

Job Advertisement Guidance: Tenured/Tenure-Track Teaching Faculty Position, For University U.S. Permanent Residence Sponsorship

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When a position is advertised, a foreign national (FN) candidate may be selected. No U.S. employer is required or obligated to sponsor U.S. permanent residence (PR)/green card for any FN; it is the employer's choice. If the employer chooses to sponsor PR on behalf of an eligible FN who is hired into an eligible position, the employer is taking on a costly, complex and time-consuming undertaking. The employer is required to pay for the costs related to the employment-based employer-sponsored PR process and not allowed to pass the costs to the sponsored FN. The U.S. Department of Labor (DOL) has strict rules which focus on protecting U.S. workers, that is, there are not sufficient U.S. workers who are able, willing, qualified and available to fill the position; the employment of the foreign worker will not have an adverse effect on the wages and working conditions of U.S. workers similarly employed; the employer has met the procedural requirements of the regulations; and the foreign worker has met all position requirements before being hired into the position when the job offer letter is issued. These rules include:

- **Eligible position:** It must be a **permanent full-time** position.
- **Recruiting U.S. workers for the job opportunity:** If a U.S. employer chooses to sponsor a FN for PR, **DOL requires the employer to conduct a full bona fide recruitment to make the permanent full-time job available to U.S. workers.** Though this type of recruitment serves the purpose for the sponsoring employer to document and attest to DOL that the permanent full-time job opportunity is indeed open and available to U.S. workers, anyone can apply since it is a full bona fide recruitment.
- **Job advertisement:** The job requirements must adhere to what is customarily required for the occupation in the U.S. and may not be tailored to the foreign worker's qualifications. In addition, the employer shall document that the job opportunity is described without unduly restrictive job requirements, unless adequately documented as arising from business necessity.
- **Wages:** The employer must pay at least the prevailing wage set by DOL.
- **Recruitment report:** **The employer must prepare a recruitment report in which it categorizes the lawful job-related reasons for rejection of U.S. applicants and provides the number of U.S. applicants rejected in each category.** The recruitment report does not have to identify the individual U.S. applicants; however, if requested by the DOL Certifying Officer, the employer must submit copies of the application materials.
- **Audits/requests for information:** The employer must provide the required supporting documentation if the employer's application is selected for audit or if the DOL Certifying Officer requests it.
- **Retention of records:** The employer is required to retain copies of application materials and all supporting documentation.

Permanent Residence sponsorship for a permanent full-time tenured/tenure-track faculty position with actual classroom teaching duties (teaching faculty)

Glossary

- **U.S. worker:** U.S. citizen, U.S. permanent resident, aslyee, and refugee.
- **Foreign national:** non-immigrant visa holder in the U.S., for example: F-1/F-2, J-1/J-2, H-1B/H-4, TN/TD, E-3, individual who is not a U.S. citizen or U.S. permanent resident/green card holder residing in his/her home country (outside the U.S.), etc.

For this type of position, DOL allows a U.S. employer to select a **FN who was more qualified than U.S. workers using its own competitive recruitment and selection process** known as "**Special Handling**" Labor Certification application procedure.

The U.S. employer must file an individual labor certification application with DOL for the permanent employment of each foreign national in the U.S.

Uniqueness of labor certification recruitment requirements

	Real world job advertisement	DOL job advertisement
Purpose	Help an employer to find a specific type of employee.	Fulfill a statutory mandate to protect U.S. workers. The employer is required to conduct a full bona fide recruitment steps to recruit U.S. workers for the job opportunity – "the job opportunity has been and is clearly open to any U.S. worker" [20 C.F.R. § 656.10(c)(8)]. The employer can only reject a U.S. worker only if he/she does not meet one of the required minimum qualifications for the job, unless this is a college/university teacher position.
Job ad language	Subject to employer and other applicable policies.	Must include specific DOL required information.
Scope of search	Subject to employer and other applicable policies.	Must follow specific DOL advertising requirements, i.e. additional recruitment steps and/or national research.
Offered salary	Reflect market, the type of employer (private vs. public, small vs. large, etc.) and negotiation.	Must pay at least the prevailing wage rate (determined by DOL) or the actual wage rate whichever is higher.

