



J-1 EXCHANGE VISITOR TWO-YEAR HOME RESIDENCE REQUIREMENT

NIH Requirements on Waivers based on No-Objection Statement (NOS)

This handout provides information on the National Institute of Health's (NIH) procedures on No-Objection Statement (NOS) waivers of the J-1 two-year home residence requirement (212e). For purposes of this document, NOS waivers will be simply referred to as "waivers." Through the Division of International Services (DIS), the NIH receives requests from the U.S. Department of State (DOS) to comment on waiver applications where the Exchange Visitor received NIH funding or J-1 sponsorship; this is known as "sponsor views."

In order for the DIS to provide a favorable sponsor view to the DOS, you must meet the NIH's NOS waiver policy requirements. This handout describes the criteria by which the NIH will comment favorably on a waiver request.

PLEASE NOTE: The DIS/NIH will **not** begin our review for sponsor views until we are formally contacted by the DOS.

I. BACKGROUND

As a J-1 Exchange Visitor sponsored or funded by the NIH, you are subject to the two-year home country physical presence requirement [Section 212(e) of the Immigration and Nationality Act]. This requirement is often known as "212e." The NIH hosts J-1 Exchange Visitors with the goal of increasing world-wide biomedical knowledge and expertise. NIH-sponsored J-1 Exchange Visitors become subject to 212e by receiving funding or J-1 sponsorship from the NIH, a U.S. government organization. Refer to page two of your NIH-sponsored Form DS-2019 for details on 212e.

In order to satisfy 212e requirements, you must either return to your home country or country of last legal permanent residence (as indicated on your NIH-sponsored Form DS-2019) for two (2) years or an aggregate thereof **OR** you may apply for a waiver of the requirement through the DOS. If you apply for a waiver, you (**not** the NIH) must make an application directly with the DOS. Information on waivers and how to apply is at the DOS web site: http://travel.state.gov/visa/temp/info/info_1296.html

II. NIH POLICY ON NOS WAIVERS

The NIH does not encourage J-1 Exchange Visitors to remain in the United States. However, extenuating circumstances may warrant remaining in the U.S., therefore, a policy has been created in order to allow these exceptional circumstances. The NIH (through the DIS) must provide its sponsor views—either favorable or unfavorable—at the request of DOS on your waiver application.

The NIH policy on issuing a "favorable" view to a DOS request is the following:

The J-1 Exchange Visitor must have:

- A. received a formal offer of employment in the biomedical sciences from the NIH;
- OR
- B. received an offer of employment in the biomedical sciences from outside the NIH, but located within the United States.

Note that an employment offer as an NIH contractor does **NOT** meet the above requirements. In addition, a job offer to your J-2 dependent does **NOT** meet the NIH requirements. The offer must be made directly to you, the primary J-1 Exchange Visitor.

If your waiver is based on "B" above (i.e. employment outside the NIH), you are expected to leave the NIH as soon as possible after receiving the waiver. You are required to depart the NIH by the end date listed on your current Form DS-2019 **OR** when your status is changed to H-1B or another immigration status – **whichever comes first!** **In addition, you cannot return to the NIH (or any NIH facility) in any capacity (including as an NIH contractor) for two (2) years following your departure. If you have already departed the NIH, then your two (2) years began after your last day at the NIH. Note that this policy also applies to any J-2 dependents working at the NIH.**

You can find the NIH policy on NOS waivers at <http://www1.od.nih.gov/oir/sourcebook/irp-policy/nos-waivers.htm>

II.A. EMPLOYMENT WITH NIH

In order for the NIH to provide a favorable sponsor view on your waiver application, the DIS must have **all** approvals for your NIH employment on NIH Form 829-1 and attachments (note: employee positions at the NIH are often known as FTEs or full-time equivalents). This includes having all internal approvals from your Institute or Center (IC), as well as any necessary approvals from the NIH Office of Intramural Research (OIR). The approved FTE must have a minimum duration of 13 months in order for the DIS to consider a favorable sponsor view.

The following web site provides guidance on what your IC must send to the DIS:
<http://dis.ors.od.nih.gov/forms/vsrequestchecklist.pdf>. Once the properly endorsed NIH Form 829-1 and attachments are received by the DIS, the NIH will comment favorably on your waiver and seek to change your status from J-1 to H-1B temporary worker.

Please contact your IC's administrative office in preparing the necessary documents. When possible, the FTE request should ideally be sent to the DIS approximately twelve (12) months before your J-1 status expires (per your current Form DS-2019), in order to allow processing of the waiver and change to H-1B. Further details on the use of the H-1B at the NIH can be found at <http://www1.od.nih.gov/oir/sourcebook/irp-policy/h-1bmodification.htm>.

II.B. EMPLOYMENT OUTSIDE NIH

In order for the NIH to comment favorably on your waiver application, the DIS must have evidence of your offer of employment in the United States. The employment must be in a comparable full-time research position that is similar to an NIH FTE. In addition, please note that employment by a contractor to place you at the NIH is **NOT** an acceptable offer, as per the NIH Policy on waivers (item II above), you are unable to remain at any NIH facility based on an outside job offer.

