

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Foreign Labor Certification
	CORRESPONDENCE SYMBOL OFLC
	DATE June 10, 2022

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 12-21

TO: STATE WORKFORCE AGENCY ADMINISTRATORS

FROM: BRENT PARTON 
Acting Assistant Secretary

SUBJECT: Foreign Labor Certification Grant Planning Guidance for Fiscal Years (FYs) 2022 through FY 2024

- Purpose.** To provide guidance to State Workforce Agencies (SWAs) regarding FY 2022 – FY 2024 annual grants for foreign labor certification activities.
- Action Requested.** ETA requests that SWA Administrators receiving this guidance share the information within their respective organizations to ensure that fiscal and programmatic staff are fully aware of the required FY 2022 – FY 2024 foreign labor certification grant application processes and timelines contained in this Training and Employment Guidance Letter (TEGL).

Grant Approval. SWAs will continue to submit their grant applications to the Employment and Training Administration (ETA), Department of Labor (DOL or Department), annually, **30 calendar days** from the date of issuance of this programmatic TEGL or 30 calendar days from the date of any subsequent guidance. ETA does not intend to issue a new programmatic TEGL through FY 2024; however, it will issue guidance to announce additional funding allotments as necessary.

SWAs must continue to submit their annual grant applications to ETA, unless they are in receipt of an approved written extension from the ETA Office of Foreign Labor Certification (OFLC). These applications should be submitted no later than 30 calendar days after the issuance of this programmatic TEGL or subsequent guidance. OFLC will review the grant application package and, generally within 30 calendar days of receipt, inform the SWA in writing of any concerns or deficiencies that may prevent the grant application package from being approved.

RESCISSIONS: None	EXPIRATION DATE: Continuing
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3. Summary and Background.

- a. Summary – This TEGL provides programmatic guidance and financial information to SWA Administrators to support state foreign labor certification activities for FY 2022 – FY 2024. A change to this TEGL will be issued each year to provide financial information pursuant to the funding levels authorized in the appropriations act for the fiscal year, and changes may also be issued, as appropriate, to implement changes in the law or legal obligations applicable to the activities covered under this grant.
- b. Background – ETA’s OFLC must 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. The *Consolidated Appropriations Act, 2022* (P.L. 117-103) authorizes \$21,282,000 for foreign labor certification state grants, a \$1,000,000 increase from the previous year’s appropriation. In order to maintain an adequate level of base funding for SWAs while ensuring the resources appropriated by Congress are distributed based on recent foreign labor workloads, the Department is allocating the appropriated funds in two components: a base allocation and a supplemental allocation, as further described in Attachment VII.

4. Content. Please see Attachment II for guidance.

5. Inquiries. SWA staff should direct all questions to the OFLC National Office at FLC.Grant@dol.gov.

6. References.

- Immigration and Nationality Act (INA), as amended, 8 U.S.C. 1101(a), 1182(a)(5)(A), 1184(c), and 1188;
- Approval of Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C. 1801, 1806;
- Wagner-Peyser Act, 29 U.S.C. 49f(d);
- U.S. Citizenship and Immigration Services regulations at 8 Code of Federal Regulations (CFR) Part 214;
- 20 CFR Parts 653, subpart F; 654, subpart E; 655, subparts A, B and E; 656; and 658;
- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

- 2 CFR Part 2900, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Department of Labor;
- Guide for Employment Service Reimbursable Grant Activities;
- ETA H-2A Program Handbook No. 398, January 1988;
- Training and Employment Guidance Letter (TEGL) No. 04-06, *Plans to Phase out Penalty Mail Costs for “Employment Security” Programs and Availability of Supplemental Budget Funds for Conversion to Commercial Mail Methods*; and
- Consolidated Appropriations Act, 2022 (P.L. 117-103)].

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CW-1 Fiscal Year (FY) 2022 Grant Planning Guidance

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CW-1 Fiscal Year (FY) 2022 OFLC Grant Planning Guidance**

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 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 (SWA) 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. 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 for Fiscal Year (FY) 2022 through FY 2024.

SWAs are required to submit their annual plans 30 calendar days from the issuance of this TEGL or subsequent guidance. The annual plan must reflect foreign labor program activities to be performed between October 1 and September 30 of the applicable fiscal year. The programmatic guidance and financial information in this TEGL also apply to SWAs' annual plans for FYs 2023 and 2024. Those plans will be due after issuance of guidance announcing the funding allocations for those subsequent fiscal years. While the Department strongly encourages 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 allocated for a fiscal year.

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 must 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 1/31/2023, OMB Control No. 4040-0004.

- SF-424A: Budget Information, Non-Construction Programs, Expiration Date 02/28/2025, 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, 2 CFR 200.308(c) and 2 CFR 200.300 (c)(6). 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 the fiscal year.
 - 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 or subsequent guidance for each fiscal year's actual funding level.
2. *Grant Submission.* A completed grant application package must be submitted by the SWA to ETA using the www.grants.gov portal no later than **30 calendar days** from the date of this TEGl's issuance or subsequent guidance. The SF-424 must be electronically signed and the completed package must be submitted through www.grants.gov for the Funding Opportunity Number described in the guidance (in the format ETA-TEGL-12-21). SWAs may find it helpful to review their prior grant application package submissions and revisions to prepare their annual grant application packages.

Starting on April 4, 2022, the DUNS Number will be replaced by a new, non-proprietary identifier requested in and assigned by SAM.gov. This new identifier is being called the Unique Entity Identifier (UEI), or the Entity ID. Each applicant must have a UEI number available, and it must be registered with the System for Award Management (SAM) at <https://www.sam.gov>, before submitting an application.

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 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 Fiscal Year funds.* The funding received from the OFLC in response to a SWA’s annual grant application package is a cost reimbursable grant provided to the SWAs. These grants are administered under the SWA’s corresponding FY Wagner-Peyser Annual Funding Agreement, for the period of October 1 through September 30 of the applicable FY. Funds must be used for OFLC activities during this period only. The Department strongly encourages states to spend the entirety of their allocated funds within the fiscal year for which the annual plan applies, but the Department will allow states an additional year to expend funds to account for unforeseen circumstances. A budget modification *may* be required if funds are not obligated or expended accordingly. SWAs should notify the OFLC Federal Project Officer for assistance.
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 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.

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:

<https://www.dol.gov/sites/dolgov/files/ETA/grants/pdfs/ETA-9130-Basic.pdf>.

Fiscal Year 2022	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:

- a. Costs incurred under the grant may only be attributed to activities supporting the direct administration of foreign labor certification programs, as identified under Attachment III of this TEGL
- b. Costs may include staff resources, travel expenditures, other direct administrative costs, and indirect/overhead support (where an approved indirect cost plan is in place).
- c. SWAs must not spend more than 20% of the OFLC grant funds conducting the prevailing wage and prevailing practice surveys described in 20 CFR Part 653. Wagner-Peyser Employment Service grant funds and Workforce Information Grants to States may also be used for conducting prevailing wage and prevailing practice surveys, if the requirements of those grants have been fully met.

