

**U.S. Department of Labor**

**Employment and Training Administration  
Sam Nunn Atlanta Federal Center  
Room 6M12 - 61 Forsyth Street, S.W.  
Atlanta, Georgia 30303**



May 1, 2003

SWA ISSUANCE NO: 03-12

**SUBJECT:** Guidelines for State Workforce Agency Alien Labor Certification (ALC) Grants for Fiscal Year (FY) 2003

1. Purpose. To provide guidance for funding and management of FY 2003 annual plans for the Alien Labor Certification program.
2. References. The Immigration and Nationality Act, Sections 101(a), 212(n), 214(c) and 218; 8 CFR 214; the Wagner-Peyser Act, Section 7(d); 20 CFR Parts 655 and 656; 29 CFR Part 93; and OMB Circular A-87.
3. Background. FY 2003 is again expected to be a year of high program workload and related activities due to the continued high number of applications for foreign labor certification being received at the State Workforce Agency (SWA) level as a result of H-1B visa-holders applying for permanent work authorization. The year is also expected to be a year of transition due to the anticipated implementation of regulatory changes for processing permanent labor certification applications. Despite the significant increase in program productivity at SWA and DOL Regional Office level, the balance of regular permanent labor certification applications, along with applications resulting from the re-opening of the Immigration and Nationality Act, Section 245(i)(8 U.S.C. 1255(i)), continues to exceed 250,000.

The proposed new procedures for processing permanent labor certifications will be a significant departure from current procedures. A Notice of Proposed Rulemaking (NPRM), 20 CFR Parts 655 and 656, Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System, was published in the Federal Register on May 6, 2002. The NPRM comments period closed on July 6, 2002, and the comments have been organized, reviewed, and evaluated. A Final Regulation is in draft and it is anticipated that the Final Regulation will be published sometime this Fall to be implemented beginning FY 2004. With the initiation of the new process, SWAs will no longer accept new permanent labor certifications for processing. Employers will be required to send the application directly to the Department of Labor for processing.

In FY 2003, States are being funded to perform the same activities they have performed in previous years. (Note that the Alien Labor Certification program's share of conducting the Occupational Employment Statistics Survey is being funded by the Bureau of Labor Statistics at the same level as FY 2002.)

In FY 2004, the implementation of the new permanent labor certification application process will eliminate the need for employers to apply to SWAs for permanent labor certifications. While they will no longer receive new permanent applications, SWAs will be expected to complete the processing of permanent applications in their files. Funding will be made available to accomplish this function.

After the implementation of the new permanent labor certification system, and the completion of the processing on-hand permanent applications in their files, SWAs will remain responsible for the following:

Processing H-2A cases, as described in the attached Statements of Work, including performing prevailing wage and prevailing practice surveys, and insuring that housing inspections are made;

Providing prevailing wage determinations for all non-agricultural labor certification programs; and

Processing H-2B cases as described in the attached Agricultural/Non-Agricultural Programs Statement of Work & Work Plan.

4. Reimbursable Grant Activities for Alien Labor Certification. New Wagner-Peyser funding allocations for ES National Activities in FY 2003, shown in Attachment II, are only for Alien Labor Certification (including agricultural and non-agricultural programs). Planning targets included in this advisory for these activities reflect a postage assessment of 2.8 percent.

To avoid disruption during this period of increasingly heavy activity and change, the allocation for FY 2003 will be the same as the initial allocation for FY 2002. As in the past, the actual final funding level may change as a result of negotiations between regional offices and the SWAs.

The FY 2003 allocation for Alien Labor Certification is \$25,930,350. Of this, \$730,699 is being retained at the national level for discretionary funding to cope with unforeseen circumstances, and \$726,050 will be used to pay for postage.

Regional office staff will closely monitor financial and program reports relating to labor certification and attestation programs on a quarterly basis and to take corrective actions as necessary. Attachment III9c), Alien Labor Certification Non-Agricultural Program Major SWA Responsibilities, includes a comprehensive listing of labor certification activities that are to be performed by SWAs. Also, SWAs should send appropriate staff to training, when such training is offered. The costs of SWA travel to regional and national meetings and training sessions are included in grant funds. Attendance at these sessions is a condition of the grant. If SWAs do not attend mandatory meetings, funds will be recaptured, based on regional recommendations.

