

H-1B TEMPORARY WORKER INFORMATION AND PROCESSING PROCEDURES

Important Note to the Department Representative and/or Supervisor of Foreign National: If you have never handled H-1B immigration matters on behalf of your department, please contact an OISS scholar advisor for a review of U.S. Citizenship and Immigration Services (USCIS) and Department of Labor (DOL) regulations and processing procedures regarding this immigration status.

BASIC REQUIREMENTS & GENERAL INFORMATION

The H-1B Temporary Worker non-immigrant classification may be granted to a foreign national who will perform services/work on a temporary basis in specialty occupations, defined as those positions requiring:

- a) A theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor as architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts; and
 - b) A bachelor's or a higher degree in the specific specialty as a minimum for entry into the occupation in the United States.
- ❖ H-1B status may be granted by USCIS in increments of three years or less, depending on the length of employment authorization requested by the department. H-1B applications should not be requested for a period longer than **guaranteed** funding availability.
 - ❖ The maximum time permitted in H-1B status is six years, which is reduced by any prior periods of stay in any H or L classification (including H-4 dependent status). Previous periods in H or L status are not counted toward the six-year maximum if the individual was outside of the U.S. for at least twelve (12) months following the time spent in H or L status.
 - ❖ An appropriate entry visa is needed when a foreign national, except Canadian citizens, enters or reenters the U.S. (few exceptions – please contact OISS for details). If an H-1B applicant is outside the U.S., they will need time to apply for an H-1B visa at a U.S. consulate in order to enter the U.S. Having approval of H-1B status from USCIS does not guarantee issuance of an H-1B visa (travel document) by a U.S. consulate. **The H-1B approval notice (I-797) is not a visa, nor may it be used in place of an H-1B visa to enter/reenter the U.S.** H-1B employees are eligible to enter the U.S. 10 days prior to the employment start date.
 - ❖ In the case of H-1B extensions of the same position, the individual may continue their employment up to 240 days if an extension request was submitted to USCIS prior to the end of the previous H-1B period. This 240-day rule only applies to the scholar residing in the U.S., not to Canadians who commute to the U.S. from Canada.
 - ❖ H-1Bs are approved **for a specific job at a specific employer at a specific location** (city and state). Any changes require prior consultation with OISS and possibly a prior approval by USCIS. H-1B employees are not allowed to receive honorariums.
- 42 W. Warren, Suite 416 • Detroit, Michigan 48202 • (313) 577-3422 • Fax (313) 577-2962 • www.oiss.wayne.edu
- ❖ Positions used in the H-1B process must be paid hourly or salaried, and must meet the WSU “actual” wage and DOL “prevailing” wage regulations as guaranteed by a certified Labor Condition Application (LCA).

- ❖ **PORTABILITY RULE:** Effective October 18, 2000, a new H-1B bill was signed into law (S.2045), which allows current H-1B status holders to begin new employment upon filing of a new petition at a new place of employment (WSU). With an official receipt notice (rather than an approval notice) from USCIS, OISS can authorize a person to begin working at WSU. Of course, if WSU's H-1B petition is later denied, they should stop working immediately.
- ❖ **RETURN TRANSPORTATION:** Please note that departments are responsible for the reasonable costs of **return transportation** of the foreign national abroad (last place of foreign residence) if they are dismissed from employment before the end of the authorized H-1B period **for any reason**.
- ❖ **Please advise the H-1B employee and their family members to consult with an OISS scholar advisor prior to traveling outside the U.S. as immigration regulations change constantly.**
- ❖ Only spouses and children under 21 may accompany the foreign national in the dependent H-4 status. H-4 dependents may not work under any circumstances.
- ❖ Persons who are or have been in J-1 or J-2 status and are subject to the "Two Year Home Country Physical Presence Requirement" are not eligible for H-1B status until the requirement is fulfilled or a waiver is obtained.

Effective November 23, 2010 USCIS added a Deemed Export Section to all H-1B Petitions that must be answered and signed off by the department, prior to OISS submitting the petition.

