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April 16, 2015

Mr. Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K St. N.W.
Washington, DC 20007

Sent via electronic mail: mfreedman@lsc.gov

Re: Agricultural Worker Population Data for Basic Field-Migrant Grants

Dear Mr. Freedman:

Legal Action of Wisconsin submits the following comments in regards to the new Agricultural Worker Population Data for Basic Field-Migrant Grants (hereinafter “Report” or “Management Report”).

I. Legal Action of Wisconsin agrees with the Report’s recommendations to continue funding projects at the state level and to continue the tradition of specialized funding for agricultural workers.

A. Wisconsin agricultural workers are best served by a statewide funding structure.

Legal Action of Wisconsin’s migrant project is an integral part of a statewide effort to protect agricultural workers. Wisconsin state law provides workers with protections such as the right to a standardized work agreement prior to coming to work in Wisconsin¹ and a minimum set of standards for employer provided housing.² Attorneys at Legal Action of Wisconsin have been representing workers in claims under Wisconsin’s Migrant Code since the Code’s inception in 1978. Additionally, Legal Action of Wisconsin’s Migrant Project has decades of experience in building and developing relationships with migrant inspectors and other state enforcers. We meet with state inspectors and job service outreach workers at the beginning and end of each season in order to discuss problems and to learn about new migrant camps. Three different Wisconsin governors have appointed our attorneys to serve on Wisconsin’s Migrant Labor Council. Further, our attorneys also serve on the boards of other statewide organizations and coalitions devoted to empowering and

¹ Wis. Stat. Ann. § 103.915 (2014).

² Wis. Admin. Code § DWD 301.07 (2014).

assisting farmworkers. We believe such statewide efforts would suffer under a regional or national program model for service delivery which would focus, inevitably, on less localized litigation strategies.

Funding at the state level is also necessary in order to ensure all the civil legal needs of Wisconsin farmworkers are met. Though the vast majority of our work consists of employment related claims, our migrant project staff has encountered questions and legal problems ranging from public benefits denials to racial profiling by local police departments and merchants. Our staff that serves agricultural workers is able to provide advice and representation in these areas because we are part of a state-level LSC funded firm. The quality of this state-level advocacy would suffer under a regional or national model of service delivery.

B. We agree that funding earmarked for agricultural workers is required to reach and serve agricultural workers.

The vast majority of Legal Action’s migrant project clients learned of our services through outreach to camps or through our government and community partnerships. Additionally, nearly all of our in-person communication with our agricultural worker client base takes place outside of the traditional business day and involves extensive travel. We agree that specialized agricultural worker units are needed because of the barriers which would otherwise restrict clients’ access to legal assistance and because of the specialized legal needs of agricultural workers.

II. Legal Action of Wisconsin objects to the LSC’s recommendation to exclude large groups of workers currently eligible for our services from the Report’s count.

A. Migrant workers who work in off-farm canneries and food processing plants should be included in the Report’s count.

Fruit and vegetable food processing workers make up over fifty-percent of Wisconsin’s migrant worker base.³ These workers are recruited to come to Wisconsin each year and, in most cases, remain in geographically isolated housing provided and controlled by their employers. Like the other agricultural workers described in this report, food processing workers face unsafe working conditions. In 2014 alone, the “serious violation citations” issued by OSHA at off-farm canneries in Wisconsin included failure to provide workers with appropriate protective gear and failure to equip machines with appropriate guarding mechanisms.⁴ Like crop workers, migrant workers who work in canneries must be rehired for their jobs each year. This vulnerability often deters workers from bringing complaints regarding health and safety issues and other working conditions. This experience is not unique to Wisconsin workers. In the survey of migrant project grantees, fruit and vegetable processing workers were tied with migrant and seasonal crop workers as most likely to experience legal problems in the areas of wage and hour violations, AWPA violations, unsafe/unhealthy working conditions, employer retaliation, discrimination, sexual harassment and violence, child labor violations, and immigration.⁵

³ Wisconsin Bureau of Migrant Labor Services, 2014 Migrant Population Report.

