

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.¹ 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 experts² 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

¹ 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.

² 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.³

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.

³ 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.⁴ 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,⁵ 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

⁴ 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).

⁵ 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.⁶

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).⁷
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).

⁶ 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.

⁷ 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.

5. DOL, Bureau of Labor Statistics (BLS) 2012 Quarterly Census of Employment and Wages (QCEW).⁸
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.⁹ 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 nationally¹⁰ and the number

⁸ 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.

⁹ 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.

¹⁰ 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.

of H-2A workers in each state, including Puerto Rico.¹¹ They also include the number of H-2B forestry workers nationally¹² and the number of H-2B forestry workers (if applicable) in each state.¹³ (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.

¹¹ 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.

¹² 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.

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

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.¹⁴ 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:

¹⁴ 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.¹⁵ 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.¹⁶
- 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.¹⁷ 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.

¹⁵ 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

¹⁶ 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.

¹⁷ 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.¹⁸ 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.¹⁹ 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 FLS²⁰ 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.²¹ 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.

¹⁸ DOL, National Agricultural Workers Survey (restricted data).

¹⁹ 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>.

²⁰ 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).

²¹ 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.²² 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.

²² 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.²³ 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

²³ 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:

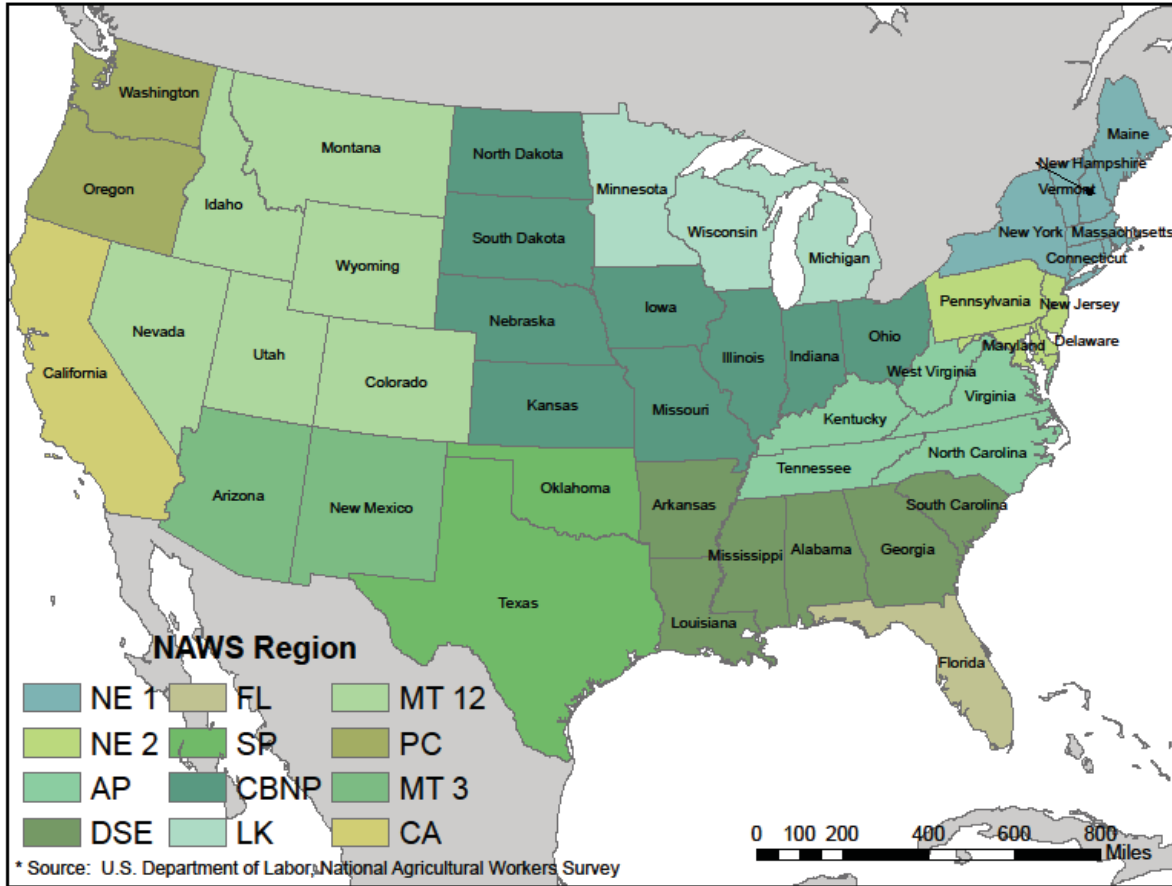
State Share of the Total LSC Eligible Population (Column L) =
LSC-Eligible Agricultural Worker State Population (column K) ÷
National LSC-Eligible Agricultural Worker Population.