6. Reporting. A financial status report (SF-269) must be submitted quarterly for each fiscal year of funds through the web-based reporting system known as the Enterprise Information Management System (EIMS). Reportable program activities are specified in the Employment and Training Administration (ETA) Handbook No. 385, Employment Service Forms Preparation Handbook, August 1981; ETA Handbook No. 398, H-2A Program Handbook, January 1988; Labor Certification Technical Assistance Guide (TAG) No. 656, 1981; and other ETA instructions. The specific program reports are:

(1) Form ETA-4748, Alien Certification State Agency Transmittal of Application and Processing Record;

- (2) Form ET-9037, Semi-annual Alien Labor Certification Activity Report; and
- (3) Form ETA-232, Domestic Agricultural In-Season Wage Report.

Now that SWAs are no longer required to submit Annual H-2A reports, the national office will compile data on a quarterly basis from the H-2A tracking system. Regions are required to enter the following data, by crop activity:

The number of employers requesting and the number of employers certified;

The number of workers requested and the number of workers certified; and

The total dollar amount collected from H-2A employers.

6. State Allocations. Grant funding will be issued to SWAs as soon as possible. The national office Grant Officer will issue the Notice of Obligations (NOO) to SWAs upon receipt of notice from regional offices that an SWA's Alien Labor Certification Plan has been approved. Budgets can only be approved for annual plans after regions have approved the Statement of Work and Work Plans for the Agricultural/Non-Agricultural programs.

7. Fiscal Management. Regions will retain flexibility to recommend the modification of the negotiated split of ALC funds between agricultural and non-agricultural ALC activities for a given state.

8. General Administration.

(a) Regional offices are responsible for continuous monitoring of the cost reimbursable grants. This includes review and approval of the grant plan application, analysis of expenditure and performance data, execution of programmatic plan modifications, and on-site reviews. States should administer the plan in accordance with the approved plan and the terms and conditions of the Wagner-Peyser Annual Funding Agreement.

(b) Regulations at 29 CFR Part 93, require recipients of ES grants in excess of \$100,000 to submit an annual certification regarding lobbying activities. These certifications, however, have already been provided under the FY 2002 Wagner-Peyser Master Agreement. Current ES regulations at 20 CFR Part 658, subpart E (20 CFR 658.400-426) 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 grant. Other applicable regulatory provisions are incorporated in the Statements of Work (attached).

(c) States are encouraged to establish innovative arrangements to reduce backlogs, process cases, and complete wage survey activities in the most cost effective manner. The National Office has approved arrangements between States allowing for joint or consolidated case processing, in accordance with policy and law. For example, State "A" may contract with State "B" to process its permanent cases in return for either direct reimbursement, or in return for assistance with its H-2A cases.

Further SWAs are reminded that labor certification funds are provided for labor certification activities only and cannot be used for other Wagner-Peyser activities, such as the routine referral of workers on job bank orders, MSFW activities, and processing of complaints under the ES complaint system.

9. Required Actions. State Administrators are requested to:

(a) Immediately transmit this planning information to the appropriate state agency program and grant administrative staff for preparation of the annual Alien Labor Certification Plan;

(b) Allocate or appropriate split of the enclosed ALC planning allocation between **agricultural and non-agricultural** activities after establishing funding needs and priorities for each activity. Regional office staff will participate in the negotiation of the split between the two activities as necessary. Legislatively required time frames and time sensitive ALC activities, such as H-2A, as well as backlog reduction, should be carefully planned and prioritized. (Note: Although states will report expenditure of funds only for the program as a whole, the information about the negotiated split for what the State expects to spend for agricultural vs. non-agricultural activities is important for future programmatic planning.) **State staff should inform the Certifying Officer of the negotiated split between Agricultural and Non-Agricultural programs as soon as agreement is reached within the state.** States are also requested to provide estimated costs for H-2A prevailing wage and practice surveys, and for administering the H-2B program.

(c) Submit one original signature and two copies of your completed FY 2003 ALC Statement of Work and Work Plan to the Regional Administrator by May 30, 2003. Regional staff must review and submit approved plans to the National Office Grant Officer by June 30, 2003, so that funds may be released to the states.

10. Inquiries. Alien Labor Certification program and funding questions should be directed to Floyd Goodman at (404) 562-2115. Grant processing questions should be directed to Richard Clark at (404) 562-2095.

11. Expiration Date. September 30, 2003.

*Helen N. Parker*

HELEN N. PARKER  
Regional Administrator

Attachments.

- I Annual Plan Procedures
- II ALC Planning Targets
- III(a) Labor Certification Statement of Work & Work Plan
- III(b) Agricultural Program Major SWA Responsibilities
- III(c) Non-Agricultural Program Major SWA Responsibilities

## Annual Plan Procedures

A. Master Agreement. The current Master Agreement includes an Assurances and Certifications package to encompass all PY 2002/FY 2003 program activities. Notice of Obligation documents will be issued by the Grant Officer based upon Regional Office approval of Annual Plans.

