April 4, 2007

TO: Faculty Council

FROM: Professor Kathleen Payne, Chairperson

University Committee on Faculty Tenure

SUBJECT: Tenure and Permanent Residency Status

Currently the MSU Tenure Policy (Operating Principle #7) permits the award of tenure only to foreign nationals with permanent resident status (see Granting Tenure: MSU Faculty Handbook). It is proposed to modify the MSU operating principle to permit tenure to be awarded to foreign nationals without permanent resident status (see attachment A for proposed amendment of principle #7 and related commitment letters).

History: Because of employment competition, especially cases in which already recruited MSU faculty who have Green Card applications pending and have met internal standards for promotion and tenure, this operating principle is problematic in some cases. Current practice is to inform such individuals that they have met standards for tenure, but their probationary appointment will be extended until citizenship or permanent residency has been achieved. Faculty who would have initially been appointed with tenure can only be offered fixed term appointments while awaiting permanent resident status. More stringent Homeland Security processing requirements in a post 9/11 world have resulted in application processing delays in recent years.

Competition from other universities: As noted in the survey of CIC (BIG Ten) universities and other AAU universities, some follow the MSU practice, others approve tenure on an exceptions basis, while others approve granting tenure without citizenship or permanent residence status as a normal practice (see attachment B). In some cases foreign nationals who are MSU professors have been recruited away by other universities. Moreover, as labor market competition grows there is some evidence that other universities are providing tenured status without permanent residency status.

MSU review of policy: In summer 2006, an internal review of this aspect of the tenure policy was initiated within MSU. Department chairpersons and school directors were surveyed about the desirability of amending the MSU tenure policy. More than 60 responded and all endorsed the change.

On October 24, 2006, while noting that advice on changes in tenure policy was within the purview of the University Committee on Faculty Tenure (UCFT), the University Committee on Faculty Affairs endorsed the proposed policy change in principle.
In calendar 2007, the UCFT endorsed the policy change in principle and also endorsed on March 28, 2007 language modifying principle #7 of the tenure operating principles as well as the language of commitment agreement (see attachment A).

Peter Briggs, the MSU Foreign Student and Faculty Advisor and the Office of the General Council, advised on/drafted the policy change language as well as the model agreements, taking into account the UCFT discussion.

**Policy changes and background information:** UCFT moves to modify the language of operating principle #7 of the tenure policy, to the language appearing in attachment A. Attention is called to two model agreements; the first concerning current foreign nationals to be considered for tenure while employed at MSU; and a second agreement concerning individuals to be appointed at MSU with immediate tenure. These model agreements have been reviewed and endorsed by UCFT; with the understanding that consultation will concur with the UCFT in light of any changes needed based on experience.

These agreements have the following provisions/characteristics:

- The arrangements codified in these agreements are not in conflict with immigration law and regulations.
- Once signed, the university is protected against the need to use its regular termination procedure in the event a faculty member is refused permanent residency status and has to leave the country.
- On a mutually agreeable basis, leaves of absence may be implemented and extended to permit permanent resident status to be achieved.
- Both the university and faulty member are pledged to commit to implement the necessary paperwork to complete a permanent residency application.
- If either party chooses not to sign the letter of agreement, current policy/practices described previously still apply.
- Only the provost or designee can enter into such agreements. Access to such agreement is not automatic as such is considered as an exception to the tenure policy. The Office of the Provost is committed to fair and even handed implementation of the policy.

UCFT believes that this policy change will enhance the quality of MSU by aiding in the recruitment and retention of high quality foreign-born faculty.

jke

Enclosure: Attachment A
Attachment B

C: Kim A. Wilcox, Provost
OPERATING PRINCIPLES OF THE TENURE SYSTEM

7. A Foreign National holding non-immigrant status may be appointed within the tenure system; however, he/she may not be appointed with tenure unless (a) he/she has acquired permanent resident status or U.S. citizenship or (b) he/she enters into and complies with the terms of a Faculty Tenure Policy Exemption Agreement approved by the Provost.

