STUDENT LIFE
INTERNATIONAL CENTER
UNIVERSITY OF MICHIGAN

**Faculty & Staff Immigration Services**

April 2, 2019

Mr. Thomas M. Dowd
Deputy Assistant Secretary
Employment & Training Administration
U.S. Department of Labor
200 Constitution Ave, N.W.
Box PPII 12-200
Washington, DC 20210

RE: Comment Request for Information Collection for Form ETA–9141, Application for Prevailing Wage Determination

Submitted via email: ETA.OFLC.Forms@dol.gov

Dear Mr. Dowd -

I am the Assistant Director for Faculty and Staff Immigration Services at the International Center on the Ann Arbor campus of the University of Michigan. I am submitting these comments on behalf of the University in response to the proposed changes to the Form ETA 9141, or Application for Prevailing Wage Determination (PWD), published in the Federal Register, Vol 84, No. 29, Feb. 12, 2019, pp 3494-3495. The University of Michigan is a large public university with more than 60,000 regular and temporary employees working in higher education, health care and research across Michigan. Of these employees, approximately 700 are H-1B status holders; several more hold H-1B1 and E-3 status. Each year, we also file a significant number of Labor Certifications for green card applications for our employees. For each H-1B petition, H-1B1 and E-3 application and/or Labor Certification, a PWD is required. We obtain a substantial portion of these PWDs from the Office of Foreign Labor Certification (OFLC); since the start of the decade, the University of Michigan has obtained in excess of 1,000 PWDs, or, on average, more than 100 each year. As such, the proposed changes to the PWD application form have a direct and significant impact on the University. Therefore, we appreciate the opportunity to comment on the proposed changes.

We are supportive of the stated goals of these changes, namely to "better align information collection requirements with the Department's current regulatory framework, provide greater clarity to employers on regulatory and procedural requirements, standardize and streamline information collection to reduce the employer's time and burden when preparing applications, and promote greater efficiency and transparency in prevailing wages determinations [... and to] provide more precise explanations of terminology to ensure the form is properly completed."

Some of the proposed changes, such as (1) clarifying under which provision an employer may be covered by ACWIA, (2) enumerating the special skills or other requirements, and (3) allowing for the usage of the full eight-digit SOC/O*Net code, generally achieve this goal. However, some additional clarifications and/or changes would be helpful. Therefore, we propose the following amendments:

1. Section E: the header above question E.4 directs employers to indicate the wage source type "[for] non-OES requests." However, the listed options do not include Collective Bargaining Agreements (CBA) or Professional Sports League Rules or Regulations, which are listed above the header. It would be helpful if this header could be amended to clarify that it only applies to "non-OES requests" that are not covered by a CBA or Professional Sports League Rules or Regulations or to include both those options in question E.4 as a source type.

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2. Section F.a.2 (job duties) requires a description of all job duties to be performed. However, despite the limited space on the form, it is stated that "[separate] attachments will not be accepted." The current version of the form allows for a 4,000 character response and also states that the job description must *begin* in the response section. To ensure employers may provide sufficiently detailed job descriptions on the proposed form, please ensure that the allowable character count is not decreased.

3. Section F.a.3.a: The instructions for the Form ETA 9141 indicate that, for the employees to be supervised, both the SOC code and job title should be provided. While the reason for inclusion of this question is clear – does the supervision merit the addition of a wage level – it is not clear who is to determine the appropriate SOC code for each supervised employee. Considering the limited nature of the BLS SOC code universe, especially in the ACWIA context, it is entirely reasonable to conclude that different SOC codes may be deemed appropriate for a given position; asking employers to affirmatively state the SOC code for the positions supervised is problematic. Instead, it would be helpful if the form instructions were amended to allow for either a job title/occupation name only, akin to ETA Form 9089 or to request a "suggested" occupational code. This can be accomplished by changing the instructions from "i.e., SOC code and title," to "e.g., SOC code and title."

