. Often the coordination function consists merely of information sharing and referral of clients. Coordination becomes much more sensitive and difficult to accomplish if proposed actions carry resource implications or involve the transfer of funding. Nevertheless, some local or state bodies have accomplished more than just the sharing of information; effective coordination often depends on the initiative and perseverance of the participants. For example, some states have moved toward a consolidated outreach process, so that migrants need fill out only one form upon arrival in the area to register for services, rather than being contacted by as many as seven different outreach workers who collect the full range of biographical and background information.

Although many service providers will answer an abstract question about barriers to coordination by referring to definitional differences, we did not find as many concrete examples of coordination problems stemming from this source as we had expected. In any event, even a uniform federal definition of MSFW would not ensure coordination, because migrant services at the local level draw also on a host of other public and private assistance programs, each with their own requirements.

Although definitions did not appear to be a major obstacle to local or state coordination, we recommend that steps be taken to move toward a common definition, for two main reasons. First, progress toward a common definition could be expected to facilitate consolidated outreach; duplicative outreach and intake processing constitutes one major area for potential administrative savings and better overall coordination. Second, agreement on at least a core definition of migrant and seasonal farmworkers would foster the development of a unified mechanism to provide a reliable count of the MSFW population in this country. This is something strongly desired by many service providers. If sufficiently current and detailed, such a census or estimation system could also facilitate better targeting of MSFW assistance programs. Over time, experience with a unified core definition used for purposes such as enumerating MSFWs might also make it easier for more programs to accept a harmonized definition for purposes of eligibility.

### **Data and Definitions: Toward a Uniform Core Definition**

It has never been easy to agree on the number, characteristics, and distribution of MSFWs, in part because of substantial difficulties in reaching agreement on the key concepts. There are numerous data sources that have been adjusted, in both top-down and bottom-up fashion, to estimate the number of such workers, but all are beset with difficulties. Some programs rely on flawed estimates of their target populations to distribute funding.

To define the target population and determine eligibility for services, at least six steps must be followed. (See Table 3, pp. 49-50.) First, it is necessary to define "agriculture." All definitions include crops; should livestock and fishery operations be covered as well? Should packing and processing? Second, "farmworker": Should the definition cover only those primarily employed in agriculture, and should there be minimum and maximum employment required? Third, "migrant": How should the required move be specified? Should there be a requirement that the movement cross a specific border (e.g., school district or county line)? Fourth, the look-back period: This ranges from 12 months to six years in current MSFW service programs. The fifth step involves more detailed criteria for eligibility, such as the age ranges to be covered. And sixth, the program must decide exactly where and in what manner to provide services to those eligible.

Our proposed core definition would cover the first four of these steps. We recommend that agriculture be defined as in the Fair Labor Standards Act, i.e., to include crop and livestock agriculture, as well as that part of processing performed by a farmer on a farm. "Farmworker" should include only persons primarily employed in agriculture, and seasonal farmworkers should be those with a minimum of 25 days worked in a year, but not having constant year-round employment. Migrants should have to cross a county boundary (this element ties in with other available data sources) and stay away from home overnight. Finally, the look-back period should be 24 months, so as to focus on those most in need of assistance owing to the disruptions that accompany a move, but allowing for continued services during the first year after the family settles out of the migrant stream.

### **Coordination at the National Level**

Because of the diversity of services (both migrant-specific and general) that must be considered and incorporated, the focus of improvements in coordination must be at the local and state level. Nevertheless, the process could be facilitated by improved coordination at the national level. This section surveys existing coordination entities and sketches options for improved mechanisms.

#### **Current bodies.**

In addition to limited ad hoc coordination agreements, sometimes embodied in Memoranda of Understanding, there have been three principal forums for interagency coordination.

Since 1985, the federal MSFW assistance agencies have been meeting quarterly in Washington under the auspices of the Interagency Committee on Migrants. The various agencies involved rotate responsibility for hosting the meetings and setting the agenda. This forum serves mainly as a vehicle



for information-sharing among the officials and nonprofits that attend; most participants agree that it has been a useful forum for this modest but important task.

In 1990 a second body began meeting on an ad hoc basis in an effort to create a forum for policy-makers to gather and deal with coordination issues that require policy resolution -- tasks not readily accomplished by the Interagency Committee. The Departments of Labor, HHS, Education and Agriculture have been involved in this Farmworker Interagency Coordinating Council, which was intended to include a smaller number of policy level participants. Some of the key personnel have recently changed jobs, however, and the Council is now inactive.

The grantee service providers have also recently improved their own cooperation, notably by providing for a joint national meeting of the service providers from the Big Four programs in Buffalo in April 1991. This process of building better links among program officials will be continued, under the auspices of a Migrant Inter-Association Coordinating Committee, looking toward another joint meeting in 1993. The Committee is also charged with planning other tasks for the Inter-Association Coalition, including workshops, publications, and possible work on legislative issues.

### **Evaluation.**

Most persons interviewed agreed that coordination at the national level is improving, but they also frequently voiced dissatisfaction with current arrangements. Existing bodies do provide for a fair amount of information-sharing, but other objectives are not as well served. For example, coordination should provide a mechanism to improve the geographic targeting of services, so that assistance can keep up with changes in agriculture.

There should also be a method to deal with duplication and overlap, although many persons interviewed pointed out that the problem of overlap is more theoretical than real, given that each agency serves only a fraction of its target population. Nevertheless, the internal dynamics of each agency seem to push toward expansion of jurisdiction, including expansion of the age ranges served, without attending to the possible effects on other agencies, and without asking whether the same service objectives could be better served through one of the other organizations.

An improved coordination body should be able to review such expansions, as a policy matter and on an interagency basis, before they go into effect. It should also find ways to reduce the burden of duplicative outreach and intake procedures. Ideally it would also have the capacity to review overall budget strategies and to consider ideas that might transcend any one agency's jurisdiction for improving comprehensive services to migrant families. There is currently no single officer, even at the Office of Management and Budget (OMB), who looks comprehensively at all migrant service budgets.

Existing coordination bodies depend on ongoing comity and support from each constituent agency or organization; because they are not founded in statute, regulation, or executive order, they lack any legal requirement that agencies continue to participate. As a result, they usually shy away from tough questions about the allocation of responsibilities or from suggestions that would shift functions and perhaps budget between agencies. Improving coordination requires developing this capacity, in order to probe whether service objectives, which transcend agency boundaries, are being effectively served. A new mechanism should also have the ability to engage the attention of the key policy-making officials in affected agencies, including Department heads.

## **Possible Alternatives**

### **Information clearinghouse.**

There has been considerable interest in a National Center for Migrant Affairs, usually conceived as an improved information clearinghouse. We do not regard such a center as a high priority. Existing programs have their own clearinghouses or other forms of resource centers, sometimes with

quite extensive and elaborate services. But field-level service providers are usually not well-equipped, owing to limited funding, to draw on these resources. A National Center, if created, should serve only as a kind of umbrella for the existing resource centers and clearinghouses.

#### **Department or Agency of Migrant Affairs.**

Truly comprehensive services might be better designed and managed if all MSFW assistance programs were combined in a single federal department or agency. But any improved coordination among MSFW programs that might result would probably be outweighed by losses in effective coordination with other related governmental services, such as other Public Health programs. Moreover, current agency locations provide a kind of mainstreaming for a population that can easily be separated and stereotyped. There is no significant support for a total unification option.

#### **Improved interagency council.**

Interagency cooperation might be strengthened, without major restructuring, by placing the existing interagency council on a firmer footing, through statute or executive order. If this option is chosen, the chartering instrument should designate the membership, consisting of a limited number of persons with policy-making authority, at the rank of Deputy Assistant Secretary or above. It should also provide for chair responsibilities to rotate, on a minimum two-year cycle, to maximize continuity and to allow the chairing agency to draw on its own resources for staffing. And it should require council review of any changes in jurisdiction, mandate, or regulations of any of the participating agencies. OMB should also designate a single staff specialist to provide an overview of MSFW assistance functions. Finally, the new council might best get a running start on its functions if the chartering instrument expressly assigned specific tasks, such as developing a core MSFW definition, a better census mechanism, or a more unified outreach and intake procedure.

There are certain disadvantages with this model. Despite its firmer foundation, the council would still be dependent on the goodwill of the agencies for its effectiveness. It would lack staff of its own, and it might not have sufficient clout to assure attention by department heads or other key policy level officials.

#### **Coordinator for MSFW Programs.**

The fourth model contemplates a new position of coordinator for MSFW service programs, preferably created by statute. The coordinator would be appointed by the President with advice and consent of the Senate. To avoid the Coordinator's identification with any one agency, the office should be located in the White House. We heard substantial objection to creating such a post, and the concerns have some merit. The office might only generate additional paperwork and red tape, draining resources from the actual services. And some fear that a White House location might lead to undue politicization. Others proposed ways in which such risks might be minimized – by keeping the office small, with a staff of perhaps a half dozen professionals, and by requiring that the coordinator be appointed from among persons with at least two years' field experience in migrant service programs. Also, the office should have jurisdiction only over service programs, not over enforcement regimes affecting farmworkers, for the latter can be politically controversial and might make politicization more likely.

#### **Recommendation**

Although we consider the question a close one, we favor an improved interagency council. It should be established by an executive order that would determine its membership and also assign it certain initial high-priority coordination tasks.

## Coordination of Migrant and Seasonal Farmworker Service Programs

### I. Introduction

#### A. The Migrant Population

Migrant farmworkers are people who cross geographic boundaries and stay away from home in order to do farmwork for wages. A diverse collection of individuals satisfies these criteria. Most are solo men who travel in groups or crews of 20 to 40 without their families, but many are families whose children accompany them from farm to farm. Some migrants move long distances, such as from south Texas to Michigan or south Mexico to Oregon, and stay away from their usual residences for four to six months, while other migrants move less than 100 miles from home and stay away only a few days. Some are teenagers who spend part of their summers working on a relative's farm.

Migrant farmworkers have traditionally been among the poorest workers in America. The tale of impecunious but hardworking families packing up their belongings and following the ripening crops has been retold in moving novels, including John Steinbeck's *The Grapes of Wrath* in 1939, television documentaries such as Edward R. Murrow's *Harvest of Shame* in 1960, and congressional testimony such as that heard by Senator Walter Mondale's Senate Subcommittee on Migratory Labor in 1971.<sup>1</sup> Most materials on migrant farmworkers reinforce the stereotype that migrants are minority families who are strangers-in-the-fields at their temporary workplaces and who have special needs and problems that are not addressed by their employers or by local assistance programs in the communities in which they temporarily reside. Although this stereotype masks some of the diversity in today's farm labor force,<sup>2</sup> it has been the source of sympathy and federal initiative to address the migrant's needs. In many cases, that initiative has eventually led legislators or administrators to expand their programs so that they may also meet the needs of nonmigrant seasonal farmworkers.<sup>3</sup> By 1990, federal expenditures for service programs intended specifically for migrant and seasonal farmworkers (MSFWs) totaled over \$500 million annually, or equivalent to about 10 percent of total migrant farmworker earnings by some estimates.<sup>4</sup>

---

<sup>1</sup>Farmworkers in Rural America, 1971-72: Hearings Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Public Welfare, 92d Cong., 1st & 2d Sess. (1971-72).

<sup>2</sup>See P. Martin, *Harvest of Confusion* 11 (1988).

<sup>3</sup>Generally speaking, seasonal farmworkers are hired farmworkers employed in agriculture on less than a year-round basis. Migrants are usually considered a subset of seasonal farmworkers. (The numerous detailed disputes over more precise definitions will receive close attention in Part IV, *infra*.) Some federal service programs focus principally on migrants; they are usually premised on the need for services to overcome the disruptions that derive from frequent changes of residence. But seasonal farmworkers are also largely poor, and their intermittent employment also causes other sorts of disruptions and resultant disadvantages. See generally Department of Labor, Findings from the National Agricultural Workers Survey (NAWS) 1990, at 54 (1991) [hereafter cited as *NAWS Findings*] (one-half of seasonal agricultural workers—a category which includes migrants—have incomes below the poverty level).

<sup>4</sup>According to the *NAWS Findings*, *supra* note 3, the median annual income for surveyed Seasonal Agricultural Services or cropworkers was between \$5000 and \$7500 in 1990. There are between 2 and 2.5 million farmworkers employed sometime during the year in U.S. agriculture, but not all of them are migrants. The *NAWS* defined migrants as workers who travel 75 miles or more to do farmwork, and because 40 percent of the *NAWS* sample workers spend part of each year abroad (usually in Mexico), *id.* at 83, at least 40 percent of the *NAWS* workers are migrants who shuttle back and forth. About 15 percent of the *NAWS* sample follow the crops in the United States, and some shuttle migrants also follow the crops, so that 42 percent of the *NAWS* sample are migrants, or 940,000 of 2,250,000 farmworkers. If 940,000 workers average \$6,000 each, they earn a total \$5.6 billion, roughly 10 times the amount now spent on federal MSFW service programs. (See Table 1.)

Another 40 percent of *NAWS* sample workers are employed less than year-round in U.S. agriculture. However, not all of these workers would be considered "seasonal" under all definitions: some do only a few days of farmwork, and others work 9 or 10 months but not year-round.

Table 1

## Federal Migrant and Seasonal Farmworker Programs

<u>Program</u>	<u>Department</u>	<u>Services</u>	<u>Funds</u> <u>(\$Mil in</u> <u>FY92</u>	<u>Funds</u> <u>(\$Mil in</u> <u>FY88</u>	<u>Percent</u> <u>Change</u>
Migrant Education (ME)	Education	Funds state educational agencies (SEAs) to serve the children of migrants who are 3 to 21	\$308.3	\$269.0	14.6
Migrant Health (MH)	HHS	Funds clinics that provide primary health care for MSFWs and their dependents	57.7	43.5	32.6
Job Training Partnership Act 402 (JTPA 402)	Labor	Employment and training services for MSFWs and their dependents	77.6	65.6	18.3
Migrant Head Start (MHS)	HHS	Early childhood program for migrant children age 0 to 5	85.9	40.5	112.1
<i>Total "Big Four" Programs</i>			\$529.5	\$418.6	26.5
High-School Equivalency	Education	Funds colleges and universities to assist migrants and their dependents to get a high school diploma or equivalent	8.3	7.3	13.7
College Assistance Migrant Program	Education	Funds colleges and universities to assist migrants and their dependents to ease their transition into college	2.3	1.3	76.9
Migrant Even Start	Education	Funds programs to coordinate child and adult education for migrants	2.1		
Migrant vocational rehabilitation	Education	Funds programs for handicapped migrants	1.0	1.1	-9.1
Women, Infants, and Children (WIC)	USDA	Provides food and nutrition counseling	17.5	13.0	34.6
Migrant legal services	LSC	Provides legal services to MSFWs	10.8	9.4	14.9
Section 516 MSFW housing grants	USDA	Grants to nonprofit organizations for farmworker housing	11.0	11.2	-1.8
Section 514 MSFW housing loans	USDA	Loans to farmers and nonprofits for farmworker housing	16.3	11.4	42.9
Community Services Block Grants	HHS	Block grant funds reserved for farmworkers	3.0	3.0	0.0

MSFWs also participate in other programs for which they qualify, including Food Stamps, AFDC, literacy programs, homeless programs, bilingual and immigrant education, and low income home energy assistance.

Source: AFOP Washington Newslines, November/December 1991, at p.3 and June 1988, at p.3, supplemented by interviews of selected agency officials.

## B. Federal Programs

During the 1960s the federal government launched a War on Poverty, enacting or expanding numerous statutory programs for assisting poor and disadvantaged Americans. Some of these programs technically included farmworkers within their compass, but it was often argued that migrant farmworkers would be excluded or underserved by these State-administered programs. As a result, the government also established during the 1960s numerous programs specifically dedicated to serving migrant farm workers and their families.

Specially targeted federal efforts for migrants were justified on several grounds. Most importantly, migrants have special needs that result simply from the fact of their mobility. Often they are not in one location long enough to do the paperwork or clear a waiting period for benefits administered by state and local governments. For migrant children in particular, frequent moves cause obvious disruptions in schooling.<sup>5</sup> The resulting educational deficiencies might trap them in a culture of migrancy and poverty. In the 1960s, this prospect was viewed as especially disadvantageous, because migrancy was expected to disappear as mechanization displaced migrants. Migrant children would be unable to follow their parents into farmwork, but they would also be unprepared to compete in the nonfarm labor market.<sup>6</sup> The withering away of migrancy of course has not come to pass, but other changes have strengthened the case for special assistance programs—including the problem of language barriers as the migrant workforce has come to be dominated increasingly by citizens and recent immigrants of Latino origin.

Furthermore, migrants were often thought to be the unique responsibility of the federal government. Migrants usually do not vote in the jurisdictions in which they work (if in fact they have voting rights at all; as foreign nationals, many cannot vote in the United States). In addition, their relations with the local population may be strained. Migrants are often regarded by farming communities as a necessary evil needed to get the crops picked, but necessary for only part of the year.<sup>7</sup> Too many benefits might encourage them to stay, diverting resources to migrants that, some local leaders concluded, should be reserved for residents who were disadvantaged. Even without such local suspicion or hostility, there may be little contact between migrants and permanent residents that would lead to initiatives to help meet the migrants' needs. Local efforts therefore could not be relied upon for assistance, and even the general assistance programs funded by the federal government, usually administered by state or local officials through cooperative arrangements, might not take adequate account of the particular needs of migrants.

Special programs for migrants often mean that they receive benefits under specialized programs that do not serve the nonmigrant poor—or that special funding is available to agencies serving migrants that they would not receive if they served other segments of America's disadvantaged population. There is nothing improper or surprising in this fact; it is an inevitable corollary of the nation's recognition of special migrant needs that require unique programs. But this difference does create certain difficulties unperceived in the heady days of the early War on Poverty, when the nation appeared to have the capacity to address the problems of all of the disadvantaged. As budgets

---

<sup>5</sup>See, e.g., House Comm. on Education and Labor, Elementary and Secondary Education Amendments of 1966, H.R. Rep. No. 89-1814, 89th Cong., 2d Sess., at 10 (1966).

<sup>6</sup>Predictions about the demise of migrancy proved inaccurate. Per capita consumption of fruits and vegetables increased, and Americans shifted from easier-to-mechanize canned and processed products to hand-harvested fresh commodities. Between 1970 and 1989, per capita consumption of vegetables rose 13 percent from 177 to 200 pounds per person per year, and fruit consumption rose 17 percent, from 97 to 114 pounds per person per year. Fresh fruit and vegetable consumption rose enough to offset declines in canned consumption. For example, fresh vegetable consumption rose 42 percent to 102 pounds while canned vegetable consumption fell 10 percent to 83 pounds per person. US Department of Agriculture, Economic Research Service, *Vegetables and Specialties: Situation and Outlook* 8 (TVS 252, 1990). The number of MSFWs stabilized and even increased in some areas as labor-intensive agriculture expanded faster than mechanization displaced workers on the fewer and larger farms that accounted for most U.S. fruit and vegetable production.

<sup>7</sup>See, e.g., N. Klores, *Farmworker Programs under the Comprehensive Employment and Training Act—A Legislative History* 24 (1981) (describing the reasons that led the directors of some of the earliest federal migrant assistance programs, under Title IIIB of the Economic Opportunity Act of 1964, to assure that migrant programs would be under centralized national management in the headquarters of the Office of Economic Opportunity (OEO)).

tightened and benefits declined in the 1980s, special and comparatively better services for migrants posed more acutely these questions: Who qualifies for such services? What priorities should be established to parcel out limited migrant assistance budgets? And how can the programs be managed or designed to minimize any possible incentive to manipulate migrant status in order to claim such benefits or expand bureaucratic turf?

For most programs today, these questions are answered by the definitional provisions of the specific migrant assistance scheme—often coupled with a first-come first-served rationing of benefits that may run out well before the end of the list of eligibles. But the definitions were enacted piecemeal and reflect no overarching congressional or administrative theory about those most likely to benefit from, or most deserving of, the particular assistance at issue.

Each federal MSFW assistance program has a unique definition of the migrant and seasonal workers who are eligible for services. These definitions differ, for example, in the border which must be crossed to be considered a migrant, in the type and amount of qualifying work done, and in how long a migrant can continue to receive services after he or she has stopped migrating. These differences in definition mean that each MSFW assistance program has a unique target population, distinct outreach workers and intake forms, and usually separate facilities that may be able to serve some farmworkers but not others.

Moreover, migrant assistance programs have developed as a series of ad hoc initiatives run by different agencies. The result is a clear potential for overlaps in some services and gaps in others, and Congress has made inadequate provision for coordination between programs. Service providers generally concur that today's multifarious scheme probably would not be replicated if we were starting over to develop from scratch an overall strategy to meet migrants' special needs (for health care, education, nutrition, financial assistance, housing, job training, and the like). Although there is little support for wholesale redesign, activists, officials, and service providers usually agree on the need for better coordination so that limited funds may be used more effectively.

### **C. The Outline of this Report**

This report analyzes regulatory barriers to coordination among migrant service programs and suggests ways to overcome them. Although its recommendations should have wider applicability, it focuses on what many persons called the "big four" MSFW programs: Migrant Education (ME), Migrant Head Start (MHS), Migrant Health (MH), and job training and ancillary services under section 402 of the Job Training Partnership Act (JTPA 402). These four programs together account for 90 percent of dedicated federal migrant assistance funds; ME alone counts for 56 percent. Although there is more coordination between these programs than existed in the past, those involved generally agree that coordination could be improved.

This report (1) explains the origin and rationale of, and current MSFW definitions used in, the federal MSFW programs on which it focuses; (2) analyzes the impact of the definitions of eligible worker—and other features of the regulatory or institutional design—on state and local program administrators and on the persons served by the program; (3) investigates whether a more uniform definition of the eligible population would improve coordination, consistency, fairness, and efficiency in migrant assistance programs; (4) considers methods to encourage better coordination at the state and local levels; and (5) evaluates the desirability of a new federal body to foster coordination or otherwise to promote improvements in program operations and standards.

In addition to a study of the available literature and the legislative histories of the central programs, we conducted interviews of selected persons involved in these programs at the federal, state, and local levels. Our interviews included government officials at all levels (some involved directly in MSFW-specific programs and some with other responsibilities), officers and employees of grantee service providers and of their umbrella organizations, farmworker advocacy organizations, and farmers and farmworkers themselves. We also attended several hearings of the National Commission on Migrant Education, as well as a joint national conference of the chief service

providers held in Buffalo in April 1991. At each location we were able to speak briefly with many of those who took part. With the assistance of the Administrative Conference of the United States, we also were able to schedule one meeting in Washington with a large number of key officials in the central offices of the chief federal programs, along with some persons from related nongovernmental organizations, to discuss issues of definition and coordination.

At times this was a difficult study to conduct. Migrant assistance programs are flexible federal programs that serve mostly poor and minority workers and their families. The services are generally provided by hard-working and dedicated people, putting in long hours for pay that is often far below what they might command in other endeavors, and in areas where the demand for services far outstrips supply. Some service providers regard evaluations or audits of the structure and functioning of their programs as hostile efforts by outsiders that will only make the provider's daunting mission more difficult, or else will afford rationales for further trimming of budgets that have already been reduced. In the face of extensive need, which can be met only partially in any event, the outsider's interest in definitions and efficiency can easily appear as uncharitable nitpicking. In many instances, there is a feeling that outside evaluators should simply acknowledge the expertise of providers to determine who should be served and how they should be served.

As a result of this understandable attitude among many service providers, questions about definitions and regulatory barriers were often met initially with skeptical queries about why and for whom the study was being done. (So as not to be misunderstood, we should emphasize that this reaction was by no means uniform. Most persons interviewed were most gracious and freely devoted considerable amounts of time toward assisting us in our understanding of their programs.) A few definition and coordination problems are immediately evident, but in other cases service providers raised legitimate questions about whether a uniform definition would solve their coordination problems—or at least would ameliorate them enough to make it worth the transition costs to some new, uniform definition.

#### D. Conclusions

This study concludes that coordination between MSFW programs could be improved with changes in program administration. As to definitions, although major restructuring of the programs to accommodate a new uniform definition would impose significant transition costs, some steps toward uniformity appear desirable and worthy. A more uniform definition would help reduce duplicative outreach and intake expenses, and, most importantly, would make it easier to estimate the target population of eligible migrant and seasonal workers and their dependents. Improvement in that capacity would reduce the frustration of service providers who report that the current wide range of MSFW target population estimates makes it hard to establish a definitive need for funding. We propose that the affected agencies agree on a core definition of migrant and seasonal farmworkers to be used initially as the basis for improved data-gathering, and that the Department of Labor, which has traditionally not estimated the number or distribution of migrant workers, develop a system to count farmworkers that is as reliable as its system to count workers in other industries and occupations. A uniform core definition, leading toward a better overall mapping of the target population, might also help to distribute available funds more effectively. Some programs currently allocate funds on the basis of persons enrolled or served, with no systematic provision for noticing when, for example, fruit and vegetable production starts up in a new area and draws a new population of MSFWs. Service providers may not catch up with the new distribution of workers for many years.

A uniform definition would also make it easier to coordinate services for MSFWs, but the successful examples of coordination at the state and local levels that we found indicate that coordination is possible even while definitions differ. In order to promote such coordination, and also to deal more effectively with a number of important interagency issues at the national level, the national-level coordination machinery should be improved. The possibilities for such improved coordination range widely, from a loose inter-agency task force through an executive branch

coordinator all the way to a Cabinet department centralizing all migrant functions. Though the question is close, we favor an improved interagency coordinating council, chartered by executive order, and charged with addressing certain specific priority coordination tasks.

## II. The Major Programs: Background and Current Issues

### A. Migrant Education

#### 1. The Framework

##### a. The Chapter I program for disadvantaged children

In the heyday of the War on Poverty, Congress passed the Elementary and Secondary Education Act of 1965, establishing a significant federal role in supporting education.<sup>8</sup> Title I of that Act set a basic funding pattern that has been continued to this day for the major portion of federal assistance. Grants are made, through the states, for aid to local education agencies (LEAs) on the basis of counts of school-aged children from low-income families, largely based on decennial census figures. Once the funding is provided, however, in observance of the traditional local control over education in this country, LEAs have considerable discretion in choosing exactly how to use those funds, so long as they are used for supplemental services and facilities, as opposed to funding of the basic educational services of the school.<sup>9</sup>

The statute was reorganized and revamped by the Education Consolidation and Improvement Act of 1981 (ECIA), and then by the Elementary and Secondary School Improvement Amendments of 1988,<sup>10</sup> but the federal funding approach for educating the disadvantaged remains essentially the same under Chapter I, as it is now known. LEAs with a high concentration of children from low-income families receive a federal supplement to use, for example, for additional teachers and aides, counseling and tutoring, inservice training for chapter I personnel, and a number of other measures. Chapter I funding of basic grants to LEAs for school year 1991-92 amounted to \$5.0 billion.<sup>11</sup>

##### b. The Migrant Education program: framework

In 1966 Congress determined that an additional special program for migrant education should be undertaken, based in part on concern that too much of the basic program was going to urban areas.<sup>12</sup> Unlike basic chapter I, the statute governing migrant education places primary responsibility on state educational agencies (SEAs), rather than local districts, "[b]ecause of the transient nature of the population."<sup>13</sup> The central migrant education grants, now known as Section 1201 grants, received an appropriation of \$285.6 million for FY 1991, up from \$274.0 million in FY 1990. This money was provided to the SEAs in the 49 states that now participate (all but Hawaii), plus the District of

<sup>8</sup>Pub. L. No. 89-10, 79 Stat. 27 (1965).

<sup>9</sup>Funding is based on figures showing low-income families, because of studies showing a high correlation between poverty and educational disadvantage. Once the funding is set, however, children are to be served on the basis of educational disadvantage alone, without regard to income.

<sup>10</sup>Pub. L. No. 97-35, Title V, 95 Stat. 463-482 (1981), replaced by Pub. L. No. 100-297, 102 Stat. 293 (1988). The current version is codified in 20 U.S.C.A. §2701 et seq (West 1990).

<sup>11</sup>Dept. of Education Fact Sheet, Allocations for School Year 1991-92.

<sup>12</sup>Elementary and Secondary Education Act Amendments of 1966, Pub. L. No. 89-750, 80 Stat. 1191. See generally Interstate Migrant Education Council, *Migrant Education: A Consolidated View* 14 (1987); Congressional Research Service, *Federal Assistance for Elementary and Secondary Education: Background Information on Selected Programs Likely to be Considered for Reauthorization by the 100th Congress*, at 55-79 (prepared for the Subcomm. on Elementary, Secondary, and Vocational Education of the House Comm. on Education and Labor, Comm. Print, Serial No. 100-A, February 1987). Before 1966, a few initiatives for migrant education had been started under Title IIIB of the Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508. See S. Levitan, *The Great Society's Poor Law: A New Approach to Poverty* 249 (1969) [hereafter cited as *Great Society*].

<sup>13</sup>House Comm. on Education and Labor, *School Improvement Act of 1987*, H.R. Rep. No. 100-95, at 36 (1987).



Columbia, Puerto Rico, and the Northern Marianas. SEAs have considerable discretion in structuring actual services and deciding on the precise uses of the funds.<sup>14</sup> They may pay for counselors, tutoring, additional aides, dropout prevention programs, prevocational training, medical and dental services, nutritional programs, transportation, training or counseling of parents, special summer schools (a particularly important element in upstream states, during some of the principal fieldwork months for the parents, in order to assist students to make up work missed over the regular school year), and a host of other initiatives. This great flexibility is a notable feature of the ME program. Moreover, the money comes on top of basic chapter I funding; one person interviewed called ME money the "supplement to all other supplements."

In addition to the 1201 grants, section 1203 of the statute<sup>15</sup> provides for additional grants "to improve the interstate and intrastate coordination among State and local educational agencies of the educational programs available for migratory students." The FY 1991 appropriation for these purposes was approximately \$9 million. The bulk of this money (some \$ 6 million) goes for the Migrant Student Record Transfer System (MSRTS), discussed below, while the rest is used for grants and contracts that promote coordination, including modest funding for stopover sites and a new program to develop a better system for secondary education credit exchange and accrual.<sup>16</sup> For the last several years, the key element for coordination, however, has been a system of three Program Coordination Centers (PCCs), located in Texas, Oregon, and New York, funded at the level of approximately \$2 million annually.<sup>17</sup> Each center has a staff of four or five professionals, and they run workshops, provide training, share curricular materials, and furnish other services aimed especially at helping states understand the curricula employed in other systems where their migrant students may spend part of the year, so as to mesh more effectively the educational programs the students experience. The ME office in Washington oversees this coordination activity through its Office of Program Coordination, staffed with approximately seven professionals. Most of the coordination activity of the office focuses on coordination among ME programs, but the staff also has responsibility for coordination with the other migrant service programs administered by other federal agencies.

As with other migrant assistance programs, some coordination among ME programs and with other agencies also derives from the work of umbrella organizations for ME grantees, especially the Interstate Migrant Education Council (IMEC) and the National Association of State Directors of Migrant Education (NASDME). IMEC is a 51-person organization of chief state school officers, ME directors, and federal, state, and local elected officials of the 16 states that include about 80 percent of all migrant children. Founded in 1976, it has been chaired since then by Representative William Ford (D-MI), Chairman of the House Education and Labor Committee, and widely credited as the "father of ME." IMEC's purpose is to "disseminate information about the unique benefits of the migrant education program and the need for sufficient resources to carry out its mission."<sup>18</sup> Several persons also described IMEC as a device for raising the visibility of Migrant Education within SEAs. IMEC pursues these goals by educating public officials about the needs of migrant children, and by providing a forum for ME directors to interact with these officials. IMEC has a small staff which carries out the directives of the 32-member Council of elected officials and other non-ME program members and a 19-member steering committee of ME-affiliated staff. IMEC publishes a newsletter,

---

<sup>14</sup>The state directors of the 49 states where ME is active (all but Hawaii), have also established their own organization, the National Association of State Directors of Migrant Education (NASDME), to share information and ideas and to advocate better support for their programs.

<sup>15</sup>20 U.S.C.A. §2783 (West 1990 & Supp. 1991).

<sup>16</sup>See 34 C.F.R. Part 205 (1990). See generally Congressional Research Service, Background Information, *supra* note 12, at 73-79.

<sup>17</sup>These were meant to correspond roughly to the western, central, and eastern migration streams. Several ME officials acknowledged that the streams are not so neatly divided any more, but they still believed that three regional offices made these services more accessible than would be the case with only one centralized coordination office.

<sup>18</sup>IMEC, Annual Report 1990-91, at 5.

