

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Foreign Labor Certification
	CORRESPONDENCE SYMBOL OFLC
	DATE April 6, 2010

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 20-09
TO: STATE WORKFORCE AGENCIES
FROM: JANE OATES *Jane Oates*
Assistant Secretary
SUBJECT: Fiscal Year (FY) 2010 Foreign Labor Certification Planning Guidance

1. **Purpose.** To provide guidance for the funding and management of FY 2010 annual grant allocations for Foreign Labor Certification (FLC) programs.
2. **References.**
 - Immigration and Nationality Act (INA), as amended, 8 U.S.C. 1101(a), 1182(a)(1), (a)(7)(B)(iii), (l), (n), and (t), 1184(c), 214(a)(1), (c), (i), and 1188.
 - Approval of Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C. 1801
 - Northern Mariana Islands Covenant Implementation Act, Pub. L. 94-241, Section 302.
 - Consolidated Natural Resources Act, Pub. L. 110-229, 122 STAT, 865, Title VII – Northern Mariana Islands, Subtitle A-Immigration, Security, and Labor.
 - Wagner-Peyser Act, 29 U.S.C. 49f(d)
 - Consolidated Appropriations Act, 2010, Division D, Pub. L. 111-117
 - U.S. Citizenship and Immigration Services Regulations at 8 CFR Parts 214 and 274A
 - 20 CFR Parts 655, 656 and 658
 - 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)
 - OMB Circular No. A-102, Grants and Cooperative Agreements with State and Local Governments
 - Employment and Training Administration (ETA) Handbook No. 385, Wage Finding Process, August, 1981
 - Guide for Employment Service Reimbursable Grant Activities
 - Domestic Agricultural In-Season Wage Finding Process
 - Training and Employment Guidance Letter No. 04-06

Subject: Plans to Phase out Penalty Mail Costs for “Employment Security” Programs and Availability of Supplemental Budget Funds for Conversion to Commercial Mail Methods

RESCISSIONS None	EXPIRATION DATE Continuing
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3. **Background.** The purpose of this Training and Employment Guidance Letter (TEGL) is to define the roles State Workforce Agencies (SWAs) play in programs administered by the Office of Foreign Labor Certification (OFLC), provide SWAs with planning figures for funding that will be allocated to support FLC activities, and set forth the necessary actions to request the funds and to comply with the grant.

SWAs must submit the required information and documents set forth in the attachments to this TEGL, which shall constitute the FY 2010 Annual Plan, and must agree to be bound by the terms set forth by OFLC in its FY 2010 Foreign Labor Certification Grant Guidance.

The Department's FLC programs have experienced and will continue to experience a number of changes over the course of FY2010. As of November 28, 2009, the Commonwealth of the Northern Mariana Islands (CNMI) became subject to U.S. immigration laws. Consequently, the allocations pertaining to this grant include CNMI. As of January 1, 2010, prevailing wage determinations became centralized in the National Prevailing Wage and Helpdesk Center (NPWHC) and are no longer performed by the SWAs under the PERM, H-1B, H-1B1, and E-3 programs.¹

Lastly, the Department recently amended its H-2A regulations through a Final Rule issued on February 12, 2010, with an effective date of March 15, 2010. The Final Rule makes some changes to SWA responsibilities under the H-2A program. Therefore, in processing job orders and job referrals under the H-2A program, SWAs must follow the regulation in effect at the time the application for H-2A labor certification was submitted.

4. **Action Requested.** SWAs are required to complete the actions listed below.
- Respond to these guidelines within **thirty (30) days** of receipt to ensure allocation of remaining grant funds.
 - Identify how program funds would best be used and by splitting the grant allocation between agricultural and nonagricultural activities.
 - Inform the OFLC National Office via written communication of the proposed program split that will be used to allocate funds between agricultural and nonagricultural activities.
5. **Mailing Address.** Mail (Federal Express or other means preferred) completed work plans to Mr. Brian Pasternak, Deputy Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, Room C-4312, 200 Constitution Avenue, NW, Washington, D.C. 20210.
6. **Inquiries.** Please direct program questions to Mr. Pasternak and funding questions to Ms. Leticia Sierra. Both may be reached at the Office of Foreign Labor Certification, (202) 693-3010.

¹ As of October 1, 2009, H-2B prevailing wage determinations became centralized in the Chicago National Processing Center and were no longer performed by the SWAs. Since January 1, 2010, H-2B prevailing wage determinations have been performed by the NPWHC.

7. Attachments.

1. Program Planning Guidance and Information Package
2. FLC Annual Plan Workload Supplement
3. Annual Plan Procedures

Program Planning Guidance and Information Package

Introduction

This document provides the necessary guidelines to be used by SWAs to update annual plans and request funds in order to administer their FLC responsibilities.

Wagner-Peyser funding allocations under the State Unemployment Insurance and Employment Service Operations account in Fiscal Year (FY) 2010 are available to States for activities supporting federal administration of FLC programs. An estimate of each SWA's total FY 2010 funding is reflected below.

FY 2010 Annual Plan

To establish and maintain eligibility for FLC grant funding, SWAs must comply with this TEG and other applicable guidance and regulations of the Department. Upon receipt and approval of the plan at the National Office, OFLC, the Grant Officer in ETA's Division of Federal Assistance will issue a Notice of Obligation (NOO) to provide the balance of funds due to each state from its annual allocation.

SWA Responsibilities

SWAs are responsible for administering grant funds for FLC programs within established guidelines. These responsibilities include:

1. Certifications and Assurances

Regulations require recipients of SWA grants to submit various standard certifications and assurances. These have already been provided under the PY 2009/FY 2010 Wagner-Peyser Annual Funding Agreement and the FY 2009 Foreign Labor Certification Agreement. Current SWA regulations at 20 CFR Part 658, Subpart E (20 CFR 658.400-658.426) cover the complaint and appeals procedures. Regulations at 20 CFR Part 653, Subpart F and 20 CFR Part 654, Subpart E apply to housing inspection activities under the reimbursable grant.

2. Use Mandated Forms for Inter-Agency Communications

SWAs must use the proper forms to ensure uniform communications. These forms include, but are not be limited to, the following:

- **Approved Standard Form: SF-424 (OMB Approval No. 4040.0004 Exp. 03/12/2012)**
- **Form ETA-232 (OMB Approval No. 1205-0017 Exp. 08/31/2010)**
Form ETA-232 is the Domestic Agricultural In-Season Wage Report.
- **Form ETA-232A (OMB Approval No. 1205-0017 Exp. 08/31/2010)**
Form ETA-232A is the Wage Survey Interview Record.

