



Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Thursday, July 28, 2022

Time: 8:30 a.m. – 11:30 a.m.

Location: ZOOM meeting due to COVID-19

Committee members present

- Jonathan DeVaney
- Edgar Franks
- Jeff Perrault
- Michael Gempler

Non-voting agency representatives

- Todd Phillips
- Ignacio Marquez

Committee members absent

- Rosalinda Guillen
- Delia Peña
- Michele Besso
- Victoria Ruddy

ESD staff

- Dan Zeitlin
- Bertha Clayton
- Vickie Carlson
- Petra Meraz
- Tamara Johnson
- Olga Kondratjeva
- Gustavo Aviles
- Rene Maldonado
- Juan Martinez

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. Four voting members were present. Committee decided to continue with today's presentation and schedule an additional meeting with absent worker representatives. Minutes not considered to due lack of a quorum.

Agenda

Recording timestamp **00:8:48**

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

2022 ASWS Report Recomendations Discussion – Bertha Clayton, Director, ASWS Office, ESD

(See Addendum II.)

- Recommendations 5
- Recommendations 6

Recording timestamp **00:10:58**

Recording timestamp **01:30:28**

2022 ASWS Budget Discussion – Dan Zeitlin, Director, ESD Employment System Policy and Integrity Division (See Addendum III.)

- H2A activities and supporting federal and state funding sources Recording timestamp **00:32:53**
- Overview of major ESD funding sources supporting H2A activities Recording timestamp **00:45:56**
- FLC Grant funding awarded to ESD for FY 2017 to 2022 Recording timestamp **00:46:46**
- Review of H2A positions certified and FLC funding top states in FY21 Recording timestamp **00:50:38**
- Washington state and U.S. Wagner-Peyser allotments for PY12 through 2022 Recording timestamp **01:01:57**
- Wagner-Peyser 10% ESD field operation allocation for FY 2022 Recording timestamp **01:06:49**
- ASWS Budget Request by job classification and object/purpose Recording timestamp **01:09:43**
- Expected cost of 2022 Agricultural Wage and Employment Practices surveys Recording timestamp **01:14:46**

Next Steps/Timeline:

Worker and Employer Perspectives due back to the committee by next Friday (August 12th), or Monday if needed (August 15th).

Future Agenda Items

Set up an additional time with worker representatives to continue discussion and thoughtfully engage in a dialog around the sections discussed today.

Public Comments

None

Adjourned

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 10:31 a.m.

2022 Meetings

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

- **August 18, 2022 – 8:30 a.m. to 11:30 a.m. – Zoom Meeting**

Addendums

ADDENDUM I.

Agenda



AGENDA

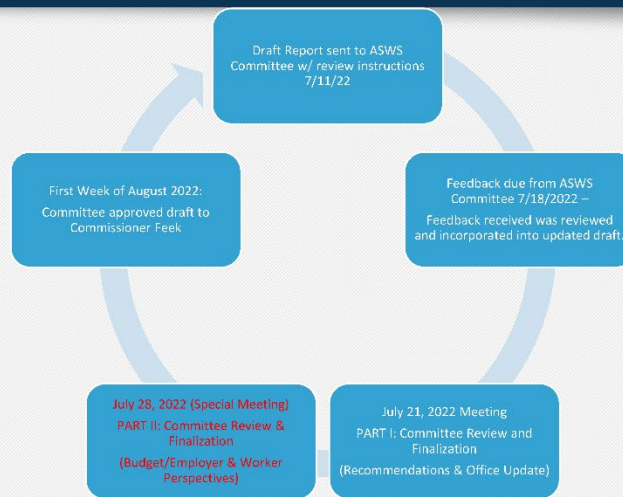
Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee
 Special Meeting | Thursday, July 28, 2022 | 8:30 am – 11:30 am | Zoom |
 212 Maple Park Ave SE Olympia WA 98501

TIME	TOPIC
8:30 am	Welcome – Daniel Zeitlin, Director, ESD Employment System Policy & Integrity Division <ul style="list-style-type: none"> • Roll Call – Vickie Carlson • Agenda Review – Daniel Zeitlin
8:45 am	Review of 2022 ASWS Report <ul style="list-style-type: none"> • Recommendations 5 & 6 – Bertha Clayton, Director ASWS, ESD • Budget Review – Daniel Zeitlin • Worker & Employer Perspectives – Daniel Zeitlin
11:10 am	Closing Discussion <ul style="list-style-type: none"> • Agenda Items
11:20 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 | Drive 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 is heard | Look out for each other | Take care of your own comfort | Ask for what you need

2022 ASWS Report Committee Review Process



ADDENDUM II.

