

# Farm Labor Stabilization and Protection Pilot Program (FLSP)



December 2023

# Agenda

## FLSP Webinar Understanding H-2A

Dec 6, 2023

- *Brief FLSP Overview*
- *Seso H-2A Technical Assistance Overview*
- *H-2A Program Basics*  
**Q&A**
- *H-2A Basics Cont...*  
**Q&A**

# FLSP Webinars

<u>Day</u>	<u>Date</u>	<u>Time</u>	<u>Type / Focus</u>
Wed	25-Oct	2:00pm EST	Basic Program Overview
Tues	31-Oct	2:00pm EST	NCA Recruitment
Wed	8-Nov	2:00pm EST	Achieving Silver/Platinum
Wed	15-Nov	2:00pm EST	en Español
Mon	27-Nov / 4-Dec	2:00pm EST	Small Growers
Wed	6-Dec	2:00pm EST	H-2A overview

**Updates at**

**<https://www.ams.usda.gov/services/grants/flsp/assistance>**

# TA: Office Hours

## Office Hour Dates

<u>Day</u>	<u>Date</u>	<u>Time</u>
Thursday	7-Dec	4:00 pm EST
Friday	15-Dec	2:00pm EST
Thursday	21-Dec	4:00 pm EST

Updates at  
[www.ams.usda.gov/  
 services/grants/flsp/  
 /assistance](http://www.ams.usda.gov/services/grants/flsp/assistance)

# Eligibility & Award Amounts

- Up to \$65 million in **competitive** grants for **agricultural employers**
- The award amounts will be determined based on the
  - 1) projected number of full-time equivalent agricultural employees (**FTEs**) and
  - 2) requested award level (**Baseline, Silver or Platinum**).
- Fixed-Award grant over 24-month grant period

**Table 1.** Award structure, based on FTEs and applicant commitment level.

	Award amount	1-10 → FTEs	11-25 FTEs	26-75 FTEs	76-200 FTEs	201-500 FTEs	501-2000 FTEs	2001+ FTEs
→	Baseline	\$ 25,000	\$ 50,000	\$ 100,000	\$ 150,000	\$ 180,000	\$ 215,000	\$ 250,000
→	Silver	\$ 100,000	\$ 200,000	\$ 400,000	\$ 600,000	\$ 720,000	\$ 860,000	\$ 1,000,000
→	Platinum	\$ 200,000	\$ 400,000	\$ 800,000	\$ 1,200,000	\$ 1,440,000	\$ 1,720,000	\$ 2,000,000

# Baseline Requirements (for all award levels)

## 1. *Universal protections and benefits*

- All commitments must be applied **universally to all applicant's agricultural employees**, H-2A or otherwise at each work site within the applicant's operation. If awarded, all commitments in the Awardee's application must be included in their H-2A Job Order.

## 2. *Participation in FLSP research and reporting*

- Awardees must **participate in research** conducted by a non-partisan, third-party university partner selected by USDA. USDA requires that all Awardees agree to grant access to their full agricultural workforce (or contractors).

## 3. *Participation in Know Your Rights and Resources (KYRR) access and training*

- In-person **2-hour KYRR session** conducted by USDA cooperator partner at start of workers' contracts, on-site in a conducive environment **scheduled within two weeks** of employees' start date.

## 4. *Responsible Recruitment*

- Describe recruitment methods for U.S. and foreign workers.
- If using a private recruiter:
  - Disclose of the name of all agents and sub-contractors,
  - Recruiter is **registered in the country in which they recruit**, if available.
  - Submit **Recruiter Partner Letter** with recruiter's complete written responses

# Supplemental Employee Commitments for *Silver* and *Platinum*



<u>RESPONSIBLE RECRUITMENT</u>	<u>PAY, BENEFITS AND WORKING CONDITIONS</u>	<u>PARTNERSHIP AGREEMENTS</u>
<i>Silver</i> : recommended but not required	<i>Silver</i> : choose at least two	<i>Silver</i> : recommended, but not required
<ol style="list-style-type: none"> <li>1. Recruitment via NCA Ministries.</li> </ol>	<ol style="list-style-type: none"> <li>1. Overtime Pay</li> <li>2. Bonus Payment</li> <li>3. Paid Sick Leave</li> <li>4. Weekly Housing Maintenance Plan</li> <li>5. Collaborative Working Group</li> <li>6. Innovative External Partnership</li> </ol>	<ol style="list-style-type: none"> <li>1. Worker-Driven Social Responsibility (WSR) program</li> <li>2. Collective Bargaining Agreement (CBA)</li> <li>3. Committing to Neutrality, Access, and Voluntary Recognition</li> </ol>

