

<b>EMPLOYMENT AND TRAINING ADMINISTRATION</b> <b>ADVISORY SYSTEM</b> <b>U.S. DEPARTMENT OF LABOR</b> <b>Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> Foreign Labor Certification
	<b>CORRESPONDENCE SYMBOL</b> OFLC
	<b>DATE</b> March 30, 2017

**ADVISORY:** TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 25-16

**TO:** STATE WORKFORCE AGENCY ADMINISTRATORS

**FROM:** BYRON ZUIDEMA   
Deputy Assistant Secretary

**SUBJECT:** Fiscal Year (FY) 2017 Foreign Labor Certification (FLC) Grant Planning Guidance

1. **Purpose.** To provide guidance for the funding and management of FY 2017 annual grant allocations in order to perform FLC program activities.

2. **References.**

- Immigration and Nationality Act (INA), as amended, 8 U.S.C. 1101(a), 1182(a)(5)(A), 1184(c), and 1188;
- Approval of Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C. 1801;
- 48 U.S.C. 1806;
- Wagner-Peyser Act, 29 U.S.C. 49f(d);
- U.S. Citizenship and Immigration Services regulations at 8 Code of Federal Regulations(CFR) Part 214;
- 20 CFR Parts 653, subpart F, 654, subpart E, 655, subparts A and B, and 658;
- 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule;
- 2 CFR 2900, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Department of Labor; Final Rule
- Guide for Employment Service Reimbursable Grant Activities;
- ET H-2A Program Handbook No. 398, January 1988; and
- Training and Employment Guidance Letter (TEGL) No. 04-06, *Plans to Phase out Penalty Mail Costs for "Employment Security" Programs and Availability of Supplemental Budget Funds for Conversion to Commercial Mail Methods.*

3. **Background.** The mission of the Office of Foreign Labor Certification (OFLC) of the Employment and Training Administration is to help U.S. employers fill jobs while protecting U.S. and foreign workers. OFLC carries out this mission by determining, on a case-by-case basis, whether there are able, willing, and qualified U.S. workers available for the job and whether there will be any adverse impact on similarly-employed U.S. workers should a labor certification be granted. The Immigration and Nationality Act (INA) assigns certain

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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responsibilities to the Secretary of Labor (Secretary) for employment-based immigration programs that require a labor certification. The Secretary has delegated the non-enforcement responsibilities of these labor certification programs to the OFLC. Accordingly, statutory and regulatory provisions of the labor certification programs administered by OFLC require all employers seeking to hire either permanent or temporary foreign labor to apply to the Secretary for a labor certification.

Congress appropriates funding for OFLC Federal Administration and related State foreign labor certification activities through the State Unemployment Insurance and Employment Service Operations (SUIESO) account. The Federal Administration activity funds federal program functions, including salaries and expenses, IT development and maintenance, contract services to support case adjudications, rent, and overhead costs. The State Grants activity funds services provided by State Workforce Agencies in support of the foreign labor certification program, including the placement of employer job orders, inspection of housing for agricultural workers, and the administration of prevailing wage and practice surveys. The OFLC distributes this grant funding annually in accordance with approved state plans. This TEGP provides programmatic guidance and financial information to SWAs to support state foreign labor certification activities in FY 2017.

4. **Action Requested.** SWA Administrators are requested to immediately provide copies of this guidance to all staff involved in the preparation and submission of the annual grant plan for FLC program activities for FY 2017. **Within 30 calendar days** from the date of this TEGP's issuance, SWAs must submit their grant applications to OFLC unless they are in receipt of an approved written extension from the OFLC National Office. We request that Administrators receiving this guidance share this information within their respective organizations in order to ensure that fiscal and programmatic public workforce system members are fully aware of the required FY 2017 FLC grant application processes and timelines.
5. **Inquiries.** SWA staff should direct all questions to the OFLC National Office at [FLC.Grant@dol.gov](mailto:FLC.Grant@dol.gov).
6. **Attachments.**

Attachment 1 - Program Planning Guidance and Information Package

Attachment 2 - Fiscal Year (FY) 2017 Annual Plan

Attachment 3 - Annual Plan Certification

Attachment 4 - FY 2016 Funding Level (provided as estimates for use in determining FY 2017 final funding levels)

## Program Planning Guidance and Information Package

### I. Introduction

The mission of the Office of Foreign Labor Certification (OFLC) of the Employment and Training Administration is to *help U.S. employers fill jobs while protecting U.S. and foreign workers*. OFLC carries out this mission by determining, on a case-by-case basis, whether there are able, willing, and qualified U.S. workers available for the job and whether there will be any adverse impact on similarly-employed U.S. workers should a labor certification be granted. The Immigration and Nationality Act (INA) assigns certain responsibilities to the Secretary of Labor (Secretary) for employment-based immigration programs that require a labor certification. The Secretary has delegated the non-enforcement responsibilities of these labor certification programs to the OFLC. Accordingly, statutory and regulatory provisions of the labor certification programs administered by OFLC require all employers seeking to hire either permanent or temporary foreign labor to apply to the Secretary for a labor certification.

