

Why GAO Did This Study

HHS and EPA have been using special hiring authority provided under 42 U.S.C. §§209(f) and (g)—referred to in this report generally as Title 42 or specifically as section 209(f) or section 209(g)—to appoint individuals to fill mission critical positions in science and medicine and, in many cases, pay them above salary limits usually applicable to federal government employees. GAO was asked to assess the extent to which HHS and EPA have (1) used authority under sections 209(f) and (g) to appoint and compensate employees since 2006, and (2) followed applicable agency policy, guidance, and internal controls for appointments and compensation. GAO analyzed agency Title 42 data, interviewed agency officials, and conducted file reviews.

What GAO Recommends

GAO recommends HHS (1) ensure section authority—209(f) or 209(g)—be consistently entered in appropriate personnel systems, (2) systematically document how policy requirements were fulfilled when hiring or converting 209(f) employees, and (3) ensure agencywide 209(g) policy currently in development provides guidance for documenting the basis for employee compensation. GAO recommends EPA develop and document a systematic approach for ensuring Title 42 employees are compliant with ethics requirements after appointment.

HHS agreed with GAO's recommendations, while EPA disagreed, citing certain actions already taken. GAO acknowledges EPA's plans to address these issues, but maintains the recommendation is needed to ensure implementation.

View [GAO-12-692](#). For more information, contact Robert Goldenkoff at (202) 512-2757 or goldenkoffr@gao.gov.

HUMAN CAPITAL

HHS and EPA Can Improve Practices Under Special Hiring Authorities

What GAO Found

The Department of Health and Human Services' (HHS) use of special hiring authorities under 42 U.S.C. §§ 209(f) and (g) has increased in recent years. Nearly all HHS Title 42 employees work in one of three HHS operating divisions: the National Institutes of Health (NIH), the Food and Drug Administration (FDA), and the Centers for Disease Control and Prevention (CDC).

HHS Operating Divisions Have Increased Their Use of Title 42, Sections 209(f) and (g) Appointments, 2006 through 2010

Operating division	2006	2007	2008	2009	2010	Percent change ^a
NIH	4,238	4,389	4,569	4,721	4,879	15%
FDA	559	564	595	816	862	54
CDC	512	603	708	796	929	81
Other	52	45	44	38	27	(48)
Total	5,361	5,601	5,916	6,371	6,697	25%

Source: GAO analysis of HHS data.

^aFigures in parentheses indicate a decrease.

Title 42 employees at HHS serve in a variety of areas, including scientific and medical research support and in senior, director-level leadership positions. At NIH, one-quarter of all employees, and 44 percent of its researchers and clinical practitioners, were Title 42 appointees. HHS reported that Title 42 enables the agency to quickly fill knowledge gaps so medical research can progress and to respond to medical emergencies. HHS further reported Title 42 provides the compensation flexibility to compete with the private sector. In 2010, 1,461 HHS Title 42 employees earned salaries over Executive Level IV (\$155,500 in 2010).

HHS does not have reliable data to manage and provide oversight of its use of Title 42 because the section authority used to hire Title 42 employees is not consistently recorded into personnel systems. Moreover, HHS did not consistently adhere to certain sections of its 209(f) policy. For example, the policy states that 209(f) appointments may only be made after non-Title 42 authorities have failed to yield a qualified candidate, but GAO found few instances where such efforts were documented. HHS has recently issued updated 209(f) policy that addresses most of these issues. HHS is developing agencywide policy for appointing and compensating fellows under 209(g), but it is not clear the policy will address important issues such as documenting the basis for compensation.

Since 2006, the Environmental Protection Agency (EPA) has used section 209(g) to appoint 17 employees. Title 42 employees lead scientific research initiatives and some manage or direct a division or office. According to EPA officials, Title 42 provides the flexibility to be competitive in recruiting top experts who are also sought by private industry, academia, and others. Also, Title 42 provides the appointment flexibility needed to align experts with specific skills to changing scientific priorities. Fifteen of EPA's 17 Title 42 employees earned salaries over Executive Level IV in 2010. EPA appointment and compensation practices were generally consistent with its guidance; however, EPA does not have post-appointment procedures in place to ensure Title 42 employees meet ethics requirements to which they have previously agreed.