



March 27, 2023

James S. Frederick  
Deputy Assistant Secretary of Labor  
for Occupational Safety and Health  
200 Constitution Ave NW  
Washington, DC 20210

**Re: Susan Harwood Training Grant Program; Revision of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements (Docket No. OSHA-2010-0021)**

Dear Deputy Assistant Secretary Frederick:

Farmworker Justice (FJ) submits these comments in response to the Occupational Safety and Health Administration's request for public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Susan Harwood Training Grant Program (88 FR 5041). Farmworker Justice is a national nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.

FJ has been awarded multiple Susan Harwood grants and we are therefore familiar with the program's reporting requirements. While we support OSHA's efforts to collect disaggregated demographic data on workers trained through projects funded by the Susan Harwood Training Grant Program, we are concerned that, if the methodology used to collect the data from trainees is not suitable for the population served, the proposed changes may become counterproductive. The methods used to collect this information will determine whether OSHA is able to collect useful data, or whether the information collection activities will discourage workers in certain demographic groups from providing the desired information or from participating in safety training activities altogether.

President Biden's *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (E.O. 13895) states that "each agency must assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved

groups.”<sup>1</sup> The Executive Order also directs the Director of the Office of Management and Budget (OMB) and representatives of other agencies to support agencies in implementing actions, consistent with applicable law and privacy interests, that expand and refine the data available to the Federal Government to measure equity and capture the diversity of the American people.

OSHA has identified the gathering of disaggregated age, race, ethnicity, gender, and language data as its first step toward complying with the data gathering requirements of the Executive Order and is requesting a revision to add race, ethnicity, and language to the currently approved data collection. The request for public comments does not specify whether OSHA will seek to add any requirements related to the aforementioned age and gender data.

The collection of race, ethnicity and language data is necessary for OSHA to determine whether projects funded by the Susan Harwood Training Grant Program are equitably serving workers from different racial and ethnic backgrounds, as well as workers whose primary language is not English, who often have difficulty accessing training materials and services in their native languages. Reporting requirements imposed on grantees, however, will necessarily have to be met by the implementation of methods for self-reporting of this data by trainees. In order to ensure that the data is being collected in a manner that promotes self-reporting and participation, we offer the following recommendations.

***Recommendation 1: Collect disaggregated data on race, ethnicity and language, but enable grantees to make it optional for trainees to self-report this personal information. Permit the anonymous self-reporting of such data by trainees.***

The agricultural worker population our organization serves is overwhelmingly comprised of low-income, socioeconomically disadvantaged workers. A large majority of these workers (70%) were born outside the U.S., and come from a variety of racial and ethnic backgrounds. According to the National Agricultural Workers Survey, 63% of farmworkers were born in Mexico, 30% in the United States or Puerto Rico, 5% in Central America and the remaining 2% in other locations including South America, the Caribbean, Asia, and the Pacific Islands. Thirty-three percent categorize themselves as White, less than 1% as Black or African American and 66% as “Other.” Seventy-eight percent identify as Hispanic and 10% as indigenous.<sup>2</sup>

The linguistic background of these workers means that there is a significant need for occupational health and safety training in languages other than English in the agriculture

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<sup>1</sup> The White House. *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. January 20, 2021. Available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

<sup>2</sup> U.S. Department of Labor. *Findings from the National Agricultural Workers Survey (NAWS) 2019–2020: A Demographic and Employment Profile of United States Farmworkers*. Research Report No. 16. Prepared by JBS International. Available at: <https://www.dol.gov/sites/dolgov/files/ETA/naaws/pdfs/NAWS%20Research%20Report%2016.pdf>.

industry. Twenty-nine percent of farmworkers report not being able to speak English “at all” and 39% say they can speak it only “a little” or “somewhat.” Furthermore, 1% of farmworkers say they feel most comfortable conversing in an indigenous language, while a small percentage (<1%) feel most comfortable speaking other languages.<sup>3</sup> Collecting disaggregated data on race, ethnicity and language would allow the agency to determine whether additional measures are needed to eliminate systemic barriers to the participation of these workers in OSHA-supported training activities.