# Supplemental Employee Commitments: Recruitment

## RESPONSIBLE RECRUITMENT

Silver: recommended, but not required

Platinum: required

1. Recruitment via Northern Central American (NCA) Ministries.

Grant applicants can recruit workers from US or any H-2A participating country. However, **additional incentives and increased application competitiveness** for NCA recruitment.

***Platinum commitment:*** recruitment of any **new individual H-2A workers** via *Ministries of Labor* in Guatemala and Honduras, and the *Ministry of Foreign Affairs* in El Salvador. No-cost to employers.

*For grantees (of any award level):* **NCA vetting and visa processing** is supported with free Consulate and Recruitment technical assistance.



# Project Evaluation Criteria

- *Applications will be **reviewed and scored competitively** using the criteria listed below.*
  - Alignment with FLSP Goals and complete Narrative Application Form
  - Responsible Recruitment
  - Supplemental Employee Commitments
  - Description of Employer Practices and Plans
  - Impact on your Operation
- *See **Section 6.0 Project Evaluation Criteria** in NFO for more details.*

# Key steps in applying to FLSP



## 1. Set up your required accounts.

- Obtaining/existing UEI number (allow 7-10 days)
- Active Sam.gov account (allow 7-10 days)
- Obtaining/existing TIN/EIN (allow 2 weeks)
- Creating Grants.gov profile (allow 4 weeks)



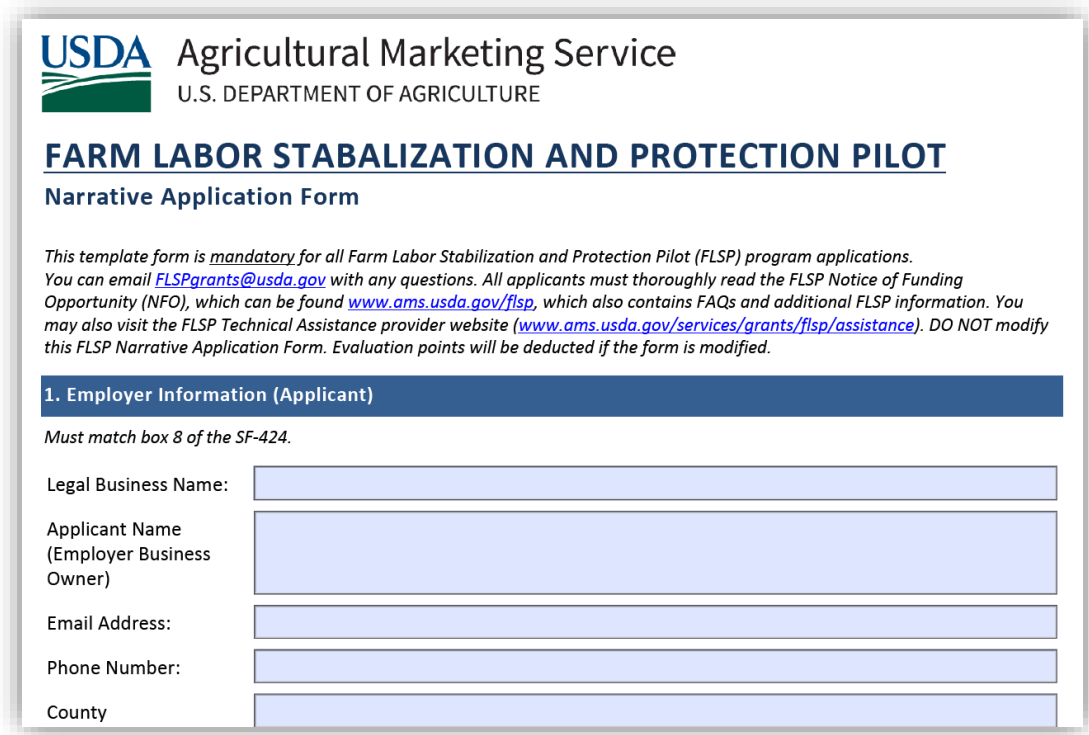
**\*\* NOTE: Cannot apply to the program without these preliminary steps \*\***

Please begin these steps if you are *\*considering\** applying to FLSP to prevent hiccups before 11/28 deadline. Begin these ASAP.

