NIH Policy Manual

2300-316-1 - Authorized Use of Temporary Limited Appointments in the Competitive Service

Issuing Office: OD/OM/OHR/CPD **Phone:** (301) 496-0377

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Transmittal Notice

1. **Explanation of Material Transmitted:** This chapter outlines NIH policy for adhering to the requirements of Subpart D of 5 CFR 316 on the use of temporary limited appointments in the competitive service. This revision is restructured for clarity and contains updates to issuing office information and hyperlinks.
2. **Filing Instructions:**

   Remove: NIH Manual Chapter 2300-316-1, dated 9/28/10.
   Insert: NIH Manual Chapter 2300-316-1, dated 07/19/17.

PLEASE NOTE: For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Policy Manual, contact the Division of Management Support, OMA on 301-496-4606 or enter this URL: https://oma.od.nih.gov/DMS/Pages/Manual-Chapters.aspx
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A. Purpose

This chapter documents the National Institutes of Health (NIH) adherence to the U.S. Office of Personnel Management (OPM) requirements, as stated in Title 5 Code of Federal Regulations (CFR) 316, Subpart D, "Temporary Limited Employment," on the use of temporary limited appointments in the competitive service. In addition, this chapter summarizes the NIH policy and procedures on the use of temporary limited appointments in the competitive service and shall be used in conjunction with 5 CFR 316, Subpart D.

B. Background and Scope

Temporary limited appointments may be based on: 1) competitive procedures under 5 CFR 332, 2) direct-hire procedures under 5 CFR 337, or 3) noncompetitive appointment

procedures without regard to the requirements of 5 CFR 332. Applicants for temporary limited appointment positions must meet relevant citizenship, qualifications, and eligibility requirements for appointment. The provisions of this chapter apply to appointments subject to any of these OPM requirements. Appointments in the excepted service (5 CFR 213), and term employment positions (5 CFR 316.301) are not covered in this chapter.

C. References and Forms

1. Federal Register Notice (Volume 69, Number 114), June 15, 2004
2. Federal Register Notice (Volume 69, Number 120), June 23, 2004
3. 5 CFR 213 – Excepted Service
4. 5 CFR 316 Subpart D – Temporary Limited Employment
5. 5 CFR 330 – Recruitment, Selection, and Placement (General)
6. 5 CFR 332 – Recruitment and Selection Through Competitive Examination
7. 5 CFR 337 Subpart B – Direct Hire Authority
8. NIH Form 2736-1 – Justification for Temporary Limited Appointment

D. Policy

The NIH restricts its use of temporary limited appointments only to meet legitimate nonpermanent staffing needs. Temporary limited appointments may be used only when the need for the employee will not exceed one year. Temporary limited appointments may not be used if the need for the employee becomes permanent. In those instances where temporary duties have evolved into work of a continuing or permanent nature, the temporary limited appointment should be terminated and the affected position should be filled on a permanent basis.

E. Definitions

1. *Competitive Service*: All civilian positions in the executive branch of the Government unless specifically excepted therefrom by or pursuant to statute or by the OPM.
2. *Direct Hire Authority*: An appointing (hiring) authority that the OPM can give to Federal agencies for filling vacancies when a critical hiring need or severe shortage of candidates exists.
3. *Excepted Service*: Those civil service positions which are not in the competitive service or the Senior Executive Service. This manual chapter does not cover Excepted Service positions under the provisions of 5 CFR 213.
4. *Temporary Limited Appointment*: Appointment for a specified period not to exceed one year. The appointment may be extended up to a maximum of one additional year (24 months of total service).
5. *Term Employment*: An appointment for a period of more than one year but not more than four years to positions where the need for an employee's services is not permanent. This manual chapter does not cover Term Employment under the provisions of 5 CFR 316.301.

F. Appropriate Use of Temporary Limited Appointments

Temporary limited appointments are appropriate to meet a range of staffing requirements when there will be no permanent need for the employee. For example, to:

- fill a short-term position (i.e., one that is not expected to last longer than one year);
- meet an employment need that is scheduled to terminate, within the time limits set out in this chapter, for such reasons as abolishment, reorganization, or contracting of the function, anticipated reduction in funding, or completion of a specific project or peak workload; and/or
- fill positions on a temporary basis when the positions are expected to be needed for placement of permanent employees who would otherwise be displaced from other parts of the organization.