4. Section F.b.5 enumerates the various required special skills or other requirements that may exist for the job opportunity. This is a helpful addition, as is the guidance in the form instruction that experience listed elsewhere under the minimum job requirements should not be duplicated in this section. However, this section is only provided under the standard minimum job requirements, not the alternative job requirements (section 5.c). The form instructions clarify that the special skills and requirements section "will be included in the wage determination with the alternative requirements." In other words, the proposed form assumes that a special skill or requirement will always be a requirement, regardless of the permutation of (alternative) requirements. However, a special skill or requirement may only be an additional skill or requirement in combination with a minimum job requirement, but not with an alternative job requirement. For example, an employer may indicate that a Bachelor's degree in a given field together with a relevant license is the minimum requirement when the alternative requirement may be a Master's degree in the same field but without the license. The current iteration of the proposed form does not allow for this distinction. Therefore, it would be helpful if section F.b.5 could be duplicated under the alternative job requirements.

5. Sections F.d.4 request information regarding required international travel. DOL indicates in its February 6, 2013 FAQ that addresses required travel, that "extensive travel outside the local area is not normal to most occupations and a point is almost always added in such circumstances." [1] To determine whether the required travel merits a higher wage level assignment, the frequency and extent of travel, i.e. distinguishing between incidental travel (which could be further defined in the form instructions) and frequent travel beyond the work locations already specified in Appendix A should be sufficient. Whether or not the required travel may be international in nature is not pertinent to the prevailing wage determination. Therefore, I suggest deleting question F.d.4.

6. Section F.d.5 (need for relocation): There appears to be no regulatory basis for this question. As such, it is not clear why this question is included on the proposed form. If the question must be included, the term "relocation" should be clarified in the form or in the instructions to ensure that the question is interpreted and answered correctly by employers. It is entirely conceivable that a prospective employee would have to relocate to the employer's location in order to accept the position, but that the job itself does not require that an individual relocate to perform the duties of the position.

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[1] How does the NPWC decide when to assign a "Special Skills and Other Requirements" point when determining the wage level? [...]A travel requirement can occasionally lead to an additional point for wage level determinations. Almost all occupations have some expectation of incidental travel associated with them. Incidental travel for training and development is considered normal for all occupations depending on the geographic scope of the travel. Typically, those in professional occupations attend these types of events nationally, but other occupations may be limited to local and regional events. Therefore, a point may be added, depending on the occupation and the scope of the travel. In addition, some occupations have travel outside of training and development in performance of the job duties. However, extensive travel outside the local area is not normal to most occupations and a point is almost always added in such circumstances. [...] February 06, 2013 <https://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#q!581>

7. Section G.4 (requirements used as the basis of the PWD): the instructions for the form indicate that the PWD will be based on minimal requirements or alternative requirements, whichever results in a higher wage determination. However, in a June 21, 2012 FAQ[2], OFLC indicates that it will not consider the alternative requirements and, instead, will base its wage determination on the minimum requirements. The proposed form instructions indicate the exact opposite will occur. Please ensure consistency between the FAQ guidance and the form instruction.

Clarifying the PWD language as discussed above will have a significant impact on the university as well as the larger regulated community. The University therefore requests that the Office of Foreign Labor Certifications consider changing the proposed form, as suggested. The University of Michigan thanks the OFLC for the opportunity to comment on this proposed change.

Sincerely,

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[2] Must I list alternative job requirements on the ETA Form 9141? Is there a section on the ETA Form 9141 where I can list the alternative requirements? If an employer intends to accept alternative job requirements and to list such requirements on the ETA Form 9089, the employer must list its alternative job requirements on the ETA Form 9141. Specifically, the employer should list its alternative job requirements in either the Special Requirements block (D.b.5) or the Job Duties block (D.a.6) of the ETA Form 9141. This is to reflect a line of BALCA decisions affirming our ability to require the same information on the job opportunity on both forms.

It should be noted, as will be indicated in a note on the prevailing wage determination, that the NPWC will not consider the alternative job requirements when making the wage determination; prevailing wage determinations will be based ONLY on the job requirements listed by the employer in the Minimum Requirements block (D.b) of the ETA Form 9141. Nor does the NPWC make any evaluation of the substantial equivalence of the alternative job requirements to the primary minimum job requirements listed. That evaluation will continue to be made in the adjudication of the Application for Permanent Employment Certification. < https://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#q!574>