



March 21, 2016

Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K St. NW
Washington, DC 20007-3522

Re: Comments on Agricultural Worker Population Estimates for Basic Field—Migrant Grants

Dear Mr. Freedman:

We write on behalf of the National Legal Aid & Defender Association (NLADA) Agricultural Worker Project Group in response to the Legal Services Corporation (LSC) “Request for Comments—Agricultural Worker Population Estimates for Basic Field—Migrant Grants” published in the Federal Register on February 5, 2016. The Federal Register notice requests comment on three enhancements to its proposal to obtain and implement more current estimates of the U.S. agricultural worker population and their dependents eligible for LSC-funded legal assistance.

The NLADA Agricultural Worker Project Group is comprised of large and small legal service programs across the country providing legal assistance to agricultural workers and their dependents (farmworker programs) and of other programs affected by the proposed redistribution. Many of these programs receive LSC-funding to provide such services, using LSC special grants for farmworker programs known as migrant grants. Program representatives have decades of experience working to meet the special legal needs of migrant and seasonal agricultural workers and their families, certainly some of the most vulnerable and exploited people in our country. The farmworker programs have considerable breadth and depth of experience working with and serving the agricultural worker community, providing those specialized legal services necessary to meet their legal needs.

The Agricultural Worker Project Group thanks LSC for its continued commitment to the statutory requirement to address the “special difficulties of access to legal services or special legal problems” of agricultural workers and for the opportunity to respond to LSC’s requests for comments. These comments are submitted by the members of that group (comprising the NLADA farmworker section).

The Agricultural Worker Project Group not only appreciates LSC’s commitment, but concurs with LSC’s and the previous commenters that there is a continued need for separately funded

specialized services to agricultural workers and their dependents. This is because of their special legal problems different from the general population, the unique body of laws governing their relationships with employers, housing providers and others and their special needs due to social, cultural and geographic isolation. We agree that consistent with the LSC Act's requirement to address such issues, LSC should continue its obligation to provide separate grants. LSC's update of the definition of agricultural workers also is consistent with program practice.¹

We particularly commend LSC's efforts in gathering and analyzing available information and preparing the "Estimate of the Population of Agricultural Workers Eligible for LSC-Funded Services Pursuant to 45 C.F.R. § 1626.4 – Anti-Abuse Laws" (Anti-Abuse Law estimate). It is an excellent example of LSC's considered and thorough response to previous comments on the proposed recalculation of the distribution of funds through Basic Field-Migrant grants, based on population estimates obtained from the U.S. Department of Labor (DOL) and Employment Training Administration (ETA), published February 3, 2015, 80 Federal Register 5791.

We also especially appreciate and support the two-year phase-in for application of the estimates that likely will result in changes in funding distribution for affected programs.

We finally appreciate the increased access to the original source data and methodology and include in our comments reference to that data and methodology reviewed by our expert.²

We summarize below our comments on the subsequent questions posed by LSC in the February 5, 2016 Federal Register Notice (81 Fed. Reg. 6299) and then provide further detailed comments.

I. Summary of Comments

The Legal Services Corporation has requested the following:

- a. Comments on the methodology and data used for estimating the agricultural worker population by the U.S. Department of Labor's Employment Training Administration (ETA) considering the additional ETA materials published with this notice.**

¹ We ask LSC to reconsider the omission of the limited number of off-farm fruit and vegetable canning workers who face substantially equivalent barriers to access to legal services. The number of workers could be estimated through the use of NAICS code 31142. These workers most often are the same workers performing field work, they and their families face similar burdens and barriers, and have special legal needs also protected by employment, housing and other special legal protections. Please see the 2015 NLADA comments and the NLADA Williams/Kissam paper.

² We prepared these comments in consultation with Shannon Williams, PhD, Research Director, LPC Consulting Associates, Inc. who co-authored the 2013 report submitted to LSC by NLADA, "Estimate of Agricultural Workers and Their Dependents in the United States."