2022 ASWS Report Discussion



Recommendations Discussion Continued

July 28, 2022

Bertha Clayton, ASWS Director, ESD
Employment Security Department

Recommendation #5 Employer Resources, Pg. 22



Recommendation:

- **The committee recommends that ESD create enhanced resources and best practices for employers to access.** This would include providing template forms and letters, compliance tips, interview best practices, and sample interview questions. Best practices would focus on educating employers on common mistakes that have been made in the past and how to prevent those mistakes from happening. It is recommended that resources are provided once to all existing employers, provided to new H-2A employers in the future, and provided to employers by email at the time they set up new recruitments.
- The expected impact of this recommendation is increased compliance by employers with H-2A laws and rules, streamlining in hiring and support for employers in successfully meeting program requirements.

Update:

As of March 2022, the ASWS is “fully-staffed”, meaning that all Full Time Equivalent (FTE) positions are filled. Additionally, all staff have received onboarding orientation and training, and staff are actively performing job duties. As such, ASWS has been well-positioned to perform compliance activities at full capacity, including employer consultation and assistance, as follows:

Recommendation #5 Employer Resources, Pg. 22



Update:

Site Visits (Field Visits): The ASWS compliance staff conduct field visits to inform MSFWs of their rights under the H-2A contract 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.

- a. **100% Goal:** As of January 2022, the ASWS Director set a goal of compliance staff conducting a 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 July 7, 2022, ASWS staff have performed 360 site visits, contacting approximately 15,610 workers.
- b. **Site Visit Notification Letter** - In January 2022, the ASWS office implemented the use of a standardized “site visit notification letter” to be used in initiating contact with the employer to schedule the site visit. The notification letter also outlines what to expect during the visit and contact information for the compliance staff member assigned to the visit.

c. **Standard work project: Format, Information, Reassessment, Execution (F.I.R.E.)**

In May 2022, the ASWS Compliance Team engaged in a LEAN project named “F.I.R.E.”, an acronym for Format, Information, Reassessment and Execution. The purpose of the project was to create a standard presentation content and formatting for each site visit to perform effective, comprehensive, and uniform site visit experiences in every compliance region. The project was completed on June 6, 2022 and resulted in a site visit outline to be used by compliance staff in each site visit. Additionally, this site visit outline is provided to employers with the Site Visit Notification Letter (see above) and will be available on the web to employers as a compliance resource once an ASWS webpage is developed.

d. **Rapid Response Protocol – Contract Impossibility**

In July 2022, the ASWS developed a protocol to contact employers who have applied for a contract impossibility to USDOL or are otherwise considering applying. A contract impossibility is a defense to a contract, which if approved by USDOL, excuses the employer’s fulfillment of the H-2A contract. The employer must demonstrate to USDOL that the reason for the impossibility is beyond the control of the employer and was not known to the employer at the time that the employer applied for foreign labor. Examples include fire, weather events, or “Acts of God” that make the employer’s fulfillment of the contract impossible.

- The protocol directs compliance specialists to contact employers to schedule a site visit wherein employers will be oriented regarding the contract impossibility process and the employer’s obligations as to its foreign and domestic workers. Additionally, compliance specialists will present information to workers about contract impossibility, worker options, and answer questions.

7

Recommendation #5 Employer Resources, Pg. 23



Update:

2. **Employer Outreach:** 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 staff presented information include: Washington Tree Fruit Association conference, Washington Grower’s League conference, Washington Farm Labor Association (WAFLA) employer summit, and 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.
3. **Field Boss Supervisor Training:** On June 13, 2022, ASWS staff presented to the 2022 Agricultural Leadership Program (ALP) cohort in Yakima, WA. The cohort consisted of field supervisor and human resources staff. The subject matter of the training – given in both English and Spanish – was H2A program background, program terms and conditions, and best practices for supervisors.