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 Years 2022-2024	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 N-5311
Washington, D.C. 20210
Attn: H-2A Prevailing Wage Surveys

If the SWA experiences technical issues submitting survey 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 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 receive complaints or identify apparent violations regarding matters that fall within the jurisdiction of DOJ's IER. If that occurs, the SWA must document the complaints or apparent violations using ETA Form 8429, Complaint/Apparent Violation Form. SWAs must process the complaints or apparent violations as described in the Employment Service and Employment-Related Law Complaint System regulations at 20 CFR 658.400 through 419, including documenting the complaint or apparent violation on the complaint system log. SWAs are 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).

FISCAL YEAR (FY) 2022 ANNUAL PLAN
(Please complete all yellow highlighted fields)

(Insert Official Name of SWA – not that of an individual)

Hereafter referred to as the “state agency,” [FILL IN] has prepared the following plan and statement of assurances for delivering services during the FY (October 1 through September 30) to support the administration of foreign labor certification programs in accordance with all applicable statutes, regulations, policies, procedures, handbooks, manuals, and other directives.

A. Foreign Labor Certification Workload

Category of OFLC Program Services/Activities	Previous FY 2021 Workload (Actual per ETA 9127 Report)	Current FY 2022 Workload (Completed)	Current FY 2022 Workload (Projected)	Total Estimated for Current FY 2022 ⁽¹⁾ Workload (Add previous 2 columns)
A. Number of agricultural prevailing wage surveys conducted and projected to be conducted under section C.4.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
B. Number of agricultural prevailing practice surveys conducted and projected to be conducted under section C.5.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
C. Number of CW-1 job offers maintained on website (only applicable for CNMI).	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
D. Number of H-2A and H-2B related stakeholder outreach events under sections B.1 and C.1.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
E. Number of stakeholders reached by H-2A and H-2B related outreach events conducted under sections B.1 and C.1.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
F. Number of Full Time Equivalent (FTE) staff funded by this grant.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

⁽¹⁾ Workload includes **completed** OFLC program services/activities provided, and services/activities planned for the period between October 1st and September 30th of each fiscal year. For completion of this chart, SWAs should refer to data from SWA job order systems and Form ETA 9127 submissions.

⁽²⁾ Data provided for reporting items should **exclude** range housing units inspected under 20 CFR 655.230, H-2A Herder Rule for the Temporary Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States.

⁽³⁾ Workload includes the tracking of CNMI labor exchange website recruitment reports uploaded by employers in accordance with the governing provision of the CNMI Interim Final Rule, codified at 20 CFR 655.442.

B. H-2B Temporary Nonagricultural Program Activities

Section 214(c)(1) of the Immigration and Nationality Act, 8 U.S.C. 1184(c)(1) requires the Secretary of Homeland Security to make H-2B visa determinations in specific cases “after consultation with appropriate agencies of the Government, upon petition of the importing employer.” Under Department of Homeland Security (DHS) regulations at 8 CFR 214.2(h)(6)(iii)(C), an H-2B petition for temporary employment must be accompanied by an approved temporary labor certification from DOL, which serves as DOL’s advice to DHS regarding whether a qualified U.S. worker is available to fill the petitioning H-2B employer’s job opportunity and whether a foreign worker’s employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. In accordance with regulations at 20 CFR part 655, Subpart A, the SWA agrees to carry out all state activities to support DOL’s review and processing of job orders and applications seeking temporary labor certification under the H-2B program. Specifically, the SWA agrees to carry out the following state activities:

1. **Stakeholder Education and Outreach:** As part of a comprehensive education and outreach plan, the SWA should make available in a conspicuous location on the state agency website the following resources, such as:
 - Information on how employers can participate in the H-2B program, for example, easy-to-understand instructions on how to prepare and submit a job order; a copy of the SWA job order form that is accessible and can be completed electronically; and current contact information within the SWA for employers to request technical assistance.
 - Worker rights information developed by the SWA or as provided below that covers at minimum the following information:
 - [Employee Rights Under the H-2B Program Poster \(PDF\)](#);
 - [Spanish Version Poster \(PDF\)](#);
 - [H-2B Worker Rights and COVID-19 \(PDF\)](#);
 - [Spanish Version Poster \(PDF\)](#).
 - Information educating employers about the responsibilities associated with the use of foreign labor recruiters and ban on prohibited fees.

The SWA agrees to maintain an up-to-date listing of contacts associated with the central office of the State Federation of Labor and office(s) of local union(s) representing employees in occupations traditionally or customarily unionized, if any, and make the list readily available to employers. No less frequently than once a year, the SWA will electronically disseminate to employers who routinely use the H-2B program information about their obligations to fully comply with relevant employment-related laws, particularly those that relate to the working conditions and health and safety of employees, and the consequences for failing to do so; information on any relevant state-specific and local employment-related laws, including health and safety laws and requirements impacting the material terms or conditions of employer job orders; helpful tips or best practices on preparing high quality job orders; and the most current version of the state agency’s job order form and instructions. In addition, the SWA will also :

- Remind and educate employers about their obligations to fully comply with *Title VII of the Civil Rights Act of 1964*, which makes it illegal to discriminate against someone or harass someone on the basis of race, color, religion, national origin or sex, and makes employers accountable for providing a work environment that is free from harassment and other kinds of discrimination.

Where requested and funds permitting, the SWA will participate in local or state employer roundtables, conferences or other stakeholder forums to present and/or disseminate information related to the H-2B program.

2. **Placement of H-2B Job Orders:** In accordance with funds appropriated under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), the SWA already administers a public labor exchange system that facilitates the placement of employer job orders and referral of prospective U.S. applicants to current and future job opportunities.

The SWA labor exchange system, which is referred to as **insert Labor Exchange System name here**, is accessible to employers required to place a job order in connection with a concurrently filed H-2B *Application for Temporary Employment Certification* with DOL, pursuant to 20 CFR 655.16. The SWA has capability for employers to place job orders for review in the following manner:

Please check all that apply:

- ☐ Self-services by accessing the SWA's labor exchange system:

Insert state labor exchange system website link here

- ☐ Staff-assisted job order services by submitting a draft job order at:

Insert SWA contact information including email address where employers can submit H-2B job orders

Please check one of the following:

- ☐ The SWA's job order form and/or system **DOES** contain an entry field or option permitting employers to identify that the job order is being placed in connection with a concurrently submitted *Application for Temporary Employment Certification* for H-2B workers;

OR

- ☐ The SWA's job order form and/or system **DOES NOT** contain an entry field or option permitting employers to identify that the job order is being placed in connection with a concurrently submitted *Application for Temporary Employment Certification* for H-2B workers. Therefore, employers can provide the notification required by regulation at 20 CFR 655.16(a)(1) to the SWA in the following manner:

Insert a brief description of how and to whom employers can provide the state agency with the required notification.

Please check all that apply:

- ☐ The SWA has submitted with this grant plan a current electronic copy of the form and general instructions employers are required to use to submit job orders.
- ☐ The standard job order form and general instructions are easily accessible to employers on a website maintained by the SWA at:

Insert state agency website link here!