Congress appropriates funding for OFLC Federal Administration and related State foreign labor certification activities through the State Unemployment Insurance and Employment Service Operations (SUIESO) account. The Federal Administration activity funds federal program functions, including salaries and expenses, IT development and maintenance, contract services to support case adjudications, rent, and overhead costs. The State Grants activity funds services provided by State Workforce Agencies in support of the foreign labor certification program, including the placement of employer job orders, inspection of housing for agricultural workers, and the administration of prevailing wage and practice surveys. The OFLC distributes this grant funding annually in accordance with approved state plans. This TEGL provides programmatic guidance and financial information to SWAs to support state foreign labor certification activities in FY 2017.

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, 2016 and September 30, 2017.**

### 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) the **original** of the following documents:

- Application for Federal Assistance (SF-424), Expiration Date 10/31/2019, Office of Management and Budget (OMB) Control No. 4040-0004 (Grants.gov). The current

version of the form must be submitted. Expired forms will not be accepted.  
<http://www.grants.gov/web/grants/forms/sf-424-family.html>

- Budget Information -Non-Construction Programs, SF 424A (sections B and D only), Expiration Date 01/31/2019, OMB Control No. 4040-0006 (Grants.gov). The current version of the form must be submitted. Expired forms will not be accepted.  
<http://apply07.grants.gov/apply/forms/sample/SF424A-V1.0.pdf>

*Important Notes:*

1. Submit the total grant amount requested as specified in the 424 and 424a. Please note that the application/budget must be based on projected State/territory needs for a period of one year.
2. 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 2 CFR 200.33(equipment) and 2 CFR 2900.16 (sub-grants/contracts).
3. 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.
4. Other: List each item in sufficient detail for us to determine whether the costs are reasonable or allowable. List any item, such as stipends or incentives, not covered elsewhere here.
5. Indirect Costs: If you include indirect costs in the budget, then include either
  - (a) The approved indirect cost rate with a copy of the Negotiated Indirect Cost Rate Agreement (NICRA), a description of the base used to calculate indirect costs along with the amount of the base, and the total indirect costs requested;

**OR**

- (b) If you meet the requirements to use the 10% de minimis rate as described in 2 CFR 200.414(f), then include a description of the modified total direct costs base (see 2 CFR 200.68 for definition) used in the calculation along with the amount of the base, and the total indirect costs requested based on the 10% de minimis rate. See Section IV.B.4. and Section IV.E.1. for more

information. Additionally, the following link contains information regarding the NICRA at DOL:

<http://www.dol.gov/oasam/boc/dcd/index.htm>

6. 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 2017 Annual Plan Table of Contents
    - Foreign Labor Certification Workload (Attachment 2, Section A)
    - H-2B Program Activities (Attachment 2, Section B)
    - H-2A Program Activities (Attachment 2, Section C)
    - Permanent Labor Certification Program (Attachment 2, Section D)
    - Grantee Contact Information (Attachment 2, Section E)
    - 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. SWAs may find it helpful to review their prior grant application package submissions and revisions for completion of the FY2017 grant application package.

To expedite review of your grant application package, the preferred method is for SWAs to send a completed signed and scanned copy of the application package in Adobe Portable Document Format (PDF) by e-mail to the dedicated e-mail address: [FLC.Grant@dol.gov](mailto:FLC.Grant@dol.gov). Please include “FY 2017 SWA Grant Plan” in the subject line of the e-mail.

The completed signed application package may also be submitted by Next Day Delivery/ Overnight mail using the following address:

U.S. Department of Labor  
Employment and Training Administration  
Office of Foreign Labor Certification  
200 Constitution Avenue, NW, Room 12-200  
Washington, D.C. 20210  
Attn: OFLC Grants/Finance Team

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. ETA will

determine the amount of funding to be awarded based on several factors, including the amount requested in the grant application, the amount received and obligated in previous years, and any amount returned to ETA in previous years. Additionally, ETA will attempt to ensure that funding remains relatively stable across years. The amount distributed will depend on the amount of resources available to ETA. After determining the amount to be awarded and verifying 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 Acceptance, 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 2017 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 and 2 CFR Parts 200 and 2900. 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. Please note that the Commonwealth of the Northern Mariana Islands (CNMI) is not covered by the Wagner-Peyser Act and hence is not required to conduct Wagner-Peyser funded program activities. Therefore, CNMI may use funding provided under its foreign labor certification program grant to fund activities related to the foreign labor certification program, such as the review of H-2A or H-2B job orders or conducting referrals of qualified U.S. workers that other grantees are required to fund with Wagner-Peyser funds.

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](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/pdf/ETA-9130-Basic.pdf>.

Fiscal Year 2017	Reporting Months	Report Due Date*
1 <sup>st</sup> Quarter	October – December	February 14, 2017
2 <sup>nd</sup> Quarter	January – March	May 15, 2017
3 <sup>rd</sup> Quarter	April – June	August 14, 2017
4 <sup>th</sup> Quarter	July – September	November 14, 2017

\* 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](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 or based on the 10% de minimus rate, if applicable).

