

Program Planning Guidance and Information Package

I. Introduction

The Immigration and Nationality Act (INA) entrusts specific responsibilities to the U.S. Secretary of Labor for the administration of certain employment-based immigration programs that require a labor certification. These statutory responsibilities include determining whether there are able, willing, and qualified U.S. workers for a requested position for which certification is requested and whether there would be any adverse impact on similarly employed U.S. workers should labor certification be granted. Accordingly, statutory and regulatory provisions require all employers seeking a labor certification for either permanent or temporary nonimmigrant labor to first apply to the Secretary of Labor for certification. The Secretary has delegated these responsibilities to Office of Foreign Labor Certification (OFLC) of the Employment and Training Administration (ETA).

Under the State Unemployment Insurance and Employment Service Operations (SUIESO) account, Congress appropriates funding for State activities supporting foreign labor certification and the Federal administration of foreign labor certification programs as two separate activities. Federal Administration activity funds Federal program functions, such as the full Federal program costs of OFLC to receive and process employer-filed applications for permanent and temporary labor certification.

The State Grants activity funds State employment services supporting the Federal foreign labor certification programs including the review and clearance of job orders, inspection of employer-provided housing, and conduct of prevailing wage and practice surveys. ETA, through OFLC, distributes these funds annually to State Workforce Agencies (SWAs) as fiscal year (FY) formula grants in accordance with approved State plans. This document provides the necessary guidelines to be used by SWAs to update annual plans and request funds in order to carry out their foreign labor certification program responsibilities for a performance period of 12 months that began on October 1, 2011, and continues through September 30, 2012.

II. Grant Procedures

A. Grant Application. The SWA grant application must be developed in accordance with instructions contained in this Training and Employment Guidance Letter. The grant application package submitted by the SWA to OFLC should consist of: (1) a transmittal letter and (2) **one original and two copies** of the following documents:

- Application for Federal Assistance (SF-424), Expiration Date 3/31/2012, Office of Management and Budget (OMB) Approval 4040.0004. (Grants.gov)
<http://apply07.grants.gov/apply/FormLinks?family=15>

- Annual Budget and Quarterly Funding Plan (SF-424A (section D only), Expiration Date 7/31/2012, OMB Approval 4040.0006 (Grants.gov)

Important Note: Submit a listing and all documentation explaining and justifying any proposed equipment purchases of \$5,000 or more and any contracts/subcontracts the SWA intends to execute to carry out the grant activities.

- FY 2012 Annual Plan
 - Foreign Labor Certification Workload (section A)
 - H-2B Program Activities (response to section B)
 - H-2A Program Activities (responses to section C)
 - Cost of H-2A and H-2B Temporary Labor Certification Activities (section D)
 - Permanent Labor Certification Activities (section E)
 - Grantee Contact Information (section F)
- Certifications and Assurances (signed and dated)

- B. Grant Submission. Absent receiving an approved written extension from the OFLC National Office, a completed grant application package must be submitted by the SWA to OFLC within **30 calendar days** using the following address:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
200 Constitution Avenue, NW, Room C-4312
Washington, D.C. 20210
Attn: Ms. Anna Kasior

To expedite review of your grant application package, the SWA may also send a Word or PDF copy using electronic mail (e-mail) to FLC.Grant@dol.gov and include "FY 2012 SWA Grant Plan" in the subject line of the e-mail.

- 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 which will prevent the grant application package from being approved. The OFLC Administrator will review the grant application package and recommend approval to the ETA Grant Officer. The ETA Grant Officer will issue the grant, including the approved grant package, and a Notice of Obligation to the SWA after receiving the approved grant application package from the OFLC Administrator.

- D. Grant Modifications. The grantee and the ETA Grant Officer, at the recommendation of the OFLC Administrator, may jointly modify the FY 2012 SWA Annual Plan including negotiated changes in program activities (e.g., review of job orders, wage or prevailing practice surveys) and funding levels during the grant period of performance. The OFLC Administrator has the authority to recommend funding adjustments to the ETA Grant Officer when overall grant expenditures are substantially below forecasted or actual spending levels. 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 of Labor 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, each SWA will be notified by the OFLC Administrator to submit to the ETA Grant Officer appropriate modifications to its approved grant plan in order to fully carry out such responsibilities.

III. Grant Reporting Procedures

As a condition of receiving grant funds under the SUIESO account, SWAs agree to carry out responsibilities supporting the Federal administration of foreign labor certification programs in accordance with all applicable regulations, policies, procedures, handbooks, manuals, and other directives. Financial and programmatic reporting by SWAs enables OFLC to report key information to its stakeholders regarding the use of grant funds. Accurate reporting of financial and program management data provides vital information to support future OFLC funding levels and ensuring appropriate management of grant funds.

