

Program Planning Guidance and Information Package

I. Introduction

The Immigration and Nationality Act assigns certain responsibilities to the Secretary of Labor (Secretary) for employment-based immigration programs that require a labor certification. These statutory responsibilities include determining whether there are able, willing, and qualified U.S. workers available for the position in the area of intended employment and whether there would be any adverse effect on similarly-employed U.S. workers should a labor certification be granted. Accordingly, statutory and regulatory provisions require all employers seeking to hire either permanent or temporary nonimmigrant foreign labor to apply first to the Secretary for certification. The Secretary has delegated the administration of these certification programs to the Employment and Training Administration's (ETA's) Office of Foreign Labor Certification (OFLC).

Congress appropriates funding for Federal and State foreign labor certification activities through the State Unemployment Insurance and Employment Service Operations (SUIESO) account. The State Grants activity funds services provided by State Workforce Agencies (SWAs) in support of the foreign labor certification program, including placements of job orders, inspections of employer-provided housing, and the administration of prevailing wage employment practice surveys. ETA, through OFLC, distributes these funds annually to SWAs in accordance with approved State plans.

This Training and Employment Guidance Letter (TEGL) provides SWAs with the necessary guidelines for updating their annual plans and requesting funds in order to carry out their foreign labor certification program responsibilities. **The annual plan must show activity to be performed between October 1, 2015 and September 30, 2016.**

II. Grant Procedures

A. **Grant Application.** The SWA grant application must be developed in accordance with the instructions contained in this TEGL. The grant application package submitted by the SWA to OFLC should consist of: (1) a transmittal letter and (2) **one original and one copy** of the following documents:

- Application for Federal Assistance (SF-424), Office of Management and Budget (OMB) Control No. 4040-0004 (Grants.gov).
<http://www.grants.gov/web/grants/forms/sf-424-family.html>
- Budget Information -Non-Construction Programs, SF 424A (sections B and D only), OMB Control No. 4040-0006 (Grants.gov).
<http://apply07.grants.gov/apply/forms/sample/SF424A-V1.0.pdf>

Important Notes:

1. Submit a justification and supporting documentation for any proposed equipment purchases of \$5,000 or more, in addition to the grant budget form narrative. Prior approval of any equipment exceeding \$5,000 and any contracts/subcontracts must be obtained per 29 CFR 97.32 (equipment) and 29 CFR 97.30 (subgrants/contracts).
2. Please submit, in addition to the grant budget form, a narrative including supporting documentation to justify any proposed contracts and/or subcontracts the SWA intends to execute to carry out these grant activities. In addition to the above additional justifications (if needed) and submitting the total grant amount request as specified in the 424 and 424a, please note the application/budget must be based on projected State/territory needs for a period of one year.
3. Full-year funding levels will not be confirmed until the annual plans have been reviewed. Please use Attachment 4 to this TEGL as guidance for estimated funding.

FY 2016 Annual Plan

- Foreign Labor Certification Workload (Attachment 2, Section A)
- H-2B Program Activities (Attachment 2, Section B)
- H-2A Program Activities (Attachment 2, Section C)
- Cost of H-2A and H-2B Temporary Labor Certification Activities (Attachment 2, Section D)
- Grantee Contact Information (Attachment 2, Section F)
- Annual Plan Certification (Attachment 3)

- B. Grant Submission. A completed grant application package must be submitted by the SWA to OFLC **within 30 calendar days** following the date of issuance of the planning guidance using the following address:

Office of Foreign Labor Certification
Employment and Training Administration
Department of Labor
200 Constitution Avenue, NW
Box# 12-200
Washington DC 20210

To expedite review of your grant application package, the preferred method is for SWAs to send a signed and scanned Word or PDF copy of the application to FLC.Grant@dol.gov. Please include “*FY 2016 SWA Grant Plan*” in the subject line of the e-mail.

