

2022 AGRICULTURAL AND SEASONAL WORKFORCE SERVICES REPORT

ASWS Committee
ASWS Office
Domestic Recruitment
Budget Overview
Worker Perspective
Employer Perspective



Employment Security Department
WASHINGTON STATE

Agricultural and Seasonal Workforce Services Advisory Committee
October 2022



2022 Agricultural and Seasonal Workforce Services (ASWS) Report

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This report was prepared in accordance with the Revised Code of Washington (RCW) [50.75.040](#).

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I. Executive summary

The H-2A foreign labor program allows U.S. employers or agents who meet federal regulatory requirements to bring foreign nationals to the United States to perform temporary agricultural jobs. As the Washington State Workforce Agency (SWA), the Employment Security Department (ESD) is responsible for:

- (1) Processing employer H-2A applications,
- (2) Recruiting domestic workers, and
- (3) Providing oversight of the H-2A program in coordination with other governmental entities.

From 2007 to 2019, the number of H-2A temporary agricultural workers coming into the state of Washington to perform agricultural work grew by more than 1,000 percent. In 2019, the Washington State Legislature passed, and Governor signed legislation, [RCW 50.75](#), establishing the office of Agricultural and Seasonal Workforce Services (ASWS) within ESD. In establishing the office, the legislature declared it in the public interest to clarify the state's role in the H-2A foreign labor program and provide both (1) adequate protections for foreign and domestic workers and (2) education and outreach opportunities to help the agricultural industry maintain the stable workforce it needs.

Furthermore, the statute established an advisory committee, with members appointed by the ESD Commissioner, to review issues and topics of interest related to the H-2A program. The statute requires that the committee report in even years to the legislature its recommendations for increasing the effectiveness of ESD's recruitment processes, and its analysis of the costs incurred by ESD to administer the H-2A program and the other agricultural programs within the Department.

Summary of updates to 2020 recommendations for ESD recruitment processes and systems

This report provides updates to the committee's 2020 recommendations, a description of progress made as to each recommendation, and the planned work to be conducted, summarized as follows:

1. **The committee recommends that ESD help facilitate a faster connection between workers and employers through process changes, including more direct and ongoing engagement with domestic job applicants.**

Since the 2020 ASWS Advisory Committee Report, ESD Wagner-Peyser program operators delivered training to all WorkSource staff in assisting agricultural workers applying for agricultural job clearance orders. Additionally, WorkSource staff were trained to assist applicants in directly contacting employers, providing information to applicants regarding the job terms and assurances, and following up with the applicants to confirm the job referral outcomes.

2. **The committee recommends ESD directly inform employers of applicants for H-2A job openings, request a waiver from the U.S. Department of Labor (USDOL) to allow H-2A employers to manage and access their own recruitments through ESD's recruitment system, and establish measures to determine the impact and success of the change.**

On June 30, 2022, the U.S. Department of Labor (USDOL) denied the state's waiver request.¹ USDOL's denial of ESD's waiver request does not change ESD's current practice of engaging agricultural job applicants to ensure they receive information regarding the terms and assurances of H-2A job orders, and informing applicants of worker rights and the services available through the Workforce Innovation and Opportunity Act (WIOA) one-stop system.

3. **The committee recommends that ESD track referral outcomes more consistently.**

Since the 2020 report, ESD Wagner-Peyser program staff created specific training regarding H-2A referral tracking procedures. As a result of these additional efforts, placement data is trending up. For example, from January 1, 2022 to September 12, 2022, ESD confirmed eleven placements to ten job orders. In comparison, in 2020, there were two confirmed placements, while in 2021, there were zero. Per 20 CFR 653.503(a), the SWA may conduct a field check on job orders to which a placement was made. From January 1, 2022 to September 12, 2022, ASWS performed ten field checks. As such, ESD is in compliance with 20 CFR 653.503(b), requiring a field check on each job order to which a placement is made.²

4. **The committee recommends that ESD complete a customer experience study to better understand the experience of farmworkers and employers in the ESD application and referral process.**

The committee requested that ESD engage in an independent study with the objective of identifying key areas in which ESD can improve its relevance and effectiveness in matching qualified applicants to agricultural jobs, thereby aiding domestic farmworker participation in the state's agricultural labor market. The study is planned to include interviews with both domestic farmworkers and agricultural employers.

The study will have two phases. Phase I, funded by ASWS vacancy funds, will focus on apple, pear, and grape crops. The Phase I report is targeted for Spring 2023. Phase II, funded by federal grant funds received from the U.S. Department of Agriculture's 2022 Specialty Crop Block Grant Program (SCBGP), is expected to begin in 2023, and will focus on cherry, berry, apple, pear, and grape crops.

5. **The committee recommends that ESD create enhanced resources and best practices for employers to access in order to increase employer compliance with H-2A laws and rules, streamline hiring, and help support employers in successfully meeting program requirements.**

¹ [USDOL Waiver request denial June 30, 2022](#)

² Per 20 CFR.653.503(b), a Field Check is required for each job order when ten or less placements are made by the SWA per quarter.

The ASWS has conducted a series of activities to enhance resources for and convey best practices to employers including:

- Site Visits: The ASWS compliance team conducts site visits (aka field visits) to H-2A workers to inform workers of their rights and contract assurances under the H-2A regulations. Additionally, employers are provided with education regarding program requirements and given compliance resources and support.

In January, 2022, the ASWS office set a “100 percent site visit goal”, meaning that the office intends to perform at least one site visit on every H-2A job order commenced in 2022. As shown in the data tables on page 15, from January 1, 2022 to September 12, 2022, ASWS staff performed 474 site visits providing information and resources to approximately 20,502 workers. ASWS projects it will meet its site visit goal in 2022.

- Process improvement project that delivered a standard work template for the presentation of information to workers and employers during site visits.
- Development of employer resources including frequently asked questions flyers.
- Robust employer outreach to employer groups and associations.
- Supervisor training participation.
- Partner agency collaboration to strengthen and align coordination of work with agencies serving Migrant and Seasonal Farmworkers (MSFWs).
- Planning of an ASWS webpage to be hosted on esd.wa.gov and planned to include compliance resources.

6. **The committee recommends enhanced employer training.**

As of the date of this report, ESD and USDOL have not yet organized H-2A employer forums, a key component to enhance employer training. Because of the COVID-19 pandemic, USDOL halted these forums. The committee desires that ESD continue to work with USDOL to continue forum planning once USDOL resumes the forums.

Budget

The ESD activities associated with the H-2A program include reviewing and processing H-2A employer applications, coordinating housing inspections, conducting agricultural prevailing wage and employment practice surveys, outreach and training, site visits (aka field visits) and field checks, domestic recruitment, and employer verification, managing the employment service complaint process, and discontinuing services when warranted. These activities, as well as other activities that support domestic farmworkers, are funded by the federal Foreign Labor Certification (FLC) and Wagner-Peyser Grants, with state funding, including funds provided in [RCW 50.75 establishing the ASWS Office](#), supplementing those grants.

During the period covered by this report, ESD received an increase in FLC funding and a decrease in Wagner-Peyser funding. The ESD continued to use supplemental state funding as provided by the legislature, namely funds provided in [RCW 50.75](#), to meet H-2A program needs.

- **Foreign Labor Certification (FLC) Grant:** ESD received \$572,579 in fiscal year 2021 and \$602,678 in fiscal year 2022 in FLC grant funding, an increase from the \$400,000 received in both 2019 and 2020. The bulk of the funding provided by the FLC Grant is used to review and process applications for the H-2A and H-2B programs. Additional funds will be used to support additional FLC project positions during peak application time and develop additional resource tools for employers.
- **Wagner-Peyser Grant:** The Wagner-Peyser Grant supports the state's one-stop system, comprised of WorkSource centers that provide universal access to an array of employment and training services. WorkSource services are available to any job seeker, regardless of employment status. Any employer seeking workers is eligible for employer services. Funded activities are provided free of charge to both job seekers and employers through self-service, facilitated self-help services, or staff-assisted services.
 - ESD received \$15,710,820 in program year (PY) 2021 and \$15,464,004 in PY 2022 in Wagner-Peyser funding, a slight decrease from PY 2020. Per a recommendation of the committee, 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, were \$76,991.
- **Wagner-Peyser 10 Percent:** The Workforce Innovation and Opportunity Act (WIOA) requires the Wagner-Peyser Grant expenditures to be split 90/10, with 90 percent intended to fund services and activities in the one-stop system, and 10 percent of the sum allotted to Washington state being reserved for use by the Governor for performance incentives, supporting exemplary models of service delivery, professional development and career advancement of ESD staff, and services for groups with special needs. In Washington state, Wagner-Peyser 10 percent of the funds (\$1,674,407.59 in 2022) are allocated for positions and services aimed at supporting the agricultural sector.
 - ESD has used Wagner-Peyser funding primarily to fund Migrant Seasonal Farmworker (MSFW) program outreach. Under the program, MSFW staff locate and contact MSFWs in places where they live, work, and gather to provide the services conducted by WorkSource offices, including information regarding available employment opportunities and services and direct customer assistance. The MSFW outreach program is distinct from that of ASWS activities. For example, MSFW outreach staff are not trained in H-2A rules and regulations, and do not perform H-2A compliance work. Even so, the consistent presence of MSFWs in agricultural areas make them a critical partner to ASWS for ensuring worker protection and maximizing services to agricultural employers.
- **State funding:** ESD's budget consists primarily of federal funding. When federal funding is insufficient or is not available to support specialized employment service needs, ESD relies on state funding sources. State funding from the Employment Services Administrative Account (fund 134, also known as the Claimant Placement Program or CPP) is used by ESD to supplement FLC and Wagner-Peyser funding,

including financing the ASWS office. State funding from CPP, as well as the Administrative Contingency Account (fund 120, also known as Penalties and Interest or P&I) is also used to supplement federal funding for the Agricultural Wage & Employment Practice Survey.

