

NIH Policy on Performance Management, Disciplinary Actions and Administrative Removals for Title 42 Employees

Update: January 10, 2007

Performance Management Guidance

- Effective June 30, 2006, except for Title 42 209 (f) employees appointed into one of the positions listed in the bullet below, all Title 42 employees listed under Section B. (Coverage) of this policy are not covered by the performance management provisions (Sections D, E, F, I, and J) of this policy and are now covered by the DHHS Performance Management Appraisal Program (PMAP) dated January 17, 2006, located at:
<http://hr.od.nih.gov/PerfMgmt/documents/HHSPerfMgmtPlan.doc>
The DHHS PMAP performance plan appraisal form, covering the majority of Title 42 staff as explained above, is located at:
<http://hr.od.nih.gov/PerfMgmt/documents/PMAPForm.doc>
- Pending final approval of the Title 42 Senior-Level Scientist Performance Plan, the performance management provisions (Sections D, E, F, I, and J) of this policy apply only to Title 42 209 (f) employees appointed into the following positions:
 - NIH Deputy Directors
 - Institute and Center (IC) Directors
 - IC Deputy Directors
 - Scientific Directors
 - Clinical Directors
 - Directors of Extramural Programs who report directly to an IC Director
 - Associate Directors in the NIH Office of the Director (OD)
 - Office Heads in the NIH OD who report directly to the NIH Director

The performance appraisal form covering the above Title 42 staff is accessible at <http://hr.od.nih.gov/employment/Title42/documents/T42-Perf-Form.pdf>.

Disciplinary Actions and Administrative Removals Guidance

- All Title 42 employees listed under Section B. (Coverage) continue to be covered by the disciplinary actions and administrative removals provisions (Sections C., G., H., K., L., and M) of this policy.

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Note: Please e-mail questions or comments to Charles H. Palmer, Jr., palmerc@od.nih.gov

A. Purpose:

Title 42 is intended to facilitate the recruitment and retention of high-level scientific researchers and scientific leadership essential to fulfill the research mission of the NIH. This performance management system is designed to provide for periodic and systematic appraisal of performance of individuals on Title 42 Appointments and to encourage excellence in performance. Performance appraisals given under this system will serve as the basis for determinations of performance awards, and will be a factor in consideration of other personnel decisions, including future pay level determinations and retention.

B. Coverage:

This policy applies to all Title 42 employees including:

- All employees appointed under 42 U.S.C. 209(f) and 209(g) (tenured and tenure-track scientists in the intramural program appointed under Title 42 are also covered by these policies and procedures, but additional rules may apply to them as noted);
- All members of the Senior Biomedical Research Service appointed under 42 U.S.C. 228;
- Special Experts for NIH appointed under 42 U.S.C. 282(d)(1) (220 positions);
- Special Experts for NHLBI appointed under 42 U.S.C. 285b-3(b)(1) (100 positions); and
- Special Experts for NCI appointed under 42 U.S.C. 285a-2(b)(5) (151 positions).

C. Trial Periods:

1. The IC may establish a trial period of one to two years, depending upon the position, duties and responsibilities of the position. In establishing trial periods, ICs should establish trial periods of like durations for positions with like duties and responsibilities.
2. When an IC decides to terminate an employee serving a trial period because his/her work performance or conduct during this period fails to demonstrate his/her fitness or qualifications for continued employment, it shall terminate his/her services by notifying the employee in writing as to why he/she is being separated and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the IC's conclusions as to the inadequacies of his/her performance or conduct. Procedures under Subsections H. and L. below do not apply to terminations during the trial period. There is no appeal available for employees who are removed during their trial period.

3. The trial period ends when the employee completes his/her scheduled tour of duty on the day before the anniversary date of the employee's appointment. For example, when the last workday is a Friday, and the anniversary date is the following Monday, the employee must be separated before the end of the tour of duty on Friday since Friday would be the last day the employee actually has to demonstrate fitness for further employment.
4. Employees converted to Title 42 from another NIH appointment are not subject to serving a trial period if they have completed a trial period under the previous appointment.

