



Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Thursday, January 19, 2023

Time: 8:30 a.m. – 11:30 a.m.

Location: ZOOM Meeting

Committee members present

- Jon DeVaney
- Rosalinda Guillen
- Edgar Franks
- Michele Besso
- Jeff Perrault

Non-voting agency representatives

- Todd Phillips
- Uriel Iniguez

Non-voting members absent

- Ignacio Marquez

Committee members absent

- Michael Gempler
- Victoria Ruddy
- Delia Peña

ESD staff

- Dan Zeitlin
- Bertha Clayton
- Vickie Carlson
- Petra Meraz
- Margarito Cabrera
- Olga Kondratjeva
- Rene Maldonado

Summary

Meeting Recorded

This meeting was recorded and is available on <https://esd.wa.gov/newsroom/Ag-committee>

Welcome and Introductions

Employment Security Department (ESD) Policy Director, Dan Zeitlin, welcomed everyone and asked Vickie Carlson to take roll. Six voting members were present. Motion to approve the November 17th meeting minutes- Jon DeVaney, 2nd from Rosalinda Guillen. Motion carries.

Agenda

Recording timestamp **00:02:52**

Dan Zeitlin reviewed the agenda for the meeting and asked if anyone had any questions. (See Addendum I.)

ASWS Office – Bertha Clayton, Director, ASWS Office, ESD (See Addendum II.)

ASWS Office Update – Bertha Clayton, Director

Recording timestamp **00:04:33**

FLC Applications – Petra Meraz, Lead FLC Program Coordinator

Recording timestamp **00:20:45**

ASWS Compliance Team Update – Margarito Cabrera, Compliance Supervisor

Recording timestamp **00:24:03**

- **Michele:** Would like to add data on complaints and how they were resolved.
- **Rosalinda:** Would like better sense of crops where we are doing field checks

Committee Administration – Dan Zeitlin (See Addendum III.)

Recording timestamp **00:45:08**

Charter, Membership & Schedule:

- **Rosalinda/Michele:** Support having designated person that receives information, listens into meetings and serves as proxy
- **Jon:** Suggested designated-alternate instead of proxy and will send language (Rosalinda/Michele agreed)
- **Rosalina:** Would prefer a space that is accessible to farmworkers/community rather than WorkSource

Disaster Preparedness Sub-Committee – Bertha Clayton (See Addendum IV.)

Recording timestamp **01:30:18**

- **Jon:** Policy discussion (i.e.: what is occurring in leg on this issue, including on UI for undocumented bill; how do new H-2A rules impact this work).
- **Michele:** Review of what occurs when there is a disaster in terms of support for workers.
- **Rosalina:** Can agencies on committee report out on what their agencies are doing in terms of natural disaster preparedness?

Federal Fiscal Year 2023 FLC and Wagner-Peyser Funding – Dan Zeitlin

Recording timestamp **01:54:35**

(See Addendum V.)

Committee Discussion Time / Future Agenda Items

Recording timestamp **02:01:12**

- **Rosalinda:** Can we look at how farm labor contractors are regulated in the United States? (Michele concurs). Interested in updates on JLARC audits.
- **Edgar:** Interested in Ostrom case (Rosalinda interested in precedential decisions related to agriculture).
- **Michele:** Interested in diving into local worker hiring.
- **Rosalinda:** Send topics we agreed to discuss when committee first formed

Public Comments

Recording timestamp **02:31:28**

None

Adjourned

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 11:30 a.m.

2022 Meetings

The next Agricultural and Seasonal Workforce Services Advisory Committee meeting is on:

- **February 15, 2023 – 1:00 p.m. to 3:00 p.m. – Zoom Meeting**

Addendums

ADDENDUM I.



