

**Prevailing Wage Policy for Researchers Employed by  
Colleges and Universities, College and University Operated  
Federally Funded Research and Development Centers, and  
Certain Federal Research Agencies**

**I. Background**

Section 656.40(c) of the Department of Labor's (Department's) regulations governing the alien labor certification program provides that:

*Similarly employed* in the case of researchers employed by colleges and universities, Federally Funded Research and Development Centers (FFRDC's) operated by colleges and universities, and Federal research agencies, means researchers employed by colleges and universities, FFRDC's operated by colleges and universities, and Federal research agencies . . . .

Thus, in the absence of an applicable wage determination issued under the Service Contract Act or set forth in a collective bargaining agreement, the prevailing wage rate for researchers employed by a college or university, an FFRDC operated by a college and university, or a Federal research agency which has successfully petitioned the Director of the U.S. Employment Service to obtain the benefit of the prevailing wage methodology provided by §656.40(c) [hereinafter referred to as "an approved Federal research agency(ies)"], is the average rate of wages paid to such workers in the area of intended employment.

These changes, which were made to the regulations at §656.40, became effective on May 4, 1998. Since these regulations govern all prevailing wage determinations other than the H-2A program, this guidance applies to the way State Employment Security Agencies (SESAs) will make determinations of prevailing wages under permanent alien labor certification program as well as the H-1B program for nonimmigrant professionals in specialty occupations.

**II. Occupational Categorization of Workers in an Academic Discipline Under the OES Wage Survey**

The only workers subject to these special procedures are those employees performing research relating to the occupation in which they are employed by a college or university, FFRDC operated by a college or university, or an approved Federal research agency.

The occupational categories for which the OES survey provides wage information that is to be used in providing prevailing wage data for

researchers employed by such employers can be identified by the designation “R&D” within the occupational category in the OES Directory of Occupations. See Attachment B for a list of R&D disciplines in colleges and universities under the OES survey.

The OES survey breaks out workers employed by institutions of higher education according to the nature of the work they perform. For example, research chemists who perform complex research pertaining to the field of chemistry and are employed by an employer to which the special procedures at §656.40(c) apply would fall under the occupational category 24130, Physical Scientists, R&D.

Employees who teach courses for a college or university fall under the OES occupational category applicable to the appropriate academic discipline. Using the example from above, the appropriate occupational category to be applied would be 31204, Chemistry Teachers, Postsecondary.

Employees who are working in a particular academic discipline but are neither teaching at the Postsecondary level nor conducting research for a college or university, an FFRDC operated by a college or university, or an approved Federal research agency, would fall under the basic OES occupational category for that discipline. In keeping with the example from above, the appropriate occupational category to be applied would be 24105, Chemists.

### **III. Use of Employer-Provided Published Wage Surveys or Employer-Conducted Surveys**

Item II.J. of GAL 2-98 sets forth the standards for the acceptability of employer-provided wage data. The fifth criterion contained in Item II.J., which requires that employer-provided wage data must have been collected across industries that employ workers in the occupation, shall not apply in the case of a request for acceptance of employer-provided wage data for a researcher to be employed by a college or university, an FFRDC administered by a college or university, or an approved Federal research agency. In lieu of this, to support the fifth criterion in Item II.J., the employer-provided wage data must include a representative sample of researchers employed by colleges and universities, FFRDC’s administered by colleges and universities, and approved Federal research agencies in the area of intended employment.

The other six criteria contained in Item II.J. must be adhered to for employer-provided wage data to be acceptable for use in determining the prevailing wage for a researcher to be employed by an employer under the special procedures outlined at §656.40(c).

### **IV. Responses to Requests for Wage Determinations for Researchers Employed by Colleges and Universities, FFRDC’s Operated by Colleges and Universities and**

### **Approved Federal Research Agencies**

Item II.I. of GAL 2-98 sets forth the information that must be provided by an employer in requesting a prevailing wage determination. If it is not otherwise self-evident, a request for a prevailing wage determination for a researcher to be employed by a college or a university, an FFRDC operated by a college or a university, or an approved Federal research agency, should clearly indicate that the employer is seeking prevailing wage data under the special procedures that apply to such workers.

The SESA's response shall state the specific wage rate applicable to the employer's job opportunity, the source of such information, and shall indicate the OES occupational title followed by the designation "R&D" and Level (*e.g.*, "Life Scientist, R&D, Level I") so that it is clear that the determination was made in accordance with the special procedures outlined at §656.40(c).