4. **Partner Agency Collaboration:** Worker and employer representatives on the committee recommended in the 2020 report that ESD work to develop mechanisms to strengthen and align coordination with other agencies to improve health, safety and working conditions effectively and efficiently in agriculture.

- In April 2022, the ASWS office and the Labor & Industries (LNI) Community Relations office partnered to launch a Northwest Region joint outreach pilot project. The objective of the project is 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.
- Along with building on this pilot, a key objective of the ASWS office, working with the committee, is to further strengthen and align coordination with partner agencies in key areas such complaint processing and housing inspections.

Link: [ASWS/LNI Joint Outreach Template](#)

8

Recommendation #5

Employer Resources, Pg. 24



Update:

1. Written Materials:

- a. **Frequently Asked Questions (FAQs):** The ASWS office is compiling a list of common compliance issues and frequently asked questions. This data will be compiled in an FAQ format which will include a question-and-answer formatted resource.
 - In July 2022, the ASWS off developed, with input from the committee, a Contract Impossibility FAQ guide.
- b. **Links to forms and regulations:** The ASWS office plans to create an electronic flyer which will include links to USDOL forms and regulations.

2. Development of ASWS webpage with information and resources for employers:

- a. ESD is developing a webpage which will include information about ASWS committee (including meeting minutes and videos); employer resources including copies of ASWS site visit and field check guides, frequently asked questions, informational videos offering compliance guidance and links to other governmental agencies and organizations.

9

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, FSD 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, FSD 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.

10

ADDENDUM III.

2022 ASWS Report Discussion



Budget Discussion

July 28, 2022

Dan Zeitlin, Policy Director, ESD
Employment Security Department

H-2A activities and supporting federal and state funding sources, Pg. 27



Update:

- In 2020, the report noted that the Wagner-Peyser grant was used to coordinate housing inspections along with the FLC grant. Housing inspection coordination is now funded by both the FLC grant and ASWS office funds. Housing inspections are conducted by the Department of Health.

Required activity	Federal Foreign Labor Certification grant	Federal Wagner-Peyser grant	State RCW 50.75.040 funding	Other state funding**
Review and process of H-2A employer applications	✓		*	
Coordinate housing inspections	✓	*	✓	*
Agricultural prevailing wage and employment practice	✓	✓	✓	✓
Outreach and training	*	✓	✓	*
Field visits and field checks	*	*	✓	*
Domestic recruitment and employment verification		✓		*
Employment service complaint process		✓	✓	*
Discontinuation of services		*	✓	*

Overview of major ESD funding sources supporting H-2A activities, Pg. 28



Update:

Updated from 2020 to reflect 2022 figures.

Funding source	Purpose	FY 2022 allocation
Federal Foreign Labor Certification Grant	To fund services provided by state agencies that support the administration of the H-2A and H-2B foreign labor certification programs. ESD charges to this grant in alignment with this scope and does not track funding spent on H-2A and H-2B separately.	\$602,678 Base: \$400,000.00 Supplemental (One-Time): \$202,678.00
Federal Wagner-Peyser Grant*	To improve the functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking qualified workers. Of these funds, 10 percent, roughly \$1.5 million in FY 2020, is allocated for employment services specifically targeted to support agricultural workers and employers.	\$15,464,004
State RCW 50.75.040 funding	Establishes the office of Agricultural and Seasonal Workforce Services. This funding is from the Employment Services Administrative Account. Funding for the program is included in the ESD budget request for 2021 through 2023. All funding supports H-2A Program-related activities.	\$1,728,437
Other state funding	The Employment Services Administrative Account and the Administrative Contingency Account support employment services for which federal funding is not available or sufficient. Both accounts help pay for a portion of the Prevailing Wage and Employment Practice Survey that supports administration of the H-2A Program.	\$801,455 (survey only)

14

FLC Grant funding awarded to ESD for FY 2017 to 2022, Pg. 29-30



Update:

- The bulk of the funding provided by the FLC grant is used for reviewing and processing applications for the H-2A and H-2B Programs, which includes coordinating with USDOL, DOH, and I.N.I. The FLC grant in the past set a cap on funding for survey work, field visits and field checks of up to 20 percent of the allocated funding. In 2022, that cap only applies to survey activities.
- In FY 2021 and 2022, while Washington state's base FLC allocation of \$400,000 remained unchanged, a supplemental allocation of \$172,579 was provided in 2021 and \$202,678.00 in 2022. With these additional funds, ESD plans to add 1-2 project positions to support FLC functions during peak application time (November-March). Specifically, the temporary positions will assist with temporary worker housing compliance research, the creation of H-2 job orders, communication with order holding offices, and will support FLC operations in other targeted tasks. Additionally, ESD plans to use the extra funding to provide outreach and education to employers at industry training conferences and to develop further resources targeted to new users of the H-2A program.