THE H-1B APPLICATION PROCESS AND TIMELINES

All H-1B applications, including amendments, extensions, concurrent employment, etc., require three steps (in the case of represented positions, Step 1 can be substituted by collective bargaining agreements). **All completed H-1B requests, including checks, should be submitted to OISS no later than six months prior to the start date if new or expiration date of current H-1B if requesting an extension or transfer/portability. Currently it is taking about 3 months to receive the Prevailing Wage and Labor Certification. OISS cannot submit the petition to USCIS until the Prevailing Wage Determination and approved Labor Certification is received. Petitions submitted after 6 months are a risk to a new person starting their new position on the proposed start date, or could potentially cause an existing H-1B to fall off of payroll.**

After all of the steps below are completed it takes an additional total processing time for an H-1B petition between 3½ to 4 months after the petition is mailed to USCIS.

Expedited processing called "Premium Processing" takes 15 days to receive a response from USCIS.

Below are the processing steps and timelines:

STEP 1: Prevailing Wage Determination (PWD) takes up to 60 days to obtain. DLEG must certify the "prevailing wage" in the field for the type of position. The H-1B employees must be paid at or above the DLEG prevailing wage determination, or the actual wage within the department/college, whichever is higher.

STEP 2: Labor Certification Application (LCA) takes up to an additional 2-4 weeks to be certified after we receive the approved prevailing wage. DOL must certify an LCA submitted by

OISS. On the LCA, WSU attests to the terms and conditions of employment and agrees to abide by the labor conditions listed on the LCA.

STEP 3: USCIS in Laguna Niguel, California (must approve the H-1B petition (I-129). WSU as employer is the petitioner, and OISS signs the legal forms on behalf of WSU for the DOL and USCIS. **Only OISS is authorized to process the H-1B on behalf of WSU. Departments and prospective H-1B employees MAY NOT USE AN OUTSIDE ATTORNEY TO PREPARE A WSU H-1B PETITION.**

Note – OISS charges a \$700 processing fee to process an H-1B application. A request for Prevailing Wage Determination (PWD) prior to submitting a complete H-1B application is \$200. Should you later decide to proceed with the rest of the H-1B filing (i.e., LCA and I-129), \$200 will be deducted from the \$700 processing fee *if it occurs within 90 days from obtaining the prevailing wage determination* as the PWD is valid only for 90 days. If the rest of the application is submitted to OISS after the 90-day window, please send the IRB for \$700 as OISS will have to re-do the PWD. USCIS' expedited premium processing is \$1,225 (effective 11/23/2010) in addition to the other filing and processing fees. Please remember that USCIS guarantees a response within 15 days and this does not necessarily mean an approval.

THE ROLE OF OISS

- ❖ Upon receiving an H-1B request, OISS will send confirmation of receipt of the H-1B request to the hiring department via e-mail. This e-mail will also indicate the name, telephone number, and e-mail address of the OISS scholar advisor assigned to the case.
- ❖ OISS will determine if actual wage requirements are being met based on information provided on the "Actual Wage Worksheet" completed by the hiring department.
- ❖ If necessary (when a position is not covered by a union contract), OISS will submit a prevailing wage determination to DLEG. It will take approximately up to 60 days for DLEG to provide a prevailing wage determination.
- ❖ Once the prevailing wage determination is returned, OISS will ensure that the DOL prevailing wage regulations are being met. If the department is offering a salary lower than the prevailing wage, OISS will contact the department's administrative contact person to discuss options. Please note that prevailing wages change yearly, and it may be necessary to increase the H-1B worker's wage at the time of an extension.
- ❖ Once the LCA is certified, OISS will prepare an I-129 petition and supporting documents for the H-1B petition and will send the entire petition to USCIS by an express service.
- ❖ OISS will receive the original H-1B approval notice (I-797) from USCIS, at which time the department will immediately be notified of any action needed. H-4 approval notices for dependents will be sent directly to the address listed on Form I-539 (completed by dependents).