# Key steps in applying to FLSP

## 6. Fill out your application.

- All application forms/templates available on the FLSP website:  
[www.ams.usda.gov/flsp](http://www.ams.usda.gov/flsp) and [Grants.gov](http://Grants.gov) (Assistance Listing 10.978).
- All applications **must** be submitted electronically. Paper/mailed applications will not be accepted.



**USDA** Agricultural Marketing Service  
 U.S. DEPARTMENT OF AGRICULTURE

**FARM LABOR STABILIZATION AND PROTECTION PILOT**  
 Narrative Application Form

*This template form is mandatory for all Farm Labor Stabilization and Protection Pilot (FLSP) program applications. You can email [FLSPgrants@usda.gov](mailto:FLSPgrants@usda.gov) with any questions. All applicants must thoroughly read the FLSP Notice of Funding Opportunity (NFO), which can be found [www.ams.usda.gov/flsp](http://www.ams.usda.gov/flsp), which also contains FAQs and additional FLSP information. You may also visit the FLSP Technical Assistance provider website ([www.ams.usda.gov/services/grants/flsp/assistance](http://www.ams.usda.gov/services/grants/flsp/assistance)). DO NOT modify this FLSP Narrative Application Form. Evaluation points will be deducted if the form is modified.*

**1. Employer Information (Applicant)**

*Must match box 8 of the SF-424.*

Legal Business Name:

Applicant Name (Employer Business Owner)

Email Address:

Phone Number:

County

# Important Dates

## Application Opens:

- September 22, 2023

## Application Closes:

- January 3, 2024, at 11:59 p.m. Eastern Time

A red starburst graphic with a jagged, multi-pointed border, containing the text "New date!" in white, bold, sans-serif font.

**New date!**

*If we don't get to your question now, we will follow up by FAQs and/or email*

## **More Questions?**

- Attend USDA Office Hours
- Tune into weekly FSLP webinars (live, or recordings posted online)
- Check the FAQs! Updated weekly: [www.ams.usda.gov/services/grants/flsp/faq](http://www.ams.usda.gov/services/grants/flsp/faq)
- Email [FLSPgrants@usda.gov](mailto:FLSPgrants@usda.gov)

# Introducing

# Seso

**FLSP Technical  
Assistance Provider**



**Daniel Ross**  
H-2A Compliance  
Attorney

# Seso's Technical Assistance

Timeframe	Resources Available
During the FLSP application window	<ul style="list-style-type: none"> <li>• Webinars</li> <li>• Office Hours</li> </ul>
During the FLSP award performance period	<ul style="list-style-type: none"> <li>• Intake survey (to target your TA needs)</li> <li>• Webinars</li> <li>• Office Hours</li> <li>• 1:1 Consultation</li> <li>• H-2A Compliance Software</li> <li>• NCA Worker Recruitment</li> <li>• NCA Consulate Services</li> </ul>

**Bring all your H-2A questions to the Seso team of experts**

# H-2A Program Basics

The H-2A temporary agricultural program assists employers facing a shortage of domestic workers by allowing them to bring foreign workers to the U.S. for temporary or seasonal agricultural work, such as planting, cultivating, and harvesting.

Seasonal work is tied to specific times of the year due to events or patterns, like annual growing cycles.

To participate, you work with your State Workforce Agency to recruit U.S. workers. They will publicly post your job order, and you must accept eligible referrals and contact former U.S. employees. If a qualified U.S. worker applies, you must employ them for at least 50 percent of the work contract period. After reaching 50 percent, you have no further obligation to hire.