AGENDA

Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee
 Thursday, January 19, 2023 | 8:30 am – 11:30 am | Zoom | 212 Maple Park Ave
 SE Olympia WA 98501

TIME	TOPIC
8:30 am	Welcome – Dan Zeitlin, Director, ESD Employment System Policy & Integrity Division <ul style="list-style-type: none"> • Roll Call – Vickie Carlson • Agenda Review – Dan Zeitlin
8:40 am	Approval of Meeting Minutes – Dan Zeitlin <ul style="list-style-type: none"> • November 17, 2022
8:45 am	Committee Administration – Dan Zeitlin <ul style="list-style-type: none"> • Discussion of Committee Charter • Update on Committee Membership • Proposed 2023 Meeting Schedule
9:10 am	ASWS Office Update – Bertha Clayton, Director, ASWS Office, ESD <ul style="list-style-type: none"> • ASWS Office – Bertha Clayton • FLC Applications – Petra Meraz, FLC Lead Program Coordinator • ASWS Compliance Update – Margarito Cabrera, Compliance Unit Supervisor
9:30 am	Disaster Preparedness Sub-Committee: Status & Discussion – Bertha Clayton
9:45 am	Federal Fiscal Year 2023 FLC and Wagner-Peyser Funding – Dan Zeitlin
10:00 am	Break
10:10 am	Committee Discussion Time
10:50 am	Closing Discussion
11:25 am	Public Comment
11:30 am	Adjourn

GROUND RULES

No side conversations | Phones on silent | Let people speak without interruption | Respect the opinion of others | Strive for understanding | Speak your mind | Strive for common ground | Assume good intent | Stay focused on task at hand and be willing to come back to the topic | Make sure everyone understands | Look out for each other | Take care of your own comfort | Ask for what you need

ADDENDUM II.

ASWS Office update

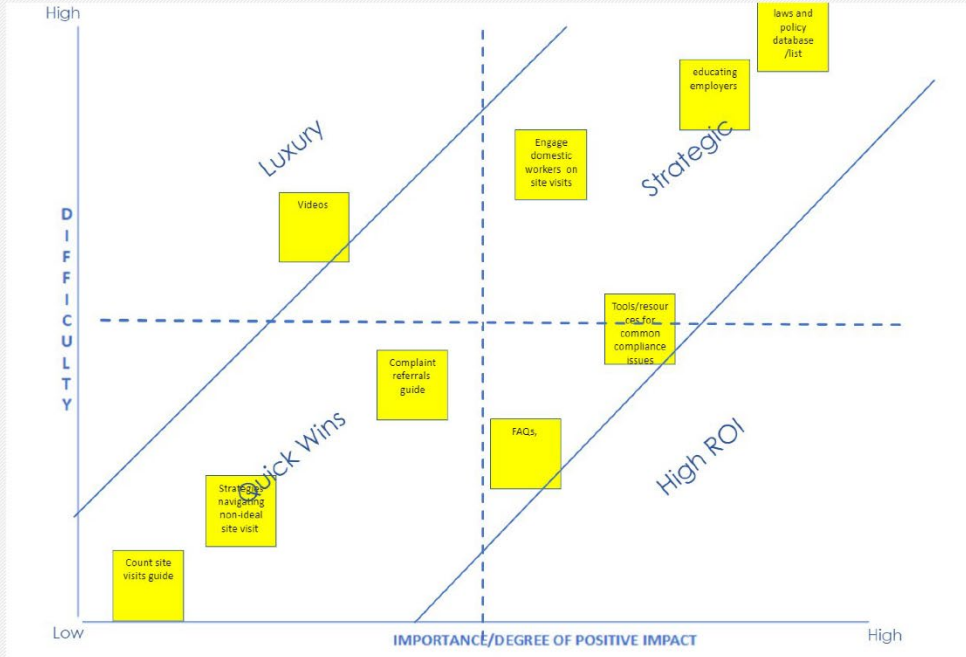


Bertha Clayton, ASWS Director, ESD

Office Update – January 2023



- Compliance Team Projects
- Team Training
 - National Council of Agricultural Employers Conference, November 2022); Winter Ag. Academy (Compliance focus)
 - Subject matter expert presentations (LNI, EEOC, USDOL WHD)
- Conferences – Tabling and Informational Presentations
 - WAFLA (1/12/23), Washington Grower’s League (1/19/23-1/12/23)



Agricultural & Seasonal Workforce Services (ASWS) Office



The ASWS office was created in 2019 to provide adequate protections for foreign and domestic workers and provide education and outreach opportunities to help growers maintain the stable workforce they need.