B. Annual Plan. Consistent with National Office guidelines, negotiations between ETA and the Grantee will determine each State's annual level of funding for Alien Labor Certification.

1. The Annual Plan will have a performance period of 12 months beginning October 1, 2002, and ending September 30, 2003.

2. The plan package submitted to the Regional Office from the States will consist of a transmittal letter and one original and two copies of the following:

- a. Application for Federal Assistance (SF-424)]
- b. Annual Budget and Quarterly Funding Plan (SF-424A)
- c. Statement of Work/Work Plan

3. The Regional Office will negotiate work plans with a State for each activity to be funded. The State is to prepare a description of the goals to be achieved as negotiated with the Regional Office.

C. Plan Modifications. The regional office and the state may jointly modify the Annual Plan. However, negotiated changes in funding levels during the year will be executed by the National office Grant Officer. The grant modification requests must include a transmittal letter, a revised annual budget, quarterly spending plan, and the Regional Administrator's concurrence. Regional offices are responsible for coordinating state requests for fund adjustments and Annual Plan modifications with the Division of Foreign Labor Certification and the Grant Officer. The Grant Officer has the authority to execute funding adjustments where a state is not spending at agreed upon levels. When an adjustment is necessary, a unilateral modification may be issued by the ETA Grant Officer. In the event that the Secretary of Labor may be required by future legislation to carry out other responsibilities, not currently anticipated, the States will be requested to submit a modification to the Annual Plan in order to carry out these additional duties.

D. Financial Reconciliation. After the end of the fiscal year, a financial reconciliation procedure will be conducted to reconcile accounting records maintained by the grantee and the Department's original accounts. It may become necessary to revise funding levels in the new plan for a particular state when reconciliation is completed.

Alien Labor Certification  
Agricultural and Non-Agricultural Programs  
FY 2003 State Distributions

**REGION I (Boston)**

Connecticut	\$406,549
Maine	\$205,555
Massachusetts	\$856,810
New Hampshire	\$120,024
Rhode Island	\$60,000
Vermont	\$78,939

**REGION I (New York)**

New Jersey	\$1,922,070
New York	\$3,403,356
Puerto Rico	\$60,000
Virgin Islands	\$60,000

**REGION II**

Delaware	\$60,000
District of Columbia	\$166,645
Maryland	\$916,226
Pennsylvania	\$751,836
Virginia	\$1,079,728
West Virginia	\$60,000

**REGION III**

Alabama	\$60,000
Florida	\$779,018
Georgia	\$419,659
Kentucky	\$470,978
Mississippi	\$60,000
North Carolina	\$216,000
South Carolina	\$73,625
Tennessee	\$192,771

**REGION IV**

Arkansas	\$60,000
Louisiana	\$80,323
New Mexico	\$60,000
Oklahoma	\$122,294
Texas	\$1,493,117
Colorado	\$317,876
Montana	\$60,000
North Dakota	\$60,000
South Dakota	\$60,000
Utah	\$113,030
Wyoming	\$60,000

**REGION V**

Illinois	\$825,583
Indiana	\$66,184
Michigan	\$572,850
Minnesota	\$139,740
Ohio	\$256,563
Wisconsin	\$100,010
Iowa	\$60,000
Kansas	\$158,714
Missouri	\$101,776
Nebraska	\$167,100

**REGION VI**

Arizona	\$356,095
California	\$5,713,715
Guam	\$60,000
Hawaii	\$60,000
Nevada	\$114,562
Alaska	\$60,000
Idaho	\$301,001
Oregon	\$124,888
Washington	\$268,391

**AGRICULTURAL/NON-AGRICULTURAL PROGRAMS**  
*STATEMENT OF WORK & WORK PLAN*

As a condition for receiving funds in support of the Secretary's responsibilities under sections 101(a)(15)(H)(i)(b) and 212(n), sections 101(a)(15)(H)(ii)(a) and 218, and section 212(a)(5)(A) of the Immigration and Nationality Act (Act), under Bureau of Citizenship and Immigration Services (BCIS) regulations at 8 CFR 214.2(h)(6); under sections 101(a)(15)(H)(ii)(b) and 214(c) of the Act, under section 221 of the Immigration Act of 1990; and under Department of Labor (DOL) regulations at 20 CFR Parts 655 and 656, \_\_\_\_\_ (agency name) agrees to assist ETA to determine the availability of U.S. workers and the potential adverse effect on wages and working conditions that the admission of alien workers might have on similarly employed U.S. workers before employers can obtain a labor certification, and agrees to assist ETA by conducting the Occupational Employment Survey and appropriate agricultural surveys and providing wage determination information to employers wishing to file or update a labor attestation or labor condition application.