The Agricultural Worker Project Group:

- Approves LSC's general approach of using a top-down method to determine the number of agricultural workers, but seeks certain adjustments in order to produce a more accurate estimate.
- Asks LSC to use the NAWS data reported by the NAWS primary 6 regions rather than the 12 regions in order to provide more reliable and valid factors for calculating estimates of LSC-eligible farmworker and dependent populations by state.
- Requests that LSC adjust certain assumptions underlying the estimate of LSC-eligible dependents in order to have a more accurate estimate.
- Seeks inclusion of particular LSC-eligible agricultural workers omitted from the current estimate because they are eligible under LSC regulations and share the unique legal needs and barriers to access of the groups already included, i.e., those LSC-eligible farmworkers who are beneficiaries of pending I-130 petitions and have the requisite relationship to a U.S. child, parent, or spouse.
- Notes that there now are more recent numbers available for H-2A workers and H-2B forestry workers and that LSC should periodically update them.

b. Comments on a new estimate of aliens within the agricultural worker population who are eligible for services from LSC grantees based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities.

The Agricultural Worker Project Group:

- Commends LSC on the January 20, 2016 memorandum on the population estimate under anti-abuse laws and approves the recommendation to modify the original ETA estimates to include these additional populations of LSC eligible individuals. We approve LSC's general approach to estimate those who would be eligible for services from LSC grantees under 45 C.F.R. 1624.6 based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities. The LSC memorandum uses thorough, detailed research and analysis and provides a reliable estimate.
- Asks LSC to direct ETA to adjust the Table VI poverty level to use the same criteria used in its other calculations.

c. Submission of available and reliable state- or region-specific data estimates of the populations of agricultural workers eligible for LSC-funded services to augment the ETA estimates in individual states or regions.

The Agricultural Worker Project Group:

- Appreciates the opportunity for farmworker programs to provide to LSC available, reliable state- or region-specific data estimates of agricultural workers.
- Requests that if LSC accepts data as available and reliable and adds to the population of a state or region and similar data or type of data are available and applicable to other

states, then LSC should consider appropriate application of the same data for other states or regions.

- Requests the opportunity to provide additional comments regarding the appropriate methods for updating the data for future agricultural worker estimates in Phase 2 as appropriate and each time LSC updates the estimates (every three years for recalculation in sync with basis field poverty estimates).

II. The Agricultural Worker Project Group supports LSC's update of the data regarding LSC-eligible agricultural workers and dependents.

- a. LSC should assign the descriptive NAWS factors to states using the 6-region reporting areas (e.g., East, Southeast, Midwest, Southwest, Northwest, and California) rather than the 12-region areas, for more reliable estimates.**

NAWS data are the most detailed and reliable information regarding agricultural workers in the United States. The reliability and validity of the NAWS are based upon its complex sampling procedure, which produces representative data for designated agricultural regions. We recognize that reporting NAWS data on a 12-region basis is intended to target farmworkers within a smaller geographic area from which the surveys were collected, but it necessarily diminishes the reliability of the data for the farmworker population in general. The use of the NAWS data on the 12-region level for determining state-level counts results in certain anomalous characterizations of state farmworker populations, which in many cases are inconsistent with our first-hand knowledge about the demographics and status of farmworkers and their dependents in a state. We believe that applying descriptive variables in 6-region reporting is a more robust alternative, and will reduce the data-produced anomalies. We also believe that reliability is the reason that the NAWS data are publically reported for the 6-region level rather than 12-region level.

NAWS data provide the best available data regarding agricultural workers, but there are questions about reliability in using the NAWS to make state-level estimates concerning farmworkers. A recent report submitted to ETA by JBS provides supplemental information on findings relevant to participants in the Migrant and Seasonal Head Start (MSHS) program and outlines the limitations of applying NAWS data to individual states. JBS reviewed the potential use of the NAWS to calculate state-level estimates of MSHS-eligible children (a small subsample of the entire Migrant and Seasonal Farmworker population) in response to the OHS (Office of Head Start) request in 2009-2010 and found that except for two large states (CA and TX), the estimates at this level were unacceptably error-prone...JBS and DOL/ETA strongly recommended that these state-level numbers not be utilized for policy or programmatic purposes.”³ The February 2016 MSHS Supplement noted that “JBS [then] pursued regional

³ *Migrant and Seasonal Head Start Supplement to the National Agricultural Workers Survey 2015 Report*, for DHHS Office of Planning, Research & Evaluation, Administration for Children & Families, DHHS, Feb. 5, 2016, p.5.