*Migrant Education Report*, and other occasional papers. It is funded by SEA contributions of \$22,000 to \$25,000 per state; its budget in 1992 is \$400,000.<sup>19</sup>

NASDME is an unincorporated organization of state ME directors whose chair rotates among the states. NASDME meets quarterly, in order for state ME directors to exchange information and to promote coordination between ME programs in various states. State ME programs pay dues to NASDME to fund its operations, but data on these dues and NASDME's budget were not available to us. NASDME publishes a bimonthly periodical, *Migrant Education Messages and Outlook (MEMO)*, and hosts an annual conference. NASDME has devoted considerable attention to the MSRTS, focusing on strategies to improve delivery of timely, reliable and germane information. It has also tackled the problems involved in coordinating ME with other programs, and it has worked on school credit transfers and related issues.

### c. The funding formula

States must apply for the §1201 ME grants and demonstrate compliance with certain criteria, such as assuring adequate evaluation, current needs assessments, and ample provision for parental involvement. Nevertheless, actual funding for each SEA derives in nearly automatic fashion from a formula based on the identified migrant student population in the state during the year. The statute specifies proportional counting of children present in the state only part of the year, in order to yield a full-time-equivalent (FTE) annual figure.

These required calculations pose problems, in part because it is hard to estimate the population of eligible migrant farmworker children. After some initial difficulties in 1966, the Office of Education used Department of Labor (DOL) estimates of the number of migrant farmworkers in each state. Even though it was aware of significant shortcomings in these data, at the time the office could find no better starting point for applying the statutory command. It then developed an estimate of the number of migrant school children per state by assuming .75 children per worker.<sup>20</sup> Clearly some more accurate measure was desirable.

By 1972, all active states were cooperating in the use of the Migrant Student Record Transfer System (MSRTS). This system, based in Little Rock, Arkansas, was originally developed to provide for ready sharing of academic records among school districts as migrant students moved from place to place with their families, rather than to develop a census count of eligible children. The MSRTS system has encountered problems and serious criticisms,<sup>21</sup> but once it was fully operational, it provided far better data on migrant *students* than the DOL estimates of migrant workers. In 1974 Congress amended the statute to require, in essence, use of MSRTS figures in calculating the FTE figures on which state allocations would be based.<sup>22</sup>

The formula for deriving actual funding is quite complex, but the basic idea is that the federal supplement for each full-time-equivalent migrant child identified in the state will amount to 40 percent of the state's average per-pupil expenditure. This calculation is subject, however, to both a

---

<sup>19</sup>California, Texas and Florida apparently contribute additional funds.

<sup>20</sup>At the time of enactment in 1966, the Office of Education expected to be able to get such census estimates from health officials or the Office of Economic Opportunity. Allocation of all Title I money was delayed while the figures were sought, but the delays stretched beyond what anyone anticipated. Finally a reserve figure was chosen in advance of census estimates, so that the balance of the Title I appropriation could be released to states and LEAs. Only a few weeks later did the office decide to use DOL statistics as the best available (although they admittedly covered only workers under contract, not all migrant farmworkers). The multiplier of .75 used to estimate the number of migrant children then derived not from scientific analysis but from the fact that its application to DOL statistics happily resulted in a total spending figure just below the amount of funds that had already been set aside by the Commissioner for Migrant Education from the overall Title I appropriation. Interview with Patrick Hogan, Office of Migrant Education, August 1, 1991.

<sup>21</sup>See National Comm'n on Migrant Education, *Keeping Up with Our Nation's Migrant Students: A Report on the Migrant Student Record Transfer System (MSRTS)* 2, 6-8 (Sept. 1991).

<sup>22</sup>20 U.S.C.A. §2781(b) (West 1990). The statute does permit the Secretary to use another system if he determines that it "most accurately and fully reflects the actual number of migrant students." The appearance of a rival to MSRTS under these conditions is thus highly unlikely.

ceiling and a floor, to make sure that it will not fall below 80 percent, nor exceed 120 percent, of the national average per-child supplement.<sup>23</sup> For program year 1991-92 the statutory formula, had it been directly applied, would have generated federal grants to SEAs totalling \$987 million. But because Congress appropriated only \$286 million, the Office of Migrant Education first performed the statutory calculations, then reduced each state's allocation proportionately.<sup>24</sup> Although the formula itself (including the 40-percent benchmark) is not based on a precise assessment of educational requirements, these proportionate reductions to stay within appropriations ceilings lead to an oft-heard complaint that SEAs receive less than a third of the funding the statute says they need.

#### d. The definition

The initial statutory provision was read to cover children only in the year following their parents' migration. As a result, migrant children whose families settled out of the migrant stream could no longer be served after 12 months of settlement. State migrant education directors consequently approached Congress and asked for authority to continue such services. They pointed out that the statute perversely terminated the assistance at a point when it might hold special promise of effectiveness, just when the student's life was taking on somewhat greater stability. Congress responded promptly, amending the statute in 1967 to extend the period of eligibility by another five years, if the parents concurred.<sup>25</sup> The legislative record discloses no particular reason for choosing the five-year benchmark, rather than some other time period.<sup>26</sup>

The current statute and regulations maintain this approach (see Appendix B, which sets forth the statutory and regulatory definitions for each of the major MSFW service programs), allowing services to "formerly migrant children" (sometimes simply called "formerlies") with the concurrence of the parents, for no more than five years.<sup>27</sup> In essence, this provision authorizes services for a total of six years after a "qualifying move," for one year as a "currently" and thereafter as a "formerly." The statute specifies, however, that currently migratory children "shall be given priority in the consideration of programs and activities"—a command that is implemented in different ways in different states, sometimes making little practical distinction.<sup>28</sup>

---

<sup>23</sup>20 U.S.C.A. §2781 (West 1990).

<sup>24</sup>Figures provided by the Office of Migrant Education. In very rough terms, the grants actually provided in program year 1991-92 worked out to a national average of about \$500 per identified migrant student. This figure should be used, however, only to give an idea of the general order of magnitude of the funding received by states. Plainly the formula contemplates considerable variation state-by-state, and in any event, the funding is based on FTE calculations of identified migrant children in the state, not of those served.

<sup>25</sup>Elementary and Secondary Education Amendments of 1967, Pub. L. No. 90-247, §109, 81 Stat. 783.

<sup>26</sup>The Senate Committee explained the change to make formerly migratory children eligible for services with these words:

Children who have been left with friends or relatives while the parents are migrating to areas where work is available, suffer from a cultural gap when enrolled in the local school system even after receiving services in their first year of residence in a community. They continue to encounter difficult language problems and are reluctant to attend school because their attire may be shabby. They experience difficulty in becoming involved in the regular school community. These children have problems in adjusting to the alien cultural and sociological climate of the school system. The committee's amendments to title I will make possible the continuity of effort needed for special migrant programs to dislodge these children from the migrant stream and integrate them successfully into the local educational system.

Sen. Comm. on Labor and Public Welfare, Elementary and Secondary Education Act Amendments of 1967, S. Rep. No. 726, 90th Cong., 1st Sess., at 13 (1967).

<sup>27</sup>20 U.S.C.A. §2782(b)(West 1990); 34 C.F.R. §201.3(b)(1990).

<sup>28</sup>Id. Another expansion of the statute's coverage occurred in 1974, when the definition was extended to include the children of migratory fishermen. Pub. L. No. 93-380, §101(a)(2)(E), 88 Stat. 492 (1974). This change was triggered by a highly successful migrant education program in Mobile, Alabama, in the early 1970s. That program turned out, upon inquiry, to be serving mostly the children of migratory fishermen, apparently on the misapprehension that such fishing was a form of agriculture. One of the key teachers, however, was the sister of a congressman, who was asked to introduce the new definitional language in order to allow the continuation of the Mobile program. Interview with Patrick Hogan, *supra* note 20. The conference report, however, explained the addition of fisheries to the definition as the correction of a "technical deficiency." S. Conf. Rep. No. 93-1026, 93d Cong., 2d Sess., at 3 (1974). Children of migratory fishermen now make up less than 3 percent of the population served.

Apart from the lengthy "look-back" period ME employs (the longest of federal migrant programs), the ME definition is also among the more expansive.<sup>29</sup> It covers the children of parents employed in both crop and livestock agriculture, and also, by special statutory provision, those employed in dairy and fishery operations. The definition also extends to the children of migrant workers in packing and processing facilities, as well as the children of some persons who transport agricultural products. A qualifying move need only take one across a school district line, and the worker need not actually find farmwork in the new destination, as long as the move was undertaken with the *purpose* of finding agricultural work. This highly subjective element, requiring inquiry into the intent of the family at the time of the move, whatever the actual employment before or after, is open to manipulation. It sometimes causes problems for outreach workers, and it certainly complicates audits.

## 2. Current issues

ME claims the largest portion of the federal migrant assistance budget, and probably comes in for the largest share of questions and complaints from the general community of MSFW service providers. Those questions most often voiced in the course of our interviews are summarized here.

### a. Funding for population and not for services

Migrant Education's formula for distributing funds to the individual states is based on the MSRTS count of FTE eligible children within state boundaries, without direct reference to how many of that population actually receive services. In program year 1990, for example, when the MSRTS eligible figure exceeded 556,000, a Migrant Education Fact Sheet reported approximately 250,000 children served.<sup>30</sup> Other more detailed reports, however, appear to establish that the number of children served exceeded 350,000.<sup>31</sup> Even the latter number is subject to question, however, because it may include double counting of children who had access to services in more than one state.

However one evaluates these statistics, this feature—allocating funds on the basis of population counts rather than service counts—surpassed any other in drawing criticism from officials and activists involved in other migrant service programs (occasionally ME officials reflected some doubts on this score as well). Other programs usually have performance standards that include requirements for detailed accountability, and they must link their grant proposals closely to the number of persons served. One Migrant Head Start official observed: "The principal use of MSRTS frequently appears to be the identification of children to generate dollars for migrant education rather than the utilization of a system to work more effectively with children to promote their educational development and health maintenance."<sup>32</sup>

ME officials defend the formula, arguing that it provides an incentive for finding and identifying migrant children. As a result, most state or local ME programs have significant staffs devoted to recruitment or outreach. Proponents of the formula argue that services are generally made available

---

<sup>29</sup>After the Reagan Administration proposed more restrictive definitions of some key terms, Congress mandated by statute the continuing use of earlier regulatory definitions. The current such provision appears in 20 U.S.C.A. §2782(c) (West 1990).

<sup>30</sup>Fact Sheet, FY 1990, Office of Migrant Education, at 1: "The number of migratory children served has grown from 80,000 in 1967 to 250,000 in 1981 and has remained fairly constant since then."

<sup>31</sup>Maria V. Colon & Marlene Portuondo, *Secondary Analysis of Selected Data on Migrant Education Programs, Fiscal Year 1990*, Table G (Report prepared for the National Commission on Migrant Education, March 1, 1991). This table gives a figure of 359,996 served in the regular school year, as well as a figure of 126,796 served in summer school. Both figures contain an undetermined amount of double-counting, however, owing to the fact that some students receive services in more than one district over the course of the year.

<sup>32</sup>Testimony of Geraldine O'Brien, Executive Director, East Coast Migrant Head Start Project, to the National Commission on Migrant Education, April 29, 1991, at 4.

once any significant concentration of migrant students is identified, and they point out that services certainly will not be provided if the students are not located.<sup>33</sup>

Critics also complain about the way the MSRTS system generates FTE counts. Even if MSRTS records show that a student has withdrawn from a school system, she remains within that state's count until she is picked up by a system in a different state and that state notifies MSRTS of the enrollment there.<sup>34</sup> Supporters defend this practice, however, based on a judgment that the student may simply have dropped out of school, could still be in the area, and should be the object of efforts to draw her back in. If she has actually moved elsewhere, she cannot remain on the rolls for longer than about 12 months in any case, for the regulations<sup>35</sup> require annual updating of information on the certificate of eligibility. The dropout phenomenon doubtless sometimes does account for recorded withdrawals without later pickups in other school systems. But quite often the student may well have moved to another state that was simply slow in the paperwork or failed to note the student's status as a migrant.

Moreover, this slow removal from MSRTS counts may at one time have worked to the special advantage of stopover states. Several people asserted that Arkansas, in particular, provides an attractive stopover site for migrants moving north from Texas, and is assiduous in enrolling migrant children with the Little Rock-based MSRTS during their brief stay there. This practice generates disproportionate FTE counts for Arkansas, because some of the migrant children will never be picked up in another state system, and the reporting of others' moves to MSRTS may be delayed by weeks or months. In its latest regulations, however, the Department took steps to minimize this practice by stopover states.<sup>36</sup>

#### b. "Formerlies" and "currentlies"

Many people raised questions about the lengthy look-back period employed, allowing services for up to six years after a qualifying move. ME officials, teachers, and supporters usually justify the practice by pointing out that the effects of educational disruptions may linger for years. In their experience, there is no significant difference between the formerlies and currentlies in their classrooms or among those in their counseling or tutoring sessions.<sup>37</sup> Moreover, it was argued that a shortening of the eligibility might only tempt some families to rejoin the migrant stream in order to restart their children's eligibility for ME services.

Critics concede that needs may persist long after a family settles out of the migrant stream, but they suggest that at some point (before the six-year mark) the needs of settled ex-migrant children are not significantly different from those of other disadvantaged students. Basic Chapter I funding exists to provide services for such children.<sup>38</sup> And they argue that a reduced eligibility period would not

<sup>33</sup>Moreover, it should be noted that basing funding on population counts has not, for nearly a decade, resulted in added overall funding for the Migrant Education program. Ronnie E. Glover, the President of NASDME (the National Association of State Directors of Migrant Education) observed in a letter commenting on an earlier draft of this study:

In theory our funding may be based on number of children identified, but in reality, since 1981, our funding is based on a line item appropriation. To the best of my knowledge, this is the same basis on which all other programs receive funding.

Letter from Ronnie E. Glover to Jeffrey Lubbers, ACUS, Feb. 7, 1992. (Even though added identification of migrant students probably will not increase the national appropriation, however, a potential for some distortion remains, because a state still can improve its relative position vis-a-vis other states in the annual allocations.) The Glover letter also expressed doubt that a change to funding based on actual numbers served would make much difference in state allocations, owing to the current requirement to serve all migrants, with the priority going to those in greatest need. Finally, it also voiced concern that such a change might instead force a reduction in services, especially to those in greatest need, as states tried to stretch resources to serve higher absolute numbers.

<sup>34</sup>The rules are slightly different for summer school, which is subject to special funding arrangements and counting rules under 20 U.S.C.A. §2781(b) (West 1990).

<sup>35</sup>34 C.F.R. §§201.30 - 201.32 (1990).

<sup>36</sup>34 C.F.R. §201.20(a)(3) (adopted in 1989).

<sup>37</sup>See Glover letter, *supra* note 33: "All the objective data we have, including information from MSRTS and a comprehensive needs assessment in California, indicates that the needs of formerlies are, on average, at least 90 to 95 percent as great as those of currentlies."

<sup>38</sup>The President of NASDME responded to such suggestions:

afford any undue incentive to renew migrancy, because from a settled-out family's perspective ME services usually are not sharply segregated from other services available through the local school system or elsewhere.

At the time when it was adopted in 1967, the statutory change that expanded coverage to formerlies held no implications for funding, because state allocations then were based on DOL estimates of currently active migrant farmworkers, state by state. The expansion of eligibility at that time allowed only a continuation of services, not an increase in some states' funding. But when the statute changed in 1974 to base state allocations on the MSRTS count of all eligible children in the state, the 1967 amendment to include "formerlies" took on a new significance that has never been fully considered in Congress.

The need for such reflection has become more pressing as a result of demographic shifts. Those states that claim the highest allocations of the §1201 grants also have very high proportions of formerlies. California, in particular, claimed over one-third of the national appropriation available for §1201 grants, and over 50 percent of its eligible population consists of formerlies.<sup>39</sup> Some of the formerlies, moreover, never did fit the stereotypical image of follow-the-crop migrants. Their ranks include, for example, Southeast Asian refugees who moved but one time (after their initial resettlement in the United States) to central California to take up truck farming on small plots owned by extended family members. That one move was "qualifying"; it fits the ME definition, for it was undertaken "to enable [a family member] to obtain temporary or seasonal employment in an agricultural . . . activity."<sup>40</sup> Though they plan no further movement, their children then bring California added funding for the next six years.<sup>41</sup> Again without doubting the existence of bona fide educational need on the part of these children, critics question whether their inclusion on migrant rolls, skewing funding to the heavy advantage of California --and other similarly situated states-- provides for the best use of the limited ME resource. (Other special federal programs exist for the specific purpose of assisting the education of refugee children.)

We found some slight indications of a willingness on the part of ME officials in Washington to consider a reduction in the look-back period, possibly to as little as 24 months, in the interests of moving toward a more uniform definition. But most people involved in ME programs stoutly defend the option to provide services for a full five years after a qualifying move.<sup>42</sup>

A middle path, proposed by some, may be worthy of consideration--a kind of return to the pre-1974 situation, which was arguably more in keeping with the initial purposes behind special federal programs for migrant education. Funding might be based on a state count which includes only current migrants, or current migrants plus those in the first year of settling out.<sup>43</sup> But the statute

---

Of course we want these "settled-out" children to be "picked up" by Chapter 1 basic and other programs, but in reality the Chapter 1 programs are often not the solution. For children who do not know English well enough to benefit from a Chapter 1 reading lab, or whose principal problem is that they are 16 years old and in the ninth grade, Chapter 1 is not a viable alternative. Even for those children whose needs could be addressed by Chapter 1 there is no assurance of access to those services; Chapter 1 can serve only about half the children who are eligible anyway.

Glover letter, *supra* note 33. (Any Chapter 1 program that is failing certain students in these ways, however, might well be out of compliance with the governing statute; it is not clear why the remedy should be continued ME coverage rather than specific remedies within the context of Chapter 1.)

<sup>39</sup>Office of Migrant Education, Fact Sheet FY 1990 (Table Headed "Final Allocation Migrant Education, in Rank Order, Program Fiscal Year 1990, 1201 Funds," June 6, 1990).

<sup>40</sup>34 C.F.R. §201.3(b) (1990).

<sup>41</sup>For example, the Fresno, California ME program serves 22,000 ME students, including 10,000 Asians in Fresno city schools (interview with Andy Rodante, Feb. 4, 1992). Farm employers and farmworker advocates assert, however, that Asians have never been even 5 percent of the area's migrant farmworkers.

<sup>42</sup>For a discussion of earlier battles over this same terrain, launched by an early Reagan Administration proposal to reduce the period from 5 years to 2 years, see Lyke, Proposed Changes in Federal Programs for Migrant Education 22-26 (Congressional Research Service, March 18, 1983). The proposal was not accepted by Congress.

<sup>43</sup>Alternatively, the FTE formula could be weighted to provide only partial credit, for funding purposes, for formerlies, while giving full weight to the count of currently migratory children. None of these alternative systems would require significant changes in MSRTS

could still allow states, at their option, to include formerly migrant students in the services. Any such change would of course bring significant political fall-out, for it would clearly shift resources from states like California and Texas toward those where a currently migratory workforce is more prevalent.

### c. Age ranges

In 1988, the statute was amended to count migrant children aged 3 to 21 inclusive for funding purposes. The House report that accompanied the amendment explained:

Currently, States may serve children between the ages of 3 and 21, but only those migrant children between the ages of 5 and 17 are counted for funding purposes. By expanding the age range being counted for funding purposes, the committee hopes to draw attention to the need to correlate to some degree those children who are served with the amount of funding provided.<sup>44</sup>

Ironically, the change may instead have reduced the correlation between services and funding. The earlier range, from 5 to 17, corresponded fairly closely with the usual ages of local school attendance in most districts. Although service was authorized for younger and older children, it was not the norm. Moreover, SEAs often will not need to create new programs targeted at such young children or older youths in order to include them in their counts. The eligibility documents filled out by ME recruiters are supposed to show the names and ages of other members of the family, whether or not they are in school. Siblings 3 to 5 or 17 to 21 can now generate added federal funding, whether or not they are served and whether or not they were located through additional targeted outreach.

The expanded age range also compounds the problems of overlap with Migrant Head Start, which traditionally serves children from shortly after birth through age 5. One MHS head interviewed, who operates a program that must turn away substantial numbers of eligible preschoolers for lack of resources, expressed some bitterness at the indifference of the local ME office to pre-school children. Despite its wider mandate, he said, ME would not think of transferring its funds to enable MHS to serve a larger population. The two were like "separate empires." When the local ME head was asked what his office was doing to serve the younger children, in view of the new statutory provisions, he mentioned only a summer school to help prepare those who would be entering kindergarten the coming fall—that is, children already 5 years old or approaching that age. This implies no wrongdoing on the part of ME; by all appearances the ME monies provided to the district were effectively employed, but with a focus on children 5 and older. The episode simply underscores the potential mismatch of the population counted for funding purposes with the population actually served. (In some other states, of course, ME and MHS have worked together more effectively to integrate their services.<sup>45</sup>)

Moreover, this tendency toward expanding the clientele of MSFWs to be served, particularly with regard to age ranges, appears to be endemic to every MSFW program. Interagency coordination can be adversely affected as a result. Any new coordinating body should therefore take this tendency into account and develop techniques to counteract it—or at least to subject any expansions to closer interagency scrutiny before they take effect.

---

data-gathering, for each student is already registered as a currently or a formerly. (On the forms, Status 1 and 2 are reserved for currently migratory agricultural workers, while all formerly migratory agricultural workers and their families are recorded in Status 3.)

<sup>44</sup>H.R. Rep. No. 100-95, *supra* note 13, at 37.

<sup>45</sup>See, e.g., National Migrant Resource Program, *Integration and Coordination of Services at Migrant Health Centers*, at III-24 (Feb. 28, 1992) (describing ME and MHS cooperation in programs involving the Illinois Migrant Council).



#### d. Coordination

The ME statute contains two specific provisions relating to coordination. Section 1203, discussed above, focuses on coordination among states' ME programs and between states and LEAs.<sup>46</sup> The other provision is more important for our purposes. Section 1202(a)(2) allows the Secretary to approve a state ME application only if he determines, *inter alia*:

that in planning and carrying out programs and projects there has been and will be appropriate coordination with [the HEP/CAMP programs described below], . . . the Education of the Handicapped Act, the Community Services Block Grant Act, the Head Start program, the migrant health program, and all other appropriate programs under the Departments of Education, Labor, and Agriculture.<sup>47</sup>

This measure dates back to 1966, when it referred to migrant programs authorized under the Economic Opportunity Act, but it has gradually been expanded over the years to reflect reorganization of migrant programs and eventually to specify a wider range of programs with which coordination must be accomplished. No one interviewed contested the desirability of such coordination. But some ME officials bemoaned the absence of parallel requirements in the organic statutes governing the other migrant service programs, fearing that the other agencies, lacking similar statutory requirements, would not have the same interest in coordination. This fear is probably exaggerated, however, for other programs have incorporated coordination requirements in their performance standards.

### 3. HEP and CAMP

The Office of Migrant Education in the Department of Education also oversees other programs meant for migrant farmworkers or their families. The most important are the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP), which fund projects designed to help migrant students complete their secondary schooling and their first year of college, respectively.<sup>48</sup> These programs were originally established as discretionary grant programs of the Office of Economic Opportunity (OEO), HEP in 1967 and CAMP in 1972.<sup>49</sup> In 1973 the director of OEO delegated responsibility for the programs to the Secretary of Labor, and in 1978

---

<sup>46</sup>20 U.S.C.A. §2783 (West 1990 & Supp. 1991). This section also authorizes funding for the MSRTS system and sets aside a minimum of \$6 million for these various coordination contracts.

<sup>47</sup>20 U.S.C.A. §2782(a)(2) (West 1990 & Supp. 1991) (statutory cross-references omitted).

<sup>48</sup>In addition to HEP and CAMP, the Office also oversees the Migrant Even Start Program, a relatively recent addition to the list of educational assistance programs for migrants. 20 U.S.C.A. §§2741-2749 (West 1990 & Supp. 1991). As part of a larger Even Start program launched in 1988, it provides funds, through project grants to SEAs, to meet the special educational needs of migratory children and their parents by integrating early childhood education and adult education into a unified program. As of March 1991 Migrant Even Start had four grantees (in New York, Louisiana, Oregon, and Washington), and it received an FY 1991 appropriation of \$1.5 million, up from \$726,000 in FY 1990. (The legislation reserves three percent of the total appropriation for the migrant portion of Even Start. 20 U.S.C.A. §2743(a)(1)(A).) Eligible migrants include parents eligible for participation in an adult basic education program and their currently migratory children ages 1-7 inclusive. Formerly migratory children can also be included if space is available. See Office of Migrant Education, Directory of Services: Federal Agencies and Non-Federal Organizations Providing Services to Migrant and Seasonal Farmworkers and Their Families 11 (March 1991); 34 C.F.R. §212.50 (1990). The relevant definitions, *id.* §201.3, are the same as those used by the regular Migrant Education program.

The Department of Education is also authorized to provide adult literacy grants to the states under 20 U.S.C. §1201. Under certain conditions the statute specifically authorizes the reservation of up to \$3 million a year from appropriated funds to be used for "national programs," which includes, under *id.* §1213, programs "to meet the special needs of migrant farmworkers and immigrants." See 34 C.F.R. Part 436. The definitions define "migrant farmworker" to include only those who have moved within the past twelve months. 34 C.F.R. §425.4. In FY 1990 and 1991, however, no funds were made available for migrant adult literacy programs. Directory, *supra*, at 14.

Brief mention should also be made of a special program to provide vocational rehabilitation services for handicapped MSFWs and their family members, authorized by the Rehabilitation Act, 29 U.S.C. §777b. Slightly over \$1 million was appropriated for this program in 1990. Directory, *supra*, at 13.

<sup>49</sup>See Great Society, *supra* note 12, at 249.



Congress established express authority for the programs under §303(c)(2) of the Comprehensive Employment and Training Act (CETA).<sup>50</sup> Their administration was transferred in 1980 to the newly created Department of Education, and later that year authority for the programs was removed from CETA and incorporated into the Higher Education Act of 1965, as amended.<sup>51</sup> FY 1990 appropriations for HEP totalled \$7.9 million and for CAMP \$1.7 million.<sup>52</sup>

HEP provides grants to colleges and universities, or private nonprofit organizations that work in cooperation with a college or university, to help MSFWs or their dependents (at least 17 years of age) to obtain a high-school equivalency diploma. HEP funds may be used for outreach and recruitment of eligible beneficiaries, educational services, and a wide range of supportive services, including counseling, health services, room and board (most HEP students live on college campuses during the program), and weekly stipends for personal expenses.<sup>53</sup> Grants are awarded on a 3-year cycle, through a competitive process that is not directly tied to migrant population in the area—thus sharply distinguishing the program from basic ME §1201. As of November 1990 there were 23 HEP grantees, located in 16 states and Puerto Rico.<sup>54</sup>

CAMP operates quite similarly, based on a competitive grant process with a 3-year grant cycle. It is meant to assist eligible MSFWs and their dependents to begin college studies. Funds may be used for outreach and recruitment aimed at such persons "who meet the minimum qualifications for attendance at a college or university." Thereafter, during the first year of college, funds may be used for instructional services such as counseling and tutoring, housing support, assistance in obtaining financial aid, health services, exposure to cultural events, and a variety of other services.<sup>55</sup> As of November 1990, there were six CAMP grantees, located in five states.

The definition that governs in both HEP and CAMP differs significantly from the basic ME definition. Both migrant and seasonal farmworkers (and dependents) are covered, but the worker must have spent a minimum of 75 days over the past 24 months in farmwork. The regulations add a requirement that the worker's *primary* employment was in farmwork, but the farmwork must be "on a temporary or seasonal basis (that is, not a constant year-round activity)."<sup>56</sup>

## B. Migrant Health

### 1. Legislative History

Migrant Health is the oldest of the major federally funded migrant service programs. A House committee report explained the need for special federal measures, pointing to studies that

continue to show high infant mortality rates, high communicable disease rates, low prenatal care rates, high premature birth rates, high accident rates, low immunization levels, serious need for dental care, low economic and educational levels, mobility and lack of resident status leading to geographic and eligibility isolation from medical facilities, plus cultural factors and language barriers contributing to the health problems of migrant and seasonal agricultural workers and their families.<sup>57</sup>

<sup>50</sup>Pub. L. No. 95-524, §2, 92 Stat. 1909 (1978), amending Pub. L. No. 93-203, §303, 87 Stat. 839 (1973). See Lyke, *The College Assistance Migrant Program and the Migrant High School Equivalency Program 2-3* (Congressional Research Service, June 27, 1986).

<sup>51</sup>20 U.S.C.A. §1070d-2 (West 1990).

<sup>52</sup>In program year 1985-86, federal expenditures per student enrolled in HEP projects ranged from \$905 to \$3,842, with an average of \$2,190. For CAMP the range was \$1,819 to \$5,900, averaging \$3,038 per student. Lyke, *supra* note 42, at 5.

<sup>53</sup>20 U.S.C.A. §1070d-2(b) (West 1990). See also 34 C.F.R. Part 206 (1990).

<sup>54</sup>Directory, *supra* note 48, Appendix C.

<sup>55</sup>20 U.S.C.A. §1070d-2(c) (West 1990); 34 C.F.R. Part 206 (1990).

<sup>56</sup>34 C.F.R. §206.5(c)(7) (1990). Migrants are defined as seasonal farmworkers "whose employment required travel that precluded the farmworker from returning to his or her domicile (permanent place of residence) within the same day." *Id.* §206.5(c)(6).

<sup>57</sup>H.R. Rep. No. 91-711, 91st Cong., 1st Sess., at 2 (1969).

In the early 1960s the Senate Subcommittee on Migratory Labor was considering several bills dealing with topics such as child labor, housing for migrant workers, and crewleader registration. Senator Harrison Williams, who chaired the committee, was approached with suggestions that instead that body might begin with legislation on migrant health, believed likely to generate less controversy and to gain wider support. This strategy worked, and in September 1962 Congress passed without dissent a simple and straightforward bill adding a new section 310 to the Public Health Service Act. The law authorized up to \$3 million "for paying part of the cost of . . . family health service clinics for domestic agricultural migratory workers and their families," as well as other special projects.<sup>58</sup> Congress appropriated only \$750,000 for the first fiscal year of operation, but the program soon showed significant results, and congressional support grew apace, to \$7.2 million in FY 1967 and \$14.0 million in 1970. The FY 1991 appropriation was \$51.7 million, up from \$48.5 million in 1990.<sup>59</sup>

Because of limited funding, early efforts targeted preventive health services such as immunizations, health education, and environmental safety programs. Many recipients of federal grants also modeled their clinics on a program in Fresno County, California, which had emphasized accessible locations and evening hours so as to reach the migrant farmworker population more effectively. The clinics then relied to a large extent on referrals to local cooperating physicians.<sup>60</sup> Increased appropriations eventually allowed the provision of a wider range of services and the construction and later expansion of a network of clinics dedicated to serving migrants. Under the current version of the migrant health authorization, now located in section 329 of the Public Health Service Act, grants may be used for both ambulatory care and hospital services, as well as a host of other measures, where appropriate, including dental services, extended care, rehabilitative services, and necessary transportation.<sup>61</sup>

Until 1970, only migrant farmworkers and their dependents were eligible for services under the Migrant Health program. An amendment that year added seasonal farmworkers to the eligible population, because they face many of the same health problems and may "live side by side in the same community." Moreover, "their status as seasonal workers and as migrant workers frequently shifts back and forth."<sup>62</sup> Congress recognized that this change expanded potential eligibility manyfold, but the legislative history emphasized that the focus still remained on migrants. Services could be provided to seasonal agricultural workers and their families in a project only if the Secretary found that providing such services would contribute to the improvement of the health conditions of migrants. The conference report underscored this limitation.<sup>63</sup>

In 1975, Congress rewrote the Migrant Health authorization and added a great many detailed requirements for the establishment and operation of migrant health centers, including, for the first time, statutory definitions of "migratory" and "seasonal" agricultural worker.<sup>64</sup> Current law essentially follows the 1975 pattern, although there have been frequent refinements since then. The Act and the regulations retain a strong emphasis on service to migratory as opposed to seasonal

---

<sup>58</sup>Pub. L. No. 87-692, 76 Stat. 592 (1962). The background is recounted in H. Johnston, *Health for the Nation's Harvesters: A History of the Migrant Health Program in its Economic and Social Setting* 135-39 (1985).

<sup>59</sup>National Association of Community Health Centers, Inc., *Migrant Health Program Funding History: Fiscal Years 1963-1991* (mimeo 1991).

<sup>60</sup>See Johnston, *supra* note 58, at 151; General Accounting Office (GAO), *Problems in the Structure and Management of the Migrant Health Program 3-4* (HRD-81-82, May 8, 1981).

<sup>61</sup>42 U.S.C.A. §254b(a) (West 1991).