1 In those situations where the Foreign National chooses not to execute a Faculty Tenure Policy Exemption Agreement but has otherwise been endorsed by the Provost as having met all of the requirements for promotion and tenure, he/she will be placed on a fixed term appointment or have his/her appointment period extended on an annual basis, whichever is appropriate, until permanent resident status or U.S. citizenship is granted, at which time a tenure recommendation will be made to the Board of Trustees.
FACULTY TENURE POLICY EXEMPTION AGREEMENT: CURRENT FACULTY

WHEREAS ________________ ("Faculty Member") currently holds a tenure system appointment at Michigan State University and has been successfully reviewed for promotion with the award of tenure or for reappointment with the award of tenure this academic year;

WHEREAS Faculty Member holds a non-immigrant visa which entitles him/her to reside and work in the United States on a temporary basis;

WHEREAS the University’s Operating Principles of the Tenure System provide that foreign nationals holding non-immigrant visas shall not be given indefinite appointment with tenure unless they have acquired permanent resident status or U.S. citizenship (“faculty tenure policy”);

WHEREAS Faculty Member has officially initiated the process for applying for permanent residency; and

WHEREAS Faculty Member seeks to obtain an exemption from the above-referenced faculty tenure policy;

WHEREAS such an exemption may be granted only if Faculty Member complies with the conditions set forth in this Faculty Tenure Policy Exemption Agreement ("Agreement”);

NOW THEREFORE Faculty Member and Michigan State University ("University") agree as follows, effective ________________:

1. Except as otherwise specifically set forth in this Agreement, Faculty Member is subject to all policies applicable to tenure system faculty in Faculty Member’s unit, including access to the Faculty Grievance Procedure to appeal an administrative decision not to reappoint a non-tenured faculty member in the tenure system. In amplification and not in limitation of the foregoing, Faculty Member’s application for reappointment or promotion with tenure was reviewed pursuant to the same criteria and standards that are applicable to all other candidates for reappointment or promotion with tenure in Faculty Member’s unit.

2. Faculty Member will notify his/her dean or separately reporting director in writing within five (5) days of learning of any governmental action that may adversely affect his/her status as being legally authorized to work for the University, including but not limited to: (a) denial of Faculty Member’s petition for permanent resident status; (b) failure to obtain an extension of Faculty Member’s non-immigrant visa; or (c) expiration of Faculty Member’s visa or work permit.

3. Faculty Member represents and warrants that he/she is legally authorized to work for the University in the United States. This is a continuing representation and warranty. If, for any reason, at any time during Faculty Member’s employment at the University, regardless of Faculty Member’s tenure status, Faculty Member is not legally authorized to work in the United States, Faculty Member (a) will immediately inform his/her dean or separately reporting director, and (b) agrees that he/she will be placed on an unpaid leave of absence until Faculty Member is legally authorized to resume work at MSU.
4. Faculty Member acknowledges that placing Faculty Member on an unpaid leave of absence pursuant to paragraph 3(b) of this Agreement is not disciplinary action and may not be challenged as disciplinary action pursuant to the Faculty Grievance Procedure.

5. Faculty Member agrees that if he/she is not legally authorized to resume work within one calendar year following placement on a leave of absence described in paragraph 3(b) above, Faculty Member’s employment with the University will be terminated effective immediately. Faculty Member agrees that, in exchange for being granted an exception to the faculty tenure policy, any such termination under this paragraph is not subject to the Dismissal of Tenured Faculty for Cause Policy and Faculty Member waives his/her rights to challenge the termination under any university policy or procedure.

6. In exchange for the commitments made in this Agreement, Faculty Member is granted an exemption from the faculty tenure policy requiring permanent resident status or U.S. citizenship before tenure may be awarded.

7. The University and Faculty Member will participate in the permanent residency process in good faith, including the timely submission of all necessary paperwork.

8. Any questions or disputes raised by the Faculty Member regarding the interpretation of this Agreement will be addressed or resolved by the Provost or his/her designee.

9. By accepting and agreeing to the terms and conditions of this Agreement, Faculty Member (a) waives and releases and (b) covenants not to sue, grieve, or otherwise bring a complaint against University, its Trustees, directors, officers, employees, and/or agents, in their individual and/or official capacities, with respect to any and all claims and actions arising out of the interruption or termination of Faculty Member’s employment pursuant to paragraphs 3-5 above.

10. Faculty Member acknowledges that he/she has read and understands this Agreement, that he/she has had adequate time to consider this Agreement and discuss it with his/her attorneys and advisors, that he/she understands the consequences of entering into this Agreement, that he/she is knowingly and voluntarily entering into this Agreement, and that he/she is competent to enter into this Agreement. This Agreement is to be interpreted as being jointly negotiated and drafted.