The sections of the Act and regulations cited above relate to DOL programs involving foreign workers as follows:

- Section 101(a)(15)(H)(i)(b) [8 U.S.C. 1101 (a)(15)(H)(i)(b)], called H-1B nonimmigrant classification, applies to professionals in specialty occupations and certain models; section 212(n) [8 U.S.C. 1182(n)], specifies the requirements or labor condition applications which must be filed by employers seeking to employ such workers.
- Section 101(a)(15)(H)(ii)(a) [8 U.S.C. 1101 (a)(15)(H)(ii)(a)], called H-2A nonimmigrant classification, applies to agricultural workers; section 218 (8 U.S.C. 1188), specifies the conditions for admission of temporary H-2A workers. DOL regulations at 20 CFR Part 655 specify the labor certification requirements.
- Section 101(a)(15)(H)(ii)(b) [8 U.S.C. 1101(a)(15)(H)(ii)(b)], called H-2B nonimmigrant classification, applies to temporary non-agricultural workers. Bureau of Citizenship and Immigration Services (BCIS) regulations at 8 CFR 214.2(h)(6) and section 214(c) of the Act require consultation with DOL before aliens are admitted to the United States. The regulations for the H-2B program are found in DOL regulations at 20 CFR Part 655. Procedures pursuant to those regulations are documented in General Administration Letter (GAL) No. 1-95; GAL No. 1-95, Change 1 and Field Memorandum No. 25-98. The H-2B program is authorized only if two conditions are met: the alien must be coming temporarily to the U.S., and the services or labor which the alien will be performing must also be temporary in nature.
- Section 212(a)(5)(A) requires a labor certification from the Secretary of Labor for permanent employment of aliens in the United States. DOL regulations at 20 CFR Part 656 specify the requirements for permanent labor certification.

**SWA Responsibilities under Labor Certification Programs**

Employers requesting permanent labor certification, H-2A temporary agricultural certification, or H-2B temporary non-agricultural certification for alien workers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the State workforce system and/or by other specified

means. They are also required to offer prevailing wages and working conditions that will not adversely affect similarly employed U.S. workers. As described in regulations at 20 CFR 656.21, a State Workforce Agency performs initial processing of non-agricultural applications; conducts special recruitment (outside of regular workforce agency recruitment and referral activities) for U.S. workers; conducts prevailing wage surveys for agricultural occupations; determines prevailing wage rates using the Occupational Employment Statistics system and review of employer supplied surveys; prepares Form ETA 232 reports; obtains data needed for making prevailing practice determinations; submits the required reports; and gathers other information which forms the basis for Regional Certifying Officer determinations to grant or deny labor certifications. See Attachments III(b) and (c) for a more comprehensive listing of SWA responsibilities.

### **SWA Responsibilities under Labor Attestation and Labor Condition Application Programs**

Employers filing labor attestations and labor condition applications for H-1B nonimmigrant workers must file such attestations directly with the H-1B processing center. Employers filing labor condition applications for H-1B nonimmigrant workers have the option of requesting prevailing wage data from the SWA or using other legitimate sources such as appropriate published wage surveys.

If requested to do so, the SWA must provide to employers or their representatives prevailing wage data for the occupation in the area of intended employment. This wage determination must be made from the Occupational Employment Statistics data unless the SWA is requested by an employer or employer's representative to review a survey provided for prevailing wage purposes to determine if the survey meets standards published by DOL. If so requested, the SWA must inform the employer or the employer's representative if the survey may be used as the prevailing wage in that instance.

### **State Workforce Agency Labor Certification Requirements**

\_\_\_\_\_ (Agency Name) shall:

- provide labor certification services to protect job opportunities for U.S. workers and prevent adverse effect on U.S. workers' wages and working conditions which may be caused by the employment of aliens;
- provide labor certification application forms and conduct certain labor market services necessary for the Secretary of Labor to make determinations on applications for permanent and temporary alien labor certification; and
- conduct certain labor market services necessary for the Secretary of Labor to accept for filing attestations and labor condition applications with respect to the employment of certain nonimmigrant aliens.