- 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, Expiration 10/31/2018) 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](mailto:FLC.Grant@dol.gov). SWAs may find it helpful to review their prior Form ETA 9127 submissions during completion of the grant application package.

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 and instructions at the following Web site:

Fillable Form:

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

Form Instructions:

[https://www.foreignlaborcert.doleta.gov/pdf/Instructions\\_Form\\_9127.pdf](https://www.foreignlaborcert.doleta.gov/pdf/Instructions_Form_9127.pdf)

Fiscal Year 2016	Reporting Months	Report Due Date*
1 <sup>st</sup> Quarter	October – December	January 15, 2017
2 <sup>nd</sup> Quarter	January – March	April 15, 2017
3 <sup>rd</sup> Quarter	April – June	July 15, 2017
4 <sup>th</sup> Quarter	July – September	October 15, 2017

*\* 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.*

SWAs experience any difficulties submitting the report, they may contact the OFLC Grants/Finance Team at [FLC.Grant@dol.gov](mailto:FLC.Grant@dol.gov) or (202) 513-7350-3010.

- 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 generally 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.

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. These employer wage results are collected through survey instruments



designed by the SWA 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, Expiration 1/31/2020)

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

ETA Form ETA-232A, *Wage Survey Interview Record* (OMB Control No. 1205-0017, Expiration 01/31/2020)

[https://www.foreignlaborcert.doleta.gov/pdf/ETA%20232A%20Form%20Final\\_fillable\\_2.pdf](https://www.foreignlaborcert.doleta.gov/pdf/ETA%20232A%20Form%20Final_fillable_2.pdf)

*ETA Forms 232 and 232A* may be submitted electronically (recommended) at the dedicated e-mail address: [agwage.surveys@dol.gov](mailto:agwage.surveys@dol.gov)

The forms may also be mailed to the following address:

U.S. Department of Labor  
Employment and Training Administration  
Office of Foreign Labor Certification  
200 Constitution Avenue, NW, Room PPII-12-200  
Washington, D.C. 20210  
Attn: H-2A Prevailing Wage Surveys

If the SWA experiences any technical issues conducting the prevailing wage survey or submitting the results, please e-mail [agwage.surveys@dol.gov](mailto:agwage.surveys@dol.gov). SWAs should monitor the Agricultural Online Wage Library on the OFLC website at <https://www.foreignlaborcert.doleta.gov/aowl.cfm> for the posting of prevailing wages for their state.

- D. **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](mailto:H2ASWA.Chicago@dol.gov) (recommended) 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 by e-mail at [H2ASWA.Chicago@dol.gov](mailto:H2ASWA.Chicago@dol.gov) or call (312) 886-8000. SWAs should monitor the Employment Practice Library on the OFLC website at [https://www.foreignlaborcert.doleta.gov/aowl\\_survey\\_pdf.cfm](https://www.foreignlaborcert.doleta.gov/aowl_survey_pdf.cfm) for the posting of employment practices for their state.

**FISCAL YEAR (FY) 2017 ANNUAL PLAN  
 (Please complete all yellow highlighted fields)**

*(Insert Official Name of SWA – not that of an individual)*

hereafter referred to as the “State Agency”, has prepared the following plan and statement of assurances for delivering services during FY 2017 (October 1, 2016 through September 30, 2017) to support the administration of foreign labor certification (FLC) programs in accordance with all applicable regulations, policies, procedures, handbooks, manuals, and other directives.

**A. Foreign Labor Certification Workload**

Category of OFLC Program Services/Activities	FY 2016 Workload Actual per ETA 9127 Report	FY 2017 Workload Completed	FY 2017 Workload Projected	Total Estimated FY 2017 Workload <sup>(1)</sup> add previous 2 columns
A. Number of H-2A agricultural clearance job orders processed and projected to be processed.				
B. Number of H-2A prevailing wage surveys conducted and projected to be conducted.				
C. Number of H-2A prevailing practice surveys conducted and projected to be conducted.				
D. Number of H-2A housing inspections conducted and projected to be conducted. <sup>(2)</sup>				
E. Number of H-2A range housing inspections conducted and projected to be conducted, as required by 20 CFR 655.230 (if applicable).				
F. Number of H-2B job orders processed and projected to be processed.				
G. Number of Full Time Equivalent (FTE) staff funded by this grant.				

(1) Workload includes completed OFLC program services/activities provided and services/activities planned for the period between October 1, 2016 and September 30, 2017. For completion of this chart, SWAs should refer to data from SWA job order systems and Form ETA 9127 submissions.

(2) Data provided for reporting items should exclude range housing units inspected under 20 CFR 655.230, H-2A Herder Rule for the Temporary Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States at 20 CFR 655.200 (et. seq.)

## **B. H-2B Temporary Nonagricultural Program Activities**

Section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), requires the Secretary of Homeland Security to consult with “appropriate agencies of the government” before authorizing the classification of aliens as H-2B workers. Under Department of Homeland Security (DHS) regulations at 8 CFR 214.2(h)(6)(iii)(C), an H-2B petition for temporary employment must be accompanied by an approved temporary labor certification from the Department of Labor (DOL), which serves as DOL’s advice to DHS regarding whether a qualified U.S. worker is available to fill the petitioning H-2B employer’s job opportunity and whether a foreign worker’s employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers.

