

Program Planning Guidance and Information Package

I. Introduction

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

Under the State Unemployment Insurance and Employment Service Operations (SUIESO) account, Congress appropriates funding for state activities supporting foreign labor certification and the Federal administration of foreign labor certification programs as two separate activities. Federal administration activity funds Federal program functions, such as the full Federal program costs of OFLC to receive and process employer-filed applications for permanent and temporary labor certification.

The State Grants activity funds state employment services supporting the Federal foreign labor certification programs including the review and clearance of job orders, inspection of employer-provided housing, and the administration of prevailing wage and practice surveys. ETA, through OFLC, distributes these funds annually to State Workforce Agencies (SWAs) as fiscal year (FY) formula grants in accordance with approved state plans. This document provides the necessary guidelines to be used by SWAs to update annual plans and request funds in order to carry out their foreign labor certification program support responsibilities for a performance period of 12 months that began on October 1, 2012, and continues through September 30, 2013.

II. Grant Procedures

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

- Application for Federal Assistance (SF-424), Expiration Date 3/31/2012, Office of Management and Budget (OMB) Control No. 4040-0004. (Grants.gov)
<http://apply07.grants.gov/apply/FormLinks?family=15>

- Budget Information -Non-Construction Programs, SF 424A (section D only), Expiration Date 06/30/2014, OMB Control No. 4040-0006 (Grants.gov).

Important Note: Submit a listing and all documentation explaining and justifying any proposed equipment purchases of \$5,000 or more and any contracts/subcontracts the SWA intends to execute to carry out these grant activities.

- FY 2013 Annual Plan
- Foreign Labor Certification Workload (Attachment 2, Section A)
 - 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. Absent receiving an approved written extension from the OFLC national office, a completed grant application package must be submitted by the SWA to OFLC **within 30 calendar days** from the date of receipt of the planning guidance by the SWA using the following address:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
200 Constitution Avenue, NW, Room C-4312
Washington, D.C. 20210
Attn: Ms. Anna McNally

To expedite review of your grant application package, the SWA may also send a Word or PDF copy using electronic mail (e-mail) to FLC.Grant@dol.gov and include "FY 2013 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 receiving 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, an official letter, on state letterhead, must be provided 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 2013 SWA Annual Plan including negotiated changes in program activities (e.g., review of job orders, wage or prevailing practice surveys) and funding levels during the grant period of performance. The OFLC administrator has the authority to recommend funding adjustments to the ETA grant officer when overall grant expenditures are substantially below forecasted or actual spending levels. 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 under the grants.

III. Grant Reporting Procedures

As a condition of receiving grant funds under the SUIESO account, SWAs agree to carry out responsibilities supporting the Federal administration of foreign labor certification programs in accordance with all applicable regulations, policies, procedures, handbooks, manuals, and other directives. 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 financial and program management data provides vital information to support future OFLC funding levels and ensure appropriate management of grant funds.

OFLC is responsible for the continuous monitoring of the cost reimbursable grants. This includes review and recommendation for approval of the grant application package, analysis of expenditure and performance data, execution of programmatic plan modifications, timely and accurate submission of all required reports, and on-site reviews. OFLC advises SWAs on how to administer the grant in accordance with the approved plan and the terms and conditions of their Wagner-Peyser Annual 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 ETA Form 9130, *U.S. DOL Financial Report* (OMB Control No. 1205-0461, Expiration

12/31/2015) on a quarterly basis providing detailed expenditure information on the grant award activities. The ETA Form 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](#). A copy of the ETA Form 9130 can be obtained at the following Web site: <http://www.doleta.gov/grants/docs/ETA-9130-ESandUI.pdf>.

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

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

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 can 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 ETA Form 9127, *Foreign Labor Certification Quarterly Activity Report* (OMB Control No. 1205-0457, Expiration 09/30/2015) on a quarterly basis providing detailed information on H-2A and H-2B program activities, and Permanent Labor Certification Program job order postings. The data required by the ETA Form 9127 are available to the SWAs as part of their routine processing of requests from employers and are currently maintained by the SWAs. The ETA Form 9127 report is due **within two weeks after the end of each quarter left in 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. A copy of the ETA Form 9127 can be obtained at the following Web site:

http://www.foreignlaborcert.doleta.gov/pdf/9127Instructions_Final.pdf

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

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

If the SWA experiences any difficulties submitting the report, please contact Anna McNally, Director of Finance and Administration, via e-mail at FLC.Grant@dol.gov or phone at (202) 693-3010.

- 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 U.S. workers similarly employed 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, 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 232, *Domestic Agricultural In-Season Wage Report*
(OMB Control No. 1205-0017, Expiration 07/31/2013)
http://www.foreignlaborcert.doleta.gov/pdf/in_season.pdf

ETA Form 232A, *Wage Survey Interview Record*
(OMB Control No. 1205-0017, Expiration 07/31/2013)
<http://www.foreignlaborcert.doleta.gov/pdf/wage.pdf>

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

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
200 Constitution Avenue, NW, Room C-4312
Washington, D.C. 20210
Attn: H-2A Prevailing Wage Surveys

If the SWA experiences any technical issues conducting or submitting the prevailing wage results, please contact Mr. Ben Orona, OFLC Temporary Programs Team, via e-mail agwage.surveys@dol.gov or phone at (202) 693-3010.

- D. Agricultural Employment Practice Survey Reports. The Department of Labor (Department) regulations at 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. Additionally, the 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 in summary form to the Chicago National Processing Center (NPC) the survey results 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, via e-mail at H2ASWA.Chicago@dol.gov or phone at (312) 886-8000.