3. **Processing of H-2B Job Orders:** Upon receipt, the SWA will review the job order submitted by the employer for compliance with the regulatory criteria under 20 CFR 655.18,¹ as well as any state-specific requirements. In circumstances where a waiver of the required time period for filing an *Application for Temporary Labor Certification* is granted under 20 CFR 655.17 for emergency situations, the SWA will review the proposed or draft job order, upon request by the DOL Certifying Officer (CO) and made available through the OFLC Foreign Labor Application Gateway (FLAG) System.

a. Compliance Review of Job Orders

- Using an authorized SWA FLAG System account, the SWA will notify the DOL CO of any deficiencies within six business days of the date the employer's job order was received;
- For each deficiency identified, the SWA will state the reason(s) why the job order fails to meet the criteria under 20 CFR 655.18;
- For each deficiency identified related to a state-specific requirement, the SWA will provide the applicable statutory or regulatory citation(s) and state the modification(s) needed for the DOL CO to issue a Notice of Acceptance (NOA); and
- In circumstances where a timely review of the job order by the SWA cannot be performed, the state agency understands that the DOL CO has the authority to

¹ The Consolidated Appropriations Act, 2022 prohibits DOL from using FY 2022 appropriations to enforce the definition of corresponding employment found in 20 CFR 655.5 or the three-fourths guarantee rule definition found in 20 CFR 655.20, or any reference thereto (P.L. 117-103, Div. H, Tit. I, Sec. 111). In order to comply with this limitation, the state agency will not use any funds provided under this grant to implement these provisions in any manner. The state agency understands that the appropriation riders did not vacate these regulatory provisions, and they remain in effect, thus imposing a legal duty on H-2B employers, even though the DOL is currently prohibited from using funds to enforce them.

issue a Notice of Deficiency (20 CFR 655.31) or a Notice of Acceptance (20 CFR 655.33) within seven business days of receipt.

b. Processing of Approved Job Orders

- Upon receipt of a NOA under 20 CFR 655.33, the SWA will perform the following actions when instructed by the DOL CO:
 - Promptly make, on behalf of the employer, any necessary modifications to the job order under 20 CFR 655.32 or amendments granted by the DOL CO under 20 CFR 655.35 and uploads the modified documents through the SWA FLAG System account;
 - Promptly place on its active file the job order approved by the DOL CO, as well as job orders received from other SWAs pursuant to 20 CFR 655.16(c), for intrastate clearance until the end of the recruitment period, as specified by the DOL CO (i.e., 21 days before the start date of need set forth in 20 CFR 655.40(c));
 - Promptly transmit a copy of the approved job order to other SWAs for interstate clearance, as instructed by the DOL CO, with instructions that each SWA keep the approved job order on its active file until the end of the recruitment period;
 - Based on the SWA's determination that the employer's job opportunity covers an occupation or industry that is traditionally or customarily unionized, promptly transmit a copy of the approved job order to the central office of the State Federation of Labor and any local union office(s) representing employees in the same or substantially equivalent job classification in the area(s) in which work will be performed under the approved job order; and
 - The SWA agrees to maintain an up-to-date listing of contacts associated with the central office of the State Federation of Labor and office(s) of local union(s) representing employees in occupations traditionally or customarily unionized, if any.

c. Referral of Qualified and Available U.S. Workers

- The SWA's public labor exchange services have the capability, whether by self-service or staff-assisted services, to apprise prospective U.S. workers of all the material terms and conditions of the employer's job opportunity prior to referral, as required by 20 CFR 655.47;

- The SWA will use its public labor exchange services (i.e., self-service job bank system and/or one-stop career centers) to refer to the employer all qualified U.S. workers who apply for the job opportunity or on whose behalf a job application is made. Please note that these activities will be covered by existing Wagner-Peyser formula grants and not by the foreign labor certification grants that are the subject of this TEGL;
- Upon request by the DOL CO, the SWA will make available records of U.S. workers referred through an approved job order to assist the DOL CO in making a final determination on the employer's *Application for Temporary Employment Certification*, as specified in 20 CFR 655.50, using the SWA FLAG System account; and
- For complaints against an employer about a specific H-2B job order to which U.S. workers were referred, the SWA agrees to utilize the existing complaint system for public labor exchange services established under 20 CFR 658, Subpart E. Please note that these activities will be covered by existing Wagner-Peyser formula grants and not by the foreign labor certification grants that are the subject of this TEGL.

U.S. workers may submit a complaint using one or more of the following methods:

Website: **[Insert the website URL where a complaint can be filed online, if applicable]**

Email: **[Insert the email address where a complaint can be filed online, if applicable]**

Telephone: **[Insert the toll-free phone number where a complaint can be filed online, if applicable]**

Other Method(s):

[Insert a brief description of any other methods U.S. workers can submit complaints for review and processing by the SWA, if applicable]

4. Post-Determination Services: The SWA agrees to provide support services to the DOL CO after a final determination is issued under 20 CFR 655.50 in the following manner:

- In accordance with 20 CFR 655.57 and upon request by the DOL CO, the SWA agrees to promptly provide information concerning the availability of U.S. workers to replace some or all of the qualified U.S. workers who were initially deemed available in support of a partial certification or denial determination on the employer's *Application for Temporary Employment Certification* using the SWA FLAG System account;

- For complaints involving allegation of fraud or misrepresentation, the SWA agrees to refer all such complaints to the DOL CO at H2BSWA.Chicago@dol.gov for appropriate handling and resolution;
- In accordance with 29 CFR 503.7 and 29 CFR 503.15, the SWA agrees to refer to the appropriate office of the Wage and Hour Division any complaint or report of a violation received by any person of the obligations imposed by 8 U.S.C. 1184(c), INA section 214(c), 20 CFR part 655, Subpart A, or 29 CFR part 503 covering the geographic area in which the reported violation is alleged to have occurred, and provide a copy of such referral to the DOL CO at h2bcomplaints.chicago@dol.gov; and
- The SWA agrees to cooperate and make available all appropriate records and information upon request from any employee or agent of the DOL who is exercising or attempting to exercise the Department's authority pursuant to 8 U.S.C. 1184(c), including investigations as described in 29 CFR 503.25.