NOTE: If you are requesting an H-1B application for a prospective teaching faculty, please contact OISS immediately to discuss possible permanent residency sponsorship. There is a limited window of time in which you can use the same recruitment procedures used to fill the H-1B position in the permanent residency application which saves the department time, and re-recruitment dollars.

H 1B TEMPORARY WORKER APPLICATION CHECKLIST

| Name | Banner ID |
|---|-----------|
| <input type="checkbox"/> An IRB for \$700 made payable to OISS. (must be paid by the hiring department) | |
| <input type="checkbox"/> A check for \$500 made payable to Department of Homeland Security to cover the Fraud Prevention and Detection Fee. (must be paid by the hiring department) | |
| <input type="checkbox"/> A check for \$460 made payable to Department of Homeland Security to cover the filing fee for the I-129 petition. (must be paid by the hiring department) | |
| <input type="checkbox"/> A check for \$2500 made payable to Department of Homeland Security for premium processing. | |
| <input type="checkbox"/> H-1B Request Form – Part A (to be completed by the hiring department) | |
| <input type="checkbox"/> H-1B Request Form – Part B (to be completed by the foreign national) | |
| <input type="checkbox"/> Copy of Wayne State University’s offer letter | |
| <input type="checkbox"/> Copy of Description of Position | |
| <input type="checkbox"/> Copy of Job Posting from WSU Online Hiring System (If Job Posting is not required, state so on top of the H-1B Request Form in big, bold, letters) | |
| <input type="checkbox"/> Actual Wage Worksheet | |
| <input type="checkbox"/> Copy of transcripts and diplomas | |
| <input type="checkbox"/> Copy of curriculum vitae | |
| <input type="checkbox"/> Copy of credential evaluation (if degree was earned outside of the U.S. including Canada) | |
| <input type="checkbox"/> Copy of beneficiary’s passport showing validity date (The passport cannot be 6 months or less away from expiration) | |
| <input type="checkbox"/> Copy of beneficiary’s I-94(s), if the person is in the U.S. | |
| <input type="checkbox"/> Copy of current/previous H-1B/H-4 approval notices (if applicable) | |
| <input type="checkbox"/> Copy of beneficiary’s previous I-20(s), DS-2019/IAP-66(s), DS-2019(s) or EAD (if applicable) | |
| <input type="checkbox"/> If J-1 subject to 212(e), USCIS waiver approval notice or Department of State’s waiver recommendation letter | |
| <input type="checkbox"/> Portability (H-1B transfer from other employer to WSU): 2-3 recent pay stubs and a letter from current Employer | |
| <input type="checkbox"/> Concurrent H-1B: Copy of the other LCA, Offer Letter & Approval Notice. | |
| <input type="checkbox"/> Form I-539 (if dependents in the U.S. – to be completed by dependents) | |
| <input type="checkbox"/> Form I-539A (supplemental information to the I-539) | |
| <input type="checkbox"/> A check for \$370 payable to Department of Homeland Security for I-539 filing fee | |
| <input type="checkbox"/> A separate check for \$85 payable to Department of Homeland Security to cover the biometric services fee | |
| <input type="checkbox"/> Copy of dependent’s passport & I-94 card | |
| <input type="checkbox"/> Proof of relationship, such as a marriage certificate for a spouse and a birth certificate for children | |
| <input type="checkbox"/> Other | |

SAMPLE ----- Prepare on the department letterhead.

DESCRIPTION OF POSITION
(Duties and Responsibilities)

POSITION DUTIES

As an Assistant Professor of Mathematical Sciences at Wayne State University, (*name of prospective H-1B employees*) will have the following duties and responsibilities:

1. Conducting research in applied mathematics, more specifically in the are of nonlinear hyperbolic conservation laws and their applications;
2. Teaching courses in mathematics at both the undergraduate and graduate levels;
3. Supervising two Ph.D. candidates;
4. Serving on the departmental committees; and
5. Performing services that are necessary to implement the educational programs and academic objectives of the department

REQUIREMENTS FOR POSITION

A Ph.D. in Mathematics or related field plus two years of relevant teaching experience are the standard requirements for a tenure-track Assistant Professor position at Wayne State University.