- C. Grant Approval. Within 30 calendar days of receipt, OFLC will review the grant application package and inform the SWA, in writing, of any concerns or deficiencies that may prevent the grant application package from being approved. When it is determined that the grant application package meets the established criteria, the OFLC Administrator will recommend approval to the ETA Grant Officer. After reviewing the approved grant application package from the OFLC Administrator, the ETA Grant Officer will issue the grant, including the approved grant application package and a Notice of Obligation, to the SWA.
- D. Grant Signatures. The SWA’s authorized representative must sign all signature pages of the grant application. If that individual has changed from the prior year, you must provide an official letter, on State letterhead, with the grant application package identifying the new authorized representative.
- E. Grant Modifications. The grantee and the ETA Grant Officer, at the recommendation of the OFLC Administrator, may jointly modify the FY 2016 SWA Annual Plan including negotiated changes in program activities (e.g., review of job orders, wage or prevailing practice surveys, etc.) and funding levels during the grant period of performance. Any grant plan modification request must include a transmittal letter, written narrative of the proposed modification(s), revised annual budget, and quarterly spending plan.

In the event that the Secretary is required by future legislation, regulatory action, or a court order to carry out responsibilities related to the administration of foreign labor certification programs not currently anticipated, the OFLC Administrator will notify the SWAs and request that they submit appropriate modifications to their approved grant plans directly to the ETA Grant Officer in order to fully carry out their responsibilities.

III. Grant Reporting Procedures

As a condition of receiving these grant funds, SWAs agree to carry out responsibilities supporting the administration of foreign labor certification programs in accordance with all applicable regulations, policies, procedures, handbooks, manuals, and other directives, including but not limited to 20 CFR parts 655 and 656, 29 CFR Part 97 and 2 CFR Part 225. Financial and programmatic reporting by SWAs enables OFLC to report key information to Congress and OFLC stakeholders regarding the use of grant funds. Accurate reporting of required financial and program management data provides vital information to support future OFLC funding levels and ensure the appropriate management of grant funds.

OFLC is responsible for monitoring these cost-reimbursable grants. Monitoring activities may include: review and recommendation for approval of the grant application package; analysis of expenditure and performance data submitted by grantees; execution of programmatic plan modifications; assessing a grantee's timely and accurate submission of all required reports; and on-site reviews where needed. OFLC will advise SWAs on how to administer the grant in accordance with the approved plan and the terms and conditions of their Wagner-Peyser Annual Grant Funding Agreement.

SWAs will report financial and program management information using the following required reports:

- A. **Financial Status Report.** ETA requires all grant recipients to submit the Form ETA-9130, *U.S. DOL Financial Report* (OMB Control No. 1205-0461) on a quarterly basis providing detailed expenditure information on the grant award activities. The Form ETA-9130 report is due **no later than 45 calendar days after the end of each quarter left in the fiscal year** and must be submitted online through ETA's Grantee Reporting System at https://www.etareports.doleta.gov/CFDOCS/grantee_prod/reporting/index.cfm. You can obtain a copy of the Form ETA-9130 at the following Web site: <http://www.doleta.gov/grants/docs/ETA-9130-ESandUI.pdf>.

Fiscal Year 2016	Reporting Months	Report Due Date*
1 st Quarter	October – December	February 14, 2016
2 nd Quarter	January – March	May 15, 2016
3 rd Quarter	April – June	August 15, 2016
4 th Quarter	July – September	November 15, 2016

* *The reporting system is available 24 hours a day including weekends; however, technical support is not available on weekends.*

If the SWA experiences any technical issues submitting the report, please contact the E-Grants Helpdesk via e-mail at e-grants.help@dol.gov or phone at (202) 693-2682.

Important Notes on Allowable Costs:

- Costs incurred under the grant may only be attributed to activities supporting the direct administration of foreign labor certification programs; and
- Costs may include staff resources, travel expenditures, other direct administrative costs, and indirect/overhead support (where an approved indirect cost plan is in place).

- B. **Program Activity Report.** To account for work performed under the grant, SWAs must submit the Form ETA-9127, *Foreign Labor Certification Quarterly Activity Report* (OMB Control No. 1205-0457) on a quarterly basis providing detailed information on H-2A and H-2B program activities.

