

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> Foreign Labor Certification
	<b>CORRESPONDENCE SYMBOL</b> OFLC
	<b>DATE</b> March 20, 2023

**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 12-21, CHANGE 1**

**TO: STATE WORKFORCE AGENCY ADMINISTRATORS**

**FROM: BRENT PARTON**   
Acting Assistant Secretary

**SUBJECT: Foreign Labor Certification Grant Planning Guidance for Fiscal Years (FYs) 2022 through FY 2024, Change 1**

- Purpose.** To provide updated guidance to State Workforce Agencies (SWAs) regarding foreign labor certification activities impacted by implementation of new H-2A regulations published by the Department of Labor (Department) on October 12, 2022, and announce the allotments for FY 2023 foreign labor certification grants.
- Action Requested.** The Employment and Training Administration (ETA) requests that SWA Administrators receiving this guidance share the information within their respective organizations to ensure that fiscal and programmatic staff are fully aware of the changes impacting foreign labor certification grant activities and timelines contained in this Training and Employment Guidance Letter (TEGL), Change 1.

SWAs must submit an annual grant application to ETA unless they are in receipt of an approved extension from the ETA Office of Foreign Labor Certification (OFLC). These applications should be submitted **no later than 30 calendar days** after the issuance of this guidance. OFLC will review the grant application package and, generally within 30 calendar days of receipt, inform the SWA in writing of any concerns or deficiencies that may prevent the grant application package from being approved.

- Summary.** This TEGL 12-21, Change 1, provides updated programmatic guidance and announces SWAs' FY 2023 grant allotments for foreign labor certification activities. **Please note** that sections of TEGL 12-21 **NOT** expressly listed in this change remain applicable during the term of TEGL 12-21 (FY 2022 – FY 2024).
- Content.** Please see Attachment I for guidance, Attachment II for FY 2023 grant allotments, and Attachments III, IV, V and VI for SWA Annual Plans.
- Inquiries.** SWA staff should direct all financial questions to the OFLC National Office at [FLC.Grant@dol.gov](mailto:FLC.Grant@dol.gov).

<b>RESCISSIONS:</b> None	<b>EXPIRATION DATE:</b> Continuing
-----------------------------	---------------------------------------

**6. 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, 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, B and E; 656; and 658;
- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- 2 CFR Part 2900, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Department of Labor;
- ETA H-2A Program Handbook No. 398, January 1988;
- Training and Employment Guidance Letter 12-21; and
- Consolidated Appropriations Act, 2023 (P.L. 117-328).

**7. Attachment(s).**

- Attachment I: Changes to TEGL 12-21  
Attachment II: FY 2023 Grant Allotments  
Attachment III: FY 2023 Annual Plan  
Attachment IV: Annual Plan Certification  
Attachment V: Instructions for Completing Budget Narrative  
Amendment VI: Commonwealth of the Northern Mariana Islands (CNMI) CW-1 FY 2023 Grant Planning Guidance

---

## Changes to TEGL 12-21

The mission of the Employment and Training Administration's (ETA) Office of Foreign Labor Certification (OFLC) is to determine, on a case-by-case basis, whether there are able, willing, and qualified U.S. workers available for a job, and whether there will be adverse impact on the wages and working conditions of 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. The Secretary has delegated the non-enforcement responsibilities of these labor certification programs to OFLC. Accordingly, statutory and regulatory provisions of foreign labor certification programs administered by OFLC generally require employers seeking to hire foreign labor on a permanent or temporary basis to apply to the Secretary for a labor certification.

The Department provides annual grants to State Workforce Agencies (SWAs) to support required state-level foreign labor certification activities. These activities include, but are not limited to, reviewing and placing job orders to recruit U.S. workers; providing assistance to employers in the effective recruitment of U.S. workers; conducting safety inspections of employer-provided housing for H-2A agricultural workers; performing prevailing practice and wage surveys used to set the wages and working standards for occupations within the state; and conducting post-certification site visits to support employer compliance with H-2A and H-2B program requirements. SWAs submit annual plans to the Department to establish continued eligibility for these grants. These annual plans describe the SWA's planned foreign labor certification activities and workload expectations for the upcoming year.

### 2022 Regulatory Changes Impacting SWA Grant Activities

On October 12, 2022, the Department published the final rule, *Temporary Agricultural Employment of H-2A Nonimmigrants in the United States* ("2022 H-2A Final Rule") to finalize all aspects of the July 2019 Notice of Proposed Rulemaking except the Adverse Effect Wage Rate methodology. See 87 FR 61660. The effective date of the 2022 H-2A final rule was November 14, 2022.

The 2022 H-2A Final Rule contains a number of provisions to modernize the H-2A temporary labor certification process, strengthen worker protections, and enhance the enforcement capabilities of the Department to address H-2A program fraud and abuse that undermines workers' rights and hurts law-abiding employers. Below is a brief list of some of the major changes made by the 2022 H-2A final rule that impact SWA grant activities.

- Mandates electronic filing, with limited exceptions, and permits use of electronic signatures that meet Office of Management and Budget guidelines for valid electronic signatures. See 20 CFR 655.130(c).
- Establishes a single point of entry for electronic filing by requiring employers to submit H-2A Agricultural Clearance Orders (Forms ETA-790/790A) ("job orders"), H-2A Applications for Temporary Employment Certification (Forms ETA-9142A) ("H-2A applications") and supporting documentation through OFLC's Foreign Labor Application Gateway (FLAG) system (<https://flag.dol.gov/>). See 20 CFR 655.121(c), 655.130(c).

