

# Form I-129 H-1B Adjudication



U.S. Citizenship  
and Immigration  
Services

# 2/22/2018 Contracts & Itineraries Memo

- Intended to be read together with the Employer-Employee (E-E) Memo (January 8, 2010)
- Discusses potential employer violations arising when petitioners place employees at 3<sup>rd</sup> party worksites

# Contracts & Itineraries Memo, cont'd

- Evidence, such as contracts and work orders, may demonstrate that, for the duration of the validity period:
  - Beneficiary will be employed in a specialty occupation
  - Employer will maintain an E-E relationship with beneficiary for the duration of the validity period
- Contracts that merely set forth the general obligations of the parties, and that do not provide specific information pertaining to the work to be performed, may be insufficient

# Contracts & Itineraries Memo, cont'd

- Itineraries are a regulatory requirement for petitions requiring services to be performed in multiple locations
  - The itinerary must include the dates and locations of the services to be provided
- The inclusion of a worksite on an itinerary is not required if it is not required on the LCA because:
  - The petitioner establishes that the location is not a “place of employment” under 20 CFR 655.715
    - Peripatetic workers
    - Workers who travel occasionally
- Detailed itineraries can assist in demonstrating non-speculative employment in a specialty occupation for entire validity period

# Contracts & Itineraries Memo, cont'd

- If eligibility is established, adjudicators should limit the approval period to the length of time demonstrated that the beneficiary will be placed in non-speculative work, and that the petitioner will maintain the requisite employer-employee relationship as documented by contracts, SOWs, etc.
- Extension requests should also establish that all H-1B requirements were met for entire prior approval period

# Wage Level Analysis Guidance

- Clarifying internal guidance in relation to March 31, 2017, Rescission memo
- Meant to assist adjudicators in determining whether the wage level listed on the LCA is “clearly inconsistent” with the proffered position
- Provides additional information regarding DOL’s process
- Not comprehensive guidance and not intended to replace the 2009 DOL guidance

# Wage Level Analysis Guidance

- A Level 1 wage would not be appropriate if:
  - The Petitioner’s education requirement is higher than what is usual for the occupation per:
    - Appendix D of the DOL guidance, or
    - If not listed in Appendix D, the O\*NET Job Zone information
  - The Petitioner’s experience requirement is higher than the minimum experience requirement defined by the SVP range in O\*NET
  - The Petitioner requires a foreign language, license or certification, or other special skill beyond the O\*NET description
  - The proffered position is a combination of two unrelated occupations

# Wage Level Analysis Guidance

DOL uses a 5 step process to determine wage level:

Step 1: Review SOC code

Step 2: Review experience required

Step 3: Review education requirement

Step 4: Look for potential level increases (special skills or other requirements)

Step 5: Look for supervisory duties

# Wage Level Analysis Guidance

## Step 1: Review SOC code

- Confirm that LCA SOC code is correct and includes documented worksites
- If a combination of two different occupations but:
  - Related: Use SOC code for the occupation with higher wage
  - Unrelated: One wage level increase and use SOC code for occupation with higher wage)

# Wage Level Analysis Guidance

## Step 2: Review experience required

- Compare Petitioner's experience requirements to those listed in O\*NET
- Can't be Level I if:
  - Job Zone 4 with an SVP of  $7 < 8$  and position requires more than 2 years of experience
  - Job Zone 5 with SVP of  $8 < 9$  and position requires more than 4 years of experience

# Wage Level Analysis Guidance

## Step 3: Review education requirement

- Cannot be Level I if the education requirement is higher than that:
  - Listed in Appendix D of the DOL guidance, or
  - If SOC code not listed in Appendix D, the O\*NET Job Zone information

# Wage Level Analysis Guidance

Step 4: Special Skills or Other Requirements (look for potential level increases)

- Potential job requirements leading to level increases:
  - Foreign language
  - License or certification
  - Travel for more than incidental training & development
  - Special skills or requirements that aren't part of the normal duties as described in O\*NET

# Wage Level Analysis Guidance

## Step 5: Look for supervisory duties

- Supervising individuals in the same (or parallel) occupations will usually mean the position can't be Level I
  - Unless provided for in O\*NET
- Supervising subordinates will only require a one level increase if the supervision is not part of the normal duties as described in O\*NET

# Deference

- When evaluating whether or not an appropriate Labor Condition Application (LCA) was submitted with the petition, deference does not apply.
- USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition. See INA 101(a)(15)(H)(i)(B), INA 212(N), 8 CFR 214.2(h)(4)(B) and *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 546 (AAO 2015).

# Deference Cont.

- Pursuant to an April 23, 2004 memo, when evaluating the specialty occupation for same/same EOS petitions, a position should be given deference unless you can articulate that there was
  - A material error
  - A substantial change in circumstances, or
  - New material information
- Pursuant to the March 31, 2017 memo, if USCIS previously approved a petition based on evidence solely from the OOH when seeking to sponsor a beneficiary for a computer programmer position, deference should not be given and the petition should be adjudicated consistent with the new guidance.

Implementation of March 31, 2017  
Memo, *Rescission of the December  
22, 2000 "Guidance memo on H1B  
computer related positions"*

# Main Analysis

- The petitioner bears the burden of proof to establish that the particular position in which the beneficiary will be employed qualifies as a specialty occupation.
- For some occupations, such as computer programmers, the general discussion in the OOH may be insufficient, in the absence of additional evidence, to establish that the particular position is a specialty occupation.
- The OOH states “Most computer programmers have a bachelor’s degree in computer science or a related subject; however, some employers hire workers with an associate’s degree.”

# Main Analysis Continued

- The fact that the OOH states that an individual may enter the field with an associate's degree suggests that entry level computer programmer positions do not necessarily require a bachelor's degree and would not generally qualify as a position in a specialty occupation.
- Therefore, for all computer programmer petitions, the petitioner will not have met its burden of proof based on the OOH alone.
- In such cases, the petitioner will need to submit other evidence to establish that the particular position is a specialty occupation as defined by 8 CFR 214.2(h)(4)(ii) that also meets one of the prongs at 8 CFR 214.2(h)(4)(iii).

# Applicable to Many Occupations

- The Policy Memorandum is specific to the computer programmer occupation.
- However, this same analysis should be conducted for occupations where the OOH does not specify that the minimum requirement for a particular position is normally a bachelor's or higher degree in a specific specialty.

# Specialty Occupation Vs. Beneficiary Qualifications

- The specialty occupation determination is not driven by a beneficiary's qualifications.
- Although the beneficiary may have a bachelor's or higher degree in a specific specialty, the beneficiary's degree alone does not independently establish that the position qualifies as a specialty occupation.
- Adjudicators should determine:
  - First, whether the proffered position qualifies for classification as a specialty occupation, and
  - Second, whether the beneficiary qualifies for the position.
- These are two separate issues.

# Appropriate LCA?

- Adjudicators may also address inconsistencies when the job duties described in a petition do not correspond to the wage level indicated on the Labor Condition Application (LCA).
- USCIS is required to verify, by a preponderance of the evidence, that the information on the certified LCA corresponds to and supports the H-1B petition.
- Adjudicators may issue a request for evidence if they determine that the wage level selected by the petitioner does not appear to correspond to the petitioner's description and requirements for the proffered position.
- This type of analysis should be conducted on all H-1B petitions, including those that are clearly specialty occupations.

# Adjudicating Different Wage Levels

- If a wage level I is *clearly inconsistent with/lower than* the level of responsibility of the position, etc., then the petitioner has not established that the petition is supported by a certified LCA corresponding to the petition/position. This would typically result in an RFE.
- If, however, an officer believes there is an issue with a Level II position, and that the Level II LCA appears to be *clearly inconsistent with/lower than* the position as stated in the petition, the officer may raise it with their supervisor and, if needed, seek the advice of counsel.
- Trying to distinguish a Level III from a Level IV position, however, is very difficult under the 2009 DOL guidance, so we recommend against analyzing the appropriateness of the wage level in such cases until further notice .

# What is a Level I Wage?

- The “Prevailing Wage Determination Policy Guidance” issued by the Department of Labor provides a description of the wage levels.
- A level I wage is defined as:
  - Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer’s methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

# No Deference Given

- Consistent with the March 31, 2017 memo, and the exceptions set forth in the existing deference memo, if USCIS previously approved a petition based on evidence *solely* from the OOH for an entry level computer programmer or otherwise was not adjudicated consistent with the March 31, 2017 memo, deference should NOT be given, and the petition should be adjudicated consistent with the new guidance.
- In such cases, including extension petitions, motions, and consular returns, officers should conduct an independent review of the facts and evidence submitted in support of the petition in order to assess eligibility since deference will not apply.

# How Does this Affect Adjudications?

- Note: The following examples are overly-simplified and for illustrative purposes only. They are intended only to provide examples of the areas that may be affected by this policy memo. Adjudicators should make each determination on a case by case basis, ensuring that they are considering the totality of the evidence.

# Example 1

- A same/same extension for an accountant who has been in the United States for 9 years as an H-1B with the same financial company. The LCA is for a level I wage. The list of duties describe advanced accounting functions, nothing looks introductory. The beneficiary is listed as being a “subject matter expert.”
  - Consistent with the March 31, 2017 memo – Unless they have a sufficient explanation for selecting the level I wage, or are otherwise able to resolve the apparent wage level discrepancy, we would RFE/deny for not having a certified LCA that corresponds to and supports the H-1B petition. It does not appear that the bene is entry level, the duties do not support that the bene is doing routine tasks that require limited, if any, exercise of judgment, working under close supervision, etc.

# Example 2

- A cap case for a computer programmer for a major IT consulting company. The LCA is for a level I wage. The beneficiary will be working off-site with “weekly phone calls” and “monthly evaluations” as her only real supervision. The list of duties describes only vaguely what any computer programmer does.
- Consistent with the March 31, 2017 memo –
  - We would RFE for evidence that this is a specialty occupation (unless the petitioner submitted additional documentation to demonstrate that they have met one of the prongs).
  - We would also RFE on whether a level I wage LCA is appropriate, as she is working offsite with minimal supervision, etc. This is not in line with a level I wage description.
  - The petitioner will need to submit additional evidence to establish that the particular position is a specialty occupation. If the position qualifies as a specialty occupation, particularly if based on evidence regarding the complexity of the position, then it’s probably not a level I wage.

# Example 3

- A cap case for a systems analyst or software developer for a major IT consulting company. The LCA is for a level I wage. The beneficiary will be working off-site with “weekly phone calls” and “monthly evaluations” as his only real supervision. His list of duties is detailed and documents that he is performing normal, high-level systems analysis or software development.
  - Consistent with the March 31, 2017 memo – We would RFE/deny (unless they have a sufficient explanation, etc.) on whether a level I wage LCA is appropriate, as they are working offsite with minimal supervision. Also, the duties are not “basic” with only routine tasks. This is not in line with a level I wage description.

# Example 4

- A change of employer/extension for a computer programmer for a IT consulting company. The LCA is for a level I wage. The beneficiary will be working on-site on an unnamed, undocumented in-house project. Her list of duties describes only vaguely what any computer programmer does.
  - Consistent with the March 31, 2017 memo – We would still issue an RFE for the same reasons. Now, we could add the level I wage issues into our discussion. A denial would still typically follow for the same reasons, but with added support from the level I wage analysis.

# Final Reminder

- As always, adjudicators should make each determination on a case by case basis, ensuring that they are considering the totality of the evidence when making a final determination.

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In your response, you have provided a copy of a “Worksheet for Use in Determining OES Wage Level” (OES worksheet) relating to the proffered position. On the OES worksheet you have indicated a Wage Level Result of “0” for Experience, Education, Special Skills and Other Requirements, and Supervisory duties and, as such, you determined that the proffered position is a Level I wage position.

The DOL Policy Guidance provides several guides that can be used for reference during the process of determining the appropriate Wage Level. The OES worksheet you provided is listed as one of these reference documents as “...an example of a worksheet that [the National Prevailing Wage and Helpdesk Center] might use for determining the appropriate wage level.” **XXXINCLUDE AND MODIFY AS NEEDED IF THE PETITIONER PROVIDED OR REFERENCED QUINTANILLA V. MYRIAD:** It is noted that you have provided a copy of the DOL decision, *Vicente Carlos Quintanilla v. Myriad RBM, Inc. D/B/A Rules Based Medicine*, ALJ Case No. 2014-LCA-11 (Feb. 10, 2015), in which a DOL Administrative Law Judge (ALJ) discusses the employer’s use of the worksheet in making a Wage Level determination. The ALJ’s determination in *Quintanilla* was in the context of a complaint filed for back pay, which is a different context than the instant petition which pertains to USCIS’s determination whether the LCA properly corresponds to and supports the H-1B visa petition. Furthermore, USCIS is not bound by the ALJ’s determination in *Quintanilla*.**XXX** Consequently, while USCIS gives appropriate consideration to the OES worksheet submitted and the arguments set forth, the agency will consider the totality of the evidence in the record in assessing whether the LCA in the record corresponds to the proffered position.

**XXXPROVIDE AN ANALYSIS OF THE PETITIONER’S ANSWERS ON STEPS 2-5 OF THE OES WORKSHEET AND EVIDENCE SUBMITTED. ADDRESS INCONSISTENCIES IN THE PETITIONER’S REQUIREMENTS LISTED ON THE OES WORKSHEET AND EVIDENCE, SUCH AS PETITIONER’S SUPPORT LETTER, LIST OF JOB DUTIES, JOB OFFER LETTER, ETC.XXX**

**XXXIF STEP 2 AND/OR 3 OF THE OES WORKSHEET CONTAIN ANY INCONSISTENCIES CONCERNING THE CLAIMED EXPERIENCE/EDUCATION REQUIREMENTS AS COMPARED TO THE EVIDENCE OF RECORD:**

On the OES worksheet you indicated, in **XXXMODIFY AS NEEDED:** Step 2, that no previous work experience is required and, in Step 3, that a bachelor’s degree in FIELD(S) is/are required for an individual to perform the duties of the proffered position.**XXX** However, in your **XXXLIST AND DISCUSS THE DOCUMENT(S) AND INFORMATION WHICH CONTRADICT WITH THE INDICATED EXPERIENCE AND/OR EDUCATION**, e.g. petitioner’s support letter, position evaluation, etc.**XXX**

**XXXMODIFY IN ACCORDANCE WITH THE EVIDENCE OF RECORD:** The statements in your support letter concerning the education and work experience required for the proffered position are vague and appear to be inconsistent with your statement in your response and the requirements indicated on the OES worksheet. You have not provided additional evidence, such as, a job offer letter, official position description, job announcement, or other documentation in

support of the work experience and education requirements indicated on the OES worksheet. As the record appears to contain inconsistencies in the education and work experience requirements for the proffered position, and you have not submitted sufficient evidence to resolve these inconsistencies, USCIS is unable to determine where the education and work experience requirements for the proffered position actually lie.XXX

**XXX IF THE SKILLS/DUTIES OF THE POSITION ARE INCONSISTENT WITH THE ANSWERS IN STEP 4 OF THE WORKSHEET:**

You have indicated, in Step 4, of the OES worksheet, that the proffered position requires no license or certification and no special skills. The record appears to establish that a license and/or certification are not required for the proffered position; however, you have provided conflicting evidence concerning the special skills required for the proffered position. USCIS notes that the DOL Policy Guidance states that:

“The requirement of a specific skill not listed in the O\*NET does not necessitate that a point should be added. If the specific skills required for the job are generally encompassed by the O\*NET description for the position, no point should be added.”

You appear to indicate several duties which do not appear to be generally encompassed by the O\*NET description for the position of a **XXXOCCUPATIONAL CLASSIFICATIONXXX**.

For example, you indicate that the beneficiary will be **XXXLIST AND ANALYZE DUTIES/SKILLS THAT ARE CLEARLY MORE ADVANCED THAN THE LISTING FOR THE OCCUPATION IN THE O\*NET**, e.g. a software developer who be responsible for project planning, management, and budgeting duties.XXX

**XXXIF THE SUPERVISORY DUTIES OF THE POSITION ARE INCONSISTENT WITH THE ANSWERS IN STEP 5 OF THE WORKSHEET:**

You have indicated, in Step 5, of the OES worksheet, that the proffered position has no supervisory duties. However, you have indicated that the beneficiary will **XXXDISCUSS AND LIST INDICATION OF SUPERVISION NOT REFLECTED BY THE O\*NET LISTING FOR THE POSITION.XXX** It is noted that the DOL Policy Guidance indicates that a “1” should be indicated unless supervision is generally required by the O\*NET occupation. A review of the O\*NET indicates that **XXXLIST THE OCCUPATIONAL CLASSIFICATION AND DISCUSS SUPERVISION INDICATED ON THE O\*NET OR DISCUSS LACK OF SUPERVISION REQUIREMENT**, e.g. may “[s]upervise the work of programmers, technologists and technicians and other engineering and scientific personnel.” This description appears to reflect supervision of lower level information technology workers and not supervision of other software developers or software developer teams.XXX As such, it does not appear that your indication of “0” in Step 5 of the OES worksheet is appropriate for the proffered position as additional supervisory duties are required.

# Evaluating Specialty Occupation

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Per 8 CFR 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- ( 1 ) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- ( 2 ) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- ( 3 ) The employer normally requires a degree or its equivalent for the position; or
- ( 4 ) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To be consistent with INA section 214(i)(1)'s "degree in the specific specialty" requirement, and the definition of "specialty occupation" at 8 CFR 214.2(h)(4)(ii), the term "degree" as used above means not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the offered position.

## Does This Meet Prong I?

Officers are reminded that we do not bear the burden of establishing that a particular position does not qualify as a specialty occupation. Instead, the petitioner bears the burden of establishing eligibility for the benefit sought.

We regularly review the Department of Labor's *Occupational Outlook Handbook (OOH)* on the duties and educational requirements of the wide variety of occupations that we address. Officers may not approve a petition based on inconclusive statements from the *OOH* about the entry-level requirements for a given occupation. However, we also do not maintain that the *OOH* is the exclusive source of relevant information in determining prong I. Rather, the petitioner bears the burden to submit probative evidence from objective and authoritative sources that the proffered position qualifies as an H-1B specialty occupation per one of the four prongs listed above.

Although the *OOH* speaks to occupational categories (e.g. Electrical Engineer, Computer Systems Analyst, etc.), prong I requires the petitioner to demonstrate that "the particular position" for which it is petitioning requires a baccalaureate or higher degree (or its equivalent) as the normal minimum for entry. As a result, the *OOH* is a mechanism for understanding what an occupational category normally requires, but does not itself directly speak to the petitioner's particular position. In other words, if the petitioner shows that the *OOH* states a baccalaureate degree is normally the minimum for entry into an occupational classification, the petitioner must also demonstrate that the occupational classification applies to the petitioner's particular position.

In simple terms, if a position does not meet prong I per our use of the *OOH*, the petitioner must establish that it either hits prong I via their own argument/documentation or that it hits prongs II, III, or IV via their own argument/documentation. Officers should be able to articulate which prong the petitioner has met and why.

Below are examples from the *OOH* to help indicate whether a position would typically meet prong I and the reasoning as to why or why not. A similar analysis can be applied to all positions listed in the *OOH*.

## How to Become a Computer Systems Analyst

A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.

### Education

Most computer systems analysts have a bachelor's degree in a computer-related field. Because these analysts also are heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems.

Some employers prefer applicants who have a master's degree in business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

**ANALYSIS:** A position involving typical duties for a computer systems analyst would not typically hit prong I based on the *OOH*. By indicating that "many" analysts have unrelated degrees or gained the requisite experience elsewhere, the *OOH* is inconclusive regarding the requirements for this position. Consequently, the petitioner has the burden of submitting other evidence and/or argument to establish the position meets one of the four prongs. Multiple, unrelated degrees, such as liberal arts, business, and computer science, would qualify an individual for this position. Therefore, the position cannot be said to require a degree in a "specific specialty" as is required.

# How to Become a Computer Programmer

Most computer programmers have a bachelor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages.

## Education

Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject. Programmers who work in specific fields, such as healthcare or accounting, may take classes in that field to supplement their degree in computer programming. In addition, employers value experience, which many students gain through internships.

**ANALYSIS:** A position involving typical duties for a computer programmer would not typically hit prong I based on the *OOH*. Because it indicates that an associate's degree, which is lesser than a bachelor's degree, would qualify an individual for this position, the *OOH* does not conclusively demonstrate that a bachelor's degree or higher in a specific specialty is required. Consequently, the petitioner has the burden of submitting other evidence and/or argument to establish the position meets one of the four prongs.

# How to Become an Electrical or Electronics Engineer

Electrical and electronics engineers must have a bachelor's degree. Employers also value practical experience, so participation in cooperative engineering programs, in which students earn academic credit for structured work experience. Having a Professional Engineer (PE) license may improve an engineer's chances of finding employment.

## Education

High school students interested in studying electrical or electronics engineering benefit from taking courses in physics and mathematics, including algebra, trigonometry, and calculus. Courses in drafting are also helpful, because electrical and electronics engineers often are required to prepare technical drawings.

In order to enter the occupation, prospective electrical and electronics engineers need a bachelor's degree in electrical engineering, electronics engineering, or electrical engineering technology.

**ANALYSIS:** A position involving typical duties for electrical or electronics engineers would typically hit prong I based on the *OOH*. A bachelor's degree in electrical engineering, electronics engineering, or electrical engineering technology is the minimum entry requirement. These fields are closely related, and the definitive language of the *OOH* is sufficient to establish that prong I is met.

# How to Become a Market Research Analyst

Most market research analysts need at least a bachelor's degree. Top research positions may require a master's degree. Strong math and analytical skills are essential.

## Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

**ANALYSIS:** A position involving typical duties for a market research analyst would not typically hit prong 1 based on the *OOH*. Though most market research analyst positions will require a bachelor's degree, the *OOH* further explains that a wide variety of backgrounds might also qualify. While it appears that a minimum of a bachelor's degree is required for this position, this bachelor's degree can be in multiple, unrelated fields, such as market research, statistics, math, computer science, business administration, the social sciences, or communications. Because this *OOH* description is inconclusive as to whether a degree "in a specific specialty" is required, the petitioner has the burden of submitting other evidence and/or argument to establish the position meets one of the four prongs.

## Many Unrelated Degrees

Below are real-life cover letter excerpts that indicate that the particular position in that petition could be performed by an individual with a variety of unrelated degrees. These statements would typically indicate the position is not a specialty occupation. As above, the reasoning would be that if a variety of unrelated bachelor's degrees would qualify an individual for that particular position, a degree in a specific specialty is not required. A similar analysis can be applied to similar statements in all petitions.

### Example 1:

To execute these sophisticated and financial professional functions, PETITIONER generally requires its POSITION TITLE to possess at least a Bachelor's degree or equivalent in Marketing, Business, Translation or a quantitative field of academic study. Only through the pursuance of this particular prerequisite educational training can an

## Example 2:

### The skills required to perform the specialty occupation:

The position of POSITION TITLE requires a theoretical and practical application of acquired specialized knowledge. As with any POSITION TITLE, the usual minimum requirement for performance of the job duties is a Master's or Bachelor's of Science in any discipline in Engineering, or computer science or information systems or a related analytic or scientific discipline or its equivalent in education or work-related experience.

## Example 3:

### JOB REQUIREMENTS

The minimum requirement for entry into the specialty occupation position of POSITION TITLE internally designated as Associate, as with any similar organization, is at least a Bachelor's degree in computer science, instrumentation science, information technology, management information systems, engineering, math, physics or a closely related field of study, or the equivalent thereof and experience. A Bachelor's degree in any of the mentioned fields, or its equivalent, provides the candidate with the necessary theoretical, analytical, and intellectual

## Beneficiary's Degree Not Relevant

Finally, officers are reminded that a beneficiary having a particular bachelor's degree is not typically relevant to the specialty occupation determination. The evaluation of whether the position is a specialty occupation and whether the beneficiary is qualified for the position are two different determinations. For example, if we have a position for a market research analyst, and the beneficiary had a degree in market research, this, alone, would not affect the determination that the position is not typically a specialty occupation by prong I. The specialty occupation analysis focuses on the requirements of the proffered position, rather than the qualifications of the particular beneficiary.

### **GENERAL NOTES:**

1. The O\*Net only has information on which level of degree is required generally (associate's, bachelor's, master's, etc.), not if these degrees have to be in a specific specialty. Accordingly, the O\*Net will not be able to establish that a position is a specialty occupation by prong I.
2. Each case will stand on its own merits and should be adjudicated by the preponderance of the evidence based on the totality of the evidence of the record.
3. All OOH information was as of August 31, 2017. The OOH should be accessed electronically to ensure the most updated data.

## **ADDITIONAL GUIDANCE REGARDING WAGE LEVEL ANALYSIS**

Prior email guidance issued by SCOPS instructed adjudicators to address inconsistencies when the job duties and requirements of the proffered position described in a petition contradict the wage level indicated on the Labor Condition Application (LCA). The internal guidance stated:

While USCIS does not have the authority or jurisdiction to mandate a specific wage level on the LCA, USCIS is required to verify that the information on the certified LCA corresponds to and supports the H-1B petition. The prevailing wage determination for an occupation is based on a comparison of the employer's job requirements to the occupational requirements: tasks, knowledge, skills, and specific vocational preparation (education, training, and experience) generally required for acceptable performance in that occupation. In general, a petitioner must distinguish its proffered position from others within the same occupation through the proper wage level designation to indicate factors such as the relative complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. The adjudicator may issue a request for evidence if he/she determines that the wage level selected by the petitioner does not appear to correspond to the petitioner's description and requirements for the proffered position. This type of analysis should be conducted on all H-1B petitions.

Officers have requested that more specific guidance be provided on when the wage level does not appear to correspond to the proffered position.

