

<b>EMPLOYMENT AND TRAINING ADMINISTRATION          ADVISORY SYSTEM          U.S. DEPARTMENT OF LABOR          WASHINGTON, D.C. 20210</b>	<b>CLASSIFICATION</b> Foreign Labor Certification
	<b>CORRESPONDENCE SYMBOL</b> OFLC
	<b>DATE</b> April 23, 2009

**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 18-08**

**TO: STATE WORKFORCE AGENCIES**

**FROM: DOUGLAS F. SMALL /s/  
 Deputy Assistant Secretary**

**SUBJECT: FISCAL YEAR (FY) 2009 FOREIGN LABOR CERTIFICATION  
 PLANNING GUIDANCE**

1. **Purpose.** To provide guidance for the funding and management of FY 2009 annual grant allocations for the Foreign Labor Certification (FLC) programs.
2. **References.**
  - Immigration and Nationality Act (INA), Sections 101(a), 212(n), 212(t), 214(c), 214(i), and 218
  - 8 CFR Part 214
  - 8 CFR Part 274a
  - 2 CFR Part 225
  - 20 CFR Parts 655 and 656
  - Wagner-Peyser Act, Section 7(d)
  - OMB Circular A-87
  - Other ETA instructions as noted
3. **Background.** The purpose of this Training and Employment Guidance Letter (TEGL) memorandum is to provide State Workforce Agencies (SWAs) with final planning figures for funding that will be allocated to support FLC activities, and the necessary actions to request the funds.

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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4. **Transition Year.** FY 2009 has been a year with a large amount of regulatory change to the H-2A and H-2B programs. For example, a re-engineered H-2A Final Regulation took effect on January 17, 2009, and an H-2B Final Regulation took effect on January 18, 2009. A *Federal Register* Notice proposing to suspend the January 17, 2009, H-2A Final Regulation was published March 17, 2009, and public comments are currently being reviewed. Both Final Regulations are currently in litigation.

Until actions surrounding both the H-2A and H-2B regulations are fully resolved, SWAs should follow the appropriate regulation in effect at the time applications are submitted.

Each SWA's FY 2008 Annual Plan will be extended through the remainder of FY 2009. However, in order to receive the remainder of their FY 2009 funds, SWAs must submit the required information and documents set forth in the attachments to this TEGL, which shall constitute the updated FY 2008 Annual Plan, and must agree to be bound by and comply with the terms and agreements set forth by the Office of Foreign Labor Certification (OFLC) in its FY 2008 Foreign Labor Certification Grant Guidance, TEGL 21-07, subject to any changes in the H-2A or H-2B Final Regulations taking effect since the issuance of such guidance. It is anticipated that new planning guidance will be issued for FY 2010.

5. **Actions.** SWAs are required to complete the actions listed below.
- Respond to these guidelines within **thirty (30) days** of receipt to ensure allocation of remaining grant funds.
  - Identify how program funds would best be utilized and by splitting the grant allocation between agricultural and nonagricultural activities.
  - Inform the National Office OFLC via written communication of the proposed program split that will be used to allocate funds between agricultural and nonagricultural activities.
6. **Mailing Address.** Mail (fed ex or other means preferred) completed work plans to Mr. William Rabung, Program Manager, Office of Foreign Labor Certification, U.S. Department of Labor, Room C-4312, 200 Constitution Avenue, NW, Washington, D.C. 20210.
7. **Inquiries.** Please direct questions to Mr. Rabung at (202) 693-3010.
8. **Attachments.**
1. Program Planning Guidance and Information Package
  2. FLC Annual Plan Workload Supplement
  3. Annual Plan Procedures