- Permits the use of electronic methods for OFLC to send notices and requests to employers, circulate approved job orders to appropriate SWAs for interstate clearance and recruitment of U.S. workers, and issue temporary labor certification decisions directly to the Department of Homeland Security (DHS) on behalf of employers. *See* 20 CFR 655.121(c), (f), 655.162.
- Establishes new regulatory standards permitting multiple individual employers to jointly employ workers in full-time employment. *See* 20 CFR 655.103(b) and 20 CFR 655.131.
- Codifies standards and procedures covering the employment of workers engaged in animal shearing, commercial beekeeping, and custom combining according to a planned itinerary across multiple areas of intended employment in one state or one or more contiguous states. *See* 20 CFR 655.300 to 655.304.
- Replaces outdated prevailing wage survey guidelines from the Department's ETA Handbook 385 with modernized standards that are more effective in producing prevailing wages for distinct crop or agricultural activities and expands the universe of State entities that may conduct prevailing wage surveys, including SWAs, other State agencies, State colleges, or State universities. *See* 20 CFR 655.120(c).
- Provides that rental and/or public accommodations secured to house workers must meet applicable local, State, or Federal standards addressing certain health or safety concerns (e.g., minimum square footage per occupant, sanitary food preparation and storage areas, laundry and washing facilities), and requires employers to submit written documentation that such housing meets applicable standards and contains enough bed(s) and room(s) to accommodate all workers requested. *See* 20 CFR 655.122(d).
- Enhances the Department's debarment authority by holding agents and attorneys, and their successors in interest, accountable for their own misconduct independent of the employer's violation(s), and clarifies that *Applications for Temporary Employment Certification* filed by debarred entities during the period of debarment will be denied without review. *See* 20 CFR 655.182 and 29 CFR 501.20.

**Attachment II, Section B of TEGL 12-21 is updated to add the following:**

7. High-Quality Award Descriptions. High-quality award descriptions include specificity regarding the purpose of the award, activities to be performed, deliverables and expected outcomes, intended beneficiaries, subrecipient activities, plain language, and any other pertinent information needed to ensure stakeholders understand the intended outcomes of the award. For foreign labor program activities, the following award description will be used:
  - **Purpose:** To ensure that U.S. workers are notified of available job opportunities, that U.S. employers can meet their labor needs when qualified U.S. workers are not available, and that foreign workers are provided fair wages, working conditions, and adequate and safe housing.
  - **Activities to be performed:** SWAs will review and post job orders to recruit U.S. workers for available positions for which employers intend to file applications for H-2A or H-2B labor certification, ensure the health and safety of farmworkers by inspecting employer-provided housing, and protect workers' wages and working conditions by conducting surveys to determine prevailing wages and practice standards.

- **Deliverables and Expected Outcomes:** Adequate and safe housing is provided to all H-2A workers and, as applicable, U.S. workers in corresponding employment as required by 20 CFR 655.122(d)(1)(i) and (ii), and 20 CFR 655.122(d)(2). Timely review and posting of job orders. Referral of qualified and available U.S. workers to job opportunities. Stakeholder education and outreach.
  - **Intended Beneficiaries:** U.S. and foreign workers. U.S. employers.
  - **Subrecipient Activities:** Grantee may or may not have subawards.
8. Effective Date of 2022 H-2A Final Rule: As of November 14, 2022, state foreign labor certification activities should be performed in accordance with changes implemented by the Department under the 2022 H-2A Final Rule and any clarifying guidance or technical assistance issued by OFLC. This includes activities funded by grants issued in FY 2021 and FY 2022 that are conducted on or after November 14, 2022.
9. Grant Monitoring. OFLC reserves the right to conduct onsite monitoring visits. The primary objective of a monitoring visit is to evaluate the management and administration of the grant, the quality of the program and/or services, and the performance of the grant to determine if the program is operating in compliance with the grant agreement and in a manner that ensures achievement of its goals and outcomes. If your grant is selected for a visit, the Federal Project Officer (FPO) will reach out 30 to 60 days prior to the anticipated monitoring visit for SWA confirmation. The FPO will provide guidance and work closely with SWA staff to help ensure a productive visit.
10. Grant Use. The expenditure period for FY 2023 FLC State Grants is October 1, 2022, to September 30, 2025. The annual plan must reflect foreign labor program activities to be performed over a 12-month period within the expenditure period. While the Department strongly encourages states to spend the entirety of their allocated funds within the fiscal year that the funds are received, the Department understands that unforeseen circumstances may affect fund expenditure and will allow states up to two years to expend all funds allocated for a fiscal year.

**Attachment III, Section B.4. H-2B Post-Determination Services is updated to add the following:**

To the extent resources are available, the SWA agrees that staff funded through the FLC grant will conduct and/or cooperate with and assist Wagner-Peyser Employment Service grant activities that support employer compliance with approved H-2B job orders and certified H-2B applications for temporary labor certification under 20 CFR 655. This means that FLC grant funds may be used to support SWA processing of Complaints and Apparent Violations through the Employment Service and Employment-Related Law Complaint System described at 20 CFR 658 Subpart E and perform field checks as described at 20 CFR 653 Subpart F or other authorized inspections.

All activities funded through the FLC grant for such Employment Service activities will be fully documented, as required by 20 CFR 655 and 20 CFR 658 Subpart E, and all related records and findings will be available to the DOL CO for other appropriate action under 20 CFR 655, Subpart A. The SWA may also provide any findings or related records to the Wage and Hour Division, Occupational Safety and Health Administration, or any other appropriate government enforcement agencies.

---

**FY 2023 Grant Allotments**

The funding authorized for foreign labor certification state grants in the *Consolidated Appropriation Act, 2023* was allocated to the SWAs as described below:

1. Base Allocation (\$13,813,250): With limited exceptions, a base allocation was allocated to each SWA commensurate with its base allocation for the previous fiscal year and the level of obligations made under its active foreign labor certification grants. The exceptions are comprised of SWAs meeting each of the following criteria:
  - a. the SWA processed an annual average of less than five clearance orders attached to H-2A applications during the three most recently completed fiscal years (FY 2020-2022);
  - b. the SWA processed an annual average of less than five H-2B job orders during the three most recently completed fiscal years; and,
  - c. an annual average of less than five housing units were identified on clearance orders attached to H-2A applications processed by the SWA during the three most recently completed fiscal years.

In circumstances where a SWA's workload met all three of these aforementioned factors, the SWA was allocated \$5,000 to support the costs associated with processing this minimal level of foreign labor certification workload. The SWAs meeting these criteria were the District of Columbia, Guam, and the Virgin Islands.