Signature: _____

Name & Title of Supervisor: _____

H 1B TEMPORARY WORKER APPLICATION CHECKLIST

| Name | Banner ID |
|--|-----------|
| <input type="checkbox"/> An IRB for \$700 made payable to OISS. (must be paid by the hiring department) | |
| <input type="checkbox"/> A check for \$460 made payable to Department of Homeland Security to cover the filing fee for the I-129 petition. (must be paid by the hiring department) | |
| <input type="checkbox"/> A check for \$2500 made payable to Department of Homeland Security for premium processing. | |
| <input type="checkbox"/> H-1B Request Form – Part A (to be completed by the hiring department) | |
| <input type="checkbox"/> H-1B Request Form – Part B (to be completed by the foreign national) | |
| <input type="checkbox"/> Copy of Wayne State University’s offer letter | |
| <input type="checkbox"/> Copy of Description of Position | |
| <input type="checkbox"/> Copy of Job Posting from WSU Online Hiring System (If Job Posting is not required, state so on top of the H-1B Request Form in big, bold, letters) | |
| <input type="checkbox"/> Actual Wage Worksheet | |
| <input type="checkbox"/> Three (3) recent pay stubs | |
| <input type="checkbox"/> Copy of curriculum vitae | |
| <input type="checkbox"/> Copy of beneficiary’s passport (if changes) | |
| <input type="checkbox"/> Copy of beneficiary’s I-94 (if changes) | |
| <input type="checkbox"/> Copy of current/previous H-1B/H-4 approval notices (Provide all H-4 approval notices and non-WSU H-1B approval notices) | |
| <input type="checkbox"/> Concurrent H-1B: Copy of the other LCA, Offer Letter & Approval Notice. | |
| <input type="checkbox"/> Form I-539 (if dependents in the U.S. – to be completed by dependents) | |
| <input type="checkbox"/> Form I-539A (supplemental information to the I-539) | |
| <input type="checkbox"/> A check for \$370 payable to Department of Homeland Security for I-539 filing fee | |
| <input type="checkbox"/> A separate check for \$85 payable to Department of Homeland Security to cover the biometric service fee | |
| <input type="checkbox"/> Copy of dependent’s passport(s) & I-94(s) | |
| <input type="checkbox"/> Proof of relationship, such as a marriage certificate for a spouse and a birth certificate for children | |

H-1B REQUEST FORM – PART A (To Be Completed by WSU Employing Department)

A. GENERAL AND POSITION INFORMATION

Hiring Department: _____ College/Division: _____

Name of foreign national: _____
Last name First name Middle name

Position Title: _____ Banner ID (if applicable): _____

Please check: New H-1B Extension w/o changes New Concurrent employment
 Extension of Concurrent Employment Change of employer (non-WSU to WSU)
 Amendment (including transfer w/WSU) – explain: _____
 New Concurrent employment with UPG full-time _____ part-time _____
 Other: _____

Will the employee mentioned above work **only** for Wayne State University?
 Yes No (attach the other H-1B receipts or approval notices, LCA & Offer Letter)

Explanation: _____

Will the employee be able to produce a Wayne State paycheck for the wage that will be certified for this petition if that information is requested by USCIS?

Yes No If No, please attach an explanation

The position is (check all that apply): Temp Permanent Tenure Track Non-Tenure Track

Union Representation (if applicable): AAUP P & A Other: _____

The position is: Full time: Salary Offered \$ _____ (specify if 9-month) # of hours per week _____
 Part time: Hourly rate offered \$ _____ **AND** Annual salary offered: \$ _____
of hours per week _____

(If there will be any period, such as WSU Holiday Closure, when they will not get paid, put a range of hours starting with "zero," such as "0 to 30 hours per week")

*** In the case of part-time H-1B petitions, the hiring department, not the H-1B employee, MUST document in writing the number of hours per day & per week the H-1B employee worked for the entire duration of the part-time H-1B validity period.**

Duration of employment (as appears on the letter of offer): from _____ to _____

Hourly Work Schedule: _____ i.e. (Monday – Friday 8:30 a.m. – 5:00 p.m.)