As noted in the prior internal guidance, officers should review all H-1B petitions to determine that the LCA properly corresponds to the position on which the petition is based. Officers should not rely on the wage level description on page 7 of the DOL *Prevailing Wage Determination Policy Guidance* to make the determination. The wage level descriptions are foundational and instructive, but have already been incorporated into DOL's five step process for determining the appropriate wage level (see Appendix A of the DOL guidance). As such, officers should follow DOL's five step process to determine if the wage level selected on the LCA properly corresponds to the petition. Wage levels begin at a Level I (entry level) and may increase based on a comparison of the duties and requirements for the employer's proffered position to the general duties and requirements for the most similar occupation as provided by the Occupational Information Network (O\*NET). If it appears that the position requirements exceed what are normal for the occupation (e.g., Level I wage but education required exceeds normal education requirement for that occupation as stated in O\*NET), otherwise exceed what is appropriate for the occupation and the wage level selected on the LCA (e.g., Level II wage, but experience required is at the high end of the experience and SVP range), or the position does not correspond to the occupational classification in the LCA (i.e., occupational classification selected is incorrect), officers should conduct a more detailed review of O\*NET as described below.

In cases where the officer concludes that the LCA does not properly correspond to the petition, because the wage level selected by the petitioner is less than what appears to be required by DOL, officers must provide an explanation in the denial, based on O\*NET, and not simply based on the definitional wage levels, explaining why the wage level selected by the petitioner on the LCA does not correspond to the position's requirements.

**TIPS TO HELP IDENTIFY WHEN AN LCA WAGE LEVEL MAY BE INCONSISTENT WITH POSITION/PETITION:**

A Level I wage might not be appropriate if:

- 1) The Petitioner's education requirement is higher than what is considered usual for the occupation, as provided in Appendix D of the DOL guidance or, if the SOC code is not listed in Appendix D, the O\*NET Job Zone information.
- 2) The Petitioner's experience requirement is higher than the minimum experience requirement defined by the SVP range provided in the O\*NET Job Zone information.
- 3) The Petitioner requires a foreign language, license or certification, or other special skill beyond what is provided for in the O\*NET description.
- 4) The proffered position is a combination of two unrelated occupations.

In order for the LCA to support the petition, it must be for the correct SOC code and include all worksites described in the petition.

Please note that the following is not intended to replace the 2009 DOL guidance and is not comprehensive wage level guidance.<sup>1</sup> If you have additional questions regarding wage levels, you should consult the DOL guidance. Remember, officers should not determine what the proper wage level should have been. Instead, officers should only determine whether the content of the LCA, including the wage level, corresponds with the H-1B petition. In addition, the following analysis does not apply to employer provided surveys.

If an officer is issuing a denial based on an inconsistent wage level/LCA, please use the below detailed review process and DOL process overview as a guide for what is to be included in the analysis portion of the denial.

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<sup>1</sup> [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf)

## DETAILED REVIEW PROCESS

Step 1 SOC Code	<ul style="list-style-type: none"><li>• Confirm that LCA SOC code is correct and includes documented worksites</li><li>• If a combination of two different occupations but<ul style="list-style-type: none"><li>• related (use SOC code for the higher wage)</li><li>• unrelated (one level increase and use SOC code for higher wage)</li></ul></li></ul>
Step 2 Experience	<ul style="list-style-type: none"><li>• For a Job Zone 4 with an SVP of 7 &lt; 8 - if more than 2 years of experience req'd, can't be Level I</li><li>• For a Job Zone 5 with SVP of 8 &lt; 9 - if more than 4 years of experience req'd, can't be Level I</li></ul>
Step 3 Education	<ul style="list-style-type: none"><li>• If education requirement is higher than that listed in Appendix D of the DOL guidance or O*NET Job Zone, if SOC code not listed in Appendix D, can't be Level I</li></ul>
Step 4 Special Skills or Other Requirements	<ul style="list-style-type: none"><li>• Potential level increases</li><li>• Foreign language</li><li>• License or certification</li><li>• Travel for more than incidental training &amp; development</li><li>• Special skills or requirements that aren't part of the normal duties as described in O*NET</li></ul>
Step 5 Supervisory Duties	<ul style="list-style-type: none"><li>• Supervising individuals in the same occupation will usually mean can't be Level I, unless provided for in O*NET</li><li>• Supervising subordinates will only require a one level increase if the supervision is not part of the normal duties as described in O*NET</li></ul>

### DOL'S PROCESS FOR DETERMINING THE APPROPRIATE WAGE LEVEL

DOL guidance provides a five step process for determining the proper wage level for the proffered position, as follows:

**Step 1: Determine whether the LCA contains the correct SOC code as described in O\*NET and review the provided information including the tasks, knowledge, work activities and job zone information**

Note: If the proffered position is a combination of two different, but *related* occupations (for example a combination of computer-related positions), the higher paying SOC code must be on the LCA. If the proffered position is a combination of two different, but *unrelated* occupations (for example a teacher who is also the school's accountant), a one level wage increase is required AND the higher paying SOC code must be on the LCA. In other words, the wage level would automatically increase one level because of the combination of unrelated occupations and the SOC code must be for the higher paying occupation. If the Petitioner did not select the higher paying occupation, and/or list a minimum of a Level II wage, then the LCA would not correspond to the petition. It is important to note that if a proffered position mainly conforms to the O\*NET description, but only an insignificant portion of the beneficiary's time

will be spent on tasks encompassed under a different SOC code, the position would not be considered a combination of two different occupations. However, a wage level increase may still be required under step 4 below because the duties fall outside of the normal duties of the occupation.

**Step 2: Compare the Petitioner's experience requirements to those listed in O\*NET**

For occupations in Job Zones 4 & 5, there is no increase in the wage level if the employer's experience requirement is at or below the level of experience and SVP range. Anything more will require an increase in the wage level.

The two most common SVPs in H-1B adjudications are as follows:

- SVP 7, which is defined as over 2 years up to and including 4 years of experience
- SVP 8, which is defined as over four years up to and including 10 years of experience

Therefore, for a Job Zone 4 position with an SVP of  $7 < 8$  (an SVP of  $7 < 8$  is the equivalent of an SVP of 7), if the employer requires zero to two years of experience, no wage level increase is required because the experience requirement is at or below the SVP range. If the employer requires more than two years of experience, a wage level increase is required as follows:

- more than two years and up to three years of experience = a one level increase (the low end of the range)
- more than three years and up to four years of experience = a two level increase (the high end of the range)
- more than four years of experience = a three level increase (greater than the range)

For a Job Zone 5 position with an SVP of  $8 < 9$ , if the employer requires zero to four years of experience, no wage level increase is required because the experience requirement is at or below the SVP range. If the employer requires more than four years of experience, a wage level increase is required as follows:

- more than four years and up to seven years of experience = a one level increase (low end of the range)
- more than seven years and up to ten years of experience = a two level increase (high end of the range)
- more than ten years of experience = a three level increase (greater than the range)

**Step 3: Compare the petitioner's level of education requirement to that listed in Appendix D of the DOL guidance (listed by SOC code), or if the SOC code is not in the Appendix, to that listed in O\*NET**

If the employer's education requirement is higher than that provided in Appendix D of the DOL guidance or O\*NET, if the SOC code is not in the Appendix, an increase is required and a Level 1 wage would not be appropriate. If the position usually requires a bachelor's degree and the Petitioner requires a master's degree, the wage would increase by one level and if the Petitioner requires a doctorate, the wage would increase by two levels.

**Step 4: Determine whether the proffered position contains any special skills or other requirements which would warrant a wage level increase**

Generally, any special skills or other requirements which are not listed in O\*NET as usually being part of the occupation require an increase in the wage level.

#### LICENSES & CERTIFICATIONS:

Generally speaking, if the Petitioner requires a certification or a license that is not normally required for entry into the occupation as described in O\*NET, then a wage level increase would be required. For example, if the proffered position is for an accountant and the employer requires a certified public accountant, or the proffered position requires a licensed professional engineer (as opposed to an engineer in training for example), a Level I wage would not be appropriate. If the occupation as described in O\*NET normally requires a license even at the entry-level (such as a doctor or lawyer), then there would not be an increase in the wage level.

#### TRAVEL:

Generally, incidental travel for training and development would not require a wage level increase. However, extensive travel, especially outside of the beneficiary's location, may require a wage level increase. DOL has given the following examples: a house painter would typically travel to job sites in the same city, but national travel would require a one level increase. A sales manager travelling to regional offices to provide oversight and monitor performance would be considered typical, but more extensive travel may be considered atypical and require a one level increase. The same one level increase would likely be required for a physician travelling to various cities in the state or various states on a rotational basis to provide services. Review the information provided in O\*NET to determine if the Petitioner's travel requirements are atypical for the occupation.

#### FOREIGN LANGUAGE:

A foreign language requirement will also generally require an increase in the wage level. An increase in the wage level would not be required, however, if the foreign language requirement is a normal requirement for the occupation (e.g., a foreign language teacher, interpreter, translator, or caption writer). Note: The following SOC codes include teaching a foreign language and would not require a wage level increase 25-1124.00 - Foreign Language and Literature Teachers, Postsecondary; 25-2022.00 - Middle School Teachers, Except Special and Career/Technical Education; and 25-2031.00 - Secondary School Teachers, Except Special and Career/Technical Education. However, if the beneficiary will be teaching more than one language, for example French and Spanish, a wage level increase would be required.

#### ADDITIONAL SKILLS & REQUIREMENTS:

Although the above are the most common instances when an increase in the wage level occurs, the Petitioner may require additional skills and/or requirements which are atypical for the occupation that would necessitate an increase in the wage level. As noted in step 1 above, when the proffered position's duties include duties that are not normally part of the occupation as described in O\*NET, but do not rise to the level of a combination of occupations, a one level increase in the wage may be required.

**Step 5: Review the duties the Petitioner provided to determine if there are any supervisory duties and compare to the information in O\*NET**

Supervisory duties do not automatically indicate that a Level 1 wage is not sufficient. A wage level increase is only required when supervision is not part of the information provided in O\*NET. Further, if supervisory duties are in O\*NET, it is important to determine the level of the individuals supervised. Generally speaking, if O\*NET includes supervisory duties, they do not usually include supervising individuals in the same occupation. For example, if a lawyer is supervising other lawyers, a wage level increase is required, but if a lawyer is supervising legal assistants, there would not be an increase in the wage level because supervising legal assistants is one of the tasks listed in O\*NET. If the employer describes the supervision in general terms, such as supervises/manages team, additional information regarding the titles and duties of the team members would be required.

## DECISION

Dear Sir/Madam,

On [[[LETTER\_CASE\_RECEIPT\_DT]]], you filed a Form I-129, Petition for a Nonimmigrant Worker with U.S. Citizenship and Immigration Services (USCIS) to classify the beneficiary under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act).

Section 101(a)(15)(H)(i)(b) of the Act defines such a beneficiary as an alien:

...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)..., who meets the requirements for the occupation specified in section 214(i)(2)..., and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under 212(n)(1).

Furthermore, section 212(n)(1) of the Act states:

No alien may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer-

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H-1B nonimmigrant wages that are at least-

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application...

**XXXINCLUDE IF THE POSITION IN THE INDEPENDENT SURVEY IS NOT THE PROPER OCCUPATIONAL CLASSIFICATION FOR THE PROFFERED POSITION**

Title 8 Code of Federal Regulations (8 CFR), section 214.2(h)(4)(i) states in part:

(B) General requirements for petitions involving a specialty occupation.

(1) Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.XXX

Title 20 Code of Federal Regulations (20 CFR), section 655.705(b) states in pertinent part:

...DHS accepts the employer's petition (DHS Form I-129) with the DOL-certified LCA attached. In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the labor condition application is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification.

**XXXUSE IF A NEW LCA CERTIFIED AFTER FILING IS SUBMITTED:** Finally, Title 8 Code of Federal Regulations (8 CFR), section 214.2(h)(4)(i) **OR** 8 CFR section 103.2 states in part:

(b) *Evidence and Processing.*

(1) *Demonstrating eligibility at time of filing.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions...

...

(12) *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* A benefit request shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the benefit request was filed...

The LCA submitted with your response was certified after the date of filing your petition. This LCA does not establish eligibility at the time of filing as required by 8 CFR section 103.2(b)(12).XXX

Your XXX**INDICATE TYPE OF**XXX business seeks to employ the beneficiary as a XXX**POSITION**XXX at an annual salary of \$XXX**AMOUNT**XXX. Based on information provided, your business was established in XXX**YEAR**XXX and currently employs XXX**NUMBER**XXX workers. Included in your initial filing is an ETA 9035 Labor Condition Application (LCA) certified by the Department of Labor (DOL) for the position of XXX**POSITION**XXX under the XXX**OCCUPATIONAL CLASSIFICATION**XXX in XXX**LIST LOCATION(S) - CITY, STATE**XXX. The LCA lists the prevailing wage source as the XXX**SOURCE YEAR AND NAME FROM BOXES 11A AND 11B**, e.g., 2016 Towers Watson Data Services Acctg & Fin Compensation SurveyXXX, which appears to be an independent authoritative source.

At issue is whether the petition is supported by an LCA which corresponds with the proffered position XXX**INCLUDE IF THE POSITION IN THE INDEPENDENT SURVEY IS NOT THE PROPER OCCUPATIONAL CLASSIFICATION FOR THE PROFFERED**

**POSITION:** and whether that the LCA is certified for the specialty occupation in which the beneficiary will be employedXXX. USCIS does not use a position title alone in determining whether the position certified on the LCA relates to the proffered position; the agency reviews the educational and experience requirements, individual job duties and specific function, and supervisory duties, if any, of the proffered position. With the initial filing, you submitted the following description of duties for the proffered position: **XXXLIST DUTIES PROVIDED WITH INITIAL FILINGXXX**

On **XXXDATE OF RFE**XXX, USCIS informed you in a Request for Evidence (RFE) that the initial evidence did not establish that your petition was supported by an LCA which corresponded with the proffered position described in the petition. You were requested to submit evidence to demonstrate that the occupation listed in the independent authoritative source was comparable to the proffered position.

On **XXXDATE OF RESPONSE**XXX, USCIS received your response, which included: **XXXLIST EVIDENCE RECEIVED**XXX

Your response is insufficient to establish that your petition is supported by an LCA that corresponds with the proffered position described in the petition.

As indicated in *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015), USCIS must determine whether the attestations and content of the LCA correspond to and support the H-1B visa petition.

In your response you have provided a copy of the **XXXSOURCE YEAR AND NAME FROM BOXES 11A AND 11B**, e.g., 2016 Towers Watson Data Services Acctg & Fin Compensation SurveyXXX prevailing wage survey for the position of **XXX POSITION FROM INDEPENDENT SOURCE** XXX at a **XXXLIST INDEPENDENT SOURCE CAREER LEVEL (IF APPLICABLE)**, e.g., P2 intermediate career level.XXX The prevailing wage survey describes the following roles and responsibilities for the position of a **XXXPOSITION AND CAREER LEVEL**XXX:

**XXXLIST DUTIES AND RESPONSIBILITIES FROM THE PREVAILING WAGE SURVEY**XXX

In considering the description of the occupation as listed in the **XXXSOURCE YEAR AND NAME FROM BOXES 11A AND 11B**, e.g., 2016 Towers Watson Data Services Acctg & Fin Compensation SurveysXXX and the totality of the evidence in the record, it does not appear that the proffered position comports with the description for the occupation as certified on the LCA. A detailed analysis of the evidence provided in relation to that description follows.

**XXXOFFICER'S ANALYSIS OF THE POSITION AS COMPARED TO THE ROLES AND RESPONSIBILITIES LISTED IN THE PREVAILING WAGE SURVEY**XXX

In support of your petition, you submitted a certified LCA for the position of **XXX POSITION FROM INDEPENDENT SOURCE** XXX at a **XXXLIST INDEPENDENT SOURCE**

**CAREER LEVEL (IF APPLICABLE)**, e.g., P2 intermediate career level.XXX. As discussed above, you have not established that the proffered position XXX**SUMMARIZE DEFICIENCY**, e.g., requires the performance of similar duties and responsibilities, is similar in scope and responsibility to a P2 intermediate career level position, etc.XXX

The record does not establish that the petition is supported by an LCA which corresponds with the proffered position described in the petition as required by 20 CFR 655.705(b) and *Matter of Simeio Solutions*. XXX**INCLUDE IF THE POSITION IN THE INDEPENDENT SURVEY IS NOT THE PROPER OCCUPATIONAL CLASSIFICATION FOR THE PROFFERED POSITION**: Additionally, you have not provided an LCA which is certified for the specialty occupation in which the beneficiary will be employed, as required by 8 CFR section 214.2(h)(4)(i).XXX **USE IF A NEW LCA CERTIFIED AFTER FILING IS SUBMITTED**: Furthermore, as discussed above, the LCA submitted with your response was certified after the date of filing your petition. Therefore, this LCA does not establish eligibility at the time filing as required by 8 CFR section 103.2(b)(12).XXX Therefore, your petition is denied.

If applicable, the portion of the petition requesting an extension of stay or change of status for the alien is now being denied as the nonimmigrant petition filed in the alien's behalf has been denied. XXX**INSERT AUTOTEXT 0054 IF THE ALIEN IS OUT OF STATUSXXX**

## DECISION

Dear Sir/Madam,

On [[[LETTER\_CASE\_RECEIPT\_DT]]], you filed a Form I-129, Petition for a Nonimmigrant Worker with U.S. Citizenship and Immigration Services (USCIS) to classify the beneficiary under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act).

Section 101(a)(15)(H)(i)(b) of the Act defines such a beneficiary as an alien:

...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)..., who meets the requirements for the occupation specified in section 214(i)(2)..., and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under 212(n)(1).

Furthermore, section 212(n)(1) of the Act states:

No alien may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer-

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H-1B nonimmigrant wages that are at least-

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application...

Title 20 Code of Federal Regulations (20 CFR), section 655.705(b) states in pertinent part:

...DHS accepts the employer's petition (DHS Form I-129) with the DOL-certified LCA attached. In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the labor condition application is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification.

**XXXUSE IF A NEW LCA CERTIFIED AFTER FILING IS SUBMITTED:** Finally, 8 CFR section 103.2 states in part:

(b) Evidence and Processing.

(1) Demonstrating eligibility at time of filing. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions...

...

(12) Effect where evidence submitted in response to a request does not establish eligibility at the time of filing. A benefit request shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the benefit request was filed...

The LCA submitted with your response was certified after the date of filing your petition. This LCA does not establish eligibility at the time of filing as required by 8 CFR section 103.2(b)(12).XXX

Your **XXXINDICATE TYPE OFXXX** business seeks to employ the beneficiary as a **XXXPOSITIONXXX** at an annual salary of **XXXAMOUNTXXX**. Based on information provided, your business was established in **XXXYEARXXX** and currently employs **XXXNUMBERXXX** workers. Included in your initial filing is an ETA 9035 Labor Condition Application (LCA) certified by the Department of Labor (DOL) for the position of **XXXPOSITIONXXX** under the **XXXOCCUPATIONAL CLASSIFICATIONXXX** with a Level I wage designation in **XXXLIST LOCATION(S) - CITY, STATEXXX**.

At issue is whether the petition is supported by an LCA which corresponds with the proffered position. USCIS does not use a position title alone in determining whether the position and its associated wage level as certified on the LCA relates to the proffered position; the agency considers the totality of the evidence of record and reviews the educational and experience requirements, individual job duties and specific function, and supervisory duties, if any, of the proffered position. With the initial filing, you submitted the following description of duties for the proffered position: **XXXLIST DUTIES PROVIDED WITH INITIAL FILINGXXX**

On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels).

On **XXXDATE OF RFEXXX**, USCIS informed you in a Request for Evidence (RFE) that the initial evidence did not establish that your petition was supported by an LCA which corresponded with the proffered position described in the petition. You were requested to submit evidence to demonstrate that the LCA you have provided, with a Level I wage designation, corresponds to the proffered position.

On **XXXDATE OF RESPONSEXXX**, USCIS received your response, which included: **XXXLIST EVIDENCE RECEIVEDXXX**

Your response is insufficient to establish that your petition is supported by an LCA that corresponds with the proffered position described in the petition.

As indicated in *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015), USCIS must determine whether the attestations and content of the LCA correspond to and support the H-1B visa petition. Accordingly, USCIS reviews the LCA to ensure that the wage level designated by the petitioner corresponds to the proffered position.

The DOL's Employment and Training Administration Prevailing Wage Determination Policy Guidance Nonagricultural Immigration Programs, Rev. November, 2009 (DOL Policy Guidance) discusses the four wage levels and states the following concerning the process for determining a wage level:

All employer applications for a prevailing wage determination shall initially be considered an entry level or Level I wage. The employer's requirements for experience, education, training, and special skills shall be compared to those generally required for an occupation as described in the O\*NET and shall be used as indicators that the job opportunity is for an experienced (Level II), qualified (Level III), or fully competent (Level IV) worker.

Therefore, USCIS will consider the established wage level determination criteria in evaluating whether the LCA corresponds with the proffered position.

**XXXADD DISCUSSION OF WHY THE WAGE LEVEL IS CLEARLY INCONSISTENT WITH THE POSITION DESCRIBED IN THE PETITIONXXX**

**XXXIF THE PETITIONER SUBMITTED A COPY OF AN OES WORKSHEET IN RESPONSE, INSERT 2049 AND MODIFY AS NEEDEDXXX**

In support of your petition, you submitted a certified LCA for the position of **XXXPOSITIONXXX** at a Level I wage. As discussed above, you have not established that the proffered position is an entry-level position within the occupational category of **XXXPOSITIONXXX**.

The record does not establish that the petition is supported by an LCA which corresponds with the proffered position described in the petition as required by 20 CFR 655.705(b) and *Matter of Simeio Solutions*. **XXXUSE IF A NEW LCA CERTIFIED AFTER FILING IS SUBMITTED:** Furthermore, as discussed above, the LCA submitted with your response was certified after the date of filing your petition. Therefore, this LCA does not establish eligibility at the time filing as required by 8 CFR section 103.2(b)(12).XXX Therefore, your petition is denied.

If applicable, the portion of the petition requesting an extension of stay or change of status for the alien is now being denied as the nonimmigrant petition filed in the alien's behalf has been denied. **XXXINSERT AUTOTEXT 0054 IF THE ALIEN IS OUT OF STATUSXXX**

**Worley, Jordan P**

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**From:** Stern, Kimberly M (Kim) [REDACTED] (b)(6)  
**Sent:** Friday, March 09, 2018 2:33 PM  
**To:** BEST\_H1BGuidance@sptaas.dhs.gov  
**Subject:** "Clearly Inconsistent" Clarifying Guidance  
**Attachments:** H-1B Wage levels-Clearly Inconsistent\_022218.docx

**From:** Doumani, Stephanie M  
**Sent:** Friday, March 09, 2018 3:27 PM  
**To:** Fierro, Joseph; Martin, Evelyn M; Boudreau, Lynn A  
**Cc:** Baran, Kathy A; Lee, Danielle L; Crandall, Kristine R; Brennan Seng, Mary Elizabeth (MB); Zuchowski, Laura B; Selby, Cara M (Carrie); Neufeld, Donald W; Colucci, Nicholas V; Hutchings, Pamela G; Nicklaw, Nicole C; Stern, Kimberly M (Kim); McMahon, Matthew E; Collins, Richard A  
**Subject:** "Clearly Inconsistent" Clarifying Guidance

Good afternoon,

Attached please find clarifying internal guidance titled, "Additional Guidance Regarding Wage Level Analysis."

This guidance for adjudicators discusses wage levels in relation to the memorandum, "Rescission of the December 22, 2000 'Guidance memo on H-1B computer related positions,'" which was published on March 31, 2017. This guidance has been drafted in response to questions raised during the November 2017 Rescission Memo Workshop at the CSC. During the workshop, officers requested specific guidance regarding when the wage level does not appear to correspond to the proffered position.

This guidance delineates a detailed approach to assist adjudicators in determining whether the wage level listed on the LCA is "clearly inconsistent" with the proffered position. This guidance also provides additional information regarding DOL's process, and can be utilized as a resource when writing denials.

Our intent in crafting this guidance is to be responsive to the questions raised and assist the centers in their consistent and efficient adjudications related to the underlying memo. You are invited to provide additional thoughts and feedback on this document, as well as any follow-up questions. Please direct any correspondence relating to this guidance to me and my team (copied here). We will also be reaching out shortly to schedule a meeting to field additional questions and concerns.

Thank you,

*Stephanie Doumani*  
Branch Chief  
Service Center Operations  
Business Employment Services Team

(b)(6)

[REDACTED] Desk  
[REDACTED] Cell

**Worley, Jordan P**

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**From:** Collins, Richard A [REDACTED] (b)(6)  
**Sent:** Monday, May 14, 2018 1:54 PM  
**To:** BEST\_H1BGuidance@sptaas.dhs.gov  
**Subject:** FW: Wage Level N/A & Private Survey Guidance

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**From:** Collins, Richard A  
**Sent:** Thursday, May 10, 2018 12:27 PM  
**To:** Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Lussier, Marcy R; Marble, Michelle J; Nguyen, Carolyn Q; Chau, Stephanie; Mello, Amy E; Simon, Ronna J  
**Cc:** Doumani, Stephanie M; Nicklaw, Nicole C; McMahan, Matthew E  
**Subject:** Wage Level N/A & Private Survey Guidance

Hello,

There have been a number of questions and concerns regarding the treatment of wage level N/A and private wage survey cases. The working group is drafting more detailed guidance related to this issue.

However, there is a need for information and there are premium cases that are being held. Accordingly, please see the preliminary guidance below. This outlines the general approach for wage level N/A and private wage survey cases:

The general analysis required when evaluating a private wage survey is essentially the same analysis required when evaluating an OES based wage level designation. The officer should first look to see if the occupational classification corresponds to the particular position. Then, the officer will look to see what the corresponding wage level is for that survey and identify whether the wage level in the private wage survey is appropriate for the position.

