**U.S. Department of Labor**

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210

FEB - 5 2008

Re: Emphasis on Referring Only Legally-Authorized Workers to H-2A Agricultural Jobs

Dear SWA Administrator:

On November 14, 2007, the Employment and Training Administration (ETA) issued to State Workforce Agencies (SWAs) Training and Employment Guidance Letter (TEGL) 11-07, Change 1, *Clarification of Certain Procedures for Processing H-2A Labor Certification Applications.* The TEGL included guidance pertaining to the verification of employment eligibility of H-2A job referrals. As a result of this issuance, ETA has received a number of inquiries, both formal and informal, from SWA staff about the legality of the employment verification requirement and states' ability to perform such verifications.

We understand that SWA staff in some states have declined to refer available workers to H-2A job orders, rather than determine whether such job-seekers are legally authorized to work in the United States. Such actions would not be consistent with the legal requirements of the Wagner-Peyser Act or the Immigration and Nationality Act (INA). The Wagner-Peyser Act requires SWAs to refer eligible workers to open job opportunities. The INA requires that only eligible workers may be referred. SWAs in their grant agreements with ETA agree to abide by the Wagner-Peyser Act, the INA, their implementing regulations, and policy guidance issued by ETA. The Department of Labor expects all SWAs to live up to their end of these agreements.

This Notice reiterates the Department's responsibility (see TEGL 11-07, Change 1, sec. 4.B.ii) to ensure that all State Workforce Agencies comply with H-2A program requirements, including employment eligibility verification of H-2A-referred workers. As a condition of a state's receipt of grant funds under the Wagner-Peyser Act and Alien Labor Certification activities, the SWA has agreed to, and pursuant to Wagner-Peyser regulations, is required to refer qualified agricultural workers, who are "legally allowed to work in the United States," to agricultural jobs posted with the SWA (20 CFR 651.10, 653.100 et seq., and 653.500 et seq.). The Department cannot abdicate its responsibilities under the INA, and will do what is necessary to uphold the conditions described in our Alien Labor Certification grant agreements. It would be illegal and irresponsible for any SWA to sacrifice the interests of U.S. farm workers by refusing to make job referrals in an effort to avoid filling out I-9 paperwork, which takes very little time and which thousands of employers fill out every day.

The Department stands ready to cooperatively work with states to fully implement the eligibility verification requirement. We believe that together we can achieve this goal and look forward to continuing our mutual partnership. Please feel free to contact Bill Carlson, Administrator, Office of Foreign Labor Certification at (202) 693-3010, should you have additional questions.

Sincerely,

Douglas F. Small

Douglas F. Small
Deputy Assistant Secretary