Will travel be required to perform the job duties? Yes No

If yes, explain the travel requirements: _____

Does compensation package include fringe benefit? Yes, value of benefits \$ _____ No

Place of Employment Information:

Address where the foreign national will work:

Street City State Zip Code

Will work be performed in multiple worksites within an area of intended employment or location (s) other than the address listed above?
 Yes No

If yes, identify the geographic place(s) of employment with as much specificity as possible:

Beginning January, 2010

USCIS says that "an employer who seeks to sponsor a temporary worker in an H-1B specialty occupation is required to establish a valid employer-employee relationship." The memo instructs adjudicators that a petitioner "must be able to establish that it has control over when, where, and how the beneficiary performs the job," and lists 11 factors that an adjudicator can consider (with no one factor being decisive) when evaluating whether a petitioner has satisfactorily established the required employer-employee relationship. **Please check all that are applicable:**

- Does the petitioner supervise the beneficiary and is such supervision off-site or on-site?
- If the supervision is off-site, how does the petitioner maintain such supervision, i.e. weekly calls, reporting back to the main office routinely, or site visits by the petitioner?
- Does the petitioner have the right to control the work of the beneficiary on a day-to-day basis if such control is required?
- Does the petitioner have the tools or instrumentalities needed for the beneficiary to perform the duties of employment?
- Does the petitioner hire, pay, and have the ability to fire the beneficiary?
- Does the petitioner evaluate the work-product of beneficiary, i.e. progress/performance review?
- Does the petitioner claim the beneficiary for tax purposes?
- Does the petitioner provide the beneficiary with any type of employee benefits?
- Does the beneficiary use proprietary information of the petitioner in order to perform the duties of employment?
- Does the beneficiary produce an end-product that is directly linked to the petitioner's line of business?
- Does the petitioner have the ability to control the manner and means in which the work product of the beneficiary is accomplished?
- Does the petitioner will employ the beneficiary to perform job duties that directly and predominately furthers the normal, primary, or essential purpose, mission, objectives, or function of Wayne State University?

Therefore, the relationship test is met if petitioner is able to present evidence to establish its right to control the beneficiary's employment, if requested by USCIS.

Beginning December 22, 2010

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

Check Box 1 or Box 2:

- 1. A license is not required from either U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; OR
- 2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

If you have any questions regarding deemed export, please visit Wayne State University Division of Research export control website at <https://research.wayne.edu/integrity/export-control>

B. DEPARTMENT CHAIR'S ATTESTATIONS *(must be signed by the chair, not by their designee)*

- By submitting this request to begin the H-1B petition process, I understand that the H-1B employee should be paid the higher of the prevailing wage (as determined by the Department of Labor (DOL) – the weighted average rate of wages paid to workers similarly employed in the area of intended employment) **OR** the actual wage (being paid to all other WSU individuals with similar experience or qualifications for the employment in question), whichever is higher.
- By submitting this request, I agree to the terms and conditions of the labor condition application (submitted to DOL by OISS based on the application submitted by the hiring department) for the duration of the H-1B employee's authorized period of stay for the H-1B employment.
- I certify under penalty of perjury that the information submitted is true and correct to the best of my knowledge. I understand that the supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, including on-site compliance review.
- By submitting this request, I certify that the employer will be liable for the reasonable costs of return transportation of the H-1B employee abroad if they are dismissed from employment by the employer for any reason before the end of the H-1B period.
- I agree that the department will consult with an OISS scholar advisor prior to any H-1B terminations or resignations.
- I understand that H-1B status may be granted in up to three-year increments, not to exceed six years total.