In accordance with DOL regulations at 20 CFR Subpart A, the State Agency agrees to carry out all state activities to support DOL’s review and processing of job orders and applications seeking temporary labor certification under the H-2B program. Specifically, the State Agency agrees to carry out the following state activities:

1. **Stakeholder Education and Outreach:** Make available in a conspicuous location on the State Agency website information on how employers can participate in the H-2B program, such as easy-to-understand instructions on how to prepare and submit a job order; a copy of the State Agency job order form that is accessible and can be completed electronically; and current contact information within the State Agency for employers to request technical assistance.

No less frequently than once a year, the State Agency will electronically disseminate to employers who routinely use the H-2B program helpful tips or best practices on preparing high quality job orders, information on any state-specific requirements impacting the material terms or conditions of employer job orders, and the most current version of the State Agency’s job order form and instructions. Where requested and funds permitting, the State Agency will participate in local or state employer roundtables, conferences or other stakeholder forums to present and/or disseminate information related to the H-2B program.

2. **Placement of H-2B Job Orders:** In accordance with funds appropriated under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), the State Agency already administers a public labor exchange system that facilitates the placement of employer job orders and referral of prospective U.S. applicants to current and future job opportunities.

The State Agency’s labor exchange system, which is referred to as insert labor exchange system name here, is accessible to employers required to place a job order in connection with a concurrently filed H-2B Application for Temporary Employment Certification with DOL, pursuant to 20 CFR 655.16. The State Agency has a capability for employers to place job orders for review in the following manner:

Please check all that apply:

- Self-services by accessing the State Agency's labor exchange system:

*[Insert State labor exchange system website link here]*

- Staff-assisted job order services by submitting a draft job order at:

*[Insert State Agency contact information including email address where employers can submit H-2B job orders]*

Please check one of the following:

- The State Agency's job order form and/or system **DOES** contain an entry field or option permitting employers to identify that the job order is being placed in connection with a concurrently submitted *Application for Temporary Employment Certification* for H-2B workers;

**OR**

- The State Agency's job order form and/or system **DOES NOT** contain an entry field or option permitting employers to identify that the job order is being placed in connection with a concurrently submitted *Application for Temporary Employment Certification* for H-2B workers. Therefore, employers can provide the regulatory required notification to the State Agency in the following manner:

*[Insert a brief description of how and to whom employers can provide the State Agency with the required notification]*

Please check all that apply:

- The State Agency has submitted with this grant plan a current electronic copy of the form and general instructions employers are required to use to submit job orders.
- The standard job order form and general instructions are easily accessible to employers on a website maintained by the State Agency at:

*[Insert State Agency website link here]*

3. **Processing of H-2B Job Orders:** Upon receipt, the State Agency will review the job order submitted by the employer for compliance with the regulatory criteria under 20 CFR 655.18<sup>1</sup>, as well as any state-specific requirements. In circumstances where a waiver of the required time period for filing an Application for Temporary Labor Certification is granted under 20 CFR 655.17 for emergency situations, the State Agency will make every effort to review the proposed or draft job order, upon request by the DOL Certifying Officer.

a. Compliance Review of Job Orders

- The State Agency will notify the DOL Certifying Officer (CO) of any deficiencies within 6 business days of the date the employer's job order was received;
- For each deficiency identified, the State Agency will state the reason(s) why the job order fails to meet the criteria under 20 CFR 655.18;
- For each deficiency identified related to a state-specific requirement, the State Agency will provide the applicable statutory or regulatory citation(s) and state the modification(s) needed for the DOL CO to issue a Notice of Acceptance; and
- In circumstances where a timely review of the job by the State Agency order cannot be performed, the State Agency understands that the DOL CO has the authority to issue a Notice of Deficiency (20 CFR 655.31) or Acceptance (20 CFR 655.33) within 7 business days of receipt.

b. Processing of Approved Job Orders

- Upon receipt of a Notice of Acceptance under 20 CFR 655.33, the State Agency will perform the following actions when instructed by the DOL CO:
  - Promptly make, on behalf of the employer, any necessary modifications to the job order under 20 CFR 655.32 or amendments granted by the DOL CO under 20 CFR 655.35;

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<sup>1</sup> *The Department of Labor Appropriations Act, 2016, Division H, Title I of Public Law 114-113 ("2016 DOL Appropriations Act"), provided that the DOL may not use any funds to enforce the definition of corresponding employment found in 20 CFR 655.5 or the three-fourths guarantee rule definition found in 20 CFR 655.20, or any reference thereto. This limitation is continued in FY2017 Further Continuing and Security Assistance Act (2017 Continuing Resolution), Public Law 114-254. Therefore, in order to comply with the 2017 Continuing Resolution, the State Agency will not use any funds provided under this grant to implement these provisions in any manner. The State Agency understands that the 2016 DOL Appropriations Act and 2017 Continuing Resolution did not vacate these regulatory provisions, and they remain in effect, thus imposing a legal duty on H-2B employers, even though the DOL is currently prohibited from using funds to enforce them.*

