



## **LEGAL SERVICES CORPORATION**

### **LSC AGRICULTURAL WORKER POPULATION ESTIMATE UPDATE**

---

**LSC Management Report to LSC Board of Directors**

**January 30, 2015**



## Table of Contents

SECTION I: INTRODUCTION AND OVERVIEW.....	1
SECTION II: STUDY METHODOLOGY .....	10
SECTION III: LSC FUNDING OF FARMWORKER LEGAL SERVICES.....	14
SECTION IV: THE NEED TO UPDATE THE POPULATION ESTIMATES FOR ALLOCATING FUNDING FOR SPECIALIZED SERVICES TO THE AGRICULTURAL WORKER POPULATION .....	20
SECTION V: UNIQUE LEGAL NEEDS OF AGRICULTURAL WORKERS .....	23
SECTION VI: FACTORS CREATING THE AGRICULTURAL WORKER POPULATION’S ACCESS BARRIERS .....	37
SECTION VII: SPECIALIZED EXPERTISE AND SERVICES PROVIDED BY MIGRANT GRANTEEES.....	46
SECTION VIII: THE FARMWORKER POPULATION ON WHICH TO BASE THE ALLOCATION OF LSC FUNDING FOR FARMWORKER LEGAL SERVICES .....	53
SECTION IX: UPDATED COUNT OF THE AGRICULTURAL WORKER POPULATION .....	56
APPENDIX A: Memorandum from the U.S. Department of Labor Employment and Training Administration with estimates of LSC-eligible agricultural worker population and explanation of estimation methodology	
APPENDIX B: “Funding of Legal Assistance for Migratory and Other Farmworkers,” memorandum from Ronald S. Flagg, Gen. Counsel; Mark F. Freedman, Senior Assistant Gen. Counsel; and Bristow Hardin, Program Analyst, Office of Program Performance to the LSC Board Operations and Regulations Committee (Oct. 8, 2013)	
APPENDIX C: List of Works Cited	
APPENDIX D: List of Persons Interviewed	
APPENDIX E: LSC Agricultural Worker Population Survey – Migrant Grantee Survey Instrument	
APPENDIX F: LSC Agricultural Worker Population Survey – Basic Field Grantee Survey Instrument	



## SECTION I INTRODUCTION AND OVERVIEW

### **LSC Funding of Legal Services to Agricultural Workers**

LSC has provided grants to serve migrant and other agricultural workers (generally referred to as “Migrant Grants”) with appropriated funds since the 1970s. In a study, mandated by Congress in 1977, LSC found that that agricultural workers have unique, special needs related to their status, in particular “the type and conditions of work in which they are engaged and their cultural and ethnic background.”<sup>1</sup> Since 1996, funds appropriated for “Basic Field Programs” have been allocated to each state, territory, and the District of Columbia via a per-capita funding formula based on data from the U.S. Census Bureau regarding the size and location of the poverty population. The entire state, territory, or District of Columbia is a single “geographic area” within which LSC may designate one or more “service areas” for grants. Within most of these geographic areas, LSC distributes those funds through general-purpose “Basic Field—General” grants and through separate “Basic Field—Migrant” grants.<sup>2</sup> The amount of the Migrant Grant in each geographic area is based on the migrant population of that area, which is deducted from the total poverty population for that area for purposes of calculating the general-purpose Basic Field—General grant.

Over the last forty years, through direct work with and service to agricultural workers, grantees with Migrant Grants (“Migrant Grantees”) have gained a deep understanding of those workers’ legal needs and have developed delivery models designed to address those needs. Migrant Grantees have adapted those models over time to respond to the changing circumstances of

---

<sup>1</sup> LEGAL SERVICES CORPORATION, SPECIAL LEGAL PROBLEMS AND PROBLEMS OF ACCESS TO LEGAL SERVICES OF VETERANS, MIGRANT AND SEASONAL FARM WORKERS, NATIVE AMERICANS, PEOPLE WITH LIMITED ENGLISH-SPEAKING ABILITY, AND INDIVIDUALS IN SPARSELY POPULATED AREAS (“1007(h) Study”) 34 (1979). The LSC Act required the Corporation to conduct a study on whether eligible clients who are migrants and seasonal farmworkers or members of other subpopulations (veterans, Native Americans, persons with Limited English-Speaking ability and those living in rural areas) “have special difficulties of access to legal services or special legal problems which are not being met.” Pub. L. 95-222, § 13, adding § 1007(h) of the LSC Act, codified at 42 U.S.C. § 2996f(h). The shared legal needs of migrants and seasonal farmworkers and the need for specialized legal assistance are addressed on pp. 40-42 and pp. 313-315 of the 1007(h) Study. The 1007(h) Study’s full analysis of these issues is set forth in Chapter I, Section III, D, and Chapter V.

<sup>2</sup> There are Migrant Grants covering 43 states and Puerto Rico. There is no more than one migrant service area in a state. Services to migrants in six New England states (CT, MA, ME, NH, RI, and VT) are provided by Pine Tree Legal Assistance through a single service area (under a single Migrant Grant). Service to migrants in seven Southern states (AL, AR, KY, LA, MS, TN, and TX) are provided by Texas Rural Legal Assistance through a single service area (under a single Migrant Grant). FY14 grant amounts for service areas in individual states ranged from \$24,318 (DE) to \$2,585,613 (CA).

agricultural workers, new developments in agricultural labor markets, and evolving best practices in legal aid delivery.

LSC's funding of specialized grants to serve migrant and other agricultural workers and their dependents parallels the approach Congress has taken in funding a range of programs to address the particular needs of migrant and other agricultural workers, and their dependents, in areas such as education, health services, housing, and job placement and training.<sup>3</sup>

When referring to the population served by Migrant Grantees, this report will use the term, "agricultural worker," unless the context intends a more specific reference to workers who are indeed "farmworkers." One of the recommendations of this report is that the population of workers to be served with this specialized funding should be formally defined to include livestock and certain forestry workers, as well as migrant and seasonal crop workers.<sup>4</sup> Thus, the broader term "agricultural worker" is more accurate.

During the history of service to these workers, various terms have been used to refer to the population. For example, from 1985 to 1995, Congress referred to "migrant programs" in LSC's appropriation, although both migrant and non-migrant seasonal workers were served with that funding. The term, "Migrant Grants," is still used in LSC's grantmaking, and will occasionally be used in this report. LSC and the Migrant Grantees themselves have often referred to the grantees as "Farmworker Programs" to reflect the broader populations served. This report will, therefore, occasionally use the term "Farmworker Programs," when it is historically appropriate.

### **The Need to Update the Population Estimate on which "Migrant Funding" Is Based<sup>5</sup>**

The population estimates used to allocate Migrant Grants need to be updated for two reasons. First, the data on which the current allocation is based have not been substantially updated since Fiscal Year 1996 (FY96). Data are available to provide more accurate estimates of the current size and distribution of the population used to allocate funding for services to the agricultural worker population. Second, the population used to allocate funding does not match the population of agricultural workers and dependents that require specialized legal assistance and that have long been served by Migrant Grantees. These workers include not just migrant farmworkers, but also seasonal farmworkers who do not migrate, livestock workers, and forestry workers.

---

<sup>3</sup> See Section III below.

<sup>4</sup> See Section VIII below.

<sup>5</sup> Section III below discusses LSC's funding of specialized services to farmworkers over the past 40 years. Section IV discusses in more detail the reasons the population estimates on which such funding has been based need to be updated.

LSC management informed the LSC Board of Directors at its October 2013 meeting that the population data which provide the basis for allocating Migrant Grants need to be updated and that management would analyze the pertinent issues and present the Board with a set of recommendations to address them.<sup>6</sup> LSC management has investigated and analyzed these issues over the course of the past 15 months and contracted with the U.S. Department of Labor to provide updated data regarding the current population of agricultural workers and their dependents eligible for LSC-funded services. Based on that work, management recommends to the Board that LSC seek public comment on a proposal to (1) use the new Department of Labor data for grants beginning in January 2016, (2) phase in the funding changes to provide intermediate funding halfway between the old and new levels for 2016 and to fully implement the new levels for 2017, and (3) update the data every three years on the same cycle as LSC updates poverty population data from the U.S. Census Bureau for the distribution of LSC's Basic Field—General grants.

### **Study Methodology<sup>7</sup>**

LSC's analysis of these issues had two components. The first component focuses on identifying the population of agricultural workers and their dependents, if any, that face similar barriers to access to the civil justice system and whose legal needs can be addressed most effectively and efficiently by specialized legal assistance and delivery approaches. LSC conducted this part of the analysis itself based on data from sources including:

- Internal LSC data regarding grantee staffing, funding, and case services as well as reports from grantee reviews conducted by LSC staff and grantees' funding applications;
- Relevant government reports, academic and other research publications as well as reports and publications of groups with subject-matter expertise;<sup>8</sup>
- Interviews with current and former staff of government agencies, academics and other researchers, and staff of organizations with subject-matter expertise;<sup>9</sup>
- A survey of LSC's Migrant Grantees (Migrant Grantee Survey) with a 100% response rate and a survey of LSC's Grantees that do not receive Migrant Grants (Basic Field Grantee Survey) with a response rate of 68.6%;<sup>10</sup>

---

<sup>6</sup> "Funding of Legal Assistance for Migratory and Other Farmworkers," memorandum from Ronald S. Flagg, Gen. Counsel; Mark F. Freedman, Senior Assistant Gen. Counsel; and Bristow Hardin, Program Analyst, Office of Program Performance to the LSC Board Operations and Regulations Comm. (Oct. 8, 2013) (the full memorandum can be found in Appendix B of this paper).

<sup>7</sup> See Section II below.

<sup>8</sup> See Appendix C for a list of works cited in this Report.

<sup>9</sup> See Appendix D for a list of persons interviewed.

<sup>10</sup> See Appendices E and F for copies of the survey instruments.

- Consultations with the Executive Directors and staff of LSC grantees, members of the National Legal Aid and Defender Association (NLADA) Agricultural Workers Group Project, and managers and staff of other providers of legal services to agricultural workers and their dependents; and
- Consultations with staff of the U.S. Department of Labor (DOL) Employment and Training Administration (ETA) and ETA contractors.

The second part of the analysis was the development of an estimate of the size and distribution of the population of agricultural workers and their dependents that are eligible for LSC-funded services (LSC-eligible population). LSC contracted with the Department of Labor’s Employment and Training Administration (ETA) to perform this task. ETA contracted with JBS International (JBS) to use Department of Labor and other government data to develop these estimates. Section IX presents the ETA estimates. Details regarding methodology and estimates are set forth in Section II and Appendix A of the Management Report.

### **Legal Needs of the Agricultural Worker Population<sup>11</sup>**

A combination of factors creates the legal needs of the agricultural worker population. Several of these factors are rooted in the nature of agricultural work. Government data show that agriculture is the most dangerous industrial sector in the U.S. – in 2012, it had the highest fatal and non-fatal occupational injury rates of all private industries. Agricultural work is insecure, temporary, and low-paid. A labor surplus of 2 to 2.5 farm workers for each year-round equivalent job contributes to high unemployment. The seasonality of work means that very few workers have year-round work. The industry median wage is only 55% that of all full-time wage and salary workers.

The legal needs of agricultural workers arise in the context of laws and regulations, some of which that apply solely to agricultural workers and others that exclude agricultural workers from some of the legal protections generally afforded to other workers. In the latter category, for example, the Fair Labor Standards Act (FLSA) requires employers to pay workers for all hours they work and to pay workers at least the federal minimum wage. However, farms with fewer than 11 employees – which employ nearly half (46%) of all hired workers – are exempt from the federal minimum wage requirement. FLSA also exempts agricultural employers from paying overtime and from child labor requirements that apply to other employers. Provisions of the Occupational Health and Safety Act (OSHA) require employers to meet field sanitation standards (*e.g.*, drinking water and toilets) and temporary labor camp housing standards and to provide safety equipment. However, appropriations riders prohibit federal health and safety inspections at small farms without temporary labor camps and also exempt those establishments from OSHA’s worker protection provisions. Agricultural employers are also exempt from the National Labor Relations Act (NLRA), which protects workers’ rights associated

---

<sup>11</sup> See Section V below.



with collective bargaining to improve terms and conditions of employment. At the same time, other laws create a legal framework unique to agriculture. One federal law, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), is designed specifically to protect the rights of agricultural workers. Section H-2A of the Immigration and Nationality Act authorizes growers to hire “temporary, nonimmigrant” guest workers (H-2A workers) when they demonstrate that there are not sufficient U.S. workers qualified and available to perform the needed work.

As described in Section V, LSC Migrant Grantees and other farmworker legal aid programs not funded by LSC report that the most pressing areas of legal need for their clients include: non-payment of wages or violations of minimum wage laws, issues arising under the AWPA (including claims involving substandard housing and employment contract disputes), violations of occupational safety and health laws, violations of field sanitation standards, sexual abuse and sexual harassment, and human trafficking.

### **Factors Creating Access Barriers and Exacerbating the Unique Legal Needs of the Agricultural Worker Population<sup>12</sup>**

Government resources to enforce the legal rights of agricultural workers in the areas listed above are limited. Accordingly, the surveys of LSC grantees and other sources of information indicate that agricultural workers often require the assistance of legal services lawyers to enforce their rights in these areas. A combination of factors, however, creates barriers to access to legal services to address the legal needs of the agricultural worker population. The agricultural worker population is isolated from sources of assistance. This population is often geographically isolated given the remote locations of job sites and employer-provided housing. Even off-farm housing in urban areas is often located in enclaves isolated from non-farmworker communities. Agricultural workers are often isolated by limited transportation and many must rely on their employers or farm labor contractors for transport.

Social and cultural isolation compounds geographic isolation. Compared to the total U.S. population, agricultural workers are far more likely to be Latino/Hispanic (76%) and foreign born (71%). Only 39% have schooling beyond the ninth grade. Only 33% report they can speak English “well” and nearly as many (27%) report they cannot speak English at all. Many are from southern Mexico (*e.g.*, Oaxaca, Chiapas) where the native language is not Spanish.

### **Specialized Expertise and Services Provided by Migrant Grantees<sup>13</sup>**

LSC farmworker programs employ a variety of techniques to address most effectively and efficiently the barriers to civil justice and unique legal needs of the LSC-eligible agricultural worker population. These include:

---

<sup>12</sup> See Section V below.

<sup>13</sup> See Section VII below.

- Employing bilingual and multilingual staff with the necessary cultural competency to communicate effectively and credibly with the agricultural worker population;
- Using special intake procedures, maintaining flexible staff work hours, and making extensive use of technology (such as special toll-free lines, cell/text phones, laptops) to serve clients in remote areas;
- Conducting outreach at labor camps and other places workers live as well as at locations other than workers' job sites and homes;
- Performing extensive community legal education; and
- Maintaining partnerships with community organizations and agencies that serve the agricultural worker population and working with agencies responsible for enforcing law pertaining to the rights of the agricultural worker population.

These grantees seek to ensure staff have specialized expertise in laws and regulations with particular relevance for the agricultural worker population, such as FLSA, AWPA, and OSHA as well as laws pertaining to human trafficking, job discrimination and sexual harassment. Because of the mobility of the agricultural worker population and the impact of judicial rulings and enforcement activities around the country, farmworker advocates maintain on-going coordination and communication with advocates serving agricultural workers in other states.

### **The Agricultural Population for Allocating Funding for Specialized Assistance<sup>14</sup>**

To allocate funding for the delivery of specialized assistance to the agricultural worker population, LSC management recommends that this population be defined to include migrant and seasonal crop workers, horticultural workers, livestock workers, and certain forestry workers, and these workers' dependents, *who have incomes below the poverty line* (the benchmark used by the U.S. Census Bureau for defining the poverty population) *and meet LSC eligibility criteria regarding citizenship and alien status.*

The range of factors identified above combine to create access barriers and legal needs that are unique to this population. First, agricultural labor is distinctive for its dangers, insecurity, and low pay. Second, this population experiences distinctive social, cultural and geographic isolation. Third, these workers are subject to statutory and regulatory provisions that are unique to agriculture. Fourth, this population is served by other federal and state programs that are specifically designed to address the distinctive needs of agricultural workers in areas such as education, employment, health, and housing. Finally, these workers all work in industrial sectors that are classified as "agriculture" by the Census Bureau's North American Industry Classification System.

---

<sup>14</sup> See Section VIII below.

## Updated Count of the Agricultural Worker Population<sup>15</sup>

Table I sets forth the national and state-by-state estimates of the agricultural worker population eligible for LSC services. It also contrasts the Department of Labor ETA estimates with the estimates currently used for allocating Migrant Grants. For both the population estimates currently used and the ETA estimates, the table shows the estimated population of the LSC-eligible agricultural worker population nationally, and each state's percentage share of the national LSC-eligible agricultural worker population. The table also shows the extent to which the ETA estimates and the estimates currently used differ in numerical and percentage terms.

As the data in Table I show, the ETA estimate of the total LSC-eligible agricultural worker population national population is 1,553,003; 4.13% less than the estimate currently used of 1,619,982. The magnitude of the changes at the state level varies, in most cases more significantly.

---

<sup>15</sup> See Section IX below.

**Table I**  
**LSC-Eligible Agricultural Worker Population by State**  
**Comparison of Current Population Estimates and Department of Labor Employment and**  
**Training Administration (ETA) Estimates**

State	Current Population Estimate		ETA Population Estimate		Change: ETA Estimate +/- Current	
	Persons	Percent (%) of Total	Persons	Percent (%) of Total	Persons	Percent (%) Change
Alabama	4,712	0.291%	13,120	0.845%	8,408	178.4%
Alaska	0	0.000%	1,485	0.096%	1,485	n/a
Arizona	21,265	1.313%	40,135	2.584%	18,870	88.7%
Arkansas	11,321	0.699%	13,245	0.853%	1,924	17.0%
California	378,096	23.340%	323,521	20.832%	(54,575)	-14.4%
Colorado	21,272	1.313%	27,458	1.768%	6,186	29.1%
Connecticut	2,386	0.147%	8,889	0.572%	6,503	272.5%
Delaware	3,556	0.220%	1,472	0.095%	(2,084)	-58.6%
Florida	128,633	7.940%	91,727	5.906%	(36,906)	-28.7%
Georgia	56,155	3.466%	28,820	1.856%	(27,335)	-48.7%
Hawaii	0	0.000%	12,701	0.818%	12,701	n/a
Idaho	26,771	1.653%	32,852	2.115%	6,081	22.7%
Illinois	35,754	2.207%	35,394	2.279%	(360)	-1.0%
Indiana	16,285	1.005%	26,006	1.675%	9,721	59.7%
Iowa	5,404	0.334%	45,938	2.958%	40,534	750.1%
Kansas	0	0.000%	29,978	1.930%	29,978	n/a
Kentucky	6,096	0.376%	25,017	1.611%	18,921	310.4%
Louisiana	3,945	0.244%	16,849	1.085%	12,904	327.1%
Maine	10,281	0.635%	12,264	0.790%	1,983	19.3%
Maryland	13,022	0.804%	5,729	0.369%	(7,293)	-56.0%
Massachusetts	2,384	0.147%	9,004	0.580%	6,620	277.7%
Michigan	86,214	5.322%	43,522	2.802%	(42,692)	-49.5%
Minnesota	28,656	1.769%	38,462	2.477%	9,806	34.2%
Mississippi	8,174	0.505%	13,991	0.901%	5,817	71.2%
Missouri	11,668	0.720%	27,461	1.768%	15,793	135.4%

**Table I (Continued)**  
**LSC-Eligible Agricultural Worker Population by State**  
**Comparison of Current Population Estimates and Department of Labor Employment and**  
**Training Administration (ETA) Estimates**

State	Current Population Estimate		ETA Population Estimate		Change: ETA Estimate +/- Current	
	Persons	Percent (%) of Total	Persons	Percent (%) of Total	Persons	Percent (%) Change
Montana	7,818	0.483%	13,854	0.892%	6,036	77.2%
Nebraska	6,056	0.374%	31,440	2.024%	25,384	419.2%
Nevada	0	0.000%	5,740	0.370%	5,740	n/a
New Hampshire	1,424	0.088%	3,845	0.248%	2,421	170.0%
New Jersey	17,281	1.067%	8,008	0.516%	(9,273)	-53.7%
New Mexico	12,509	0.772%	19,564	1.260%	7,055	56.4%
New York	39,645	2.447%	38,244	2.463%	(1,401)	-3.5%
North Carolina	76,764	4.739%	51,741	3.332%	(25,023)	-32.6%
North Dakota	16,602	1.025%	16,851	1.085%	249	1.5%
Ohio	18,042	1.114%	31,834	2.050%	13,792	76.4%
Oklahoma	8,963	0.553%	15,574	1.003%	6,611	73.8%
Oregon	79,782	4.925%	60,176	3.875%	(19,606)	-24.6%
Pennsylvania	23,739	1.465%	20,234	1.303%	(3,505)	-14.8%
Puerto Rico	41,642	2.571%	7,098	0.457%	(34,544)	-83.0%
Rhode Island	253	0.016%	988	0.064%	735	290.5%
South Carolina	28,330	1.749%	13,547	0.872%	(14,783)	-52.2%
South Dakota	0	0.000%	15,572	1.003%	15,572	n/a
Tennessee	9,084	0.561%	17,928	1.154%	8,844	97.4%
Texas	198,948	12.281%	83,809	5.397%	(115,139)	-57.9%
Utah	9,715	0.600%	10,247	0.660%	532	5.5%
Vermont	1,161	0.072%	4,880	0.314%	3,719	320.3%
Virginia	22,589	1.394%	21,058	1.356%	(1,531)	-6.8%
Washington	104,545	6.453%	79,936	5.147%	(24,609)	-23.5%
West Virginia	0	0.000%	3,792	0.244%	3,792	n/a
Wisconsin	13,040	0.805%	45,482	2.929%	32,442	248.8%
Wyoming	0	0.000%	6,521	0.420%	6,521	n/a
<b>Total U.S.</b>	<b>1,619,982</b>	<b>100.000%</b>	<b>1,553,003</b>	<b>100.000%</b>	<b>(66,979)</b>	<b>-4.13%</b>

## SECTION II STUDY METHODOLOGY

The analysis to develop updated estimates of the population on which to base LSC funding allocations for services to agricultural workers and their dependents had two components. One was defining the “agricultural worker population”: the universe of agricultural workers and their dependents with access challenges and unique legal needs that can be addressed most effectively and efficiently by specialized legal assistance and delivery approaches. That part of the analysis was conducted by LSC itself. The second part of the analysis was estimating the total size and the geographic distribution among the 50 states, the District of Columbia, and Puerto Rico of the portion of the agricultural worker population that is eligible for LSC-funded legal assistance (the LSC-eligible agricultural worker population). LSC contracted with the Department of Labor’s Employment and Training Administration (ETA) to provide estimates of the LSC-eligible agricultural worker population.

### LSC ANALYSIS

#### Identifying the Agricultural Worker Population

The analysis conducted to identify the agricultural worker population that can be served most effectively and efficiently with specialized legal assistance and delivery approaches incorporated information from the following sources.

- *Internal LSC data sets.* These include grantee staffing, funding, and Case Services Reports (CSR) data; information in Program Quality Visit Reports conducted by the Office of Program Performance (OPP) and Case Service Report/Case Management System Review Reports conducted by the Office of Compliance and Enforcement (OCE); grant applications; and other documents.
- *Literature review.* Documents reviewed include government reports, academic and other research publications, and reports and publications of groups with subject-matter expertise. These documents are listed in Appendix C.
- *Interviews.* Interviews were conducted with individuals with expertise and knowledge regarding the demographic characteristics, social, health and economic status, legal issues and related information about agricultural workers and their dependents. These included current and former staff of government agencies, academics and other researchers, and staff of organizations with subject-matter expertise. Appendix D provides a list of those interviewed.
- *Surveys of LSC Grantees.* Separate Agricultural Worker Population surveys were conducted of the LSC grantees that receive Migrant Grants (Migrant Grantee Survey) and the basic field programs that do not receive Migrant Grants (Basic Field Grantee Survey). All of the 31 programs that receive Migrant Grants responded to the survey,

for a response rate of 100%. Of the 103 basic field programs that do not receive Migrant Grants, 70 responded to the survey, for a response rate of 68%. The survey instruments are provided in Appendices E and F.

- *Consultations* with:
  1. Executive directors and staff of LSC grantees, members of the National Legal Aid and Defender Association (NLADA) Agricultural Workers Group Project, and managers and staff of other providers of legal services to agricultural workers and their dependents.
  2. Staff of the U.S. Department of Labor Employment and Training Administration (ETA), the contractors ETA hired to develop the estimate, and the members of the expert panel the ETA contractor convened to obtain input in the development of the estimation methodology.

### **Definition of the “LSC-Eligible Agricultural Worker Population” for ETA Population Estimates**

The ETA estimate of the LSC-eligible agricultural worker population includes agricultural workers and their dependents who have incomes less than 100% of the U.S. poverty line. Although income eligibility for LSC-funded services is 125% of the poverty guidelines published annually by the U.S. Department of Health and Human Services,<sup>16</sup> Congress requires LSC to allocate funding among geographic areas based on the Census Bureau’s estimates of the poverty population. The Census Bureau estimates are based on 100% of the poverty line.

The ETA estimate of the LSC-eligible agricultural worker population includes only those persons who meet the LSC eligibility criteria regarding citizenship and alien status as set forth in Part 1626 of the LSC Regulations. LSC management recommends that the allocation for farmworker funding should be adjusted for eligibility criteria regarding citizenship and alien status because of the large proportion of the agricultural worker population that is unauthorized – approximately 50%.<sup>17</sup> Simply put, LSC funding should not be allocated for grants to serve agricultural workers and diverted from basic field grants to the extent credible data show that a material proportion of the agricultural worker population would not likely be eligible for LSC-funded services. Although LSC’s basic field grants are allocated based on Census data without adjustment for citizenship and alien status, unauthorized immigrants comprise only about 3.6% of the total U.S. population.<sup>18</sup>

---

<sup>16</sup> 45 C.F.R. § 1611(c)(1).

<sup>17</sup> U.S. DEP’T OF LABOR, EMP’T & TRAINING ADMIN., NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS), PUBLIC DATA SETS, <http://www.doleta.gov/agworker/naws.cfm> (last visited Jan. 15, 2015).

<sup>18</sup> This is calculated from American Community Survey (ACS) data and estimates developed by Jeffrey S. Passel and D’Vera Cohn. According to the 2012 American Community Survey (ACS) 1-year estimates the total U.S. population was 313.9 million people. Passel and Cohn estimated that there are 11.2 million unauthorized persons in the U.S. ( $11.2 \div 313.9 = 3.57\%$ ). AMERICAN COMMUNITY SURVEY, <http://www.census.gov/acs/www/> (last visited Jan. 16, 2015) and Jeffrey S. Passel & D’Vera Cohn,

## **ETA ESTIMATION OF THE SIZE AND GEOGRAPHIC DISTRIBUTION OF THE LSC-ELIGIBLE AGRICULTURAL WORKER POPULATION**

ETA contracted with JBS Associates (JBS) to develop the estimates of the size and distribution of the LSC-eligible agricultural worker population. Appendix A provides JBS’s memorandum setting forth in detail the methodology used to develop these estimates. A summary of the methodology is provided here.

In developing the estimation method, JBS relied on the input of a panel of experts and reviewed the methods used by other federal agencies to estimate their service populations.<sup>19</sup> The estimation methodology was based on a “top down” approach – using national data sources to develop an estimate of the total U.S. agricultural worker population and consistent data sources and methods to estimate each state’s share of that total population. In the judgment of the expert panel and ETA, this top down method provides better reliability and validity than other approaches.

There are no U.S. Census Bureau or other available data sets that provide comprehensive, reliable information regarding the size, distribution, economic and demographic characteristics, of the agricultural worker population in the U.S. Consequently, the estimates ETA provided LSC are based on a methodology that uses a combination of data sources. ETA believes that these are the best available data sets, and farmworker demographic experts consider the ETA estimation methodology the best approach for developing accurate, reliable estimates of the farmworker population.

Data from the following sources were used in these calculations: the United States Department of Agriculture (USDA) 2012 Census of Agriculture (COA), the USDA Farm Labor Survey (FLS), the Department of Labor (DOL) Bureau of Labor Statistics’ Quarterly Census of Employment and Wages (QCEW), the DOL National Agricultural Workers Survey (NAWS), the DOL Office of Foreign Labor Certification (OFLC) H2-A and H-2B worker certification data, the DOL “Adverse Effect Wage Rate” (AEWR) data, and the U.S. Census Bureau poverty thresholds.

---

*Unauthorized Immigrant Totals Rise in 7 States, Fall in 14: Decline in Those From Mexico Fuels Most State Decreases*” (Pew Research Ctr.’s Hispanic Trends Project, Nov. 2014), <http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/> (last visited Jan. 16, 2015).

<sup>19</sup> The panel of experts consisted of: Dr. Edward Kissam, trustee of the Werner Konhnstamm family fund and long-term farmworker researcher involved in population estimates; Dr. Phil Martin, professor of agricultural economics at the University of California Davis and author of several publications on estimating farmworkers; and Dr. Don Villarejo, founder and retired director of the California Institute for Rural Studies and an expert in farmworker data.



The following are the specific data sets used in the calculations to develop the estimates of the LSC-eligible agricultural worker population:

- The *base estimate of the number of agricultural workers* in each state was calculated using data from the COA, the NAWS, and the FLS. (The base number of forestry workers employed QCEW data rather than FLS data.)
- The *base estimate of the number of LSC-eligible agricultural workers (and their dependents) (i.e., household income below poverty line and citizenship or alienage eligibility based criteria of Part 1626 of the LSC Regulations)* in each state was calculated using the U.S. Census Bureau poverty thresholds and data from the NAWS.
- The *number of LSC-eligible agricultural workers (and their dependents) who are temporarily out of the agricultural workforce* in each state was calculated using the U.S. Census Bureau poverty thresholds and data from the COA, the NAWS, and the FLS.
- The *number of LSC-eligible retired agricultural workers (and their dependents)* in each state was calculated using the U.S. Census Bureau poverty thresholds and data from COA, the NAWS, and the FLS.
- The *number of LSC-eligible H-2A agricultural workers and H-2B forestry workers* in each state was calculated using the U.S. Census Bureau poverty thresholds, AEWR data, OFLC H2-A and H-2B worker certification data, and data from the NAWS.

The estimates developed through the calculations identified above were then used to calculate the estimates of the LSC-eligible agricultural worker population for each state and in the U.S.

The estimates of the LSC-eligible agricultural worker population for each state is equal to the sum of:

- The base estimate of the number of LSC-eligible agricultural workers (and their dependents) in the state;
- The total number of LSC-eligible agricultural workers (and their dependents) who are temporarily out of the agricultural workforce in the state;
- The total number of LSC-eligible retired agricultural workers (and their dependents) in the state; and
- The total number of number of LSC-eligible H-2A agricultural workers and H-2B forestry workers in each state.

The estimate of the total LSC-eligible agricultural worker population in the U.S. is the sum of all of the states' LSC-eligible agricultural worker populations.

### SECTION III LSC FUNDING OF FARMWORKER LEGAL SERVICES

LSC has provided funding for specialized legal assistance to migrant and seasonal farmworkers since LSC's establishment.<sup>20</sup> This has been based on LSC's determination that specialized services were needed to ensure the provision of legal assistance that would most effectively and efficiently address the particular access difficulties and legal problems this population faced. This targeted funding parallels the approach Congress has adopted to address the particular needs of farmworkers in a wide range of other areas.

#### **A. LSC's Legal Authority for Sub-Population Grants**

The LSC Act provides broad general authority for LSC grantmaking for "the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." 42 U.S.C. § 2996b(a). Section 1006(a)(1) of the LSC Act authorizes LSC "(A) to provide financial assistance to qualified programs furnishing legal assistance to eligible clients . . . and (B) to make such other grants and contracts as are necessary to carry out the purposes and provisions [of the LSC Act.]" 42 U.S.C. § 2996e(a)(1)(A) and (B). Starting in 1996, Congress has appropriated almost all grant funds (with the exception of funds for Technology Initiative Grants and Pro Bono Innovation Fund Grants) in a single broad category – basic field programs providing direct legal services. The LSC Act does not further define the nature of those grants and leaves to LSC the discretion to determine what types of grants to provide to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas." 42 U.S.C. § 2996f(a)(3).

In the 1977 reauthorization of the LSC Act, Congress recognized the needs of special populations by requiring LSC to conduct a study of the legal needs of migrants and seasonal farmworkers and other specific subpopulations and to implement methods of addressing those needs. Pub. L. 95-222, § 13, adding § 1007(h) of the LSC Act, codified at 42 U.S.C. § 2996f(h). Section 1007(h) of the LSC Act provides:

The Corporation shall conduct a study on whether eligible clients who are—

- (1) veterans,
- (2) native Americans,
- (3) migrants or seasonal farm workers,
- (4) persons with limited English-speaking abilities, and,
- (5) persons in sparsely populated areas where a harsh climate and an inadequate transportation system are significant impediments to receipt of legal services

---

<sup>20</sup> This funding built on and expanded the legal assistance previously funded by the Legal Services Program of the Office of Economic Opportunity (OEO) and the Department of Labor.

have special difficulties of access to legal services or special legal problems which are not being met. The Corporation shall report to Congress no later than January 1, 1979, on the extent and nature of any such problems and difficulties and shall include in the report and implement appropriate recommendations.

As directed by Congress, LSC's Section 1007(h) Study (hereafter, 1007(h) Study), issued in 1979, identified each of these population's access difficulties and special legal problems and also identified the measures LSC should implement to ensure these groups' legal needs were addressed most effectively and efficiently.<sup>21</sup> LSC implemented a range of measures to ensure the particular needs of each of these populations were met. It determined that earmarked funding was needed to ensure that the requisite capacities were in place to serve two of these populations: Native Americans and migrant and seasonal farm workers. Earmarked grants for legal assistance to these groups have continued ever since then.