G. Inappropriate Use of Temporary Limited Appointments

1. Temporary limited appointments are intended to meet legitimate nonpermanent staffing needs. The use of temporary limited appointments and extensions for other reasons is inappropriate and is not authorized. Examples of inappropriate and unauthorized use include:

    a. Hiring temporary employees to avoid the costs of employee benefits;
    b. Using temporary limited appointments to extend other nonpermanent employment, including service fellowship (e.g. research or clinical fellows, postdoctoral fellows, etc.) and special expert appointments; and/or
    c. Circumventing the competitive examining process by appointing an individual on a temporary basis because the individual is not within reach for permanent appointment or because a particular register is closed.

1. The time limitation on temporary employment was established to maintain the distinction between permanent and temporary employment. For this reason, the refilling of a position that has been filled continuously on a temporary basis is prohibited. For example, the following actions are not authorized or permitted:

    a. A position may not be filled by a temporary limited appointment if that position has previously been filled by other temporary limited appointments for an aggregate of two years, or 24 months, within the preceding three year period.
    b. Appointment to a position involving the same basic duties, in the same major subdivision of the Institute/Center (IC) and the same local commuting area as the original appointment is also considered to be an extension of the original appointment.

H. Conditions of Employment

1. The benefits and conditions of employment for temporary limited employees differ in a number of important respects from those of permanent employees[1]. As indicated below, temporary employees:

    a. Do not acquire competitive status under a temporary limited appointment or eligibility to be non-competitively converted to a career-conditional appointment;
    b. Do not serve a probationary period;
    c. Are not eligible for promotion, reassignment or transfer to other positions;
    d. Are not eligible for coverage under the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), or the Federal Employees Group Life Insurance (FEGLI) Program. (A covered employee serving under a temporary limited appointment may be eligible to continue such coverage when the temporary employment immediately follows employment in a covered position, without a break in service in excess of three days);
    e. That are on: 1) temporary full-time appointments; 2) seasonal full-time schedules who will be working a schedule of less than six months per year; or 3) intermittent employment and are expected to work 130 hours per month or more for at least 90 days will be eligible to enroll in a Federal Employees Health Benefits (FEHB) plan with full government contribution. Additionally, these employees are eligible to enroll in a Healthcare Flexible Spending Account through FSAFEDS. They are also eligible to apply for coverage in the Federal Long Term Care Insurance Program (FLTCIP);
    f. Are not covered by adverse action procedures under Title 5 United States Code (U.S.C.) 4303 and 5 U.S.C. 7511 even when converted to a new temporary limited appointment with total service extending beyond one year;
    g. Are not competing employees under reduction-in-force procedures and may be terminated at any time upon written notice; and
    h. Are not eligible for within-grade increases when serving in General Schedule positions, even when extended beyond one year. (Temporary employees serving in Federal Wage System positions are eligible for such increases provided they meet service and performance criteria under Subchapter S8. Pay Administration, Operating Manual Federal Wage System – Appropriated Fund.).

2. Other benefits and conditions of employment for temporary employees are comparable to those of permanent employees. For example, temporary employees:

    a. May work on a part-time, intermittent, or full-time basis;

b. Earn sick leave when appointed to a position with a regularly scheduled tour of duty, (i.e., part-time or full-time). Employees on a part-time tour will earn sick leave on a prorated basis. Temporary employees on regularly scheduled tours of duty, who are appointed for more than 90 days, also earn annual leave;
c. Are covered by applicable performance management systems;
d. Are eligible for consideration for incentive awards on the same basis as permanent employees;
e. Are eligible for workers' compensation for injury on the job; and
f. May be eligible for Maximum Payable Rate when appointed to a position with a regular tour of duty over 90 days.
g. May be subject to financial disclosure requirements and are subject to ethical conduct rules to the list of other benefits.

[1] The NIH will continue to honor all current Collective Bargaining Agreements and will implement this policy consistent with the Agreements and its obligations under law, rule and regulation.

