



Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Thursday, July 21, 2022

Time: 8:30 a.m. – 11:30 a.m.

Location: ZOOM meeting due to COVID-19

Committee members present

- Jonathan DeVaney
- Edgar Franks
- Michele Besso
- Victoria Ruddy
- Jeff Perrault
- Michael Gempler
- Delia Peña
- Rosalinda Guillen

Non-voting agency representatives

- Todd Phillips
- Ignacio Marquez
- Uriel Iniguez

Committee members absent

ESD staff

- Joy Adams
- Bertha Clayton
- Vickie Carlson
- Petra Meraz
- Tamara Johnson
- Olga Kondratjeva
- Carlos Sandoval-Larios
- Gustavo Aviles
- Rene Maldonado
- Juan Martinez
- Ana Alcalá-Rodriguez

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 Deputy Director, Joy Adams, welcomed everyone and asked Vickie Carlson to take roll. Eight voting members were present.

Agenda

Recording timestamp **00:2:24**

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

Meeting Minutes

Recording timestamp **00:03:22**

Joy Adams requested that everyone review the meeting minutes for June 16, 2022 and provide their feedback. Michael Gempler made a motion to approve the June 16, 2022 minutes. Jeff Perrault seconded the motion. The June 16, 2022 meeting minutes were approved.

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

FLC Applications – Petra Meraz, Lead FLC Program Coordinator

Recording timestamp **00:07:34**

ASWS Office Update – Bertha Clayton

Recording timestamp **00:18:38**

ASWS Compliance – Bertha Clayton

Recording timestamp **00:13:36**

USDOL: Wagner-Peyser Rulemaking and Waiver Request (See Addendum III.) Recording timestamp [00:31:41](#)

Gary Kamimura, Manager, Workforce Policy, ESD

- Wagner-Peyser Waiver Request
- Wagner-Peyser Rulemaking
- SWA Comments

ASWS Disaster Preparedness Subgroup – Bertha Clayton (See Addendum IV.) Recording timestamp [01:01:12](#)

- Contract Impossibility
- Rapid Response Protocol
- Action Items

2022 ASWS Report Discussion – Bertha Clayton (See Addendum V.)

- Committee Review Process, Part I Review Approach Recording timestamp [01:25:58](#)
- Introduction, ASWS Committee Meetings Recording timestamp [01:31:13](#)
- ASWS Office Update & Activities Recording timestamp [01:47:04](#)
- COVID Response Recording timestamp [01:58:50](#)
- Domestic Recruitment Recording timestamp [02:01:55](#)
- Recommendations 1 Recording timestamp [02:04:12](#)
- Recommendations 2 Recording timestamp [02:11:07](#)
- Recommendations 3 Recording timestamp [02:14:21](#)
- Recommendations 4 Recording timestamp [02:25:48](#)
- Recommendations 6 Recording timestamp [02:32:25](#)

Future Agenda Items

- Recommendation 5

Public Comments

None

Adjourned

Joy Adams thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 11:27 a.m.

2022 Meetings

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

- **July 21, 2022 – 8:30 a.m. to 11:30 a.m. – Zoom Meeting**

Addendums

ADDENDUM I.



AGENDA

Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee
 Thursday, July 21, 2022 | 8:30 am –11:30 am | Zoom | 212 Maple Park Ave SE
 Olympia WA 98501

TIME	TOPIC
8:30 am	Welcome – Joy Adams, Deputy Director, ESD Employment System Policy & Integrity Division <ul style="list-style-type: none"> • Roll Call – Vickie Carlson • Agenda Review – Joy Adams
8:40 am	Approval of Meeting Minutes – Joy Adams <ul style="list-style-type: none"> • June 16, 2022
8:45 am	ASWS Office Update – Bertha Clayton, Director, ASWS Office, ESD <ul style="list-style-type: none"> • FLC Applications – Petra Meraz, FLC Coordinator • ASWS Office – Bertha Clayton • ASWS Compliance Update – Bertha Clayton
9:15 am	USDOL: Wagner-Peyser Rulemaking and Waiver Request – Gary Kamimura, Manager, Workforce Policy, ESD
9:35 am	ASWS Disaster Preparedness Subgroup Update – Bertha Clayton <ul style="list-style-type: none"> • Contract Impossibility – Bertha Clayton
9:50 am	Break
10:00 am	2022 ASWS Report Discussion – Bertha Clayton <ul style="list-style-type: none"> • ASWS Office Update and Domestic Recruitment Recommendations
11:20 am	Closing Discussion/Next Agenda (7/28) <ul style="list-style-type: none"> • 2022 ASWS Report: Domestic Recruitment and Budget
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



ASWS Advisory Committee Presentation

July 21, 2022

Petra Meraz, Lead FLC Program Coordinator, ESD
 Bertha Clayton, ASWS Director, ESD
 Employment Security Department

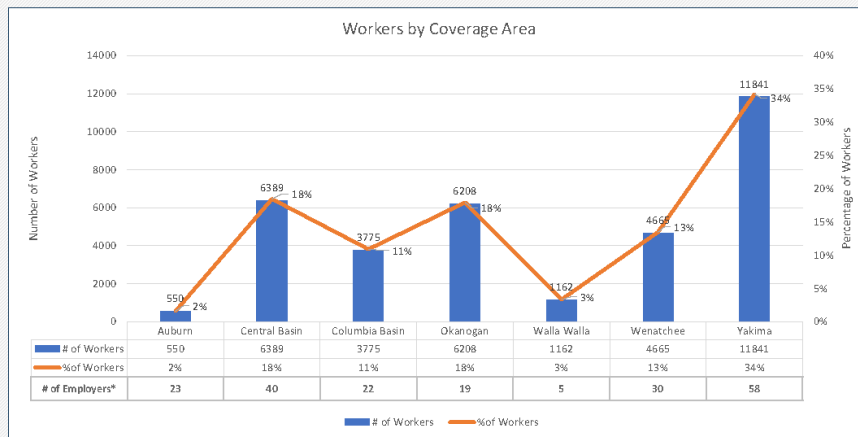
FLC Applications Update



2022 H-2A Program Data (10/1/2021-7/20/2022)	2022				2021			
	Applications processed	Workers Requested	Active	Active Workers	Applications processed	Workers Requested	Active	Active Workers
Total Applications Received/Processed:	384	34,376			349	29,265		
Number of Applications Withdrawn/Not Processed by DOL:	26	2,383			17	678		
Contract Impossibility:	4	224			0	-		
Total Number of Contracts Commenced:	310	27,706	304	28,204	276	23,745	252	22,306

