



March 21, 2005

MEMORANDUM

TO: Human Resource Representatives for Academic Divisions

FROM: Deborah Ahlstedt, Director, International Faculty and Staff Services
Stephen Lund, Director, Academic Personnel Office

RE: Postdoctoral Fellows/Trainees on H-1B Status

We write to alert you to a required change in university practice to comply with immigration and tax laws and regulations.

Until now, we have allowed international scholars with Postdoctoral Fellow and Postdoctoral Trainee titles to hold H-1B status. Effective immediately, persons newly appointed to these titles must hold J-1 status.

As you may know, J-1 status is intended for scholars, while H-1B status is intended for employees. Postdoctoral Fellows/Trainees are, of course, scholars and not employees for tax and immigration purposes. Consequently, persons holding those appointments must have J-1 status. Postdoctoral Fellows/Trainees cannot appropriately be in H-1B status.

Working with the Graduate School, Employee Compensation & Benefits Services and Administrative Legal Services, we determined the following practices that need to be implemented, effective immediately, for new and current international Postdoctoral Fellows/Trainees.

New International Postdoctoral Fellows/Trainees

All future Postdoctoral Fellows/Trainees will have to come to the U.S. with J-1 status. If they are currently in the U.S. in another status (e.g., a Research Associate in H-1B status at UW-Madison) and receive a fellowship or traineeship offer, they will have to change to J-1 in order to start the fellowship. This requirement will be set forth in the Graduate School's sample appointment letter to Research Associates. The letter will also state that international postdocs who are unable to hold the J-1 status are ineligible for Postdoctoral Fellow/Trainee awards.

Current International Postdoctoral Fellows/Trainees on H-1B Status

Current* Postdoctoral Fellows/Trainees on H-1B status will be grandfathered as follows.

1. If the individual has not yet used up his/her 3 years in J-1 status, the individual will have to change from H-1B to J-1 as soon as possible, but no later than November 30, 2005 (current USCIS processing time, always subject to change without any notice, is 1.5 - 2 months).
2. If the individual does not have time left on the J-1, then he/she will be allowed to continue as a Postdoctoral Fellow/Trainee on H-1B status until November 30, 2005 (the last month in the 2004 tax year; the stipend for December is paid on January 1, in the 2006 tax year).

As of December 1, 2005, the individual cannot remain a Postdoctoral Fellow/Trainee on H-1 status. There are two choices.

- ◆ The individual's title may be changed to Research Associate (an employee title that is compatible with H-1B status) if the funding agency will allow this as an exception. A written request, co-signed by RSP staff, should be submitted to the agency (please consult with Bob Andresen in RSP for help with this letter). Should the agency approve of the use of an employee title, please ensure that a copy of their response is on file at RSP and with the human resources person in your dean's office prior to initiating the Research Associate appointment. You should note that the Research Associate title has a higher fringe benefit rate because it is an employment title. If the increased rate cannot be paid from the agency's funds, the difference is the responsibility of the PI.
- ◆ If the PI is not willing to change the individual's title to Research Associate or the funding agency refuses to permit the person to be treated as an employee, the person will have to give up the fellowship as of December 1, 2005. Please note that federal law requires the employer of a person on H-1B status to pay for the individual's transportation costs back to his/her home country if appointment ends prior to the end date listed on the H-1B approval notice (I-797). This requirement applies to this situation.
- "Current" Postdoctoral Fellows/Trainees include both those who currently hold a fellowship or who have received an offer but have not yet started it. There are currently 13 Postdoctoral Fellows/Trainees on H-1B status (see attached) – in the following divisions: CALS, Engineering, L&S, Medical School and Pharmacy. Please identify other internationals who have received and accepted Postdoctoral Fellowships or Traineeships, but have not yet started and send their names and status situation to Deborah Ahlstedt.

Deborah Ahlstedt is more than willing to work with you on the visa implications for these people. Please do not hesitate to contact her.

Ahlstedt/Lund

3/21/05

Page 3

We certainly realize that these requirements will pose great difficulties for PIs and individual postdocs. While we regret those difficulties, we have no choice but to follow federal tax and immigration law.

Please feel free to contact either of us if you have any questions or concerns.

xc: Robert Andresen, Research and Sponsored Programs
Ben Griffiths, Administrative Legal Services
Deb Holm, EC&BS
Julie Karpelenia, Graduate School
Kim Moreland, Research and Sponsored Programs
Petra Schroeder, Graduate School