Department Chair's Signature: _____

Date: _____

Chair's Name: _____

C. ADMINISTRATIVE CONTACT INFORMATION

Name: _____ Title: _____

Phone: _____ Fax: _____ E-mail: _____

Address: _____

Street City State Zip Code

D. PRINCIPAL INVESTIGATOR CONTACT INFORMATION

Name: _____ Title: _____

Phone: _____ Fax: _____ E-mail: _____

Address: _____

Street City State Zip Code

Office of International Students and Scholars
Wayne State University

42 W. Warren, Suite 416 ♦ Detroit, Michigan 48202 ♦ (313) 577-3422 ♦ FAX (313) 577-2962 ♦ OISSscholars@wayne.edu

H-1B REQUEST FORM – PART B (To Be Completed by Foreign National)

PLEASE DO NOT LEAVE ANYTHING BLANK AS INFORMATION BELOW IS REQUIRED FOR FILING.

PERSONAL INFORMATION

Full Legal Name: _____
Last/Family Name First Name Middle Name

All Other Names Used (including maiden name, etc.): _____

Current Address: _____
Street City State Zip Code

Mailing Address, if different: _____
Street City State Zip Code

Foreign Address: _____
Street City State Zip Code

Phone: _____ Fax: _____ E-mail: _____

Country of Citizenship: _____

Country of Permanent Residence (*not U.S.A.*): _____

City, Province and Country of Birth: _____
City Province Country

Date of Birth: _____ Male Female Dr. Mr. Ms. Mrs.
Month/Day/Year

U.S. Social Security #: _____ WSU ID/Banner ID: _____

Employee Signature: _____ Date: _____

IMMIGRATION STATUS INFORMATION

1. Class of last nonimmigrant admission to the U.S., e.g., H-1B, F-1, J-1, etc.: _____

2. Current nonimmigrant status: _____ Expiration Date: _____

3. SEVIS# (if any): _____ EAD# (if any): _____

4. Are you or will be working for more than one H-1B employer?

No Yes (Attach a copy of any non-WSU H-1B approval and/or receipt notices)

Explanation: _____

5. Current I-94 number (11 digits): _____

6. Most recent date of arrival in the U.S.: _____

DEPENDENT INFORMATION

1. If your Spouse is currently in U.S., what is their immigration category: _____
Date of Expiration: _____
2. Is your Spouse currently in the process of changing their current immigration status to a different category within U.S.? If yes, provide the documents.

List your spouse or minor children who are currently present in the U.S. needing extension of H-4 status or change of status to H-4. If any, please enclose one original Form I-539 (completed) for all dependents.

| Family Name | Given Name | Age | Relationship | Immigration Status |
|-------------|------------|-----|--------------|--------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

PROCESSING INFORMATION

(REQUIRED from everyone) Indicate city and country of a U.S. consulate (Canadian Citizens indicate port of entry) at which you will apply for the H-1B visa in the event that your change of status or extension of stay is denied, or if you are outside the U.S. (except Canadian citizens, do not put "Detroit, MI"):

_____ City _____ Country

Answer the following questions. If you answers "YES" to any questions, please explain on a separate paper & attach copies of relevant documents.

| | YES | NO |
|--|-----|----|
| Are you or any other person included on this form, an applicant for an immigrant visa or adjustment of status to lawful permanent resident? <i>*A pending labor certification is neither immigrant visa nor adjustment of status.</i> | | |
| Has an immigrant petition ever been filed for you or any of your dependents? | | |
| Have you or any accompanying dependents even beer arrested or convicted of any criminal offense? | | |
| Have any dependents been employed in the U.S. since last admitted or granted a change of non-immigrant status? If yes, give the following: name of employer, department, name of immediate supervisor, phone number, and address: | | |
| Have you or any accompanying dependents <u>EVER</u> been subject to the J Exchange Visitor Two Year Home Residency Requirement? If YES please list dates: | | |
| Have you or any accompanying dependents ever been denied a visa, a change of status, or admission to the United States? | | |
| Is any person in this petition in removal proceedings? | | |

PLEASE RETURN THIS FORM TO THE ADMINISTRATIVE CONTACT PERSON IN THE WSU EMPLOYING DEPARTMENT ALONG WITH REQUIRED SUPPORTING DOCUMENTS AS OUTLINED IN THE H-1B CHECKLIST.