In addition, the analysis of the private wage survey should include consideration of the area of intended employment. The area of intended employment means "the area within normal commuting distance of the worksite or physical location where the work of the H-1B nonimmigrant is or will be performed." There is no DOL requirement that the geographical divisions of a private wage survey exactly mirror the MSAs or other divisions identified in the Occupational Employment Statistics. As long as a private wage survey's geographical region covers an area within normal commuting distance of the beneficiary's worksite it would generally be acceptable (unless this area is egregiously small). However, a survey with a much larger geographic region, which is larger than the area within normal commuting distance of the beneficiary's worksite, would generally not be acceptable.

Again, more detailed guidance should be forthcoming. We hope that this is sufficient to address any premium cases that are being held.

Please let me know if you need any additional information or if you have any questions or concerns.

Thank you,

**Ricky Collins | Adjudications Officer (Detail)**  
**Business Employment Services Team (BEST) | SCOPS | USCIS**

Office: [Redacted]  
Cell: (

(b)(6)

**Worley, Jordan P**

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**From:** Nicklaw, Nicole C [REDACTED]  
**Sent:** Thursday, May 31, 2018 8:19 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

---

**From:** Doumani, Stephanie M  
**Sent:** Tuesday, August 08, 2017 8:44 AM  
**To:** Nakajima, Simon T; Bump, Micah N; Stern, Kimberly M (Kim); Cox, Robert H  
**Cc:** Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Simon,

(b)(5)

[REDACTED]

If our understanding is incorrect, please let us know.

Thanks,  
Stephanie

**From:** Nakajima, Simon T  
**Sent:** Monday, August 07, 2017 2:41 PM  
**To:** Doumani, Stephanie M; Bump, Micah N; Stern, Kimberly M (Kim); Cox, Robert H  
**Cc:** Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Stephanie/SCOPS,

(b)(5)

[REDACTED]

Thanks,  
Simon

**From:** Doumani, Stephanie M  
**Sent:** Monday, August 07, 2017 12:51 PM  
**To:** Bump, Micah N; Stern, Kimberly M (Kim); Nakajima, Simon T; Cox, Robert H  
**Cc:** Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Everyone,

As Kim previously mentioned, we were notified that NSC is currently holding thousands of cases. They informed us that they need this training to train the new officers they've brought on to assist with this workload. We completely understand that OCC has competing priorities, especially in light of all the work needed on EOs. We just wanted to give

you all visibility on our game plan, which is to utilize the draft training until the final is ready if we are unable to finalize by Wednesday. We were going to move forward with this plan last week, but wanted to see if we could get the final version finished, as utilizing the final version from the start is our preferred approach.

Thanks very much for your understanding and your hard work on this.

Stephanie

---

**From:** Bump, Micah N  
**Sent:** Monday, August 07, 2017 9:28 AM  
**To:** Stern, Kimberly M (Kim); Nakajima, Simon T; Cox, Robert H  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Kim,

We should be able to review by then. If we need more time, we'll be in touch.

Thanks,

Micah

---

**From:** Stern, Kimberly M (Kim)  
**Sent:** Monday, August 07, 2017 8:20 AM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Good morning,

I've combined NSC's deference slides into the larger PPT, [Implementation of March 31 2017 Memo](#). The deference slides are #9 and 10, please review and revise as you see fit.

Do you think it would be possible complete initial review by COB Wed. Aug. 9<sup>th</sup>?

Thanks,  
Kim

**From:** Nakajima, Simon T  
**Sent:** Thursday, August 03, 2017 12:45 PM  
**To:** Stern, Kimberly M (Kim); Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C (b)(5)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency



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**From:** Stern, Kimberly M (Kim)  
**Sent:** Thursday, August 03, 2017 12:41 PM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N

**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Simon,

Thanks so much for the quick turnaround!

(b)(5)



Thanks,  
Kim

**From:** Nakajima, Simon T  
**Sent:** Thursday, August 03, 2017 12:04 PM  
**To:** Stern, Kimberly M (Kim); Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Kim,

(b)(5)



Thanks,  
Simon

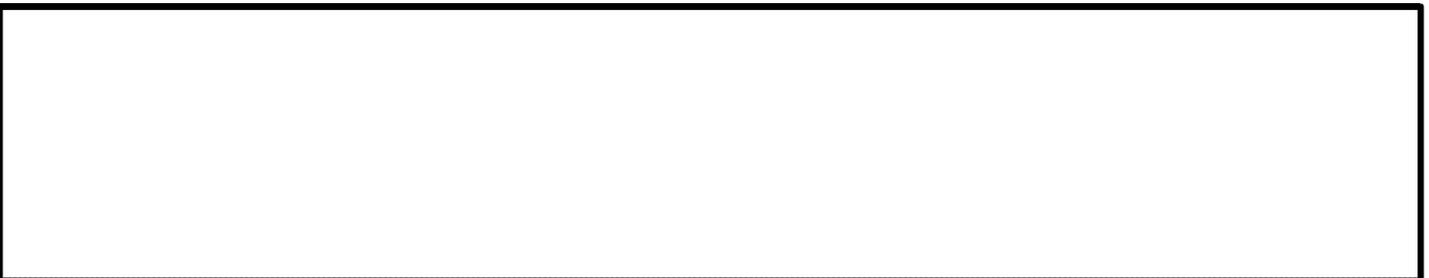
---

**From:** Stern, Kimberly M (Kim)  
**Sent:** Thursday, August 03, 2017 9:59 AM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Good morning OCC,

I wanted to touch base regarding the status of the training slides, including NSC's suggested modifications for the deference slides. NSC is holding approximately 2000 cases, pending receipt of the finalized Rescission Memo training slides and deference guidance slides.

(b)(5)



Thoughts welcome,  
Kim

**From:** Nakajima, Simon T  
**Sent:** Wednesday, August 02, 2017 3:22 PM  
**To:** Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

I double checked my archives and didn't find anything from OP&S on the material change issue.

We'll take a look at the denial template and get back to you.

Thanks,  
Simon

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, July 31, 2017 8:32 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi OCC,



Thank you,

Nicole

**From:** Cox, Robert H  
**Sent:** Monday, July 10, 2017 12:03 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Just wanted to let you know that we are still working to finalize our review of the PPT, but wanted to hear back from OP&S first regarding the material change issue so that we can ensure this training sufficiently addresses that point.

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 10:22 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Thanks so much, everyone. We really appreciate it!

After the initial rescission memo and guidance were distributed, the centers created a training power point which OCC reviewed. They have since revised the training power point based on the previous OCC comments and clarifying guidance given over the past few weeks and provided us with the attached late last week. Once the RFE templates are completed, can you also please take another look at the attached power point? If you could get back to us by COB Monday, July 3, we would really appreciate it.

Thank you,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Monday, June 26, 2017 4:27 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Not sure that is a legal call as much as it is an operational/policy call. Regardless, I think your response helped resolve Simon's comment and we are trying to finalize these and send them back asap.

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 9:15:48 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Legally, do you view that as a material change?

Also, are you able to provide the final documents/templates by COB tomorrow? Cases are still being held with more and more accumulating. We really need to provide the centers with the templates as soon as possible so they can start moving the cases.

Thank you,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Monday, June 26, 2017 2:49 PM

**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

I see. Thanks.

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 2:40 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert,

Without seeing a file and looking at the evidence in its totality, I don't believe we can say for sure whether a replacement LCA with an increased wage would be viewed as a material change. It may be viewed as material, dependent upon the circumstances of the particular case, but believe it would be a case-by-case determination.

Thanks,

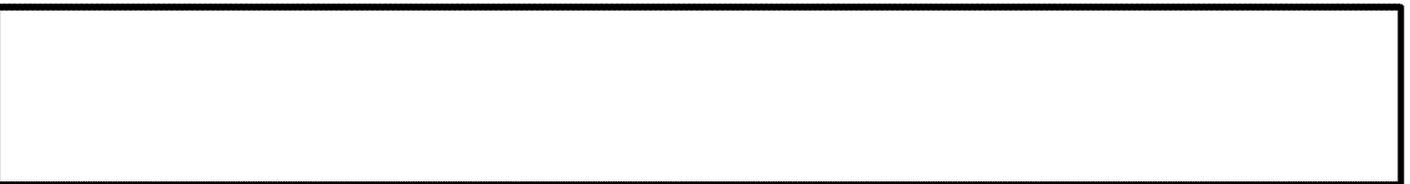
Nicole

---

**From:** Cox, Robert H  
**Sent:** Thursday, June 22, 2017 1:24 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Nicole,



Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Thursday, June 22, 2017 9:43 AM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

Thanks so much for the comments and edits. We've incorporated your suggested edits, responded to the outstanding comments and attached a red-lined and clean version to this email.

Please let us know as soon as possible if you're good to go with the templates and we can let the centers know they're cleared and that they can begin using them.

Thank you!

Nicole

**From:** Nakajima, Simon T  
**Sent:** Wednesday, June 21, 2017 5:32 PM  
**To:** Cox, Robert H; Nicklaw, Nicole C; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Please find some comments and edits in the attached.

Thanks,  
Simon

**From:** Cox, Robert H  
**Sent:** Wednesday, June 21, 2017 3:39 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

[Redacted]

(b)(5)

Thanks for confirming.

---

**From:** Nicklaw, Nicole C  
**Sent:** Wednesday, June 21, 2017 3:25 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert,

[Redacted]

(b)(5)

Thanks!

Nicole

---

**From:** Cox, Robert H  
**Sent:** Wednesday, June 21, 2017 2:48 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

(b)(5)

[Redacted]

Thanks,  
Robert

**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, June 20, 2017 8:31 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert and OCC,

Attached are revised and reworked RFE templates based on the clarifying guidance you provided (thank you!) and many of your suggested edits were incorporated.

To summarize, RFE 2120 is a specialty occupation RFE which includes the initial, threshold analysis of whether a position is a specialty occupation and the second analysis regarding whether the corresponding LCA is appropriate for the position. RFE 2120 has two distinct places for snippets – first for the specialty occupation and second for the wage level analysis. The two separate snippets can be found the RFE template labeled “1 – RFE.” The second RFE template labeled “2 – RFE” is only related to the LCA/wage level analysis and is for use when it is already established that the proffered position is a specialty occupation.

As you know, VSC is holding a very large number of cases pending the clearance of the RFE templates. Since an initial review was already completed, would it be possible to have your comments/edits **by COB Thursday, June 22**? Please let us know if you have any questions or need any additional information.

Thank you,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)  
Desk:   
Mobil (b)(6)

---

**From:** Cox, Robert H  
**Sent:** Wednesday, May 24, 2017 12:30 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Our comments/edits are attached.

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 2:48 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

COB Wednesday will work – thank you!

(b)(5)



Thanks,

Nicole

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 12:59 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Thanks. We will likely need a couple more days to complete our review. COB Wednesday okay?

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 12:56 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

Attached are the other 2 documents for review.

Thank you,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)  
Desk:  (b)(5)  
Mobi: 

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 11:41 AM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Cool. Thanks.

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 4:40:20 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

I've reached out to VSC to get the correct documents. Their original email prior to the issuance of our guidance contained different document however this recent one, as Simon mentioned last week, appears to have the same docs attached. As soon as I hear back, I will pass along the updated docs/text.

Thank you!

-Nicole

---

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 11:38 AM  
**To:** Nakajima, Simon T; Nicklaw, Nicole C; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

(b)(5)

Thanks,  
Robert

---

**From:** Nakajima, Simon T  
**Sent:** Friday, May 19, 2017 3:04 PM  
**To:** Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Is it me or are the three RFEs completely identical, even though they are labeled differently?

Thanks,  
Simon

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 15, 2017 11:23 PM  
**To:** Cox, Robert H; Bump, Micah N; Nakajima, Simon T  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

Hi OCC,

(b)(5)

Is it possible to get your comments/edits by COB Monday, May 22? If you need more time, please let us know.

Thank you,

Nicole

**From:** Boudreau, Lynn A  
**Sent:** Wednesday, May 10, 2017 12:04 PM  
**To:** Nicklaw, Nicole C  
**Cc:** Doumani, Stephanie M; Martin, Evelyn M; Fierro, Joseph; Whittier, Michelle J; Plastrik, Steven T; Schmalz, Peter N; Selby, Cara M (Carrie)  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

Hi Nicole,

The VSC has shared the attached draft RFEs with POCs from both the NSC and CSC. It appears SCOPS may need to provide some additional clarification with regard to wage leveling and the second RFE (#2 wage leveling). Please refer to exchange/discussion below.

Please also note that the RFEs have been reviewed by VSC local OCC (see last attachment RE: Wage Leveling RFE)

The VSC does have some cases being held awaiting the clearance of said templates so I think they are ready to go to the working group for final vetting and concurrence. I also believe the working group should review the discussion below as I believe we need additional clarification in order to ensure a consistent approach at all three SCs.

Lastly, I have attached a copy of a PowerPoint with training slides that the we (VSC) provided to our officers. It would be great if we could get the presentation vetted and approved by the working group, as well.

Please let me know if you have any additional question or concerns.

Thanks,

Lynn

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Thank you for your feedbacks. I read the attached email and realized that you have run this matter through your local counsel.

(b)(5)



(b)(5)

I tried to respond to your points below in red.

The second RFE was created to address this guidance provided by SCOPS:

The memo also instructs adjudicators to address inconsistencies when the job duties described in a petition contradict the wage level indicated on the Labor Condition Application (LCA). While USCIS does not have the authority or jurisdiction to mandate a specific wage level on the LCA, USCIS is required to verify that the information on the certified LCA corresponds to and supports the H-1B petition. The prevailing wage determination for an occupation is based on a comparison of the employer’s job requirements to the occupational requirements: tasks, knowledge, skills, and specific vocational preparation (education, training, and experience) generally required for acceptable performance in that occupation. In general, a petitioner must distinguish its proffered position from others within the same occupation through the proper wage level designation to indicate factors such as the relative complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. The adjudicator may issue a request for evidence if he/she determines that the wage level selected by the petitioner does not appear to correspond to the petitioner’s description and requirements for the proffered position. This type of analysis should be conducted on all H-1B petitions.

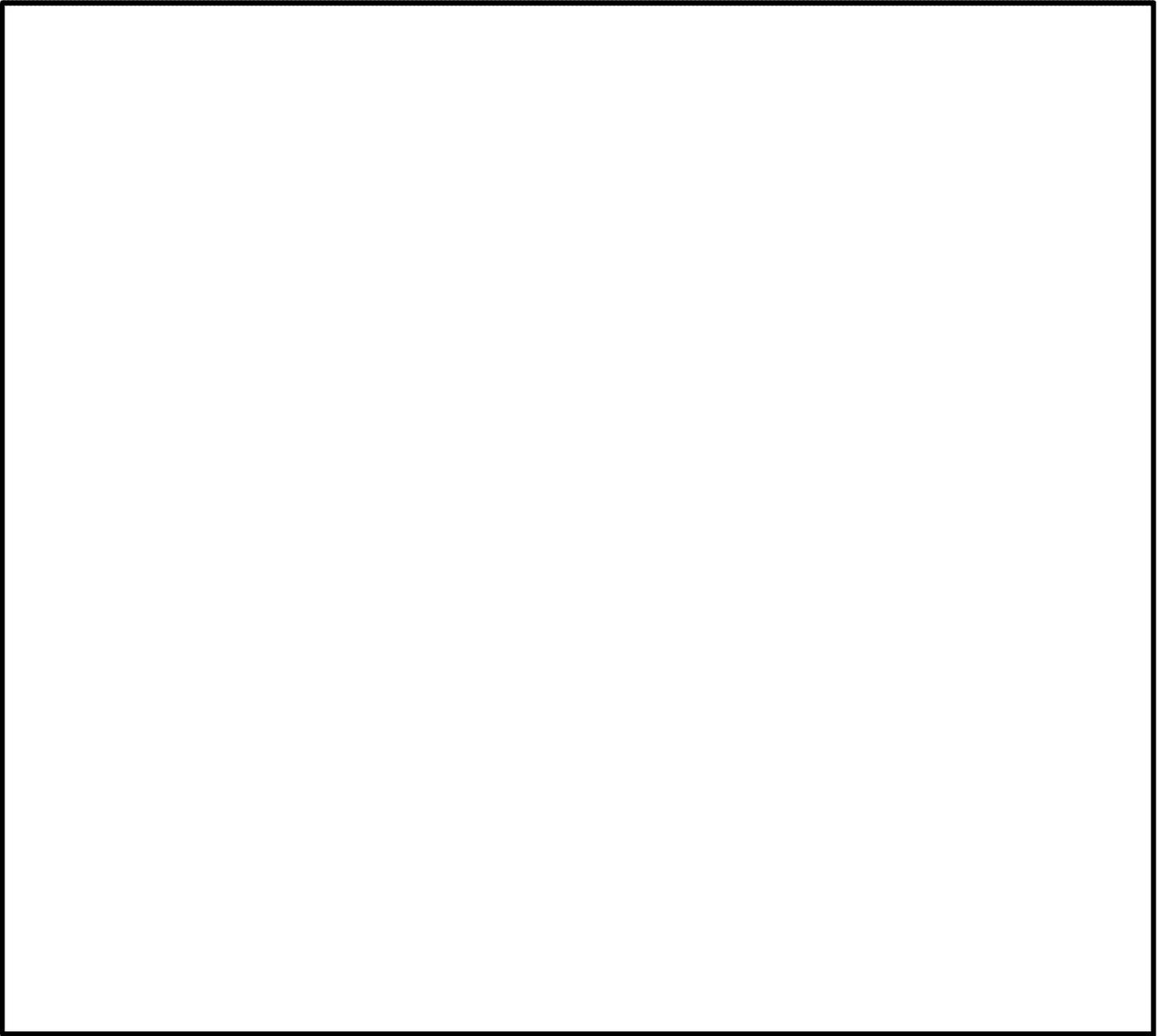
The recession memo itself indicates “USCIS officers must also review the LCA to ensure the wage level designated by the petitioner corresponds to the proffered position.” *Matter of Simeio* also supports our ability to perform this type of analysis. This precedent decision states, “DOL reviews LCAs ‘for completeness and obvious inaccuracies’ and will certify the LCA absent a determination that the application is incomplete or obviously inaccurate. Section 212(n)(1)(G)(ii) of the Act. In contrast, USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition, including the specific place of employment. 20 C.F.R. § 655.705(b) (2014); see also 8 C.F.R. § 214.2(h)(4)(i)(B).”

(b)(5)



(b)(5)





**Worley, Jordan P**

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**From:** Nicklaw, Nicole C [REDACTED] (b)(6)  
**Sent:** Thursday, May 31, 2018 8:19 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Computer Programmer Memo Service Center Consistency  
**Attachments:** 2 Deference slides.pptx

**From:** Nicklaw, Nicole C  
**Sent:** Monday, July 31, 2017 8:32 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC, (b)(5)

[REDACTED]

Thank you,

Nicole

**From:** Cox, Robert H  
**Sent:** Monday, July 10, 2017 12:03 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole, (b)(5)

[REDACTED]

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 10:22 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Thanks so much, everyone. We really appreciate it!

After the initial rescission memo and guidance were distributed, the centers created a training power point which OCC reviewed. They have since revised the training power point based on the previous OCC comments and clarifying guidance given over the past few weeks and provided us with the attached late last week. Once the RFE templates are completed, can you also please take another look at the attached power point? If you could get back to us by COB Monday, July 3, we would really appreciate it.

Thank you,

Nicole

**From:** Cox, Robert H  
**Sent:** Monday, June 26, 2017 4:27 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny) (b)(5)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 9:15:48 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny) (b)(5)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Thank you,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Monday, June 26, 2017 2:49 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

I see. Thanks.

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 2:40 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert,

Without seeing a file and looking at the evidence in its totality, I don't believe we can say for sure whether a replacement LCA with an increased wage would be viewed as a material change. It may be viewed as material, dependent upon the circumstances of the particular case, but believe it would be a case-by-case determination.

Thanks,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Thursday, June 22, 2017 1:24 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

If the petitioner submits a level II LCA in response to the RFE (LCA certified prior to filing of petition), and there are no other changes other than the increased wage to correspond to the level II LCA, would we consider that to be a material change? For this question, presume that the petition did not involve a dependent employer/recruitment obligation. Just trying to understand if a replacement LCA and increased wage would be viewed as a material change.

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Thursday, June 22, 2017 9:43 AM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

Thanks so much for the comments and edits. We've incorporated your suggested edits, responded to the outstanding comments and attached a red-lined and clean version to this email.

Please let us know as soon as possible if you're good to go with the templates and we can let the centers know they're cleared and that they can begin using them.

Thank you!

Nicole

---

**From:** Nakajima, Simon T  
**Sent:** Wednesday, June 21, 2017 5:32 PM  
**To:** Cox, Robert H; Nicklaw, Nicole C; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Please find some comments and edits in the attached.

Thanks,  
Simon

**From:** Cox, Robert H  
**Sent:** Wednesday, June 21, 2017 3:39 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

[Redacted] (b)(5)

Thanks for confirming.

**From:** Nicklaw, Nicole C  
**Sent:** Wednesday, June 21, 2017 3:25 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert, (b)(5)

[Redacted]

Thanks!

Nicole

---

**From:** Cox, Robert H  
**Sent:** Wednesday, June 21, 2017 2:48 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole, (b)(5)

[Redacted]

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, June 20, 2017 8:31 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert and OCC,

(b)(5)

Attached are revised and reworked RFE templates based on the clarifying guidance you provided (thank you!) and many of your suggested edits were incorporated.



Thank you,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk:

Mobil

(b)(6)

**From:** Cox, Robert H

**Sent:** Wednesday, May 24, 2017 12:30 PM

**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance

**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Our comments/edits are attached.

Thanks,

Robert

---

**From:** Nicklaw, Nicole C

**Sent:** Monday, May 22, 2017 2:48 PM

**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)

**Subject:** RE: Computer Programmer Memo Service Center Consistency

COB Wednesday will work – thank you!

(b)(5)



Thanks,

Nicole

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 12:59 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Thanks. We will likely need a couple more days to complete our review. COB Wednesday okay?

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 12:56 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

Attached are the other 2 documents for review.

Thank you,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)  
Desk:  (b)(6)  
Mobile:

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**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 11:41 AM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Cool. Thanks.

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 4:40:20 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

I've reached out to VSC to get the correct documents. Their original email prior to the issuance of our guidance contained different document however this recent one, as Simon mentioned last week, appears to have the same docs attached. As soon as I hear back, I will pass along the updated docs/text.

Thank you!

-Nicole

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 11:38 AM  
**To:** Nakajima, Simon T; Nicklaw, Nicole C; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

(b)(5)

Thanks,  
Robert

**From:** Nakajima, Simon T  
**Sent:** Friday, May 19, 2017 3:04 PM  
**To:** Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

(b)(5)

Thanks,  
Simon

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 15, 2017 11:23 PM  
**To:** Cox, Robert H; Bump, Micah N; Nakajima, Simon T  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

Hi OCC,

Attached are RFEs that VSC created based on the rescission memo guidance as well as a training presentation for officers. VSC already worked with their local counsel to draft the documents. SCOPS is in the process of reviewing and would like to also clear through you as well.

Is it possible to get your comments/edits by COB Monday, May 22? If you need more time, please let us know.

Thank you,  
Nicole

---

**From:** Boudreau, Lynn A  
**Sent:** Wednesday, May 10, 2017 12:04 PM  
**To:** Nicklaw, Nicole C  
**Cc:** Doumani, Stephanie M; Martin, Evelyn M; Fierro, Joseph; Whittier, Michelle J; Plastrik, Steven T; Schmalz, Peter N; Selby, Cara M (Carrie)  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

Hi Nicole,

The VSC has shared the attached draft RFEs with POCs from both the NSC and CSC. It appears SCOPS may need to provide some additional clarification with regard to wage leveling and the second RFE (#2 wage leveling). Please refer to exchange/discussion below.

Please also note that the RFEs have been reviewed by VSC local OCC (see last attachment RE: Wage Leveling RFE)

The VSC does have some cases being held awaiting the clearance of said templates so I think they are ready to go to the working group for final vetting and concurrence. I also believe the working group should review the discussion below as I believe we need additional clarification in order to ensure a consistent approach at all three SCs.

Lastly, I have attached a copy of a PowerPoint with training slides that the we (VSC) provided to our officers. It would be great if we could get the presentation vetted and approved by the working group, as well.

Please let me know if you have any additional question or concerns.