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

Compliance Specialist Counties served	Office # of workers
Carlos Sandoval-Larías Pierce, King, Snohomish Skagit, Whatcom Thurston, Mason, Kitsap Grays Harbor, Jefferson, Clallam, San Juan Islands	550
Galen Hunt Okanogan	6208
Tony Acosta Walla Walla Columbia Garfield Asotin	1162
Aurilio Espinoza Benton Franklin	3775
Alejandra Mendoza Chelan Douglas	4665
Amador Madera Grant Lincoln Adams Spokane, Whitman	6389
Mirya Prieto Yakima, Kittitas Klickitat, Skamania Clark, Coville Wahkiakum, Pacific, Lewis	11841



*Does not include joint employers

FLC Grant – FY 2022 Allocation - Update



TEGL 12-21 Foreign Labor Certification Grant Planning Guidance for FY22 through FY24 - Released 6/10/22:

Provides financial information pursuant to funding levels authorized in the appropriations act for the fiscal year.

Washington (FY 2022)

- Base Allocation: \$400,000.00
- Supplemental Allocation: \$202,678.00
- **Total FY 2022 Grant: \$602,678.00**
- % of Total Grant Allocation (2022): 2.83%

Update:

FY 2022 FLC Annual Plan package was submitted to WSDA on 7/6/2022

- FLC Annual Plan FY 2022
- Budget narrative providing detail as to intended use of funds

**Detail regarding intended use of funds to come during the July 28, 2022, ASWS Advisory Committee supplemental meeting.

Source: https://wdr.dleta.gov/directives/attach/TEGL/TEGL_12-21.pdf

ASWS Team Update & Happenings



Since June 2022 Meeting:

Continued robust site visit coverage

Performed 2 field checks

Responding to complaints received from workers and LNI

- Coordinating with LNI for timely on-site investigation and resolution
 - Following up monthly with DOL re: complaints referred
 - Employer conferences regarding apparent violations
 - Technical assistance and education provided. Recommendations made and follow up monitoring performed

Communication with DOH re: COVID cases

Unit wide training 7/19/22 - H-2A expert former H2A program creator at Moss Adams-LLC training funds used for training

- Frequently asked questions
 - FLC review
 - Compliance issues
- Payroll compliance training

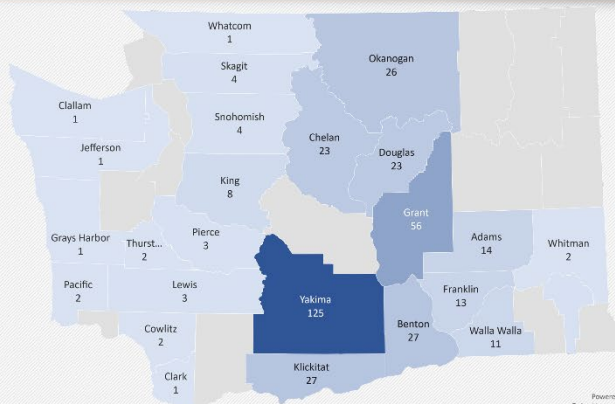
MOU Development re: referral of complaints and data sharing

- DOI, WHD
- Washington LNI
- Will commence after ASWS report

ASWS Compliance Team Update

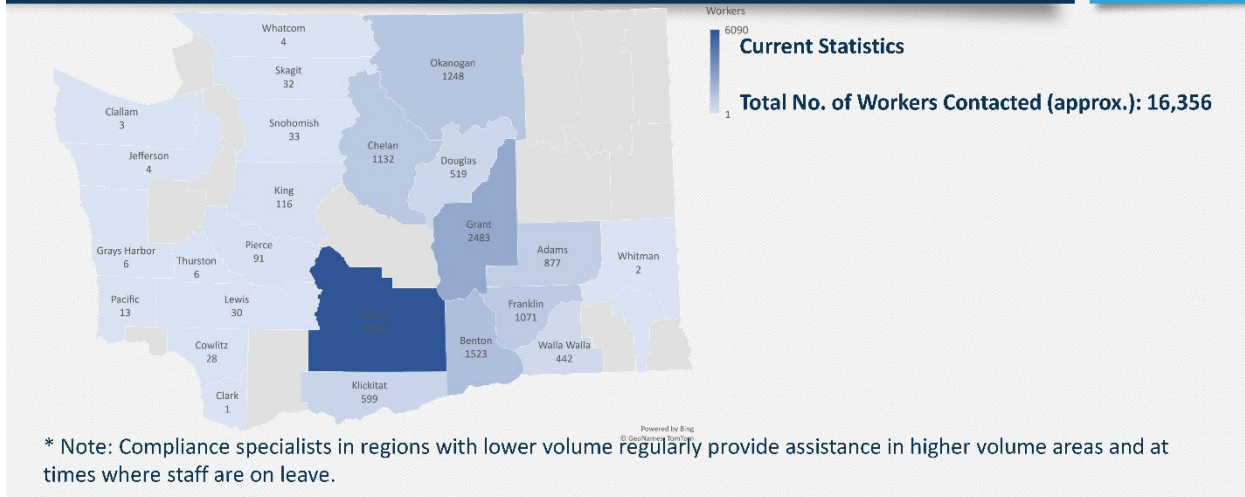


Site Visits by County 1/1/22- 7/20/22



*Compliance specialists in regions with lower volume regularly provide assistance in higher volume areas and at times where staff are on leave.

