



Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Thursday, April 23, 2020

Time: 8:30 a.m. to 11:30 a.m.

Location: Skype meeting due to COVID-19

Committee members present

- Michele Besso
- Jonathan DeVaney
- Michael Gempler
- Rosalinda Guillen
- Rosella Mosby
- Delia Peña
- Erik Nicholson
- Ramon Torres

Committee members absent

ESD staff

- Dan Zeitlin
- Alberto Isiordia
- Gustavo Aviles
- Norma Chavez
- Tamara Johnson
- Rene Maldonado

Non-voting agency representatives

- Alejandro Sanchez
- Anne Soiza
- Todd Phillips
- Uriel Iñiguez
- Ignacio Marquez
- Dave Gifford
- Maggie Leland
- Jeff Killip

Summary

Welcome and Introductions

Employment Security Department (ESD) ASWS Director, Norma Chavez welcomed everyone and asked them to introduce themselves.

Agenda

Norma Chavez reviewed the agenda for the meeting and asked if anyone had any questions. There were no questions. (See Addendum I.)

April 2, 2020 Meeting Minutes

Norma Chavez requested that everyone review the April 2, 2020 meeting minutes and provide their feedback. Erik Nicholson made a motion with one small correction in a Hal Burton's name. Michele Besso seconded. Minutes were approved.

Governor's Office – Alejandro Sanchez

- Updates

NORMA CHAVEZ (ESD): I would like to give Alejandro Sanchez the opportunity to provide an update.

ALEJANDRO SANCHEZ (GOV): I sent an email that talked about childcare and isolation housing, I haven't heard remarks about either of those. We are looking at the co-pay piece of the seasonal childcare and how to deploy the remaining dollars. Our next conference call will include the importance of the centers being stood up. We are still working on the messaging campaign. There is a small grant program for outreach from private nonprofit partners.

ROSALINDA GUILLEN (CTC): Could you repeat again what you said about childcare? I would like to request that we discuss recording the meeting.

NORMA CHAVEZ (ESD): OK I will talk to Dan and our advisors thank you.

ALEJANDRO SANCHEZ (GOV): Working connections childcare federal program, the state has the seasonal childcare program that has left and that is typically used with a copay with ranges from \$10 to \$100. We are trying to temporarily suspend that copay for the program.

ROSALINDA GUILLEN (CTC): I have a question on the state seasonal program in the past we have found that program has been underfunded. Has funding for that program been increased?

ALEJANDRO SANCHEZ (GOV): Not to my knowledge, no.

ROSALINDA GUILLEN (CTC): It doesn't help unless we increase funding during this time.

ALEJANDRO SANCHEZ (GOV): Could you send me an email of your experience with this program as I am not familiar with it, I just learned about it in the last week.

ROSALINDA GUILLEN (CTC): This is a crisis and to have to keep proving repeatedly the lack of support for our farmworkers families is why we see 8-9-year-old kids in labor camps taking care of infants. It is very frustrating the time it takes to prove that people qualify.

ALEJANDRO SANCHEZ (GOV): I will check in on that for you. Two other quick items, we clarified that horticulture is part of the agriculture designation and we did open the disaster federal cash assistance program which will be managed by a DSHS application process.

MICHELLE BESSO (NWJP): I'm a little taken aback that we're not talking in more of an emergency mode about the planning for Eastern Washington rural communities and how we're going to handle the issues around COVID-19. How to prepare for and prevent more contagion in the farmworker community? Do any of us think it will work to leave it up to individual employers to take care of existing and then the thousands of workers coming up in six weeks, without coordination?

ERIK NICHOLSON (UFW): Could you tell us more about the cash assistance and how we can engage.

ALEJANDRO SANCHEZ (GOV): I can send you web link to the application process and funding program.

ERIK NICHOLSON (UFW): Much appreciated any information

ROSALINDA GUILLEN (CTC): What is the total dollar amount in the cash assistance fund?

ALEJANDRO SANCHEZ (GOV): I know it is in the many millions, but I don't know the actual amount. I could find out.

ROSALINDA GUILLEN (CTC): I guess I just want to make sure that there's enough funding. I'm interested to know how much the state has put into that cash assistance fund.

ALEJANDRO SANCHEZ (GOV): Ok

ROSALINDA GUILLEN (CTC): Ramon are you still on the line?

RAMON TORRES (FUJ) (*Interpreted by Rosalinda Guillen*): Ramon wants everyone to know he will be in and out of this meeting because he is just about to enter union negotiations this morning.

NORMA CHAVEZ (ESD): Thank you Ramon for joining us. We are going to move on to agency updates, I would like to start with Uriel Iniguez and Maggie Leland from L&I.

Agency discussion (COVID-19):

- DOH – Todd Phillips and Dave Gifford
- L&I – Uriel Iniguez and Maggie Leland
- WSDA – Ignacio Marquez
- ESD Policy, Data, Performance and Integrity – Dan Zeitlin

URIEL INIGUEZ (L&I): Maggie Leland will give you an update regarding emergency rules and Jeff Killip will talk about what DOSH is doing in outreach and communication to employers and workers.

MAGGIE LELAND (L&I): DOH and L&I have distributed a draft of emergency rule language for temporary worker housing. Both agencies, by statute, have joint jurisdiction and are directed to have joint rules. We have updated emergency rules to address COVID-19 and we are asking for feedback through Monday the 27th, please send comments to both emails L&I and DOH. The rules address education of workers and occupants of the housing, physical distancing requirements including separation of beds, cleaning and disinfecting requirements and actions needed related to both suspect and confirmed COVID-19 workers. We are targeting an adoption date of May 1st.

ROSALINDA GUILLEN (CTC): So, there are no rules on social distancing in the workplace?

MAGGIE LELAND (L&I): (L&I): L&I has existing rules that cover those issues and are enforceable under the current rules we have in place.

JON DEVANEY (WSTFA): The rules are for an emergency and would be effective for how long assuming they took effect on May 1st?

MAGGIE LELAND (L&I): They can only be in effect for 120 days. They can be renewed if efforts are taken under certain circumstances.

ROSALINDA GUILLEN (CTC): Could you give an example?

MAGGIE LELAND (L&I): One option could be looking to do permanent rule making that would adopt those requirements to be in place on a permanent basis when certain conditions are met. We are only looking at an initial adoption of the emergency rules that would be in place during the COVID-19 pandemic.

ERIK NICHOLSON (UFW): I'm curious the degree to which when the guidance conflicts with the rules which one prevails.

MAGGIE LELAND (L&I): Rules prevail.

ROSALINDA GUILLEN (CTC): To clarify the guidance you have out there and are enforceable are those guidance or rules?