### **Special Assurances**

- Services provided for activities shall be in conformity with regulations at 20 CFR Parts 655 and 656, handbooks, field issuances, and other instructions issued by the Department of Labor, *e.g.*, Technical Assistance Guide No. 656 Labor Certifications, ETA Handbook No. 398 (H-2A Program Handbook), ETA Handbook No. 385 (Employment Service Forms Preparation Handbook), General Administration Letter (GAL) No. 1-95, "Procedures for H-2B Temporary Labor Certifications in Non-Agricultural Occupations" (November 10, 1995), GAL No. 1-95, Change 1, "Procedures for H-2B Temporary Labor Certifications in Non-Agricultural Occupations" December 1997), Field Memorandum No. 25-98, "H-2B

- Temporary Non-Agricultural Labor Certification Program Requirements,” and GAL 1-97, Change 1,”Measures for Increasing Efficiency in the Permanent Labor Certification Process” (May 1999).
- Services provided for temporary agricultural and logging alien certification activity shall be in conformity with regulations at 20 CFR Part 655, handbooks, field issuances, and other instructions issued by the Department of Labor, *e.g.*, ETA Handbook No. 398, issued March 4, 1988;
  - Summary data relating to prevailing wage surveys conducted by the SWA shall be released to those who request it. However, information identifying or which might lead to the identification of a specific employer surveyed shall not be released by the SWA since such action could result in possible competitive damage to the employer and could inhibit the employer from cooperating in future surveys;
  - The State shall assure that job orders placed into the regular ES recruitment system pursuant to regulations at 20 CFR 656.21(f) do not contain symbols or words which identify the job order as an alien certification order, and that ES staff are instructed to refrain from discouraging U.S. workers who seek referral to employers on such job orders; and
  - Advertisements, though they must include many specific elements of information, should be written in a style consistent with non-ALC advertisements, organized, titled, and placed in a logical section of the publication so as to reach and interest the maximum number of U.S. workers.

### **Allowable Costs**

- Costs may be attributed to activities allowed by regulations at 20 CFR Part 656; 20 CFR Part 655, subparts A, B, C, H, and L, including costs for all activities related to the preparation of and submittal of ETA 232 and ETA 9037 reports, and for indirect support as a fair share of overhead.
- Regular workforce agency activities under Wagner-Peyser, such as referring workers to job bank orders, migrant and seasonal farm worker recruitment, and the processing of complaints under the ES complaint system are not allowable costs, unless the activity can be directly attributed to extraordinary functions in the processing of a specific labor certification application/attestation.

### **Performance Standards**

- The state’s performance shall be reviewed according to labor certification TAG No. 656; GAL No. 1-95, "Procedures for H-2B Temporary Labor Certifications in Non-Agricultural Occupations"(November 10, 1994), Field Memorandum No. 25-98, “H-2B Temporary Non-Agricultural Labor Certification Program Requirements,” Field Memorandum No. 2-98, "Prevailing Wage Policy for Non-Agricultural Immigration Programs" (Oct. 31, 1997) and Field Memorandum No. 1-00, “Availability and Use of Occupational Statistics Survey Data for Alien Labor Certification Prevailing Wage Purposes” (May 16, 2000); ETA Handbooks Nos. 398 and 385; the "Review Guide for Employment Service Reimbursable Grant Activities"; and any subsequent ETA advisories concerning alien certification activities. Fund utilization will be reviewed against the funding plan and actual workload levels, and when expenditures are significantly below plan, ETA may de-obligate funds for redistribution.
- The state shall continue to staff prevailing wage activities for labor certification/attestation programs with individuals who have relevant skills. Current programs, however, require enhanced knowledge, skills and expertise in evaluating prevailing wage surveys and in making prevailing wage determinations. To increase the State’s capacity to perform this work, and to assure credibility, validity, and reliability of wage surveys and determinations, State allocations include funding to support a prevailing wage expert function. In States with a small labor certification workload, it is appropriate for that function to be filled on a part-time basis. Each State shall:

1. Staff this function with an individual who has at least a bachelor's degree in statistics or economics, or a degree in another field with a minimum of 6 hours in statistics, and at least two years of experience in data collection, statistical analysis, sampling techniques, labor market analysis, or conducting wage surveys, and classifying jobs;

2. Make the incumbent responsible for implementing national prevailing wage policies, evaluating prevailing wage surveys for labor certification/ attestation programs, training other staff, responding to prevailing wage issues and challenges, and giving expert testimony in litigation cases.

