The Office of International Programs
Martindale 331
(662)915-7404
www.international.olemiss.edu

Departmental Request to Waive the Safe Harbor Provision

The University of Mississippi currently recognizes the Safe Harbor Provision set forth by 20 C.F.R. § 655.731(a)(2)(ii)(A)(3) and 655.731(d)(1) when filing H-1B petitions on behalf of its employees.

Explanation of Safe Harbor: An H-1B employer can choose to rely on a written prevailing wage determination (PWD) provided by the Department of Labor (DOL). DOL PWD requests are filed with and determined by the National Prevailing Wage Center.

Using a NPWC PWD provides an employer a safe harbor in case of a DOL wage investigation. If the position was adequately described to the NPWC when the determination was made, DOL will accept an NPWC PWD as correct and will not question its validity if the employer has maintained a copy of the determination.

If an employer relies on a non-safe harbor source, then, in the course of a wage investigation, DOL can challenge that source, conduct a new prevailing wage determination based on OES data, and, if the ETA determination comes back showing the employer was paying less than the wage found in the DOL determination, hold the employer responsible for paying back wages for the difference between the DOL determination and what the employer was actually paying.

Request by UM Department/School to forgo the Safe Harbor Provision: The Department/School understands that forgoing safe harbor may subject the Department/School in the case of an audit and unfavorable decision to paying back wages for the difference between the DOL determination and the actual wages of the employee.

*In order for the Department/School to waive the safe harbor provision for a particular case, The Office of International Programs must receive a thorough, written explanation of job description and duties along with justification of the O*NET category in the ACWIA database that would be most appropriate for the particular position before proceeding with the H-1B petition.*

Name of employee: _____

_____

Department Chair Name (in print) Date

_____

Provost Date