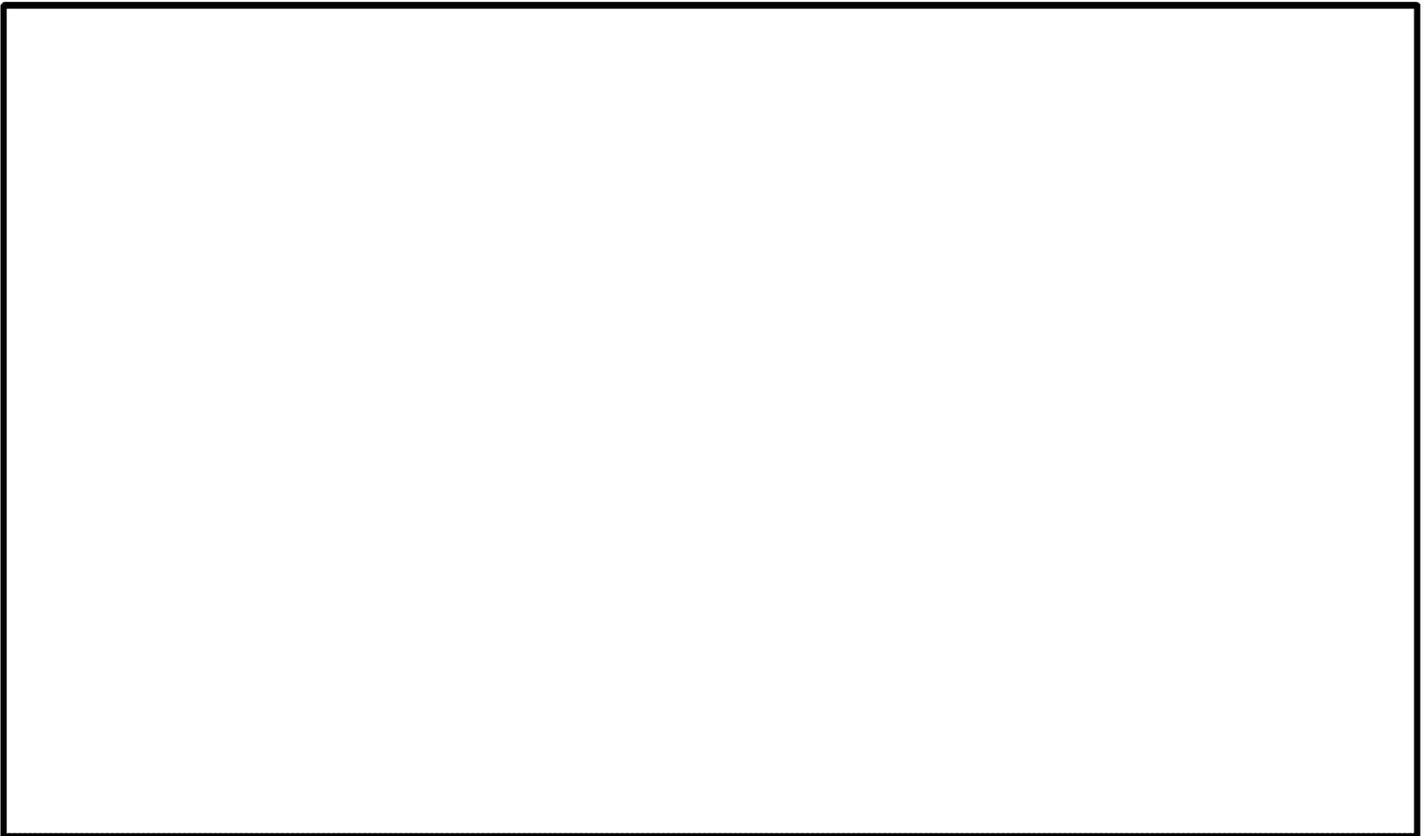
Thanks,

Lynn

(b)(5)

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Thank you for your feedbacks. I read the attached email and realized that you have run this matter through your local counsel.



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I tried to respond to your points below in red.

The second RFE was created to address this guidance provided by SCOPS:

The memo also instructs adjudicators to address inconsistencies when the job duties described in a petition contradict the wage level indicated on the Labor Condition Application (LCA). While USCIS does not have the authority or jurisdiction to mandate a specific wage level on the LCA, USCIS is required to verify that the information on the certified LCA corresponds to and supports the H-1B petition. The prevailing wage determination for an occupation is based on a comparison of the employer's job requirements to the occupational requirements: tasks, knowledge, skills, and specific vocational preparation (education, training, and experience) generally required for acceptable performance in that occupation. In general, a petitioner must distinguish its proffered position from others within the same occupation through the proper wage level designation to indicate factors such as the relative complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. The adjudicator may issue a request for evidence if he/she determines that the wage level selected by the petitioner does not appear to correspond to the petitioner's description and requirements for the proffered position. This type of analysis should be conducted on all H-1B petitions.

The recession memo itself indicates "USCIS officers must also review the LCA to ensure the wage level designated by the petitioner corresponds to the proffered position." *Matter of Simeio* also supports our ability to perform this type of analysis. This precedent decision states, "DOL reviews LCAs 'for completeness and obvious inaccuracies' and will certify the LCA absent a determination that the application is incomplete or obviously inaccurate. Section 212(n)(1)(G)(ii) of the Act. In contrast, USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition, including the specific place of employment. 20 C.F.R. § 655.705(b) (2014); see also 8 C.F.R. § 214.2(h)(4)(i)(B)."

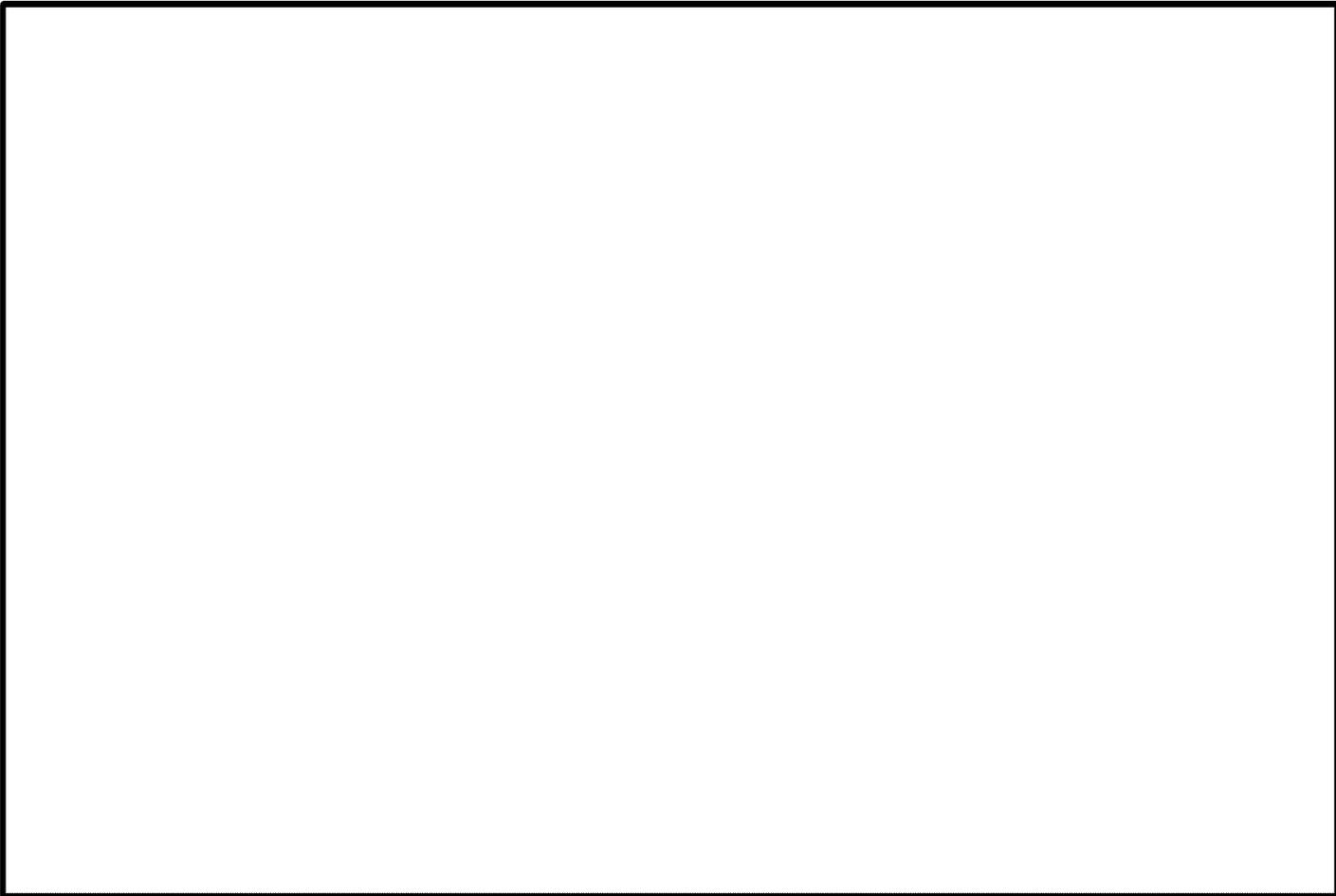
(b)(5)



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(b)(5)





**Worley, Jordan P**

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**From:** Nicklaw, Nicole C <Nicole.C.Nicklaw@uscis.dhs.gov>  
**Sent:** Thursday, May 31, 2018 8:18 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

---

**From:** Doumani, Stephanie M  
**Sent:** Tuesday, August 08, 2017 8:44 AM  
**To:** Nakajima, Simon T; Bump, Micah N; Stern, Kimberly M (Kim); Cox, Robert H  
**Cc:** Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Simon,

(b)(5)



If our understanding is incorrect, please let us know.

Thanks,  
Stephanie

**From:** Nakajima, Simon T  
**Sent:** Monday, August 07, 2017 2:41 PM  
**To:** Doumani, Stephanie M; Bump, Micah N; Stern, Kimberly M (Kim); Cox, Robert H  
**Cc:** Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Stephanie/SCOPS,

(b)(5)



Thanks,  
Simon

**From:** Doumani, Stephanie M  
**Sent:** Monday, August 07, 2017 12:51 PM  
**To:** Bump, Micah N; Stern, Kimberly M (Kim); Nakajima, Simon T; Cox, Robert H  
**Cc:** Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Everyone,

As Kim previously mentioned, we were notified that NSC is currently holding thousands of cases. They informed us that they need this training to train the new officers they've brought on to assist with this workload. We completely understand that OCC has competing priorities, especially in light of all the work needed on EOs. We just wanted to give

you all visibility on our game plan, which is to utilize the draft training until the final is ready if we are unable to finalize by Wednesday. We were going to move forward with this plan last week, but wanted to see if we could get the final version finished, as utilizing the final version from the start is our preferred approach.

Thanks very much for your understanding and your hard work on this.

Stephanie

---

**From:** Bump, Micah N  
**Sent:** Monday, August 07, 2017 9:28 AM  
**To:** Stern, Kimberly M (Kim); Nakajima, Simon T; Cox, Robert H  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Kim,

We should be able to review by then. If we need more time, we'll be in touch.

Thanks,

Micah

---

**From:** Stern, Kimberly M (Kim)  
**Sent:** Monday, August 07, 2017 8:20 AM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Good morning,

I've combined NSC's deference slides into the larger PPT, [Implementation of March 31 2017 Memo](#). The deference slides are #9 and 10, please review and revise as you see fit.

Do you think it would be possible complete initial review by COB Wed. Aug. 9<sup>th</sup>?

Thanks,  
Kim

**From:** Nakajima, Simon T  
**Sent:** Thursday, August 03, 2017 12:45 PM  
**To:** Stern, Kimberly M (Kim); Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C (b)(5)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency



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**From:** Stern, Kimberly M (Kim)  
**Sent:** Thursday, August 03, 2017 12:41 PM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N

**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Simon,

Thanks so much for the quick turnaround!

(b)(5)



Thanks,  
Kim

---

**From:** Nakajima, Simon T  
**Sent:** Thursday, August 03, 2017 12:04 PM  
**To:** Stern, Kimberly M (Kim); Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Kim,



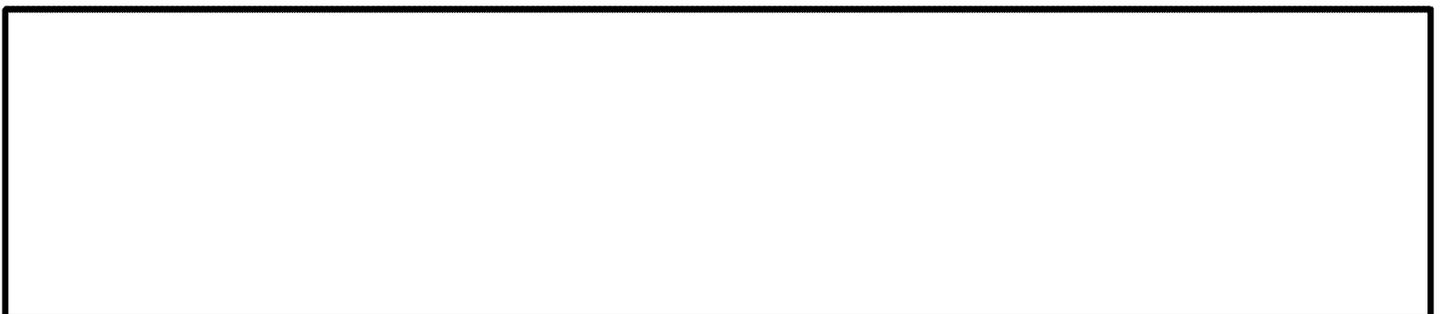
Thanks,  
Simon

---

**From:** Stern, Kimberly M (Kim)  
**Sent:** Thursday, August 03, 2017 9:59 AM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Nicklaw, Nicole C  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Good morning OCC,

I wanted to touch base regarding the status of the training slides, including NSC's suggested modifications for the deference slides. NSC is holding approximately 2000 cases, pending receipt of the finalized Rescission Memo training slides and deference guidance slides. (b)(5)



Thoughts welcome,  
Kim

**From:** Nakajima, Simon T  
**Sent:** Wednesday, August 02, 2017 3:22 PM  
**To:** Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

I double checked my archives and didn't find anything from OP&S on the material change issue.

We'll take a look at the denial template and get back to you.

Thanks,  
Simon

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, July 31, 2017 8:32 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi OCC,



us know.

Thank you,

Nicole

**From:** Cox, Robert H  
**Sent:** Monday, July 10, 2017 12:03 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Just wanted to let you know that we are still working to finalize our review of the PPT, but wanted to hear back from OP&S first regarding the material change issue so that we can ensure this training sufficiently addresses that point.

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 10:22 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Thanks so much, everyone. We really appreciate it!

After the initial rescission memo and guidance were distributed, the centers created a training power point which OCC reviewed. They have since revised the training power point based on the previous OCC comments and clarifying guidance given over the past few weeks and provided us with the attached late last week. Once the RFE templates are completed, can you also please take another look at the attached power point? If you could get back to us by COB Monday, July 3, we would really appreciate it.

Thank you,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Monday, June 26, 2017 4:27 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Not sure that is a legal call as much as it is an operational/policy call. Regardless, I think your response helped resolve Simon's comment and we are trying to finalize these and send them back asap.

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 9:15:48 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Legally, do you view that as a material change?

Also, are you able to provide the final documents/templates by COB tomorrow? Cases are still being held with more and more accumulating. We really need to provide the centers with the templates as soon as possible so they can start moving the cases.

Thank you,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Monday, June 26, 2017 2:49 PM

**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

I see. Thanks.

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 2:40 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert,

Without seeing a file and looking at the evidence in its totality, I don't believe we can say for sure whether a replacement LCA with an increased wage would be viewed as a material change. It may be viewed as material, dependent upon the circumstances of the particular case, but believe it would be a case-by-case determination.

Thanks,

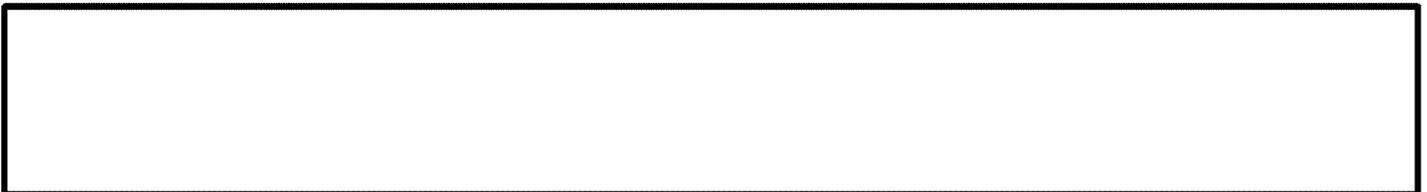
Nicole

---

**From:** Cox, Robert H  
**Sent:** Thursday, June 22, 2017 1:24 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi Nicole,



Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Thursday, June 22, 2017 9:43 AM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

Thanks so much for the comments and edits. We've incorporated your suggested edits, responded to the outstanding comments and attached a red-lined and clean version to this email.

Please let us know as soon as possible if you're good to go with the templates and we can let the centers know they're cleared and that they can begin using them.

Thank you!

Nicole

**From:** Nakajima, Simon T  
**Sent:** Wednesday, June 21, 2017 5:32 PM  
**To:** Cox, Robert H; Nicklaw, Nicole C; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Please find some comments and edits in the attached.

Thanks,  
Simon

**From:** Cox, Robert H  
**Sent:** Wednesday, June 21, 2017 3:39 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

[REDACTED] (b)(5)

Thanks for confirming.

---

**From:** Nicklaw, Nicole C  
**Sent:** Wednesday, June 21, 2017 3:25 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert,

[REDACTED] (b)(5)

Thanks!

Nicole

---

**From:** Cox, Robert H  
**Sent:** Wednesday, June 21, 2017 2:48 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

[REDACTED] (b)(5)

Thanks,  
Robert

**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, June 20, 2017 8:31 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert and OCC,

Attached are revised and reworked RFE templates based on the clarifying guidance you provided (thank you!) and many of your suggested edits were incorporated.

To summarize, RFE 2120 is a specialty occupation RFE which includes the initial, threshold analysis of whether a position is a specialty occupation and the second analysis regarding whether the corresponding LCA is appropriate for the position. RFE 2120 has two distinct places for snippets – first for the specialty occupation and second for the wage level analysis. The two separate snippets can be found the RFE template labeled “1 – RFE.” The second RFE template labeled “2 – RFE” is only related to the LCA/wage level analysis and is for use when it is already established that the proffered position is a specialty occupation.

As you know, VSC is holding a very large number of cases pending the clearance of the RFE templates. Since an initial review was already completed, would it be possible to have your comments/edits **by COB Thursday, June 22?** Please let us know if you have any questions or need any additional information.

Thank you,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS| Business Employment Services Team (BEST)

Desk

Mobi

(b)(6)

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**From:** Cox, Robert H  
**Sent:** Wednesday, May 24, 2017 12:30 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Our comments/edits are attached.

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 2:48 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

COB Wednesday will work – thank you!

(b)(5)



Thanks,

Nicole

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 12:59 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Thanks. We will likely need a couple more days to complete our review. COB Wednesday okay?

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 12:56 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

Attached are the other 2 documents for review.

Thank you,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)  
Desk:  (b)(6)  
Mobi: 

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 11:41 AM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Cool. Thanks.

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 4:40:20 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

I've reached out to VSC to get the correct documents. Their original email prior to the issuance of our guidance contained different document however this recent one, as Simon mentioned last week, appears to have the same docs attached. As soon as I hear back, I will pass along the updated docs/text.

Thank you!

-Nicole

---

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 11:38 AM  
**To:** Nakajima, Simon T; Nicklaw, Nicole C; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

(b)(5)

[Redacted]

Thanks,  
Robert

---

**From:** Nakajima, Simon T  
**Sent:** Friday, May 19, 2017 3:04 PM  
**To:** Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Is it me or are the three RFEs completely identical, even though they are labeled differently?

Thanks,  
Simon

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 15, 2017 11:23 PM  
**To:** Cox, Robert H; Bump, Micah N; Nakajima, Simon T  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

(b)(5)

Hi OCC,

[Redacted]

Is it possible to get your comments/edits by COB Monday, May 22? If you need more time, please let us know.

Thank you,

Nicole

**From:** Boudreau, Lynn A  
**Sent:** Wednesday, May 10, 2017 12:04 PM  
**To:** Nicklaw, Nicole C  
**Cc:** Doumani, Stephanie M; Martin, Evelyn M; Fierro, Joseph; Whittier, Michelle J; Plastrik, Steven T; Schmalz, Peter N; Selby, Cara M (Carrie)  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

Hi Nicole,

The VSC has shared the attached draft RFEs with POCs from both the NSC and CSC. It appears SCOPS may need to provide some additional clarification with regard to wage leveling and the second RFE (#2 wage leveling). Please refer to exchange/discussion below.

Please also note that the RFEs have been reviewed by VSC local OCC (see last attachment RE: Wage Leveling RFE)

The VSC does have some cases being held awaiting the clearance of said templates so I think they are ready to go to the working group for final vetting and concurrence. I also believe the working group should review the discussion below as I believe we need additional clarification in order to ensure a consistent approach at all three SCs.

Lastly, I have attached a copy of a PowerPoint with training slides that the we (VSC) provided to our officers. It would be great if we could get the presentation vetted and approved by the working group, as well.

Please let me know if you have any additional question or concerns.

Thanks,

Lynn

(b)(5)

---

Thank you for your feedbacks. I read the attached email and realized that you have run this matter through your local counsel.



(b)(5)

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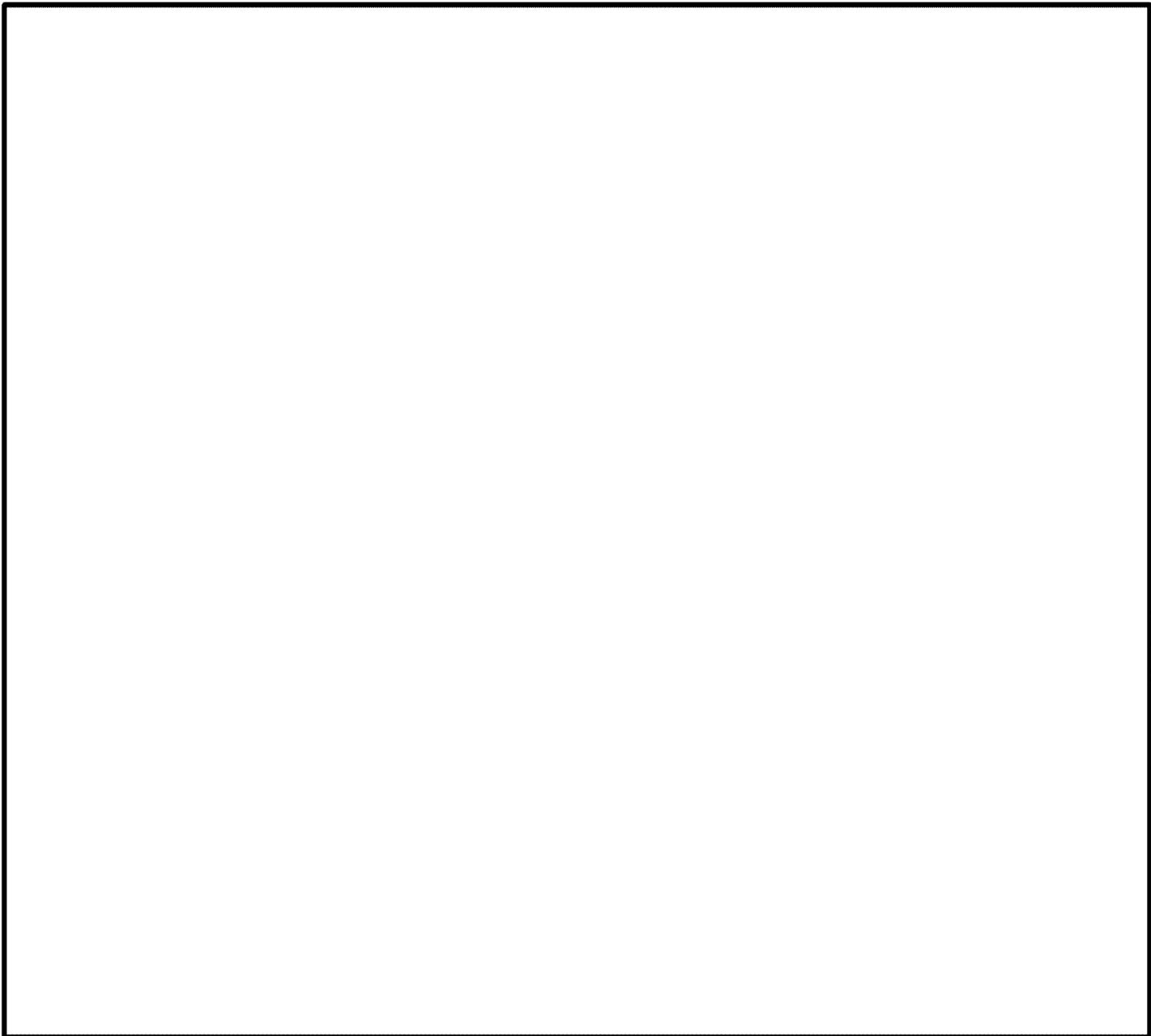
I tried to respond to your points below in red.

The second RFE was created to address this guidance provided by SCOPS:

The memo also instructs adjudicators to address inconsistencies when the job duties described in a petition contradict the wage level indicated on the Labor Condition Application (LCA). While USCIS does not have the authority or jurisdiction to mandate a specific wage level on the LCA, USCIS is required to verify that the information on the certified LCA corresponds to and supports the H-1B petition. The prevailing wage determination for an occupation is based on a comparison of the employer's job requirements to the occupational requirements: tasks, knowledge, skills, and specific vocational preparation (education, training, and experience) generally required for acceptable performance in that occupation. In general, a petitioner must distinguish its proffered position from others within the same occupation through the proper wage level designation to indicate factors such as the relative complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. The adjudicator may issue a request for evidence if he/she determines that the wage level selected by the petitioner does not appear to correspond to the petitioner's description and requirements for the proffered position. This type of analysis should be conducted on all H-1B petitions.

(b)(5)





**Worley, Jordan P**

---

**From:** Nicklaw, Nicole C [REDACTED] (b)(6)  
**Sent:** Thursday, May 31, 2018 8:12 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

---

**From:** Doumani, Stephanie M  
**Sent:** Friday, July 07, 2017 2:48 PM  
**To:** Bump, Micah N  
**Cc:** Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Cox, Robert H; Nicklaw, Nicole C; Nakajima, Simon T; Cummings, Kevin J; Parascandola, Ciro A  
**Subject:** RE: Computer Programmer Memo Service Center Consistency (b)(5)

[REDACTED]

Policy, can you please weigh in at your earliest convenience? We would like to provide a response to this question to the centers by next week.

Happy Friday.

Stephanie

---

**From:** Bump, Micah N  
**Sent:** Friday, July 07, 2017 2:28:08 PM  
**To:** Doumani, Stephanie M  
**Cc:** Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Cox, Robert H; Nicklaw, Nicole C; Nakajima, Simon T  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Stephanie/SCOPS: (b)(5)

[REDACTED]

[Redacted]

Enjoy the weekend!