## **B. Historical Rationale for Earmarked Funding for Farmworker Legal Services**

### **LSC Section 1007(h) Study**

The 1007(h) Study articulated the rationale for earmarked funding for legal assistance to migrant and seasonal farmworkers.<sup>22</sup> It concluded that "migrant farmworkers face five significant barriers to access to legal services that are special and arise out of the type and conditions of work in which they are engaged and out of their cultural and ethnic background."<sup>23</sup> These are:

- Physical barriers, *e.g.*, distance, migrants' lack of transportation, work hours that conflict with legal services office hours, and housing in labor camps to which legal services personnel are denied access;
- The limited time migrants are in a program's service area;
- Migrants' limited English proficiency;
- The inability or unwillingness of migrants to communicate about their working and living conditions, which "is because of their almost absolute economic dependence upon their employers and crew leaders;" and
- Migrants' view that the legal system is not a favorable means of resolving disputes and their reluctance to seek the assistance of legal aid programs.

---

<sup>21</sup> LEGAL SERVICES CORPORATION, SPECIAL LEGAL PROBLEMS AND PROBLEMS OF ACCESS TO LEGAL SERVICES OF VETERANS, MIGRANT AND SEASONAL FARM WORKERS, NATIVE AMERICANS, PEOPLE WITH LIMITED ENGLISH-SPEAKING ABILITY, AND INDIVIDUALS IN SPARSELY POPULATED AREAS ("1007(h) Study") Vol. I, Chap. I (1979).

<sup>22</sup> The 1007(h) Study's full analysis of migrant and seasonal farmworkers' special access needs and unmet special legal needs are elaborated in Volume I, Chapter I, Section III-D, and in Chapter V of the 1007(h) Study.

<sup>23</sup> *Id.* at 305-308.

The study found that seasonal farmworkers also faced barriers to legal assistance related to their dependence on employers (though this was not as great as migrants' dependence on employers), limited English proficiency, and their unwillingness to seek out lawyers or use the legal system to resolve their problems.

The study identified “four major areas presenting legal problems for migrant and seasonal farmworkers which are special and, according to our data, not fully met.” These areas are employment, immigration and discrimination related problems of non-citizens authorized to be in the U.S., public benefits, education, and migrants' housing. The study found that these workers also “faced particular problems with consumer and credit, problems that are aggravated by language and cultural difficulties.”<sup>24</sup>

Based on these findings, the 1007(h) study made clear that LSC expected recipients of “Migrant Grants” to serve migrant farmworkers *and* seasonal farmworkers. However, LSC continued to allocate funding for services to this population based only on the estimated size of the population of migrant farmworkers. This discrepancy between the broader population actually served and the narrower population counted for purposes of determining funding allocations remains a part of LSC’s current funding of farmworker programs. The updated population count presented in this analysis addresses this inconsistency.<sup>25</sup>

### **Federal Laws and Federal Programs Targeting Farmworkers**

Congress has established a range of federal programs designed to provide the specialized services required to address the particular needs of migrant and other farmworkers. Nearly all of these programs serve populations broader than *migrant* farmworkers and their dependents. These include the following:<sup>26</sup>

- The Migrant and Seasonal Farmworkers Program, administered by the Department of Education, provides vocational rehabilitation grants for targeted projects because “States with projects funded through this program are better equipped to provide *specialized services* needed to effectively serve migrant and seasonal farmworkers with disabilities.”<sup>27</sup>

---

<sup>24</sup> *Id.* at 313-315.

<sup>25</sup> See the discussion presented in Section VIII below.

<sup>26</sup> Other programs serving farmworker populations broader than migrants include the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP) educational programs, and the Rural Farm Labor Housing program. The Department of Education’s Migrant Education Even Start and Migrant Education Program focus exclusively on the needs of migrants and their dependents.

<sup>27</sup> U.S. Dep’t of Educ., *Migrant and Seasonal Farmworkers Program*, <http://www2.ed.gov/programs/rsamigrant/index.html> (last visited Jan. 15, 2015).

- The Migrant Health Center Program, administered by the Department of Health and Human Services, Health Resources and Services Administration, provides targeted funding for health centers to serve migrant and seasonal farmworkers, because they comprise a “special medically underserved population.”<sup>28</sup>
- The Migrant and Seasonal Head Start Program, administered by the Department of Health and Human Services, Administration of Children and Families, Office of Head Start, seeks to accomplish the goals of all Head Start programs – ensuring a greater degree of social competency and school readiness within each child. It serves additional goals as well because Migrant and Seasonal Head Start “children and families have unique characteristics and circumstances that differentiate their program service needs from traditional Head Start children and families.”<sup>29</sup>
- The National Farmworker Jobs Program, administered by the Department of Labor, Employment and Training Administration, provides employment and training services and housing assistance for migrant and seasonal farmworkers in order to “counter the chronic unemployment and underemployment experienced by MSFWs who depend primarily on jobs in agricultural labor performed within the United States and Puerto Rico.”<sup>30</sup>
- The Migrant and Seasonal Farmworkers Monitor Advocate System, administered by the Department of Labor, Employment and Training Administration, seeks to ensure that the services provided migrant and seasonal farmworkers “are ‘qualitatively equivalent and quantitatively proportionate’ to the services provided to other jobseekers. This means that MSFWs should receive all workforce development services, benefits and protections on an equitable and non-discriminatory basis (i.e. career guidance, testing, job development, training, and job referral).”<sup>31</sup>

Thus, earmarked funding for legal services to migrant and seasonal farmworkers parallels the approach Congress has adopted to meet the particular needs of migrants and other farm workers in the areas of education, health, and employment.

---

<sup>28</sup> Health Care Consolidation Act of 1996, Pub. L. No. 104-299, § 330(g), 110 Stat. 3628 (1996).

<sup>29</sup> U.S. DEP’T OF HEALTH AND HUMAN SERV., ADMIN. FOR CHILDREN AND FAMILIES, OFFICE OF HEAD START, EFFECTIVE PARTNERSHIPS GUIDE: IMPROVING ORAL HEALTH FOR MIGRANT AND SEASONAL HEAD START CHILDREN AND THEIR FAMILIES, <http://eclkc.ohs.acf.hhs.gov/hslc/states/collaboration/docs/effective-partnerships-guide-oral-health-mshs-v3.pdf> (last visited Jan. 15, 2015).

<sup>30</sup> U.S. DEP’T OF LABOR, EMP’T AND TRAINING ADMIN., THE NATIONAL FARMWORKER JOBS PROGRAM, <http://www.doleta.gov/Farmworker/html/NFJP.cfm> (last visited Jan. 15, 2015).

<sup>31</sup> U.S. DEP’T OF LABOR, EMP’T AND TRAINING ADMIN., MIGRANT AND SEASONAL FARMWORKERS MONITOR ADVOCATE SYSTEM, <http://www.doleta.gov/programs/msfw.cfm> (last visited Jan. 15, 2015).

## C. LSC Funding for Farmworker Legal Assistance Since 1974

### Farmworker Funding Prior to FY1996

The earmarked funding LSC has provided for migrant legal services built on the legal assistance previously funded by the Legal Services Program of the Office of Economic Opportunity (OEO) and the Department of Labor. LSC funding allocations to Migrant Grants from the early 1980s through FY1996 reflected policies implemented by LSC during the 1979-1981 periods, which immediately followed the issuance of the 1007(h) Study. Starting in 1986, Congress set specific funding amounts (“lines”) for migrant legal services and several other funding categories or entities (*e.g.*, Native American grantees, national and state support, the National Clearinghouse) in LSC’s annual appropriation.<sup>32</sup> These funding lines specified the *minimum* amounts of funding that LSC had to provide grantees for the identified purposes. The FY93 and FY94 appropriations laws specified the use of the Migrant Health Atlas<sup>33</sup> and the Larson-Plascencia study<sup>34</sup> to govern the distribution of funding *increases* among migrant programs.<sup>35</sup> (The total migrant population was derived from the Migrant Atlas; the distribution among states was based on the Larson-Plascencia enumeration.)

The relative share of LSC funding allocated by Congress to migrant, basic field and Native American budget lines remained stable throughout the FY82-FY95 period,<sup>36</sup> suggesting that

---

<sup>32</sup> Making Continuing Appropriations for the Fiscal Year 1987, and for Other Purposes, Pub. L. No. 99-500, 100 Stat. 1783-69 (1986).

<sup>33</sup> U.S. DEP’T OF HEALTH AND HUMAN SERV., PUB. HEALTH SERV., HEALTH RES. AND SERV. ADMIN., BUREAU OF HEALTH CARE DELIVERY AND ASSISTANCE, MIGRANT HEALTH PROGRAM, AN ATLAS OF STATE PROFILES WHICH ESTIMATE NUMBER OF MIGRANT AND SEASONAL FARMWORKERS AND MEMBERS OF THEIR FAMILIES (1990) (Migrant Health Atlas), *available at* <http://files.eric.ed.gov/fulltext/ED332857.pdf>.

<sup>34</sup> ALICE C. LARSON & LUIS PLASCENCIA, MIGRANT ENUMERATION PROJECT, (Tomas Rivera Center, Univ. of Tex at San Antonio 1993).

<sup>35</sup> Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. 102-394, 106 Stat. 1792, 1861 (1992) and Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1994, Pub. L. 103-121, 107 Stat. 1153, 1184 (1993).

<sup>36</sup> The respective funding levels for Migrant Grants for the following years are illustrative (expressed as a percentage of the sum of migrant, basic field, and Native American grant funds): FY82 – when the 1979-1981 policies were first reflected in funding levels – 3.58%; FY85 – the year before Congress began setting funding floors – 3.60%; FY86 – the first year after floors were set – 3.40%; FY94 – the last year the Migrant Health Atlas-Larson-Plascencia numbers were used to specify allocation of migrant funding issues – 3.50%; and FY95 – the last year funding “lines” were set for migrant and other funding categories – 3.46%. The small variances in these numbers may have resulted from data inconsistencies (*e.g.*, the tables from which these data are drawn are from different data sets), shifts in the amounts going to categories other than migrant, basic field or Native Americans, rounding, etc.

Congress did not intend to change the migrant funding policy or allocations that LSC had set in 1981.

### **Farmworker Funding Since FY1996**

The FY96 LSC appropriation eliminated all “lines” for special legal services except for Native American funding. LSC determined that the access barriers and unique legal needs of migrant and seasonal farmworkers and their dependents would be met most effectively and efficiently by continuing to provide grants for specialized assistance to this population. Accordingly, LSC notified Congress of its plans to continue providing Migrant Grants.<sup>37</sup> LSC then implemented the policy that has guided migrant funding until today. This policy’s major elements include:

- Funding for migrant legal services is based on the estimated size of the migrant poverty population in each geographic area. The funding for this population is “backed out” of the funding for the rest of a state’s poverty population.
- The 1990 Migrant Health Atlas figure used to estimate the total migrant population was 1,661,875.<sup>38</sup> LSC determined in 1995 that 70% of this population – 1,116,195 – had incomes below the poverty line.
- The distribution of the total migrant population among states is based on the Larson-Plascencia data.
- The Migrant Health Atlas and Larson-Plascencia estimates were used in the FY96 funding policy because they had the imprimatur of Congress; as noted above, the FY93 and FY94 LSC appropriations had required their use for allocating increases in migrant funding for those years.

LSC’s current funding for migrant services assumes that changes in the total size of the migrant population since the implementation of the FY96 policy (then based on 1990 data) have closely mirrored the changes in the size of the total U.S. poverty population. (The increase in the total poverty population served by LSC grantees since the 1990 Census is 40.2%; the increase in the estimated size of the migrant population is 39.3%.) Based on this assumption, the current migrant population for LSC funding purposes is 1,619,982, which is 3.39% of the total poverty population served by LSC grantees.

---

<sup>37</sup> In December 1995 and March 1996, LSC President Alex Forger notified Congress of its plans to implement for FY1996 the migrant funding policy set forth above. Both communications requested that Congress notify LSC if it had objections to the migrant funding policy LSC intended to implement. Congress did not notify LSC of any such concerns. LSC’s final FY96 appropriation, enacted after the December 1995 communication, provided no language pertaining to migrant funding.

<sup>38</sup> Migrant Health Atlas, *supra* note 33, at 13 (Table II – Adjusted State Profiles).

## SECTION IV

### THE NEED TO UPDATE THE POPULATION ESTIMATES FOR ALLOCATING FUNDING FOR SPECIALIZED SERVICES TO THE AGRICULTURAL WORKER POPULATION

There are two reasons why the population estimates used to allocate funding for farmworker legal services need to be updated. First, the data on which the population estimates are based are over 20 years old. There have been many changes in the agricultural worker population during those 20 years that affect their number and characteristics. Second, the population on which funding allocations are based should match the population of agricultural workers that require specialized legal assistance and that are served by farmworker programs.

#### **The Need for Current Data**

As described in Section III regarding LSC's funding of specialized assistance for the agricultural worker population, the funding level for farmworker legal services since FY1996 has been based on data sets from the late 1980s and early 1990s. The total migrant population estimate implemented for FY1996 funding allocations was derived from the 1990 Migrant Health Atlas, which was based on data collected in 1987-1989, and poverty estimates from the early 1990s. Those estimates were updated in 2003 and 2013 based on the untested assumption that the migrant population had increased at the same rate as the total U.S. poverty population.

The estimated distribution of the migrant population among states has since 1996 been based on the estimates of the 1993 Migrant Enumeration Project. Those estimates were based on data from sources including the 1990 Migrant Health Atlas, U.S. Bureau of Labor Statistics (BLS) data from 1989-1991, Migrant Health and Migrant Education data from 1990 and 1991, and the 1987 Census of Agriculture. Those estimates were updated in 2003 and 2013 based again on the untested assumption that the migrant population in each state had increased at the same rate as the total U.S. poverty population.

#### **Discrepancy between the Population Base for Farmworker Funding and the Farmworker Population of Needing Specialized Services**

*The 1007(h) Study.* Section III also noted that since 1979 there has been a discrepancy between the population base for determining farmworker funding, which is based on the migrant population, and the much broader agricultural worker population that requires and is provided specialized services by LSC grantees. The 1007(h) study concluded that specialized legal expertise and knowledge were needed to address the distinctive "unmet special legal problems" that migrants *and seasonal farmworkers* shared because of their status as farmworkers. Migrant Grantees were expected to serve migrant farmworkers, as well as seasonal farmworkers on non-status related issues, even though Migrant Grants were based on the size of the migrant population and "seasonal farmworkers are counted in the census figures used by the Corporation for funding allocations to field programs." Nonetheless, LSC



maintained the existing formula that allocated migrant funding based on the number of migrants in a service area.<sup>39</sup>

The 1007(h) study reported that field programs had the legal expertise to assist seasonal farmworkers in their service areas on legal issues *unrelated* to their status as farmworkers. However, “[c]reating a duplicate delivery system for farmworkers – one for [farmworker] status-related problems and another for other problems – may often be impractical, if not impossible” because a range of factors constrained the ability of field programs to provide these services effectively. For example, migrants and seasonal farmworkers often shared the same language and culture, lived in the same communities, had close family and social ties, and had similar legal needs, and as “a natural result of intense caseload and other pressures,” basic field programs might routinely refer to the migrant program Spanish-speakers or “those who appear to be ‘migrants.’”<sup>40</sup>

The 1007(h) study stated that decisions on how to resolve this access problem would be left to local programs, but “with continuing monitoring and oversight” by LSC staff. If local programs did “resolve this access problem on their own,” LSC would consider “require[ing] the migrant components to serve only migrants,” or “altering the service and funding allocation formulas.”<sup>41</sup>

*The McKay Letter.* LSC management did not formally address this issue until 2000, when LSC President John McKay sent a letter to directors of LSC grantees that provided guidance about the scope and focus of migrant legal services grantees’ work. The McKay letter emphasized that the “factors enumerated in the 1007(h) Study are as true as they were 22 years ago.” To address eligible clients’ legal needs, the letter stated that LSC expected migrant legal services projects to “primarily represent those clients in need of legal assistance from a specialized migrant unit because (1) they are faced with barriers which otherwise restrict clients’ access to legal assistance and (2) they have specialized legal needs which arise from their work in agriculture and status as a farmworker.”

The letter broadly defined the universe of agricultural workers that migrant programs should serve. It affirmed that migrant programs should serve seasonal farmworkers and also stated that these programs should serve clients conducting “some types of work, not typically thought of as ‘farm work’ or agricultural employment.” The additional types of work were forestry, nursery work, cotton ginning, mushroom growing, seed conditioning, pine bough tying, aloe vera processing, work on sod farms, work in meat and poultry processing plants, livestock and feed lot work, shepherding, work on egg farms, and tobacco housing, stripping, and warehousing.

---

<sup>39</sup> 1007(h) Study, *supra* note 21 at 315.

<sup>40</sup> *Id.* at 311.

<sup>41</sup> *Id.* at 38-40.

The identification of an expanded universe of agricultural workers that migrant programs should serve – and in fact were already serving – did not result in a similar change in the funding formula. Allocations were still based on the size of the migrant population. However, the McKay letter effectively endorsed a dual farmworker delivery system discussed in the 1007(h) study, as it advised Migrant Grantees to focus their work on issues related to clients' status as migratory and agricultural workers, leaving to basic field programs representation of those workers on issues not related to their status as migratory and agricultural workers.

## SECTION V

### UNIQUE LEGAL NEEDS OF AGRICULTURAL WORKERS

The unique legal needs of farmworkers and their dependents arise from the nature of agricultural work and the laws and regulations that have particular significance for the agricultural workforce, and the limitations of the agencies responsible for enforcing these laws and regulations.

#### A. The Nature of Agricultural Work

##### The Dangers and Physical Demands of Agricultural Work

Government data regarding occupational fatality and injury rates reflect that agricultural work is highly dangerous and physically demanding. In 2013, for example, the fatality rate for the farming, fishing, and forestry industry was seven times the rate for all private industry. The fatality rate was 69% higher than for the industry with the next highest rate (transportation and warehousing).<sup>42</sup>

The farming, fishing, and forestry industry category likewise had the highest rate of nonfatal occupational injuries and illnesses among private industry. In 2013, its rate was 71% higher than the rate for all private industry and 43% higher than the industry with the next highest rate (construction).<sup>43</sup>

Agricultural workers experience especially high rates of heat stress, musculoskeletal pain, respiratory illness, and gastrointestinal illness. Because of the extensive use of pesticides and the proximity of farmworker housing to the fields, the agricultural workers and their families suffer from significantly elevated rates of pesticide poisoning. These workplace hazards are compounded by the conditions of farmworker housing that are discussed below.<sup>44</sup>

---

<sup>42</sup> U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, CENSUS OF FATAL OCCUPATIONAL INJURIES CHARTS, 1992-2013 (PRELIMINARY DATA), <http://www.bls.gov/iif/oshcfoi1.htm#2013> (last visited Jan. 16, 2015).

<sup>43</sup> U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, TABLE 5. INCIDENCE RATE AND NUMBER OF NONFATAL OCCUPATIONAL INJURIES BY SELECTED INDUSTRIES AND OWNERSHIP, 2013, <http://www.bls.gov/news.release/osh.t05.htm> (last visited Jan. 16, 2015).

<sup>44</sup> Wide-ranging research, including numerous studies supported by the National Institute for Occupational Safety and Health (NIOSH), has documented the health status of the farmworker population. See Don Villarejo, *Health-Related Inequities Among Hired Farm Workers and the Resurgence of Labor-intensive Agriculture* (The Kresge Foundation, Troy, Michigan, 2012) (providing a very useful overview of much of the literature); Thomas Arcury & Sara A. Quandt, *Living and Working Safely: Challenges for Migrant and Seasonal Farmworkers* 72(6):466-70 (N. C. Med. J. Nov.-Dec. 2011); G.M. Calvert, J. Karnik, L. Mehler, J. Beckman, B. Morrissey, J. Sievert, R. Barrett, M. Lackovic, L. Mabee, A. Schwartz, Y. Mitchell, & S. Moraga-McHaley, *Acute pesticide poisoning among agricultural workers in the United States, 1998-2005*, 51(12):883-98 (American J. Of Indus. Med., Dec.

These workplace hazards are exacerbated by insufficient field sanitation facilities, as significant numbers of agricultural workers lack required drinking water, toilets, and hand washing facilities in the fields where they work. According to the most recent National Agricultural Workers Survey, 6% of workers were provided no water and no cups, 2% were not provided toilets and 2% were not provided water for washing their hands.<sup>45</sup>

It should be noted that because of data limitations the actual prevalence of workplace injuries may be significantly higher than reported. Farms with fewer than 11 employees comprise 93% of all farms and employ 46% of all hired workers and such farms are not required to report

---

2008); K. Emmi, K. Jurkowski, N. Codru, E. Bell, M. Kacica, & T. Carter, *Assessing the health of migrant and seasonal farm workers in New York State: statewide data 2003-2005* 21(2):448-63 (J. of Health Care for the Poor and Underserved, May 2010); R. Mines, J. Hausman, & L. Tabshouri, *The Need for Targeted Surveys of Farm Workers: A Comparison of the California Health Insurance Survey (CHIS) and the California Agricultural Workers Health Survey (CAWHS)* (Cal. Inst. for Rural Studies, Davis, CA 2005); A. Steege, S. Baron, & X. Chen, *Occupational Health of Hired Farm Workers in the United States, National Agricultural Workers Survey, Health Supplement*, 1999. (Nat'l Inst. for Occupational Safety and Health, NIOSH Publ'n No. 2009-119, 2009); U. S. Ctr. for Disease Control and Prevention, *Heat-related deaths among crop workers – U. S., 1992-2006* 57(24):649-53 (Morbidity and Mortality Weekly Report, June 2008); Maria, Stoecklin-Mariosa, Tamara Hennessey-Burt, Dianne Mitchell, & Marc Schenker, *Heat Related Illness Knowledge and Practices Among California Hired Farmworkers in the MICASA Study* 51(1):47-55 (Industrial Health, 2013); U.S. Ctr. for Disease Control and Prevention, Nat'l Inst. for Occupational Safety and Health, *Respiratory Disease in Agricultural Workers: Mortality and Morbidity Statistics* (2007); A.L. Gentry, J.G. Grzywacz, S.A. Quandt, S.W. Davis, & T.A. Arcury, *Housing Quality Among North Carolina Farmworker Families* (J. of Agric. Safety & Health 13(3):323-337, 2007); Marc Schenker & Stephen McCurdy, *Occupational Health Among Migrant and Seasonal Farmworkers: The Specific Case of Dermatitis* (Am. J. of Indus. Med. 18:345-351, 1990); J. Paul Leigh, Marc Schenker, & Stephen McCurdy, *Occupational Health Among Migrant and Seasonal Farmworkers: The Specific Case of Dermatitis* (Pub. Health Rep. Vol. 116, May-June 2001); Stephen J. Reynolds, Matthew W. Nonnenmann, Joannis Basinas, Margaret Davidson, Lena Elfman, John Gordon, Shelley Kirychuk, Sue Reed, Joshua W. Schaffer, Marc Schenker, Vivi Schlunssen, & Torben Sigsgaard, *Systematic Review of Respiratory Health Among Dairy Workers* (J. of Agromedicine 18:3, 219-243, 2013); S.R. Kirkham & M.B. Schenker, *Current Health Effects of Agricultural Work: Respiratory Disease, Cancer, Reproductive Effects, Musculoskeletal Injuries, and Pesticide-Related Illnesses* (J. of Agric. Safety & Health 8(2):199-214, 2002); Lance George, Mary Lee Hall, Ilene J. Jacobs, Ann Moss Joyner, Ed Kissam, Shelley Latin, Allan Parnell, Virginia Ruiz, Nargess Shadbeh, & Janet Tobacman, *Farmworker Housing Standards and Regulations, Their Promise and Limitations, and Implications for Farmworker Health* (Key Rep. 1 from the Transdisciplinary Conference on Farmworker Housing Quality and Health, Crystal City, Va., Nov. 11, 2014); and Sara A. Quandt, Carol Brooke, Kathleen Fagan, Allyson Howe, Stephen A. McCurdy, Lisel Holdenried, Thomas K. Thornburg, & Don Villarejo, *Farmworker Housing and Its Impact on Health* (Key Rep. 2 from the Transdisciplinary Conference on Farmworker Housing Quality and Health, Crystal City, Va., Nov. 11, 2014).

<sup>45</sup> NAWS, *supra* note 17.

occupational injury data.<sup>46</sup> Research indicates that workers on small farms have higher rates of occupational injuries than workers on larger farms.<sup>47</sup> In addition, the U.S. Government Accountability Office (GAO) reports that underreporting of occupational injuries likely results from shortcomings of the data collection procedures of the Bureau of Labor Statistics (BLS) and the Occupational Safety and Health Administration (OSHA). GAO also found “disincentives that affect workers’ decisions to report work-related injuries and illnesses and employers’ decisions to record them.” The employer disincentives lie in potentially increased worker compensation costs and adverse impacts on obtaining contracts that result from higher injury rates. Worker disincentives include fear of job loss and other retaliatory actions.<sup>48</sup>

### **Agricultural Work Is Generally Temporary, Insecure and Low-Paid**

Temporary nature of agricultural work. Because of the seasonal nature of much farm work and the varying demands for labor, few crop workers work year-round. NAWS data show that for the 1995-2009 period, the average number of weeks per year that crop workers were employed in agriculture ranged from 24 to 35.<sup>49</sup> Over the 2005-2009 period, three crop workers in four were employed for less than nine months a year in farm work.<sup>50</sup>

Insecurity of agricultural work. Agricultural workers’ employment is also insecure because the agricultural labor market has a surplus of workers. According to one study, “there are 2 to 2.5 farm workers for each year-round equivalent job.”<sup>51</sup> Agriculture typically has unemployment rates twice those of other private wage and salary workers.<sup>52</sup> Although this gap narrowed in recent years because of the significant increases in non-farm unemployment caused by the 2008 recession, the unemployment rates for agricultural workers in 2012 and 2013 were 12.4%

---

<sup>46</sup> U.S. DEP’T OF AGRIC., NAT’L AGRICULTURAL STATISTICS SERV., 2012 CENSUS OF AGRICULTURE, Vol. 1 Geographic Area Series Part 51, 300 (2014) (2012 Census of Agriculture) (Table 7. Hired Farm Labor – Workers and Payroll: 2012), *available at* [http://www.agcensus.usda.gov/Publications/2012/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_US/usv1.pdf](http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf).

<sup>47</sup> VILLAREJO, HEALTH-RELATED INEQUITIES AMONG HIRED FARM WORKERS AND THE RESURGENCE OF LABOR-INTENSIVE AGRICULTURE 7-8, *supra* note 44

<sup>48</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-10-10, WORKPLACE SAFETY AND HEALTH. ENHANCING OSHA’S RECORDS AUDIT PROCESS COULD IMPROVE THE ACCURACY OF WORKER INJURY AND ILLNESS DATA, (2009).

<sup>49</sup> NAWS, *supra* note 17.

<sup>50</sup> BON APPETIT MGMT CO. FOUND. & UNITED FARM WORKERS, INVENTORY OF FARMWORKER ISSUES AND PROTECTIONS IN THE U.S. 15 (United Farm Workers, March 2011), *available at* [http://www.ufw.org/pdf/farmworkerinventory\\_0401\\_2011.pdf](http://www.ufw.org/pdf/farmworkerinventory_0401_2011.pdf).

<sup>51</sup> PHILLIP MARTIN, FARM LABOR AND H-2A (Univ. of Cal.-Davis, 2014).

<sup>52</sup> WILLIAM KANDEL, ECON. RESEARCH REPORT NO. 60, PROFILE OF HIRED FARMWORKERS: A 2008 UPDATE 16-19 (U.S. Dep’t of Agric., July 2008).

and 10.1%, respectively, in contrast to unemployment rates for other private wage and salary workers, which were 7.9% and 7.2%.<sup>53</sup>

Low compensation for agricultural work. Compensation for agricultural work is very low relative to compensation for other workers. Median weekly wages of all full-time agricultural workers are 55% of the wages paid to all wage and salary full-time workers.<sup>54</sup> Full-time crop workers earn only 53% of the median weekly wages of all wage and salary full-timers. The median weekly earnings of livestock workers and crop workers both fall below the median level for major “low skill occupations,” with crop workers earning less than all of these workers, except for dishwashers.<sup>55</sup>

Because of intense labor demands during the growing season, agricultural workers often work long hours: in the 2005-2009 period, 51% of crop workers averaged working 41-60 hours a week and 8% averaged working more than 60 hours a week. During the same period, 51% of crop workers averaged working six or more days a week.<sup>56</sup>

## **B. Laws and Regulations That Affect Agricultural Workers**

The federal laws that have the most significance for agricultural workers are the Fair Labor Standards Act; the Migrant and Seasonal Agricultural Worker Protection Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Occupational Safety and Health Act; the National Labor Relations Act; and the Immigration and Nationality Act. The following is a very brief summary of the provisions of these laws that have the most significant impact on agricultural workers’ well-being and legal needs.<sup>57</sup>

---

<sup>53</sup> U.S. DEP’T OF LABOR, BUREAU OF LABOR STATISTICS, HOUSEHOLD DATA ANNUAL AVERAGES, 26. UNEMPLOYED PERSONS BY INDUSTRY, CLASS OF WORKER, AND SEX, <http://www.bls.gov/cps/cpsaat26.pdf> (last visited Jan. 16, 2015).

<sup>54</sup> U.S. DEP’T OF LABOR, BUREAU OF LABOR STATISTICS, HOUSEHOLD DATA ANNUAL AVERAGES, 39. MEDIAN WEEKLY EARNINGS OF FULL-TIME WAGE AND SALARY WORKERS BY DETAILED OCCUPATION AND SEX, <http://www.bls.gov/cps/cpsaat39.pdf> (last visited Jan. 16, 2015). *See also* KANDEL, *supra* note 52 at iv.

<sup>55</sup> KANDEL, *supra* note 52 at iv, 20-23.

<sup>56</sup> BON APPÉTIT MGMT CO. FOUND., *supra* note 50, at 14.

<sup>57</sup> For summaries of these laws and regulations as they apply to agricultural workers *see* Jack Runyan, *Summary of Federal Laws and Regulations Affecting Agricultural Workers*, (U.S. Dep’t of Agric., Econ. Research Serv., July 2000); Susan Reed & Ilene Jacobs, *Serving Farmworkers* 38:5-6 (Clearinghouse Rev., Sept.-Oct. 2004); Brian Craddock, *Federal and State Employment Standards and U.S. Farm Labor. A Reference Guide to Labor Protective Laws and Their Applicability in the Agricultural Workplace* (Motivation Educ. & Training, Inc., Apr. 1988); OxFam Am., *Like Machines in the Fields: Workers without Rights in American Agriculture* (OxFam Am. Rep., 2004); Bon Appétit Mgmt. Co. Found. & United Farm Workers, *Inventory of Farmworker Issues and Protections in the United States* (2011); Megan Horn & Nicholas Marritz, *Unfinished Harvest: The Agricultural Worker Protection Act at 30* (Farmworker Justice, 2013); William Beardall (ann. by Gregory Schell), *Migrant and Seasonal*

*The Migrant and Seasonal Agricultural Worker Protection Act (AWPA).*<sup>58</sup> The Act contains provisions with protections for migrant and seasonal workers related to pay, working conditions, housing, and transportation.

### **Key provisions**

- AWPA requires employers to:
  1. Inform workers of the terms of employment at the time they are recruited;
  2. Comply with the employment terms related to wages and hours and other issues such as housing and transportation, if they are provided; and
  3. Confirm that the farm labor contractors they use are registered with and licensed by DOL.
- AWPA also requires that:
  1. Farmworker housing meets local and federal housing standards; and
  2. Providers of agricultural workers' transportation certify that the vehicles they use meet appropriate safety standards and are insured.
- The AWPA "joint employer" provision specifies that if a worker has been hired through a farm labor contractor (FLC), *both* the grower and the FLC are subject to AWPA's requirements. This provision is designed to prevent growers from evading responsibility for violations of their employees' rights by asserting that the FLCs are the employers and, therefore, are solely responsible for these violations.
- AWPA provides workers a private right of action.

The survey of LSC Farmworker Programs found that 93.3% of the programs provided representation to agricultural workers with regard to AWPA violations related to the terms of employment, including housing and transportation standards.

*The Fair Labor Standards Act (FLSA).*<sup>59</sup> FLSA contains provisions governing minimum wages, overtime, child labor, and recordkeeping.

### **Key provisions**

- FLSA requires employers to pay workers for all hours workers and to pay workers at least the federal minimum wage. However, farms with fewer than 11 employees

---

*Agricultural Worker Protection Act, Outline and Annotations, March 2014 Update* (Tex. Equal Justice Ctr., Austin, Tex.); and William Beardall (ann. by Gregory Schell), *Outline of Fair Labor Standards Act in Agriculture and Related Employment, March 2014 Update*, (Tex. Equal Justice Ctr., Austin, Tex.).

<sup>58</sup> Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801-1872.

<sup>59</sup> Fair Labor Standards Act, 29 U.S.C. §§ 201-219.

(which comprise 93% of all farms and employ 46% of all hired workers)<sup>60</sup> are exempt from the federal minimum wage requirement.

- The law exempts all agricultural employers from paying overtime wages (*i.e.*, at least 1.5 times the regular pay rate) for time worked in excess of 40 hours a week.
- FLSA also exempts agricultural employers from child labor requirements that apply to other employers. “Consequently,” GAO notes, “children may work in agriculture under circumstances that would be illegal in other industries.”<sup>61</sup> In most industries, employing workers younger than 16 is considered “oppressive child labor.” In agriculture, however, 14 and 15 year-olds can work anytime outside of school hours, and children as young as 10 years old can be employed with the written consent of their parents.
- FLSA provides workers a private right of action.

The most common claims arising under FLSA are for non-payment of wages, violations of child labor laws, and failure to provide required breaks. In response to the survey conducted in support of this analysis, 97% of the Migrant Grantees indicated that agricultural workers in their area have wage claims and claims arising from other FLSA violations. Eighty-nine percent (89%) separately indicated that child labor law violations were problematic. The most common claims arising under FLSA are for non-payment of wages, violations of child labor laws, and failure to provide required breaks.

*Occupational Safety and Health Act (OSHA)*.<sup>62</sup> The OSHA is the primary federal law to protect the health and safety of workers.

