

Material Transmitted: September 19, 2012

Department of Health and Human Services (HHS) Instruction 42-2, Appointment of 42 U.S.C. § 209(g) Service Fellows.

Background:

This instruction provides guidance to Operating Divisions and Staff Divisions on the minimum requirements for appointments made under 42 U.S.C. § 209(g). Additionally, the Instruction provides guidance on compensation, awards, performance management, benefits and leave for those serving on appointments made under 42 U.S.C. § 209(g).

This issuance is effective immediately. Implementation under this issuance must be carried out in accordance with applicable laws, regulations, bargaining agreements, and Department policy.

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INSTRUCTION 42-2

HUMAN RESOURCES MANUAL

Instruction 42-2: APPOINTMENT OF 42 U.S.C. § 209(g) SERVICE FELLOWS

Issuance Date: September 12, 2012

HHS PERSONNEL INSTRUCTION 42-2 APPOINTMENT OF 42 U.S.C. § 209(g) SERVICE FELLOWS

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42-00 Background

The authority to hire fellows is granted by section 209(g) of the Public Health Service (PHS) Act, codified at 42 U.S.C. §209(g), which provides:

In accordance with regulations, individual scientists, other than commissioned officers of the Service, may be designated by the Surgeon General to receive fellowships, appointed for duty with the Service without regard to the civil-service laws, may hold their fellowships under conditions prescribed therein, and may be assigned for studies or investigations either in this country or abroad during the terms of their fellowships.

42-10 Purpose

Service fellowships in the Public Health Service are for the purpose of encouraging and promoting research, studies, and investigations related to health. Such fellowships may be provided to secure the services of talented scientists for a period of limited duration for health related research, studies, and investigations where the nature of the work or the character of the individual's services render customary employing methods impracticable or less effective.

42-20 Authorities

- 42 U.S.C. § 209(g) Designation for fellowships; duties; pay
- 42 U.S.C. § 209(h) Aliens
- 42 C.F.R. § 61, Subpart B, Service Fellowships
- Pub. L. No. 102-394, § 202

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42-30 Coverage

- A. This policy applies to the establishment of service fellowships in the Public Health Service, the designation of persons to receive such fellowships, and the appointment of service fellows under authority of 42 U.S.C. § 209(g). This instruction does not apply to any other excepted service appointments, including but not limited to, Special Government Employees, Experts and Consultants, the Senior Biomedical Research Service, or those covered by 42 U.S.C. § 209(f).
- B. While the laws or regulations found in 5 U.S.C. or 5 C.F.R. do not apply generally to employees appointed under 42 U.S.C. § 209(g), there are instances in which Title 5 principles are used to effectuate actions for employees appointed under 42 U.S.C. § 209(g).

42-40 Tenure

- A. All appointments, including conversions from other pay systems, to positions under 42 U.S.C. § 209(g) are in the excepted service. Work schedules may be full-time or part-time.
- B. All appointments must be time-limited – indefinite appointments are not permitted. Initial appointments may be made for varying periods not in excess of 5 years. Such appointments may be extended or renewed for varying periods not to exceed 5 years for each period. Extensions or renewals of appointments are not automatic.
- C. Appointments may be terminated before their expiration date for cause (e.g., personal or scientific misconduct), unsatisfactory performance, or administrative reasons including, but not limited to, programmatic changes and/or budgetary considerations.

42-50 Qualifications

- A. Candidates must meet education requirements in a scientific discipline directly related to the position being filled, in accordance with the Office of Personnel Management (OPM) qualification standards.
- B. At a minimum, the candidate must possess a doctoral-level degree from an accredited institution of higher learning, including: Ph.D., M.D., D.V.M., D.D.S., D.M.D., Sc.D., or other research doctoral-degree widely recognized in U.S. academe as equivalent to a Ph.D.
- C. A lower level of education may be acceptable depending on the needs of the particular fellowship. Such exceptions to this requirement must be approved by the OPDIV head or designee and the justification must be documented.
- D. Candidates who have completed part or all of their education outside of the United States must, in order to meet qualification requirements, have their foreign education evaluated by an accredited organization to ensure that the foreign education is comparable to education received in the United States. It is the responsibility of the candidate to provide written proof of his/her foreign education accreditation prior to appointment. In addition, the servicing human resources office is responsible for verification.

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- E. Candidates must furnish proof, prior to appointment (e.g., official transcript; Education Commission for Medical Graduates Certification; foreign education accreditation), that they meet all required education requirements.

42-60 Service Fellowship Categories

OPDIVs are responsible for the establishment of service fellowships, or a series of service fellowships and shall prescribe, in writing, the conditions under which service fellows will be appointed and hold their fellowships.

42-70 Selection and Appointment

- A. Sufficient outreach efforts must be taken to assure that a diverse pool of potential candidates (e.g. minorities, women, and individuals with disabilities) are made aware of fellowship opportunities.
- B. Official position descriptions are not required. However, the supervisor must prepare a narrative statement fully describing the duties and responsibilities required. The narrative statement should be reviewed periodically and updated as necessary to ensure that the duties are commensurate with the level of compensation. The review should also ensure the narrative statement accurately reflects the work being performed.