(b)(5)

Best,

Micah

Micah N. Bump  
Associate Counsel  
Department of Homeland Security  
Citizenship and Immigration Services  
20 Massachusetts Avenue, NW  
Washington, D.C. 20529

Tel: (20

[Redacted]

(b)(6)

Mobile

WARNING: This email contains a document(s) categorized as FOR OFFICIAL USE ONLY (FOUO). The document(s) contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). This email and its attachment(s) are to be controlled, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to Sensitive But Unclassified (SBU) information and are not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval from the originator.

**From:** Doumani, Stephanie M

**Sent:** Tuesday, June 27, 2017 3:06 PM

**To:** Cox, Robert H; Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N

**Cc:** Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)

**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hey Robert,

(b)(5)

[Redacted]

Thanks,  
Stephanie

**From:** Cox, Robert H  
**Sent:** Monday, June 26, 2017 4:27 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Not sure that is a legal call as much as it is an operational/policy call. Regardless, I think your response helped resolve Simon's comment and we are trying to finalize these and send them back asap.

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 9:15:48 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Legally, do you view that as a material change?

Also, are you able to provide the final documents/templates by COB tomorrow? Cases are still being held with more and more accumulating. We really need to provide the centers with the templates as soon as possible so they can start moving the cases.

Thank you,

Nicole

**From:** Cox, Robert H  
**Sent:** Monday, June 26, 2017 2:49 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

I see. Thanks.

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, June 26, 2017 2:40 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert,

Without seeing a file and looking at the evidence in its totality, I don't believe we can say for sure whether a replacement LCA with an increased wage would be viewed as a material change. It may be viewed as material, dependent upon the circumstances of the particular case, but believe it would be a case-by-case determination.

Thanks,

Nicole

**From:** Cox, Robert H  
**Sent:** Thursday, June 22, 2017 1:24 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

If the petitioner submits a level II LCA in response to the RFE (LCA certified prior to filing of petition), and there are no other changes other than the increased wage to correspond to the level II LCA, would we consider that to be a material change? For this question, presume that the petition did not involve a dependent employer/recruitment obligation. Just trying to understand if a replacement LCA and increased wage would be viewed as a material change.

Thanks,  
Robert

**From:** Nicklaw, Nicole C  
**Sent:** Thursday, June 22, 2017 9:43 AM  
**To:** Nakajima, Simon T; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

Thanks so much for the comments and edits. We've incorporated your suggested edits, responded to the outstanding comments and attached a red-lined and clean version to this email.

Please let us know as soon as possible if you're good to go with the templates and we can let the centers know they're cleared and that they can begin using them.

Thank you!

Nicole

---

**From:** Nakajima, Simon T  
**Sent:** Wednesday, June 21, 2017 5:32 PM  
**To:** Cox, Robert H; Nicklaw, Nicole C; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Please find some comments and edits in the attached.

Thanks,  
Simon

---

**From:** Cox, Robert H  
**Sent:** Wednesday, June 21, 2017 3:39 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

[Redacted]

(b)(5)

Thanks for confirming.

**From:** Nicklaw, Nicole C  
**Sent:** Wednesday, June 21, 2017 3:25 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert,

[Redacted]

(b)(5)

Thanks!

Nicole

**From:** Cox, Robert H  
**Sent:** Wednesday, June 21, 2017 2:48 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

(b)(5)

[Redacted]

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, June 20, 2017 8:31 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Robert and OCC,

Attached are revised and reworked RFE templates based on the clarifying guidance you provided (thank you!) and many of your suggested edits were incorporated.

To summarize, RFE 2120 is a specialty occupation RFE which includes the initial, threshold analysis of whether a position is a specialty occupation and the second analysis regarding whether the corresponding LCA is appropriate for the position. RFE 2120 has two distinct places for snippets – first for the specialty occupation and second for the wage level analysis. The two separate snippets can be found in the RFE template labeled “1 – RFE.” The second RFE template labeled “2 – RFE” is only related to the LCA/wage level analysis and is for use when it is already established that the proffered position is a specialty occupation.

As you know, VSC is holding a very large number of cases pending the clearance of the RFE templates. Since an initial review was already completed, would it be possible to have your comments/edits **by COB Thursday, June 22?** Please let us know if you have any questions or need any additional information.

Thank you,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: [REDACTED] (b)(6)  
Mobil [REDACTED]

---

**From:** Cox, Robert H  
**Sent:** Wednesday, May 24, 2017 12:30 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); ALD; OCC-Clearance  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Our comments/edits are attached.

Thanks,  
Robert

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 2:48 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

COB Wednesday will work – thank you!

(b)(5)

[REDACTED]

Thanks,

Nicole

---

**From:** Cox, Robert H  
**Sent:** Monday, May 22, 2017 12:59 PM  
**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Thanks. We will likely need a couple more days to complete our review. COB Wednesday okay?

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 22, 2017 12:56 PM  
**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

Attached are the other 2 documents for review.

Thank you,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk:

Mobile:



(b)(6)

---

**From:** Cox, Robert H

**Sent:** Monday, May 22, 2017 11:41 AM

**To:** Nicklaw, Nicole C; Nakajima, Simon T; Bump, Micah N

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)

**Subject:** RE: Computer Programmer Memo Service Center Consistency

Cool. Thanks.

---

**From:** Nicklaw, Nicole C

**Sent:** Monday, May 22, 2017 4:40:20 PM

**To:** Cox, Robert H; Nakajima, Simon T; Bump, Micah N

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)

**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi OCC,

(b)(5)



Thank you!

-Nicole

---

**From:** Cox, Robert H

**Sent:** Monday, May 22, 2017 11:38 AM

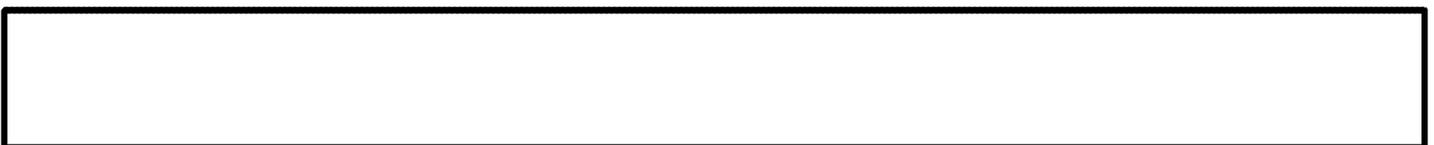
**To:** Nakajima, Simon T; Nicklaw, Nicole C; Bump, Micah N

**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)

**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

(b)(5)



Thanks,  
Robert

**From:** Nakajima, Simon T  
**Sent:** Friday, May 19, 2017 3:04 PM  
**To:** Nicklaw, Nicole C; Cox, Robert H; Bump, Micah N  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim); Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny)  
**Subject:** RE: Computer Programmer Memo Service Center Consistency

Hi Nicole,

Is it me or are the three RFEs completely identical, even though they are labeled differently?

Thanks,  
Simon

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 15, 2017 11:23 PM  
**To:** Cox, Robert H; Bump, Micah N; Nakajima, Simon T  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

Hi OCC,

Attached are RFEs that VSC created based on the rescission memo guidance as well as a training presentation for officers. VSC already worked with their local counsel to draft the documents. SCOPS is in the process of reviewing and would like to also clear through you as well.

Is it possible to get your comments/edits by COB Monday, May 22? If you need more time, please let us know.

Thank you,  
Nicole

---

**From:** Boudreau, Lynn A  
**Sent:** Wednesday, May 10, 2017 12:04 PM  
**To:** Nicklaw, Nicole C  
**Cc:** Doumani, Stephanie M; Martin, Evelyn M; Fierro, Joseph; Whittier, Michelle J; Plastrik, Steven T; Schmalz, Peter N; Selby, Cara M (Carrie)  
**Subject:** FW: Computer Programmer Memo Service Center Consistency

Hi Nicole,

The VSC has shared the attached draft RFEs with POCs from both the NSC and CSC. It appears SCOPS may need to provide some additional clarification with regard to wage leveling and the second RFE (#2 wage leveling). Please refer to exchange/discussion below.

Please also note that the RFEs have been reviewed by VSC local OCC (see last attachment RE: Wage Leveling RFE)

The VSC does have some cases being held awaiting the clearance of said templates so I think they are ready to go to the working group for final vetting and concurrence. I also believe the working group should review the discussion below as I believe we need additional clarification in order to ensure a consistent approach at all three SCs.

Lastly, I have attached a copy of a PowerPoint with training slides that the we (VSC) provided to our officers. It would be great if we could get the presentation vetted and approved by the working group, as well.

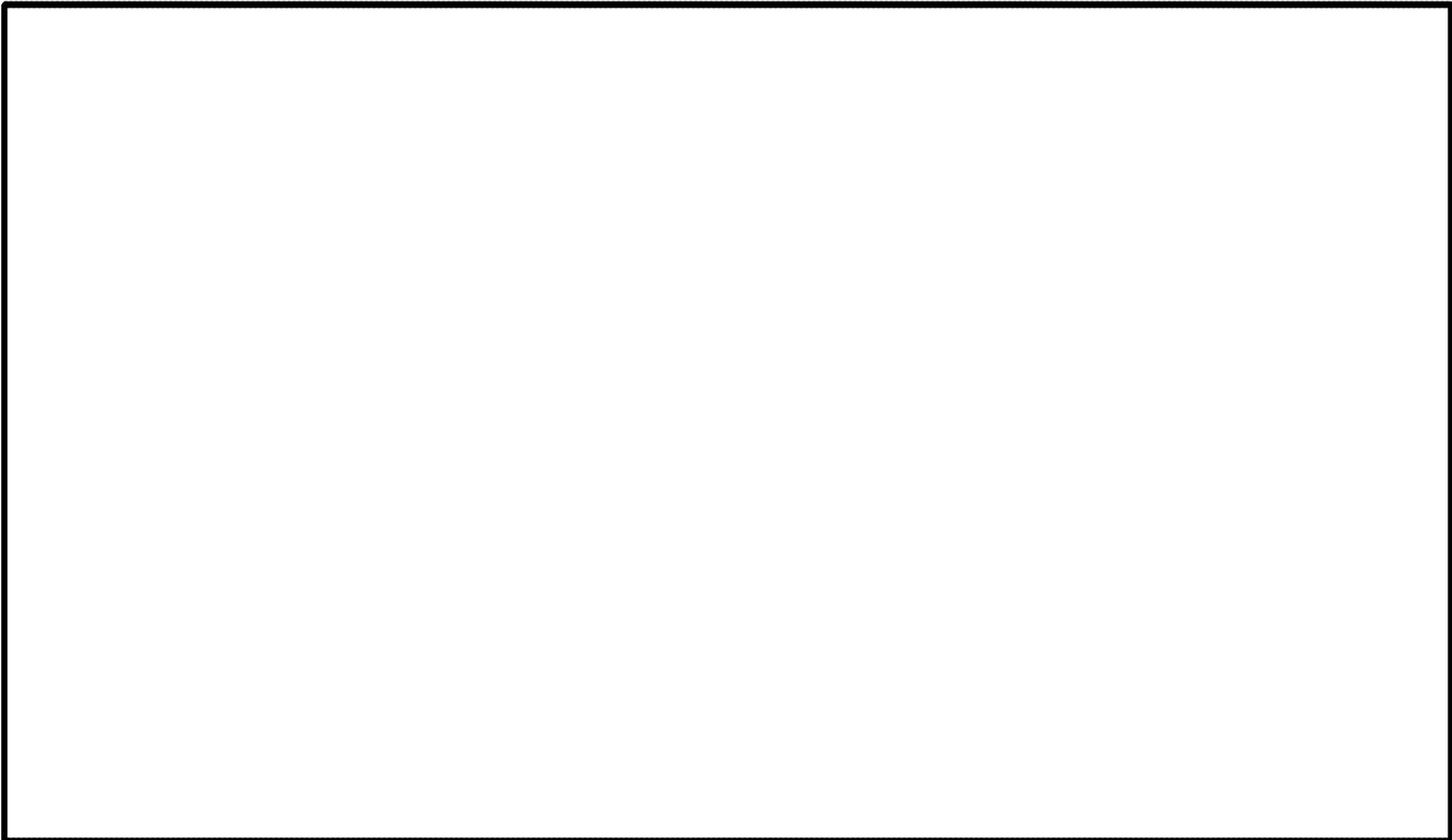
Please let me know if you have any additional question or concerns.

Thanks,

Lynn

---

Thank you for your feedbacks. I read the attached email and realized that you have run this matter through your local counsel. (b)(5)



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I tried to respond to your points below in red.

The second RFE was created to address this guidance provided by SCOPS:

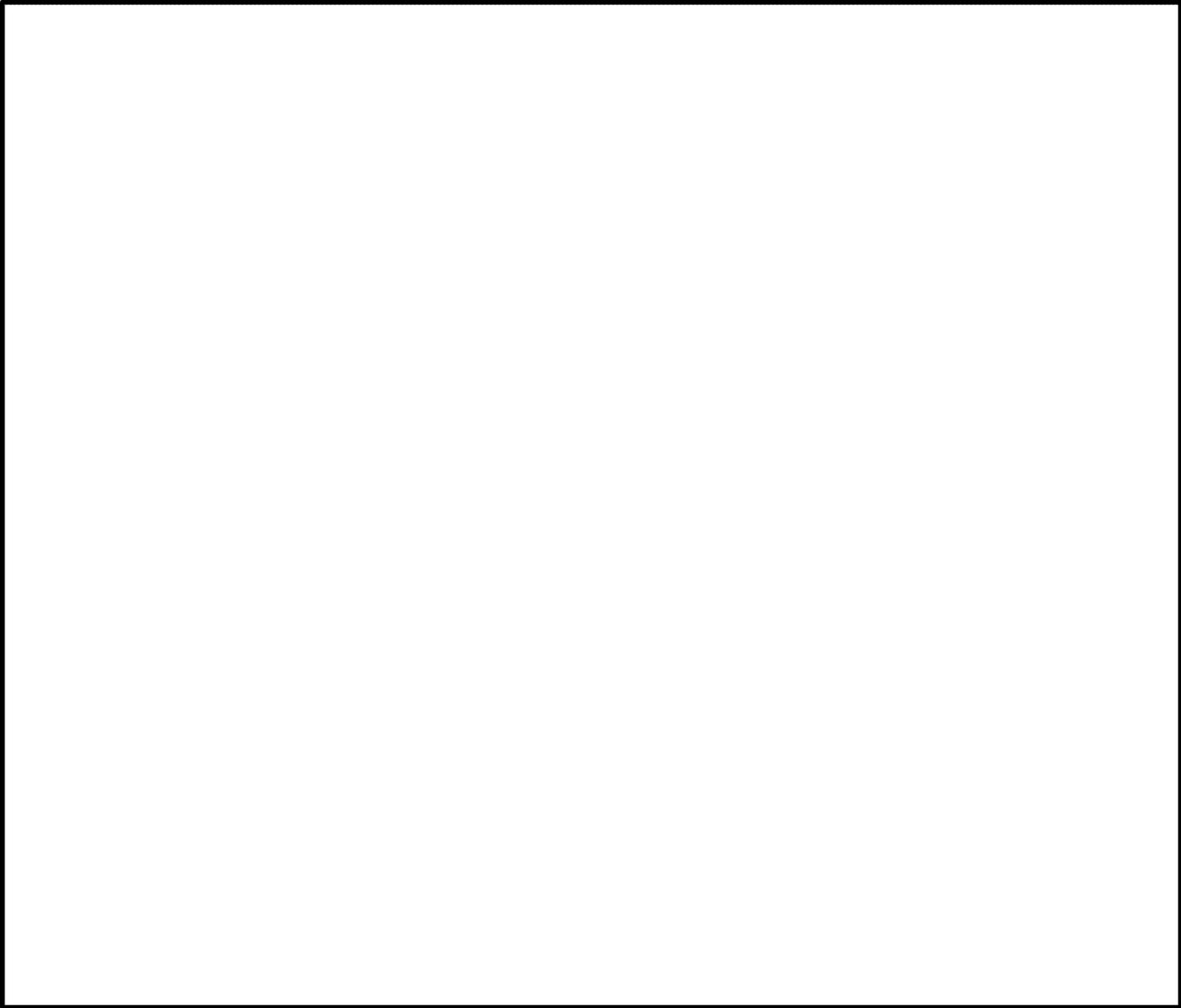
The memo also instructs adjudicators to address inconsistencies when the job duties described in a petition contradict the wage level indicated on the Labor Condition Application (LCA). While USCIS does not have the authority or jurisdiction to mandate a specific wage level on the LCA, USCIS is required to verify that the information on the certified LCA corresponds to and supports the H-1B petition. The prevailing wage determination for an occupation is based on a comparison of the employer's job requirements to the occupational requirements: tasks, knowledge, skills, and specific vocational preparation (education, training, and experience) generally required for acceptable performance in that occupation. In general, a petitioner must distinguish its proffered position from others within the same occupation through the proper wage level designation to indicate factors such as the relative complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. The adjudicator may issue a request for evidence if he/she determines that the wage level selected by the petitioner does not appear to correspond to the petitioner's description and requirements for the proffered position. This type of analysis should be conducted on all H-1B petitions.

(b)(5)



---

(b)(5)





(b)(5)

## Worley, Jordan P

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**From:** Nicklaw, Nicole C [REDACTED] (b)(6)  
**Sent:** Thursday, May 31, 2018 8:18 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Deference and PM-602-0142 (Rescission Memo)

---

**From:** Nicklaw, Nicole C  
**Sent:** Wednesday, August 02, 2017 10:58 AM  
**To:** Buten, Elizabeth C; Choi, Hae-Jin; Parascandola, Ciro A; Cummings, Kevin J; Viger, Steven W; Nakajima, Simon T; Fortes, Michael J; Bailey, Morgan; Cox, Robert H; Dalal-Dheini, Sharvari P (Shev); Doumani, Stephanie M; Renwick, William K; Zimonjic, Milica; Bump, Micah N; Hale, Paola R  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Deference and PM-602-0142 (Rescission Memo)

Hello Working Group,

As you may know, the centers have expressed a great deal of concern about the implementation of the rescission memo (PM-602-0142). A few weeks ago, SCOPS began holding a roundtable with the service centers to facilitate discussion and help alleviate concerns and questions related to rescission memo implementation. On the last call, NSC expressed a desire to receive email guidance related to deference. The final guidance issued by the working group states that the guidance should be applied to same employer petitions as well and "if USCIS previously approved a petition based on evidence solely from the OOH for an entry level computer programmer, deference should not be given, and the petition should be adjudicated consistent with the new guidance" (see highlighted text below).

SCOPS is aware that OP&S is working on a draft to rescind the deference memo which we know will take time. In the meantime, SCOPS hopes to provide email guidance letting the centers know that they should not rely on deference while adjudicating petitions. Is the working group amenable to providing such guidance? If so, SCOPS requests working group assistance to ensure the correct information is being disseminated to the centers.

Please let us know by **COB on Tuesday, August 8** if providing interim email guidance related to deference is something we can move forward with.

Thank you,

**Nicole Nicklaw**

Adjudications Officer  
DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk: [REDACTED]  
Mobi: [REDACTED] (b)(6)

---

**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 01, 2017 11:21 AM  
**To:** Fierro, Joseph; Boudreau, Lynn A; Martin, Evelyn M  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Final Guidance on PM-602-0142

Hello all,

Below please find the final guidance on PM-602-0142. In a nutshell, the guidance indicates that the petitioner bears the burden to submit evidence from appropriate sources that the proffered position qualifies as an H-1B specialty occupation. If you have any questions, please elevate the case specifics and examples to SCOPS. The PM can be found here: <https://www.uscis.gov/sites/default/files/files/nativedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf>

Thank you,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk:

Mobil



(b)(6)

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An “occupation” is a category of positions that are similar with respect to the work performed and the skills possessed by the incumbents. A “position” is the specific set of tasks performed by an individual worker. For example, a “turnpike toll collector” is an example of a position that corresponds to the occupation “Cashiers” SOC 41-2011. The DOL’s Occupational Outlook Handbook (OOH) is a career resource offering information on hundreds of occupations. The OOH states that each profile includes the duties required by the occupation, as well as the typical education and training needed for entry. Occupations are classified based on the work performed and, in some cases, on the skills, education, or training needed to perform the work at a competent level. There may be a spectrum of positions covered within the OOH’s profile for an occupation. Further, an OOH profile sometimes does not distinguish the requirements of an entry-level position from a senior, complex, specialized, or unique position. For example, in some instances, the supervisors of workers within a group may be classified within the occupation they supervise. Additionally, licensed and non-licensed workers performing the same work may be classified together.

The Policy Memorandum is specific to the computer programmer occupation; however, the same analysis should be conducted for occupations where the OOH does not specify that the minimum requirement for a particular position is at least a bachelor’s degree in a specific specialty. The PM reiterates that the petitioner bears the burden of proof to establish that the particular position in which the beneficiary will be employed qualifies as a specialty occupation. For some occupations, such as computer programmers, the general discussion in the OOH may be insufficient, in the absence of additional evidence, to establish that the particular position is a specialty occupation. For the computer programmer occupation, the OOH states “Most computer programmers have a bachelor’s degree in computer science or a related subject; however, some employers hire workers with an associate’s degree.” The fact that the OOH states that an individual may enter the field with an associate’s degree suggests that entry level computer programmer positions do not necessarily require a bachelor’s degree and would not generally qualify as a position in a specialty occupation. Additionally, for all computer programmer petitions, the petitioner will not have met its burden of proof based on the OOH alone since the general discussion in the OOH, indicating that some employers only require an associate’s degree, will not be sufficient to show by a preponderance of the evidence that the particular computer programmer position in which the beneficiary will be employed meets the requirements of the first criterion in 8 CFR 214.2(h)(4)(iii). In such cases, the petitioner will need to submit other evidence to establish that the particular position is a specialty occupation as defined by 8 CFR 214.2(h)(4)(ii) that also meets one of the criteria at 8 CFR 214.2(h)(4)(iii).

The PM also reminds adjudicators that the OOH is not the only type of evidence a petitioner may submit to establish eligibility under the first criterion in 8 CFR 214.2(h)(4)(iii). Petitioners may submit other types of evidence, such as industry reports based on independently conducted surveys. In some instances, the employer may still be able to

establish that the particular position qualifies as a specialty occupation based on the other criteria in 8 CFR 214.2(h)(4)(iii).

The memo also instructs adjudicators to address inconsistencies when the job duties described in a petition contradict the wage level indicated on the Labor Condition Application (LCA). While USCIS does not have the authority or jurisdiction to mandate a specific wage level on the LCA, USCIS is required to verify that the information on the certified LCA corresponds to and supports the H-1B petition. The prevailing wage determination for an occupation is based on a comparison of the employer's job requirements to the occupational requirements: tasks, knowledge, skills, and specific vocational preparation (education, training, and experience) generally required for acceptable performance in that occupation. In general, a petitioner must distinguish its proffered position from others within the same occupation through the proper wage level designation to indicate factors such as the relative complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. The adjudicator may issue a request for evidence if he/she determines that the wage level selected by the petitioner does not appear to correspond to the petitioner's description and requirements for the proffered position. This type of analysis should be conducted on all H-1B petitions.

Though not mentioned in the PM, adjudicators are reminded that the specialty occupation determination is not driven by a beneficiary's qualifications. The petitioner must demonstrate that the position qualifies as a specialty occupation. Although the beneficiary may have a bachelor's or higher degree in a specific specialty, the beneficiary's degree alone does not independently establish that the position qualifies as a specialty occupation. Adjudicators should determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the beneficiary qualifies for the position. These are two separate issues.

Additionally, the analysis specified in the memo should be applied to same employer extension petitions. If USCIS previously approved a petition based on evidence solely from the OOH for an entry level computer programmer, deference should not be given, and the petition should be adjudicated consistent with the new guidance.

As always, adjudicators should make each determination on a case by case basis, ensuring that they are considering the totality of the evidence when making a final determination.

**Worley, Jordan P**

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**From:** Nicklaw, Nicole C [REDACTED]  
**Sent:** Thursday, May 31, 2018 8:16 AM (b)(6)  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Final Guidance on PM-602-0142

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**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 01, 2017 11:21 AM  
**To:** Fierro, Joseph; Boudreau, Lynn A; Martin, Evelyn M  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Final Guidance on PM-602-0142

Hello all,

Below please find the final guidance on PM-602-0142. In a nutshell, the guidance indicates that the petitioner bears the burden to submit evidence from appropriate sources that the proffered position qualifies as an H-1B specialty occupation. If you have any questions, please elevate the case specifics and examples to SCOPS. The PM can be found here: <https://www.uscis.gov/sites/default/files/files/nativedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf>

Thank you,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS| Business Employment Services Team (BEST)  
Desk [REDACTED]  
Mobile [REDACTED] (b)(6)

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**Worley, Jordan P**

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**From:** Nicklaw, Nicole C [REDACTED] (b)(6)  
**Sent:** Thursday, May 31, 2018 8:14 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Final Guidance on PM-602-0142

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**From:** Nicklaw, Nicole C  
**Sent:** Monday, May 01, 2017 11:21 AM  
**To:** Fierro, Joseph; Boudreau, Lynn A; Martin, Evelyn M  
**Cc:** Doumani, Stephanie M; Stern, Kimberly M (Kim)  
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Thank you,

**Nicole Nicklaw**  
Adjudications Officer  
DHS|USCIS|SCOPS| Business Employment Services Team (BEST)  
Desk [REDACTED]  
Mob [REDACTED] (b)(6)

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## Worley, Jordan P

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**From:** Nicklaw, Nicole C [REDACTED] (b)(6)  
**Sent:** Thursday, May 31, 2018 8:22 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Follow up - Rescission Memo Discussion

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**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, June 20, 2017 2:17 PM  
**To:** Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M; Selby, Cara M (Carrie); Tamanaha, Emisa T; Crandall, Kristine R  
**Cc:** Hutchings, Pamela G; Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Follow up - Rescission Memo Discussion

Hello Centers,

Thank you for participating in the call on Friday to further discuss the implementation of the rescission memo. SCOPS is currently working with OCC to clear the RFE templates and would like to reiterate and elaborate on our recent discussion.

