

**WORKFORCE SYSTEMS LETTER NO.: 04-10****DATE:** April 7, 2004**EFFECT:** **ACTION** **INFO** **WITH ATTACHMENT**
 [X] **[X] SWAs** **[X]****SUBJECT: Guidelines for State Workforce Agency (SWA) Alien Labor Certification (ALC) Grants for Fiscal Year (FY) 2004**

1. Purpose. To provide guidance for the funding and management of FY 2004 annual plans for the Alien Labor Certification (ALC) 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)
- 29 CFR Part 93
- OMB Circular A-87
- Employment and Training Administration (ETA) Handbook No. 385
- Guide for Employment Service Reimbursable Grant Activities
- 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
- Other ETA instructions as noted

3. Background. The purpose of this Workforce Systems Letter is to define the roles state agencies play in the ALC program, the funding that will be allocated to the state agencies to support these activities, the required actions necessary on the part of the states to request funding, and the required activities on the part of the Regional Offices to monitor grant funds.

4. Actions. SWA Administrators are required to complete the actions listed below.

- Provide three signed copies of your Alien Labor Certification Work Plan to the Regional Office so that funds may be released to the state.
- When splitting allocations between agricultural and non-agricultural activities, consider program priorities. Legislatively required time frames and time sensitive ALC activities such as H-2A, as well as backlog reduction should be carefully planned and prioritized.

- In order to ensure prompt allocation of funds, your statement of work and work plan for Ag and Non-Ag programs should be submitted to this office per the attached grant procedures no later than **April 30, 2004**.

5. Inquiries. Direct questions on the Alien Labor Certification program to Dolores DeHaan at 212-337-1829 and fiscal questions should be directed to John Meadows at 212-337-2191.



Holly C. O'Brien
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Attachments

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• Explanation of the evolving role of the State Workforce Agency as it relates to the new permanent labor certification program (PERM).	I
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The evolving role of the State Workforce Agency as it relates to the new permanent labor certification program (PERM).

Introduction

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 comment period closed on July 6, 2002, and comments have been organized, reviewed and evaluated. A Final Regulation has been drafted and cleared through the Department's internal review process and submitted to the Office of Management and Budget (OMB).

We anticipate the Final Regulation will be published during the 2nd quarter of 2004 and the new program must be operational within 120 days. Therefore, FY 2004 will be a year of transition for the labor certification function in State Workforce Agencies (SWAs). However, the change should not be exaggerated. For at least the first nine months of FY 2004, the SWAs will operate exactly as they have in the past. This role will not change until the implementation of the PERM program. Following implementation, the SWAs will no longer accept permanent labor certification applications. All other functions of alien labor certification should continue as usual, i.e. prevailing wage determinations, H-2A and H-2B program functions.

PERM's effect on grant activities for Alien Labor Certification (ALC) and SWA activities

1. Changes in the reimbursable Grant Activities for Alien Labor Certification and SWA activities.

- In FY 2004, states will receive funds to perform the activities noted above. In addition, states shall receive funding, to the extent available, to process backlogged permanent labor certification applications. (Note: the alien certification share of conducting the Occupational Employment Statistics Survey is being funded by the Bureau of Labor Statistics, as has been the case in previous years).
- Once the "new" Permanent Labor Certification Program is implemented, employers will no longer forward applications to the SWAs. We envision the establishment of two (2) permanent central processing centers where the new program will be implemented. These centers will be located in Atlanta and Chicago.
- However, many SWAs will have cases they received prior to the implementation of the new program which, by law, must be processed under the "old" program's regulations. Accordingly, these old cases shall be deemed "backlog" cases and states will be expected to continue working on these cases unless the case is transferred to a backlog center for processing. The Department has requested funds for both FY 2004 and FY 2005 to fund the necessary work to completely eliminate the backlogs.

Funding will be made available to those states with backlogged cases to continue processing backlogged cases through the remainder of this fiscal year. Allocations for FY 2005 will be made based upon appropriations, the level of backlogged cases at the SWA level, and backlog center capacity. SWAs may not receive funding in FY 2005 to process backlogged permanent cases.

- The DFLC has funded a pilot program designed to "test" a management report recommendation that certain efficiencies could be achieved if backlogged cases were processed in a centralized fashion.

- Our plans include, and they are budget sensitive, the opening of two (2) centers (one in Philadelphia and Dallas) where centralized processing of backlogged “old” permanent program cases will occur. This effort would be in addition to the processing of backlogged cases in the states and the Boston and San Francisco Regional Offices.