The ASWS office is composed of two teams:
Foreign Labor Certification Team (FLC) and Compliance Team.

Foreign Labor Certification Team

Processes foreign labor applications from employers and creates job orders for domestic workers to apply to the job. Additionally, the FLC team provides technical assistance to filers.

Phone: (509) 440-2442
Email: wcdh2a@esd.wa.gov

Compliance Team

- Conducts in-person site visits to H-2A employers and provides education regarding program requirements.
- Shares compliance resources and provides compliance technical assistance.
- Informs workers of their rights and contract assurances under the H-2A regulations.
- Conducts Field Checks to employers where ESD has made a placement on a job order, as is required by law.
- Receives and helps workers resolve complaints informally with employers.



Compliance areas & phone numbers

Yakima	(509) 412-2601
Columbia Basin	(509) 222-8049
Walla Walla	(509) 221-8405
Central Basin	(509) 403-0424
Wenatchee Valley	(509) 423-0178
Okanogan	(509) 222-4539
Auburn / Skagit	(206) 536-0424

Employment Security Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance services are available upon request. Washington Relay Service: 711

Updated: 06.11.2023



Office Update – January 2023



- ASWS Website Status
- 2023 Site Visits Starting (First 2023 site visits started week of January 16, 2023)
 - 100% Goal
- FLC Process Improvement
 - Quality improvement measures to build accuracy protections into review process, improve review standardization
- FLC DJA Status

SITE VISIT PRESENTATION OUTLINE

Intro: The purpose of this visit is to perform outreach to your employees, provide education and resources to you, the employer, and to verify compliance with the terms of the H-2A regulations.

About us: We are a part of ESD (Employment Security Department). Our office, the Office of Agricultural & Seasonal Workforce Services (ASWS), was created to make sure that the H-2A program is administered properly with a dual focus, support both H-2A employers and workers. Our job is to confirm that the employer is meeting the guarantees to workers under the H-2A program, and that all conditions are as required by law.

Objectives:

1. **Introduction to ASWS:** Build rapport with employers and workers to inform and familiarize them with the work of our office.
2. **Information to workers:** Provide general information and counseling to workers about the terms and conditions of the H2A contract and the H2A program.
3. **Employer support:** Provide education, technical assistance, and compliance resources to employers.
4. **Complaint system access:** Provide access to the ES (Employment Service) complaint system.
5. **Observation:** Observe the working and living conditions of workers.

Presentation to workers:

Elements of the contract (Contract Terms and Conditions)

- Disclosure of work contract – 20 CFR 655.122(q)
- AEWR and pay stub must include hour/piece rate, hours offered, hours worked, itemized deductions, pieced produced daily – 20 CFR 655.122(i)
- Travel reimbursement – (transportation, hotel, food, Airbnb, etc.) – 20 CFR 655.122(h)(1)
- Safe housing and transportation without charge - 20 CFR 655.122(d), 653.501(c)(3)(iv), 20 CFR 655.122(h)(3)
- Kitchen or meal charge (\$14 or approved rate) - 20 CFR 655.173, 20 CFR 655.122(g), 20 CFR 655.210(e)
- 75% guarantee of hours - 20 CFR 655.122(i)
- Employer provided tools and equipment without charge or deposit - 20 CFR 655.122(f).
- Deductions (required by law or disclosed) - 20 CFR 655.122(p)
- Approved employment locations, housing, crop and activities

Employment related concerns / Complaint system – 20 CFR 658 Subpart E

- If you feel comfortable talk to you supervisor, manager or HR representative
- Or, if you prefer, you can call or email us directly with any employment concern or H-2A contract question
- Business card provided to the worker

Employee benefits:

- Sick leave
- Overtime over 48 hours per week
- Industrial insurance/injury (what to do if you have been injured?)

