

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Foreign Labor Certification
	CORRESPONDENCE SYMBOL OFLC
	DATE December 3, 2008

**ADVISORY: FOREIGN LABOR CERTIFICATION
TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 6-08**

TO: STATE WORKFORCE AGENCY ADMINISTRATORS

FROM: BRENT R. ORRELL /s/
Deputy Assistant Secretary

SUBJECT: Fiscal Year (FY) 2009 Foreign Labor Certification Grants – State Workforce Agency Allocations Through December 31, 2008

1. **Purpose.** To advise State Workforce Agencies (SWAs) of their Foreign Labor Certification (FLC) grant allocations for the first 92 days of the FY 2009 Continuing Resolution (CR) in effect October 1, 2008, through March 6, 2009.

2. **References.**

- Immigration and Nationality Act (INA) Sections 101(a), 212(n) and (t), 214(c), and 218
- U.S. Citizenship and Immigration Services regulation at 8 CFR 214.2(h)
- Wagner-Peyser Act Section 7(d)
- 29 CFR Part 93
- OMB Circular A-87
- Employment and Training Administration (ETA) Handbook No. 385, Wage Finding Process, August 1981
- Guide for Employment Service Reimbursable Grant Activities
- ETA Handbook No. 398, H-2A Program Handbook, January 1988
- Prevailing Wage Determination Policy Guidance for Nonagricultural Immigration Programs, May 2005
- Training and Employment Guidance Letter No. 04-06
Subject: Plans to Phase out Penalty Mail Costs for “Employment Security” Programs and Availability of Supplemental Budget Funds for Conversion to Commercial Mail Methods
- Other ETA instructions as noted

3. **Background.** Each fiscal year, upon the enactment of appropriations legislation for the Department of Labor, the Employment and Training Administration (ETA), through the Office of Foreign Labor Certification (OFLC), advises SWAs on their FLC grant distribution for the fiscal year, subject to submission and approval of workplans and meeting other criteria for funding. ETA guidance is designed to assist SWAs in their financial planning and, assuming ETA approves their workplans, to outline each state’s procedural and programmatic obligations under the grant.

RESCISSIONS None	EXPIRATION DATE December 31, 2008
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In the absence of final FY 2009 appropriations action – including a final Appropriations Act for the Department of Labor – the Congress has authorized and the President has signed the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, P.L. 110-329 (September 30, 2008). The Act includes disaster relief; provides full-year funding for select government activities; and extends funding at the 2008 level for the Department of Labor and many other government agencies from October 1, 2008, through March 6, 2009. With respect to the Department of Labor, the Act includes funding for state FLC activities under the Department’s State Unemployment Insurance and Employment Service Operations account. The attachment to this TEGL lists the FLC grant allocation for each state under the first 92 calendar days of this long-term CR, through December 31, 2008. The Department has proposed major regulations that would, among other things, significantly change the role of SWAs in the foreign labor certification process, particularly in the H-2A and H-2B temporary programs. Implementation of final regulations, which would become effective in 30 days, could potentially lead to a dramatic change in SWA responsibilities, requiring a shift in the funding provided by the Office of Foreign Labor Certification. As we approach January 1, 2009, the Department will issue additional guidance governing funding for the remainder of the CR and FY 2009, including the issuance of annual state grant plans.

Based on longstanding practice, once the Department receives a final FY 2009 appropriation, it will issue detailed planning guidance to SWAs. For SWAs planning to apply for FY 2009 FLC funding or that have, by the time final guidance issues, used FLC funding distributed under an FY 2009 CR, the issuance of the planning guidance triggers an obligation to immediately submit a workplan in order to demonstrate continuing eligibility under the annual grant. SWAs accepting funding under the current CR and this TEGL agree to be bound by and comply with the terms and conditions set forth by OFLC in its FY 2008 grant planning guidance, until such time as an FY 2009 workplan is submitted by a state and subsequently approved by OFLC.

Following the issuance of this TEGL, SWAs will receive additional information from the ETA Office of Grants and Contract Management as their respective allocations become available for their use.

4. **Effective Date.** This guidance is effective immediately.
5. **Action Requested.** SWA Administrators are directed to provide SWA staff involved in foreign labor certification activities with a copy of these procedures.
6. **Inquiries.** Grant funding questions should be directed to Leticia Sierra at (202) 693-3010. OFLC program-related questions should be directed to Brian Pasternak at (202) 693-3010.
7. **Attachment.** FY 2009 Foreign Labor Certification Grant Allocations: October 1, 2008 – December 31, 2008.