NAFSA Practice Advisory
The NPWHC and OES Wage Levels

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adapted from content in the NAFSA Adviser's Manual

This practice advisory discusses how the National Prevailing Wage and Helpdesk Center (NPWHC) determines an occupation's **Wage Level** when using the OES (Occupational Employment Statistics) survey to make a prevailing wage determination (PWD). Understanding the mechanics of how the NPWHC evaluates minimum education, experience, and other requirements when making a PWD based on OES wage data can help you when completing your Form ETA 9141, as well as if you decide to challenge a NPWHC PWD.

1.1   OVERVIEW OF NWPHC PREVAILING WAGE DETERMINATIONS

The NPWHC handles requests for prevailing wage determinations for H-1B purposes using the same standards and procedures used for permanent labor certification (PERM) prevailing wage determinations, described at 20 C.F.R. § 656.40. [20 C.F.R. § 655.731(a)(2)(ii)(A)]

⬚   Note: Although an NPWHC PWD is required in all PERM filings, an H-1B petitioner can also choose to rely directly on an "independent authoritative source" or "another legitimate source of wage information," rather than seek a NPWHC PWD, but by doing so forgoes the "safe harbor" treatment that a NPWHC PWD affords.

After receiving the employer's ETA Form 9141, the NPWHC will:

☐ Assign an SOC/O*NET occupational code classification to the job, based on the employer's job description and requirements placed on the 9141.

☐ Consider any non-OES wage sources submitted by the employer. The NPWHC is required to consider employer-submitted wage surveys. If the survey submitted meets regulatory and policy standards, and the NPWHC otherwise accepts the survey, the prevailing wage will be determined with reference to that wage data, not to OES wage data, but still receive safe harbor treatment.

☐ If the employer does not provide an alternative survey o the NPWHC will assign an OES wage level (from Level 1 to Level 4) to the job, and use the wage component of the DOL Occupational Employment Statistics (OES) Survey to determine the prevailing wage. ACWIA employers should identify themselves as an ACWIA employer on the ETA Form 9141, as recommended by DOL: "On the ETA Form 9141 item D.a.6 (Job Duties), after the description of job duties, include the following statement surrounded by asterisks: ***This employer is an institution of higher education or a research entity under 20 CFR 656.40(e).***"

☐ The NPWHC will then issue the prevailing wage determination (PWD)

1.2 THE FOUR WAGE LEVELS

OES wages are divided into 4 wage levels that are meant to reflect experience, education, and level of supervision. DOL guidance describes the 4 wage levels, and establishes a step-by-step process that DOL will use to place a job within one of the 4 wage levels.

📖 [Prevailing Wage Determination Policy Guidance for Nonagricultural Immigration Programs](#), revised November, 2009

🗀 It is important to remember that wage levels are only a factor when OES wage data is used. Wage levels are not utilized with employer-provided wage data.

🗀 The language used in the following definitions of the wage levels is very important. Examine it closely in the context of your own job descriptions.

Wage Level I

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.

Wage Level II

Level II (qualified) wage rates are assigned to job offers for qualified employees that have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

Wage Level III

Level III (experienced) wage rates are assigned to job offers for experienced employees that have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. Words such as 'lead' (lead analyst) or 'senior' (senior programmer) or 'head' (head nurse) or 'chief' (crew chief) or 'journeyman' (journeyman plumber) would be indicators that a Level Ill wage should be considered.

Wage Level IV

> **Level IV** (fully competent) wage rates are assigned to job offers for compe-
> tent employees who have sufficient experience in the occupation to plan and
> conduct work requiring judgment and the independent evaluation, selection,
> modification and application of standard procedures and techniques. Such
> employees use advanced skills and diversified knowledge to solve unusual and
> complex problems. These employees receive only technical guidance and their
> work is reviewed only for application of sound judgment and effectiveness in
> meeting the establishment's procedures and expectations. They generally have
> management and/or supervisory responsibilities.

1.3 DOL GUIDANCE ON DERIVING A JOB'S WAGE LEVEL

DOL's November, 2009 prevailing wage guidance provides two worksheets and detailed instructions for the NPWHC on how to use them. The guidance describes the "point system" the NPWHC will use to determine the appropriate wage level for a position. Points are awarded based on a comparison of the employer's job offer to the requirements in the SOC/O*NET description for similar occupations.

> ☩ DOL memo Prevailing Wage Determination Policy Guidance for Nonagricultural
> Immigration Programs rev. November, 2009. This is virtually the same guidance
> that DOL had provided to SWAs since 2005.