<sup>62</sup>H.R. Rep. No. 91-711, *supra* note 57, at 3. The legislation that year was contained in Pub. L. No. 91-209, 84 Stat. 52 (1970). Before that time, migrant clinics had often provided services to seasonal farmworkers, but had to assure that funding for such services came from other sources.

<sup>63</sup>Conference Report No. 91-853, 91st Cong., 2d Sess., at 3 (1970), stated:

This provision is intended to be restricted in its applicability to projects in areas where migratory workers reside, and is to be limited to projects which will improve the health conditions of migratory workers themselves.

<sup>64</sup>Pub. L. No. 94-63, 89 Stat. 304 (1975).

farmworkers, through a set of defined funding priorities that are linked to the number of migrants in the clinic's "catchment area."<sup>65</sup>

The definitions (see Appendix B) define as migratory or seasonal agricultural workers only those whose "principal employment" is in agriculture on a seasonal basis.<sup>66</sup> (Interviews indicated that intake workers usually rely on the individual's own statement about the primacy of agricultural employment, and do not spend much time or effort in checking this issue.) A migrant, one who establishes "a temporary abode" for such employment, must have been employed in such work within the last 24 months. This 24-month look-back period is considerably shorter than that for Migrant Education, but of course migrants who have settled out for a longer period may still be served as seasonals, provided they retain their principal employment in agriculture. Such people will not count, however, for purposes of establishing the migrant population used in calculating funding priorities. "Agriculture," for Migrant Health purposes, includes only crops, not livestock, and it embraces processing, packing and similar activities only if "performed by a farmer or on a farm incident to or in conjunction with" primary growing or harvesting activity.<sup>67</sup> The committee reports accompanying the 1975 amendments, which adopted these definitions, offer no explanation of the reasons for choosing a 24-month period or defining agriculture in this fashion.<sup>68</sup>

In addition to the funding for Migrant Health Centers (MHCs) under what is now section 329 of the Public Health Service Act, Congress began in 1975 a separate program of federally funded Community Health Centers (CHCs) for "medically underserved" areas, under a new section 330 of the Act.<sup>69</sup> The range of services that can be funded is quite similar to that available under section 329, and most migrant health catchment areas also qualify as "medically underserved." As a result, many Migrant Health centers also apply for and receive funding under section 330 as well.<sup>70</sup> There have been periodic efforts, most recently in the early Reagan administration, to repackage federal health care initiatives as block grants that would give the states far more discretion in deciding how to use their federal health funding. Congress has strongly resisted including migrant health in such packages, however, fearing that states would not accord sufficient priority to migrant programs if such a change were made.<sup>71</sup>

## 2. Institutional Framework

The Migrant Health Program is a branch of the Division of Primary Care Services in the Bureau of Health Care Delivery and Assistance of the Department of Health and Human Services (HHS). Its central office consists of four or five professionals, plus support staff, who have broad oversight and policy responsibility. Actual approval of migrant health center grant applications and detailed program monitoring are decentralized to the 10 HHS regions, carried out by staff that report to the Regional Health Commissioners, not to the Migrant Health Branch. One staff member in each region is designated a Migrant Regional Program Consultant, but none of those consultants is able to devote full time to Migrant Health.<sup>72</sup>

---

<sup>65</sup>42 C.F.R. §56.107 (1990). See also 42 U.S.C.A. §254b(b) (West 1991). Since 1978, migrant health clinics may also serve former migrants who no longer meet the definition because of age or disability. *Id.* §254b(a)(1). Migrant Health published in 1990 an atlas of state profiles containing a detailed breakdown of migrant and seasonal farmworker population in each state served, as estimated (according to varying methodologies) by organizations in the states served by MH. Migrant Health Program, *An Atlas of State Profiles Which Estimate the Number of Migrant and Seasonal Farmworkers and Members of Their Families* (March 1990).

<sup>66</sup>42 U.S.C.A. §254b(a)(2), (3) (West 1991).

<sup>67</sup>42 U.S.C.A. §254b(a)(4) (West 1991).

<sup>68</sup>See, e.g., S.Rep. No. 94-29, 94th Cong., 1st Sess., at 106 (1975) (simply describing the definitions adopted in the legislation).

<sup>69</sup>42 U.S.C.A. §254c (West 1991).

<sup>70</sup>A GAO study reported that by 1979 63 percent of MH grantees were also funded under section 330. GAO, *supra* note 60, at 11.

<sup>71</sup>See, e.g., S.Rep. No. 91-618, 91st Cong., 1st Sess., at 3 (1969). Johnston, *supra* note 58, at 167-68, quotes a Congressional statement announcing "unanimous agreement that the [federal migrant health] program had been successful, and that this success could be attributed to the program's separate identity that could be jeopardized by a merger with other programs."

<sup>72</sup>Interview with Jack Egan, Acting Director, Migrant Health Program (Oct. 21, 1991).

The bulk of the annual appropriation for Migrant Health goes to the migrant health centers. As of 1990 102 MHC grantees operated some 400 clinic sites in 43 states and Puerto Rico.<sup>73</sup> Centers must undergo a competitive application process at least every five years, and must gain approval of "continuation" applications annually.<sup>74</sup> Some attention is given to shifting migrant populations in this process, particularly through reviewing the past year's productivity statistics for the centers; productivity is likely to decline if the migrant or seasonal population in an area is shrinking based on changing agricultural patterns or practices. But persons interviewed acknowledged the system's limited capacity for responding to major shifts in migrant health needs across areas. Limited funding in recent years has generally precluded the opening of new centers in previously unserved areas even if the central office knows of new migrant activity. And there is no systematic arrangement for keeping track of such shifts in agricultural employment, particularly in areas outside the reach of existing centers.

Such a gap does not necessarily mean that migrants in these other areas will be without subsidized medical services. In many areas, health facilities locally known as migrant health clinics (including some in areas of high MSFW concentration in California and elsewhere) are not technically part of the federal Migrant Health program. These clinics receive no section 329 funds, relying instead on state and private sources, or on other federal support (such as section 330 or Medicaid).

In any event, MHCs themselves almost always rely on substantial funding from other sources (in addition to community health center funding under section 330 of the Public Health Service Act, for which a high percentage of MHCs qualify). They turn, for example, to state and local government grant or contract programs, church or other private support, Medicaid, private insurance, and patient fees.<sup>75</sup> Indeed, this feature merely reflects the great emphasis that the American system of service provision, relying as heavily as it does on private nonprofit organizations, places on such initiative of a quasi-entrepreneurial character. Those organizations that are most creative in finding new funding sources and perhaps—in that process—branching out into new but related fields of activity, will be best situated to sustain and expand their operations.

In addition to the funding of the MHCs, the central office of Migrant Health selects for special funding certain projects with wider impact. These include, for example, the East Coast Migrant Health Project, which recruits multilingual health care staff and outreach workers to work on a temporary basis during the peak season in various centers along the east coast, and the National Migrant Resource Program (NMRP), based in Austin, Texas. NMRP houses a library of studies and articles relevant to migrant health that can be drawn upon by all MHCs. NMRP has also spearheaded several other useful initiatives, including the development of a Migrant Clinicians Network and, under that umbrella, the generation of migrant-specific protocols to assist doctors and nurses dealing with this population.<sup>76</sup> NMRP has also worked on issues of coordination among migrant health programs in various states, and with migrant service programs of other agencies. For example, its staff worked for many years to incorporate more complete and useful health records into the MSRTS data system. (This effort ultimately failed, due to database, confidentiality, and access problems; NMRP is now looking to other techniques for providing easily transferable and readily usable medical records.) Beyond these purely MH initiatives, the central office has arranged with the Health Care Financing Administration for pilot funding of hospitalization programs, primarily for maternal and emergency care, at selected locations.<sup>77</sup>

---

<sup>73</sup>Migrant Health Program (fact sheet, 1991); National Ass'n of Community Health Centers (NACHC), *Medicaid and Migrant Farmworker Families: Analysis of Barriers and Recommendations for Change I* (July 1991).

<sup>74</sup>Egan interview, *supra* note 72.

<sup>75</sup>Interview with Dan Cardenas, National Ass'n of Community Health Centers, October 21, 1991. No eligible MSFW may be turned away for inability to pay, but the centers may and do charge on a sliding scale that takes into account the resources of the patient or his or her family.

<sup>76</sup>See also National Migrant Resource Program, *Migrant and Seasonal Farmworker Health Objectives for the Year 2000* (April 1990).

<sup>77</sup>Egan interview, *supra* note 72. This initiative reflects the difficulties migrants often have in making use of Medicaid, which should generally cover hospitalization costs for those who meet the low-income requirements, as migrants generally do. Migrants often find

### 3. Coordination

Migrant Health has especially good working relationships with Migrant Head Start, for there is a natural match, in many localities, between the two programs. MH can provide the necessary health screening and treatment for children entering Migrant Head Start, and Head Start can also help MH to contact the children's families and so begin providing health services to them. In 1984, MH and MHS entered into a three-year interagency agreement to coordinate at the national level and to foster coordination at the local level.<sup>78</sup> Although the agreement apparently has lapsed, efforts are underway to renew it, and in any event a majority of MHS grantees report formal or informal agreements at the local level.<sup>79</sup> In some states this kind of symbiosis has also flourished between MH and Migrant Education. Most of this coordination results from efforts at the local level, however, because MH is simply not staffed, at either the national or regional levels, to provide extensive initiatives for interagency coordination.

Nevertheless, MH has been highly supportive of better interagency coordination. It took the lead in efforts in 1985 to establish an interagency coordination body (discussed below), and MH personnel and associated organizations have been quite vocal in calling for more structured coordination at the national level. The National Advisory Council on Migrant Health, for example, has called for the creation of "an Interagency Migrant Commission which exists at not less than the *Cabinet* level."<sup>80</sup> Sonia M. Leon Reig, Associate Bureau Director in the HHS Bureau of Health Care Delivery and Assistance, and formerly director of Migrant Health, testified before the National Commission on Migrant Education in favor of a Commission or Consortium, to be established at the "highest possible level, such as the White House," to "conduct short-term applied research, to prioritize and strategize solutions to common problems and to mobilize resources."<sup>81</sup> She also advocated a uniform definition of migrant farmworker, and she urged concerted efforts to eliminate duplication of activities, including mandated transfer of funds from one program to another to focus the responsibility for providing specific services.

## C. Migrant Head Start

### 1. Statutory Framework

Project Head Start, of which Migrant Head Start is a component part, began in 1965 under the general statutory authorities granted by Congress to the Office of Economic Opportunity.<sup>82</sup> In 1969 OEO delegated responsibility for Head Start to what was then the Department of Health, Education and Welfare (HEW). Congress enacted a more specific statutory authorization in 1974,<sup>83</sup> and then revised and reenacted the "Head Start Act" as part of the Omnibus Budget Reconciliation Act in

Medicaid difficult or impossible to employ, because of state residency requirements or simply because of paperwork delays that outlast their relatively brief stays. Reform of Medicaid to allow special eligibility requirements for migrant farmworkers, readily transferable as they move state to state, or to permit simplified application and approval, has therefore become a high priority for Migrant Health and affiliated organizations. See, e.g., National Advisory Council on Migrant Health (NACMH), 1990 Issues and Recommendations at A-1 - A-2; Farmworker Health for the Year 2000: 1992 Recommendations of the National Advisory Council on Migrant Health 23 (1992); NACHC, *supra* note 73.

<sup>78</sup>Testimony of Frank Fuentes, Chief, Migrant Programs Branch, Administration of Children and Families, Dept. of Health and Human Services, before the National Commission on Migrant Education, April 29, 1991, at 17.

<sup>79</sup>*Id.* at 12, 17.

<sup>80</sup>NACMH, *supra* note 77, at A-4. In addition to NACMH, the National Council of Community Health Centers (NACHC) also serves as an umbrella organization watching out for the collective interests of migrant health clinics and attending to the need for better interagency coordination. In this respect these organizations are roughly the Migrant Health analogues of IMEC or NASDME for ME grantees.

<sup>81</sup>Testimony of Sonia M. Leon Reig, National Commission on Migrant Education, April 29, 1991, at 10.

<sup>82</sup>See S. Levitan, *Programs in Aid of the Poor 100-101* (5th ed. 1985); Economic Opportunity Act of 1964, Pub. L. No. 88-452, Title III, 78 Stat. 508.

<sup>83</sup>Pub. L. No. 93-644, Title V, 88 Stat. 2291 (1974).

1981.<sup>84</sup> The program is now administered by the Head Start Bureau, which is located in the Administration for Children and Families, Department of Health and Human Services (HHS).

Head Start is a comprehensive, locally based preschool child development program, often described as emphasizing five main components: education, nutrition, health, parent involvement, and social services.<sup>85</sup> Ninety percent of participants must be from families with incomes below the federal poverty guidelines, and at least ten percent of the spaces are reserved for children with disabilities.<sup>86</sup> Numerous studies have shown that Head Start can make a substantial difference in the lives of the children who take part, making it perhaps the most effective of all federal antipoverty programs. As a result, even in recent years of severe budget-cutting, Head Start has won firm support for expansion from both Congress and the Bush Administration. FY 1991 appropriations reached \$1.95 billion, a \$500 million increase over the previous year.<sup>87</sup> The reauthorizing legislation passed in 1990 authorizes appropriations of \$4.27 billion for FY 1992, and up to \$7.66 billion in FY 1994,<sup>88</sup> so that if appropriations keep pace (which now appears unlikely), Head Start could serve all of its target population by 1995.<sup>89</sup> It served some 540,000 children in 1990, approximately 20 percent of the estimated eligible population, in 31,000 classrooms operated by 1,320 grantees.<sup>90</sup> Most grantees are private nonprofit agencies, but some are public bodies, including public schools.<sup>91</sup>

Special programs for the children of migrant workers were begun in the early years of Head Start, and the 1974 legislation directed the Secretary of HEW to "continue the administrative arrangement responsible for meeting the needs of migrant and Indian children and [to] assure that appropriate funding is provided to meet such needs."<sup>92</sup> The same equally vague directive appears in the 1981 legislation and remains in effect today,<sup>93</sup> although the statute now includes a funding formula that reserves 13 percent of the total appropriation for a list of designated priorities heavily (but not exclusively) oriented toward migrant and Indian children.<sup>94</sup> In FY 1990, the allocation for Migrant Head Start was \$60.4 million. Services were provided to 23,469 children in 33 states by the 23 Migrant Head Start grantees. (In FY 1991, \$74 million was made available.<sup>95</sup>)

## 2. Program Operations

MHS grantees typically operate programs at numerous sites, either themselves or through delegate agencies, and some function in several states. (One grantee, East Coast Migrant Head Start, for example, operates centers through delegate agencies in 12 states.) Grantees are monitored in detail on a three year cycle, to measure accomplishments in light of detailed performance standards set out in the regulations and in contract documents. Head Start officials have asserted that this form of oversight, with a direct federal-to-local relationship, provides for better assurance (in comparison with the Migrant Education system) that services are provided effectively to the target population.

<sup>84</sup>Pub. L. No. 97-35, §§635-657, 95 Stat. 499 (1981). The Head Start Act is codified at 42 U.S.C.A. §9831-9852 (West 1983 & Supp. 1991).

<sup>85</sup>See 42 U.S.C.A. §9833(a) (West 1983 & Supp. 1991); U.S. Dept. of HHS, *Head Start: A Child Development Program 2-4* (1990). Under the statute and regulations, local policy councils, 51 percent of whose membership must consist of parents, exercise ultimate authority over personnel and fiscal matters. See 45 C.F.R. Part 1304, Subpart E (1990).

<sup>86</sup>45 C.F.R. §§1305.4, 1305.5 (1990).

<sup>87</sup>1990 Cong. Q. 552, 853.

<sup>88</sup>42 U.S.C.A. §9834 (West Supp. 1991).

<sup>89</sup>1990 Cong. Q. 552, discussing the Human Services Reauthorization Act, Pub. L. No. 101-501, 104 Stat. 1222 (1990).

<sup>90</sup>Fuentes testimony, *supra* note 78, at 3.

<sup>91</sup>General Accounting Office, *Head Start: Information on Sponsoring Organizations and Center Facilities* (GAO/HRD-89-123FS, July 1989).

<sup>92</sup>Pub. L. No. 93-644, §8, 88 Stat. 2291 (1974).

<sup>93</sup>42 U.S.C.A. §9831(b) (West 1983 & Supp. 1991). A 1990 amendment added "non-English language background" children to the list.

<sup>94</sup>42 U.S.C.A. §9835(a)(2) (West 1983 & Supp. 1991).

<sup>95</sup>Telephone interview with Frank Fuentes, Sept. 30, 1991. An appropriation of \$74 million for MHS in the FY91 budget of \$1.95 billion indicates a 3.8 percent share for MHS.

A typical regular Head Start center provides half-day programs throughout the school year. Because of its unique constituency, Migrant Head Start must operate in different ways and with greater flexibility. Some centers operate on a full-day basis, with two shifts, so as to provide services during the full time that the parents are working in the fields, and may have to lay greater stress on center-provided transportation, nutrition, and even laundry services. In general, regular Head Start serves children only from age three to the age of compulsory school attendance; Migrant Head Start is authorized to serve children from birth to school age (usually 0 to 5 years of age). Recently 35 percent of enrollment in MHS consisted of infants and toddlers.<sup>96</sup> MHS also must remain flexible to provide its services during the time when migrants are in the area; time periods and demand may change from year to year, owing to shifting weather and crop patterns. Some personnel even move from place to place during the year with the migrant population.

Demand for MHS's day-care and educational services far outstrips supply. The MHS programs we visited therefore maintain waiting lists for children from qualified families. Most operate on a first-come, first-served basis (provided that the family meets the migrancy and low-income requirements). This arrangement gives an advantage to those families that are knowledgeable about the program and arrive early to assure sign-up. The advantages can be enormous. One MHS program we visited has a staff of 57 to provide a most impressive range of services to the 81 children it can serve. The 57 include two shifts of teachers and aides, as well as bus drivers, outreach workers, cooks, laundry staff, and supervisory personnel. (The center provides clothing for the children while in the center, washes their own clothes while they are there, and then sends them home in their own freshly laundered outfits.) Families who do not arrive in the area early enough to place their children in the Migrant Head Start program are probably relegated to day-care on a much more modest scale, sometimes day-care for which the family must pay, or must make do in some other way. This lopsided outcome should raise legitimate questions about the program's priorities; the agency might be well advised to furnish less extensive services, in order to serve more of the needy farmworker population. In any event, as this example illustrates, MHS grantees have considerable flexibility to use their funds for direct educational and child care programs, and also for transportation, clothing, health care, and a variety of other support services.

### 3. Definitions

The statute contains no definition of "migrant" or "farmworker"—perhaps not surprising in view of the vagueness of the statutory provisions for Migrant Head Start in general. Existing regulations likewise contain no such definitions, but regulations proposed in July 1990 essentially capture the standard that has been used as a matter of administrative practice in a new definition of "migrant family." (See Appendix B.) It is perhaps the most limited of the program definitions, covering only current migrants (with children under the age of compulsory school attendance). Although the definition does not say so explicitly, the look-back period is 12 months; the family must have moved in connection with agricultural employment within the past year.<sup>97</sup> Only the production and harvesting of tree and field crops count as agricultural labor, and family income must come "primarily from this activity" if the family is to qualify for MHS.<sup>98</sup>

There has been some discussion among MHS directors about expanding the program to reach seasonal agricultural workers, and MHS recently chartered a limited pilot program for this wider constituency. But as long as funding remains limited, we found stronger support within MHS than elsewhere for retaining a relatively narrow definition focused on current migrants.<sup>99</sup> Some hold to this view even if definitions are harmonized across agencies, again as a way of targeting limited

<sup>96</sup>Fuentes testimony, *supra* note 78.

<sup>97</sup>MHS considers a farmworker who has enrolled in a JTPA program to have "left agriculture," so that the child's eligibility for MHS services ends 12 months after the last qualifying move. JTPA 402 grantees would generally like farmworkers who are enrolled in training programs to remain eligible for MHS services.

<sup>98</sup>55 Fed. Reg. 29,970 (1990) (notice of proposed rulemaking) (proposed 45 C.F.R. §1305.2(l)).

<sup>99</sup>Interview with Thomas Hill, MHS director, Fresno, California, July 16, 1991; interview with Geraldine O'Brien, *supra*.



resources in a time of budgetary stringency. But some who advocated this view were also willing to countenance expansion to, e.g., a 24-month look-back period, because of the difficulties a family may face in its first year of settling out of the migrant stream.<sup>100</sup>

MHS performance standards require grantees and delegate agencies to coordinate with other available services at the local level.<sup>101</sup> As indicated above, cooperation is particularly in evidence with Migrant Health (and other health agencies), in light of the specific obligation of MHS to provide health screening and certain health services to its children.<sup>102</sup>

#### D. Job Training for Migrant and Seasonal Farmworkers (JTPA 402)

##### 1. Background and Statutory Framework

Like Migrant Head Start, job training programs for migrant and seasonal farmworkers originated in the Office of Economic Opportunity, under the very general language of Title IIIB of the Economic Opportunity Act of 1964.<sup>103</sup> In July 1973, however, responsibilities for MSFW job training and placement were transferred to the Department of Labor under a presidential order (supplemented by a Memorandum of Understanding between OEO and DOL), as part of the Nixon administration's efforts to phase out OEO.<sup>104</sup> Less than six months later, Congress completed work on long-debated umbrella legislation for federal job training and employment programs, the Comprehensive Employment and Training Act (CETA).<sup>105</sup> Section 303 of CETA, which became the framework for DOL efforts to assist MSFWs from 1974 through 1982, provided specific statutory authority for the ongoing programs to meet the training needs of migrant and seasonal farmworkers.

CETA drew increasing criticism through the 1970s, primarily because of the operation of its non-migrant programs. Critics focused on CETA's extensive reliance on subsidized public-sector jobs, while at the same time audits disclosed high administrative costs and other operating problems. CETA thus became a prime target for the incoming Reagan administration, and the Act was allowed to expire in 1982. In its place Congress enacted a new framework for federal job-training programs, the Job Training Partnership Act (JTPA).<sup>106</sup>

As the title suggests, in its primary programs, the JTPA establishes a partnership between the private and public sectors covering all aspects of local policy-making and administration, including deciding locally what types and combinations of services to provide.<sup>107</sup> The general provisions of JTPA (separate from the farmworker provisions) give state governors several functions formerly assumed by DOL. In particular, the governors have a larger role in coordinating job training programs, and they designate local service delivery areas, the units of government within which the job training programs are to operate. Local programs function under the guidance of local governments and Private Industry Councils (PICs), composed primarily of business representatives, but including members from labor, educational, and community groups. Most trainees are to be

<sup>100</sup>Interview with Geraldine O'Brien, Executive Director, East Coast Migrant Head Start Project, Oct. 22, 1991.

<sup>101</sup>42 U.S.C.A. §9837(c) (West 1983 & Supp. 19991) recently added a provision requiring all Head Start agencies to coordinate with local schools and other programs serving the relevant children and families.

<sup>102</sup>Through its National Migrant Headstart Directors' Association (NMHDA), an umbrella organization, MHS grantees have also cooperated in broader initiatives to improve interagency coordination. See part V.A.3. *infra*.

<sup>103</sup>See *Great Society*, *supra* note 12, at 247-61; Klores, *supra* note 7, at 15-46. As amended in 1968, the statute described the program's purpose as follows: "to assist migrant and seasonal farm workers and their families to improve their living conditions and develop skills necessary for a productive and self-sufficient life in an increasingly complex and technological society." 42 U.S.C. §2861-2 (1970).

<sup>104</sup>See Klores, *supra* note 7, at 45-46; *Ass'n of Farmworker Opportunity Programs, Toward an Equitable CETA 303 Allocation Formula for Farmworkers 4-5* (1978) [hereafter cited as *AFOP*].

<sup>105</sup>Pub. L. No. 93-203, 87 Stat. 839 (1973).

<sup>106</sup>Pub. L. No. 97-300, 96 Stat. 1369 (1982).

<sup>107</sup>See General Accounting Office, *The Job Training Partnership Act: An Analysis of Support Cost Limits and Participant Characteristics 2* (GAO/HRD-86-16, Nov. 6, 1985).



drawn from the ranks of the economically disadvantaged. Local programs must satisfy demanding performance standards, emphasizing successful job placements in unsubsidized employment. In addition, the Act places strict limits on the percentage of the funding that grantees may spend for administration.<sup>108</sup>

Despite persistent efforts from some quarters to bring MSFW programs under this decentralized JTPA umbrella, Congress chose to retain a special national program for farmworkers, much like CETA 303, under §402 of the JTPA.<sup>109</sup> Overseen by the Office of Special Targeted Programs in DOL,<sup>110</sup> rather than by PICs or state governors, JTPA 402 is not subject to the same partnership approach that characterizes general JTPA programs. Section 402 begins with a congressional finding that:

chronic seasonal unemployment and underemployment in the agricultural industry, aggravated by continual advancements in technology and mechanization resulting in displacement, constitute a substantial portion of the Nation's rural unemployment problem and substantially affect the national economy.<sup>111</sup>

The statute then authorizes services through public agencies and private nonprofit organizations that can administer "diversified employability development program[s]" for MSFWs.<sup>112</sup> Section 402 reserves an amount equal to 3.2 percent of the funding for Title IIA of the JTPA (the major general job training component) for MSFW projects, but Congress in recent years has appropriated funds above this level.<sup>113</sup> In addition, JTPA grantees have received funds as the conduit for other short-term federal assistance, such as money from the Federal Emergency Management Agency in response to a nationwide drought in 1988 and a California freeze in 1990-91. Congress appropriated \$70.3 million for JTPA 402 in FY 1991, out of a total of \$4.09 billion for all of JTPA.<sup>114</sup>

## 2. Program Administration and Operation

Following a procedure developed under CETA, but since refined, the distribution of JTPA 402 funds incorporates two steps. First, funds are allocated among the states based on population estimates of the number of farmworkers in each.<sup>115</sup> Then a competitive process is used to decide on the grantee who will provide the JTPA 402 services in that state. DOL prefers to deal with a single grantee in each state, but California, with the largest number of farmworkers, currently has five grantees.

The state-by-state allocations have been the subject of controversy for many years.<sup>116</sup> Current allocations are based upon the 1980 decennial Census of Population (COP), which shows the number of persons working in agriculture as of the last week in March. These COP data were adjusted in the late 1980s using Immigration and Naturalization Service data to account for legalized farmworkers

<sup>108</sup>See New Job Training Program Replaces CETA, 1982 Cong.Q. Almanac 39.

<sup>109</sup>29 U.S.C. §1672 (1988). The controversies over whether to retain a distinct, nationally-administered MSFW program or to incorporate it into the general, and decentralized, job training activities, recapitulated battles that have raged since OEO days. See, e.g., Klores, *supra* note 7, at 24-25, 48-66. Congress has generally supported national administration. Section 402(a)(2) now provides: "because of the special nature of farmworker employment and training problems, such programs shall be centrally administered at the national level."

<sup>110</sup>This Office also has responsibility for a few other national employment programs, such as those for Native Americans and older workers.

<sup>111</sup>29 U.S.C. §1672(a)(1).

<sup>112</sup>*Id.*, §1672(c)(1).

<sup>113</sup>Department of Labor, *The Farmworker Program* (mimeo, Sept. 25, 1991).

<sup>114</sup>AFOP Washington Newswire, July/Aug. 1991, at 3.

<sup>115</sup>29 C.F.R. §633.105 (1990). Under this regulation, DOL first reserves 6 percent of the §402 monies for a national account, usable for technical assistance and special discretionary projects. The balance, 94 percent, is then distributed among the states.

<sup>116</sup>See generally AFOP, *supra* note 104 (critiquing CETA allocation formula); *California Human Development Corp. v. Brock*, 762 F.2d 1044 (D.C.Cir. 1985) (court rejects extensive challenge to allocation formula).

under the special amnesties enacted in 1986 for certain undocumented aliens.<sup>117</sup> The use of COP data to distribute MSFW funds has been criticized, primarily because the census identifies mostly farmworkers who were employed in March. Farmwork is then at a low ebb; consequently this procedure underestimates the number of farmworkers by at least two-thirds,<sup>118</sup> and it probably distorts the count in favor of home-base states over those where migrants may do most of their work during the growing and harvesting season.

Difficulties with decennial census figures reflect a larger problem with farmworker population data, as we will discuss below. Nevertheless, JTPA 402 grantees expect that COP data are likely to remain as the basis for their allocations. They have been working for years, so far unsuccessfully, to urge modest modifications in the COP questionnaires to better identify persons who have worked in agriculture. In particular, they have advocated a change in the census long-form questionnaire to ask that sample of respondents to distinguish between farm and nonfarm wages earned during the previous year.<sup>119</sup>

The regulations allow DOL to exclude states with small MSFW populations from Section 402 allocations if their total grant would be less than \$120,000; for this reason, Alaska, Rhode Island, and the District of Columbia have no JTPA 402 program.<sup>120</sup> Other states qualify but are not guaranteed funding; potential grantees must compete on a biennial basis to be awarded the allocated funding to serve the state at issue. But in fact all the rest of the states are currently served, by a total of 29 nonprofit organizations, one local agency (Kern County, California), three state agencies (Florida, Utah, and Wisconsin), and the Commonwealth of Puerto Rico.<sup>121</sup> As the arithmetic indicates, some nonprofit grantee organizations have successfully competed to become the responsible agency for several states at once. Telamon Corporation, for example, serves nine states in the Midwest and East Coast regions.

JTPA 402 is a highly flexible program. Most of its funding goes for the training of those MSFWs who are seeking a major occupational change, and most such persons are seeking to leave agriculture for a more stable job in the nonfarm economy. Obviously persons who have settled out of the migrant stream, or are in the process of doing so, are the most likely to enroll in such programs, rather than current migrants. This result is not out of keeping with the program's purpose; JTPA 402, like its predecessors, specifically includes seasonals among those eligible for its services.

The services that may be provided to such MSFWs in connection with their retraining are extensive, and may include recruitment, assessment, classroom instruction, on-the-job training, job placement, follow-up and counseling, and other forms of support.<sup>122</sup> The regulations require that at least 50 percent of a grantee's funds be spent on training. In addition, a wide range of expenses may be charged to "training-related support services," when provided to someone enrolled in this component of JTPA 402—for example, child-care, health services, financial counseling, and a stipend equal to an hourly wage to the individual during the time of the training.<sup>123</sup> A grantee may spend several thousand dollars on a participant who makes use of this most extensive version of JTPA 402 services.<sup>124</sup>

---

<sup>117</sup>See *The Farmworker Program*, *supra* note 113, at 1; 55 Fed.Reg. 7,607 (1990).

<sup>118</sup>Lealie Whitener, *Hired Farm Labor Data from the Decennial Census: Limitations and Considerations* (Mimeo, August 1983.)

<sup>119</sup>See Testimony of Lynda Diane Mull, Association of Farmworker Opportunity Programs, before the National Commission on Migrant Education, Buffalo, April 29, 1991, at 4-5.

<sup>120</sup>*The Farmworker Program*, *supra* note 113, at 1.

<sup>121</sup>*Id.*

<sup>122</sup>Interview with Diana Carrillo, Center for Employment Training, Salinas, California, July 15, 1991.

<sup>123</sup>See 29 C.F.R. §633.304(c)(3) (1990).

<sup>124</sup>The DOL reports that over the nine years of the JTPA 402 program, 97,000 farmworkers have been placed into permanent unsubsidized employment, at a unit cost of \$3700. *The Farmworker Program*, *supra* note 113, at 2. It also reports a grand total of some 391,000 participants in employment and training activities generally, at an average expenditure of \$1200 per participant. *Id.*

But JTPA 402 is also designed to enhance the skills of those who choose to remain in agriculture,<sup>125</sup> and the most flexible component of the 402 program is directed to this end. The regulations stipulate that these "nontraining-related supportive services," provided to persons who are not enrolled in the more extensive training, work experience, or tryout employment programs, may include (but are not limited to) "transportation, health care, temporary shelter, meals and other nutritional assistance, legal or paralegal assistance and emergency assistance."<sup>126</sup> Grantees may not, however, use more than 15 percent of their grants for these supportive services. In 1990, 26,500 MSFWs received these supportive services, out of a total of 53,000 people served by JTPA 402 grantees.<sup>127</sup>

This element of JTPA programs is significant for interagency coordination.<sup>128</sup> Other service programs may turn to the latter when services that fall outside their own mandates are needed. For example, Migrant Health may turn to JTPA for help in transporting an injured individual back to the home-base state after initial treatment at a clinic. But because eligibility for JTPA services is governed by a technical and restrictive definition of MSFW (discussed below), these requests occasionally cannot be honored, leaving the other service organization frustrated and probably impatient with definitional restrictions. Although such episodes are not terribly frequent and their impact should not be exaggerated, they accounted for the most common example cited to us during interviews of the ways in which definitions impose barriers to coordination.<sup>129</sup>

### 3. Definitions and Eligibility

Though §402 of the statute specifies "services to meet the employment and training needs of migrant and seasonal farmworkers," it contains no definition of these key terms. Since 1974, definitions have been provided in the DOL regulations, frequently adjusted and refined as experience was gained. The 1974 version defined "farmworker" by reference to standard occupational classifications (SOC) provided in DOL's Dictionary of Occupational Titles.<sup>130</sup> This approach proved problematic, and in 1975 new regulations were issued, employing standard industrial classification (SIC) codes. These proved more workable, and all later regulations have maintained this basic framework. (For the current definitional provisions, see Appendix B).<sup>131</sup> Those who work for wages in the agricultural production or in specified agricultural services are farmworkers. Both crops and livestock are included, as is the on-farm packing of agricultural commodities.