D. Schedule of Performance Reviews:

The appraisal year for Title 42 employees in senior level management (i.e., positions equivalent to division director and above) will be October 1 to September 30 of each year. The appraisal year for all other Title 42 employees will be January 1 to December 31. Performance appraisals for covered employees will be conducted every year in October and January, respectively, to review the employee's progress under his/her performance standards. To be eligible for a rating, an employee must have worked under a performance plan for at least 120 days.

E. Performance Plans:

1. The employee's first line supervisor is responsible for meeting with the employee to develop the [performance plan](#), as well as rating the employee's performance. Employee performance plans must contain one or more critical elements that address individual performance that the employee will be expected to achieve during the rating period. Requirements for existing NIH-wide performance elements (e.g., EEO elements and general management performance requirements) should be included in the performance plan as appropriate.

Note: Performance plans for employees engaged in intramural research must be based on the criteria developed by the Office of Intramural Research. See Appendix 1.

2. Two levels (Acceptable and Unacceptable) will be used for rating performance on each critical element. A written performance standard will be established at the Acceptable level for each performance element.
3. The NIH requires only the above two performance levels for each critical element and will have only two summary ratings as described in Section E. However, ICs may use additional performance levels to further communicate performance

results/expectations. The only summary ratings allowed then would be Acceptable and Unacceptable.

4. Performance Appraisal:

- a. Only performance under critical elements will be used to determine final summary ratings. An employee must receive a rating of Acceptable on all critical elements in order to be assigned an Acceptable rating. An employee who receives an Unacceptable rating on one or more critical elements will receive an Unacceptable rating.
- b. Performance in all positions for which an employee has served for 120 days will be considered in final summary ratings. For employees receiving a rating of Unacceptable, and who have completed any applicable trial period, the rating official will follow the procedures in G. below.
- c. For an employee who did not work under a performance plan for the specified minimum appraisal period, the rating period will be extended until the minimum 120-day appraisal period is met.

5. Progress Reviews:

Feedback on performance is an important component of performance management. Supervisors should provide feedback on a continuing basis as appropriate, during discussions with employees about work progress during the appraisal year, not just at specified periods of time or at a specified point in a cycle. Feedback should be provided on those aspects of performance that are done well in addition to those that may need improvement. ICs are encouraged to provide feedback throughout the performance cycle for all employees.

F. Performance Determinations:

Two ratings are possible:

Acceptable: The Acceptable level is the level of performance needed to accomplish the job element completely by fully meeting all of the requirements specified in the Acceptable standard. Acceptable performance is essential and important because organizational goals and objectives cannot be attained efficiently and effectively unless the job elements in employee performance plans are fully met.

Unacceptable: Performance is rated Unacceptable when it does not meet the requirements in the Acceptable standard.

To be rated Acceptable and retained at the NIH, employees must continue to meet the eligibility criteria prescribed in law and regulation for initial Title 42 appointments. That is, members must continue to be actively engaged in biomedical research, clinical research evaluation, or management of research, and possess other professional qualifications and expertise in a field related to the program needs of an IC or the Office of the Director, NIH. In addition, all must demonstrate fully acceptable performance on all elements in meeting all performance expectations in these endeavors.