# Key H-2A Employer Obligations

- **Recruitment:** Employers must recruit and offer jobs to qualified US workers first, and continue recruiting until 50% of contract period
- **Corresponding Employment:** US and H-2A workers must receive same pay and benefits for same work, with no preferential treatment
- **Written Disclosure:** Disclose all terms and conditions of employment to applicants in writing
- **Wages:** Pay H-2A and US workers the highest of AEWR, prevailing wage, bargaining wage, or minimum wage
- **Housing & Transportation:** Provide free, approved housing and transportation to H-2A workers, and pay visa and inbound/outbound travel costs

# H-2A Housing

- Provide **free housing meeting OSHA standards**
- Ensure adequate beds, bathrooms, kitchen and laundry access
- Full kitchen with appliances, cookware for meal prep
- Onsite laundry facilities or transport to laundromats
- **Frequently self-inspect housing** for damage, hazards
- Request inspections early

# H-2A Simplified Timeline

- **Submit ETA-790A** Job Order to State Workforce Agency **60-75 days** before contract start date
- **Submit ETA-9142A** H-2A Application to Department of Labor upon ETA-790A approval, no later than **45 days** before start date
- Department of Labor accepts ETA-9142A application within 7 days, opening interstate recruitment
- **File initial recruitment report** showing efforts to hire U.S. workers
- Receive labor certification decision on ETA-9142A from Department of Labor around 30 days before start date
- **Submit I-129** Visa Petition to USCIS after receiving ETA-9142A labor certification
- **Schedule worker visa interviews**, admission at port of entry, and travel to worksite **10-15 days** before contract start date

# Pre-Submission Compliance Checks

- Analyze job duties for **SOC code wage considerations**
- Accurately **project your labor needs** and account for changes affecting seasonality
- Confirm **contract dates, grower agreements, and job sites**
- Obtain **workers' compensation policy**; must be valid for entire contract period and valid in all states where work will be performed
- Plan for **transportation**; daily inbound/outbound transportation plan must be provided at time of filing
- **FLC considerations** (valid FLC card, grower contracts, surety bond)

# Domestic Recruitment

- **H-2A employers must engage in positive recruitment of U.S. workers** from when the job order is accepted until the halfway point of the contract.
- Recruitment includes posting job openings on state job websites, referral of candidates by the State Workforce Agency, and requiring employers to interview and document all U.S. applicants.
- **Preferential hiring practices favoring foreign workers are prohibited** - U.S. applicants can only be rejected for lawful, job-related reasons.
- Employers should contact former U.S. employees to offer them work under upcoming H-2A contracts.
- **Employers must document all recruitment efforts in reports to the Department of Labor to demonstrate there are no available U.S. workers before foreign workers can be hired.**

# Worker Arrival and In-Season Management

- Begin accounting for **three-quarter guarantee** or H-2A workers upon date of arrival
- Adhere to the “**20% rule**”, which allows H-2A workers to perform minor, incidental duties not listed on the job application, as long as these duties do not exceed 20% of total work time
- **Report ending employment / termination for cause / abscondment events** to the DOL & USCIS no later than 2 business days after the last day of work
- Stay informed of **wage changes** and new rule implementations that can occur in-season
- **Reimburse all inbound expenses** during first work week (FLSA minimum wage implications)
- Conduct regular in-season **housing inspections**
- Document all **disciplinary actions**

# End of Season Considerations

- **Three-quarter guarantee implications:**
  - Accurate accounting that each worker has met their three-quarter guarantee OR has been paid out the remaining balance
- **Early completion of contract and layoffs:**
  - No need to report workers if sent home within 30 days of originally scheduled end date
  - Employers cannot lay off U.S. workers doing the same job as H-2A workers as long as even one H-2A worker is still employed
- H-2A employers are required to provide or advance money for **outbound transportation** and subsistence to workers who complete the contract.
- H-2A workers receive a **30-day grace period** after their authorized stay ends to settle affairs and depart the US, but they may not work or receive compensation during this time.
- Employers must **retain records for at least 3 years** after the end of the certification period: recruitment records, payroll, contracts, housing inspections, reimbursements, notifications, I-9s, and other documentation.

*If we don't get to your question now, we will follow up by FAQs and/or email*

## **More Questions?**

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