MAGGIE LELAND (L&I): We have rules that require employers to do certain things. There are requirements around doing hazard assessments and then providing appropriate personal protective equipment based on those assessments. There are rules in both Washington and Federal OSHA that require employers to keep a safe and healthful workplace and to follow recognized standards in lieu of places where there isn't a rule currently possible. We have communicated, in light of the Governor's order, social distancing of 6ft is required and will be enforced.

JON DEVANEY (WSTFA): One of the things I noted for sleeping quarters, it talks about "other effective engineering controls if approved by L&I". Given the short turn around, how much staff capacity are you going to have to review any alternative measures that employers and housing providers want to discuss with the agency?

MAGGIE LELAND (L&I): We evaluate the issues as they come in and they will be prioritized.

JON DEVANEY (WSTFA): Would that be through consultation staff or someone else?

MAGGIE LELAND (L&I): It is through the technical services staff under normal circumstances.

JON DEVANEY (WSTFA): Clarifying the point of contact in the final document would be helpful.

RAMON TORRES (FUJ) (*Interpreted by Rosalinda Guillen*): Is there enough staff to enforce the rules when there is a farm that is not following the rules? Is there enough enforcement staff for the workplace rules? And if there are going to be any sanctions, what are those sanctions for the farms that are not following the rules?

MAGGIE LELAND (L&I): We have enforcement staff for DOSH that conduct workplace safety and health inspections. They have been getting a lot of complaints. The process is to review and determine whether the complaint requires immediate contact or a contact within a period of time. Depending on the complaint, a phone call to the employer asking what they are doing to address a certain issue and depending on that response there may be an onsite visit. Where the complaint alleges a serious hazard is happening at the time, then there will be an onsite inspection and if there are violations where there are WISHA citations issued there is a monetary penalty associated that can have various ranges depending on the type of penalty it is. The key part is we require there to be corrections of the hazard.

RAMON TORRES (FUJ) (*Interpreted by Rosalinda Guillen*): What is the length of time between the complaint being made and the sanction?

MAGGIE LELAND (L&I): It can vary by statute. The department has six months to complete the inspection. Inspections are usually done in less time, but it can vary. The inspectors are looking to identify what needs to be corrected and working with the employer to get the issue corrected while they are also trying to get the information together to get the sanction in place.

ROSALINDA GUILLEN (CTC): There's no change to this process, it is the same as it was before the pandemic started?

MAGGIE LELAND (L&I): The general statutory outlines of our authority are the same as before the pandemic started. What is different is how we are deploying our resources to make sure that we're figuring out how to best get them resolved in the quickest way because our goal is to ensure that where we can we have an employer correct the hazard.

ROSALINDA GUILLEN (CTC): Have you increased the number of staff?

MAGGIE LELAND (L&I): We have changed the way we are using staff as far as ensuring that we're getting the information we can to the inspectors, but we don't have additional inspectors. Certainly, as the workload has changed under this, where the inspectors are going out has changed.

ROSALINDA GUILLEN (CTC): To the committee and to Norma, I want a report of the changes that you are making in the way you are deploying staff since the 1st of March.

MAGGIE LELAND (L&I): The message that I'm trying to convey is that normally we have a set inspectors that would be going out and spending time doing complaint inspections, also doing inspections of fatalities and hospitalizations and some inspections that are more proactive from a scheduled list. Most of the inspections that are happening now are responding to fatalities and hospitalizations as well as responding to complaints that are coming in related to COVID-19.

ROSALINDA GUILLEN (CTC): I understand that, I would like to see a report of that.

URIEL INIGUEZ (L&I): Rosalinda is your question, are we going to be able to respond in a timely manner to the complaints and investigate them? Is that what your concern is?

ROSALINDA GUILLEN (CTC): Yes, because as a committee without seeing a report of what the resources are and how they are being used we can't make any recommendations to prepare for future crisis. I am concerned, because as you all know this is the reason this committee was formed. It never worked to the extent of really providing the health and safety that farmworkers need in the workplace. The reason that we wanted emergency rules is because of those reasons. The farmworker population is vulnerable to this disease. We want to work with everybody to try to set up processes that will support future crisis like this. We need these recordings of the minutes, none of the nuances of why we're doing this work is reflected in the minutes. We are feeling it urgently because we are hearing from farmworkers what is happening.

MAGGIE LELAND (L&I): I have to tell you that L&I staff are working day and night on COVID issues. We are hearing the same thing from first responders and hospital workers. I just want to convey we are

doing all we can, we are working, and our mission is to protect workers and to help employers and to ensure workers have their benefits when they need them. We hear you and if you aren't hearing the urgency in our voice it's probably because we're working on these issues' day and night.

ROSALINDA GUILLEN (CTC): This is exhausting for all of us. However, what goes down on paper for rules and policies makes a difference for future issues and that is why I want to make sure we track this the best that we can so that we can make improvements. The way that the system worked prior to the pandemic was such that we weren't satisfied with it; farmworkers weren't adequately being protected. That is the whole point of these meetings, to try to improve things.

JON DEVANEY (WSTFA): I understood from the response from L&I staff that the way it was phrased to request that sounded a little daunting to be tracking the ways staff are allocated. I don't imagine that you allocate staff based on industry, so much as you allocate some specific purposes and they respond to inquiries or complaints. Because so much of the economy is shut down, I imagine that by nature you are responding primarily to complaints and concerns about workplaces that are essential and are still operating. I don't expect you're getting a lot of calls to close salons and restaurants, for example. So maybe rather than asking for background information on how you're deploying your staff if you could maybe give the committee some information by industry about the kind of complaints or investigations that you're responding to and compare and contrast that with prior years. It might show if it is tagged by the industry that you're conducting inspections. It might be easier to pull a quick data search. I just get the sense that you're not able to provide information in the way that it was asked for, is that correct?

MAGGIE LELAND (L&I): Yes, I just want to make sure that I'm not also giving impressions that I didn't mean to give. I'm not in our safety and health division, you're getting this information based on what I know from a more enterprise perspective. I do know Anne talked last meeting about the six months' worth of complaints in the past month. We can get data on that for the next meeting.

JON DEVANEY (WSTFA): That would be really helpful and I know that for farmworkers and H2A workers which is part of the purview of this committee that L&I did some more targeted inspections two years ago to employers and I had sent the message to Dan Zeitlin asking if that data can be recaptured and reported back to the committee. I think there was a report generated but I can't lay my hands on it, so that we have a baseline for the level of compliance and the kind of violations that, if there were any, that we may have seen in the past so that we can compare. Is there a compliance problem during this crisis, or has it gotten worse as a result? I think having some context for that data when we look at it would be helpful, as well. I know that you all are under a huge workload right now but as we're trying to give you advice, I think it would help for us to have this data.

ROSALINDA GUILLEN (CTC): My concern is adequate resources and attention being put towards farmworkers complaints? To the extent that you can show that in a report. Every industry in the state of Washington is pushing hard for protections for their workers just like we are, and I know that that is difficult, but we are going to push.