C. H-2A Temporary Agricultural Program Activities

Section 218(a)(1) of the INA, 8 U.S.C. 1188(a)(1), authorizes the Secretary of Homeland Security to permit employers to employ foreign workers to perform agricultural labor or services of a temporary or seasonal nature where the DOL certifies that there are not sufficient qualified U.S. workers available to fill the petitioning employer's job opportunity and a foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of workers in the United States similarly employed. In accordance with DOL regulations at 20 CFR 655 Subpart B, the SWA agrees to carry out all state activities to support DOL's review and processing of job orders and applications seeking temporary labor certification under the H-2A program. The SWA will use the FLAG System to submit clearance orders to OFLC. Specifically, the SWA agrees to carry out the following activities:

1. **Stakeholder Education and Outreach:** As part of comprehensive education and outreach plan, the SWA will make available in a conspicuous location on the state agency website the following:
 - Information on how employers may attach H-2A applications to Agricultural Clearance Orders through the Agricultural Recruitment System for U.S. workers, such as easy-to-understand instructions on how to prepare and submit the Form ETA-790 *Agricultural and Food Processing Clearance Order*, request a pre-occupancy inspection of housing for farmworkers (*if applicable*), and the current contact information for employers to request technical assistance from the state agency.
 - Worker rights information created by the SWA or as provided below that covers at minimum the following information:
 - [Employee Rights Under the H-2A Program English Version \(PDF\)](#);
 - [Employee Rights Under the H-2A Program Spanish Version \(PDF\)](#);
 - [H-2A Worker Rights Card - English Version \(PDF\)](#);
 - [H-2A Worker Rights Card - Spanish Version \(PDF\)](#);
 - [Farm Worker Rights Flyer – English & Spanish Version \(PDF\)](#);

- Information educating employers about the responsibilities associated with the use of foreign labor recruiters and ban on prohibited fees.

No less frequently than once a year, the SWA will electronically disseminate to employers who routinely use the H-2A program information about their obligations to fully comply with relevant employment-related laws, particularly those that relate to the working conditions and health and safety of employees, and the consequences for failing to do so; if applicable, information on any relevant state-specific requirements (e.g., current prevailing practices or normal and accepted requirements) and local employment-related laws, including health and safety laws impacting the material terms or conditions of employer job orders; and helpful tips or best practices on preparing high quality job orders.

In addition, the SWA will:

- Remind and educate employers about their obligations to fully comply with *Title VII of the Civil Rights Act of 1964*, which makes it illegal to discriminate against someone or harass someone on the basis of race, color, religion, national origin or sex, and makes employers accountable for providing a work environment that is free from harassment and other kinds of discrimination.

Where requested and funds permitting, the SWA will participate in local or state employer roundtables, conferences or other stakeholder forums to present and/or disseminate information related to the H-2A program.

- 2. Placement of Clearance Orders Attached to H-2A Applications:** In accordance with funds appropriated under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), the SWA already administers a public labor exchange system that facilitates the placement of employer job orders and referral of prospective U.S. applicants to current and future job opportunities.

The SWA fully utilizes the Department's FLAG System to process the *Agriculture Clearance Order* (Form ETA-790/790A) filed by employers in connection with a future filed *H-2A Application for Temporary Employment Certification* (Form ETA-9142A) with DOL, pursuant to 20 CFR 655.121.

- 3. Processing of Clearance Orders Attached to H-2A Applications:** Upon receipt of the clearance order, the SWA will review the clearance order submitted by the employer for completeness, obvious errors or inaccuracies, and compliance with the regulatory criteria under 20 CFR 655.122 and 20 CFR 653, subpart F.

In circumstances where a waiver of the required time period for filing an H-2A application is granted under 20 CFR 655.134 for emergency situations, the SWA will make every effort to review the proposed or draft clearance order, upon request by the DOL CO, and made available using the SWA FLAG System account.

a. Compliance Review of Clearance Orders

- The SWA will notify the employer of any deficiencies within seven calendar days of the date the employer’s job order was received;
- In circumstances where deficiencies are identified, the SWA will promptly record the decision using the SWA FLAG System account and provide written notification to the employer stating the reason(s) why the job order fails to meet the regulatory criteria and offering an opportunity to respond to the deficiencies within five calendar days after receipt of the state agency’s written notification, and make a copy of this notification available for the DOL CO’s review using the SWA FLAG System account;
- The SWA agrees to respond within three calendar days after receipt of the employer’s response, and make a copy of this response available for the DOL CO’s review using the SWA FLAG System account; and
- In circumstances where a timely review of the job order cannot be performed, the SWA understands that the employer is permitted to use the emergency filing procedures for filing an H-2A application set forth in 20 CFR 655.134.

b. Processing of Approved Clearance Orders

- Upon determining the clearance order meets the regulatory criteria, whether by the SWA or the DOL CO in the NOA under 20 CFR 655.143, the SWA will promptly record the decision on the job order using the SWA FLAG System account.
- In accordance with 20 CFR 653.501(a), the SWA, based on its knowledge and experience with the local labor market, may either (1) place the approved job order with the nearest local ES office serving the area of intended employment to initially determine whether qualified local workers are available for the job opportunity, or (2) make a determination anticipating a shortage of qualified local workers for the job opportunity and place the approved job order for intrastate clearance per 20 CFR 655.121(b)(2), and commence recruitment of U.S. workers;
- The SWA agrees to keep the approved clearance order on its active file until the end of the recruitment period (i.e., 50 percent of the period of employment), as set forth in 20 CFR 655.135(d);
- Where the approved clearance order includes worksites in an area of intended employment that falls within the jurisdiction of more than one SWA, the order-holding SWA agrees to forward a copy of the approved clearance order to other SWAs serving the area of intended employment with instructions to place a copy of the approved clearance order on its active file until the end of the recruitment period; and

- Upon receipt of a NOA under 20 CFR 655.143, the SWA will perform the following actions when instructed by the DOL CO:
 - In circumstances where the clearance order remains on the active file of the local ES office serving the area of intended employment, promptly place the approved clearance order into intrastate clearance.
 - In the case of emergency situations, promptly place on its active file the clearance order approved by the DOL CO, as well as clearance orders received from other SWAs, for clearance per 20 CFR 655.121(b)(2) until the end of the recruitment period, as set forth in 20 CFR 655.135(d).
 - Promptly transmit a copy of the approved clearance order to other SWAs for interstate clearance, as instructed by the DOL CO, with instructions that each SWA keep the approved clearance order on its active file until the end of the recruitment period.
 - Provide written notice of the job opportunity to organizations that provide employment and training services to workers likely to apply for the job and/or to place written notice of the job opportunity in other physical locations where such workers are likely to gather per 20 CFR 655.143(b)(5).
- c. Referral of Qualified and Available U.S. Workers
 - The SWA will use its public labor exchange services to refer to the employer all qualified U.S. workers who apply for the job opportunity or on whose behalf a job application is made until 50 percent of the contract period calculated from the first date indicated in Section A.3 of Form ETA-790A. This announcement should apprise prospective U.S. workers of all the material terms and conditions of the employer's job opportunity prior to referral, as required by 20 CFR 655.155. Please note that these activities are covered by existing Wagner-Peyser formula grants and not by the foreign labor certification grants that are the subject of this TEGL; and
 - Using the SWA FLAG System account, the SWA will make available records of U.S. workers referred through an approved clearance order to assist the DOL CO in making a final determination on the employer's *Application for Temporary Employment Certification*, as specified in 20 CFR 655.160.
- d. Providing Written Notice of Certain Job Opportunities Placed in Connection with H-2A Applications

- The SWA will provide written notice of a job opportunity to organizations that provide employment and training services to workers likely to apply for that job opportunity and/or place written notice of that job opportunity in other physical locations where such workers are likely to gather per 20 CFR 655.143(b)(5).