estimates of the number of children eligible for MSHS; combining the data into six groupings of states that represent distinct agricultural regions.”⁴

Reliance on the NAWS 12-region survey reporting to determine farmworker characteristics for individual states within certain NAWS regions (e.g., the smaller NAWS regions) can result in high Relative Standard Errors (RSEs) with less precise resulting measures. There are disclaimers in the current LSC estimate, in the notes to Table IV for instance, where the authors warn that “Estimates for [specific NAWS] regions should be interpreted with caution because they have relative standard errors between 31 and 50 percent” [notes 3 and 5]. It should be noted that the NAWS has adopted data suppression rules to determine when data will be published:

Estimates with RSEs greater than 30% but no more than 50% are published but should be used with caution.

Estimates with fewer than 4 response or RSEs greater than 50% are considered statistically unreliable and are suppressed.

We understand and agree with the logic that when reporting the data in smaller subgroups (i.e., 12 regions rather than 6 regions), it is expected that there will be resulting higher RSEs. This could be more relevant where the survey sample is relatively small. An appropriate correction for the unintended state-level anomalies resulting from the ETA/JBS allocation of farmworkers would be use of the 6-region NAWS Public Access Data (NAWSPAD) to assign “Percent-Eligible” factors.⁵ JBS reported the survey data in 6 regions, and combined the smaller Midwest and Northeast reporting regions in the 2016 MSHS Supplement, apparently to achieve more reliability in the reported numbers.⁶

We ask LSC to consider using the NAWS data reporting for the 6-region level for its calculations rather than at the reduced 12-region level.

⁴ *Migrant and Seasonal Head Start Supplement to the National Agricultural Workers Survey 2015 Report*, for DHHS Office of Planning, Research & Evaluation, Administration for Children & Families, DHHS, Feb. 5, 2016, p.6.

⁵ The 12 region NAWS non-public data sources were used by ETA/JBS to derive the LSC-eligible farmworkers and dependents. The National Center for Farmworker Health (NCFH), together with Dr. Susan Gabbard of JBS International, analyzed the available 2012 Census of Agriculture (COA) data from the Department of Agriculture in 2014 in conjunction with the Public Access Data File of NAWS, to make estimations of farmworkers at the county level in every state. The methodology for this estimate of farmworkers, both nationally and at the local level, is described at http://www.ncfh.org/uploads/3/8/6/8/38685499/threshold_ncfhpoestmethodology3.3.15.pdf

The NCFH/JBS farmworker enumeration methodology notes that “NCFH used the six regional NAWS coefficients to determine the number of crop production workers who are migratory and seasonal, the number of crop production worker dependents, and the number of dependents that are children and adults.” (See NCFH website.)

⁶ *Ibid*, Table 1, p.6.

b. LSC should adjust certain assumptions underlying the estimate of LSC-eligible dependents.

The Agricultural Worker Project Group is concerned that the current assumptions underlying the estimate of LSC-eligible dependents result in a significant under estimate of LSC-eligible agricultural worker dependents. Adjustment of these assumptions would provide a more accurate estimate of the number of LSC-eligible dependents. LSC should re-calculate the estimate using the adjusted assumptions described below.

Assumptions currently used to estimate LSC-eligible dependents include the following:

- Children who are under 18 years' of age, who are born outside of the U.S. and who have at least one "authorized"⁷ parent are considered authorized.
- Adult children (over 18), born outside of the U.S. but where either the agricultural worker or the worker's spouse is U.S. born, are considered authorized.
- Spouses are considered authorized only if U.S. born.

The NAWS survey includes a household grid that collects the name, relation, date of birth and place of birth of each member of the interviewed farmworker's household. More detailed information regarding the interviewee's immigration and work authorization status is collected at a later point in the NAWS survey, but no additional information regarding the interviewee's spouse or children is collected beyond the household grid. This requires certain assumptions to be made about dependents who are LSC-eligible.