The data required by the Form ETA-9127 are available to the SWAs as part of their routine processing of requests from employers (SWAs currently maintain this data). The Form ETA-9127 report is due **within 2 weeks after the end of each quarter during the fiscal year** and may be submitted by e-mail directly to OFLC at FLC.Grant@dol.gov.

OFLC will promptly review the report for completeness and notify the SWA of any inaccuracies or deficiencies requiring correction. You can obtain a copy of the Form ETA-9127 at the following Web site:
http://www.foreignlaborcert.doleta.gov/pdf/9127Instructions_Final.pdf.

Fiscal Year 2016	Reporting Months	Report Due Date*
1 st Quarter	October – December	January 15, 2016
2 nd Quarter	January – March	April 15, 2016
3 rd Quarter	April – June	July 15, 2016
4 th Quarter	July – September	October 15, 2016

* If the 15th day falls on a weekend (Saturday or Sunday, or Federal holiday), then the report is due the next business day.

If the SWAs experience any difficulties submitting the report, they may contact the OFLC Grants/Finance Team at FLC.Grant@dol.gov or (202) 513-7350.

- C. **Agricultural Prevailing Wage Survey Reports.** A critical component of OFLC’s ability to grant a labor certification under the H-2A temporary agricultural program is a finding that the wages of similarly employed U.S. workers are not adversely impacted by the admission of temporary foreign workers. To that end, an employer participating in the program is required to offer and pay the highest of several wages, namely: the

Adverse Effect Wage Rate (AEWR), 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 (20 CFR 655.120(a)).

SWAs collect and provide vital information to OFLC with respect to whether a prevailing hourly wage or piece rate exists for the occupation or crop in the area of intended employment (also see, 20 CFR 653.501(d)(4)). These employer wage results are collected through survey instruments designed by the SWA, conducted in accordance with the ETA Handbook No. 385, and transmitted to OFLC **as soon as the wage results are completed (based on the SWA's wage survey plan)** using the following standard forms:

ETA Form ETA-232, *Domestic Agricultural In-Season Wage Report* (OMB Control No. 1205-0017) http://www.foreignlaborcert.doleta.gov/pdf/in_season.pdf

ETA Form ETA-232A, *Wage Survey Interview Record* (OMB Control No. 1205-0017). <http://www.foreignlaborcert.doleta.gov/pdf/wage.pdf>.

ETA Forms 232 and 232A may be submitted electronically at agwage.surveys@dol.gov or mailed to the following address:

Office of Foreign Labor Certification
Employment and Training Administration
Department of Labor
200 Constitution Avenue, NW
Box# 12-200
Washington DC 20210

If the SWA experiences any technical issues conducting the prevailing wage survey or submitting the results, please contact the OFLC Temporary Programs Team at agwage.surveys@dol.gov or (202) 513-7350.

Agricultural Employment Practice Survey Reports. Department of Labor (Department) regulations 20 CFR 655.122(b) require that each job qualification and requirement listed in the employer's job offer must be bona fide and consistent with the normal and accepted qualifications required by employers that do not use H-2A workers in the same or comparable occupation and crops. In addition, Department regulations allow for certain terms of employment, provided that those terms constitute a prevailing practice. In making a determination as to whether a job offer contains normal and accepted qualifications and requirements or whether a term of employment would be considered a prevailing practice, OFLC may rely on any information or data collected through State-conducted surveys. The SWA is responsible for designing the survey instruments to collect the data and for transmitting the survey results in summary form to the Chicago National Processing Center (NPC) as soon as the employment practice results are completed. Absent employment practice survey results, the SWA will be

required to conduct ad hoc surveys.

The prevailing, normal, or common practice survey results may be submitted electronically directly to the Chicago NPC at H2ASWA.Chicago@dol.gov or mailed to the following address:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court
Chicago, IL 60604-2105
Attn: H-2A Prevailing Practice Surveys

If the SWA experiences any technical issues conducting or submitting the employment practice results, please contact the Chicago NPC at H2ASWA.Chicago@dol.gov or (312) 886-8000.