Approx. Workers Contacted by County - 1/1/22- 7/20/22



* Note: Compliance specialists in regions with lower volume regularly provide assistance in higher volume areas and at times where staff are on leave.

Placements and Field Checks (as of 7/20/22)



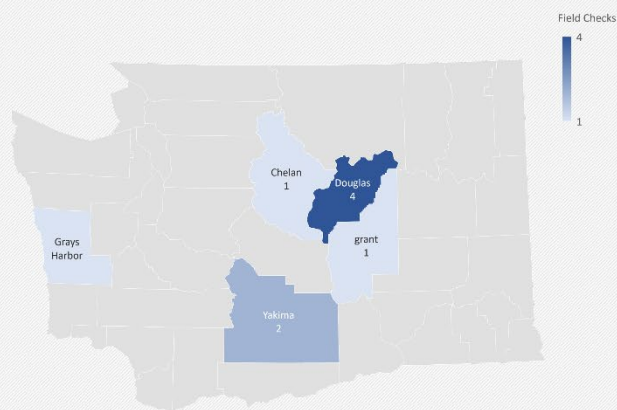
20 CFR 653.503 Field Checks

(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 (seeker referred and started working)	10
Number of Field Checks Performed by ASWS	9
Number of Field Checks currently scheduled	0

ASWS Field Checks by County (1/1/22-7/20/22)



Field Checks by County

- Chelan: 1
- Grant: 1
- Douglas: 4
- Grays Harbor: 1
- Yakima: 2

Total Field Checks Performed YTD: 9

A summary of field check findings and resolution/referral information will be provided at a Q4 ASWS advisory committee meeting.

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ADDENDUM III.

USDOL: Wagner-Peyser Rulemaking and Waiver Request



ASWS Advisory Committee Presentation

July 21, 2022

Gary Kamimura, Manager, Workforce Policy, ESD
Employment Security Department

Wagner-Peyser Waiver Request



- DOL formally denied Washington’s request that DOL eliminate the requirement to suppress employer information in clearance orders at section (b)(2) of 20 CFR 653.501.
- Its rationale is that Wagner-Peyser law only allows the Secretary to waive requirements at Section 8-10 of Wagner-Peyser Act, which is clearly a drafting error by Congress as those sections require state plans, performance and fiscal MIS, and federal reporting.
- TEGL 8-18 was written more flexibly, but DOL apparently did not do that purposely to address the drafting error (that’s why there are no Wagner-Peyser waivers and probably never will be).

Wagner-Peyser Rulemaking



- DOL undertook Wagner-Peyser rulemaking at 20 CFR Parts 651, 652, 653, and 658.
- ESD submitted comments by the June 21, 2022 deadline as the State Workforce Agency responsible for Wagner-Peyser administration and operations.
- It will take time for DOL to sort through the hundreds of comments received and prepare commentary to accompany the final rule.

SWA Comments



- Request at 20 CFR 651.10 that DOL clarify the definition of *field checks* to include circumstances that warrant targeted field checks or make clear the responsibility of States to define the circumstances in policy.
- Request at 20 CFR 651.10 that DOL clarify what is meant by “recruitment assistance” under the proposed definition of *intrastate clearance order*.

SWA Comments



- Request at 20 CFR 651.10 that DOL rethink the blended use of Census of Agriculture and Census of Agriculture and Quarterly Census of Employment and Wages (QCEW) data for determining *significant MSFW states* as it proposes to blend data for designations due to disparate. Washington proposes instead that the Department use only QCEW data, principally annual variable employment derived from QCEW data using a time series decomposition model that disaggregates covered employment by industry at the state level and by agriculture reporting areas and counties

SWA Comments



- Request at subsection (a)(4) of 20 CFR 651.107 that DOL clarify what is meant by “in each area of the State” as interpretation may have staffing implications.
- Also request at subsection (a)(4) of 20 CFR 651.107 that DOL grant States operational flexibility to reach the regulatory goal of conducting outreach to MSFW without the rigid staffing requirements imposed on MSFW significant one-stop sites.
- Request at subsection (d) of 20 CFR 653.108 that DOL require coordination between the SMA and SWA officials to ensure efficient and non-duplicative efforts around MSFW and W-P monitoring

SWA Comments



- Request at 20 CFR 653.108 that DOL further clarify that SMA do not conduct field visits, which have a specific purpose in regulation, but, rather, monitor the adequacy of information and services provided to MSFW by ES staff during field visits.
- Request at section (b)(2) of 20 CFR 653.501 that DOL eliminate the requirement to suppress employer information in clearance orders, which would provide the same transparency to workers presently afforded when viewing the same orders on DOL’s SeasonalJobs.gov site and remove a barrier for MSFW not encountered by non-MSFW viewing job orders.