- Promptly place on its active file the job order approved by the DOL CO, as well as job orders received from other State Workforce Agencies (SWAs) pursuant to 20 CFR 655.16(c), for intrastate clearance until the end of the recruitment period, as specified by the DOL CO (i.e., 21 days before the start date of work set forth in 20 CFR 655.40(c));
- Promptly transmit a copy of the approved job order to other SWAs, as instructed by the DOL CO, with instructions that each SWA keep the approved job order on its active file under the end of the recruitment period;
- Where the DOL CO determines the employer’s job opportunity covers an occupation or industry that is traditionally or customarily unionized, promptly transmit a copy of the approved job order to the central office of the State Federation of Labor and any office(s) of local union(s) representing employees in the same or substantially equivalent job classification in the area(s) in which work will be performed under the approved job order; and
- To the extent practicable, the State Agency agrees to maintain an up-to-date listing of contacts associated with the central office of the State Federation of Labor and office(s) of local union(s) representing employees in occupations traditionally or customarily unionized.

c. Referral of Qualified and Available U.S. Workers

- The State Agency’s public labor exchange services has the capability, whether self-service or staff-assisted services, to apprise prospective U.S. workers of all the material terms and conditions of the employer’s job opportunity prior to referral, as required by 20 CFR 655.47;
- The State Agency will use its public labor exchange services (i.e., self-service job bank system and/or one-stop career centers) to refer to the employer all qualified U.S. workers who apply for the job opportunity or on whose behalf a job application is made. Please note that these activities will be covered by existing Wagner-Peyser formula grants and not by the FLC grants that are the subject of this TEGL;
- Upon request by the DOL CO, the State Agency will make available records of U.S. workers referred against an approved job order to assist the DOL CO in making a final determination on the employer’s *Application for Temporary Employment Certification*, as specified in 20 CFR 655.50;
- For complaints against an employer about a specific H-2B job order to which U.S. workers were referred, the State Agency agrees to utilize the existing complaint system for public labor exchange services established under 20 CFR 658, Subpart E. Please note that these activities will be covered by existing Wagner-Peyser

formula grants and not by the FLC grants that are the subject of this Training and Employment Guidance Letter.

4. **Post-Determination Services:** The State Agency agrees to provide support services to the DOL CO after a final determination is issued under 20 CFR 655.50 in the following manner:

- In accordance with 20 CFR 655.57 and upon request by the DOL CO, the State Agency agrees to promptly provide information concerning the availability of U.S. workers to replace some or all of the qualified U.S. workers who were initially deemed available in support of a partial certification or denial determination on the employer's *Application for Temporary Employment Certification*;
- In accordance with 29 CFR 503.7, the State Agency agrees to refer to the appropriate office of the Wage Hour Division any complaint or report of a violation received by any person of the obligations imposed by 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, Subpart A, or 29 CFR part 503 covering the geographic area in which the reported violation is alleged to have occurred; and
- The State Agency agrees to cooperate and make available all appropriate records and information upon request from any agent of the DOL who is exercising or attempting to exercise the Department's authority pursuant to 8 U.S.C. 1184(c), including investigations as described in 29 CFR 503.25.

#### C. H-2A Temporary Nonagricultural Program Activities

Section 218(a)(1) of the INA, 8 U.S.C. 1188, authorizes the Secretary of Homeland Security to permit employers to import foreign workers to perform agricultural labor or services of a temporary or seasonal nature where the DOL certifies that there are not sufficient qualified U.S. workers available to fill the petitioning H-2A employer's job opportunity and a foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of similarly employed U.S. workers.

In accordance with DOL regulations at 20 CFR Subpart B, the State Agency agrees to carry out all state activities to support DOL's review and processing of job orders and applications seeking temporary labor certification under the H-2A program. Specifically, the State Agency agrees to carry out the following state activities:

1. **Stakeholder Education and Outreach:** Make available in a conspicuous location on the State Agency website information on how employers can participate in the H-2A program, such as easy-to-understand instructions on how to prepare and submit the Form ETA-790 *Agricultural and Food Processing Clearance Order*, request a pre-occupancy inspection of housing for farmworkers (*if applicable*), and current contact information within the State Agency for employers to request technical assistance.



No less frequently than once a year, the State Agency will electronically disseminate to employers who routinely use the H-2A program helpful tips or best practices on preparing high quality job orders and, if applicable, information on any state-specific requirements (e.g., current prevailing practices or normal and accepted requirements) impacting the material terms or conditions of employer job orders. Where requested and funds permitting, the State Agency will participate in local or state employer roundtables, conferences or other stakeholder forums to present and/or disseminate information related to the H-2A program.

2. **Placement of H-2A Job Orders:** In accordance with funds appropriated under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), the State Agency already administers a public labor exchange system that facilitates the placement of employer job orders and referral of prospective U.S. applicants to current and future job opportunities.