Important things to know

- No recruitment fees - 20 C.F.R. 655.135(j)
- No passport confiscation - 18 U.S. Code § 1592

Employer Conversation

Educate employer on the 50% rule hiring obligations



FLC applications update



Petra Meraz, Lead FLC Program Coordinator, ESD

FLC Applications update



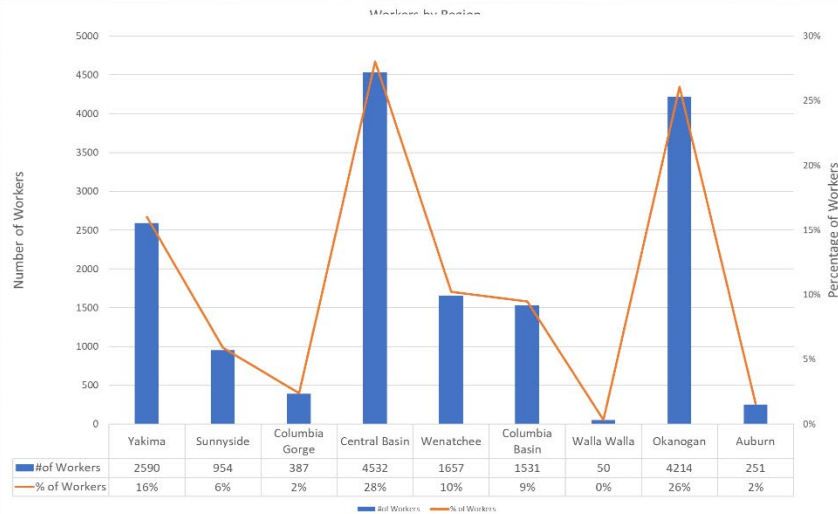
H-2A Applications & Workers Report

	PY 2023 H-2A Data		PY 2022 H-2A Data	
	10/1/2022	1/10/2023	10/1/2021	1/10/2022
	Applications	Workers requested	Applications	Workers requested
Total processed to date	140	13942	134	11668
Withdrawn/Denied	10	407	7	496
Contracts Commenced	17	981	20	1479
Contract Impossibility	0	0	1	210
Active Cases	36	1397	21	1754

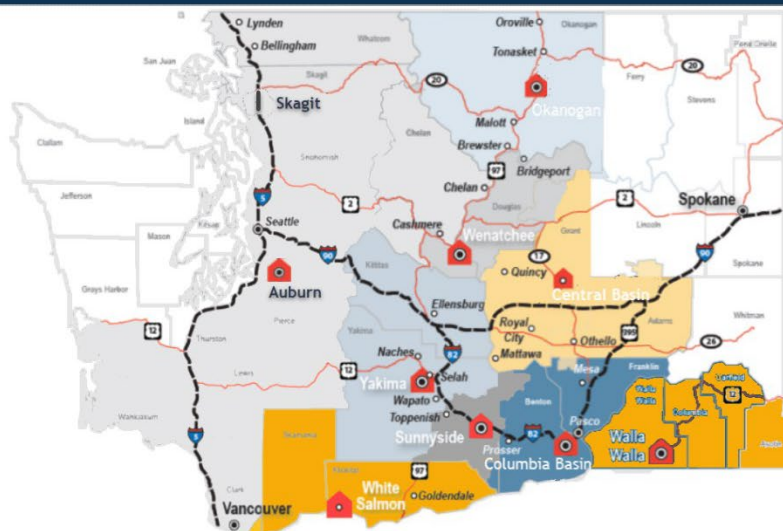
*The numbers reported are not reflective of the number of foreign workers that arrive in Washington State.