SWA Comments



- Request at 20 CFR 653.503 that DOL clarify in rule or guidance the circumstances that warrant targeted field checks or the responsibility of States to define it in policy.
- Request at 20 CFR 658.419 that DOL additionally define *apparent violation* to aid implementation by proposing: “A suspected violation of employment-related laws or employment service (ES) regulations, as set forth in § 658.419 of this chapter, *for which ES staff observes, has reason to believe, or is in receipt of information that a violation has occurred.*”

SWA Comments



- Implementing and aligning with a number of the proposed rules has staffing and resource implications against a nonadjusted increase of 0.6 percent in the national PY22 Wagner-Peyser grant and a nonadjusted *decline* of 1.6 percent in our state’s PY22 Wagner-Peyser grant, which continues a 20-year pattern of declining funding. Urge DOL to recognize the challenge for States, particularly significant MSFW states, to commit additional staff and resources to align with the proposed new rules while facing broader Wagner-Peyser service delivery demands in an environment of stagnant or declining real funding.

ADDENDUM IV.

ASWS Disaster Preparedness Subgroup



ASWS Advisory Committee Presentation

July 21, 2022

Bertha Clayton, ASWS Director, ESD
Employment Security Department

ASWS Disaster Preparedness Subgroup



Met on 7/7/2022 at 9 AM

Discussed ASWS Contract Impossibility Response

- FAQ Resource – developed by ASWS

- Rapid Response Protocol
 - Focused site visit to provide information to employers and workers and answer questions
 - Scheduled as soon as we learn employers have applied for a contract impossibility and/or have been approved by DOL

Next Meeting: August 4, 2022; 9 AM, TEAMS

Action Items from Subgroup



INFORMATION

- Present Contract Impossibility information to employers and employees during initial site visits.
- Ensure information re: contract impossibility is provided to domestic workers.
- Include a statement in presentations to H-2A workers about obligation to comply with immigration law without providing legal advice.

ASSISTANCE

- Connect impacted agricultural workers with the Agricultural Recruitment System (ARS).
- Explore funding sources for emergency cash relief for H2A workers who are not working because of no work/slow work, etc.
 - DSHS meeting, Governor's office notification

COMPLIANCE MONITORING

- Educate employers that they must send all H2A workers home before laying off domestic workers.
- Connect with employers and agents re: efforts to locate alternative work for interested workers.

ADDENDUM V.

2022 ASWS Report Discussion



**Employment
Security
Department**
WASHINGTON STATE

ASWS Advisory Committee Presentation

July 21, 2022

Bertha Clayton, ASWS Director, ESD
Employment Security Department

2022 ASWS Report Committee Review Process



Part I Review Approach



Objectives:

- 1) Substantive review of the report for comprehension and accuracy
- 2) Finalization and approval of today's sections of the report.

Presumption:

Committee members have reviewed the report in detail and have provided feedback and editing recommendations prior to 7/18/22

- Feedback received were minor changes and requests for clarification – no major changes to the substance of the text or data were received.

Expectations Today:

- 1. Access to Draft**
Committee members have access on their device to the draft sent out by Dan Zelin on 7/11/22 and will refer to that draft during our review discussion, if necessary.
- 2. Compartmentalized Review**
Committee members will be presented with report sections to be finalized and approved today (Recommendations, ASWS Office Update, Credit update, etc.) on a slide with the actual text of the report, or in some cases, where best suited, a summary of the update.

Budget and Worker/Employer Perspectives will be reviewed on 7/28/22, led by Dan.
- 3. Discussion rooted in substance**
Committee members will be given an opportunity to discuss/propose any substantive changes (please do not consider formatting).

Vickie will note the feedback and if agreeable to the group, it will be implemented into the report.
- 4. Finalize and Approve**
Committee will finalize and approve the report section by section (20 slides total to approve).
- 5. Stay on Track**
My Adams will be our time-keeper and will assist with moving us along, if necessary- total time to complete task: 90 minutes.

I. Introduction, Page 5



Objective of Report

- This report provides updated information regarding implementation of the advisory committee's 2020 recommendations, as well as the required budget analysis of the ASWS office and other relevant programs. Additionally, this report provides an overview of the committee's membership, meeting schedule and activities during the reporting period, as well as an update on ASWS office activities, including engagements related to the COVID-19 pandemic. Finally, the report includes worker and employer perspectives.

III. ASWS Committee Meetings, Pg. 7-8



1. Plan for Meetings (Pg. 7)

- Committee meetings are subject to the Washington Open Public Meetings Act (OPMA) and all committee meetings covered in the period of this report were open to the public. The committee continued to meet virtually in 2021 and 2022. The committee will discuss the format of future meetings, including resuming in person meeting with a virtual option. The work of the committee, including the charter, committee procedures, approved minutes, and recordings, can be found at: <https://www.esd.wa.gov/newsroom/Ag-committee>.

2. Committee Activities (Pg. 7)

During each of its meetings, the committee received informational presentations from various state agencies regarding pertinent topics impacting agricultural employment in Washington. The committee engaged with presenters regarding information presented and, when requested, received follow-up information and status reports. Topics in which the committee engaged during this reporting period included, but were not limited to:

1. Strategies and approaches for implementing 2020 ASWS Report recommendations;
2. ASWS Foreign Labor Certification foreign labor application activity;
3. ASWS Compliance activities, including worker and employer contacts, technical assistance and education provided, and resource tools developed;
4. COVID testing and vaccination activity; and
5. Other agricultural related topics of interest.

Additionally, in response to the abnormally cold weather in Washington State in April 2022, the committee chose to form a subcommittee to focus on enhancing its understanding of work disruptions related to weather events, assessing ESD's mechanisms for quickly connecting farmworkers impacted by weather to other jobs, mobilizing Migrant and Seasonal Farmworker (MSFW) outreach staff to provide resources and support workers, assessing ESD's proactiveness in educating workers about what to do in a job disruption, and utilizing the Customer Experience Study to gain feedback from workers about how ESD's rapid response system can be more effective. The subgroup began meeting monthly in June 2022.