### **Key provisions**

- With regard to agricultural workers, employees are required to:
  1. Meet standards for temporary camps;
  2. Meet field sanitation standards requiring that require employers to provide workers with drinking water, toilet facilities, and hand washing facilities in the fields;
  3. Provide safety devices for farm field equipment;
  4. Provide persons trained to provide first aid when these services are not near the workplace; and

---

<sup>60</sup> 2012 Census of Agriculture, *supra* note 46, at 300f (Table 7. “Hired Farm Labor – Workers and Payroll: 2012”).

<sup>61</sup> Government Accountability Office, *Child Labor in Agriculture: Changes Needed to Better Protect Health and Educational Opportunities*, GAO/HEHS-98-193, 1998.

<sup>62</sup> Occupational Safety and Health Act, 29 U.S.C. §§ 651-678; National Labor Relations Act, 29 U.S.C. §§ 151-169.



5. Meet safety requirements for slow-moving vehicles.
- Employers with fewer than 11 employees and without temporary labor camps are exempt OSHA worker protections. In addition, federal health and safety inspections of these establishments are prohibited. (As noted above, about half of hired workers are employed on these farms.)
  - OSHA is prohibited from conducting inspections, investigations, and similar enforcement activities at these small farms. These prohibitions apply to safety or health inspections as well as actions to respond to employee complaints, or requests to investigate if employees are fired for making complaints, or to investigate fatalities, catastrophes, and accidents.
  - There is no OSHA standard relating to musculo-skeletal injuries, among the most widespread injuries suffered by agricultural workers. (The Federal Insecticide, Fungicide and Rodenticide Act, discussed below, not the OSHA, governs workers' use of and exposure to pesticides.)
  - OSHA provides workers with no private right of action.
  - Common claims by agricultural workers under OSHA include failure meet requirements regarding temporary camps standards and field sanitation standards, and issues related to heat stress.

The LSC Migrant Grantee Survey found that 90% of the Migrant Grantees reported that agricultural workers have OSHA related issues. Common claims by agricultural workers under OSHA include failure meet requirements regarding temporary camps standards and field sanitation standards, and issues related to heat stress.

*The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).*<sup>63</sup> FIFRA provides for the federal control of pesticide distribution, sale, and use. It provides the basis for the Worker Protection Standard (WPS),<sup>64</sup> which is a regulation designed to protect agricultural workers and pesticide handlers.

#### **Key provisions**

- The WPS requires employers to:
  1. Provide workers with pesticide safety training, personal protective equipment and decontamination supplies;
  2. Notify workers of pesticide applications and restrict workers' entry into areas with pesticide application for specified periods; and
  3. Provide emergency medical assistance.

---

<sup>63</sup> Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y.

<sup>64</sup> JACK RUNYAN, SUMMARY OF FEDERAL LAWS AND REGULATIONS AFFECTING AGRICULTURAL WORKERS 16 (U.S. Dep't of Agric., Econ. Research Serv., July 2000).

- FIFRA delegates to the U.S. Environmental Protection Agency (EPA) and state agencies enforcement and inspection duties to ensure compliance with the WPS. States assume responsibility for enforcement where they have an approved “state plan.”

Ninety-seven percent (97%) of respondents to the Migrant Grantee survey indicated that the agricultural worker population in their service area encountered problems with violations of Worker Protection Standards and other EPA enforcement issues.

*The Immigration and Nationality Act (INA) provisions regarding temporary nonimmigrant workers.*<sup>65</sup> A significant number of non-immigrant, temporary agricultural workers (H-2A workers) are brought into the country each year through the H-2A program, which is authorized under the Immigration and Nationalization Act and administered by the ETA Office of Foreign Labor Certification (OFLC).<sup>66</sup> The INA also authorizes the admission into the U.S. temporary, nonimmigrant nonagricultural workers (H-2B workers) through the H-2B program.<sup>67</sup> Part 1626 of the LSC Regulations allows grantees to serve all H-2A agricultural workers and H-2B forestry workers.

Employers must demonstrate that there are insufficient numbers of U.S. workers who are able, willing, and qualified to perform the needed work and that hiring these guest workers will not have “an adverse effect on the wages and working conditions of similarly employed U.S. workers.”

### **Key provisions**

- Under the terms of the DOL-administered H-2A program, employers must:
  - Provide employees with a written contract (or similar document) that specifies, in a language the worker can understand, the terms and conditions of work (*e.g.*, pay rate, benefits, expenses, work periods, and work locations);
  - Pay workers at least the “adverse effect wage rate,” a level substantially above the federal and state minimum wage;
  - Provide workers with no-cost housing that meets applicable safety and health standards;
  - Guarantee a minimum amount of work;

---

<sup>65</sup> Immigration and Nationality Act, 8 U.S.C. §§ 1101-1537.

<sup>66</sup> The H-2A program and H-2A worker names are derived from the section of the INA under which the program is authorized: Section 101(a)(15)(h)(ii)(a) (8 U.S.C. 1101(a)(15)(h)(ii)(a)).

<sup>67</sup> The H-2B program and H-2B program names are similarly derived from the section of the INA under which the program is authorized: Section 101(a)(15)(h)(ii)(b) (8 U.S.C. 1101(a)(15)(h)(ii)(b)).

- Provide (or reimburse the worker for the costs of) inbound and outbound transportation between the jobsite and the worker’s home abroad, and subsistence en route;
- Provide free daily transportation between the housing and the worksite; and
- Provide worker’s compensation insurance or its equivalent.

The survey of LSC Migrant Grantees indicated that violations of the terms of employees’ contracts are a significant problem.<sup>68</sup> In addition, complaints of violations of H-2A workers’ rights under the terms of the North American Agreement on Labor Cooperation (NAALC) (the labor side-agreement to NAFTA) led to the U.S. Secretary of Labor and the Mexican Secretary of Labor and Social Welfare signing a “Joint Ministerial Declaration on Migrant Workers” to address concerns regarding “the labor rights of Mexican migrants working in the United States with H-2A and H-2B temporary work visas and the responsibilities of their employers.”<sup>69</sup>

### C. Factors Limiting Government Enforcement of Agricultural Workers’ Rights

In spite of the protections provided by the federal laws described above, the constrained enforcement capacities of the government agencies responsible for each of the acts limit agricultural workers’ ability to take advantage of the protections of these laws.

Reports by the GAO and other data sources indicate lack of sufficient staffing impairs enforcement of laws protecting agricultural workers. Relevant findings include the following:

- From 1997 to 2007, the annual number of the Department of Labor Wage and Hour Division’s (WHD) enforcement actions for all industries decreased by more than a third, from approximately 47,000 actions in 1997 to just under 30,000 in 2007.<sup>70</sup>
- In FY2002, only 0.6% of the investigations WHD conducted of labor law violations nationally involved agricultural employers. This fell to 0.5% in FY2008.<sup>71</sup>

<sup>68</sup> The survey did not ask a specific question about H-2A violations. However, in response to a question regarding significant accomplishments of their work, 28% identified indicated that their most significant accomplishment involved H2-A violations.

<sup>69</sup> MINISTERIAL CONSULTATIONS JOINT DECLARATION BETWEEN THE DEPARTMENT OF LABOR OF THE UNITED STATES OF AMERICA AND THE SECRETARIAT OF LABOR AND SOCIAL WELFARE OF THE UNITED MEXICAN STATES CONCERNING MEXICAN NAO PUBLIC COMMUNICATIONS MEX 2003-1, MEX 2005-1, AND MEX 2011-1 UNDER THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION, *available at* <http://www.dol.gov/opa/media/press/ilab/ILAB20140543-US-Mex-Declaration.pdf>. For more information see U.S. Dep’t of Labor, *News Release: Joint ministerial declaration on migrant workers signed by US Secretary of Labor, Mexican Secretary of Labor and Social Welfare*, <http://www.dol.gov/opa/media/press/ilab/ILAB20140543.htm> (last visited Jan. 16, 2015).

<sup>70</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-08-962T, FAIR LABOR STANDARDS ACT: BETTER USE OF AVAILABLE RESOURCES AND CONSISTENT REPORTING COULD IMPROVE COMPLIANCE 5 (2008).

- From FY1986 to FY2002 the number of investigations conducted under AWPFA fell 50%. The number of these investigations fell another 19% by FY2008, while from 2002-2008 the percent of employers found in violation remained constant at 60% of those investigated.<sup>72</sup>
- The number of DOL's confirmed cases of child labor violations fell by 65% from 1997 to 2009.<sup>73</sup> As GAO has indicated, however, reductions in confirmed violations do not mean fewer violations are occurring. Noting that child labor violations reported by WHD declined by 70% from 1993 to 1997, the GAO stated that "weaknesses in enforcement and data collection procedures mean violations are not being detected."<sup>74</sup>
- GAO reported that the Environmental Protection Agency (EPA) "has little assurance that the protections called for in the [Worker Protection] Standard are actually being provided to farmworkers generally or to children who work in agriculture."<sup>75</sup>
- In 2009 WHD cited only two violations of agricultural hazardous orders that accounted for only 0.14% of the 1,432 hazardous occupation violations it found that year.<sup>76</sup>
- In 2009, OSHA conducted a total of only 26 inspections on crop farms in the 25 states where it is responsible for enforcing workplace safety standards.<sup>77</sup>

Constraints on staffing limit federal and state agencies' ability to enforce laws effectively to protect agricultural workers' rights. For example, from 1997 to 2007, the total number of WHD investigators for all industries nationally, not just agriculture, fell by more than 20 percent, from 942 to 732.<sup>78</sup> In 2008, the Department of Labor had the equivalent of only 22 full-time investigators for the approximately 576,000 U.S. agricultural employers in the U.S.<sup>79</sup> Similarly,

---

<sup>71</sup> FARMWORKER JUSTICE & OXFAM AM., WEEDING OUT ABUSES: RECOMMENDATIONS FOR A LAW-ABIDING FARM LABOR SYSTEM 4 (2010), *available at* <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.7%20weeding-out-abuses.pdf>.

<sup>72</sup> *Id.*

<sup>73</sup> HUMAN RIGHTS WATCH, FIELDS OF PERIL: CHILD LABOR IN US AGRICULTURE 74 (2010), <http://www.hrw.org/reports/2010/05/05/fields-peril> (last visited Jan. 16, 2015).

<sup>74</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO/HEHS-98-193, CHILD LABOR IN AGRICULTURE: CHANGES NEEDED TO BETTER PROTECT HEALTH AND EDUCATIONAL OPPORTUNITIES 6 (1998).

<sup>75</sup> U.S. GOV'T ACCOUNTABILITY OFFICE GAO/RCED-00-40, PESTICIDES: IMPROVEMENTS NEEDED TO ENSURE THE SAFETY OF FARMWORKERS AND THEIR CHILDREN 5 (2000).

<sup>76</sup> HUMAN RIGHTS WATCH, *supra* note 73, at 79.

<sup>77</sup> BON APPETIT MGMT. CO. FOUND., *supra* note 50, at 36.

<sup>78</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-962T, *supra* note 70, at 6.

<sup>79</sup> BON APPETIT MGMT. CO. FOUND., *supra* note 50, at 20.

the North Carolina Department of Labor “has only seven inspectors to review all the 6,000 to 10,000 farmworker camps in the state for OSHA standards.”<sup>80</sup>

Interviews with federal and state enforcement agencies’ managers also highlighted these agencies’ limited enforcement capacities. For example, John Trasviña, Dean of the University of San Francisco School of Law and former Special Counsel for Immigration Related Unfair Employment Practices for DOL and Assistant Secretary of the HUD Office of Fair Housing and Equal Opportunity, stated that “government agencies alone cannot effectively enforce the law” because of staffing limitations and insufficient connections with farmworker communities. Similar problems were cited by Ellen Widess, former Chief of the California Occupational Safety and Health Administration and former Director of the Texas Department of Agriculture’s Pesticide Program, and Ronald Javor, former Deputy Director and Staff Counsel of the California Department of Housing and Community Development.<sup>81</sup>

#### **D. The Incidence of Legal Problems That Affect Agricultural Workers**

As described above, government resources to enforce the legal rights of agricultural workers are limited. Accordingly, the surveys of LSC grantees and other sources of information indicate that agricultural workers often require the assistance of legal services lawyers to enforce their rights in these areas. The legal needs of agricultural workers and their dependents are described in numerous publications.<sup>82</sup>

---

<sup>80</sup> Lara E. Whalley, Joseph G. Grzywacz, Sara A. Quandt, Quirina M. Vallejos, Michael Walkup, Haiying Chen, Leonardo Galvan, & Thomas A. Arcury, *Migrant Farmworker Field and Camp Safety and Sanitation in Eastern North Carolina* 14(4):9 (J. of Agromedicine 2009).

<sup>81</sup> Others interviewees who also highlighted the limitations of agencies’ enforcement capacities included: Professor Thomas A. Arcury; Cesar Britos, Esq.; Bruce Goldstein, Esq.; Professor Joan Flocks; Professor Cindy Hahamovitch; Ed Kissam, Ph.D.; Ruben Martinez, Ph.D.; Gregory Schell, Esq.; Cynthia Schneider, Esq.; Rebecca Smith, Esq.; and Don Villarejo, Ph.D.

<sup>82</sup> In addition to the 1007(h) study, these include: Susan Reed & Ilene Jacobs, *Serving Farmworkers* 38:5-6 (Clearinghouse Rev., Sept.-Oct., 2004); OxFam Am., *Like Machines in the Fields: Workers without Rights in American Agriculture* (OxFam Am. Rep., 2004); Bon Appetit Mgmt. Co. Found. & United Farm Workers, *Inventory of Farmworker Issues and Protections in the U.S.* 15 (United Farm Workers, March 2011); Megan Horn & Nicholas Marritz, *Unfinished Harvest: The Agricultural Worker Protection Act at 30* (Farmworker Justice, 2013); U.S. Comm’n on Agric. Workers, *Report of the Commission on Agricultural Workers*, 50 and 105-106 (1992); Migrant Delivery Working Grp., *Basic Policy Issues for Migrant Legal Services* (Dec. 27, 1999) (part of the materials provided at the Migrant Workers Legal Serv. Conference, Boerne, Tex., Mar. 19-22, 2000), [http://lri.lsc.gov/sites/default/files/LRI/docs/020072\\_BasicPolicyIssuesforMigrant.pdf](http://lri.lsc.gov/sites/default/files/LRI/docs/020072_BasicPolicyIssuesforMigrant.pdf); Alan Houseman, *Excellence in Migrant Programs: A Very Preliminary Analysis* (Mar. 10, 2000) (part of the materials provided at the Migrant Workers Legal Serv. Conference, Boerne, Tex., Mar. 19-22, 2000), [http://lri.lsc.gov/sites/default/files/LRI/docs/020072\\_ExcellenceinMigrantLSprog.pdf](http://lri.lsc.gov/sites/default/files/LRI/docs/020072_ExcellenceinMigrantLSprog.pdf); “Effective Delivery of Legal Services to Agricultural Workers,” memorandum from NLADA Agric. Worker Project Grp. to Ronald S. Flagg, Gen. Counsel, and Bristow Hardin, Program Analyst (Dec. 8, 2014); “The Need

Those interviewed as part of this study also identified a range of legal problems that the agricultural worker population confronts.<sup>83</sup> Interviewees indicated that the most common of these legal problems include: wage theft; violations of worker safety standards; unsafe and substandard housing; retaliation; discrimination; child labor law violations; and sexual harassment and sexual violence.

Two additional data sources further highlight the areas in which agricultural workers commonly experience legal needs: (1) the Migrant Grantee Survey undertaken for this Report and (2) a 2011 survey conducted by the Bon Appétit Management Company Foundation and the United Farm Workers (Bon Appétit/UFW survey) of farmworker legal services programs in states with some of the highest concentrations of agricultural workers in the country.<sup>84</sup> (Advocates in California, Florida, North Carolina, and Washington responded to the survey.<sup>85</sup>)

The Bon Appétit/UFW survey asked advocates to identify the five most common types of legal problems experienced by their clients. The Migrant Grantee Survey asked programs to indicate the degree to which the farmworker population that it serves encounters various legal problems, including those typically associated with agricultural workers as well as those that affect the general population of low-income persons.<sup>86</sup>

---

for Specialized Migrant Legal Services Programs,” Luis Jaramillo, NLADA, Remarks at the Meeting of the Provisions Comm. of the Legal Serv. Corp. Bd. (Sept. 14, 2003); Thomas Arcury & Sara A. Quandt, *Living and Working Safely: Challenges for Migrant and Seasonal Farmworkers* (N. C. Med. J. 72(6): 466-70, Nov.-Dec. 2011); Farmworker Justice & Oxfam Am., *Weeding Out Abuses: Recommendations for a Law-Abiding Farm Labor System* 4 (2010); Ctr. for Migrant Rights, *Recruitment Revealed, Fundamental Flaws in the H-2Temporary Worker Program and Recommendations for Change* (Jan. 17, 2013); Farmworker Justice, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers* (2011); and Erin Robinson, H Nguyen, S. Isom, S. Quandt, J. Grzywacz, H. Chen, & Tom Arcury, *Wages, Wage Violations, and Pesticide Safety Experienced by Migrant Farmworkers in North Carolina* (New Solutions 21(2):251-268, 2011).

<sup>83</sup> Interviewees identifying these types of legal problems included: Professor Thomas A. Arcury; Professor Peter Benson; Cesar Britos, Esq.; Bruce Goldstein, Esq.; Professor Joan Flocks; Professor David Griffith; Professor Cindy Hahamovitch; Ronald Javor, Esq.; Ed Kissam, Ph.D.; Nancy Leppink, Esq.; Ruben Martinez, Ph.D.; Gregory Schell, Esq.; Professor Marc Schenker; Cynthia Schneider, Esq.; Rebecca Smith, Esq.; William Tamayo, Esq.; John Trasviña, Esq.; Don Villarejo, Ph.D.; and Ellen Widess, Esq.

<sup>84</sup> BON APPÉTIT MGMT. CO. FOUND., *supra* note 50, at 10.

<sup>85</sup> Thirty-six percent of all U.S. hired farmworkers and 46% of all hired crop workers are employed in the four states. See NAWS, *supra* note 17.

<sup>86</sup> The data for the Migrant Grantees are based on responses to survey question 5.

As the data in Table V show, these surveys yield similar results with respect to the legal problems that are especially significant for the agricultural worker population. In particular:

- Ninety-seven percent (97%) of Migrant Grantee survey respondents and all of the four Bon Appétit/UFW survey respondents indicated agricultural workers experience FLSA-related legal problems.
- Ninety-seven (97%) percent of Migrant Grantee survey respondents and all of the Bon Appétit/UFW survey respondents indicated the clients experience legal problems related to sexual violence, harassment, or other civil rights-related issues.
- Ninety-three (93%) percent of Migrant Grantee survey respondents and three of four of Bon Appétit/UFW survey respondents indicated that clients experience AWPAs-related legal problems.
- Ninety percent (90%) of Migrant Grantee survey and all of Bon Appétit/UFW survey respondents indicated that clients encounter OSHA-related legal problems.
- Eighty-seven percent (87%) of Migrant Grantee survey respondents and all of Bon Appétit/UFW survey respondents indicated that clients experience Worker Protection Standard violations and related EPA-related legal problems.
- Eighty percent (80%) of Migrant Grantee survey respondents and all of Bon Appétit/UFW survey respondents indicated that clients experience trafficking-related issues.

The Migrant Grantee Survey also identified legal problems that the agricultural worker population experiences at much higher levels than the broader population, in particular, other employment-related issues, such as worker's compensation (identified by 97%), immigration or naturalization related-issues (identified by 93%), taxes (not related to the Earned Income Tax Credit) (identified by 93%),<sup>87</sup> and child labor (identified by 60%).

The results of the Migrant Grantee Survey also indicated that crop workers and livestock workers have similar legal needs. In particular, one of the questions asked about the extent to which seven different categories of workers experienced legal problems in each of nine different substantive issue areas including: wage and hour violations, AWPAs violations, unsafe/unhealthy working conditions, unsafe/unhealthy housing conditions, discrimination, employer retaliation, sexual harassment/violence, child labor violations, and immigration.<sup>88</sup> In identifying the extent to which different workers had legal problems in these areas, the highest number of respondents consistently named migrant and seasonal crop workers and fruit and vegetable packing and processing workers. Livestock workers were consistently identified by the next highest percentage of respondents as having problems in each of these areas.<sup>89</sup>

---

<sup>87</sup> Tax issues can be especially important to agricultural workers because employers may not report the information to the IRS or report incomplete or inaccurate information.

<sup>88</sup> Migrant Grantee Survey, question 11, attached as Appendix E.

<sup>89</sup> The other categories of workers were nursery and greenhouse workers, agriculture support workers (e.g., cotton ginning, crop planting/grading), workers in forest nurseries or gathering forest products, and aquaculture workers (i.e., farm raising and production of aquatic animals and plants).

**Table V**

<b>SUBSTANTIVE AREAS IN WHICH AGRICULTURAL WORKERS ENCOUNTER PROBLEMS</b>		
Substantive Area	% of LSC-funded Migrant Grantees' that identified the area as a problem for agricultural workers in their area	Top Five Areas of Legal Need Identified in Bon Appétit/United Farm Workers Study
Wage claims and other Fair Labor Standards Act (FLSA)-related issues	97%	Non-payment of wages or violations of minimum wage laws – identified in all 4 States
Other employment related (e.g., worker's compensation)	97%	
Civil rights (e.g., sexual harassment, employment discrimination)	97%	Sexual abuse and sexual harassment – identified in 3 of 4 states
Migrant and Seasonal Agricultural Workers Protection Act (AWPA)-related issues	93%	Substandard housing issues – identified in 3 of 4 states and violations of employer contracts – identified in 2 states
Immigration/naturalization	93%	
Taxes	93%	
Occupational Safety and Health Act (OSHA)-related issues	90%	Violations of occupational safety and health– identified in all 4 states
Health (not OSHA-related or EPA-related)	90%	
Environmental Protection Agency (EPA) enforcement-related issues (Worker Protection Standard/pesticides)	87%	Violations of or field sanitation standards – identified in all 4 states
Public benefits (other than unemployment insurance)	87%	
Domestic violence	87%	
Housing (not covered by AWPA)	87%	
Human trafficking	80%	Human trafficking – identified in 3 of 4 states
Unemployment Insurance (UI)	80%	
Consumer	80%	
Family (other than domestic violence)	80%	
Education	73%	
Child labor	60%	
Youth (other than child labor)	47%	



## SECTION VI

### FACTORS CREATING THE AGRICULTURAL WORKER POPULATION'S ACCESS BARRIERS

As described above, the surveys of LSC grantees and other sources of information indicate that agricultural workers often require the assistance of legal services lawyers to enforce their rights in these areas. A combination of factors, however, creates barriers to access to legal services to address the legal needs of the agricultural worker population. The characteristics of the agricultural worker population create these access barriers and can exacerbate their legal needs.

#### **A. Who Agricultural Workers Are and Where They Are Employed**

The terms “farmworker” and “agricultural worker” refer to hired workers as opposed to farm owners and their family members who work on their own farms. A very small number of the nation’s 2.1 million farms account for most agricultural production and employment of agricultural workers. According to the most recent USDA Census of Agriculture (COA), less than 4% of farms account for slightly more than two-thirds (67%) of the total market value of products sold.<sup>90</sup> About one in four (26.9%) farms hires workers. Of those farms, 7.2% employed 53.8% of all U.S. agricultural workers.<sup>91</sup> One in ten farms (10.3%) employ workers hired through Farm Labor Contractors (FLCs) – individuals or entities that hire farm laborers and contract them out to farms – and only 7.3% of these farms bore 79.1% of total farm labor contract expenses (the number of workers hired through contractors is not reported separately).<sup>92</sup>

The need for hired labor varies significantly by product. For example, labor’s share of total cash expenses ranges from about 5% for products such as corn, soybeans, and wheat to 13-14% for dairy and poultry products to over 40% for fruits, vegetables, and nursery crops. Two-thirds of the labor expenditures reported by farm employers to the Census of Agriculture are attributed to four commodities: fruits and nuts, 25%; nursery crops, 20%; vegetables, 12%; and dairy, 10%.<sup>93</sup>

Overall, about three-fourths of hired agricultural workers are “crop workers” employed in the highly-mechanized production of crops like corn and wheat to labor-intensive planting, harvesting, and processing “high value” commodities such as vegetables, melons, fruits, and nuts, and in greenhouses and nurseries. Most of the remaining one-fourth of hired agricultural

---

<sup>90</sup> 2012 Census of Agriculture, *supra* note 46, at 245 (Table 1, State Summary Highlights: 2012).

<sup>91</sup> *Id.* at 300 (Chapter 2, Table 7. Hired Farm Labor – Workers and Payroll: 2012).

<sup>92</sup> *Id.* at 11 (Chapter 1, Table 4. Farm Production Expenses: 2012 and 2007).

<sup>93</sup> RURAL MIGRATION NEWS, *Projections, Mechanization*, <http://migration.ucdavis.edu/rmn/more.php?id=1804> (last visited Jan. 15, 2015).

workers work in raising livestock, such as beef and dairy cattle, swine, and poultry, including egg farms.

## **B. Different Worker Categories: Migrant and Settled Agricultural Workers, Direct-Hired and Contract Agricultural Workers, and Guest Workers**

### **Migrant and Settled Agricultural workers**

The agricultural workforce includes both migrant and settled workers. Migrants are workers who are absent from their permanent place of residence in order to seek employment in agricultural work, in contrast to those who are settled in or near the community in which they are employed.<sup>94</sup> Historically, migrant agricultural workers have comprised a major portion of the U.S. agricultural workforce. The LSC 1007(h) Study provided detailed information about the different migrant “streams” in the East, Midwest, and West.<sup>95</sup> In the late 1980s, somewhat over two in five (43%) agricultural workers were migrants. Their numbers increased after that, and by 1998 nearly three in five agricultural workers (59%) were migrants. Since then, however, their numbers have significantly declined, so that by 2011-2012 only 17% of agricultural workers were migrants.<sup>96</sup>

Migrant farmworkers typically perform crop work (production of fruits, nuts, vegetables, melons, nursery products, etc.) or forestry tasks (such as tree planting) rather than livestock work. The percentage of farmworkers who are migrants varies widely across the country, with the highest in the East and the lowest in the West.

In general, migrant workers are more vulnerable than settled workers to unlawful practices by employers, especially because they are more dependent on employers for work, housing and transportation and more isolated geographically and socially. Migrant workers’ demographic characteristics also exacerbate their vulnerability. Compared to settled workers, migrant workers are younger; are more likely to be foreign born; are more likely to be recent immigrants; have lower educational attainment levels; are less likely to be proficient in English; are more likely to be indigenous to locations other than where they work; are more likely to be unaccompanied by any family members; and are more likely to be unauthorized.<sup>97</sup>

---

<sup>94</sup> There is no universally accepted definition of a migrant farmworker as various researchers and federal agencies employ different definitions. This analysis follows the definition used in the Department of Labor’s National Agricultural Workers Survey (NAWS): a migrant is “a person who reported jobs that were at least 75 miles apart or who reported moving more than 75 miles to obtain a farm job during a 12-month period.” NAWS, *supra* note 17.

<sup>95</sup> 1007(h) Study, *supra* note 21, at 34.

<sup>96</sup> NAWS, *supra* note 17.

<sup>97</sup> NAWS, *supra* note 17.

Data from the Department of Labor’s National Agricultural Workers Survey (NAWS) reflect that migrant workers’ economic circumstances are generally worse than settled workers’ circumstances. Migrants generally have fewer weeks of farm employment annually; have lower incomes; are more likely to be poor; are more likely to live in substandard and crowded housing; and have less access to health care and other public services.<sup>98</sup>

### **Direct-Hired and Contract Agricultural workers**

Historically, a significant portion of the agricultural worker labor force has been recruited and employed by Farm Labor Contractors (FLCs). FLCs can range in size from a single individual (“crew leader”) to a large corporate entity, some of which are owned by individual growers or growers associations.

The description of the FLCs’ core functions in a 1974 Senate Report remains apt today:

Although the specific functions of the farm labor contractor, often called a “crew leader” or “crew pusher,” might vary from job to job, his role remains essentially the same – a bridge between the operator and the worker. In many instances, the contractor is not only the recruiter, hirer, and transporter, but acts as the supervisor, foreman, and paymaster as well. In addition, the contractor frequently controls housing and other vital aspects of the workers’ everyday needs. In the vast majority of cases, the crew leader is not only the link between the worker and the grower, but also acts as an intermediary with the non-farming community as well. In the latter role, the crew leader functions as a sort of cultural broker, mediating between the worker and the outside, often alien, community.<sup>99</sup>

When FLCs do not directly perform these functions, they often have sub-contracts or informal relationships with other entities to provide necessary services.

Since the late 1990s, the number of agricultural workers employed by growers has increased and those employed by Farm Labor Contractors have fallen. For example, recent data from the NAWS show that from 1998-1999 to 2011-2012, direct-hire workers increased from 73% to 90% of crop workers while workers employed by contractors fell from 27% to 10%.<sup>100</sup> (These numbers do not include H2-A “guest workers” who are discussed below.)

Farmers often use FLCs to lower their production costs by outsourcing expenses for labor recruitment and supervision as well as the costs associated with housing and transporting

---

<sup>98</sup> NAWS, *supra* note 17.

<sup>99</sup> S.REP. NO.93-1295 (1974), *reprinted in* U.S.C.C.A.N. 6441, 6442.

<sup>100</sup> NAWS, *supra* note 17.

workers.<sup>101</sup> However, FLCs typically face intense competition and narrow profit margins, which can create pressures to cut costs, including by means which are unlawful. Key provisions of the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) were enacted because of recognition of this problem.<sup>102</sup>

NAWS data reflect that FLCs tend to hire the most vulnerable workers. For example, 97% of contract workers versus 70% of hired workers are foreign born; two-thirds (67%) of contract workers versus about one-third (34%) of hired workers cannot speak English; 76% of contract workers versus 46% of hired workers are undocumented; and contract workers are twice as likely as direct-hired workers to be migrants.<sup>103</sup> The great majority of contract employees are crop workers, although some may work in tree planting. Very few livestock workers are contract employees.

### **H-2A Temporary, Nonimmigrant Agricultural Workers**

A significant number of non-immigrant, temporary agricultural workers are brought into the country each year through the H-2A program authorized under the Immigration and Nationalization Act and administered by the ETA Office of Foreign Labor Certification (OFLC).<sup>104</sup>

OFLC certified 116,689 H-2A positions in FY2014. Those positions were concentrated in relatively few states. One-third (32%) were in three states: North Carolina, Florida, and Georgia.<sup>105</sup> These workers come from many different countries around the world, but over 90% are from Mexico. Virtually all H-2A workers are unaccompanied young men. Most have limited educational attainments levels and limited English proficiency. The great majority of these workers perform crop work.

The ETA minimum requirements regarding H-2A workers' wages, benefits, and working conditions typically are substantially better than the compensation and working conditions of

---

<sup>101</sup> This dynamic is highlighted in California. The state's labor costs are a higher proportion of agricultural production expenses than they are in many other state; likewise, contract workers' percentage of the agricultural labor force in California are higher than they are many other state. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, *Occupational Employment and Wages, May 2013, Agricultural Workers, All Others*, <http://www.bls.gov/oes/current/oes452099.htm> (last visited Jan. 16, 2015).

<sup>102</sup> H.R. REP. NO. 97-885 (1982), *reprinted in* U.S.C.C.A.N. 4547 (reporting on the Migrant and Seasonal Agricultural Worker Protection bill H.R. 7102, which later became Pub. L. 97-470 (now codified at 29 U.S.C. §§ 1801-1872)).

<sup>103</sup> NAWS, *supra* note 17.

<sup>104</sup> See Section VI.B. above for a description of the law's key provisions.

<sup>105</sup> U.S. DEP'T OF LABOR, EMP'T AND TRAINING ADMIN., OFFICE OF FOREIGN LABOR CERTIFICATION, H-2A TEMPORARY AGRICULTURAL LABOR CERTIFICATION PROGRAM - SELECTED STATISTICS, FY 2014, *available at* [http://www.foreignlaborcert.doleta.gov/pdf/H-2A\\_Selected\\_Statistics\\_FY2013\\_YTD\\_Q4\\_final.pdf](http://www.foreignlaborcert.doleta.gov/pdf/H-2A_Selected_Statistics_FY2013_YTD_Q4_final.pdf).

migrant and contract workers. However, H-2A workers are extremely dependent on their employers and typically isolated from other communities.

### C. Characteristics of the Agricultural Worker Population That Increase Their Vulnerability

Certain characteristics of the agricultural worker population and the circumstances in which they work can increase their vulnerability to exploitation. Those factors include (1) their social, cultural, and geographic isolation; (2) inadequate housing, access to which is often controlled by the employer; and (3) susceptibility to retaliation when they assert their rights.

#### Agricultural Workers' Social, Cultural, and Geographic Isolation

*Geographic isolation.* Agricultural workers are often physically isolated by virtue of living and working in remote, rural areas. This can make them an “invisible population” that is “hidden” from other communities.<sup>106</sup> This isolation reduces their ability to reach out to others, aside from their employers, for assistance with regard to employment, housing, health, family and other issues. The isolation is exacerbated by the fact that many agricultural workers do not own vehicles. Recent NAWS data show that 53% of agricultural workers drive their own car to work, while 26% rely on *raiteros* (private van operators) or labor buses, often owned by or associated with farm labor contractors or employers. Another 17% ride with other workers, 11% walk and 2% use other means, such as public transit.<sup>107</sup>

The reliance on employers and *raiteros* for transportation can significantly limit mobility and autonomy, both in getting to their workplace and attending to basic needs, such as shopping,, accessing needed services, and entertainment. Moreover, employers' and *raiteros*' vehicles are often unsafe and the costs of these services reduce workers' already-limited resources.<sup>108</sup>

*Ethnicity and National Origin.* The ethnicity and national origin of agricultural workers and their families can also increase their vulnerability to discrimination in the job and housing markets.<sup>109</sup>

---

<sup>106</sup> Interview with Ruben Martinez. Ronald Javor also referred to farmworkers as physically “invisible.” Professor Peter Benson referred to farmworkers as a “hidden” population.

<sup>107</sup> BON APPETIT MGMT. CO. FOUND., *supra* note 50, at 24 (table 19).