Throughout the history of the regulations, migrant farmworkers have been a subset of seasonal farmworkers: migrants are those seasonals who are unable to return to their permanent places of residence within the same day. Thus, definitional refinements have focused on the criteria for

<sup>125</sup>Early versions of MSFW job training programs focused heavily on training for and placement in nonagricultural employment. This emphasis grew logically from the then-prevalent assumption that migrant farmwork was disappearing, increasingly displaced by mechanized harvesting. But it provoked the opposition of agricultural interests, who felt that these programs amounted to a federal effort to lure away a necessary workforce. Eventually this criticism was mollified by added statutory and regulatory language making clear that the job training programs exist not only to train for nonagricultural employment, but also for enhanced employment within agriculture itself. See D. Pederson & D. Dahl, *Agricultural Employment Law and Policy* 136 (1981). For the current language to this effect, see 29 U.S.C. §1672(c)(3) (1988).

<sup>126</sup>29 C.F.R. §633.304(c)(4).

<sup>127</sup>The Farmworker Program, *supra* note 113, at 2.

<sup>128</sup>Through their principal umbrella organization, the Association of Farmworker Opportunity Programs (AFOP), JTPA 402 grantees have also paid considerable attention to interagency coordination issues. AFOP publishes a thorough and useful monthly newsletter, the AFOP Washington Newsliner, and also a number of position papers and other studies.

<sup>129</sup>This frustration was probably magnified in the early 1980s, as job training programs shifted from CETA to JTPA. As indicated, JTPA imposed a 15 percent cap on these ancillary services; CETA had no equivalent limit. "With a regulatory limitation established on the amount of supportive services that could be provided by §402 programs, other agencies began to feel the burden of increased referrals because the programs could no longer support the cost of health, child care, transportation, and other emergency services at previous levels. The other major farmworker service providers were not expecting that such drastic changes would occur, nor were they expecting that their programs would now be required to pick up the pieces." Mull testimony, *supra* note 119, at 6.

<sup>130</sup>39 Fed.Reg. 28,401 (1974).

<sup>131</sup>40 Fed.Reg. 28,983 (1975). The current version, using virtually the same SIC codes, appears at 29 C.F.R. §633.104 (1990).

"seasonal farmworker." The first such definition appeared in 1974, but was changed in 1975 "to assure consistency in the definitions used by different units of the Manpower Administration" of DOL.<sup>132</sup> At that time, the definition considered the person's employment only during the preceding 12 months, and individuals had to have worked at least 25 days in farmwork but no more than 150 days in one establishment to qualify as a seasonal farmworker.<sup>133</sup> Grantees criticized this definition as overly cumbersome,<sup>134</sup> and then worked with DOL to produce a better one.

In 1979 another set of regulations was introduced, dropping the 150 day limit and replacing it with a simpler requirement that farmworkers must not have a constant year-round salary if they are to qualify as seasonals. In addition, the look-back period was expanded to 24 months and an alternative to the 25-day minimum was provided. A farmworker would either have to work 25 days or earn at least \$400 in farmwork to qualify; this was seen as a "more realistic" criterion for the legislation's target population, and one that would be administratively feasible.<sup>135</sup> These specifications (but with a different look-back provision) survive in the current regulations.

In the rules proposed to implement JTPA §402, after it replaced CETA §303, DOL attempted to return to the 12-month look-back period.<sup>136</sup> This proposal drew considerable criticism, and DOL retreated to the complicated look-back compromise that appears in today's regulations.<sup>137</sup> In determining eligibility, grantees now must assure that the individual met the minimum farmwork requirements during any period of 12 consecutive months during the past 24 months. They must also find that the individual was "primarily" employed in farmwork.<sup>138</sup>

This is complicated enough. But the regulations also introduce other limitations, not as part of the definition, but as part of the eligibility requirements.<sup>139</sup> For example, during the eligibility determination period, the farmworker must have earned at least 50 percent of total earnings or been employed at least 50 percent of total work time in farmwork. (Why this was thought a necessary limitation, when the definition already requires that a seasonal farmworker be "primarily" employed in farmwork, is unexplained.) Further, and more understandably, a means test is imposed. The farmworker must be part of a family either receiving public assistance or having an annual family income that does not exceed the higher of the poverty level or 70 percent of the Bureau of Labor Statistics' "lower living standard income level."<sup>140</sup> Dependents of farmworkers who meet these stipulations are also eligible for the services of JTPA 402.

Finally, the regulations refer to general statutory limitations imposed by the JTPA on all recipients of services. These require that all males must register with the Selective Service, and that all participants must be citizens, permanent resident aliens, or other aliens authorized to work in the United States.<sup>141</sup> These limitations sometimes prove frustrating for service providers in other programs trying to coordinate with JTPA 402, for their statutes do not impose similar limits, especially regarding legal immigration status. Moreover, some service providers, particularly those

---

<sup>132</sup>40 Fed.Reg. 28,980 (1975). Some of the key elements, including the 25 day minimum and 150 day maximum, track the definitions used for the ES-223 data reports elsewhere in DOL, as explained in Part IV *infra*. Persons interviewed noted this parallel, but did not believe that it had any real operative significance. In any event, later changes in the definitions for the job training programs have ended this commonality.

<sup>133</sup>*Id.* at 28,983.

<sup>134</sup>See, e.g., AFOP, *supra* note 104, at 66.

<sup>135</sup>44 Fed.Reg. 30,594 (1979).

<sup>136</sup>48 Fed. Reg. 33,182 (1983).

<sup>137</sup>See 48 Fed.Reg. 48,774 (1983).

<sup>138</sup>29 C.F.R. §633.104 (1990).

<sup>139</sup>29 C.F.R. §633.107(a) (1990).

<sup>140</sup>The latest revision of the lower living standard income levels, provided solely for JTPA eligibility purposes, appears at 56 Fed. Reg. 24,097 (1991).

<sup>141</sup>*Id.* §633.107(c), referring to sections 167(a)(5) and 504 of the JTPA, 29 U.S.C. §§1577(a)(5), 1504 (1988).

dealing with education,<sup>142</sup> feel strongly that they should do nothing to discourage undocumented alien farmworkers or their families from taking advantage of their services. Nevertheless, JTPA grantees and DOL have no discretion in the matter, for these restrictions are express statutory requirements. Moreover, as several JTPA officials or service providers acknowledged, one cannot realistically expect a change, particularly in the requirement for work authorization, given that JTPA 402 is a training program designed to prepare workers for better jobs in the U.S. labor market.

#### 4. Current Issues

During our interviews we heard some criticism of the JTPA 402 program, both from other service providers and from those involved in the program. Criticisms concerning coordination are mentioned above, as is the problem of using decennial census data to establish initial state allocations. We also learned that the strict performance standards employed by JTPA, with their emphasis on documented and successful job placements, can lead to "creaming." That is, grantees are induced to select for the training components of their programs only those already possessing the aptitude, talent or drive that might make them successful even without assistance, to the possible neglect of persons equally deserving but less likely to succeed. The same criticism is frequently directed to the general JTPA job training programs funded under the statute and run by PICs in the states and localities. Remedies are not obvious without relaxing some of the key accountability components on which Congress has insisted.<sup>143</sup>

Some persons we interviewed also commented that geographic targeting of services could be improved. Despite the apparent targeting provided by the two-step allocation process, many acknowledged that this only serves to provide a gross state-by-state population count. It does not necessarily assure that the state grantee will locate service centers in areas of heavy MSFW concentration nor keep up with changes in MSFW activity. Biennial grant reviews do monitor the effectiveness of services, and the federal contract officers may well pick a different grantee if the numbers provided by the first fall off. But if the grantee is serving well a significant number of persons at its current locations, Washington officials are not equipped to help identify other parts of the state that may not be well-served. One commented: "What do we know here about what's going on in the states?" More sensitive measures of MSFW activities and populations would be needed to improve performance in this area.

Finally, some comments focused on the vigor or competitiveness of JTPA grantees. As indicated, most are private nonprofit organizations. Interviews indicated that they tended to be among the most entrepreneurial or aggressive of the grantee community. For example, several JTPA 402 grantees are also Migrant Head Start grantees, and a few also manage Migrant Health clinics. Many also pursue other private and public sources of funding, such as FEMA disaster assistance funds or community service block grant awards, and even AIDS education programs. Their success in these endeavors sometimes crowds out other applicants and can therefore generate resentment. This may simply be an inevitable byproduct of the quasi-entrepreneurial competitive system used for choosing the providers of most of the MSFW services. In any event, this enterprising approach may reflect the rather different nature of the task shouldered by JTPA 402, compared with those of other MSFW service programs. Although one should not overgeneralize, a JTPA grantee may have more need to engage in affirmative outreach and persistent recruitment to enroll participants and thus meet its performance standards. Migrant Education has a natural location to find its target population, for migrant children are required to enroll in school. Migrant Health is an obvious destination when farmworkers and family members become sick. Child care is also an obvious need when there are young children in the family, and Migrant Head Start easily becomes known as a provider. By

---

<sup>142</sup>See generally *Plyler v. Doe*, 457 U.S. 202 (1982) (Constitution forbids certain state restrictions on education for undocumented alien children).

<sup>143</sup>See, e.g., Victor, *Helping the Haves*, 1990 Nat'l J. 898 (1990); Guskind, *Cheers and Bronx Cheers for Jobs Law*, 1988 Nat'l J. 2407.

comparison, JTPA's services are more remote and of uncertain application; MSFWs must often be persuaded to avail themselves of training opportunities.

### E. Other Federal Programs Serving Farmworkers

The programs described so far (the "Big Four") meet certain important needs of farmworker families—primarily medical care, education (including job training), and child care. But often comprehensive assistance to such a family will obviously have to attend to other basic needs as well, such as food, housing, or legal assistance. Federal programs exist in each of these fields. Some specifically target the needs of MSFWs, but most of them are more general efforts to assist the disadvantaged. In the latter programs, farmworkers who qualify can also take part, and on occasion such a program will adjust certain of its requirements or practices to take account of special requirements of migrants.

For example, nutrition assistance can be obtained through Food Stamps or the Supplemental Food Program for Women, Infants, and Children (WIC). The Food Stamp program, which dates to 1964 (and earlier pilot programs), is designed to increase the food purchasing power of persons with incomes below the poverty level and of those who are receiving certain forms of public assistance. Complicated formulas determine the amount of food stamps to which a household is entitled, and the stamps may be used to purchase any food for human consumption (alcohol, tobacco and imported foods are excluded). The program is overseen by the Department of Agriculture (USDA), but it is administered by state welfare or social services agencies.<sup>144</sup> In FY 1991 the program provided total benefits to recipients in the amount of \$17.4 billion.<sup>145</sup> There is no special set-aside of funding for MSFWs, but in a realistic acknowledgement of the effect that uneven work patterns can have on farmworker families, the regulations make special provision for "expedited service" (ordinarily meaning receipt of food stamps within five days) to MSFW households in specified circumstances.<sup>146</sup>

The WIC program was adopted in 1972, primarily to address the issue of low birthweight babies. Administered by the Food and Nutrition Service of USDA, the program is implemented through state health departments. It now provides supplemental foods for a specified time period to pregnant, postpartum, or breast-feeding women and to children under age five, as well as nutrition education and certain health-related services. Recipients must meet income guidelines or else qualify for "adjunct eligibility" through receipt of food stamps, Medicaid, or Aid to Families with Dependent Children (AFDC), and they must be determined to be at "nutritional risk."<sup>147</sup> Recently Congress has insisted that the State plans under which WIC is provided must specially describe how they will address the needs of "migrants, homeless individuals, and Indians," and the Secretary is to report biennially on efforts to assure migrant participation despite their interstate movement.<sup>148</sup> The implementing regulations provide for a "migrant set-aside" of 0.9 percent of the fiscal year food appropriation for migrants, a total of \$16.2 million in FY 1991.<sup>149</sup> WIC has also pioneered the use of a "verification of certification" card that is issued to migrant recipients to ensure continuity of benefits as the family moves from area to area. Those who have the card need not go through the whole process of application and eligibility determination in the new location. Service providers in

<sup>144</sup>See generally Levitan, *supra* note 82, at 77-81; Super, Introduction to the Food Stamp Program, 23 Clearinghouse Rev. 870 (1989). The Food Stamp Act is codified at 7 U.S.C. §§2011 et seq., and the implementing regulations appear at 7 C.F.R. Parts 271-282.

<sup>145</sup>Telephone interview with Daniel Woodhead, USDA Food and Nutrition Service, April 15, 1992.

<sup>146</sup>See 7 C.F.R. §§273.2(i)(1); 273.10(e)(3) (1991).

<sup>147</sup>See generally Introduction to the WIC and CSFP Programs, 24 Clearinghouse Rev. 820 (1990). The authorizing legislation is codified at 42 U.S.C. §1786 (Supp. 1989), and the implementing regulations appear at 7 C.F.R. Part 246 (1991).

<sup>148</sup>42 U.S.C. §1786(f)(1)(C)(4), (j).

<sup>149</sup>Telephone interview with J.B. Passino, Food and Nutrition Service, USDA, April 16, 1992. See 7 C.F.R. §246.16(c)(2)(i)(B) (1991). The regulations define "migrant farmworker" as "an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes, for the purposes of such employment, a temporary abode. Id. §246.2.

other programs have expressed interest in adapting this model for other services, particularly with regard to Medicaid.

Housing needs are often acute for MSFWs. Over the past two decades, many employers have discontinued the provision of housing, in part because of greater success of enforcement of housing codes and other protective provisions administered by the Department of Labor.<sup>150</sup> Substandard housing remains a major problem, and the need for improved enforcement continues. The federal government also provides funds to support the construction or rehabilitation of farmworker housing, through programs administered by the Department of Agriculture. Under §514 of the Housing Act of 1949, USDA provides loans on highly favorable terms to farmers, farmers' associations, states, and private nonprofit agencies to construct or rehabilitate housing for farm labor.<sup>151</sup> Section 516 of the Act authorizes grants to nonprofit agencies to cover up to 90 percent of the cost of housing for the same basic purposes.<sup>152</sup> Funding for these purposes declined from \$68.7 million in 1979 to \$22.0 million in 1990, before rebounding to an appropriation of \$27.3 million in FY 1992.<sup>153</sup>

The federal government provides civil legal services to persons who meet certain income and other criteria through a governmentally chartered private nonprofit body, the Legal Services Corporation (LSC), established in 1974.<sup>154</sup> A 1977 study, requested by Congress, established a special need for legal assistance to migrant farmworkers, particularly in view of their usual remoteness from population centers, language difficulties, and frequent travel.<sup>155</sup> As a result, LSC undertook special efforts to create programs to meet these needs. In the mid-1980s, however, when this initiative appeared threatened, Congress provided a special line-item appropriation to assure continuation of migrant legal services. Migrant legal services programs now exist in 46 states, under an appropriation for FY 1992 of \$10.8 million. Assistance using this federal funding may be provided only to farmworkers with legal immigration status.<sup>156</sup>

None of these programs is able to serve what it considers its entire target population, and in any event each has limited capacity to assist those who are not physically located close to one of the program's facilities. When this is the case, the farmworker family must either do without the service, acquire it using family resources, or rely on state, local, or private funding to assist. At the state and local level there is enormous variety in the assistance of the latter types.<sup>157</sup>

---

<sup>150</sup>See General Accounting Office, *Hired Farmworkers: Health and Well-Being at Risk* 28 (GAO/HRD-92-46, Feb. 1992).

<sup>151</sup>42 U.S.C. §1484 (1988).

<sup>152</sup>42 U.S.C. §1486 (1988). The implementing regulations for both the loan and grant programs may be found at 7 C.F.R. Part 1944, Subpart D.

<sup>153</sup>GAO, *Hired Farmworkers*, *supra* note 150, at 29; Telephone interview with Tom Sanders, Multi-Family Housing Division, USDA, April 16, 1992.

<sup>154</sup>42 U.S.C. §2996 *et seq.* (1988).

<sup>155</sup>See General Accounting Office, *Legal Services Corporation: Grantee Attorneys' Handling of Migrant Farmworker Disputes with Growers 2* (GAO/HRD-90-144, Sept. 1990).

<sup>156</sup>See 45 C.F.R. §1626.4 (1991).

<sup>157</sup>The above listing does not exhaust the range of federal assistance programs that might possibly be called upon in meeting the comprehensive needs of a farmworker family. See generally Table 1, *supra*, and Directory, *supra* note 48. In addition to assistance programs, the federal government has established several enforcement regimes that can be brought to bear to improve the situation of MSFWs. The most important are the Migrant and Seasonal Agricultural Workers Protection Act, 29 U.S.C. §1800 *et seq.*, the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, and the Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*, all three administered by the Department of Labor, and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*, administered by the Environmental Protection Agency.



### III. Coordination at the State and Local Level

#### A. Existing Coordination

##### 1. State Level

Most of the MSFW service providers and officials we interviewed felt that local and state level coordination in their areas had improved in recent years, but nearly all agreed that more could be done. Much of this improvement has stemmed from statewide task forces or councils on migrant farmworkers, usually established under the authority of the state governor. Typically these bodies bring together a wide range of interests, ranging from growers' representatives through officials of service and enforcement programs (both MSFW-specific and more general programs) to Legal Services and farmworker advocacy groups. In Virginia, for example, after a somewhat acrimonious start many years ago, the Governor's Board on Migrant and Seasonal Farmworkers moved beyond adversarial relationships to focus on cooperative initiatives, such as the construction of improved housing for migrants.<sup>158</sup> In Illinois, the statewide Inter-Agency Committee on Migrant Affairs meets six to eight times a year to set priorities, share analyses of farmwork trends, identify gaps in services, and undertake similar functions. Local networks are also encouraged to get together regularly during the farmwork season.<sup>159</sup> In Indiana, a Task Force on Migrant Affairs has existed since 1952; it meets monthly and has numerous standing committees to examine specialized issues. One of these committees spearheaded the creation of an impressive Consolidated Outreach Project to enroll migrants and their children. This program merits a fuller description, as it could serve as a model for similar efforts elsewhere (indeed, local providers elsewhere have already drawn inspiration from the Indiana experience).

##### a. Indiana

In the early 1980s, many MSFW programs faced declining budgets. Seeking ways to do more with less, the Program Operations Committee of the Indiana Task Force proposed pooling agency funds used for intake processing and for outreach (e.g., to locate new concentrations of MSFWs or facilitate their access to services). Although the different service programs used varying definitions and eligibility criteria, it proved possible to develop a single-page form that would capture the main information needed by each of them. Four agencies initially agreed to fund the effort. The Indiana Department of Human Services won the initial contract to provide these outreach services, but recently this function was shifted to Indiana Health Centers, Inc., a private nonprofit organization that is also the Migrant Health grantee for the state. That organization now has 23 caseworkers on its staff performing this outreach function throughout the state.

The consolidated outreach form has been refined over the years; the latest version appears in Appendix C. The caseworker goes over each item carefully with the farmworker being interviewed (usually at his or her residence in the migrant camp) and fills in the form. Then both caseworker and interviewee sign it. One copy of the form is used to enter the data in a central computer system, which keeps a complete individual record and also generates limited monthly census data usable for funding purposes. Other copies go to various programs or caseworkers, and one copy is kept by the farmworker family. The Project uses financial incentives to encourage clients to keep the form and make use of it as they obtain services from MSFW programs. For example, certain discounts on Migrant Health services are available for those who present their own yellow copy at the clinic, and this copy also gains them preferred access to a migrant food pantry.

---

<sup>158</sup>Interviews with Nancy Quynn, Peninsula Legal Services, Eastern Shore of Va., July 31, 1991; Kevin Boyd, Telamon Corporation, Richmond, Va., July 31, 1991.

<sup>159</sup>National Migrant Resource Program, Inc., *Integration and Coordination of Migrant Health Centers*, at III-25 (report submitted to HHS, Feb. 28, 1992).



The consolidated outreach process has not fully achieved its original objectives; it does not entirely replace individual intake processing by the separate programs. The originators of the program eventually came to appreciate the additional functions, in addition to form completion, that the intake staff of the various programs performs; hence some intake staff for each of the specific programs had to be retained. For example, these staff members also carry out certain preliminary needs assessments or furnish counseling. Nevertheless, we were told that the consolidated outreach form saves an average of 45 minutes per case for the intake staff of specific programs—a worthwhile economy. And consolidation also reduces considerably the burden on the MSFW family seeking to use several of the available services.<sup>160</sup>

#### b. Iowa

Iowa has achieved an important measure of consolidation of services through a different process. Proteus, Inc., had been the JTPA 402 grantee for the state for several years when in 1990 it also successfully competed to become the state grantee under the Migrant Health and Migrant Head Start programs. The management team thereupon decided to use a single intake staff for the basic intake and outreach process of the three programs. But they soon encountered a problem. Under the statute, JTPA processing requires detailed information about the immigration or citizenship status of an enrollee, whereas MHS and MH have insisted on agnosticism about such issues, in order better to fulfill their underlying missions. Eventually Proteus decided to have phased questioning, and to train its staff to begin all intake sessions with a brief orientation program, during which prospective enrollees are counseled that if they desire only medical or Head Start services, they will not have to answer questions about status. (Those not seeking JTPA services also are subject to less rigorous documentation requirements; they need not necessarily show W-2 forms to document work history.)<sup>161</sup>

The Proteus intake form, a one-page sheet (reproduced in Appendix C), allows for the gathering of a considerable amount of background information, including work history, that can be used in determining eligibility for a number of programs, and also to help determine specific needs within the programs. In fact, Proteus also uses this form as the basis for preparing certificates of eligibility for the state Migrant Education program, a task it carries out under contract with the state ME office.<sup>162</sup>

Further consolidation or integration of actual services has been hampered, however, in part because the parent programs insist on keeping their own component of Proteus's services separately identifiable, somewhat like a stand-alone program. Also, the great variety in the performance standards of the programs also inhibits full comprehensive planning. To take the example of child care, Proteus strives to avoid turning anyone away who seeks such services. Nevertheless its MHS program (which operates during the peak farmwork months of July and August) has a fixed enrollment limit. When needed, additional child care is provided, on a modest scale, using nontraining support services funds from JTPA. MHS in particular is said to be hard to administer because of its elaborate requirements for plans and reports, and its demanding performance standards (e.g., full physical and dental screening is required, even if the child recently received such screening at the last place of residence). Some greater comparability among the programs in this respect would promote greater integration of services.

#### c. Illinois

In Illinois, the JTPA 402 grantee, the Illinois Migrant Council (IMC), also became the Migrant Health grantee. In addition to the opportunities for consolidation and coordination which this arrangement afforded, further coordination has succeeded with a number of other state and private bodies that serve farmworkers. According to a recent thorough case study of the program, IMC has developed cooperative working relationships with county health departments, the Department of

<sup>160</sup>The information in this section is drawn from an interview with Lynn Clothier, Indiana Health Centers, Inc., Indianapolis, Aug. 16, 1991, and from descriptive literature of the Consolidated Outreach Project.

<sup>161</sup>Interview with Terry Meek, Executive Director, Proteus Employment Opportunities, Inc., February 28, 1992.

<sup>162</sup>Id. Proteus also does some outreach to farmworkers in connection with the Wagner-Peyser Act, 29 U.S.C. §§49-49k (1988).

Rehabilitative Services, Department of Public Aid, Migrant Education and Migrant Head Start, the state health department, the American Medical Students Association, the Rural Community Assistance Program, and the statewide Inter-Agency Committee on Migrant Affairs.<sup>163</sup> Particularly impressive have been the formal agreements negotiated with ME and MHS, which permit highly integrated medical services to migrant children. Physical exams of school age children, for example, are performed by IMC, with ME paying approximately 50 percent of the cost. Dental services are also provided by IMC, at a fixed rate of \$20 per child for MHS participants and under a flat-fee arrangement with ME for \$15,000 to serve approximately 1200 school-age children.<sup>164</sup> This combined effort has also facilitated a comprehensive strategy to deal with dental problems among MSFWs. Arrangements have been made for sharing of records throughout the season, and a season-end "record swap" to assure complete documentation on all children.<sup>165</sup>

#### d. New York

The Cornell Migrant Program based near Rochester, New York, spearheaded the development of a Working Together Group involving eight MSFW service programs in Western New York. It included the Big Four programs as well as legal services, a literacy program, and a social ministry. The Group was formed under the guidance of an outside facilitator in 1988 to reduce conflicts among agencies that serve MSFWs, which had been particularly apparent in the planning for a conference that year to address racism. In 1989 the agencies successfully cooperated to stage a farmworker festival for 500 workers. Later they worked to develop a coordinated outreach effort involving a joint intake form and joint training for outreach staff. The MSFW agencies then cooperated to win a grant to deal with substance abuse among farmworkers and another to coordinate literacy services. The guiding principle of the Group appears to be coordination to obtain additional resources for joint activities, usually in areas that fall outside the reach of the specific mission of each program, rather than endeavors that might ultimately lead to transfer of funding from one agency to another as pre-existing tasks are consolidated.

## 2. Local Level

Often statewide task forces or councils mandate or encourage the creation of similar local service providers' councils. There are several in Virginia, for example; the council on the Eastern Shore, where MSFW activity is concentrated, meets monthly and is working on developing a consolidated outreach approach. In the meantime it has arranged for "service fairs," to make it easier for migrant families to learn about and register for those programs in which they might be interested. Under these arrangements, instead of descending on the camps piecemeal after the migrant work season begins, all the major service providers (up to seven participate) go to a camp on the same evening to do outreach and intake processing. Local councils also provide a forum for discussing common issues and sharing information about program or about changes in the population or farmwork patterns.

### B. Functions and Obstacles

The primary function of existing coordination forums is information sharing. They may also facilitate the process whereby the various programs refer a client to another program—a sick child from ME to a migrant health clinic, for example. Coordination runs into problems, however, when the agencies must deal with issues that may have resource implications.<sup>166</sup> In the type of example

---

<sup>163</sup>NMRP, *supra* note 159, at III-21 - III-36. The study also contains illuminating case studies of eight other programs and offers useful conclusions and recommendations on coordination and integration of services to MSFWs.

<sup>164</sup>*Id.* at III-24.

<sup>165</sup>*Id.* at III-25.

<sup>166</sup>A survey by the National Association of State Directors of Migrant Education (NASDME) noted this problem. One respondent commented: "The others look at coordination as 'How much money do you have for us?' or else there is apprehension: 'Do you want our

given, the local or state ME and MH agencies may wind up arguing over who bears responsibility for paying for the health services that are provided to the schoolchildren. Similarly, coordinated outreach proposals have also run aground on these sorts of financial issues, when the agencies cannot agree on a formula to pay for the cost of the single primary outreach staff.

Sometimes resource conflicts become so acrimonious that they may inhibit recognition of productive coordination—giving rise to a misleading sense that less ambitious coordination efforts (such as those that do not seek any resource transfers among programs) are more successful because they give rise to fewer complaints. For example, a recent national meeting of the major MSFW service providers awarded special recognition to the Working Together Group from New York, selecting it over the Indiana Coordinated Outreach Program. The New York program, relying on a Cornell University-funded staffer to serve as a neutral convener to help work out common problems and to avoid competition for funds, generated less opposition than the Indiana program. The nomination of the Indiana program, in particular, was resisted by the former JTPA 402 grantee in the state, which felt that its needs had not been adequately met by the combined system, resulting in reduced funding and eventually the termination of the 402 grant.<sup>167</sup>

The disinclination of coordination bodies to deal with resource reallocation issues is understandable, but it should be resisted. Better provision of comprehensive services may sometimes require difficult decisions about resource shifting. Although it is not easy to create coordinating bodies with this capacity, we recommend that those states currently lacking a state-level coordinating body create one, with representation from all interested parties, both public and private. The body should have a specific mandate to examine resource issues, with authority to recommend changes in service allocations. It should also encourage well-focused local coordination efforts.

### C. Definitional Issues

When asked in the abstract about obstacles to coordination among MSFW assistance programs, service providers and officials commonly cite the varying definitions that govern in the separate regimes.<sup>168</sup> But our field interviews failed to turn up widespread evidence of significant concrete problems caused by the differing definitions. Many local service providers had to think long and hard before coming up with examples of how differences in definition impeded coordination, and many of the examples seemed to be nuisances rather than systemic barriers to coordination. For example, MH and MHS sometimes were frustrated that some of their clients could not make use of JTPA 402 vans or other transportation services, because of JTPA's more restrictive eligibility criteria. Others noted that different definitions make it harder to consolidate outreach and intake processing, and may discourage the programs from even attempting such cooperation. Several persons interviewed noted the wastefulness of sending numerous outreach workers (it could be as many as seven or eight) to burden a farmworker family with many of the same questions, even if each worker does spend part of his or her time asking certain questions that are germane only to the particular assistance program at issue. The Indiana and Iowa efforts indicate, of course, that

---

money?" Testimony of Beth Arnow for NASDME, before the National Commission on Migrant Education, Buffalo, April 29, 1991, at 2-3.

<sup>167</sup>Much of this problem appears to have resulted from a misunderstanding. The consolidated outreach staff saw its task primarily in terms of developing full information on the MSFW population in the state, not as encouraging individuals to enroll in particular programs. This approach served other programs reasonably well, for they could generally rely on other incentives (like an obvious need for day care or medical treatment) to bring about actual use of their services. In contrast, JTPA is more dependent on proactive recruiting to persuade individuals to join programs that take them out of the workforce for training. See Part II.D. *supra*. The former JTPA grantee in Indiana, a state agency, waited for the Consolidated Outreach Project to fill this recruitment need, rather than supplementing the more limited consolidated efforts with its own recruitment staff. As a result, the number of enrolled JTPA 402 participants remained quite low, and that JTPA grantee eventually lost the grant. The new JTPA grantee in Indiana, a private nonprofit, has declined to take part in the consolidated outreach program.

<sup>168</sup>A recent poll of MHS grantees, for example, found strong support for the notion that the different definitions impede interagency coordination and for the proposal that a single definition of migrant should be adopted and used by all agencies. Fuentes testimony, *supra* note 78, at 15.

considerable progress can be made in consolidating intake processing, even while different definitions govern the various programs. But the psychological barrier remains.

Other consequences of definitional differences were also mentioned by some we interviewed, but it proved difficult to pin down specific details. We were told that promising cooperation between programs sometimes foundered because of "political fallout" once farmworker parents learned that some of the children would be excluded from one portion of a combined program, owing to different eligibility standards. For example, we heard in general terms of a Migrant Education program's agreement to facilitate the efforts of the local Migrant Head Start by offering space in a summer school building and permission to use ME buses for transportation. The Migrant Health clinic agreed to provide health screening and inoculations. But when the ME buses went out to pick up children for the MHS program, the driver had to exclude "formerlies." Angry parents called the school board, which then decided that the cooperative effort should be discontinued.

Obviously in this case definitional differences were not an absolute barrier to coordination; it should have been possible to sustain the combined program, given additional effort to explain the situation, ride out the immediate negative reaction, or provide alternative assistance of a similar type to those excluded from MHS. But the differences did complicate matters. And viewed in a larger perspective, it may not make sense to have two educational efforts, ME and MHS, reaching such markedly different constituencies.

Based on such a line of argument, some we interviewed argued for a procedure whereby coordinated programs could overcome such problems by means of a waiver procedure (which would probably require statutory amendment). They proposed that by qualifying for one of the cooperating programs, an individual (or family) could have access to all the others, whenever local service providers in the various programs negotiated arrangements for coordinated or integrated services. In the above example, children could ride the ME buses to the MHS program if their families met the relevant definition for either ME or MHS. Or to pursue the example further, a seasonal farmworker enrolled in a lengthy training program under JTPA 402 would be eligible for child care at the local MHS center, even though it had been more than a year since he or she last migrated to undertake agricultural work.