The assumption that adult children (over the age of 18) born outside of U.S. are authorized only if either the interviewed farmworker or spouse is U.S. born excludes eligible children. This assumption would exclude all adult children of parents not born in the United States from being counted as "authorized", although a child could in fact be a U.S. citizen or lawful permanent resident or otherwise "authorized." Our experience is that the child most often would have become a naturalized citizen as a child, or a lawful permanent resident, or would have a pending I-130 petition if the farmworker parent is a naturalized citizen or lawful permanent resident. These children would be LSC-eligible, but are not included in the estimate under the current assumption.

The assumption that spouses are LSC authorized only if they are U.S. born excludes many eligible spouses. Many spouses who were not born in the U.S. nevertheless are authorized. Many farmworkers who are citizens or lawful permanent residents would have petitioned for their spouses and thus their spouses are lawful permanent residents, or their spouses might have pending I-130s with a requisite U.S. citizen relative.

We are concerned that the current assumptions underlying the estimate of LSC-eligible dependents cause a substantial under estimate of LSC-eligible dependents. Our expert believes

⁷ Please note that when we use the term "authorized" in this section, we mean "authorized as defined by NAWS."

that it is reasonable to assume that most foreign born spouses and children of U.S. born or naturalized workers themselves are citizens or legal permanent residents, or have a pending I-130 petition, and therefore are LSC eligible. Our expert also believes it likely that a significant proportion of foreign-born spouses and foreign-born minor dependents of legal permanent resident farmworkers are LSC eligible. Our expert believes it would be reasonable to assume that 50%-75% of this population of foreign born spouses and dependents of legal permanent resident farmworkers are LSC eligible. We recommend further analysis to verify the breadth of this assumed population in order to make the estimates more accurate.

The NAWS data collected do not permit a direct estimate, but the assumptions made by ETA should be adjusted in calculating the rate of LSC eligible dependents in order to appropriately include more accurate percentages of foreign born spouses of NAWS respondents who are either naturalized citizens, lawful permanent residents, or pending I-130s.

- We request that LSC direct ETA to include the spouses of naturalized citizens and lawful permanent resident NAWS respondents as “authorized” in the estimate of LSC eligible dependents.
- We also ask LSC to direct ETA to calculate the rate of LSC eligible dependents by including the adult children of naturalized citizen and lawful permanent resident NAWS respondents.

We believe these revised assumptions would produce a more reliable and accurate estimate of LSC-eligible dependents.

The Agricultural Worker Group also asks LSC to clarify how the rate of dependents was calculated, including how dependents performing some agricultural work were included in the calculation. Excluding 15 or 16-year olds who work for some brief period in agricultural work with their parents might not be accurately reflected in the NAWS estimates. We ask LSC to reexamine its calculations of LSC-eligible dependents. Additional information and examination also is required with respect to the rate of poverty-eligible dependents. It appears that for some states the rate of poverty for dependents is lower than that for agricultural workers. These rates are anomalous because increasing the household size generally indicates a higher rate of poverty, rather than a lower rate.

- c. ETA should include in the estimate the number of agricultural workers who would be eligible for services from LSC grantees based on having pending I-130s and a requisite relationship with U.S. citizen child, spouse or parent and those based on being political asylum seekers, refugees, or Individuals Granted Withholding of Deportation, Exclusion or Removal.**

We appreciate LSC’s recognition that LSC grantees can serve those individuals who are beneficiaries of pending I-130 petitions for permanent residence and are spouses, parents or children of U.S. citizens pursuant to 45 CFR 1626.5(b). LSC stated in its Federal Register notice that “ETA reported that the NAWS survey instrument is designed to identify the individuals with

pending I-130 petitions,” indicating that those individuals were included in the estimate. We and our expert do not concur, however, that the NAWS questionnaire adequately captures pending I-130 petitions. We understand that the NAWS survey asks respondents to state their immigration status in response to question L1. A pending petition is an option, but the instructions state that the interviewer is only to read the choices if “necessary.” Our researcher, who reviewed the ETA data, determined that only a negligible number of NAWS responses indicated that they had a pending status in response to Question L1 in the NAWS survey. This indicates that while the NAWS survey constitutes the best available data regarding agricultural workers, it is reasonable to assume that many workers with pending I-130 petitions would not be captured through responses to the NAWS questionnaire. Respondents might have pending petitions, but correctly would state that they are “unauthorized” and would not be asked the follow up question. There are public data available regarding the number and the national origin of those with pending petitions. We ask that LSC include a reasonable estimate of the number of pending I-130 petitions using public data from the United States Citizenship and Immigration Service (USCIS).