<sup>108</sup> See, e.g., NAWS, *supra* note 17; Megan Horn & Nicholas Marritz, *Unfinished Harvest: The Agricultural Worker Protection Act at 30*, (Farmworker Justice, 2013); SOUTHERN POVERTY LAW CTR., *Who Are Farmworkers?* <http://www.splcenter.org/sexual-violence-against-farmworkers-a-guidebook-for-criminal-justice-professionals/who-are-farmworke> (last visited Jan. 16, 2015); and Cal. Rural Legal Assistance (CRLA) & Cal. Rural Legal Assistance Foun. (CRLAF), Agric. Worker Health Project, *Farmworker Transportation*, <http://www.agworkerhealth.org/RTF1.cfm?pagename=Transportation> (last visited Jan. 16, 2015).

<sup>109</sup> See, among others, U.S. Comm'n on Agric. Workers, *Report of the Commission on Agricultural Workers*, 50 and 105-106 (1992); Hous. Assistance Council, *No Refuge from the Fields: Findings from a Survey of Farmworker Housing Conditions in the United States* (Sept. 2001); Don Villarejo, Marc Schenker, Ann Moss Joyner, & Allan Parnell, *(Un)Safe At Home: The Health Consequences of Sub-*

Seventy-one percent (71%) of agricultural workers are foreign born, in contrast to 16% of all U.S. residents over 18 who are foreign born.<sup>110</sup> Seventy-six percent (76%) of agricultural workers, compared to 17% of the total U.S. population, are Latino/Hispanic.<sup>111</sup> Nearly all (96%) of the foreign born workers are from Mexico. An increasing number of Mexican-born workers are from states in southern Mexico, such as Guerrero, Oaxaca and Chiapas, where the native language is not Spanish.

*Immigration Status.* The immigration status of agricultural workers also contributes to their relative vulnerability to exploitation. NAWS data indicate that 52% of crop workers are authorized to work in the United States.<sup>112</sup> The picture is complex, however, since 78% of agricultural worker children are citizens and 65% of agricultural worker spouses are authorized. Nearly one-fourth (24%) of agricultural worker families are “mixed status” families, with members who are authorized as well as members who are unauthorized.<sup>113</sup>

*Literacy and Education.* Agricultural workers are also often handicapped by lack of literacy and education as well as limited proficiency in English. Only 39% have schooling beyond the nine grade. In contrast, 96.5% of all U.S. adults 24 years or older, have completed the eighth grade.<sup>114</sup> Only 33% of agricultural workers report they can speak English “well,” nearly as many (27%) reporting they cannot speak English at all. Of those workers not born in the U.S., only 3%

---

*standard Farm Labor Housing* (Cal. Rural Legal Assistance, June 2012); Southern Poverty Law Ctr., *Under Siege. Life for Low-Income Latinos in the South* (Southern Poverty Law Ctr. Rep., Apr. 2009); Susan Reed & Ilene Jacobs, *Serving Farmworkers* 38:5-6 (Clearinghouse Rev., Sept.-Oct. 2004); and “Effective Delivery of Legal Services to Agricultural Workers,” memorandum from NLADA Agric. Worker Project Grp. to Ronald S. Flagg, Gen. Counsel, and Bristow Hardin, Program Analyst (Dec. 8, 2014).

<sup>110</sup> NAWS, *supra* note 17 and U.S. CENSUS BUREAU, 2012 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES, *Table B05003: Sex By Age By Nativity And Citizenship Status*, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Jan. 16, 2015).

<sup>111</sup> NAWS, *supra* note 17 and U.S. CENSUS BUREAU, 2012 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES, *Table B03002: Hispanic Or Latino Origin By Race*, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Jan. 16, 2015).

<sup>112</sup> NAWS, *supra* note 17.

<sup>113</sup> NAWS, *supra* note 17.

<sup>114</sup> NAWS, *supra* note 17 and U.S. CENSUS BUREAU, 2012 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES, *Table DP02: Selected Social Characteristics In The United States*, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Jan. 16, 2015).

speaking English “well.”<sup>115</sup> In contrast, only 4.5% of all U.S. households have no one age 14 and over who speaks English “very well.”<sup>116</sup>

### **Agricultural Workers’ Inadequate and Insecure Housing**

Lack of adequate housing and in some cases reliance on the employer for housing exacerbate agricultural workers’ vulnerability to exploitation. It is widely recognized that much of agricultural workers’ housing remains substandard and fails to comply with local, state and federal requirements.<sup>117</sup> The critical importance of housing in the agricultural economy was highlighted by the Commission on Agricultural Workers (CAW), jointly appointed by the Office

---

<sup>115</sup> NAWS, *supra* note 17.

<sup>116</sup> U.S. CENSUS BUREAU, 2012 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES, *Table S1602: No One Age 14 And Over Speaks English Only Or Speaks English ‘Very Well,’* <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Jan. 16, 2015).

<sup>117</sup> The research on farmworker housing is considerable. See Thomas A. Arcury, Chensheng Lu, Haiying Chen, & Sara A. Quandt, *Pesticides present in migrant farmworker housing in North Carolina*, (Am. J. of Indus. Med., 51:312–22, March 2014); Werner E. Bischoff, Maria Weir, Phillip Summers, Haiying Chen, Sara A. Quandt, Amy K. Liebman, & Thomas A. Arcury, *The Quality of Drinking Water in North Carolina Farmworker Camps*, (Am. J. Pub. Health 102(10):49–54, 2012); Am. Pub. Health Ass’n, *Policy #20118, Improving Housing for Farmworkers in the United States Is a Public Health Imperative* (Nov. 2011); U.S. Gov’t Accountability Office GAO/RCED-00-40, *Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and Their Children* (2000); Hous. Assistance Council, *Housing Conditions for Farmworkers* (Rural Research Rep., Sept. 2013); Mich. Civil Rights Comm’n, *A Report on the Conditions of Migrant and Seasonal Farmworkers in Michigan* (March 2010); Quirina M. Vallejos, Sara A. Quandt, Joseph G. Grzywacz, Scott Isom, Haiying Chen, Leonardo Galván, Lara Whalley, Arjun B. Chatterjee, & Thomas A. Arcury, *Migrant farmworkers’ housing conditions across an agricultural season in North Carolina* (Am. J. Indus. Med., 54: 533–44, July 2011); Don Villarejo, Marc Schenker, Ann Moss Joyner, & Allan Parnell, *(Un)Safe At Home: The Health Consequences of Sub-standard Farm Labor Housing* (Cal. Rural Legal Assistance, June 2012); Don Villarejo, *Health-Related Inequities Among Hired Farm Workers and the Resurgence of Labor-intensive Agriculture* (Health Program, The Kresge Found., Troy, Michigan, 2012); Don Villarejo, *California’s Hired Farmworkers Move to the Cities: The Outsourcing of Responsibility for Farm Labor Housing* (Cal. Rural Legal Assistance Priorities Conference, Asilomar, Cal., 2014); Lance George, Mary Lee Hall, Ilene J. Jacobs, Ann Moss Joyner, Ed Kissam, Shelley Latin, Allan Parnell, Virginia Ruiz, Nargess Shadbeh, & Janet Tobacman, *Farmworker Housing Standards and Regulations, Their Promise and Limitations, and Implications for Farmworker Health* (Key Rep. 1 from the Transdisciplinary Conference on Farmworker Housing Quality and Health, Crystal City, Va., Nov. 11, 2014); and Sara A. Quandt, Carol Brooke, Kathleen Fagan, Allyson Howe, Stephen A. McCurdy, Lisel Holdenried, Thomas K. Thornburg, & Don Villarejo, *Farmworker Housing and Its Impact on Health* (Key Rep. 2 from the Transdisciplinary Conference on Farmworker Housing Quality and Health, Crystal City, Va., Nov. 11, 2014). The inadequacy of farmworkers’ housing was also identified by the following interviewees: Professor Thomas A. Arcury; Professor Peter Benson; Bruce Goldstein, Esq.; Professor Joan Flocks; Ronald Javor, Esq.; Ed Kissam, Ph.D.; Ruben Martinez, Ph.D.; Professor Marc Schenker; and Don Villarejo, Ph.D.

of the President and the U.S. Congress, in 1993: “From an economic perspective, the *linchpin* of farmworkers’ economic strategies is access to affordable housing.” Without it, it is more difficult for workers “to cope with the uncertainty and intermittent employment of farm work.” However, the Commission found that “the number of farmworkers in need of housing exceeds the available housing stock. The result is overcrowding, the occupation of substandard units and homelessness. . . . [T]he vast majority of hired farmworkers are housed in seriously inadequate conditions. Most quarters are overcrowded . . . . Other problems include use of dilapidated structures and of buildings not intended for residential use, such as garages and storage sheds.”<sup>118</sup>

A recent analysis of farmworker housing research concluded that: “[t]here is no evidence in the [most recent] government report or in the peer-reviewed literature to indicate that the housing situation for hired farm workers on a national basis has changed appreciably in the past 20 years.”<sup>119</sup> A 2008 USDA report noted that “farmworkers often confront substandard quality, crowding, deficient sanitation, proximity to pesticides (which is especially harmful for children), and lack of inspection and enforcement.”<sup>120</sup> Based on a review of the occupational safety and health research programs addressing agricultural workers, the National Research Council reported that “virtually all recent health survey research have [sic] demonstrated that a large share of this workforce is still experiencing unwarranted risks to health that are associated with their housing conditions.”<sup>121</sup>

This is reflected as well in Housing Assistance Council reports that 31% of agricultural workers live in crowded housing, over six times higher than the national average, and that “substandard and structurally deficient conditions are endemic to farmworker housing.” They estimate that one-third of farmworker housing and 44% of manufactured housing (mobile homes) are moderately or severely substandard, and about one in five units are both crowded and substandard.<sup>122</sup> Moreover, farmworker housing quality is frequently impaired by agricultural chemicals, as studies “find evidence of pesticides in and about the home, often in rugs, furnishings, and often attributable to contaminated work clothing being brought home.”<sup>123</sup>

---

<sup>118</sup> U.S. COMM’N ON AGRIC. WORKERS, REPORT OF THE COMMISSION ON AGRICULTURAL WORKERS, 50 and 105-106 (1993).

<sup>119</sup> DON VILLAREJO, MARC SCHENKER, ANN MOSS JOYNER, & ALLAN PARNELL, (UN)SAFE AT HOME: THE HEALTH CONSEQUENCES OF SUB-STANDARD FARM LABOR HOUSING (Cal. Rural Legal Assistance, June 2012).

<sup>120</sup> KANDEL, *supra* note 52, at 28.

<sup>121</sup> VILLAREJO ET AL., *supra* note 119, at 6.

<sup>122</sup> HOUS. ASSISTANCE COUNCIL, HOUSING CONDITIONS FOR FARMWORKERS 6-7 (Rural Research Rep. Sept. 2013). The 31% crowded measures exclude barracks and dormitories that are designed for high occupancy.

<sup>123</sup> Sara A. Quandt, Carol Brooke, Kathleen Fagan, Allyson Howe, Stephen A. McCurdy, Lisel Holdenried, Thomas K. Thornburg, & Don Villarejo, *Farmworker Housing and Its Impact on Health* (Key Rep. 2 from the Transdisciplinary Conference on Farmworker Housing Quality and Health, Crystal City, Va., Nov. 11, 2014).



## The Agricultural Worker Population’s Vulnerability to Employer Retaliation

The substantial control that employers’ wield over agricultural workers and their families can limit workers’ willingness to complain about or seek redress for violations of their rights. In the context of a farm labor surplus – with an estimated 2 to 2.5 workers for each year-round full-time equivalent job – the loss of current future employment can have major negative consequences.

As noted above GAO reports that “disincentives” such as job loss and other retaliatory practices result in the underreporting of occupational injuries and hazards in agriculture. A wide range of cases litigated since the late 1990s by the U.S. Equal Employment Opportunity Commission documented the nature and pervasiveness of retaliatory practices.<sup>124</sup> Interviews with former officials of government enforcement agencies highlight similar patterns. Based on her experience at WHD and the Minnesota Department of Commerce, Nancy Lippenk stated that retaliatory practices make farmworkers “afraid to come forward; they are afraid to complain.” And Ron Javor reported that his three decades with the California Department of Housing and Community Development demonstrated that agricultural workers are “afraid to speak up.” Several others interviewed for the study also highlighted the significance of retaliation.<sup>125</sup>

---

<sup>124</sup> U.S. EQUAL EMP’T OPPORTUNITY COMM’N, SELECTED LIST OF PENDING AND RESOLVED CASES INVOLVING FARMWORKERS FROM 1999 TO THE PRESENT (AS OF AUGUST 2014), [http://www.eeoc.gov/eeoc/litigation/selected/farmworkers\\_august\\_2014.cfm](http://www.eeoc.gov/eeoc/litigation/selected/farmworkers_august_2014.cfm) (last visited January 15, 2015).

<sup>125</sup> These included Professor Thomas A. Arcury; Professor Peter Benson; Bruce Goldstein, Esq.; Ed Kissam, Ph.D.; Ruben Martinez, Ph.D.; Gregory Schell, Esq.; Professor Marc Schenker; Cynthia Schneider, Esq.; and William Tamayo, Esq. Professor Cindy Hahamovitch observed that because the threat of retaliation made workers unlikely to speak up, the “cases that do come up are only tip of the iceberg.”

## SECTION VII

### SPECIALIZED EXPERTISE AND SERVICES PROVIDED BY MIGRANT GRANTEES

LSC's Migrant Grantees employ delivery techniques that have been developed over decades to respond to the special characteristics of agricultural workers and the legal needs that result from those characteristics. The evolution of the system reflects the Legal Services Corporation Performance Criteria that were promulgated "to guide LSC's assessments of program performance generally and in the competitive grants process" and to enable the Corporation to best fulfill its "statutory responsibility to ensure the provision of economical and effective delivery of legal assistance by Legal Services programs to eligible persons in all parts of the country, including U.S. territories."<sup>126</sup> The Performance Criteria frame the following discussion of the ways that grants for specialized delivery approaches and legal expertise ensure that the unique access barriers and legal needs of the LSC-eligible agricultural worker population are addressed most effectively and efficiently.

The Performance Criteria are:

- Performance Area One. Effectiveness in identifying the most pressing civil legal needs of low-income people in the service area and targeting resources to address those needs.
- Performance Area Two. Effectiveness in engaging and serving the low-income population throughout the service area.
- Performance Area Three. Effectiveness of legal representation and other program activities intended to benefit the low-income population in the service area.
- Performance Area Four. Effectiveness of governance, leadership and administration.

**A. Performance Area One. Effectiveness in identifying the most pressing civil legal needs of low-income people in the service area and targeting resources to address those needs.**

**Performance Area Two. Effectiveness in engaging and serving the low-income population throughout the service area.**

Because core elements of Performance Areas One and Two are significantly entwined, farmworkers programs' activities in these areas are discussed in tandem. The most important elements of these Performance Areas concern farmworker programs' specialized expertise and delivery related to linguistic and cultural competence; engagement to foster clients' trust and confidence and to inform them of their legal rights; the identification of clients' most pressing

---

<sup>126</sup> LEGAL SERVICES CORPORATION, LEGAL SERVICES CORPORATION PERFORMANCE CRITERIA, REFERENCED TO THE ABA STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID 1 (ed. 2007), *available at* <http://www.lsc.gov/sites/default/files/LRI/LSCPerformanceCriteriaReferencingABAStandards.pdf>.

legal needs and development and implementation of strategies to address those needs most effectively and economically; and facilitating clients' access to program services.

Pertinent information about farmworker program's work in these areas was derived from responses to the LSC Migrant Grantee Survey about legal needs of the agricultural worker population,<sup>127</sup> interviews with officials of state and federal agencies responsible for the enforcement of laws affecting the rights of the agricultural worker population and from LSC grantees' annual Case Services Reports (CSR).

*LSC Migrant Grantees Survey Results.* In their responses to the LSC survey, Migrant Grantees identified the capacities and strategies that they considered necessary and that they employed to serve the agricultural worker population "most effectively and efficiently."<sup>128</sup> For example, all (100%) of the Migrant Grantees considered the following techniques necessary and likewise incorporated them into their delivery approaches:

- Flexible staff work hours (for outreach in non-work hours and travel to remote areas);
- Outreach at labor camps and other places workers live;
- Outreach at locations other than where workers work or live;<sup>129</sup>
- Partnerships with community organizations and agencies that served the agricultural worker population;
- Bilingual and multilingual staff;<sup>130</sup>
- Staff with cultural competence with the agricultural worker population;<sup>131</sup> and
- Community legal education.

Nearly all the Migrant Grantees considered it necessary provide special intake procedures (97%) and to make extensive use of technology (87%), such as special toll-free lines, cell/text phones, and laptops, to serve clients in remote areas (87%). Nearly all Migrant Grantees, in fact, use these approaches (97% use special intake procedures, 96% make extensive use of

---

<sup>127</sup> As noted in Section II, all of the LSC Migrant Grantees responded to the survey.

<sup>128</sup> The following information is based on the responses to question 1. The percentages do not include the small number of "don't know" responses.

<sup>129</sup> Because of the risk of employer retaliation, farmworker programs very seldom conduct outreach at farmworkers' work sites.

<sup>130</sup> LSC 2012 Grant Activity Reports (GAR) data indicate that of the total FTE staff of migrant programs, 82% are bilingual or multilingual. In contrast, 25% of the total basic field program FTE advocate staff are multilingual/bilingual.

<sup>131</sup> To foster cultural competence programs conduct on-going training and also have staffing diversity that reflects the diversity of the farmworker population. GAR data from 2012 indicate that 53% the total FTE advocate staff of migrant programs, vs. 17% of basic field advocate staff, are Latino/Hispanic.

technology). Finally, nearly all considered work with enforcement agencies necessary and incorporated that work in their delivery model (90% and 89%, respectively).

*LSC Basic Field Grantees Survey Results.* In their responses to the LSC Basic Field Survey, basic field grantees also indicated that special delivery approaches were needed to serve the agricultural worker population effectively and efficiently.<sup>132</sup> Nearly all indicated the need to have bilingual and multilingual staff (97%) and staff with cultural competence with the agricultural worker population (93%) were required. Nine in ten also indicated that work with community partners and agencies (91%) and community education (90%) were needed.

*Interview Results.* Interviews with four top officials of state and federal agencies responsible for enforcing the rights of the agricultural worker population provide insights into the effectiveness of farmworker programs' engagement with the agricultural worker population and their knowledge of that population's legal needs. All of these interviewees were officials with federal agencies (one continues in that capacity); two were also officials with state agencies.<sup>133</sup>

All of these officials indicated that enforcement agencies lack the staffing to effectively enforce the relevant laws and fulfill their missions. They emphasized that enforcement agencies' staffing constraints are compounded by their insufficient connections with and trust within the communities they are expected to serve. These limitations restrict enforcement agencies' ability to identify violations of the legal rights of the agricultural worker community and to develop strategies to most effectively prevent those violations. The officials concurred with

---

<sup>132</sup> The following is based on responses to question 10. The percentages do not include "don't know" responses. Also, the members of the California Project Directors Association and the Legal Aid Association of Michigan sent letters to LSC President James J. Sandman indicating that specialized services and assistance were needed to serve farmworkers. The letters recommended that LSC continue providing designated funding for these services. "Support for Dedicated Agricultural Worker Funding," letter from California Project Directors Association (May 21, 2014) and "Funding for Legal Assistance for Farmworkers," letter from Ann Rout & Deirdre Weir, Co-Chairs, Legal Services Association of Michigan (June 9, 2014).

<sup>133</sup> Interviewees included Nancy Lippenk, former Assistant Commissioner of Enforcement, Minnesota Commerce Department, and former Acting Administrator of the United States Department of Labor, Wage and Hour Division; William Tamayo, Regional Attorney, U.S. Equal Employment Opportunity Commission, San Francisco Office; John Trasviña, Dean of University of San Francisco School of Law, former U.S. Department of Justice Special Counsel for Immigration Related Unfair Employment Practices and former Assistant Secretary, U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity; and, Ellen Widess, former Chief, California Occupational Safety and Health Administration, and former Director, Texas Department of Agriculture, Pesticide Program.

one interviewee's assessment that without the assistance of legal services programs and other stakeholders "it is impossible to ensure the law is enforced."<sup>134</sup>

These officials stressed the importance of farmworker programs' assistance in two major areas. First, farmworker programs enhance agencies' abilities to develop necessary connections with agricultural worker communities. The knowledge of where agricultural workers work and live is only one aspect of that. They considered no less important farmworker programs' linguistic and cultural competence and the trust they have within agricultural worker communities. Second, farmworker programs identify the legal needs of the agricultural worker population and help identify employers with patterns of illegal practices. They were referred to as agencies' "eyes and ears on the ground." Farmworker programs train agency staff on the major laws and regulations affecting agricultural workers and have partnered with agencies in training the community and employers about the laws.<sup>135</sup>

**B. Performance Area Three. Effectiveness of legal representation and other program activities intended to benefit the low-income population in the service area.**

**Performance Area Four. Effectiveness of governance, leadership and administration**

Performance Area Three and Performance Area Four are discussed together because they both have particular relevance for assessing the need for specialized legal expertise and delivery approaches. Those criteria relate to the coherence and comprehensiveness of the delivery system and programs' participation in an integrated delivery system.

The most pertinent elements from the Performance Criteria Area Three relate to programs' capacities and activities with respect to the linguistic and cultural competence of staff; outreach and community education; intake; and substantive expertise. The first three of these were discussed in the previous section so the following focuses on issues related to specialized expertise.

LSC does not collect systematic data regarding the expertise of grantees' staff in specific substantive legal areas. However, in their responses to the Migrant Grantee Survey agricultural

---

<sup>134</sup> Interview with John Trasviña. William Tamayo observed that legal services programs are "indispensable" to the EEOC's success in prosecuting cases on behalf of farmworker women victimized by sexual violence and sexual assault.

<sup>135</sup> These officials also indicated that the assistance farmworker programs provided their agencies required the capacities and strategies employed by farmworker programs and that the absence of designated funding for special services could compromise the effectiveness and efficiency of legal assistance to farmworkers. They noted that designated funding would best ensure that providers had the specialized capacities and expertise to address the agricultural worker population's unique access barriers and legal needs. These views were echoed by others interviewed for this study, including Thomas A. Arcury, Joan Flocks, Ruben Martinez, Cesar Britos, Cynthia Schneider, and Rebecca Smith.

worker programs identified the substantive areas in which expertise was needed to “effectively and efficiently” meet the legal needs of the agricultural worker population.

Table VII.a shows the percent of respondents who indicated that specialized expertise was needed in the identified areas. As those data show, virtually all – between 97% and 100% –of the respondents indicated that specialized expertise was required regarding laws pertaining to agricultural workers’ pay and working conditions: Migrant and Seasonal Agricultural Workers Protection Act (AWPA)-related issues; wage claims and other Fair Labor Standards Act (FLSA)-related issues; Occupational Safety and Health Act (OSHA)-related issues; and Environmental Protection Agency enforcement-related issues (*e.g.*, Worker Protection Standard, pesticides). (As noted in Section V, expertise in AWPA is of singular importance given that the employment contract provisions may cover issues related to wages, employment conditions, and housing and transportation standards.)

**Table VII.a**  
**Legal Problem Areas Affecting Farmworkers that Require Specialized Expertise**  
**Percent (%) of Migrant Grantee Survey Respondents Indicating that Specialized Expertise**  
**Is Needed to Address the Needs of the Farmworker Population Effectively**

Legal Problem Type	Specialized Expertise Needed
Migrant and Seasonal Agricultural Workers Protection Act (AWPA)-related issues	100%
Immigration/naturalization	100%
Wage claims and other Fair Labor Standards Act (FLSA)-related issues	97%
Occupational Safety and Health Act (OSHA)-related issues	97%
Environmental Protection Agency (EPA) enforcement-related issues (Worker Protection Standard/pesticides)	97%
Other employment related ( <i>e.g.</i> , worker's compensation)	96%
Human trafficking	93%
Taxes	93%
Child labor	89%
Health (not OSHA-related or EPA-related)	88%
Civil rights ( <i>e.g.</i> , sexual harassment, employment discrimination)	87%
Education	81%
Housing (not covered by AWPA)	81%
Public benefits (other than unemployment insurance)	79%
Youth (other than child labor)	79%
Unemployment insurance (UI)	75%
Domestic violence	75%
Consumer	74%
Family (other than domestic violence)	67%

All (100%) of respondents deemed specialized expertise necessary to protect the rights of eligible agricultural workers and their families on issues related to immigration and naturalization, and high percentages identified the need for this expertise with respect to human trafficking (93%), child labor (89%) and civil rights-related crimes such as job discrimination and sexual harassment (87%). A similar number consider this expertise necessary for health-related issues that did not arise from violations of OSHA or EPA worker protection standards.

All (100%) of the respondents noted that training in agricultural workers' legal needs, laws and delivery approaches are necessary to that ensure programs maintain the requisite skills and knowledge. All also indicated that the mobility of the agricultural worker population and the impact of judicial rulings and enforcement activities around the country required farmworker advocates to maintain on-going coordination and communication with the advocates serving agricultural workers in other states.

In their responses to the Basic Field Grantee Survey, basic field grantees likewise indicated that specialized legal expertise was necessary to serve the agricultural worker population “effectively and efficiently.”<sup>136</sup> For example, about nine in ten indicated the following types of expertise were needed: access to specialized training regarding agricultural worker issues/delivery (90%); coordination and communication with advocates providing services to agricultural workers in other states (88%); and expertise regarding federal laws and state laws with special provisions affecting agricultural workers (87%). Large majorities likewise indicated that work with enforcement agencies (84%) and federal litigation experience (78%) were needed.

The distribution of cases closed by Migrant Grantees provides indicators of the extent to which these grantees' advocacy (1) focuses on the particular legal needs of the agricultural worker population and (2) is concentrated in the substantive areas that require special expertise.

Tables VII.b and VII.c provide these data for 2013. Table VII.b shows that over 89% of the cases handled by Migrant Grantees focused on issues unique to agricultural workers that require specialized expertise. Those include in particular representation associated with employment, civil and individual rights, and health and safety. Table VII.c shows that only about 11% of the cases handled by Migrant Grantees focused on more general issues.

---

<sup>136</sup> Basic Field Grantee Survey, question 10, attached as Appendix F (“don’t know” responses are excluded).

**Table VII.b**  
**Distribution of Migrant Programs' Cases among Legal Problem Areas**  
**Special Farmworker Focus**

Legal Problem Type	Percent of Cases
<b>Farmworker-Focused</b>	
Wage claims/other FLSA	21.8%
Agricultural worker (not FLSA), employee rights, other: includes cases related to AWPA, OSHA, EPA (e.g., Worker Protection Standard), child labor	25.1%
Civil rights (e.g., sexual harassment, employment discrimination)	6.0%
Taxes (not Earned Income Tax Credit)	1.5%
Individual rights (immigration/naturalization, human trafficking)	12.7%
Health (not OSHA-related or EPA-related)	5.6%
Education	1.8%
Farmworker public benefits: workers compensation, unemployment insurance, food stamps	14.8%
<b>Farmworker-focused as percent of total cases</b>	<b>89.3%</b>

**Table VII.c**  
**Distribution of Migrant Programs' Cases among Legal Problem Areas**  
**General Focus**

Legal Problem Type	Percent of Cases
<b>General Issues</b>	
Consumer	1.2%
Family	2.0%
Non-farmworker public benefits: Social Security (not SSDI), SSDI, SSI, state and local income maintenance, TANF, veterans benefits	2.2%
Housing	3.1%
Youth	0.2%
Other individual rights	0.8%
Miscellaneous	1.2%
<b>General issues as percent of total cases</b>	<b>10.7%</b>



## SECTION VIII

### THE FARMWORKER POPULATION ON WHICH TO BASE THE ALLOCATION OF LSC FUNDING FOR FARMWORKER LEGAL SERVICES

The data and analyses set forth in the preceding sections support the conclusion that migrant and seasonal crop workers, livestock workers, and certain forestry workers,<sup>137</sup> and the dependents of each of these groups, share legal needs that can be most effectively and efficiently addressed with specialized expertise and delivery approaches. Therefore, LSC management recommends that these workers and their dependents should comprise the population that provides the basis for allocating farmworker legal services funding. The June 19, 2000, letter of John McKay, LSC President, stated that farmworker programs should serve this farmworker population as well as workers employed in meat and poultry slaughtering plants. Although meat and poultry workers share some of the same legal needs as farmworkers, LSC management believes that the foregoing data and analyses support the conclusion that they should not be included in the population on which to base farmworker legal services funding allocations. The reasoning for these recommendations follows.

#### **The Farmworker Population: Crop Workers, Livestock Workers and Forestry Workers and Their Dependents**

Although the agricultural workforce is not monolithic, crop workers, livestock workers and forestry workers, and their dependents share multiple, common characteristics that create access barriers and legal needs that can be addressed most effectively and efficiently with specialized legal expertise and delivery approaches. First, the agricultural workforce shares the distinctive characteristics of agricultural work and the agricultural labor market described in Section V. Agriculture is the most dangerous industrial sector in the U.S. Agricultural work is insecure, temporary and low-paid. A labor surplus – there are 2 to 2.5 farm workers for each year-round equivalent job – contributes to high unemployment. The seasonality of work means that very few workers have year-round work. The industry median wage is only 55% that of all full-time wage and salary workers.

Second, as Section V also discussed, the agricultural labor market is governed by a unique body of laws and regulations. Some that apply solely to agricultural workers and others that exclude agricultural workers from legal protections generally afforded to other workers and thereby directly affect the legal advice and strategies applicable to such workers. In the latter category, for example, the Fair Labor Standards Act (FLSA) requires employers to pay workers for all hours they work and to pay workers at least the Federal minimum wage. However, farms with fewer than 11 employees – which employ nearly half (46%) of all hired workers – are exempt from the federal minimum wage requirement. FLSA also exempts agricultural employers from paying overtime and from child labor requirements that apply to other employers. Provisions

---

<sup>137</sup> Logging workers are generally not included with other forestry workers.

of the Occupational Health and Safety Act (OSHA) require employers to meet field sanitation standards (e.g., drinking water, toilets) and temporary labor camp housing standards and provide safety equipment. However, appropriation riders prohibit Federal health and safety inspections at small farms without temporary labor camps and also exempt those establishments from OSHA's worker protection provisions. Agricultural employers are also exempt from the National Labor Relations Act (NLRA), which protects workers' rights associated with collective bargaining to improve the terms and conditions of employment. At the same time, other laws create a legal framework unique to agriculture. One federal law, the Migrant and Seasonal Agricultural Worker Protection Act (AWPPA), is designed specifically to protect the rights of agricultural workers. Section H-2A of the Immigration and Nationality Act authorizes growers to hire "temporary, nonimmigrant" guest workers (H-2A workers) when they demonstrate there are not sufficient U.S. workers qualified and available to perform the needed work.

Third, the farmworker population is geographically, socially, and culturally isolated. (See Section VI.) Job sites and employer-provided housing are often in remote locations. Off-farm housing accessed through the private market is often located in enclaves isolated from non-farmworker communities. And many farmworkers lack their own vehicles. Social and cultural isolation compounds this geographic isolation. A large majority of farmworkers have very low educational attainment levels and low English language proficiency. A large majority are Latino/Hispanic and foreign-born. About half of farmworkers are authorized to work in the U.S., although most children of unauthorized parents are citizens.

The combination of these factors creates access barriers and legal needs that are unique to the agricultural worker population. Tailored special delivery approaches and specialized legal expertise are necessary to meet this population's legal needs most effectively and economically. Accordingly, it is appropriate that crop workers, livestock workers and forestry workers, and their dependents, should be included in the "farmworker population" used for the allocation of LSC funding for farmworker legal services.

### **Meat and Poultry Processing Plant Workers**

Workers employed in meat and poultry slaughtering plants have similar characteristics to the farmworker population and can be vulnerable and subjected to the same type of illegal and exploitive practices that farmworkers experience.<sup>138</sup> They share many of the same demographics with regard to race and ethnicity, educational levels and rural isolation. Meat and poultry plant workers may also have claims such as wage theft, violations of worker safety and health protections, discrimination based race and national origin, sexual violence and

---

<sup>138</sup> For an informative analysis of the meat and poultry processing workforce and the challenges they face, see HUMAN RIGHTS WATCH, *BLOOD, SWEAT, AND FEAR: WORKERS' RIGHTS IN U.S. MEAT AND POULTRY PLANTS* (2004), available at <http://www.hrw.org/sites/default/files/reports/usa0105.pdf>.

violence, trafficking and other illegal practices similar to claims which farmworkers frequently advance.

For several reasons, however, LSC management recommends that meat and poultry processing plant workers do not have the type of access challenges and legal needs that warrant their inclusion in the population count used to allocate funding for farmworker legal services.<sup>139</sup> Most significantly, workers in this industry have the rights and protections from laws such as FLSA, the OSH Act, and the NRLA that are denied to agricultural workers. Employment of meat and poultry workers is far less seasonal and sporadic, unemployment is much lower, and wages are higher in the meat and poultry processing industry than in agriculture.<sup>140</sup> Finally, the tasks performed by meat and poultry processing plant workers differ significantly from those performed by agricultural workers. These are among the reasons that the meat and poultry industry is defined by the Census Bureau's North American Industry Classification System as manufacturing, not agriculture.

---

<sup>139</sup> Several individuals interviewed for the study indicated that the differences in legal needs of meat and poultry processing plant workers and the agricultural worker population were greater than their similarities. They indicated that because of those differences meat and poultry processing plant workers should not be included in the population count that provided the basis for funding for specialized services to the agricultural worker population. Interviewees included: Thomas A. Arcury, David Griffith, Nancy Lippenk, Ruben Martinez, Don Villarejo, Ellen Widess, Ed Kissam, Gregory Schell, and Cynthia Schneider.

<sup>140</sup> For example, in 2012 the median hourly wages and median annual earnings of meat and poultry processing workers were 33% higher than both the median hourly wages and median annual earnings of crop workers and laborers. *See data at:* U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, *Occupational Employment and Wages, May 2013, 45-2092 Farmworkers and Laborers, Crop, Nursery, and Greenhouse*, <http://www.bls.gov/oes/current/oes452092.htm> (last visited Jan. 20, 2015) and U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, *Occupational Employment and Wages, May 2013, 51-3023 Slaughterers and Meat Packers*, <http://www.bls.gov/oes/current/oes513023.htm> (last visited Jan. 20, 2015).