Search documentation	Subject to employer and other applicable policies.	Must follow specific DOL documentation requirements, i.e. recruitment report, recruitment documents retention.
Flexibility	Maybe, subject to employer and other applicable policies.	No, must adhere to specific DOL requirements.

Procedure

To expedite the PR sponsorship process **in the event an eligible FN is selected**, the current institutional policy is to integrate DOL requirements in ALL permanent full-time tenured/tenure-track teaching faculty positions assuming the position may be filled by a FN **and** the hiring unit will sponsor PR for the selected FN. Therefore, an academic hiring unit should follow the procedures below when developing a job announcement for a permanent full-time tenured/tenure-track faculty position with actual classroom teaching duties in position titles as Assistant/Associate/Full Professor:

1. The hiring unit is **strongly recommended to use the template on page 5 integrating DOL regiments when developing the draft job advertisement**, in reference of this guidance and consulting your EEO Representative(s).
2. The hiring unit e-mails the draft job ad to IP-GS in MS Word (so that it is editable) for review to be DOL compliant before it is uploaded to HRS OPDRS. If the hiring unit wishes to use multiple versions (i.e. position details in HRS OPDRS, Notice of Vacancy, long ad, and short ad), please submit all versions for review.
3. When the hiring unit uploads the position details to HRS OPDRS, make sure to attach the actual job ad(s) to be published. If the job ad in HRS OPDRS does not incorporate IP-GS comments to be DOL compliant without any other special note, IP-GS will send it back to the hiring unit for revision which will further delay the publication of the job ad.
4. If a hiring unit decides **not** to integrate DOL requirements in the regular job ad for such position, **e-mail a written note** to IP-GS to record this choice.

Note: If an academic hiring unit chooses to sponsor PR for a FN for this type of position without going through an eligible competitive recruitment and selection process and/or the recruitment procedure/documents do NOT meet specific DOL requirements, the academic hiring unit will have to conduct a new full bona fide recruitment with all specific DOL requirements for such purpose.

What qualifies the “competitive recruitment and selection process” for such purpose?

The recruitment - The employer must document the FN was selected for the job opportunity in a competitive recruitment and selection process through which the **FN was found to be more qualified than any of the U.S. workers** who applied for the job.

Documentation of the “competitive recruitment and selection process” must include:

1. A copy of **at least one advertisement for the job opportunity placed in a national professional journal**, giving the name and the date(s) of publication; and which states the job title, job geographic location, job duties, and requirements;
2. Evidence of **all other recruitment sources** utilized;
3. A statement, signed by an official who has actual hiring authority from the employer outlining in detail the complete recruitment procedures undertaken; and which must set forth:
 - a) The **total number of applicants** for the job opportunity;
 - b) The **specific lawful job-related reasons why the FN is more qualified than each U.S. worker** who applied for the job.
4. A final report of the faculty, student, and/or administrative body making the recommendation or selection of the FN, at the completion of the competitive recruitment and selection process; and
5. A **written statement attesting to the degree of the FN’s educational or professional qualifications and academic achievements**.

Job Advertisement Guide on page 2-4 explains the requirements and tips for publishing advertisements as part of a national search.

Template and Sample: Job Ad on page 5 is a template that ad authors should use to develop a job ad that meets DOL requirements for PR sponsorship purpose. Make sure your EEO Representative(s)/administrative personnel reviews before it is sent to IP-GS.

Job Advertisement Guide

The purpose of this guide is to provide a list of the requirements that will facilitate the rapid development and publication of advertisements for permanent full-time tenured/tenure-track teaching faculty positions if a hiring unit wishes to sponsor PR for an eligible FN who was selected in an eligible competitive recruitment and selection process. Please note this list is by no means conclusive and/or exhaustive as feedbacks, updates and government guidelines are constantly incorporated. **Before you begin writing an advertisement, it is strongly recommended that you read this guidance in its entirety.**

Ad Content Requirements

The proposed job ad should include the full body of the ad content, and adhere to the recommendations described below. Content of the job ad should be consistent with the HRS OPDRS “Position Details” posted on WSU website and must include the following. It is strongly recommended to **use the job ad template on page 5 to fill in the position specific information.**

1. **The name of the employer and job location** (Pullman, Spokane, Vancouver, Tri-Cities, etc.).
2. **Job title and the type of job** (Assistant/Associate/Full Professor, permanent full-time tenured/tenure-track).
3. **Job duties, actual classroom teaching duties must be included.**

4. **Requirements:** minimum requirements must be included. Preferred qualifications are discouraged; if you wish to list preferred qualifications, **they are treated as requirements by DOL.**
5. **The application process and the means to contact the employer:** what to submit and how to submit.
6. University required **EEO/AA** statement.