4. **Conducting Prevailing Wage Surveys:** This section of the grant plan identifies the schedule of the agricultural prevailing wage surveys (including logging activities) the SWA plans to conduct during the performance period of the grant, including anticipated survey timeframes by area (e.g., statewide, regional), crops or other agricultural activities/commodities, survey means (e.g., site survey, telephone survey), *and* approximately when wage results are expected to be transmitted to the OFLC National Office (via the Forms ETA-232) for review.
- To the extent practicable, the SWA will prioritize its limited resources on conducting wage surveys in the major crops or other agricultural activities/commodities where seasonal H-2A workers are regularly employed and, where feasible, at a broader wage reporting area (e.g., statewide) that will yield reliable wage findings from year to year, particularly those agricultural activities paying workers on a piece rate basis;
 - In circumstances where substantial dissimilarities in crop or related conditions exists in different parts of the state, the SWA may use sub-state reporting areas for conducting prevailing wage surveys; and
 - The SWA agrees to submit all completed and signed Form ETA-232 prevailing wage survey findings to the DOL OFLC National Office in accordance with instructions contained in this TEGL.
 - The SWA must provide an explanation for not scheduling any prevailing wage surveys, or for reducing the number of wage surveys from previous year, here:

[Insert explanation]

[SWA schedule of wage surveys inserted here and, if necessary, include attachments]

Survey Timeframes	Survey Areas (e.g., statewide, regional)	Crops/Agricultural Commodities	Survey Means (e.g., site survey, telephone)	Survey Transmission Timeframe to OFLC
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

-
5. **Conducting Prevailing Practice and Normal/Accepted Requirements Surveys:** This section of the grant plan identifies the schedule of the agricultural prevailing practice and normal and accepted requirement surveys (including logging activities) the SWA plans to conduct during the performance period of the grant in accordance with ETA Handbook No. 398, including anticipated survey timeframes by area (e.g., statewide, regional) and crops or other agricultural activities/commodities, *and* approximately when employment practice results are expected to be transmitted to the OFLC CNPC for review.

The SWA agrees to submit all completed prevailing practice and normal and accepted requirement surveys promptly to the CNPC in accordance with instructions contained in this TEGL.

The SWA must provide an explanation for not scheduling any prevailing practice surveys for reducing the number of surveys from previous year, here:

[Insert explanation]

[SWA schedule of employment practice surveys inserted here and, if necessary, include attachments]

If this is the same as provided above, please indicate "Same survey schedule," without completing this table.

Survey Timeframes	Survey Areas (e.g., statewide, regional)	Crops/Agricultural Commodities	Survey Means (e.g., site survey, telephone)	Survey Transmission Timeframe to OFLC
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

6. Scheduling and Conducting Housing Inspections:

- *All Housing Inspections.* The SWA agrees to develop and maintain a plan to schedule housing inspections prior to the filing of clearance orders from employers who **regularly use the H-2A program** and, to the extent practicable, actively encourage employers to have housing ready for inspection at the time of filing the clearance order or earlier. The SWA agrees to conduct housing inspections in accordance with applicable local, state or Federal standards and provide notification to the employer of any deficiencies, request correction in five calendar days, and re-inspect to determine compliance. Additionally, the SWA agrees to provide a copy of the approved housing inspection or other official certification document to the employer and, if applicable, to the employer's authorized representative.
- *Employer-Provided Housing.* In accordance with 20 CFR 655.122(d)(1)(i), the SWA agrees to schedule and conduct **pre-occupancy inspections of housing** to be furnished to H-2A workers and non-H-2A workers in corresponding employment who are not reasonably able to return to their place of residence the same day. Employer-provided housing must meet the full set of DOL Occupational Safety and Health Administration standards set forth at 29 CFR 1910.142, or the full set of standards at 20 CFR 654.404 through 654.417, whichever are applicable under 20 CFR 654.401. Special requirements for range housing are provided below.
- *Rental and/or Public Accommodations.*
 - ☐ The SWA **DOES NOT** have jurisdiction to inspect rental and/or public accommodation housing.
 - ☐ The SWA **DOES** have jurisdiction under a state or local law/regulation to perform an inspection of rental and/or public accommodation housing.

[Insert citation of state or local law/regulation and the criteria under which the inspections of rental or public accommodation housing will be performed]
- *Range Housing.* If applicable, the SWA agrees to schedule and conduct inspections of range housing and certify that such housing used on the range is sufficient to accommodate the number of certified workers and meets the requirements under 20 CFR 655.230 and all applicable standards contained in 20 CFR 655.235.

- Except in circumstances where the DOL has a special procedure or as permitted by 20 CFR 655.230, the SWA agrees to schedule and complete the required housing inspection and submit notification (e.g., report, email) **no later than 30 days before the start date of work** to the CNPC regarding whether housing is approved or not approved at H2ASWA.Chicago@dol.gov; and
- The SWA agrees to promptly notify the CNPC of any changes in employer-provided housing and the results of any inspections conducted on substitute housing.
- *Alternative Housing Inspection Methods or Arrangements.*
 - ☐ The SWA **DOES NOT** use alternative methods or arrangements for conducting pre-occupancy housing inspections. The SWA is solely responsible for scheduling and conducting pre-occupancy housing inspections.
 - ☐ The SWA **DOES** use alternative methods, memoranda of understanding, or other contractual arrangements with the following agency(ies)/organization(s) to assist in conducting pre-occupancy housing inspections:

[Insert name of state or local housing authority or other entity assisting the SWA in conducting housing inspections]
 - ☐ The SWA has submitted with this grant plan a current electronic copy of the memorandum of understanding or other contractual arrangement demonstrating that pre-occupancy housing inspections will be scheduled and conducted in a manner that meets applicable regulatory standards and timeframes.

Alternative Inspection Methods: Only in emergency situations where physical housing inspections cannot reasonably be performed, such as during FEMA declared emergencies due to Acts of God or other pandemic health emergencies, may the SWA implement the below alternative methods and procedures, on a temporary basis, to verify that housing meets all applicable standards. As soon as practicable, SWAs are expected to conduct a physical housing inspection. The SWA will retain all documentation and records demonstrating compliance and make such information available to DOL upon request.

[Insert a description of the alternative methods and procedures that may be implemented by the SWA, including examples of acceptable documentation or evidence the SWA will rely upon to determine compliance.]

