

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

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

In most cases, Wayne State departments are no longer permitted to pass along the OISS H-1B processing fees of \$700 and the U.S. Citizenship and Immigration Services (USCIS; formerly INS) filing fee of \$325 (effective 11/23/2010) to H-1B employees. Requiring such individuals to pay these fees now constitutes an unauthorized deduction in the H-1B wage as certified on DOL Form ETA-9035, Labor Condition Application (LCA).

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

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

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

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