Multiple version of the job ad: HRS OPDRS, Notice of Vacancy, Long ad, short ad - Regardless what version you use, all job ad contents must match.

- **In all versions** (HRS OPDRS job descriptions, Notice of Vacancy [NOV], long ad and short ad) **of the job announcement that will be published to fulfil DOL requirements, they must include all DOL required items.** There is no institutional or DOL requirement to have NOV, long and/or short ad; it is the hiring unit's choice. Long version of the job announcement (Notice of Vacancy and/or long ad) usually includes additional information about the university, the college, the school, the department, the academic program, employee benefits programs, and the local community to help applicants better understand the job opportunity, this information are not DOL required.
- **A short ad missing these DOL requirements with links to HRS website will NOT suffice.** Usually a long version (NOV and/or long ad) is posted on WSU website or other free/less costly sources, and short ad published in Chronicle of Higher Education or other costly national professional journal(s).
- **The job ad must be placed in at least one print ad or a web-based ad** (see "Advertisement Plan Requirements" below for details) **in a national professional/academic journal**, and all **other recruitment sources** that are commonly used.

Consequences if the job ad is deemed unacceptable by DOL

- The academic hiring unit cannot proceed to sponsor PR for the selected FN, who may have to leave the U.S. if exhausting the means to stay in the U.S. legally.
- **If** the academic hiring unit chooses to sponsor PR for the FN, the academic unit must conduct a full bona fide recruitment and selection process and retain recruitment documents that meet specific DOL requirements. In order to proceed with the PR sponsorship, the FN must be re-selected as more qualified than U.S. workers and within a reasonable timeframe of visa status stay to accommodate PR processing times.

Advertisement Plan Requirement

- **At least one job ad placed in a national professional journal. The academic hiring unit can place one print ad in a national professional journal. The Chronicle of Higher Education and many other national professional journals are accepted by DOL. The journal must be **nationally distributed and published** by a professional society, organization, or association in the discipline of the advertised position. When using a print publication, documentation must include an original job ad tear-sheet which includes the date of publication, title of publication as well as the full body of the job ad; **OR** place **an electronic or web-based advertisement in a national professional journal and contain the same information listed in the print advertisement**. The ad **must be posted for at least 30 calendar days on the journal's website**. Documentation must include **evidence of the start and end dates of the advertisement** and **the text of the advertisement**; for example, an invoice for the ad showing you paid for it to be **published for 30 days**. **Print the web-based job ads when they are published as they may be taken off from the web-sites after the job ads reach their publishing expiration dates.****
- DOL requires all other recruitment information besides the job ad placed in a national professional journal (i.e. the Chronicle of Higher Education). When the hiring unit publishes the job ad in other sources, i.e. WSU website, other national professional journals, keep documents of other recruitment information.
- **Application deadline:** at least 30 days after the date of the initial publication of the job advertisement in a national professional journal.

Advertisement Tips

Job title

State the **specific job title**. "Tenure-track faculty member" is not acceptable. If you are uncertain about the specific rank, include all possibilities: Assistant, Associate or Full Professor, depending on qualifications; in the job requirements and duties sections, list additional/different requirements for Associate and Full Professor. If hiring more than one position, the ad must state this, e.g. "multiple position openings," or "two position openings," etc.

Experience requirements

If listed in the advertisement, it **must be quantified in specific terms of months or years**. Do not say "Post-doctoral experience required" or "must be an experienced scientist." Suggested language is "at least two years of postdoctoral research experience is required." Additionally any experience gained by a FN employee while working at WSU will not be considered by DOL as acceptable toward fulfilling the experience requirements stated in the ad. He/she **must meet the experience requirements with experience gained prior to coming to work for WSU**. "**Experience**" means "**full-time paid work**" after having earned a college degree.

For **Assistant Professor**, this is usually entry level, experience may or may not be required. If the hiring unit requires experience, please specify, i.e. one year of post-doctoral experience required. See WSU Assistant Professor bench-mark at <http://hrs.wsu.edu/utills/File.aspx?fileid=7087> If it is difficult to specify the months of experience, consider replacing "experience" with expertise, skill, knowledge, ability, record, evidence, whichever is appropriate.