NORMA CHAVEZ (ESD): Maggie and Uriel, I think we have a request of the past report that goes out every year and the current information that goes by industry would be helpful. If you could provide that by the next meeting.

ERIK NICHOLSON (UFW): We would find it helpful, without disclosing any additional information, just the number of citations that L&I is issuing based on the guidance that you shared with us in the fact sheets. Just what those citations are and how many your issuing in each period I think would be extremely helpful.

NORMA CHAVEZ (ESD): I think we want to move on. If anybody has comments on the factsheets provided by L&I, please send comments or questions, directly to the agency.

MIKE GEMPLER (WGL): One more time, you can, will, and have been citing people for violations of the mandatory sections of the factsheets, correct?

MAGGIE LELAND (L&I): I will say that we have been inspecting to it. I don't know any outcomes because I am not privy to that information.

MIKE GEMPLER (WGL): But that is the intent, right? Thank you, I just wanted to make sure.

ROSALINDA GUILLEN (CTC): So, we are going to see that in the data you pull.

MAGGIE LELAND (L&I): I will ask for the data to be put together and shared.

NORMA CHAVEZ (ESD): We want to move on to Department of Health with Todd Phillips and Dave Gifford.

TODD PHILLIPS (DOH): We don't have a lot to add beyond what Maggie has described with the emergency rule making. Michele and Rosalinda had asked about the crisis, and we hear you this is a crisis. We're working with appropriate DOH staff to make sure there's awareness and make sure the unified command is aware of what we are working on. So, the overall response is aware. I appreciate you bringing it up.

MICHELE BESSO (NWJP): Not exactly, but I didn't know if this was the appropriate time and I know I was maybe a little bit hasty before in my wanting to discuss the urgent need for coordination and preparation that would take more than rules, that would take concerted testing, involvement of health providers in the training of workers, in figuring out solutions to grocery shopping, and to transportation. I see a huge need for there to be a more coordinated approach. We have many cases popping up in existing workforces and that's going to be a challenge. We see outbreaks in warehouses and now we're going to be bringing in thousands of people to be living in these congregate housing facilities. I don't see, given the kind of contagiousness of this virus, the kind of response that I think is going to be needed. I mean if we're leaving it to individual growers and providers to figure out housing, figure out how they're going to train the workers on disease prevention. Last Sunday - Walmart a bus full of workers drove up in Yakima and released 50 workers to go shopping at Walmart. Are we going to be able to prevent further contagion with these steps or do we need another approach?

MAGGIE LELAND (L&I): I think part of the problem is that the right people are not on the call. The staff that are on the call from DOH are the housing staff and the staff that are on the call from L&I have a unique role in this. We are just part of the role. We are prepared to talk about how we do think moving to more proactive steps around education outreach would be helpful right now. Jeff Killip is on the line from DOSH and we would like to talk about how to get together on training materials. We do want to move forward with those types of things and we do have a sense of urgency on it. I'm not sure if overall and when you talk about the public responding to this public health crisis, we don't have the right people in the

room to talk about testing and coordinating. I will say there are enforcement activities going on and it is coordinated with both state and local health departments. There is work being done and there is coordination. I'm not sure we have the right people in the room to outline that for you.

ROSALINDA GUILLEN (CTC): So how can we get the right people in the room for testing and health care?

URIEL INIGUEZ (L&I): I think that will require the Governor's office in order to get that kind of coordination.

MAGGIE LELAND (L&I): There is an email distributions list that comes from Central Command at Camp Murray. There is a large structure in place for how that is going on and there are daily briefings and all sorts of things going on and so trying to make that fit into a committee like this is I think is a challenge.

ALEJANDRO SANCHEZ (GOV): That is true, the EOC emergency operations center is all at Camp Murray. We can get you information and there might be somebody that can speak to that from an internal point of view. I can look at that and try to get somebody. Our Governor is asking for more testing all the time. I don't know what to say about that beyond we have an entire division actively working on it.

MICHELE BESSO (NWJP): I understand there are a lot of people working very hard. I feel like it's very reactive that once there's an outbreak, there is a response. Maybe I'm wrong on that, and I'm very relieved if it turns out that people are really thinking ahead and coordinating how to handle the H2A workers that are all arriving in the next six weeks. I'm convinced that in six weeks we're going to be here with thousands of people here, the growers saying where are we going to house these people because you're not letting us use put as many people in the housing as we need, we now need to put them all in tents and there's 100 people in each place that have COVID-19. So, what are we supposed to do and how are we going to handle this? We should have tested everybody at the very beginning and maybe we should be bringing up fewer because we don't have housing for them.

IGNACIO MARQUEZ (WSDA): The Washington State Department of Agriculture, as many on the committee know, really has a very limited role in worker safety or the health of people in the workplace. We mostly do food safety, and it's only when workers use pesticides that we get into the worker protection standards. The director has asked me to look into options for farmworker housing. Just anticipating that these rules would limit the number of workers that can stay in one facility. This applies not just to H2A workers, but to all farmworkers that are living in housing that's provided by the employer. I am working with other state agencies to try to figure out where are the resources and what are some options to place farmworkers in anticipation that these rules are going to go into effect. It's been a struggle because it's hard to figure out exactly where the housing will be needed and how to transport those workers from one location where they may be living, to the work site, in a fashion where they are still social distancing. I would like to say that we're getting somewhere but it's just been very challenging trying to find the resources and even when we find the resources trying to figure out exactly where are these workers going to be. Where can we place them, what are some options whether it's a voucher system, finding apartments or using motels and hotels? Housing facilities are in rural areas or remote areas where it's very unlikely that we would find a hotel or motel nearby. I will continue working at it, I am working with several agencies on this and the emergency operations center, but we still have a way to go. I know that doesn't respond to all your concerns because there is also a concern about not having enough test available to test every single worker out there.

ROSALINDA GUILLEN (CTC): I just want to go on the record and I want to make sure this goes in the notes, to me the sign that shows there is a structure that has been created to bring in H2A workers and to protect farmworkers in general for these kinds of crisis does not exist in the state of Washington right now. And that it is part of this committee's responsibility to investigate fixing that problem because everything that I'm hearing is an infrastructure that does not accommodate common sense guidelines or behavior towards this type of pandemic.

NORMA CHAVEZ (ESD): Thank you for your comments Rosalinda and thank you Ignacio from Department of Agriculture for adding some of the work that your agency is doing on housing.