7. **Post-Determination Services:** The SWA agrees to provide support services to the DOL CO after a final determination in the following circumstances:

- To the extent resources are available, the SWA agrees that staff funded through the FLC grant will cooperate with and assist Wagener-Peyser Employment Service grant activities that support employer compliance with Agricultural Clearance Order requirements at 20 CFR 653 and 655. This means that FLC grant funds may be used to support SWA processing of Complaints and Apparent Violations through the Employment Service and Employment Related Law Complaint System described at 20 CFR 658 Subpart E and field checks described at 20 CFR 653.503. All activities funded through the FLC grant for such Employment Service activities will be fully documented, as required by 20 CFR 653 and 20 CFR 658 Subpart E, and all related records and findings will be available to the State Monitor Advocate for monitoring purposes or to the DOL CO for other appropriate action under 20 CFR 655, Subpart B. The SWA may also provide any findings or related records to the Wage and Hour Division, Occupational Safety and Health Administration, or any other appropriate government enforcement agencies.
- In accordance with 20 CFR 655.166 and upon request by the DOL CO, the SWA agrees to promptly provide information concerning the availability of U.S. workers to replace some or all of the qualified U.S. workers who were initially deemed available in support of a partial certification or denial determination on the employer's H-2A application;
- The SWA agrees to cooperate and make available all appropriate records and information upon request from any Federal officials assigned to perform an investigation, inspection, or law enforcement function pursuant to 8 U.S.C. 1188 and the H-2A regulations as described in 29 CFR 501.7;
- For complaints and apparent violations arising under the H-2A regulations, the SWA agrees to utilize the existing Employment Service and Employment-Related Law Complaint System, as described in 20 CFR part 658, subpart E, and as required by 20 CFR 655.185. Please note that these activities will be covered by existing Wagner-Peyser formula grants and not by the foreign labor certification grants that are the subject of this TEGl;
- SWAs agree to refer complaints and apparent violations arising under the H-2A regulations, which are not informally resolved as described at 20 CFR 658.411, to the following recipients, in addition to other appropriate enforcement agencies (or another public agency, a legal aid organization, or a consumer advocate organization, as appropriate):
 - For complaints and apparent violations involving allegation of fraud or misrepresentation, the SWA agrees to refer all such complaints to the DOL CO at H2ASWA.Chicago@dol.gov for appropriate handling and resolution;

- For complaints and apparent violations involving contracts with workers, the SWA agrees to refer all such complaints to the nearest local or regional office of the Wage Hour Division for appropriate handling and resolution, as described in 29 CFR part 501, and provide a copy of such referral to the DOL CO at H2ASWA.Chicago@dol.gov; and
- For complaints and apparent violations alleging that an employer discouraged an eligible U.S. worker from applying, failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, or discovered violations involving the same, the SWA agrees to refer all such complaints to the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights section in addition to any activity, investigation, and/or enforcement action taken by the state agency, and provide a copy of such referral to the DOL CO at H2ASWA.Chicago@dol.gov.

D. Permanent Labor Certification Program

- The SWA's labor exchange system is accessible to employers who are required to place a job order in connection with an *Application for Permanent Employment Certification*, as set forth in 20 CFR part 656, and facilitates the referral of qualified and available U.S. workers for consideration; and
- The SWA understands that these labor exchange services are already covered by existing Wagner-Peyser formula grants; not by the foreign labor certification grants that are the subject of this TEGL.

E. Grantee Contact Information

H-2A Program Point-of-Contact

Last name Click or tap here to enter text.		First name Click or tap here to enter text.	
Job title Click or tap here to enter text.			
Address Click or tap here to enter text.			
City Click or tap here to enter text.		State Click or tap here to enter text.	Postal code Click or tap here to enter text.
Telephone number (including extension) Click or tap here to enter text.		Fax number Click or tap here to enter text.	
E-mail address Click or tap here to enter text.			

H-2B Program Point-of-Contact (if different than the contact listed above)

Last name Click or tap here to enter text.	First name Click or tap here to enter text.	
Job title Click or tap here to enter text.		
Address Click or tap here to enter text.		
City Click or tap here to enter text.	State Click or tap here to enter text.	Postal code Click or tap here to enter text.
Telephone number (including extension) Click or tap here to enter text.	Fax number Click or tap here to enter text.	
E-mail address Click or tap here to enter text.		

Fiscal Grant Point-of-Contact (if different than the contact listed above)

Last name Click or tap here to enter text.	First name Click or tap here to enter text.	
Job title Click or tap here to enter text.		
Address Click or tap here to enter text.		
City Click or tap here to enter text.	State Click or tap here to enter text.	Postal code Click or tap here to enter text.
Telephone number (including extension) Click or tap here to enter text.	Fax number Click or tap here to enter text.	
E-mail address Click or tap here to enter text.		

OMB Paperwork Reduction Act (OMB Control Number 1225-0086)

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

This information is being collected for purposes of awarding a grant. Your response is required in order to obtain or retain a benefit. (*See* Wagner-Peyser Act section 9 (29 U.S.C. 49(i)). Public reporting burden for this collection of information is estimated to average approximately 4 (four) hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the U.S. Department of Labor-OASAM, • Office of The Chief Information Officer • Room 1N1301 • 200 Constitution Ave., NW, • Washington, DC 20210.

ANNUAL PLAN CERTIFICATION

(Insert Official Name of SWA—not that of an individual)

certifies that it will carry out all activities outlined in the Fiscal Year 2022 Annual Plan to support the Secretary of Labor’s responsibilities under the Immigration and Nationality Act as well as all other standard certifications and assurances as a condition of receiving the Federal grant funds. Per 2 CFR 200.333, file documentation of grant activities and accomplishments will be available for examination by the Employment and Training Administration or other authorized Federal representatives.

Authorized Representative’s Signature

Date

Authorized Representative’s Job Title

Authorized Representative’s Printed Name

Procedures for Prior Approval of Equipment Purchase Requests

Grant recipients must follow the procedures below to receive prior approval to purchase equipment.

Grant recipients must submit a formal written request to acquire and purchase equipment to the appropriate Grant Officer. All requests must be submitted through the Federal Project Officer and contain the following information, at a minimum:

1. Item name;
2. Item description and basic specifications;
3. Estimated useful life of equipment;
4. Item cost, actual or estimated (and total cost if multiple items), including the cost, if known, to put the asset(s) in place and make it usable for the purposes it was acquired;
5. Purpose of acquisition: a description of how the equipment will be used to support the grant and a reference to the approved activities in the Statement of Work (and the page numbers, if known). This description and justification are critical, as the information will provide the documentation that the costs to be incurred are for approved grant-related activities and in the best interests of the government; and
6. Contact name and telephone number.

This information will be used as the basis for the Grant Officer's decision.

Instructions for Completing the Budget Narrative

For all grantees, use the following guidance below when writing the budget narrative:

IMPORTANT: If a total amount for each line item listed below is included in the narrative, please be sure the amount in the narrative matches the corresponding line items on the SF-424A, *Application for Federal Assistance*.

Personnel: List all staff positions by title (current and proposed). Provide the annual salary of each position, percentage of each position's time devoted to the project, the amount of each position's salary funded by the grant, and the total personnel cost for the program year.

Fringe Benefits: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement, etc.

Travel: Specify the purpose, mileage, per diem, estimated number of in-state and out-of-state trips, and under costs for each type of travel.

Equipment: Identify each item of equipment to be purchased which has an estimated acquisition cost of \$5000 or more per unit and a useful life of more than one year (*see* 2 CFR 200.1 for the definition of equipment). List the quantity and unit cost per item. Items with a unit cost of less than \$5000 are considered supplies.