This cross-eligibility or waiver proposal holds some initial attraction, but it also gives rise to important questions. The net result would clearly be an expansion in the population eligible for any one of the given programs. Unless coupled with either a major funding increase (unlikely in the present budget climate) or some other rationing mechanism to replace the original definitional limitations, it might only lengthen waiting lists, exacerbate uneven service, or dilute the level of assistance to the primary target population of a program. Moreover, it would amount, in practice, to a kind of uniform definition, but one that incorporates the most expansive features of each of the programs' definitions. If there is to be some such de facto uniformity, perhaps it should result from direct decisions on each of the elements of the definition (see Part IV *infra*), sometimes choosing expansive criteria, sometimes choosing narrower ones as a way of better targeting limited resources. Cross-eligibility might also encourage some manipulation or reward the canniest applicants for services. For example, a seasonal farmworker who had never migrated but who wanted to enroll his children in MHS or ME could achieve this objective by first qualifying for MH or JTPA benefits, both of which include seasonals. Other seasonal farmworkers who applied directly to ME or MHS, however, would not be eligible, at least not without eventually following the circuitous route of the first.

These problems should give serious pause before embarking on a waiver or cross-eligibility procedure. Nevertheless, it is not clear just how substantial they might be in practice. (Some interviewees speculated that enough resources might be saved by the elimination of duplicative eligibility determinations to pay for the additional services.) It might therefore be worthwhile to test this proposal in the field by a more limited statutory amendment allowing the designation of some local areas for pilot projects. The task of selecting the pilot locations and working out the exact

ground rules for such waivers could be assigned to a federal coordinating entity (as discussed in Part VI).

In any event, even complete uniformity in the federal definitions would not usher in a new era of simple interagency coordination, for a straightforward and important reason. From the perspective of the service provider in the field, seeking to help clients draw on other services available locally, these federal programs form only part of the picture. Most localities do not have all of the Big Four assistance programs. If there is no Migrant Health clinic locally, ME or MHS personnel seeking health care for one of their students will probably have to work with a local physician's organization, a local hospital, or perhaps with a state-funded health clinic, or they may turn to private sources of support. Many of these agencies or organizations will have their own eligibility criteria, which may or may not include a definition of MSFW. If a client does not qualify for one of these sources of assistance, effective local service providers do not spend a lot of time grumbling about definitions; they simply go on to look for another source of support.

Given the diversity of assistance programs available under our federal system, therefore, coordination will have to occur primarily at the local level, taking into account the full range of relevant programs available in that location, both MSFW-specific and general, and both public and private.<sup>169</sup> State and national coordination initiatives can still be useful, however, to promote such local initiatives and to find incremental ways to overcome existing barriers. Constant and creative prodding from such quarters can also help to stimulate local initiative and to overcome personality conflicts. In sum, as many interviewees observed, the absence or ineffectiveness of local and state coordination probably has more to do, overall, with lack of local initiative or personality conflicts than with structural barriers; definitions can serve more as an excuse than an explanation.<sup>170</sup>

#### D. Recommendations

We recommend the creation or improvement of state-level coordinating bodies to look for statewide initiatives that can make more efficient use of service resources. These bodies should also attend to ways to promote better local-level integration or cooperation. As to definitions, we cannot conclude that the current diversity in federal definitions imposes a highly significant barrier to coordination. Coordination is clearly possible without a uniform federal definition, and considerable local initiative for coordination would still be necessary, even if there were a uniform federal definition, given the diversity of local resources available.

Moreover, differing federal definitions took root, in part, for understandable reasons relating to the specific service missions of the varying programs. Immediate mandates to force definitional uniformity are therefore likely to provoke considerable political resistance. We were frequently reminded during interviews, for example, of a Reagan administration proposal to cut the Migrant Education look-back period from five to two years. After acrimonious controversy, it was successfully beaten back by the affected agencies, and Congress reaffirmed the five-year period.

Despite these cautionary notes, we do recommend steps in the direction of a uniform definition, for two reasons. First, we believe that consolidated outreach offers real hope for improved service to individuals, both by cutting down on the wasteful use of staff time in intake processing and by reducing the burden on MSFW families. As long as there are separate programs, individual program intake and questioning cannot be completely supplanted, as the Indiana and Iowa experience indicates. But economies could be achieved. Reducing the disparities among the definitions might

---

<sup>169</sup>One ME state director commented: "All of the Migrant-specific programs can coordinate their hearts out, but there still are not enough resources in sight to serve this population unless there is improvement in access to the mainstream programs." Glover letter, *supra* note 33, at 5.

<sup>170</sup>One ME state director concluded: "Within the existing statutory/regulatory framework, the degree of effective coordination possible seems to be limited only by the initiative, energy and good will of the service providers at the state and local levels." Arnow testimony, *supra* note 166, at 2. See also Mull testimony, *supra* note 119, at 7 ("personality conflicts can sometimes be translated into policies that discourage productive coordination.").

help encourage the development of consolidated outreach forms, even if separate programs retained some differences in definitions and eligibility criteria that are truly justified by the nature of the particular program.

Moreover, many officials and service providers interviewed pointed to another important reason for a uniform definition—at least a core definition for certain purposes. They reported considerable frustration at being unable to provide legislators or others with an agreed count of migrant farmworkers, nor even of the wider category of seasonal farmworkers. An agreed census or estimation mechanism should help them argue for their budgets. It would also help identify the real needs and the appropriate regional or local distribution of funds meant for MSFW services—a targeting function that is not well served at present.

Finally, we believe that experience with a uniform core definition, perhaps used initially only for population counts or for part of the outreach process, would have beneficial long-term effects. Over time, it may ease the concerns that have in the past sparked resistance to proposed changes in the definitions governing particular programs, and may facilitate incremental progress toward more uniform eligibility criteria.

## IV. Data and Definitions: Toward a Uniform Core Definition

### A. Migrant Worker Data and Definitions

#### 1. Introduction

Although inconsistent definitions may not wholly impede local coordination efforts, the lack of a core MSFW definition does hamper the ability of the federal government to determine the needs of, and to target resources to, the migrant population. This section pursues these issues and recommends improvements.

How can a uniform core definition of MSFW be developed? It has never been easy to define migrant and seasonal farmworkers, or to agree on their number, characteristics, and distribution. Many farmworker advocates blame governmental indifference for persisting disagreements over how many MSFWs there are. These critics often note that migratory birds seem more important to the federal government than migratory workers, since the federal government allegedly has better data on migratory birds than migratory workers.<sup>171</sup>

Farmworkers have been excluded from federal labor law protections and were initially neglected in federal antipoverty programs, but another reason for the lack of reliable data on them is that migrant farmworkers are hard to define. Logically, migrant is an attribute of a subset of persons whose occupation is farmworker. U.S. labor force data can apply age, sex, or race attributes to workers in particular occupations and industries, but they cannot distinguish migrants from other workers. For example, the DOL Standard Occupational Classification (SOC) manual defines six types of farmworkers, such as general farmworkers (SOC 5612) and vegetable (5613) and orchard (5614) workers, but not migrant farmworkers. Similarly, the DOL Dictionary of Occupational Titles distinguishes farmworkers in the grain, vegetables, fruits and nuts, field crops, and horticultural industries, but it does not include listings for migrant or seasonal workers within these farmworker occupations. Hence, one cannot simply look up migrant farmworker in regularly published occupational data.

Since MSFW does not appear in normal data sources, two major methods have emerged to estimate their number and distribution. Most common are bottom-up estimation procedures, which begin with a count or estimate of the number of MSFWs in each county or state, adjust these data to reflect MSFWs who were not included in the count or estimate, then add dependents, and thus produce an estimate of the number and distribution of MSFWs and their dependents for states and perhaps counties.<sup>172</sup> An alternative top-down approach begins with the total number of farmworkers (or another overall indicator of farmworker activity such as wages paid to hired workers), and then adjusts downward to isolate the subset of MSFWs of interest.<sup>173</sup>

Both procedures have advantages and disadvantages. Bottom-up procedures begin with the population of interest, but subsequent adjustments presume that the analyst has more knowledge of MSFWs than the local person who originally made the baseline estimates. Top-down procedures, by contrast, usually begin with better data, but they must make often arbitrary assumptions to isolate the MSFW subset of all farmworkers.

The problems inherent in both bottom-up and top-down procedures have prevented either from emerging as the generally accepted procedure. Even worse, from an analytical perspective, few studies using either procedure have ever been done twice (the usual practice for cross checking) so that, in the case of MH, studies done in 1973, 1978, 1985, and 1988 were in no way cumulative or self-correcting.<sup>174</sup> It appears that at least \$100,000 has been spent annually by non-ME federal

<sup>171</sup>T. Moore, *The Slaves We Rent* \_\_ (1965).

<sup>172</sup>See *Harvest of Confusion*, *supra* note 2, at 75-94 (1988) for an explanation and review of bottom-up estimates of MSFWs.

<sup>173</sup>See *id.* at 99-109, for an example of a top-down procedure for estimating the distribution of migrant activity across states.

<sup>174</sup>*Id.* at 84-88.



MSFW assistance programs to estimate the number and distribution of MSFWs and their dependents, or at least \$1.5 million since the mid-1970s, but there is no agreement on the number and distribution of MSFWs. Experience has not even produced agreement on a procedure to determine their number and distribution.

Because there has been relatively little progress in getting reliable data on MSFWs, it is still possible to re-evaluate the virtues of bottom-up versus top-down estimation procedures. An improved bottom-up procedure might, for example, build on an improved MSRTS, while an improved top-down procedure might be based on a modified decennial Census of Population (COP) questionnaire or an expanded National Agricultural Workers Survey (NAWS).

We recommend that the number and distribution of MSFWs should be based on regularly published labor data that are not tied to or generated by any MSFW program, and that the characteristics of MSFWs that might modify the distribution of funds be based on a Department of Labor worker survey such as the NAWS. Establishing this sort of independent system should be a major priority for any new national-level coordinating agency (as we recommend in Part VI). This agency should arrange with an established statistical body such as the DOL's Bureau of Labor Statistics, to make annual, biennial, or quinquennial estimates of the target population of MSFWs in each state and, if needed, in each county.

## 2. The Harvest of Confusion

With each MSFW assistance program having a unique definition, and estimates of MSFW target populations based on a mixture of top down and bottom-up procedures, and with federal farm labor data painting very different pictures about a typical migrant, it is not surprising that there is a harvest of confusion over the number, characteristics, and distribution of MSFWs. Some of this confusion is due to the gap between the stereotype and the definition of a migrant farmworker. The stereotype is that virtually all minority workers in the fields are migrants; many definitions, on the other hand, include Iowa teenagers as migrants but not Mexican-born families settled in California who each day commute from their homes in farmworker towns to the fields. Varden Fuller once observed that highway drivers who see a crew of Hispanic workers hoeing assume that all of the hoers are migrants, and the white tractor driver is not, while the opposite may be the case under, e.g., a cross-county-line and stay-away-from-home-overnight migrant definition.<sup>175</sup>

Confusion also arises because there is a persisting myth that "millions" of people live in the southern parts of the United States and follow the ripening crops north. A typical description is that "three streams of people ... flow and fan northward, travelling from their homes around Florida, Texas, and California to distant places."<sup>176</sup> The map that accompanies this description has heavy black arrows which show how Florida-based migrants move up the Eastern Seaboard, Texas-based migrants fan out across the midwest, and California-based migrants move within the state and north into Washington and Oregon. The arrows indicating a south to north migration of workers help to explain the nautical flavor of migrant labor discussions: states are upstream or downstream, and there are major currents and cross currents. However, farm labor scholars have usually emphasized that the picture of migrants flowing south to north lent a false precision to an unorganized migration and exaggerated the flow of workers. Varden Fuller noted in 1984 that "the major change that has occurred in respect to seasonal farm labor is the decline in migratoriness ... no less important than the decline in physical magnitude is the decline in the myth."<sup>177</sup> During the mid-1960s, when the federal government launched programs to assist migrant farmworkers and their children, imprecision in definitions and numbers did not seem so important because there was a sense that migrant farmworkers would soon be displaced by machines. There was a temporary upsurge in the

<sup>175</sup>Fuller, Introduction in R. Emerson, *Seasonal Farm Labor in the United States*, at x (1984).

<sup>176</sup>R. Goldfarb, *Migrant Farm Workers: A Caste of Despair* 3 (1981).

<sup>177</sup>Fuller, *supra* note 175, at xi.



number of migrants in the mid-1960s,<sup>178</sup> when the federal government terminated the Bracero program.<sup>179</sup> Nevertheless, the children in migrant farmworker families were not expected to be able to follow in their parents' footsteps because of mechanization.<sup>180</sup> Without federal assistance, the argument ran, migrants and their children would be unprepared for nonfarm jobs. Definitions of the migrant farmworkers to be served, as well as the distribution of available funds, for example, between health and education services or between upstream and downstream states, were ad hoc in this era when migrancy was considered a soon-to-be-closed chapter of American history. Migrancy, however, did not disappear. The number of MSFWs stabilized and even increased in some areas as labor-intensive agriculture expanded faster than mechanization displaced workers on the fewer and larger farms that accounted for most U.S. fruit and vegetable production.

### 3. The Number and Distribution of Migrants

Most newly begun federal service programs try to determine the number and distribution of their target population and then allocate funds to areas with eligible clients in proportion to their share of the national need. The number and distribution of target populations are often established with the decennial Census of Population (COP). However, migrant farmworker programs are different; only the JTPA 402 assistance program allocates funds to states on the basis of COP data. The other migrant assistance programs rely on their own data systems or they ask grantees who apply for funds to prove that there is a target population to be served. For example, Migrant Education funds are allocated on the basis of an ME-specific counting system, the MSRTS, and Migrant Head Start (MHS) and Migrant Health (MH) require applicants for funds to demonstrate the existence of a needy target population in the area to be covered by the grant. National administrators in such grantee-driven programs agree that there is no reliable system in place to ensure that the distribution of funds is related to the distribution of the target population instead of the distribution of the best grant applications.

Studies to rationalize the allocation of migrant assistance monies have mostly been of the bottom-up type. That is, the study began with acknowledged flawed local estimates of migrant and seasonal workers and then "adjusted" these estimates to determine the number and distribution of eligible workers and dependents. During the 1970s, most studies began with the monthly Employment and Training Administration estimates (reported as ETA-223 data) of the number of migrant and seasonal workers employed during the week which includes the 15th of the month in areas with significant farmworker activity (one or more counties with 500 or more farmworkers or any H-2A temporary foreign workers). These local ETA estimates were then adjusted by the person making the MSFW estimate to account for unemployed workers, alleged undercounts of workers employed, and the dependents of workers, to produce a count and distribution of the target population of MSFWs and their dependents. A review of these 1970s studies noted that many of the adjustments were contradictory, and that these studies were not building blocks to better estimates of the number and distribution of migrants and their dependents. Subsequent studies often ignored previous studies.<sup>181</sup>

<sup>178</sup>As estimated by a Department of Agriculture analysis of supplementary questions attached to the December Current Population Survey (CPS), the number of migrant farmworkers rose 21 percent, from 386,000 in 1964 to 466,000 in 1965, before falling to 351,000 in 1966 and then averaging 200,000 during the 1970s. The definition used by USDA to analyze CPS data required persons 14 and older to cross county lines and stay away from home at least one night to be considered migrant farmworkers.

<sup>179</sup>The Bracero program refers to the series of agreements which permitted almost five million Mexican farmworkers to enter the United States on a temporary basis to do farmwork between 1942 and 1964. There were five million entries, but some workers returned year-after-year, so that perhaps only one million Mexicans participated. One commentator concluded that the Bracero program was responsible in part for the 1960s migrant programs and protective legislation because Braceros had rights and privileges under the contracts growers were required to provide that U.S. farmworkers did not have. Craig, *The Bracero Program* 200 (1971).

<sup>180</sup>For example, during the 1964 debate on what became the Economic Opportunity Act of 1964, the National Sharecroppers Fund Secretary used his understanding that a mechanical lettuce harvester was coming to support his assertion that "machines are replacing men on the farm as they are in the factories." Quoted in Klores, *supra* note 7, at 10. As of 1991, no lettuce is harvested mechanically in the United States.

<sup>181</sup>See *Harvest of Confusion*, *supra* note 2, at 77-98.

Several 1980s studies continued this bottom-up procedure of adjusting flawed local estimates, but there were also attempts to make top-down estimates of the number and distribution of farmworkers. One study combined state-by-state data from the Census of Agriculture (COA), the Quarterly Agricultural Labor Survey (QALS), and the Current Population Survey (CPS) to distribute migrant activity across states, and then demonstrated that there may be 600,000 to 1.2 million migrant farmworkers in the United States, depending on definition.<sup>182</sup> The NAWS, a national worker survey established by the U.S. Department of Labor after the enactment of the Immigration Reform and Control Act of 1986 (IRCA)<sup>183</sup> to determine whether there were farm labor shortages that required the admission of additional agricultural workers, similarly used COA and QALS data to develop a sampling frame to select farmworkers to interview. Based on a definition that counts as migrants those who travel at least 75 miles from their usual residence to do farmwork, the NAWS found that 42 percent of its sample workers were migrants. If the total farmworker population is 2.25 million, then there would be 940,000 migrant workers.<sup>184</sup>

Program-generated data cannot be improved enough to estimate the total number and distribution of MSFWs, unless each program has at least a uniform core definition and some programs serve all of their target populations. Program service data today do not reflect the total migrant population because no program serves all of the eligible MSFWs and dependents, and service data do not reflect persons who are not MSFWs under one program but may be migrants under another program definition. Without a uniform federal definition, each MSFW assistance program develops an estimate of its eligible population, and these eligible population estimates are like circles which partially overlap. However, despite differences in definition, by some estimates, roughly 80 to 90 percent of the migrants as defined by one program are also migrants as defined by the others.

Even if most of the persons served by MSFW programs do fall in the eligible-for-one and eligible-for-all migrant program group, estimates of the total migrant population based on persons served may miss migrants in areas not currently served by assistance programs. The estimates may also be affected by different levels of outreach and funding. For these reasons, it is preferable to determine the number and distribution of MSFWs from a census or sample survey rather than from the enrollment data of programs that have different definitions of migrant workers.

There are several sources of farm labor data that might be relied on to estimate the number and distribution of MSFWs. The decennial Census of Population (COP) has not been considered reliable enough to estimate the number and distribution of migrants because, as noted earlier, the COP asks respondents about the work they did in the week before the Census, and the last week in March finds employed only one-third of the people who do farmwork during a typical year. However, some of the JTPA 402 program participants, whose funding is based on COP data, believe that a slight modification of one or two COP questions could make the COP a valuable source of data on farmworkers, although even a modified COP could not distinguish those farmworkers who migrate.<sup>185</sup>

Most labor data come from the monthly Current Population Survey (CPS), which interviews people in 60,000 households to establish, inter alia, national and state unemployment rates. The CPS is not used extensively today to study MSFWs because it is based on the assumption that each of the 80 million housing units in the United States has an equal probability of being in the sample, and the CPS is believed to miss many MSFWs because of their nontraditional housing. However, until 1987

---

<sup>182</sup>See id. at 107. Based on detailed 1984 California Unemployment Insurance data, there were 600,000 migrant farmworkers if migrant was defined as a worker having at least two farm employers in two counties; 1 million migrant workers if migrant was defined as a worker having a farm job outside the worker's base or highest-earnings county; and 1.2 million migrants if migrant was defined as a worker having a farm job in one county and a farm or nonfarm job in another county.

<sup>183</sup>Pub. L. No. 99-603, 100 Stat. 3359. The NAWS was designed to determine whether there were farm labor shortages that would have triggered the admission of "replenishment agricultural workers" under §303 of IRCA, 8 U.S.C. §1161 (1988).

<sup>184</sup>Richard Mines, Memorandum (mimeo, March 1992).

<sup>185</sup>The suggested modification to the COP would ask respondents what amount or percentage of their earnings in the year preceding the COP were from farmwork so that a respondent not employed as a farmworker in March but with farm earnings during the previous 12 months can be identified.

the CPS included a December supplement which asked if anyone in the household had done farmwork during the calendar year. About 1,500 households in the December CPS included a farmworker, and in these households, data were collected on where the farmworker worked during the year as well as his farm and nonfarm earnings.

The U.S. Department of Agriculture (USDA) analyzed these CPS data to estimate the number and characteristics of migrant farmworkers, as defined by USDA. The USDA defined migrants as persons who crossed county or state lines and stayed away from home at least one night during the year to do farmwork for wages. USDA defined farmwork to include crop and livestock agriculture, but to exclude the processing of crops and livestock, and USDA imposed no occupational, earnings, or legal status criteria. As a result, veterinarians as well as field hands could be migrants, and legally authorized as well as illegal alien workers were included. Teenagers in Hispanic families who migrated from Texas to Michigan could be migrants, as well as Iowa teenagers who lived and worked on an uncle's farm in another county during the summer. According to USDA's analysis of CPS data, there were 115,000 to 226,000 migrant farmworkers in the U.S. in the 1980s, with one-fourth of them concentrated in the southeastern states.<sup>186</sup>

The CPS data became suspect because, as the 1980s unfolded, they continued to picture a largely white and teenage migrant workforce, whereas MSFW assistance programs and other data were reporting an increasingly adult and Hispanic workforce. In the mid-1980s, for example, the CPS data found that about one-fourth of the 160,000 migrant farmworkers in the United States were mostly white youth in the midwest. The NAWS, by contrast, which was established in 1989 to determine whether immigration reforms caused farm labor shortages, reported that MSFWs are mostly Hispanic adults who were born abroad. For example, in 1990 two-thirds were born abroad (usually in Mexico), and their median age was 31.<sup>187</sup>

## B. Estimating the Farm Labor Population

### 1. Farm Labor Data

This section reviews the data sources available to estimate the number and distribution of MSFWs according to a core definition.<sup>188</sup> Agriculture has always been the most difficult sector for which to obtain reliable employment-related data. There are several reasons, including the spatial dispersion of the industry, the seasonality of employment, the large number of small employers and casual employees,<sup>189</sup> and the unique division of responsibility between USDA and DOL in collecting and analyzing farm labor data.

Employment and wage data record what happens in labor markets--the number of people hired and their characteristics, the wages they are paid and their fringe benefits, and how long they stay with a particular employer or in a certain industry or occupation. No single data source can give a complete picture of the people in a particular labor market. Instead, the labor market can be imagined as a room of unknown size and shape, and each data source can be thought of as a window which provides a view into the room. The completeness of the data is indicative of the size of the window, and the reliability of the data is suggestive of the quality of the view.

There are three major types of labor market data. Establishment or employer-reported data are obtained from employers. Most labor market data are obtained from employers because it is cheaper to survey a sample of or to take a census of the nation's seven million employers than to interview a

---

<sup>186</sup>Victor Oliveira, *Trends in the Hired Farm Workforce: 1945-87*, at 5 (USDA, ERS, Ag Information Bulletin 561).

<sup>187</sup>NAWS Findings, *supra* note 3, at 11.

<sup>188</sup>Table 3, *infra*, outlines the concepts which must be defined in order to develop a core definition, and it includes recommended definitions, justifications for them, and some of the effects of adopting them.

<sup>189</sup>Casual employees refers to the large number of farmworkers who are employed in agriculture for only a few weeks, and who are then out of the U.S. labor force or employed in another job the rest of the year. There are also large numbers of paid and unpaid family workers in agriculture.

sample or census of the 140 million persons in the U.S. labor force sometime during each year. Establishment data usually describe jobs: they report, for example, the number of employees; wages paid, hours worked, and benefits offered; and duration of employment with this employer.

Household data are collected from individuals and households. These data include the personal characteristics of workers as well as data on spells of unemployment and movement between employers, industries and occupations. Some household data do not change (race and sex), other data change in a predictable fashion (age), and some can be obtained only through repeated interviews (employment status).

Establishment and household data can be collected through censuses or sample surveys. A census obtains data from everyone; a sample from only a subset of the group. Data obtained from random samples can be examined so that the analyst can report that the sample results are what a census would have yielded within certain bounds. For example, a sample wage of \$5 ± 25¢ means that a census (or another sample) could produce a wage of \$4.75 to \$5.25, e.g., 95 percent of the time.

Establishment and household data are not the only sources of labor market information. Administrative data, the third major type, also provide useful ways to look into the labor market room. Administrative data are collected for tax purposes (quarterly unemployment insurance (UI) reporting), regulatory purposes (farm labor contractor registrations), and funding or client purposes (ME or MH intake data). Administrative data can be censuses, as UI, contractor registration, or pesticide reporting are supposed to be, or samples, such as social service intake or client data are. However, tax and regulatory administrative data may be incomplete if employer-reporters have incentives not to report or to underreport employment and wage data, and client or intake data may provide a biased or skewed picture of the underlying population. For example, JTPA 402 data may reflect only the legally authorized farmworker population interested in training, while ME data may provide data only on the migratory parents of children aged 3 to 21 that recruiters locate.

## **2. Definitional and Conceptual Issues**

Employment and wage data begin with definitions and then develop enumeration procedures to estimate the number and distribution of workers in the group. To enumerate farmworkers, agriculture and farmworker must be defined. This is a much more challenging task than most casual observers would realize. This section explores some of the complexities.

In most farm labor data, a farmworker is a person who works for cash wages on a farm (farm operators and unpaid family workers, by contrast, share in the farm's net income), so the first critical definition is what constitutes a farm. Most data sources at least attempt to define a farm as the term is defined in the Census of Agriculture (COA): a farm or agricultural enterprise is any place from which \$1,000 or more of "agricultural products" were sold or normally would have been sold during the year. Agricultural products can be livestock or crop products sold to other farmers (such as calves or hay) or sold to retailers or consumers (such as strawberries), or commodities that are sold for further processing or distribution (such as peaches produced on a farm but canned in a nonfarm establishment).

Farms as defined by the COA can be assigned to Standard Industrial Classification (SIC) codes that reflect the farm's primary commodity, or the commodity (group) which generates 50 percent or more of the farm's sales. The COA divides the farms that satisfy its definition first into crop (SIC 01) and livestock (02) categories, and then into more detailed three digit SIC commodity codes such as fruits and nuts (SIC 017), and four digit codes such as grapes (SIC 0172). Diversified farms without a dominant commodity are classified as general crop farms (SIC 0191) if they primarily sell crops, and as general livestock farms (SIC 0291) if they primarily sell livestock commodities.

Agricultural service firms are not farms, but they often employ workers who do farmwork for wages on farms. Agricultural services (SIC 07) include soil preparation (071), crop services (072), and farm labor and management services (076). The service firms in these SIC codes usually employ

workers who work for wages on a farm, but these "farmworkers" are sometimes included and sometimes excluded from farm labor data. Most agricultural service firms are not based on farms, such as a farm labor contractor who operates from his home in town or an agricultural chemical applicator with an office in the business district. Thus, sampling methodologies based on lists of farmers or parcels of land may miss them. Some of the agricultural service firms that have farm addresses may still be overlooked. For example, some larger farms that grow labor-intensive fruits and vegetables operate with four or five corporations, including, e.g., a farm labor contractor business and a chemical application business that share an office with the farm business. These on-farm corporations can supply workers to the farm business or for the associated farm and other farms, and the workers may or may not appear in farm labor data.

The proliferation of agricultural service firms reflects farmers' growing dependence on them. Farm production is concentrated on a relative handful of large farms. In 1990, the nation's 2.1 million farms had 170 million in cash receipts from selling farm products. The largest 16,000 farms—less than 1 percent of all farms—accounted for one-third of all farm sales, and the largest 5 percent accounted for 60 percent of all farm sales.<sup>190</sup> Many of these large farms employ accountants and marketing representatives, operate packing sheds or gins to handle their products, and buy equipment to fertilize or apply chemicals. As a result, accountants, packing shed workers, and chemical applicators employed on large farms are sometimes considered farmworkers in data reported by farm operators and sometimes considered to be agricultural service workers, depending on the structure of the farm business and the sampling procedure. If these workers are provided to the farm by an outside or independent agricultural service firm, their indirect hiring may make them nonfarm workers.

The "farmworker" status of an individual employed on a farm by an agricultural service firm depends on factors such as what type of employer they have, who owns the facility in which they work, and what it does to farm products. Construction workers employed by a nonfarm contractor who is building a building on a farm are not usually considered farmworkers, but workers employed by a farm labor contractor who prune grapes and repair trellises usually are considered farmworkers. The workers who pick peaches are usually considered farmworkers whether they are employed by a farmer or by a contractor, as are the workers employed in a peach packing shed on the farm that packs mostly the peaches grown on that farm. But if the peach packing shed handles peaches, for example, from ten equally-sized growers, then it is not considered a farm enterprise and is classified in the SIC code as 0723 (crop preparation services for market) or 5148 (fresh fruit and vegetable wholesaling). As a result, the workers may or may not be considered farmworkers.

Farm enterprises can be classified in the SIC as farms or nonfarm agricultural services, and this means that standard industrial classification data on employment in agriculture may not agree with standard occupational classification data on what workers actually do. When workers are asked in a household survey if they worked for wages on a "farm" during the past year, such ambiguities abound. A "farm" is defined to exclude agricultural service firms in the Census of Agriculture (COA), but "farm" is not defined in the CPS supplement used to collect data for the USDA Hired Farm Working Force (HFWF) household survey.<sup>191</sup>

A worker employed by an agricultural service firm such as a labor contractor or a livestock veterinarian may respond in a household survey that he or she did farmwork during the past year and thus be considered a farmworker in household data. But establishment data such as the COA do not consider agricultural service firms to be farm employers. Thus they may exclude these agricultural

---

<sup>190</sup>The largest 16,000 U.S. farms sell an average \$3.7 million in farm products each, and have average net incomes of \$1.2 million. The 60 percent of all farms that sell less than \$20,000 worth of farm products annually account for less than 5 percent of all farm sales, and these small farms, on average, have lost \$100 to \$1000 each in the 1980s. *Economic Indicators of the Farm Sector: National Financial Summary*, November 1991, at 44.

<sup>191</sup>The screening question is "During (past year), did (person) do any farmwork for cash wages or salary, even for one day?"

service "farmworkers." As a result, household and establishment surveys may be reporting different numbers and characteristics of "farmworkers."

Farmworkers can be defined by where they work or by what they do. In establishment data such as the Census of Agriculture (COA) and Unemployment Insurance (UI) reports, all persons employed on a farm are considered farmworkers, including fieldworkers as well as clerical and professional staff, the executives of a corporate farm, and paid family members on a family-operated farm. However, if these workers are classified by occupation on the basis of what they do, rather than as farmworkers because they are employed in the industry of farming, some will be farmworkers but others will be clerks, accountants, and truck drivers. No regularly published data can determine how many persons classified as farmworkers in establishment data are also farmworkers in occupational data, but California UI claimant data suggest that only about two-thirds of the persons employed in the industry agriculture (SIC 01 and 02) have farmworker occupations.

### 3. USDA Interpretations of Farm Labor Concepts

The U.S. Department of Agriculture has had the most experience interpreting farm labor data. According to USDA, people who work on "farms" are divided into three groups: farm operators, unpaid workers, and hired workers. Farm operators are distinguished by working for a share of the profits or a share of the crop and not for an agreed-upon wage. The tendency of family farms to incorporate for tax and estate reasons, however, has converted some previously self-employed farm operators and unpaid family workers into hired farmworkers. About 15 percent of the wages paid to hired workers in the USDA FCRS survey are paid to workers related to the farm operator.<sup>192</sup>

Unpaid workers are usually family members related to the operator who indirectly benefit from farm profits but are not paid cash wages. Unpaid workers are defined in the USDA's Quarterly Agricultural Labor Survey (QALS), for example, as all persons who worked at least 15 hours during the survey week on a farm and were not paid a wage or salary.

Hired farmworkers are all persons who work for wages or a salary on a farm. In most data sources, the minimum time that must be worked for wages is one hour, and one spell (hour) of farmwork makes a person a farmworker for a particular year, even if the person was primarily a student, housewife, or nonfarm worker during the year. Thus, all persons who had any paid farm employment during the year, including field and livestock workers, equipment operators, bookkeepers, mechanics, and entomologists, veterinarians, and other professionals are considered to be hired farmworkers in USDA's interpretation of CPS data. If agricultural service firms are also considered farm employers, then a secretary in the urban office of a crop protection service may be considered a hired farmworker.

Farm operators, unpaid workers, and hired farmworkers live in single person or family households. The family households pose especially difficult problems for determining the number of dependents in hired farmworker households. In the USDA Hired Farm Working Force (HFWF) reports based on the Current Population Survey (CPS), and under some MSFW assistance program regulations, the presence of one person who did qualifying farmwork for wages makes the entire household a farmworker household. The one farmworker may be the household head, the spouse, or a child, so that "farmworker households" often include both farm and nonfarm workers. The migrant subset of hired farmworkers is even more complex: since one migrant farmworker makes the entire household a migrant household in most data sources, a teenage student in an urban family can make the family satisfy the migrant farmworker definition for one year with a summer job away from home.