States with excessive numbers of permanent applications in their queue will be requested to send some of them to either Dallas or Philadelphia. The exact methodology to be employed for determining which cases would be sent to a center is being finalized. The DFLC will publish in the near future a notice in the Federal Register of this intent.

- Following the implementation of the new Permanent Labor Certification Program and the elimination of backlogged cases at the state level, SWAs will remain responsible for the following labor certification activities:
 - (1) Processing of H-2A cases, including performing prevailing wage and prevailing practice surveys, and ensuring that housing inspections are made;
 - (2) Providing prevailing wage determinations for all non-agricultural labor certification programs; and
 - (3) Processing H-2B cases in accordance with existing policy.

2. Changes in the Prevailing Wage Determination Function

Under the new Perm Program, employers will be required to obtain a prevailing wage determination from the SWA prior to submitting their application for processing to DOL. This differs from past practice where the wage offered on the ETA 750 was reviewed by the SWA after the application was submitted.

Employers will request a prevailing wage determination from the SWA using the appropriate State Workforce Agency Prevailing Wage Determination form. The SWA will respond to the employer with the wage determination, which the employer may be required to supply to the Department in support of their PERM application, in the case of an audit being conducted. A new directive updating GAL 2-98 and succeeding directives regarding prevailing wage determinations will be issued once the PERM regulation is published.

SWAs should send appropriate staff to program 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.

3. Changes in Reporting.

State Workforce Agencies are no longer required to submit Annual H-2A Reports other than the data required on the ETA Form 9037 Semiannual Report. The National Office will compile reports from the new H-2A Case Management System.

4. Changes in State Workforce Agency Allocations.

Grant funding to cover the remainder of this fiscal year will be issued to SWAs as soon as possible.

5. Changes in General Administration.

States are advised to administer the plan in accordance with the approved plan and the terms and conditions of their Wagner-Peyser Annual Funding Agreement.

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, based on regional recommendations that the activities are 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.

With the pending implementation of the new PERM Program and the elimination of the program's backlog, some states may not need 100 percent of their allocated FY 2004 foreign labor certification funds. Since these funds may not be used for other Wagner-Peyser activities, Regional Offices staff will work closely with the SWAs and identify any funds that will not be needed so that they can be redirected to states that could effectively use them this fiscal year.

Grant Guidance and Information Package

Introduction

This document provides the necessary guidelines to be used by State Workforce Agencies (SWAs) to request funds in order to administer their Alien Labor Certification (ALC) programs, and the Regional Offices responsible for oversight of those programs.

Wagner-Peyser funding allocations for SWA National Activities in FY 2004 (shown in Attachment III), are only for agricultural and non-agricultural Alien Labor Certification (ALC) programs. Planning targets, included in this document, reflect a postage assessment of 2.8 percent.

The available FY 2004 allocation for ALC is \$39,694,413. Of this amount, \$15,000,000 is being used for processing center activities, \$108,500 is funding the Online Wage Library, \$2,358,297 is being retained at the national level for discretionary funding to cope with unforeseen circumstances, and \$1,111,444 will be used to pay postage.

SWA Responsibilities

SWAs are responsible for administering grant funds for ALC programs within established guidelines. An overview of these responsibilities is listed below:

1. Administration of the cost reimbursable grant.

States are advised to administer the plan in accordance with the approved plan and the terms and conditions of the Wagner-Peyser Annual Funding Agreement.

Labor certification funds are provided for labor certification activities only and cannot not 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 SWA complaint system.

SWAs must send appropriate staff to program 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.**

2. Certifications and Assurances.

Regulations require recipients of SWA grants to submit various certifications and assurances. These certifications, however, have already been provided under the FY 2002 master agreement. Current SWA regulations at 20 CFR, Part 658, subpart E (20 CFR 658.400-658-426) cover the complaint and appeals procedures. Regulations at 20 CFR, Part 653, subpart F, and 20 CFR, Part 654, subpart E apply to housing inspection activities under the reimbursable grant. Other applicable regulatory provisions are incorporated in the Statements of Work (attached).

3. Formally identify and prioritize ALC workload.

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, based on regional recommendations that the activities are 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.

4. Utilize mandated forms for inter-agency communications.

SWAs must utilize the proper formats to ensure uniform communications. These formats include, but may not be limited to, the following:

- **Form ETA-7147**

Form ETA-7147 is the Alien Certification State Agency Transmittal of Application for an alien employment certification.

- **Form ETA-232**

Form ETA-232 is the Domestic Agricultural In-Season Wage Report.

5. Reporting Responsibilities.

The required reports are listed below:

- **SF-269**

The SF-269 is the Financial Status Report and must be submitted electronically by the SWA on a quarterly basis for each fiscal year of funds.