I. Time Limits and Extension of Appointments

When appropriately justified, temporary limited appointments may initially be made for a specified period not to exceed one year. When appropriate circumstances continue to exist, temporary limited appointments may be extended up to a maximum of one additional year (24 months of total service). However, a position may not be filled by a temporary limited appointment if that position has previously been filled by other temporary limited appointments for an aggregate of two years, or 24 months, within the preceding three year period. Extensions should not be regarded as automatic; rather, each must be based on continued appropriate justification and demonstration of temporary need.

After a position has been filled continuously on a temporary basis for two years, a successor position may not be created and filled with a temporary employee. A successor position is one that replaces and absorbs the original position. Appointment to a successor position is considered to be an extension of the original appointment

Appointment to a position, involving the same basic duties, in the same major subdivision of the Institute/Center (IC), and the same local commuting area as the original appointments is also considered to be an extension of the original appointment.

Vacancy announcements for temporary limited appointments covered under this chapter must include the following statement, "This position may be extended to a maximum of one additional year (24 months total service)." Otherwise, a new vacancy announcement must be posted to provide for an extension that was not mentioned in the original announcement.

Exception: Temporary limited appointments and extensions of temporary limited appointments may be made to positions involving intermittent or seasonal work without

regard to the time limitations stated above; provided that: appointments and extensions are made in increments of one year or less, and, employment in the same or a successor position under this and any other authority totals less than six months (1040 hours), excluding overtime in a service year. Should a position filled under this exception total six months or more in any service year, the time limits stated above must be applied to subsequent extensions or reappointment unless OPM approves continued exception under 5 CFR 316.401(d).

J. Certification of Appropriate Use

The supervisor of each position filled by temporary limited appointment must certify that the employment need is truly temporary and that the proposed appointment meets the regulatory time limits. The reason(s) for making a temporary limited appointment must be stated on the form documenting each such appointment.

In compliance with OPM documentation requirements, the following procedures will be followed to assure that temporary limited appointments are properly made and extended, and that employees are fully aware of the conditions and limitations of their employment. As described below, the selecting official's "Justification for Temporary Limited Appointment" (NIH 2736-1), and standard remarks on the SF-50, "Notification of Personnel Action," are required for all appointment and extension actions, regardless of the selection mechanism used.

1. NIH 2736-1, "Justification for Temporary Limited Appointment," as illustrated in the Appendix must be completed for all temporary limited appointments and extensions. This form describes appropriate and inappropriate use of the temporary appointing authority, and, serves to document the reason why a temporary limited appointment and any extension(s) are justified.

   Selecting officials must complete the justification on NIH 2736-1 to support a request for a new temporary limited appointment or extension of a current appointment. The completed form should be forwarded along with other required documents through appropriate IC channels to the servicing Client Services Division (CSD) Branch.

1. It is essential that the temporary nature of this appointment be indicated in the vacancy announcement and in the subsequent offer letter so that employees understand that the conditions of temporary employment differ from those of permanent employment. The ICs are encouraged to provide additional orientation and clarification, as necessary, to assure that temporary employees understand the conditions of their employment.

K. Internal Controls

The purpose of this manual issuance is to establish policy and procedures for the use of temporary limited appointments in the competitive service as required under 5 CFR 316, Subpart D.

1. The Office of Human Resources (OHR) is responsible for reviewing internal controls relative to this chapter.
2. **Frequency of Review**: The OHR will periodically review the records of clearance of previously separated and transferred employees as part of the five-year staffing function self-assessment evaluation.
3. **Method of Review**: OHR shares accountability for adherence of merit system compliance with IC managers. OHR will select a random sampling from each of the previous three years to evaluate IC use of these authorities. ICs should obtain feedback on the use, effectiveness of, and satisfaction with procedures and decisions, and report back to OHR. OHR will consolidate IC review reports for dissemination to executive management.
4. Reports should indicate that controls are in place and working well or indicate any internal management control issues that should be brought to the attention of the Deputy Director for Management (DDM) to whom the report is provided.

L. Records Retention and Disposal

All records pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743,"Keeping and Destroying Records," Appendix 1, "NIH Records Control Schedules" (as amended). These records must be maintained in accordance with current NIH Records Management and Federal guidelines. Contact your IC Records Liaison or the NIH Records Officer for additional information.

Appendix

NIH 2736-1, Justification for Temporary Limited Appointment