Main Application Holding Offices



Main Application Holding Offices Map

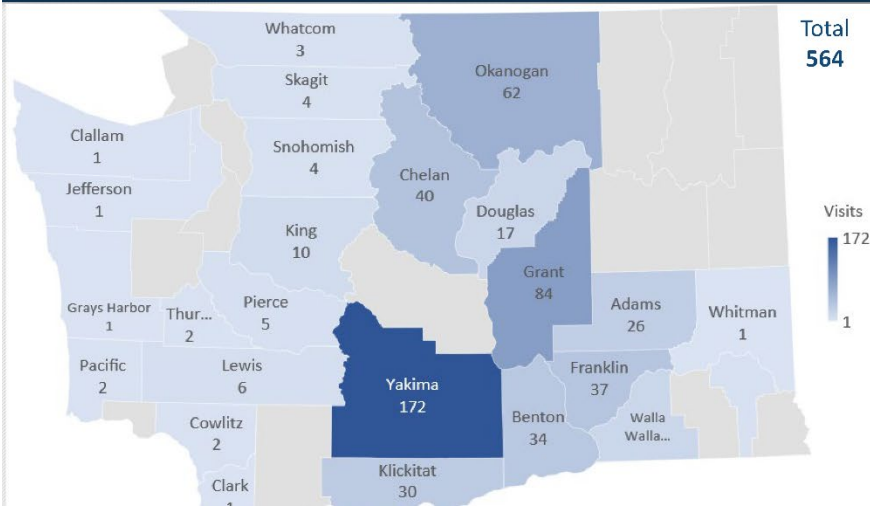


Compliance team update

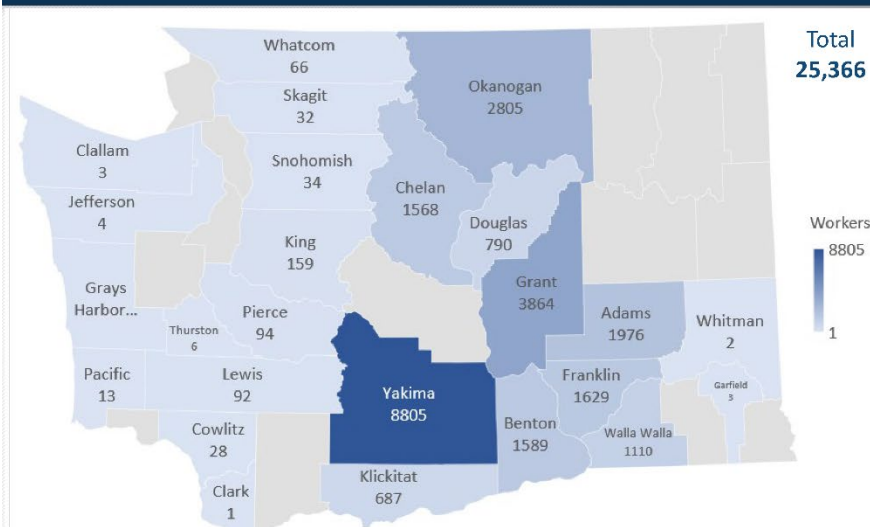


Margarito Cabrera, ASWS Compliance Unit Supervisor, ESD

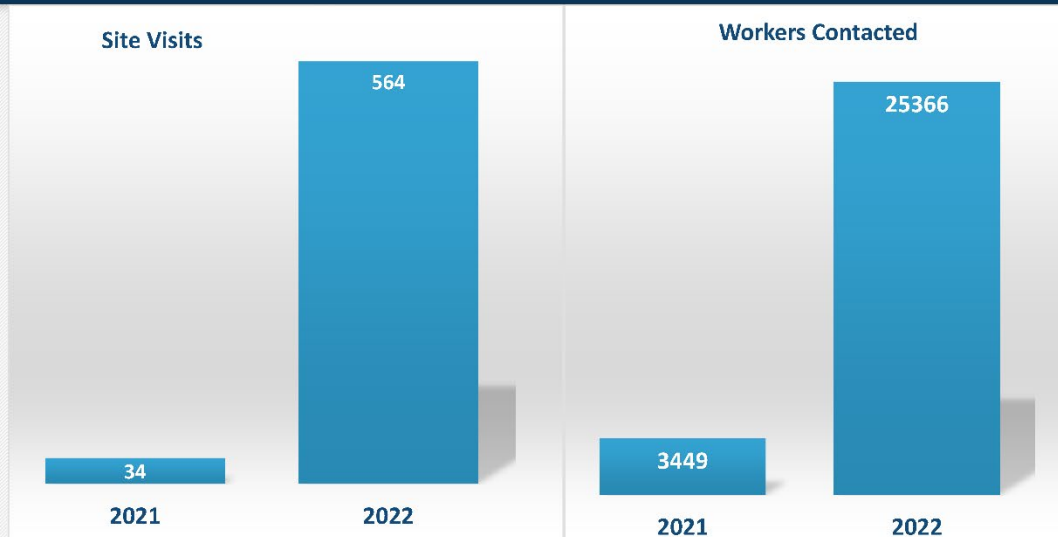
Site Visits by County: January 1, 2022 – December 31, 2022