---

<sup>192</sup>USDA normally permits operators to identify themselves, with a limit of one operator per farm. Thus, the factory worker who tends chickens in the evening can be a farm operator, as can the retired farmer whose farm is operated by his sons. If a farm incorporates, then all of its employees can become hired workers.

The final conceptual complication in farm labor data is the difference between farm jobs and farmworkers. Agriculture offers a fluctuating number of jobs, and some farmworkers move from farm to farm and enter and exit the farm workforce several times during the year. Several data sources estimate the number of workers employed or the number of jobs offered during a particular time period. For example, the USDA QALS survey asks a sample of farm employers how many hired workers they employed during the *week* which includes the 12th of the month, while the CES-ag program (California only) follows the Bureau of Labor Statistics practice of asking employers to report the total number of employees on their payrolls for the *payroll period* which includes the 12th day of the month. Most agricultural payroll periods for farmworkers are weekly, but mechanics and office staff, who are also included as wage and salary workers on farms, are often paid biweekly.

Workers employed and jobs offered are not identical, even for a survey week, because of worker turnover and varying job durations. If worker turnover is high, two or three workers may be hired during the survey week to fill one job slot, so a survey of worker employment during a particular time period must distinguish between total employment (all names on the payroll) and average employment (the average number of workers employed or jobs offered during a one or two week survey period). Survey week jobs may be of different durations: no survey directly distinguishes between a job or worker employed for one hour on one day of the survey week and a job or worker which involves 40 hours. However, labor expenditure and hours worked data indirectly indicate the duration of employment.

The major farm labor data sources are summarized in Table 2. These data sources are grouped by their purpose and the source.

**Table 2. Defining Farmworkers: Conceptual Issues**

Term	Sample Definition	Source	Sample Data Item	Issue
1. Farm and farmwork	All work done for wages on a place which sells farm products worth \$1,000 or more	Census of Agriculture	In 1987, COA labor expenditures were \$12.7 billion	<ul style="list-style-type: none"> <li>- Includes wages paid to hired workers and FLCs as well as family members, clerical workers, and corporate officers.</li> <li>- May miss some agriculture service wages; labor expenditures are more than hired farmworker wages</li> </ul>
2. Farmworker	a. Person who did farmwork for cash wages or salary	CPS-HFWF	In 1983, there were 2.6 million hired farmworkers, including 9 percent migrants	<ul style="list-style-type: none"> <li>- Sampling procedure based on housing units and interviews conducted in December, so many (Hispanic) farmworkers may be missed</li> </ul>
	b. All persons employed on farms for wages during a particular period	BEA; ES-202	ES-202 reported that 44,000 crop and livestock employers hired an average 616,000 workers in 1986	<ul style="list-style-type: none"> <li>- Includes all types of workers employed on farms; usually covers workers on the payroll for the payroll period that includes 12th of month</li> </ul>
	c. Paid workers doing agricultural work during survey week by the type of farmwork they did.	QALS	During the week of July 7-13, 1991, there were 3.7 million persons employed on U.S. farms, including 1.1 million hired workers and 0.4 million ag service workers	This survey conducted since 1910, may underestimate seasonal farmworker employment and may not generate reliable regional data
3. Migrant Farmworker	Crosses county lines and stays away from home overnight to do farmwork for wages	CPS-HFWF	159,000 migrants employed sometime during 1985	Based on a sample conducted in December of about 1,500 households which include at least one person who did farmwork during the past year. About 6 percent or 94 households included a migrant farmworker.
	Does 25 to 150 days of farmwork annually, obtains at least half of annual income from farmwork, and cannot return home at the end of a workday	ES-223	Local ES staff estimate MSFW employment each month. In 1982, an average annual 62,500 migrants; 1/3 in California, and 90 percent in 10 states.	No standard methodology for collecting data.
	The children aged 3 to 21 of farmworkers who cross school district lines to do farmwork	ME-MSRTS	In 1982, about 190,000 currently migrant students (FTE) were identified, and 216,000 formerly migrant students (FTE)	Recruiters determine the eligibility of children; school districts get funding for each child they enroll as a migrant



## C. Steps in Defining the Population and Determining Eligibility for Services

### 1. The Process

Migrant farmworker definitions and programs are as diverse as the people they serve. Determining the target population and establishing actual eligibility for a migrant assistance program usually involves six steps. First, agriculture must be defined, since the programs serve a subset of the persons involved in the industry of agriculture. Some programs cover persons employed in both crop and livestock agriculture, including fisheries (ME), while others include only workers and their dependents employed in, e.g., crop agriculture (MHS).

Second, "farmworker" must be defined. Most programs define farmworkers as persons who do or look for wage work in agriculture (as the program defines it), and some programs go further and define how little and how much farmwork an eligible worker must do by establishing earnings or income criteria. For example, HEP and CAMP require applicants for their assistance to have done at least 75 days of farmwork in the past 24 months. Most assistance programs define farmworkers as persons whose principal or primary employment is in agriculture, which usually means that at least 50 percent of the worker's worktime or earnings during the previous 12 or 24 months were derived from farmwork. Some also establish a maximum time in farmwork, in order to target their services on persons affected by the seasonality of the industry. In these programs seasonal farmworker is usually considered someone primarily employed in farmwork from a fixed base or home, usually for something less than constant employment year-round. ME, in contrast, does not require that the children it serves have parents who are primarily farmworkers.

Most programs give priority to migrants, the third step in defining eligibility. All migrant definitions include some concept of movement, although they vary in the border that must be crossed or distance that must be travelled. For example, ME requires that school district lines must be crossed; MH says only that a temporary abode must be established for the purpose of doing farmwork; MHS requires that the place of residence must have changed because of the search for farmwork. Some programs (MH, JTPA) also serve nonmigratory seasonal farmworkers and their dependents.

Determining whether a worker and dependents are eligible for services usually requires a retrospective look at a worker's employment and income history, and the fourth step is to determine how far back to look to determine eligibility. ME looks back six years, MH and JTPA two years, and MHS 12 months. This means that a migratory act or event makes a worker (and his dependents) eligible for services as a migrant for one to six years after the worker has stopped migrating.

The fifth step is to determine whom to serve. For example, with a few exceptions, ME serves the children, ages 3 to 21, of eligible parents, while MHS ordinarily serves children from before their first birthdays through age 5. Many programs also place earnings or income limits on eligible farmworkers. For example, JTPA 402 and MHS limit participation by comparing the incomes of persons wanting services to federal poverty income levels. In contrast, ME has no income criteria.

Finally, the sixth step is to decide exactly how and where to provide services. For example, should MHS grantees try to locate near hospitals or near other MSFW providers? Should ME use its funds to hire classroom teachers, provide rides for migrant children, or run seminars for migrant fathers on the importance of education? Should all states receive funding under the program's formula, or should there be a threshold excluding states with populations too small to make a separate MSFW program administratively feasible? Some migrant assistance programs are granted considerable flexibility in the range of services they can provide.

These six steps to determining target populations and eligibility--agriculture, farmworker, migrant, the retrospective look at an individual's farmwork, age and other individual traits, and how to provide the service--have generally evolved to become more inclusive over time. As we develop more fully elsewhere in this report, we believe that these largely unplanned and uncoordinated expansions have produced disjointed qualification requirements that increase administrative costs,

especially those associated with outreach and intake processing, have sometimes generated unnecessary competition that impedes coordination between MSFW assistance programs, and have hampered effective targeting of limited assistance monies.

## 2. Improving the System: A Uniform Core Definition

As a first step toward reducing those problems, we recommend the development of a uniform core definition of MSFW. This core definition should be used, initially, for the development of a single reliable federal MSFW census or estimation system, independent of any of the current MSFW service programs. That system should produce a usable count of migrant and seasonal farmworkers, with data sufficiently detailed and current to provide a basis for allocating funds among grantees and regions, and also to keep track of population adjustments as agriculture evolves. We also hope that the experience gained in developing and implementing this system will encourage many of the programs to move toward applying a uniform definition for purposes of eligibility—but we do not advocate an immediate move in that direction.

Our recommended uniform core definition is outlined in Table 3. Agriculture should be defined as it is in the Fair Labor Standards Act (FLSA)—a labor law which provides farmworkers with lower levels of protection than are afforded to nonfarm workers.<sup>193</sup> The major effect of using this definition of agriculture on current MSFW programs would be to make MSFWs in livestock agriculture eligible for services, and to render ineligible those workers employed in nonfarm packing and processing. The logic of this core definition of agriculture is that specialized MSFW assistance programs exist largely to serve workers employed in the types of agriculture in which they are not treated like other workers by federal laws and regulations.

We next recommend that the core definition be limited to workers who have some minimum number of days worked annually (perhaps 25, the number used in the JTPA 402 regulations). A criterion specifying a minimum number of days worked helps to separate the less-than-25-day casual workers, who are 30 to 50 percent of all individuals employed as farmworkers during a typical year, from workers with enough attachment to the industry to suffer from its seasonality and migrancy characteristics. For similar reasons, the core definition might pay some attention to the maximum number of days worked; someone with full year-round employment is not seasonally employed. The core definition could use the 150-day limit once employed in CETA regulations. But if such a specification proves administratively cumbersome (as it did under CETA) the definition might simply require that farmwork not be a constant year-round activity.

---

<sup>193</sup>The FLSA has a primary and a secondary definition of agriculture (see *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 762-63 (1949)):

"[A]griculture' includes [primary definition] farming in all of its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and [secondary definition] any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market." 29 U.S.C. §203(f) (1988).

These definitions emphasize that agriculture includes both the production and the processing activities that occur on a farm.

Similarly, the National Labor Relations Act limits the protections afforded to agricultural laborers. 29 U.S.C. §152(a)(1) (1988). Although the NLRA does not define the term, Congress has specified in appropriations legislation that agricultural laborer is to be understood as it is defined in the FLSA. See *Bayside Enterprises, Inc. v. NLRB*, 429 U.S. 298, 300 & n.6 (1977). The Internal Revenue Code uses a similar definition. See 26 U.S.C. §3121(g) (1988).

Table 3

## Recommended Core Definition of MSFW

<u>Topic</u>	<u>Recommendation</u>	<u>Justification</u>	<u>Effect</u>
1. Agriculture/ qualifying work	Agriculture as defined in FLSA	Federal laws exclude or provide fewer protections for farmworkers, and this is one justification for federal MSFW assistance programs	Narrows some definitions, since most packing, processing, and fisheries are excluded; widens some definitions (includes livestock)
2a. Farmworker	Person primarily employed in agriculture for wages; primarily employed can mean, e.g., more than 50 percent of earnings and/or days employed from agricultural employers	There are other programs that provide assistance for, e.g., poor farmers and unpaid family workers	Introduces new requirements for e.g., MH and ME
2b. Seasonal Farmworker	Primarily employed in agriculture with minimum (e.g., 25 days) and maximum farm employment (e.g., 150 days or "not constant year-round employment")	Helps to target assistance on those most affected by the seasonality of the industry	Introduces new requirements for e.g., MH and ME

<u>Topic</u>	<u>Recommendation</u>	<u>Justification</u>	<u>Effect</u>
3. Migrant Farmworker	Subset of seasonal workers who cross a county border and stay away from home overnight	Focuses on disruptions that most programs target. County borders and overnight stay are easy to understand.	Introduces new requirements for e.g., MH and ME
4. MSFW Lookback Period	24 months	Helps to target assistance on current migrants, but allows for assistance during first year after settling out	Shorter than ME eligibility period; longer than that for MHS
<i>Eligibility issues (not addressed by core definition):</i>			
5. Age range to be served (and other individual qualifications)	Minimize overlap	Promote coordination and reduce overlap in services	
6. What services, where, and small state funding	Have coordinating body examine closely	All are becoming more important issues in the 1990s	

---

It might also be determined to limit the core definition to cover only those who are *primarily* employed in agriculture, to help target limited MSFW assistance funds on those most in need of such specialized services. If necessary, this requirement could be more precisely spelled out, to require that 50 percent of the individual's working days have been worked in agriculture or that 50 percent of annual earnings come from agricultural employment.<sup>194</sup> We recommend that persons meeting either of these criteria qualify under the definition, but the definition could conceivably require both for someone to be counted as "primarily" employed in agriculture.

The preceding steps identify the seasonal farmworker population. We recommend that migrants be defined as that subset of seasonal workers who cross a county border and stay away from home overnight to do farmwork. (To avoid some of the difficulties engendered by the subjective component in the ME definition, we recommend that the definition require actual performance of farmwork at the destination, not simply that the person went with the *intention* of doing farmwork.) The county boundary criterion follows other employment data and thus might allow for some cross-checking, and the stay-away-from-home-overnight criterion focuses on the disruptions associated with a change of residence that provide the rationale for many federal migrant programs.

The fourth criterion is the lookback period. We recommend a 24-month look back; that is, a farmworker would still be considered a migrant for 24 months after a qualifying move, and determinations of seasonal farmworker status could count any 12-month period within the last 24 months. We heard arguments for a shorter 12-month period (a time frame that Congress adopted for several programs in the mid-1960s), particularly for programs that are focused on migrants, primarily in order to target limited resources on those whose lives have been most recently disrupted. But others argued that these programs should also provide some assistance to migrants who are settling out of the migrant stream, especially during the first year of transition away from being a migrant farmworker. A 24-month lookback period appears to us to be a reasonable compromise between the competing goals of targeting program benefits and providing settling-out assistance.

Steps 5 and 6 relate to eligibility, coordination, and policy. A core definition used primarily for overall population counts and macro allocation of funds could coexist with a variety of other criteria employed at these stages to determine precisely which individuals will benefit, and in what locations. Nevertheless, it may happen that experience with using a core definition will gradually make it possible to rationalize those eligibility criteria as well. In particular, we urge that coordinating bodies undertake a careful review of those criteria that result in program overlaps, particularly the question of age ranges to be served.<sup>195</sup>

---

<sup>194</sup>If this criterion is used in program administration, it does potentially complicate eligibility determinations, because intake personnel might have to insist upon examining wage receipts. If this process becomes too cumbersome in view of the objectives of the particular program, program staff may wish to eliminate this requirement and rely simply on a threshold (e.g., 25 days) that will target services by excluding casual workers, as discussed in the previous paragraph.

<sup>195</sup>See Part V, *infra*.

## V. Coordination at the National Level: Current Realities and Future Needs

Although the process of improving coordination among MSFW service programs properly focuses at the local level, given the diversity of other state and local services that must be considered and incorporated, there remains considerable interest in improved coordination at the national level. In chartering the National Commission on Migrant Education, Congress specifically included in the Commission's mandate a requirement that it study how:

migrant education, migrant health, migrant Head Start, Job Training Partnership programs serving migrants, HEP/CAMP, and adult literacy programs [can] be integrated and coordinated at both the Federal and State levels.<sup>196</sup>

In asking the Administrative Conference of the United States (ACUS) to conduct the present study, the Commission expanded on this request, asking that ACUS "evaluate whether an entity within the Executive Branch of the government should be created to maintain coordination and uniformity in migrant programs, and if so, how it should be structured."<sup>197</sup>

The balance of this report describes existing coordination "entities" and efforts, and then evaluates various possibilities for reforms or new institutions.

### A. Existing Coordination Mechanisms

In recent years several efforts have provided a measure of coordination among MSFW service programs at the national level. They have evolved over time, and they are sometimes known by different names. We use here what appear to be the currently prevalent titles for the three major bodies.

#### 1. The Interagency Committee on Migrants

Since approximately 1985, the major migrant service programs have cooperated under the framework of an umbrella committee to provide better information-sharing and coordination at the headquarters level.<sup>198</sup> Currently known as the Interagency Committee on Migrants, it meets quarterly, usually in Washington, D.C. The various federal agencies involved rotate responsibility for hosting and chairing the meeting and setting the agenda. The group publishes a directory setting forth the names, addresses, and phone numbers of specific individuals in the various departments who are involved with the committee, and the list is updated roughly every six months. The directory is useful not only for notifying interested parties of meetings, but also to help contact precisely the right office or official between meetings if an interagency issue arises.

The Committee includes among its number not only representatives from the "Big Four" service programs, but also a large number of people from other offices, both within the same Departments as those four programs (Labor, HHS, Education) and from elsewhere (Agriculture, Justice, Environmental Protection Agency). Many of the offices represented are not migrant-specific or farmworker-specific, though their mandates cover farmworkers, at least in part. Examples are the Occupational Safety and Health Administration (Labor), the Food Stamp Program (Agriculture), or HHS's Office of Civil Rights. The June 1991 directory contains 68 names from these six departments or agencies, plus a half dozen "other governmental" names.<sup>199</sup> The level of participation in the quarterly meetings varies considerably among the offices mentioned in the directory, and some do not attend regularly.

---

<sup>196</sup>20 U.S.C. §2839(c)(4) (1988).

<sup>197</sup>National Commission on Migrant Education, Press Release (March 28, 1991).

<sup>198</sup>See testimony of Sonia M. Leon Reig, before the National Commission on Migrant Education, Buffalo, April 29, 1991, at 7.

<sup>199</sup>Interagency Committee On Migrants, June 12, 1991 Mailing List.

In addition, nongovernmental organizations that are closely involved in migrant issues are also included in the directory, and are invited to attend the Committee meetings. There they are allowed to take part, although usually at the end of the presentations or discussions by the federal governmental members. These organizations include advocacy and watchdog organizations like the Migrant Legal Action Program or the Farmworker Justice Fund; umbrella organizations for the private nonprofits that are the usual grantees for the major service programs, such as the Association of Farmworker Opportunity Programs (AFOP, which represents JTPA 402 grantees), or the National Association of Community Health Centers (which represents Migrant Health clinics); and a few major nonprofits which are themselves grantees, such as the East Coast Migrant Head Start Program. The nonprofits have been pressing for a larger role and recently proposed to take responsibility for hosting and chairing a meeting, but this initiative has not yet been accepted.

The meeting agenda may be built around a specific issue of interest to several organizations, or it may center on a presentation by an invited guest, for example, someone who recently completed research bearing on migrant farmworkers. Usually it also includes some time for updating reports on recent initiatives of the major agencies that attend. Those who participate agree that the major function served by the Committee is information-sharing; it is not a policy-making body. For this reason, several people interviewed expressed frustration or impatience with it, and they noted that agencies often tend to send rather low-level personnel who cannot commit the agency but serve instead to report back to policy-level officials. Moreover, even if the lead officials of the migrant programs attend, they are sometimes hampered in assuring real policy changes for coordination purposes. As one of these officials pointed out during an interview, he is six layers below the Cabinet Secretary. Even if he and a counterpart at another agency agree that some mutual change would be beneficial, both will probably have to arrange for their two secretaries to reach agreement before action can be taken. Despite these problems, most who take part agree that on balance the Committee is useful, even if it has limited promise to generate significant program changes in the interests of coordination.<sup>200</sup>

## 2. The Farmworker Interagency Coordinating Council

Frustration at the slow pace or modest ambitions of the Interagency Committee helped spur the creation of a second coordination forum beginning in mid-1990. Led by the efforts of John Florez, then Deputy Assistant Secretary in the Employment and Training Administration at the Department of Labor, the key agencies participated in an ad hoc group that came to be known as the Farmworker Interagency Coordinating Council. This was intended to be a meeting of policy-makers, at the Deputy Assistant Secretary level or higher, to focus on particular issues that require policy resolution, and specifically to look for new and creative ways, transcending agency parochialism, to serve migrant families comprehensively.<sup>201</sup> Members of the Council, as of April 1991, were Labor Department offices with migrant responsibilities, Migrant Head Start, Migrant Education, Migrant Health, and the Department of Agriculture.<sup>202</sup> Mr. Florez recently left the Department of Labor (to become Assistant Secretary in the Department of Education), before the Council had had time to demonstrate any significant fruits of its labors. It is not clear what will become of this body, although it is apparently inactive at the present time.

---

<sup>200</sup>See, e.g., Mull testimony, *supra* note 119, at 8 ("The influence or impact that this effort [the Interagency Committee] has had is very difficult to measure, and therefore, I cannot say that these meetings have stimulated meaningful coordination of services at the state or local level. However, I do believe the real benefit has been the education that has taken place with Federal agency personnel and other participants at the national level."); Reig testimony, *supra* note 198, at 7 ("The Committee, in my estimation, has had limited success;" she then lists helpful initiatives, mainly in the realm of promoting better understanding and reducing isolation or fragmentation).

<sup>201</sup>See Testimony of John Florez to the National Commission on Migrant Education, Buffalo, April 29, 1991, at 9.

<sup>202</sup>Testimony of Frank Fuentes, *supra* note 78, at 17.

### 3. The Migrant Inter-Association Coordinating Committee and Coalition

The grantee service providers in the various MSFW service programs gained some acquaintance with one another's perspectives through their participation in the Interagency Committee. This sharing led to a proposal in 1989 that the fall quarterly meeting of AFOP, the principal organization for JTPA 402 grantees, be held at the same time and place as that of the Migrant Education program. Because this gathering was regarded as a success, the participants decided to repeat and expand the process. Planning began then for a comprehensive National Joint Conference on Migrant and Seasonal Farmworkers, to include not only JTPA and Migrant Education, but also Migrant Health and Migrant Head Start. The conference, which served as the annual meeting for all four umbrella organizations, took place in April 1991 in Buffalo.<sup>203</sup>

At Buffalo, some 120 panels and programs offered forums for activists, officials, and participants to discuss specific questions of mutual interest, and to learn of successful local programs elsewhere whose ideas they might want to borrow, including ideas about interagency coordination. And of course the gathering provided for an abundance of informal contacts outside the scheduled meetings. The organizing committee also wanted to award special recognition to a body or bodies that had been especially successful in promoting interagency coordination. It proceeded by agreeing on criteria in advance and then receiving and considering nominees from around the country. The award was a highlight of the proceedings. Many persons interviewed felt strongly that the joint conference and associated activities contributed importantly to interagency understanding, and they have high hopes that many concrete improvements in coordination at the state and local level will flow, incrementally, from the contacts made and ideas shared at these meetings.

Pleased with the results of the conference, the participants decided to plan for another joint meeting in 1993. The body charged with responsibility to organize that gathering was also asked to consider other initiatives that might be undertaken by the grantee community acting together. At follow-up meetings in Washington in May and in Denver in October 1991, they initiated planning for the exact structure and organization of this new "Inter-Association Coalition," and discussed other specific tasks for the organization. These may include planning smaller scale workshops for state-level personnel, improving the use of existing publications, selecting current legislative issues on which mutual strategies might be adopted, and working to include other associations in the coalition.<sup>204</sup> In the meantime, the planning body has taken the name of Migrant Inter-Association Coordinating Committee, consisting at present of a total of 11 persons representing the four main migrant assistance programs (ME, MH, MHS, and JTPA 402).<sup>205</sup>

### 4. Smaller-scale Initiatives

In addition to these more comprehensive efforts, the central offices of the various programs have entered into cooperative ad hoc arrangements over the years, sometimes enshrined in formal Memoranda of Understanding or similar documents. These tend to focus on specific areas where there is a clear and recognized benefit from close cooperation. For example, Head Start programs have always considered health screening and treatment an important component of their local services, and Migrant Head Start has logically looked to Migrant Health clinics for assistance in fulfilling this mandate, in those parts of the country where both programs are active. In 1984 Migrant Head Start entered into a three year interagency agreement with Migrant Health, meant to coordinate policies at the national level and to foster working relationships and joint planning among MHS and MH grantees at the local level. Although the agreement has officially lapsed, patterns of

---

<sup>203</sup>Interview with Diane Mull, AFOP, September 17, 1991; interview with Dan Cardenas, NACHC, October 21, 1991. Federal officials were invited to participate, but they were not officially part of the organizing committee, nor did the federal government fund the Buffalo gathering. The grantee organizations deliberately decided to proceed this way, in order to allow a proper level of federal involvement but to leave the decision process to the grantee community.

<sup>204</sup>Migrant Inter-Association Coordinating Committee, Summary of Meeting May 23-24, 1991, Washington, D.C.

<sup>205</sup>Migrant Inter-Association Coordinating Committee, Meeting Documents, Denver, Oct. 3-4, 1991.



cooperation it fostered have continued, and there is some interest in renewing the formal agreement.<sup>206</sup>

Similarly, JTPA 402 programs can provide services for older teenagers who have difficulty in a formal school setting. This fact sets the stage for cooperation with Migrant Education programs (which tend to focus their services in the school systems). Since early 1990, the Office of Migrant Education and its service providers have been meeting with Labor's Division of Seasonal Farmworkers and its service providers to find ways to take advantage of these potential commonalities of interest. The resulting "Coordination Workgroup," which has often included participation at high levels from both departments, has developed the framework for a cooperative agreement between the two programs. The agreement would incorporate clearer policy directives to grantees, placing a high priority on local coordination.<sup>207</sup>

Nevertheless, many obstacles stand in the way of wider use of such agreements. First, they cannot override statutory or regulatory requirements of the specific programs, and these technical objections have sometimes delayed conclusion or implementation of agreements for lengthy periods of time. They have also sometimes led to time-consuming semantic disputes over the exact wording of the agreements. Sometimes effective implementation is also hampered because different levels of government or nongovernmental players are the grantees. For example, ME operates through state-level grantees, whereas the other programs tend to focus on local agencies or organizations. Many times it is not clear to participants that their agencies will gain enough from a formalized relationship to make it worth the trouble of negotiating such an arrangement.

## B. Evaluation and the Objectives of National-Level Coordination

Although they usually express the view that coordination is improving, officials and service providers frequently voice dissatisfaction with the current arrangements for national-level coordination. To assess the adequacy of current bodies or mechanisms fully, however, requires clarity about the objectives of coordination at that level. What follows is our effort to distill the principal objectives that are implicit in the evaluations we have heard, or that seem appropriate to add to the list.

### 1. Information-sharing

The most basic starting point for coordination is sharing of information, so that participants in one program have a better idea of the operations and statutory framework of the other programs, as well as the services they provide and the legislative or programmatic issues they are now facing. This was apparently a central interest of the congressional committee that first proposed chartering the National Commission on Migrant Education. In explaining the tasks of the Commission, the committee suggested that it explore a "National Center for Migrant Affairs to help coordinate and disseminate information pertinent to migrants."<sup>208</sup>

This objective is uncontroversial, and it is the one that existing arrangements principally serve. Although the federal government now lacks the single central depository for migrant-related studies and information that was apparently contemplated in the proposal for a National Center (to be discussed below), numerous depositories with narrower focus exist, and in any event the interagency

<sup>206</sup>Fuentes testimony, *supra* note 78, at 17. Several other specific examples of interagency coordination involving MH grantees can be found in the case studies reported in the NMRP study, *supra* note 159.

<sup>207</sup>Mull testimony, *supra* note 119, at 7-8. There are other examples as well, such as a 1989 memorandum of understanding between the Department of Education and Agriculture's Food and Nutrition Service, providing for assistance from local ME personnel in encouraging families to obtain and keep with them the Verification of Certification card provided by the WIC program (Supplemental Food Program for Women, Infants and Children). This card helps the bearer qualify more quickly for benefits at a new location. Migrant participation in WIC increased 12 percent from 1989 to 1990, and a WIC official credits much of this improvement to the interagency cooperation. Testimony of Robert Mulvey, National Commission on Migrant Education, Buffalo, April 29, 1991.

<sup>208</sup>H.R. Rep. No. 100-95, 100th Cong., 1st Sess., at 38-39 (1987). The statute specifically charges the Commission with responsibility to consider such a Center. 20 U.S.C. §2839(c)(12) (1988).

and interassociation mechanisms mentioned above accomplish a considerable amount of information sharing. That the function might be done more systematically is certainly possible, but any efforts toward that end should build on an understanding of the other objectives of coordination.

## 2. Wise use of limited resources

### a. Geographic targeting

MSFW-specific service programs have insufficient resources to serve the entire target population. Thus programs should be located where the highest concentrations of migrant and seasonal farmworkers can be found. Each individual program has substantial internal incentives to follow this common-sense dictate, and in general, existing programs have conformed to this requirement as they first let contracts or awarded grants and then expanded. The problem is that farmwork patterns change, sometimes quite rapidly. Labor-intensive crops in one area may be replaced by others that can be harvested mechanically, or, alternatively, a large agricultural company may start up a major new labor-intensive operation employing thousands of migrants in an area where such workers were previously unknown. The concern that services keep pace with changes in agriculture also figured in Congress's decision to establish the National Commission,<sup>209</sup> and was frequently voiced by officials and service providers in our interviews.

The present service infrastructure is not well equipped to adjust to these changes. Officials in every program interviewed noted their program's deficiencies in this regard.<sup>210</sup> Although central grant administrators may cut an established grantee's funding at the next renewal if the grant proposal shows reduced "productivity" or otherwise discloses a decreasing population of eligible recipients, they are not well positioned to spot wholly new areas of migrant activity. Particularly because their budgets (with the exception, recently, of Migrant Head Start) have been relatively level for some time, the agencies have had little capacity to entertain applications for new centers or clinics in previously unserved areas.

Targeting could of course be improved without interagency coordination, but tracking geographic shifts in farmworker activity on a joint basis and responding accordingly presents many advantages. Improvements in quarterly or annual farmworker census figures, as discussed in Part IV of this report, would facilitate timely program adjustments of the kind envisioned here, and would also make it easier for a central administrator to feel more confident about cutting or eliminating programs in certain areas where productivity has declined (if it can be shown that this is related to a long-term reduction in farmworker population). Detailed data of this kind, with frequent updates, are expensive to gather. It makes sense to pool resources to provide for the most effective single counting process possible.

Even without such improved data, however, the present coordination entities serve the objective of geographic targeting only marginally and incidentally. It is possible that their meetings provide occasions for, say, Migrant Health to learn of a substantial migrant population in a new area, because they hear of substantial new Migrant Education activity there. But the information-sharing provided by current bodies relates primarily to program in existing locations; they incorporate no systematic effort to use the meetings as a basis for these sorts of geographic adjustments. Many service providers and officials interviewed expressed a wish for more systematic information about shifting agricultural labor patterns, so that they could adjust program accordingly.

---

<sup>209</sup>H.R. Rep. 100-95, at 37: "Among other things, the Commission will examine the changing demographics of the migrant student population in an effort to assure that the patterns of migrancy are anticipated and the children are served to the best extent possible."

<sup>210</sup>The question arises in somewhat different fashion for Migrant Education, which deals principally with state-level governmental agencies, who are then responsible for using the resources provided to the state in a way that maximizes their effectiveness. The problem of geographic targeting still arises (and the ultimate effectiveness of the programs would still be greatly aided by better systems for reliable MSFW population data), but the responsibility for adjusting program falls mainly on state program officials, not federal officials.

## b. Minimizing overlap and promoting efficiency

It is clear from preceding sections that the potential for overlap or duplication among the programs exists, particularly with regard to repetitious intake processing and outreach. As discussed above, this problem can be minimized greatly through local cooperation, but many localities, for a variety of reasons (inattention, personality conflicts, inertia), have simply been unable to work out the necessary arrangements.

The potential for overlap has also expanded in recent years, as statutes or regulations have authorized service providers to reach wider populations—for example, by expanding the respective age ranges of the programs. Migrant Education now has authority to count and to serve children and youth from age 3 up, and the Department of Labor has been urged to allow its §402 grantees to engage in "employability enhancement" services that reach children below its traditional limit of age 14. Coordination would seem to be useful to resist the internal pressures for such expansion, or at least to review more systematically, before any such change becomes a *fait accompli*, whether the program objectives that drive such an amendment could actually be served more effectively through program adjustments in another agency that already reaches migrant children in the affected age bracket.

Such changes in program scope are not normally presented to the interagency forums beforehand<sup>211</sup> (although the changes may be the subject of information-sharing after the fact), in part because those forums have no policy-making authority on such matters. Such advance checking would be desirable, but participants often worry that it would only trigger negative reactions based on "turfism." Nevertheless, coordination would be better served by some such review. Indeed, interagency bodies ideally would not only review proposed expansions of a particular program's authority, but also should look systematically at existing overlaps and think creatively about ways to serve the target population more efficiently. Such scrutiny need not always mean selecting one agency over the other as the exclusive provider—competition or complementarity may be worthwhile in some circumstances, depending on the task and the geographic area<sup>212</sup>—but any such overlap should be chosen as the result of careful consideration of a wider range of issues, rather than left to proliferate as a result of a dynamic that seems internal to each program, without close attention to effects elsewhere.