The State Agency's labor exchange system is publicly accessible and possesses the capability for employers to submit the Form ETA-790 and all supporting documentation in connection with a future filed H-2A *Application for Temporary Employment Certification* (Form ETA-9142A) with DOL, pursuant 20 CFR 655.121. More specifically, the State Agency requires that employers submit the Form ETA-790 for review in the following manner:

***[Insert State Agency contact information including email address where employers can submit H-2A job orders]***

3. **Processing of H-2A Job Orders:** Upon receipt, the State Agency will review the job order submitted by the employer for completeness, obvious errors or inaccuracies, and compliance with the regulatory criteria under 20 CFR 655.122 and 20 CFR 653, subpart F. In circumstances where a waiver of the required time period for filing an H-2A Application is granted under 20 CFR 655.134 for emergency situations, the State Agency will make every effort to review the proposed or draft job order, upon request by the DOL Certifying Officer.

- a. Compliance Review of Job Orders

- The State Agency will notify the employer of any deficiencies within 7 calendar days of the date the employer's job order was received;
- In circumstances where deficiencies are identified, the State Agency will provide written notification to the employer stating the reason(s) why the job order fails to meet the regulatory criteria and offering an opportunity to respond to the deficiencies within 5 calendar days after receipt of the State Agency's written notification;
- The State Agency agrees to respond within 3 calendar days after receipt of the employer's response; and

- In circumstances where a timely review of the job order cannot be performed, the State Agency understands that the employer is permitted to use the emergency filing procedures for filing an H-2A application set forth in 20 CFR 655.134.

**b. Processing of Approved Job Orders**

- Upon determining the job order meets the regulatory criteria, whether by the State Agency or the DOL CO in the Notice of Acceptance (NOA) under 20 CFR 655.143, the State Agency will promptly (1) provide written notification (preferably using email) to the employer and, if applicable, the employer's authorized representative and include the State Agency's Job Order Number (if available), and (2) place the approved job order in intrastate clearance and commence recruitment of U.S. workers;
- The State Agency agrees to keep the approved job order on its active file until the end of the recruitment period (i.e., 50 percent of the period of employment), as set forth in 20 CFR 655.135(d);
- Where the approved job order includes worksites in an area of intended employment that falls within the jurisdiction of more than one SWA, the State Agency agrees to forward a copy of the approved job order to other SWAs serving the area of intended employment with instructions to place a copy of the approved job order on its active file until the end of the recruitment period;
- Upon receipt of a NOA under 20 CFR 655.143, the State Agency will perform the following actions when instructed by the DOL CO:
  - In the case of emergency situations, promptly place on its active file the job order approved by the DOL CO, as well as job orders received from other SWAs, for intrastate clearance until the end of the recruitment period, as set forth in 20 CFR 655.135(d); and
  - Promptly transmit a copy of the approved job order to other SWAs, as instructed by the DOL CO, with instructions that each SWA keep the approved job order on its active file under the end of the recruitment period.

**c. Referral of Qualified and Available U.S. Workers**

- The State Agency's public labor exchange services has the capability to apprise prospective U.S. workers of all the material terms and conditions of the employer's job opportunity prior to referral, as required by 20 CFR 655.155;

- The State Agency will use its public labor exchange services (i.e., one-stop career center system) to refer to the employer all qualified U.S. workers who apply for the job opportunity or on whose behalf a job application is made. Please note that these activities are covered by existing Wagner-Peyser formula grants and not by the FLC grants that are the subject of this TEGL; and
- Upon request by the DOL CO, the State Agency will make available records of U.S. workers referred against an approved job order to assist the DOL CO in making a final determination on the employer's *Application for Temporary Employment Certification*, as specified in 20 CFR 655.160.

**4. Conducting Prevailing Wage Surveys:** This section of the grant plan identifies the schedule of the agricultural prevailing wage surveys (including logging activities) the State Agency plans to conduct during the performance period of the grant, including anticipated survey timeframes by area (e.g., statewide, regional), crops or other agricultural activities/commodities, survey means (e.g., field survey, telephone survey) and approximately when wage results are expected to be transmitted to the OFLC National Office (via the Forms ETA-232) for review.

- To the extent practicable, the State Agency has prioritized its limited resources on conducting wage surveys in the major crops or other agricultural activities/commodities where seasonal H-2A workers are regularly employed and, where practicable, at a broader wage reporting area (e.g., statewide) that will yield statistically valid wage findings from year to year, particularly those agricultural activities paying workers on a piece rate basis;
- In circumstances where substantial dissimilarities in crop or related conditions exists in different parts of the state, the State Agency may use sub-state reporting areas for conducting prevailing wage surveys;
- The State Agency agrees to submit all completed and signed Form ETA-232/232A prevailing wage survey findings to the DOL OFLC National Office in accordance with instructions contained in this TEGL

*[SWA schedule of wage surveys inserted here and, if necessary, include attachments]*

Survey Timeframes	Survey Areas (e.g., statewide, regional)	Crops/ Agricultural Commodities	Survey Means (e.g., field survey, telephone)	Survey Transmission Timeframe to OFLC

**5. Conducting Prevailing Practice and Normal/Accepted Requirements Surveys:** This section of the grant plan identifies the schedule of the agricultural prevailing practice and normal and accepted requirement surveys (including logging activities) the State Agency plans to conduct during the performance period of the grant in accordance with ET Handbook No. 398, including anticipated survey timeframes by area (e.g., statewide, regional) and crops or other agricultural activities/commodities, and approximately when employment practice results are expected to be transmitted to the OFLC Chicago National Processing Center (NPC) for review.

