

Attachment II

Program Planning Guidance and Information Package

A. Introduction

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 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. These state grants fund services are provided by State Workforce Agencies (SWAs) in support of the foreign labor certification program, including the placement and review of employer job orders, inspection of housing for agricultural workers, and the administration of prevailing wage and practice surveys. The OFLC distributes this grant funding annually in accordance with approved state plans. This Training and Employment Guidance Letter (TEGL) provides programmatic guidance and financial information to SWAs to support state foreign labor certification activities in FY 2021.

This TEGL provides SWAs with the necessary guidelines for updating their annual plans and requesting funds in order to carry out their foreign labor certification program responsibilities. **The annual plan must reflect foreign labor program activities to be performed between October 1, 2020 and September 30, 2021. While the Department expects states to spend the entirety of their allocated funds within the fiscal year, the Department understands that unforeseen circumstances may affect fund expenditure and will allow states up to two years to expend all funds.**

B. Grant Procedures, Requirements, and Timeline

In an effort to achieve greater efficiency and as part of ETA's on-going efforts to streamline the grant award process, grantees are required to submit the application through www.grants.gov.

1. **Grant Application.** The SWA grant application must be developed in accordance with the instructions contained in this TEGL. The grant application package must be submitted via the www.grants.gov portal and should consist of the following documents:

- Fiscal Year Annual Plan, Expiration Date 07/31/2022, Office of Management and Budget (OMB) Control No. 1225-0086;
- SF-424: Application for Federal Assistance, Expiration date 12/31/2022, OMB Control No. 4040-0004;

- SF-424A: Budget Information, Non-Construction Programs, Expiration Date 02/28/2022, OMB Control No. 4040-0006.
- Justification and supporting documentation for any proposed equipment purchases of \$5,000 or more. Prior approval of any equipment purchases exceeding \$5,000 and the contracting out of any work must be obtained per 2 CFR 200.439 and 2 CFR 200.308(c)(1)(vi). Please see the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 and the Department of Labor exceptions to these requirements at 2 CFR part 2900 for additional information about prior approval requirements.
- Indirect Cost Rate Agreement (if applicable): SWAs requesting indirect costs must submit a current copy of the Negotiated Indirect Cost Rate Agreement (NICRA) or Cost Allocation Plan (CAP) supplied by the Federal Cognizant Agency on file as part of this application. Note: For any grantee that chooses to include estimated indirect costs in its budget and that either does not have a NICRA/CAP or has a pending NICRA/CAP, the Grant Officer will release funds in the amount of ten percent of salaries and wages to support indirect costs at the time of the award. Within 90 days of award, the grantee must submit an approved NICRA or CAP to the Grant Officer for modification of the award to allow indirect costs as indicated in the NICRA or CAP.

Important Reminders:

- An electronically submitted SF-424, *Application for Federal Assistance* through www.grants.gov constitutes the official signed document and must reflect the total amount requested in item #18, *Estimated Funding*. Item #11 must include the *Catalog of Federal Domestic Assistance Number (CFDA)*, 17.273. The application/budget must be based on the projected state/territory needs for FY 2021.
- Full-year funding levels will not be confirmed until the annual plans have been reviewed and full funding for the year is authorized by appropriations legislation. Please use Attachment VII of this TEGL for actual funding levels based on the Consolidated Appropriations Act, 2021.
- FY 2021 Annual Plan Table of Contents:
 - Foreign Labor Certification Workload (Attachment III, Section A)
 - H-2B Program Activities (Attachment III, Section B)
 - H-2A Program Activities (Attachment III, Section C)
 - Permanent Labor Certification Program (Attachment III, Section D)
 - Grantee Contact Information (Attachment III, Section E)
 - Annual Plan Certification (Attachment IV)
- 2. Grant Submission. A completed grant application package must be submitted by the SWA to ETA using the www.grants.gov portal **within 30 calendar days** following the date of issuance of the planning guidance. The SF-424 should be electronically signed and the completed package should be submitted through www.grants.gov for the Funding Opportunity Number ETA-TEGL-21-20. SWAs may find it helpful to review their prior grant application package submissions and revisions to prepare the FY 2021 grant application package.

To submit the required documents, applicants must follow the “Apply for Grants” link on www.grants.gov and search for the TEGL number or CFDA number to access the grant application workspace. For this grant opportunity, applicants should **not** follow the “Find Grants” link, as this is not a competitive funding opportunity. If applicants encounter a problem with www.grants.gov and do not find an answer in any of the other resources, please call 1-800-518-4726 or 606-545-5035 to speak to a Customer Support Representative or email support@grants.gov.

3. Grant Approval. Within 30 calendar days of receipt, OFLC will review the grant application package and inform the SWA, in writing, of any concerns or deficiencies that may prevent the grant application package from being approved.

