



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
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July 22, 2016

Daniel G. Ford
Columbia Legal Services
101 Yesler Way, Suite 300
Seattle, WA 98104

RE: Farmworker Housing

Dear Mr. Ford:

Thank you for your letter of July 11, 2016 (enclosed), and your work on behalf of agricultural workers. As I stated previously, while we appreciate your concerns regarding availability of housing to all agricultural workers, Department of Commerce (Commerce) does not have authority to differentiate between classes of migrant farmworkers, nor to prohibit H-2A farmworkers residing in housing funded through the Housing Assistance Program. Nor does Commerce have authority to interfere with an employer's prerogatives in meeting its housing obligations under the Federal H-2A visa program.

As you noted in your letter, RCW 43.185.050(1) does in fact call out "special housing needs" and RCW 43.185.070(5)(h) identifies "Projects which demonstrate serving the greatest need" as priorities for the State's housing assistance funding. However, the Legislature also has explicitly identified migrant farmworkers generally as a population requiring housing assistance, with absolutely no distinction drawn between H-2A and non-H-2A farmworkers.

Moreover, H-2A farmworkers are also very likely to be minority people in rural households, populations also identified by the Legislature as of particular concern and requiring housing assistance. RCW 43.185.070(5)(h) states in full: "The Legislature further finds that minorities, rural households, and migrant farmworkers require housing assistance at a rate which significantly exceeds their proportion of the general population."

Had the Legislature intended to differentiate H-2A farmworkers or any other farmworkers with employer-paid or assisted housing benefits, it could have done so.

Furthermore, as I mentioned in our previous conversations and correspondence, for the past two biennia, specific projects—including farmworker projects—were individually selected by the legislators, not by Commerce, for funding (aka the “HTF LEAP list”). Refer to the 2011-2013 and 2013-2015 Capital Budget bills: http://leap.leg.wa.gov/leap/budget/index_lbns.asp.

As to the requirements of the Federal H-2A program, our understanding is that 20 CFR 655.122(d)(1) indeed requires employers to provide housing. But 20 CFR 655.122(d) also is clear that the under the Federal program, employers may opt to provide housing through public housing. 20 CFR 655.122(d)(4) states: “*Charges for public housing.* If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by the employer, the employer must pay any charges normally required for use of the public housing units directly to the housing's management.” The only limitations on an employer’s provision of public housing is that the employer: (1) pay the customary rental rates, and (2) make rental payments directly to the housing management.

Additionally, like the State RCW, the plain language of 20 CFR 655.122 is clear that, as to an employer’s provision of housing, there is no distinction between H-2A employees and similarly situated non-H-2A employees. 20 CFR 655.122(d)(1) requires employers to provide housing to all migrant workers who cannot practically return to their homes within the work day: “The employer must provide housing at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.” (emphasis added).

Again, Commerce truly appreciates your efforts on behalf of agricultural workers. For the reasons stated above we respectfully decline your request to require that housing assistance program housing be rented to H-2A employers only at market rates.

Should you have any further questions, please do not hesitate to contact me at (360) 725-4134 or by email at Corina.Grigoras@commerce.wa.gov.

Sincerely,



Corina Grigoras
Housing Finance Unit Managing Director
Community Services and Housing Division

cc: Senator John McCoy, Washington State Legislature
Brian Bonlender, Department of Commerce Director
Michele Besso, Northwest Justice Project
Jason Davidson, Department of Commerce, Housing Finance Unit Asset Manager

enclosure