

Minutes of
THE FACULTY SENATE
OF
ARKANSAS TECH UNIVERSITY

The Faculty Senate met Tuesday, December 10, 2013, at 1:00 p.m. in Room 325 of the Ross Pendergraft Library and Technology Center. The following members were present:

Dr. Sherman Alexander	Dr. Sean Huss
Dr. Glen Bishop	Dr. Chris Kellner
Dr. Carey Bosold	Dr. Linda Kondrick
Dr. Molly Brant	Dr. Timothy Leggett
Dr. Ernest Enchelmayer	Dr. Eric Lovely
Dr. Marcel Finan	Dr. Johnette Moody
Mr. Ken Futterer	Dr. Michael Rogers
Dr. Beth Giroir	Dr. David Ward
Mr. Neal Harrington	Dr. Deborah Wilson
Dr. Annette Holeyfield	

Dr. Kevin Mason was absent. Dr. John Watson, Ms. Pat Chronister, Dr. Malcolm Rainey, Dr. Jan Jenkins, Dr. Carl Brucker, Dr. Jim Musser, Dr. Cynthia Hukill, Dr. Charles Gagen, Dr. Carl Greco, and Dr. Jeff Mitchell were visitors.

CALL TO ORDER

President Lovely called the meeting to order and asked for a motion in regard to the minutes of the November 12, 2013, meeting.

**APPROVAL OF
MINUTES**

Motion by Dr. Rogers, seconded by Dr. Moody, to approve the minutes as distributed.

Following the motion, Mr. Futterer requested a clarification be added to the November minutes in the Executive Session section, with the wording from the by-laws of the Faculty Senate, specifying the attendance for Senate meetings (Article III, Section 4). He also asked for the minutes to reflect the report by Dr. Brown that the Board of Trustees is not in support of requiring tenure for faculty serving on the Senate, because of the potential to disenfranchise the untenured faculty. Mr. Futterer stated this is an important insight from the Board to include in the minutes, as it would be useful information for future Senates.

**Motion by Mr. Futterer, seconded by Mr. Harrington, to amend the minutes as requested.
Motion to amend carried.**

President Lovely called for the question to approve the minutes as amended.

Motion carried.

**NEW BUSINESS:
CURRICULAR
ITEMS**

President Lovely asked if the Senate had any motions concerning the submitted curricular proposals.

Motion by Mr. Futterer, seconded by Dr. Bosold, to approve the following curricular proposals, excluding the Honors proposal, as a block:

Department of English and World Languages

1. Modify the course description and change from 4 hours to 3 hours for the following courses:

- (a) CHIN 1014, Beginning Chinese I;
 - (b) CHIN 1024, Beginning Chinese II;
 - (c) CHIN 2014, Intermediate Chinese I;
 - (d) CHIN 2024, Intermediate Chinese II;
 - (e) FR 1014, Beginning French I;
 - (f) FR 1024, Beginning French II;
 - (g) FR 2014, Intermediate French I;
 - (h) FR 2024, Intermediate French II;
 - (i) GER 1014, Beginning German I;
 - (j) GER 1024, Beginning German II;
 - (k) GER 2014, Intermediate German I;
 - (l) GER 2024, Intermediate German II;
 - (m) Dormant Course - ITAL 1014, Beginning Italian I;
 - (n) Dormant Course - ITAL 1024, Beginning Italian II;
 - (o) Dormant Course - ITAL 2014, Intermediate Italian I;
 - (p) Dormant Course - ITAL 2024, Intermediate Italian II;
 - (q) JPN 1014, Beginning Japanese I;
 - (r) JPN 1024, Beginning Japanese II;
 - (s) JPN 2014, Intermediate Japanese I;
 - (t) JPN 2024, Intermediate Japanese II;
 - (u) Dormant Course - RUSS 1014, Beginning Russian I;
 - (v) Dormant Course – RUSS 1024, Beginning Russian II;
 - (w) Dormant Course – RUSS 2014, Intermediate Russian I;
 - (z) Dormant Course – RUSS 2024, Intermediate Russian II;
 - (y) SPAN 1014, Beginning Spanish I;
 - (z) SPAN 1024, Beginning Spanish II;
 - (aa) SPAN 2014, Intermediate Spanish I; and
 - (ab) SPAN 2024, Intermediate Spanish II;
2. Modify the Curriculum in English; History; Journalism with Broadcast Option; Journalism with Print Option; Journalism with Public Relations Option; Music; Political Science; Public History; and Creative Writing; as follows: (a) add a second-language study requirement; (b) reduce or add the number of electives in order to maintain 120 total hours; and (c) add the following footnote: Students may waive three hours of language requirement for every one year of language study in high school with grades of C or better;
 3. Modify the Curriculum in World Languages with Concentration Spanish as follows: (a) change SPAN 2014, Intermediate Spanish I, and SPAN 2024, Intermediate Spanish II, to SPAN 2013 and SPAN 2023; and (b) increase the number of electives from 43 hours to 45 hours;
 4. Modify the Curriculum in Foreign Language with Concentration in Spanish for Teacher Licensure as follows: (a) change SPAN 2014, Intermediate Spanish I, and SPAN 2024, Intermediate Spanish II, to SPAN 2013 and SPAN 2023; and (b) increase the number of electives from 13 hours to 15 hours; and
 5. Modify the minor in French; German; Japanese; Spanish; Latin American/Latino Studies without; and Spanish Medical Interpretation as follows: reduce the four credit hours beginning language courses to three credit hours.

Department of Music

1. Delete MUS 1241, Italian Diction, from the course descriptions;
2. Delete MUS 2241, German Diction, from the course descriptions;
3. Delete MUS 2251, French Diction, from the course descriptions;
4. Delete MUS 4972, Marching Band Techniques;
5. Add MUS 1191, Vocal Diction I, to the course descriptions;
6. Add MUS 2191, Vocal Diction II, to the course descriptions;
7. Add MUS 3191, Vocal Solo Literature, to the course descriptions;
8. Add MUS 4971, Marching Band Techniques;

9. (a) Change the title of MUS 4832, Vocal Solo Literature/Pedagogy, to Vocal Pedagogy; (b) modify the prerequisite from Prerequisite: Junior standing; to Prerequisite: Passing Vocal Sophomore Barrier and Keyboard Barrier; and (c) modify the course description;
10. Modify the Curriculum in Music Education for Teacher Licensure Instrumental Music Option as follows: (a) Delete MUS 4701, Special Methods in Music; and (b) add MUS 4971, Marching Band Techniques; and
11. Modify the Curriculum in Music Education for Teacher Licensure Vocal Music Option as follows: (a) Delete MUS 1241, Italian Diction; MUS 2241, German Diction; and MUS 2251, French Diction; and (b) add MUS 1191, Vocal Diction I; MUS 2191, Vocal Diction II; and MUS 3191, Vocal Solo Literature;