When reviewing a petition, the first, threshold issue is whether or not a position qualifies as a specialty occupation and meets the requirements of the first criteria of 8 CFR 214.2(h)(4)(ii). When determining whether a position qualifies as a specialty occupation, an officer may look to the wage level designated on the LCA as part of the analysis. For instance, the DOL's Occupational Outlook Handbook (OOH) indicates that most computer programmers have a bachelor's degree however some computer programmers are hired with an associate's degree. As such, a basic computer programmer position would not qualify as a specialty occupation without additional evidence. In addition, when evaluating any additional evidence, an officer should look to the designated wage level as a piece of evidence when deciding whether or not a position qualifies as a specialty occupation.

If the position meets the threshold analysis of a specialty occupation, then an officer should apply the wage level analysis to determine if the petition is supported by a certified LCA which corresponds to the petition/position. Note: the specialty occupation threshold can be met through the analysis of presented evidence or because the position itself is inherently a specialty occupation (lawyer, doctor, engineer, etc).

OCC summarized the wage level analysis in their clarifying guidance (quoted below):

"In order to ensure that the certified LCA corresponds to the position as described in the petition, we believe officers should apply the wage level analysis to all occupations, including those that are clearly specialty occupations. If the wage level is *clearly inconsistent with/lower than* the level of responsibility of the position, etc., then it is legally defensible to conclude that the petitioner has not established that the petition is supported by a certified LCA corresponding to the petition/position. We also believe that further guidance on the wage level issue/analysis is needed, and until such time as additional guidance is issued, we believe it is safer to initially apply the analysis to petitions filed with Level I LCAs. If, however, an officer believes there is an issue with a Level II position, and that the Level II LCA appears to be *clearly inconsistent with/lower than* the position as stated in the petition, the officer may wish to raise it with their supervisor and, if needed, seek the advice of counsel. Note that trying to distinguish a Level III from a Level IV position, however, is very difficult under the 2009 DOL guidance, so we recommend against analyzing the appropriateness of the wage level in such cases until further DOL and USCIS guidance is issued."

Applying the above analysis to “SCENARIO 1” below, an officer would first look to determine whether the position in question is a specialty occupation. Based on the information given in the scenario, the position appears to be a standard computer programmer per the OOH definition of the position. An officer should weigh the evidence presented along with the position description and the Wage Level 1 designation to determine if any evidence is presented to elevate the position to the level of a specialty occupation. Absent additional evidence, it does not appear that this position would qualify as a specialty occupation. A denial may be issued based on the position not qualifying as a specialty occupation. (*\*Please note, in a prior email, SCOPS did not address this analysis and went right to the wage level analysis which is not the proper way to approach the issue.*)

In contrast, if evidence is presented to demonstrate the position rises to that of a specialty occupation, the officer should then perform the wage level analysis to determine if the wage level is clearly inconsistent/lower than the level of responsibility of the position.

#### SCENARIO 1

The petition is for a Computer Programmer, with an LCA certified for the Computer Programmer SOC title and code with a Wage Level 1. The beneficiary will work off-site for an end-client, the Massachusetts Institute of Technology (MIT).

The duties of the position are described, in the petitioner’s cover letter and the end-client letter, as:

- Develop one or more large-sized, moderately to highly complex user design projects;
- Develop comprehensive projects that fit strategic and operational goals for user experience design;
- Create a fully realized user experience design footprint for projects that encompass end-to-end concepts;
- Create advanced test scripts to test user interfaces;
- Create communications for user design projects;
- Incorporate organization change management for training, and updating policies & procedures;
- Create the functional and technical specifications for the Use Case;
- Determine how each requirement will be met, and how it interacts with current and planned system functionality;
- Plan, develop, test, and document computer programs and apply broad knowledge of programming techniques and computer systems to evaluate user requests for new or modified programs;
- Formulate plans outlining steps required to develop programs using structured analysis and design;
- Write manuals and document operating procedures and assist users to solve problems;
- Replace, delete and modify codes to correct errors, analyze, review and alter programs to increase operating efficiency and adapt the system to new requirements; and, oversee the installation of software and provide technical assistance to clients; and
- Responsible for requirement analysis, designing various application components, writing functional/technical specifications, coding, unit/integration testing etc.

There is also an expert opinion letter which makes many claims about the specialized knowledge, skills, and systems that will be utilized. For example, a worker in this position “must have highly specialized expertise in a number of technical fields related to infrastructure design, implementation, and maintenance.”

In regards to supervision, the beneficiary will work off-site at MIT. The only specific claims about his supervision are in the beneficiary’s employment agreement with the petitioner. This document indicates that the beneficiary will participate in the bi-monthly task review conducted by his manager.

As discussed during our last call, we will begin round table sessions next week to discuss particular case scenarios. Please feel free to reach out to us with any additional questions.

Thank you,

**Nicole Nicklaw**  
Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk:

Mobil



(b)(6)

## Worley, Jordan P

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**From:** Nicklaw, Nicole C <[REDACTED]> (b)(6)  
**Sent:** Thursday, May 31, 2018 8:15 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Recission Memo Questions

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**From:** Boudreau, Lynn A  
**Sent:** Thursday, October 12, 2017 12:01 PM  
**To:** Doumani, Stephanie M; Nicklaw, Nicole C  
**Cc:** Fierro, Joseph; Martin, Evelyn M; Whittier, Michelle J  
**Subject:** Recission Memo Questions

Hi Stephanie,

Per our discussion last week, please see some of our outstanding issues below -

### Wage Leveling

- Wage level N/A from an independent authoritative source. We are still waiting for more guidance on whether to issue an RFE for the private wage surveys.
- Has our position on the relevance of the OES worksheet changed? SCOPS included language in our wage level denial that states that the DOL decision *Quintanilla* is not binding on USCIS.
- If the OES worksheet is still relevant, can we reconcile the inconsistencies in the Wage Level definitions to the OES worksheet process which only compares the position requirements to the O\*NET?
- The OES worksheets are not being supported by any evidence to support the requirements of the position, e.g. job offers, performance reviews, official position descriptions. As such, their requirements are self-reported and we are taking the OES worksheet at face value. Is that appropriate?
- What standard should be using when we compare the duties of the proffered position to the Wage Level definitions?
- How detailed should the denials for a clearly inconsistent Wage Level be? Our current denial process involves analyzing any inconsistencies in the OES worksheet (if provided) and then specifically breaking down each factor in the definition of Wage Level 1 and discussing how the duties are beyond entry-level and a basic understanding, more than limited exercise of judgment, etc. This is taking a significant amount of time and even our most experienced officers are struggling. We would prefer to keep the denial short and to the point.

### Specialty Occupation

FN7 of the March 31 memo emphasizes that the petitioner bears the burden of establishing eligibility for the benefit sought, and specifically states:

- Accordingly, USCIS officers may not approve a petition based on inconclusive statements from the *Handbook* about the entry-level requirements for a given occupation. Rather, the petitioner bears the burden to submit probative evidence from objective and authoritative sources that the proffered position qualifies as an H-1B specialty occupation.  
PM 602-0142 at p. 3, FN 7.

Prior to the memo being issued, we would expect officers to take a common sense approach and utilize the knowledge they have regarding industry standards especially for the large fortune five hundred companies. My concern is one of both time and resources. The officers need some additional direction on this and I want to ensure we give them the correct guidance.

Thanks,

Lynn

**Worley, Jordan P**

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**From:** Nicklaw, Nicole C [REDACTED] (b)(6)  
**Sent:** Thursday, May 31, 2018 8:18 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Rescission: Computer Related Positions

**From:** Nicklaw, Nicole C  
**Sent:** Friday, April 07, 2017 9:45 AM  
**To:** Doumani, Stephanie M; Violett, Michael D  
**Subject:** RE: Rescission: Computer Related Positions

Nothing to add from me.

Thanks!

**From:** Doumani, Stephanie M  
**Sent:** Friday, April 07, 2017 9:43 AM  
**To:** Violett, Michael D; Nicklaw, Nicole C  
**Subject:** RE: Rescission: Computer Related Positions

Anything else to add?

\*\*\*\*\*

Hi Kevin,

I've added Pam Hutchings to this email, our Division Chief, as well as Carrie Selby, our Deputy Director. Pam and I discussed this approach yesterday after conferring with the service centers. The concern is that computer programmer petitions take up a good chunk of the H-1B population. Our understanding is that deference generally allows for us to make determinations based on prior eligibility, however we are uncertain if the submission/review of a new LCA would qualify under the deference provisions. That said, holding these cases until we clarify such points will add a significant delay in our processing.

While cap cases will be impacted by this memo as well, cap processing does not begin until all lottery winners are data entered. (This likely won't take place until the beginning of May.) The concern is more so with the remainder of the H-1B population.

Thanks,

Stephanie

**From:** Cummings, Kevin J  
**Sent:** Friday, April 07, 2017 9:21 AM

**To:** Doumani, Stephanie M; Parascandola, Ciro A  
**Subject:** FW: Rescission: Computer Related Positions

Steph? Please see the plethora of questions posed by Larry below. Thanks.

--Kevin

Kevin J. Cummings  
Chief, Business & Foreign Workers Division  
USCIS Office of Policy and Strategy  
Department of Homeland Security

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**From:** Levine, Laurence D  
**Sent:** Friday, April 07, 2017 9:19 AM  
**To:** Cummings, Kevin J; Parascandola, Ciro A; Nuebel Kovarik, Kathy  
**Cc:** Rather, Michael B  
**Subject:** RE: Rescission: Computer Related Positions

Kevin – do you have a sense from how high up in SCOPS the request to keep adjudicating petitions in the way it was prior to the memo came from? Service Center directors? SCOPS FO? Why would they want to push forward instead of holding them in the absence of guidance? Is it a cap question?

Thanks,

Larry

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Larry Levine  
Senior Advisor  
Office of Policy & Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security

(b)(6)

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**From:** Cummings, Kevin J  
**Sent:** Friday, April 07, 2017 9:15 AM  
**To:** Parascandola, Ciro A; Levine, Laurence D; Nuebel Kovarik, Kathy  
**Cc:** Rather, Michael B  
**Subject:** FW: Rescission: Computer Related Positions  
**Importance:** High

(b)(5)

Kathy,



--Kevin

Kevin J. Cummings  
Chief, Business & Foreign Workers Division  
USCIS Office of Policy and Strategy  
Department of Homeland Security

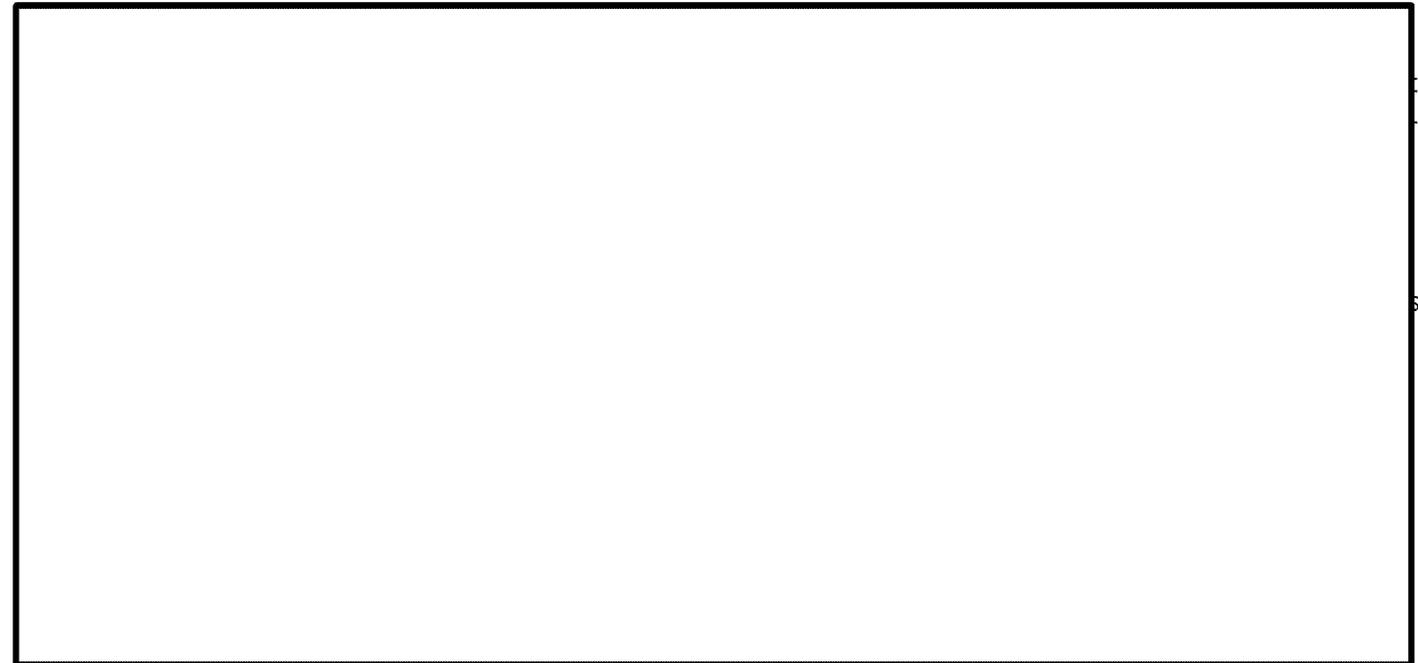
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**From:** Doumani, Stephanie M  
**Sent:** Thursday, April 06, 2017 5:30 PM  
**To:** Cummings, Kevin J; Parascandola, Ciro A  
**Cc:** Hutchings, Pamela G; Violett, Michael D; Nicklaw, Nicole C  
**Subject:** Rescission: Computer Related Positions  
**Importance:** High

Hi Kevin and Ciro,

(b)(5)

I hope this email finds you well.



Thank you,

*Stephanie Doumani*  
Branch Chief  
Service Center Operations  
Business Employment Services Team

 Desk

(b)(6)

[Redacted] Cell  
[Redacted]

(b)(6)

## Worley, Jordan P

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**From:** Nicklaw, Nicole C [REDACTED] (b)(6)  
**Sent:** Thursday, May 31, 2018 8:17 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Rescission: Guidance Memo On H-B Computer Related Positions

**From:** Boudreau, Lynn A  
**Sent:** Monday, April 10, 2017 4:49 PM  
**To:** Fierro, Joseph; Doumani, Stephanie M  
**Cc:** Martin, Evelyn M; Campagnolo, Donna P; Crandall, Kristine R; Hutchings, Pamela G; Nicklaw, Nicole C; Violett, Michael D; Zuchowski, Laura B; Brouillette, Bradley J; Whittier, Michelle J  
**Subject:** RE: Rescission: Guidance Memo On H-B Computer Related Positions

Hi Stephanie,

VSC has the following questions which were forwarded last week-

1. Initially, per footnote 6 on page 3, "USCIS officers must also review the LCA to ensure the wage level designated by the petitioner corresponds to the proffered position. If a petitioner designates a position as a Level I, entry-level position, for example, such an assertion will likely contradict a claim that the proffered position is particularly complex, specialized, or unique compared to other positions within the same occupation." This seems to contradict the previous guidance that we cannot address wage leveling in denials/RFEs. According to the new memo, we now MUST review the LCA for the wage level in comparison to the petition/position. Does this mean that SCOPS now wants us to address wage leveling?
2. It's clear from the memo (and past practice) that computer programmer positions should be evaluated on a case-by-case basis. However, are we supposed to now view computer programmer positions as generally requiring only an associate's degree unless evidence presented documents otherwise? Historically, we were reviewing the petitioner's scope/operations and the duties of the position. If they seemed to generally match those described in the entry for computer programmers in the OOH we determined they qualified.

Per the current online version of the OOH, computer programmers have the following description, "Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject." Per the discussion on page 3 of the new memo because the OOH says that some employers hire workers with associate's degrees, "a petitioner may not rely solely on the *Handbook* to meet its burden when seeking to sponsor a beneficiary for a computer programmer position. Instead, a petitioner must provide other evidence to establish that the particular position is one in a specialty occupation." What would this evidence look like? Would it just be a better description of duties?

Moreover, this thinking doesn't seem to align with our historical interpretation of Prong 1. To qualify as a specialty occupation by prong one, "a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position." I suppose this depends on how we are defining "particular position" and "normally" in the definition of prong 1 and "most" in the OOH. What definitions is SCOPS using in this regard? Historically, VSC has taken this as "the position generally" as described in the OOH. The way the new memo addresses this prong seems to muddy the waters further between prong 1 and prongs 2.2, 3, and 4. Moreover, this may constitute a change in practice, at least at VSC.

3. Relatedly, this memo appears to conflict with the historical operations at VSC in regards to how we utilize the OOH in the determination of a specialty occupation. In most of our four prong based specialty occupation denials we reference the OOH in regards to prong one. For example, we typically use the OOH saying something like "Most JOB POSITIONS have an associate's degree; however, some employers hire workers who have a bachelor's degree" as our reasoning for why a bachelor's degree is not "normally the minimum requirement" for entry into the position. Obviously, the job may still qualify by the remaining three prongs. However, this is largely the basis for us discounting the petitioner's ability to establish eligibility under prong 1. The memo largely disagrees with this reasoning, as even though the OOH says that "most" computer programmer positions need a bachelor's degree, we aren't concluding that they generally qualify. This may undermine our ability to reference the OOH in this regard in our denials. Do you have any suggested language to address prong 1 in light of the treatment of the OOH in the new memo?

Thanks,

Lynn

**From:** Fierro, Joseph

**Sent:** Monday, April 10, 2017 4:39 PM

**To:** Doumani, Stephanie M

**Cc:** Boudreau, Lynn A; Martin, Evelyn M; Campagnolo, Donna P; Crandall, Kristine R; Hutchings, Pamela G; Nicklaw, Nicole C; Violett, Michael D

**Subject:** Rescission: Guidance Memo On H-B Computer Related Positions

Hi Stephanie:

CSC has the following questions:

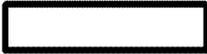
- There has been a high rate of approval for computer related positions. Does SCOPs anticipate this changing depending on the intent of the memo?
- Cases may require a more in depth analysis to determine if the position meets the specialty occupation definition and criteria, depending on the guidance. Can SCOPs consider this when discussing the intent of the memo?
- While decisions should be made on a case by case basis, this may be challenging in terms of consistency, since decisions could vary on very similarly filed petitions/petitioners for computer related positions due to differing opinions. Consistency may also be challenging since variances in what meets the preponderance of evidence may vary, and individual differences in interpretation of the criteria of what meets the definition of specialty occupation may vary. Can SCOPs consider this as well when discussing the intent of the memo and the guidance?
- Due to the above, does SCOPS see the SCs as needing more time to adjudicate H-1Bs in computer related positions since more time may be needed to review and determine if computer related fields qualify, depending on the guidance?.

We are available if you wish to have a call for any discussion you may wish to have.

Thank you,

Joseph Fierro

Associate Center Director, Employment Branch 2  
California Service Center



(b)(6)

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**From:** Doumani, Stephanie M  
**Sent:** Thursday, April 06, 2017 2:24:04 PM  
**To:** Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M  
**Cc:** Selby, Cara M (Carrie); Campagnolo, Donna P; Crandall, Kristine R; Hutchings, Pamela G; Nicklaw, Nicole C; Violett, Michael D  
**Subject:** Rescission: Guidance Memo On H-B Computer Related Positions

Hi Everyone,

As many of you know, the front office recently issued a Policy Memo titled *Rescission of the December 22, 2000 "Guidance memo on H1B computer related positions"* PM-602-0142.  
(<https://www.uscis.gov/sites/default/files/files/natedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf>).

We understand that as written, this rescission includes language and interpretations that may conflict with current practice at the centers. We also understand that many of you may have specific questions regarding how this memo will impact your adjudication. We will be meeting with our H-1B working group early next week to discuss in detail the intent of this memo. We intend to issue clarifying guidance thereafter. In the interim, we invite each center to submit their questions concerning this memo via email if they have not done so already. When submitting your questions, please be sure to include everyone on this thread. Please submit your questions by COB Monday, April 10<sup>th</sup>.

Thank you very much for your patience while we look further into this.

Sincerely,

*Stephanie Doumani*

Branch Chief

Service Center Operations

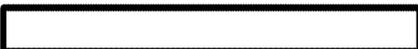
Business Employment Services Team



Desk

(b)(6)

Cell



**Worley, Jordan P**

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**From:** Nicklaw, Nicole C [REDACTED] (b)(6)  
**Sent:** Thursday, May 31, 2018 8:16 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Rescission Memo Clarifying Guidance

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**From:** Nicklaw, Nicole C  
**Sent:** Thursday, June 15, 2017 1:49 PM  
**To:** Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M; Selby, Cara M (Carrie); Tamanaha, Emisa T; Crandall, Kristine R  
**Cc:** Hutchings, Pamela G; Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Rescission Memo Clarifying Guidance

Hello Centers,

Below is additional, clarifying guidance that SCOPS received related to the rescission memo. We also included the previously provided scenarios to indicate how they should be handled based on the guidance received from OCC. We can discuss any additional scenarios and questions during the call scheduled for tomorrow, Friday, June 16 at 11:00 am (EST).  
;

\*\*\*\*\*

In order to ensure that the certified LCA corresponds to the position as described in the petition, we believe officers should apply the wage level analysis to all occupations, including those that are clearly specialty occupations. If the wage level is *clearly inconsistent with/lower than* the level of responsibility of the position, etc., then it is legally defensible to conclude that the petitioner has not established that the petition is supported by a certified LCA corresponding to the petition/position. We also believe that further guidance on the wage level issue/analysis is needed, and until such time as additional guidance is issued, we believe it is safer to initially apply the analysis to petitions filed with Level I LCAs. If, however, an officer believes there is an issue with a Level II position, and that the Level II LCA appears to be *clearly inconsistent with/lower than* the position as stated in the petition, the officer may wish to raise it with their supervisor and, if needed, seek the advice of counsel. Note that trying to distinguish a Level III from a Level IV position, however, is very difficult under the 2009 DOL guidance, so we recommend against analyzing the appropriateness of the wage level in such cases until further DOL and USCIS guidance is issued.

SCENARIO 1

The petition is for a Computer Programmer, with an LCA certified for the Computer Programmer SOC title and code with a Wage Level 1. The beneficiary will work off-site for an end-client, the Massachusetts Institute of Technology (MIT).

The duties of the position are described, in the petitioner's cover letter and the end-client letter, as:

- Develop one or more large-sized, moderately to highly complex user design projects;
- Develop comprehensive projects that fit strategic and operational goals for user experience design;
- Create a fully realized user experience design footprint for projects that encompass end-to-end concepts;
- Create advanced test scripts to test user interfaces;
- Create communications for user design projects;
- Incorporate organization change management for training, and updating policies & procedures;
- Create the functional and technical specifications for the Use Case;
- Determine how each requirement will be met, and how it interacts with current and planned system functionality;

- Plan, develop, test, and document computer programs and apply broad knowledge of programming techniques and computer systems to evaluate user requests for new or modified programs;
- Formulate plans outlining steps required to develop programs using structured analysis and design;
- Write manuals and document operating procedures and assist users to solve problems;
- Replace, delete and modify codes to correct errors, analyze, review and alter programs to increase operating efficiency and adapt the system to new requirements; and, oversee the installation of software and provide technical assistance to clients; and
- Responsible for requirement analysis, designing various application components, writing functional/technical specifications, coding, unit/integration testing etc.

There is also an expert opinion letter which makes many claims about the specialized knowledge, skills, and systems that will be utilized. For example, a worker in this position “must have highly specialized expertise in a number of technical fields related to infrastructure design, implementation, and maintenance....#157;

In regards to supervision, the beneficiary will work off-site at MIT. The only specific claims about his supervision are in the beneficiary’s employment agreement with the petitioner. This document indicates that the beneficiary will participate in the bi-monthly task review conducted by his manager.

In this situation, even though the position likely qualifies as a specialty occupation, the wage level analysis should be applied. The wage level appears to clearly be inconsistent with/lower than the level of responsibility of the position. As such, an RFE and possible denial are warranted.

Scenario 2

The petition is for a Computer Systems Analyst, with an LCA certified for the Computer Systems Analyst SOC title and code and Wage Level 1. The evidence in the file is the same as above, except, the beneficiary’s list of duties also includes, “Will oversee a team of five workers,...#157; and the petitioner’s cover letter indicates that the beneficiary would supervise this team at the client site. As above, this position would also be a specialty occupation. However, per the DOL wage leveling determination guidance:

The DOL guidelines are very clear that supervisory duties should increase the wage level. Accordingly, per 20 C.F.R. § 655.705(b), “the petition is [not] supported by an LCA which corresponds with the petition....#157; Similarly, the rescission memo indicates “USCIS officers must also review the LCA to ensure the wage level designated by the petitioner corresponds to the proffered position,...#157; and *Matter of Simeio* indicates “USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition, including the specific place of employment....#157;

The wage level analysis should also be completed in this case and in cases once a position is deemed to be a specialty occupation. Upon completing the wage level analysis, if the wage level is *clearly inconsistent with/lower than* the level of responsibility of the position, etc., then it is legally defensible to conclude that the petitioner has not established that the petition is supported by a certified LCA corresponding to the petition/position. As such, a center may deny based on the LCA not “corresponding to and supporting...#157; the position described in the petition only, outside of the specialty occupation determination.

Thank you,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk

(b)(6)

**Worley, Jordan P**

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**From:** Nicklaw, Nicole C [REDACTED] (b)(6)  
**Sent:** Thursday, May 31, 2018 8:14 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Rescission Memo Clarifying Guidance

---

**From:** Nicklaw, Nicole C  
**Sent:** Thursday, June 15, 2017 1:49 PM  
**To:** Boudreau, Lynn A; Fierro, Joseph; Martin, Evelyn M; Selby, Cara M (Carrie); Tamanaha, Emisa T; Crandall, Kristine R  
**Cc:** Hutchings, Pamela G; Doumani, Stephanie M; Stern, Kimberly M (Kim)  
**Subject:** Rescission Memo Clarifying Guidance

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\*\*\*\*\*

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- Determine how each requirement will be met, and how it interacts with current and planned system functionality;

- Plan, develop, test, and document computer programs and apply broad knowledge of programming techniques and computer systems to evaluate user requests for new or modified programs;
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- Write manuals and document operating procedures and assist users to solve problems;
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- Responsible for requirement analysis, designing various application components, writing functional/technical specifications, coding, unit/integration testing etc.