## **SECTION IX**

### **UPDATED COUNT OF THE AGRICULTURAL WORKER POPULATION**

The national and state-by-state estimates of the LSC-eligible agricultural worker population provided to LSC by the Department of Labor Employment and Training Administration (ETA) are summarized below. More details about the estimates and the methodology used to develop them are provided in Appendix A.

Table IX.a and Table IX.b show the ETA estimates as well as the estimates currently used for allocating Migrant Grants (“Current Estimate”). Both tables provide the following information:

- The estimated population of the LSC-eligible agricultural worker population nationally and in each state.
- Each state’s percentage share of the national LSC-eligible agricultural worker population.
- The differences between the ETA estimate and the Current Estimate.

Table IX.a provides these data in alphabetical order by state name, Table IX.b. provides these data in the order of the change in size (in percentage terms) of states’ respective shares of the total national population.

As these data show, the ETA estimate of the total LSC-eligible agricultural worker population national population is 1,553,003; 4.13% less than the estimate currently used of 1,619,982. The magnitude of the changes at the state level varies, in many cases significantly.

**Table IX.a**  
**LSC-Eligible Agricultural Worker Population by State**  
**Current Population Estimates and Department of Labor**  
**Employment and Training Administration (ETA) Estimates**  
***In Alphabetical Order by State***

State	Current Population Estimate		ETA Population Estimate		Change: ETA Estimate +/- Current	
	Persons	Percent (%) of Total	Persons	Percent (%) of Total	Persons	Percent (%) Change
Alabama	4,712	0.291%	13,120	0.845%	8,408	178.4%
Alaska	0	0.000%	1,485	0.096%	1,485	n/a
Arizona	21,265	1.313%	40,135	2.584%	18,870	88.7%
Arkansas	11,321	0.699%	13,245	0.853%	1,924	17.0%
California	378,096	23.340%	323,521	20.832%	(54,575)	-14.4%
Colorado	21,272	1.313%	27,458	1.768%	6,186	29.1%
Connecticut	2,386	0.147%	8,889	0.572%	6,503	272.5%
Delaware	3,556	0.220%	1,472	0.095%	(2,084)	-58.6%
Florida	128,633	7.940%	91,727	5.906%	(36,906)	-28.7%
Georgia	56,155	3.466%	28,820	1.856%	(27,335)	-48.7%
Hawaii	0	0.000%	12,701	0.818%	12,701	n/a
Idaho	26,771	1.653%	32,852	2.115%	6,081	22.7%
Illinois	35,754	2.207%	35,394	2.279%	(360)	-1.0%
Indiana	16,285	1.005%	26,006	1.675%	9,721	59.7%
Iowa	5,404	0.334%	45,938	2.958%	40,534	750.1%
Kansas	0	0.000%	29,978	1.930%	29,978	n/a
Kentucky	6,096	0.376%	25,017	1.611%	18,921	310.4%
Louisiana	3,945	0.244%	16,849	1.085%	12,904	327.1%
Maine	10,281	0.635%	12,264	0.790%	1,983	19.3%
Maryland	13,022	0.804%	5,729	0.369%	(7,293)	-56.0%
Massachusetts	2,384	0.147%	9,004	0.580%	6,620	277.7%
Michigan	86,214	5.322%	43,522	2.802%	(42,692)	-49.5%
Minnesota	28,656	1.769%	38,462	2.477%	9,806	34.2%
Mississippi	8,174	0.505%	13,991	0.901%	5,817	71.2%
Missouri	11,668	0.720%	27,461	1.768%	15,793	135.4%

**Table IX.a (Continued)**  
**LSC-Eligible Agricultural Worker Population by State**  
**Current Population Estimates and Department of Labor**  
**Employment and Training Administration (ETA) Estimates**  
**In Alphabetical Order by State**

State	Current Population Estimate		ETA Population Estimate		Change: ETA Estimate +/- Current	
	Persons	Percent (%) of Total	Persons	Percent (%) of Total	Persons	Percent (%) Change
Montana	7,818	0.483%	13,854	0.892%	6,036	77.2%
Nebraska	6,056	0.374%	31,440	2.024%	25,384	419.2%
Nevada	0	0.000%	5,740	0.370%	5,740	n/a
New Hampshire	1,424	0.088%	3,845	0.248%	2,421	170.0%
New Jersey	17,281	1.067%	8,008	0.516%	(9,273)	-53.7%
New Mexico	12,509	0.772%	19,564	1.260%	7,055	56.4%
New York	39,645	2.447%	38,244	2.463%	(1,401)	-3.5%
North Carolina	76,764	4.739%	51,741	3.332%	(25,023)	-32.6%
North Dakota	16,602	1.025%	16,851	1.085%	249	1.5%
Ohio	18,042	1.114%	31,834	2.050%	13,792	76.4%
Oklahoma	8,963	0.553%	15,574	1.003%	6,611	73.8%
Oregon	79,782	4.925%	60,176	3.875%	(19,606)	-24.6%
Pennsylvania	23,739	1.465%	20,234	1.303%	(3,505)	-14.8%
Puerto Rico	41,642	2.571%	7,098	0.457%	(34,544)	-83.0%
Rhode Island	253	0.016%	988	0.064%	735	290.5%
South Carolina	28,330	1.749%	13,547	0.872%	(14,783)	-52.2%
South Dakota	0	0.000%	15,572	1.003%	15,572	n/a
Tennessee	9,084	0.561%	17,928	1.154%	8,844	97.4%
Texas	198,948	12.281%	83,809	5.397%	(115,139)	-57.9%
Utah	9,715	0.600%	10,247	0.660%	532	5.5%
Vermont	1,161	0.072%	4,880	0.314%	3,719	320.3%
Virginia	22,589	1.394%	21,058	1.356%	(1,531)	-6.8%
Washington	104,545	6.453%	79,936	5.147%	(24,609)	-23.5%
West Virginia	0	0.000%	3,792	0.244%	3,792	n/a
Wisconsin	13,040	0.805%	45,482	2.929%	32,442	248.8%
Wyoming	0	0.000%	6,521	0.420%	6,521	n/a
<b>Total U.S.</b>	<b>1,619,982</b>	<b>100.000%</b>	<b>1,553,003</b>	<b>100.000%</b>	<b>(66,979)</b>	<b>-4.13%</b>

**Table IX.b**  
**LSC-Eligible Agricultural Worker Population by State**  
**Current Population Estimates and Department of Labor**  
**Employment and Training Administration (ETA) Estimates**  
*In Order of Change in Size of Percentage (%) Change by State*

STATE	Current Estimate		ETA Estimate		Change: ETA Estimate +/- Current	
	Persons	Percent (%) of Total	Persons	Percent (%) of Total	Persons	Percent (%) Change
Alaska	0	0.000%	1,485	0.096%	1,485	n/a
Hawaii	0	0.000%	12,701	0.818%	12,701	n/a
Kansas	0	0.000%	29,978	1.930%	29,978	n/a
Nevada	0	0.000%	5,740	0.370%	5,740	n/a
South Dakota	0	0.000%	15,572	1.003%	15,572	n/a
West Virginia	0	0.000%	3,792	0.244%	3,792	n/a
Wyoming	0	0.000%	6,521	0.420%	6,521	n/a
Iowa	5,404	0.330%	45,938	2.958%	40,534	750.1%
Nebraska	6,056	0.370%	31,440	2.024%	25,384	419.2%
Louisiana	3,945	0.240%	16,849	1.085%	12,904	327.1%
Vermont	1,161	0.070%	4,880	0.314%	3,719	320.3%
Kentucky	6,096	0.380%	25,017	1.611%	18,921	310.4%
Rhode Island	253	0.020%	988	0.064%	735	290.5%
Massachusetts	2,384	0.150%	9,004	0.580%	6,620	277.7%
Connecticut	2,386	0.150%	8,889	0.572%	6,503	272.5%
Wisconsin	13,040	0.800%	45,482	2.929%	32,442	248.8%
Alabama	4,712	0.290%	13,120	0.845%	8,408	178.4%
New Hampshire	1,424	0.090%	3,845	0.248%	2,421	170.0%
Missouri	11,668	0.720%	27,461	1.768%	15,793	135.4%
Tennessee	9,084	0.560%	17,928	1.154%	8,844	97.4%
Arizona	21,265	1.310%	40,135	2.584%	18,870	88.7%
Montana	7,818	0.480%	13,854	0.892%	6,036	77.2%
Ohio	18,042	1.110%	31,834	2.050%	13,792	76.4%
Oklahoma	8,963	0.550%	15,574	1.003%	6,611	73.8%
Mississippi	8,174	0.500%	13,991	0.901%	5,817	71.2%
Indiana	16,285	1.010%	26,006	1.675%	9,721	59.7%

**Table IX.b (Continued)**  
**LSC-Eligible Agricultural Worker Population by State**  
**Current Population Estimates and Department of Labor**  
**Employment and Training Administration (ETA) Estimates**  
*In Order of Change in Size of Percentage (%) Change by State*

STATE	Current Estimate		ETA Estimate		Change: ETA Estimate +/- Current	
	Persons	Percent (%) of Total	Persons	Percent (%) of Total	Persons	Percent (%) Change
New Mexico	12,509	0.770%	19,564	1.260%	7,055	56.4%
Minnesota	28,656	1.770%	38,462	2.477%	9,806	34.2%
Colorado	21,272	1.310%	27,458	1.768%	6,186	29.1%
Idaho	26,771	1.650%	32,852	2.115%	6,081	22.7%
Maine	10,281	0.630%	12,264	0.790%	1,983	19.3%
Arkansas	11,321	0.700%	13,245	0.853%	1,924	17.0%
Utah	9,715	0.600%	10,247	0.660%	532	5.5%
North Dakota	16,602	1.020%	16,851	1.085%	249	1.5%
Illinois	35,754	2.210%	35,394	2.279%	(360)	-1.0%
New York	39,645	2.450%	38,244	2.463%	(1,401)	-3.5%
Virginia	22,589	1.390%	21,058	1.356%	(1,531)	-6.8%
California	378,096	23.340%	323,521	20.832%	(54,575)	-14.4%
Pennsylvania	23,739	1.470%	20,234	1.303%	(3,505)	-14.8%
Washington	104,545	6.450%	79,936	5.147%	(24,609)	-23.5%
Oregon	79,782	4.920%	60,176	3.875%	(19,606)	-24.6%
Florida	128,633	7.940%	91,727	5.906%	(36,906)	-28.7%
North Carolina	76,764	4.740%	51,741	3.332%	(25,023)	-32.6%
Georgia	56,155	3.470%	28,820	1.856%	(27,335)	-48.7%
Michigan	86,214	5.320%	43,522	2.802%	(42,692)	-49.5%
South Carolina	28,330	1.750%	13,547	0.872%	(14,783)	-52.2%
New Jersey	17,281	1.070%	8,008	0.516%	(9,273)	-53.7%
Maryland	13,022	0.800%	5,729	0.369%	(7,293)	-56.0%
Texas	198,948	12.280%	83,809	5.397%	(115,139)	-57.9%
Delaware	3,556	0.220%	1,472	0.095%	(2,084)	-58.6%
Puerto Rico	41,642	2.570%	7,098	0.457%	(34,544)	-83.0%
<b>Total U.S.</b>	<b>1,619,982</b>	<b>100.000%</b>	<b>1,553,003</b>	<b>100.000%</b>	<b>(66,979)</b>	<b>-4.13%</b>



The state estimates are substantially affected by variances in the percentage of the agricultural population in each state that are LSC-eligible (i.e., have incomes below the poverty line and meet LSC eligibility criteria regarding citizenship and alien status). These percentages are determined by factors that can differ across the country, such as income levels, family size (including the number of unaccompanied workers), and the percent of dependents who are citizens that reside with unauthorized workers.

The data in Table IX.c show, for each state, the average number of workers that are LSC-eligible and the average number of LSC-eligible dependents per worker (for all workers, not just LSC-eligible workers). States in each NAWS region will have the same eligibility factors, because, as discussed in Appendix A, eligibility calculations can only be calculated at the regional level. As those data show, the percentage of the agricultural workforce that is eligible for LSC services ranges from 7% in the Southeast to 31% in Arizona and New Mexico, and the average number of LSC-eligible dependents per worker ranges from .15 in the Mid-Atlantic to .65 in Arizona and New Mexico.

**Table IX.c**  
**Regional and State LSC-Eligibility Factors Used in the Department of Labor**  
**Employment and Training Administration Agricultural Worker Population Estimates**  
**Average Number of Workers & Average Number of Dependents Per Worker that Are LSC-Eligible In**  
**NAWS Regions and States**

NAWS Region	States in Region	Percent of Agricultural Workers that Are LSC-Eligible	Average LSC Eligible-Dependents Per Agricultural Worker
NE 1	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont	17%	.30
NE 2	Delaware, Maryland, New Jersey, Pennsylvania	18%	.15
AP	Kentucky, North Carolina, Tennessee, Virginia, West Virginia	20%	.19
DSE	Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina	07%	.23
FL	Florida	09%	.46
SP	Oklahoma, Texas	19%	.33
CBNP	Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, North Dakota, Ohio, South Dakota	23%	.24
LK	Michigan, Minnesota, Wisconsin	13%	.33
MT 12	Colorado, Idaho, Montana, Nevada, Utah, Wyoming	14%	.32
MT 3	Arizona, New Mexico	31%	.65
PC	Washington, Oregon	09%	.39
CA	California	10%	.33
Not NAWS Region	Alaska, Hawaii, Puerto Rico	14%	.31



## **APPENDIX A**

Memorandum from the U.S. Department of Labor Employment and Training Administration with estimates of LSC-eligible agricultural worker population and explanation of estimation methodology





January 21, 2015

Mr. Bristow Hardin  
Legal Services Corporation  
3333 K Street, NW  
Washington, DC 20007

Dear Bristow,

Per the terms of the Interagency Agreement that was executed on October 14, 2014 between the Department of Labor's Employment and Training Administration (ETA) and the Legal Services Corporation (LSC), I'm transmitting national and state estimates of the number of agricultural workers and their dependents, and the number eligible for LSC services.

ETA commissioned the development of these estimates to JBS International, Inc. (JBS). JBS is ETA's contractor for the National Agricultural Workers Survey (NAWS). Paralleling ETA's responsibilities in the Interagency Agreement, the task request to JBS consisted of three components: 1) calculating national and state estimates of the agricultural worker population; 2) estimating for each state the number and share of agricultural workers and dependents that are eligible for LSC services; and 3) providing a national estimate of the LSC-eligible population.

Following the process that ETA undertook to develop and evaluate farmworker population estimates for the National Farmworker Jobs Program's funding allocation formula, JBS created a technical working group (expert panel) to ensure that its estimation methodology utilized the best sources of farm labor and other data in the most appropriate fashion. The panel, which consisted of three of the nation's leading farm labor experts, was chosen by and worked with JBS independently on this project. The enclosed memorandum from JBS discusses the makeup of the panel and its input, as well as the estimation methodology. The tabled estimates are in Appendix B of the memorandum.

As the Contracting Officer's Representative for the NAWS, I reviewed the memorandum and tabled estimates and found both to be technically sound and to meet contract requirements.

Effectively targeting and equitably allocating limited resources to programs and services that aim to improve the wellbeing of farmworkers and their dependents is a challenging task. It is my hope that the accompanying memorandum and tabled estimates will be of great assistance to LSC as it carries out its mission to assist agricultural workers with legal services.

Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel Carroll".

Daniel Carroll  
Division of Research and Evaluation  
Office of Policy Development and Research  
Employment and Training Administration  
U.S. Department of Labor



Date: January 19, 2015  
To: Daniel Carroll, DOL/ETA/OPDR  
From: JBS International  
Subject: Estimating the National Size and State Distribution of the LSC-Eligible Population

## I. INTRODUCTION

The Legal Services Corporation (LSC) and the Department of Labor (DOL), Employment and Training Administration (ETA) executed an interagency agreement under which ETA agreed to provide population estimates to LSC on which to allocate funding for specialized services to agricultural workers and their dependents who are in poverty and are citizens, or meet the LSC eligibility criteria for services to clients who are not U.S. citizens. For the purposes of this memo, this population is referred to as the LSC-eligible agricultural worker population.<sup>1</sup> JBS International, Inc. (JBS), ETA's contractor for the National Agricultural Workers Survey (NAWS), undertook the estimation work, per NAWS contract terms. This memorandum provides JBS's estimates of the total size of the LSC-eligible agricultural worker population in the fifty states, the District of Columbia (DC) and Puerto Rico (PR), and the shares (and numbers) of this population that are in each of these jurisdictions. The memorandum also describes the methods JBS used to develop the estimates.

As detailed in the following sections, the methodology employed a variety of data sets and calculations. JBS incorporated the input of a panel of experts<sup>2</sup> in developing the estimation methodology. It is based on the "top down" approach used to develop population estimates for the allocation of funding for major federal programs that provide special services to farmworkers. This approach is also used by ETA to develop agricultural worker population estimates for the Congressional Budget Office. It should

---

<sup>1</sup> The income eligibility limit for LSC-funded services is 125% of the poverty line, but the allocation of funding for LSC-funded services is based on the number of persons with incomes below 100% of the poverty line.

<sup>2</sup> The panel of experts consisted of: Dr. Edward Kissam, trustee of the Werner Konhnstamm family fund and long-term researcher in the demographic characteristics of the agricultural worker population; Dr. Philip Martin, professor of agricultural economics at the University of California, Davis, and author of several publications relating to the agricultural labor market and the size and demographics characteristics of the agricultural workforce; and Dr. Don Villarejo, founder and retired director of the California Institute for Rural Studies and an expert in issues related to farmworker health, housing and demographics.

be emphasized that these are estimates, not a count of the LSC-eligible worker population. However, the methodology employs the best available data sets and the panel of experts considered this the best approach for developing accurate, reliable estimates of the agricultural worker population.

The table in Appendix B sets forth the estimates of the total LSC-eligible agricultural worker population in the U.S., the 50 states and Puerto Rico (there are no eligible agricultural workers or dependents in the District of Columbia.) In the remainder of the document, “states” refers to the 50 states and PR unless noted otherwise.

The balance of the memorandum describes the calculations and data sets used to develop these estimates. Section II describes the parameters of the LSC-eligible agricultural worker population used in the methodology. Section III provides an overview of the estimation methodology’s data sets and calculations. Section IV describes the data sets and calculations used to estimate the LSC-eligible population of H2-A and H-2B workers nationally and in each state. Section V details the specific calculations and data sets used to estimate the LSC-eligible agricultural worker population of current workers (and dependents) nationally and in each state that does not include H-2A and H-2B workers. Section VI sets forth the data sets and calculations used to estimate the LSC-eligible populations nationally and in each state of (a) retired workers (and their dependents) and (b) workers temporarily out of the workforce (and their dependents). Section VII identifies the steps used to develop the final estimates of the LSC-eligible agricultural worker population nationally and in each of the fifty states and Puerto Rico. Section VIII identifies limitations of the estimates.

## **II. DEFINITION OF THE LSC-ELIGIBLE AGRICULTURAL WORKER POPULATION**

For the purposes of the ETA estimate, the LSC-eligible population includes agricultural workers and their dependents with incomes below 100% of the U.S. Census Bureau poverty line who also are citizens, or who meet the LSC-eligibility criteria for representation of persons who are not U.S. citizens.<sup>3</sup>

*A. Persons Who Are Not Citizens.* The LSC eligibility criteria for persons who are not U.S. citizens are set forth in the LSC Regulations at 45 CFR Section 1626. Persons who are not citizens are eligible for LSC-funded services if they are lawful permanent residents, or have a valid visa status. Persons with a valid visa include asylees, refugees, those with visas allowed under the Violence Against Women Act (VAWA), T visas (victims of trafficking) and U (victims of violence) visas under provisions of the Immigration and Nationalization Act (INA) regarding trafficking and violence, abuse and extreme cruelty, as well as H-2A agricultural workers and H-2B forestry workers.

---

<sup>3</sup> The LSC eligibility criteria for persons who are not U.S. citizens are set forth in the LSC Regulations at 45 CFR Section 1626.



Excluded are individuals who do not have a current visa, including those in deferred deportation programs such as the Deferred Action for Childhood Arrivals (DACA) or the new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). Two exceptions to this exclusion are persons with pending I-130 applications for family sponsorship and persons who appear to be eligible for T and U visas or VAWA visas.

*B. Agricultural Workers.* The expert panel recommended that agricultural workers be defined based on their employment in establishments coded in the North American Industry Classification System (NAICS) as: 111 Crop Agriculture, and 112 Livestock, as well as establishments in the associated codes for agricultural services, 1151 and 1152, respectively. The LSC Regulations, however, specifically allow grantees to represent H-2B forestry workers. (Migrant Education also includes forestry in its definition of eligible farmworkers.) Forestry workers are employed by establishments in NAICS code 113 Forestry (and 1153, agricultural services). Therefore, for the purpose of the estimation, agricultural workers were defined as workers employed by establishments in NAICS codes: 111 Crop Agriculture, 112 Livestock, 113 Forestry, and the agricultural services codes of 1151, 1152, and 1153.

### **III. OVERVIEW OF METHODOLOGY AND DATA SETS**

There are no U.S. Census Bureau or other available data sets that provide comprehensive, reliable information regarding the size, distribution, economic and demographic characteristics, of the agricultural worker population in the U.S. Therefore, the estimation methodology incorporated the combination of data sets that provide the most recent, comprehensive and accurate information about the agricultural worker population.

*A. Top-Down Methodology.* The methodology was based on the “top down” approach that the expert panel agreed was the best method for developing accurate and reliable estimates of the agricultural worker population.<sup>4</sup> This approach is used by ETA to develop agricultural worker population estimates for the Congressional Budget Office and is the basis for the National Farmworker Jobs Program. While some federal programs with special services for farmworker populations rely on different approaches,<sup>5</sup> the expert panel recommended that the LSC estimation methodology should use, as much as possible, the top down approach that ETA uses for the National

---

<sup>4</sup> This term was first used by Dr. Philip Martin, in his *Harvest of Confusion: Migrant Workers in U.S. Agriculture* (Westview Press. Boulder, CO, 1988).

<sup>5</sup> For a more complete explanation of the different methods used to allocate federal funds for services to farmworker populations see “Methodologies for Estimating the Migrant Population”, a memo submitted to the National Center for Farmworker Health by Susan Gabbard, August 5, 2005 <http://www.ncfh.org/docs/NCFHattach/6Methodologies%20for%20Estimating%20the%20Migrant%20Population,%20Susan%20Gabbard,%20Aguirre%20Int%271%208.5.05.pdf>.

Farmworker Jobs Program (NFJP) and should include in the state estimates factors for which there were reliable state level data from a national source.<sup>6</sup>

This method yields the most valid, accurate estimates because it employs publically-available, national data sets and comparable methods for each geographic area. In addition, the use of public data sets and similar methods provides for the greatest transparency and fairness.

*B. Major Calculations.* As detailed in the following sections of the memorandum, the estimates of the LSC-eligible populations were derived from calculations to develop the following:

1. Base estimate of the number of agricultural workers in each state.
2. Base estimate of the number of LSC-eligible agricultural workers in each state.
3. Estimate of the number of LSC-eligible agricultural workers in each state who are temporarily out of the agricultural workforce (and their dependents).
4. Estimate of the number of LSC-eligible retired agricultural workers (and their dependents) in each state.
5. Estimate of the number of number of LSC-eligible H-2A agricultural workers and H-2B forestry workers in each state.

The estimate of the LSC-eligible agricultural worker population in each state is the sum of the population estimates calculated in steps 2, 3, 4 and 5 above.

The estimate of the LSC-eligible population nationally is the sum of all of the states' LSC-eligible populations.

*C. Data Sets.* Data from the following sources were used in the calculations to develop the above estimates:

1. United States Bureau of the Census (Census Bureau) Poverty Thresholds.
2. United States Department of Agriculture (USDA) 2012 Census of Agriculture (COA).<sup>7</sup>
3. USDA / National Agricultural Statistics Service (NASS) Farm Labor Survey (FLS).
4. United States Department of Labor (DOL) ETA 2008-2012 National Agricultural Workers Survey (NAWS).

---

<sup>6</sup> The NFJP allocation was first developed with the guidance of an Interagency Task Force comprised of members from DOL's Office of Policy and its Bureau of Labor Statistics. The Task Force also included representation from the Bureau of the Census at the Commerce Department, the Economic Research Service at the Agriculture Department, and the Executive Director of the Association of Farmworker Opportunity Programs – an association of Migrant and Seasonal Farmworker Program grantees.

<sup>7</sup> United States Department of Agriculture (USDA), National Agricultural Statistics Service (NASS). Special Tabulation of 2012 Census of Agriculture. ID 23194. 2012 Farm labor data by NAICS 111 and 112. Requested by JBS International. Released on 6/10/2014. Accessed at [http://www.nass.usda.gov/Data\\_and\\_Statistics/Special\\_Tabulations/Request\\_a\\_Tabulation/data-lab-records.html](http://www.nass.usda.gov/Data_and_Statistics/Special_Tabulations/Request_a_Tabulation/data-lab-records.html).

5. DOL, Bureau of Labor Statistics (BLS) 2012 Quarterly Census of Employment and Wages (QCEW).<sup>8</sup>
6. DOL, Office of Foreign Labor Certification (OFLC) 2012 H-2A and H-2B Visa Certifications.
7. DOL, OFLC 2012 Adverse Event Wage Rates

***Note that FLS data and NAWS data are available only for the regional level.***

Therefore, all states in the region are assigned the same values for factors derived from the FLS and the NAWS. Appendix A contains a map which shows the states in each NAWS region.<sup>9</sup> To achieve the sample size needed for robust regional estimates from the NAWS, five years of data were combined. For example, the average regional wage for Federal Fiscal Years 2008 through 2012 was used for all the states in each given region. Single-year FLS data are valid at the national level.

#### **IV. CALCULATING THE NUMBER OF ELIGIBLE H-2A WORKERS AND H-2B FORESTRY WORKERS**

The estimates of the population of LSC-eligible H-2A workers and H-2B forestry workers (H-2 workers) were developed separately from the estimates of the rest of the LSC-eligible agricultural worker populations for several reasons. In particular: all H-2 workers meet the LSC eligibility criteria for authorization status; reliable data are available from the DOL Office of Foreign Labor Certification (OFLC) regarding factors such as the number of H-2 workers nationally and in each state, the average wages of H-2 workers, and the average weeks worked of H-2 workers; virtually all H-2 workers are unaccompanied by family members; and H-2 workers are not included in the NAWS.

As noted above, all H-2 workers met LSC eligibility criteria for authorization status. It was estimated that all H-2 workers also had household incomes below the poverty line. Thus, all H-2 workers were counted as LSC-eligible. The estimates of the LSC-eligible H-2 worker populations nationally and in each state were derived from the following data sets and calculation.

*The numbers of H-2 workers nationally and in each state were identified using OFLC data. These data identify the total number of H-2A workers nationally<sup>10</sup> and the number*

---

<sup>8</sup> Bureau of Labor Statistics (BLS), Quarterly Census of Employment and Wages. Table built from query November 21, 2014 for NAICS 113 and 1153, accessed at [http://www.bls.gov/cew/apps/data\\_views/data\\_views.htm](http://www.bls.gov/cew/apps/data_views/data_views.htm).

<sup>9</sup> The NAWS has 12 regions derived from the 17 FLS regions. NAWS combines the FLS regions as follows. Delta and Southeast, two FLS Northeast Regions, two Appalachian regions, two Mountain regions and creates one region from the two Cornbelt regions and the two Northern Plains regions.

<sup>10</sup> United States Department of Labor (DOL), Office of Foreign Labor Certification. H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, FY 2012. November 21, 2014. Accessed at [http://www.foreignlaborcert.doleta.gov/pdf/h\\_2a\\_temp\\_agricultural\\_visa\\_2012.pdf](http://www.foreignlaborcert.doleta.gov/pdf/h_2a_temp_agricultural_visa_2012.pdf).

of H-2A workers in each state, including Puerto Rico.<sup>11</sup> They also include the number of H-2B forestry workers nationally<sup>12</sup> and the number of H-2B forestry workers (if applicable) in each state.<sup>13</sup> (Forestry workers made up a small portion of the H-2B workforce and not all states have H-2B forestry workers.)

*The poverty status of H-2 workers was determined using the following data sets and calculations.*

- For each certified H-2A and H-2B contract, OFLC reports data including the length of the contract, and the number of workers certified.
- These OFLC data and FLS data were used to estimate the income per contract:
  1. Average contract length (OFLC data) was divided by seven to get the number of weeks in the contract.
  2. Number of weeks in the contract (previous step) was multiplied by the national average hours worked per week (FLS data), to get the number of hours in the contract.
  3. Number of hours in the contract (previous step) was multiplied by the OFLC 2012 Adverse Effect Wage Rate (AEWR), resulting in an estimate of the income per contract.

This approach was based on the following reasoning. OFLC data provide no data regarding average hours worked per week. Therefore, the expert panel recommended the use of FLS data for hours. Further, employers were required to guarantee payment of 75 percent of the contract's value. This regulation guaranteed an income to the worker while recognizing the uncertainty of crop timing. Employers would be likely to ask for a contract that extended beyond the usual harvest season so as not to be caught short if the harvest was late. To parallel this, the estimated income per contract was multiplied by 75 percent to get the estimated income per contract.

- A worker's poverty status was derived by comparing estimated income per contract to the U.S. Census Bureau's 2012 poverty threshold for a single individual under the age of 65 (\$11,945).

This calculation indicated that approximately 90 percent of H-2A workers and 82 percent of H-2B forestry workers were on a contract whose estimated income would qualify them as poor.

---

<sup>11</sup> DOL, Office of Foreign Labor Certification. Annual Report October 1, 2011-September 30, 2012. December 8, 2014. Access at [http://www.foreignlaborcert.doleta.gov/pdf/OFLC-2012\\_Annual\\_Report-11-29-2013-Final%20Clean.pdf](http://www.foreignlaborcert.doleta.gov/pdf/OFLC-2012_Annual_Report-11-29-2013-Final%20Clean.pdf).

<sup>12</sup> DOL, Office of Foreign Labor Certification. H-2B Temporary Non-Agricultural Labor Certification Program - Selected Statistics, FY 2012. November 21, 2014. Accessed at [http://www.foreignlaborcert.doleta.gov/pdf/h\\_2b\\_temp\\_non\\_agricultural visa\\_2012.pdf](http://www.foreignlaborcert.doleta.gov/pdf/h_2b_temp_non_agricultural visa_2012.pdf).

<sup>13</sup> DOL's Office of Foreign Labor Certification. H-2B Performance Data FY 2012. December 7, 2014. Accessed at <http://www.foreignlaborcert.doleta.gov/performancecdm.cfm>.

These calculations assumed that the H-2A or H-2B contract was the worker's only income relevant to the determination of his/her poverty status. The calculations also assumed that H-2 workers had no dependents, since there was no information on the numbers of dependents these workers had. Surveys of H-2A workers have shown that these workers are mostly unaccompanied in the U.S. and would not have many lawfully present dependents. At the same time, many H-2A workers were supporting dependents in their home country. Both U.S. and home-country dependents should be included in determining workers' poverty status. Since poverty rates among H-2 workers were very high when they were considered as single individuals, it is likely that almost all would be considered poor if dependents were added to the calculation. Hence, for the purpose of the population estimation, all H-2 workers were considered LSC-eligible *with no LSC-eligible dependents*.

The estimated numbers of H2A workers and H-2B forestry workers in each state and nationally are identified in columns G and H, respectively, of the table in Appendix B.

## **V. BASE ESTIMATES OF THE LSC-ELIGIBLE AGRICULTURAL WORKER POPULATION EXCLUDING H-2 WORKERS**

Since the calculations for H-2 workers were done separately (Section IV), this section sets forth the specific calculations and data sets used to estimate the "base estimates" of LSC-eligible agricultural workers and the LSC-eligible agricultural worker population, *excluding H-2 workers*. All references to agricultural workers in this section are to workers who are not H-2 workers.

In each state, the regional ratio of LSC-eligible persons per farmworker was multiplied by the corresponding state population estimate not including of H-2 workers. The result was the number of LSC-eligible individuals without a H-2A or H-2B visa.

Note that the national estimates of these populations are derived by summing all of the state estimates / shares. The validity and strength of this approach was set forth by Amang Sukasih and Frank Potter in their analysis of three top-down estimates of the farm labor force.<sup>14</sup> They endorsed calculating the estimates at the lower levels of aggregation and then summing the results (e.g., calculating population sizes at the state or regional level and then aggregating to the national level).

### ***A. Base estimates of the number of agricultural workers nationally and in each state***

The base estimate is derived from the following calculations:

---

<sup>14</sup> Memo to Daniel Carroll DOL/ETA/OPDR from Amang Sukasih and Frank Potter dated 9/30/2013, "Review on the Estimation of Agricultural Workers ('Top-Down' Estimation)."



- Total labor expenditures per state ÷ the average hourly wage = the total number of hours worked;
- Total number of hours worked (from last step) ÷ the average hours worked per week = total number of weeks worked;
- Total number of weeks worked (from last step) ÷ the average number of weeks worked per worker per year = the number of workers.

As noted above, the base of workers in each state was calculated first. Then the national estimate was derived by summing all of the state estimates.

The factors used in the above calculations employed different data sets for different categories of workers. Based on the recommendations of the expert panel, the following data sets were used:

- Labor expenditures for directly hired and contract workers: Data for crop and livestock workers nationally and for each state came from the USDA 2012 COA.<sup>15</sup> These labor expenditure data are available separately, by special request to USDA, for directly hired and labor-contracted crop and livestock workers. The COA does not provide expenditure data for off-farm forestry work. The opinion of the expert panel was that the BLS QCEW had the best data for forestry workers. Therefore, 2012 QCEW data was used to estimate the annual average employment and annual wages in 2012 for forestry and forestry services workers.<sup>16</sup>
- Average hourly wage:
  - 1) The combined “field and livestock” wage data from the USDA FLS were used to derive the average hourly wage of all livestock workers in each state; separate average hourly wages for directly-hired and labor-contracted livestock workers were not used in the estimates because the FLS does not report the wages of labor-contracted workers.<sup>17</sup> The FLS does not include data for Alaska or Puerto Rico, so the national level data was used for the estimates of the average livestock wages for those states.