42-80 Compensation

- A. Salaries for individuals appointed on a full-time schedule will be set on a per annum basis commensurate with the applicants' qualifications, experience, and other factors as described below. Appointments that are on other than a full-time basis will be paid on a pro-rata basis of an annualized salary.
- B. For purposes of this program, the appointee's compensation is the base salary for pay, leave, and benefits, as well as retention allowances, recruitment/relocation bonuses, and awards, which are not included in base salary. In determining the base salary, management must consider such factors as:
- Qualifications and stature of individual in his/her professional field;
 - Salary the Fellow may be expected to receive outside the Federal government for work similar to his/her fellowship assignment;
 - Specialized skills/training, and experience that the applicant may possess that will benefit the agency/program; and
 - Consistency of pay with others in the organization.
- C. Base salary may not exceed the rate set in accordance with Pub. L. No. 102-394.
- D. Annual Comparability Increases and Pay Increases
1. Employees appointed under 42 U.S.C. §209(g) may receive annual increases. This may or may not be the same increase as is applicable to the General Schedule. An annual increase may not raise an employee's base salary above the rate set in accordance with Pub. L. No. 102-394. The OPDIV Head or his/her designee will make this determination and approve such pay adjustments.

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2. Employees appointed under 42 U.S.C. § 209(g) also may receive other pay adjustments. The OPDIV Head or his/her designee must establish the rates and eligibility requirements. Other pay adjustments may not raise an employee's base salary above the rate set in accordance with Pub. L. No. 102-394. All pay adjustments must be fully documented and justified in accordance with OPDIV policy.

E. Pay Incentives

1. Employees appointed under 42 U.S.C. § 209(g) are eligible to receive recruitment, retention, and relocation bonuses. While these employees are not covered by the compensation laws and regulations outlined in 5 U.S.C. and 5 C.F.R., the same criteria and coding used for Title 5 employees will be used for employees appointed under Section 209(g) when making decisions regarding eligibility and implementation of these incentives.
2. Employees appointed under Section 209(g) cannot receive special salary rates, Physician's Comparability Allowances, or Physician Special Pay under Title 38. No exceptions are authorized.

F. Travel and Transportation

The following travel allowances may be authorized for employees appointed under 42 U.S.C. § 209(g) and are payable under authority of 42 CFR § 61.37, at the same rates authorized for Title 5 employees. Claims for reimbursement are made in accordance with procedures prescribed in the DHHS Travel Manual.

1. Travel allowances or transportation and per diem from place of residence, within or outside the continental United States, to first duty station;
2. Travel allowances or transportation and per diem for any change of duty station during the term of the fellowship;
3. Travel allowances or transportation and per diem while traveling on official duty away from the permanent duty station; and
4. Travel allowances or transportation and per diem from last duty station to place of residence which he/she left to accept the fellowship, or to some other place at no greater cost to the Government.

42-90 Benefits Including Leave

- A. While the laws and regulations found in 5 U.S.C. and 5 C.F.R. do not apply generally to employees appointed under 42 U.S.C. § 209(g), the benefits available (e.g., life insurance, health insurance, retirement, etc.), as well as the criteria for eligibility are the same for both groups of employees. Specifically, employees appointed under 42 U.S.C. § 209(g) for more than 12 months (with the exception of non-citizens in overseas locations) will be eligible for benefits equivalent to those of employees appointed under Title 5.
- B. As noted above, although the laws and regulations outlined in 5 U.S.C. and 5 C.F.R. do not apply generally to employees appointed under 42 U.S.C. § 209(g), these employees are covered by the same leave provisions as employees appointed under Title 5.

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42-100 Training and Awards

- A. Employees appointed under 42 U.S.C. § 209(g) are eligible for training at Government expense on the same basis as employees appointed under Title 5.
- B. Employees appointed under 42 U.S.C. § 209(g) are eligible for performance-based cash awards, onetime special act awards (including on the spot and time off awards), honorary awards, and other awards as appropriate.

42-110 Performance Management and Conduct

- A. All Title 42 U.S.C. § 209(g) employees must be on a performance plan that meets all requirements of the appropriate Departmental performance system. Depending on the performance system, ratings under the performance plan may be used as the basis for pay decisions.
- B. Title 42 U.S.C. § 209(g) employees must maintain acceptable performance and conduct in order to be retained in their positions.

42-120 Other Actions

- A. If an employee voluntarily or involuntarily separates from a Title 42 U.S.C. § 209(g) position and seeks to return to a non-Title 42 position, the employee may be considered in accordance with all civil service or Commissioned Corps requirements. Pay of Title 42 U.S.C. § 209(g) employees, upon converting to a non-Title 42 position, will be set no higher than the maximum General Schedule pay limitations under Title 5 for civil servants and regular pay tables (including any applicable special or professional pay) for Commissioned Corps officers.
- B. Prior to appointment or conversion to a Title 42 U.S.C. § 209(g) position, employees must be informed in writing that they are not entitled to Merit System Protection Board (MSPB) appeal rights under the Civil Service Reform Act (CSRA).

42-130 Conduct Laws and Regulations

Title 42 U.S.C. § 209(g) employees must comply with all ethical and conduct-related laws and regulations applicable to other Executive Branch employees. These include laws concerning financial interests, financial disclosure, and conduct regulations promulgated by the Department, by the Office of Government Ethics, and other agencies.

42-140 Processing Appointments and Conversions to 42 U.S.C. § 209(g)

- A. Initial and Subsequent Appointments. Requests to appoint and/or convert individuals using 42 U.S.C. § 209(g) will be processed in accordance with the OPM Guide to Processing Personnel Actions.
- B. Employees appointed or converted to a 42 U.S.C. § 209(g) position must sign a statement documenting their understanding that they are accepting an excepted service appointment and

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to acknowledge that they are not entitled to MSPB appeal rights under the CSRA.

- C. Non-citizens may be appointed as permitted by 42 U.S.C. § 209(h). The non-citizen must have an appropriate work visa. Appointments and/or extensions of non-citizens may not exceed the duration of their visas.

42-150 Program Review and Evaluation

The Division of Administration, Office of Human Resources periodically will review appointments made under the 42 U.S.C. § 209(g) authority to ensure proper use.