Department of Agriculture

1. Delete the following course from the course descriptions:
 - (a) AGED 3003, Methods in Agricultural Education;
 - (b) AGED 4003, Issues in Agriculture; and
 - (c) AGED 4013, Methods in Agriculture Laboratories;
 - (d) AGME 1003, Basic Agricultural Mechanization;
 - (e) AGME 3003, Metals and Welding;
 - (f) AGME 3013, Agriculture Structural Systems; and
 - (g) AGME 3023, Agricultural Power;
2. Delete the following course for the course descriptions: AGAS 3333, Poultry Processing and Product Technology;
3. Delete the following course from the course descriptions: AGE 3413, Agricultural Waste Management;
4. Delete the following course from the course descriptions: AGPS 1003, Introduction to Agronomy;
5. Add AGAS 3343, Regulatory Affairs of the Food Industry, to the course descriptions;
6. Add AGBU 2103, A Global Perspective: Resources, Food, and Society, to the course descriptions;
7. Add the following courses to the course descriptions:
 - (a) AGED 2104, Introduction to Agricultural Systems Technology;
 - (b) AGED 2203, Applied Agricultural Systems Technology;
 - (c) AGED 3033, Philosophy and Foundations of Program Development;
 - (d) AGED 4033, Curriculum Design and Assessment;
 - (e) AGED 4044, Methods in Teaching Agriculture;
 - (f) AGL 3003, Personal Leadership Theory and Development; and
 - (g) AGL 3013, Team Leadership and Organizational Change;
8. Change the course number for AGED 1012, Agricultural Youth Organizations, to 1013;
9. Change the title of AGPS 1024, Principles of Horticulture, to Principles of Plant Science, and modify the course description;
10. Modify the Curriculum in Agriculture Business as follows: (a) delete 6 hours of social sciences because AGBU 2063, Principles of Agriculture Macroeconomics, and AGBU 2073, Principles of Agriculture Microeconomics, have been added to the list of courses satisfying the General Education Requirements Social Sciences; (b) delete AGE 3413, Agricultural Waste Management; (c) delete AGPS 1003, Introduction to Agronomy; (d) add ENGL 2053, Technical Writing; (e) add 9 hours of Agriculture Elective²; (f) remove the statement: (Except ECON 2003) in Footnote 1; and (g) change SPAN 1014, Beginning Spanish I, to SPAN 1013; and SPAN 1023, Beginning Spanish II, to SPAN 1023, in Footnote 3;
11. Modify the Curriculum in Agriculture Business Animal Science as follows: (a) delete 6 hours of social sciences because AGBU 2063, Principles of Agriculture Macroeconomics, and AGBU 2073, Principles of Agriculture Microeconomics, have been added to the list of courses satisfying the General Education

- Requirements Social Sciences; (b) delete AGEG 3413, Agricultural Waste Management; (c) delete AGPS 1003, Introduction to Agronomy; (d) add ENGL 2053, Technical Writing; (e) add 9 hours of Agriculture Elective²; (f) remove the statement: (Except ECON 2003) in Footnote 1; and (g) delete AGAS 3333, Poultry Processing and Product Technology; and (h) add AGAS 3343, Regulatory Affairs of the Food Industry, in Footnote 3;
12. Modify the Curriculum in Agriculture Business Feed Mill Management as follows: (a) delete 6 hours of social sciences because AGBU 2063, Principles of Agriculture Macroeconomics, and AGBU 2073, Principles of Agriculture Microeconomics, have been added to the list of courses satisfying the General Education Requirements Social Sciences; (b) delete AGPS 1003, Introduction to Agronomy; (c) delete AGEG 3413, Agricultural Waste Management; (d) delete EAM 4993, Special Problems and Topics; delete AGAS 3333, Poultry Processing and Product Technology; (e) change the course number for AGAS 2083, Feeds and Feeding, to 2084; (f) change AGBU 4993, Special Problems in Agriculture; to AGBU 4983, Internship II in Agriculture, in the spring start senior fall term matrix; (g) add ENGL 2053, Technical Writing; (h) add AGAS 3343, Regulatory Affairs of the Food Industry; (i) change 4 hours of Agriculture Elective² to 12 hours of Agriculture Elective²; (j) remove the statement: (Except ECON 2003) in Footnote 1; (k) change footnote 2 to state: ²At least 40 of the total hours required for graduation must be 3000 - 4000 level courses; and (l) delete footnote 3;
 13. Modify the Curriculum in Agriculture Business Horticulture Business as follows: (a) delete 6 hours of social sciences because AGBU 2063, Principles of Agriculture Macroeconomics, and AGBU 2073, Principles of Agriculture Microeconomics, have been added to the list of courses satisfying the General Education Requirements Social Sciences; (b) delete AGPS 1003, Introduction to Agronomy; (c) delete AGPM 3104, Introduction to Entomology, or AGPS 3053, Weed Ecology, and AGBU 4991, Special Problems in Agriculture; (d) add ENGL 2053, Technical Writing; (e) add 10 hours of Agriculture Electives; remove the statement: (Except ECON 2003) in Footnote 1; and (f) delete footnote 2;
 14. Modify the Curriculum in Agriculture Business Public Relations as follows: (a) delete 6 hours of social sciences because AGBU 2063, Principles of Agriculture Macroeconomics, and AGBU 2073, Principles of Agriculture Microeconomics, have been added to the list of courses satisfying the General Education Requirements Social Sciences; (b) delete AGEG 3413, Agricultural Waste Management; (c) delete AGPS 1003, Introduction to Agronomy; (d) add ENGL 2053, Technical Writing; (e) add 9 hours of Agriculture Elective²; and (f) remove the statement: (Except ECON 2003) in Footnote 1;
 15. Modify the Curriculum in Agriculture Business Pre-Veterinary Medicine as follows: (a) delete 6 hours of social sciences because AGBU 2063, Principles of Agriculture Macroeconomics, and AGBU 2073, Principles of Agriculture Microeconomics, have been added to the list of courses satisfying the General Education Requirements Social Sciences; (b) change the course number for AGAS 2083, Feeds and Feeding, to 2084; (c) add ENGL 2053, Technical Writing; (d) add 1 hour of Agriculture Elective²; (e) remove the statement: (Except ECON 2003) in Footnote 1; and (f) add footnote 2 to state: ²At least 40 of the total hours required for graduation must be 3000 - 4000 level courses;
 16. Modify the Curriculum in Agriculture Education as follows:
 - (a) Delete the following:
 - (1) AGED 1012, Agricultural Youth Organizations;
 - (2) AGED 3003, Methods in Agricultural Education;
 - (3) AGED 4003, Issues in Agriculture;
 - (4) AGED 4013, Methods in Agriculture Laboratories;
 - (5) AGME 1003, Basic Agricultural Mechanization;
 - (6) AGME 3003, Metals and Welding;
 - (7) AGME 3013, Agriculture Structural Systems; and

- (8) AGME 3023, Agricultural Power;
- (9) AGPS 1003, Introduction to Agronomy; and
- (10) MATH 2163, Introduction to Statistical Methods; and
- (b) Add the following:
 - (1) AGED 1013, Agricultural Youth Organizations;
 - (2) AGED 2104, Introduction to Agricultural Systems Technology;
 - (3) AGED 2203, Applied Agricultural Systems Technology;
 - (4) AGED 3033, Philosophy and Foundations of Program Development;
 - (5) AGED 4033, Curriculum Design and Assessment;
 - (6) AGED 4044, Methods in Teaching Agriculture;
 - (7) AGLE 3003, Personal Leadership Theory and Development;
 - (8) AGLE 3013, Team Leadership and Organizational Change; and
 - (9) AGPS 3093, Greenhouse Operation and Management.
- 17. Add a minor in Agriculture as follows: require 21 hours of courses from the following: (a) AGAS 1014, Principles of Animal Science; (b) AGPS 1024, Principles of Horticulture, (Pending Title Change to Principles of Plant Science); (c) AGBU 1013, Principles of Agricultural Business; (d) AGSS 2014, Soils; and (e) 6 hours of 3000-4000-level Agriculture Electives excluding AGBU 3213, Career Development in Agriculture; AGBU 3993, Internship I in Agriculture; AGBU 4983, Internship II in Agriculture; and AGBU 4991-4, Special Problems in Agriculture.