For **Associate Professor**, see WSU Associate Professor bench-mark at <http://hrs.wsu.edu/utills/File.aspx?fileid=7092> for experience requirement. Since Associate Professor is not entry level, months/years of experience is required.

For **Full Professor**, see WSU Full Professor bench-mark at <http://hrs.wsu.edu/utills/File.aspx?fileid=7114> for experience requirement. Since Full Professor is not entry level, months/years of experience is required.

Degree and specific field requirements must be stated

This is acceptable: Earned Ph.D. in [insert the field of study] or a closely related field by the date of hire. To DOL, “PhD or equivalent” means a foreign degree that is equivalent to a U.S. PhD.

A specific field of study must be listed, for example “PhD in chemistry or a related field.” If ad does not include “**or related field**,” the selected FN must possess a PhD in the **exact** field of study listed in the job ad in order to proceed with the PR sponsorship process.

ABD (all but dissertation) issues

A FN ABD who needs an employer’s H-1B and PR sponsorship is **not** eligible for a position that requires a PhD degree; such individual must have possessed the required PhD degree before he/she was hired into the position in order to be sponsored for H-1B and PR. Please know that it takes at least 3 months to process an H-1B with expedite processing from onset to adjudication (approval, denial or request for evidence), considering DOL, DOS, USCIS and internal processing times. Using the special handling Labor Certification procedure for college/university teachers for PR sponsorship purpose, **a FN ABD must be more qualified than U.S. workers – that means the employer cannot proceed to PR sponsorship if there were U.S. applicants who have possessed the required PhD degree.** Having possessed a PhD degree means a transcript showing the date the PhD degree was awarded/conferred and/or a PhD diploma. The common workaround for an ABD will not work for a FN ABD who needs to go through an immigration process.

Job location

State the **specific job location** since WSU is multi-campus, e.g. Pullman, Spokane, Vancouver, Tri-Cities, etc.

Type of job

State it is a **full-time tenured/tenure-track** position, as only permanent full-time college/university teacher positions are eligible for DOL Special Handling Labor Certification application procedure. Not all tenured/tenure-track positions are full-time.

Job duties

State **essential job duties and responsibilities, actual classroom teaching duties must be included**. Avoid ambiguous words like “Commitment to teaching,” “Participation in teaching,” “part of the instruction team,” etc. DOL requires elaboration of the topics the position will teach, e.g. “teach undergraduate/graduate courses in Electrical Engineering on topics of power systems analysis and Energy Systems.” Avoid words that may lead to a higher level position if this is an entry-level tenured-track Assistant Professor position, for example: “direct,” “administer,” “lead,” “supervise,” etc., which may bump up the DOL prevailing wage determination to a higher level than the offered salary; consider “advise,” “mentor,” “contribute,” “collaborate,” “participate,” “coordinate,” etc.

“Or” language

DOL considers the greater of these two options is the minimum requirement. For example: “must be board eligible or certified,” will be understood to mean “must be board certified.” Similarly, “must have a PhD and/or MD degree” will be interpreted as “must have both a PhD and MD degree.” **If alternate credentials are listed, the greater of the options will be considered the minimum requirement.** If degree requirement is “ABD or PhD” or “MA or PhD,” a FN candidate must possess the highest degree listed before the date of hire in order to proceed to the PR sponsorship process.

“And” language

If degree requirement is “PhD, MD and/or DVM before date of hire,” DOL may require the selected FN to possess **ALL** of the listed degrees before the date of hire in order to proceed to the PR sponsorship process.

Hire date, employment/appointment start date

DOL considers hire date as the date when the initial selection was made (job offer letter was issued), which is different from the institutional understanding that the hire date is the employment/appointment start date.

No salary or salary range in the advertisement

You may state that successful candidates will be expected to secure funding for their research, but do not imply that they must generate their own salary. Instead of “must generate at least 60% of income from grants,” you can say “will be expected to develop a grant-supported research program.”