MICHELE BESSO (NWJP): I'm impressed with what L&I is doing and how they're responding. I think Department of Health is doing the best they can. I'm glad to hear Ignacio. It's not that I question that individual agencies are doing what they can within their powers, within their resources, within their authority. From where I'm sitting, given the contagion, I don't see it meeting the reality of the next two months. I don't think we're able even to stop the contagion in the warehouses, I don't understand how we're going to stop it in in these situations with bringing in people who are being bused, who are living in congregate housing and with so many different employers. Some of whom are sophisticated and will figure out how to do some of these protective measures, but we know they can't because one reason we have this committee are all the problems that have flared up over in the H2A program with the lack of oversight. The fact is that some employers follow the rules, and some do not. In this pandemic leaving it to each individual employer to figure out how to do this and how to protect these people. I don't know how we are going to get there in the next month when agriculture is really ramping up.

ERIK NICHOLSON (UFW): On Sunday I'm going to go over to Pasco and just watch the buses come in with H2A workers. Assuming I'm going to witness a similar event that Michelle talked about in the Yakima Walmart with 50 workers on the bus all getting off at the same time, all entering the store. Who do I call to file a report and what guideline or rule do I file a report of a violation of the social distancing guidelines or rules?

MAGGIE LELAND (L&I): If you want to file a report that an employer provided transportation without social distancing that would be filing a complaint with L&I via the 800 number.

ERIK NICHOLSON (UFW): I just don't see that covered in the factsheet. I just want to be very clear when whoever takes the call when they asked the basis of my complaint that I can be very specific.

MAGGIE LELAND (L&I): The factsheets talk about the need for social distancing. We are getting out a factsheet on temporary worker housing that would include information on the transportation that it is still an expectation. That is all that would need to be said. Employers are required to implement an effective social distancing plan.

MICHELE BESSO (NWJP): How are you going to find out which employer's workers they are since the buses are not labeled?

ERIK NICHOLSON (UFW): I speak Spanish, we'll figure it out.

ROSALINDA GUILLEN (CTC): That's the problem, you can do that but not everybody can do that.

ERIK NICHOLSON (UFW): If L&I wants to have an effective enforcement action, Sunday at the grocery stores.

MIKE GEMPLER (WGL): What about enforcing social distancing at the stores? Is anybody doing that I mean some stores are limiting and taking great pains to mark social distancing to mark out lines.

MAGGIE LELAND (L&I): And yes, we do that as well. We have a grocery store factsheet that talks about social distancing requirements and we work with the industry associations and unions as well and are dealing with the same issues.

ROSALINDA GUILLEN (CTC): Are the workers getting off the bus and going into the grocery store, being monitored inside the store?

MAGGIE LELAND (L&I): It is the stores responsibility to make sure their employees are socially distanced. We are all responsible for ensuring we are socially distancing.

ROSALINDA GUILLEN (CTC): Is the phone number to call to complain on the factsheet?

MIKE GEMPLER (WGL): There is an 800 number on the bottom of the first page.

URIEL INIGUEZ (L&I): If you see something please call us. That is information that we need in order to respond.

MICHELE BESSO (NWJP): I guess I want to ask Jon and Mike do you think that with these regulations that the employers are equipped to handle the H2A workers coming in. I guess I am just wondering do you guys think we need more coordination.

JON DEVANEY (WSTFA): It depends on what you mean by coordination. Employers are taking this very seriously and understand that these are serious obligations that they have to ensure the safety of their workers in the community or they wouldn't be concerned about the content of those factsheets that have come out because they understand them to be binding That they are mandatory. If they weren't taking it seriously, they wouldn't care about what is in them. I think that they are taking steps to make sure that these safety measures can be implemented. I think this is an ongoing response that our entire state and society are dealing with so I don't want to overpromise that yes that it's all handled. But I think that it is not the impending disaster that you are painting it to be.

ROSALINDA GUILLEN (CTC): Ok, can that go on the record?

NORMA CHAVEZ (ESD): Noted Rosalinda.

DELIA PENA (ZFC): Some of the things that we have been doing to try to get ahead of this, and we obviously don't have any H2A onsite we are reaching out to different vendors in all of the different counties that we have our H2A housing and asking what are the different options we do have when it comes to online shopping or curbside pickup or something to where we are not having busloads of workers. We are looking at how we can minimize exposure for the workers as well as seeing if there are other options for check cashing.

MICHELE BESSO (NWJP): Luckily Zirkle has more resources to do that and I salute you for doing that. What I am seeing is I don't think individual growers are all in a position to figure out all these issues about how they are going to get food, banking services, etc. Are we really thinking that each of these people are going to figure this out individually and make it work, without creative collaboration? If Zirkle figures it out, how are all the others going to find out about it, how is that information going to get to all the others who could use the same processes. It is going to take a different way of paying people so that they can maybe prepay for curbside pick-up. These are the practical issues I see, and they are not all members of Jon and Mike's organizations.

DELIA PENA (ZFC): We have had DOH reach out and ask survey questions. That is based off everyone that has filed applications and not necessarily part of an association. Maybe a quick guide or frequently asked questions, what are my resources, what are my other options in getting people to cash checks, what are the other options or payroll cards. Which services offer online grocery shopping. There have been some locations of stores that has said we will reserve some special time when your group can come in and go shopping. Growers must reach out to the stores they know they frequent and ask. If the answer is no, move on to the next store.

ERIK NICHOLSON (UFW): I appreciate that, and I think the challenge we have is not all growers are as forward thinking as you all are. We know that there are growers in our industry that are violators of the rules and regulations we would hope that the Growers League and Tree Fruit Association would hold each other accountable. Our supply chains are only as strong as the weakest link. We're watching with horror what's going down right now at Tyson and other cases now sprouting up in surrounding agricultural areas. That we strongly believe are a direct result of worker exposure impacting family members of Tyson workers. We need your help to hold them accountable and not let them continue to get away with impunity in the middle of the pandemic.

NORMA CHAVEZ (ESD): I think for the sake of time we've had this conversation and thank you for everybody's comments and things to think about. Moving forward I think there's been some comments before to take this conversation on with additional parties beyond those in this meeting. I think it's been mentioned before, clinics, health districts, to try to make some of those suggestions. I know Alejandro has mentioned maybe a committee outside with the governor's office, is that something that could happen moving forward?

ALEJANDRO SANCHEZ (GOV): Potentially, we were looking at that. We will look yes.

NORMA CHAVEZ (ESD): I would like to transition to Employment Security and Dan Zeitlin.

DAN ZEITLIN (ESD): I am putting on my policy director hat to provide an update to everybody on where we are in the world of unemployment, then I can put back on my committee chair hat. I sent, at Michele's request, some information last week about what we're seeing in terms of unemployment insurance claims in the agriculture industry. When I sent that data earlier in the week, I noted that we had around 3800 workers in the agricultural industry that had applied for unemployment insurance; 82% of those are eligible and of those, 82% of them are paid. So, at the time of my email about 2600 workers in the agricultural industry had been paid unemployment benefits and around 543 had issues with their claim. Since then, we launched the Pandemic Unemployment Assistance Program. This is the program authorized and funded by Congress to cover individuals who are not eligible for regular unemployment insurance. Those would include individuals who do not have the necessary hours in the last year and a half of work to qualify for regular UI. We launched that program on Sunday. If the committee is interested as we get data,

we can provide data about both regular UI and PUA. Whether agriculture workers or otherwise, we have a very large view of individuals who have issues with their claims that needed need to be adjudicated. That is tens of thousands of people who have issues with their claims that have not been resolved. We are doing a variety of things to try to get through that queue as soon as possible to get claimants regular UI benefits those benefits or PUA benefits if they are determined ineligible. We do know in some of those cases that it is errors with applications and, Spanish speaking and English as a second language applicants have challenges so we're trying to address those issues.

