

Attachment No.: 4

Major SWA Responsibilities for the ALC Agricultural Program

1. **Before Required Filing Date.**

- Meet with employers to encourage early filing; inform employers of any new/emerging requirements; and assist employers in preparing job offers/orders. Special emphasis shall be placed by SWAs in the areas of Agricultural Prevailing Wage Surveys, assisting employers to prepare job orders and positive recruitment plans which are most likely to reach and encourage response by U.S. workers, and in increased use of America's Job Bank (AJB) for all H-2A orders.
- Conduct prevailing wage surveys and submit them to the national office for verification.
- Conduct housing inspections (where conditional access is not involved). Housing inspections should be scheduled by the State Agency **prior** to the filing of applications for those employers who regularly use the H-2A program.
- Gather information and provide advice to the national processing center (Atlanta or Chicago) on prevailing practices (family housing, utilization of crewleaders and crewleader overrides, transportation advances, and frequency of payment).
- Gather information on U.S. worker availability to assist the national processing center in determining positive recruitment requirements.

2. **Forty-Five (45) Days Before Date of Need.**

- Receive duplicate of employer application and job offer.
- Prepare local job order and begin local recruitment.
- Advise the national processing center if any components appear unacceptable for H-2A clearance purposes.
- Maintain record of referrals and actions taken thereon; report to the national processing center any "questionable" refusals to hire.
- Respond to national processing center requests for assistance/clarification on employer's application.
- Begin preparation of clearance order based on employer's job offer portion of application (if not done before).
- Assist employer in preparing advertisement plans based on the requirements from the national processing center.

3. **Upon Receiving Notification by Telephone (or E-mail) from the National Processing Center on Whether or not the Application is Accepted.**

- If application accepted, finalize clearance order; clear to states designated by the national processing center.
- If application not accepted, revise clearance order to incorporate modifications required by the national processing center (but do not submit).
- Consult with employer to determine if employer agrees to modifications.

- If employer intends to appeal to the Administrative Law Judge (ALJ), put clearance order in abeyance.
- Assist employer in making modifications, if appropriate (Form ETA 795 if clearance order already prepared and ready for transmittal).

4. After Clearance Order Approved by the National Processing Center.

- Enter order into AJB.
- Mail order to other areas specified by the national processing center.
- Perform other actions related to recruitment specified by the national processing center.
- Review employer advertising--ensure it is published/broadcast.
- Refer workers; facilitate referrals from other states; (maintain records of referrals and actions taken thereon).
- Assist employer in processing requests for amendments (the national processing center must approve).
- Ensure that approved amendments are included in job order package.
- Ensure previous editions of job orders are corrected or updated.

5. Housing Inspections.

- Complete all scheduled housing inspections.
- If deficiencies are found, inform employer(s) that they have five calendar days to correct. Re-inspect five days later.
- If housing not approved after the re-inspection, the clearance order must be canceled and referred workers should be notified.
- The Immigration and Nationality Act requires that employers furnish housing that meets applicable standards before certification can be issued (INA 218(c)(4)). Documentation that the employer's housing meets applicable standards must be received by the Certifying Officer prior to certification being granted. SWAs should encourage employers who expect to obtain their certification 30 days before the date of need to have housing ready for inspection at the time of filing their application or earlier. SWAs should be prepared to conduct housing inspections prior to the filing of applications, as appropriate; and should even plan to schedule housing inspections prior to filing for those employers who regularly use the H-2A program.

6. Twenty-Four (24) Hours Before Date of Need (Suggested).

- Submit report on SWA recruitment to the national processing center.

7. After Certification Determination.

- Continue to refer workers who apply for the job.
- If proof of advertising is not received, prior to the granting of the labor certification, obtain from employer.
- Respond to national processing center requests for assistance/advice on re-determination requests.

8. After Date of Need.

- Continue to refer workers who apply if comparable alternative employment is not available (up to 50 percent of the contract period).
- Advise the national processing center if employer refuses to accept referred workers.
- Respond to national processing center requests for assistance/advice on re-determination requests and recruitment of replacement workers (employer must report workers not accepted or fired to the SWA; the national processing center has 72 hours to act on re-determination requests).
- Refer worker complaints on non-performance of contracts to the Wage and Hour Division (DOL).
- Provide information (and other assistance) to the Wage and Hour Division in its investigations.
- Investigate employer complaints on 50 percent rule violations (655.106(g)).
- Advise employers, and the national processing center if appropriate, of legal or regulatory actions mandating changes in work situation.
- Conduct field checks at job sites only where U.S. workers have been placed through the clearance system (coordinate with the national processing center and Wage and Hour Division; do not duplicate Wage and Hour targeted enforcement visits).
- Cancel job order when 50 percent of work contract has elapsed.