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| U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210 | CLASSIFICATION ES |
| | CORRESPONDENCE SYMBOL TEES |
| | DATE May 26, 1998 |

DIRECTIVE: GENERAL ADMINISTRATION LETTER NO. 2-98, Change 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : *David Henson for*
DAVID HENSON
Director
Office of Regional Management

SUBJECT : Prevailing Wage Policy for Researchers Employed by Colleges and Universities, College and University Operated Federally Funded Research and Development Centers, and Certain Federal Agencies

1. Purpose. To provide policy and procedural guidance for making prevailing wage determinations for researchers employed by colleges and universities, Federally Funded Research and Development Centers (FFRDC's) operated by colleges and universities, and certain Federal research agencies.

2. References. 20 CFR part 655, subparts H and I; 20 CFR part 656; and *Technical Assistance Guide (TAG) No. 656 Labor Certifications.*

3. Background. The Department recently published a Final Rule at 63 FR 13756 (March 20, 1998) which changed the way prevailing wage determinations are made for researchers employed by colleges and universities, FFRDC's operated by colleges and universities, and certain Federal research agencies. These policies and procedures apply under the permanent labor certification program as well as under the H-1B program for nonimmigrant professionals in specialty occupations.

4. Eligible Entities. All colleges and universities are eligible. A list of the FFRDC's operated by a college or university as of November 4, 1996, is attached. State Employment Security Agencies will be apprised on an ongoing basis of any changes to this list, as well as the names of any Federal research agencies which have successfully petitioned the Director of the U.S. Employment Service to obtain the benefit of the prevailing wage methodology provided by §656.40(c) .

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| RESCISSIONS | EXPIRATION DATE May 31, 1999 |
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5. Action Required. State Administrators are requested to:

A. Provide the attached policy and procedural guidance to appropriate staff.

B. Instruct staff to follow these policies and procedures in making prevailing wage determinations for researchers employed by colleges and universities, FFRDC's operated by colleges and universities, and Federal research agencies that have successfully petitioned the Director of the U.S. Employment Service in accordance with the Department's regulations at 20 CFR 656.50 to obtain the benefit of the prevailing wage methodology provided by §656.40(c).

C. Ensure that the state OES coordinator has provided the wage data obtained from the Occupational Employment Statistics (OES) survey supporting these R&D occupations to the alien labor certification unit.

6. Inquiries. Inquiries regarding this memorandum should be addressed to your Regional Office.

7. Attachments.

A. Prevailing Wage Policy for Researchers Employed by Colleges and Universities, College and University Operated Federally Funded Research and Development Centers, and Certain Federal Research Agencies.

B. List of R&D disciplines in colleges and universities under the OES survey.

C. List of FFRDC's operated by colleges and universities.

**Prevailing Wage Policy for Researchers Employed by
Colleges and Universities, College and University Operated
Federally Funded Research and Development Centers, and
Certain Federal Research Agencies**

I. Background

Section 656.40(c) of the Department of Labor's (Department's) regulations governing the alien labor certification program provides that:

Similarly employed in the case of researchers employed by colleges and universities, Federally Funded Research and Development Centers (FFRDC's) operated by colleges and universities, and Federal research agencies, means researchers employed by colleges and universities, FFRDC's operated by colleges and universities, and Federal research agencies

Thus, in the absence of an applicable wage determination issued under the Service Contract Act or set forth in a collective bargaining agreement, the prevailing wage rate for researchers employed by a college or university, an FFRDC operated by a college and university, or a Federal research agency which has successfully petitioned the Director of the U.S. Employment Service to obtain the benefit of the prevailing wage methodology provided by §656.40(c) [hereinafter referred to as "an approved Federal research agency(ies)"], is the average rate of wages paid to such workers in the area of intended employment.

These changes, which were made to the regulations at §656.40, became effective on May 4, 1998. Since these regulations govern all prevailing wage determinations other than the H-2A program, this guidance applies to the way State Employment Security Agencies (SESAs) will make determinations of prevailing wages under permanent alien labor certification program as well as the H-1B program for nonimmigrant professionals in specialty occupations.

II. Occupational Categorization of Workers in an Academic Discipline Under the OES Wage Survey

The only workers subject to these special procedures are those employees performing research relating to the occupation in which they are employed by a college or university, FFRDC operated by a college or university, or an approved Federal research agency.

The occupational categories for which the OES survey provides wage information that is to be used in providing prevailing wage data for researchers employed by such employers can be identified by the designation "R&D" within the occupational category in the OES Directory of Occupations. See Attachment B for a list of R&D disciplines in colleges and universities under the OES survey.

The OES survey breaks out workers employed by institutions of higher education according to the nature of the work they perform. For example, research chemists who perform complex research pertaining to the field of chemistry and are employed by an employer to which the special procedures at §656.40(c) apply would fall under the occupational category 24130, Physical Scientists, R&D.

Employees who teach courses for a college or university fall under the OES occupational category applicable to the appropriate academic discipline. Using the example from above, the appropriate occupational category to be applied would be 31204, Chemistry Teachers, Postsecondary.