2. Ongoing Workload Allocation (\$9,468,750): In addition to its base allocation, each SWA, except those meeting the criteria described above, was allocated an additional ongoing allocation based on its share of the national foreign labor certification workload. Each SWA's additional ongoing allocation was determined in the following manner:
  - a. One-third of the additional allocation was based on each SWA's proportion of the estimated national H-2A housing inspection workload. This was defined as the total number of housing units identified on clearance orders attached to H-2A applications processed during the three most recently completed fiscal years (FY 2020-2022) and located in the jurisdiction of the SWA divided by the total number of housing units identified on clearance orders attached to H-2A applications processed by all SWAs during the three most recently completed fiscal years.
  - b. Two-thirds of the additional allocation was based on each SWA's share of the national workload associated with reviewing and posting H-2A and H-2B job orders during the three most recently completed fiscal years (FY 2020 – 2022).

- Seventy percent of this two-thirds amount was allocated based on each SWA’s share of the total clearance orders attached to H-2A applications processed during the three most recently completed fiscal years (FY 2020 – 2022). For example, if SWA 1 processed five percent of the total nationwide clearance orders attached to H-2A applications processed during the three most recently completed fiscal years, then SWA 1 would receive five percent of the funding allocated on this basis. Because SWA reviews of clearance orders attached to H-2A applications have significantly more complex regulatory requirements than SWA reviews of H-2B job orders, a higher percentage of the available resources were allocated on the basis of clearance orders attached to H-2A applications than on H-2B job orders.
  - The remaining thirty percent of the two-thirds amount was allocated based on each SWA’s share of the total H-2B job orders processed during the three most recently completed fiscal years (FY 2020 – 2022). For example, if SWA 1 processed five percent of the total nationwide H-2B job orders processed during the three most recent fiscal years, then SWA 1 would receive five percent of the funding allocated based on H-2B job orders.
3. Total Grant Allocation: The combined total of each SWA’s base allocation and ongoing workload allocation comprises the SWA’s total FY 2023 grant award.
  4. Data Sources: The data sources used to support the funding allocations are available in the OFLC disclosure data published at [www.dol.gov/agencies/eta/foreign-labor/performance](http://www.dol.gov/agencies/eta/foreign-labor/performance). Housing unit data was derived from Form ETA-790A, Addendum B. Data from the three most recently completed fiscal years was used for the workload factors to more accurately reflect long-term trends.



**FY 2023 Funding Level: \$23,282,000**

*\*The funding amount below **must** be indicated on the SF-424 and SF-424A for FY 2023*

	Total FY 2023 Grant:
<b>Total</b>	<b>\$23,282,000</b>
Alabama	\$198,879
Alaska	\$96,661
Arizona	\$341,198
Arkansas	\$333,026
California	\$2,186,241
CNMI	\$67,192
Colorado	\$488,338
Connecticut	\$296,022
Delaware	\$81,657
District of Columbia	\$5,000
Florida	\$1,179,451
Georgia	\$831,118
Guam	\$5,000
Hawaii	\$66,973
Idaho	\$731,842
Illinois	\$436,454
Indiana	\$192,915
Iowa	\$361,216
Kansas	\$237,017
Kentucky	\$723,053
Louisiana	\$730,663
Maine	\$367,961
Maryland	\$517,190
Massachusetts	\$381,000
Michigan	\$592,316
Minnesota	\$265,533
Mississippi	\$422,437
Missouri	\$266,293
Montana	\$451,055
Nebraska	\$225,991
Nevada	\$347,181
New Hampshire	\$89,738
New Jersey	\$508,649
New Mexico	\$114,960
New York	\$1,752,806
North Carolina	\$954,759
North Dakota	\$446,642

	Total FY 2023 Grant:
Ohio	\$434,065
Oklahoma	\$179,214
Oregon	\$403,860
Pennsylvania	\$570,695
Puerto Rico	\$64,559
Rhode Island	\$85,431
South Carolina	\$339,281
South Dakota	\$250,589
Tennessee	\$435,478
Texas	\$978,916
Utah	\$296,895
Vermont	\$176,804
Virgin Islands	\$5,000
Virginia	\$565,203
Washington	\$664,713
West Virginia	\$62,958
Wisconsin	\$219,506
Wyoming	\$174,406
Online Wage Library	\$80,000

---

### Instructions for FY2023 Grant Plan

The SWA grant application must be developed in accordance with the instructions contained in TEGL 12-21. The grant application package must be submitted via the [www.grants.gov](http://www.grants.gov) portal and include an updated Fiscal Year Annual Plan. When TEGL 12-21 was published, the expiration date of the Fiscal Year Annual Plan form was 07/31/2022. The form's expiration date has since been updated to 07/31/2025.

**Important Reminder:** The SWA must submit a completed grant application package to ETA using the [www.grants.gov](http://www.grants.gov) portal no later than **30 calendar days** from the date of this guidance. The grant application package must consist of the following documents:

- Fiscal Year Annual Plan, Expiration Date 07/31/2025, Office of Management and Budget (OMB) Control No. 1225-0086;
- An annual plan certification in accordance with and provided in Attachment IV of this guidance;
- An SF-424: Application for Federal Assistance, Expiration date 1/31/2025, OMB Control No. 4040-0004
- An SF-424A: Budget Information, Non-Construction Programs, Expiration Date 02/28/2025, OMB Control No. 4040-0006;
- A budget narrative drafted in accordance with the instructions provided in Attachment V of this guidance;
- A justification and supporting documentation for any proposed equipment purchases of \$5,000 or more; and
- A Negotiated Indirect Cost Rate Agreement (if applicable).

**FISCAL YEAR (FY) 2023 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,” [FILL IN NAME] has prepared the following plan and statement of assurances for delivering services during the FY (October 1 through September 30) to support the administration of foreign labor certification programs in accordance with all applicable statutes, regulations, policies, procedures, handbooks, manuals, and other directives.

