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Via www.regulations.gov

**RE: OMB Control Number: 1205–0453
Information Collection Request submitted to OMB by the Department of
Labor on National Agricultural Worker Survey, 87 Fed. Reg. 994 (Jan. 7,
2022)**

To Whom It May Concern:

Texas RioGrande Legal Aid (“TRLA”) provides civil legal services to low-income clients, and especially to agricultural workers, in Texas, Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Tennessee, and throughout the United States. Its staff has more than 50 years of experience and expertise with respect to farm worker communities around the country. The extensive, reliable information produced by the National Agricultural Workers Survey (“NAWS”) is vital to TRLA for planning, targeting, and delivering legal services to its agricultural worker clients. Further, TRLA is funded in part by the Legal Services Corporation, which distributes funds based upon a formula that relies heavily upon NAWS data. For these reasons TRLA has long been concerned with the demography of farm workers in the United States and follows the NAWS survey very closely. From these perspectives, TRLA offers the following comments regarding the ICR currently under consideration.

As a general matter, the NAWS survey is critical to all of the programs that are targeted to providing services to farm worker families in the United States. It is extraordinarily difficult to understand and document with any degree of accuracy the complex social, economic, and geographic experience of farm workers in the United States on any but an anecdotal basis. NAWS embraces this task from a solid, social science perspective, and NAWS provides the best available objective data about this important segment of our economy. This data is essential to planning in the health, social services, immigration, labor supply, legal, and economic fields. While legitimate questions can be raised as to specific issues, without question, this survey must be continued.

The survey might be improved, however, in a number of ways if resources can be found to do so.

Extend survey to H-2A workers.

Under current practice, H-2A temporary workers are not included within the NAWS survey. While this was perhaps a logical choice at the beginning of the survey, it makes less and less sense as agricultural employers rely more heavily on temporary foreign workers. As use of

the H-2A program has exploded and H-2A workers become a more significant portion of the total agricultural labor force, to the extent their experience is different from that of U.S. farm workers, their exclusion will inevitably distort the survey results. Of course, it would be important to rely on worker-reported results as to wages paid and working hours, rather than assuming that employers are complying with conditions offered in the job orders. Indeed, it would be helpful to policymakers to understand the extent to which promised conditions are reported by agricultural workers as being met. Information about dependent family members both in the home sending country and within the United States should also be collected. It would be further helpful to know whether non-H-2A workers are employed doing the same work as H-2A workers at the same establishment, and whether the wages are the same.

In some parts of the country, use of H-2A workers has become quite widespread, and it would probably be easier to identify establishments using H-2A workers than not. If the survey is opened to H-2A workers, it would be important that, in such counties, H-2A employers not be overrepresented in the survey.

Collection of COVID-19 related information

For a variety of reasons, understanding the impacts of COVID-19 on the agricultural work force, and the nature of precautions being taken to protect workers, is highly important. TRLA supports the series of questions being proposed for approval relating to the pandemic. In addition, it would be helpful to know whether the density of employer-provided farm labor housing occupancy and ventilation of such labor camps is adequate since those factors bear directly on the incidence of COVID-19 among farm workers.

Survey of farm workers' access to digital information

The current NAWS results with regard to access to digital information was eye-opening and very significant in thinking about how to impart client information about rights and access to justice. It should be continued. In addition, it would be very helpful to understand any geographic variation in this information. As well, is the reported high level of access available during all periods of employment, or only during part of the year?

Include off-farm food processing workers in NAWS survey

Currently, food processing workers are interviewed as a part of NAWS only if they work on a farm or for a farmer who principally processes crops produced by the farmer. In much of the country, food processing is done off-farm by other employers, yet these workers are an integral part of the agricultural work force. These workers should be part of the NAWS survey.

Don't allow farm employers to exclude their workers from the NAWS survey

Under current practice workers are only interviewed for the NAWS if their employer consents to the interview. This makes the survey less random, since employers who are not complying with proper labor standards are more likely to refuse to consent to the survey. The Department should explore ways of offering the survey to the employees of nonconsenting

employers. This might be done by using employment records of nonconsenting employers. Issues would have to be resolved about access to those records and access to the workers once identified, but this would still offer a more random set of interviews.

Better means of involving the employees of labor contractors in NAWS should be sought

Reliance on unemployment insurance records to identify the universe of labor contractors is very unreliable in states that do not have universal coverage of agricultural workers for unemployment benefits. It has been our experience that many labor contractors who are large enough that they should be covered do not report unemployment taxes to state authorities. Since it is common for an agricultural worker not to be covered, noncompliance is far less likely to be investigated by state authorities. Some states require registration of farm labor contractors. This may be another means of identifying a list of farm labor contractor employers.

State level data that is statistically significant would be very useful

Aside from California and Florida, most NAWS data is statistically significant only at a regional level. Yet for many of the purposes for which we use this data, state level data would be more useful. Understanding that this is a question of resource allocation, it would be better if enough interviews could be conducted to draw reliable conclusion at the state level with respect to most significant agricultural states.

Thank you for your consideration of these comments.

Very truly yours,

TEXAS RIOGRANDE LEGAL AID, INC.

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