Employees who are working in a particular academic discipline but are neither teaching at the Postsecondary level nor conducting research for a college or university, an FFRDC operated by a college or university, or an approved Federal research agency, would fall under the basic OES occupational category for that discipline. In keeping with the example from above, the appropriate occupational category to be applied would be 24105, Chemists.

III. Use of Employer-Provided Published Wage Surveys or Employer-Conducted Surveys

Item II.J. of GAL 2-98 sets forth the standards for the acceptability of employer-provided wage data. The fifth criterion contained in Item II.J., which requires that employer-provided wage data must have been collected across industries that employ workers in the occupation, shall not apply in the case of a request for acceptance of employer-provided wage data for a researcher to be employed by a college or university, an FFRDC administered by a college or university, or an approved Federal research agency. In lieu of this, to support the fifth criterion in Item II.J., the employer-provided wage data must include a representative sample of researchers employed by colleges and universities, FFRDC's administered by colleges and universities, and approved Federal research agencies in the area of intended employment.

The other six criteria contained in Item II.J. must be adhered to for employer-provided wage data to be acceptable for use in determining the prevailing wage for a researcher to be employed by an employer under the special procedures outlined at §656.40(c).

IV. Responses to Requests for Wage Determinations for Researchers Employed by Colleges and Universities, FFRDC's Operated by Colleges and Universities and Approved Federal Research Agencies

Item II.I. of GAL 2-98 sets forth the information that must be provided by an employer in requesting a prevailing wage determination. If it is not otherwise self-evident, a request for a prevailing wage determination for a researcher to be employed by a college or a university, an FFRDC operated by a college or a university, or an approved Federal research agency, should clearly indicate that the employer is seeking prevailing wage data under the special procedures that apply to such workers.

The SESA's response shall state the specific wage rate applicable to the employer's job opportunity, the source of such information, and shall indicate the OES occupational title followed by the designation "R&D" and Level (*e.g.*, "Life Scientist, R&D, Level I") so that it is clear that the determination was made in accordance with the special procedures outlined at §656.40(c).

Attachment B to GAL 2-98, Change 1

**R&D Disciplines in Colleges and Universities
Under the OES Survey**

| <u>OES Code</u> | <u>Title</u> |
|-----------------|---|
| 22150 | Engineers, R&D |
| 22540 | Engineering and Related Technicians and Technologists, R&D |
| 24130 | Physical Scientists, R&D |
| 24330 | Life Scientists, R&D |
| 24530 | Physical and Life Science Technicians and Technologists, R&D |
| 25113 | Systems Analysts, Electronic Data Processing, R&D |
| 25115 | Data Base Administrators, R&D |
| 25117 | Computer Support Specialists, R&D |
| 25122 | Computer Programmers, R&D |
| 25308 | Mathematical Scientists, R&D |
| 27107 | Urban and Regional Planners, R&D |
| 27112 | Psychologists, R&D |
| 27189 | All Other Social Scientists, R&D |
| 32307 | Occupational Therapists, R&D |
| 32316 | Speech-Language Pathologists and Audiologists , R&D |
| 32504 | Registered Nurses, R&D |
| 32524 | Dieticians and Nutritionists, R&D |
| 32959 | All Other Health Professionals, Paraprofessionals, and Technicians, R&D |
| 39989 | All Other Professional, Paraprofessionals, and Technical Workers, R&D |

**Federally Funded Research and Development Centers
Operated by Colleges and Universities**

- Ames Laboratory, Ames, IA
(Iowa State University of Science and Technology)
- Argonne National Laboratory, Argonne, IL
(University of Chicago)
- Brookhaven National Laboratory, Upton, Long Island, NY
(Associated Universities, Inc.)
- Ernest Orlando Lawrence Berkeley National Laboratory, Berkeley, CA
(University of California)
- Fermi National Accelerator Laboratory, Batavia, IL
(Universities Research Association, Inc.)
- Jet Propulsion Laboratory, Pasadena CA
(California Institute of Technology)
- Lawrence Livermore National Laboratory, Livermore, CA
(University of California)
- Lincoln Laboratory, Lexington, MA
(Massachusetts Institute of Technology)
- Los Alamos National Laboratory, Los Alamos, NM
(University of California)
- National Astronomy and Ionosphere Center, Arecibo, PR
(Cornell University)
- National Center for Atmospheric Research, Boulder, CO
(University Corporation for Atmospheric Research)
- National Optical Astronomy Observatories, Tucson, AZ
(Association of Universities for Research in Astronomy, Inc.)
- National Radio Astronomy Observatory, Green Bank, WV
(Associated Universities, Inc.)
- Oak Ridge Institute for Science and Education, Oak Ridge, TN
(Oak Ridge Associated Universities, Inc.)

Princeton Plasma Physics Laboratory, Princeton, NJ
(Princeton University)

Software Engineering Institute, Pittsburgh, PA
(Carnegie Mellon University)

Stanford Linear Accelerator Center, Stanford, CA
(Leland Stanford, Jr., University)

Thomas Jefferson National Accelerator Facility, Newport News, VA
(Southeastern Universities Research Association, Inc.)