DOL's wage level work sheet

Appendix C: Worksheet for Use in Determining OES Wage Level				
Employer's Job Title:				
O*NET Title:		Date:		
O*NET Code:		Reviewer:		
Indicator	Job Offer Requirements	O*NET-Usual Requirements	Comments	Wage Level Result
Step 1. Requirements				1
Step 2. Experience				
Step 3. Education				
Step 4. Special Skills and Other Requirements? (Y/N)				
Step 5. Supervisory duties (Y/N)				
			Sum:	

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Appendix B: Check Sheet for Use in Determining OES Wage Level

Indicator	Job Offer Requirements	O*NET-Usual Requirements	Instruction	Wage Level Result
Step 1. Requirements				1
Step 2. Experience	Enter the years of experience required by the employer.	Job Zone (overall experience, job training)	If the years of required experience in the job order are greater than the low end of the O*NET usual requirements, enter 1, 2, or 3.	
Step 3. Education	Enter the education or training required by the employer.	Professional Occupations Appendix D Other occupations - Job Zone (overall experience, job training, education)	If the years of required education in the job order are greater than the Categories for Professional Occupations OR O*NET usual requirements for non-professional occupations, enter 1 or 2.	
Step 4. Special Skills (Y/N)	Note special requirements from the job description or other special requirements including licensure or certification.	O*NET Tasks, Knowledge, and Work Activities. National or state licensing/ certification requirements.	Consider if skills, knowledge, work activities, tasks, licensure or certification requirements indicate a higher level of complexity or decision-making. Enter 1 or 2 as appropriate.	
Step 5. Supervisory duties (Y/N)	Note any supervisory duties indicated in the job duties or description.		If Yes, enter a 1 – UNLESS supervision is generally required by the O*NET occupation.	
			Sum:	

1.3.1 PRELIMINARY STEPS

"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 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 and warrants a prevailing wage determination at a higher wage level.

All prevailing wage determinations start with a Level I determination; therefore, the check sheet and worksheet have a 1 entered in the Wage Level Column."

"Step 1: Enter the O*NET Requirements on the Worksheet

- Use the O*NET OnLine 'Find Occupations' feature (http://online.onetcenter.org) to determine the appropriate O*NET-SOC code based on the job title provided on the prevailing wage determination request form.
- Enter the job title from the employer's job offer into the Quick Search box and click on Go.
- Select the O*NET occupation that most closely matches the employer's request from the resulting list of occupations.
- Review the Tasks, Knowledge, Work Activities, and Job Zone information contained in the O*NET summary report to gain an understanding of what is generally required for vocational preparation and performance in that occupation.

Enter the O*NET education and experience requirements on the Worksheet."

> ⊤ Excerpts from Appendix A of DOL's prevailing wage determination policy guidance on using the check sheet and work sheet.

1.3.2 EVALUATING EXPERIENCE ON THE WORKSHEET

Step 2: Complete the Experience Section of the Worksheet

[**NAFSA note:** the guidance also contains instructions for Job Zone 1 occupations, which are not included here]

Compare the overall experience described in the O*NET Job Zone to the years of experience on the PWD request form. For occupations in Job Zones 2 through 5, if the employer's experience requirement is:

- At or below the level of experience and SVP range, make no entry in the Wage Level Column.
- In the low end of the experience and SVP range, enter a 1 in the Wage Level Column.
- In the high end of the experience and SVP range, enter a 2 in the Wage Level Column.
- Greater than the experience and SVP range, enter a 3 in the Wage Level Column.

Points should be added only for experience only if the required experience is above the job zone range start point. Education required for the job is addressed in Step 3 of the worksheet, and therefore the years of education required should not be considered in Step 2. However, if education is considered as an equivalent amount of experience in Step 2, it should not also be considered in Step 3.

> ⊤ Excerpts from Appendix A of DOL's prevailing wage determination policy guidance on using the check sheet and work sheet.

1.3.3 EVALUATING EDUCATION REQUIREMENTS

"Step 3: Complete the Education Section of the Worksheet

Compare the education requirement generally required for an occupation to the education requirement in the employer's job offer.

Determine if the level required by the employer's job offer is greater than what is generally required.

Professional Occupations by O*NET-SOC category and the related education and training category code are listed in Appendix A to the Preamble of the PERM regulations [**NAFSA note:** this appendix is reproduced in Appendix D of the DOL guidance, and the guidance refers to it as "Appendix D."]. **The**

education and training categories assigned to those occupations shall be considered the usual education and training required when considering the education level for prevailing wage determinations. [emphasis added]

If the education required is equal to or less than the O*NET-SOC E&T category code, make no entry in the Wage Level Column.