The 1986 Immigration Reform and Control Act provided special procedures for farmworkers to regularize their immigration status through the Special Agricultural Worker (SAW) program. The Migration Policy Institute indicates that almost 1.1 million persons became Lawful Permanent Residents (LPRs) through the SAW program.⁸ It is estimated that 877,000 Mexicans gained LPR status through the SAW program.⁹ Our experience indicates that a significant proportion of these SAW farmworkers have filed I-130 petitions and other “applications for adjustment of status” for family members since the 1990s, and many of these family members continue to work in agriculture. Other farmworkers adjusted their status to LPR under the regular legalization provisions of IRCA (pre-1982) adjustments. LSC farmworker programs often encounter farmworker clients who received their LPR status under either of these formerly available tracks and since have filed I-130 Petitions for Family Visas seeking to adjust their spouses and other eligible dependents. These family-preference I-130s for Mexican nationals are subject to lengthy waiting periods from two to 21 years before a visa becomes available for the non-rejected Mexican beneficiary of such an I-130 petition.¹⁰

Presently, of those with approved family-preference I-130s which the National Visa Center is holding in its waiting list for consular processing once their priority date becomes current, 1.3 million are from Mexico.¹¹ A significant percentage of these persons are likely to be in farmworker families because the SAW program was one of the primary vehicles for farmworkers to obtain LPR status during the past 30 years, as well as a prominent legal basis to file I-130 petitions for their relatives. The availability of governmental data sources from USCIS and the State Department, and reputable studies documenting these family-preference petitions, should make it possible to estimate, at least on a national basis, the number of

⁸ See <http://www.migrationpolicy.org/pubs/legalization-historical.pdf>.

⁹ See <https://migration.ucdavis.edu/mn/cir/binational/sum.html>.

¹⁰ See U.S. Department of State, March 2015 Visa Bulletin. <http://travel.state.gov/content/visas/english/law-and-policy/bulletin/2015/visa-bulletin-for-march-2015.html>

¹¹ See <http://www.travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingListItem.pdf>

pending I-130 beneficiaries who are farmworkers or dependents of farmworkers.¹² The experience of advocates in farmworker programs is that a significant portion of our current clients falls within this LSC-eligibility category by virtue of having the requisite relationship to a U.S. citizen required by Section 1626.5(b). We believe it is reasonable to calculate an estimate of this population using available data regarding Mexican-born beneficiaries of pending I-130 petitions with the requisite U.S. citizen immediate relative relationship.

The same analysis applies to those who are LSC-eligible because they are asylum seekers, refugees and granted withholding of deportation and are LSC-eligible but who might not be identified through the NAWS survey. These numbers might be relatively few, but they serve as an example of missing estimates in the NAWS calculations.

d. LSC should use the most recent numbers for H-2A and H-2B forestry workers.

We request that LSC and ETA periodically update the H-2A and H-2B numbers. ETA and JBS used the H2 figures from fiscal year 2012 to determine the number of H2A and H2B forestry workers to be included in the total LSC eligible worker figures for each state.¹³ More recent, accurate H-2A information is available.¹⁴ The figures reveal a substantial increase in the numbers of H-2A workers for some states.

III. The Agricultural Worker Project Group supports the general approach to estimating the numbers of agricultural workers who would be eligible for services from LSC grantees based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities.

a. LSC identified key studies and made a conservative and reasonable estimate.

The Agricultural Worker Project Group supports the inclusion of an estimate of agricultural workers who are made eligible by applicable LSC statutory and regulatory law for services from LSC grantees based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities. LSC correctly recognizes that the omission of this group of farmworkers in the 2015 report was not reasonable. We appreciate LSC's efforts to review available data regarding this population and to make a reasonable estimate based upon the best available data.