Avoid preferred/desired/secondary qualifications in the ad

All qualifications listed in the advertisement will be considered as required by DOL, even if listed as “desired” or “preferred.” Only essential requirements for the position should be listed; extraneous preferences should not be listed in the ad. If they are included, they are treated as requirements by DOL and a **selected FN must possess them before the selection date.** Note: “Preferred qualifications” treated as requirements may bump up the prevailing wage determination to the next higher level, which means you may have to pay a higher wage than you planned or normally pay for an entry level position. **If you choose to list “preferred” qualifications in NOV/long Ad, it must be listed in the short ad as well, as the job requirements must match in all published job ads (NOV, long ad, short ad, or WSU OPDRS position descriptions).** The preferred qualifications section is usually the most troublesome, for Labor Certification purpose. It is important that there are no degree, experience, or licensure requirements within the preferred section because DOL considers them as minimum position requirements (since DOL allows the employer to proceed to PR sponsorship for an eligible FN who is more qualified than U.S. applicants in a permanent full-time university teacher position), even if they are listed under the preferred section of the ad.

Beware of “unduly restrictive” job requirement

Be prepared to document “business necessity.” Is “at least 5 years of post-doctoral experience” absolutely essential for the performance of the job? Is this level of experience required for all your new teaching faculty? DOL will probably consider an experience requirement of more than three years “unduly restrictive.” Requirements are unduly restrictive if they demand skills, knowledge, abilities, and conditions of employment which are not normally required to satisfactorily perform the job, or can only be obtained outside the U.S.

Template: Job Advertisement (short ad version)

The shade areas are samples, and should be replaced with the position specific information. This is the “short ad” version that includes specific DOL requirements. Long version of the job ad (such as Notice of Vacancy and/or long ad) can be built/expanded from the short ad with other additional information (not DOL required) you wish the applicants to know, such as the university, the college, the school, the department, the academic program, employee benefits, the local community, etc.; please also consult with your EEO representative and/or personnel staff to meet other applicable institutional and/or government requirements.

Position description: The Department/School of **Engineering** [insert the name of your hiring unit] at Washington State University in **Pullman** [insert the job location], WA invites applications for a [if hiring more than one position, state “multiple openings,” or “two position openings,” etc.] permanent full-time tenure-track position with **9** month **academic** appointment as an **Assistant Professor** [insert the specific job title] to begin on **August 16, 2015**.

Requirements: Earned PhD in **Engineering** [insert the specific field of study] or a closely related field prior to the hire date, **demonstrated specialization in ... , minimum one year experience of post-doctoral research, and knowledge of** [insert other requirements, i.e. special skills, knowledge, experience, etc.].

Duties: Teach undergraduate/graduate courses on topics of **...** [insert the topics of classes taught]; conduct research in **...** and participate in service activities **...** [insert the applicable essential job duties for this position.]

Application: Applicants must submit a cover letter summarizing qualifications, research and teaching statements, curriculum vitae, and contact information of at least three references [insert what to submit] and apply on-line at www.wsujobs.com/ [insert how to apply] Complete applications must be received by December 31, 2014. For questions, **email inquiries to Dr. John Doe, Search Committee Chair, at john.doe@wsu.edu** [insert means to contact]

WSU is an EEO/AA educator and employer [institutional requirement].

Sample: Tenured/tenure-track teaching faculty job advertisement (short ad version)

The Department of Engineering, College of Engineering, Washington State University in Pullman, WA invites applications for a permanent full-time tenure-track 9 month academic appointment position as Assistant Professor to begin on August 16, 2015.

Duties: Teach undergraduate/graduate courses on topics of ..., publish in academic journals in engineering or closely related fields, and serve on committees or otherwise provide services to the university as needed.

Requirements: Earned PhD in engineering or a closely related field prior to the hire date; minimum one year experience of post-doctoral research; record of submissions and publications, demonstrated ability to publish in top tier academic engineering journals and a desire to take an active role working with doctoral students. Preferred qualifications: Primary teaching interest in ... engineering and evidence of a secondary teaching interest in an additional area of engineering.

Applications: Submit: 1) Letter of Application, 2) Curriculum Vitae, 3) an example of scholarly work, and 4) three letters of recommendation with contact information. The application materials must be submitted online at: www.wsujobs.com. Finalists will be required to submit a summary of their student evaluations. Review of applications will begin November 30, 2014, and will continue until the position is filled. Questions regarding the position should be directed to Professor & Department Chair, John Doe, (509-335-9999, john.doe@wsu.edu).

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