G. Performance Problems:

1. If at any time during the rating period an employee's performance is deemed to be Unacceptable in one or more critical elements, the employee will be given a documented performance improvement plan by his/her supervisor and an opportunity to demonstrate Acceptable performance. Employees must be under a performance plan for 120 days before performance can be determined to be Unacceptable, placed on a performance improvement plan, and possibly removed. The length of the documented opportunity to improve may vary depending on the employee's position, type of work, etc.
2. In short, the employee must be informed in writing that his/her performance is Unacceptable; the element(s) on which that rating is based and how the employee's performance was Unacceptable; what the employee must do to reach the Acceptable level of performance; the specific assistance that will be provided to help the employee; the time by which the performance must reach the Acceptable level; and the action that may be initiated if the performance does not improve to the Acceptable level.
3. If after the documented opportunity to improve is completed, and the employee's performance still has not improved to the Acceptable level of performance, action will be initiated to reduce the employee's pay or remove the employee. When the employee is a tenured or tenure-track scientist, specific policies and procedures developed for these positions will apply. See the Office of Intramural Research Sourcebook (<http://www1.od.nih.gov/oir/sourcebook/prof-desig/sr-invest.htm> and <http://www1.od.nih.gov/oir/sourcebook/irp-policy/tenure-track.htm>).

H. Terminations For Unacceptable Performance and Reductions in Pay (for employee's not serving a trial period):

1. Termination for Unacceptable Performance

When an employee has demonstrated Unacceptable performance, based on the results of the opportunity given to improve performance and other relevant information, the employee's supervisor or other designated official will prepare a recommendation for termination and a justification in support of that recommendation. Employees will be notified in writing of the recommendation and the reasons for it or thereof. Employees will have the right to respond orally, in writing, or both, to the IC Director or an individual designated by the IC Director to receive the response. The employee may be represented in this process. Normally a period of not less than seven days and not more than 14 days will be given to the employee to provide the response, with extensions granted, if warranted. When the employee is a tenured or tenure-track scientist, those specific policies and procedures also apply. Tenured scientists must undergo the de-tenuring process before a performance-based action may be taken against them. See section K.3. below.

The IC Director will consider the supervisory recommendation, narrative justification, any written response of the employee, and a summary of any oral reply, in making the final decision. The employee will then receive a written decision from the IC Director.

2. Reductions in Pay

Title 42 employees whose performance is rated as Unacceptable may be recommended for a downward adjustment in pay of up to 20 percent or \$20K, whichever is greater, when merited in lieu of removal. The employee's supervisor may initiate the recommendation. The employee will have the right to respond to the deciding official orally, in writing, or both to such a recommendation. Normally, a period of not less than seven days or not more than 14 days will be provided for response, with extensions granted, if warranted. The employee will receive a written decision from the IC Director or his designee. For tenured senior investigators, notice of intent to reduce salary should normally be given in writing at least one year in advance of the action. See section K.2. below.

Except as in M. below, a decision made on any action under this section is final and not subject to further review or appeal.

I. Using Ratings to Determine Stipend Increases:

1. Cumulative performance-based salary increases may be approved by the official with delegated authority to recognize superior accomplishment of performance goals and objectives, or because the employee has taken on significant additional responsibilities.

Stipend increase recommendations should emphasize significant changes that have occurred since the initial stipend was determined or the last pay adjustment occurred, and should include a justification of why the pay level recommended is appropriate.

2. Pay setting and all discretionary increases will be based on the pay level guidelines and approval authorities for Title 42 appointments in accordance with NIH pay and appointment Delegations of Authority. Initial salary setting and all subsequent salary adjustments must be fully documented in writing and made a permanent part of the employee's official personnel file. Each IC is responsible for setting initial salary and subsequent salary adjustments consistently so that employees occupying the same type of positions with all equivalent or similar education, experience, and accomplishments are treated equitably within the IC.

J. Performance Bonuses and Cash Awards for Title 42 Employees:

1. Performance bonuses are granted in recognition of superior performance and the individual's contributions to meeting organizational goals and objectives. Various levels of performance bonuses should be used to distinguish between different levels of noteworthy performance.

- a. Eligibility

If the employee's salary is less than or equivalent to GS-15, Step 10, she/he must have served on a Title 42 performance plan for a minimum of 120 days and have received an Acceptable rating or be performing at that level. If the employee's salary is greater than GS-15, Step 10, she/he must have served on a Title-42 appointment on an approved performance plan for a minimum of one year (unless converted to Title-42 from another NIH appointment) and have received an Acceptable summary rating. No more than 50 percent of the employees in an IC appointed under a Title 42 mechanism whose pay is above the GS-15, Step 10, level may be nominated for and receive a performance bonus in a particular fiscal year.