The ESD received \$3,264,000 from the legislature for the FY2021-2023 biennium to supplement federal funding for the ASWS office, as well as state and federal funding for the agricultural wage survey.

Worker and employer perspectives

ASWS committee members formed two groups – (1) worker representatives; and (2) employer representatives for the purpose of developing priorities from each perspective to include in this report. The perspectives provided by each group pertain to domestic worker recruitment, foreign labor program oversight, Foreign Labor Certification (FLC) and ASWS budget, state agency coordination regarding worker complaints, and improved data keeping. Feedback from both groups is included in this report. Also included are shared perspectives that both groups hold in common.

II. Introduction

Revised Code of Washington (RCW) [50.75.020](#) established the office of Agricultural and Seasonal Workforce Services (ASWS) within the Employment Security Department (ESD). In establishing the office, the legislature declared it to be in the public interest to clarify the state's role in the H-2A temporary agricultural program to provide

- adequate protections for foreign and domestic workers. and
- education and outreach opportunities to help the agricultural industry maintain the stable workforce it needs.

RCW [50.75.040](#) further directed the ESD commissioner to appoint an advisory committee (hereafter “committee”) to review issues and topics of interest related to the H-2A temporary agriculture program. The committee is comprised of eight voting members: four representing agricultural workers’ interests, one of whom is a farmworker, and four representing agricultural employers, one of whom is an agricultural employer. One ex-officio member without a vote represents ESD as chair, and non-voting ex-officio members representing the Departments of Labor & Industries (LNI), Health (DOH), and Agriculture (DOA) also serve on the committee.

The committee is charged with providing comment on department rulemaking, policies, implementation of the H-2A temporary agriculture program and initiatives and studying issues it determines require consideration. In even years, the committee is required to submit a report to the governor and the legislature by Oct. 31 that:

- (a) identifies and recommends approaches to increase the effectiveness of ESD’s recruitment process as part of the H-2A application. If deemed advisable by the committee, the report may include recommended changes to state law that would lead to increased recruitment and hiring of domestic workers in agricultural employment in Washington; and
- (b) analyzes the costs incurred by the office to administer the H-2A program, the funds to administer other department programs for farmworkers, and the amount of funds allocated by the federal government to administer the H-2A program and all other agricultural programs within the department.

This report provides updated information regarding implementation of the committee’s 2020 recommendations, as well as the required budget analysis of the ASWS office and other relevant programs. Additionally, this report contains:

1. An overview of the committee’s membership and meeting schedule;
2. Discussion of the committee’s activities during this reporting period which include, but are not limited to: committee engagement with DOH regarding comment on response to COVID-19 as it pertains to farmworkers, exploration of coordination opportunities with partner state and federal agencies, formation of a committee sub-group focused on assessing weather-related impacts to farmwork and improving ESD’s response to assisting impacted farmworkers, briefing and discussion of ASWS activities and progress in serving employers and protecting farmworkers, briefing and providing feedback regarding ESD comments to federal rule making, and providing

comment and guidance regarding both employer and worker resources developed by ASWS.

3. Discussion of the committee’s priorities, from both worker and employer perspectives. These perspectives include the committee’s desire for formalized and expanded coordination among state and federal agencies; specifically on receiving, investigating, and ultimately adjudicating farmworker complaints and apparent violations identified by an agency.

In addition to the committee’s work as set forth in this report, the committee engages in discussion of agricultural workforce issues as they arise. In some instances, such as weather disaster preparedness, the committee forms sub-committees to discuss and plan particular action. The committee’s work is ongoing and will be guided by the recommendations and perspectives as set forth in this report.

For reference and further background, please see the [2020 Agricultural and Seasonal Workforce Services Report](#).

III. Highlights

1. As of March 2022, the ASWS office was “fully staffed,” meaning that all full-time equivalent (FTE) positions were filled. Since January 2022, ASWS compliance staff have performed 474 site visits to H-2A contracts, contacting approximately 20,502 foreign and domestic workers.
2. Since January 2022, ASWS compliance staff have performed ten field checks, which represents field checks on 100 percent of job orders to which eleven placements were made in 2022.³ As such, Washington State is in compliance with the Wagner-Peyser Act. [20 CFR 651.503\(b\)](#).
3. ASWS has engaged agricultural employers at numerous industry events and has provided “field boss” supervisor training to agricultural supervisors regarding H-2A program requirements and best practices for professionalism in the field. ASWS is currently developing a variety of employer resources including links, forms, guides, and a webpage.
4. ASWS is currently engaged with Washington Labor and Industries (LNI), Washington Department of Health (DOH), and the U.S. Department of Labor Wage and Hour Department (USDOL) in drafting Memoranda of Understanding (MOUs) to increase coordination in the management of farmworker complaints.
5. Per the committee’s 2020 recommendations, ESD has thoroughly analyzed its processes for referral and placement of domestic farmworker applicants. As a result, ESD has implemented process changes. In 2022, a contractor will begin a Customer Experience study to collect information about how specialty crop workers look for farmwork and how crop growers recruit domestic and foreign farmworkers. A report is expected early 2023. Based on this study, the ASWS committee will recommend process improvements to ESD.

³ Two placements were made to one job order.

- In 2022, the Foreign Labor Certification (FLC) Grant base funding of \$400,000 remained the same, though ESD received a supplemental allocation of \$202,678. The federal Wagner Peyser Grant was cut by \$427,991 from \$15,891,995 to \$15,464,004. State funding for the ASWS office remained constant. Overall, the cost for the Prevailing Wage and Employment Practice Survey increased by \$222,434.

IV. ASWS advisory committee meetings

Background

RCW [50.75.040](#), [the statute establishing the Office of Agricultural and Seasonal and Workforce Services \(ASWS\)](#) requires the ESD commissioner to appoint members representing:

- Agricultural workers' interests from a list of at least four names, one of whom shall be a farmworker, submitted by a recognized statewide organization of workers.
- Agricultural employers from a list of at least four names, one of whom shall be an agricultural employer, submitted by a recognized statewide organization of agricultural employers.

Membership

For the period covered in this report, the following individuals served on the committee:

Chair – Employment Security Department

- Dan Zeitlin, Director, Employment System Policy & Integrity Division

Agricultural Worker Representatives

- Michele Besso, Attorney, Northwest Justice Project
- Rosalinda Guillen, Executive Director, Community to Community
- Victoria Ruddy, Pacific Northwest Regional Director, United Farm Workers

Agricultural Farmworker

- Edgar Franks, Political Director, Familias Unidas por la Justicia

Agricultural Employer Representatives

- Jon DeVaney, President, Washington State Tree Fruit Association
- Michael Gempler, Executive Director, Washington Growers League
- Delia Peña, Director of Orchard HR and H-2A, Zirkle Fruit Company

Agricultural Employer

- Jeff Perrault, Owner Operator, Perrault Farms

Department of Labor and Industries Representative

- Uriel Iñiguez, Director, Community Relations

Department of Health Representative

- Todd Phillips, Director, Environmental Health & Safety

Department of Agriculture Representative

- Ignacio Marquez, Regional Assistant to the Director – Eastern/Central WA

Meeting schedule

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>.

Figure 1. Meeting dates and locations
Washington state, 2021 and 2022
Source: Employment Security Department

Date	Location	Notes
January 21, 2021	Zoom	Recorded Meeting
February 18, 2021	Zoom	Recorded Meeting
March 18, 2021	Zoom	Recorded Meeting
April 15, 2021	Zoom	Recorded Meeting
May 20, 2021	Zoom	Recorded Meeting
June 17, 2021	Zoom	Recorded Meeting
July 15, 2021	Zoom	Recorded Meeting
August 19, 2021	Zoom	Recorded Meeting
September 16, 2021	Zoom	Recorded Meeting
October 21, 2021	Zoom	Recorded Meeting
November 18, 2021	Zoom	Recorded Meeting
December 16, 2021	Zoom	Recorded Meeting
January 20, 2022	Zoom	Recorded Meeting
February 17, 2022	Zoom	Recorded Meeting
March 17, 2022	Zoom	Recorded Meeting
April 21, 2022	Zoom	Recorded Meeting
May 19, 2022	Zoom	Recorded Meeting
June 16, 2022	Zoom	Recorded Meeting
July 21, 2022	Zoom	Recorded Meeting
July 28, 2022	Zoom	Recorded Meeting
August 18, 2022	Zoom	Recorded Meeting
September 15, 2022	Zoom	Recorded Meeting
October 20, 2022	Zoom	Recorded Meeting
November 17, 2022	Zoom	Recorded Meeting
December 15, 2022	Zoom	Recorded Meeting

Committee activities

During each of its meetings, the committee received 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 addressed by the committee 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 (FLC) 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 comment on DOH's response to COVID-19 as it pertains to farmworkers.
5. Exploration of coordination opportunities with partners state and federal agencies.
6. Formation of a sub-group focused on assessing weather-related impacts to farmwork and improving ESD's response to assisting impacted farmworkers.
7. Briefing and providing feedback on ESD comments to federal rule making.
8. Providing comment and guidance regarding employer and worker resources developed by ASWS. and
9. 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 sub-committee 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 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.

