

PAY PROVISIONS FOR CERTAIN NON-CITIZEN TITLE 42(f) SCIENTISTS

Background:

The NIH Extramural Title 42(f) Committee (ETFC) recently examined the use of Title 42(f) in the NIH Extramural/OD programs and identified positions that are appropriately filled under Title 5 versus Title 42(f). In the context of these determinations, a question arose regarding whether non-citizen scientists, for whom Title 5 appointment is precluded because of citizenship requirements, could continue to be appointed under Title 42(f) to positions that have otherwise been designated as Title 5. Both the ETFC and the NIH recognize that there are some instances where a non-citizen scientist may be appropriately appointed to a position otherwise designated as Title 5. In these limited circumstances, provided that all NIH, OIR, OER and HHS policies and requirements (including “exhaustion) are satisfied *and* that pay is set in compliance with Title 5 General Schedule rules, the *time-limited* Title 42(f) appointment (NTE 5 years) of a non-citizen scientist in lieu of Title 5 may be approved.

NOTES:

- In accordance with governing HHS and NIH policies, non-citizen scientists may continue to be appointed on the same basis as citizens to positions designated as Title 42, and will be paid in accordance with the provisions of the applicable pay model – i.e., the NIH Title 42 Pay Model or the NIH IC Directors/NIH Deputy Directors Compensation Model.
- The provisions described herein do not apply to Title 42(f) non-citizen scientists who are “grandfathered” in extramural/OD positions – i.e., hired into positions that have after-the-fact been identified by the ETFC as appropriately filled under Title 5. Separate pay provisions for “grandfathered” scientists, whether citizens or non-citizens, are included in the Title 42 Pay Model.

New Authority:

To clarify pay requirements, provisions of the Title 42 Pay Model have now been revised to specify that pay of non-citizen scientists appointed under Title 42(f) in lieu of Title 5 must be established and adjusted to the extent possible as if they are paid under the General Schedule. Because the General Schedule allows for the possibility of multiple pay adjustments (i.e., annual comparability adjustment, within-grade increase, quality step increase, and promotion), it is not uncommon for General Schedule employees to receive combined annual adjustments exceeding six percent. If pay parity is to be maintained for non-citizen Title 42(f) scientists, then annual increases above six percent may occasionally be required. Under current Pay Model provisions, however, any annual “spring” increase above six percent requires review by the NIH Compensation Committee and approval by the Deputy Director or Director, NIH. To facilitate adherence to General Schedule pay rules, IC Directors have now been delegated the authority to establish and adjust pay for non-citizen Title 42(f) scientists serving in Title 5 positions as follows. In each case, pay must be set based on the qualifications of the scientist, the General Schedule grade to which the position would be classified under Title 5, and in compliance with Title 5 pay rules.

Specifically, the Director, NIH, has delegated the following to IC Directors:

- To approve initial base pay above step 1 of the appropriate General Schedule grade provided all of the provisions governing Title 5 appointments “Above the Minimum” are satisfied and appropriately documented.
- To approve “spring” performance-based base pay increases above six percent when required to align pay equivalent to the grade and step the scientist would receive under Title 5, specifically to reflect any comparability increase to which he/she would be entitled and/or any within-grade increase, quality step increase, and/or promotion which he/she might otherwise be granted (appropriate justification and documentation required).

IC Directors and the Deputy Director, NIH, may exercise these authorities only within their respective ICs. All pay increases must be fully documented and justified. These authorities must be exercised in full compliance with all the requirements and limitations of the NIH Title 42 Pay Model, governing NIH intramural and extramural programmatic policies, requirements and procedures, as well as rules regarding General Schedule pay. No further redelegation is authorized.