- b. Nomination Process

A specific nomination form is not required. ICs may utilize any format that best suits their needs. The content of the nomination narrative is critical. ICs should remember that the narrative is the principal source of information regarding the nominee's

performance and accomplishments during the performance year. Narratives must clearly and concisely describe the individual's accomplishments and the significance of those accomplishments in such a manner that a reviewer who is unfamiliar with the work can judge its difficulty and importance. Insufficient justifications may result in either disapproval of a bonus or lowering of the proposed bonus amount.

c. Approvals

IC Directors or their designees may approve annual performance bonuses of up to 10 percent of base salary provided that total annual compensation does not exceed the EX-I level. IC Directors may recommend approval by the Director in cases where the annual performance bonus proposed is greater than 10 percent or total compensation would exceed the EX-I level. The Director, NIH, may approve annual performance bonuses of amounts between 10 and 20 percent of the employee's salary.

2. Cash awards are granted in recognition of a one-time act or service which is either outside the norm of the employee's duties or responsibilities or otherwise constitutes a significant act which merits recognition. Cash awards may be given at any time during the year but should be given as close in proximity to the event meriting the award as possible.

IC Directors have the authority to approve cash awards up to \$10,000, as long as the employee's total compensation (base pay plus discretionary increases) does not exceed the level of EX-I in any twelve-month period and/or the employee does not receive an increase in compensation, including discretionary increases, in excess of \$30,000 in any twelve-month period. In cases where either limit is exceeded, approval is required from the Director, NIH.

K. The Tenure Process:*

1. Tenure at the NIH is the commitment of salary to an independent Senior Investigator who is granted tenure by the Central Tenure Committee or SBRS Policy Advisory Board. Tenure conferred or approved by earlier NIH-wide review bodies is considered equivalent. Tenured Senior Investigators are granted independent resources (personnel, budget and space) by their Institute, and are required to have regular outside, expert review by Boards of Scientific Counselors. Resources may be adjusted up or down by the Institute, based on productivity and the quality of their work, as

determined by these and other reviews. The granting of tenure at the NIH will continue to be a vote of confidence in the achievements and potential of the Senior Investigator, and it is the policy of the NIH that long, stable, productive careers will continue to be the rule.

2. A commitment to long-term support of salary is made by an IC when it tenures an individual as a Senior Investigator. However, salary in all systems is merit-based within the flexibility afforded by the particular system. For example, the salary may be increased or reduced for Title 42 employees to reflect the level of their performance. It is the policy of the NIH that a Title 42 salary in the intramural program will generally not be reduced below that of a GS-14/Step 5, and that downward adjustments should generally not exceed 20 percent or \$20K per year, whichever is greater, when merited in lieu of removal, with notice of intent to reduce salary being given in writing at least one year in advance of the action. Performance that declines below that acceptable for a GS-14 is grounds for termination of the Title 42 appointment.

3. Removal of tenure is a rare event and only occurs after thorough review by the IC and the Central Tenure Committee (CTC), with final decision by the Deputy Director for Intramural Research. First, a package that presents the case for de-tenuring should be submitted by the IC where the individual has tenure to the CTC. In this package, the Scientific Director from the IC describes in a cover memo the reasons why the IC no longer has a vote of confidence in the achievements and potential of the investigator, as it had when tenure was conferred. The investigator must receive a copy of this memorandum and has the opportunity to respond in writing. This rebuttal should be provided to the CTC as part of the package for the de-tenuring case. The package also should include the investigator's C.V., bibliography, and last two BSC reviews. At a meeting with the CTC, the Scientific Director should present the case for de-tenuring and answer questions from the CTC members. All CTC deliberations are strictly confidential. The presentation should include evidence of an inability to function as a productive member of the scientific community (e.g., a serious, long-term decline in the person's productivity, qualifications, and fulfillment of expectations). After answering all questions from the CTC, the Scientific Director should leave and the DDIR should ask for general CTC discussion. Then there should normally be a motion, followed by a secret written vote. The DDIR makes the final de-tenuring decision, taking into consideration the CTC's recommendation. CTC members do not vote on a de-tenuring action that originates in their own IC. Any

subsequent action, e.g., removal from Federal employment or downgrading, must follow the procedures outline in G. above.