Department of Biological Sciences

- 1. Add MEDT 4001-9, Medical Technology Professional Coursework to the course descriptions;
- 2. Modify the prerequisites for BIOL 4033, Cell Biology, from Prerequisites: BIOL 1114, Principles of Biology; BIOL 2124, Principles of Zoology; or BIOL 2134, Principles of Botany; plus four additional hours of biology and one course from BIOL 3034, Genetics; BIOL 3054, Microbiology; BIOL 4023, Immunology; or CHEM 3344, Principles of Biochemistry; eight hours of chemistry; to Prerequisites: BIOL 1114, Principles of Biology; four additional hours of biology, eight hours of chemistry, and a grade of C or better in one of the following courses: BIOL 3034, Genetics; BIOL 3054, Microbiology; BIOL 3074, Human Physiology; BIOL 4023, Immunology; or CHEM 3344, Principles of Biochemistry; and modify the course description;
- 3. Modify the Curriculum in Life Science and Earth Science for Teacher Licensure as follows: delete PHSC 3033, Meteorology; and PHSC 3053, Astronomy; delete BIOL 3124, General Physiology, or BIOL 3174, Physiological Ecology; add BIOL 2004, Basic Human Anatomy and Physiology; and add 3-4 hours of Biology Electives;
- 4. Modify the Curriculum in Health Information Management as follows: (a) delete CHEM 1113, A Survey of Chemistry; CHEM 1111, Survey of Chemistry Laboratory; and (b) add BUAD 2003, Business Information Systems; and (c) one hour of elective;
- 5. Modify the Curriculum in Medical Technology as follows:
 - (a) delete the following MEDT courses from the curriculum and course descriptions:
 - (1) MEDT 4012, Clinical Microscopy and Body Fluids;
 - (2) MEDT 4029, Hematology;
 - (3) MEDT 4035, Immuno-hematology;
 - (4) MEDT 4048, Clinical Chemistry and Instrumentation
 - (5) MEDT 4057, Microbiology;
 - (6) MEDT 4064, Parasitology;
 - (7) MEDT 4073, Serology; and
 - (8) MEDT 4082, Special Topics;
 - (b) add MEDT 4001-9, Medical Technology Professional Coursework, to total 38-40 hours; and (c) change electives to read 2-4 hours.

Department of Physical Sciences

1. Add GEOL 4043, Geochemistry, to the course descriptions;
2. Add GEOL 4433, Advanced Topics in Geology, to the course descriptions;
3. Add PHSC (BIOL) 3243, Integrating the Three Dimensions of Science, to the course descriptions;
4. Add PHSC (BIOL) 3253, Teaching Methods for STEM, Physical Science, to the course descriptions;
5. Modify the Curriculum in Chemistry Biochemistry Option as follows: (a) delete BIOL 2134, Principles of Botany; (b) add BIOL 2014, Human Anatomy; and (c) replace BIOL 3124, General Physiology, with BIOL 3074, Human Physiology;
6. Modify the Curriculum in Geology Environmental Option as follows: (a) delete GEOG 2013, Regional Geography of the World, POLS 2003, American Government, and ECON 2003, Principles of Economics I, as prescribed general education U. S. History/Government and Social Sciences; (b) add 3 hours of Social Sciences/Fine Arts/Humanities/Speech and 3 hours of U. S. History/Government; (c) delete CHEM 3254, Fundamentals of Organic Chemistry, and MATH 2163, Introduction to Statistical Methods; or PSY 2053, Statistics for the Behavioral Sciences; (d) reduce GEOL/MATH/BIOL/CHEM electives from 11 hours to 9 hours; and (e) add GEOG 2833, Introduction to Geographic Information Systems, COMS 2003, Microcomputer Applications, and GEOL 4043, Geochemistry;
7. Modify the Curriculum in Geology Petroleum Option as follows: (a) delete GEOG 2013, Regional Geography of the World, and POLS 2003, American Government, as prescribed general education U. S. History/Government and Social Sciences; and (b) add 3 hours of Social Sciences/Fine Arts/Humanities/Speech and 3 hours of U. S. History/Government; (c) delete CHEM 3254, Fundamentals of Organic Chemistry, 3 hours COMS Elective, and delete the wording “or higher level math” in MATH 1203, Plane Trigonometry; (d) add GEOL 3153, Environmental Geology, GEOL 4043, Geochemistry, and GEOG 2833, Introduction to Geographic Information Systems; (e) reduce Electives from 6 hours to 4 hours; and (f) remove the spring matrix;
8. Modify the Curriculum in Geology Professional Option as follows: (a) delete GEOG 2013, Regional Geography of the World, and POLS 2003, American Government, as prescribed general education U. S. History/Government and Social Sciences; (b) and add 3 hours of Social Sciences/Fine Arts/Humanities/Speech and 3 hours of U. S. History/Government; (c) delete 10 hours of Elective; (d) add GEOL 3153, Environmental Geology; GEOL 3174, Computer Applications in Geology; and GEOG 2833, Introduction to Geographic Information Systems; and (e) move GEOL 3004 from fall to spring; and
9. Modify the Curriculum in Physical Science and Earth Science for Teacher Licensure as follows: (a) delete GEOL 2024, Historical Geology; (b) delete GEOL 3153, Environmental Geology; (c) add PHYS 4993, Special Problems in Physics and Astronomy, or CHEM 4993, Special Problems in Chemistry; (d) add 3 hours of PHSC, PHYS, CHEM, or MATH Electives; (e) add one hour of Electives; (f) allow GEOL 1004, Essentials of Earth Science, or GEOL 1014, Physical Geology.

Motion carried.

Motion by Mr. Futterer, seconded by Dr. Holeyfield, to approve the University Honors proposal as follows:

University Honors Program

1. Delete ENGL 1043, Honors Composition I; PHSC 1033, Honors Introduction to Physical Science; PHSC 1031, Honors Physical Science Laboratory; BIOL 2144, Honors Zoology; and ENGL 1053, Honors Composition II; and add ENGL 2183, Honors Introduction to Film, to the Freshman Fall Semester;

2. Add PHIL 2043, Honors Introduction to Philosophy OR ENGL 2023, Honors World Literature, to the Junior Spring Semester; and
3. Instead of the University Honors curriculum requiring 21-23 hours of Honors courses for each student, it will require 21 hours for each student.

Following the motion, Dr. Kellner questioned the validity of the statement in the Honors proposal that the “elimination of BIOL 2144 and PHSC 1031/1033 will not affect any decision by those departments to continue to offer honors sections of those courses if they so desire.” He stated the departments would not be able to continue to offer the honors sections with an expectation of sufficient enrollment. Dr. Jan Jenkins, Professor of History and Director of Honors, reported the Department of English was able to successfully maintain their honors section after it was removed from the honors curriculum. Dr. Kellner asked if this change to BIOL 2144 had been discussed with Dr. Charles Gagen, Department Head of Biological Sciences, and mentioned, typically, such discussions are documented in the proposal. Dr. Jenkins responded she had discussed this with Dr. Gagen in the past, but because the course was not being eliminated and the department could still offer it, such documentation was not necessary. Additional discussion relating to the recruitment of qualified students into the Honors Program and also whether Biology could successfully offer their course as an honors section was held. Dr. Wilson invited Dr. Carl Brucker, Department Head of English, to address the Senate, and he described the success of his department, working with the Advising Center, in offering honors sections to other gifted students on campus. Dr. Wilson called for the question.

Motion carried.

SENATE BY-LAWS, MINUTES, AND AGENDA POLICIES

President Lovely read aloud from the *Faculty Handbook*, Article III, Section 4 of the by-laws of the Faculty Senate:

Attendance at Meetings: Official meetings called by the Faculty Senate chairperson are open to the general university faculty and invited guests.

He stated this gives the Senate the ability to invite guests, and would also allow for the exclusion of guests. President Lovely then mentioned the *Faculty Handbook* states the agenda should be distributed to senators at least ten days before each regular meeting. He stated the *Handbook* does not state ten business days or working days, but that has been the practice. He reported, with the Thanksgiving holiday, the practice of ten working days seemed unreasonable, and would have required the agenda to be distributed far in advance of the meeting. As a result, President Lovely stated he distributed the December agenda after the ten business day window, but prior to the literal ten day deadline.

President Lovely also noted a change made to the current agenda. Rather than continuing to list subcommittees individually, he had added a general agenda item to provide a time for subcommittees to give a report.

REPORT BY SUBCOMMITTEE COLLABORATING WITH THE ADMINISTRATION

Dr. Rogers reported the subcommittee collaborating with the administration on *Faculty Handbook* changes met with Dr. Brown to discuss the four revisions submitted to the Board of Trustees from the Faculty Senate. He thanked Dr. Brown for meeting with the subcommittee and his willingness to work with the Senate on these issues.