The State Agency agrees to submit all completed prevailing practice and normal and accepted requirement surveys promptly to the DOL OFLC Chicago NPC in accordance with instructions contained in this TEGL.

*[SWA schedule of employment practice surveys inserted here and, if necessary, include attachments]*

*If this is the same as provided above, please indicate "Same survey schedule", without completing this table.*

Survey Timeframes	Survey Areas (e.g., statewide, regional)	Crops/ Agricultural Commodities	Survey Means (e.g., field survey, telephone)	Survey Transmission Timeframe to OFLC

## 6. Scheduling and Conducting Housing Inspections:

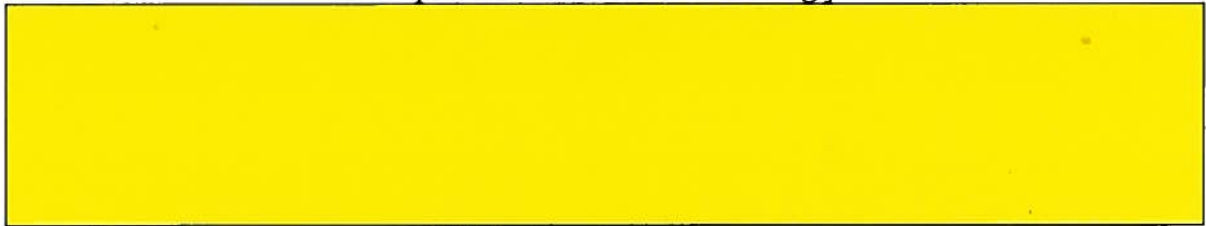
- Employer-Provided Housing. In accordance with 20 CFR 655.122(d)(1)(i), the State Agency agrees to schedule and conduct **pre-occupancy inspections of housing** to be furnished to U.S. and H-2A workers who are not reasonably able to return to their place of residence the same day. Employer-provided housing must meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR 1910.142, or the full set of standards at 20 CFR 654.404 through 654.417, whichever are applicable under 20 CFR 654.401. Requests by employers whose housing does not meet the applicable standards for conditional access to the interstate clearance system, will be processed under the procedures set forth at 20 CFR 654.402;
- Rental and/or Public Accommodations.
  - The State Agency **DOES NOT** have jurisdiction to inspect rental and/or public accommodation housing.
  - The State Agency **DOES** have jurisdiction under a state or local law/regulation to perform an inspection of rental and/or public accommodation housing.

*[Insert citation of state or local law/regulation and the criteria under which the inspections of rental or public accommodation housing will be performed]*

- Range Housing. If applicable, the State Agency agrees to schedule and conduct inspections of range housing and certify that such housing used on the range is sufficient to accommodate the number of certified workers and meets the requirements under 20 CFR 655.230 and all applicable standards contained in 20 CFR 655.235;
- The State Agency agrees to develop and maintain a plan to schedule housing inspections prior to filing of job order for employers who regularly use the H-2A program and, to the extent practicable, actively encourage employers to have housing ready for inspection at time of filing job order or earlier;
- The State Agency agrees to conduct housing inspections in accordance with applicable local, state or federal standards and provide notification to the employer of any deficiencies, request correction in 5 calendar days, and re-inspect to determine compliance;

- The State Agency agrees to provide a copy of the approved housing inspection or other official certification document to the employer and, if applicable, to the employer's authorized representative;
- Except in circumstances where the DOL has a special procedure, the State Agency agrees to schedule and complete the required housing inspection and submit notification (e.g., report, email) no later than 30 days before the start date of work to the DOL Chicago NPC regarding whether housing is approved or not approved at [H2ASWA.Chicago@dol.gov](mailto:H2ASWA.Chicago@dol.gov);
- The State Agency agrees to promptly notify the DOL Chicago NPC of any changes in employer provided housing and the results of any inspections conducted on substitute housing.
- To the extent the State Agency will use alternative methods for conducting pre-occupancy housing inspections, such as through contracts, memoranda of understanding, or other cooperative agreements with State or local organizations, please include a short description of these arrangements.

