

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. 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. 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 st Quarter	October – December	February 14, 2017
2 nd Quarter	January – March	May 15, 2017
3 rd Quarter	April – June	August 14, 2017
4 th 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 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. 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

Form Instructions:

https://www.foreignlaborcert.doleta.gov/pdf/Instructions_Form_9127.pdf

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

** If the 15th 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 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

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

ETA Forms 232 and 232A may be submitted electronically (recommended) at the dedicated e-mail address: 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. 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 (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 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 for the posting of employment practices for their state.