Workers Contacted by County: January 1, 2022 – December 31, 2022



Site Visits and Workers Contacted: 2021 vs 2022



Field Checks – 2022



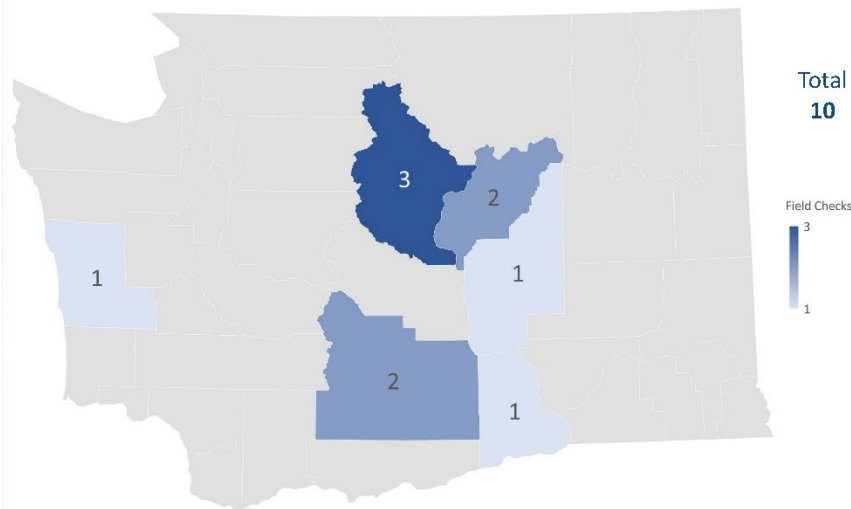
20 CFR 653.503 Field Checks

(a) If a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its ES offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.

(c) Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, ES staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.

Number of Placements <i>(seeker referred and started working)</i>	11
Number of Field Checks Performed by ASWS	10
Number of Field Checks currently scheduled	0

Field Checks by County: January 1, 2022 – December 31, 2022



ADDENDUM III.

Committee Administration



Employment
Security
Department
WASHINGTON STATE

Dan Zeitlin, Employment System Policy Director, ESD

Committee Administration: Charter



Charter Review:

- **Current Membership**

- **Public Comment**

- 5 minutes per person at the beginning of the meeting
- 2 minutes per person at the end of the meeting

- **Allow for proxies with language such as:**

Members may, after giving notice via email or telephone of at least 24 hours to the Chair, send a proxy member to the meeting. The proxy member will have full authority to act on behalf of the appointed member.

If a proxy member attends and participates in the meeting as a member, the appointed member for whom a proxy was sent may not attend the meeting in his or her capacity as an appointed member.

Committee Administration: Membership



Membership Discussion:

- **Staggered Membership Terms Charter Language**

All Members shall be appointed by the Commissioner to serve an initial term through December 31, 2020. Following the initial term, members shall serve staggered four-year terms following procedures set forth by the Committee. At the end of each term, members may either be replaced or re-appointed by the Commissioner. There is no term limit.