Dr. Rogers presented two general observations from the meeting with Dr. Brown, including the importance of collaboration between the administration and the faculty and the need for a viable process for the submission of Senate recommendations to the Board of Trustees. Dr. Rogers suggested the Senate formalize this process by creating a standing committee which could act as a bridge between the administration and faculty, and serve as the central body for receiving any proposed changes to the *Faculty Handbook*. Dr. Rogers reported Dr. Brown had stated many institutions regularly invite or even require the President or

Vice President for Academic Affairs to attend Faculty Senate meetings as the administrators frequently have information necessary for the Senate to conduct their business.

Dr. Enchelmayer confirmed, when researching the makeup of Faculty Senates at other universities within the state, this was most often the practice. Dr. Rogers recommended the President and/or Vice President for Academic Affairs routinely be invited to Faculty Senate meetings, as often as every meeting or a minimum of once per term for a “state of the union” style address.

Dr. Rogers stated the four proposed changes to the *Faculty Handbook* would not have to be submitted as a unit, but could instead be submitted individually. The four proposed changes under discussion were:

- (1) Requiring only tenured faculty serve on the Faculty Senate
- (2) Removing the appointive membership from the Faculty Senate
- (3) Adding language on worker’s compensation to the *Faculty Handbook*
- (4) Adding language on the Faculty Senate becoming an advisory body for proposed changes to the *Faculty Handbook*

Dr. Rogers reported Dr. Brown had expressed confidence that the Board of Trustees would approve the addition of the language on worker’s compensation and on the Faculty Senate serving as an advisory body on proposed *Handbook* changes. Dr. Rogers informed the senators that Dr. Brown did not anticipate the Board of Trustees approving the proposed requirement for only tenured faculty to serve on the Senate and the removal of the appointive membership as currently stated. He reported the Board felt such changes in the membership of the Faculty Senate could disenfranchise a large number of faculty and could create an undue hardship on smaller colleges with fewer tenured faculty available to serve. He stated Dr. Brown believed the appointive membership had been in practice since the creation of the Faculty Senate, with the purpose of balancing the Senate membership between the junior faculty members and the senior faculty members, who may have a greater institutional memory.

Motion by Dr. Kondrick, seconded by Mr. Harrington, to request for Dr. Brown to resubmit two of the proposed changes to the Board of Trustees, regarding worker’s compensation and the Senate becoming an advisory body for *Faculty Handbook* changes. Motion carried.

Mr. Futterer stated the two remaining changes to the membership of the Senate had been voted on by the faculty and as such, could not be changed. Dr. Huss reported he had posed that question to Dr. Brown, who indicated the language could be revised. President Lovely stated the *Handbook* addresses the ratification and amendment of the Constitution of the Faculty Senate and read Article V aloud:

Section 1: Ratification – This Constitution and attached By-Laws shall be considered as ratified and in force upon their being approved by two-thirds of the elective and appointive members of the Senate, by a majority of those voting in a regular convened meeting of the faculty of the University, and by the Board of Trustees.

Section 2: Amendment – The Constitution or the By-Laws of the Senate may be amended in the following manner:

- a. The proposed amendment shall be drafted and presented in duplicated form to each member of the Senate at least ten days before the meeting in which it is to be considered.
- b. The proposed amendment shall be approved by two-thirds of the elective and appointive members of the Senate in a regular meeting of the Senate.

- c. The proposed amendment shall be approved by a majority of those voting in the next regular or special election of the faculty of the University.
- d. The proposed amendment shall be approved by the Board of Trustees of the University.

President Lovely noted there is not a step between “c” and “d” which would allow for revision to proposed amendments after being voted on by the faculty.

Motion by Mr. Futterer, seconded by Dr. Huss, to table the current discussion of the remaining proposed changes until the February meeting. Motion carried.

Mr. Futterer stated the creation of a standing committee to serve as a bridge between the faculty and administration was a sound, practical idea. President Lovely noted the Senate has an existing subcommittee for this purpose. Dr. Rogers stated forming an official standing committee would send a positive message to the faculty and administration of their willingness to collaborate. Mr. Futterer mentioned the formation of a standing committee would require a revision to the *Faculty Handbook*, and therefore, approval from the Board of Trustees.

Dr. Kellner reported two suggestions he had received from a faculty member regarding the membership of the Faculty Senate. The first, he stated, was to request appointed members to abstain from voting and the second was for the departments to voluntarily restrict membership to tenured faculty.

OLD BUSINESS: AFFORDABLE CARE ACT

Dr. Kellner stated he did not yet have a report regarding the impact of the Affordable Care Act on student labor, but he planned to pursue the subject further.

Motion by Dr. Kellner, seconded by Dr. Huss, to table the discussion for the present time. Motion carried.

SUBCOMMITTEE PLANS FOR 2014

President Lovely announced, rather than listing individual subcommittees on each agenda, he will begin adding a broad, general agenda item to allow subcommittees with an update a period for reporting. He stated the existing subcommittees were respectively charged with collaborating with the administration on *Faculty Handbook* changes, reviewing promotion and tenure issues, and reviewing academic dishonesty. President Lovely also listed the Senate’s recommendations concerning the non-discrimination policy, the H-1B visa policy, and the faculty hiring policy as ongoing items of discussion. He then asked for any updates the subcommittees may have or any motions regarding these items.

Dr. Finan distributed the H-1B Processing Procedures from the University of Wisconsin at Madison (Attachment A), and noted the Wisconsin state law prohibiting state institutions from the use of private immigration attorneys. Dr. Finan informed the Senate of his personal experience in gaining an H-1B visa and green card. He expressed the opinion that it is necessary for the university to have a central location for H-1B visa application assistance, such as the international office.

Motion by Dr. Finan, seconded by Dr. Kellner, to recommend the administration develop an internal procedure by which international faculty can apply for an H-1B visa. Motion carried.

OPEN FORUM

Dr. Rogers asked the Senate if there was any interest in inviting the President and/or Vice President to Faculty Senate meetings. President Lovely stated he would prefer to leave that pursuit to a future Faculty Senate. Dr. Kondrick responded it was counterproductive to harbor an atmosphere of “us versus them” and stated not all senators shared that opinion. She reported her experience when the subcommittee met with

Dr. Brown was very open and she expressed she now had an understanding of his position on certain issues. Dr. Rogers stated adopting a policy of inviting administrators would not need to be immediate, but could instead be gradual and intermittent. Mr. Futterer noted both Dr. Brown and Dr. Watson were welcome to attend any Senate meeting, both as members of the general faculty, and as academic and administrative leaders of the university. Dr. Rogers stressed the difference between holding an open meeting and directly inviting a guest. He expressed the opinion that Dr. Brown may not have felt welcome at the November meeting, as he would not address the Senate until invited.

Dr. Alexander, on behalf of Dr. Mason, distributed a letter for the Senate's consideration, expressing gratitude to Dr. Brown and Dr. Watson for attending the November meeting and for their current and past efforts for the university. Dr. Rogers suggested the Senate recognize Dr. Brown and his years of service at a meeting in the spring, and possibly incorporate a statement of gratitude to the Board of Trustees as well.

Dr. Finan questioned the current practice of voting to approve the minutes from the final spring Senate meeting during the organizational meeting the following August. He inquired about the possibility of approving the minutes by means of an email vote over the summer. President Lovely stated he would add this issue to New Business and asked the senators to consider solutions.

ANNOUNCEMENTS/
INFORMATION
ITEMS

President Lovely announced the meeting dates and times of the Faculty Senate for the spring 2014 semester:

Tuesday, February 11 at 3:00 p.m.
Tuesday, March 11 at 3:00 p.m.
Tuesday, April 8 at 3:00 p.m.
Tuesday, April 29 at 1:00 p.m. (Reading Day)

ADJOURNMENT

The meeting adjourned at 2:30 p.m.