At the end of the day we have an historic amount of UI claims coming in the hundreds of thousands per week.

JON DEVANEY (WSTFA) You said there were about 18% of unemployment claims have been denied because of problems. Were those application errors or was there some fundamental ineligibility issues?

DAN ZEITLIN (ESD): Those are 17% of those that have issues and have not been paid and they need to be adjudicated. When an individual files a claim, they may go through cleanly, the employer doesn't dispute it, they get paid quickly. That 18% or 543 cases at the time my email, are in the adjudication queue. So, it's hard to say what the issue is, other than that it needs to be resolved. It could be anything from they made an error on their application and it didn't go through, to not enough hours/wages in the system and therefore they might qualify for PUA, or an employer is disputing it. They are in a queue of tens of thousands of cases we are trying to work through. We're looking at some common issues that they might have. When it looks like a common issue really pertaining to the circumstances were in an economic shutdown, we are trying to clear those out in a batch way, but for a lot of these we need to go into each individual claim. It varies claim by claim.

MIKE GEMPLER (WGL): What's the normal level of UI applications in agriculture for this time of year?

DAN ZEITLIN (ESD): I would have to check. Our peak season is October to March so at this point we are out of that peak season that we see year over year. I can say for a general perspective we had roughly 6000 claims came in the week before we really started to feel the effects of the crisis. Since then we have had over 100,000 initial claims each week not to mention the weekly claims that follow that each week. Between March 8th and when we launched PUA this week. I can do a year over year data query and see how that compared to last year. I will do that and send it out to the whole committee.

MICHELE BESSO (NWJP): I was wondering about the Spanish on the website for being able to apply to the PUA. I had heard yesterday there were problems in terms of the information about how to apply.

DAN ZEITLIN (ESD): Do you mean general problems or Spanish problems? If you or others on the committee have suggestions on getting the information that these claimant need in Spanish that would be appreciated. I know we can put as many factsheets on a website or do as many webinars if we can or do things on social media and it can still be a challenge to get claimants get the right information to help them get through an application process.

NORMA CHAVEZ (ESD): We have been working with communications to get more second language information out and if there are claimants that you can indicate are having issues just give me a holler. I have had claimants that I've been able to assist with their claims.

DAN ZEITLIN (ESD): That is a very good suggestion Norma.

NORMA CHAVEZ (ESD): Part of it is the queue, where they just have a question or two. We can resolve that issue pretty quick it's just a matter of knowing who they are.

BREAK 10:05 – 10:15

DAN ZEITLIN (ESD): The ASWS office was established to provide enhanced administration, oversight, education and technical assistance related to the H2A program. This committee was established to provide advice as that office was stood up and that office does have a critical role to play in responding to the COVID-19 crisis.

At the same time, it is also true that this forum may not be the best to address the myriad of health and safety issues that agricultural workers and businesses face. We at ESD are working with the committee and with the governor's office to find other venues with a broader group of stakeholders at the table and a more diverse set of agency officials. These are challenging issues that touch on things that go beyond the scope and ability of the agency representatives at this table to address. I think that it is evident that everyone including the agencies and everyone at this table are doing all they can to address extraordinary challenges that we all face. Ultimately the ASWS office and this committee were design and funded in a pre-COVID-19 world and I think it's important that we get back to a discussion focused on this office, understanding how it is funded, understanding and agree on what the mission is and what we can and should do in coordination with our agency partners to manage the H2A program. Including acknowledging the dynamics that now exist in a COVID-19 world.

For the next part of our agenda we are going to turn things over to Norma and the office itself. We think it is important to for everybody to get a baseline understanding of what federal funds are available to us, what we can do with those funds to address some of the issues that are now more front and center due to COVID-19 and then what else is needed for this office and other agencies looking to best administer a program and provide the needed oversight, education, and technical assistance.

NORMA CHAVEZ (ESD): I think it is important that we're all discussing COVID-19 issues and how it affects employers and workers in the agriculture industry. The last four weeks you know have shown and everybody is trying to work together they're just limitations with some of the policies and laws that we have at this point. I want to give credit to those who are really trying to change those policies and rules and to the people who are asking questions and pushing. I can see the passion and the vested interest that everyone has in this work.

We left off back in March with the foreign labor certification process, with applications to USDOL and how they work with the housing portion for precertification with Department of Health. There are three staff members doing that work currently, CaraMia Stearns-Vance, Ana Alcalá-Rodríguez, and Petra Meraz. Rene Maldonado, Washington State Monitor Advocate also joined our team. Tamara Johnson is our Administrative Assistant.

We are moving forward working on compliance staff to begin to recruit. It has been sort of difficult with some of the requests we've had in relation to COVID-19, but we want to start on that transition. We think that if we start with some compliance staff, we will be able to do some field checks, provide information and guidance to employers. Facilitate the transition of complaints as to what the agency would need to look at to address those types of concerns. We do see a great benefit in moving forward on staffing with compliance throughout the regions. It may be difficult with some of the issues we have still with COVID-19.

JON DEVANEY (WSTFA): You talked about some of the staffing is that a fully staffed situation now or are you still planning to move additional personnel into the office.

NORMA CHAVEZ (ESD): As far as hiring, the next stage would be recruiting for staff to do compliance. We would be hiring in the Wenatchee, Omak, Moses Lake and Yakima.

IGNACIO MARQUEZ (WSDA): I may have missed this, but did you talk about any type of training for employers on how to negotiate the H2A program to make sure that they understand what the requirements are for submitting their applications on time, with no errors.

NORMA CHAVEZ (ESD): Our foreign labor certification staff can do that even more now because we are fully staffed with three people. We can facilitate employers with the process.

MICHELE BESSO (NWJP): Is part of the training also how to maximize recruiting workers at the local level?

NORMA CHAVEZ (ESD): Yes, we are training the offices. Now that we have a little more bandwidth, we have been able to start conversations with the different regions. I will now hand things over to Alberto for the Foreign Labor Certification Grant overview.

ESD – Norma Chavez & Alberto Isiordia

- ASWS Office Update
- FLC Grant

NORMA CHAVEZ (ESD): I will hand over to Alberto for the Foreign Labor Certification Grant overview.