**A. Foreign Labor Certification Workload**

Category of OFLC Program Services/Activities	Previous Year (FY 2022)  Workload (per ETA 9127 Report)	Current Year (FY 2023)  Workload (Completed)	Current Year (FY 2023)  Workload (Projected)	Total Estimated Workload for Current Year (FY 2023) <sup>(1)</sup> (Add previous 2 columns)
A. Number of agricultural prevailing wage surveys conducted and projected to be conducted under section C.4.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
B. Number of agricultural prevailing practice surveys conducted and projected to be conducted under section C.5.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
C. Number of CW-1 job offers maintained on website (only applicable for CNMI).	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
D. Number of H-2A and H-2B related stakeholder outreach events under sections B.1 and C.1.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
E. Number of stakeholders reached by H-2A and H-2B related outreach events conducted under sections B.1 and C.1.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
F. Number of Full Time Equivalent (FTE) staff funded by this grant.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
G. Number of H-2A and H-2B post-certification site visits.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

<sup>(1)</sup> Workload includes **completed** OFLC program services/activities provided, and services/activities planned for the period between October 1<sup>st</sup> and September 30<sup>th</sup> of each fiscal year. For completion of this chart, SWAs should refer to data from SWA job order systems and Form ETA 9127 submissions.

<sup>(2)</sup> 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.

<sup>(3)</sup> Workload includes the tracking of CNMI labor exchange website recruitment reports uploaded by employers in accordance with the governing provision of the CNMI Interim Final Rule, codified at 20 CFR 655.442.

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

Section 214(c)(1) of the Immigration and Nationality Act, 8 U.S.C. 1184(c)(1) requires the Secretary of Homeland Security to make H-2B visa determinations in specific cases “after consultation with appropriate agencies of the Government, upon petition of the importing employer.” 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 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 regulations at 20 CFR part 655, Subpart A, the SWA 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 SWA agrees to carry out the following state activities:

1. **Stakeholder Education and Outreach:** As part of a comprehensive education and outreach plan, the SWA should make available in a conspicuous location on the state agency website the following resources, such as:
  - Information on how employers can participate in the H-2B program, for example easy-to-understand instructions on how to prepare and submit a job order; a copy of the SWA job order form that is accessible and can be completed electronically; and current contact information within the SWA for employers to request technical assistance.
  - Worker rights information developed by the SWA or as provided below:
    - [Employee Rights Under the H-2B Program Poster \(PDF\)](#);
    - [Spanish Version Poster \(PDF\)](#);
    - [H-2B Worker Rights and COVID-19 \(PDF\)](#);
    - [Spanish Version Poster \(PDF\)](#).
  - Educate employers about the responsibilities associated with the use of foreign labor recruiters and ban on prohibited fees.
  - To the extent practicable, the SWA 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 and make the list readily available to employers.

No less frequently than once a year, the SWA 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 relevant state-specific and local employment-related laws, including health and safety laws and 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.

In addition, the SWA will also make effort to:

- Remind and educate employers about *Title VII of the Civil Rights Act of 1964*, which makes it illegal to discriminate against someone or harass someone on the basis of race, color, religion, national origin or sex, and makes employers accountable for providing a work environment that is free from harassment and other kinds of discrimination.
  - Where requested and funds permitting, the SWA 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 Clearance Orders Attached to H-2B Applications:** In accordance with the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), the SWA already administers a public labor exchange system that facilitates the placement of employer job orders into clearance and referral of prospective U.S. applicants to current and future job opportunities. This broader labor exchange system is funded through the SWA’s separate Employment Service grant. The costs associated with posting job orders connected to H-2B applications may be charged to the FLC grant.

The SWA 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 SWA has capability for employers to place job orders for review in the following manner:

*Please check all that apply:*

- Self-services by accessing the SWA’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 SWA contact information including email address where employers can submit H-2B job orders**

*Please check one of the following:*

- The SWA’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 SWA’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 notification required by regulation at 20 CFR 655.16(a)(1) to the SWA 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 SWA 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 SWA at:

**[Insert state agency website link here]**

3. **Processing of Clearance Orders Attached to H-2B Applications:** Upon receipt, the SWA 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, the DOL Certifying Officer (CO) will forward the Notice of Acceptance (NOA) and the approved job order to the SWA.

a. Compliance Review of Job Orders

- Using an authorized SWA FLAG System account, the SWA will notify the DOL CO of any deficiencies within six business days of the date the employer's job order was received;
- For each deficiency identified, the SWA 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 SWA will provide the applicable statutory or regulatory citation(s) and state the modification(s) needed for the DOL CO to issue a NOA; and
- In circumstances where a timely review of the job order by the SWA cannot be performed, the state agency understands that the DOL CO has

---

<sup>1</sup> *The Consolidated Appropriations Act, 2023 prohibits DOL from using FY 2023 appropriations 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 (P.L. 117-328, Div. H, Tit. I, Sec. 111). To comply with this limitation, 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 appropriation riders 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.*

the authority to issue a Notice of Deficiency (20 CFR 655.31) or a Notice of Acceptance (20 CFR 655.33) within seven business days of receipt.

b. Processing of Approved Job Orders

- Upon receipt of a NOA under 20 CFR 655.33, the SWA 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 and uploads the modified documents through the SWA FLAG System account;
  - Promptly place on its active file the job order approved by the DOL CO, as well as job orders received from other 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 need set forth in 20 CFR 655.40(c));
  - Where the employer’s job order references an area of intended employment that falls within the jurisdiction of more than one SWA, the originating SWA will promptly notify the NPC that a copy of the approved job order must be forwarded to the other SWAs serving the area of intended employment;
  - Based on the SWA’s determination that 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 local union office(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 SWA 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 SWA’s public labor exchange services have the capability, whether by 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 SWA 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 foreign labor certification grants that are the subject of this TEGL;
- Upon request by the DOL CO, the SWA will make available records of U.S. workers referred through 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, using the SWA FLAG System account; and
- For complaints against an employer about a specific H-2B job order to which U.S. workers were referred, the SWA 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 foreign labor certification grants that are the subject of this TEGL.