11. This Agreement shall be interpreted in accordance with the laws of the State of Michigan.

12. If any provision of this Agreement is determined to be unenforceable, the remainder of this Agreement shall not be affected, but each remaining provision shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

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2 This time period may be extended for good cause by mutual agreement of the parties. Any such agreement must be in writing and approved by the Provost.
FACULTY MEMBER:

By my signature below, I represent that I have read the foregoing Faculty Tenure Policy Exemption Agreement and I agree to be bound by the terms of such Faculty Tenure Policy Exemption Agreement.

_____________________________________   Date: __________________

MICHIGAN STATE UNIVERSITY

By: __________________________________   Date: _________________

Kim Wilcox, Ph.D.
Provost
FACULTY TENURE POLICY EXEMPTION AGREEMENT: PROSPECTIVE FACULTY

WHEREAS ________________ (“Faculty Member”) has been recommended for a faculty appointment with tenure at Michigan State University;

WHEREAS Faculty Member holds a non-immigrant visa which entitles him/her to reside and work in the United States on a temporary basis;

WHEREAS the University’s Operating Principles of the Tenure System provide that foreign nationals holding non-immigrant visas shall not be given indefinite appointment with tenure unless they have acquired permanent resident status or U.S. citizenship (“faculty tenure policy”);

WHEREAS Faculty Member has officially initiated the process for applying for permanent residency; and

WHEREAS Faculty Member seeks to obtain an exemption from the above-referenced faculty tenure policy;

WHEREAS such an exemption may be granted only if Faculty Member complies with the conditions set forth in this Faculty Tenure Policy Exemption Agreement (“Agreement”);

NOW THEREFORE Faculty Member and Michigan State University ("University") agree as follows, effective ________________:

13. Except as otherwise specifically set forth in this Agreement, Faculty Member is subject to all policies applicable to tenure system faculty in Faculty Member’s unit. In amplification and not in limitation of the foregoing, Faculty Member’s application for employment was considered pursuant to the same criteria and standards that are applicable to all other candidates for employment in Faculty Member’s unit.

14. Faculty Member will notify his/her dean or separately reporting director in writing within five (5) days of learning of any governmental action that may adversely affect his/her status as being legally authorized to work for the University, including but not limited to: (a) denial of Faculty Member’s petition for permanent resident status; (b) failure to obtain an extension of Faculty Member’s non-immigrant visa; or (c) expiration of Faculty Member’s visa or work permit.

15. Faculty Member represents and warrants that he/she is legally authorized to work for the University in the United States. This is a continuing representation and warranty. If, for any reason, at any time during Faculty Member’s employment at the University, regardless of Faculty Member’s tenure status, Faculty Member is not legally authorized to work in the United States, Faculty Member (a) will immediately inform his/her dean or separately reporting director, and (b) agrees that he/she will be placed on an unpaid leave of absence until Faculty Member is legally authorized to resume work at MSU.

16. Faculty Member acknowledges that placing Faculty Member on an unpaid leave of absence pursuant to paragraph 3(b) of this Agreement is not disciplinary action and may not be challenged as disciplinary action pursuant to the Faculty Grievance Procedure.
17. Faculty Member agrees that if he/she is not legally authorized to resume work within one calendar year\(^3\) following placement on a leave of absence described in paragraph 3(b) above, Faculty Member’s employment with the University will be terminated effective immediately. Faculty Member agrees that, in exchange for being granted an exception to the faculty tenure policy, any such termination under this paragraph is not subject to the Dismissal of Tenured Faculty for Cause Policy and Faculty Member waives his/her rights to challenge the termination under any university policy or procedure.

18. In exchange for the commitments made in this Agreement, Faculty Member is granted an exemption from the faculty tenure policy requiring permanent resident status or U.S. citizenship before tenure may be awarded.

19. The University and Faculty Member will participate in the permanent residency process in good faith, including the timely submission of all necessary paperwork.

20. Any questions or disputes raised by the Faculty Member regarding the interpretation of this Agreement will be addressed or resolved by the Provost or his/her designee.

21. By accepting and agreeing to the terms and conditions of this Agreement, Faculty Member (a) waives and releases and (b) covenants not to sue, grieve, or otherwise bring a complaint against University, its Trustees, directors, officers, employees, and/or agents, in their individual and/or official capacities, with respect to any and all claims and actions arising out of the interruption or termination of Faculty Member’s employment pursuant to paragraphs 3-5 above.

22. Faculty Member acknowledges that he/she has read and understands this Agreement, that he/she has had adequate time to consider this Agreement and discuss it with his/her attorneys and advisors, that he/she understands the consequences of entering into this Agreement, that he/she is knowingly and voluntarily entering into this Agreement, and that he/she is competent to enter into this Agreement. This Agreement is to be interpreted as being jointly negotiated and drafted.