After verifying that a SWA’s grant application package meets the established criteria in the following attachments to this TEGL, the OFLC Administrator will recommend approval to the ETA Grants Officer. After reviewing the SWA grant application package recommended for approval by the OFLC Administrator, the ETA Grant Officer will issue the grant award, including the approved grant application package and a Notice of Acceptance (NOA), to the SWA.

4. Use of FY 2021 funds. The funding received from the OFLC annual distribution is a cost reimbursable grant provided to the SWAs. Although the Department generally allows states to spend Wagner-Peyser funds over a three-year period of performance, please note that the Department is limiting the expenditure of funds allocated pursuant to this TEGL to a two-year period. As referenced above, the Department expects states to spend the entirety of their allocated funds within the FY 2021 fiscal year based on the plan that they submit pursuant to this TEGL, but the Department will allow states up to two years to expend funds to account for unforeseen circumstances.
5. Grant Signatures. The SWA’s authorized representative must electronically sign all signature pages of the grant application. If that individual has changed from the prior year, the SWA must provide an official letter, on state letterhead, with the grant application package identifying the new authorized representative.
6. Grant Modifications. The grantee and the ETA Grant Officer, at the recommendation of the OFLC Administrator, may jointly modify the FY 2021 SWA Annual Plan including negotiated changes in program activities (e.g., review of job orders, wage or prevailing practice surveys, etc.) and funding levels during the grant period of performance. Any grant plan modification request must include a transmittal letter, written narrative of the proposed modification(s), revised annual budget, and quarterly spending plan. In the event that the Secretary is required by future legislation, regulatory action, or court order to carry out responsibilities related to the administration of foreign labor certification programs not currently anticipated, the OFLC Administrator will notify the SWAs and request that they submit appropriate modifications to their approved grant plans directly to the ETA Grant Officer in order to fully carry out their responsibilities based on their existing foreign labor certification grant allocations.

C. Grant Reporting Procedures

As a condition of receiving these grant funds, SWAs agree to carry out responsibilities supporting the administration of foreign labor certification programs in accordance with all applicable regulations and guidance, including, but not limited to, 20 CFR parts 655 and 656 and 2 CFR Parts 200 and 2900. Financial and programmatic reporting by SWAs enables OFLC to report key information to Congress and OFLC stakeholders regarding the use of grant funds. Accurate reporting of required financial and program management data provides vital information to support future OFLC funding levels and ensure the appropriate management of grant funds.

OFLC is responsible for monitoring these cost-reimbursable grants. Monitoring activities may include: review and recommendation for approval of the grant application package; analysis of expenditure and performance data submitted by grantees; execution of programmatic plan modifications; assessing a grantee’s timely and accurate submission of all required reports; and on-site reviews where needed. ETA will advise SWAs on how to administer the grant in accordance with the approved plan and the terms and conditions of their Wagner-Peyser Annual Grant Funding Agreement. Please note that the Commonwealth of the Northern Mariana Islands (CNMI) is not covered by the Wagner-Peyser Act and therefore not required to conduct Wagner-Peyser funded program activities. Therefore, CNMI may use funding provided under its foreign labor certification program grant to fund activities related to foreign labor certification programs, such as the placement and review of H-2A or H-2B job orders or conducting referrals of qualified U.S. workers that other grantees are required to fund with Wagner-Peyser funds.

SWAs will report financial and program management information using the following required reports:

1. Financial Status Report. ETA requires all grant recipients to submit the Form ETA-9130, *U.S. DOL Financial Report* (OMB Control No. 1205-0461) on a quarterly basis providing detailed expenditure information on the grant award activities. The Form ETA-9130 report is due **no later than 45 calendar days after the end of each quarter in the FY** and must be submitted online through ETA’s Grantee Reporting System at https://www.etareports.doleta.gov/CFDOCS/grantee_prod/reporting/index.cfm.

SWAs can obtain a copy of the Form ETA-9130 at the following Web site: <http://www.doleta.gov/grants/pdf/ETA-9130-Basic.pdf>

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

*The reporting system is available 24-hours-a-day, including weekends; however, technical support is not available on weekends.

If the SWA experiences any technical issues submitting the report, please contact the e-Grants Helpdesk via e-mail at e-grants.help@dol.gov or by phone at 202-693-2682.

Important Reminders on Allowable Costs:

1. Costs incurred under the grant may only be attributed to activities supporting the direct administration of foreign labor certification programs; and
2. Costs may include staff resources, travel expenditures, other direct administrative costs, and indirect/overhead support (where an approved indirect cost plan is in place).
3. Please note, SWAs must not spend more than 20% of the OFLC grant funds conducting prevailing wage and prevailing practice surveys and performing field checks or visits in accordance with 20 CFR Part 653. If additional funding is needed, SWAs may use other Wagner-Peyser funds if available. Employment Service grants may be used for conducting prevailing wage and prevailing practice surveys and performing field checks or visits in accordance with 20 CFR Part 653; Workforce Information grants may be used for conducting prevailing wage and prevailing practice surveys only.