U.S. workers may submit a complaint using one or more of the following methods:

Website: **[Insert the website URL where a complaint can be filed online, if applicable]**

Email: **[Insert the email address where a complaint can be filed online, if applicable]**

Telephone: **[Insert the toll-free phone number where a complaint can be filed online, if applicable]**

Other Method(s): **[Insert a brief description of any other methods U.S. workers can submit complaints for review and processing by the SWA, if applicable]**

**4. Post-Determination Services:** The SWA 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 SWA agrees to promptly provide information concerning the availability of U.S. workers to replace some or all 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* using the SWA FLAG System account;

- For complaints involving allegation of fraud or misrepresentation, the SWA agrees to refer all such complaints to the DOL CO at [H2BSWA.Chicago@dol.gov](mailto:H2BSWA.Chicago@dol.gov) for appropriate handling and resolution;
- In accordance with 29 CFR 503.7, the SWA 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 provide a copy of such referral to the DOL CO at [h2bcomplaints.chicago@dol.gov](mailto:h2bcomplaints.chicago@dol.gov); and
- The SWA agrees to cooperate and make available all appropriate records and information upon request from any employee or 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.
- To the extent resources are available, the SWA agrees that staff funded through the FLC grant will conduct and/or cooperate with and assist Wagner-Peyser Employment Service grant activities that support employer compliance with approved H-2B job orders and certified H-2B applications for temporary labor certification under 20 CFR 655. This means that FLC grant funds may be used to support SWA processing of Complaints and Apparent Violations through the Employment Service and Employment-Related Law Complaint System described at 20 CFR 658 Subpart E and perform field checks as described at 20 CFR 653 Subpart F or other authorized inspections. All activities funded through the FLC grant for such Employment Service activities will be fully documented, as required by 20 CFR 655 and 20 CFR 658 Subpart E, and all related records and findings will be available to the DOL CO for other appropriate action under 20 CFR 655, Subpart A. The SWA may also provide any findings or related records to the Wage and Hour Division, Occupational Safety and Health Administration, or any other appropriate government enforcement agencies.

### **C. H-2A Temporary Agricultural Program Activities**

Section 218(a)(1) of the INA, 8 U.S.C. 1188(a)(1), authorizes the Secretary of Homeland Security to permit employers to employ 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 employer's job opportunity and a foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of workers in the United States similarly employed.

In accordance with DOL regulations at 20 CFR 655 Subpart B, the SWA 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. The SWA will use the FLAG System to submit clearance orders to OFLC. Specifically, the SWA agrees to carry out the following activities:

- 1. Stakeholder Education and Outreach:** As part of comprehensive education and outreach plan, the SWA will make available in a conspicuous location on the state agency website the following:
  - Information on how employers may attach H-2A applications to Agricultural Clearance Orders through the Agricultural Recruitment System for U.S. workers, 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 the current contact information for employers to request technical assistance from the state agency.
  - Worker rights information created by the SWA or as provided below:
    - [Employee Rights Under the H-2A Program \(PDF\)](#);
      - [Employee Rights Under the H-2A Program – Spanish Version \(PDF\)](#)
    - [H-2A Worker Rights Card - English Version \(PDF\)](#);
      - [H-2A Worker Rights Card - Spanish Version \(PDF\)](#);
    - [Farm Worker Rights Flyer - English and Spanish Version \(PDF\)](#);
  - Materials educating employers about the responsibilities associated with the use of foreign labor recruiters and ban on prohibited fees.

No less frequently than once a year, the SWA 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 relevant state-specific requirements (e.g., current prevailing practices or normal and accepted requirements) and local employment-related laws, including health and safety laws impacting the material terms or conditions of employer job orders.

In addition, the SWA will make effort to:

- Remind and educate employers about *Title VII of the Civil Rights Act of 1964*, which makes it illegal to discriminate against someone or harass someone on the basis of race, color, religion, national origin or sex, and makes employers accountable for providing a work environment that is free from harassment and other kinds of discrimination.

- Where requested and funds permitting, the SWA 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 Clearance Orders Attached to H-2A Applications:** In accordance with the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), the SWA already administers a public labor exchange system that facilitates the placement of employer job orders into clearance and referral of prospective U.S. applicants to current and future job opportunities. This broader labor exchange system is funded through the SWA's separate Employment Service grant. The costs associated with posting job orders connected to H-2A applications may be charged to the FLC grant.

The SWA fully utilizes the Department's FLAG System to process the *Agriculture Clearance Order* (Form ETA-790/790A) filed by employers in connection with a future filed *H-2A Application for Temporary Employment Certification* (Form ETA-9142A) with DOL, pursuant to 20 CFR 655.121.

- 3. Processing of Clearance Orders Attached to H-2A Applications:** Upon receipt of the clearance order, the SWA will review the clearance 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 SWA will make every effort to review the proposed or draft clearance order, upon request by the DOL CO, and made available using the SWA FLAG System account.

- a. Compliance Review of Clearance Orders

- The SWA will notify the employer of any deficiencies within seven calendar days of the date the employer's job order was received;
- In circumstances where deficiencies are identified, the SWA will promptly record the decision using the SWA FLAG System account and 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 five calendar days after receipt of the state agency's written notification, and make a copy of this notification available for the DOL CO's review using the SWA FLAG System account;
- The SWA agrees to respond within three calendar days after receipt of the employer's response, and make a copy of this response available for the DOL CO's review using the SWA FLAG System account; and

- In circumstances where a timely review of the job order cannot be performed, the SWA 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 Clearance Orders
- Upon determining the clearance order meets the regulatory criteria, whether by the SWA or the DOL CO in the NOA under 20 CFR 655.143, the SWA will promptly record the decision on the job order using the SWA FLAG System account.
  - In accordance with 20 CFR 653.501(a), the SWA, based on its knowledge and experience with the local labor market, may either (1) place the approved job order with the nearest local ES office serving the area of intended employment to initially determine whether qualified local workers are available for the job opportunity, or (2) make a determination anticipating a shortage of qualified local workers for the job opportunity and place the approved job order for intrastate clearance per 20 CFR 655.121(b)(2), and commence recruitment of U.S. workers;
  - The SWA agrees to keep the approved clearance 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 clearance order includes worksites in an area of intended employment that fall within the jurisdiction of more than one SWA, the order-holding SWA agrees to forward a copy of the approved clearance order to other SWAs serving the area of intended employment with instructions to place a copy of the approved clearance order on its active file until the end of the recruitment period; and
  - Upon receipt of a NOA under 20 CFR 655.143, the SWA will perform the following actions when instructed by the DOL CO:
    - In circumstances where the clearance order remains on the active file of the local ES office serving the area of intended employment, promptly place the approved clearance order into intrastate clearance.
    - In the case of emergency situations, promptly place on its active file the clearance order approved by the DOL CO, as well as clearance orders received from other SWAs, for clearance per 20 CFR 655.121(b)(2) until the end of the recruitment period, as set forth in 20 CFR 655.135(d).