Alberto Isiordia presented on Foreign Labor Certification. (See Addendum III.)

ROSELLA MOSBY (MF): Is this the only grant utilized for the program? Are there other grants you utilize for say field visits or do you seek out other grants?

ALBERTO ISIORDIA (ESD): The other grant that is used to fund some of our activities is the Wagner Peyser grant. I would say that is the 2.0 version of this conversation. To answer your question this is a key grant, but this is not the only grant.

JON DEVANEY (WSTFA): I've had a number of conversations with DOL about their allocation formula as well as with the members of Congress on how we can work to get this improved. I was back in DC in March and I had a conversation with Brian Pasternak. I was talking about the need for more funding for Washington and he thought that was interesting because Washington didn't use its full grant last year and returned money. Can you provide more information on why?

ALBERTO ISIORDIA (ESD): I'd like to look at that because it does not align with my knowledge. I am aware that in past years we were having internal issues with not charging appropriately. My understanding is that's been fixed over the last couple of years so, I will follow up with you.

JON DEVANEY (WSTFA): Thanks, I was making a very strong case that we desperately need more money and I felt a little embarrassed at that point.

ROSALINDA GUILLEN (CTC): I would like to see a similar report on the funding for recruitment and the oversight of complaints.

ALBERTO ISIORDIA (ESD): Noted we will add that as an action item.

MICHELE BESSO (NWJP): We probably need to know what is the actual cost of these activities.

ALBERTO ISIORDIA (ESD): I know in the past in grants submissions we were communicating more closely what we thought our costs were however, even then there were certain things that we were not including. I think this is an area we will need to dive into further in the budget.

JON DEVANEY (WSTFA): We should probably get information on the foreign labor certification and how much ESD is getting for Wagner Peyser and where those dollars are going and how much additional funds are available to use.

ALBERTO ISIORDIA (ESD): We will be looking to prepare that for our future discussion.

ROSELLA MOSBY (MF): Is there any chance we can request getting a better price for the survey? Putting it out for bid, rather than settling on the University of Washington each time.

DAN ZEITLIN (ESD): Alberto, can you speak to the history of the survey.

ALBERTO ISIORDIA (ESD): Gustavo you are probably more prepared to answer that question if he's on the line. He's worked closely with the University of Washington.

GUSTAVO AVILES (ESD): Back in 2000 is the last time that we analyzed survey results in house. We used to have a survey unit but the cost of having it in house was very expensive. Washington State University conducted the survey for us, and they did it for one year. I don't remember the exact numbers, but it was higher than what we are paying right now to UW. WSU was having some problems when it came to security of the data and in following the guidelines and specifications of how the survey should be conducted. The following three years we asked the University of Washington to do the survey for us. It's been in the books and we're hoping that this year we will try to set up a request for proposal or investigate other universities or state agencies to see if they can conduct the survey for us. We started conversations with Western Washington University, but because of COVID-19 we haven't seen another cost estimate. The main concern we have is the security of the data and there are certain policies that need to be followed and, so far, we haven't found an entity that would be able to meet those requirements.

ROSELLA MOSBY (MF): How much does that survey typically cost?

GUSTAVO AVILES (ESD): The estimated cost for this coming year it goes is \$400,000, just doing the survey administration. Last year I believe it was \$390,000, just the administration. That doesn't take into account the time staff use in analyzing the data and preparing the sample. That is something that we can prepare, and I can send it to you. I believe we've been tracking this for about 3 years very closely and one thing that I want to clarify is it is not just the employer survey that with the University is administering, but

also the workers survey. The worker survey is supposed to validate the responses that we get from employers.

My staff coordinates that with MSFW outreach specialists, and we bring in the University of Washington staff to do the interviews. For this survey we need bilingual interviewers, usually Spanish speaking, interviewers and in addition to that field work we also have a sample of 8000 workers that we try to reach by phone.

ROSELLA MOSBY (MF): Do you have a percentage for participation for the 8000 workers?

GUSTAVO AVILES (ESD): In the case of 2019, we have it on our website. I will send a copy out to the committee. Last year the survey cost for the University of Washington administrating all the surveys was about \$390,000. That does not include staff time. The response rate when it comes to employers has not changed that much. The University of Washington also has the web survey, but we tried to contact employers three times which is a best practice for surveys.

ROSELLA MOSBY (MF): I just want to clarify there's no other contractor other than whatever University you are hiring and your staff time working on this survey. The other questions that I would like answered is the actual percentage number of participation responses from employers and responses from workers. I'm just wondering about the percentage of involvement within actual outreach and direct phone calls.

GUSTAVO AVILES (ESD): I'll provide you the response rate that we get on the surveys. You talk about the overall cost of the survey collectively and where we're getting value for money on the two surveys and whether they are priority. I'm about to present the estimated cost that we got through the University of Washington last year in the contract do you think that that's something we can share now?

DAN ZEITLIN (ESD): Let's share it at a future meeting. Can you repeat how you engage workers from that survey is using a phone or is that just for employers?

GUSTAVO AVILES (ESD): There are two main survey's right now the employer and the worker. The survey of 2019 sample size on the employer survey it's about 3800 and the worker survey it's about 8000 plus the voluntary interviews that we get during those two weeks during cherry and apple harvest. For the employer survey we use web, phone, and mail. We start with a postcard to the employer inviting them to respond to the survey through the web if we don't see enough responses, then we start calling them. In the case of the worker survey there are two types of contact, web and phone, they are more likely to respond by phone. The field survey is mostly in person we are conducting the survey during their breaks or after or before they start working. We also going to housing, daycare centers and other places where workers may gather.

DAN ZEITLIN (ESD): Who is the we when you say we?

GUSTAVO AVILES (ESD): My two staff and there are at least four from the University of Washington.

DAN ZEITLIN (ESD): We have three buckets of money. We have the Foreign Labor Certification Grant. The Wagner Peyser grant, and that funding can be used for the survey work, for fields checks and everything else. What we would like to do with the next presentation is explain Wagner Peyser. Lastly, the legislature provided us about \$3.5 million over two years; that funding is tied to Norma's position and staff hired in the office.

NORMA CHAVEZ (ESD): Technical assistance and education is going to be a large part of starting a compliance unit with employers.

Closing comments

DAN ZEITLIN (ESD): I would like to go around for closing comments.

MICHELE BESSO (NWJP): I appreciate the need for this committee to pivot giving a hard look at the ASWS and recommendations. I would encourage our group to continue the conversation in a different forum about how to make proactive planning with a larger group of stakeholders including health providers on the safety of farmworkers including the H2A workers under COVID-19.

JON DEVANEY (WSTFA): I think we do need to focus on the H2A and program management issues that this committee was created for. There are plenty of COVID-19 issues and I'm not entirely sure how to handle those given the agency stakeholders are restrained by pending legal action from engaging in this process.