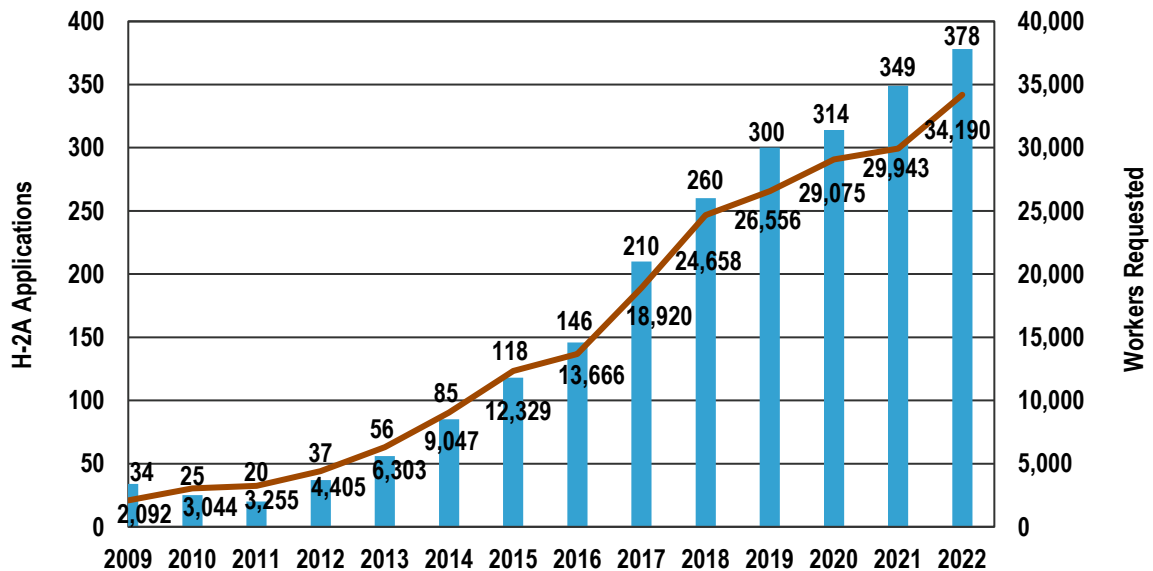
The sub-group began meeting monthly in June 2022 and provides monthly briefings of its activities to the full committee. The sub-committee elevates concerns to appropriate state agencies, where applicable.

V. Agricultural Seasonal Workforce Services (ASWS) office

Background

The state legislature found in 2019 that the number of H-2A temporary agricultural workers coming into the state of Washington to harvest crops has grown by more than 1,000 percent since 2007. The number of H-2A applications in recent years has continually increased as well as the number of workers requested (*Figure 2*).

Figure 2. Number of H-2A applications* and workers requested Washington state, 2009 through 2022
Source: Employment Security Department, Employment Connections Division



*These numbers exclude goat and sheep herder applications through 2018.

ASWS office responsibilities

The ASWS office was established in RCW [50.75.020](#) to:

- Process and adjudicate foreign labor certification applications from employers.
- Process complaints consistent with [20 CFR Part 658 Subpart E](#).
- Conduct field checks and site visits (aka field visits), as required by the United States Department of Labor (USDOL). When conducting a field check, the office shall coordinate, to the extent possible, with the LNI, DOH, and DOA to limit disruption to agricultural employers and efficiently use government resources.
- Administer the discontinuation and reinstatement of services process pursuant to [20 C.F.R. Part 658, Subpart F](#). and
- Conduct training and outreach activities to employers who are using agricultural and seasonal workforce services and programs within ESD.

ASWS 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, ESD, 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, the seven ASWS compliance team positions⁴ are filled. The compliance team has received extensive training on conducting site visits, conducting field checks, and conducting investigations of worker complaints. Additionally, the compliance team has received training on receiving and processing complaints pursuant to the Wagner-Peyser Employment Service Complaint System at 20 CFR 658.

As discussed below, in January, 2022, the ASWS office set a “100% Site Visit Goal”, meaning that the office intended to perform at least one site visit on every H-2A job order in the state commenced in 2022. As shown in the data tables on page 15, ASWS site visit coverage has been comprehensive and robust, and it is likely that the office will meet its goal by the end of the year.

The compliance staff report to the compliance team Supervisor, who reports to the ASWS Director. In November 2021, the inaugural ASWS Compliance Supervisor left the position, and a new supervisor was hired in March 2022.

- **ASWS Foreign Labor Certification (FLC) Staff-** The ASWS office has three 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 a federally required State Monitor Advocate (SMA), who is responsible for ensuring domestic Migrant Seasonal Farmworkers (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 ESD’s administration of the foreign labor program and MSFW programs.

⁴ [ASWS compliance region map](#)

ASWS office activities

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

1. Full staffing of ASWS office

Information regarding the ASWS office status is provided in the previous section 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 where 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) – Worker rights presentation and employer education

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 education regarding the H-2A program legal requirements and compliance counseling. Additionally, employers are given the opportunity to ask questions and receive knowledgeable guidance and feedback, as well as provided with resources to aid in managing their participation in the foreign labor program. In January 2022, ASWS renamed field visits “site visits” to avoid confusion with field checks, as are defined by [20 CFR 653.503](#) (Figure 3).

In January 2022, the ASWS office set a “100% Site Visit Goal”, meaning that the office intended to perform at least one site visit on every H-2A job order in the state commenced in 2022. This goal was set with the objective that every employer and worker group would receive information and engagement from the ASWS office for H-2A contracts started in 2022. As of September 12, 2022, the ASWS has performed 474 site visits on 378 active contracts, contacting approximately 20,502 workers.⁵

Figure 3. ASWS site visits and number of workers contacted from January 1, 2022 through September 12, 2022

Washington state, 2022

Source: Employment Security Department, ASWS Office

ASWS site visits and number of workers contacted from January 1, 2022 to September 12, 2022	Number
ASWS site visits performed	474
Approximate number of workers contacted	20,502

⁵ Data as of July 7, 2022

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 January 1, 2022, ASWS compliance staff have performed ten field checks, which represents field checks on 100 percent of job orders to which eleven placements were made in 2022.⁶

Figure 4. Placements and field checks performed by ASWS from January 1, 2022 through September 12, 2022 Washington state, 2022

Source: Employment Security Department, ASWS Office

Placements and field checks performed by ASWS January 1, 2022 through September 12, 2022	Number
Number of placements	11*
Number of field checks performed by ASWS	10

*Two placements made to one job order.

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 were limited because of COVID-19. Employer events where ASWS 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. 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.⁷ The cohort consisted of field supervisor and human resources staff. The subject matter of the training – delivered in both English and Spanish by the ASWS Director – was H-2A program background, program terms and conditions, and best practices for supervisors.

⁶ Two placements were made to one job order.

⁷ [Agricultural Leadership Program](#)

6. Partner Agency Collaboration

Northwest Region Joint Outreach Pilot Project: In April 2022, ASWS and LNI community relations staff 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.

Memoranda of Understanding (MOUs) for Referral of Complaints:

ASWS is developing MOUs with LNI and the USDOL WHD detailing how the agencies will coordinate in investigating and referring MSFW related complaints. Additionally, the MOUs will outline how the agencies will share data related to MSFW complaints. 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\(d\)\(5\)\(iv\)](#).

Please see Recommendation 5 for additional information regarding ASWS Office Activities

COVID-19 response

Partner agency communication

During this reporting period, the committee received regular COVID-19 case, testing, and vaccination rate briefings from the Washington Department of Health (DOH) at monthly committee meetings. As of the date of this report, the last COVID-19 briefing from Washington DOH was in April 2022. As the COVID-19 pandemic continues to evolve, the ASWS Committee desires continued, regular updates on COVID-19 as it pertains to farmworkers.

From 2020 to the present, the ASWS Director and Compliance Supervisor has engaged in regular bi-monthly calls with members from the DOH, LNI, DOA and the Governor's office to obtain information about each office's COVID-19 response and identify potential gaps in service. The ASWS Director and Compliance Supervisor also receive briefings from DOH in a bi-monthly meeting regarding COVID-19 case numbers, testing statistics, and mobile vaccination clinics providing vaccinations and boosters.

Mask distribution to farmworkers

From 2020 to March 2022, ASWS and MSFW program outreach staff statewide participated in the receipt and distribution of approximately 531,000 masks to farmworkers. These masks were received to ESD by the Governor's office and were distributed by ESD during site visits and MSFW outreach.

Continued work

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.

Additionally, during field checks, compliance staff observe whether housing units are compliant with emergency COVID-19 rules. During site visits, compliance staff inform workers and employers about accessibility to medical care and are alert to any potential COVID-19 rule violations. ASWS communicates COVID-19 cases in farmworker housing to DOH.

VI. Domestic recruitment

RCW [50.75.040\(4\)\(a\)](#) requires the committee to include in this report a section that “Identifies and recommends approaches to increase the effectiveness of the Employment Security Department’s recruitment process as part of the H-2A application. If deemed advisable by the committee, the report may include recommended changes to state law that would lead to increased recruitment and hiring of domestic workers in agricultural employment in Washington.”

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 site visits (aka 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 employer 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 between workers and employers

The committee recommends that ESD facilitate a faster connection between 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 focus on the 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.

Update

ESD staff assisting applicants in calling employers

The ESD H-2A Handbook instructs WorkSource staff to:

1. Provide all necessary information to the job seeker to identify the employer involved and determine their preferred method of contact. Job seekers living within the local area should be encouraged to apply for H-2A positions in person if it costs little or nothing. However, staff must give job seekers the option to request a phone interview.
2. Give the “WorkSource Referral Form” to job seekers who choose to apply in person. The referral form communicates to employers that the job seeker has been determined to meet minimum job requirements by WorkSource. The referral form also allows workers to document interview outcomes. Referring staff must fill out the form, except for the “results” section. Staff must inform job seekers to hand the form to the employer at the time of the interview, so that the outcome can be documented.
3. If job seekers choose to apply by phone, ESD staff can help by allowing job seekers to use the staff member’s phone to attempt a phone interview. If the job seeker does not reach the employer, staff shall ensure the job seeker leaves a phone message using the script provided in the special instructions of the job-order template. Staff must document the phone interview attempt in the job-order notes.