- Where the employer's job order references an area of intended employment that falls within the jurisdiction of more than one SWA, the originating SWA will promptly notify the NPC that a copy of the approved job order must be forwarded to the other SWAs serving the area of intended employment.
- Provide written notice of the job opportunity to organizations that provide employment and training services to workers likely to apply for the job and/or to place written notice of the job opportunity in other physical locations where such workers are likely to gather per 20 CFR 655.143(b)(5).

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

- The SWA will use its public labor exchange services 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 until 50 percent of the contract period calculated from the first date indicated in Section A.3 of Form ETA-790A. This announcement should 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. Please note that these activities are covered by existing Wagner-Peyser formula grants and not by the foreign labor certification grants that are the subject of this TEGL; and
- Using the SWA FLAG System account, the SWA will make available records of U.S. workers referred through an approved clearance 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.

d. Providing Written Notice of Certain Job Opportunities Placed in Connection with H-2A Applications

- The SWA will, if directed by the DOL CO, provide written notice of a job opportunity to organizations that provide employment and training services to workers likely to apply for that job opportunity and/or place written notice of that job opportunity in other physical locations where such workers are likely to gather per 20 CFR 655.143(b)(5).

- To the extent practicable, the SWA will prioritize its limited resources on conducting wage surveys in the major crops or other agricultural activities/commodities where seasonal H-2A workers are regularly employed, 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 SWA or other State agency may use sub-state reporting areas for conducting prevailing wage surveys; and
- The SWA agrees to submit all completed and signed Form ETA-232 prevailing wage survey findings to the DOL OFLC National Office in accordance with instructions contained in this TEGL and the regulations at 20 CFR 655.120(c).
- The SWA must provide an explanation for not scheduling any prevailing wage surveys, or for reducing the number of wage surveys from previous year, here:

***[Insert explanation]***

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

Survey Timeframes	Survey Areas (e.g., statewide, regional)	Crops/Agricultural Activities & District Work Task(s), if applicable	Survey Means (e.g., site survey, telephone)	Survey Transmission Timeframe to OFLC
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

- 4. 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 SWA plans to conduct during the performance period of the grant in accordance with ETA 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 CNPC for review.

The SWA agrees to submit all completed prevailing practice and normal and accepted requirement surveys promptly to the CNPC in accordance with instructions contained in this TEG. The SWA must provide an explanation for not scheduling any prevailing practice surveys for reducing the number of surveys from previous year, here:

**[Insert explanation]**

*[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., site survey, telephone)	Survey Transmission Timeframe to OFLC
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.



## 5. Scheduling and Conducting Housing Inspections:

- *All Housing Inspections.* The SWA agrees to develop and maintain a plan to schedule housing inspections prior to the filing of clearance orders from employers who **regularly use the H-2A program** and, to the extent practicable, actively encourage employers to have housing ready for inspection at the time of filing the clearance order or earlier. The SWA 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 five calendar days, and re-inspect to determine compliance. Additionally, the SWA 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.
- *Employer-Provided Housing.* In accordance with 20 CFR 655.122(d)(1)(i), the SWA agrees to schedule and conduct **pre-occupancy inspections of housing** to be furnished to H-2A workers and non-H-2A workers in corresponding employment 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 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. Special requirements for range housing are provided below.
- *Rental and/or Public Accommodations.*
  - The SWA **DOES NOT** have jurisdiction to inspect rental and/or public accommodation housing.
  - The SWA **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 SWA 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.

- Except in circumstances where the DOL has a special procedure or as permitted by 20 CFR 655.230, the SWA 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 CNPC regarding whether housing is approved or not approved using the FLAG system or via email at [H2ASWA.Chicago@dol.gov](mailto:H2ASWA.Chicago@dol.gov); and
- The SWA agrees to promptly notify the CNPC using the FLAG system of any changes in employer- provided housing and the results of any inspections conducted on substitute housing.
- *Alternative Housing Inspection Methods or Arrangements.*
  - The SWA **DOES NOT** use alternative methods or arrangements for conducting pre-occupancy housing inspections. The SWA is solely responsible for scheduling and conducting pre-occupancy housing inspections.
  - The SWA **DOES** use alternative methods, memoranda of understanding, or other contractual arrangements with the following agency(ies)/organization(s) to assist in conducting pre-occupancy housing inspections:
 

***[Insert name of state or local housing authority or other entity assisting the SWA in conducting housing inspections.]***
  - The SWA has submitted with this grant plan a current electronic copy of the memorandum of understanding or other contractual arrangement demonstrating that pre-occupancy housing inspections will be scheduled and conducted in a manner that meets applicable regulatory standards and timeframes.

**Alternative Inspection Methods:** Only in emergency situations where physical housing inspections cannot reasonably be performed, such as during FEMA declared emergencies due to Acts of God or other pandemic health emergencies, the SWA may implement the below alternative methods and procedures, on a temporary basis, to verify that housing meets all applicable standards. The SWA will retain all documentation and records demonstrating compliance and make such information available to DOL upon request.