IV. ASWS Office Update, Pg. 8



Office Status:

As of March 2022, the ASWS office was “fully-staffed,” meaning that all full-time equivalent (FTE) positions were filled as follows:

ASWS Director- In October 2021, the inaugural ASWS Director left the position. In November 2021, FSD, with the advice of committee members, hired a new ASWS Director who assumed the position on January 18, 2022. An interim ASWS Director managed the office from November 2021 to January 2022.

ASWS Compliance Staff- As of January 2022, all seven compliance positions are filled. All compliance staff received training on conducting site visits, conducting field checks, conducting investigations, and on the Employment Service Complaint System. As discussed below, the ASWS office set a “100% Goal” for site visits. The objective of the goal is that compliance staff collectively perform at least one site visit for every H2A contract. The data tables herein demonstrate that site visit compliance coverage has been robust and comprehensive across all compliance regions, and that the “100% Goal” will likely be achieved by year end.

- The compliance staff serve under a supervisor that reports to the ASWS Director. In January 2022, the inaugural ASWS Compliance Supervisor left the position, with a new supervisor hired in March 2022.

ASWS Foreign Labor Certification (FLC) Staff- The ASWS office has 3 FLC staff responsible for processing and adjudicating foreign labor certification applications from employers. Two full-time FLC certification specialists serve under a lead specialist that reports to the ASWS Director. The lead specialist is responsible for providing leadership and training, as well as focusing on process improvement and quality control. Additionally, this role serves as the primary point of contact for requests for information from external agencies and stakeholders.

State Monitor Advocate- The ASWS office also includes the federally required Washington State Monitor Advocate (SMA), a position responsible for ensuring domestic MSFWs have equitable access to career services, skill development, and workforce protections offered by WorkSource centers, so they may improve their living and working conditions. The position is funded by the federal government through the Wagner-Peyser Grant and is housed in the ASWS office to ensure enhanced coordination between foreign and domestic farmworker program oversight and administration of services to both populations.

IV. ASWS Office Activities, Pg. 10 Items 1-6



The following is an overview of ASWS office activities during this reporting period:

1. Full Staffing of ASWS Office
 - See above.

2. Staff Training and Team Development

All compliance staff have received field check training, Employment System (ES) complaint training, and Washington State investigator training.

Additionally, ASWS staff have attended various in person and virtual employer association events. In person events during this period have been limited because of COVID-19. Employer events at which ASWS has presented information include: Washington Tree Fruit Association conference, Washington Grower's League conference, Washington Farm Labor Association (WAFLA) employer summit, and a WAFLA member forum.

3. Site Visits (AKA Field Visits)

The ASWS compliance staff conduct field visits to inform foreign and domestic workers of their rights under the H-2A regulations and provide the employer with compliance information and provide technical assistance. In January 2022, ASWS renamed field visits “site visits” to avoid confusion with field checks, as defined by 20 CFR 653.503 (see below).

As of January 2022, the ASWS compliance team's goal is to perform at least one site visit on 100% of job orders. This goal was set with the expectation that every employer and worker group would receive information and engagement from the ASWS office for H-2A contracts started in 2022. As of the date of this report, the ASWS has performed 360 site visits on 287 active contracts, contacting approximately 15,610 workers*.

*Data as of 7/7/2022

IV. ASWS Office Activities, cont., Pg. 11 Items 4-5



4. Field Checks, 20 CFR 653.503

A field check, as defined by 20 CFR 651.10, is a random, unannounced appearance by ES or federal staff at agricultural worksites to which ES placements have been made through the intrastate or interstate clearance system to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law. In March 2022, all ASWS compliance staff received field check training. Since March 2022, ASWS compliance staff have performed 8 field checks, which represents field checks on 100% of job orders to which nine placements were made in 2022.

5. Employer Outreach

- **Employer Association Events:** Since the 2020 report, ASWS staff have attended various in person and virtual employer association events. In person events during this period have been limited because of COVID-19. Employer events at which ASWS has presented information include: Washington Tree Fruit Association conference, Washington Grower's League conference, Washington Farm Labor Association (WAFLA) employer summit, and a WAFLA member forum. The ASWS office continues to engage employer groups with the objective of sharing information about the ASWS office, site visits, and field checks.
- **Field Boss Supervisor Training-Agricultural Leadership Program (ALP):** On June 13, 2022, ASWS presented to the 2022 ALP cohort in Yakima, WA. The ALP is a comprehensive bilingual training program sponsored by the Washington Tree Fruit Association, Washington State Department of Agriculture and Washington State University. ALP is designed to enhance leadership skills of farm supervisors and managers, by providing them with the knowledge and tools to effectively administer their tasks related to labor, new technology, safety, economics, regulations, and others. The cohort consisted of field supervisor and human resources staff. The subject matter of the training delivered by the ASWS Director – given in both English and Spanish – was H2A program background, program terms and conditions, and best practices for supervisors.

IV. ASWS Office Activities, cont., Pg. 12 Item 6



1. Partner Agency Collaboration

- **Northwest Region Joint Outreach Pilot Project:** In April 2022, ASWS and LNI Community Relations partnered to launch a joint outreach pilot project. The objective of the project was to assess how coordination between ASWS outreach staff and LNI community relations staff in presenting information to workers and employers could better serve the needs of workers. The project was limited in scope to the Northwest compliance region to better focus on feedback received from workers and employers and adjust, as necessary. The project has been positively received in the local area, and a template has been developed for use in implementing the coordinated outreach in other compliance regions.
- **Memorandums of Understanding (MOUs) for Referral of Complaints:** ASWS is developing MOUs with the Washington State Department of Labor and Industries and the U.S. Department of Labor Wage and Hour Division outlining agreements as between the parties to share data related to the final adjudication of complaints referred by ASWS. This information will be useful to ASWS for data keeping and assessing whether the SWA must initiate Discontinuation of Services as is required by 20 CFR 658(d)(5)(iv).