- **Form ETA-9037**

Form ETA-9037 is the Semi-Annual Alien Labor Certification Activity Report.

- **H-2A Report**

The National Office implemented the new H-2A Case Management System on October 1, 2003. The system was designed to track data that will allow the National Office to generate the necessary H-2A reports.

6. Fiscal Management Responsibilities.

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.

Conclusion

Grant funding balances will be issued to SWAs as soon as possible. The National Office Grant Officer will issue a Notice of Obligation (NOO) to SWAs upon receipt of notice from Regional Offices that a SWA 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.

**Alien Labor Certification
Agricultural and Non-agricultural Programs
FY 2004 State Distribution**

REGION I

Connecticut	\$391,808
Maine	\$355,518
Massachusetts	\$1,061,594
New Hampshire	\$111,991
Rhode Island	\$60,000
Vermont	\$115,370
New Jersey	\$1,100,286
New York	\$1,771,718
Puerto Rico	\$60,000 *
Virgin Islands	\$60,000

REGION II

Delaware	\$189,802
District of Columbia	\$199,378
Maryland	\$787,195
Pennsylvania	\$826,133
Virginia	\$1,303,968
West Virginia	\$60,000 *

REGION III

Alabama	\$88,202
Florida	\$837,200
Georgia	\$648,080
Kentucky	\$406,841
Mississippi	\$60,000
North Carolina	\$330,857
South Carolina	\$104,155
Tennessee	\$298,574

REGION IV

Arkansas	\$63,288
Louisiana	\$160,609
New Mexico	\$60,000
Oklahoma	\$99,860
Texas	\$1,065,858
Colorado	\$353,048
Montana	\$60,000
North Dakota	\$108,660
South Dakota	\$63,736
Utah	\$140,042
Wyoming	\$61,709

REGION V

Illinois	\$787,985
Indiana	\$60,539
Michigan	\$455,968
Minnesota	\$143,654
Ohio	\$267,971
Wisconsin	\$180,632
Iowa	\$60,000 *
Kansas	\$169,246
Missouri	\$111,628
Nebraska	\$133,270

REGION VI

Arizona	\$392,536
California	\$4,123,243
Guam	\$60,000
Hawaii	\$60,000
Nevada	\$93,138
Alaska	\$60,000
Idaho	\$245,948
Oregon	\$99,526
Washington	\$289,761

* These States had some or all of the above amounts provided by a special distribution during September 2003.

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 the United States Citizenship and Immigration Services (USCIS) regulations at 8 CFR 214.2(h)(6) under to 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. USCIS 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.

State Workforce Agency Requirements and Responsibilities

(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.

1. 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 do the following:

- Demonstrate that they have attempted to recruit U.S. workers through advertising, the State Workforce System, and/or by other specified means.
- Offer prevailing wages and working conditions that will not adversely affect similarly employed U.S. workers.
- Fulfill the duties listed in regulation 20 CFR 656.21 listed below: (Note - A comprehensive listing of these duties can be found in Attachments V and VI)
 - Performing initial processing of non-agricultural applications
 - Conducting special recruitment (outside of regular workforce agency recruitment and referral activities) for U.S. workers
 - Conducting prevailing wage surveys for agricultural occupations
 - Determining prevailing wage rates using the Occupational Employment Statistics system and review of employer supplied surveys
 - Preparing Form ETA 232 reports
 - Obtaining data needed for making prevailing practice determinations
 - Submitting required reports
 - Gathering other information which forms the basis for regional Certifying Officer determinations to grant or deny labor certifications

2. 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 requesting such information the 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.

3. 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, 1994), 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" (April, 1998), Training and Employment Guidance Letter No. 12-03, "Policy Clarification for Processing H-2A Temporary Certification for Occupations in the Landscaping Industry 2003-2004, Training and Employment Guidance Letter No. 4-03, "Procedures for Temporary Labor Certification in the Entertainment Industry", 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 contain, information leading 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 SWA 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 SWA staff are instructed to refrain from discouraging U.S. workers who seek referral to employers on such job orders;
- Contracting out of the program will not be allowed without a pre-approval in writing from the National Office; 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 the maximum number of U.S. workers.

4. Allowable Costs.

- Costs may be attributed to activities directly in support of the 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 farmworker recruitment, and the processing of complaints under the SWA 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.