- **Who is staying on the ASWS Advisory Committee**

- **Appointment Process ([RCW 50.75.040](#))**

(2)(a) The committee is composed of eight voting members:

(i) Four voting members representing agricultural workers' interests: One of whom shall be a farmworker; and all of whom shall be appointed from a list of at least four names submitted by a recognized statewide organization of workers;

(ii) Four voting members representing agricultural employers: One of whom shall be an agricultural employer; and all of whom shall be appointed from a list of at least four names submitted by a recognized statewide organization of agricultural employers;

Committee Administration: Schedule



Proposed:

- Third Wednesday at 1:00 PM
- In-person, rotating locations, 1pm-5pm

Date	Location	Notes
Wednesday, February 15, 2023	Zoom	Recorded meeting 1-3
Wednesday, March 15, 2023	In-Person	Ellensburg
Wednesday, April 19, 2023	Zoom	Recorded meeting 1-3
Wednesday, May 17, 2023	Zoom	Recorded meeting 1-3
Wednesday, June 21, 2023	In-Person	Yakima
Wednesday, July 19, 2023	Zoom	Recorded meeting 1-3
Wednesday, August 16, 2023	Zoom	Recorded meeting 1-3
Wednesday, September 20, 2023	In-Person	Ellensburg
Wednesday, October 18, 2023	Zoom	Recorded meeting 1-3
Wednesday, November 15, 2023	In-Person	Yakima
Friday, December 15, 2023	Cancelled	Cancelled
Wednesday, January 17, 2024	Zoom	Recorded meeting 1-3

ADDENDUM IV.

ASWS Disaster Preparedness Sub-Committee: Status & Discussion



Bertha J. Clayton, ASWS Director, ESD

ASWS Disaster Preparedness Sub-Committee: Status



Last Meeting: October 6, 2022

Revisited sub-committee objectives and reviewed progress made

Current Committee Membership:

Jon Devaney, Uriel Iniguez, Ignacio Marquez, Galen Hunt

No labor representatives

Conclusions & Recommendations

- **November 2022 Meeting:** Suggestions to use “task force” approach to issues as they arise rather than have a standing committee. Task force may include members of other agencies.
- **ASWS Committee agreed to discuss at January 2023 meeting to give labor members time to provide feedback about dissolving standing sub-committee.**

ASWS Disaster Preparedness Sub-Committee: Discussion



- How should the ASWS Committee respond to weather related issues (and other issues as they arise)?

ADDENDUM V.

Federal Fiscal Year 2023 FLC and Wagner-Peyser Funding



**Employment
Security
Department**
WASHINGTON STATE

Dan Zeitlin, Employment System Policy Director, ESD

Federal Fiscal Year 2023 FLC and Wagner-Peyser Funding



- **FLC:** The *Consolidated Appropriations Act of 2023* was enacted on December 29, 2022, authorizing FFY 2023 funding for many governmental activities, including FLC State Grants. The Act increased appropriations for FLC Grants by \$2 million (\$21.28M) – a 9% increase from FFY 2022 and a 63% increase since FFY 2020. **ESD received \$602,678 in FFY 2022 and, pending further US Department of Labor guidance, anticipates receiving an increase in FFY2023.**
- **Wagner-Peyser:** The *Consolidated Appropriations Act of 2023* also increased appropriations for Wagner-Peyser grants by \$5 million (\$680.05M). **ESD received \$15.46 million in PY22 and is awaiting further guidance from the US Department of Labor with PY22 state allocations.**

28

Committee Discussion Time



Closing Discussion



- Future Agenda Items
- Public Comment



Agricultural and Seasonal Workforce Services
ADVISORY COMMITTEE



Next ASWS Advisory Committee Meeting

Wednesday, February 15, 2023

1:00 p.m. – 3:00 p.m.

Contact information

Dan Zeitlin, Director of Employment System Policy & Integrity Division DZeitlin@ESD.WA.GOV

Employment Security Department • Policy, Data, Performance and Integrity