*[If applicable, SWA narrative inserted here for alternative housing inspection methods and, if necessary, including state or local law or regulation governing the inspection of rental or other public accommodation housing.]*



5. **Post-Determination Services:** The State Agency agrees to provide support services to the DOL CO after a final determination in the following circumstances:
- In accordance with 20 CFR 655.166 and upon request by the DOL CO, the State Agency agrees to promptly provide information concerning the availability of U.S. workers to replace some or all of the qualified U.S. workers who were initially deemed available in support of a partial certification or denial determination on the employer's H-2A Application;
  - The State Agency agrees to cooperate and make available all appropriate records and information upon request from any Federal officials assigned to perform an investigation, inspection, or law enforcement function pursuant to 8 U.S.C. 1188 and the H-2A regulations as described in 29 CFR 501.7;

- For complaints arising under the H-2A regulations, the State Agency agrees to utilize the existing Job Service Complaint System, as described in 20 CFR part 658, subpart E, and as required by 20 CFR 655.185. Please note that these activities will be covered by existing Wagner-Peyser formula grants and not by the FLC grants that are the subject of this TEGL;
- For complaints involving allegation of fraud or misrepresentation, the State Agency agrees to refer all such complaints to the DOL CO at [H2ASWA.Chicago@dol.gov](mailto:H2ASWA.Chicago@dol.gov) for appropriate handling and resolution;
- For complaints involving contracts with workers, the State Agency agrees to refer all such complaints to the nearest local or regional office of the Wage Hour Division for appropriate handling and resolution, as described in 29 CFR part 501; and
- Complaints alleging that an employer discouraged an eligible U.S. worker from applying, failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, or discovered violations involving the same, the State Agency agrees to refer all such complaints to the U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices (OSC), in addition to any activity, investigation, and/or enforcement action taken by the State Agency.

**D. Permanent Labor Certification Program**

- The State Agency’s labor exchange system is accessible to employers who are required to place a job order in connection with an *Application for Permanent Employment Certification*, as set forth in 20 CFR part 656, and facilitates the referral of qualified and available U.S. workers for consideration; and
- The State Agency understands that these labor exchange services are already covered by existing Wagner-Peyser formula grants; not by the FLC grants that are the subject of this TEGL.

**E. Grantee Contact Information**

**H-2A Program Point-of-Contact**

Last name	First name
Job title	
Address	



City	State	Postal code
Telephone number (including extension)	Fax number	
E-mail address		

**H-2B Program Point-of-Contact (if different than the contact listed above)**

Last name	First name	
Job title		
Address		
City	State	Postal code
Telephone number (including extension)	Fax number	
E-mail address		

**Fiscal Grant Point-of-Contact (if different than the contact listed above)**

Last name	First name	
Job title		
Address		
City	State	Postal code
Telephone number (including extension)	Fax number	
E-mail address		

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**OMB Paperwork Reduction Act (OMB Control Number 1225-0086)**

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's reply to these reporting requirements is required to obtain the benefits. Public reporting burden for this collection of information is estimated to average 4 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the Office of Foreign Labor Certification • U.S. Department of Labor • Room 12-200 • 200 Constitution Ave., NW, • Washington, DC 20210.

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**ANNUAL PLAN CERTIFICATION**

*(Insert Official Name of SWA – not that of an individual)*

certifies that it will carry out all activities outlined in the fiscal year 2017 Annual Plan to support the Secretary of Labor's responsibilities under the Immigration and Nationality Act as well as all other standard certifications and assurances as a condition of receiving the Federal grant funds. Per 2 CFR 200.333, file documentation of grant activities and accomplishments will be available for examination by the Employment and Training Administration or other authorized Federal representatives.

\_\_\_\_\_

Authorized Representative's Signature

Date \_\_\_\_\_

\_\_\_\_\_

Authorized Representative's Job Title

\_\_\_\_\_

Authorized Representative's Printed Name

## Attachment 4

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### FY 2016 Funding Levels

*\*Last year's funding levels are provided for reference and may not equate to FY 2017 allocations.*

Alabama	91,208.00	Nevada	102,741.00
Alaska	76,145.00	New Hampshire	64,263.00
Arizona	192,444.00	New Jersey	615,000.00
Arkansas	87,591.00	New Mexico	87,591.00
California	1,295,937.00	New York	1,417,021.00
Colorado	241,500.00	North Carolina	463,800.00
Connecticut	250,191.00	North Dakota	169,631.00
Delaware	93,712.00	Northern Mariana Islands	71,565.00
Florida	476,901.00	Ohio	256,193.00
Georgia	564,490.00	Oklahoma	83,012.00
Guam	79,954.00	Oregon	120,474.00
Hawaii	71,564.00	Pennsylvania	401,797.00
Idaho	350,000.00	Puerto Rico	71,564.00
Illinois	466,983.00	Rhode Island	76,145.00
Indiana	76,143.00	South Carolina	113,517.00
Iowa	114,908.00	South Dakota	97,460.00
Kansas	110,010.00	Tennessee	227,700.00
Kentucky	369,900.00	Texas	626,496.00
Louisiana	235,965.00	Utah	116,590.00
Maine	302,952.00	Vermont	121,048.00
Maryland	447,706.00	Virgin Islands	71,564.00
Massachusetts	889,045.00	Virginia	498,931.00
Michigan	307,306.00	Washington	179,907.00
Minnesota	126,652.00	Washington DC	10,000.00
Mississippi	99,043.00	West Virginia	78,433.00
Missouri	150,558.00	Wisconsin	136,580.00
Montana	278,811.00	Wyoming	78,437.00
Nebraska	76,921.00		