



## MEMORANDUM

To: Mark Freedman

From: Steve Eppler-Epstein, Chair, NLADA Civil Policy Group; Rudy Sanchez, NLADA Farmworker Section Representative; and Don Saunders, Vice-President for Civil Legal Services

Re: Comments from **NLADA's Civil Policy Group** and **NLADA's Farmworker Section** on Agricultural Worker Population Data for Basic Field – Migrant Grants

Date: April 20, 2015

NLADA is grateful for the opportunity to respond to LSC's request for public comment, published in the Federal Register on February 3, 2015, regarding the population data sets to be used for determining grants to agricultural worker programs across the United States.

Our primary comments were developed by the Agricultural Workers Project Group (AWPG), a subcommittee of NLADA's Farmworker Section (hereinafter, Section). These comments draw on the expertise of hundreds of agricultural worker advocates across the country; they also capture input from a wide array of LSC-funded basic field service providers. The comments have been adopted as well by the Civil Policy Group, the broadly representative entity within NLADA charged with discussing, developing and advocating on policy issues related to the delivery of civil legal assistance to poor people. While not all of NLADA's member basic field programs agree with all of the comments that follow, especially about definitions of the population to be served, the comments that follow are the result of broad and open conversations with each of the regions in NLADA's governance structure.

NLADA and the AWPG have provided extensive input to LSC throughout its deliberations on the continuation, design and funding of specialized grants to deliver legal services to agricultural workers. Regarding the population data to be used by LSC, for example, NLADA commissioned *Estimate of Agricultural Workers and Their Dependents in the United States*. Prepared by Ed Kissam and Shannon Williams, two of the most respected national experts on agricultural workers. This report was submitted to LSC in June 2013, with an update provided to LSC in November 2014. Both documents contained a recommended methodology for determining the number of agricultural workers and dependents in the United States, using a top-down analysis based upon available national data sets. They estimated a total national number of workers and dependents that was substantially similar to the ETA-commissioned national number submitted in the LSC management report to the board of directors this January.

However, NLADA has strong concerns with the state estimates provided by ETA in the January management report. The Section comments, and other comments provided by the field, analyze in detail our concerns about the methodology used by ETA for its state estimates. We believe the ETA methodology does not accurately capture the distribution of LSC-eligible agricultural workers among the states. The estimates fail to adequately document a number of enumerated categories of LSC-eligible agricultural workers that should be considered in determining a state-by state distribution of these

grants. The Section comments provide a detailed examination of these anomalies, based upon the extensive experience advocates have developed over up to 40 years of serving this population.

NLADA's primary recommendation is that the ETA state estimates be adjusted pursuant to the input provided in the Section's comments. Several other programs designed to serve agricultural workers at the national level have made similar adjustments in light of both trends in agriculture in the United States and the imprecise nature of the available state data. A similar adjustment by ETA based upon the Section's recommendations would stop the highly disruptive consequences of the current ETA state estimates on both the basic field and farmworker delivery systems.

Regardless of whether ETA revises its current state estimates, LSC must be flexible in considering information from particular states when that data provides a more accurate picture of the state's agricultural population. Even though many agricultural worker programs serve the broader population of agricultural workers described in the LSC management memo and the earlier John McKay letter, current state-by-state funding is based upon an estimated count of migrant workers only. Funding for "migrant" programs was never based upon the broader definition of client populations to be served.

With the proposed changes in funding that would flow from the current ETA state estimates, LSC will likely find that, in certain states historically having a small population of migrant farmworkers, the nature of the agricultural workforce and their legal needs in certain states might be significantly different than the estimates. Likewise, some states might have clearly demonstrable populations of LSC-eligible workers who are not accounted for in the ETA estimates. As pointed out in the Section's comments, the access and legal needs of livestock workers and migrant crop workers may be entirely different from one state to another. The ETA formula likely over-counts certain workers (e.g., livestock) and undercounts others.

The available national data sets on these populations are simply not sufficiently nuanced or state-specific enough to capture all of these differences. Since the LSC analysis is based upon a national legal needs framework, it is essential for LSC to recognize the imprecise nature of the available state estimates and maintain discretion in making adjustments. LSC should exercise flexibility in identifying the most effective and efficient means to best meet the needs of agricultural workers within the framework of a state's overall delivery system.

Finally, given the significant changes to the delivery system that will inevitably occur with the update of this data, we underscore the request in the Section comments (VI. B) that LSC expand its period of implementation of these changes from two to three years.

NLADA appreciates how much effort and good work went into LSC's consideration of the revisions proposed in the January management memo. We also thank LSC for the openness of discussion throughout the process. We look forward to continuing the dialogue after the comment period ends.

Please do not hesitate to contact us if we can provide further information.