IV. COVID Response, pg. 12



During this reporting period, the committee received regular COVID case, testing, and vaccination rates from the Washington Department of Health. Additionally, the ASWS Director and Compliance Supervisor engaged in regular bi-weekly calls with members from the Department of Health, Washington State Department of Labor and Industries, Washington Department of Agriculture and the Governor's office sharing information about each office's COVID-19 response and identifying any gaps in service.

From 2020 to March 2022, ASWS received shipments of approximately 10,000 cloth masks from the Governor's office to distribute during site visits and share with MSIW outreach staff. The masks were distributed among the seven ASWS compliance regions during site visits.

As of the date of this report, the ASWS Director and Compliance Supervisor continue to receive briefings from the Department of Health regarding COVID case numbers, testing statistics, and mobile vaccination clinics providing vaccinations, including boosters. The committee also receives similar briefings.

Additionally, during field checks, compliance staff are observant to whether housing units are compliant with emergency COVID rules. During site visits, compliance staff inform workers and employers regarding accessibility to medical care.

As the COVID-19 pandemic continues to evolve, ASWS will continue to participate in regular communication with partner agencies to enhance ASWS's participation in COVID-19 related assistance to farmworkers and agricultural employers.

V. Domestic Recruitment (Section with Committee's Six 2020 Recommendations), Pg. 12



Introduction (p. 12)

- This section of the report includes an updated status for each of the committee's 2020 recommendations. For an overview of ESD domestic recruitment and verification processes, further background pertaining to the 2020 recommendations to increase the effectiveness of ESD's domestic and referral processes as part of the H-2A program, and information regarding field checks and field visits, please refer to the [2020 ASWS Committee Report](#).
- **Committee recommendations for ESD recruitment processes and systems**
- In the 2020 report, the committee thoroughly analyzed recruitment and referral processes, identified gaps, and considered improvement ideas. The result of the committee's thorough review was six recommendations aimed at improving domestic worker recruitment outcomes and enhancing education and resources to employers to increase compliance with H-2A laws and rules.
- This section lists each of the six recommendations put forth by the committee in the 2020 report and updated status on progress associated with each recommendation.

Recommendation #1 Faster Connection of Workers and Employers,

Page 13



Recommendation:

The committee recommends that ESD facilitate a faster connection of workers and employers through process changes, including:

- ESD staff should assist applicants in calling employers from the WorkSource office (rather than sending them away with the number to call).
- ESD staff should provide more information to applicants about the next steps in the process after they have applied, including education about the process through workshops and other types of outreach.
- ESD should explore using texting or apps commonly used by the farmworker community for recruiting and job matching, including using text alerts to notify farmworker applicants of new job openings.
- Additional outreach from ESD should include posters, booths, social media, and text notifications, including pending number of days remaining on a job order.
- ESD should conduct a formal “lean” process improvement project to identify additional improvements and to further reduce barriers in recruiting domestic workers as part of the H-2A program. This should not be confused with the budgetary lean process, but actual reduction in barriers between employers and domestic workers.
- ESD should develop a Request for Information (RFI) to further scope and identify costs for text and/or app-based outreach to farmworkers.

REPORT UPDATE:

1. ESD staff assisting applicants in calling employers;
 1. Description of staff assisted experience as per H-2A handbook (providing information about the employer).
 2. Use of WorkSource Referral Form to job seekers who choose to apply at the employer in person
 3. ESD staff assistance to applicant in calling employers.
2. Information to applicants post application;
 1. Description of information given to the applicant (H2A job order summary, worker rights, work locations, conditions and pay rates, copy of H2A job order “side by side” job order in both Eng./Span with referral instructions, information about how to follow up with staff to report outcome of the referral.
3. Use of Text messaging or applications to notify workers of job openings
 1. Current ESD policy re: prohibition of text messaging with customers; WTT replacement project (Projected completion: 2024) will include text features and policy will be amended.
4. Additional outreach by ESD to workers regarding job openings
 1. 2020-2014 Agricultural Outreach Plan (AOP) outlining outreach targets for MSFW outreach program staff and information presented during that outreach.
5. ESD Lean Process improvement project to reduce domestic recruitment barriers
 1. July 2021 LEAN Project aimed at increasing referrals of domestic workers, placements, tracking, etc.
 2. Outcome: H2A handbook needs to be updated; outlined protocols for staff referrals to h-2a job orders and referral outcome tracking, created H2A 101 training for all ESD Wagner-Peyser staff.
6. RFE to determine costs of text-app based outreach
 1. Within scope of WTT replacement, project (to be completed 2024).

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Recommendation #2 Disclosure of Referrals to Employers (“Waiver Request”), Page 16



Recommendation:

The committee recommends that ESD directly inform employers of applicants for H-2A job openings. The committee further recommends ESD request a waiver from the USDOL [US Department of Labor] to allow H-2A employers to manage and access their own recruitments through ESD’s recruitment system. Finally, the committee recommends establishing measures to determine the impact and success of the change.

- Allowing the employer to contact the applicant directly would result in a faster connection of workers and employers as workers would receive unfettered access to employer contact information. If a waiver is not granted by USDOL, ESD could continue to manage the recruitments in the system and notify employers after each referral. This would still provide the employer the opportunity to contact referrals directly but would delay interaction between both parties.
- Implementing this change would require a waiver from USDOL, minor IT changes, and training for ESD employees and H-2A employers. Minor IT changes would be required for ESD to track H-2A recruitment data, otherwise there is a risk of data loss associated with the agricultural recruitment system.
- There is an expectation that this recommendation would increase the number of domestic referrals resulting in faster connections between farmworkers and employers. The recommendation may, however, reduce ESD’s ability to track referrals and hires of domestic workers.