L. Terminations for Cause or Administrative Reasons and Disciplinary Suspensions (for employee's not serving a trial period):

1. Terminations for Cause or Administrative Reasons

Appointments may be terminated before the expiration date for cause, e.g., personal or scientific misconduct. Under certain rare and extraordinary circumstances appointments may be terminated or for administrative reasons. Terminations for administrative reasons may be made only for programmatic reasons, e.g., lack of funds, re-direction of program resources. However, a tenured scientist may not be terminated for administrative reasons without going through the de-tenuring process. Title 42 employees recommended for termination will be notified in writing of the IC's recommendation and the reasons thereof. IC Directors may delegate the authority to issue such recommendations. Employees will have the right to respond orally, in writing, or both, to the IC Director, and to be represented in this process. Normally, a period of not less than seven days and not more than 14 days will be provided for response, with extensions granted, if warranted. The employee will receive a written decision from the IC Director.

2. Disciplinary Suspensions

If termination is not warranted, disciplinary suspension may be recommended for Title 42 employees. IC Directors may delegate the authority to issue such recommendations. The length of a disciplinary suspension should generally be consistent with the length of suspension for such infraction as contained in the Agency Table of Suggested Penalties. Title 42 employees recommended for suspension for cause will be notified in writing of the IC's recommendation and the reasons thereof. Employees will have the right to respond orally, in writing, or both, to the second-level supervisor, and to be represented in this process. Normally, a period of not less than seven days will be provided for response, with extensions granted, if warranted. The employee will receive a written decision from the IC Director or his/her designee.

Terminations may not be made on a prohibited basis, e.g., racial, political, religious, gender, or other discriminatory basis. The Agency may curtail any notice or response period where it has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed.

M. Dispute Resolution Procedures for Title 42 Employees:

Terminations and suspensions for Title 42 employees are not subject to review through normal agency grievance processes with the exception of Equal Employment discrimination allegations raised under a statutory provision, such as Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Rehabilitation Act. In addition, Title 42 employees may avail themselves of the services of the NIH Office of the Ombudsman, Center for Cooperative Resolution (CCR) for these actions as well as other disputes they encounter during the course of their employment. To contact the NIH CCR, call 301-594-7231. In addition, OIR maintains a process for resolving disputes of a scientific nature including Tenure/Promotion/Science Review Decisions; Authorship; Mentoring; and Intellectual or Physical Property. See the Office of Intramural Research Sourcebook (<http://www1.od.nih.gov/oir/sourcebook/conflict/process-res.htm>) for details on the process.

APPENDIX 1

Office of Intramural Research

Title 42 Performance Criteria for Senior Investigators and Investigators

1 - Professional Accomplishments in this Calendar Year

- Peer-reviewed manuscripts published or accepted for publication
- Review articles published or accepted for publication
- Seminar and symposia talks presented and invitations received
- Participation in manuscript and grant reviews
- Participation on editorial boards
- Participation on NIH committees, interest groups
- Awards and other notable accomplishments
- Patient care responsibilities and clinical protocol development and implementation, if relevant

2 – Mentoring/Training Accomplishments

- Detail how you have mentored students/postdoctoral fellows on:
 - Research projects
 - Communications skills
 - Career goals

- Ethical conduct of research
- Minority/disadvantaged recruitments

3 – Management/Supervisory Accomplishments

- Describe how you have enhanced diversity in a program
- Describe how you have ensured responsible stewardship of budget/facilities

Describe your efforts related to adherence and promotion of safety standards