---

<sup>15</sup> United States Department of Agriculture (USDA), National Agricultural Statistics Service (NASS). Special Tabulation of 2012 Census of Agriculture. ID 23194. 2012 Farm labor data by NAICS 111 and 112. Requested by JBS International. Released on 6/10/2014. Accessed at [http://www.nass.usda.gov/Data\\_and\\_Statistics/Special\\_Tabulations/Request\\_a\\_Tabulation/data-lab-records.html](http://www.nass.usda.gov/Data_and_Statistics/Special_Tabulations/Request_a_Tabulation/data-lab-records.html)

<sup>16</sup> Bureau of Labor Statistics (BLS), Quarterly Census of Employment and Wages. Table built from query November 21, 2014 for NAICS 113 and 1153, accessed at [http://www.bls.gov/cew/apps/data\\_views/data\\_views.htm](http://www.bls.gov/cew/apps/data_views/data_views.htm).

<sup>17</sup> USDA, NASS. Farm Labor Survey, November 19, 2012. Annual Average Wage Rates - Region and United States: 2011 and 2012. Field workers. NASS does not report a separate livestock wage. Per personal communication from Daniel Carroll (October 31, 2014), the following formula was used to derive the livestock wage. If the combined wage = 0.7\* crop wage + 0.3\*livestock wage, then the livestock wage equals the difference between the combined wage and 0.7\*crop wage divided by 0.3. See: <http://usda.mannlib.cornell.edu/usda/nass/FarmLabo//2010s/2012/FarmLabo-11-19-2012.pdf> (p. 24).

- 2) Data from the DOL / ETA NAWS were used for all crop workers in each state, including directly-hired and labor-contracted workers.<sup>18</sup> JBS, in consultation with ETA's Contracting Officer's Representative for the NAWS, determined that NAWS data on average hourly earnings for all crop workers was the best wage to use because the FLS wage data did not reflect wages paid to contract workers; contract labor expenditures in crop agriculture, nationally, comprise 30 percent of total labor expenditures.
  - 3) The NAWS does not collect data in Alaska, Hawaii, or Puerto Rico, so the national-level average wage was applied to those three jurisdictions.
  - 4) The 2012 AEW from DOL, OFLC was used to determine wages for NAICS code 113 employees.<sup>19</sup> There were no national surveys of forestry workers' wages in 2012. LSC grantees serve H-2B forestry workers, and these workers must be paid at least the AEW. JBS reasoned that the AEW is the best proxy to use for forestry workers' wages because it is a prevailing wage for agricultural tasks similar to forestry work. There is no AEW for Puerto Rico or Alaska, so the 2012 AEW national level data was used for those estimates.
- Average number of hours worked per week:
    - 1) The FLS<sup>20</sup> was used for the number of hours worked per week in all three occupational categories - crop, livestock and forestry. (Like the hourly wage estimates, the FLS hours worked per week estimates do not include contract labor.) While the FLS does not survey forestry workers, the expert panel agreed that crop and livestock workers work roughly similar numbers of weeks during the year as do forestry workers.
    - 2) The FLS did not include data for Alaska or Puerto Rico in 2012, so the national level data was used for the estimates of the hours worked per week for those jurisdictions.
  - Average number of weeks worked per year:
    - 1) On the recommendation of the expert panel, the calculation for the size of the workforce used NAWS regional averages of the number of weeks worked in farm work per year.<sup>21</sup> While the NAWS surveys only crop workers, the experts agreed that livestock and forestry workers work roughly similar numbers of weeks during the year as do crop workers.
    - 2) The national average was used for Alaska, Hawaii and Puerto Rico.

---

<sup>18</sup> DOL, National Agricultural Workers Survey (restricted data).

<sup>19</sup> DOL, U.S. Department of Labor's Office of Foreign Labor Certifications. Adverse Effect Wage Rate Chart 2007-2012. Accessed at <http://www.dol.gov/opa/media/press/eta/ETA20111794fs.pdf>.

<sup>20</sup> USDA, NASS. Farm Labor Survey, November 19, 2012. Annual Average Number of Hired Workers and Hours Worked - Region and United States: 2011 and 2012. See <http://usda.mannlib.cornell.edu/usda/nass/FarmLabo//2010s/2012/FarmLabo-11-19-2012.pdf> (p. 23).

<sup>21</sup> DOL, National Agricultural Workers Survey (restricted data).

The base estimate of the number of agricultural workers in each state and the U.S. is shown in Column B of the table in Appendix B.

***B. Base estimates of the number of LSC-eligible agricultural workers and dependents nationally and in each state***

The base estimates of the total LSC-eligible agricultural worker population nationally and in each state was derived using the following calculations:

- Total number of agricultural workers in each state (from V.a. above) x percentage of LSC-eligible agricultural workers in the state = number of LSC-eligible agricultural workers in the state.
- Total number of agricultural workers in each state x the average number of eligible dependents per worker in the state = number of LSC-eligible dependents in the state.

As with the base estimates of the population of agricultural workers, the estimates of the numbers of LSC-eligible agricultural workers and dependents were first calculated at the state level. The national estimate was then derived by summing all of the state estimates.

The two LSC eligibility factors relate to poverty status and authorization status. The members of the expert panel agreed that the NAWS was the only reliable source of data on farmworker demographics that could provide the information needed for calculating worker and dependent eligibility. The NAWS was designed to provide valid and reliable data on crop workers using data collection methods developed specifically for this seasonal and migratory population, which is often omitted from or undercounted in other data sources. Both ETA and Migrant and Seasonal Head Start (MSHS) use NAWS data in estimating the size of their farmworker service populations. In addition, the NAWS provides information for the Congressional Budget Office on legislation affecting farmworkers.

The NAWS collects data on workers employed in crop agriculture. Because the sources of data on forestry and livestock worker demographics and dependents were scattered, the panel agreed that applying findings from the NAWS to these workers was a better option than using incomplete or old data on forestry or livestock workers.

As noted above (page 5), NAWS data are available only for the regional level. The NAWS collects state-level data for only two states (California and Florida). For the remaining states, the panel recommended using the corresponding NAWS regional estimate.



NAWS data were used to calculate the poverty and authorization status of both agricultural workers and their dependents.

*LSC-eligible agricultural workers.* As indicated above, to estimate the number of LSC-eligible agricultural workers (i.e., authorized and in poverty) in a state it was necessary to calculate the percentage of farmworkers in the state that was LSC eligible. The estimation of *poverty status was computed using the following data sets and calculation:*

- Information about workers' household income and household size were derived from NAWS data. The total household income was the income that the farmworker respondent reported for the calendar year prior to the NAWS interview.

In determining household size, the expert panel endorsed a definition of household as the economic household, which the NAWS survey instrument defined as all individuals who share income and expenses. There were no a priori restrictions on the relationship or the residence location of members of the economic household. Household members could include extended family members or unrelated individuals, so long as they shared resources with the farmworker. Economic household members could include individuals residing with the farmworker, living elsewhere in the United States, or living abroad.

- The poverty status of the agricultural worker was determined by comparing the U.S. Census Bureau poverty threshold for the worker's household size to the total household income.

*Workers' authorization status* also was determined based on NAWS data.

- The NAWS has a series of questions on legal status that focus on identifying whether foreign-born workers have authorization to work in the U.S. NAWS respondents were asked whether they were born in the U.S. or abroad, their citizenship or visa status, what visa program they applied for, when they applied, when they received their visa, and whether they had work authorization.

The NAWS then creates a legal status variable using an algorithm that tests the consistency and completeness of the respondents' answers and assigns workers to one of four categories: citizen, lawful permanent resident, other work authorization visa holder, or unauthorized. Workers in the "other work authorized" category can have a variety of visa types including U visas for victims of crime and T visas for victims of human trafficking. An algorithm crosschecks the information given by the respondent with the requirements for the visa.

These data for authorized workers with household incomes below the poverty line were used to calculate the percentage of agricultural workers in each state that was LSC-eligible. (Note that each state's percentage is based on the regional percentage.) In the table in Appendix B, the percentage of agricultural workers in each state that is LSC-eligible is identified in column C and the numbers of LSC-eligible workers in each state and nationally are identified in column D.

Using Alabama as an example, the estimated number of LSC-eligible agricultural workers, noted in column D, is 3,502. This is obtained by multiplying the estimated share of agricultural workers in the region containing Alabama who are LSC-eligible (.0734882269092308), noted as the rounded 7 percent in column C, by the estimated number of non H-2 workers (column B minus the sum of columns G and H), and then adding back in the number of H-2 workers (G + H):

$$3,502 = [(34,241 - (681 + 383)) \times .0734882269092308 + (681 + 383)]$$

or, using the column letters:

$$D = C \times [B - (G + H)] + (G + H).$$

*LSC-eligible dependents.* As indicated above, the estimate of the population of LSC-eligible dependents in a state was derived from the average number of eligible dependents per worker in the region containing the state. Dependents' LSC-eligibility was determined only by their legal status and dependence on a poor farmworker. Unauthorized farmworkers could have eligible dependents. In poor farmworker households that included both lawful and unauthorized dependents, only the lawfully-present dependents were counted.

The average number of eligible dependents per worker in a state was calculated using NAWS data. The NAWS includes a set of questions to collect data on members of the farmworkers' economic households that include each member's relationship to the farmworker and place of birth. These data were used to determine the average number of LSC-eligible dependents in each farmworker's household. Farmworkers ages 14 and above in the economic household are part of the NAWS sampling frame and accounted for in the estimate of eligible farmworkers. For calculation purposes, household dependents included farmworkers under the age of 14 and all other household members.

The average number of LSC-eligible individuals per farmworker was estimated by calculating the average number of eligible dependents for all of workers (again, excluding H-2 workers).

If the farmworker was LSC-eligible (i.e., authorized and household in poverty), the number of LSC eligible individuals in a household was expressed as follows:

1 + number of LSC-eligible dependents \* dependent weight.

If the household was poor and the farmworker was unauthorized, the number of eligible individuals in the household was expressed as follows:

0 + number of LSC-eligible dependents \* dependent weight

The dependent weight accounted for the multiple reporting of dependents in households with more than one farmworker in the NAWS sampling frame. The formula for the weight was:

Dependent weight = 1 / number of farmworkers ages 14 and over in the household

This weight is one if the respondent is the only farmworker in the household, one-half if there are two farmworkers in the household, one third if there are three farmworkers in the household, and so on.

In the table in Appendix B, the average number of LSC-eligible dependents per worker in each state (which is derived from the regional average) is listed in column E and the numbers of LSC-eligible dependents in each state and nationally are listed column F.

## **VI. AGRICULTURAL WORKERS TEMPORARILY OUT OF THE WORKFORCE OR RETIRED**

Federal farmworker service programs generally include some farmworkers not currently in the labor force. These include workers who were unemployed, disabled, retired, temporarily out of the labor force for family or other reasons, or temporarily working in a non-farm job. There is no reliable and consistent state-level data on workers not currently in the labor force, so calculations to estimate the size of this population took place at the national level using national data. There is little guidance in the “top down” approach for estimating the population of workers currently out of the workforce or who are retired. Therefore, the estimation model used a “look back” method and cohort analysis using NAWS data to estimate these populations.

As noted above, the estimates of the populations of agricultural workers and the LSC-eligible populations were first calculated for the states and then national estimates were calculated by adding together the state estimates. However, there are not state or regional data about the populations of agricultural workers that are retired or out of the workforce. Therefore, the expert panel recommended that the populations of these workers should be calculated at the national level. However, as LSC must use consistent state and national estimates to equitably distribute legal services funds to grantees throughout the country, it was necessary to estimate the numbers of these persons in each state. In consultation with ETA’s Contracting Officer’s Representative, JBS constructed state estimates that included agricultural workers temporarily out of the labor force or retired. The estimates of the sizes of these populations in each state

were derived by allocating proportionately to each state their respective shares of the total base population of LSC agricultural workers and their dependents and the LSC-eligible H-2 population.

### ***Estimating LSC-Eligible Agricultural Workers Temporarily Out of the Workforce***

One way that federally-funded farmworker service programs handle temporary absences from the farm labor force is to include a “look-back” period in their eligibility criteria. These look-back periods include farmworkers who do not currently meet program eligibility criteria but who did at some time during the recent past. This would include farmworkers unemployed for short or long periods of time, those temporarily or permanently disabled, as well as those caring for family members or recently retired.

Service programs vary in the length of their look-back periods.<sup>22</sup> Look-back periods are usually defined in terms of an eligibility window. A two-year look-back period would include agricultural workers in the current year’s labor force plus those who were active farmworkers the previous year but not in the current year. For example, a two-year look-back period could include individuals who were active farmworkers in 2012 plus those who had worked in farm work in 2011 but not 2012. A three-year look-back period could include workers active in the 2012 farm labor force plus those who had worked in 2010 or 2011 but not in 2012.

As noted above, there is little guidance on how to measure the look-back period in a top-down estimate. Federal agencies use look-back periods for eligibility, not population estimates. Furthermore, no national surveys include information about respondents’ prior farm work history. The approach taken here was to use a cohort analysis. Demographers use this method to estimate changes to population sizes by examining the behavior of cohorts over time. The cohorts for the look-back period include all farmworkers who were new to the farm labor force in a particular calendar year. The look-back analysis measured absences from the farm labor force as the difference between the size of the cohort when it entered farm work and its size in subsequent years. It derives this information from a NAWS survey question that asks farmworkers to identify the year they first did farm work.

The three-year look-back period appeared appropriate for the LSC estimation. The look-back period was then calculated as the difference in the number of farmworkers absent from the labor force over a three-year period beginning in 2010 and ending in 2012. To apply this crop worker estimate to workers in livestock and forestry, the size of the look-back period was expressed as the ratio of workers not in the 2010-2012 labor force to workers in the 2012 labor force. This ratio was 8.4 percent.

---

<sup>22</sup> MSHS and Migrant Health have a two-year look back period to account for the seasonality of farm work, given that their eligibility guidelines require that 50 percent of the worker’s income in at least one 12-month period during the look back be from farm work. Migrant Education has a three-year focus, as its purpose is to remedy the impacts of education disrupted by migration. Students may need assistance over time in order to achieve the desired education outcomes.

This calculation assumed that workers temporarily out of the labor force had the same demographic characteristics and numbers of dependents as those currently working.

To derive estimates of the LSC-eligible populations of agricultural workers temporarily out of the workforce (and their dependents), the base estimate of the LSC-eligible population (including H-2 workers) in the state and nationally was multiplied by 8.4%.

### ***Retired Farmworkers***

While look-back periods are a good option for handling temporary absences from farm work, they do not include workers who exited the farm work force due to long-term disabilities or who have been retired for more than three years. Very little information was available to help determine the size of the retired farmworker population. Among the major migrant service programs, Migrant Health explicitly serves retired farmworkers. JBS consulted the National Center for Farmworker Health (NCFH) on their experience estimating retired farmworker populations for local health clinics. NCFH's calculations for the size of the retired farmworker population rely on local information, Census data on the population over age 65, and the size of the farm labor force relative to the total local labor force. NCFH used this method as one component of a process forecasting patient counts for migrant and community health centers.

For the LSC estimate, JBS used a cohort analysis to provide information on the ages of farmworkers no longer in the labor force. The cohorts consisted of all NAWS respondents with the same birth year. Similar to the calculations for the look-back period, the analysis focused on identifying the number of individuals in the birth cohort who were no longer in the farm labor force. There was no way to identify the size of the entering class for each of these age groups as they were already in farm work when the NAWS began. As a result, 1989 was used as the base year. The workers in these birth-year cohorts were ages 45 years or older when the NAWS began collecting data in Fall 1988.

There was no national source of data on either the age at which farmworkers retire or their average lifespan. In 2011, the average U.S. life expectancy was 78.7 years.<sup>23</sup> The model used by JBS acknowledged that farm work was physically difficult and, as a result, workers may retire before their full retirement age. It also acknowledged that poverty and other factors might reduce farmworkers' lifespans. As a result, the model assumed that workers spent an average of 10 years in retirement, retiring after age 65 and dying in their mid-70s.

Using these assumptions, JBS calculated the ratio of retired farmworkers to working farmworkers as 10 percent. Multiplying the national base population by 10 percent resulted in approximately 130,000 retired farmworkers ages 65-75, and their

---

<sup>23</sup> Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report (MMWR). *QuickStats: Life Expectancy at Birth, by Sex and Race/Ethnicity – United States, 2011*. Accessed at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6335a8.htm>.

dependents, in 2012. This calculation assumed that retired farmworkers had similar demographic characteristics and the same number of dependents as currently working farmworkers.

To derive estimates of the LSC-eligible retired agricultural worker population, the base estimate of the LSC-eligible population (including H-2 workers) in the state and nationally was multiplied by 10.0%. Column J of the table in Appendix B lists the number of the LSC-eligible population of retirees and their dependents, and workers temporarily out of the workforce and their dependents.

## **VII. FINAL ESTIMATES OF THE LSC-ELIGIBLE AGRICULTURAL WORKER POPULATION NATIONALLY AND IN EACH OF THE FIFTY STATES AND PUERTO RICO**

### ***States' LSC-eligible agricultural worker populations***

The total number of LSC-eligible individuals in each state was the sum of the number of eligible H-2A and H-2B forestry workers plus the number of other LSC-eligible workers, LSC-dependents, and the number of retirees and workers temporarily out of the workforce and their dependents:

LSC-Eligible Agricultural Worker State Population (column K) =  
H-2 workers (column G + column H) + LSC-eligible workers (column D) + LSC-eligible dependents (column F) + LSC eligible retirees/temporarily out of work and dependents (column J).

### ***National LSC-eligible agricultural worker population***

The national LSC-eligible agricultural worker population is the sum of all of the states' agricultural worker populations (column K):

National LSC-Eligible Agricultural Worker Population (last row in column K) =  
Sum of All States' LSC-Eligible Agricultural Worker Population (sum of all other rows in column K).

### ***States' shares of the national LSC-eligible agricultural worker population***

Each state's respective share of the national agricultural worker population was calculated by dividing its LSC-eligible agricultural worker population by the national LSC-eligible agricultural worker population:

State Share of the Total LSC Eligible Population (Column L) =  
LSC-Eligible Agricultural Worker State Population (column K) ÷  
National LSC-Eligible Agricultural Worker Population.

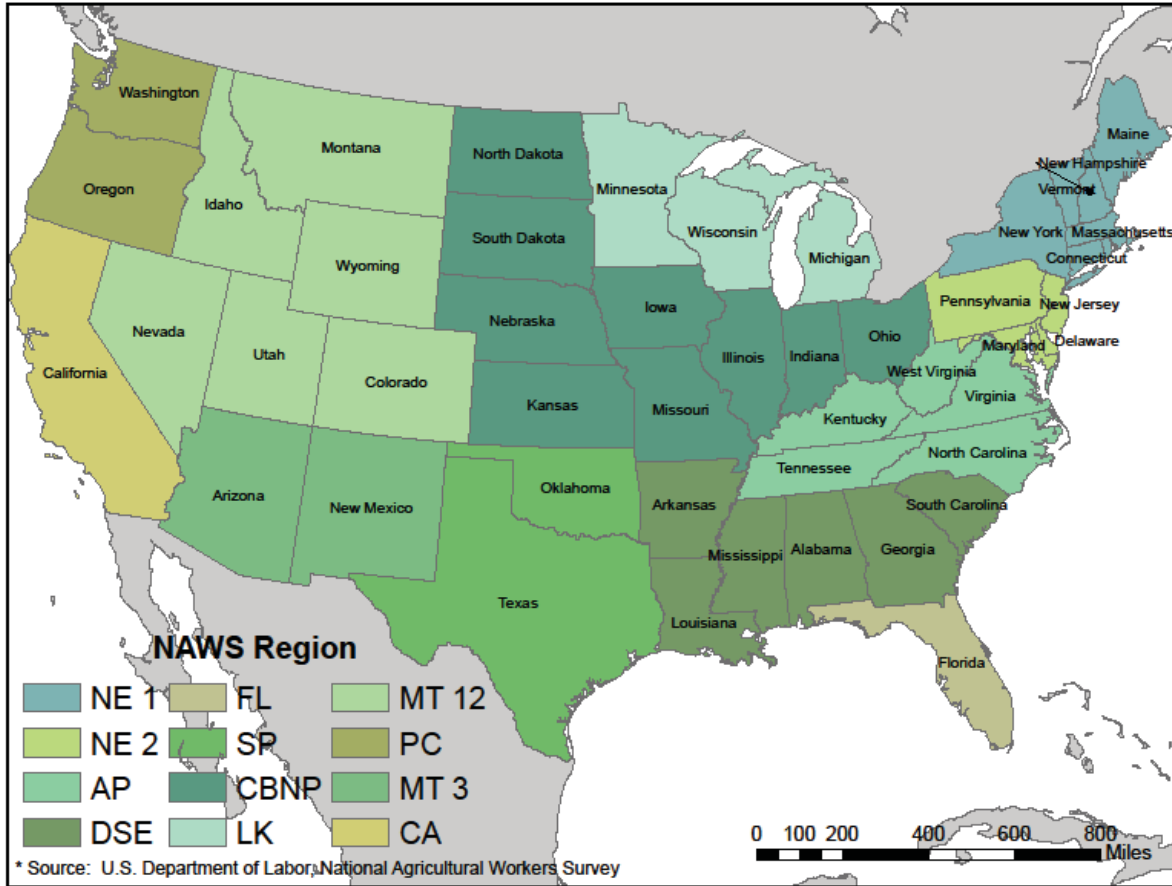


### **VIII. Limitations of the Estimates**

Because there were no existing data on the counts of farmworkers and the number of farmworkers and dependents that met LSC-eligibility criteria, LSC asked JBS to produce an estimate of the LSC-eligible population. JBS consulted experts and relied on best practices in constructing the estimates and followed the experts' recommendation of using a top-down approach to produce the most accurate and equitable state shares. JBS used the best available data at each step of the process.

The estimates of the LSC-eligible population included limitations resulting from the many necessary assumptions made in order to do the calculations, the varying data definitions, and lack of existing information on some groups within the LSC-eligible population. Each of these may have introduced varying degrees of uncertainty or inaccuracy in the estimates that could result in under- or over-estimating the population size. It appeared likely that many of these limitations had effects that to some degree offset each other.

## Appendix A: NAWS Sampling Regions





**APPENDIX B**

**ESTIMATES OF THE LSC-ELIGIBLE AGRICULTURAL WORKER POPULATION BY STATE AND NATIONALLY**

**TOTAL NUMBER NATIONALLY AND STATE NUMBER AND PERCENTAGE SHARE**

A	B	C		D	E	F		G	H	I	J	K	L
		LSC Eligible Workers				LSC-Eligible H-2 Workers							
State	Total Number of Workers	Percentage (%) of LSC-eligible Workers	Total LSC Eligible Workers	Average Number per Worker	Total LSC Eligible	H-2A	H-2B Forestry	Total LSC-Eligible: current Workers & Dependents	LSC-Eligible Retirees / Temporarily Out of Work Force & Dependents	Total LSC-Eligible Agricultural Worker Population	State Percentage (%) Share of total Eligible Population		
ALABAMA	34,241	7%	3,502	0.23	7,574	681	383	11,076	2,044	13,120	0.845%		
ALASKA	2,759	14%	405	0.31	848	22	-	1,254	231	1,485	0.096%		
ARIZONA	35,130	31%	13,942	0.65	19,939	2,375	2,049	33,881	6,254	40,135	2.584%		
ARKANSAS	30,802	7%	4,766	0.23	6,415	2,701	-	11,181	2,064	13,245	0.853%		
CALIFORNIA	633,978	10%	63,103	0.33	210,006	2,862	76	273,109	50,412	323,521	20.832%		
COLORADO	48,899	14%	7,943	0.32	15,237	1,079	-	23,180	4,278	27,458	1.768%		
CONNECTICUT	15,159	17%	3,210	0.3	4,294	721	-	7,504	1,385	8,889	0.572%		
DELAWARE	3,655	18%	685	0.15	558	32	-	1,243	229	1,472	0.095%		
FLORIDA	134,352	9%	18,471	0.46	58,963	6,945	98	77,433	14,294	91,727	5.906%		
GEORGIA	60,532	7%	12,493	0.23	11,836	8,227	456	24,329	4,491	28,820	1.856%		
HAWAII	23,706	14%	3,403	0.31	7,319	98	-	10,722	1,979	12,701	0.818%		
IDAHO	56,144	14%	10,902	0.32	16,831	1,980	1,340	27,733	5,119	32,852	2.115%		
ILLINOIS	62,896	23%	15,141	0.24	14,737	784	-	29,879	5,515	35,394	2.279%		
INDIANA	46,347	23%	11,065	0.24	10,888	458	-	21,953	4,053	26,006	1.675%		
IOWA	81,458	23%	19,731	0.24	19,049	1,173	-	38,780	7,158	45,938	2.958%		
KANSAS	53,173	23%	12,868	0.24	12,438	751	-	25,307	4,671	29,978	1.930%		
KENTUCKY	45,957	20%	13,104	0.19	8,014	4,754	-	21,118	3,899	25,017	1.611%		
LOUISIANA	31,467	7%	8,586	0.23	5,638	6,771	-	14,224	2,625	16,849	1.085%		
MAINE	21,328	17%	4,196	0.3	6,156	584	44	10,353	1,911	12,264	0.790%		
MARYLAND	13,197	18%	2,902	0.15	1,934	639	-	4,836	893	5,729	0.369%		
MASSACHUSETTS	15,673	17%	3,073	0.3	4,528	449	-	7,601	1,403	9,004	0.580%		
MICHIGAN	80,549	13%	10,514	0.33	26,226	344	-	36,740	6,782	43,522	2.802%		
MINNESOTA	70,633	13%	9,621	0.33	22,847	761	-	32,468	5,994	38,462	2.477%		
MISSISSIPPI	31,169	7%	5,482	0.23	6,329	2,255	1,190	11,811	2,180	13,991	0.901%		
MISSOURI	49,206	23%	11,566	0.24	11,616	250	-	23,182	4,279	27,461	1.768%		
MONTANA	24,747	14%	3,963	0.32	7,732	480	-	11,695	2,159	13,854	0.892%		

ESTIMATES OF THE LSC-ELIGIBLE AGRICULTURAL WORKER POPULATION BY STATE AND NATIONALLY

TOTAL NUMBER NATIONALLY AND STATE NUMBER AND PERCENTAGE SHARE

A	B	C		D	E	F		G	H		I	J	K	L
		LSC Eligible Workers	Percentage (%) of LSC-eligible Workers			Total LSC Eligible Workers	Average Number per Worker		Total LSC Eligible	LSC-Eligible H-2 Workers				
NEBRASKA	56,342	23%	13,239	0.24	13,302	281	-	26,541	4,899	31,440	2.024%			
NEVADA	8,262	14%	2,822	0.32	2,024	1,910	-	4,846	894	5,740	0.370%			
NEW HAMPSHIRE	6,736	17%	1,288	0.3	1,958	153	-	3,246	599	3,845	0.248%			
NEW JERSEY	19,141	18%	3,896	0.15	2,864	545	-	6,760	1,248	8,008	0.516%			
NEW MEXICO	17,206	31%	5,489	0.65	11,026	226	-	16,515	3,049	19,564	1.260%			
NEW YORK	64,623	17%	14,146	0.3	18,139	3,632	-	32,284	5,960	38,244	2.463%			
NORTH CAROLINA	93,905	20%	27,474	0.19	16,205	10,498	91	43,679	8,062	51,741	3.332%			
NORTH DAKOTA	29,303	23%	7,496	0.24	6,730	940	-	14,226	2,625	16,851	1.085%			
OHIO	56,497	23%	13,651	0.24	13,222	770	-	26,873	4,961	31,834	2.050%			
OKLAHOMA	24,801	19%	5,148	0.33	7,999	422	84	13,147	2,427	15,574	1.003%			
OREGON	105,096	9%	10,056	0.39	40,743	88	552	50,799	9,377	60,176	3.875%			
PENNSYLVANIA	50,004	18%	9,465	0.15	7,617	554	-	17,081	3,153	20,234	1.303%			
PUERTO RICO	13,316	14%	1,864	0.31	4,128	-	-	5,992	1,106	7,098	0.457%			
RHODE ISLAND	1,771	17%	309	0.3	525	4	-	834	154	988	0.064%			
SOUTH CAROLINA	30,175	7%	5,309	0.23	6,127	2,924	413	11,436	2,111	13,547	0.872%			
SOUTH DAKOTA	27,361	23%	6,800	0.24	6,345	619	-	13,145	2,427	15,572	1.003%			
TENNESSEE	34,520	20%	8,879	0.19	6,255	2,250	112	15,134	2,794	17,928	1.154%			
TEXAS	133,995	19%	27,339	0.33	43,410	2,078	66	70,749	13,060	83,809	5.397%			
UTAH	16,935	14%	3,743	0.32	4,908	1,532	-	8,651	1,596	10,247	0.660%			
VERMONT	8,297	17%	1,776	0.3	2,343	418	-	4,119	761	4,880	0.314%			
VIRGINIA	41,419	20%	10,149	0.19	7,628	2,161	40	17,777	3,281	21,058	1.356%			
WASHINGTON	135,362	9%	16,544	0.39	50,936	4,443	329	67,481	12,455	79,936	5.147%			
WEST VIRGINIA	7,857	20%	1,699	0.19	1,502	134	-	3,201	591	3,792	0.244%			
WISCONSIN	84,164	13%	10,995	0.33	27,400	171	199	38,395	7,087	45,482	2.929%			
WYOMING	11,540	14%	1,930	0.32	3,575	319	-	5,505	1,016	6,521	0.420%			
<b>US</b>	<b>2,785,785</b>	<b>N/A</b>	<b>486,143</b>	<b>N/A</b>	<b>824,863</b>	<b>85,248</b>	<b>7,522</b>	<b>1,311,008</b>	<b>241,995</b>	<b>1,553,003</b>	<b>100.0000%</b>			

## **APPENDIX B**

“Funding of Legal Assistance for Migratory and Other Farmworkers,”  
memorandum from Ronald S. Flagg, Gen. Counsel; Mark F. Freedman, Senior  
Assistant Gen. Counsel; and Bristow Hardin, Program Analyst, Office of Program  
Performance to the LSC Board Operations and Regulations Committee  
(Oct. 8, 2013)





## MEMORANDUM

**TO:** Operations and Regulations Committee

**FROM:** Ronald S. Flagg, General Counsel  
Mark F. Freedman, Senior Assistant General Counsel  
Bristow Hardin, Program Analyst, OPP

**CC:** Janet Labella, Tillie Lacayo

**DATE:** October 8, 2013

**SUBJECT:** Funding of Legal Assistance for Migratory and Other Farmworkers

---

### **OVERVIEW**

LSC has provided grants to serve migratory and other farmworkers (generally referred to as “migrant grants”) with appropriated funds since the 1970’s. Since 1996, funds appropriated for “basic field programs” have been allocated to each state, territory and the District of Columbia via a per capita funding formula based on data from the U.S. Census Bureau regarding the location of the poverty population. The entire state, territory, or District of Columbia is a single “geographic area” within which LSC may designate one or more “service areas” for grants. Within most of these geographic areas, LSC distributes those funds through general-purpose basic field grants and through separate migrant grants.<sup>1</sup> The amount of the migrant grant in each geographic area is based on the migrant population of that area, which is deducted from the total poverty population for that area for purposes of calculating the general-purpose basic field grant.

The basis on which LSC allocates migrant grants raises at least two fundamental issues. First, the data used to estimate the migrant population of each geographic area are outdated. There is no U.S. Census Bureau estimate of migrant population, and the migrant population figures LSC uses to compute migrant grants are based on historical estimates dating back to 1990. Second, there is a mismatch between the population served by so-called “migrant

---

<sup>1</sup> There are migrant grants covering 43 states and Puerto Rico. There is no more than one migrant service area in a state. Services to migrants in six New England states (CT, MA, ME, NH, RI, and VT) are provided by Pine Tree Legal Assistance through a single service area (under a single migrant grant). Grants are provided to grantees for migrant services in 18 states with a single basic field grantee, and 20 states with multiple basic field service areas. FY13 grant amounts for service areas in individual states range from \$25,406 (LA) to \$2,435,542 (CA).

grants” – generally migrants *and* other farmworkers – and the population used to determine the distribution and allocation of migrant grants – solely migrant workers.

This memorandum provides background information regarding the funding of grants for legal assistance to migrants and farmworkers and these two issues. The memorandum covers the following topics:

- Historical and Legal Context of LSC’s Funding of Legal Assistance for Migratory and Other Farmworkers
- LSC Funding for Legal Services for Migratory and Other Farmworkers Since 1974
- Populations Currently Served by LSC Migrant Grantees and the Scope of Those Services
- NLADA 2013 Analysis of the Population of Agricultural Workers
- Migrant Census and Eligibility Issues
- Next Steps

## **I. HISTORICAL AND LEGAL CONTEXT OF LSC’S FUNDING OF LEGAL ASSISTANCE FOR MIGRATORY AND OTHER FARMWORKERS**

LSC has provided targeted funding for migrant legal services since LSC’s establishment.<sup>2</sup> Although this has been termed “migrant funding,” migrant programs have served migrants *and* other farmworkers throughout this period and LSC has found on several occasions that this is the most effective and efficient way to address the legal needs of these clients.

### **A. Legal Authority for Sub-Population Grants**

The LSC Act provides broad general authority for LSC grantmaking for “the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.” 42 U.S.C. § 2996b(a). Section 1006(a)(1) of the LSC Act authorizes LSC “(A) to provide financial assistance to qualified programs furnishing legal assistance to eligible clients . . . and (B) to make such other grants and contracts as are necessary to carry out the purposes and provisions [of the LSC Act.]” 42 U.S.C. § 2996e(a)(1)(A) and (B). Starting in 1996, Congress has appropriated almost all grant funds (with the exception of Technology Initiative Grants, which began in 2000) in a single broad category -- basic field programs providing direct legal services. The LSC Act does not further define the nature of those grants and leaves to LSC the discretion to determine what types of grants to provide to “insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas.” 42 U.S.C. § 2996f(a)(3).