Respectfully submitted,



Eric C. Lovely, Ph.D., President



Marcel B. Finan, Ph.D., Secretary

H-1B PROCESSING PROCEDURES

This is a guide to obtaining H-1B status for employees of University of Wisconsin - Madison Departments and Centers. The hiring unit must complete the three step process for the H-1B petition as described in this packet. This information will assist employing units in completing the necessary paperwork to obtain H-1B status for its employees. It is in no way intended to be a "do it yourself" guide. U.S. government rules and regulations for H-1B classification may change at any time. All UW-Madison employing units should consult with International Faculty and Staff Services (IFSS) before initiating any H-1B petition. **It is of utmost importance to initiate the processing of H-1B petitions with IFSS with as much lead time as possible, allowing a minimum of five months.**

Please note: Wisconsin state law does not permit state institutions to retain private legal counsel to advise or represent the institution's interests; therefore the use of private immigration attorneys for filing UW-Madison sponsored H-1B petitions is prohibited. Please see Wis. Stat. § 14.11(2).

Basic Information

Definition of H-1B: H-1B visa classification may be granted to a foreign national who will perform services (work) in a "specialty occupation." See INA §101(a)(15)(H). A specialty occupation requires theoretical and practical application of a body of highly specialized knowledge to fully perform the required duties, and the attainment of a bachelor's or higher degree in the specific field as a **minimum** for entry into the occupation. H-1B status is for temporary workers. Although the position may be a permanent one, the individual must be filling it temporarily, meaning for a period of up to a maximum of six years, with limited exceptions. Tenure-track and tenured faculty may be accorded H-1B status.

*Please note: Employing units who intend to apply for permanent residency status for its teaching faculty **MUST** file the Labor Certification (the first step of the permanent residency process) within 18 months of offering the position to the employee. This 18 month deadline applies even if the initial appointment was a visiting one. The date of the initial offer letter is the date the employee was offered the position, not the starting date of the appointment nor the date of any subsequent amendments to the initial offer.*

H-1B Criteria: The employer petitions for the H-1B status on behalf of a potential (or continuing) international employee. The employer must show that there is a temporary job available in a specialty occupation, that the position will pay a salary at least equal to or greater than the "prevailing wage" in the field (See INA §212(p) and §§212(a)(5)(A), (N)(a)(A)(i)(II), (t)(1)(A)(i)(II) and 20 C.F.R. §§655.731(a)(2)(vii)), and that the individual has the credentials and skills for the occupation. At UW-Madison, faculty, academic staff, and employee-in-training positions which specify a degree in a particular field or fields and relevant experience in the field may qualify for the H-1B status. Very few classified positions qualify for H-1B status. The position description or the Office of State Employment Relations (OSER) job specifications must

list a bachelor's or higher degree and relevant experience as a requirement for the position. Honorary fellow, limited term employee, graduate assistant and student help positions do not qualify for the H-1B status.

Other Considerations: Statuses other than H-1B may be available to employ non-U.S. workers such as F-1 optional practical training, J-1 scholar, O-1 for renowned individuals, TN (Trade NAFTA) for Canadian/Mexican citizens, and E-3 for Australians. IFSS maintains information on its website on these other various employment based status. If the prospective employee is currently in the United States maintaining a legal nonimmigrant status (such as F-1 student, J-1, O-1, or H-1B for another employer), he/she may change status to H-1B or extend H-1B status to begin new employment without leaving the U.S.

Current or Prior J Exchange Visitors: An individual who is or was previously in J Exchange Visitor status (J-1 or J-2 dependent) may be subject to a requirement to spend two years in his home country before becoming eligible for H-1B or H-4 status. See 8 U.S.C. §1182(e); 8 C.F.R. §§248.2(c)(d). It is sometimes possible to obtain a waiver of this requirement, but it is the individual's responsibility to obtain the waiver. IFSS must see a copy of all DS-2019 forms (formerly IAP-66) and J-1/J-2 visa stamps of anyone who has ever held J status before starting the processing of the H-1B petition in order to determine if the person is subject to the home residence requirement. If the individual is subject to this requirement, IFSS will not be able to process the H-1B petition without the waiver or evidence that the person has fulfilled the requirement by being physical present in his home country for two years. Obtaining a waiver can take several months to a year, so it is important to make this determination at the start of the H-1B process.

Period of authorization: See 8 C.F.R. §§214.2(h)(9), (13), (15). An individual may not spend more than six years in H-1B status, with two exceptions which are discussed in the next paragraph. See 8 C.F.R. §214.2(h)(13)(iii). The initial H-1B petition can be authorized for a period of up to three years. Extensions of stay may be authorized for subsequent periods of employment not to exceed the total six year limit. The six year limit does not apply to H-1B workers who engage in intermittent work of less than six months at a time, such as visiting faculty who come for just one semester at a time. See 8 C.F.R. § 214.2(h)(13)(v). Periods of time spent outside the U.S. do not count towards the six years. See *Matter of IT Ascent*, EAC-034-047-53189 (AAO Sept. 2, 2005). If an individual is not in the U.S., he does not have a United States immigration status. In order to recapture the time spent outside the U.S. from the six years, the H-1B must be able to document the absences to USCIS by airline tickets, rent receipts, stamps in the passport or any other similar documentation that can demonstrate that the person was outside the country.

Individuals who are in the process of applying for permanent residence may be able to extend their H-1B status beyond six years in two circumstances: (1) If either the Labor Certification or the I-140 has been pending for 365 days by the beginning of the sixth year, the H-1B status can be extended in one year increments. See AC21, PL 106-313 §106(a). (2) If the person has an approved I-140 and is from a country which has a backlog of immigrant visa number availability,

their H-1B status can be extended in three year increments. See AC 21, PL 106-313 §104(c).

H-1Bs may be employed by more than one employer at a time and/or may change from one employer to another, provided each employer has a valid I-797 approval notice for the worker. However, all employment, either full and/or part-time or with different employers, counts toward the six year limit. The six years is an aggregate. An employee does not get six years of H1-B status with the University and then another six years with another employer. It is very important to note that the approval of H-1B status for an individual to work with one employer is NOT VALID for any other employer. H-1Bs are employer and employee specific. This includes changing departments within UW-Madison, as each department is considered to be a separate employer.

H-1Bs who are employed by an academic institution are exempt from the 85,000 annual cap, but private employers are not. In most instances, if an H-1B leaves the University, he will be unable to begin employment for a cap-subject employer until the quota for the new federal fiscal year becomes available. The federal fiscal year begins on October 1.

H-1B Portability: Normally, an H-1B temporary worker cannot begin employment until USCIS has approved the employer's petition. However, if the individual already holds H-1B status with another employer, employment may begin with the new employer as soon as the new employer receives the I-797 Receipt Notice from USCIS. See INA §§214(n)(1) and (n)(2)(A)--(C). For example, if an individual is currently an H-1B at Northwestern, and the University of Wisconsin-Madison wants to employ this individual, as soon as the UW files the H-1B petition and has the I-797 Receipt Notice from USCIS, indicating that USCIS has received the petition and has begun reviewing it, the individual can begin working for the UW so long as the start date on the UW's petition has passed. An H-1B who changes from one UW department to another may NOT benefit from portability, nor may one for whom an amended petition for different employment in the same department has been filed.

Specific terms of employment: H-1B status permits an individual to work for a specific employer with specific terms of employment: title, salary, duties, and dates. If the Department or individual intends to change the terms of employment during the period of an H-1B approval, an "amended" H-1B petition may need to be filed and approved by USCIS before the change can occur. USCIS regulations require employers to file an amended H-1B petition when there has been a "material change in the terms and conditions of employment which affect the beneficiary's eligibility for the H-1B classification." See 8 C.F.R. §214.2(h)(11)(i)(A). Although USCIS does not define "material change," policy memos have indicated that USCIS does not want to be advised of "minor, immaterial changes in the conditions of the alien's employment which do not affect the alien's eligibility for the classification." After consultation with other major research universities, IFSS has established the following guidelines regarding when an amended H-1B petition may need to be filed by the University of Wisconsin-Madison.