Supplies: Supplies include all tangible personal property other than "equipment" (*see* 2 CFR 200.1 for the definition of supplies). List the quantity and unit cost per item.

Contractual: Identify each proposed contract and specific purpose and estimated cost. If applicable, identify any sub-recipient agreements, including purpose and estimated costs.

Construction: Construction costs are not allowed, and this line must be zero.

Other: List each item in sufficient detail for us to determine whether the costs are reasonable or allowable. List any item, such as stipends or incentives, not covered elsewhere.

Indirect Charges: The following link contains specific DOL information regarding indirect charges: <https://www.dol.gov/agencies/oasam/centers-offices/office-of-the-senior-procurement-executive/cost-price-determination-division>.

**FY 2022
Funding Guidance and Funding Levels**

The funding authorized for foreign labor certification state grants in the *Consolidated Appropriation Act, 2022* was allocated to the SWAs as described below:

1. Base Allocation (\$13,955,140): With limited exceptions a base allocation was allocated to each SWA commensurate with its **base allocation for the previous year and the level of obligations under its active foreign labor certification grants**. The exceptions are comprised of SWAs meeting each of the following criteria:
 - a. the SWA processed an annual average of less than five total clearance orders attached to H-2A applications during the three most recently completed fiscal years (FY 2019-2021),
 - b. the SWA processed an annual average of less than five total H-2B job orders during the three most recently completed fiscal years (FY 2019- 2021); and
 - c. an annual average of less than five total housing units were identified on clearance orders attached to H-2A applications processed by the SWA during FY 2020 and FY 2021; and
 - d. in circumstances where a SWA's actual workload met all three of these aforementioned factors, the SWA was allocated \$5,000 to support the costs associated with processing this minimal level of foreign labor certification workload. The SWAs meeting these criteria were the District of Columbia, Guam, and the Virgin Islands.
2. Supplemental Allocation (\$7,326,860): In addition to its base allocation, each SWA, except those meeting the criteria described above, was allocated a supplemental allocation. Each SWA's supplemental allocation was determined in the following manner:
 - a. One-third of the available funding was based on each SWA's proportion of the estimated total national housing inspection workload. This was defined as the total number of housing units identified on clearance orders attached to H-2A applications processed during FY 2020 and FY 2021 and located in the jurisdiction of the SWA divided by the total number of housing units identified on clearance orders attached to H-2A applications processed during FY 2020 and FY 2021 by all SWAs.
 - b. Two-thirds of the available funding was based on each SWA's share of the total national workload associated with reviewing and posting clearance orders attached to H-2A and H-2B applications during the three most recent fiscal years (FY 2019 – 2021).

- Seventy percent of this two-thirds amount was allocated based on each SWA's share of the total clearance orders attached to H-2A applications processed during the three most recently completed fiscal years (FY 2019 – 2021). For example, if SWA 1 processed five percent of the total national clearance orders attached to H-2A applications processed during the three most recent fiscal years, then SWA 1 would receive five percent of the funding allocated on the basis of clearance orders attached to H-2A applications. Because SWA reviews of clearance orders attached to H-2A applications have significantly more complex regulatory requirements than SWA reviews of H-2B job orders, a higher percentage of the available resources were allocated on the basis of clearance orders attached to H-2A applications rather than on H-2B job orders.
 - The remaining thirty percent of the two-thirds amount was allocated based on each SWA's share of the total H-2B job orders processed during the three most recently completed fiscal years (FY 2019 – 2021). For example, if SWA 1 processed five percent of the total H-2B job orders processed during the three most recent fiscal years, then SWA 1 would receive five percent of the funding allocated on the basis of H-2B job orders.
3. Total Grant Allocation: The combined total of each SWA's base allocation and supplemental allocation comprises the SWA's total FY 2022 grant award.
4. Data Sources:
- The data sources used to support the allocation of supplemental funding for SWAs are available in the OFLC disclosure data published at www.dol.gov/agencies/eta/foreign-labor/performance.
 - Housing unit data was derived from the Form ETA-790A, Addendum B. Data from the three most recently completed fiscal years was used for the workload factors associated with job orders in order to more accurately reflect long-term trends.

FY 2022 Funding Level: \$21,282,000

The funding amount below **must be indicated on the SF-424 and SF-424A for FY 2022*

	Base Allocation:	Supplemental Allocation:	Total FY 2022 Grant:
Total	\$13,955,140	\$7,326,860	\$21,282,000
Alabama	\$122,000	\$55,580	\$177,580
Alaska	\$76,145	\$20,205	\$96,350
Arizona	\$160,587	\$130,156	\$290,743
Arkansas	\$100,230	\$160,957	\$261,187
California	\$1,500,000	\$518,964	\$2,018,964
CNMI	\$65,500	\$3,146	\$68,646
Colorado	\$241,500	\$197,989	\$439,489
Connecticut	\$250,000	\$34,298	\$284,298
Delaware	\$65,000	\$13,102	\$78,102
District of Columbia	\$5,000	\$0	\$5,000
Florida	\$470,000	\$516,889	\$986,889
Georgia	\$480,000	\$267,562	\$747,562
Guam	\$5,000	\$0	\$5,000
Hawaii	\$60,000	\$4,383	\$64,383
Idaho	\$400,000	\$265,127	\$665,127
Illinois	\$300,000	\$91,799	\$391,799
Indiana	\$92,361	\$77,084	\$169,445
Iowa	\$207,185	\$105,837	\$313,022
Kansas	\$110,010	\$86,515	\$196,525
Kentucky	\$300,000	\$353,358	\$653,358
Louisiana	\$255,000	\$372,110	\$627,110
Maine	\$265,000	\$77,466	\$342,466
Maryland	\$433,424	\$68,436	\$501,860
Massachusetts	\$408,140	\$91,860	\$500,000
Michigan	\$320,000	\$194,517	\$514,517
Minnesota	\$130,000	\$93,907	\$223,907
Mississippi	\$250,000	\$123,625	\$373,625
Missouri	\$150,558	\$84,870	\$235,428
Montana	\$278,811	\$131,392	\$410,203
Nebraska	\$100,000	\$86,422	\$186,422
Nevada	\$115,000	\$196,608	\$311,608
New Hampshire	\$53,625	\$26,871	\$80,496
New Jersey	\$400,000	\$78,437	\$478,437
New Mexico	\$70,000	\$29,448	\$99,448
New York	\$1,400,000	\$275,486	\$1,675,486
North Carolina	\$483,800	\$496,418	\$980,218
North Dakota	\$186,000	\$192,521	\$378,521
Ohio	\$275,000	\$118,652	\$393,652
Oklahoma	\$96,500	\$63,039	\$159,539
Oregon	\$315,000	\$62,820	\$377,820
Pennsylvania	\$400,000	\$130,835	\$530,835

