ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 21-20

TO: STATE WORKFORCE AGENCY ADMINISTRATORS

FROM: SUZAN G. LEVIN /s/  
Principal Deputy Assistant Secretary

SUBJECT: Fiscal Year (FY) 2021 Foreign Labor Certification Grant Planning Guidance

1. **Purpose.** To provide guidance to State Workforce Agencies (SWAs) regarding FY 2021 annual grant allocations for foreign labor certification activities.

2. **Action Requested.** SWA Administrators are requested to immediately provide copies of this guidance to all staff involved in the preparation and submission of the annual grant plan for foreign labor certification activities for FY 2021. By June 11, 2021, SWAs must submit their grant applications to the Employment and Training Administration (ETA), Department of Labor (DOL or Department), unless they are in receipt of an approved written extension from the ETA Office of Foreign Labor Certification (OFLC). ETA requests that SWA Administrators receiving this guidance share this information within their respective organizations in order to ensure that fiscal and programmatic staff are fully aware of the required FY 2021 foreign labor certification grant application processes and timelines contained in this Training and Employment Guidance Letter (TEGL).

3. **Summary and Background.**
   a. This TEGL provides programmatic guidance and financial information to SWA Administrators to support state foreign labor certification activities for FY 2021.
   b. The mission of ETA’s 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 the OFLC. Accordingly, statutory and regulatory provisions of the labor certification programs administered by OFLC require many employers seeking to hire either permanent or temporary foreign labor to apply to the Secretary for a labor certification.
Congress appropriates funding for state foreign labor certification activities through the State Unemployment Insurance and Employment Service Operations (SUIESO) account.

c. The Consolidated Appropriations Act, 2021 (P.L. 116-260) authorizes $20,282,000 for foreign labor certification state grants, a $6,000,000 increase from the previous year’s appropriation of $14,282,000. In order to maintain an adequate level of base funding for SWAs while ensuring the additional resources appropriated by Congress for FY 2021 are based on more recent actual foreign labor workload factors impacting SWAs, the Department is allocating the appropriated funds in two components: a base allocation and a supplemental allocation. Each SWA’s base allocation is equivalent to its FY 2020 grant award, except where a SWA (1) processed an annual average of less than five total H-2A job orders during the three most recently completed fiscal years; (2) processed an annual average of less than five total H-2B job orders during the three most recently completed fiscal years; and (3) less than five housing units were identified on H-2A job orders processed by the SWA during FY 2020. In circumstances where a SWA’s workload met all three of the above factors, the SWA was only allocated $5,000 in base funding to support costs associated with processing this minimal level of foreign labor certification workload and no supplemental funding.

For all other SWAs receiving a supplemental allocation, the amount of funding was determined by each SWA’s proportion of the total number of H-2A and H-2B job orders processed during the three previous fiscal years and each SWA’s proportion of the total housing units identified on H-2A job orders processed during FY 2020. A more detailed description of these workload factors and the allocation of funding to each SWA is included in Attachment VII.

4. Content. Please see Attachment II for guidance.

5. Inquiries. SWA staff should direct all questions to the OFLC National Office at FLC.Grant@dol.gov.

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);
   • 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;
• Guide for Employment Service Reimbursable Grant Activities;
• ETA H-2A Program Handbook No. 398, January 1988;
• Training and Employment Guidance Letter (TEGL) No. 04-06, Plans to Phase out Penalty Mail Costs for “Employment Security” Programs and Availability of Supplemental Budget Funds for Conversion to Commercial Mail Methods; and

7. Attachment(s).

Attachment I. Table of Contents
Attachment II. Program Planning Guidance and Information Package
Attachment III. Fiscal Year (FY) 2021 Annual Plan
Attachment IV. Annual Plan Certification
Attachment V. Procedures for Prior Approval of Equipment Purchase Requests
Attachment VI. Instructions for Completing Budget Narrative
Attachment VII. FY 2021 Actual Funding Guidance and Funding Levels
Attachment VIII. Amendment A: Commonwealth of the Northern Mariana Islands (CNMI)

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