There is also an expert opinion letter which makes many claims about the specialized knowledge, skills, and systems that will be utilized. For example, a worker in this position “must have highly specialized expertise in a number of technical fields related to infrastructure design, implementation, and maintenance.❖

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The wage level analysis should also be completed in this case and in cases once a position is deemed to be a specialty occupation. Upon completing the wage level analysis, if the wage level is *clearly inconsistent with/lower than* the level of responsibility of the position, etc., then it is legally defensible to conclude that the petitioner has not established that the petition is supported by a certified LCA corresponding to the petition/position. As such, a center may deny based on the LCA not “corresponding to and supporting❖ the position described in the petition only, outside of the specialty occupation determination.

Thank you,

**Nicole Nicklaw**

Adjudications Officer

DHS|USCIS|SCOPS|Business Employment Services Team (BEST)

Desk:

(b)(6)

Mobil

**Worley, Jordan P**

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**From:** Nicklaw, Nicole C <[REDACTED]> (b)(6)  
**Sent:** Thursday, May 31, 2018 8:13 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Rescission Memo Discussion

---

**From:** Cox, Robert H  
**Sent:** Wednesday, June 14, 2017 4:15 PM  
**To:** Parascandola, Ciro A; Doumani, Stephanie M  
**Cc:** Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G; Viger, Steven W; Buten, Elizabeth C; Chulapakorn, Adrienne; Buono, Paul M; Hale, Paola R; Bailey, Morgan; Choi, Hae-Jin; Dalal-Dheini, Sharvari P (Shev); Choi, Heesun S (Sunny); Bump, Micah N; Nakajima, Simon T; Plastrik, Steven T; Hanehan, Brendan J; Luna, Maria P (Pilar)  
**Subject:** RE: Rescission Memo Discussion

Hi Stephanie and Ciro,

(b)(5)

[REDACTED]

Please let us know if you have any questions.

Thanks,  
Robert

---

**From:** Parascandola, Ciro A  
**Sent:** Monday, June 12, 2017 2:49 PM  
**To:** Doumani, Stephanie M; Cox, Robert H  
**Cc:** Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G; Viger, Steven W; Buten, Elizabeth C; Chulapakorn, Adrienne; Buono, Paul M; Hale, Paola R  
**Subject:** RE: Rescission Memo Discussion

(b)(5)

Hi Stephanie –

[REDACTED]



(b)(5)

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**Ciro Parascandola**

Acting Chief, Business and Foreign Workers Division

USCIS Office of Policy and Strategy, DHS

Office: 

(b)(6)

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**From:** Doumani, Stephanie M

**Sent:** Monday, June 12, 2017 2:17 PM

**To:** Parascandola, Ciro A; Cox, Robert H

**Cc:** Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G

**Subject:** Rescission Memo Discussion

Hi Ciro and Robert,

Happy Monday.

I wanted to see if by chance you were able to confer with your leadership regarding our discussion last week. If so, we would really like to discuss next steps.

Thanks,  
Stephanie

**Worley, Jordan P**

---

**From:** Nicklaw, Nicole C <[REDACTED]> (b)(6)  
**Sent:** Thursday, May 31, 2018 8:13 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Rescission Memo Discussion

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**From:** Parascandola, Ciro A  
**Sent:** Monday, June 12, 2017 2:49 PM  
**To:** Doumani, Stephanie M; Cox, Robert H  
**Cc:** Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G; Viger, Steven W; Buten, Elizabeth C; Chulapakorn, Adrienne; Buono, Paul M; Hale, Paola R  
**Subject:** RE: Rescission Memo Discussion

Hi Stephanie –

(b)(5)

[REDACTED]

---

**Ciro Parascandola**

Acting Chief, Business and Foreign Workers Division  
USCIS Office of Policy and Strategy, DHS

Office: [REDACTED]

(b)(6)

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**From:** Doumani, Stephanie M  
**Sent:** Monday, June 12, 2017 2:17 PM  
**To:** Parascandola, Ciro A; Cox, Robert H  
**Cc:** Nicklaw, Nicole C; Stern, Kimberly M (Kim); Hutchings, Pamela G  
**Subject:** Rescission Memo Discussion

Hi Ciro and Robert,

Happy Monday.

I wanted to see if by chance you were able to confer with your leadership regarding our discussion last week. If so, we would really like to discuss next steps.

Thanks,  
Stephanie

## Worley, Jordan P

---

**From:** Nicklaw, Nicole C [REDACTED] (b)(6)  
**Sent:** Thursday, May 31, 2018 8:15 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Updated RFEs, Snippet & Denials for Wage Leveling  
**Attachments:** RFE 2050 Edits.docx; RFE 2124 Edits.docx; RFE 2125 Edits.docx; RFE 2126 Edits.docx; 2049 SNIPPET FOR H-1B WAGE LEVELING DENIAL.docx; I129H1NA DENIAL H-1B WAGE LEVEL NA.docx; I129H1WL DENIAL H-1B WAGE LEVELING.docx

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**From:** Boudreau, Lynn A  
**Sent:** Friday, December 08, 2017 4:49 PM  
**To:** Nicklaw, Nicole C; Buten, Elizabeth C; Parascandola, Ciro A; Doumani, Stephanie M; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J; Whittier, Michelle J  
**Cc:** Moran, Karla V; Hutchings, Pamela G; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy, Amanda L; Choi, Hae-Jin; Viger, Steven W; Cummings, Kevin J; Selby, Cara M (Carrie); Plastrik, Steven T; Hanehan, Brendan J  
**Subject:** Updated RFEs, Snippet & Denials for Wage Leveling

Please see the attached updated RFEs, snippet and denial shells for wage leveling based on our discussions at the workshop (see descriptive key below). We are sharing for vetting, comment and concurrence. Please note that these have all been reviewed by our local OCC staff.

- 2050 RFE LCA wage level N/A
- 2124 RFE Specialty Occupation established - standalone wage level ( LCA Requirement – higher level position (senior or lead) and /or Specialty met but duties too vague to evaluate level)
- 2125 RFE Snippet on Wage level (OOH /educational requirements) insert in Specialty Occupation RFE (2120)
- 2126 RFE Snippet LCA-Specialty Occupation does not appear to be met- LCA disclaimer to prevent 2<sup>nd</sup> rfe if they respond with advance or complex
- 2049 Snippet for OES worksheet (discusses step 2-5 of the OES worksheet)
- I129H1NA- denial shell for N/A (position in independent survey doesn't align)/ new LCA submitted
- I129H1WL wage level denial (wage level clearly inconsistent/can insert 2049 for OES denial discussion/LCA not certified at time of filing)

Thanks,

Lynn

## Worley, Jordan P

---

**From:** Nicklaw, Nicole C [REDACTED] (b)(6)  
**Sent:** Thursday, May 31, 2018 8:15 AM  
**To:** BEST\_H1Bfoia@sptaas.dhs.gov  
**Subject:** FW: Workshop Summary  
**Attachments:** Wage Leveling Chart.docx; Evaluating Specialty Occupation.docx

**From:** Boudreau, Lynn A  
**Sent:** Thursday, December 07, 2017 4:33 PM  
**To:** Nicklaw, Nicole C; Buten, Elizabeth C; Parascandola, Ciro A; Doumani, Stephanie M; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J; Whittier, Michelle J  
**Cc:** Moran, Karla V; Hutchings, Pamela G; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy, Amanda L; Choi, Hae-Jin; Viger, Steven W; Cummings, Kevin J; Selby, Cara M (Carrie); Plastrik, Steven T  
**Subject:** RE: Workshop Summary

Please see the attached training tools the VSC has created based on our discussions at the workshop. We are sharing for circulation, comment & concurrence.

- Wage Leveling Guidance
- Evaluation of Specialty Occupation

Thanks,

Lynn

**From:** Nicklaw, Nicole C  
**Sent:** Tuesday, November 28, 2017 10:10 AM  
**To:** Buten, Elizabeth C; Parascandola, Ciro A; Doumani, Stephanie M; Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J  
**Cc:** Moran, Karla V; Hutchings, Pamela G; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy, Amanda L; Choi, Hae-Jin; Viger, Steven W; Cummings, Kevin J  
**Subject:** RE: Workshop Summary

Hi everyone,

Hope you all had a great Thanksgiving also! SCOPS is meeting internally later this afternoon to discuss the takebacks in further detail. We will be back in touch soon thereafter to get a plan together.

Thanks for reaching out OP&S!

Nicole

---

**From:** Buten, Elizabeth C  
**Sent:** Monday, November 27, 2017 2:27 PM  
**To:** Parascandola, Ciro A; Doumani, Stephanie M; Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J  
**Cc:** Moran, Karla V; Hutchings, Pamela G; Nicklaw, Nicole C; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy,

Amanda L; Choi, Hae-Jin; Viger, Steven W; Cummings, Kevin J

**Subject:** RE: Workshop Summary

Good afternoon and I hope everyone had a good Thanksgiving! We just had a brief meeting on the workshop at OP&S so I wanted to reach out to see what our next steps will be. SCOPS, have you all had a chance to discuss the proposed memos below (under items due)? Should we set up a meeting with the H-1B working group to discuss these proposals? Thanks.

Elizabeth

---

**From:** Parascandola, Ciro A

**Sent:** Wednesday, November 22, 2017 9:56 AM

**To:** Doumani, Stephanie M; Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J

**Cc:** Moran, Karla V; Hutchings, Pamela G; Nicklaw, Nicole C; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy, Amanda L; Choi, Hae-Jin; Viger, Steven W; Buten, Elizabeth C; Cummings, Kevin J

**Subject:** RE: Workshop Summary

Adding the H-1B team from OP&S.

---

**Ciro Parascandola**

Special Assistant

USCIS Office of Policy and Strategy, DHS

Office

(b)(6)

This email, along with any attachments, is intended solely for the use of the addressee(s) and may contain information that is sensitive or protected by applicable law. Unauthorized use or dissemination of this email and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender and delete or destroy all copies. Thank you.

**From:** Doumani, Stephanie M

**Sent:** Tuesday, November 21, 2017 5:42 PM

**To:** Boudreau, Lynn A; Martin, Evelyn M; Fierro, Joseph; Simon, Ronna J

**Cc:** Moran, Karla V; Hutchings, Pamela G; Nicklaw, Nicole C; Parascandola, Ciro A; Cox, Robert H; Lin, Peggy P; Aucoin, Lauren J; Hardy, Amanda L; Choi, Hae-Jin

**Subject:** Workshop Summary

Good Afternoon Everyone,

First and foremost, thank you all for your participation in our rescission workshop. This past week was very successful in that we were able to make decisions regarding pending policy calls, identify areas where additional guidance is needed, and identify inconsistencies in our interpretation of the memo. This would not have been possible without your insight and expertise. We are very grateful to all of you for your assistance and are confident that we are well on our way to establishing a road map for the policy set forth in this memo.

As promised, we have compiled a list of all the decisions we made, in addition to items that we agreed to work on collectively. They are as follows:

**RFE Templates**

- 1.) Add a request for the petitioner to identify which prong they qualify under. (NOTE: If the petitioner does not specify the prong, it is still the adjudicator's responsibility to discuss each prong and how the beneficiary does not qualify if a denial is issued.)

- 2.) For Prong 3, we will provide examples of additional evidence that a petitioner can submit.
- 3.) Add “Prevailing Wage Determination” as suggested evidence that may be submitted.
- 4.) Add a request for petitioner requirements as suggested evidence that may be submitted.
- 5.) Consider adding discussion points regarding beneficiary qualifications.

### **Denial Templates**

- 1.) Change denial language as it is currently based on DOL definitions (page 7 of 2009 guidance).
- 2.) Develop summary statements (related to point 1 under RFE templates) to use in the denial when the petitioner identifies a particular prong they claim they meet but do not submit evidence or claim to meet one of the other prongs.

### **Decisions Made**

- 1.) In addition to editing the RFE template to request that the petitioner identify which prong they are trying to qualify under, we will also work with OCOMM to ensure that this information is made public on our website.
- 2.) The OOH will generally not suffice, in the absence of additional evidence, to establish that a computer programmer position is a specialty occupation since the OOH discusses the occupation more broadly and does not provide probative evidence regarding whether the proffered position is a specialty occupation.
- 3.) The reference to “position” in prong 1 is meant to be in reference to the actual position being offered by the petitioner.
- 4.) If a new LCA is submitted that was certified before the time of filing and the only change is the wage level (and the “actual wage” is the same), this would not constitute a material change. If the proffered wage on the petition has to be increased to match the actual/required wage on the LCA, that would constitute a material change.
- 5.) When issuing decisions, it is best to cite to the underlying authoritative source (when available), as opposed to policy memos or adopted decisions.

### **Items Due**

- 1.) Revised RFE and denial template pertaining to wage leveling.
- 2.) SCOPS will develop a library of sample denials on the BEST ECN website. CSC, NSC, and VSC will acquire examples, which BEST will then route through the working group for clearance. Thereafter, the examples will be uploaded.
- 3.) SCOPS will follow up with DOL regarding training materials discussed during their segment. SCOPS will also request that DOL provide an overview of their process for PWDs for adjudicators at the centers.
- 4.) The working group will come up with instructions for how to establish if a wage level is “clearly inconsistent” with the proffered position.
- 5.) The working group will consider developing guidance on how to interpret the OOH when words such as “most” and “typically” are listed before the educational requirement.
- 6.) Further clarify what is considered a related degree (i.e. financial analyst position).

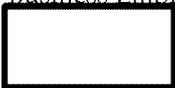
In terms of prioritizing the abovementioned items, SCOPS BEST will first begin to work on the agreed-upon changes for the RFE and Denial templates. All templates will be circulated through the working group and the centers for comments before they are finalized. SCOPS will also reach out to DOL to obtain training materials and see if they are amenable to offering an overview of their process to the centers.

Next, SCOPS BEST will work with policy and OCC to draft the aforementioned guidance. That will also be circulated to the working group and the centers to ensure it is legally sound and addresses the needs of adjudicators.

If there is anything we missed, please let us know at your earliest convenience. Also, please don't forget to send your denial examples so that we can begin circulating samples through the working group.

Thanks very much.

Stephanie Doumani  
Branch Chief  
Service Center Operations  
Business Employment Services Team

 Desk  
Cell

(b)(6)

## Labor Condition Application

As explained in *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015), U.S. Citizenship and Immigration Services (USCIS) must determine whether the attestations and content of the ETA Form 9035(E) Labor Condition Application (LCA) correspond to and support the H-1B visa petition. Additionally, Title 20 Code of Federal Regulations (20 CFR), section 655.705(b) states in pertinent part:

For H-1B visas, the following agencies are involved: [Department of Homeland Security (DHS)] DHS accepts the employer's petition (DHS Form I-129) with the DOL-certified LCA attached. In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition...

Finally, title 8 Code of Federal Regulations (8 CFR), section 214.2(h)(4)(i)(B)(1) states:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

Accordingly, you must establish that your petition is supported by an LCA which corresponds with the proffered position.

XXX[You did not submit any evidence for this requirement.]XXX

XXX[OR]XXX

XXX[To satisfy this requirement, you submitted:]XXX

- XXX[LIST EVIDENCE]XXX

On your LCA you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels). The U.S. Department of Labor (DOL)'s Employment and Training Administration Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs, Rev. November, 2009 (DOL Policy Guidance) discusses the four wage levels and defines a Level I wage as XXX[OFFICERS: WAGE LEVEL DEFINITION INCLUDED ONLY FOR PETITIONER BACKGROUND/FOUNDATION. DO NOT REFERENCE WAGE LEVEL DEFINITION IN REASONING WHY LEVEL I WAGE IS INAPPROPRIATE]XXX:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close

supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

The DOL Policy Guidance further states:

All employer applications for a prevailing wage determination shall initially be considered an entry level or Level I wage. The employer's requirements for experience, education, training, and special skills shall be compared to those generally required for an occupation as described in the O\*NET and shall be used as indicators that the job opportunity is for an experienced (Level II), qualified (Level III), or fully competent (Level IV) worker.

USCIS follows the DOL guidance, and the process set forth in the DOL Policy Guidance, to determine whether the wage level in the certified LCA submitted in support of the petition properly corresponds to the proffered position.

By designating the proffered position at a Level I wage, you indicate that the proffered position is a position of a comparatively low level relative to other positions within the occupation.

**XXX[EXPLAIN WHY A LEVEL I WAGE DOES NOT CORRESPOND TO THE PARTICULAR POSITION BASED ON THE OES WORKSHEET ANALYSIS (E.G.HOW THE JOB DUTIES INDICATE THAT A SPECIAL SKILL IS REQUIRED WHEN COMPARED TO THE NORMAL DUTIES AND REQUIREMENTS FOR THAT OCCUPATION IN O\*NET OR HOW THE EDUCATION OR EXPERIENCE REQUIREMENTS ARE ABOVE THOSE LISTED IN O\*NET FOR THE OCCUPATION). REFER TO APPENDICES A AND B TO THE 2009 DOL POLICY GUIDANCE FOR INSTRUCTIONS ON PROPER COMPLETION OF THE OES WORKSHEET.**

**-AND-**

Therefore, the position, as described in your petition, does not appear to be a position that should be assigned a Level I wage. As such, you have not established that the petition is supported by a certified LCA that corresponds to the petition.]XXX

**XXX[OR, IF THE RECORD ESTABLISHES THE POSITION IS A SPECIALTY OCCUPATION BUT THE DUTIES AND REQUIREMENTS ARE TOO VAGUE TO EVALUATE THE WAGE LEVEL:** The description of the proffered position and supporting documentation provided with your initial filing are insufficient to establish that the proffered position should be assigned a Level I wage. Further evidence which lists the tasks, knowledge, and skills of the proffered position along with the experience

and education required for the proffered position is necessary to establish that the petition is supported by a certified LCA that corresponds to the petition.]XXX

You may submit additional evidence to establish that the wage level on the LCA properly corresponds with the proffered position. Evidence may include, but is not limited to:

XXX[**DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE**]XXX

- A Prevailing Wage Determination for the proffered position issued by the U.S. Department of Labor.
- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position, such as an official position description, job offer letter, or job announcement that describes all of the experience and education requirements for the proffered position. The documentation should also detail the tasks, knowledge, and skills of the proffered position. If the position involves employment at an end-client worksite, such documentation should include the end-client's official job description, announcement, or other evidence that describes the job duties the beneficiary will perform and the end-client's education, experience, and skill requirements for that position.
- Alternatively, if you do not wish to rely on the LCA with a Level I wage but wish to instead rely on an LCA with a higher wage level, you may do so by submitting another LCA certified prior to the time of filing with a Level II, III or IV wage designation that properly corresponds to the proffered position, but does not require a corresponding change to the proffered wage on the petition in order to establish eligibility.

**Private Wage Surveys**

(b)(5)

The general analysis required when evaluating a private wage survey is essentially the same analysis required when evaluating an OES based wage level designation. The main difference here is that the OES wage is publically available and its wage level is specifically requested on the LCA, whereas the petitioner may need to provide a copy of the relevant portions of the private survey for us to know what wage level was used in support of the LCA.



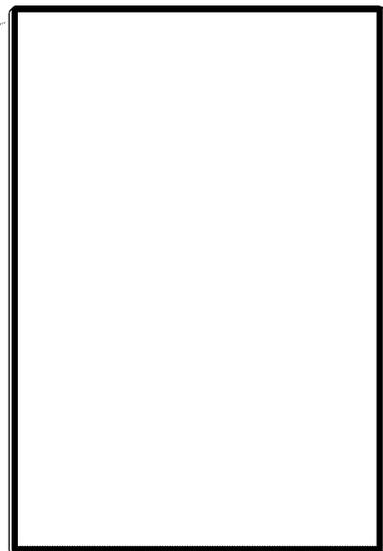
SCOPS: Thanks, OCC.

The officer should, first and foremost, look to determine if the occupational classification corresponds to the particular position. The officer should then look to see what the corresponding wage level is for that survey and identify whether the wage level identified within the private wage survey is appropriate for the position.

If the petitioner establishes that, more likely than not, the occupational classification selected sufficiently corresponds to the position, we would accept that as the proper classification without requiring more. In cases when it appears that the occupational classification doesn't correspond because the articulated duties are significantly different from the duties required for associated with the selected occupational classification, the officer may issue an RFE. The RFE may request that the petitioner submit more evidence (such as additional information from the wage survey) to establish ~~more detail from the wage survey to verify and explain~~ how the selected occupational classification is appropriate and how it relates to the position. The entire private survey and all classifications are not necessarily required for the petitioner to establish, by a preponderance of the evidence, that the selected occupational classification is sufficient.

In addition, the analysis of the private wage survey should include consideration of the area of intended employment. The area of intended employment means "the area within normal commuting distance of the worksite or physical location where the work of the H-1B nonimmigrant is or will be performed." There is no DOL requirement that the geographical divisions of a private wage survey exactly mirror the MSAs or other divisions identified in the Occupational Employment Statistics. As long as a private wage survey's geographical region covers an area within normal commuting distance of the

(b)(5)



In summary, the analysis should consider whether the occupational classification corresponds to the particular position, -whether the survey assigned the correct wage level according to the wage levels provided in the private survey, and whether the survey's selected geographical region corresponds to the area of intended employment.

## Specialty Occupation

You must establish that the beneficiary's proffered position is a specialty occupation. A specialty occupation is one that requires the theoretical and practical application of a body of highly specialized knowledge and that requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

XXX[You did not submit any evidence for this requirement.]XXX

XXX[OR]XXX

XXX[To satisfy this requirement, you submitted:]XXX

- XXX[LIST EVIDENCE]XXX

XXX[USE THIS SECTION ONLY IF NECESSARY]XXX

### Specialty Occupation Determination

You must establish that the proffered position is a specialty occupation as defined above. U.S. Citizenship and Immigration Services (USCIS) interprets "a bachelor's degree or higher in a specific specialty" as used above as "one that relates directly to the duties and responsibilities of a particular position." *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

You indicate that the minimum entry requirements for the proffered position are a wide variety of disparate fields of study, such as XXX[LIST PETITIONER'S REQUIRED DEGREE FIELDS]XXX. However, there must be a close correlation between the required "body of highly specialized knowledge" and the position. A minimum entry requirement of a bachelor's degree in disparate fields of study, would not meet the requirement that the position requires a degree "in the specific specialty (or its equivalent)," unless you establish how each field is directly related to the duties and responsibilities of the particular position.

The evidence you submitted is insufficient to establish how each field is directly related to the duties and responsibilities of the particular position, and therefore, that the position is a specialty occupation.

XXX[DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT]XXX

XXX[USE/MODIFY IF RELEVANT: You indicate that one of the minimum entry requirements for the proffered position is a degree in XXX[GENERAL FIELD OF STUDY]XXX without further specialization or explanation. You have not explained how this generalized field is a "body of highly specialized knowledge" that is directly related to the duties and responsibilities of the proffered position and/or how each of the fields of study under this generalized heading would relate to the duties and responsibilities of the proffered position.]XXX

Accordingly, on the basis of the position's educational requirements alone, you have not established that the position is in a specialty occupation as defined above.

You may still provide evidence to meet this requirement. Evidence may include, but is not limited to:

**XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- A letter explaining how each field of study listed as a qualifying field for the proffered position is directly related to the duties and responsibilities of the position.
- An expert opinion letter discussing how each field of study listed as a qualifying field for the proffered position is directly related to the duties and responsibilities of the position.

**XXX[USE THIS SECTION ONLY IF NECESSARY]XXX**

#### **Specific Duties of the Offered Position and Nature of Business Operations**

USCIS does not use the job title, by itself, when determining whether a particular position qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that USCIS considers.

**XXX[USE THIS INTRODUCTORY LANGUAGE ONLY IF RELEVANT:** In this case, you have indicated that the beneficiary will be performing services at an end-client's worksite. Therefore, as recognized by the court in *Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000), where the work is to be performed for an entity other than the petitioner, evidence of the end-client's job requirements is critical. You must submit evidence that the proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entity(ies) using the beneficiary's services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific specialty that is necessary to perform that particular work.]**XXX**

**XXX[DISCUSS WHY DUTIES/DESCRIPTION OF BUSINESS IS INSUFFICIENT (I.E. VAGUE DUTIES, DUTIES DIRECTLY COPIED FROM OOH/O\*NET, ETC.)XXX**

In addition to providing evidence relating to the specialty occupation qualifying criteria discussed below, provide evidence that details the specific duties of the proffered position and the nature of your business operations. Evidence may include, but is not limited to:

**XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- A detailed statement from your company or, if the beneficiary will perform services for an end-client, the end-client to:
  - Explain the actual duties the beneficiary will perform;

- Indicate the percentage of time devoted to each duty;
- State the education, experience, training, and special skills required to perform these duties; and
- Explain how the educational requirements relate to the position.
- A copy of a line-and-block organizational chart showing your hierarchy and staffing levels. The organizational chart should:
  - List all divisions in the organization;
  - Identify the proffered position in the chart;
  - Show the names and job titles for those persons, if any, whose work will come under the control of the proposed position; and
  - Indicate who will direct the beneficiary, by name and job title.
- Copies of documentary examples of work products created by current or prior employees in similar positions, such as:
  - Reports;
  - Presentations;
  - Evaluations;
  - Designs; or
  - Blueprints.
- Additional information about your organization, highlighting the nature, scope, and activity of your business enterprise, along with evidence to establish the beneficiary will be employed with the duties you have set forth, such as:
  - Business plans, reports, and presentations to describe your business;
  - Contractual agreements or work orders from each company who will utilize the beneficiary's services showing that the beneficiary will be performing specialty occupation duties;
  - Promotional materials, advertisements, articles, and/or press releases; or
  - Patents.