MIKE GEMPLER (WGL): I'm interested in knowing when the agencies anticipate finalizing the emergency rules, because I know that substantive discussions on the regulations and interpretation of those regulations can't begin until then. When do you anticipate having these finalized?

MAGGIE LELAND (L&I): We're looking at a May 1st filing date.

MIKE GEMPLER (WGL): I think on the funding and operation of the program. We really need to work at being as efficient as possible in the administration of the program and the cost of the survey. I look forward to continuing to work on that

ROSALINDA GUILLEN (CTC): I continue to be extremely concerned for the wellbeing and the life of farmworkers and agricultural industry under the COVID-19 pandemic. I agree we need to look at this structure of this H2A program, that is what this committee was created for. The big challenge for us is how we blend this pandemic into creating an efficient program that also ensures the wellbeing of farmworkers.

ROSELLA MOSBY (MF): You know we are entering a season unlike any other. I want to reiterate what I've been saying this whole time I do believe that we are all shaking in our boots as to how we're going to balance all aspects of the situation. I do appreciate ESD refocusing their efforts on getting data for the report.

ERIK NICHOLSON (UFW): NO ANSWER

DELIA PENA (ZFC): NO ANSWER

RAMON TORRES (FUJ): NO ANSWER

URIEL INIGUEZ (L&I): Please continue to call the 800 number to report issues. Leave messages with the address so we can respond appropriately to the concerns.

TODD PHILLIPS (DOH): I just appreciate everyone continuing to work on this.

DAN ZEITLIN (ESD): We will circle back with Alejandro with the idea of bringing a larger group of stakeholders together to discuss needs in terms of health, safety and other COVID-19 issues. We're going to hold our next committee meeting on Thursday May 7.

Action Items

- Determine if meetings can be recorded.
- Report from L&I/DOH on use of staff for agricultural complaints.
- Request for separate stakeholder/agency meeting around COVID-19 issues.

Agenda Items for Next Meeting

- Domestic Worker Recruitment & Referral
- Domestic Worker Verification Process
- ASWS Report to Legislature

Public Comments

Joe Morrison – Columbia Legal Services

Dan Fazio – Wafla

Adjourned

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 11:33 a.m.

2020 Meetings

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

- **May 7th, 2020 – 8:30 a.m. to 11:30 a.m.**
Skype Meeting

Addendums

ADDENDUM I



Agenda

Agricultural and Seasonal Workforce Services (ASWS)
Advisory Committee

Thursday, April 23, 2020 | 8:30 am – 11:30 am | SKYPE

Agenda Items

TIME	TOPIC
8:30 am	Introductions <ul style="list-style-type: none"> Welcome from Dan Zeitlin, Director, ESD Policy, Data, Performance and Integrity Division & Norma Chavez, Director – Agricultural and Seasonal Workforce Services Agenda Review
8:35 am	Approval of April 2, 2020 Meeting Minutes
8:40 am	Governor’s Office – Alejandro Sanchez <ul style="list-style-type: none"> Updates
9:00 am	<u>Agency discussion (COVID-19):</u> <ul style="list-style-type: none"> DOH – Todd Phillips and Dave Gifford L&I – Uriel Iniguez and Maggie Leland WSDA – Ignacio Marquez ESD Policy, Data, Performance and Integrity – Dan Zeitlin
10:00 am	BREAK
10:10 am	ESD – Norma Chavez & Alberto Isiordia <ul style="list-style-type: none"> ASWS Office Update FLC Grant
11:10 am	Discuss next meeting agenda
11:20 am	Public Comments
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



Foreign Labor Certification (FLC) Grant Overview

April 2020

BACKGROUND

The Department of Labor publishes an annual Training Employment Guidance Letter (TEGL) that provides grant planning instructions to all state workforce agencies. [TEGL 14-19](#), issued on April 13, 2020, provides Employment Security Department (ESD) the most recent instructions. While TEGL 14-19 remains under review, it appears to align significantly with [TEGL 21-18](#), issued in May 2019.

As part of the May 2019 grant planning instructions, ESD was required to provide:

- A summary of workload associated with the number of H-2A and H-2B job orders processed, the number of housing inspections conducted, the number of prevailing wage surveys and the number of prevailing practice surveys conducted.
- Assurances and responses to questions associated with conducting H-2A and H-2B related activities.
- A schedule of prevailing wage and practice surveys to be conducted along with a breakdown of costs to be incurred by the contract with the University of Washington.
- Support documents including our Memorandum of Understanding with the Department of Health (DOH) and the Department of Labor & Industries.

The 2019 \$400,000 grant award amount was disclosed by DOL to ESD at the beginning of the grant application process. This was a change when compared to previous years, when grant amounts were disclosed after all states applied. The following table provides a summary of FLC grant funding for the last five years.

Fiscal Year	Amount
2019	\$400,000
2018	\$450,000
2017	\$237,354 and a supplemental allocation of \$325,000
2016	\$179,907
2015	\$179,907

FEDERAL GRANT FUNDED ACTIVITIES

The following activities are allowed and funded, to some extent, by the FLC grant:

- Reviewing and processing employer H-2A and H-2B applications as required by [20 CFR 655.121](#) and [20 CFR 655.16](#);
- Coordinating with the State Department of Health and State Department of Labor & Industries to ensure temporary housing used for the H-2A program is inspected and licensed in compliance with local, state and federal regulations including those described by [20 CFR 655.122\(d\)](#);
- Stakeholder engagement and outreach activities;
- Conducting agricultural wage and prevailing practice surveys to satisfy conditions described by [20 CFR 655.120](#); and
- Conducting field visits and checks as federally required by [20 CFR 653.501\(c\)\(3\)\(vii\)](#) and [20 CFR 653.503](#), respectively.

While some of the FLC grant is intended to fund survey work, field visits and field checks, the grant instructions only allow for up to 20% of funding (\$80,000 in PY 2019) to be allocated for those activities.

Employment Security Department

BRIEFING PAPER**OTHER REQUIRED ACTIVITIES**

DOL requires states to conduct several activities in support of FLC programs that extend beyond the FLC grant. The following required activities are not funded by the FLC grant:

- Recruit domestic workers for employers seeking to use the H-2A and H-2B programs as required by [20 CFR 655.121\(c\)](#) and [20 CFR 655.16\(d\)](#);
- Process complaints as federally required by [20 C.F.R. Part 658, Subpart E](#).
- Administer the discontinuation of services when employers are found to be out of compliance with an H-2A/H-2B contract or employment-related law as required by [20 C.F.R. Part 658, Subpart F](#).