***[Insert a description of the alternative methods and procedures that may be implemented by the SWA, including examples of acceptable documentation or evidence the SWA will rely upon to determine compliance.]***

**6. Post-Determination Services:** The SWA agrees to provide support services to the DOL CO after a final determination in the following circumstances:

- To the extent resources are available, the SWA agrees that staff funded through the FLC grant will cooperate with and assist Wagner-Peyser Employment Service grant activities that support employer compliance with Agricultural Clearance Order requirements at 20 CFR 653 and 655. This means that FLC grant funds may be used to support SWA processing of Complaints and Apparent Violations through the Employment Service and Employment-Related Law Complaint System described at 20 CFR 658 Subpart E and field checks as described at 20 CFR 653 Subpart F or other authorized inspections. All activities funded through the FLC grant for such Employment Service activities will be fully documented, as required by 20 CFR 653 and 20 CFR 658 Subpart E, and all related records and findings will be available to the State Monitor Advocate for monitoring purposes and/or to OFLC for other appropriate action under 20 CFR 655, Subpart B. The SWA may also provide any findings or related records to the Wage and Hour Division, Occupational Safety and Health Administration, or any other appropriate government enforcement agencies.
- In accordance with 20 CFR 655.166 and upon request by the DOL CO, the SWA agrees to promptly provide information concerning the availability of U.S. workers to replace some or all 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 SWA 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 and apparent violations arising under the H-2A regulations, the SWA agrees to utilize the existing Employment Service and Employment-Related Law 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 foreign labor certification grants that are the subject of this TEG;
- SWAs agree to refer complaints and apparent violations arising under the H-2A regulations, which are not informally resolved as described at 20 CFR 658.411, to the following recipients, in addition to other appropriate enforcement agencies (or another public agency, a legal aid organization, or a consumer advocate organization, as appropriate):
  - For complaints and apparent violations involving allegation of fraud or misrepresentation, the SWA 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 and apparent violations involving contracts with workers, the SWA 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 provide a copy of such referral to the DOL CO at [H2ASWA.Chicago@dol.gov](mailto:H2ASWA.Chicago@dol.gov); and
- For complaints and apparent violations 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 SWA agrees to refer all such complaints to the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights section in addition to any activity, investigation, and/or enforcement action taken by the state agency, and provide a copy of such referral to the DOL CO at [H2ASWA.Chicago@dol.gov](mailto:H2ASWA.Chicago@dol.gov).

#### D. Permanent Labor Certification Program

- The SWA’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 SWA understands that these labor exchange services are already covered by existing Wagner-Peyser formula grants; not by the foreign labor certification grants that are the subject of this TEGL.

#### E. Grantee Contact Information

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

<b>Last name</b> Click or tap here to enter text.		<b>First name</b> Click or tap here to enter text.	
<b>Job title</b> Click or tap here to enter text.			
<b>Address</b> Click or tap here to enter text.			
<b>City</b> Click or tap here to enter text.		<b>State</b> Click or tap here to enter text.	<b>Postal code</b> Click or tap here to enter text.
<b>Telephone number (including extension)</b> Click or tap here to enter text.		<b>Fax number</b> Click or tap here to enter text.	
<b>E-mail address</b> Click or tap here to enter text.			

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

<b>Last name</b> Click or tap here to enter text.	<b>First name</b> Click or tap here to enter text.	
<b>Job title</b> Click or tap here to enter text.		
<b>Address</b> Click or tap here to enter text.		
<b>City</b> Click or tap here to enter text.	<b>State</b> Click or tap here to enter text.	<b>Postal code</b> Click or tap here to enter text.
<b>Telephone number (including extension)</b> Click or tap here to enter text.	<b>Fax number</b> Click or tap here to enter text.	
<b>E-mail address</b> Click or tap here to enter text.		

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

<b>Last name</b> Click or tap here to enter text.	<b>First name</b> Click or tap here to enter text.	
<b>Job title</b> Click or tap here to enter text.		
<b>Address</b> Click or tap here to enter text.		
<b>City</b> Click or tap here to enter text.	<b>State</b> Click or tap here to enter text.	<b>Postal code</b> Click or tap here to enter text.
<b>Telephone number (including extension)</b> Click or tap here to enter text.	<b>Fax number</b> Click or tap here to enter text.	
<b>E-mail address</b> Click or tap here to enter text.		

---

**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. This information is being collected for purposes of awarding a grant. Your response is required to obtain or retain a benefit. (See Wagner-Peyser Act section 9 (29 U.S.C. 49(i)). Public reporting burden for this collection of information is estimated to average approximately 4 (four) hours 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 U.S. Department of Labor-OASAM, • Office of The Chief Information Officer • Room 1N1301 • 200 Constitution Ave., NW, • Washington, DC 20210.

---

**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 2023 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

---

### Instructions for Completing the Budget Narrative

For all grantees, use the following guidance below when writing the budget narrative:

**IMPORTANT:** If a total amount for each line item listed below is included in the narrative, please be sure the amount in the narrative matches the corresponding line items on the SF-424A, *Application for Federal Assistance*.

**Personnel:** List all staff positions by title (current and proposed). Provide the annual salary of each position, percentage of each position's time devoted to the project, the amount of each position's salary funded by the grant, and the total personnel cost for the program year.

**Fringe Benefits:** Provide a breakdown of the amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement, etc.

**Travel:** Specify the purpose, mileage, per diem, estimated number of in-state and out-of-state trips, and under costs for each type of travel.

**Equipment:** Identify each item of equipment to be purchased which has an estimated acquisition cost of \$5000 or more per unit and a useful life of more than one year (*see* 2 CFR 200.1 for the definition of equipment). List the quantity and unit cost per item. Items with a unit cost of less than \$5000 are considered supplies.

**Supplies:** Supplies include all tangible personal property other than "equipment" (*see* 2 CFR 200.1 for the definition of supplies). List the quantity and unit cost per item.

**Contractual:** Identify each proposed contract and specific purpose and estimated cost. If applicable, identify any sub-recipient agreements, including purpose and estimated costs.

**Construction:** Construction costs are not allowed, and this line must be zero.

**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.

**Indirect Charges:** The following link contains specific DOL information regarding indirect charges: <https://www.dol.gov/agencies/oasam/centers-offices/office-of-the-senior-procurement-executive/cost-price-determination-division>.