5. 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" (April, 1998), 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; 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 ensure 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 receiving and tracking applications, writing letters, and maintaining a prevailing wage database.
- 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 employer's need for the duties to be performed is truly temporary. That need may be neither ongoing, nor 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 to make a determination on applications within 60 days of receipt by states, the state is responsible for informing their regional Certifying Officer regarding the status of their H-2B case workload on a monthly basis to ensure timely completion. ***H-2B applications should be processed in an expedited manner and applications should be processed and transmitted to the regional Certifying Officer within 30 days from the date the application was received by the state.***

6. Reporting Requirements.

- Basic reporting requirements for Labor Certification include financial and program reporting requirements as specified by ETA. The required program reports, including the 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 certification reimbursable grant shall be available to regional and/or National Office staff. Inappropriate charges shall be disallowed.
- Informally, states will report to Regional Offices unusual increases in H-2A and in H-2B, 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 2004. This narrative should include, at a minimum, the following:

- A. The projected number of permanent applications to be processed during FY 2004 to include:
 - Total projected to be processed
 - Total number to be forwarded to the Regional Office
- B. The projected number of job orders related to temporary agricultural alien certification applications to be processed.
- C. The projected number of temporary non-agricultural alien certification applications to be processed
- D. The projected number of prevailing wage surveys to be conducted in agricultural activities including projected wage surveys in anticipation of H-2A requests (this includes logging)
- E. The projected number of prevailing wage determinations to be given in nonagricultural occupations. This includes surveys for the permanent, H-1B nonimmigrant, and H-2B temporary.
- F. 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.
- G. 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)

Statement of Work for Housing Inspections

Note: Due to the special nature of housing inspections, a separate Statement of work is included. Regions or Regional Offices may combine this section into one unified agricultural subpart of the ALC grant.

____ (Agency Name) _____ shall prepare a narrative plan which explains how it will deliver this activity in FY 2004. 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.

In addition, as a condition for receiving funds in support of the Secretary's responsibility, (Agency Name) _____ agrees to do the following:

- 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.
- Assist employers in recruiting agricultural and logging workers. 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 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.
- Determine, through a pre-occupancy inspection, that such housing is, in fact, available and meets appropriate standards. The employer seeking labor certification may also 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.

1. 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, 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.

- 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.
- SWAs should be encouraged to evaluate alternative methods of conducting pre-occupancy housing inspections. (i.e. State Health Department, Agricultural Department, etc.)

2. 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.

3. 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.

4. Reporting.

- Required reporting of activity is specified on the ETA 9037, semi-annual report Financial reporting will be as specified by the Employment and Training Administration.
- States should plan to track the costs associated with conducting pre-occupancy housing inspections in order to assist the National Office in the allocation of future resources. The costs include, but are not limited to, staff resources, travel expenditures, and administrative costs (see Attachment VIII).
- **States should submit an annual summary of their pre-occupancy housing inspection costs as an attachment to the Semi-annual report, which is due October 15, 2004 (see Attachment VIII).**

ENCLOSURE III

Work Plan (Attached to Statement of Work)

Statement of Work for 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 sub part of the ALC grant.

____ (Agency Name) shall prepare a narrative plan which explains how it will deliver this activity in FY 2004. This narrative should include the number of prevailing wage surveys to be conducted and in which crops.

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. Since those workers do not have knowledge of wages in distant locations, the SWA provides a level of wage protection by requiring that intra- and inter-state clearance orders offer a prevailing wage (20 CFR 653.501(d)(4)), if it is higher than the state or Federal minimum. For H-2A 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.

1. 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 you expect more than 100 workers in the current season; 2) When there were H-2A workers last season or you expect 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 DFCL 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.

2. 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.

3. Performance Standards.

- The state's performance will be reviewed according to its adherence to the procedures for wage surveys in ETA Handbook No. 385. Irrespective of the Adverse Effect Rate (AEWR) published for a given state each year, the procedures contained in the ETA Handbook No.385 require that prevailing wage surveys be conducted for any crop activity that is anticipated in the upcoming season.

5. 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.
- States should plan to track the costs associated with conducting prevailing wages in order to assist the National Office in the allocation of future resources. The costs include, but are not limited to, staff resources, travel expenditures, and administrative costs (see Attachment VIII).
- **States should submit an annual summary of their prevailing wage costs as an attachment to the Semi-annual report, which is due October 15, 2004 (*see Attachment VIII*).**

MAJOR SWA RESPONSIBILITIES FOR THE ALC AG PROGRAMS

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 to 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 DFRC, National Office for verification.
- Conduct housing inspections (where conditional access is 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.

Forty Five (45) Days Before Date of Need.

- Receive duplicate of employer application and job offer.
- Prepare local job order and begin local recruitment.
- Advise 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.

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 Regional Office.

- If application not accepted, revise clearance order to incorporate modifications required by Regional Office (but do not submit).
- Consult with employer to determine if employer agrees to modifications.
- If employer intends to appeal to the Administrative Law Judge (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).