In addition, WorkSource staff are trained in specific protocol to follow up on referral outcomes (*See Recommendation 3 update*).

Additional information to applicants post-application

In all cases in which an applicant has applied to an H-2A job order, WorkSource staff are trained to explain the following information to the applicant:

1. H-2A job order summary and experience requirements.
2. Worker rights as a worker in corresponding H-2A employment.
3. Working locations, conditions, and pay rates.
4. The H-2A job order “Side by Side” in both English and Spanish, along with a WorkSource Referral Form with all referral instructions. and

- How to follow up with ESD staff to self-report the outcome of the referral, or if the worker needs further assistance.

Use of text messaging or apps to notify workers of job openings

The use of text messaging to communicate with customers is not currently permitted under ESD’s Public Disclosure policy. Texting capability is currently being contemplated as part of the Workforce Information Technology (WIT) replacement project. ESD anticipates amending its Public Disclosure policy once texting capability is operational. The projected date of project completion and implementation of this proposed feature is currently 2024. The committee is a member of the project’s stakeholder list and is receiving updates about the status of the project.

Additional outreach by ESD to workers regarding job openings

The 2020 to 2024 ESD Agricultural Outreach Plan (AOP)⁸ outlines the Migrant Seasonal Farmworker Outreach Program’s planned outreach contact targets for PY 2020 to 2023. The AOP sets minimum targets for MSFW outreach staff in the nine “Agricultural Significant Offices.” Each of the nine significant offices are monitored annually by the State Monitor Advocate to ensure compliance with the requirement that the MSFW program “maintain full-time, year-round MSFW outreach staff to conduct outreach duties and that they spend the majority of their time in the field.” (*See AOP, pg. 6.*)

The minimum targets outlined in the 2020 to 2024 AOP are as follows:

Figure 5. ESD Agriculture Outreach Plan
Washington state 2022
Source: Employment Security Department, Employment Connections Division

MSFW Outreach Worker Activity	Targets
Minimum “Days of Outreach” to be completed in the field for the program year/per office	132
Average minimum “Days of Outreach” to be completed monthly in the field per office	11
Minimum “MSFW Contacts” to be completed in the field for the program year/per office	660
Average minimum “MSFW Contacts” to be completed monthly in the field per office	55

The expected outreach includes presentation of H-2A job openings, screening applicants, registration and application assistance, referral to job openings, and follow-up on referral outcomes. In addition to this outreach, MSFW outreach staff also participate in job fairs, community resource events, radio/tv/social media appearances, and government agency partner events.

ESD LEAN process improvement project to reduce domestic recruitment barriers

On July 21, 2021, ASWS office staff, Wagner-Peyser program staff, and other ESD staff participated in the “H-2A Job Order Recruitment, Referral and Replacement Improvement Project.” The goals of the project included increasing referrals of qualified domestic workers to H-2A job orders, increasing placements, and creating a standardized tracking process for referrals.

⁸ [2022 Agricultural Outreach Plan \(AOP\)](#)

The project resulted in numerous recommendations to improve the H-2A referral process, including increased staff training in referrals and outcome tracking and greater communication with employers and agents regarding referral outcomes.

As a result of the project, ESD's Wagner-Peyser program team took the following steps:

1. Identified the 2014 H-2A handbook as ESD policy that should be updated to implement increased training regarding making referrals and tracking referral outcomes. As of the date of this report, the H-2A Handbook update is planned.
2. Created and implemented specific protocols for ESD staff referrals to H-2A job orders and referral outcome tracking. All ESD staff were trained on the protocol. This protocol includes immediately notifying the ASWS Office of a placement of a referral to a job order. The ASWS office uses this notification to perform a field check on the job order. As demonstrated by the data in the Recommendation 5 update below, since the protocol was implemented, the number of placements to job orders, and consequently, field checks increased. and
3. Created and implemented "H-2A 101" training for all ESD Wagner-Peyser program staff.

Request for Information (RFI) to determine costs of text/app-based outreach

As stated above, texting capability is currently being contemplated within the scope of the WIT Replacement project. The projected date of project completion and implementation of this proposed feature is currently 2024. The committee is a member of the project's stakeholder list and receives regular updates about the status of the project.

Recommendation #2: Disclosure of referrals to employers

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 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 technology changes, and training for ESD employees and H-2A employers. Minor technology 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 ESDs ability to track referrals and hires of domestic workers.

Update

As of the date of this report, applicants who come in person to 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 when these attempts are not successful, applicants are directed by staff to contact the employer.

On May 16, 2022, ESD submitted to the USDOL Washington's request of the Secretary to waive the Wagner-Peyser regulation at subsection (b)(2) of [20 CFR 653.501](#) requiring employer information to be suppressed on clearance orders in the Agricultural Recruitment System.⁹

This request was approved by a second formal vote of the committee in support of the waiver request on October 21, 2021. The vote occurred following further discussion concerning the pros and cons of the request, as well as the need for support from the Governor, which was provided, to submit the request.

On June 30, 2022, USDOL denied approval of the state's waiver request.¹⁰ 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 previously stated. Additionally, the SWA's obligation of informing applicants of worker rights and services available through the WIOA one-stop system is unchanged.

Recommendation #3: Referral tracking and follow up

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 USDOL 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.

⁹ [ESD letter to USDOL to waive Wagner-Peyser regulation, May 16, 2022](#)

¹⁰ [USDOL waiver request denial June 30, 2022](#)

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

Improvements on referral tracking and follow-up with domestic applicants

Since the 2020 report, ESD 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:

- (1) **Candidate Does Not Qualify:** Upon screening of the applicant, the applicant is not able, willing, available or qualified for the job.
- (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.

As a result of these additional efforts, placement data is trending up. As of the date of this report, confirmed placements of domestic workers to H-2A jobs are as follows:

Figure 6. Annual summary of H-2A job order referral and hiring activity
Washington state, calendar years 2016 through 2021
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**	378	455 ¹¹	236	159	11	11	10

¹¹ In 2022, 455 total applications were received to 378 job orders. Of those 455, only 159 unique customers applied, indicating that applicants submitted multiple applications to multiple job orders. Only 11 applicants met minimum requirements and were referred to the job order(s).

*ESD transitioned to the ETO case management system.

**2022 is from January 1 through September 12.

Figure 7. 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	***
2017	286	8	8	2	***
2018	234	7	7	0	***
2019	300	13	13	1	***
2020	314	2	2	0	***
2021	349	0	0	0	27
2022	378	10	10**	10	474

*ESD transitioned to the ETO case management system.

**2 placements made to one order

***Data unavailable

In this reporting period, the ASWS office performed field checks on 100 percent 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 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.”

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 address 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 percent of all job orders (if less than 10 placements per quarter) in which a placement has been made. If more than ten placements per quarter are made, the SWA must only perform field checks on twenty-five percent of orders in which there has been a placement. Field checks are performed using a standard guide provided by USDOL.¹²

Outreach by phone or text to farmworker applicants who have been referred

The committee recommended it work with ESD to develop a Request for Information (RFI) to further scope and identify costs for text and/or app-based outreach to farmworkers. As stated in the update to recommendation one, texting capability is currently being contemplated by the WIT Replacement project. The projected date of project completion and implementation of these proposed features is currently 2024. The committee is a member of the project’s stakeholder list and will receive regular updates about the status of the project.

¹² [USDOL Field Check Guide](#)

Employers providing a copy of USDOL recruitment reports to ESD to determine outcomes

Per [20 CFR 655.156](#), H-2A employers provide domestic recruitment reports directly to USDOL, and not to the SWA. The ESD does, however, receive copies of employer Termination and Abandonment reports on a regular basis. These reports include the names of employees (both foreign and domestic) who have either been terminated or otherwise abandoned the job, and the reason for the employment separation. Regarding domestic applicants referred through the ESD recruitment system, staff are trained to follow up with the referred applicants to determine the referral outcome.

Creating incentives for workers to self-report the outcome of referrals

As of the date of this report, ESD has not designated any funds to provide monetary incentives to referred applicants to self-report the outcome of the referral. Staff are trained to emphasize to referred applicants the importance of reporting the referral outcome. In cases where the referred applicant does not follow up, staff are trained to contact the referred applicant and inquire as to the outcome. Staff referral follow-up has been the most effective method of confirming the referral outcome.

Allowing WorkSource staff to create registrations on behalf of customers

On June 17, 2021, ESD implemented [WIN0120](#) – Procedures for Adding Participants to Efforts to Outcomes (ETO), When Individuals are Unable to Create a WSWA Account. This policy enables WorkSource staff to “impersonate” the MSFW customer in creating a WorkSourceWA registration, a step required by ESD to provide a referral to a customer. In addition to assisting with WorkSourceWA registration, WorkSource staff provide one-on-one assistance to customers in navigating WorkSourceWA and complying with the requirements for job application.

Recommendation #4: Customer Experience Study

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, compile, and analyze customer feedback, and identify actionable feedback that could be implemented to improve the customer experience.

Update

The committee engaged ESD's Data Architecture, Transformation and Analytics (DATA) 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 where 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 \$250,000.00 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 developed a Request for Proposal (RFP) with the committee for Phase I of the study focused on apple, pear, and grape production.