⁴Citation information via OSHA establishment search tool. <https://www.osha.gov/pls/imis/establishment.html>.

⁵See Management Report, page 35

Migrant workers in off-farm canneries are also entitled to similar protections as other agricultural workers. They are covered by the AWPA⁶ and under Wisconsin's Migrant Code.⁷ They are also eligible for services from the Migrant and Seasonal Farmworker Advocate System.⁸ Migrant food processing workers also have special designations under many of Wisconsin's public benefit programs. In some cases, this status allows for protections such as annualized income computation in order to ensure ongoing access to healthcare programs⁹.

B. The Report's estimate of the LSC ineligible farmworker population contradicts Legal Action's experience in conducting eligibility screenings with Wisconsin farmworkers.

The Report's regional methodologies excluded 87% of Wisconsin farmworkers based on estimates of ineligibility for services. The JBS Report discusses exclusions based on regional data in regards to citizenship and income ineligibility.¹⁰ We would appreciate more discussion of the sources used to determine ineligibility based on income and citizenship in both the JBS Report and the Management Report. The Management Report notes that farmworker counts were reduced by 50% based on regional calculations of ineligibility based on immigration status;¹¹ but the discussion of the figures and methodology used to exclude workers based on assumptions about income is less explicit.

The end result of the calculations is that only 13% of Wisconsin farmworkers are determined to be eligible for our services.¹² This contradicts our experience working with Wisconsin farmworkers. In 26 years of farmworker advocacy, our migrant project staff attorney has turned down only one potential client because of income and assets restrictions. We do recognize that the agricultural and basic field poverty counts distribute funds based on 100% FPL, lower than our actual eligibility guidelines. Even so, we believe that the income exclusion projections are high.

Additionally, after screening for remedies such as T and U visa eligibility, our declination rate based on immigration related eligibility is also much lower than the regionally sourced data would suggest –approximately 10-18% of our intakes. Many of our clients obtained LPR status following IRCA and return to work in Wisconsin year after year.

III. Agricultural workers should be counted as agricultural workers *and* as poor people.

We urge the LSC to use its influence to encourage greater collaboration between the U.S. Census Bureau and the Department of Labor in order to improve the counting of farmworkers in U.S. Census data sources. Though migrant funding has been “backed out” of basic field funding since 1996, there has been little to no attempt to reconcile the results of the American Community Survey with the count in the Agricultural Worker Population Estimate Update. We understand that the LSC does not have direct control over the methodologies used in the American Community Survey and concur that the “top down” approach of the Agricultural Worker Population Estimate Update is

⁶29 U.S.C.A. § 1802 (West).

⁷ Wis. Stat. Ann. § 103.90(5)(2014).

⁸ United States Department of Labor. “Who Are Migrant and Seasonal Farmworkers” available at http://www.doleta.gov/programs/who_msfw.cfm.

⁹ See, e.g. Wisconsin Badgercare Plus Handbook. Sections 12.2 and 16.8, <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>

¹⁰ JBS Report, pages 4-5.

¹¹ Management Report, page 11

¹² JBS Report, page 20

currently the most reliable way to count agricultural workers –but we cannot and should not be satisfied with this funding structure in the long term.

Under the current funding structure, agricultural workers could be undercounted as poor people in the American Community Survey; but then “found” using the methodologies advocated in the Agricultural Worker Population Estimate Update. This apples from oranges approach has the potential to disproportionately punish basic field programs in states with higher counts of agricultural workers.

The methodology section of the American Community Survey notes attempts to reach and count migrant workers.¹³ Additionally, the Census Bureau conducted research to identify migrant camp locations.¹⁵ Even so, we understand that “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.”¹⁷ and that agricultural workers may be underrepresented in the American Community Survey results.