Amended H-1B Petition Required

- ☐ different appointment
- ☐ change in major Department only if it results in a new appointment
- ☐ same appointment with:
 - o significant change in job responsibilities
 - o any decrease in salary
 - o change in title to a different title series
 - o change in work location

Amended H-1B Petition Not Required

- ☐ minor changes in job responsibilities
- ☐ routine promotion within the same position title series (from Assistant to Associate Scientist)

Amended H-1B Petition May or May Not Be Required—Consult with IFSS

- ☐ increase in salary
 - o if salary increase is a result of merit or equity factors, no amended petition is required
 - o if salary increase is a result of significant new duties or greater responsibilities, an amended petition is required
- ☐ change in major department but the beneficiary is working with the same principal investigator, has the same title, same salary, and same duties, no amended petition is required

Please complete the H-1B Amended Petition Determination form, found on the IFSS website, and submit it to IFSS. IFSS will inform the Department of whether an amended petition needs to be filed.

Foreign Medical Graduates (FMGs): Graduates of foreign medical schools may work in the U.S. in H-1B status only if they are invited by an educational or research institution to teach or conduct research. They may be involved in patient care unrelated to teaching or research only if they have passed parts 1 and 2 of the FLEX or parts 1, 2 and 3 of the USMLE or the NBME and have demonstrated competency in oral and written English by having passed the ECFMG English exam. No combination of the various medical exams is permitted. The FMG must have completed one full series of exams. This includes graduates of Canadian medical schools. They also must have a full and unrestricted license to practice medicine in a foreign country or have graduated from a medical school in a foreign country, and have Wisconsin medical license.

Procedures

All H-1B applications, amendments, and extensions require three steps (note separate sections within this packet for details on each step). In the case of extensions, if the LCA is still valid for the desired period of extension, only the third step is required. There is a five to six month processing time from the date the H-1B process is initiated with IFSS until the petition is

approved by USCIS. **Premium Processing** (see separate section) can speed up processing time by USCIS.

STEP 1: Prevailing Wage Determination

The US Department of Labor (DOL) must certify the "prevailing wage" in the field for the type of position. The international faculty/staff member must be paid at or above the DOL prevailing wage determination, or the actual wage within the department, whichever is higher.

STEP 2: Labor Condition Application

The Department of Labor (DOL) must certify a "Labor Condition Application" (LCA) submitted by UW-Madison. On the LCA, the University attests to the terms of employment and agrees to abide by the labor conditions listed on the LCA.

STEP 3: USCIS Application

USCIS must approve the H-1B petition. With the assistance from the hiring Department, IFSS files Form I-129 and supporting documents to sponsor the international faculty/staff member for H-1B status. The employing Department must show that the position is in a "specialty occupation," and that the individual possesses the necessary degree(s) and other credentials.

Because the Department, the employer, is the petitioner, the Department hiring authority must sign the legal forms for the DOL and USCIS. The hiring authority is considered an authorized representative of the employer (UW-Madison), thus the hiring authority is usually the Department chair or director. **The individual seeking H-1B status does not sign any forms for the H-1B process, nor may an outside attorney prepare them (see page 1).**

Notification of Approval: IFSS will receive the original H-1B Approval Notice (I-797A) from USCIS. IFSS will notify the Department.

If the international faculty/staff member is within the United States, IFSS will provide the original approval notice to him/her. **The individual may not begin legal employment until the petition has been approved by USCIS** except in portability cases, as explained above. In the case of H-1B extensions of the same position within UW-Madison, the individual may continue employment for up to 240 days after the expiration date of the previously authorized stay if an extension request was submitted to USCIS prior to the end of the previous H-1B period. See 8 C.F.R. §274a.12(b)(20).

If the prospective employee is not currently in the U.S., the Department should make arrangements to mail or express mail the original H-1B approval to the individual. USCIS will directly notify the appropriate U.S. consular post of the approval of the petition (as was designated in the petition). The H-1B Approval Notice should be used to apply for the H-1B visa stamp at the U.S. consular post abroad. As with any visa application, the decision to grant or deny an H-1B application is made by the consular official and there is no guarantee that the visa will be issued. In addition, mandatory background checks and personal interviews are creating significant delays in visa issuance at many consular offices. Individuals who receive the H-1B

visa stamp may enter the U.S. from a foreign country in H-1B classification up to 10 days before the begin date on the Approval Notice. See 8 C.F.R. §214.2(h)(13)(i)(A). **The individual should not enter the United States until he/she obtains the H-1B visa stamp in the passport.** Canadian citizens do not need a visa stamp, but do need the I-797 and I-94.

Related information:

Travel - The H-1B Approval Notice from USCIS will be needed to apply for an H-1B visa stamp at a U.S. consular post abroad if the individual travels outside of the U.S. IFSS has information on travel for international faculty and staff on its web site. As with any visa application, the decision to grant or deny an H-1B application is made by the consular official and there is no guarantee that the visa will be issued.

Please note: If the H-1B applicant is currently in the U.S. and plans to travel outside the country during the processing of the H-1B application, IFSS should be notified of the travel plans at the beginning of the process. A departure from the U.S., even for a brief visit to contiguous territories such as Canada and Mexico, could cancel the petition or leave the applicant stranded outside the country for an extended period of time. See 8 C.F.R. §248.1(a) and (b).

Return transportation: If the Department terminates the international faculty/staff member's employment for any reason prior to the end date specified on the H-1B Approval Notice, the Department is responsible for the reasonable cost of the individual's return transportation to his/her home country or last permanent residence abroad. INA §214 (c)(5)(A), 8 U.S.C. §1184(c)(5)(A), 8 C.F.R. §214.2(h)(4)(iii)(E). The Department must give IFSS a copy of the termination letter. The Department does not have to pay the cost of return transportation for the employee's dependent family members. Should the employee decide to voluntarily resign the position prior to the end date on the H-1B Approval Notice, IFSS should be provided with a copy of the resignation letter. The Department is not required to pay return transportation of any dependents or if the individual voluntarily resigns; however, IFSS still needs a copy of the resignation letter. Return transportation should be offered in writing, and if the employee declines the offer, that also should be in writing. Copies should be sent to IFSS.

Departments may want to take this into consideration when deciding the period of employment under H-1B status. If funding is certain and there is little question that the individual will be in the job for at least three years, it is a good idea to get the maximum initial period. However, if there is any question, a shorter initial period might be better.

Dependent family members: The dependent spouse and children (under 21) of an H-1B employee may apply for H-4 status. H-4 individuals are not authorized to work in the United States under any circumstances. If the dependents are already in the U.S. and they want to change to H4 status or extend their existing H4 status, they must complete the form I-539, submit it to IFSS along with the required supporting documents and the appropriate filing fees.

Tax issues: Individuals in H-1B status are subject to Social Security taxation. Unless considered a beneficiary of an income tax treaty between the United States and the home country, the individual in H-1B status is subject to U.S. income taxes. Beneficiaries of tax treaties are still required to file tax forms with the Internal Revenue Service (IRS). For complete information on taxation of internationals, contact Employee Compensation and Benefits.

If you have any questions, please contact:

International Faculty & Staff Services at 21 N. Park Street, Suite 5101, Madison, Wisconsin 53715. Telephone number: 608/265-2257, Facsimile: 608/265-6547 and web: <http://www.olr.wisc.edu/ifss/index.htm>

Caution: This packet is designed for UW-Madison departments ONLY. These materials are specific to UW-Madison and should not be generalized to be applicable for any other employer. The use of these materials without further legal research and instructions may have serious legal implications for an individual and an employer.

h-1b process proc. 10/2010

Important Visa Information for H-1B

Check-List for Visa Application

1. Appointment with a US Consulate/Embassy nearest to your place of residence. Please be aware that it may take a few weeks to get an appointment. Allow additional time –two to three months if a background check is deemed necessary by the consular official.
2. Completed Visa Application Form, DS 160, DS-156, DS 157, and DS 158 (if applicable).
3. Original I-797 Approval Notice.
4. Copy of the I-129 petition.
5. Updated letter of employment from your department (necessary for renewing H-1B visas).
6. Application fee. Please check the US Consulate/Embassy website for details.

Please check the US Consulate/Embassy website for any additional documents required by an individual consular post.