- When requested by the Regional or National Office, States shall insure that appropriate labor certification staff travel within or outside the State to attend meetings, training sessions, speaking engagements, or other activities deemed necessary by the Regional or National Office to carry out effective program operations. Travel for such activities is accounted for within program funding levels.
- The state shall continue to maintain an automated Alien Certification Processing System(s) for logging and tracking applications, writing letters, and maintaining a prevailing wage database. Such system shall be compatible with the Regional Office automated system and have the capability to electronically transfer data to the Regional Office database.
- States whose Alien Labor Certification function is not currently centralized are strongly encouraged to centralize this function to increase efficiencies.
- Due to continued growth of the H-2B non-agricultural temporary labor program, states are expected to initially screen each H-2B application to ensure that the need by the employer for the duties to be performed is truly temporary, i.e., the need may not be ongoing or continuous. The employer has the burden of establishing the facts necessary to support such a finding in the application. States should immediately consult with the Regional Office when there is doubt. **Because of the need for certification of a timely application within 60 days after receipt of the application by the state, H-2B applications should be processed in an expedited manner and transmitted to the Regional Certifying Officer within 30 days from the date the application was received by the state.**

### Reporting

- Basic reporting requirements for Labor Certification include financial and program reporting requirements as specified by ETA. The required program reports, including the ETA 4748, ETA 9037, and the ETA 232 reports, will be submitted in accordance with ETA TAG No. 656, ETA Handbook No. 385, and ETA Handbook No. 398.
- Financial reports relating to staff time and other charges to the Alien Labor Certification grant shall be made available to Regional and/or National Office staff. Inappropriate charges shall be disallowed.
- Informally, States will report to the Regional Office any unusual increases in H-2A and in H-2B applications, and will also report unusual new occupations or crops.

ENCLOSURE I  
Work Plan (Attached to Statement of Work)

(Agency Name) shall prepare a narrative plan which explains how it will deliver labor certification/attestation services in FY 2003. This narrative should include, at a minimum, the following statement of the negotiated goals to be achieved:

**Statement of the negotiated goals to be achieved:**

- a) The projected number of job orders related to temporary agricultural alien certification applications to be processed.
- b) The projected number of temporary non-agricultural alien certification applications to be processed, and the projected number of permanent labor certification applications to be processed.
- c) The projected number of prevailing wage surveys to be conducted in agricultural activities including projected wage surveys in anticipation of H-2A requests.
- d) The projected number of prevailing wage surveys to be conducted in non-agricultural occupations. This includes surveys for the permanent, H-1B nonimmigrant, and H-2B temporary (including logging).
- e) The projected number of prevailing wage determinations to be provided to employers for non-agricultural occupations by the following categories: Permanent program; H-1B nonimmigrant program.
- f) Any plans for changes in existing operations, including the prevailing wage program that will substantially affect negotiated goals.

ENCLOSURE II  
Work Plan (Attached to Statement of Work)

**1. Housing Inspections**

NOTE: DUE TO THE SPECIAL NATURE OF HOUSING INSPECTIONS, A SEPARATE STATEMENT OF WORK IS INCLUDED; THIS SECTION MAY BE COMBINED INTO ONE UNIFIED AGRICULTURAL SUBPART OF THE ALC GRANT PLAN.

Statement of Work. As a condition for receiving funds in support of the Secretary's responsibility, (Agency Name) agrees to conduct pre-occupancy inspections of housing to be furnished to migrant and seasonal farmworkers or other U.S. workers, or to nonimmigrant aliens admitted to the United States under temporary labor certification programs for temporary employment in agriculture or logging. The SWA assists employers in recruiting agricultural and logging workers from places outside of the area of intended employment. These employers are required to provide housing at no cost, or public housing, for workers who are not reasonably able to return to their place of residence the same day. In the case of criteria employers seeking H-2A agricultural or logging labor, free housing must be provided. The housing must meet ETA standards described in 20 CFR Part 654, subpart E or OSHA standards at 29 CFR 1910.142 and be sufficient to house the number of workers required. State staff must determine, through a pre-occupancy inspection that such housing is, in fact, available and meets appropriate standards. Optionally, the employer seeking labor certification may provide rental or other public accommodation type housing. Such housing must meet applicable local or State standards, and does not have to be inspected by State agency staff when such standards exist. However, in the absence of applicable local or State standards, such housing must meet Federal standards at 29 CFR 1910.142 (OSHA) and must be inspected by the State agency or other appropriate public agency prior to occupancy.