In the 1977 reauthorization of the LSC Act, Congress recognized the needs of special populations by requiring LSC to conduct a study of the legal needs of migrants and seasonal

---

<sup>2</sup> This funding built on and expanded the legal assistance previously funded by the Legal Services Program of the Office of Economic Opportunity (OEO) and the Department of Labor.

farmworkers and other specific subpopulations and to implement methods of addressing those needs. Pub. L. 95-222, § 13, adding § 1007(h) of the LSC Act, codified at 42 U.S.C. § 2996f(h). Section 1007(h) of the LSC Act provides:

The Corporation shall conduct a study on whether eligible clients who are—

- (1) veterans,
- (2) native Americans,
- (3) migrants or seasonal farm workers,
- (4) persons with limited English-speaking abilities, and,
- (5) persons in sparsely populated areas where a harsh climate and an inadequate transportation system are significant impediments to receipt of legal services

have special difficulties of access to legal services or special legal problems which are not being met. The Corporation shall report to Congress no later than January 1, 1979, on the extent and nature of any such problems and difficulties and shall include in the report and implement appropriate recommendations.

LSC's Section 1007(h) Study, issued in 1979, concluded that specialized legal expertise and knowledge were needed to address the distinctive "unmet special legal problems" that migrants and seasonal farmworkers shared because of their status as farmworkers.<sup>3</sup> The Section 1007(h) Study also discussed issues still pertinent to the funding of migrant grants today, most notably:<sup>4</sup>

- Funding for migrant legal services was based on the migrant population, although migrant programs assisted farmworkers in addition to migrants;
- Based on the funding allocation, basic field programs had the responsibility to represent farmworkers who were not migrants, but they lacked the expertise to do so on issues related to clients' status as farmworkers; thus, it was appropriate for migrant programs to provide services to farmworkers other than migrants; and,
- Basic field programs had the legal expertise to serve migrants and other farmworkers on legal issues unrelated to their status as migrants or farmworkers, but other factors (*e.g.*, language, location, interrelationships between status and other legal issues) had limited their ability to do this effectively. In this regard, the study reported that "[c]reating a duplicate delivery system for farmworkers -- one for [farmworker] status-related problems and another for other problems -- may often be impractical, if not impossible. . . ."

---

<sup>3</sup> Legal Services Corporation, *Special Legal Problems and Problems of Access to Legal Services of Veterans, Migrant and Seasonal Farm Workers, Native Americans, People, with Limited English-Speaking Ability, and Individuals in Sparsely Populated Areas*, 1979 ("Section 1007(h) Study"). The shared legal needs of migrants and seasonal farmworkers and the need for specialized legal assistance are addressed on pp. 40-42 and pp. 313-315. The study's full analysis of these issues is set forth in Chapter I, Section III, D, and Chapter V.

<sup>4</sup> The information and quotations below are from the 1007(h) Study at 38-40, 310-312.

The LSC regulation on competition for direct-delivery grants, 45 C.F.R. Part 1634, promulgated in 1996, implements LSC's authority to award grants to serve the specific legal needs of subpopulations:

The Corporation shall determine the service areas to be covered by grants or contracts and shall determine whether the population to be served will consist of all eligible clients within the service area or a specific subpopulation of eligible clients within one or more service areas.

45 C.F.R. § 1634.3(b). The regulation defines "subpopulation of eligible clients" to include

Native Americans and migrant farm workers and may include other groups of eligible clients that, because they have special legal problems or face special difficulties of access to legal services, might better be addressed by a separate delivery system to serve that client group effectively.

45 C.F.R. § 1634.2(d).

#### **B. June 2000 Letter from LSC President John McKay to LSC Grantee Directors**

A letter from LSC President John McKay (McKay letter) to directors of LSC grantees dated June 19, 2000, provided what is perhaps the most elaborate statement by LSC management about the scope and focus of migrant legal services grantees' work. The letter emphasized that the "factors enumerated in the 1007(h) Study are as true as they were 22 years ago."

To address eligible clients' legal needs, the letter stated that LSC expected migrant legal services projects to "primarily represent those clients in need of legal assistance from a specialized migrant unit because (1) they are faced with barriers which otherwise restrict clients' access to legal assistance and (2) they have specialized legal needs which arise from their work in agriculture and status as a farmworker." The letter elaborated in two ways regarding the categories of eligible clients satisfying these criteria. First, the letter made clear that service provided by migrant programs should cover agricultural workers beyond migratory workers. Second, the letter expanded the universe of agricultural workers that migrant programs should serve, stating that migrant program "should treat some types of work, not typically thought of as "farm work" as farm work or agricultural employment." The additional types of work were forestry, nursery work, cotton ginning, mushroom growing, seed conditioning, pine bough tying, aloe vera processing, work on sod farms, work in meat and poultry processing plants, livestock and feed lot work, sheepherding, work on egg farms and tobacco housing/stripping warehousing. Finally, the letter advised migrant grantees to focus their resources on representation related to the status of migratory and agricultural workers as migratory and agricultural workers (*e.g.*, employment matters), leaving to basic field programs



representation of such workers on issues not related to their status as migratory and agricultural workers.

The letter also said that basic field programs (with internal migrant farmworker projects), not the migrant grantees, should represent farmworkers on issues not related to farmworker status while permitting the migrant grantees to represent migrant and other farmworkers on farmworker status-related issues.

### **C. Federal Laws and Federal Programs Targeting Migratory and Other Farmworkers**

LSC's targeting of legal services to a broader category of agricultural workers going beyond migratory workers, is consistent with the approach taken by the federal government. The provisions of major laws applicable to the legal needs of agricultural workers apply to a broader category agricultural workers that includes, but is not limited to, migratory workers. These laws are:

- The Migrant and Seasonal Agricultural Worker Protection Act
- Field Sanitation Standards under the Occupational Safety and Health Act
- Fair Labor Standards Act

Likewise, major programs administered and funded by federal agencies recognize the similar needs of farmworkers and migrants and provide services to *all* farmworkers (or agricultural workers), including the following programs:

- Department of Education, Migrant and Seasonal Farmworkers Program (vocational rehabilitation)
- Department of Health and Human Services, Health Resources and Services Administration, Migrant Health Centers
- Department of Health and Human Services, Administration of Children and Families, Office of Head Start, Migrant and Seasonal Head Start
- Department of Labor, Employment and Training Administration, National Farmworker Jobs Program
- Department of Labor, Employment and Training Administration, Migrant and Seasonal Farmworkers Monitor Advocate System<sup>5</sup>

## **II. LSC FUNDING FOR MIGRATORY AND OTHER FARMWORKERS SINCE 1974**

### **A. Migrant Funding Prior to FY1996**

LSC has provided funding for migrant legal services since LSC's establishment, building on the legal assistance previously funded by the Legal Services Program of OEO and the Department of Labor. LSC funding allocations to migrant grants from the early 1980s through

---

<sup>5</sup> Two Department of Education programs focus exclusively on the needs of migrants and their dependents, Migrant Education Even Start and Migrant Education Program.

FY96, reflected policies implemented by LSC during the 1979-1981 period, which immediately followed the issuance of the Section 1007(h) Study. Starting in 1986, Congress set specific funding amounts (“lines”) for migrant legal services and several other funding categories or entities (*e.g.*, national and state support, Native American grantees, the National Clearinghouse) in LSC’s annual appropriation. These funding lines specified the *minimum* amounts of funding that LSC had to provide grantees for the identified purposes. The FY93 and FY94 appropriations laws specified the use of the Migrant Health Atlas<sup>6</sup> and the Larson-Plascencia study<sup>7</sup> to govern the distribution of funding among migrant programs. (The total migrant population was derived from the Migrant Atlas; the distribution among states was based on the Larson-Plascencia enumeration.)

Because there were only very small differences in the relative shares of LSC funding Congress allocated to migrant, basic field and Native American service areas throughout the FY82-FY95 period,<sup>8</sup> it appears that Congress did not intend to change the migrant funding policy or allocations that LSC had set in 1981.

## **B. Migrant Funding Since FY1996**

The FY96 LSC appropriation eliminated all “lines” for special legal services except for Native American funding. LSC then implemented the policy that has guided migrant funding until today. This policy’s major elements include:

- Funding for migrant legal services is based on the estimated size of the migrant poverty population in each geographic area. The funding for this population is “backed out” of the funding for the rest of a state’s poverty population.
- The 1990 Migrant Health Atlas figure used to estimate the total migrant population was 1,661,875.<sup>9</sup> LSC determined in 1975 that 70% of this population – 1,116,195 – had incomes below the poverty line.<sup>10</sup>

---

<sup>6</sup> U.S. Department of Health and Human Services, Public Health Service, Health Resources and Services Administration, Bureau of Health Care Delivery and Assistance, Migrant Health Program, *An Atlas of State Profiles Which Estimate Number of Migrant and Seasonal Farmworkers and Members of Their Families*.

<sup>7</sup> Larson, Alice and Plascencia, Luis, *Migrant Enumeration Project 1993*, Thomas Rivera Center.

<sup>8</sup> This is illustrated by the minimal differences in the relative shares of LSC funding that were allocated among migrant, basic field and Native American service areas between FY82 and FY95. Data for the following years are illustrative: FY82, when the 1979-1981 policies were first reflected in funding levels; FY85, the year before Congress began setting funding floors; FY86, the first year after floors were set; FY94, the last year the Migrant Health Atlas-Larson-Plascencia numbers were used to specify allocation of migrant funding issues; and FY95, the last year funding “lines” were set for migrant and other funding categories. The respective funding levels for migrant grants in those years, expressed as a percentage of the sum of migrant, basic field and Native American grant funds were: 3.58%, 3.60%, 3.40%, 3.50%, and 3.46%. The small variances in these numbers may have resulted from data inconsistencies (*e.g.*, the tables from which these data are drawn are from different data sets), shifts in the amounts going to categories other than migrant, basic field or Native Americans, rounding, etc.

<sup>9</sup> *Migrant Health Atlas*, Table II.

- The distribution of the total migrant population among states is based on the Larson-Plascencia data.
- The Migrant Health Atlas and Larson-Plascencia estimates were used in the FY96 funding policy because they had the imprimatur of Congress; as noted above, the FY93 and FY94 LSC appropriations had required their use for allocating increases in migrant funding for those years.

In December 1995 and March 1996, LSC President Alex Forger notified Congress of the migrant funding policy set forth above that LSC intended to implement for FY96.<sup>11</sup> Both communications requested that Congress notify LSC if it had objections to the migrant funding policy LSC intended to implement. Congress did not notify LSC of any such concerns. LSC's final FY96 appropriation enacted after the December 1995 communication provided no language pertaining to migrant funding.

LSC's current funding for migrant services assumes that changes in the total size of the migrant population since the implementation of the FY96 policy (then based on 1990 data) have closely mirrored the changes in the size of the total US poverty population. (The increase in the total poverty population served by LSC since the 1990 Census is 40.2%; the increase in the estimated size of the migrant population is 39.3%.) Based on this assumption, the current migrant population for LSC funding purposes is 1,619,982, which is 3.39% of the total poverty population served by LSC.

Available data indicate that the estimates of the size and distribution of the migrant population currently used to determine the size and allocation of migrant grants likely are not accurate, not surprising given that they are based on data sets that are more than 20 years old. Although we do not have a precise estimate of the current size of the migrant population (including dependents) below the poverty line, Department of Labor data suggest that the number may be no more than 1 million.<sup>12</sup> If the migrant poverty population is 1 million, and that figure were used to calculate LSC migrant grants, the migrant poverty population's share of the LSC poverty population – and thus its share of LSC basic field funding – would fall from 3.39% to 2.09%.

---

<sup>10</sup> We are not able to identify the basis for this 70% poverty population calculation. Based on the 1.116 million poverty population figure, per-person funding for migrants and basic field clients was the same: \$7.58, suggesting that the poverty population calculation was derived by equalizing the per-person funding for migrants and basic field grants.

<sup>11</sup> Letter dated December 20, 1995, from Alex Forger, LSC President, to Rep. Harold Rogers, Chairman, and Rep. Alan B. Mollohan, Ranking Minority Member, of the House Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, and Sen. Judd Gregg, Chairman, and Sen. Ernest F. Hollings, Ranking Minority Member, of the Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, Committee on Appropriations, United States Senate. Letter dated March 22, 1996, from Alex Forger, LSC President, to Rep. Harold Rogers and Sen. Judd Gregg.

<sup>12</sup> Staff of the Department of Labor, Employment and Training Administration will soon provide the most recent numbers, which will be based on data from the National Agricultural Workers Survey and other sources.

### **III. POPULATIONS CURRENTLY SERVED BY LSC MIGRANT GRANTEES AND THE SCOPE OF THOSE SERVICES**

As described above, LSC migrant grantees have not limited their services to clients who meet the Migrant Health Atlas definition of the term “migrants”; most provide legal assistance to the larger universe of agricultural workers identified in the McKay letter.<sup>13</sup>

Consistent with the McKay letter, LSC expects migrant grantees to focus their services on issues related to migrants’ and agricultural workers’ *status* as migrants and agricultural workers rather than all of their legal needs. Case Service Reports indicate that the services of migrant programs are in fact targeted on these issues. For example, of cases closed by migrant grantees in 2012, 54.3% and 13.6% were in case categories typically related to status as migratory or agricultural workers -- employment (*e.g.*, job discrimination, wage claims, other agricultural worker issues) and individual rights (*e.g.*, immigration/naturalization, human trafficking), respectively. By contrast, the respective numbers for basic field grantees (non-PAI) in these categories were much lower -- 2.5% and 1.8%.

### **IV. NLADA 2013 ANALYSIS OF THE POPULATION OF AGRICULTURAL WORKERS**

A recent analysis funded by the National Legal Aid and Defender Association (NLADA) provided extensive data regarding the population of “agricultural workers” – not just “migrant” or “migrant and seasonal farmworkers.” The NLADA study does not provide separate estimates for the size of the migrant population and other agricultural workers, nor does it provide poverty estimates for the population of agricultural workers. It also includes livestock workers, while the farmworkers included in the LSC estimate of the migrant population is limited to crop workers.

Because of the broader universe it uses, the NLADA study estimates that the agricultural worker population is far larger than the migrant poverty population of 1,116,195, which is used in LSC’s funding formula. The NLADA estimate of the total agricultural worker population

---

<sup>13</sup> This service focus on agricultural workers, not just migratory workers, is consistent with the findings of the Section 1007(h) Study and other research regarding the similarity of the legal needs of migrants and other farmworkers. In addition, attempting to distinguish between migrants and non-migrants is made difficult and impractical by the following factors: migratory and non-migratory farmworkers may be part of the same family; a client may have migrated in a prior period but is not migrating at the time services are provided (or vice-versa); and migratory and other farmworkers may require services for the same issue or case. Further, there is no generally accepted definition of “migrant.” The Section 1007(h) Study, the Migrant Atlas, and the Larson-Plascencia study each used different definitions of “migrants”. In addition, different definitions of migrants or farmworkers are used in the targeting of resources of federal programs serving migratory and other farmworkers.

(including dependents) is 4,691,713. Of this number, 2,082,370 individuals are agricultural workers and 2,609,343 are their dependents (of whom 1,642,919 are children).<sup>14</sup>

## **V. MIGRANT CENSUS AND ELIGIBILITY ISSUES**

The distribution of LSC's basic field funding does not consider the immigration status of the poverty population across the country. The American Community Survey poverty estimates provide no reliable data regarding immigration status. The Department of Labor, Employment and Training Administration's National Agricultural Workers Survey (NAWS) provides reliable information about the authorization status and locations of farmworkers. Current estimates are that approximately 50% of agricultural workers are unauthorized workers.<sup>15</sup> Any adjustment of farmworker population estimates for documentation status related to the eligibility criteria of section 1626 of the LSC regulations would be complicated by at least one factor. A significant number of dependents of unauthorized farmworkers are LSC-eligible, either as U.S. citizens or eligible aliens. For example, of the 5.5 million children of unauthorized immigrants, 4.5 million (82%) are U.S. citizens.<sup>16</sup>

## **VI. PROPOSED NEXT STEPS**

As indicated above, the basis on which LSC allocates migrant grants raises at least two fundamental issues: (1) the data used to estimate the migrant population of each geographic area are outdated, and (2) there is a mismatch between the population served by migrant grants – generally migrants *and* other agricultural workers – and the population used to determine the distribution and allocation of migrant grants – solely migrant workers. We propose that LSC Management investigate these issues further and prepare and present to the Committee in January or April a set of options to address them.

---

<sup>14</sup> The 1990 Atlas estimate of the *total* migrant and seasonal farmworker population (*not* those below the poverty line) was 4,171,419.

<sup>15</sup> Carroll, Daniel, Annie Georges and Russell Saltz, "Changing Characteristics of U.S. Farm Workers: 21 Years of Findings from the National Agricultural Workers Survey," PowerPoint Presentation for the Immigration Reform and Agriculture Conference: Implications for Farmers, Farm Workers, and Communities, University of California, D.C. Campus, 12 May 2011, p.20.

<sup>16</sup> Pew Hispanic Center, Pew Research Center, Unauthorized Immigrant Population: National and State Trends, 2010, February 1, 2011.



## **APPENDIX C**

### List of Works Cited





**LSC AGRICULTURAL WORKER POPULATION ESTIMATE UPDATE**  
**LSC MANAGEMENT REPORT TO LSC BOARD OF DIRECTORS**  
**January 30, 2015**

**APPENDIX C**  
**LIST OF WORKS CITED**

Administration for Children and Families (2012). *2012 Report: Migrant and Seasonal Head Start Supplement of the National Agricultural Workers Survey*, OPRE Report #2012-13, Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

Ag Innovations Network (2014). *Shelter + Mobility: Recommendations for California's Specialty Crop Ag Workforce*. California Agricultural Workforce Housing & Transportation Project.

American Public Health Association (2011). *Improving Housing for Farmworkers in the United States Is a Public Health Imperative* (online), available at <http://www.apha.org/advocacy/policy/policysearch/default.htm?id=1418>.

Arcury, Thomas A. & Sara A. Quandt (2007). "Delivery of Health Services to Migrant and Seasonal Farmworkers," *Annual Review of Public Health*, Vol. 28, No. 1: 345-63.

Arcury, Thomas A. & Sara A. Quandt (2011). "Living and Working Safely: Challenges for Migrant and Seasonal Farmworkers," *North Carolina Medical Journal*, Vol. 72, No. 6: 466-470.

Arcury, Thomas, Joseph G. Grzywacz, Jill Sidebottom, & Melinda F. Wiggins (2013). "Overview of Immigrant Worker Occupational Health And Safety For The Agriculture, Forestry, And Fishing (AgFF) Sector In The Southeastern United States," *American Journal of Industrial Medicine*, Vol. 56, No. 8: 911-924.

Arcury, Thomas A., Chensheng Lu, Haiying Chen, & Sara A. Quandt (2014). "Pesticides Present In Migrant Farmworker Housing in North Carolina," *American Journal of Industrial Medicine*, Vol. 57, No. 3: 312-322.

Arcury, Thomas A., Heather O'Hara, Joseph G. Grzywacz, Scott Isom, Haiying Chen, & Sara A. Quandt (2012). "Work Safety Climate, Musculoskeletal Discomfort, Working While Injured, and Depression among Migrant Farmworkers in North Carolina." *American Journal of Public Health*: Vol. 102, No. S2.

Association of Farmworker Opportunity Programs (2007). *Children in the Fields: An American Problem*, available at <http://afop.org/wp-content/uploads/2010/07/Children-in-the-Fields-Report-2007.pdf>.

Bail, Kari, Jennifer Foster, Safiya George Dalmida, et al. (2012). "The Impact of Invisibility on the Health of Migrant Farmworkers in the Southeastern United States: A Case Study from Georgia," *Nursing Research and Practice*, vol. 2012, Article ID 760418. doi:10.1155/2012/760418.

Beardall, Bill (2014). "Fair Labor Standards Act In Agriculture And Related Employment (29 U.S.C. §§201 Et Seq.), Outline and Annotations," Outline by Bill Beardall (Equal Justice Center, Austin, Texas), Updated and annotated by Greg Schell (Migrant Farmworker Justice Project).

Beardall, Bill (2014). "Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. §§1801 et seq.), Outline and Annotations." Outline by Bill Beardall (Equal Justice Center, Austin, Texas), Updated and annotated by Greg Schell (Migrant Farmworker Justice Project).

Bischoff, Werner E., Maria Weir, Phillip Summers, Haiying Chen, Sara A. Quandt, Amy K. Liebman, & Thomas A. Arcury (2012). "The Quality of Drinking Water in North Carolina Farmworker Camps," *American Journal of Public Health* 102, No.10: 49–54.

Bronars, Stephen (2014). *No Longer Home Grown: How Labor Shortages are Increasing America's Reliance on Imported Fresh Produce and Slowing U.S. Economic Growth*. A Report Prepared for the Partnership for a New American Economy and the Agriculture Coalition for Immigration Reform, available at <http://www.renewoureconomy.org/wp-content/uploads/2014/03/no-longer-home-grown.pdf>.

Bon Appétit Management Company Foundation & United Farm Workers (2011). *Inventory of Farmworker Issues and Protections in the United States* (March 2011), available at [http://www.ufw.org/pdf/farmworkerinventory\\_0401\\_2011.pdf](http://www.ufw.org/pdf/farmworkerinventory_0401_2011.pdf).

California Project Directors Association (2014). Letter from association members to LSC President James Sandman.

California Rural Legal Assistance (CRLA) & California Rural Legal Assistance Foundation (CRLAF) (undated). Agricultural Worker Health Project, *Farmworker Transportation*, available at <http://www.agworkerhealth.org/RTF1.cfm?pagename=Transportation>.

Calvert, G.M., J. Karnik, L. Mehler, J. Beckman, B. Morrissey, J. Sievert, R. Barrett, M. Lackovic, L. Mabee, A. Schwartz, Y. Mitchell, & S. Moraga-McHaley (2008). *Acute Pesticide Poisoning Among Agricultural Workers in the United States, 1998-2005*. *American Journal of Industrial Medicine* 51, No. 12: 883-98.

Calvin, Linda & Philip Martin (2010). *The U.S. Produce Industry and Labor: Facing the Future in a Global Economy*, ERR-106, U.S. Department of Agriculture, Economic Research Service.

Carroll, Daniel, Annie Georges, & Russell Saltz (2011). "Changing Characteristics of U.S. Farm Workers: 21 Years of Findings from the National Agricultural Workers Survey," Immigration Reform and Agriculture Conference: Implications for Farmers, Farm Workers and Communities.

Carroll, Daniel, Russell Saltz, & Susan Gabbard (2009). "The Changing Farm Workforce: Findings from the National Agricultural Workers Survey," Immigration Reform and Agriculture Conference: Implications for Farmers, Farm Workers and Communities.

Center for Migrant Rights (2013). *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change*, available at [http://www.cdmigrante.org/wp-content/uploads/2013/01/Recruitment-Revealed\\_Fundamental-Flaws-in-the-H-2-Temporary-Worker-Program-and-Recommendations-for-Change.pdf](http://www.cdmigrante.org/wp-content/uploads/2013/01/Recruitment-Revealed_Fundamental-Flaws-in-the-H-2-Temporary-Worker-Program-and-Recommendations-for-Change.pdf).

Chien, Marsha (2010). "When Two Laws are Better than One: Protecting the Rights of Migrant Workers," *Berkeley J. Int'l Law*, Vol. 28, No. 1:15-49.

Craddock, Brian (1988). "Federal and State Employment Standards and U.S. Farm Labor: A Reference Guide to Labor Protective Laws and Their Applicability in the Agricultural Workplace," *Motivation and Education Training, Inc.*

Emmi, K., K. Jurkowski, N. Codru, E. Bell, M. Kacica, & T. Carter (2010). "Assessing the Health of Migrant and Seasonal Farm Workers in New York State: Statewide Data 2003-2005." *Journal of Health Care of the Poor & Underserved*, Vol. 21, No.2:448-63.

Farmworker Justice (2013). *Exposed and Ignored: How Pesticides Are Endangering Our Nation's Farmworkers*, available at <http://www.farmworkerjustice.org/sites/default/files/aExposed%20and%20Ignored%20by%20FarmworFar%20Justice%20singles%20compressed.pdf>.

Farmworker Justice (2011). *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*, available at <http://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20No%20Way%20To%20Treat%20A%20Guest%20H-2A%20Report.pdf>.

Farmworker Justice and Oxfam America (2010). *Weeding Out Abuses: Recommendations for a Law-Abiding Farm Labor System*, available at <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.7%20weeding-out-abuses.pdf>.

Farm Worker Project Group (2003). "The Need for Specialized Migrant Legal Services Programs," Legal Services Corporation Board Meeting, Provisions Committee.

Gentry, A.L., J.G. Grzywacz, S.A. Quandt, S.W. Davis, and T.A. Arcury (2007). "Housing Quality Among North Carolina Farmworker Families." *Journal of Agricultural Safety and Health*, 13(3):323-337.

Lance George, Mary Lee Hall, Ilene J. Jacobs, Ann Moss Joyner, Ed Kissam, Shelley Latin, Allan Parnell, Virginia Ruiz, Nargess Shadbeh, Janet Tobacman (2014). "Farmworker Housing Standards and Regulations, Their Promise and Limitations, and Implications for Farmworker Health," Key Report 1 presented at the Transdisciplinary Conference on Farmworker Housing Quality And Health, Crystal City, Virginia.

Greskevitch, M., G. Kullman, K. Bang, & J. Mazurek (2007). "Respiratory Disease In Agricultural Workers: Mortality and Morbidity Statistics." *Journal of Agromedicine*. Vol. 12 No. 3:5-10.

Horn, Megan & Nicholas Marritz (2013). "Unfinished Harvest: The Agricultural Worker Protection Act at 30," Farmworker Justice.

H.R. Report No. 97-885 (1982).

Houseman, Alan (2000). "Excellence in Migrant Programs: A Very Preliminary Analysis." Report presented at the Migrant Workers Legal Services Conference, Boerne, *available at* <http://lri.lsc.gov/about/lri-archive/migrant-farm-workers/conference-material>.

Housing Assistance Council (2013). "Housing Conditions for Farmworkers," Rural Research Report.

Housing Assistance Council (2001). *No Refuge from the Fields: Findings from a Survey of Farmworker Housing Conditions in the United States*.

Human Rights Watch (2004). *Blood, Sweat, And Fear: Workers' Rights in U.S. Meat and Poultry Plants*, *available at* <http://www.hrw.org/sites/default/files/reports/usa0105.pdf>.

Human Rights Watch (2010). *Fields of Peril: Child Labor in US Agriculture*, *available at* <http://www.hrw.org/reports/2010/05/05/fields-peril>.

Kirkham, S.R. and M.B. Schenker (2002). "Current Health Effects of Agricultural Work: Respiratory Disease, Cancer, Reproductive Effects, Musculoskeletal Injuries, and Pesticide-Related Illnesses," *Journal of Agricultural Safety and Health* 8(2): 199-214.

Kissam, Ed, & Shannon Williams (2013). "Estimate of Agricultural Workers and Their Dependents in the United States," National Legal and Defender Association.

Larson, Alice and Luis Plascencia (1993). *Migrant Enumeration Project 1993*, Thomas Rivera Center.

Larson, Alice (2006). "Serving All in Need of 'Migrant Health,'" *Streamline*.

Legal Services Association of Michigan (2014). Letter from co-chairs Ann Rout and Deierdre Weir to LSC President James Sandman.

Legal Services Corporation (2000). Letter from LSC President John McKay to LSC Grantee Program Directors, dated June 19, 2000.

Legal Services Corporation (2013). Memorandum from Ronald S. Flagg, Gen. Counsel; Mark F. Freedman, Senior Assistant Gen. Counsel; and Bristow Hardin, Program Analyst, OPP to LSC Board Operations and Regulations Comm. (Oct. 8, 2013).

Legal Services Corporation (2007). *Corporation Performance Criteria, Referenced to the ABA Standards for the Provision of Civil Legal Aid*, *available at* <http://www.lsc.gov/sites/default/files/LRI/LSCPerformanceCriteriaReferencingABAStandards.pdf>.

Legal Services Corporation (1979), *Special Legal Problems and Problems of Access to Legal Services of Veterans, Migrant and Seasonal Farm Workers, Native Americans, People, with Limited English-Speaking Ability, and Individuals in Sparsely Populated Areas* ("1007(h) Study").

Leigh, J. Paul, Marc Schenker, and Stephen McCurdy (2001). "Occupational Health Among Migrant and Seasonal Farmworkers: The Specific Case of Dermatitis," *Public Health Reports*, Vol. 116.

Long, Greg (2013). "Differences between union and nonunion compensation, 2001–2011," *Monthly Labor Review*, pp.16-23.

Maloney, Thomas R. & David C. Grusenmeyer (2005). "Survey of Hispanic Dairy Workers in New York State," RB 2005-02, Department of Applied Economics and Management, College of Agriculture and Life Sciences, Cornell University.

Martin, Philip (2009). "AgJobs: Provisions, Eligibility," *Rural Migration News*, Vol. 15, No.3.

Martin, Philip (2008). "Evaluation of the H-2A Alien Labor Certification Process and the U.S. Farm Labor Market," KRA Corporation, Report to U.S. Department of Labor, Employment and Training Administration, #DOL061A20353.

Martin, Philip (2014). "Farm Labor and H-2A," University of California, Davis.

Martin, Philip (2012). "How Many Farm Workers?" *Rural Migration News*, Vol. 18 Number 3.

Martin, Philip (2013). "Immigration and Farm Labor: Policy Options and Consequences." *American Journal of Agricultural Economics*, Vol. 95, No. 2: 470-475.

Martin, Philip (2011). "Immigration Reform: Implications for Farmers, Farm Workers and Communities," University of California, Davis.

Martin, Philip & J. Edward Taylor (2013). *Ripe with Change: Evolving Farm Labor Markets in the United States, Mexico and Central America*, Migration Policy Institute.

Michigan Civil Rights Commission (2010). *A Report on the Conditions of Migrant and Seasonal Farmworkers in Michigan*.

Migrant Delivery Working Group (1999). "Basic Policy Issues for Migrant Legal Services." Material presented at the Migrant Workers Legal Services Conference, Boerne, Texas, held on March 19-22, 2000, <http://lri.lsc.gov/about/lri-archive/migrant-farm-workers/conference-material>.

Mines, R., J. Hausman, & L. Tabshouri (2005). "The Need for Targeted Surveys of Farmworkers: A Comparison of the California Health Insurance Survey (CHIS) and the California Agricultural Workers Health Survey (CAWHS)." California Institute for Rural Studies.

Mobed, Ketty, Ellen Gold, & Marc Schenker (1992). "Occupational Health Problems among Migrant and Seasonal Farm Workers," In *Cross-Cultural Medicine-A Decade Later* [Special Issue]. *Western Journal of Medicine*, Vol. 157:367-373.

National Advisory Council on Migrant Health (2001). *Migrant Health Issues*, Monograph Series, National Center for Farmworker Health.

National Institute of Occupational Safety and Health (2003). *NIOSH Alert: Preventing Deaths, Injuries, and Illnesses of Young Workers*, DHHS (NIOSH) Publication No. 2003-128.

National Legal Aid and Defender Association (2003). Luis Jaramillo, Remarks at the meeting of the LSC Board Provisions Committee.

National Legal Aid and Defender Association, Agricultural Worker Project Group (2014). Memorandum to Ronald S. Flagg, LSC General Counsel, and Bristow Hardin, Program Analyst.

National Legal Aid and Defender Association, Civil Policy Group (undated), *Resolution in Support of Ongoing Funding for Farmworker Legal Services*.

OxFam America (2004). *Like Machines in the Fields: Workers without Rights in American Agriculture*, OxFam America Report.

Passel, Jeffrey S. & D’Vera Cohn (2014). *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14: Decline in Those From Mexico Fuels Most State Decreases*. Pew Research Center’s Hispanic Trends Project, (Nov. 2014), available at <http://www.pewhispanic.org/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14>.

Quandt, Sara A., Phillip Summers, Werner E. Bischoff, Haiying Chen, Melinda F. Wiggins, Chaya R. Spears, & Thomas A. Arcury (2013). *Cooking and Eating Facilities in Migrant Farmworker Housing in North Carolina*. American Journal of Public Health, Vol. 103, No. 3:e78-e84.

Quandt, Sara A. & Thomas A. Arcury (2013). Farmworker Housing: Implications for Food Security and Food Safety. *Rural Voices*.

Quandt, Sara A., Carol Brooke, Kathleen Fagan, Allyson Howe, Stephen A. McCurdy, Lisel Holdenried, Thomas K. Thornburg, Don Villarejo, “Farmworker Housing and Its Impact on Health,” Key Report 1 presented at the Transdisciplinary Conference on Farmworker Housing Quality And Health, Crystal City, Virginia.

Reed, Susan and Ilene Jacobs (2004). *Serving Farmworkers*, Clearinghouse Review, Vol.38, Nos.5-6 (Sept.-Oct.).

Reynolds, Stephen J., Matthew W. Nonnenmann, Ioannis Basinas, Margaret Davidson, Lena Elfman, John Gordon, Shelley Kirychuck, Sue Reed, Joshua W. Schaeffer, Marc Schenker, Vivi Schlüssens & Torben Sigsgaard (2013) “Systematic Review of Respiratory Health Among Dairy Workers, *Journal of Agromedicine*, 18:3, 219-243.

Robinson, Erin, H. Nguyen, S. Isom, S. Quandt, J. Grzywacz, H. Chen, T. Arcury (2011). *Wages, Wage Violations, and Pesticide safety Experienced by Migrant Farmworkers in North Carolina*, *New Solutions*, Vol. 21, No. 2: 251-268.

Rosenbaum, Sara & Peter Shin (2005). *Migrant and Seasonal Farmworkers: Health Insurance Coverage and Access to Care*. Kaiser Commission on Medicaid and the Uninsured.

Rosson, Parr, Flynn Adcock, Dwi Susanto, & David Anderson, (2009). *The Economic Impacts of Immigration on U.S. Dairy Farms*. National Milk Producers Federation.

Runyan, Jack (2000). *Summary of Federal Laws and Regulations Affecting Agricultural Workers*. Economic Research Service, U.S. Department of Agriculture (July 2000).