In Phase I, ESD expects the contractor to 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 the 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 to 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).
- Circumstances that motivate specialty crop growers to employ farm labor contractors to recruit domestic workers.
- Strategies they use for recruitment and hiring.
- 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.

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.

Recommendation #5: Employer resources

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 in the future. 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 by streamlining 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:

1. **Site visits:** In January 2022, ASWS renamed field visits “site visits” to avoid confusion with field checks, as defined by [20 CFR 653.503](#). The ASWS compliance staff conduct site visits to inform MSFWs of their rights under the H-2A contract and provide the employer with compliance information and provide technical assistance. The authority for site visits is pursuant to [20 CFR 653.107](#) providing for employment service staff to have “reasonable access to workers.” Additionally, this regulation is an assurance made by employers on Form ETA-790A, H-2A Agricultural Clearance Order, therefore, the employer has agreed to the site visit upon filing their application for foreign labor.
 - a. **100 percent Goal**
In January 2022, the ASWS office set a “100% Site Visit Goal”, meaning that the office intended to perform at least one site visit on every H-2A job order in the state commenced in 2022. The goal was set with the intent that every employer and worker group would receive information and engagement from the ASWS office for H-2A contracts started in 2022. As of September 12, 2022 ASWS staff have performed 474 site visits, contacting approximately 20,502 workers. While this goal is not a legal requirement, it represents ASWS’s objective to provide statewide site visit coverage to every employer and worker group.

b. Site visit notification letter¹³

In January 2022, the ASWS office implemented the use of a standardized “site visit notification letter” to initiate contact with the employer to schedule the site visit. The notification letter also outlines the authority for the visit, what the employer can 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.)¹⁴

In May 2022, the ASWS Compliance Team engaged in a LEAN process improvement project named F.I.R.E for Format, Information, Reassessment and Execution. The purpose of the project was to create a standard presentation of informational content for each site visit with the goal of making site visits effective, comprehensive, and consistent in every compliance region. The project was completed on June 6, 2022 and resulted in a site visit outline currently used by compliance staff for each site visit. Additionally, this site visit outline is provided to employers with the Site visit notification letter (see above) and will be available at ESD’s website 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 where employers will be informed about the contract impossibility process and the employer’s obligations to its foreign and domestic workers. Additionally, compliance specialists will present information to workers about contract impossibility, worker options, and answer questions.

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 were limited because of COVID-19. Employer events where 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.

¹³ [Site visit notification letter](#)

¹⁴ [Site visit presentation outline](#)

3. **Field boss supervisor training:** On June 13, 2022, ASWS staff presented to the 2022 Agricultural Leadership Program (ALP) cohort in Yakima. The cohort consisted of field supervisor and human resources staff. The subject matter of the training – delivered in both English and Spanish – was H-2A program background, program terms and conditions, and best practices for supervisors.
4. **Partner agency collaboration:** In the 2020 ASWS report, worker and employer representatives on the committee recommended that ESD work to develop mechanisms to strengthen and align coordination with state and federal agencies protecting farmworkers with the objective of improving health, safety and working conditions. Furthermore, RCW [50.75.030\(2\)\(c\)](#) directs ASWS to “coordinate, to the extent possible, with LNI, DOH, and DOA (when conducting field checks) in order to limit disruption to agricultural employers and efficiently use government resources.”

In April 2022, the ASWS office and the LNI community relations office partnered to launch a Northwest region 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 best serve the needs of workers. The project was limited in scope to the Northwest compliance region to analyze feedback received from workers and employers and adjust delivery of information, as necessary. The project has been positively received in the local area, and a coordination template has been developed for use in implementing the coordinated outreach in other compliance ASWS regions.¹⁵

In addition to this pilot project, a key objective of the ASWS office, under the advisement of the committee, is to further strengthen and align coordination with partner agencies in key areas such as complaint processing and worker housing certification.

The ASWS office is also planning to provide the following employer resources:

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.

In July 2022, the ASWS office developed, with input from the ASWS Disaster Preparedness sub-committee (see below), a Contract Impossibility FAQ guide.¹⁶
 - 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

ASWS is the process of developing a webpage at ESD’s website which will include information about the 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

¹⁵ [ASWS/LNI joint outreach template](#)

¹⁶ [Contract impossibility FAQ](#)

links to other governmental agencies and organizations. The planned objective of the webpage is to offer accessible, accurate, and helpful information to new and returning H-2A employers about the H-2A application process, complying with rules and regulations, and other topics necessitating education and guidance.

Recommendation #6: Employer training

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 WHD 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 H-2A employer forums. A forum steering committee was formed, however planning progress was halted by COVID-19 and waiting for finalization of the new federal rules. This committee desires that ESD work with USDOL to plan and conduct employer forums. The estimated timeframe for federal rule publication is 2023.

Please refer to the recommendation number 5 update for further discussion on ASWS employer training activities.

VII. Budget

In accordance with RCW [50.75.040](#), this section of the report provides analysis of: (1) the costs incurred by the office to administer the H-2A program; (2) the funds to administer other department programs for farmworkers, and (3) the amount of funds allocated by the federal government to administer the H-2A program and all other agricultural programs within the department. For the purpose of this report, the analysis of funds to administer other department programs for farmworkers is covered as part of the section providing an analysis of the amount of funds allocated by the federal government to administer the H-2A Program and all other agricultural programs within the department.

Figure 8 provides a breakdown of activities and the current funding source used by ESD to support the execution of each activity. While some of the funding sources shown, such as the FLC Grant, may allow for additional activities to be funded (outreach, training, field checks and field visits). Those activities are not accounted for in the table given base funding does not pay for those activities (as detailed in *Figure 8*, supplemental 2021 and 2022 funding will be used for outreach). Each funding source represented in *Figure 8* is described in greater detail in this section.

Figure 8. H-2A activities and supporting federal and state funding sources
Washington state, 2022
Source: Employment Security Department

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		*	✓	*

*Allowed but not currently used.

**Other state funding consists of the Employment Services Administrative Account: Claimant Placement Program and the Administrative Contingency Account: Penalties and Interest.

***In 2022, ASWS compliance staff conducted visits to temporary worker housing to confirm the accuracy of housing descriptions, as indicated on Form ETA-790. These visits did not constitute housing inspections. Rather, these visits were to gather data necessary to adequately inform the SWA prior to the SWA certifying the housing as compliant to USDOL.

Figure 9 provides a brief comparison of each major funding source, its purpose and the amount allocated to ESD or by ESD in FY 2022. In comparison to 2020, the federal FLC Grant base funding of \$400,000.00 remained the same, though ESD received a supplemental allocation of \$172,579.00 in 2021 and \$202,678.00 in 2022. The federal Wagner Peyser Grant was cut by \$427,991 from \$15,891,995 to \$15,464,004. State funding for the ASWS office remained constant.

Figure 9. Overview of major ESD funding sources supporting H-2A activities
Washington state, 2022
Source: Employment Security Department

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 Supplemental (One-Time): \$202,678
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

Funding source	Purpose	FY 2022 allocation
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.	\$601,455 (survey only)

Funds allocated by the federal government to administer the H-2A Program and all other agricultural programs within ESD

The USDOL allocates funding to state workforce agencies, like ESD, to support the federal government’s obligation to process H-2A applications filed by agricultural employers while ensuring conditions of certification are met.

The conditions for certification are:

- Qualified U.S. domestic workers are not available to meet employer needs; and
- The employment of foreign workers does not adversely affect the wages and working conditions of similarly employed U.S. domestic workers.

The USDOL provides funding to ESD through two federal grants to administer aspects of the H-2A Program – the FLC Grant and the Wagner-Peyser Grant. When those funding sources are insufficient, ESD relies on state funding sources to meet customer needs.

The Foreign Labor Certification (FLC) Grant

This FLC Grant is intended to fund services provided by state agencies that support the administration of the H-2A and H-2B foreign labor certification programs. The following activities are allowed, but not all fully funded 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 DOH and LNI 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\(d\)](#);
- Conducting agricultural wage and prevailing practice surveys to satisfy conditions described by [20 CFR 655.120](#);
- Stakeholder engagement and outreach activities; and

- Conducting field visits and field checks as required by Wagner-Peyser regulations [20 CFR 653.501\(c\)\(3\)\(vii\)](#) and [20 CFR 653.503](#), respectively.

The USDOL publishes an annual Training Employment Guidance Letter (TEGL) that provides grant planning instructions to all state workforce agencies. [TEGL 12-21](#), issued on June 10, 2022, provided ESD the most recent instructions. [Attachment 7 to TEGL 12-21](#) provides a comparison FLC Grant funding by state for FY 2022. *Figure 10* provides a summary of FLC Grant funding awarded to ESD over the last five years.

Figure 10. FLC Grant funding awarded to ESD for FY 2017 to 2022
Washington state, 2022
Source: Employment Security Department

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.

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 LNI. The FLC Grant in the past set a cap on funding for survey work, site (field) visits and field checks of up to 20 percent of the allocated funding. In 2022, that cap only applies to survey activities.

The 2020 report highlighted that USDOL 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 FY 2019, ESD received 2.80 percent of the FLC funding while accounting for 10.20 percent of all certified positions nationally.

Figure 11. Review of H-2A positions certified and FLC funding for top 10 states in FY 2021
Washington state

Sources: Office of Foreign Labor Certification – H-2A temporary agricultural labor certification program selected statistics, FY 2021 and Training and Employment Guidance Letter for Fiscal Years 2022-2024; ETA, USDOL Office of Foreign Labor Certification H-2A temporary Ag. Program, Selected Statistics FY 2021

Percent of top 10 states by number of H-2A positions certified (2021)	Number of positions certified (FY 2021)	Percent of total certified in U.S. (FY 2021)	FLC funding level (FY 2022)	U.S. FLC funding (2022)
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%
Total	317,619	100%	\$21,282,000	100%

In recent years, both ESD and agricultural employer organizations have continually advocated for increased FLC funding for the state with the Congressional delegation. In FY 2021 and 2022, while Washington state’s base FLC allocation of \$400,000.00 remained unchanged, a supplemental allocation of \$172,579.00 was provided in 2021 and \$202,678.00 in 2022. With these additional funds, ESD plans to add one to two project positions to support FLC functions during peak application time (November to 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.