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 State	B Total Number of Workers	C LSC Eligible Workers		D Total LSC Eligible Workers	E Average Number per Worker	F LSC Eligible Dependents		G LSC-Eligible H-2 Workers		I Total LSC-Eligible: current Workers & Dependents	J LSC-Eligible Retirees / Temporarily Out of Work Force & Dependents	K Total LSC-Eligible Agricultural Worker Population	L State Percentage (%) Share of total Eligible Population
		Percentage (%) of LSC-eligible Workers	Total LSC Eligible Workers			Total LSC Eligible	H-2A	H-2B Forestry					
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%			
US	2,785,785	N/A	486,143	N/A	824,863	85,248	7,522	1,311,008	241,995	1,553,003	100.000%			

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.¹ 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

¹ 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.² 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

² 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.³ The Section 1007(h) Study also discussed issues still pertinent to the funding of migrant grants today, most notably:⁴

- 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. . . ."

³ 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.

⁴ 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, shepherding, 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 System⁵

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

⁵ 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 Atlas⁶ and the Larson-Plascencia study⁷ 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,⁸ 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 1,661,875.⁹ LSC determined in 1975 that 70% of this population – 1,116,195 – had incomes below the poverty line.¹⁰

⁶ 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*.

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

⁸ 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.

⁹ *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 FY96.¹¹ 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.¹² 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%.

¹⁰ 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.

¹¹ 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.

¹² 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.¹³

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

¹³ 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).¹⁴

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.¹⁵ 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.¹⁶

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.

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

¹⁵ 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.

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

APPENDIX C

List of Works Cited

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APPENDIX D

List of Persons Interviewed

LSC AGRICULTURAL WORKER POPULATION ESTIMATE UPDATE
LSC MANAGEMENT REPORT TO LSC BOARD OF DIRECTORS
January 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

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

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

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

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.

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.

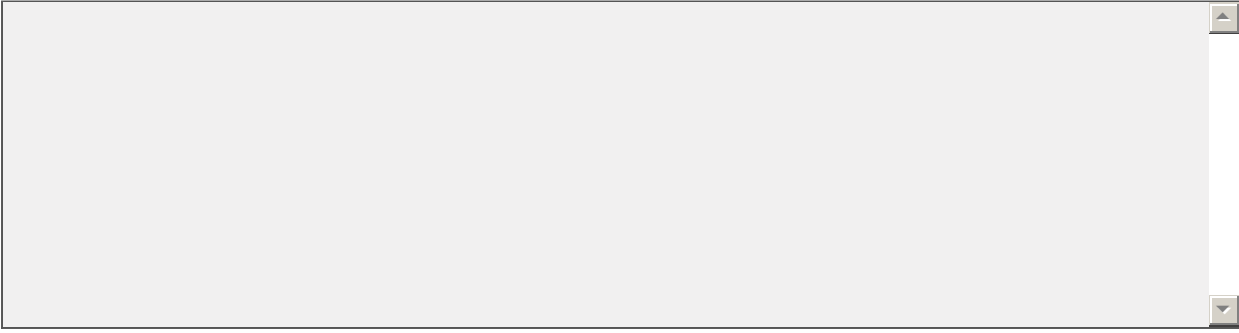
(The answer options are "Yes," "No," and "Don't Know.")