Link: <http://usembassy.state.gov/>

Important Tips When Applying for an H-1B Visa

1. Please make sure that you have an appointment.
2. Be concise.
3. Know your job responsibilities and duties and how it fits in with your education. You should be prepared to explain this in one or two sentences.
4. Know where you are working- institution, address, lab, and your supervisor.
5. If dependents are accompanying you, please make sure that you have birth certificates of your children; have an original marriage certificate, photographs of your wedding, invitations, etc. as proof of evidence.
6. If the visa is denied or not issued, do not engage in an argument with the consular officer. Get a list of missing documents and/or a written explanation for the denial and contact IFSS as soon as possible.

If your name is sent for a background check, there is very little that we can do.

STEP 1: Prevailing Wage Determination and Actual Wage Review

Prevailing Wage Determination

Requirements: The University of Wisconsin – Madison Department must pay the international faculty or staff member the prevailing wage or the actual wage; whichever is higher. The prevailing wage is the weighted average salary paid to all persons equally employed in the area of intended employment. The University determines the prevailing wage based on the US Department of Labor's Bureau of Labor Statistics annual data. The actual wage level is that wage paid by the employer to all other individuals with similar experience and qualifications as the H-1B nonimmigrant for the specific employment in question at the place of employment, i.e. the Department. The Department of Labor (DOL) can investigate complaints and review the documentation to ensure compliance with the wage requirements.

Department Procedures: In order to complete the process for determining the prevailing wage, the Department must:

- Type the information on the Prevailing Wage Request form (Please see the "Prevailing Wage Request Worksheet" for assistance on filling out the form.) **Remember to use the MINIMUM requirements to fill the position, not the individual's qualifications.** Also, if the number of hours per week is less than 40 (100% time), it is extremely important that the H-1B work only that number of hours per week; otherwise the University could be subject to fines.
- Complete the Department Request Form (for New or Extension, as appropriate)
- Please ask the employee to complete the Beneficiary Information Form on the IFSS website at the beginning of the process.
- Submit to IFSS the Prevailing Wage Request form, Department Request Form, Beneficiary Information Form and, **for new hires, copies of the position vacancy listing (PVL) or PVL waiver request, if required.**

Processing Information: IFSS determines the Prevailing Wage based on its knowledge and experience in using the US Department of Labor, Bureau of Labor Statistics. The Department must pay 100% of the prevailing wage. In the event that the prevailing wage determination is higher than the offered salary, IFSS will contact the Department immediately. The Department has three choices:

1. Increase the salary level to 100% of the prevailing wage, **ONLY IF** it would not create inequities within UW-Madison, i.e. the proposed salary does not exceed the salaries of similarly qualified and titled employees within the Department. Increasing the salary level requires approval of the dean/director and APO.

Creating a new appointment rather than effecting a base adjustment for a continuing employee, or changing an appointment to less than 100% when the department expects 100% effort, are both inappropriate.

2. Resubmit the prevailing wage request to include market data and challenge the earlier determination.
3. Inform the international staff member that the Department cannot hire or continue to employ the individual in H-1B status at UW-Madison.

Actual Wage Review

Upon receipt of the prevailing wage request form, IFSS will provide the Department a chart listing the names and wages of all employees with a particular title in that Department. It is my understanding that the years of service on the chart may not be accurate because the years of service are based on this particular appointment and not overall years of experience. Because this chart includes all the employees with a particular title, the Department must determine the actual wage range of only the employees with similar experience and qualifications to the H-1B/E-3 employee. Another way to look at this is the Department needs to identify employees NOT comparable to the H-1B/E-3 employee and exclude their wages from the actual wage range. Ideally, the Department would only need to do the comparison chart once for each title (research associate, assistant scientist, associate scientist, assistant professor), then modify the chart as new H-1Bs with the same title are hired to reflect the changes in experience and education each person has.

In order to determine the actual wage range, the Department must list the names and reasons why a current employee is NOT comparable to the H-1B/E-3 on the Actual Wage Comparison Chart and attach it to the Actual Wage Determination and Certification Form. Departments will determine who is comparable to the H-1B/E-3 employee by asking the Principle Investigator (PI) or the Department Chair how they arrived at the proposed salary. The Department must be able to justify the salary based on experience and education. For example, the Department can look at the years of post degree experience the individual has, the publications and/or patents the individual has, etc. Information such as the resume or curriculum vitas should be reviewed, along with input from the Chair or PI. Below is a list of acceptable reasons stating why a current employee is not comparable to the H-1B/E-3. The DOL is conducting audits on thousands of employers so our salaries must not be arbitrarily assigned.

Once the non-comparable employees have been identified and their salaries eliminated from the actual wage range determination, the Department then lists the actual wage range on the Determination form. If the Department determines that all current employees are comparable to the H-1B/E-3, then all employees with similar experience and qualifications should be paid the same salary and there would be no actual wage range; just an actual salary. For most Departments, this is not the case. *In case of an audit, the employing Department must be able to justify the reasons employees with the same job title are NOT comparable to the H-1B or E-3*

employee and be able to justify the reasons why all employees **ARE** comparable if that is what the Department determined.

The Department is required by law to pay either the prevailing or the actual wage, whichever is higher.

STEP 2: Labor Condition Application

Requirements: The regulations from the Department of Labor (DOL) require the employer to submit a Labor Condition Application (LCA) to the DOL and comply with the requirements. The hiring authority who signs the LCA certifies the following under penalty of perjury:

- (1) the H-1B employee will be paid either the actual wage or the prevailing wage for the occupation, whichever is higher. The sponsoring Department will pay a similar wage to all employees with similar experience and qualifications;
- (2) employing the international faculty/staff member will not adversely affect the working conditions of similarly employed workers (i.e. same benefits, annual increases are provided to all employees, etc.); See 20 C.F.R. §655.732 (b)
- (3) on the date of the application, there is not a strike, lockout or work stoppage; See 20 C.F.R. §655.733(a)(1); and
- (4) the employer will post notice of the Labor Condition Application (LCA) in a conspicuous location for at least ten business days (or provide it to the collective bargaining representative, if applicable).

If the employer is found to have willfully violated the Labor Condition Application requirements, the Department of Labor may penalize the sponsoring UW-Madison Department up to \$ 1,000 per violation and assess back wages to the H-1B nonimmigrant. In extreme cases, there is the possibility of imprisonment and a bar against UW-Madison from obtaining H-1B status and permanent resident status for future employees for one year or more.

Department Procedures: In order to complete the Labor Condition Application (LCA) process the Department must:

- Complete the LCA Authorization Form.
- Obtain the signature of the Chair and/or PI and send the original document to IFSS.
- After IFSS generates the LCA and the DOL certifies it, the Department must post a copy of the LCA per IFSS instructions and return the notice of posting the LCA to IFSS.

A copy of the certified LCA must be submitted to USCIS with the I-129 petition, fee, and documents as detailed in Step 3.

STEP 3: U.S. Citizenship and Immigration Services (USCIS) petition**Requirements**

USCIS will determine whether the position is a "specialty occupation" and whether the individual meets the qualifications for H-1B status. USCIS will also review the person's current legal status (within the U.S.) or eligibility to enter the U.S. as an H-1B non-immigrant (if outside the U.S.).

The hiring authority (Department Chair) must sign in three areas on the Form I-129 which:

- ☐ Verifies the information is correct under penalty of perjury,
- ☐ Agrees to comply with the terms of the approved LCA during the entire period of the H-1B petition, and
- ☐ Agrees to pay for the reasonable cost of return transportation of the international faculty/staff member (but not the dependents) abroad if he/she is dismissed from employment for any reason before the H-1B status expires.

Department Procedures

Obtain the required supporting documents (listed below) and submit them along with the I-129 and filing fees to IFSS. USCIS requires two original applications be sent so please send one original set of pages 1-7, 11-12 and two original signature pages (pages 6, 7 and 12) and only one set of supporting documents.