While the majority of FLC work, and accordingly funding, is directed to the H-2A program, the ASWS office is also responsible for reviewing and processing employer H-2B (temporary non-agricultural worker) applications. H-2B application processing is not as labor intensive as H-2A applications because H-2B applications do not require the SWA to review and certify worker housing. The ASWS office processed an average of 120 H-2B applications in 2021 and 2022. ASWS expects H-2B applications to increase as more employers utilize the program.

The Wagner-Peyser Grant

Originally passed in 1933, the Wagner-Peyser Act established a nationwide system of public employment offices known as the Employment Service (ES) 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. The act was amended in the late 1990s and, as a result in Washington, Wagner-Peyser became a key part of the state's one-stop system, called WorkSource.

WorkSource centers provide universal access to an array of employment and training services, which are available to any job seeker, regardless of employment status. Veterans receive priority and disabled veterans receive the highest priority. States can provide specialized assistance to other targeted populations such as individuals with disabilities, ex-offenders, youth, minorities, older workers, and migrant and seasonal farmworkers (MSFWs). Any employer seeking workers is eligible for employer services. Funded activities are provided free of charge to both job seekers and employers through self-service, facilitated self-help services, or staff-assisted services.

State allocations are based on federal formula provisions defined in the Wagner-Peyser Act. [Attachment B to TEG 09-21](#) outlines the formula in detail, which is as follows:

- Formula for 97 percent of funds:
 - 2/3: state relative share of civilian labor force (average 12 months ending September 30th [preliminary] or December 31st [final])
 - 1/3: state relative share of total unemployment (average 12 months ending September 30th [preliminary] or 1 December 31st [final])
 - Minimums:
 - 90 percent of state relative share of prior year funding
 - 0.28 percent of total available funds for states
- Distribution of 3 percent of funds (not applied to Washington state due to the size the state civilian labor force):
 - States with a civilian labor force below one million, and under the national median civilian labor force density, receive an amount which, when added to their share of the 97 percent, will result in an amount equal to 100 percent of their relative share of the prior year funding.
 - Remaining states losing in relative share receive a share of the remaining funds prorated based on the amount needed to achieve 100 percent of their relative share of prior year funding.

For PY 2022 (July 1, 2022 to June 30, 2023), Washington state was allotted \$15,464,004 (a \$246,816.00 decrease from the \$15,710,820 allotted in PY2021). The funding was used to pay for a total of roughly 139 FTEs within ESD's Employment Connections Division, which is responsible for providing direct services to customers (businesses, job seekers and future job seekers). These FTEs are spread across over 30 WorkSource offices statewide. They deliver services to job seekers and employers in close alignment with local service delivery strategies developed by local workforce boards in 12 distinct regions across the state. Services provided range from hiring events to customer assessments, orientations, resume assistance, partner

resource referrals and more. *Figure 9* shows the amount of Wagner-Peyser funds ESD has received since the year 2012, which have remained relatively flat. [TEGL 09-21](#) offers the most recent allotments to states, with a comparison of allotments by state for PY 2021 and PY 2022 in [Attachment I](#).

Figure 12. Washington state and U.S. Wagner-Peyser allotments for PY 2012 through 2022
Washington state, 2022
Source: Employment Security Department

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%

Wagner-Peyser Act regulations speak extensively to services to MSFWs in 20 CFR Parts [653](#), [654](#) and [658](#). These regulations create special requirements to ensure the equitable delivery of employment services as to MSFWs. This includes aggressive outreach to enhance access to WorkSource services so that MSFWs have more opportunities to acquire new job skills that allow them to obtain higher wages and more stable employment.

While the intent of these requirements, which relate to domestic workers, are not directly intended to support the administration of the H-2A program, there are several Wagner-Peyser requirements that have synergies with H-2A administration service needs. *Figure 13* provides a summary of Wagner-Peyser requirements that are relevant to the administration of the H-2A Program.

Figure 13. Major Wagner-Peyser requirements tied to the administration of H-2A
Washington state, 2022
Source: Employment Security Department

Requirement	Connection to H-2A administration
Full-time State Monitor Advocate – 20 CFR 653.108	This position reviews WorkSource offices for compliance with MSFW service requirements, serves as a subject matter expert on complaints and conducts field visits, which may include H-2A employment sites when both domestic and foreign workers are present. ESD has a Monitor Advocate fully funded by the Wagner-Peyser Grant.
At least one MSFW outreach FTE per one-stop MSFW significant office – 20 CFR 653.107	ESD has 9 FTEs dedicated to MSFW outreach activities to engage farmworkers at places where they live, work and congregate with the goal of connecting workers to employment and training services. This may include providing H-2A-related information to workers when both domestic and foreign workers are present.

Requirement	Connection to H-2A administration
Agricultural Recruitment System (ARS) for U.S. workers – 20 CFR 653 Subpart F	This system requires state agencies and employers to ensure the orderly movement of workers that relocate to seek temporary agricultural employment. Several requirements extend beyond standard services provided to general employers (on-going verification of placements, job order entry, notice of rights to workers, field checks, etc.). While open to all agricultural employers, the ARS is primarily used by H-2A employers in Washington state.
Employment Service (ES) Complaint System – 20 CFR 658 Subpart E	The ES Complaint System handles all complaints and apparent violations alleging an employer’s failure to comply with Wagner-Peyser regulations. The ES Complaint System also accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws that may occur on sites with H-2A workers.
Discontinuation of Services – 20 CFR 658 Subpart F	Discontinuation of services procedures are used when employers are found to be out of compliance with Wagner-Peyser regulations and/or employment laws, including H-2A Program requirements.

As detailed in the following section, ESD has primarily relied on 10 percent of Wagner-Peyser funding to cover minimum staffing requirements related to the Monitor Advocate and MSFW outreach positions. Duties associated with the ARS, the ES Complaint System and discontinuation of services have been largely funded by the Wagner-Peyser Grant.

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 were \$76,991.00.

Wagner-Peyser 10 percent funds

Section 7 of the Wagner-Peyser Act, as amended by the Workforce Investment Act of 1998 and the Workforce Innovation and Opportunity Act of 2014 require the Wagner-Peyser Grant expenditures to be split 90/10 with 90 percent intended to fund services and activities in the one-stop system and 10 percent reserved for use by the Governor for performance incentives, supporting exemplary models of service delivery, professional develop and career advancement of SWA staff, and services for groups with special needs ([Section 7\(b\)](#) and [20 CFR 652.204](#)).

In Washington state, Wagner-Peyser 10 percent funds (approximately \$1.55 million in PY 2022) are allocated for positions and services aimed at supporting the agricultural sector. As Wagner-Peyser 10 percent and other flexible sources have continued to remain stagnant over time, funding has largely been centered on funding MSFW Outreach FTEs (including the Monitor Advocate) required by Wagner-Peyser regulations and a few additional staff in agricultural areas serving farmworker customers and agricultural employers. A small percentage has also been allocated to paying for administrative staff (supervisors and administrative assistants).

ESD’s allocation of Wagner-Peyser 10 percent funds are shown in *Figure 14*. While most of Wagner-Peyser 10 percent funds are focused on positions providing direct customer support and outreach, additional funds are used for support services. As shown in *Figure 14*, most of the Wagner-Peyser 10 percent FTEs are allocated to areas with significant agricultural industry.

Figure 14. Wagner-Peyser 10 percent ESD field operations allocation for FY 2022

Washington state, 2022

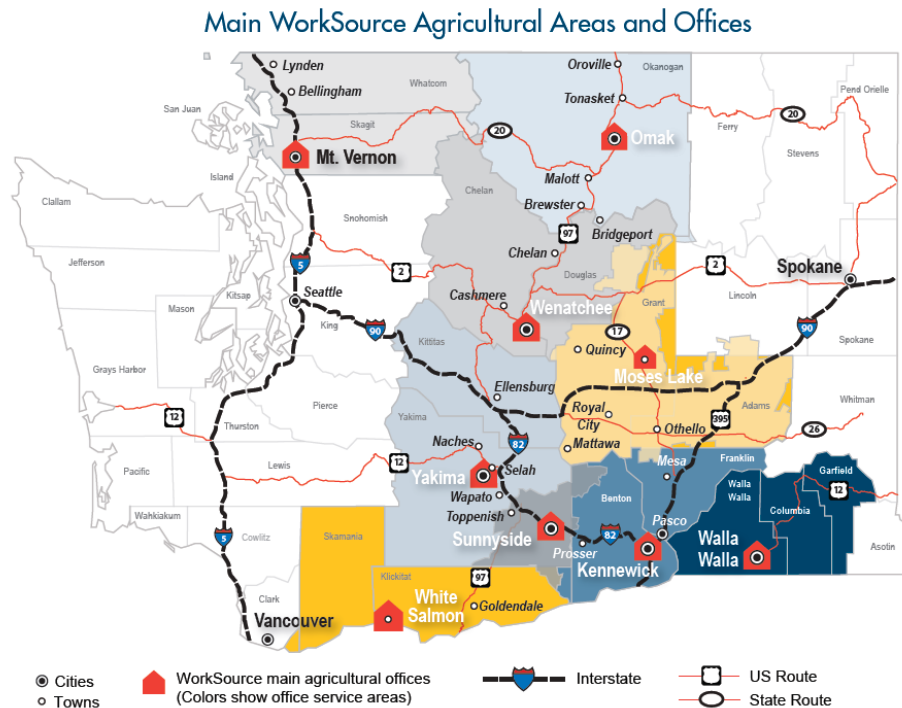
Source: Employment Security Department

Office	FTE budget	Budget allocated
Monitor Advocate Position	1.00	\$111,187.00
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

