

## Program Planning Guidance and Information Package

### I. Introduction

The Immigration and Nationality Act 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 any adverse impact exists 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. The Federal Administration activity funds Federal program functions, such as the receipt and processing of employer-filed applications for permanent and temporary labor certification.

The State Grants activity funds State employment services supporting the Federal foreign labor certification program 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 SWAs with the necessary guidelines for updating their annual plans and requesting funds in order to carry out their foreign labor certification program support responsibilities. The annual plan submitted must show activity to be performed or previously performed between October 1, 2014 and September 30, 2015.

### II. Grant Procedures

A. Grant Application. The SWA grant application must be developed in accordance with the instructions contained in this Training and Employment Guidance Letter (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), Expiration Date 08/31/2016, 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), Expiration 08/31/2016, OMB Control No. 4040-0006 (Grants.gov).  
<http://apply07.grants.gov/apply/forms/sample/SF424A-V1.0.pdf>

*Important Notes:*

1. Please submit a listing, in addition to the grant budget form narrative including supporting documentation, to explain and justify any proposed equipment purchases of \$5,000 or more.
2. Please submit, in addition to the grant budget form, a narrative including supporting documentation to explain and justify any proposed contracts and/or subcontracts the SWA intends to execute to carry out these grant activities.
3. 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).
4. 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.
5. Full-year funding levels will not be confirmed until a FY 2015 appropriation for this purpose is enacted; please use Attachment 4 to this TEGLas guidance for estimated funding.

FY 2015 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. 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** following the date of issuance of the planning guidance 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: OFLC Grants/Finance Team

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](mailto:FLC.Grant@dol.gov). Please include “FY 2015 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 2015 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. The OFLC Administrator has the authority to recommend funding adjustments to the ETA Grant Officer when overall grant expenditures are substantially below or exceed 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 these grant funds, 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, including but not limited to 20 CFR parts 655 and 656, 29 CFR Part 97 and 2 CFR Part 225. These requirements will continue to apply even if there is a regulatory change during the fiscal year. If changes to the program warrant, OFLC will issue further guidance. 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 the 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, as fiscal constraints allow. 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 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](https://www.etareports.doleta.gov/CFDOCS/grantee_prod/reporting/index.cfm) at [https://www.etareports.doleta.gov/CFDOCS/grantee\\_prod/reporting/index.cfm](https://www.etareports.doleta.gov/CFDOCS/grantee_prod/reporting/index.cfm). You can obtain a copy of the ETA Form 9130 at the following Web site: <http://www.doleta.gov/grants/docs/ETA-9130-ESandUI.pdf>.

<b>Fiscal Year 2015</b>	<b>Reporting Months</b>	<b>Report Due Date*</b>
1 <sup>st</sup> Quarter	October – December	February 14, 2015
2 <sup>nd</sup> Quarter	January – March	May 15, 2015
3 <sup>rd</sup> Quarter	April – June	August 14, 2015
4 <sup>th</sup> Quarter	July – September	November 14, 2015

\* If the 15<sup>th</sup> day falls on a weekend (Saturday or Sunday, or Federal holiday), then the report is due the next 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](mailto: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 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.

The data required by the ETA Form 9127 are available to the SWAs as part of their routine processing of requests from employers (SWAs currently maintain this data). The ETA Form 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](mailto: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 ETA Form 9127 at the following Web site:

[http://www.foreignlaborcert.doleta.gov/pdf/9127Instructions\\_Final.pdf](http://www.foreignlaborcert.doleta.gov/pdf/9127Instructions_Final.pdf)

<b>Fiscal Year 2015</b>	<b>Reporting Months</b>	<b>Report Due Date*</b>
1 <sup>st</sup> Quarter	October – December	January 15, 2015
2 <sup>nd</sup> Quarter	January – March	April 15, 2015
3 <sup>rd</sup> Quarter	April – June	July 15, 2015
4 <sup>th</sup> Quarter	July – September	October 15, 2015

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

If the SWA experiences any difficulties submitting the report, please contact the OFLC Grants/Finance Team via e-mail at [FLC.Grant@dol.gov](mailto: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 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 ET 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 09/30/2016)

[http://www.foreignlaborcert.doleta.gov/pdf/in\\_season.pdf](http://www.foreignlaborcert.doleta.gov/pdf/in_season.pdf)

ETA Form 232A, *Wage Survey Interview Record* (OMB Control No. 1205-0017, Expiration 09/30/2016) <http://www.foreignlaborcert.doleta.gov/pdf/wage.pdf>.

*ETA Forms 232 and 232A may be submitted electronically* directly to OFLC at [agwage.surveys@dol.gov](mailto: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 survey results, please contact the OFLC Temporary Programs Team, via e-mail at [agwage.surveys@dol.gov](mailto: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. 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](mailto: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](mailto:H2ASWA.Chicago@dol.gov) or phone at (312) 886-8000.