¹² An analysis of USCIS data on legalization during IRCA and findings from the multi-agency survey of IRCA-era immigrants 5 years after legalization (Smith, Kramer, and Singer 1996) makes it evident that many of the foreign-born spouses and children secured LPR status and that farmworkers, in fact, did file substantial numbers of I-130 petitions for family members. See also Nancy Rytina, "IRCA Legalization Effects: Lawful Permanent Residence and Naturalization through 2001", paper presented in The Effects of Immigrant Legalization Programs on the United States: Scientific evidence on immigrant adaptation and impacts on U.S. economy and society, The Cloister, Mary Woodward Lasker Center, NIH Main Campus, October 25, 2002. The Rytina study provides a ratio of "pre-1982" IRCA applicants to SAW applicants (DHS) and it is particularly relevant because it shows outcomes for SAWs (distinct from other immigrants).

¹³ See footnotes 10 and 11 of *LSC Agricultural Worker Population Estimate Update, January 2015, Appendix A; and footnote 7, Table I, January 2016 Publication.*

¹⁴ See *OFLC Selected FY2015 H2A Statistics* https://www.foreignlaborcert.doleta.gov/pdf/H-2A_Selected_Statistics_FY_2015_Q4.pdf, https://www.foreignlaborcert.doleta.gov/pdf/H-2B_Selected_Statistics_FY_2015_Q4.pdf, and pages 42 and 49 of *Office of Foreign Labor Certification, Annual Report 2014* https://www.foreignlaborcert.doleta.gov/pdf/OFLC_Annual_Report_FY2014.pdf.

We agree, based upon our decades of experience serving this population, that the LSC estimates of “26.2% of unauthorized female farmworkers living in poverty and 16.3% of unauthorized male farmworkers living in poverty are eligible for LSC-funded services pursuant to 45 C.F.R. Section 1626.4” are reasonable, although conservative.¹⁵ LSC used national victim data determining sexual and physical violence-related crime rates in the general population to develop the estimate for agricultural workers. We appreciate LSC’s recognition that “[s]tudies that have identified factors that tend to increase the prevalence of these crimes against farmworker women and data from relevant small-scale surveys indicate that the prevalence of these crimes against female farmworkers may well be higher than against women in the general population... .”¹⁶

LSC’s report confirms that a unique combination of factors cause U.S. agricultural women to experience an increased prevalence of sexual and physical violence than those of the general population including: lower levels of education and English language proficiency, higher rates of poverty, geographic isolation, less familiarity with and trust of the U.S. justice system, immigration status and higher poverty rates. Another key factor is the isolation and high levels of control experienced by many agricultural workers in the workplace, including supervisors who often control wages, work amount, housing, and future employment opportunities. These factors cause not only a higher rate for farmworker men and women, but also require additional and specialized resources to meet their legal needs.

We support the use of the San Diego study to calculate a conservative estimate of the number of forced labor and trafficking victims in the agricultural worker community. The estimate is conservative for the population for many of the same reasons described above, but the study is one of the only currently available to provide statistically reliable estimates.

The LSC memorandum estimating the affected population provides a thorough and detailed analysis of the LSC-eligible categories of abuse victims, data regarding crimes of sexual and physical violence, rates of violence in the general population, the increased prevalence of sexual and physical violence for farmworker women and supporting studies, data on forced labor and trafficking among farmworkers and the methodology for estimating the population of farmworkers eligible under 1626.4. We and our expert concur that this is a reasonable approach.

b. LSC should direct ETA to use LSC criteria for determining poverty level in its calculations for Table VI.

Our researcher determined that the ETA used NAWS criteria for determining poverty level rather than LSC criteria, which was used in other calculations in its tables and should be used

¹⁵ Flagg, R., Hardin, B., Freedman, M., “Estimate of the Population of Agricultural Workers Eligible for LSC-funded Services Pursuant to 45 C.F.R. Section 1626.4 – Anti-Abuse Laws,” 01/20/2016, p. 2.

¹⁶ Flagg, R., Hardin, B., Freedman, M., “Estimate of the Population of Agricultural Workers Eligible for LSC-funded Services Pursuant to 45 C.F.R. Section 1626.4 – Anti-Abuse Laws,” 01/20/2016, p. 4.

here. LSC should direct the ETA to use LSC criteria for determining its calculations for Table VI. This correction is required in order to make the calculations consistent with those in Table III.