Fiscal year	Amount awarded to ESD
2017	\$237,354*
2018	\$450,000
2019	\$400,000
2020	\$400,000
2021	\$572,579**
2022	\$602,678***

*ESD received an additional supplemental allocation of \$325,000 intended to enhance coordination of housing inspections required as a condition of USDOL certification.

**ESD received an additional supplemental allocation of \$172,579.

***ESD received an additional supplemental allocation of \$202,678.00.

15

Review of H-2A positions certified and FLC funding for top 10 states in FY 2021, Pg. 30



Update:

- The 2020 report highlighted that USDOJ allocates funding to states without the use of a formula that accounts for workloads, an issue that persists in 2022. While Washington state ranked 4th in the number of positions certified at 28,727, in FY 2021 it ranked 8th in level of funding. For that same year, ESD received 2.83 percent of the FLC funding while accounting for 9 percent of all certified positions nationally. For comparison, in FY 2019 Washington state ranked 3rd in the number of positions certified and 6th with the level of funding. In FY2019, ESD received 2.80 percent of the FLC funding while accounting for 10.20 percent of all certified positions nationally.

Top 10 States by # of H2A positions certified (2021)	Number of positions certified (FY 2021)	Percent of total certified in U.S. (FY 2021)	FLC funding level (2022)	Percent of U.S. FLC funding (2022)
	Total Positions Certified: 317,619	100%	TOTAL FY 2022 FUNDING LEVEL: \$21,282,000	100%
Florida	44,706	14.07%	\$986,889	4.63%
Georgia	35,205	11.08%	\$747,562	3.51%
California	32,333	10.17%	\$2,018,964	9.48%
Washington	28,727	9.04%	\$602,678	2.83%
North Carolina	23,479	7.39%	\$980,218	4.60%
Louisiana	12,473	3.92%	\$627,110	2.94%
Michigan	11,376	3.58%	\$514,517	2.41%
Arizona	10,842	3.41%	\$290,743	1.36%
New York	9,192	2.89%	\$1,675,486	7.87%
Texas	8,553	2.69%	\$848,171	3.98%

16

Washington state and U.S. Wagner-Peyser allotments for PY 2012 through 2022, Pg. 32



Update:

- The funding was used to pay for a total of roughly 139 full-time employees (FTEs) within the Employment Connections Division, the division within ESD responsible for providing direct services to customers (businesses, job seekers and future job seekers).
- In the 2020 report, the committee committed to, in conjunction with ESD, examining the allocation of the funding sources for the H-2A administrative functions and to identify gaps in funding and needed resources to address those gaps if they exist.
- Accordingly, ESD started tracking Wagner-Peyser funding spent on H-2A-related activities as of July 1, 2021. Year to date expenditures from July 1, 2021 through May 31, 2022 was \$76,991

Program year	Washington	U.S.	Percent of U.S. allocation
2012	\$14,673,520	\$700,841,900	2.09%
2013	\$13,893,830	\$664,183,664	2.09%
2014	\$13,819,721	\$664,184,000	2.08%
2015	\$13,756,839	\$664,184,000	2.07%
2016	\$14,323,487	\$680,000,000	2.11%
2017	\$14,769,360	\$671,413,000	2.20%
2018	\$14,707,432	\$666,413,000	2.21%
2019	\$15,040,605	\$663,052,000	2.27%
2020	\$15,891,995	\$668,052,000	2.38%
2021	\$15,710,820	\$668,253,000	2.35%
2022	\$15,464,004	\$672,277,000	2.30%

17

Wagner-Peyser 10 percent ESD field operations allocation for FY 2022, Pg. 34



Update:

- ESD's allocation of Wagner-Peyser 10 percent funds within the ESD's Employment Connections Division and the ASWS office is shown in this figure. While most of Wagner-Peyser 10 percent funds are centered on positions providing direct customer support and outreach, additional funds are used for supportive services.
- Due to the deployment of ESD staff to assist with UI during the pandemic, ESD had 10 percent funds from 2020 and 2021 carry over into 2022.