After Clearance Order Approved by Regional Office.

- Enter order into AJB
- Mail order to other areas specified by Regional Office
- Perform other actions related to recruitment specified by 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 (RO must approve).
- Ensure that approved amendments are included in job order package.
- Ensure previous editions of job orders are corrected or updated.

Housing Inspections.

- Complete all scheduled housing inspections.
- 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.
- 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.

Twenty-Four Hours Before Date of Need (Suggested).

- Submit report on SWA recruitment to the Regional Office.

After Certification Determination

- Continue to refer workers who apply for the job.
- If proof of advertising is not received, prior to the granting of the labor certification, obtain from employer.
- Respond to Regional Office requests for assistance/advice on re-determination requests.

After Date of Need.

- Continue to refer workers who apply if comparable alternative employment is 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 and Hour Division (DOL).
- Provide information (and other assistance) to the Wage and Hour (W&H) in their investigations.
- Investigate employer complaints on 50% rule violations (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.

MAJOR SWA RESPONSIBILITIES FOR THE ALC NONAG PROGRAMS

Major State Workforce Agency (SWA) Responsibilities

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.

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 SWA recruitment activity. Monitor and collect referrals from SWA 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 regional Certifying Officer.
- Transmit case file to Regional Office with state recommendations.
- Furnish information on applications, employers, and beneficiaries to USCIS and other law enforcement agencies.

After Transmission of Case File to Regional Office.

- Respond to requests for further information from Regional Offices and law enforcement agencies such as USCIS and SWAA.
- Work with employers on applications as a result of Notices of Findings issued by regional Certifying Officer.

ANNUAL PLAN PROCEDURES

Master Agreement (Annual Funding Agreement).

The current Master Agreement includes an Assurances and Certifications package to encompass all PY 2003/FY 2004 program activities. Notice of Obligation documents for the allotment balances will be issued by the National Office Grant Officer based upon Regional Office approval of Annual Plans.

Annual Plan

The Annual Plan includes an Application for Federal Assistance (SF-424), transmittal letter, work Statements, and budget information. Consistent with National Office guidelines, negotiations between ETA and the Grantee will determine each state's annual level of funding for Alien Labor Certification.

- The Annual Plan will have a performance period of 12 months beginning October 1, 2003, and ending September 30, 2004.
- The plan package submitted to the Regional Office from the states should 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
- Regional Offices will negotiate work plans with states 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.

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, and the quarterly spending plan. 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.

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 the reconciliation is completed.

COSTING OF H-2A ACTIVITIES

Instructions.

Complete the table below. If housing inspections are done by another organization, list the burden that the H-2A portion adds to the total cost.

Under the average number of units, fill the block if it is not shaded. Here are two examples: for each housing inspection visit on average 4 housing units are inspected taking 1.5 hours each unit with a staff cost of \$35 per hour; for each job order there are on average 9 applicants who need their qualifications reviewed taking 0.5 hour per applicant with a staff cost of \$28 per hour.

For travel mileage, enter the average round trip miles per visit and the standard cost per mile.

For postage enter how many items are sent and the average cost to send them.

Costing Sheet.

Activity	Average number of units, if more than one.	Average staff hours or unit of measure per activity	Average cost per staff hour or unit of measure
Housing Inspection – list re-inspections as separate inspections			
Travel time			
Travel mileage			
Inspection of Unit			
Completion of paperwork			
Prevailing Wage and Prevailing Practice Surveys			
Identify crops and activities			
Develop survey instrument			
Postage			
Collection of responses			
Collation of information			
Publication of results			
Job Orders			
Receive application			
Create file			
Enter local job order			
Release into inter/intra-state job system			
Review applicants			
Refer applicants			
Forward results to DOL			

BUDGET BREAKDOWN WORKSHEET

Instructions.

Complete the following Budget Breakdown Sheet by entering the following information:

- Total Amount Allocated to the state: Enter the total amount of money obligated through this grant request.
- H-2B Amount: Enter the amount of the obligated funds that will be used to fund H-2B tasks and activities.
- Prevailing Wage Amount: Enter the amount of the obligated funds that will be used to fund Prevailing Wage tasks and activities (including H-1B).
- H-2A Amount: Enter the amount of the obligated funds that will be used to fund H-2A tasks and activities.
- Perm Amount: Enter the amount of the obligated funds that will be used to fund permanent tasks and activities.

Budget Breakdown Sheet

Program	Amounts
Total Amount Allocated to the state	\$
H-2B Amount	\$
Prevailing Wage Amount	\$
H-2A Amount	\$
Perm Amount	\$