OFLC is responsible for the continuous monitoring of the cost reimbursable grants. This includes review and recommendation for approval of the grant plan application, analysis of expenditure and performance data, execution of programmatic plan modifications, timely and accurate submission of all required reports, and on-site reviews. OFLC advises SWAs on how to administer the plan in accordance with the approved plan and the terms and conditions of their Wagner-Peyser Annual Funding Agreement.

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 ETA Form 9130, *Financial Report* (OMB Approval No. 1205-0461, Expiration 11/30/2012) on a quarterly basis providing detailed expenditure information on the grant award activities. The ETA 9130 report is due **45 calendar days after the end of each quarter** and must be submitted online through ETA's Enterprise Business Support System. A copy of the ETA Form 9130 can be obtained at the following Web site:
<http://www.doleta.gov/grants/docs/ETA-9130-ESandUI.pdf>.

| Fiscal Year | Reporting Months | Report Due Date* |
|-------------------------|-------------------------|---------------------------|
| 1 st Quarter | October – December | February 15 th |
| 2 nd Quarter | January – March | May 15 th |
| 3 rd Quarter | April – June | August 15 th |
| 4 th Quarter | July – September | November 15 th |

* If the 15th day falls on a weekend (Saturday or Sunday), then the report is due the previous business day.

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 can include staff resources, travel expenditures, other direct administrative costs, and indirect/overhead support (where an approved indirect cost plan is in place).

- B. Program Activity Report. To account for work performed under the grant, SWAs must submit the ETA Form 9127, *Quarterly Activity Report* (OMB Approval No. 1205-0457, Expiration 5/31/2012) on a quarterly basis providing detailed information on H-2A and H-2B program activities, and Permanent Labor Certification Program job order postings. The ETA Form 9127 report is due **within 2 weeks after the end of each quarter** and may be submitted electronically directly to OFLC at FLC.Grant@dol.gov. OFLC will promptly review the report for completeness and notify the SWA of any inaccuracies or deficiencies requiring correction. A copy of the ETA Form 9127 can be obtained at the following Web site:
http://www.foreignlaborcert.doleta.gov/pdf/9127Instructions_Final.pdf

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

* If the 15th day falls on a weekend (Saturday or Sunday), then the report is due the previous business day

If the SWA experiences any difficulties submitting the report, please contact Ms. Valerie Massey, OFLC Federal Project Officer, via e-mail at FLC.Grant@dol.gov or phone at (202) 693-3010.

- 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 U.S. workers similarly employed are not adversely impacted by the admission of a temporary foreign worker. 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 (also see 20 Code of Federal Register (CFR) 653.501(d)(4)). These employer wage results are collected through survey instruments designed by the SWA, conducted in accordance with the ETA Handbook No. 385, 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 232, *Domestic Agricultural In-Season Wage Report*
(OMB Approval No. 1205-0017, Expiration 07/31/2013)
http://www.foreignlaborcert.doleta.gov/pdf/in_season.pdf

ETA Form 232A, *Wage Survey Interview Record*
(OMB Approval No. 1205-0017, Expiration 07/31/2013)
<http://www.foreignlaborcert.doleta.gov/pdf/wage.pdf>

The ETA Forms 232 and 232A may be submitted electronically directly to OFLC at agwage.surveys@dol.gov or mailed to the following address:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
200 Constitution Avenue, NW, Room C-4312
Washington, D.C. 20210
Attn: H-2A Prevailing Wage Surveys

If the SWA experiences any technical issues conducting or submitting the prevailing wage results, please contact Mr. Ben Orona, OFLC Temporary Programs Team, via e-mail agwage.surveys@dol.gov or phone at (202) 293-3010.

- D. Agricultural Employment Practice Survey Reports. The Department of Labor (Department) regulations at 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. Additionally, Department regulations also allow for certain terms of employment, provided that those terms constitute 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 prevailing practice, OFLC may rely on any

information or data collected through State-conducted surveys (OMB Approval No. 1205-0457) . The SWA is responsible for designing the survey instruments to collect the data and transmitting in summary form to the Chicago National Processing Center (NPC) the survey results 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 or mailed to the following address:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
536 South Clark Street, 9th floor
Chicago, Illinois 60605-1509
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, via e-mail at H2ASWA.Chicago@dol.gov or phone at (312) 886-8000.

The Department requires the SWAs to submit a quarterly report on their workloads related to the activities described above through the ETA Form 9127, *Foreign Labor Certification Quarterly Activity Report* (OMB Control Number 1205-0457, Expiration 05/31/2012). The data required by the ETA Form 9127 are available to the SWAs as part of their routine processing of requests from employers and are currently maintained by the SWAs. Details regarding the information collection burden for prevailing practice and normal and accepted surveys are being submitted to OMB as part of the information collection for the ETA Form 9127.