Figure 15. WorkSource offices located in agricultural service areas

Washington state, 2022

Source: Employment Security Department



The ESD is expected to further define roles and responsibilities in a manner that maximizes MSFW outreach staff efforts to connect all MSFWs and all agricultural employers to employment and training resources while also providing support needed for the H-2A Program administration. Per [20 CFR 653.107\(b\)](#), MSFW staff are required to locate and contact MSFWs who are not being reached by the normal intake activities conducted by WorkSource offices. Outreach staff responsibilities, as defined in federal regulation, must include:

- Explaining to MSFWs at their working, living, or gathering areas the following:
 - The services available at their local WorkSource center and other related services.
 - Information on the Employment Service (ES) and Employment-related Law Complaint System.
 - Information on the other organizations serving MSFWs in the area. and
 - A basic summary of farmworker rights, including farmworker rights with respect to the terms and conditions of employment.
- Attempting to connect MSFWs to their local WorkSource center to obtain the full range of employment and training services.
- If an MSFW cannot or does not wish to visit a WorkSource Center, the outreach worker must offer to provide the following on-site:
 - Assistance in the preparing applications for employment services.
 - Assistance in obtaining referral(s) to current and future employment opportunities.
 - Assistance in preparing either ES or employment-related law complaints.
 - Referral of complaints to the ES office Complaint System Representative or local WorkSource office manager.
 - Referral to supportive services and/or career services in which the individual or a family member may be interested. and
 - As needed, assistance in making appointments and arranging transportation for individual MSFW(s) or members of their family to and from local one-stop centers or other appropriate agencies.
- Making follow-up contacts as necessary and appropriate to provide the assistance.
- Observing the working and living conditions of MSFWs and, upon observation or upon receipt of information regarding a suspected violation of federal or state employment-related law, documenting and referring information to the local WorkSource office manager.

The MSFW staff, while intended to engage workers and employers where they congregate and trained to initially process complaints, are not trained as compliance staff given their primary purpose is to extend WorkSource services to MSFWs. Accordingly, their outreach role is distinct from that of ASWS staff performing compliance outreach during field checks and site visits. The consistent presence of MSFWs in agricultural areas, however, makes them a critical

resource for collaborating with the ASWS office and maximizing services to agricultural employers and workers.

Other state funding

The ESD's budget consists primarily of federal funding. When federal funding is insufficient or is not available to support specialized employment service needs, ESD relies on state funding sources.

The ESD has two main sources of state funding: The Administrative Contingency Account (Fund 120, also known as Penalties and Interest or P&I) and the Employment Services Administrative Account (Fund 134, also known as the Claimant Placement Program or CPP). The Administrative Contingency Account receives revenues from penalties and interest from employers for late or incorrect unemployment taxes and interest from unemployment insurance recipients who must repay benefits to which they were not entitled. The Employment Services Administrative Account, established in 1985, receives its revenues from an employer tax of 0.02 percent of taxable wages (for most classes of employers). These funding sources finance the ASWS office (CPP) and are used to help fund the Agricultural Wage & Employment Practice Survey (CPP and P&I).

Costs incurred by the office to administer the H-2A Program

In [RCW 50.75.005](#), the Legislature declared it to be in the public interest to provide adequate protections for foreign and domestic workers and to provide education and outreach opportunities to help growers maintain the stable workforce they need.

Accordingly, [RCW 50.75.020](#) created the ASWS office. Funding to implement [RCW 50.75](#) is also intended to fund some of the work to develop and complete the annual Agricultural Prevailing Wage and Employment Practice Surveys that provide USDOL information required to make a determination on setting minimum prevailing wages and employment practices for foreign workers.

Current funding for the H-2A Program

The [fiscal note](#) attached to [ESSSB 5438](#) provided an estimate of the FTE support and funding to carry out key functions of the H-2A program. When developing the 2021 to 2023 biennium budget request (decision package) to continue the program, the positions and other costs were refined to reflect how the program is now expected to be staffed (*Figure 16*).¹⁷ That funding budget request was approved by the state legislature during the 2022 session.

In FYs 2020 and 2021, the ASWS office accumulated approximately \$250,00.00 in vacancy funds as a result of minimal initial staff hiring due to COVID-19. As discussed above, these vacancy funds were utilized to fund the Customer Experience Study. Consequently, the ASWS office was fully spent in each FY.

¹⁷ Cost for staff salaries and benefits are not constant and do increase as Washington state government staff receive cost of living and other adjustments. During the biennium captured in this report, adjustments to other objects or purposes offset those costs so that the total budget equates to that approved by the legislature.

Figure 16. Annual budget request by job classification (2021 to 2023 Biennium)
Washington state
Source: Employment Security Department

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

Figure 17 provides a breakdown of the budget by object or purpose for FY 2021 to 2025. Funding is allocated to cover two years (biennium). The budget associated with [RCW 50.75.020](#) does not account for FTEs and services related to H-2A already covered by other funding sources, namely the FLC and the Wagner-Peyser Grants.

Figure 17. Budget request by object or purpose for FY 2019 to 2025
Washington state
Source: Employment Security Department

Description	FY 2019-2021	FY 2021-2023	FY 2023-2025
FTE staff	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

Prevailing wage and employment practice survey costs

The agricultural wage survey is intended to protect the wages of domestic farmworkers by ensuring they are not adversely impacted by an employer’s use of the H-2A Program.

Per [20 CFR 655.120 \(a\)](#) “an employer must offer, advertise in its recruitment, and pay a wage that is the highest of the AEW [Adverse Effect Wage Rate], the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment.”

Per [20 CFR 655.1300 \(c\)](#) the “Prevailing hourly wage means the hourly wage determined by the SWA [State Workforce Agency] to be prevailing in the area in accordance with State-based wage surveys.” The “Prevailing piece rate means that amount that is typically paid to an agricultural worker per piece (which includes, but is not limited to, a load, bin, pallet, bag,

bushel, etc.), to be determined by the SWA according to a methodology published by the Department [U.S. Department of Labor].”: [ETA handbook 385](#).

To meet this requirement, ESD conducts voluntary employer and worker surveys to establish prevailing hourly wage or piece rates that are posted by USDOL in its [Agriculture Online Wage Library](#) if the survey findings meet the requirements in the ETA Handbook 385.

Figure 17 lists the expected 2022 agricultural survey costs by funding source capturing the University of Washington (UW) contract, ESD (DATA) and Attorney General costs. The total cost for the survey in 2019 (as captured in the 2020 report) was \$698,437.00, which was \$222,434.00 less than the expected cost of the 2022 survey. A little more than half the increase from 2019 to 2022 is associated with UW (\$63,262.00) and legal (\$52,405.00) costs. The ESD will be putting out an RFP for a new survey contract and anticipates legal fees will be ongoing.

In 2019, ESD was not fully staffed to conduct the survey and the legislature funded ESD’s DATA staff to do this work when establishing the ASWS office accounting for a little less than half of the cost increase (\$106,767.00) from 2019 to 2022. That funding level approval is detailed below in Figure 18.

Figure 18. Expected cost of the 2022 Agricultural Wage and Employment Practices surveys Washington state, 2022
Source: Employment Security Department, DATA and Budget

Funding source	UW- employer	UW-worker	DATA staff	Attorney General - Legal fee	Sum
Foreign Labor Certification	\$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
Total	\$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

VIII. Worker and employer perspectives

In addition to the above committee recommendations, the 2020 report included perspectives from both worker and employer representatives. The worker and employer perspectives provided contextual information for the recommendations in the report and included the issues and concerns considered most important by each group. The committee also noted that these issues and concerns would continue to be addressed in future committee meetings.

In addition to the perspectives in the 2020 ASWS Report, the committee wishes to add the following worker and employer perspectives, as well as common issues identified by both groups:

Worker perspectives

Since the ASWS was formed in 2020, the size of the H-2A foreign agricultural worker program in Washington has only grown larger. There has also been more displacement of local farm workers and more exploitation of the H-2A workers. Washington state must take stronger action if it is going to protect our local workforce and prevent labor trafficking of foreign farmworkers. The H-2A program structure is built to meet the needs of farm employers and not workers; it perpetuates structural racism and fails to provide workers with the tools to protect themselves from exploitation.