	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

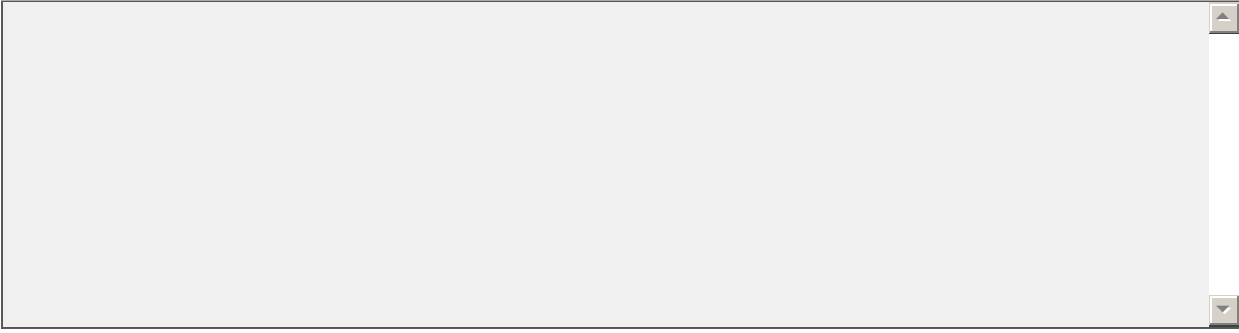
* 3. Please check the appropriate boxes to indicate whether the identified factors create legal needs that require specialized legal expertise and other capacities or delivery models to serve agricultural workers effectively and efficiently.

	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

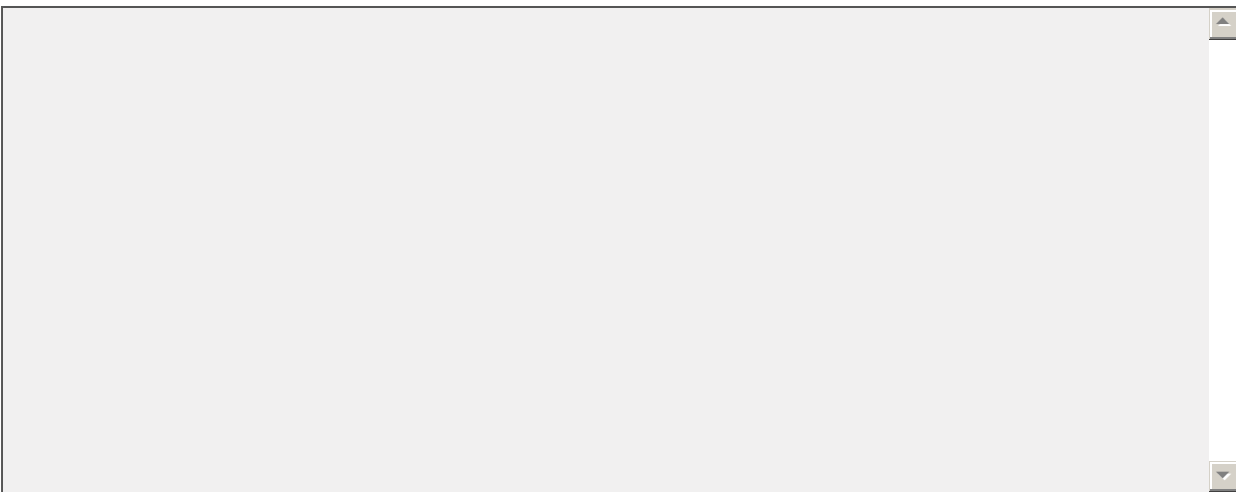
Cases or Other Activities with Significant Client Benefits

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.

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.