Supporting Documents

- ☐ Completed Check List (New/Change of Status; Change of Employer/Concurrent; or Extension/Amended, as appropriate)
- ☐ Completed Department Request Form
- ☐ Completed Beneficiary Information Form
- ☐ current offer letter (title, salary, duties, dates specified)
- ☐ current resume/CV
- ☐ diploma/degree (and transcript if field not listed; translations if not in English, including Latin; and credentials evaluation-see below). Note that the degree must be in the specific field required for the position.
- ☐ publications (title page of one or two) or two reference letters, if no publications
- ☐ required license to practice the occupation (i.e. medical/veterinary clinical positions)
- ☐ if the individual is currently in the United States
 - o copy of both sides of the I-94
 - o copy of previous immigration documents showing the individual is in a legal status
 - o copy of the information page of the passport
 - o if currently an H-1B, all forms I-797
 - o if currently F-1, all forms I-20, Employment Authorization Document (EAD) if optional practical training (OPT) granted

- if currently F-2, all forms I-20 of F-2
- if currently J-1, all forms DS-2019 (formerly IAP-66), waiver of 2 year home residence requirement (if subject), employment authorized by sponsor (i.e. J-1 student academic training)
- if currently J-2, all forms DS-2019 (formerly IAP-66) of J-2, EAD (if work authorization previously granted), waiver (if spouse is subject)
- if person is currently in H-1B status with another employer, payroll statements from the past three months
- if the individual is outside the U.S., the address of the individual and the address of U.S. consulate where the individual will apply for the visa. This information must be entered in part 4 of form I-129, and include copy of information page of passport.

For medical positions, a copy of Wisconsin medical license, unexpired ECFMG certificate, and proof of having passed one of the required exams (FLEX parts 1 and 2, or Parts 1, 2 and 3 of either the USMLE or the NBME).

Translations

All documents that are not in English, including Latin, must be translated. Translations must be accompanied by a statement from the translator indicating his/her qualifications for doing the translation. Neither the H-1B applicant nor an immediate family member may do the translation. The translator must sign the translation and type or write on the translation the following: "I certify that I am competent to translate (name of language) into English and this is an accurate translation of the original."

Credentials Evaluations

USCIS has recently been requesting a credentials evaluation of the highest degree that was not obtained from a U.S. or Canadian college or university. Such requests delay the application, including those filed under Premium Processing. In order to avoid unwanted delays, we recommend that any applicant who has obtained his/her highest degree from an institution outside the U.S. or Canada obtain an official credentials evaluation. The National Association of Credentials Evaluation Services has a listing of their members at: <http://www.naces.org/>. It is up to the hiring Department and the individual to decide who should pay the fee for the evaluation. IFSS cannot recommend one firm over another.

Fees

The basic filing for the I-129 is \$325 and must be paid by the employing Department.

The Fraud Prevention and Detection Fee of \$500 applies to all **initial** H-1B applications. **This fee must be paid by the employing department.** This fee is in addition to the basic filing fee and applies to all individuals who are:

1. outside the U.S. and will apply for initial entry into the U.S. in H-1B status;

2. inside the U.S. in another status (such as J-1 or F-1) and are applying for a change of status to H-1B; and
3. inside the U.S. in H-1B status and are applying for employment with a new employer. This will not affect those who change from one Department to another within UW-Madison.

Each fee must be a separate check and all should be made out to U.S. Department of Homeland Security.

Premium Processing

Normal processing of H-1B petitions takes approximately four to five months. H-1B petitions can be expedited by paying a premium processing fee of \$1,225 and must be paid by a separate check made payable to "U.S. Department of Homeland Security." USCIS guarantees that they will adjudicate the petition within 15 calendar days of receiving the premium processing request. If they fail to do so, the fee will be fully refunded. Adjudication means that they will approve the petition, send a request for additional evidence, or deny it.

There is an additional form, I-907, for premium processing which must be submitted to USCIS. The Department should complete Parts 2 and 3 of the form and submit it to IFSS. IFSS will complete the rest of the form and file it in accordance with USCIS instructions. The Premium Processing fee of \$1225 **must be paid by the employing department**. IFSS can submit the premium processing request with the I-129 or it can upgrade the processing of the I-129 to premium at a later date by sending the I-907, the appropriate fee and a copy of the Receipt Notice to USCIS.

When a timely application for extension of stay is filed for a person in H-1B status with no changes in the terms and conditions of employment, the H-1B may continue working for up to 240 days after the expiration date of the original H-1B while USCIS adjudicates the extension of the status. See 8 C.F.R. §274a.12(b)(20). Therefore, premium processing is NOT necessary for a straight extension with no changes. Premium processing also is not necessary for a portability case, as the beneficiary may begin employment as soon as we have the Receipt Notice from USCIS for the I-129.

Dependents

The spouse and unmarried children under age 21 of an individual on an H-1B visa may apply for an "H-4 dependent" visa. Family members in the U.S. who wish to change to H-4 status from another status or to extend their current H-4 status, must complete a US Citizenship and Immigration Services (USCIS) Form I-539. **The family member completes and signs the I-539 application, NOT the H-1B visa holder. If the family member is a young child who is not old enough to sign, the parent may sign the form in Part 6 "Signature of person preparing form if other than above."**

A foreign address must be given in Part 4. The address of a parent or other family member living in the home country is acceptable.

Fee: The fee for processing is \$290 payable to US Department of Homeland Security and must be paid by the beneficiary, not the Department.

Return the completed and signed I-539 to IFSS, 21 N. Park Street, Suite 5101, with the H-1B petition packet. Additional supporting documents are needed. The supporting documents include a photocopy of I-94 of the spouse and/or child(ren), and if they are currently in a status other than H-4, a photocopy of their other USCIS documents indicating their current status. If they are currently in H-4 status, they may also have a form I-797, Approval Notice, in which case, a copy of that form should also be provided. Proof of relationship to the principal H-1B in the form of birth and marriage certificates must also be included, as well as a copy of the information page of the passport.

Family members who have a valid status independent of the H-1B visa holder (e.g. F-1, J-1), are not required to file for H-4 status. **H-4 visa holders are not authorized to work in the United States under any circumstances.**

For family members outside the U.S.: The I-539 Form is not needed if the family members are currently not in the United States. Instead, they will complete a visa application for H-4 status directly to the U.S. Consulate or embassy. The following offers guidelines on what may be required. However, each Consulate may have different fees, procedures and requirements and should be contacted prior to making the application.

1. Proof of the H-1B's status in the U.S. Original form I-797 Notice of Approval.

2. Proof of financial support

- A letter from the H-1B's department indicating annual salary;
- A letter from the H-1B indicating that he/she will provide support for the dependents;
- Copies of the H-1B's bank statements.

3. Proof of relationship

- Copies of marriage and/or birth certificates.

Other family members such as parents, sisters, brothers, domestic partners are not eligible for H-4 status. They may be able to apply for a "B-2 tourist" visa. They would need to show proof of financial support and ties to their home country.

Final notes about the I-129:

- ☐ When submitting documents and forms to IFSS, please do not staple anything.
- ☐ Make sure all signatures are in blue ink, or some color other than black. USCIS rejects forms signed in black ink. They will return the petition to us unadjudicated.
- ☐ When copying the I-94, visa, and/or passport information page, please make sure the background is white not black.
- ☐ Page 9 of I-129 Form requires the Department Chair to sign in the following two places

“Petitioner’s Signature” and “Signature of Authorized Official of Employer.”

Processing Information: IFSS will review and mail the petition, include a copy of the approved Labor Condition Application (step 2), H-1B Data Collection form, supporting documents, and fee to USCIS. If the H-1B classification is approved, an Approval Notice (form I-797) will be sent to IFSS and it will indicate the dates of the work authorization. IFSS will notify the Department of the approval. The individual or Department representative must pick up the original H-1B Approval Notice at 21 N. Park Street, Suite 5101 anytime between 7:45 a.m. and 4:30 p.m.

When H-1B Employment is Terminated: If the Department terminates the international faculty/staff member's employment prior to the end date specified on the H-1B Approval Notice for any reason, the Department is responsible for the reasonable cost of the individual's return transportation to his/her home country or last permanent residence abroad. The Department is not required to pay return transportation of any dependents or if the individual voluntarily resigns. Should an early termination occur, for whatever reason, **IFSS should be notified immediately, and provided with a copy of the termination letter. The Department could be held responsible for back wages and fines if USCIS is not notified of an early termination.** (See Departure Form)

H-1B packet 2012/04