1. The needs identified in the Worker Perspective to the 2020 Report remain largely unmet:
 - a. **Lack of needed data:** The agencies, including ESD, do not collect the data that workers need to address the problems that face them, and even where the agencies collect data, they do not organize it in a format accessible by the worker community. To respond to the harmful impacts of climate change such as increased weather extremes, wildfires and pandemics, workers, advocates, and policy makers need to know how many foreign workers are in our state at any given time and where they are. The current system does not require the employers to report the number of foreign workers who have actually arrived and are working on their farms. Also, there is no reliable source for where these workers are being housed. ESD's current data gathering and analysis systems do not meet the needs of the state's agricultural workers and employers.
 - b. **Need for accountable agency coordinated oversight mechanisms:** The ASWS has made progress in increasing staff presence on H-2A workplaces. However, coordination with multiple state agencies is needed to enforce the wide range of health and safety, wage, contract, and housing problems that exist. The state should have a mechanism to track worker complaints from referral to the appropriate enforcement agency to resolution. Workers need to know that complaints are addressed and lead to action.
 - c. **Worker voices in the customer experience survey:** ESD needs to acknowledge the barriers of structural racism in traditional surveys of farmworkers and be intentional in reaching out to workers in a way that collects authentic voices of workers. Based on past experience, we don't trust that the outreach to the farmworker community for the customer experience survey will be done adequately to get accurate information. The agency needs to improve the way that it reaches out and communicates with the farmworker community to ensure that that local worker input is elevated and is considered in decision-making.
 - d. **Prevailing wage surveys:** A fundamental principle of the H-2A program is that it cannot be used if it will depress local wages. Inaccurate (or non-existent) prevailing wage findings make local workers vulnerable to wage depression, as more and more growers take advantage of the opportunity to offer the AEW (H-2A minimum wage) instead of the piece rates that the free labor market would demand. Prevailing wages are crucial to protecting local wages, as prevailing piece-rate pay allows workers to make more than minimum hourly wages, especially during harvest. Currently, ESD surveys local workers about their pay, but it does not use the results in any way in making prevailing wage findings, verifying the results of grower surveys, or improving grower surveys for future years. Worker voices must be

incorporated in the prevailing wage and working condition surveys to make accurate determinations of prevailing wages. We need a robust worker survey that is parallel to the grower survey, and ESD must commit to using the survey results in every way possible to ensure that prevailing wage determinations are true to the local labor market.

- e. **Employer recruitment and hiring:** The law allows growers to bring in H-2A workers only when they are unable to find domestic workers. The 2020 recommendations focus on improving WorkSource recruitment and hiring services. But given the small percentage of workers hired through WorkSource offices, and the rapid continued growth in the number of H-2A workers being brought to Washington each year, we need to expand our focus to improve employer recruitment and hiring of domestic workers. Local workers in the community report that many employers don't want to hire them once they start bringing H-2A workers, or only hire them for short periods when they need additional workers, not the other way around. There needs to be higher expectations of agricultural employers to recruit and hire in the local communities. In order to understand how to better help local workers connect with the jobs offered by H-2A employers, the state should seek to understand what employers are doing to recruit, hire, and retain their local workforce, and what more could be done. The lack of a requirement that employers share their hire reports with ESD has been a barrier, as has been the lack of accountability required of growers to demonstrate their active recruitment of local workers. ESD needs mechanisms for understanding the barriers to local workers' access to agricultural jobs and for tracking the results of domestic worker referrals to H-2A growers and analyzing why the referrals succeed or fail.
 - f. **Oversight of labor contractors:** There has been an increase in the number and role of farm labor contractors in bringing H-2A workers to Washington. This has led to new challenges, including the increased use of motels to house workers, with an accompanying lack of transparency and oversight. Workers are moved around, making enforcement more challenging. The ASWS needs increased presence from the farm labor contracting licensing division of Labor and Industries to provide oversight and ensure compliance with the Farm Labor Contractors Act.
2. Additional Recommendations:
- a. **Monitoring and enforcement:** An important impetus for the legislation creating the ASWS committee was the need for stronger agency oversight and coordination to protect workers. The committee needs to focus on strengthening this monitoring and enforcement. The 2020 report focused exclusively on recommendations to strengthen local worker recruitment and hiring. The committee needs to address the need for oversight and enforcement. Worker organizations are receiving more calls than ever from H-2A workers experiencing abusive treatment, constant pressure to meet production standards, and lack of contract compliance. The state needs to analyze the complaints received by the state agencies for gaps in existing protections, and to implement an accountable tracking system for agency enforcement that shows the follow-up and resolution of worker complaints.

- b. **Addressing retaliation:** The pervasive fear of blacklisting and retaliation is a tremendous barrier to H-2A workers reporting workplace violations. The state needs legislative change to improve retaliation protections for farmworkers.¹⁸
- c. **Disaster response committee:** We recommend that the disaster response committee be expanded to develop the funding and resources needed to assist farmworkers impacted by the increasing climate disasters. Every year now we see increasing climate emergencies and wildfires. Farmworkers are left with less earnings to survive. In particular, the H-2A workers have no safety net for the periods that they are laid off or have only part-time work. They are not eligible for unemployment benefits, TANF, food stamps or other financial assistance, and they are completely dependent on their employers for transportation to resources. The employers are required under H-2A program rules only to provide $\frac{3}{4}$ of the season's promised work hours. In a typical six-month contract, this can leave workers to sit in the labor housing for 1.5 months with no income either to buy food and necessities for themselves or to send to their families who depend on them.

¹⁸ ASWS member Michele Besso abstains from this recommendation.

Employer perspectives

Recommendation 1:

Growers and workers both experience frustration going through a middleman. If a more direct way can be found to make connections between potential employees and employer, we are for it. State-mediated recruitment does remain important to both employers and employees, however, as it documents compliance with domestic recruitment preferences as well as providing a trigger for mandatory field checks.

Recommendation 2:

We favor finding an alternate way to streamline connections between potential employees and employers since the proposed waiver was denied by USDOL. The employer information which would have been published under the proposed waiver is available on the USDOL's seasonal [ag jobs website](#), and it may be possible to utilize this mechanism.

Recommendation 3:

The domestic recruitment system can't be improved without knowing what is happening to referrals. We view this as fundamental to understanding the performance of the recruiting system and anticipate that there will be new information gleaned from tracking referral outcomes better. The employer community would benefit from knowing what jobs other than agricultural jobs potential referrals are taking.

Recommendation 4:

In-depth information is needed on customer experience in order to identify meaningful solutions to poor recruitment program performance. Employer representatives support the proposed survey process that would gather substantive comments from workers and employers who may not be providing information directly to the public and agency members of the ASWS Committee.

Recommendation 5:

A knowledgeable employer base is a productive means of gaining compliance. In particular, a mechanism within ESD that allows employers to ask for information or receive guidance on compliance will result in more overall compliance and a better system for the people of Washington state. As more employers must resort to the H-2A program to meet their labor needs, these new participants will need resources to ensure they operate a successful and compliant workplace.

Recommendation 6:

Employer training is a subset of *Recommendation 5* and is a key part of reaching the goal of widespread compliance. It would be beneficial for the department to identify compliance problem areas and create training to address them. It is important to consider program improvements in the context of growth and outreach. As the use of the H-2A program continues to increase with new employers and more workers, and greater outreach to workers encouraging them to report any concerns or violations, the absolute number of complaints is likely to rise. However, this may not reflect a higher rate of occurrence and may also be a result of better information (and timely correction) on problems and not an increase in their occurrence.

Issues and concerns not covered by the recommendations related to an analysis of the costs of H-2A and other agricultural-related programs:

Employer representatives continue to emphasize the importance of coordination between state and federal agencies. This is essential to ensuring that any problems are promptly addressed and will also reduce duplication of effort. Communication and resource-sharing between agencies will reduce administrative costs while improving outcomes, improve customer service for employers and employees, and reduce the inconvenience of duplicative inspections and outreach visits during periods of peak agricultural activity.

The cost of participating in the H-2A program is high and is increasing. Cost considerations need to be a priority when designing compliance requirements and the specific design of the H-2A program. The cost of the H-2A program is of paramount importance to the grower community.

Concerns relating to data collection:

Many ASWS committee members have expressed a desire for comprehensive and real-time information on the location, identity, and visa status of every employee in a workplace utilizing the H-2A program. While omniscience may be an aid to decision-making, the efforts and costs necessary to collect and maintain such information must be balanced with its practical utility. For example, a workplace with an H-2A contract is likely to include both temporary foreign workers and domestic workers in corresponding employment. Moreover, employers are required to actively continue domestic recruitment after initiation of the contract and so this data is likely to change on a regular basis. While there may be interest in these specific employee counts, they do not alter the contract terms or the applicable health and safety requirements which are tied to the workplace and the contract and are not to the individual employee's immigration status.

Common issue areas identified by worker and employer cohorts

Common issue areas identified by the two cohorts include:

1. **H-2A program impact to domestic workers:** The committee recognizes that the H-2A program in Washington is experiencing continued growth which has impacted the state's domestic farm labor workforce. The committee desires to learn more about how domestic workers seek farm work, how and why domestic workers utilize (or do not utilize) ESD services, and what barriers are experienced by domestic workers during the job recruitment processes. The committee will utilize the data collected from a customer experience study to identify and recommend solutions to improve ESD recruitment services for farmworkers.
2. **State agency coordination regarding worker complaints:** The committee believes that further coordination between ASWS and other states agencies, including LNI and DOH, is necessary to more comprehensively and efficiently receive, resolve, and/or refer complaints received from workers or observed in the field (apparent violations). The committee desires better tracking and reporting of outcomes of worker complaints, as well as improved communications between agencies handling

complaints to avoid duplication of work. The committee recommends that the coordination be formalized in writing to promote accountability and tracking.

3. **Improved data keeping:** The committee desires improved data keeping and reporting from ESD related to domestic farmworker application, referral, and placement to agricultural jobs. The committee believes that this data is essential for determining the number of foreign workers present in the state, the number of domestic applicants for farmworker jobs, the number of applicants hired (or not hired by employers) and the number of workers in worker housing facilities. Additionally, the committee desires to receive information from ESD regarding the outcome of referrals made by WorkSource to agricultural jobs, to learn why, or why not, domestic farmworker referrals are hired.
4. **Employer training, support and resources:** The committee believes that ASWS is well positioned to provide employer resources and training, particularly for new users of the H-2A program. The committee desires that employer resources and training be developed and delivered by ASWS to improve employer compliance with H-2A rules and regulations.