Ideally, government coordination mechanisms should also have the capacity to ask larger questions. Of the approximately \$500 million that now goes into migrant service programs, some 60 percent goes to Migrant Education. Is this a sensible way to allocate limited resources? What are the relative priorities of the various services in maximizing the welfare of the target population? It may well be that ME deserves exactly this sort of priority, but under the present arrangements these comparative questions are never expressly asked and answered. There is no forum that effectively looks at such budgetary priorities. We were surprised to learn in the course of our interviewing that even the Office of Management and Budget (OMB) is not organized so as to ask questions of this kind. OMB scrutiny of migrant programs is divided departmentally, with different staff specialists overseeing the respective MSFW service programs. No single officer in OMB (or elsewhere in the executive office) takes a look at the whole MSFW service program landscape, so as to watch for

---

<sup>211</sup>Diane Mull, Executive Director of AFOP, testified: "In some cases, the overlap in program's age ranges is not a complication due to the different scope of services being offered by each program [but potential] for complications is created when changes occur without consulting other affected service providers. . . . [D]iscussions and hearings, like those being held today, should take place before such changes are implemented." Mull testimony, *supra* note 119, at 2.

<sup>212</sup>See generally Landau, *Redundancy, Rationality, and the Problem of Duplication and Overlap*, 29 Pub. Admin. Rev. 346 (1969).

opportunities to make better use of overall resources in meeting the comprehensive needs of farmworker families.<sup>213</sup>

Many service providers and officials objected to our laying too much stress on the objective of reducing or eliminating overlaps or otherwise pruning or reorganizing programs in the service of a supposed efficiency. Although they could not quarrel with these objectives in the abstract, they worried greatly about what they would mean in practice. They fear that prominent discussion of overlaps in authority will be used as a pretext for serious budget cutbacks in one agency, without any guarantee that the funds will go to another agency that should assist those people who lose the service from the first. "Outsiders," in other words, might be too ready to seize on such information to undercut programs they have never supported, and "wasteful duplication" is an easy rallying cry that often simply masks misunderstanding of the real tasks involved.<sup>214</sup>

Others we interviewed pointed out vigorously that the overlaps themselves are far more theoretical than real. All MSFW service agencies serve only a fraction of the eligible population. Overlap in authority simply means that some of those left out of one program for lack of resources have a chance for similar services through another. (Migrants who arrive in an area after a MHS center has already reached its enrollment limit, for example, may be able to secure some help towards providing child care through ME resources or through the support services component of JTPA.) Overlap, these persons suggest, will not be a real problem until all agencies are funded at a level that permits services for virtually all of their target populations. In any event, they argue, a degree of overlap can actually be of benefit, for it allows experimentation with different approaches, rather than a stifling uniformity.<sup>215</sup>

These reservations deserve serious attention. Overlap in authority does not necessarily mean actual duplication or wasteful spending, particularly at the present level of funding. Moreover, glib talk about efficiency sometimes does mask efforts to gut a program. Nevertheless, we believe that these concerns should be heard more as cautionary notes, to be met by fuller airing of both the pros and cons of particular proposals to reduce overlap or reconsider funding priorities. They do not overcome the desirability of more serious and comprehensive attention to issues of efficiency and potential duplication of effort, particularly with regard to the two issues identified above—the burden of duplicative outreach or intake procedures, and the dynamic of incremental expansion in individual service jurisdictions. At present, decisions about funding and siting of programs, or other expansions of authority, are made separately by the different federal agencies, in processes that are principally responsive to the grantee constituencies of that program. It would be far better to have some forum for examining the overall service package in a given area, in a way that takes full account of the ultimate objectives for service to the MSFW population—without ignoring, of course, the risk of pretextual cuts that so worries the agencies.

Viewed in this light, current coordination entities are not well-designed to serve these efficiency objectives. They function as a product of comity among agencies or organizations, and none are mandated by statute, regulation, or executive order. Comity could be significantly threatened by proposals, for example, to transfer nearly all outreach staff to a single program so as to consolidate intake processing. It is similarly endangered if one agency begins asking persistent questions about another agency's program expansions, and even more so if the first aggressively suggests shrinkage in the scope of a second agency's mandate on the ground that the first can serve a certain population or meet a particular need more effectively. The present interagency bodies, dependent as they are on continuing goodwill of the participating agencies and lacking any legal requirement that such agencies

---

<sup>213</sup>This situation differs from, e.g., the review of refugee programs in the days before creation of the office of the U.S. Coordinator for Refugee Affairs. At that time, refugee resettlement programs involved the State Department's Office of Refugee and Migration Affairs, the Justice Department's Immigration and Naturalization Service, and HEW's Office of Refugee Resettlement. OMB officials frequently convened meetings of officers from all three departments to consider relative priorities, to examine ways in which one agency's decisions affected the budget of the others, and occasionally to decide whether a function could be more efficiently handled by another.

<sup>214</sup>See J. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* 265 (1989).

<sup>215</sup>See Landau, *supra* note 212, at 354-56.

continue their participation, are unlikely ever to provide a good forum for asking these kinds of tough questions.

### c. Provision of comprehensive services

Most of the agencies that serve MSFWs, and particularly those with an educational focus, recognize the need for comprehensive services if their own objectives are to be fully realized. Only if children are well-nourished and healthy, for example, can they take maximum advantage of their schooling. Workers cannot be steady participants in a job training program if their child-care arrangements are unreliable. Education on good hygiene may be highly useful in preventing future illnesses or injuries and thus minimizing the need for treatment in a migrant clinic. Precisely because of this recognition, most of the agencies have authority to spend some of their funds on ancillary or supportive services. Sometimes these authorities are flexible enough to allow the agencies to fill gaps in the overall program landscape, by providing needed services that are not the specific target of any of the service programs. (An example is transportation services, which can be provided as non-training related support services by JTPA grantees,<sup>216</sup> or, in some circumstances, by ME or MHS.) According to their statutory or regulatory requirements, most are to use their funds for these purposes only after it is determined that no outside agencies can provide the service. This is a difficult mandate to realize in practice, however, even though grantees are required to discuss in their grant applications the general steps they are taking toward these ends.

In addition to this concern for filling gaps in service provision, interest has been renewed in transcending traditional agency boundaries in order to consider and address the needs of migrant families as a whole, perhaps through a case management approach that would give the family a single point of contact within the service provider bureaucracy in any local area.<sup>217</sup> This impulse played an important role in inspiring the establishment in 1990 of the Interagency Coordinating Council.<sup>218</sup> That Council did not remain active long enough to know how effective it might be toward that end. But even if revived in the same form, it is likely to run into many of the same problems discussed in the previous section on efficiency. Lacking ultimate decisionmaking authority, or even a foundation in statute or executive order that mandates continuing participation by affected agencies, the Council too is dependent on persuasion and goodwill to have its suggestions implemented, and indeed to continue functioning at all. The agency-focused, task-specific outlook of the participants thus imposes a barrier to implementation of any agency-transcending ideas that body might generate. It does not have independent authority to initiate even limited pilot projects meant to demonstrate the possibilities for comprehensive approaches.

### 3. Summary: what is needed in the ideal coordinating entity

Harold Seidman has described the quest for coordination as the "twentieth century equivalent of the medieval search for the philosopher's stone. . . . If only we can find the right formula for coordination, we can reconcile the irreconcilable, harmonize competing and wholly divergent interests, overcome irrationalities in our government structures and make hard policy choices to which no one will dissent."<sup>219</sup> Coordination is always attractive in the abstract, yet often painful and difficult in the concrete. The relatively widespread support for coordination among migrant service agencies suggests an equally rosy view of what coordination will accomplish. This is coupled with a

<sup>216</sup>20 C.F.R. §633.304(b)(2), (c)(4) (1990).

<sup>217</sup>This objective has been articulated since at least the days when migrant programs were operated by the Office of Economic Opportunity (see S. Levitan, *The Great Society's Poor Law: A New Approach to Poverty* 250 (1969) (quoting OEO planning document)), but it has always been imperfectly realized. Moreover, the impulse to provide comprehensive services to families, with a minimum of bureaucratic confusion, is finding expression on many fronts, and Congress has authorized various pilot projects. If these result in promising new initiatives, migrant programs should of course employ the new approaches. See, e.g., 56 Fed. Reg. 29,656 (1991) (HHS request for proposals to establish a National Service Integration Resource Center and announcement of funding for up to six local or regional facilitators for comprehensive integration).

<sup>218</sup>See generally Florez testimony, *supra* note 201.

<sup>219</sup>H. Seidman & R. Gilmour, *Politics, Position, and Power* 219 (4th ed. 1986).

tendency to downplay the painful adjustments, including some loss of control, occasional ceding of program responsibilities, or transfer of funding, that complete coordination is likely to entail for at least some of the individual agencies involved. This view may explain why much of the concrete discussion to date focuses on relatively painless issues like better information-sharing or highly technical matters like definitional discontinuities. Definitional differences become a form of excuse, affording an explanation for the failure to take the considerable time required or to make the hard decisions that may be necessary to adjust program so as to achieve real efficiencies or to better serve the overall needs of migrant families.

The foregoing discussion suggests that a future interagency coordination entity needs above all to be able to ask creative, persistent, and tough questions about the allocation of responsibilities and the ways in which ultimate service objectives (which transcend agency boundaries) are or are not being served. This need not mean, necessarily, that major changes in program operations are in the offing. It does mean that more careful scrutiny, from a perspective not tied solely to one agency and its constituencies, would be applied—initially to examine proposed changes or expansions in mandate, and eventually to review existing programs. At least temporary disruptions in agency comity must be possible without terminating the coordination endeavor, although effective coordination over the long run will of course require skill and tact to move beyond such challenging periods with a minimum of lingering bad feeling.

Second, the coordinating entity needs the capacity to engage the attention of the appropriate policy-making officials in the affected agencies, sometimes up to the level of the Cabinet Secretary.<sup>20</sup> If matters cannot be resolved through such channels, the coordinating entity needs the capacity to assure ultimate interagency resolution, if necessary (when the issues are of a scope to warrant this) by means of Presidential choice among competing options.

Third, the entity should also pay attention to ongoing information sharing, and should initiate improvements where possible at reasonable cost. This objective, however, is closer to adequate realization under the present system than are the previous aims.

Fourth, the entity should assume a function related to the preceding: it should oversee a process leading to the development of better statistical systems, as discussed in Part IV above, so as to provide agencies with agreed and reliable information on MSFW populations, and especially on changes in farmwork and in farmworker population patterns.

Fifth, a federal coordinating entity would be the logical focal point for efforts to promote coordination at the state and local levels. It could be the central decisionmaker in choosing award recipients or providing other recognition for successful local coordination efforts. It should also work to devise other incentives to promote these ends.

Sixth, the coordinating entity should also take the lead in examining possibilities for harmonizing definitions, if only for purposes of establishing a "core definition" to be used in census counts, as discussed in Part IV. Over time, it may also find ways to harmonize program definitions or other eligibility qualifications.

---

<sup>20</sup>This conclusion assumes, of course, that MSFW service programs continue to be based in separate departments. We expect this to be the case, but we discuss in Part VI an option for total consolidation.

## VI. Coordination at the National Level: Alternative Models

We have not found the philosopher's stone. No one proposal or set of proposals for coordination clearly recommends itself as superior to all others, particularly since a near-infinite spectrum of variations and permutations can be imagined. We have tried to avoid overdoing such detail; instead we cluster the ideas around four possible models. The first is the most modest, addressing only the improvement of access to information (not a priority need at present). It could be implemented in conjunction with any of the other three, more comprehensive, options.

### A. A Unified Information Clearinghouse: The National Center for Migrant Affairs

There have been recurring proposals for creating a central clearinghouse for information on migrant programs, as a way of improving the information-sharing function that is necessary to better coordination. As noted above, this idea received concrete expression in the legislation that created the National Commission on Migrant Education. The statute requires the Commission to consider whether there is "a need to establish a National Center for Migrant Affairs and what are the options for funding such a center."<sup>221</sup> The legislative history describes the purpose of such a proposed center as "to help coordinate and disseminate information pertinent to migrants," making specific reference to a consultant's study that urged consideration of a central repository for "products" generated by the coordination grants of the Migrant Education Program (now known as §1203 grants).<sup>222</sup>

We encountered no substantial objections to the proposal for a National Center. To the extent that it is simply an information clearinghouse, it steps on no one's programmatic toes, at least in the absence of specific plans for funding it. But we found little enthusiasm for the idea either. The specific concerns of the consultant's study referred to in the House report, which focuses on Migrant Education "products," have been met by the more complete development of three Program Coordination Centers (PCCs), one for each of the western, central, and eastern migrant streams, under the umbrella of the Migrant Education Program. As discussed in Part II, the PCCs, in addition to other functions, serve as repositories for the products of previous §1203 grants, which can be drawn upon by any interested user.<sup>223</sup>

Many other existing resource centers also can be consulted by those who seek further specific "products" associated with the education of migrant children or the other migrant services. For example, the Department of Education maintains an elaborate and technologically advanced system of resource centers as part of its ERIC system (Educational Resources Information Centers). The staff of the 16 subject-specific ERIC clearinghouses, operated under contract with the Department, review the documents and journals they receive, abstract and index those that are relevant to their center's subject matter, and respond to inquiries from teachers, parents, students, and researchers. ERIC produces monthly hard-copy indexes and quarterly CD-ROM directories, and all the indexed documents can be consulted in microfiche form at any of some 900 depositories throughout the United States and in numerous foreign countries.<sup>224</sup> One of the 16 centers, known as CRESS

<sup>221</sup>20 U.S.C. §2839(c)(12) (1988), enacted by Pub. L. No. 100-297, §1001, 102 Stat. 193 (1988).

<sup>222</sup>H.R. Rep. No. 100-95, 100th Cong., 1st Sess., at 39 (1987). The consultant's study, as described by the House committee report, noted the absence of a "central repository . . . for products associated with the Section 143 grants (coordination of migrant activities) programs." In this respect, the suggestion in the statute, for an overarching center for migrant affairs, goes considerably beyond what the study seemed to have in mind. Section 143 is now referred to as §1203, 20 U.S.C. §2783 (1988), but the substance is not substantially changed; the provision focuses on interstate and intrastate coordination within Migrant Education—i.e., among ME agencies at the State and local level. Moreover, the full study points out that such products tend to deal less with coordination as such and more with development of curriculum guides, staff training packages, and similar items—all items fairly specific to ME and probably not of major interest to other MSFW service organizations. N. Adelman & C. Cleland, *Descriptive Study of the Migrant Education Section 143 Interstate and Intrastate Coordination Program 41-45* (Policy Studies Associates, Inc., March 1987).

<sup>223</sup>Interview with Sandra Bryant, Office of Migrant Education, Washington, D.C., October 21, 1991.

<sup>224</sup>Interview with Robert Stonehill and Pat Coulter, ERIC offices, Washington, D.C., October 22, 1991; A Pocket Guide to ERIC (April 1991); ERIC Annual Report 1991; Directory of ERIC Information Service Providers (Jan. 1990). ERIC received an appropriation of \$6.6 million in FY 1990.



(Clearinghouse on Rural Education and Small Schools), includes migrants within its coverage, but documents on migrants give rise to only a small fraction of its activities.<sup>225</sup>

Other migrant programs have their own associated resource centers or clearinghouses. For example, Migrant Health funds the National Migrant Resource Program in Austin, Texas, which provides services similar to ERIC's for migrant health issues. Migrant Health clinics make use of its database and library, as well as the other specific products (such as medical protocols) it generates. Migrant Head Start agencies and staff similarly draw upon the services of the Migrant Head Start Resource Center in Tysons Corner, Virginia.

With all these repositories in existence, it is hard to develop a persuasive case for adding still another. The problem is not the lack of centers capable of disseminating available information on migrant service programs.<sup>226</sup> The problem is more the disconnection between the existing repositories and the field-level service providers. Although the latter might well benefit from learning of relevant studies or accounts of strategies devised elsewhere to overcome problems similar to ones they are now facing, few local service providers have the time to engage in this kind of research and reading. Further consolidation of migrant-related information into a single National Center is unlikely to ease this situation. If wider or more effective use of such "products" is deemed a priority, any extra funding might well be better used instead to beef up the staffs at the local level, in the hope that some of the extra staff time might be devoted to drawing upon such accumulated learning.<sup>227</sup>

We recommend that any effort to create a National Center for Migrant Affairs not start from scratch. It should instead build on the existing foundation of current documentation and research centers. Most promising (and least expensive) would be some form of loose linkage among existing clearinghouses under a National Center's umbrella, without greatly disturbing their present operation. The National Center would then focus its efforts on publicizing the resources available, easing the use of such resources by local service providers, and perhaps providing a central telephone exchange which would refer inquirers to the appropriate clearinghouse. It should be a modest undertaking. Care should be taken to avoid duplicating existing resources or draining funds from other direct services.

### **B. A Separate Department or Agency Unifying All Migrant Service Programs**

One can envision the creation of a single Migrant Affairs Department that would unify all migrant service functions. A model for such unification might be found in the creation of the Department of Energy in 1977. That reorganization was advocated, in significant part, on the ground that it would provide for better coordination among programs that had resided in separate agencies theretofore.<sup>228</sup> The new department combined functions that had previously been performed by five separate departments and four independent agencies.<sup>229</sup>

A new Department of Migrant Affairs could incorporate the Big Four programs along with others such as migrant housing from Agriculture, and possibly even the authority to serve MSFWs now carried by general programs like Food Stamps or WIC. (It is possible also, in the interest of true comprehensiveness, to envision an agency that would also eventually incorporate enforcement

<sup>225</sup>CRESS, Annual Review Report 14 (Jan. 31, 1991) (documents relating to migrants provided only 1.1% of CRESS input in RIE database for 1990).

<sup>226</sup>A recent auditor's inquiry at the Department of Education revealed that that Department alone has over 700 clearinghouses of some kind (including technical assistance centers). This revelation has generated considerable interest in both the executive and legislative branches in cutting back and consolidating; creation of a new national repository would have to swim against an understandably strong tide running in the opposite direction. Interview with Patrick Hogan, Office of Migrant Education, Washington, October 22, 1991.

<sup>227</sup>The consultant's study to which the House Report refers itself discussed these and other centralized databases, but noted that many are badly underutilized. Adelman & Cleland, *supra* note 222, at 51. It also reported the comments of two state ME directors that perhaps a "saturation point" had been reached on "products" of the section 143 grant programs. *Id.* at 61. The study's ultimate suggestion for still another repository, *id.* at 62, is thus at least mildly surprising.

<sup>228</sup>Pub. L. No. 95-91, 91 Stat. 565 (1977).

<sup>229</sup>See 1977 Cong. Q. Almanac 612.



functions like those established by the Migrant and Seasonal Agricultural Workers Protection Act.<sup>230</sup> Coordination among programs would still be required, but it would become an intra-agency task, and could more readily command attention at the policy-making level. The process of preparing the agency's annual budget, plus defending it as a whole before OMB and the Congress, would provide built-in occasions for asking many of the comparative questions mentioned above. Beyond the discipline necessarily imposed by the budget process within a single department, a departmental policy planning bureau might assume ongoing responsibility for asking tough questions about overlaps and efficiency, with authority to report its suggestions directly to the Secretary, along with comments by the affected programs.

Governors and local officials would know where to concentrate their efforts if they want to lobby to reduce certain duplicative procedures. In addition, a unified department of this type could ultimately develop a unified grant process, inviting combined proposals by a single service provider for each local area or region that would incorporate all the components now handled separately—e.g., education, job training, nutrition, child care and child development, health services, housing, etc.<sup>231</sup> Applications could be judged as to how well they mix and match the various components so as best to meet the comprehensive needs of migrant families in the local area, in light of the local or state resources, public and private, already available.

Obvious obstacles stand in the way of realizing this proposal in practice, and not even those who have been most supportive of ambitious coordination efforts or of consistent Cabinet-level attention to migrant issues have seriously advanced the idea of a new Department of this kind. One initial objection derives from size and relative political priority. Migrant service programs now claim a combined budget of something over one-half billion dollars, whereas the Department of Energy receives \$14 billion (and also touches on issues that doubtless have wider political ramifications).<sup>232</sup>

Unification of all MSFW service programs could still be accomplished in other ways, even if a new Department is deemed inappropriate. The Migrant Affairs body could instead be set up as a non-Cabinet agency, something like the Small Business Administration.<sup>233</sup> Alternatively, the unified body could be designated a bureau, headed by an Assistant Secretary, and located within one of the existing departments, although it is by no means clear which department should be awarded such functions.<sup>234</sup> These modifications would create a structure more proportionate to the scope of MSFW service programs, but either one would generate considerable political controversy over the exact institutional arrangements or the precise forms of accountability to President and Congress.<sup>235</sup>

---

<sup>230</sup>29 U.S.C. §1800 et seq. (1988).

<sup>231</sup>A few local service providers exemplify this approach already, at least in part. But as the description in Part III, *supra*, of the Iowa experience reveals, such unification still requires cumbersome multiple applications to separate funding agencies, and each of those agencies, at present, tends to insist upon clearly identifiable separate programs even when run by a common grantee. Such demands are less likely if there is complete unification at the federal level within a single department or agency. Migrant Education is harder to work into this framework, because its services are traditionally provided through public agencies, i.e., the school systems. This obstacle is not necessarily insuperable, however, for public bodies sometimes become MHS grantees or delegate agencies, and similar adaptations might conceivably allow a broader role for recipients of ME funds, if they wished to branch out.

<sup>232</sup>See 1989 Cong.Q. Almanac 738.

<sup>233</sup>See 15 U.S.C. §631 et seq. (1988).

<sup>234</sup>A proposal of this type appeared in a bill sponsored by Congressman Roybal in 1974, which would have created a National Office for Migrant and Seasonal Farmworkers in the Department of Health, Education and Welfare. All MSFW programs within HEW's jurisdiction would have been transferred to this office, and its work would have been supplemented by a special task force as a kind of advisory committee charged to carry out continuing studies of the needs of MSFWs and of "methods for meeting those needs." See National Office for Migrant and Seasonal Farmworkers, Hearing on H.R. 12257 before the Subcomm. on Agricultural Labor, House Comm. on Education and Labor, 93d Cong., 2d Sess. (Sept. 26, 1974).

<sup>235</sup>If a separate agency, it could be located within the executive branch (clearly the preferred option, given the functions it must perform) or it could be set up as an independent agency headed by a commissioner who could only be removed for cause. See generally *Humphrey's Executor v. United States*, 295 U.S. 602 (1935); *Parker, The Removal Power of the President and Independent Administrative Agencies*, 36 Ind. L.J. 63 (1960).

A more fundamental objection to this sort of unification is the following: what might be gained in coordination among migrant-specific programs would be outweighed by the losses to effective coordination with other related governmental functions.<sup>236</sup> Migrant Health, for example, would have to find new ways to assure interagency coordination with other public health programs, including Community Health Centers, and Migrant Head Start would probably need to coordinate, now across agency boundaries, with the basic Head Start program. These needs could require massive readjustments. Furthermore, some people we interviewed saw the current departmental locations of these programs as a form of mainstreaming, helping to minimize the isolation or stereotyping that sometimes befalls the programs' clientele. Finally, consolidation into one agency might make all the programs more vulnerable at budget time.

The point need not be labored. Gains in efficiency and coordination under this model would probably be overshadowed by these other disadvantages. Complete unification is not a practical option. Instead it might be viewed largely as an ideal type, illustrating the maximum effort that might be made if efficiency and coordination (or more accurately, integration) assumed the highest priority. It provides a kind of lodestar that might illuminate other options that are more realistic in the medium term.

### C. Improved Interagency Council

Interagency committees and councils are often used for coordination, but they can hardly claim to have gained popularity or even respect. Seidman summed up common attitudes in referring to them as "the crabgrass in the garden of government. Nobody wants them, but everyone has them. Committees seem to thrive on scorn and ridicule."<sup>237</sup> President Carter particularly targeted such committees as part of his effort to streamline and rationalize the organization of the federal government. But he too found that he could not live without them, creating at least seven new councils in one twelve-month period, including an Interagency Coordinating Council to deal with urban and regional policy, an Energy Coordinating Committee, a Management Improvement Council, and a Consumer Affairs Council.<sup>238</sup> Despite their nominal unpopularity, interagency councils obviously meet real needs, particularly when other considerations preclude full integration of the programs involved.<sup>239</sup>

Coordination among the MSFW programs could therefore be improved by strengthening or redesigning the current committees or councils, leaving the basic responsibilities for program in the various departments, under the ultimate responsibility of the respective Cabinet secretaries. To make this approach successful, careful changes in the coordinating bodies would be needed, however, to overcome the deficiencies noted earlier. Changes should address the following objectives: to give the body or bodies higher standing, to assure more complete involvement by officials with policy-making authority, to provide the coordinating entities both the capacity and the incentives to look closely at proposed improvements even if the proposals provoke resistance on the part of one or more of the participating agencies, and to equip them with the ability to force decisions by agency or department heads when a proposal has been sufficiently refined and deserves a straightforward decision.

These objectives are rather easy to list. Mechanisms or procedures for accomplishing them are far harder to craft, because in the end their successful achievement may depend much more on political support or substantive priorities than they do on procedural fixes.<sup>240</sup> In fact, the current

---

<sup>236</sup>For a stimulating argument that hierarchical reorganization is often inferior to informal coordination of "loosely coupled multiorganizational systems," see D. Chisholm, *Coordination without Hierarchy: Informal Structures in Multiorganizational Systems* 1-19 (1989).

<sup>237</sup>Seidman & Gilmour, *supra* note 219, at 226.

<sup>238</sup>Schick, *The Coordination Option*, in *Federal Reorganization: What Have We Learned?* at 85, 95-96 (P. Szanton ed. 1981).

<sup>239</sup>Schick, *id.* at 86-88, identifies three main reasons why coordination is needed: planned or preferred redundancy, a pluralism of affected interests, and a lack of integrating criteria.

<sup>240</sup>As Schick has observed, *id.* at 96-97:

mechanisms could be made to work for these purposes, without much procedural or structural tinkering, if, say, the Secretary or Deputy Secretary of one of the Departments involved began to take substantial personal interest in migrant programs generally or in some specific coordination initiative (such as consolidated outreach and intake processing). Similar results might be made to flow from the present structure if the President or a key White House staffer placed equivalent priority on the same matters. What is needed, in short, is someone in a position of sufficient prominence who would press the matter, demand high-level attention in counterpart agencies, spend a fair amount of personal time (a precious and scarce commodity) and political capital, and ultimately refuse to let the issue drop until some resolution is reached—either implementation or agreed abandonment of the initiative.

Such a scenario is unlikely in the near term, in view of the host of other issues, with higher political salience, that compete for attention of those high-level officials who could energize the existing coordination mechanisms. Procedural or structural changes cannot by themselves provide this sort of impetus. The best they can do is improve the odds that a high-level figure might choose a migrant or farmworker issue for priority attention because he or she knows that there exists a workable forum for refining ideas, implementing change, and eventually (if the changes work out as expected) pointing to concrete achievement.

With these cautions in mind, structural suggestions can be offered that might provide some progress, without displacing the ultimate authorities of the department heads. First, a more solid and enduring basis for the interagency mechanism would help give it higher stature. Some officials and service providers offered in their interviews preliminary ideas for grounding the mechanism in statute or Executive Order. Such a chartering instrument would give the entity authority and a mission transcending the temporary acceptance or acquiescence of agency or department heads. Its drafting would also force all participants to give close thought to just what kind of a body might be most useful.

We recommend, if this option be pursued, that the charter provide for a coordinating entity built generally on the model of the Interagency Coordinating Council, rather than the Interagency Committee on Migrants. The former is a smaller body, meant to pull together a few key people with policy authority for actual decisions on changes in operation. Its smaller size should promote focused dialogue on such issues rather than having the function degrade into mere information-sharing. The instrument should specify exactly which officers would be the members of the Council from the various participating agencies. In general, they should hold the rank of Deputy Assistant Secretary or above; perhaps a higher rank would be appropriate. Designation in statute or executive order of the officers who are to be members cannot, of course, guarantee attendance by the principal rather than a delegate. But express designation does provide a fulcrum for pressure by the chair if one of the named officials is too often absent.<sup>241</sup>

It might also be useful for the charter to tap specific officers (by position, not name), from the departments most heavily involved, as chair and deputy chair, in order to assure consistency and continuity. Such a permanent assignment, however, may prove too rigid. It would in any event be highly contentious, perhaps leaving those agencies not chosen suspicious about the new body from

---

The effectiveness of an interagency committee depends less on its formal status than on the extent to which member agencies share common interests and perspectives. . . . Interagency committees cannot succeed as organizational orphans. When nobody has a vested interest in the group's work and nobody is responsible for following through on its decisions, a committee will languish even if its formal status remains intact. This problem cannot be overcome merely by arming one of the group's members with "convenor" or "lead" status. The lead agency has to care enough to invest the group with resources and support.

<sup>241</sup>Designating positions filled by political appointees as the members of the council poses a risk of discontinuity, given the more frequent turnover in such positions. We therefore heard some suggestions for designating further members of the council drawn from the ranks of career civil service personnel. Such a move appears inadvisable. The council is likely to work more cohesively as a relatively small body. Continuity is clearly important, but if the council's functions assume any level of real importance, the policy-making officials will want to involve career officers in the body's ongoing actions, if only to prepare the member adequately for issues to be discussed at the meetings. The realities of time management also suggest that top civil servants are likely to attend some of the gatherings anyway as stand-ins for designated members.

the start. If so, a rotating chairmanship may become necessary, but the rotations should be widely spaced, at intervals of no less than two years, to allow for both some sense of "ownership" in initiatives generated during the period and enough continuity to see many of them through to completion during one agency's chairmanship. This arrangement would also help assure that Council initiatives would be adequately staffed. Realistically the chairing agency will have to staff the process any time others cannot be persuaded to take the lead in preparing reports or otherwise supporting an initiative.<sup>242</sup> Finally, a relatively long-term chair may be in a better position to press other agencies at the highest levels, to assure that they take some action on well-formed proposals and not simply let matters drift in the hopes that proponents will lose interest.

The chartering instrument should require advance review by the Council of any significant MSFW service program changes (such as amended regulations or substantial alteration in grantee performance standards) well before their adoption. Adoption would still be within the authority of the originating department, but the Council might well offer an interagency perspective that would otherwise be lacking in the internal deliberations. Sometimes, as mentioned above, this perspective could be expected to help counter certain expansionist tendencies internal to the separate programs. The charter should also assign some sort of comprehensive budget review authority to the Council, to provide a forum for considering comparative effectiveness and deciding whether there should perhaps be a different assignment of resources.<sup>243</sup> Obviously all of these review functions will need to be handled in close cooperation with the Office of Management and Budget. In this connection (indeed, under any conceivable coordination option), OMB should also designate a single office or staff specialist to provide comprehensive budget and regulatory review of all MSFW programs.

Coordination of this type is most likely to be successful when focused on specific tasks. The council could come up with its own agenda under very general terms set forth in its charter, of course. But it is probably better if the chartering instrument itself assigned the council not only the general mandate of coordination but also a few such specific assignments, which would then come with the imprimatur and mandate of Congress or the President. Such an assignment would help build momentum, from the earliest days, for an active agenda for the new coordinating entity. Also, if the body has a specific duty to come up with a definite product in the form of new regulations or other program instruments, all affected agencies will have a definite incentive to remain engaged in the process at a fairly high level, if only to protect the agency's own interests.

The most promising early tasks we have identified (ones that need not have terribly threatening short-term programmatic consequences for any of the participating agencies) are discussed above: development of a core definition and detailed plans for improved MSFW census information, creation of a consolidated intake form and a streamlined outreach procedure, and possible local pilot programs allowing cross-eligibility or definitional waivers. The chairing agency can be expected to take the lead on many of the council's projects, but on some issues it may make sense for another agency with a greater stake to be designated as lead agency. In any case, the clear assignment to one of the participating agencies of responsibility for a concrete action outcome, to be reached after consultation with the other agencies, appears most promising for sustaining attention and involvement.<sup>244</sup>

The Interagency Committee on Migrants need not be displaced under this model. By and large, it meets a different need: providing a forum for quarterly information sharing and notification,

---

<sup>242</sup>Conceivably the Council could be given its own modest staff, but such an approach risks heightening imbalances and sharpening possible resentments on the part of agencies not currently chairing the body.

<sup>243</sup>This is bound to be a sensitive subject, however. A council of equals, such as this option envisions, is not an auspicious forum for assuring close review of such questions; the process is potentially too threatening to all of the players involved.

<sup>244</sup>Such assignments of lead agencies are often provided for by statute, either designating an agency for a task directly or specifying the procedure in more general terms. See, e.g., 42 U.S.C.A. §7521(a)(6) (West Supp. 1991) (part of the Clean Air Act Amendments of 1990, assigning EPA lead responsibility to develop regulations, within one year, governing on-board systems for the control of vehicle refueling emissions, after mandatory consultation with the Secretary of Transportation on safety questions); 21 U.S.C. §1504(d) (stating that the "President shall designate lead agencies with areas of principal responsibility for carrying out the National Drug Control Strategy").

involving a larger number of operational level staff. Similarly the Interassociation Committee could continue to meet the distinct coordination needs of the grantees of the various agencies. When either of these bodies generates concrete proposals for coordination or altered functioning, the proposal could go to the Council for further consideration and for ultimate implementation.