For professional occupations:
- If the education required on the prevailing wage determination request form is equal to or less than the usual education contained in Appendix D, make no entry in the Wage Level Column.
- If the education required on the prevailing wage determination request form is more than the usual education contained in Appendix D by one category, enter a 1 on the worksheet in the Wage Level Column.
- If the education required is more than the usual education contained in Appendix D by more than one category, enter a 2 on the worksheet in the Wage Level Column.

Example: If the occupation generally requires a Bachelor's degree and the employer's job offer requires a Master's degree, enter a 1; if the job offer requires a Ph.D., enter a 2.

For other occupations, apply the same process with reference to the education level for what the job zone says 'most of these occupations require,' or 'usually require described in the O*NET Job Zone for that occupation."

⊤ Excerpts from Appendix A of DOL's prevailing wage determination policy guidance on using the check sheet and work sheet.

1.3.3.1   NAFSA discussion on educational requirements

DOL's November, 2009, prevailing wage guidance instructs the NPWHC to look to Appendix D of that guidance, which lists the *Education & Training Category Codes* of occupations that DOL has determined are "professional." If the O*NET-SOC code selected by the NPWHC is listed in Appendix D, the guidance states that "the education and training categories assigned to those occupations shall be considered the usual education and training required when considering the education level for prevailing wage determinations." That is to say, for any degree requirement above that level, the NPWHC would add a "point" to the wage level work sheet. Recall the example in DOL's guidance: "Example: If the occupation generally requires a Bachelor's degree and the employer's job offer requires a Master's degree, enter a 1; if the job offer requires a Ph.D., enter a 2."

☐ Note: Appendix D of the November 2009 guidance was originally published as Appendix A to the supplementary information preceding the PERM final rule. The original purpose of this list was to identify the occupations for which employers "must follow the recruitment regiment for professional occupations at § 656.17(e)" of the PERM regulation. [69 Fed. Reg. 77326, 77346 (December 27, 2004)].

There are 5 Education and Training Categories described in Appendix D:

Appendix D: Professional Occupations Education and Training Categories

Code	Definition
1	First professional degree
2	Doctoral degree
3	Master's degree
4	Work experience, plus a bachelor's or higher degree
5	Bachelor's degree

To provide an idea of how this might impact the wage level that the NPWHC will assign to your job, consider the following two occupational titles:

Example: Comparing Education and Training Codes of Some Related Occupations

O*NET-SOC Code	O*NET-SOC Title	Education and Training Category Code
25-1032.00	Engineering teachers, Postsecondary	2
17-2071.00	Electrical Engineers	5

As you see in this example, the teaching faculty classification carries an Education and Training Category Code of 2 (Doctoral degree as a minimum requirement), while the other one carries a Code of 5 (Bachelor's degree as a minimum requirement).

☐ In fact all Engineering occupations except "Engineering teachers, postsecondary," carry an Education and Training Category Code of 5.

If the NPWHC mechanically applies DOL guidance, then an assistant professor of electrical engineering position that requires a Ph.D. and no experience would probably be found to be wage level 1, but a post-doctoral electrical engineering research position that requires a Ph.D. and no experience, would likely be classified as an engineer rather than a teacher, and be assigned a wage level 3.

☐ Before submitting a prevailing wage request that will be based on OES wage data, examine Appendix D to locate the occupation for which you're filing. Also read the note about DOL discretionary guidance described at section **1.4** "DOL discretion" on page **9**.

If an occupation is not listed in Appendix D, then the NPWHC is instructed to "apply the same process with reference to the education level for what the job zone says 'most of these occupations require,' or 'usually require' described in the O*NET Job Zone for that occupation."

Most positions that colleges and universities would sponsor that are not listed in Appendix D would be in O*NET Job Zones Four and Five, whose educational levels are:

- Job Zone Four: "Most of these occupations require a four-year bachelor's degree, but some do not."
- Job Zone Five: "A bachelor's degree is the minimum formal education required for these occupations. However, many also require graduate school. For example, they may require a master's degree, and some require a Ph.D., M.D., or J.D. (law degree)."

1.3.4 STEP 4: SPECIAL SKILLS, KNOWLEDGE, WORK ACTIVITY OR TASKS, AND CERTIFICATION OR LICENSURE

"Special skills, knowledge, work activity or tasks are considered in the same step as certification or licensure requirements.