If agricultural workers are undercounted in the American Community Survey, this has the potential to create a rural and urban divide in our statewide delivery of legal services. For example, our firm represents clients in the city of Milwaukee. The American Community Survey estimates that 29.1% of Milwaukee City/ Milwaukee County residents have been below the poverty level in the past twelve months.¹⁸ We must ensure that projects that serve our clients in urban areas continue to be funded proportionally to the rate of poverty. This cannot occur if farmworkers are undercounted as poor people under the American Community Survey and then “found” using the “top down” approach developed by the current agricultural worker population estimates. Accurate counting of farmworkers as farmworkers *and* as poor people protects our farmworker clients and our clients residing in urban areas.

IV. Legal Action of Wisconsin needs discretion and flexibility in identifying and meeting the legal needs of Wisconsin farmworkers. We also need additional time in order to adjust to the changes suggested in the Report.

A. The LSC should clarify that we will not be penalized for representing farmworkers in matters other than employment law claims.

Legal Action of Wisconsin has always been a full service law firm. For example, we ensure that clients we represent in a consumer law matter receive all the FoodShare benefits to which they are entitled. In the migrant project, the vast majority of our cases currently consist of employment law claims. We primarily represent agricultural workers in employment law claims because the problems our clients bring to us are almost always employment related. We expect that farmworkers who reside in Wisconsin year-round may face legal problems in other areas and that their vulnerability in these areas may be heightened by their status as agricultural workers. For example, we know that *notario* fraud is common in many immigrant communities¹⁹ and have anecdotally heard of some possible scams that target immigrant communities consisting largely of Wisconsin

¹³American Community Survey, Design and Methodology, page 7

http://www.census.gov/acs/www/Downloads/survey_methodology/acs_design_methodology_report_2014.pdf

¹⁵ *Id* at 27

¹⁷ JBS Report, page 3

¹⁸ Results available via the American Factfinder Tool. <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>.

¹⁹ Federal Trade Commission. “Scams Against Immigrants.” <http://www.consumer.ftc.gov/articles/0141-scams-against-immigrants>

farmworkers. Many of our community partners also tell us that workers isolated on dairy farms are extremely vulnerable in instances of domestic violence.

We are excited to begin organized outreach to agricultural workers who reside in Wisconsin year round. This new work will involve representing workers who are employed in industries that we have not served previously –such as the dairy industry. We seek LSC’s confidence in our ability to identify and meet the legal needs of this under-served group. In order to provide this new client base with quality and aggressive advocacy, we must have the flexibility to use broad-based legal solutions to achieve outcomes for our clients. Though we will continue to identify areas of need that stem from or are exacerbated by our clients’ status as farmworkers, we want to ensure that we have the autonomy and discretion to identify and meet the legal needs of this new client base. We seek assurance that we will not be penalized if this group’s legal needs differ from the legal needs of our current migrant worker client base.

B. Legal Action requests additional time to adjust to the proposed changes in the Report.

If the changes recommended in the Report are implemented, Legal Action will need to identify new ways to reach year-round agricultural workers. The bulk of our current migrant project outreach involves outreach to camps of crop and food processing workers. We have already begun the process of identifying ways to reach year-round agricultural workers –but we will need time to perfect our outreach strategy and to identify the needs of clients who work in year-round industries.

We also need some time to adjust staffing and to develop firm expertise in identifying and meeting the needs of this new client group. Given the magnitude of the proposed changes, we anticipate that other programs may face similar challenges. If the funding changes are implemented as proposed, we will need to shift staffing resources from some of our basic field projects to the agricultural worker project. We need to ensure that this shift between projects is done gradually in order to minimize harm to our basic field programs and clients. We propose a 4-5 year phase in for the funding changes instead of the proposed two year implementation plan.

Thank you for your consideration.

Sincerely,



David Pifer
Executive Director
Legal Action of Wisconsin