Special Assurances

- The state shall adhere to regulations at: 20 CFR Part 655, subparts B and C, Labor Certification Process for Temporary Agricultural and Logging Employment; Part 654, subpart E, Housing for Agricultural Workers; and 20 CFR Part 653 subpart F, Agricultural Clearance Order Activity. Actual housing inspections may be conducted under certain conditions in accordance with OSHA standards at 29 CFR 1910.142, Temporary Labor Camps.
- State Workforce Agencies (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 H-2A application or earlier.
- SWAs should be prepared to conduct housing inspections prior to the filing of applications.
- SWAs should plan to schedule housing inspections prior to the filing of H-2A applications for those employers who regularly use the H-2A program.

Allowable Costs

- Costs may be attributed to activities in support of tasks described in 20 CFR Part 654 subpart E, Housing for Agricultural Workers and/or 29 CFR 1910.142, Temporary Labor Camps, and for indirect support as a fair share of overhead.

### Performance Standards

- The State's performance will be reviewed according to the applicable Housing Inspection Checklist in ETA Handbook No. 398, the applicable Federal housing standards and the "Review Guide for Employment Service Reimbursable Grant Activities.

### Reporting

- Required reporting of activity is specified on the ETA 9037. Financial reporting will be as specified by the Employment and Training Administration.

### Housing Work Plan (Attach to this Statement of Work)

(Agency Name) shall prepare a narrative plan which explains how it will deliver this activity in FY 2003. This narrative should include, at a minimum, the following:

1. Statement of the negotiated goals to be achieved. Number of pre-occupancy housing inspections to be conducted;
2. Plans for changes in the existing operations, if any, which may substantially affect-negotiated goals.

## 2. Agricultural Wage Surveys

NOTE: DUE TO THE SPECIAL NATURE AND IMPORTANCE OF AGRICULTURAL PREVAILING WAGE SURVEYS, A SEPARATE STATEMENT OF WORK IS INCLUDED; REGIONS MAY COMBINE THIS SECTION INTO ONE UNIFIED AGRICULTURAL SUBPART OF THE ALC GRANT.

Statement of Work. As a condition for receiving funds in support of the Secretary's responsibility, (Agency Name agrees to conduct prevailing wage surveys of agricultural and logging activities in accordance with ETA Handbook No. 385. The SWA assists employers in recruiting agricultural and logging workers from outside the area of intended employment. Since those workers do not have knowledge of wages in distant locations, the workforce agency provides a level of wage protection by requiring that intra- and interstate clearance orders offer a prevailing wage [20 CFR 653.501(d)(4)], if it is higher than the State or Federal minimum. For criteria orders involving alien workers, the prevailing wage must be offered if it is higher than the State or Federal minimum and the Adverse Effect Wage Rate (AEWR) [20 CFR 655.102(b)(9)].

In order to establish the required prevailing wages, surveys must be done in accordance with ETA Handbook No. 385 for each agricultural reporting area in which a crop activity meets the threshold specified in Section I, C.1.a. of the Handbook. When the data have been collected and compiled in accordance with the Handbook, the signed Form ETA 232 must be submitted to the National Office for review and confirmation before publication.

### Special Assurances

- The State shall submit to the Regional Office a plan for the surveys it is scheduling for the coming year. This plan must include all the surveys which will be conducted by the State in the upcoming season. Accordingly, the State's survey targets should be based on estimated job order activity to be produced by H-2A applications. Prevailing wage surveys must be completed in the following instances: 1) When there were more than 100 workers in one crop last season or the SWA expects more than 100 workers in the current season; 2). when there were H-2A workers last season or the SWA expects H-2A workers in the current season; 3) when it is a very complex method of payment (i.e., piece rates); and 4) all mandatory national interest surveys such as Custom Combine, Sheep and Goat herding, Nurseries, and East Coast apples. Wage surveys should not be conducted if they do not fit into the above categories.
- The state shall submit the results of its prevailing wage surveys (ETA 232) promptly to the National Office as well as to the Regional Office, so the correct wage is established for the next cycle of crop activity. Timely submission is critical to ensure release of wage determinations by the National Office well ahead of the crop activity start date.

### Allowable Costs

- Costs may be attributed to tasks described in ETA Handbook No. 385 for crop activities which meet the criteria specified above and for indirect support as a fair share of overhead.

### Performance Standards

- The state's performance will be reviewed according to its adherence to the procedures for wage surveys in ETA Handbook No. 385 and the "Review Guide for Employment Service Reimbursable Grant Activities".

Reporting

- Completed surveys will be submitted on the ETA 232. Financial reporting will be as specified by the Employment and Training Administration. The ETA-9037 will continue to be used to report activity on a semi-annual basis.