Current State Update:

- As of the date of this report, applicants who come in-person to the WorkSource centers to apply for H-2A job openings are assisted one-on-one by WorkSource staff. This assistance includes screening of applicants for job qualifications, providing all necessary referral information to the applicant including worker rights and employer assurances and assisting the applicant in contacting the employer. WorkSource staff regularly attempt to contact the employer while the applicant is deskside, however these attempts are not always successful, and applicants are directed by staff to contact the employer.
- Waiver Request:
 - Waiver request approved by committee vote on 10/21/21
 - Submitted USDOL, 5/16/2022
 - USDOL Denied 6/30/22
- Next Steps:
 - In light of the denial, Wagner-Peyser field staff will continue its standard practice of actively and directly engaging agricultural workers to ensure they receive the information on their rights and access to the one-stop system program and services. Additionally, ESD staff will continue to receive regular training in recording placements of domestic farmworkers to agricultural jobs and communicating these placements to the ASWS office for field checks, when applicable.
 - USDOL’s denial of ESD’s waiver request does not preclude ESD from directly contacting employers of domestic H-2A job referrals made by Worksource, as per above. Additionally, the SWA’s obligation of informing applicants of worker rights and services available through the WIOA one stop system is unchanged.

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Recommendation #3 Referral Tracking and Follow Up, Pg. 17



Recommendation:

The committee recommends that ESD track referral outcomes more consistently.

More thorough referral tracking and follow up could be achieved through:

- Outreach by phone or text to farmworker applicants who have been referred.
- Using an app to communicate with and request information from farmworker applicants regarding referral outcomes.
- Employers providing a copy of USDOT recruitment reports to ESD to determine outcomes.
- Creating incentives for workers to self-report the outcome of referrals.
- Allowing WorkSource staff to create registrations on behalf of customers.
- In addition, worker and employer representatives on the committee had a shared perspective that ESD needs to improve its tracking and monitoring of quarterly domestic worker placements to ensure it is then conducting field checks as federally required (federal statute requires placement of a domestic worker to conduct a field check at an H-2A site).

Update:

1. Improvements on referral tracking and follow-up with domestic applicants

- Since the 2020 report, USD Wagner-Peyser program staff created specific training regarding H-2A referral tracking procedures. The training was provided virtually to all program staff. Additionally, the training was recorded and is readily available for review and new employee onboarding.
- The training includes direct instruction on how to: (1) screen applicants and make referrals to H-2A job orders; (2) provide information to applicants regarding H-2A rules, protections, and assurances; and (3) confirm that the applicant was hired and that a placement was made. Furthermore, Wagner-Peyser program staff developed specific protocols for notifying the ASWS office of the placement so that ASWS can initiate field check preparation.
- Wagner-Peyser program staff extract and analyze H-2A job application data on a weekly basis to confirm that H-2A job orders received from the ASWS Foreign Labor Certification team have been timely reviewed and created. Additionally, Wagner-Peyser program staff created two new "codes" in the labor market exchange workforce data management system to ensure that the hiring status of farmworker applicants is properly coded to prioritize domestic workers. These new codes are as follows:
 - (1) Candidate Does Not Qualify: Upon screening of the applicant, the applicant is not able, willing, available or qualified for the job; and
 - (2) Ineligible Foreign Worker: Upon screening of the applicant, it is determined that the applicant is applying from outside of the U.S. and is not authorized to work in the U.S.

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Tables in this section, pg. 18 & 19



Figure 3 . Annual summary of H-2A job order referral and hiring activity
Washington state, calendar years 2016 through 2022
Source: Employment Security Department,
Employment Connections Division

Year	Job orders	Total applications made to job orders	Job orders with at least one applicant	Number of individuals applying	Individuals referred to employer	Total hires (placements)	Number of job orders with hires
2016*	151	75	42	54	15	4	4
2017	286	583	155	325	80	11	8
2018	234	642	199	331	41	9	7
2019	300	1318	226	585	92	19	13
2020	314	1047	287	405	39	2	2
2021	349	375	187	196	6	0	0
2022 (Jan 01 - July 07)	378	455	236	159	10	10	9

Figure 4. Field checks and field visits conducted by ESD
Washington state, calendar years 2016 through 2022
Source: Employment Security Department,
Employment Connections Division

Program year	H-2A job orders	Number of job orders with hires	Minimum number field checks required by USDOL	Field checks	Field Visits
2016*	151	4	0	5	Data unavailable
2017	286	8	8	2	Data unavailable
2018	234	7	7	0	Data unavailable
2019	300	13	13	1	Data unavailable
2020	314	2	2	0	Data unavailable
2021	349	0	0	0	27
2022	378	9	9 (2 placements made to one order)	8	360

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Recommendation #3 Referral Tracking and Follow Up, cont., Pg. 17



Update:

- In this reporting period, the ASWS office performed Field Checks on 100% of contracts to which a domestic placement was made. As per 20 CFR 653.503(a); "if a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its TIS 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."
- All ASWS compliance staff received field check training in March 2022. All field checks are performed at times when workers are present and include (1) interviews with both foreign and domestic workers regarding employment terms, working conditions, and safety; (2) walk-throughs of housing locations listed on the ETA-790 to verify compliance; (3) a payroll records review to confirm compliance with applicable federal and state law; and (4) an exit interview with the employer to discuss findings and technical consultation about how to cure findings. As of the date of this report, ESD is compliant with 20 CFR 653.503(b), requiring the SWA to conduct field checks on 100% of all job orders (if less than 10 placements per quarter) in which a placement has been made. If more than 10 placements per quarter are made, the SWA must only perform field checks on 25% of orders in which there has been a placement. Field checks are performed using a standard guide provided by USDOL.