The discrepancies produced by using two different poverty criteria are demonstrated by the inconsistency of adding the percent of NAWS respondents who are female, unauthorized and below poverty (Col. D on Table VI) to the percent of NAWS respondents who are male, unauthorized and below poverty (Col. H on Table VI). If one then adds the rate of NAWS workers who are authorized and below poverty (last column on Table III), it is reasonable to assume that the sum is equivalent to the share of NAWS respondents with household income below poverty level (including all authorized and unauthorized) (middle column on Table III).¹⁷

For example, the California numbers in Table VI show the following:

6.62% of women, unauthorized and poor (Col. D on Table VI)
+ 17.25 of men, unauthorized and poor (Col. H on Table VI)
+ 9.53 rate of authorized and poor - men and women (last column on Table III)
= 33.4% which should equal all those farmworkers with households below poverty level.
The Table III column for share of workers in California with households below poverty, however, is 42%.

We therefore ask ETA to use LSC poverty-criteria to calculate the rates in Table VI to make the sums consistent and reflect the LSC poverty guidelines.

IV. The Agricultural Worker Project Group welcomes the opportunity to submit available and reliable state- or region-specific data estimates of the populations of agricultural workers eligible for LSC-funded services to augment the ETA estimates in individual states or regions.

We appreciate the opportunity to provide available and reliable state or region-specific estimates of the population of agricultural workers eligible for LSC-funded services to augment the ETA estimates in individual states or regions. We recommend that, if LSC accepts data as available and reliable and adds to the population of a state or region and the data or type of data is available and applicable to other states, LSC should consider appropriate application of the same data for other states or regions.

¹⁷ We continue to be concerned that LSC eligibility among the state farmworker populations (Column E, Table III) is inconsistent with our first-hand knowledge of the communities we serve, particularly with respect to the proportion of those households identified below poverty level. Variation among states in the proportion of farmworker populations does not reflect our agricultural worker communities, where the majority of farmworkers and their dependents are below poverty. We ask LSC to reconsider the methodology, assumptions and data to allow for a more accurate estimate because of the discrepancy. One assumption that might not be correct is that field, livestock and forestry workers work the same number of weeks per year, but applying the estimate of days worked by a typical crop worker based on the NAWS data to calculate livestock and forestry workers because the peak-to-trough ratio of workers is lower in livestock than in labor-intensive crops. This might have an adverse differential effect in the regions, depending on the average length of time field workers work in those regions and the ratio between different kinds of workers in that state.

- V. **The Agricultural Worker Project Group requests the opportunity to provide comment on the appropriate methods for updating the data for future estimates and recommends that LSC seek comment for each three-year estimate for recalculation of the farmworker and dependent population and provide the opportunity for state programs to submit additional reliable data for the state calculation when conducting the three year estimates.**


The LSC federal register notice reiterates that LSC will obtain updated estimates every three years for recalculation on the same statutory cycle as LSC obtains updated poverty-population data from the U.S. Census Bureau for the distribution of LSC Basic Field Program appropriation. The Agricultural Worker Project Group requests the opportunity to provide additional comments regarding the appropriate methods for updating the data for future estimates and recommends that LSC seek comment for each three year cycle and allow for the submission of available and reliable state or region specific data-based estimates of the population of agricultural workers and dependents eligible for LSC funded services.

VI. **Conclusion**

We thank LSC for its commitment and support to providing high quality legal services to migrant and seasonal agricultural workers and we look forward to continuing to work together to ensure the efficiency and effectiveness in the provision of these services. We also appreciate the opportunity to have input on the methodology and data used to calculate the estimate of LSC-eligible agricultural workers and support the LSC proposal to update the estimates at regular intervals. We appreciate the phase-in and understand that LSC will move forward using the methodology it determines to provide the best estimate at this time, but request the opportunity to comment as needed for Phase 2 and in future 3 year cycles as we continue to gather additional information and better understand the underlying assumptions of the ETA data and as states or regions assess available and reliable data.

The revised estimate will result in adjustments to the provision of legal services to agricultural workers across the country and we request the opportunity to provide feedback if LSC contemplates making decisions regarding the support and configuration of different service delivery models on the basis of the updated estimates.


We appreciate your consideration of these comments.




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Ilene Jacobs
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