While collecting data on race, ethnicity and language will allow OSHA to evaluate whether it is meeting the objectives of E.O. 13895, the agency must ensure that it is not requiring grantees to collect the data from workers in ways that might discourage them from accurately sharing the corresponding data or from participating in safety trainings. Community health workers who deliver occupational safety trainings to farmworkers have reported that these workers are sometimes reluctant to write down their names and signatures on attendance forms out of concern that such information could be used for immigration enforcement purposes (currently, 44% of farmworkers lack work authorization in the U.S.).<sup>4</sup> Making the self-reporting of personal information on race, ethnicity and language mandatory would risk creating additional concerns among trainees about the use of personal data collected during training activities. Specifically, trainees may become concerned that the additional data could be used to assess the likelihood that workers are undocumented. Although this would not be OSHA’s objective in mandating the collection of such data, most farmworkers are not sufficiently familiar with the agency’s data use policies to understand whether there is risk involved in the sharing of additional personal data. Therefore, providing personal data on race, ethnicity and language must be optional for trainees. Accordingly, OSHA must allow grantees to indicate on all forms on which such data is collected that providing this information is optional. Furthermore, enabling grantees to collect the data from workers anonymously—such as through the use a survey form that does not ask trainees to state their name—would give trainees more confidence to share this information.

***Recommendation 2: Include the category “Some other race” for race reporting; allow individuals to report more than one race.***

Race is a complex social construct which, depending on a person’s cultural background, may factor in characteristics such as ancestry, physical appearance and even socioeconomic status. Individuals of Latin American ancestry, among others, may have a very different perception of what it means to be “White” or “Black” than individuals of U.S. ancestry. In fact, many consider themselves to be of mixed race due to the centuries-long practice of intermarriage among racial groups in Latin America. If made to choose between the categories “White” or “Black,” many such individuals would choose “White” based on the more fluid definition of the term used in many Latin American countries. However, to people of U.S. origin who have a traditional American perception of the meaning of the terms “White” and “Black,” these individuals would not appear White, and

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

may experience structural disadvantages similar to those experienced by other people of color.

For these reasons, requiring that individuals be classified as belonging to only one of the five categories used by OMB to collect race data (White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander) would not allow OSHA to determine the extent to which the Susan Harwood Training Grant Program is actually advancing the goal of racial equity. Enabling the collection of data regarding individuals who self-identify as belonging to more than one race or to “some other race,” as the U.S. Bureau of the Census does in the decennial census, would yield data that is more representative of the worker population that is being served. The self-reporting of this information by trainees should be anonymous, as discussed above.

***Recommendation 3: Require grantee reporting of the language in which each training is delivered, while giving trainees the option to self-report the language in which they feel most comfortable conversing.***

Collecting data on the language used in each training session allows OSHA to determine how many speakers of various languages are being trained. Meanwhile, collecting data on the language in which trainees feel most comfortable conversing would enable OSHA to assess the extent to which workers taking part in these sessions are receiving information in the language that is most appropriate for them. By comparing these two sets of data OSHA will be able to identify whether there are unmet needs for training in particular languages among the worker population served by grantees participating in the Susan Harwood Training Grant Program.

Asking trainees to identify the language in which they are “most comfortable conversing” is preferable to asking individuals to identify “their primary language,” since the latter terminology can be easily misconstrued to mean, for example, the primary language of a person’s country of origin, even if it is not the language in which they are most comfortable communicating. Since safety training is most successful when trainees feel comfortable asking questions and interacting with their trainers, knowing in which language they are most comfortable is key to understanding whether they are being properly served by the training activities in which they are taking part. As stated in Recommendation 1, the self-reporting of language information by trainees should be optional and anonymous.

## ***Conclusion***

The collection of disaggregated race, ethnicity and language data would be a key step toward enabling OSHA to fulfill the requirements of E.O. 13895 and assess the effectiveness of the Susan Harwood Training Grant Program at meeting its objective of providing training to disadvantaged, underserved, low-income, or other hard-to-reach, at-risk workers in a way that is racially equitable. The collection of this disaggregated data, however, will require that grantees request self-reporting of the data by trainees. In order

for trainees to feel comfortable reporting this personal information, they must be allowed to self-report the information anonymously, and be allowed to easily opt out from self-reporting if they so wish. Furthermore, allowing individuals to self-identify as belonging to more than one race or to “some other race” will produce data that better reflects the racial makeup and diversity of the population served by the Susan Harwood Training Grant Program. Giving trainees the option to self-report the language in which they feel most comfortable conversing—in addition to gathering data from grantees regarding the language in training sessions are conducted—would reveal whether the language needs of trainees are being adequately met. We urge OSHA to consider these recommendations as it plans and implements the proposed changes to Susan Harwood grantee reporting requirements.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mayra Reiter". The signature is written in black ink and is positioned above the printed name.

Mayra Reiter

Project Director, Occupational Safety and Health

Farmworker Justice