Office	FTE budget	Budget allocated
Monitor Advocate Position	1.00	\$111,187
Employment Connections Central Office	1.20	\$173,953.47
Skagit (Mt. Vernon) WorkSource	1.18	\$158,071.07
Central Basin (Moses Lake) WorkSource	1.34	\$163,157.46
Okanogan County (Omak) WorkSource	1.30	\$186,808.72
Wenatchee WorkSource Affiliate	1.19	\$161,281.38
Yakima County (Union Gap) WorkSource	1.45	\$171,078.95
White Salmon WorkSource Affiliate	1.05	\$126,717.09
Sunnyside WorkSource Affiliate	1.13	\$136,790.66
Columbia Basin (Kennewick) WorkSource	1.45	\$172,631.95
Walla Walla WorkSource	1.10	\$112,729.84
Operating FTE total	13.75	\$1,674,407.59

18

ASWS Budget Request by job classification and object/purpose, Pg. 37-38



Update:

- Budget request/authorization unchanged from previous biennium

ASWS staffing	FTE	Salaries	Benefits
WMS 3 - ASWS Director	1	\$117,000	\$47,000
Administrative Assistant 3	1	\$42,000	\$17,000
Program Specialist 2	1	\$48,000	\$19,000
Program Specialist 3	7	\$408,000	\$163,000
Program Specialist 5 (Lead)	1	\$69,000	\$28,000
Agricultural wage survey staffing	FTE	Salaries	Benefits
WMS 2 - Econometrics and Actuarial Analysis Manager	0.2	\$14,000	\$6,000
Operations Research Specialist - Surveys and Agricultural Analysis Supervisor	0.6	\$52,000	\$21,000
Economic Analysis 3 - Research Economist	0.9	\$76,000	\$30,000
Agency Services and Technology	1.8	\$134,000	\$89,000
Total	14.5	\$960,000	\$420,000

Description	FY 2019-2021	FY 2021-2023	FY 2023-2025
FTE staff years	13.9	14.4	14.4
A - Salaries and wages	\$1,753,751	\$1,652,000	\$1,652,000
B - Employee benefits	\$613,814	\$662,000	\$662,000
E - Goods and other services	\$368,995	\$384,000	\$384,000
G - Travel	\$17,819	\$122,000	\$122,000
T - Intra-agency reimbursements	\$525,234	\$444,000	\$444,000
Total	\$3,487,432	\$3,264,000	\$3,264,000

19

Expected cost of the 2022 Agricultural Wage and Employment Practices surveys , Pg. 39



Update:

- Total cost for the survey in 2019 (2020 report) was \$698,437.
- Roughly half the increase from 2019 to 2022 is associated with UW and legal costs.
- In 2019, ESD was not fully staffed to conduct the survey and the legislature funded ESD staff to do this work when establishing the ASWS office accounting for the other half of the increase.

Funding source	UW-employer	UW-worker	DATA staff	Attorney General - Legal fee	Sum
Foreign Labor Certification ²	\$84,259	\$36,277	\$0	\$0	\$120,536
Wagner-Peyser 90 percent	\$0	\$0	\$198,880	\$0	\$198,880
Administrative Contingency Account (P&I)	\$220,316	\$94,856	\$0	\$62,405	\$377,577
Employment Services Administrative Account (CPP - including ESSB 5438)	\$0	\$0	\$223,878	\$0	\$223,878
Sum	\$304,575	\$131,133	\$422,758	\$62,405	\$920,871

*Estimated distribution of cost based on 2022 ESD and UW survey interagency agreement. Estimated UW 2022 total cost is \$435,708.
**Since 2020, the cost for the Prevailing Wage and Employment Practice Survey increased by \$222,434, with those increased costs attributed to increased University of Washington and ESD staff costs, as well as legal fees

20



Agricultural and Seasonal Workforce Services ADVISORY COMMITTEE



Employment Security Department
WASHINGTON STATE

Next ASWS Advisory Committee Meeting

Thursday, August 18, 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