Update:

2. Outreach by phone or text to farmworker applicants who have been referred
 - included in WIT replacement projects (Completion 2024)
3. Employers providing a copy of USDOL recruitment reports to ESD to determine outcomes
 - Abandonment/Termination reports not provided directly to SWA by employers. Ultimately received from DOL;
 - Domestic referral outcomes are determined by staff trained to follow up.
4. Creating incentives for workers to self-report outcome of referrals
 - No incentives developed. Staff trained to emphasize importance of reporting outcome. Staff Follow up with applicant has been the most effective tracking tool.
5. Allowing Worksource staff to create registrations on behalf of customers
 - June 2021 ESD procedure enables WorkSource staff to impersonate an MSFW customer in creating a WorkSourceWA registration. Staff also provide 1:1 assistance to customers in navigating site and complying with requirements for job application.

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Recommendation #4 Customer Experience Study, Pg. 21



Recommendation:

The committee recommends ESD develop a Request for Information (RFI) and conduct focus group sessions to design a customer experience study. The study should focus on hearing the farmworker and employer perspectives on barriers to accessing jobs, usability of ESD systems, and the disconnect between the number of available jobs compared to the number of successful referrals. The proposed study would help to interpret the qualitative data to make ESD more relevant to employers and farmworkers.

The ESD's approach to a customer experience study could include a combination of some or all of the following:

- Building opportunities for customer feedback into processes, such as during field checks and field visits.
- Conducting interviews with farmworkers and employers, in person or by phone.
- Collecting data and feedback through surveys.
- Collecting data regarding referrals and how workers are applying for jobs.

Implementing this change requires staff time to collect and compile customer feedback, analyze feedback, and identify actionable feedback that could be implemented to improve the customer experience.

Customer Experience Study Update:

- The committee engaged ESD's Data Architecture, Transformation and Analytics team to develop an RFI for the study. The committee agreed that the purpose of the initiative is to conduct an independent study to identify key areas to improve ESD's agricultural employment recruitment for specialty crop production activities. Specifically, the study is expected to identify areas in which ESD can increase its relevance and effectiveness in matching qualified applicants to agricultural jobs thereby aiding domestic farmworker participation in the agricultural labor market.
- The initial RFI was issued by ESD in September 2021 to solicit costs to conduct the study. Upon completion of the RFI process and after engaging several university research staff regarding project execution, ESD prepared a tentative budget for conducting the study.
- Working with the committee, in February 2022, ESD submitted a grant application to the Washington State Department of Agriculture as part of the 2022 Specialty Crop Block Grant Program (SCBGP) requesting \$250,000 to fund the survey, in part. In April 2022, the grant application was tentatively approved by the U.S. Department of Agriculture with formal approval expected in the fall of 2022.
- In addition, using position vacancy savings from the ASWS office accumulated through minimal initial staff hiring due to COVID-19, ESD budgeted an additional \$250,000 for the study. Using those funds, ESD develop a Request for Proposal (RFP) with the committee for Phase I of the study focused on apple, pear, and grape production.

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Recommendation #4

Customer Experience Study, Pg. 21-22



Phase I:

- In Phase I, ESD expects the contractor will conduct qualitative interviews (one-on-one or focus groups) with farmworkers inquiring about how specialty crop farmworkers engage in specialty crop job searches, what sources and strategies they use to look for specialty crop production jobs, how they apply for jobs, what barriers they experience in accessing specialty crop jobs, how they communicate with potential specialty crop growers, the extent to which they use (or do not use) ESD recruitment and referral systems and reasons why, how they engage with ESD staff, and how the ESD systems and processes may be improved to facilitate the specialty crop job application process.
- In Phase I, ESD expects that the contractor will conduct qualitative (one-on-one or focus groups) interviews to collect information about how specialty crop growers recruit domestic and foreign farmworkers, whom or what they rely on for assistance in recruiting specialty crop farmworkers other than ESD (i.e. associations or individuals), the circumstances that motivate specialty crop growers to employ farm labor contractors to recruit domestic workers, strategies they use for recruitment and hiring, what challenges they experience in attracting qualified candidates, the extent to which they use or do not use ESD recruitment and referral systems, how they use ESD agricultural recruitment systems to hire temporary workforce, why they do not use the ESD system, how they interact with ESD staff, and how ESD processes may be improved.

Phase II:

- A final Phase I report is targeted for the Spring of 2023. Should ESD receive the SCBGP funding, another RFP will be issued for Phase II of the study, which will be conducted in a similar fashion focusing on cherry, berry, apple, pear, and grape production with another report provided later in 2023.

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Recommendation #6

Employer Training, Pg. 24



Recommendation:

- **The committee recommends enhancing employer training.** Training may include formal training sessions, communication about employer resources, making sure employers understand the resources available to them, creating designated points of contact for employers with questions, and building relationships for ongoing conversations and education.
- In January of 2019, ESD began working with the USDOL National Office of Foreign Labor Certification and USDOL Wage and Hour Division to organize H-2A employer forums in Washington and Oregon. A steering committee consisting of agricultural industry representatives, as well as federal and state agencies, was developed. The exact locations, dates, and agenda for the H-2A employer forum were not developed as it was determined in late 2019 that it would be best to schedule the forums after a federal H-2A final rule was published in late 2020. That rule has yet to be published.

Update:

- As of the date of this report, ESD and USDOL have not yet organized H2A employer forums. Please refer to the recommendation 5 update above for further discussion on ASWS employer training activities.

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Agricultural and Seasonal Workforce Services
ADVISORY COMMITTEE



Next ASWS Advisory Committee
Meeting

Thursday, July 28th, 2022

8:30 a.m. – 11:30 a.m.

Contact information

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

Employment Security Department • Policy, Data, Performance and Integrity