☐ Special skills, knowledge, work activity or tasks

– Review the job title, job description (duties) and special requirements on the prevailing wage determination request form to identify the tasks, work activities, knowledge and skills required. Make note of machines, equipment, tools or computer software used. Match those identified to the O*NET Tasks, Work Activities, Knowledge, and Job Zone Examples.

– If the employer's requirements are not listed in those O*NET sections, then the requirements shall be determined to be special skills. Enter a 1 on the worksheet in the Wage Level Column.

– Note: A language requirement other than English in an employer's job offer shall generally be considered a special skill for all occupations, with the exception of Foreign Language Teachers and Instructors, Interpreters and Caption Writers, and a point should be entered on the worksheet.

– It is recognized, however, that there may be circumstances where a foreign language is required for the job, but that requirement does not sufficiently increase the seniority and complexity of the position such that a pint must be added for the foreign language requirement (e.g. Specialty Cooks).

– If a required license or certification is a normal requirement to perform the job as an entry-level worker, no point should be added. Jobs that have more than one license, though, may indicate a different level of independent judgement and complexity of tasks required of the licensee. Points may be entered as appropriate in such cases.

☐ Certification or licensure

– If the employer's job opportunity requires the possession of a license or certification, the NPWHC must give careful consideration to the occupation in question and the education, training, and experience requirements of the license or certification to evaluate whether possession of a license or certification is an indicator that the offer of employment is for an experienced worker.

– An employer's requirement for the possession of an occupational license or certification does not constitute a situation where a point must automatically be awarded. The NPWHC should look at the employer's job description and stated requirements to evaluate, along with other factors, whether the position is closely supervised, involves only moderately complex duties, and allows limited exercise of independent judgment. If the license or certification is a normal requirement to perform the job duties as an entry level worker, no point should be added on the worksheet in the Wage Column, e.g., attorney, teacher, registered nurse.

– Some occupations have more than one license and the requirements of the license provide an indicator of the level of independent judgment and complexity of tasks required of the licensee, e.g. Journeyman Plumber or Master Plumber.

– The NPWHC must consider the education, training and experience requirements of the license or certification to determine when points should be entered on the worksheet in the Wage Column.

– If a substantial amount of work experience, education or training is required to obtain a license or certification and this results in the total amount of necessary work experience being on the

high end of the O*NET job zone range, a point could be added either in Step 2 for the work experience, or Step 3 for the education or training, or in Step 4 for the license. A point or points should not be added in every step."

1.3.5   STEP 5: SUPERVISORY DUTIES

"Review the prevailing wage determination request form to determine the number or range of people to be supervised to determine if there is a supervisory requirement. If the number is greater than 0, then enter a 1 on the worksheet in the Wage Level Column.

Exception: If supervision is a customary duty for the O*NET occupation (e.g. First-line Supervisors / Managers occupations) do not enter a 1 on the worksheet in the Wage Level Column.

Note: Previous guidance suggested that an employer's job offer that included supervisory duties should be assigned the higher of the two previous wage levels. In this new guidance an employer's job requirement for supervisory duties will not automatically warrant a determination of the highest wage level because the wages for supervisory occupations already account for the supervision of employees. The guidance contained above for evaluating education, experience and skills required in an employer's job offer should be used to determine the appropriate wage level for supervisory occupations."

1.3.6   STEP 6: DETERMINE THE WAGE LEVEL

"Determine the wage level by summing the numbers in the Wage Level Column of the worksheet. The sum total shall equal the wage level for the prevailing wage determination. If the sum total is greater than 4, then the wage level shall be Level 4.

The process described above should not be implemented in an overly automated fashion. The NPWHC must exercise judgement when making prevailing wage determinations. The wage level should be commensurate with the complexity of tasks, independent judgment required, and the amount of close supervision received as described in the employer's job opportunity."

1.4   DOL DISCRETION

DOL's prevailing wage determination policy document does describe some discretionary guidance that could help avoid an overly-mechanical application of the point system. In particular:

- The last sentence in the description of Wage Level I says that, "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." Closely examine the descriptions of the other Wage Levels as well.
- On page 13 of the guidance document, DOL instructs the NPWHC that, "The process described above should not be implemented in an automated fashion. The NPWHC must exercise judgment when making prevailing wage determinations. The wage level should be commensurate with the complexity of tasks, independent judgment required, and amount of close supervision received as described in the employer's job opportunity."