ESD FLC GRANT ALLOCATION CONCERNS

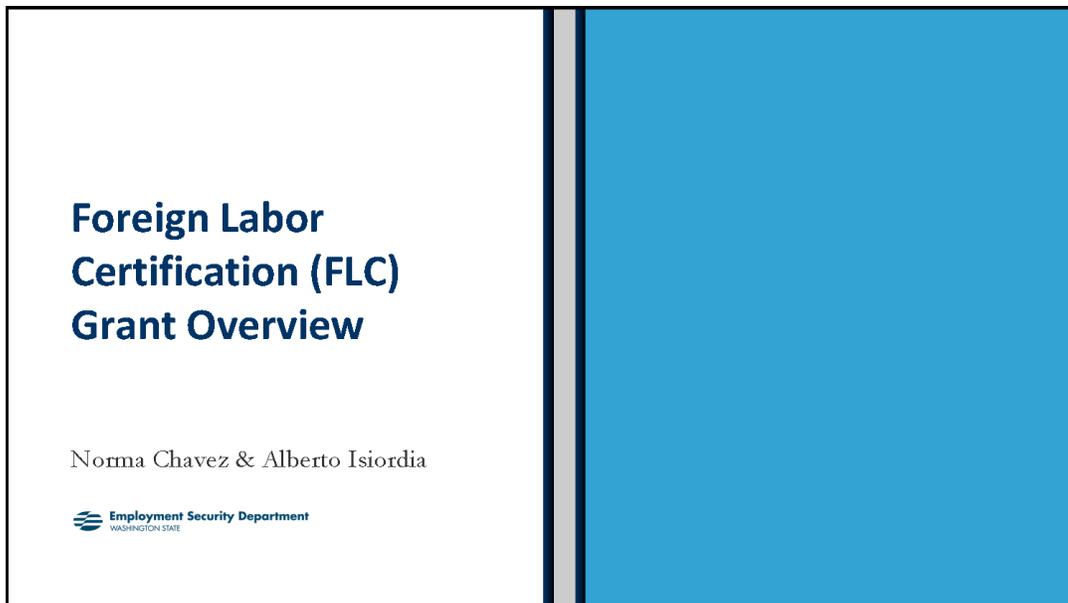
In January 2017, ESD expressed concern to DOL regarding the unclear approach/formula used to distribute FLC grant funding to states, as it did not appear to take into account state workloads. Workloads are most easily measured by the number of applications processed and the number of positions certified. An analysis from our Labor Market and Performance Analysis team found that in 2013 and 2014, Washington State accounted for an average of 2.2 percent and 4.4 percent of H-2A and H-2B applications processed and certified nationally, respectively, yet received an average of 1 percent of the national FLC grant funding. To adjust funding to workload, LMEA proposed that DOL adopt an approach that sets a minimum fixed funding level for all states and a variable funding allocation that would be adjusted according the percentage of applications processed plus positions certified in the preceding year.

CONTACTS

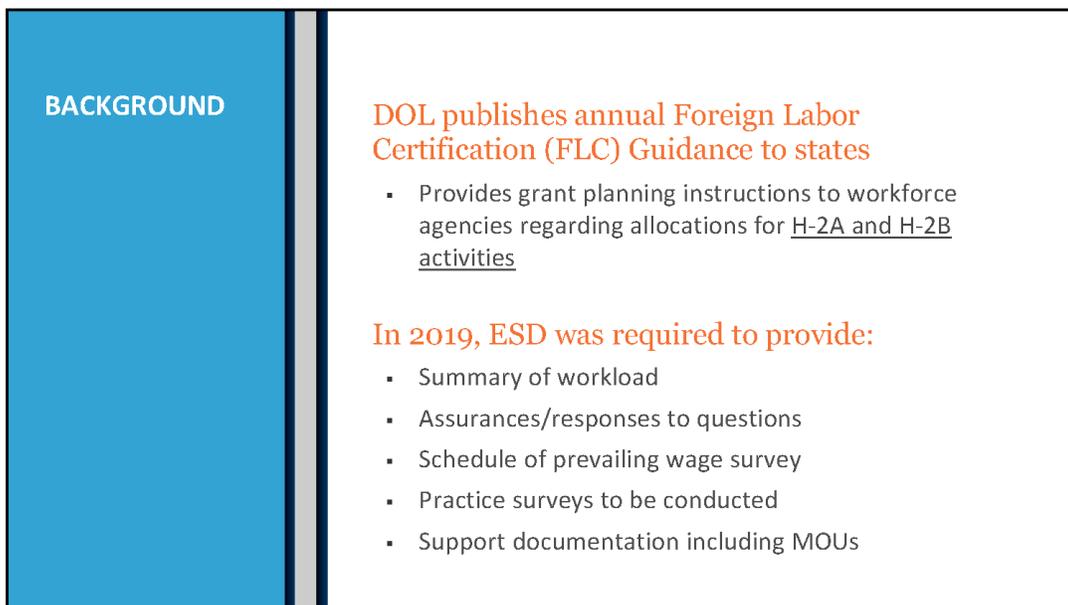
Alberto Isiordia, Central Regional Director, 509-836-1115

Norma Chavez, Agricultural and Seasonal Workforce Services Director, 509-734-5922

FLC Grant Overview presentation by Norma Chavez & Alberto Isiordia



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FLC Grant Overview presentation by Norma Chavez & Alberto Isiordia

ESD FLC Grant Funding

Summary of FLC grant funding over the last 5 years

Fiscal Year	Amount
*2019	\$400,000
2018	\$450,000
2017	\$237,354 and a supplemental allocation of \$325,000
2016	\$179,907
2015	\$179,907

*In 2019, the \$400,000 grant award amount was disclosed at beginning application process.

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FEDERAL GRANT FUNDED ACTIVITIES

Allowable activities funded by FLC grant

- Application Review & Processing (H-2A & H-2B)
- Coordination with DOH & LNI
- Outreach and Education
- *Surveys
- *Field Checks
- *Field Visits

*Only 20% of FLC grant funding may be used for these activities

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FLC Grant Overview presentation by Norma Chavez & Alberto Isiordia

<p>OTHER REQUIRED ACTIVITIES</p>	<p>Activities NOT allowed to be funded by FLC grant</p> <ul style="list-style-type: none">▪ Domestic Worker Recruitment▪ Complaint Processing▪ Discontinuation of Services
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<p>FLC GRANT ALLOCATION CONCERNS</p>	<p>ESD letter to DOL</p> <ul style="list-style-type: none">▪ Unclear how DOL distributes funding across states▪ ESD issued letter to DOL provided analysis of state workloads compared to their allocations▪ Proposed allocation formula that distributes funding to states according to workload
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FLC Grant Overview presentation by Norma Chavez & Alberto Isiordia

Thank you very much for your time

If you have any questions about this document, please contact us at:

Norma Chavez ASWS Director nchavez@esd.wa.gov 509-734-5922	Alberto Isiordia Central Regional Director aisiordia@esd.wa.gov 509-836-1115
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 **Employment Security Department**
WASHINGTON STATE

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Contact information

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