This option, creating a strengthened interagency council as the principal federal coordination entity, holds certain advantages. It would be relatively inexpensive, and it could be established without major disruptions in familiar agency operations. Some initial wrangling could be expected over the exact provisions of any new statute or executive order, but the chartering instrument could probably be drafted (particularly with a rotating chairmanship) so as to avoid deep disaffection in any quarter early in the process.

The disadvantages are straightforward. Despite any structural improvements that might be devised, the council will still be highly dependent on agency goodwill for its effectiveness. Lacking staff, even the initial development of its proposed initiatives would be dependent on the relative priority assigned to coordination by the participating agencies. The council may not prove to have the clout or sustained interest needed to assure continued involvement by policy-level officers or to force migrant coordination issues onto the agendas of the department heads who would retain ultimate authority.

#### **D. A Coordinator for Migrant and Seasonal Farmworker Programs**

Many of the disadvantages associated with the interagency council model could be remedied by creating a new central office of coordinator, with an identity separate from any of the constituent agencies and with its own staff. Its mission would focus wholly on coordination of programs and more effective use of overall resources devoted to MSFW service programs. The person appointed as coordinator could also function, within the government and in relations with the public, as a spokesperson and farmworker advocate.

#### **1. Models**

There are numerous possible models for such an office. Three are examined here.

##### **a. The Office of National Drug Control Policy**

In 1988, after earlier bills had been vetoed, Congress finally succeeded in enacting a statute creating the Office of National Drug Control Policy in the Executive Office of the President.<sup>245</sup> The statute was born of congressional frustration over the perceived inability of the dozens of agencies involved in drug control to come together to develop a consolidated strategy to achieve the overall objectives, and the new structure replaced three earlier drug policy councils or boards.<sup>246</sup> The office is headed by a director, appointed by the President with the advice and consent of the Senate, and three other top officials are likewise made Presidential appointees subject to Senate approval.

The director is charged with developing, modifying, and insuring the implementation of a national drug control strategy.<sup>247</sup> To this end all other agencies involved in drug control must give advance notice to the Office of any proposed changes in policies. The Director then reviews the proposal and certifies whether it is consistent with the national strategy.<sup>248</sup> He may not directly countermand such policies, however, even if he finds them inconsistent with the strategy. To that extent does not have genuine supervisory authority—a hard-fought concession won by the other agencies during congressional deliberations on the bill. The Director has a similar role in budget review of each of the agencies' requests, with the responsibility to certify the adequacy of the budget

<sup>245</sup>Pub. L. No. 100-690, Title I, 102 Stat. 4181 (codified to 21 U.S.C. §1501 et seq.).

<sup>246</sup>1988 Cong. Q. Almanac 110.

<sup>247</sup>29 U.S.C. §1502(b).

<sup>248</sup>Id. §1503.

in light of the published national strategy.<sup>249</sup> (The total budget for these purposes in 1992 is \$12.7 billion.) In sum, the director does not have direct authority over agency policies or budgets, but can use the certification process and attendant publicity to "shame" an agency into changing a policy or a budget request, or else force the matter onto the President's desk for resolution. This can of course be a considerable power, but it is dependent on the Director's own skills and relationship with the President. The position was relatively powerful during the tenure of its first incumbent, William Bennett, but is now regarded as considerably weaker under Bob Martinez.<sup>250</sup> Moreover, despite its limited statutory authority, the Office has grown to be quite large, with a staff of 130 and an annual budget of \$19 million. Some observers question whether it effectively accomplishes the coordination objective Congress originally had in mind.<sup>251</sup>

#### **b. The Office of Science and Technology Policy**

The Office of Science and Technology Policy (OSTP) was created by statute in 1976,<sup>252</sup> to provide comprehensive overview of, and coordination among, scientific endeavors throughout the federal government. The office was placed in the White House, as one of the 11 agencies that make up the Executive Office of the President. As of 1988, it had a total full-time staff of 31, including 12 detailed to OSTP from the other agencies of the government most involved in science and technology questions.<sup>253</sup> The director, who is also the President's Science Advisor, chairs the White House Science Council, an advisory body, and also a Federal Coordinating Council on Science, Engineering and Technology. The Coordinating Council's other members are the senior science and engineering executives of each agency with substantial technical involvement. Other interagency committees on specific scientific fields or on specific new initiatives report to this Council.<sup>254</sup> OSTP helps devise strategies for the most effective use of federal scientific resources, such as in supporting new technologies like superconductors. As described by the director, the system collects a wide range of options and a wide range of views on those options, and then, "while forming consensus where that is possible, highlights issues and . . . raises them to a higher level for resolution."<sup>255</sup> It also has a defined role in budget guidance and review.<sup>256</sup>

#### **c. The Coordinator for Refugee Affairs**

Although the two previous descriptions suggest several functions like those that might profitably be performed by a MSFW Coordinator, each model's relevance may be limited. Science policy has a much wider reach than do migrant programs, touching on many more agencies and overall policy objectives. Drug control is a major priority for the nation, and the billions of dollars involved in the anti-drug effort dwarf the scope of MSFW assistance.

A model on a somewhat more modest scale, which may be more instructive for present purposes, is the office of the U.S. Coordinator for Refugee Affairs. Refugee admission programs involve the efforts of the State Department, the Justice Department's Immigration and Naturalization Service, HHS's Office of Refugee Resettlement, and sometimes other agencies. After resettlement, other departments, such as Education and Labor, frequently play a role in supporting a successful transition to life in a new homeland. When refugee programs expanded greatly in the late 1970s as

<sup>249</sup>*Id.* §1502(c).

<sup>250</sup>See Laikoff, *Martinez Suffers Setbacks in Post as Anti-Drug Chief*, *Wash. Post*, Feb. 24, 1992, at A1.

<sup>251</sup>See *id.*

<sup>252</sup>Pub. L. No. 94-282, 90 Stat. 459 (1976), codified in 42 U.S.C. §6601 (1988).

<sup>253</sup>Oversight of the Office of Science and Technology Policy, Hearing Before the Subcomm. on Science Research and Technology of the House Comm. on Science, Space and Technology, 100th Cong., 1st Sess., at 6-7 (1988) (statement of Dr. William R. Graham, OSTP Director).

<sup>254</sup>*Id.* at 7.

<sup>255</sup>*Id.* at 12.

<sup>256</sup>The OSTP director described this role: "In the area of budget guidance and review, OSTP interacts with the agencies of the government during the budget formation process, and then works in partnership with its fellow agency—the Office of Management and Budget—when the overall federal budget is prepared for review by the President." *Id.* at 12.

the exodus from Southeast Asia accelerated, the need for better coordination among the agencies became acute. Accordingly the executive branch created the office of the U.S. Coordinator for Refugee Affairs in 1979. A year later, when the Refugee Act of 1980 was passed, the office was given statutory mandate and a specific list of duties.<sup>257</sup>

Under that statute (reprinted in Appendix D), the Coordinator is appointed by the President with the Senate's advice and consent. He or she is responsible to the President for development of overall policy on refugee admission and resettlement, and for coordination of programs "in a manner that assures that policy objectives are met in a timely fashion." That official is also to design an overall budget strategy on these matters, to "provide guidance" to the agencies in preparing their own budget requests and to give OMB an overview of these issues. The statute specifically mentions the coordinator's role as an advisor to the three department heads most closely involved, and it also instructs the Coordinator to develop effective liaison with state and local governments and nongovernmental organizations involved with refugee resettlement.<sup>258</sup> The Coordinator, whose office is based in the State Department (an arrangement that has been criticized<sup>259</sup>) holds the rank of ambassador-at-large and also assumes some responsibility for international representation and negotiation. The office now has a professional staff of seven who cover both domestic and international issues and maintain liaison with each of the affected agencies. In earlier years the number of staff has sometimes been much higher, including several officers detailed from other agencies.<sup>260</sup>

## 2. A Proposed MSFW Coordinator

Many of the functions of the Refugee Coordinator's office listed in the statute are exactly those that a Coordinator for Migrant and Seasonal Farmworker Service Programs should accomplish. If this option is chosen, however, it would probably be advisable not to locate the MSFW Coordinator's office in any of the departments now having migrant service programs. Whatever the merits of placing the Refugee Coordinator in the State Department,<sup>261</sup> it appears especially important for the MSFW Coordinator to develop a perspective that transcends departmental parochialism. That process would be difficult if staff and budget are under the ultimate control of just one of the departments. Equally important, a coordinator must not be *perceived* as simply an advocate for one of the agencies.<sup>262</sup> The logical place for such a transdepartmental office is the White House (as is the case with the Drug Control Office and OSTP.)

This option could be combined with some sort of improved interagency council, as described in the preceding section. But it holds certain advantages over the former. Giving one individual focused responsibility for interagency coordination, rather than assigning it to a collegial body made up of persons with other substantial responsibilities in their own departments, obviously improves the odds that coordination will receive sustained attention. Unlike a temporary chairman drawn from Deputy Assistant Secretary ranks, the Coordinator may develop the stature to keep coordination proposals on the front burner and before the necessary high-level officials in other agencies, rather than having to work a proposal up through multiple departmental layers and then wait while it gets placed onto the crowded agenda of a department head. The new position would provide a visible sign

<sup>257</sup>Pub. L. No. 96-212, §301, 94 Stat. 109 (1980), codified at 8 U.S.C. §1525 (1988).

<sup>258</sup>*Id.*

<sup>259</sup>See, e.g., N.L. Zucker & N.F. Zucker, *The Guarded Gate: The Reality of American Refugee Policy* 124-37; 281-82 (1987); Select Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest* 197 (Final Report, 1981).

<sup>260</sup>Interview with Dr. Luke Lee, Director of Plans and Programs, Office of the U.S. Coordinator for Refugee Affairs, October 22, 1991.

<sup>261</sup>Critics of placing the Refugee Coordinator's office in the State Department argue that this location risks identifying the office too much with only one of the affected agencies; the White House, in this view, is the logical site, owing to the Coordinator's transdepartmental responsibilities. The counterargument is that refugee resettlement is inevitably tied closely to overseas developments, and that the Coordinator's ambassadorial functions further support placement in the State Department. Despite the controversy, the office has remained in State throughout its existence.

<sup>262</sup>See Zucker & Zucker, *supra* note 259, at 282.



of the priority given to interagency coordination and the development of improved service delivery to the MSFW population. (On the other hand, recent disaffection with the Drug Control Policy office indicates that such outcomes are by no means assured.)

We encountered two types of strong objections when we mentioned early versions of this proposal to create a federal coordinating entity during our interviews. The first was aptly captured by one official's comment: "Oh Lord, not another entity!" In his view, and that of others who share this opinion, adding such an office simply means proliferating committee meetings and paperwork. Drawing on his own recent experience in another agency that had been brought under the umbrella of the White House Drug Control Office in 1988, he suggested that massive studies might be ordered and strategy papers written, but actual program changes in the interest of improved coordination or service delivery would prove no easier to achieve than at present. Another layer of unproductive bureaucracy, necessarily distant from actual service provision and hence unfamiliar with the real challenges as experienced by field-level providers, would spring into being, competing for resources that should instead go directly for services.

The other set of objections focused on placing this office in the White House. Such a step, some argued, would damage the programs by politicizing MSFW service issues. MSFW issues can of course be highly contentious and adversarial, it was conceded, particularly over enforcement regimes like pesticide regulations, or housing code compliance, or minimum wage obligations. In those settings, the struggle between growers and farmworker advocates sometimes achieves epic proportions. But services for farmworkers have become relatively depoliticized. More and more agricultural interests see these services as part of the benefits available to their workers, and so are less inclined to resist their extension. They may even become advocates of new clinics or centers for their locality. This state of affairs should not be disturbed. According to those who advance this objection, getting the White House directly involved by means of a Coordinator's office would invite dragging service programs into overtly political initiatives aimed at electoral advantage.

Both these objections carry weight and identify real risks. Whether the risks are worth running depends on an assessment of the gains to be expected from this type of coordination regime. Such gain is inevitably hard to gauge in advance. Its realization depends not only on structural design but also on present imponderables, such as the diligence, persistence, and common sense of the people who fill the key positions. In any event, our interviews did generate a few ideas that might help alleviate some of the concerns reflected in these objections. For example, the office itself should remain small, with a lean staffing pattern; extra staffers mean more capacity to demand reports or other paperwork from the agencies, with less regard for the real need for such endeavors. Perhaps a half-dozen professionals should be adequate, and some of these should be persons detailed from the agencies.

Steps were also suggested to minimize the risk of unseemly political misuse of a coordinator's office.<sup>263</sup> First, to minimize the incentive for some such distortion, the statute, order or memorandum establishing the office should rigidly provide that the coordinator would have responsibility for MSFW service programs only, not for enforcement regimes affecting farmworkers. As noted above, the latter regimes are more closely associated with adversarial struggles between growers and workers. Any perception of the office as having significant authority over such enforcement would raise the stakes surrounding the choice of the coordinator, thus increasing the risk of political interventions in a manner that would be detrimental to central service program objectives.

---

<sup>263</sup>Some who voiced the objection to a White House based coordinator suggested that the Coordinator's office should be independent, with the Coordinator removable by the President only for stated cause. Such an approach is not workable. Because the office would lack operational responsibilities or capacities, its initiatives must all ultimately be implemented by departmental personnel. High departmental officials have reasons to listen to initiatives that come from the Executive Office. Even if they resist, a White House-based Coordinator would be in a position (as is OSTP) to raise the dispute to a higher level for resolution. An independent body lacks this institutional clout, especially when seeking action from nonindependent executive-branch agencies. Without any hope of such leverage, a coordinator's office is essentially pointless.



Second, if the office were to be created by statute, the statute itself could specify the coordinator's qualifications and the office's functions, and perhaps include other safeguards minimizing the risk of politicization. For example, as one MHS grantee suggested, the statute might require that the Coordinator be a person with a stated minimum of field experience in MSFW service programs.<sup>264</sup> Although newcomers to the area might well serve with distinction (as has sometimes been the case with the Refugee Coordinator position), requiring such field experience would improve the odds that the office is filled by someone sympathetic to the programs' service objectives and more willing to resist partisan pressures from elsewhere in the White House. Such a person might also be more careful to shield service programs from burdensome reporting or paperwork.

Appendix E contains a draft statute to create such an office, modeled on the Refugee Coordinator legislation.

### E. Recommendation

Although the question is a close one, we favor the interagency coordinating council model. It is true that many service providers we interviewed seemed excited about the idea of a White House coordinator, but that excitement probably had more to do with the symbolism of such an office than with sound judgments about what it could realistically hope to accomplish.<sup>265</sup> Mere location in the White House is not likely to lead to the priority for MSFW service issues that these providers hope for.

Incremental improvement to coordination through a revitalized interagency council appears more promising and more realistic. Though the most recent effort of this type has foundered, we hold out modest hope that the process can be energized by the sort of institutional charter sketched above, provided by Congress or the President, particularly one that mandates action within a stated time on one or two initial coordination tasks. Although a statutory charter would perhaps be more enduring, it is also more difficult to secure than a document issued by the President. We therefore recommend that efforts should focus on the issuance of an Executive Order containing a charter for an interagency council. The modesty of this conclusion may seem anticlimactic, but we believe that this approach can be made to produce, in a relatively short time frame, some real improvements in the services provided to the nation's farmworkers.

---

<sup>264</sup>It is an open question whether the Constitution permits limits of this kind on the President's appointment power, particularly for a position in the Executive Office of the President.

<sup>265</sup>Once again, Harold Seidman has provided insightful commentary:

The establishment of agencies within the Executive Office of the President is also sought by professions and interest groups as a means for maximizing access and influence and obtaining status and prestige. . . . [But the] degree to which location within the Executive Office of the President enhances power and influence within the executive branch or with the Congress is questionable. The power of Executive Office agencies is derived from the functions they perform—not organization location. Influential units . . . are those that provide direct support to the President in conducting presidential business or the control action-forcing processes such as the budget and legislative clearance. Seidman, *A Typology of Government*, in *Federal Reorganization*, *supra* note 238, at 39-40.

## Appendix A

### Glossary of Acronyms

ACUS	Administrative Conference of the United States
AFDC	Aid to Families with Dependent Children
AFOP	Association of Farmworker Opportunity Programs
CAMP	College Assistance Migrant Program
CETA	Comprehensive Employment and Training Act
CHC	Community Health Center
COA	Census of Agriculture
COP	Census of Population
CPS	Current Population Survey
CRESS	Clearinghouse on Rural Education and Small Schools
DOL	Department of Labor
ECIA	Education Consolidation and Improvement Act
EPA	Environmental Protection Agency
ERIC	Educational Resources Information Center
ETA	Employment and Training Administration
FLSA	Fair Labor Standards Act
FTE	Full-Time Equivalent
GAO	General Accounting Office
HEP	High School Equivalency Program
HEW	Department of Health, Education and Welfare
HFWF	Hired Farm Working Force
HHS	Department of Health and Human Services
IRCA	Immigration Reform and Control Act
JPTA	Job Training Partnership Act
LEA	Local Education Agency
LSC	Legal Services Corporation
ME	Migrant Education
MH	Migrant Health
MHC	Migrant Health Center
MHS	Migrant Head Start
MSFW	Migrant and Seasonal Farm Workers
MSRTS	Migrant Student Record Transfer System
NACHC	National Association of Community Health Centers

<b>NACMH</b>	<b>National Advisory Council on Migrant Health</b>
<b>NASDME</b>	<b>National Association of State Directors of Migrant Education</b>
<b>NAWS</b>	<b>National Agricultural Survey Workers</b>
<b>NLRA</b>	<b>National Labor Relations Act</b>
<b>NMRP</b>	<b>National Migrant Resource Program</b>
<b>OEO</b>	<b>Office of Economic Opportunity</b>
<b>OMB</b>	<b>Office of Management and Budget</b>
<b>OSTP</b>	<b>Office of Science and Technology Policy</b>
<b>PCC</b>	<b>Program Coordination Center</b>
<b>PIC</b>	<b>Private Industry Council</b>
<b>QALS</b>	<b>Quarterly Agricultural Labor Survey</b>
<b>SEA</b>	<b>State Education Agency</b>
<b>SIC</b>	<b>Standard Industrial Classification</b>
<b>SOC</b>	<b>Standard Occupational Classification</b>
<b>UI</b>	<b>Unemployment Insurance</b>
<b>USDA</b>	<b>United States Department of Agriculture</b>
<b>WIC</b>	<b>Supplemental Food Program for Women Infants and Children</b>

## Appendix B

### Statutory and Regulatory Definitions Used in Selected Programs Serving Migrant and Seasonal Farmworkers

#### Migrant Education

20 U.S.C.A. §2782(c) (West 1990):

The Secretary shall continue to use the definitions of "agricultural activity", "currently migratory child", and "fishing activity" which were published in the Federal Register on April 30, 1985, in regulations prescribed under section 555(b) of the Education Consolidation and Improvement Act of 1981 and subpart 1 of part B of title I of the Elementary and Secondary Education Act of 1965 (as in effect on April 30, 1985). No additional definition of "migratory agricultural worker" or "migratory fisherman" may be applied to the provisions of this subpart.

34 C.F.R. §201.3(b) (1990):

*Agricultural activity* means:

- (1) Any activity directed related to the production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence;
- (2) Any activity directly related to the cultivation or harvesting of trees; or
- (3) Any activity directly related to fish farms.

\* \* \*

*Currently migratory child* means a child:

- (1) Whose parent or guardian is a migratory agricultural worker or a migratory fisher; and
- (2) Who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—to enable the child, the child's guardian, or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity. This definition includes a child who has been eligible to be served under the requirements in the preceding sentence, and who, without the parent or guardian, has continued to migrate annually to enable him or her to secure temporary or seasonal employment in an agricultural or fishing activity. This definition also includes children of migratory fishermen, if those children reside in a school district of more than 18,000 square miles and migrate a distance of 20 miles or more to temporary residences to engage in fishing activity.

\* \* \*

*Fishing activity* means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence.

*Formerly migratory child* means a child who:

- (1) Was eligible to be counted and served as a currently migratory child within the past five years, but is not now a currently migratory child; and
- (2) Has the concurrence of his or her parent or guardian to continue to be considered a migratory child.

*Migratory agricultural worker* means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—to enable

him or her to obtain temporary or seasonal employment in an agricultural activity (including dairy work).

*Migratory children* means children who qualify under either the definition of "currently migratory child" or "formerly migratory child" described in this section.

*Migratory fisher* means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another—to enable him or her to obtain temporary or seasonal employment in a fishing activity.

## **HEP/CAMP**

20 U.S.C.A. §1070d-2 (West 1990):

**(b) Services provided by high school equivalency program**

The services authorized by this subpart for the high school equivalency program include—

- (1) recruitment services to reach persons who are 17 years of age and over, who themselves or whose parents have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who lack a high school diploma or its equivalent;

\* \* \*

**(c) Services provided by college assistance migrant program**

Services authorized by this subpart for the college assistance migrant program include—

- (1) outreach and recruitment services to reach persons who themselves or whose parents have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who meet the minimum qualifications for attendance at a college or university;

\* \* \*

34 C.F.R. §206.5(c) (1990):

**(2) "Agricultural activity" means:**

- (i) Any activity directly related to the production of crops, dairy products, poultry, or livestock;
- (ii) Any activity directly related to the cultivation or harvesting of trees; or
- (iii) Any activity directly related to fish farms.

- (3) "Farmwork" means any agricultural activity, performed for either wages or personal subsistence, on a farm, ranch, or similar establishment.**

\* \* \*

**(6) "Migrant farmworker" means a seasonal farmworker—as defined in paragraph (c)(7) of this section—whose employment required travel that precluded the farmworker from returning to his or her domicile (permanent place of residence) within the same day.**

**(7) "Seasonal farmworker" means a person who, within the past 24 months, was employed for at least 75 days in farmwork, and whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity).**

## **Migrant Health**

42 U.S.C.A. §254b(a) (West 1991):

- (2) The term "migratory agricultural worker" means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last**

twenty-four months, and who establishes for the purposes of such employment a temporary abode.

(3) The term "seasonal agricultural workers" means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

(4) The term "agriculture" means farming in all its branches, including--

(A) cultivation and tillage of the soil,

(B) the production, cultivation, growing, and harvesting of any commodity grown on, in, or as an adjunct to or part of a commodity grown in or on, the land, and

(C) any practice (including preparation and processing for market and delivery to storage or to market or to carriers for transportation to market) performed by a farmer or on a farm incident to or in conjunction with an activity described in subparagraph (B).

42 C.F.R. §56.102 (1990):

(b)(1) *Agriculture* means farming in all its branches, including--

(i) Cultivation and tillage of the soil;

(ii) The production, cultivation, growing, and harvesting of any commodity grown on, in, or as an adjunct to or part of a commodity grown in, or on, the land; and

(iii) Any practice (including preparation and processing for market and delivery to storage or to market or to carriers for transportation to market) performed by a farmer or on a farm incident to or in conjunction with an activity described in subsection (ii).

\* \* \*

(h) *Migratory agricultural worker* means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes for the purpose of such employment a temporary place of abode;

\* \* \*

(m) *Seasonal agricultural worker* means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

## **Migrant Head Start**

(42 U.S.C.A. §9831 (West 1983 & Supp. 1991))

[No statutory or regulatory definitions at present. Proposed rules are set forth.]

55 Fed. Reg. 29,970 (July 23, 1990) (notice of proposed rulemaking) (proposed 42 C.F.R. §1305.2(f)):

(1) *Migrant family* means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who change their residence by moving from one geographic location to another, either intrastate or interstate, for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity.

## **Job Training Partnership Act, §402**

(29 U.S.C.A. §1672 (West 1985))

20 C.F.R. §633.104 (1990):

*Farmwork* shall mean, for eligibility purposes, work performed for wages in agricultural production or agricultural services as defined in the most recent edition of the Standard Industrial Classification (SIC) Code definitions included in industries 01--Agricultural Production--Crops; 02--Agricultural Production--Livestock excluding 027--Animal Specialties; 07--Agricultural Services excluding 074--Veterinary Services, 0752--Animal Specialty Services, and 078--Landscape and Horticultural Services.

\* \* \*

*Migrant farmworker* shall mean a seasonal farmworker who performs or has performed farmwork during the eligibility determination period (any consecutive 12-month period within the 24-month period preceding application for enrollment) which requires travel such that the worker is unable to return to his/her domicile (permanent place of residence) within the same day.

\* \* \*

*Seasonal farmworker* shall mean a person who during the eligibility determination period (any consecutive 12-month period within the 24-month period preceding application for enrollment) was employed at least 25 days in farmwork or earned at least \$400 in farmwork; and who has been primarily employed in farmwork on a seasonal basis, without a constant year round salary.

*Id.* §633.107:

(a) Eligibility for participation in Section 402 programs is limited to those individuals who have, during any consecutive 12-month period within the 24-month period preceding their application for enrollment:

- (1) Been a seasonal farmworker or migrant farmworker as defined in §633.104; and,
- (2) Received at least 50 percent of their total earned income or been employed at least 50 percent of their total work time in farmwork; and,
- (3) Been identified as a member of a family which receives public assistance or whose annual family income does not exceed the higher of either the poverty level or 70 percent of the lower living standard income level.
- (4) Dependents of the above individuals are also eligible.

CONSOLIDATED OUTREACH PROJECT  
INDIANA HEALTH CENTERS, INC.

- Print all information
- Refer to Consolidated Outreach Project Manual for further instructions.

IMPORTANT:

- The information on this document is confidential according to IC 4-1-6-1. This agency is requesting disclosure of your social security number. You have the right to refuse to provide this information and will not be penalized for doing so.
- Esta informacion es confidencial segun IC 4-1-6-1. Esta agencia pide su numero de Seguro Social. Declaracion de esta informacion es voluntaria. Ud. tiene derecho de rehusar a proveer esta informacion sin imponerse pena.

Date \_\_\_\_\_ Prov # \_\_\_\_\_

Area \_\_\_\_\_ F.C. \_\_\_\_\_

Camp Name or Local Address		Local City		Local State <b>IN</b>	Zip Code	Telephone number		County	Co No
Permanent Address Street / RR number		Permanent City		Permanent State	Zip Code	Telephone number		County/Country	
Last address (Street / RR number)		Last City		Last State	Zip Code	Next destination (City / State)		Number in family	No. in family in IN
Date arrived in IN	First time in state <input type="checkbox"/> Yes <input type="checkbox"/> No	If no. last date	Name of crew leader		School corporation	Access to a vehicle <input type="checkbox"/> Yes <input type="checkbox"/> No		Income Level A B C D E E F G	
Agriculture Activity <input type="checkbox"/> (check if not applicable)			Date of last move within the last 5 years (Mn., day, yr.) <input type="checkbox"/> (check if not applicable)			Number of days in farm labor (FL) in last 12 months			
Number of days in food processing (FP) in last 12 months			Total family income for past 12 months			Was 1/2 or more of MOH income earned through either FL or FP? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Number of employers in last 12 months			Is job Service information provided <input type="checkbox"/> Yes <input type="checkbox"/> No			Have publications X-119 and X-715 been distributed? <input type="checkbox"/> Yes <input type="checkbox"/> No			

ID #	Name  Last Name, First Name, MI	Social Security Number	Date of Birth	General Information															
				Age	Sex	Race / Ethnicity	Migrant / Seasonal / Settled Out	Citizenship Status	Full Time Student	Education Level	Limited English Speaking Ability	PROCEDURE #22211							
	1. Head of Household																		
	2.																		
	3.																		
	4.																		
	5.																		
	6.																		
	7.																		
	8.																		

REFERRED: IDETS #'s \_\_\_\_\_ DPW #'s \_\_\_\_\_  
DOE #'s \_\_\_\_\_ DMH #'s \_\_\_\_\_  
IHC #'s \_\_\_\_\_ IDHS #'s \_\_\_\_\_

Notes:

Signature of participant / Firma del participante	Date signed	Caseworker
---	-------------	------------

DISTRIBUTION: White - Registration Yellow - Participant Pink - Clinic Goldenrod - Case Worker Green - Encounter





## Appendix D

### **Statute Establishing the Office of United States Coordinator for Refugee Affairs**

#### **(8 U.S.C. § 1525)**

(a) The President shall appoint, by and with the advice and consent of the Senate, a United States Coordinator for Refugee Affairs (hereinafter in this part referred to as the "Coordinator"). The Coordinator shall have the rank of Ambassador-at-Large.

(b) The Coordinator shall be responsible to the President for—

(1) the development of overall United States refugee admission and resettlement policy;

(2) the coordination of all United States domestic and international refugee admission and resettlement programs in a manner that assures that policy objectives are met in a timely fashion;

(3) the design of an overall budget strategy to provide individual agencies with policy guidance on refugee matters in the preparation of their budget requests, and to provide the Office of Management and Budget with an overview of all refugee-related budget requests;

(4) the presentation to the Congress of the Administration's overall refugee policy and the relationship of individual agency refugee budgets to that overall policy;

(5) advising the President, Secretary of State, Attorney General, and the Secretary of Health and Human Services on the relationship of overall United States refugee policy to the admission of refugees to, and the resettlement of refugees in, the United States;

(6) under the direction of the Secretary of State, representation and negotiation on behalf of the United States with foreign governments and international organizations in discussions on refugee matters and, when appropriate, submitting refugee issues for inclusion in other international negotiations;

(7) development of an effective and responsive liaison between the Federal Government and voluntary organizations, Governors and mayors, and others involved in refugee relief and resettlement work to reflect overall United States Government policy;

(8) making recommendations to the President and to the Congress with respect to policies for, objectives of, and establishment of priorities for, Federal functions relating to refugee admission and resettlement in the United States; and

(9) reviewing the regulations, guidelines, requirements, criteria, and procedures of Federal departments and agencies applicable to the performance of functions relating to refugee admission and resettlement in the United States.

(c)(1) In the conduct of the Coordinator's duties, the Coordinator shall consult regularly with States, localities, and private nonprofit voluntary agencies concerning the sponsorship process and the intended distribution of refugees.

(2) The Secretary of Labor and the Secretary of Education shall provide the Coordinator with regular reports describing the efforts of their respective departments to increase refugee access to programs within their jurisdiction, and the Coordinator shall include information on each programs in reports submitted under section 413(a)(1) of the Immigration and Nationality Act.

## Appendix E

### **Proposed Statute Establishing an Office of Coordinator for Migrant and Seasonal Farmworker Service Programs**

(a) The President shall appoint, by and with the advice and consent of the Senate, a Coordinator for Migrant and Seasonal Farmworker Service Programs (hereinafter referred to as the "Coordinator"). [The Coordinator shall be selected from among persons having a minimum of two years' experience in a service program (either public or private nonprofit) for migrant and/or seasonal farmworkers.] The Coordinator's office shall be a part of the Executive Office of the President.

(b) The Coordinator shall be responsible to the President for

(1) the development of overall federal policy on services to migrant and seasonal farmworkers;

(2) the coordination of all federal programs that provide services to migrant and seasonal farmworkers in a manner that assures that policy objectives are met in a timely fashion, and that overlap and duplication are minimized;

(3) the design of an overall budget strategy to provide individual agencies with policy guidance on farmworker service matters in the preparation of their budget requests, and to provide the Office of Management and Budget with an overview of all budget requests relating to services for migrant and seasonal farmworkers;

(4) the presentation to the Congress of the Administration's overall policy regarding service programs for migrant and seasonal farmworkers and the relationship of individual agency budgets to that overall policy;

(5) advising the Attorney General, the Secretary of Agriculture, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, and the heads of other affected departments and agencies on the relationship of overall farmworker service policy to the actions of their departments and agencies;

(6) development of an effective and responsive liaison between the Federal Government and Governors and mayors, other state and local government bodies, voluntary organizations, nonprofit corporations, and others involved in farmworker service programs to reflect overall United States Government policy;

(7) making recommendations to the President and to the Congress with respect to policies for, objectives of, and establishment of priorities for, Federal functions relating to migrant and seasonal farmworkers; and

(8) reviewing the regulations, guidelines, requirements, criteria, and procedures of Federal departments and agencies applicable to the performance of functions relating to service programs for migrant and seasonal farmworkers.

(c) In the conduct of the Coordinator's duties, the Coordinator shall consult regularly with States, localities, private nonprofit organizations, other service providers, and other affected individuals and organizations, regarding the effectiveness of service programs for migrant and seasonal farmworkers.