**Commonwealth of the Northern Mariana Islands (CNMI) CW-1 Program Fiscal Year (FY) 2023 Office of Foreign Labor Certification (OFLC) Grant Planning**

**Guidance CW-1 Temporary Employment Activities**

Title VII of the Consolidated Natural Resources Act of 2008 provided the Secretary of the Department of Homeland Security (DHS) authority to administer and enforce a system of allocating and determining the terms and conditions of visas to be issued to nonimmigrant workers performing services or labor for an employer in the Commonwealth of the Northern Mariana Islands (CNMI or Commonwealth). DHS regulations established the Commonwealth-Only Transitional Worker (CW-1) visa classification to provide for an orderly transition from the CNMI permit system to the U.S. Federal immigration system for certain foreign nationals.

The Northern Mariana Islands U.S. Workforce Act of 2018 (Workforce Act) was passed to increase the percentage of U.S. workers in the total workforce of the Commonwealth while maintaining the minimum number of non-U.S. workers to meet the changing demands of the Commonwealth's economy, to encourage the hiring of U.S. workers, and to ensure U.S. workers are not at a disadvantage for employment or displaced by non-U.S. workers. In accordance with the Workforce Act, DHS promulgated corresponding regulations to provide that a CW-1 petition for temporary employment in the CNMI must be accompanied by an approved temporary labor certification from the Department. A temporary labor certification granted by DOL serves as confirmation to DHS that: (1) there are not sufficient U.S. workers in the CNMI who are able, willing, qualified, and available to fill the petitioning CW-1 employer's job opportunity; and (2) a foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of similarly employed U.S. workers.

The CNMI Department of Labor is the government agency responsible for providing employment and training services and maintains an electronic system for registered and approved employers to post job vacancy announcements and receive referrals of qualified U.S. workers in the CNMI. Registration for employers to post vacancy announcements on the job listing system is a one-time, free process, and readily accessible through the CNMI Department of Labor's website.

In accordance with regulations at 20 CFR part 655, subpart E, the CNMI Department of Labor agrees to carry out all activities to support DOL's review, and processing of job offers and applications seeking temporary labor certification under the CW-1 program.

Specifically, the CNMI Department of Labor agrees to carry out the following activities:



**A. Stakeholder Education and Outreach:** As part of a comprehensive education and outreach plan, the SWA will make available in a conspicuous location on the CNMI Department of Labor website the following information:

- Worker rights information created by the CNMI Department of Labor, the Occupational Safety and Health Administration, Wage and Hour Division, or similar federal authority; and
- Information on how employers can participate in the CW-1 program, such as easy-to-understand instructions on how to prepare and place a job advertisement with the CNMI Department of Labor that is accessible and can be completed electronically; and current contact information within the CNMI Department of Labor for employers to request technical assistance.
- Educate employers about the responsibilities associated with the use of foreign labor recruiters and ban on prohibited fees.

No less frequently than once a year, the CNMI Department of Labor will electronically disseminate to employers who routinely use the CW-1 program helpful tips or best practices on obtaining a prevailing wage determination from the National Prevailing Wage Center and preparing high-quality job advertisements. Where requested and funds permitting, the CNMI Department of Labor will participate in local employer roundtables, conferences or other stakeholder forums to present and/or disseminate information related to the CW-1 program.

In addition, the SWA will also make effort to:

- Remind and educate employers about *Title VII of the Civil Rights Act of 1964*, which makes it illegal to discriminate against someone or harass someone on the basis of race, color, religion, national origin or sex, and makes employers accountable for providing a work environment that is free from harassment and other kinds of discrimination; and
- Information educating employers about the responsibilities associated with the use of foreign labor recruiters and ban on prohibited fees.

**B. Placement of CW-1 Job Advertisement:** employer must place an advertisement with the CNMI Department of Labor for a period of 21 consecutive calendar days. All advertisements must satisfy the requirements codified in 20 CFR 655.441.

The CNMI Department of Labor's labor exchange system, at [www.marianaslabor.net](http://www.marianaslabor.net) is accessible to employers required to place a job advertisement in connection with a CW-1 *Application for Temporary Employment Certification* with DOL, pursuant to 20 CFR 655.442. The CNMI Department of Labor has capability for employers to place job advertisements for review in the following manner:

Please check all that apply:

- Self-services by accessing the CNMI Department of Labor's labor exchange system: [www.marianaslabor.net](http://www.marianaslabor.net).
- Staff-assisted job offer services by submitting draft job offers at:

**[Insert CNMI contact information including email address where employers can submit CW-1 job offer]**

Please check one of the following:

- The CNMI Department of Labor's job offer form and/or system **DOES** contain an entry field or option permitting employers to identify that the job offer is being placed in connection with a submitted *Application for Temporary Employment Certification* for CW-1 workers;

OR

- The CNMI Department of Labor's job offer form and/or system **DOES NOT** contain an entry field or option permitting employers to identify that the job offer is being placed in connection with a submitted *Application for Temporary Employment Certification* for CW-1 workers. Therefore, employers can provide the regulatory required notification to the CNMI Department of Labor in the following manner:

**[Insert a brief description of how and whom employers can provide]**

Please check all that apply:

- The CNMI Department of Labor has submitted with this grant plan a current electronic copy of the form and general instructions employers are required to use to submit job advertisements.
- The standard job advertisement form and general instructions are easily accessible to employers on a website maintained by the CNMI Department of Labor at: [www.marianaslabor.net](http://www.marianaslabor.net).

Once employers place an advertisement with the CNMI Department of Labor for 21 consecutive calendar days, the CNMI Department of Labor will make available to the employer web pages in which the advertisement appeared on the CNMI Department of Labor job listing system, or other verifiable evidence containing the text of the advertisement and the dates of publication demonstrating compliance with the requirement.

---

**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.

This information is being collected for purposes of awarding a grant. Your response is required to obtain or retain a benefit. *See* 20 CFR 655, Subpart E. Public reporting burden for this collection of information is estimated to average approximately 1 (one) 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 U.S. Department of Labor-OASAM, ● Office of The Chief Information Officer ● Room 1N1301 ● 200 Constitution Ave., NW, ● Washington, DC 20210.

---