### **Qualifying Criteria**

To qualify as a specialty occupation, the position must meet at least one of the following criteria.

USCIS will discuss each of the qualifying criteria for specialty occupation below. With your response, identify which of the specialty occupation qualifying criteria you believe has been satisfied. If you believe the offered position satisfies multiple criteria, identify the evidence that you believe satisfies each criterion.

#### **1. Degree is Normally Minimum Requirement**

You may establish eligibility by showing that a bachelor's degree or higher in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The evidence you submitted is insufficient to establish eligibility under this criterion. XXX[**DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT**]XXX

You submitted a certified Labor Condition Application (LCA) which lists an Occupation Title of XXX[**OCCUPATION TITLE**]XXX.

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the educational requirements of particular occupations. The *OOH* states the following regarding the training and educational requirements for XXX[**OCCUPATION TITLE**]XXX positions:

XXX[**INCLUDE RELEVANT INFORMATION**]XXX

XXX[**CHOOSE EITHER THIS PARAGRAPH:** The *OOH* does not indicate that XXX[**OCCUPATION TITLE**]XXX positions normally require a minimum of a bachelor's degree in a specific specialty. XXX[**EXPLAIN WHY**]XXX A range of educational credentials, including those less than a bachelor's degree in a specific specialty may qualify an individual to perform the duties of a XXX[**OCCUPATION**]XXX.]XXX

XXX[**OR**]XXX

XXX[**THIS PARAGRAPH:** The *OOH* language indicates that these are the minimum entry requirements for this occupation generally, however, you state that your particular position requires a bachelor's degree, or the equivalent, in XXX[**LIST PETITIONER'S SPECIFIC DEGREE REQUIREMENTS**]XXX. The degree requirements for your position are substantively different from those listed in the *OOH*. XXX[**EXPLAIN WHY**]XXX Accordingly, you have not established how the *OOH* listing for XXX[**SOC OCCUPATIONAL TITLE**]XXX relates to your particular position or demonstrates that a bachelor's degree in a specific specialty is normally the minimum requirement for entry into your particular position.]XXX

XXX[**USE IF RELEVANT:** Moreover, as discussed above, you have not established how each of the qualifying fields of study that you have listed for the proffered position is directly related to the duties and responsibilities of the position. Therefore, you have not established that a bachelor's degree or higher in a *specific specialty*, or its equivalent, is normally the minimum requirement for entry into the particular position by your own educational requirements.]XXX

As such, you have not sufficiently established that a bachelor's degree or higher in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to: XXX[**DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE**]XXX

- Relevant documentation from an authoritative career resource, such as the *OOH*, which list the duties, work environment, education, training, skills, and other qualification requirements for the occupation. Include a statement describing how the particular position relates to the occupation listed in the career guide and how the information in the career guide demonstrates that a bachelor's or higher degree in a specific specialty or its equivalent is normally the minimum requirement for the particular position.
- Any evidence you believe will establish that a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

### **2.1 Degree Common to the Industry**

You may establish eligibility by showing that the degree requirement of a bachelor's degree or higher in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.

The evidence you submitted is insufficient to establish eligibility under this criterion. **XXX[DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT]XXX**

**XXX[USE IF RELEVANT:** Moreover, as discussed above, you have not established how each of the qualifying fields of study that you have listed for the proffered position is directly related to the duties and responsibilities of the position. Accordingly, it is not apparent how a bachelor's degree or higher in a *specific specialty*, or its equivalent, is common to the industry in parallel positions among similar organizations, if it is not the requirement of your own position.]**XXX**

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to: **XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- Job postings or advertisements showing a degree requirement of a bachelor's degree or higher in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Any job postings or advertisements should be supported by documentation of the following:
  - The date and source of the job posting or announcement;
  - A detailed description of the duties of the position and the educational, training, and experience requirements of the position;
  - The company or firm offering the position in these job postings or announcements is within your industry and is similar to your organization; and
  - The job postings or advertisements represent the industry standards for the position.

- Letters from an industry-related professional association indicating that similar organizations routinely employ and recruit only individuals with a bachelor’s degree or higher in a specific specialty, or its equivalent for parallel positions.
- Copies of letters or affidavits from firms or individuals in the industry attesting that similar organizations routinely employ and recruit only individuals with a bachelor’s degree or higher in a specific specialty, or its equivalent for parallel positions. Any letter or affidavit should be supported by documentation of the following:
  - The writer’s qualifications as an expert;
  - How the writer’s conclusions were reached; and
  - The basis for the writer’s conclusions, supported by copies or citations of any materials used.

## **2.2 Position So Complex or Unique**

You may establish eligibility by showing that the particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree or higher in a specific specialty, or its equivalent.

The evidence you submitted is insufficient to establish eligibility under this criterion.  
**XXX[DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT]XXX**

**XXX[USE IF RELEVANT:** Moreover, as discussed above, you have not established how each of the qualifying fields of study that you have listed for the proffered position is directly related to the duties and responsibilities of the position. Accordingly, it is not apparent that the particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree or higher in a *specific specialty*, or its equivalent, based on your own educational requirements.]**XXX**

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to: **XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- Letters from an industry-related professional association indicating that the particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree or higher in a specific specialty, or its equivalent.
- Copies of letters or affidavits from firms or individuals in the industry attesting that the particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree or higher in a specific specialty, or its equivalent. Any letter or affidavit should be supported by documentation of the following:
  - The writer’s qualifications as an expert;
  - The writer’s knowledge of your business;
  - How the writer’s conclusions were reached; and
  - The basis for the writer’s conclusions, supported by copies or citations of any materials used.

- Copies of trade publications or other articles within your industry which demonstrate and highlight the specific complex or unique functions of the particular position, which can only be performed only by an individual with a bachelor's degree or higher in a specific specialty, or its equivalent.

### **3. Employer Normally Requires Degree or its Equivalent**

You may establish eligibility by showing that you normally require a bachelor's degree or higher in a specific specialty, or its equivalent, for the position. XXX[**USE THIS LANGUAGE ONLY IF RELEVANT:** However, in this case, you have indicated that the beneficiary will be performing services at an end-client's worksite. Consistent with *Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000), evidence of the end-client's job requirements is critical. To establish that the proffered position qualifies as a specialty occupation under this criterion, you must submit evidence that the entity(ies) using the beneficiary's services normally requires a bachelor's or higher degree in a specific specialty or its equivalent.]XXX

The evidence you submitted is insufficient to establish eligibility under this criterion. XXX[**DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT**]XXX

XXX[**USE IF RELEVANT:** Moreover, as discussed above, you have not established how each of the qualifying fields of study that you have listed for the proffered position is directly related to the duties and responsibilities of the position. Accordingly, you have not established that you normally require a bachelor's degree or higher in a *specific specialty*, or its equivalent, based on your own educational requirements.]XXX

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to: XXX[**DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE**]XXX

- An organizational chart showing your hierarchy and staffing levels with corresponding educational and experience requirements for the positions. The educational requirements should include the field of study (e.g. computer science) in addition to the educational level (e.g. bachelor's degree).
- Copies of present and past job postings or announcements for the proffered position showing that you require or, if the beneficiary will perform services for an end-client, the end-client requires applicants to have a minimum of a bachelor's or higher degree in a specific specialty or its equivalent.
- Documentary evidence of your past employment practices for the position, including:
  - Documentation which lists the number of employees hired in the most recent two years for the position;
  - Copies of employment or pay records identifying past and present employees in this position;
  - Copies of degrees and/or transcripts to verify the level of education and field of study of each individual hired for this position in the last two

- years. Additionally, provide evidence to establish the duties that the individuals performed, such as official position descriptions, job offer letters, job postings, or performance reviews; and
  - An organizational chart or diagram, showing your organizational structure and staffing levels.
- Documentation which lists the educational, experience, training, and skills requirements of the offered position, such as official position descriptions, job offer letters, or job postings.

#### **4. Nature of Specific Duties So Specialized and Complex**

You may establish eligibility by demonstrating that the nature of the specific duties of the offered position are so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent.

The evidence you submitted is insufficient to establish eligibility under this criterion.  
**XXX[DISCUSS WHY THE EVIDENCE SUBMITTED IS INSUFFICIENT]XXX**

**XXX[USE IF RELEVANT:** Moreover, as discussed above, you have not established how each of the qualifying fields of study that you have listed for the proffered position is directly related to the duties and responsibilities of the position. Accordingly, it is not apparent that the nature of the specific duties of the offered position are so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a bachelor's degree or higher in a *specific specialty*, or its equivalent, based on your own educational requirements.]**XXX**

You may still submit evidence to establish eligibility under this criterion. Evidence may include, but is not limited to: **XXX[DELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLE]XXX**

- An explanation of the specific duties, as they relate to your products and services, and how the nature of those duties of the offered position are so specialized and complex, that they are usually associated with the attainment of a bachelor's degree or higher in a specific field of study; provide an explanation of what differentiates your products and services from other employers in the same industry. Be specific and provide documentation to support any explanation of specialization and complexity.
- Copies of letters or affidavits from firms, individuals, professional associations, or customers attesting that the nature of your products and services are so specialized and complex that a bachelor's level of education, or higher, in a specific field of study is a prerequisite for entry into the offered position. Any letter or affidavit should be supported by documentation of the following:
  - The writer's qualifications as an expert;

- How the writer's conclusions were reached; and
  - The basis for the writer's conclusions, supported by copies or citations of any materials used.
- Copies of trade publications or other articles about your company that highlights the nature of your products and services and demonstrates that the specific duties of the offered position are so specialized and complex that a bachelor's level of education, or higher, in a specific field of study is a prerequisite for entry into the position.

**Labor Condition Application**

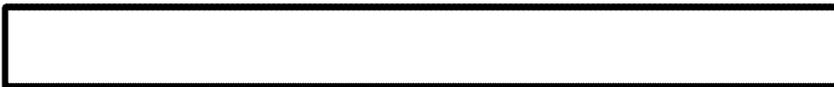
You must establish that your petition is supported by an ETA Form 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position.

You have provided an LCA certified for the occupational classification of **XXXa/an LCA SOC OCCUPATION TITLEXXX** and have designated the prevailing wage source for the occupation as the **XXXSOURCE YEAR AND NAME FROM BOXES 11A. AND 11B, e.g. 2016 Towers Watson Data Services Acctg & Fin Compensation SurveyXXX**. The prevailing wage source listed above appears to be an independent authoritative source; however, the evidence of the record is insufficient to establish that the occupation listed in the independent authoritative source is comparable to the proffered position. As such, you have not demonstrated that your petition is supported by an LCA which corresponds with the proffered position.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to:

- A copy of the prevailing wage survey for the occupation published by the authoritative source covering the area of intended employment. The prevailing wage survey must provide an explanation of the occupational classification system and the wage data must have been collected across industries that employ workers in the occupation;
- Documentation, such as an official position description, job offer letter, or job announcement, which factored into the selection of the occupation certified on the LCA and details the duties and responsibilities of the proffered position and describes the skills and qualifications required to perform those duties;
- Documentation published by the independent authoritative source, which shows that the survey’s job description matches the job description for the proffered position. This documentation should also list details of the occupation certified on the LCA, such as the duties, position qualification requirements, work supervision requirements, or any other details which factored into the selection of the occupation certified on the LCA;
- If available for the survey used, copies of the prevailing wage survey(s) for all lower and/or higher level positions within the occupation certified on the LCA, such as “entry,” “senior,” “lead,” or “supervisory” positions. In the alternative, provide evidence, as published by the independent authoritative source, to establish that no lower and/or higher level positions exist within the occupation certified on the LCA; and/or

(b)(5)



## **Labor Condition Application**

You must establish that your petition is supported by an ETA Form 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position.

You have provided an LCA certified for the occupational classification of **XXXa/an LCA SOC OCCUPATION TITLEXXX** and have designated the prevailing wage source for the occupation as the **XXXSOURCE YEAR AND NAME FROM BOXES 11A. AND 11B, e.g. 2016 Towers Watson Data Services Acctg & Fin Compensation SurveyXXX**. The prevailing wage source listed above appears to be an independent authoritative source; however, the evidence of the record is insufficient to establish that the occupation listed in the independent authoritative source is comparable to the proffered position. As such, you have not demonstrated that LCA corresponds with the proffered position.

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to:

- A copy of the prevailing wage survey for the occupation, as published by the authoritative source, covering the area of intended employment. The prevailing wage survey must provide an explanation of the occupational taxonomy and must represent the occupation across the entire industry;
- Documentation, such as an official position description, job offer letter, or job announcement, which factored into the selection of the occupation certified on the LCA and details the duties and responsibilities of the proffered position and describes the skills and qualifications required to perform those duties;
- Documentation, as published by the independent authoritative source, which lists details such as the duties, position qualification requirements, and work supervision requirements of the occupation certified on the LCA, or any other details which factored into the selection of the occupation certified on the LCA;
- If available for the survey used, copies of the prevailing wage survey(s) for all lower and/or higher level positions within the occupation certified on the LCA, such as “entry,” “senior,” “lead,” or “supervisory” positions. In the alternative, provide evidence, as published by the independent authoritative source, to establish that no lower and/or higher level positions exist within the occupation certified on the LCA; and/or
- Any other documentation which establishes that the LCA corresponds with the proffered position.

**XXXDO NOT USE IN CONJUNCTION WITH 2120 WHEN ADDRESSING SPECIALTY OCCPATION, USE 2126XXX**

### **Labor Condition Application**

You must establish that your petition is supported by an ETA Form 9035(E) Labor Condition Application (LCA) which corresponds with the proffered position.

On your LCA you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels).

By designating the proffered position at a Level I wage, you indicate that the proffered position is an entry level position within the occupation.

**XXXLIST AND PROVIDE ANALYSIS OF THE ROLES AND RESPONSIBILITIES WHICH INDICATE A HIGHER LEVEL POSITION, SUCH AS “SENIOR,” “LEAD,” “SUPERVISORY,” “MENTORING,” ETC. AND CLEARLY CONTRADICT WITH A LOWER LEVEL POSITION WITHIN THE OCCUPATION.**

Therefore, the position, as described in your petition, does not appear to be an entry level position within the occupation. As such, you have not sufficiently established that the petition is supported by a certified LCA that corresponds to the petition.XXX

**XXXOR, IF THE RECORD ESTABLISHES A SPECIALTY OCCUPATION BUT THE DUTIES AND REQUIREMENTS ARE TOO VAGUE TO EVALUATE THE WAGE LEVEL.** The description of the proffered position and supporting documentation provided with your initial filing are insufficient to establish that the proffered position is an entry level position within the occupation. Further evidence which lists the tasks, knowledge, and skills of the proffered position along with the experience, education, and level of supervision required for the proffered position is required to establish that the petition is supported by a certified LCA that corresponds to the petition.XXX

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to: **XXXDELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLEXXX**

- A Form ETA-9141, Application for Prevailing Wage Determination, completed by the U.S. Department of Labor for the proffered position.
- Documentation, such as an official position description, job offer letter, or job announcement, which factored into the selection of the occupation and wage level certified on the LCA. The documentation should detail the tasks, knowledge, and skills of the proffered position. Additionally, the documentation should describe the experience and education requirements for the proffered position.
- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered specialty occupation position.

- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.

**XXXINSERT AS SPECIALTY OCC SNIPPET INTO 2120XXX**

USCIS routinely consults the Department of Labor's *Occupational Outlook Handbook (OOH)* for information about the duties and educational requirements of particular occupations. You have petitioned and provided a Labor Condition Application (LCA) for the position of **XXXPOSITIONXXX**. The *OOH* states the following regarding the training and educational requirements for a **XXXPOSITIONXXX**:

**XXXINCLUDE RELEVANT INFORMATION FROM THE OOHXXX**

Accordingly, a range of educational credentials **XXX**, including those less than a bachelor's degree in a specific specialty,**XXX** may qualify an individual to perform the duties of a **XXXPOSITIONXXX**. On your LCA, you have designated the proffered position as a Level I wage (the lowest of four assignable wage levels).

By designating the proffered position at a Level I wage, you indicate that the proffered position is an entry level position within the occupation. Given the *OOH's* guidance that some positions within this occupational category do not normally require a bachelor's or higher degree in a specific specialty as a minimum requirement, the record does not establish that an entry level position within the occupation would have such a requirement.

**XXX INSERT OTHER DISCUSSION AND SNIPPETS TO ADDRESS OTHER PRONGSXXX**

XXXINSERT AT THE END OF 2120 IF NEEDEDXXX

### Labor Condition Application

You must establish that your petition is supported by an ETA Form 9035(E) Labor Condition Application which corresponds with the proffered position..

XXXYou did not submit any evidence for this requirement.XXX

XXXORXXX

XXXTo satisfy this requirement, you submitted:XXX

- **XXXOFFICER TEXTXXX**

As discussed above, you have not demonstrated that the proffered position is a specialty occupation. Further, USCIS requires additional evidence to establish that the LCA you have provided, with a Level I wage designation, properly corresponds to the proffered position. **XXXIF RELEVANT PROVIDE DISCUSSION OF ROLES AND RESPONSIBILITIES WHICH INDICATE A HIGHER LEVEL POSITION, SUCH AS “SENIOR,” “LEAD,” “SUPERVISORY,” “MENTORING,” ETC. AND CLEARLY CONTRADICT WITH A LOWER LEVEL POSITION WITHIN THE OCCUPATIONXXX**

You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to: **XXXDELETE ITEMS THAT WERE ALREADY PROVIDED OR NOT APPLICABLEXXX**

- A Form ETA-9141, Application for Prevailing Wage Determination completed by the U.S. Department of Labor for the proffered position.
- Documentation, such as an official position description, job offer letter, or job announcement, which factored into the selection of the occupation and wage level certified on the LCA. The documentation should detail the tasks, knowledge, and skills of the proffered position. Additionally, the documentation should describe the experience and education requirements for the proffered position.
- A letter explaining how the Level I wage designation LCA that you have provided corresponds to the proffered position.
- Documentation to support that the Level I wage designation on the LCA corresponds to the proffered position.

## Specialty Occupation & Related Degrees Guidance

To qualify as a specialty occupation, the position must satisfy the statutory definition at section 214(i)(1) of the Act of an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 CFR 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor:

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

In addition, the proffered position must also meet at least one of the following criteria at 8 CFR 214.2(h)(4)(iii)(A):

- A bachelor or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by a person with a degree;
- The employer normally requires a degree or its equivalent for the position; or
- The nature of the duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

To be consistent with the statute at 214(i)(1) and the regulatory definition at 8 CFR 214.2(h)(4)(ii), we construe the term “degree” in the criteria above to mean not just any degree, but a bachelor’s or higher degree in a specific specialty (or its equivalent) that is directly related to the proposed position.

### **Analyzing “Specific Specialty”**

While the statutory “the” and the regulatory “a” are both interpreted to denote a singular “specialty,” this should not be misconstrued with necessarily requiring a singular academic major or field of study.

In general, provided the required fields of study are closely related, e.g., electrical engineering and electronics engineering for the position of an electrical engineer, a minimum of a bachelor's or higher degree in more than one field of study is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Each academic major is in a “specific specialty” directly related to the position.

In addition, a minimum entry requirement of a bachelor’s or higher degree in multiple disparate fields of study does not automatically disqualify a position from being a specialty occupation. For example, a petitioner may be able to establish that a bachelor’s degree in either education or chemistry (each a body of highly specialized knowledge) is directly related to the duties and responsibilities of a chemistry teacher.

### **Application**

In cases where the petitioner lists multiple disparate fields of study as the minimum entry requirement for a position, the petitioner must establish how each field of study is in a “specific specialty” that is directly related to the duties and responsibilities of the particular position (i.e., the applied body or bodies of highly specialized knowledge) in order to establish eligibility under the statutory and regulatory definitions and under one of the four criteria at 8 CFR 214.2(h)(4)(iii)(A).

However, if the *Occupational Outlook Handbook (OOH)* lists disparate fields of study as sufficient to qualify for the occupation, some of which do not relate to a body of highly specialized knowledge required to be applied by the occupation, the petitioner will generally not be able to demonstrate eligibility under the first criterion based on the *OOH*. This holds true even if the petitioner demonstrates that each of the disparate fields of study listed in the *OOH* is directly related to the position. This is because the position would still not be “...one that by its nature demands a bachelor's degree or its equivalent in a specific specialty.” See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). However, the petitioner may still be able to demonstrate eligibility under the first criterion by providing evidence from another authoritative source that

demonstrates that it is more likely so than not that, based on a review of typical requirements for similar positions in the same occupation, the particular position requires a bachelor's or higher degree in a specific specialty (or its equivalent) as a minimum for entry into that position.

### **Summary**

The statutory and regulatory language does not require that the specific specialty be limited to the attainment of a degree in a single, sole field of study or academic major.

Requiring a degree in more than one field of study does not automatically disqualify a position from being a specialty occupation.

The petitioner must demonstrate that each field of study they list as a qualifying field of study for the position is directly related to the duties and responsibilities of the position by the preponderance of the evidence standard. This is true when the petitioner lists only one field of study, multiple related fields of study, or multiple disparate fields of study.

If the *OOH* lists disparate fields of study as sufficient to qualify for the occupation, the petitioner will generally not be able to demonstrate eligibility under the first criterion.

## H-1B/HSC/E-3 Wage Leveling Chart

The following chart provides guidance for H-1B/HSC/E-3 petitions with potential wage leveling issues. Officers may issue a request for evidence if they determine that the wage level selected by the petitioner appears to be clearly inconsistent with the petitioner’s description and requirements for the proffered position or if the description of the position is extremely vague and you are unable to evaluate whether the LCA corresponds to and supports the petition.

The LCA is certified with a wage level of...	And the proffered position...	You will...
<b>1*</b>	<ul style="list-style-type: none"> <li>• Appears to be a higher level position beyond entry-level, e.g. indications that the position is “senior,” “lead,” “a subject matter expert,” etc.;</li> <li>• Involves supervising/managing** a team or a project, e.g. indications of project budgeting, liaising with the client and defining project objectives, etc.;</li> <li>• Involves “teaching,” “coaching,” “mentoring,” or “training” other individuals <u>in parallel positions</u>;</li> <li>• Requires a higher level of experience or education as compared to the O*NET listing for the occupation, e.g. a job zone four occupation but the proffered position requires a master’s degree; and/or</li> <li>• Involves other <u>significantly</u> advanced duties not generally associated with the listing for the occupation in the O*NET.</li> </ul>	<p><b>If specialty occupation <u>is</u> established:</b></p> <p>Address wage leveling via standard paragraph 2124 <b><u>after obtaining SISO concurrence.</u></b></p> <hr/> <p><b>If specialty occupation <u>is not</u> established:</b></p> <p>Address specialty occupation with standard paragraphs/snippets 2120, 2125 (if applicable), and 2126.</p> <p>Note: SISO concurrence <b><u>is not</u></b> required if specialty occupation is also being questioned.</p>
<b>1*</b>	<p>Involves duties which appear to closely align with or be typical of the occupation certified on the LCA, as listed in the O*NET, and appears to require the same or lower experience, education, and skills of that occupation. Nothing in the record establishes that the proffered position is clearly inconsistent with the certified LCA wage level, <b>AND SPECIALTY OCCUPATION <u>IS ESTABLISHED.</u></b></p>	<p>Not address wage leveling.</p>

The LCA is certified with a wage level of...	And the proffered position...	You will...
1*	Involves duties which appear to closely align or be typical of the occupation certified on the LCA, as listed in the O*NET, and appears to require the same or lower experience, education, and skills of that occupation. The record does not establish that the proffered position is clearly inconsistent with the certified LCA wage level <b>AND SPECIALTY OCCUPATION IS NOT ESTABLISHED.</b>	Address specialty occupation with standard paragraphs/snippets 2120 and 2125 (if applicable). In addition, standard paragraph 2126 should generally be included unless you feel the duties and qualification requirements are clearly established and/or the record establishes that the proffered position is clearly consistent with the certified LCA wage level.  Note: SISO concurrence <b>not</b> required if specialty occupation is also being questioned.
1*	Description is extremely vague or inconsistent and/or the position requirements are extremely vague or inconsistent, to the extent that you are unable to evaluate whether the LCA relates to the proffered position.	<p><b>If specialty occupation <u>is</u> established:</b></p> <p>Address wage leveling via standard paragraph 2124, with discussion of vague duties and/or requirements, <b><u>after obtaining SISO concurrence.</u></b></p> <p><b>If specialty occupation <u>is not</u> established:</b></p> <p>Address specialty occupation with standard paragraphs/snippets 2120, 2121, 2125 (if applicable), and 2126.</p> <p>Note: SISO concurrence <b>is not</b> required if specialty occupation is also being questioned.</p>
N/A		Forward the petition, without further consideration or adjudication, to the Wage Level N/A team via the POCs designated on the Business Bulletin Board posting.

\* Wage Levels of 2 or 3 might also be inconsistent with the proffered position; however, establishing a clear inconsistency is extremely difficult in most scenarios. Please see your SISO or an ISO3 if you feel that a Wage Level 2 or 3 LCA is clearly inconsistent with the proffered position.

\*\* This does not apply to occupations which inherently involve supervision or management, e.g. computer and information systems managers or general and operations managers. Supervision of lower level positions and project management could be appropriate for wage level 1 positions within these occupations. However, if they are supervising or managing other individuals in the same position, e.g. a computer and information systems manager supervising other computer and information systems managers, wage level 1 might not correspond to the proffered position. Please see your SISO or an ISO3 if you encounter this scenario.

Note: Officers are reminded to properly adjudicate all H-1B/HSC/E-3 eligibility grounds and should not focus solely on wage leveling. Additionally, the totality of the evidence of the record must be considered when evaluating whether the LCA corresponds to and supports the petition.