

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** Sponsorship of Employee Permanent Resident Applications

**NUMBER:** 4.1.8

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### **A. PURPOSE**

To outline provisions for employment based permanent residency to support recruitment and retention of the most qualified candidates while ensuring legal compliance, responsible use of state resources and consistent employee experience.

### **B. DEFINITIONS**

- 1. Lawful Permanent Resident:** A person who has been granted the right to live in the United States indefinitely. Permanent residence includes the right to work in the United States either through most employers or self-employment. Permanent residents continue to hold citizenship of another country.

### **C. POLICY**

#### **1. Position Eligibility for Employer Sponsorship**

- 1.1. Eligible Positions – Permanent residency applications may only be authorized for persons holding certain positions.
  - 1.1.1. Professorial Rank, Tenured or Tenure-Track Positions with assigned responsibilities for classroom instruction; provided that the applicant has been in the position for at least one academic semester, holds an advanced degree and may be deemed to be the best qualified person for that position.
  - 1.1.2. Research Rank Positions; provided that the institution can demonstrate its intent to continue to seek external funding and a reasonable expectation that funding will continue (such as demonstrated prior renewals for extended long-term research projects); and provided, further, that the incumbent has a consistent three (3) year record of research that has been recognized as outstanding in the academic field.
- 1.2. Non-Eligible Positions – Positions not eligible for BOR sponsorship include term faculty positions, non-faculty exempt, civil service act positions, and part time or temporary positions.
- 1.3. Exceptions – Institutions or administrative units may request an exception for current employees holding certain full-time, Fair Labor Standards Act exempt, non-academic staff positions but only if they can show that:

- 1.3.1. the uniqueness of the position makes the position difficult to fill, and a recruitment plan is submitted and approved;
- 1.3.2. there is sufficient justification that the employee is uniquely qualified through experience, skill, and background for the position; and
- 1.3.3. the employee has been employed in a benefits-eligible, exempt staff position with the institution or administrative unit, without interruption, for a minimum of three years.

## **2. Process**

- 2.1. Where a position is eligible for sponsorship as defined in Section C.1.1 the System International Employment Services (SIES) Officer, or an approved outside counsel will review to determine the permanent residency paths available and whether all Department of Labor (DOL) and United States Citizenship and Immigration Services (USCIS) requirements can be met. Where there is confidence the case has potential for success, SIES will contact institutional department leadership and human resources to confirm:
  - 2.1.1. Compelling employer need to pursue permanent residency sponsorship;
  - 2.1.2. The employee is meeting performance expectations and there is no foreseeable risk to ongoing employment; and
  - 2.1.3. Commitment of funds to cover employer costs (where applicable).
- 2.2. If the request necessitates an exception pursuant to Section C.1.3. above, the SIES Officer will convene a special committee to include the BOR Chief Human Resources Officer, BOR General Counsel, institutional counsel, or outside counsel, the institutional Human Resource Director and an institutional senior administrator. The special committee will review the application and determine whether to approve an exception.
- 2.3. The SIES Officer is responsible for implementation of this policy and has the authority and the responsibility to sign applications and petitions to be filed with United States Citizenship and Immigration Service (USCIS), United States Department of Labor (DOL), or other immigration-related government agencies on behalf of the BOR or an institution.
- 2.4. As stewards of state resources, the role of the BOR and its institutional staff is limited to those aspects of document preparation and submission that are directly related to their interests and responsibilities as an employer. Employees have the sole responsibility to prepare and file all documents on behalf of their eligible family members. The employee is responsible for any costs associated with immigration filings for eligible family members.
- 2.5. Institutions and administrative units may only assume responsibility for non-immigrant and immigrant expenses required by law to be paid by the employer. Costs for premium processing of petitions may be paid by a department for employment related purposes, such as avoiding disruption to employment authorization or to ensure timely start of employment. All other associated costs and

expenses, which are not the obligation of the employer under law, are the responsibility of the employee. SIES acceptance of payment for fees or services related to the preparation and filing of petitions is not a guarantee of petition approval.

- 2.6. Permanent residency sponsorship is not an entitlement and can never be promised. Final decision on sponsorship will be made in the best interest of the institution.
- 2.7. This policy will be implemented in accordance with all federal or state laws and other applicable BOR policies.

**FORMS / APPENDICES:**

None

**SOURCE:**

BOR April 2015; October 2023 (Clerical); BOR August 2024.