Puerto Rico	\$55,000	\$3,105	\$58,105
Rhode Island	\$76,145	\$7,031	\$83,176
South Carolina	\$209,000	\$99,962	\$308,962
South Dakota	\$100,000	\$109,443	\$209,443
Tennessee	\$220,251	\$168,195	\$388,446
Texas	\$450,000	\$398,171	\$848,171
Utah	\$120,000	\$134,909	\$254,909
Vermont	\$130,000	\$33,912	\$163,912
Virgin Islands	\$5,000	\$0	\$5,000
Virginia	\$424,931	\$139,612	\$564,543
Washington	\$400,000	\$202,678	\$602,678
West Virginia	\$50,000	\$9,954	\$59,954
Wisconsin	\$150,000	\$49,533	\$199,533
Wyoming	\$88,437	\$71,664	\$160,101
Online Wage Library	\$80,000	\$0	\$80,000

Amendment A:
Commonwealth of the Northern Mariana Islands (CNMI) CW-1 Program
Fiscal Year (FY) 2022 Office of Foreign Labor Certification (OFLC) Grant Planning

Guidance CW-1 Temporary Employment Activities

Title VII of the Consolidated Natural Resources Act of 2008 provided the Secretary of the Department of Homeland Security (DHS) authority to administer and enforce a system of allocating and determining the terms and conditions of visas to be issued to nonimmigrant workers performing services or labor for an employer in the Commonwealth of the Northern Mariana Islands (CNMI or Commonwealth). DHS regulations established the Commonwealth-Only Transitional Worker (CW-1) visa classification to provide for an orderly transition from the CNMI permit system to the U.S. Federal immigration system for certain foreign nationals.

The Northern Mariana Islands U.S. Workforce Act of 2018 (Workforce Act) was passed to increase the percentage of U.S. workers in the total workforce of the Commonwealth while maintaining the minimum number of non-U.S. workers to meet the changing demands of the Commonwealth's economy, to encourage the hiring of U.S. workers, and to ensure U.S. workers are not at a disadvantage for employment or displaced by non-U.S. workers. In accordance with the Workforce Act, DHS promulgated corresponding regulations to provide that a CW-1 petition for temporary employment in the CNMI must be accompanied by an approved temporary labor certification from the Department. A temporary labor certification granted by DOL serves as confirmation to DHS that: (1) there are not sufficient U.S. workers in the CNMI who are able, willing, qualified, and available to fill the petitioning CW-1 employer's job opportunity; and (2) a foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of similarly employed U.S. workers.

The CNMI Department of Labor is the government agency responsible for providing employment and training services and maintains an electronic system for registered and approved employers to post job vacancy announcements and receive referrals of qualified U.S. workers in the CNMI. Registration for employers to post vacancy announcements on the job listing system is a one-time, free process, and readily accessible through the CNMI Department of Labor's website.

In accordance with regulations at 20 CFR part 655, subpart E, the CNMI Department of Labor agrees to carry out all activities to support DOL's review, and processing of job offers and applications seeking temporary labor certification under the CW-1 program.

Specifically, the CNMI Department of Labor agrees to carry out the following activities:

A. Stakeholder Education and Outreach: As part of a comprehensive education and outreach plan, the SWA will make available in a conspicuous location on the CNMI Department of Labor website the following information:

- Worker rights information created by the CNMI Department of Labor, the Occupational Safety and Health Administration, Wage and Hour Division, or similar federal authority; and
- Information on how employers can participate in the CW-1 program, such as easy-to-understand instructions on how to prepare and place a job advertisement with the CNMI Department of Labor that is accessible and can be completed electronically; and current contact information within the CNMI Department of Labor for employers to request technical assistance.
- Educate employers about the responsibilities associated with the use of foreign labor recruiters and ban on prohibited fees.

No less frequently than once a year, the CNMI Department of Labor will electronically disseminate to employers who routinely use the CW-1 program helpful tips or best practices on obtaining a prevailing wage determination from the National Prevailing Wage Center and preparing high-quality job advertisements. Where requested and funds permitting, the CNMI Department of Labor will participate in local employer roundtables, conferences or other stakeholder forums to present and/or disseminate information related to the CW-1 program.

In addition, the SWA will also make effort to:

- Remind and educate employers about *Title VII of the Civil Rights Act of 1964*, which makes it illegal to discriminate against someone or harass someone on the basis of race, color, religion, national origin or sex, and makes employers accountable for providing a work environment that is free from harassment and other kinds of discrimination; and
- Information educating employers about the responsibilities associated with the use of foreign labor recruiters and ban on prohibited fees.

B. Placement of CW-1 Job Advertisement: employer must place an advertisement with the CNMI Department of Labor for a period of 21 consecutive calendar days. All advertisements must satisfy the requirements codified in 20 CFR 655.441.

The CNMI Department of Labor's labor exchange system, at www.marianaslabor.net is accessible to employers required to place a job advertisement in connection with a CW-1 *Application for Temporary Employment Certification* with DOL, pursuant to 20 CFR 655.442. The CNMI Department of Labor has capability for employers to place job advertisements for review in the following manner:

Please check all that apply:

- ☐ Self-services by accessing the CNMI Department of Labor's labor exchange system: www.marianaslabor.net.
- ☐ Staff-assisted job offer services by submitting draft job offers at:

[Insert CNMI contact information including email address where employers can submit CW-1 job offer]

Please check one of the following:

- ☐ The CNMI Department of Labor's job offer form and/or system **DOES** contain an entry field or option permitting employers to identify that the job offer is being placed in connection with a submitted *Application for Temporary Employment Certification* for CW-1 workers;

OR

- ☐ The CNMI Department of Labor's job offer form and/or system **DOES NOT** contain an entry field or option permitting employers to identify that the job offer is being placed in connection with a submitted *Application for Temporary Employment Certification* for CW-1 workers. Therefore, employers can provide the regulatory required notification to the CNMI Department of Labor in the following manner:

[Insert a brief description of how and whom employers can provide the CNMI Department of Labor with the required notification.]

Please check all that apply:

- ☐ The CNMI Department of Labor has submitted with this grant plan a current electronic copy of the form and general instructions employers are required to use to submit job advertisements.
- ☐ The standard job advertisement form and general instructions are easily accessible to employers on a website maintained by the CNMI Department of Labor at: <http://www.marianaslabor.net/>.

Once employers place an advertisement with the CNMI Department of Labor for 21 consecutive calendar days, the CNMI Department of Labor will make available to the employer web pages in which the advertisement appeared on the CNMI Department of Labor job listing system, or other verifiable evidence containing the text of the advertisement and the dates of publication demonstrating compliance with the requirement.

OMB Paperwork Reduction Act (OMB Control Number 1225-0086)

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

This information is being collected for purposes of awarding a grant. Your response is required in order to obtain or retain a benefit. See 20 CFR 655, Subpart E. Public reporting burden for this collection of information is estimated to average approximately 1 (one) hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the U.S. Department of Labor-OASAM, • Office of The Chief Information Officer • Room 1N1301 • 200 Constitution Ave., NW, • Washington, DC 20210.