Rural Migration News (2014), *Projections, Mechanization*, available at <http://migration.ucdavis.edu/rmn/more.php?id=1804>.

S. Report No. 93-1295 (1974).

Schenker, Mark and Stephen McCurdy (1990). "Occupational Health Among Migrant and Seasonal Farmworkers: The Specific Case of Dermatitis," *American Journal of Industrial Medicine* 18:345-351.

Southern Poverty Law Center (2009). *Under Siege. Life for Low-Income Latinos in the South*. Southern Poverty Law Center Report (Apr. 2009).

Southern Poverty Law Center (2014), *Who Are Farmworkers?* available at <http://www.splcenter.org/sexual-violence-against-farmworkers-a-guidebook-for-criminal-justice-professionals/who-are-farmworke>.

Steege, A., S. Baron, & X. Chen (2009). *Occupational Health of Hired Farm Workers in the United States, National Agricultural Workers Survey, Health Supplement, 1999*. National Institute for Occupational Safety and Health, NIOSH Publication No. 2009-119.

Stoecklin-Marios, Maria, Tamara Hennessey-Burt, Dianne Mitchell, & Marc Schenker (2013). *Heat Related Illness Knowledge and Practices among California Hired Farmworkers in the MICASA Study*. *Industrial Health*, 51: 47-55.

Transdisciplinary Conference on Farmworker Housing Quality and Health (2014), Crystal City, Virginia.

U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates, Table B05003: *Sex By Age By Nativity And Citizenship Status*, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates, Table B03002: *Hispanic Or Latino Origin By Race*, available at <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates, Table DP02: *Selected Social Characteristics In The United States*, available at <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates, Table S1602: *No One Age 14 And Over Speaks English Only Or Speaks English 'Very Well,'* available at <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

U. S. Centers for Disease Control and Prevention (2008). "Heat-Related Deaths Among Crop Workers – United States, 1992-2006," *Morbidity and Mortality Weekly Report*, Vol. 57, No. 24: 649-653.

U.S. Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (2007). *Respiratory Disease in Agricultural Workers: Mortality and Morbidity Statistics*, available at <http://www.cdc.gov/niosh/docs/2007-106/pdfs/2007-106.pdf>.

U.S. Commission on Agricultural Workers (1993). *Report of the Commission on Agricultural Workers*.

U.S. Department of Agriculture, Economic Research Service (2013). *Farm Labor: Background*, available at <http://www.ers.usda.gov/topics/farm-economy/farm-labor/background.aspx>.

U. S. Department of Agriculture, National Agricultural Statistics Service (2014). *2012 Census of Agriculture*, Vol. 1 Geographic Area Series Part 51, available at [http://www.agcensus.usda.gov/Publications/2012/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_US/usv1.pdf](http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf).

U. S. Department of Agriculture, National Agricultural Statistics Service (2013). *Farm Labor Methodology and Quality Measures*, NASS, Agricultural Statistics Board.

U.S. Department of Education (2014). *Migrant and Seasonal Farmworkers Program*, available at <http://www2.ed.gov/programs/rsamigrant/index.html>.

U.S. Department of Health and Human Services, Administration for Children and Families, Office of Head Start (undated), *Effective Partnerships Guide: Improving Oral Health for Migrant and Seasonal Head Start Children and their Families*, available at <http://eclkc.ohs.acf.hhs.gov/hslc/states/collaboration/docs/effective-partnerships-guide-oral-health-mshs-v3.pdf>.

U.S. Department of Health and Human Services, Public Health Service, Health Resources and Services Administration, Bureau of Health Care Delivery and Assistance, Migrant Health Program (1990). *An Atlas of State Profiles Which Estimate the Number of Migrant and Seasonal Farmworkers and Members of Their Families*, available at <http://files.eric.ed.gov/fulltext/ED332857.pdf>.

U.S. Department of Labor (2014). *Background on Submissions Received by Mexico Regarding U.S. Compliance with Obligations under the North American Agreement on Labor Cooperation*.



U. S. Department of Labor (2014). *Ministerial Consultations Joint Declaration between the Department of Labor of the United States of America and the Secretariat of Labor and Social Welfare of the United Mexican States Concerning Mexican NAO Public Communications MEX 2003-1, MEX 2005-1, and MEX 2011-1 under the North American Agreement on Labor Cooperation* (Apr. 3, 2014), available at <http://www.dol.gov/opa/media/press/ilab/ILAB20140543-US-Mex-Declaration.pdf>.

U.S. Department of Labor (2014). *News Release: Joint ministerial declaration on migrant workers signed by US Secretary of Labor, Mexican Secretary of Labor and Social Welfare*, available at <http://www.dol.gov/opa/media/press/ilab/ILAB20140543.htm>.

U.S. Department of Labor (2000). *U.S. Department of Labor Report to Congress : The Agricultural Labor Market – Status and Recommendations*.

U.S. Department of Labor, Bureau of Labor Statistics (2013). *Census of Fatal Occupational Injuries Charts, 1992-2013*, available at <http://www.bls.gov/iif/oshcfoi1.htm#2013>.

U.S. Department of Labor, Bureau of Labor Statistics (2013). *Household Data Annual Averages, 26. Unemployed persons by industry, class of worker, and sex*, available at <http://www.bls.gov/cps/cpsaat26.pdf>.

U.S. Department of Labor, Bureau of Labor Statistics (2013). *Household Data Annual Averages, 39. Median weekly earnings of full-time wage and salary workers by detailed occupation and sex*, available at <http://www.bls.gov/cps/cpsaat39.pdf>.

U.S. Department of Labor, Bureau of Labor Statistics (2013), *Occupational Employment and Wages, May 2013, 45-2092 Farmworkers and Laborers, Crop, Nursery, and Greenhouse*, available at <http://www.bls.gov/oes/current/oes452092.htm>.

U.S. Department of Labor, Bureau of Labor Statistics (2013), *Occupational Employment and Wages, May 2013, 45-2099 Agricultural Workers, All Others*, available at <http://www.bls.gov/oes/current/oes452099.htm>.

U.S. Department of Labor, Bureau of Labor Statistics (2013), *Occupational Employment and Wages, May 2013, 51-3023 Slaughterers and Meat Packers*, available at <http://www.bls.gov/oes/current/oes513023.htm>.

U.S. Department of Labor, Bureau of Labor Statistics (2013). *Table 5. Incidence rate and number of nonfatal occupational injuries by selected industries and ownership, 2013*, available at <http://www.bls.gov/news.release/osh.t05.htm>.

U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research (2014). *Findings from the National Agricultural Workers Survey (NAWS), A Demographic and Economic Profile of U.S. Farmworkers*, Research Report No. 11, available at <http://www.doleta.gov/agworker/naws.cfm#d-tables>.

U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research (2005). *Findings from the National Agricultural Workers Survey (NAWS) 2001-2002*, available at [http://www.doleta.gov/agworker/report9/naws\\_rpt9.pdf](http://www.doleta.gov/agworker/report9/naws_rpt9.pdf).

U.S. Department of Labor, Employment and Training Administration (2014). *Migrant and Seasonal Farmworkers Monitor Advocate System*, available at <http://www.doleta.gov/programs/msfw.cfm>.

U.S. Department of Labor, Employment and Training Administration (2014). *The National Farmworker Jobs Program*, available at <http://www.doleta.gov/Farmworker/html/NFJP.cfm>.

U.S. Department of Labor, Office of Foreign Labor Certification (2013). *Annual Report October 1, 2011-September 30, 2012*.

U.S. Department of Labor, Office of Foreign Labor Certification (2014). *H-2A Temporary Agricultural Labor Certification Program - Selected Statistics, FY 2014*, available at [http://www.foreignlaborcert.doleta.gov/pdf/H-2A\\_Selected\\_Statistics\\_FY2013\\_YTD\\_Q4\\_final.pdf](http://www.foreignlaborcert.doleta.gov/pdf/H-2A_Selected_Statistics_FY2013_YTD_Q4_final.pdf).

U.S. Department of Labor and United Mexican States Secretariat of Labor and Social Welfare (2014). *Ministerial Consultations Joint Declaration Between the Department of Labor of the United States of America and the Secretariat of Labor and Social Welfare of the United Mexican States Concerning Mexican NAO Public Communications MEX 2003-1, MEX 2005-1, and MEX 2011-1 under the North American Agreement on Labor Cooperation*.

U.S. Equal Employment Opportunity Commission (2014). *Selected List of Pending and Resolved Cases Involving Farmworkers From 1999 To The Present (As of August 2014)*, available at [http://www.eeoc.gov/eeoc/litigation/selected/farmworkers\\_august\\_2014.cfm](http://www.eeoc.gov/eeoc/litigation/selected/farmworkers_august_2014.cfm).

U. S. Government Accountability Office (2008). *Fair Labor Standards Act: Better Use of Available Resources and Consistent Reporting Could Improve Compliance*, GAO-08-962T.

U. S. Government Accountability Office (2005). *Safety in the Meat and Poultry Industry, while Improving, Could Be Further Strengthened*, GAO-05-96.

U. S. Government Accountability Office (2000). *Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and Their Children*, GAO/RCED-00-40.

U. S. Government Accountability Office (1998). *Child Labor in Agriculture: Changes Needed to Better Protect Health and Educational Opportunities*, GAO/HEHS-98-193.

U. S. Government Accountability Office (2009). *Workplace Safety and Health, Enhancing OSHA's Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data*, GAO-10-10.

Vallejos, Quirina M., Sara A. Quandt, Joseph G. Grzywacz, Scott Isom, Haiying Chen, Leonardo Galván, Lara Whalley, Arjun B. Chatterjee, & Thomas A. Arcury (2011). *Migrant Farmworkers' Housing Conditions*

*Across an Agricultural Season in North Carolina.* American Journal of Industrial Medicine, Vol. 54, No. 7: 533–544.

Villarejo, Don (2014). *California's Hired Farmworkers Move to the Cities: The Outsourcing of Responsibility for Farm Labor Housing.* California Rural Legal Assistance Priorities Conference, Asilomar, California.

Villarejo, Don (2012). *Health-Related Inequities Among Hired Farm Workers and the Resurgence of Labor-intensive Agriculture.* Health Program, The Kresge Foundation, Troy, Michigan.

Villarejo, Don, Marc Schenker, Ann Moss Joyner, & Allan Parnell (2012). *(Un)Safe At Home: The Health Consequences of Sub-standard Farm Labor Housing.* California Rural Legal Assistance, Inc.

Villarejo, Don, Stephen A. McCurdy, Bonnie Bade, Steve Samuels, David Lighthall, & Daniel Williams III (2010). *The Health of California's Immigrant Hired Farmworkers.* American Journal of Industrial Medicine 53:387–397.

Whalley, Lara E., Joseph G. Grzywacz, Sara A. Quandt, Quirina M. Vallejos, Michael Walkup, Haiying Chen, Leonardo Galvan, & Thomas A. Arcury, (2009). *Migrant Farmworker Field and Camp Safety and Sanitation in Eastern North Carolina.* Journal of Agromedicine 14(4): 421–436.



## APPENDIX D

### List of Persons Interviewed



**LSC AGRICULTURAL WORKER POPULATION ESTIMATE UPDATE**  
**LSC MANAGEMENT REPORT TO LSC BOARD OF DIRECTORS**  
**January 30, 2015**

**APPENDIX D**  
**LIST OF PERSONS INTERVIEWED**

**Note:** *Interviewees' affiliation listed for information purposes only.*

Thomas A. Arcury, Ph.D., Professor, Wake Forest University; Director, Wake Forest University Center for Worker Health, interviewed on April 28, 2014

Peter Benson, Ph.D., Professor, Washington University, St. Louis, interviewed on May 15, 2014

Cesar Britos, LSC Consultant, Board member, Pine Tree Legal Assistance (ME); Assistant Vice President and Senior Counsel, Unum Group, interviewed on April 21, 2014

Daniel Carroll, U.S. Department of Labor, Employment & Training Administration, Office of Policy Development and Research, multiple interviews

Joan Flocks, J.D., M.A., Professor, University of Florida Levin College of Law; Director, Social Policy Division, Center for Governmental Responsibility, University of Florida, interviewed on May 14, 2014

Susan Gabbard, Ph.D., Senior Vice President, Aguirre Division, JBS International, Inc., multiple interviews

Bruce Goldstein, President, Farmwork Justice, multiple interviews

David Griffith, Ph.D., Professor, East Carolina University; Interim Director, Institute for Coastal Science and Policy, interviewed on April 14, 2014

Cindy Hahamovitch, Ph.D., Professor, College of William and Mary University, interviewed on May 14, 2014

Ronald Javor, Deputy Director / Staff Counsel (1977-2008), California Department of Housing and Community Development, interviewed on June 5, 2016

Ed Kissam, Ph.D., Trustee, WKF Giving Fund; independent researcher, projects include farmworker studies for the Department of Labor and Commission on Agricultural Workers and 4-year study of immigrant integration into rural U.S. communities, multiple interviews

Nancy J. Leppink, former Assistant Commissioner for Enforcement, Minnesota Department of Commerce; former Acting Administrator, U.S. Department of Labor, Wage and Hour Division, interviewed on April 14, 2014

Phil Martin, Ph.D., Professor, University of California, Davis; Chair, University of California Comparative Immigration & Integration Program, interviewed on June 3, 2014

Ruben Martinez, Director, Julian Samora Research Institute, Michigan State University, interviewed on May 6, 2014

Max Pfeffer, Ph.D., Professor and Senior Associate Dean, Cornell University College of Agriculture and Life Sciences, interviewed on June 12, 2014

Fritz Roka, Ph.D., Professor, University of Florida, interviewed on March 20, 2014

Donald Saunders, Vice President, Civil Legal Services, National Legal Aid and Defender Association, multiple interviews

Gregory Schell, Managing Attorney, Florida Legal Services, Inc., Migrant Farmworker Justice Project, multiple interviews

Marc Schenker, MD, MPH, Professor, Department of Public Health Sciences, University of California, Davis, Center for Occupational and Environmental Health; Director Western Center for Agricultural Health and Safety, interviewed on May 14, 2014

Cynthia Schneider, former deputy director, LSC Office of Program Performance, multiple interviews

Rebecca Smith, Deputy Director, National Employment Law Project

William Tamayo, Regional Attorney, U.S. Equal Employment Opportunity Commission, San Francisco Office

John Trasviña, Dean, University of San Francisco School of Law; former Asst. Secretary, U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity; former Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, interviewed on May 20, 2014

Don Villarejo, Ph.D., Founder and Director Emeritus, California Institute for Rural Studies, interviewed on May 20, 2014

Matthew Wesaw, Director, Michigan Department of Civil Rights, interviewed on May 16, 2014

Ellen Widess, former Chief, California Occupational Safety and Health Administration, former Director, Texas Department of Agriculture, Pesticide Program, interviewed on April 19, 2014



## APPENDIX E

### LSC Agricultural Worker Population Survey – Migrant Grantee Survey Instrument



# Agricultural Worker Population -- Migrant Grantees Survey

## Introduction

LSC is reviewing population data regarding migrants and other agricultural workers and their dependents (agricultural worker population). These data provide the basis for the allocation of LSC grant funds for legal assistance to this population.

This survey seeks your perspective about:

1. The legal needs of the agricultural worker population;
2. The extent to which specialized expertise and delivery approaches, if any, are needed to address the legal needs of the agricultural worker population; and,
3. The categories of agricultural workers with legal needs that require such expertise and delivery approaches.

"Agricultural workers" can include:

1. Migrant and seasonal crop workers;
2. Fruit and vegetable packing and processing workers;
3. Livestock workers (e.g., dairy, eggs, poultry, beef, hogs);
4. Nursery and greenhouse workers;
5. Workers in forest nurseries or gathering forest products;
6. Aquaculture workers;
7. Agriculture support workers (e.g., planting, grading, cotton ginning); and,
8. Others engaged in agriculture related work.

Throughout the survey:

1. "Agriculture worker population" and "agricultural workers" refer to agricultural workers and their dependents; and,
2. "Specialized legal expertise, capacities and delivery approaches" refer to expertise with regard to the most significant legal issues and laws affecting the agricultural worker population and capacities and delivery approaches tailored to meet the particular needs of that population.

The survey solicits your perspective through a combination of multiple-choice and open-ended questions. The survey should take about 30-45 minutes to complete. The time it takes you will depend on the length and detail of your responses.

You may exit and re-enter the survey to add to or edit your responses. Also, your responses will be automatically saved when you exit the survey.

We ask that you complete this survey no later than close of business, June 9, 2014.

Thank you for your assistance,  
Jim Sandman  
LSC President

If you have questions or have trouble accessing the survey, please contact Bristow Hardin, LSC Program Analyst, 202-295-1553, [hardinb@lsc.gov](mailto:hardinb@lsc.gov).

# Agricultural Worker Population -- Migrant Grantees Survey

## Service Delivery to the Agricultural Worker Population

The questions in this section solicit information about the agricultural worker population in your service area and how your program provides services to that population.

\* 1. Please select the appropriate responses to indicate:

(1) Whether your program provides the identified services or employs the identified delivery techniques to serve the agricultural worker population; and,

(2) Whether these services and/or techniques are necessary to serve that population most effectively and efficiently.

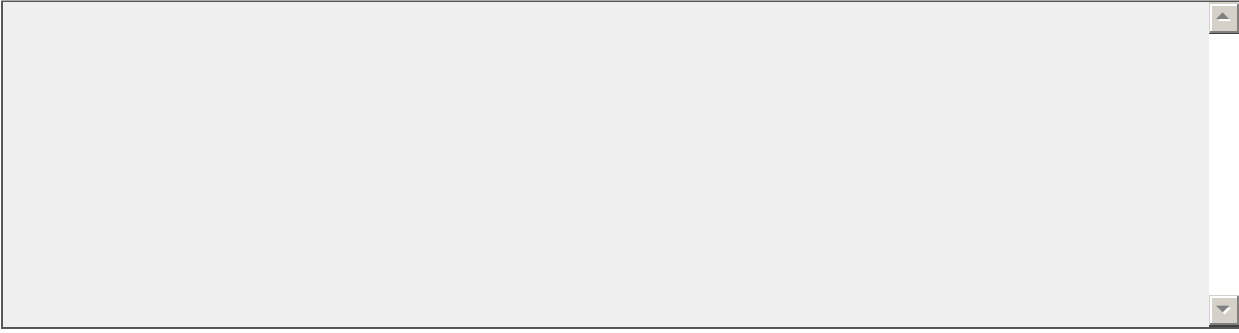
(The answer options are "Yes," "No," and "Don't Know.")

	Provide Services / Employ Techniques??	Necessary for Effective/Efficient Service?
Outreach at labor camps and other places workers live	<input type="text"/>	<input type="text"/>
Outreach to locations other than where workers work or live	<input type="text"/>	<input type="text"/>
Community education	<input type="text"/>	<input type="text"/>
Work with community partners / agencies to reach and serve workers	<input type="text"/>	<input type="text"/>
Work with enforcement agencies	<input type="text"/>	<input type="text"/>
Special intake procedures	<input type="text"/>	<input type="text"/>
Use of technology (e.g. special toll-free lines, cell/text phones, laptops)	<input type="text"/>	<input type="text"/>
Legal advice and limited services	<input type="text"/>	<input type="text"/>
Extended services (including litigation)	<input type="text"/>	<input type="text"/>
Other (please identify below)	<input type="text"/>	<input type="text"/>

Other (identify):

## Agricultural Worker Population -- Migrant Grantees Survey

2. Please provide any comments you have about your responses in question 1.



# Agricultural Worker Population – Migrant Grantees Survey

## Agriculture Worker Population ~ Characteristics and Special Legal Needs

\* 3. Please check the appropriate boxes to indicate whether the identified factors create legal needs that require specialized legal expertise and other capacities or delivery models to serve agricultural workers effectively and efficiently.

	Yes	No	Don't know
Lack of safe / affordable housing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient access to health care	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient access to education	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient access to transportation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Geographic mobility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Geographic isolation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cultural / social isolation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Limited English Proficiency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Low educational attainment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Immigration status	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sex discrimination / sexual harassment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Discrimination based on race, ethnicity or national origin	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Workplace safety and health	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Job characteristics, e.g., dangerous, payment systems, dependence on grower / labor contractor	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Retaliation for filing complaints, seeking legal assistance, etc.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Human trafficking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Unemployment / under-employment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Taxes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please identify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other factors:

## Agricultural Worker Population -- Migrant Grantees Survey

4. Please provide any comments you have about your responses in question 3.



# Agricultural Worker Population -- Migrant Grantees Survey

## Agricultural Worker Population ~ Legal Needs

\* 5. Please select the appropriate responses to identify:

(1) Whether the agricultural worker population in your service area encounters problems in the identified substantive issue areas ("Population encounters problem"); and,

(2) Whether specialized legal expertise and delivery approaches are necessary to effectively and efficiently assist the affected agricultural workers in addressing the problem ("Specialized expertise / delivery necessary").

(The answer options are "Yes," "No," and "Don't Know.")

	Population encounters problem	Specialized expertise / delivery approach necessary
Wage claims and other Fair Labor Standards Act (FLSA)-related issues	<input type="text"/>	<input type="text"/>
Migrant and Seasonal Agricultural Workers Protection Act (AWPA)-related issues	<input type="text"/>	<input type="text"/>
Occupational Safety and Health Act (OSHA)-related issues	<input type="text"/>	<input type="text"/>
Environmental Protection Agency enforcement-related issues (Worker Protection Standard / pesticides)	<input type="text"/>	<input type="text"/>
Child labor	<input type="text"/>	<input type="text"/>
Trafficking	<input type="text"/>	<input type="text"/>
Other employment related (e.g., worker's compensation)	<input type="text"/>	<input type="text"/>
Civil rights (e.g., sexual harassment, employment discrimination)	<input type="text"/>	<input type="text"/>
Unemployment Insurance (UI)	<input type="text"/>	<input type="text"/>
Public benefits (other than UI)	<input type="text"/>	<input type="text"/>
Immigration/naturalization	<input type="text"/>	<input type="text"/>
Consumer	<input type="text"/>	<input type="text"/>
Education	<input type="text"/>	<input type="text"/>
Domestic violence	<input type="text"/>	<input type="text"/>
Family (other than domestic violence)	<input type="text"/>	<input type="text"/>
Youth (other than child labor)	<input type="text"/>	<input type="text"/>
Health (not OSHA-related or EPA-related)	<input type="text"/>	<input type="text"/>
Housing (not covered by AWPA)	<input type="text"/>	<input type="text"/>
Taxes	<input type="text"/>	<input type="text"/>
Other significant problems (identify below)	<input type="text"/>	<input type="text"/>

Please identify the other(s):



## Agricultural Worker Population -- Migrant Grantees Survey

6. Please provide any comments you have about your responses in question 5.



# Agricultural Worker Population – Migrant Grantees Survey

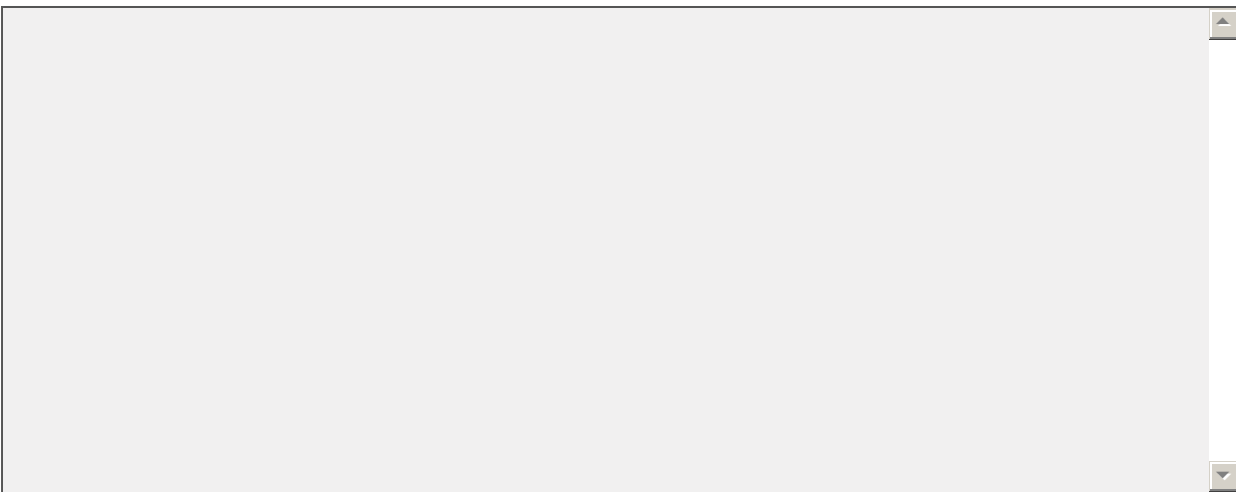
## Cases or Other Activities with Significant Client Benefits

The two questions in this section ask you to describe two examples of cases or other activities conducted by your program that provided clients with significant benefits.

\* 7. Please provide an example of work your program conducted in the last year (or that it is conducting now) that had (or can have) significant benefits for the agricultural workers you serve. As part of your answer, specify the legal issues addressed, the types of representation provided and the benefits provided clients.



\* 8. Please provide a second example of work your program conducted in the last year (or that it is conducting now) that had (or can have) significant benefits for the clients you serve. As part of your answer, specify the legal issues addressed, the types of representation provided and the benefits provided clients.



# Agricultural Worker Population -- Migrant Grantees Survey

## Expertise and Delivery Models Used to Address the Legal Needs of Agricultur...

\* 9. Are the following types of specialized expertise / capacities necessary to serve agricultural workers effectively and efficiently?

	Yes	No	Don't know
Expertise regarding federal laws with special provisions affecting agricultural workers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Expertise regarding state laws and policies with special provisions affecting agricultural workers in your service area	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Federal litigation experience	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bilingual / multilingual staff	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Staff with cultural competence with the agricultural worker population	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Flexible work schedule (e.g., evening outreach, extensive travel)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access to training in agricultural workers' legal needs, laws and delivery approaches	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Coordination / communication with advocates providing services to agricultural workers in other states	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please identify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please describe the "other" specialized expertise or capacities

10. Please explain why you think any of the specialized expertise / capacities identified in the previous question are necessary to provide assistance to agricultural workers effectively and efficiently.

# Agricultural Worker Population -- Migrant Grantees Survey

## The Legal Needs of Different Categories of Agricultural Workers

11. Please select the appropriate answers to indicate whether workers employed in the specified occupations (and / or their dependents) have legal issues associated with the identified issues. (The answer options are "Yes," "No," and "Don't Know.")

	Wage and Hour violations	AWPA violations	Unsafe / Unhealthy working conditions	Unsafe / Unhealthy housing conditions	Employer Retaliation	Discrimination	Sexual Harassment / Violence	Other
Migrant and seasonal crop workers	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Livestock workers (e.g., dairy, eggs, poultry, beef, hogs, sheep)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Nursery and greenhouse workers	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Workers in forest nurseries or gathering forest products	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Fruit and vegetable packing and processing workers;	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Aquaculture workers (i.e., farm raising and production of aquatic animals and plants)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Agriculture support workers (e.g., cotton ginning, crop planting / grading)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Others engaged in	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

# Agricultural Worker Population -- Migrant Grantees Survey

agriculture  
related work  
(please  
identify  
below)

Meat and  
poultry  
slaughtering  
and  
processing  
plant  
workers

--	--	--	--	--	--	--	--	--	--

Please identify other:

12. Please provide any comments you have about your responses in the previous question.

# Agricultural Worker Population -- Migrant Grantees Survey

## Final Comments

13. Please provide any additional comments you may have about the issues addressed in this survey.



# Agricultural Worker Population -- Migrant Grantees Survey

## Information for Follow-Up

Please provide the information below in case we would like to follow-up on some of your answers.

### 14. Contact person and contact information.

Name:	<input type="text"/>
Program name	<input type="text"/>
Title	<input type="text"/>
Email Address:	<input type="text"/>
Phone Number:	<input type="text"/>

## Agricultural Worker Population -- Migrant Grantees Survey

Thank You!

Thank you! Your answers will be invaluable to LSC as it analyzes services to the agricultural worker population.

Please click "Done" to submit your answers.



## **APPENDIX F**

### **LSC Agricultural Worker Population Survey – Basic Field Grantee Survey Instrument**



# Agricultural Worker Population -- Basic Field Survey

## Introduction

LSC is reviewing population data regarding migrants and other agricultural workers and their dependents (agricultural worker population). These data provide the basis for the allocation of LSC grant funds for legal assistance to this population.

This survey seeks your perspective about:

1. The legal needs of the agricultural worker population;
2. The extent to which specialized expertise and delivery approaches, if any, are needed to address the legal needs of the agricultural worker population; and,
3. The categories of agricultural workers with legal needs that require such expertise and delivery approaches.

"Agricultural workers" can include:

1. Migrant and seasonal crop workers;
2. Fruit and vegetable packing and processing workers;
3. Livestock workers (e.g., dairy, eggs, poultry, beef, hogs);
4. Nursery and greenhouse workers;
5. Workers in forest nurseries or gathering forest products;
6. Aquaculture workers;
7. Agriculture support workers (e.g., planting, grading, cotton ginning); and,
8. Others engaged in agriculture related work.

Throughout the survey:

1. "Agriculture worker population" and "agricultural workers" refer to agricultural workers and their dependents; and,
2. "Specialized legal expertise, capacities and delivery approaches" refer to expertise with regard to the most significant legal issues and laws affecting the agricultural worker population and capacities and delivery approaches tailored to meet the particular needs of that population.

The survey solicits your perspective through a combination of multiple-choice and open-ended questions. The survey should take about 20-30 minutes to complete. The time it takes you will depend on the length and detail of your responses.

You may exit and re-enter the survey to add to or edit your responses. Also, your responses will be automatically saved when you exit the survey.

We ask that you complete this survey no later than close of business June 9, 2014.

Thank you for your assistance,  
Jim Sandman  
LSC President

If you have questions or have trouble accessing the survey, please contact Bristow Hardin, LSC Program Analyst, 202-295-1553, [hardinb@lsc.gov](mailto:hardinb@lsc.gov).

# Agricultural Worker Population -- Basic Field Survey

## Assistance to Agricultural Workers in Your Service Area

\* 1. Are there more than 500 agricultural workers and their dependents in your service area? Use estimates if necessary.

- Yes
- No
- Don't know

\* 2. Does your program have Case Management System data, data from other systems, anecdotal data or any other information that enable you to identify whether your program has provided services to agricultural workers in the last year?

- Yes
- No

## Agricultural Worker Population -- Basic Field Survey

\* 3. Has your program provided assistance to agricultural workers in your service area in the last year?

Yes

No

# Agricultural Worker Population -- Basic Field Survey

## Services Provided to Agricultural Workers

\* 4. Please select the appropriate box to estimate the percentage of your program's cases involving the representation of agricultural workers.

- Less than 10%
- 10% or more
- Don't know

\* 5. Please check the appropriate boxes to indicate whether your program has provided assistance to agricultural workers in the last year on the following issues.

	Yes	No	Don't Know
Wage claims and other Fair Labor Standards Act (FLSA)-related issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Migrant and Seasonal Agricultural Workers Protection Act (AWPA)-related issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Occupational Safety and Health Act (OSHA)-related issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Environmental Protection Agency enforcement-related issues (Worker Protection Standard / pesticides)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Child labor	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trafficking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other employment related (e.g., worker's compensation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Civil rights (e.g., sexual harassment, employment discrimination)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Unemployment Insurance (UI)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public benefits (other than UI)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Immigration/naturalization	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Education	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Domestic violence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Family (other than domestic violence)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Youth (other than child labor)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Health (not OSHA-related or EPA-related)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Housing (not covered by AWPA)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Taxes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other significant problems (identify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please identify "Other"

## Agricultural Worker Population -- Basic Field Survey

\* 6. Please check the appropriate boxes to indicate the types of services that your program provided to agricultural workers in the last year.

	Yes, provided service	No, did not provide service	Don't Know
Outreach and education	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Advice, counsel, other brief services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Extended service	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7. Please provide any comments you may have about your responses to questions 4-6.

# Agricultural Worker Population -- Basic Field Survey

## Services Not Provided to Agricultural Workers

\* 8. Please select the appropriate box(es) to indicate why your program has not provided services to the agricultural worker population in the last year. (Check all that apply.)

- Another program serves the agricultural worker population
- Agricultural worker population is very small
- Agricultural workers have not had legal issues that fell within program priorities
- Agricultural workers have not sought program services
- Other

Other (please identify)

9. Please provide any comments you have about your responses in the previous question.



# Agricultural Worker Population – Basic Field Survey

## Expertise / Delivery Models Needed to Serve Agricultural Workers Most Effec...

\* 10. Please select the appropriate responses to indicate whether you think the identified program capacities and delivery approaches are needed to serve agricultural workers effectively and efficiently.

	Yes	No	Don't Know
Expertise regarding federal laws with special provisions affecting agricultural workers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Expertise regarding state laws and policies with special provisions affecting agricultural workers in your service area	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Federal litigation experience	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bilingual / multilingual staff	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Staff with cultural competence with agricultural worker communities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access to specialized training re: agricultural worker issues / delivery	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Special intake procedures and policies for agricultural workers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Outreach at labor camps and other places workers live	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Outreach to locations other than where workers work or live	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Community education	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Work with community partners / agencies to reach and serve workers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Work with enforcement agencies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Use of technology (e.g. special toll-free lines, cell/text phones, laptops)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal advice and limited services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Extended services (including litigation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Coordination / communication with advocates providing services to agricultural workers in other states	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please identify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please identify the "other" capacities

11. Please provide any comments you have about your responses to the question above.

# Agricultural Worker Population -- Basic Field Survey

## Final Comments

12. Please provide any additional comments you may have about the issues addressed in this survey.



# Agricultural Worker Population -- Basic Field Survey

## Contact Information for Follow-Up

Please provide the information below in case we would like to follow-up on some of your answers.

### 13. Contact person and contact information.

Name:	<input type="text"/>
Program name	<input type="text"/>
Title	<input type="text"/>
Email Address:	<input type="text"/>
Phone Number:	<input type="text"/>

## Agricultural Worker Population -- Basic Field Survey

Thank You!

Thank you! Your answers will be invaluable to LSC as it analyzes services to the agricultural worker population.

Please Click "Done" to submit your answers.