ACTUAL WAGE WORKSHEET

Federal law requires employers to document that H-1B workers will not be paid less than the actual wage paid to other similarly employed workers at Wayne State University. Below, please provide the required information on similarly employed workers in the hiring department/unit. Begin the comparison with individuals holding the same title and doing comparable work to what the H-1B worker will be doing. If there are no others with the same title, compare the H-1B worker's position with other positions having similar duties. It may be necessary to obtain comparative data from other units within your college or division.

The rationale for arriving at the salary for each worker should be clear. Total experience, qualifications, education, job responsibilities and functions, specialized knowledge, and other legitimate factors (i.e., publications, patent development, receipt of an international prize, or other meritorious performance rewarded as part of a defined pay system of WSU) may be considered. Please note that **limited grant or department funding is not a legitimate reason for paying less, nor are market conditions**. The Labor Condition Application (LCA) cannot be filed until this worksheet has been adequately completed by the hiring department/unit.

| Title of Similarly Employed Worker | Annual Salary | Hours Per week |
|------------------------------------|---------------|----------------|
| | | |
| | | |
| | | |
| | | |

A detailed explanation is required if the H-1B worker will be paid less than any other similarly employed worker (specific # no years of experience, etc.); _____

Actual Wage Data Provided by:

Name: _____ Signature: _____ Date: _____

* In addition, H-1B workers must not be paid less than similarly employed workers in the geographic area. This figure, called a "prevailing wage," will be obtained from the Michigan Department of Labor & Economic Growth unless the position is represented by a union. The hiring department will be informed by OISS if there is a problem with this wage.

MEMORANDUM: OISS Processing and USCIS Filing Fees for H-1B Workers

In late 2000, the United States Department of Labor (DOL) published a final rule implementing changes to the H-1B Labor Condition Application (LCA) process called for by the American Competitiveness and Workforce Improvement Act of 1998 and the American Competitiveness in the 21st Century Act of 2000. While most of the regulations affect record keeping and filing practices handled by the Office of International Students and Scholars (OISS), one regulatory change directly impacts Wayne State departments interested in petitioning for H-1B status on behalf of prospective employees.

In most cases, Wayne State departments are no longer permitted to pass along the OISS H-1B processing fees of \$700 and the U.S. Citizenship and Immigration Services (USCIS; formerly INS) filing fee of \$460 (effective 12/23/2016) to H-1B employees. Requiring such individuals to pay these fees now constitutes an unauthorized deduction in the H-1B wage as certified on DOL Form ETA-9035, Labor Condition Application (LCA).

Requiring H-1B workers to pay the OISS processing fee and the USCIS filing fee is now only permitted in cases when the salary paid to the H-1B employee is at least \$1,225 more than the prevailing wage as certified by DOL. In addition, the employee must be made aware of the deduction prior to commencement of employment and, if the deduction was a condition of employment, it must be mutually agreed upon and should be clearly identified as such.

Example A: Prospective H-1B employee is offered a WSU salary of \$30,000. The LCA used to verify the actual and prevailing wage requirements have been met indicate that the prevailing wage for the position in question is \$30,000. The WSU hiring department must cover the OISS processing and USCIS filing fees.

Example B: Prospective H-1B employee is offered a WSU salary of \$31,225. The LCA used to verify that the actual and prevailing wage requirements have been met indicate that the prevailing wage for the position in question is \$30,000. The WSU hiring department has the option to cover the OISS processing and/or USCIS filing fees, or pass these fees along to the employee as long as there is a mutual agreement prior to the commencement of H-1B employment.

Please contact OISS should you have any questions or concerns regarding this matter.