2. Program Activity Report. To account for work performed under the grant, SWAs must submit the Form ETA-9127, *Foreign Labor Certification Quarterly Activity Report* (OMB Control No. 1205- 0457), on a quarterly basis providing detailed information on H-2A and H-2B program activities.

The data required by the Form ETA-9127 is available to the SWAs as part of their routine processing of requests from employers (SWAs currently maintain this data). The Form ETA-9127 report is due **within two weeks after the end of each quarter during the fiscal year** and may be submitted by e-mail directly to OFLC at FLC.Grant@dol.gov. SWAs may find it helpful to review their prior Form ETA-9127 submissions during completion of the grant application package.

OFLC will promptly review the report for completeness and notify the SWA of any inaccuracies or deficiencies requiring correction. SWAs can obtain a copy of the Form ETA-9127 and instructions at the following websites:

Fillable Form:

https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/ETA_9127_7369.pdf

Form Instructions:

https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/ETA_9127_Instructions_7369.pdf

Fiscal Year 2021	Reporting Months	Report Due Date*
1 st Quarter	October – December	January 15
2 nd Quarter	January – March	April 15
3 rd Quarter	April – June	July 15
4 th Quarter	July – September	October 15

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

If the SWA experiences any technical issues submitting the report please contact the OFLC Grants and Finance Team at FLC.Grant@dol.gov.

3. Agricultural Prevailing Wage Survey Reports. Under the Department’s regulations at 20 CFR 655.120, an employer participating in the program is required to offer and pay the highest of several wages, as applicable, namely: the Adverse Effect Wage Rate (AEWR), the prevailing hourly wage or piece rate, the agreed upon collective bargaining wage, or the Federal or state minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment. SWAs can collect and provide information to OFLC with respect to whether a prevailing hourly wage or piece rate exists for the crops or other agricultural activity. These employer wage results are collected through survey instruments designed by the SWA and documented using the following form:

Form ETA-232A, *Wage Survey Interview Record* (OMB Control No. 1205-0017, Expiration 03/31/2023) <https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/ETA-232A.pdf>.

Once SWAs tabulate wage results, SWAs transmit them to OFLC **as soon as the wage results are completed (based on the SWAs’ wage survey plans)** using the following standard form:

Form ETA-232, *Domestic Agricultural In-Season Wage Report* (OMB Control No. 1205-0017, Expiration 03/31/2023) <https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/ETA-232.pdf>.

Form ETA-232 may be submitted electronically (recommended) at the dedicated e-mail address: agwage.surveys@dol.gov.

The forms may also be mailed to the following address:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
200 Constitution Avenue, NW, Room PPII-12-200
Washington, D.C. 20210
Attn: H-2A Prevailing Wage Surveys

If the SWA experiences any technical issues conducting the prevailing wage survey or submitting the results, please e-mail agwage.surveys@dol.gov. SWAs should monitor the Agricultural Online Wage Library on the OFLC website at <https://www.foreignlaborcert.doleta.gov/aowl.cfm> for the posting of prevailing wages for their state.

4. Agricultural Employment Practice Survey Reports. The Department's 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. In addition, Departmental regulations at 20 CFR 655.122 allow for certain terms of employment, provided that those terms constitute a prevailing practice. In making a determination as to whether a job offer contains normal and accepted qualifications and requirements or whether a term of employment would be considered a prevailing practice, OFLC may rely on any information or data collected through state-conducted surveys. The SWA is responsible for designing the survey instruments to collect the data and, once tabulated, transmitting the survey results in summary form to OFLC's Chicago National Processing Center (CNPC) as soon as the employment practice results are completed. The prevailing practice or normal and accepted requirements survey results may be submitted electronically directly to the CNPC at H2ASWA.Chicago@dol.gov (recommended) or mailed to the following address:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court
Chicago, IL 60604-2105
Attn: H-2A Prevailing Practice Surveys

If the SWA experiences any technical issues conducting or submitting the employment practice results, please contact the CNPC by e-mail at H2ASWA.Chicago@dol.gov or call 312-886-8000. SWAs should monitor the Employment Practice Library on the OFLC website at https://www.foreignlaborcert.doleta.gov/aowl_survey_pdf.cfm for the posting of employment practices for their state.

5. Referrals to Department of Justice (DOJ), Immigrant and Employee Rights (IER) section. SWAs may identify a matter that falls within the jurisdiction of DOJ's IER. The SWA is encouraged to contact IER's hotline and ask to speak to a referral duty attorney at 1-800-255-7688 or 1-800-237-2515 (TTY for hearing impaired). Information on how to make a written notification on the IER's charge form is available at www.justice.gov/crt/filing-charge.