23. This Agreement shall be interpreted in accordance with the laws of the State of Michigan.

24. If any provision of this Agreement is determined to be unenforceable, the remainder of this Agreement shall not be affected, but each remaining provision shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

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\(^3\) This time period may be extended for good cause by mutual agreement of the parties. Any such agreement must be in writing and approved by the Provost.
FACULTY MEMBER:

By my signature below, I represent that I have read the foregoing Faculty Tenure Policy Exemption Agreement and I agree to be bound by the terms of such Faculty Tenure Policy Exemption Agreement.

_____________________________________   Date: __________________

____________________

MICHIGAN STATE UNIVERSITY

By: __________________________________   Date: __________________

____________________

Kim Wilcox, Ph.D.
Provost
## Tenure & Immigration Status

Would your institution ever confer tenure on a foreign national who is in legal H-1B state and has a pending, but not yet approved, petition for legal permanent residency?

<table>
<thead>
<tr>
<th>University</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>University of Illinois, UC</td>
<td>We do not have such a restriction on this campus regarding tenure. It is not unusual for one of our international tenure-track faculty to be granted tenure before the green card process is complete. We also sometimes bring a faculty member to campus into a tenured position with H-1 status.</td>
</tr>
<tr>
<td>OSU</td>
<td>It is not legal to grant tenure to an individual who is neither a US citizen nor a permanent resident. Ohio State explicitly states in its handbook that candidates can be reviewed and approved for tenure, but that granting tenure is contingent upon obtaining permanent residency status.</td>
</tr>
<tr>
<td>Iowa</td>
<td>We don't have a written rule on the visa question, but I am not aware of tenure being conferred under those circumstances. We might do it, but only with a separate written agreement with the faculty member laying out conditions for what would happen if legal residency did not happen.</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>We do allow H-1Bs to hold a tenured position, provided they have sufficient time to obtain permanent residency before their maximum time in H-1B status would expire. The H-1B normally is limited to six years (there are a few exceptions for people who are at a certain place in the PR process). If the person still has several years on the H, then tenure is no problem. However, if they already are into the sixth year and nothing has been started on the PR, then we would hold the tenure up until we could either get PR or at least an Employment Authorization Document which they can get after certain parts of the PR process have been completed.</td>
</tr>
<tr>
<td>Penn State</td>
<td>Penn State has brought foreign nationals in with immediate tenure (as well as in tenure track positions) who have valid H1B visas even though their permanent residency applications have not yet been approved.</td>
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<tr>
<td>Northwestern</td>
<td>For newly tenured people, we have generally said that your receipt of tenure will be complete if – and only if – you receive permanent residency with x number of years. That is, the notification of the approval of tenure is conditional. We have a case like this currently in a school where a faculty member must return to Europe for two years before becoming “legal” here. For senior hires from abroad, we say that continued membership on the faculty is of course dependent upon continuity of ability to work in the USA. We have not yet had to test this matter.</td>
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<tr>
<td>Institution</td>
<td>Policy Description</td>
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<tr>
<td>U of Illinois - Chicago</td>
<td>The Office of International Services typically receives requests for employment-based permanent residency from departments who have hired tenured-track faculty in H-1B non-immigrant status. The office has, however, processed a few requests where the appointment was marked tenure and the beneficiary was currently on H-1B status and we only received the request for sponsorship.</td>
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<tr>
<td>Michigan</td>
<td>We have on occasion granted tenure to someone who has applied for but not yet received permanent residency status. Usually it is just a matter of the processing period and no significant issues of approval seem to be apparent.</td>
</tr>
<tr>
<td>Michigan State University</td>
<td>Award tenure only to US citizens or permanent residents</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Normally do not grant tenure to faculty on non-immigrant visas, but case by case exemption may be approved.</td>
</tr>
<tr>
<td>Purdue</td>
<td>Purdue does not confer tenure to individuals who do not hold legal permanent residency.</td>
</tr>
<tr>
<td>Indiana</td>
<td>Award tenure only to US citizens or permanent residents</td>
</tr>
<tr>
<td>University of Chicago</td>
<td>The University of Chicago does not give tenure to foreign nationals until they obtain a green card.</td>
</tr>
</tbody>
</table>

Replies from Harvard, Stanford, UC Berkeley, Maryland, Cornell, Texas, NYU, Washington, all confer tenure as a separate decision from anything with the visa. Of those inquired, only Nebraska follows the MSU practice.