Work Plan (Attach to this Statement of Work)

(Agency Name) shall prepare a narrative plan which explains how it will deliver this activity in FY 2003. This narrative should include, at a minimum, the number of prevailing wage surveys to be conducted and in which crops.

ALC -Agricultural Program  
Major State Workforce Agency (SWA) Responsibilities

I. 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 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 DOL for verification.
- Conduct housing inspections (where conditional access 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 Regional Office 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 Regional Office in determining positive recruitment requirements.

II. Forty Five (45) Days Before Date of Need

- Receive duplicate of employer application and job offer.
  - Prepare local job order and begin local recruitment (unless blatantly below standards).
- Advise the Regional Office if any components appear unacceptable for H-2A clearance purposes.  
-Maintain record of referrals and actions taken thereon; report to Regional Office any "questionable" refusals to hire.
- Respond to regional office 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 preparation of advertising expected to be required by Regional Office.

III. Upon Receiving Notification by Telephone (or e-mail) from Regional Office on whether or not the application is accepted:

- If application accepted, finalize clearance order; clear to States designated by the regional office.
  - If application not accepted, revise clearance order to incorporate modifications required by regional office (but do not submit as yet).
- Consult with employer to determine if employer agrees to modifications.  
-If employer intends to appeal to the Administrative Law Judges (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).

#### IV. After Clearance Order Approved by Regional Office:

- Enter order into America's Job Bank (AJB).
- Mail order to other areas specified by the regional office.
- Perform other actions related to recruitment specified by the regional office.
- 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 (with regional office approval):

-Ensure that approved amendments are included in job order package.

-Ensure previous editions of job orders are corrected or updated.

#### V. Housing Inspections

- Complete all scheduled housing inspections (if conditional access involved).

-If deficiencies are found, inform employer(s) that they have five 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, if possible.

- 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.

#### VI Twenty-Four Hours Before Date of Need (Suggested)

- Submit report on SWA recruitment to the Regional Office.

#### VII. After Certification Determination

- Continue to refer workers who apply for the job.
- Respond to regional office requests for assistance/advice on re-determination request.

#### VIII. After Date of Need

- Continue to refer workers who apply if comparable alternative employment not available (up to 50% of contract period).
- Advise regional office if employer refuses to accept referred workers.
- Respond to regional office 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 Regional Office has 72 hours to act on re-determination requests).
- Refer worker complaints on non-performance of contracts to the Wage & Hour Division.
- Provide information and other assistance to the Wage and Hour Division in their investigations.
- Investigate employer complaints on 50% rule violations [20 CFR 655.106(g)].
- Advise employers, and Regional Office 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 clearance system (coordinate with Regional Office and Wage & Hour Division; do not duplicate Wage & Hour targeted enforcement visits).
- Cancel job order when 50% of work contract has elapsed.

ALC Non-Agricultural Program  
Major State Workforce Agency Responsibilities

I. Before Filing of Application

- Respond to written and telephonic inquiries about non-agricultural certification and attestation programs.
- Advise employers, applicants, and aliens, as appropriate, about requirements of non-agricultural labor certification and attestation programs.
- Refer employers, applicants, and aliens, as appropriate, to Regional Office for further information regarding non-agricultural labor certification and attestation programs.
- Provide prevailing wage information.
- Mail forms, regulations, instructions, etc., to employers, attorneys, and other interested members of the public.

II. After Filing of Application (Permanent and H-2B programs)

- Review applications for completeness.
- Advise employers, as appropriate, of deficiencies and corrections that should be made to application(s).
- Provide prevailing wage determinations to employers.
- Prepare job orders from the ETA 750 and transmit to Job Bank for regular ES recruitment activity. Monitor and collect referrals from ES verification system.
- Advise employers of recruitment and other regulatory requirements; *i.e.*, notice, advertising, job order.
- Screen applicant resumes received against advertisements to assure that applicants meet employer requirements and make referrals of only qualified applicants to employers.
- Collect recruitment results from employers on all applicants who responded to the employer's recruitment efforts, including those who responded directly to the employer.
- Prepare case file for review by the Certifying Officer.
- Transmit case file to Regional Office with State recommendations.
- Furnish information on applications, employers, and beneficiaries to BCIS and other law enforcement agencies.

III. After Transmission of Case File to Regional Office

- Respond to requests for further information from the Regional Office and law enforcement agencies such as BCIS and ESA.
- Work with employers on applications as a result of Notices of Findings issued by the Certifying Officer.