To receive the NIH's favorable sponsor views, the DIS will require the following documents.

If you are currently at the NIH, please submit:

1. copy of the official job offer letter;
2. acceptance of the said offer of employment;
3. confirmation of your understanding of the NIH NOS waiver policy; and
4. confirmation of your NIH lab/branch sponsor's understanding of NIH NOS Waiver policy.

If you have already departed the NIH, please submit:

1. current letter confirming your employment, noting your employment begin date;
2. acceptance of the said offer of employment;
3. copy of your most recent pay stub;
4. confirmation of your understanding of the NIH NOS waiver policy; and
5. confirmation of your previous NIH lab/branch sponsor's understanding of the NIH NOS Waiver policy.

ALL items **must** be received **before** the DIS will review your case for NIH sponsor views. In order to facilitate our review, we suggest that you submit all items together in one package (except for those items requested to be sent by email; refer to item II.B.3-4).

II.B. 1-2. JOB OFFER LETTER and ACCEPTANCE

You can fax the DIS a copy of your job offer letter AND indicate your acceptance of the position on the offer letter. The job offer must be a formal or concrete offer of employment; it cannot be a tentative or potential offer contingent upon the availability of a grant or other similar factor. Carefully work out a proposed starting date with the employer. Indicate your acceptance of the position on the job offer letter (note: the DIS will **NOT** comment favorably without seeing your acceptance of the position, even if you have already departed the NIH). If the letter does not have an acceptance field, you can indicate your acceptance by simply writing at the bottom of your job offer letter or current letter of employment: "*I accept the terms and conditions of the above employment offer.*" You must sign your name and note the date by the acceptance.

The job offer letter or current letter of employment (if you have already departed the NIH) must incorporate the following elements to be considered a valid offer of employment:

- the letter must be on employer letterhead; and indicate
- the job or position title;
- a brief description of job duties;

- job location (including city and state);
- salary and benefits;
- proposed starting date or actual starting date, if already departed the NIH; and
- signed by an individual authorized to extend the employment offer—usually from the Personnel/Human Resources office of the employer, or the employer’s international office. Please note that at many institutions, department heads, Professors or Assistant Professors are not authorized to extend an offer of employment!

****IMPORTANT:** After receipt of the job offer letter with your acceptance, the DIS will contact the employer to verify the employment offer. **The DIS will not provide a favorable sponsor view without verifying the job offer!****

II.B. 3-4. UNDERSTANDING OF NIH NOS WAIVER POLICY

You must indicate in writing via email to the DIS that you understand the NIH policy on NOS waivers. To indicate your understanding, simply copy the following text and place in an email to the DIS contact (refer to item III):

“This is to confirm that I, <<*insert your name here*>>, understand that once the NIH submits favorable comments to the DOS based on my outside employment, then I must leave the NIH or the NIH facility by the end date of my NIH-sponsored Form DS-2019 OR my earlier change of status to H-1B or other immigration status. In addition, I understand that I **am not** eligible to return to the NIH for a period of two (2) years from my departure from the NIH. If I have already departed the NIH, then my two (2) years began after my last day at the NIH.”

We must also have confirmation that your current or previous NIH lab/branch sponsor understands the above NIH waiver policy. Please notify your lab/branch sponsor to send an email to the DIS contact (refer to item III) to confirm his/her understanding of the NIH NOS waiver policy (see <http://www1.od.nih.gov/oir/sourcebook/irp-policy/nos-waivers.htm>). The sponsor simply needs to state:

“This is to confirm that I have read and understand the NIH NOS waiver policy. I have no objections to the DIS/NIH providing a favorable sponsor view on the waiver application by <<*name of J-1 waiver applicant*>>.”

III. DIS Contact

All waiver correspondence should be sent to the DIS Waiver Coordinator’s attention at the DIS via fax, email, or regular mail. The fax is (301) 496-0847; email is DISWaiver@mail.nih.gov; and the DIS mailing address is:

31 Center Drive, MSC 2028
 Building 31, Room B2B07
 Bethesda, MD 20892.

Please allow sufficient time for review and response (up to 30 days from the time that **ALL** documents are received).

IV. DEADLINES

The DOS requires the NIH to provide our comments as soon as possible. In order to comply with this requirement, you must immediately forward the necessary paperwork based on receiving either an FTE with the NIH or a comparable research position outside the NIH. The DOS has imposed a deadline of ninety (90) days for our views. If you do not provide the necessary documents within the ninety (90) day period, then the DIS may be forced to comment **unfavorably** on your waiver! Please note that the DOS may require our comments at any time, therefore, we may be unable to wait 90 days and thus be compelled to respond **unfavorably** if the necessary documents are not received. It is **YOUR responsibility** to ensure that all documents are sent to the DIS. The DIS will not follow-up with you. **CAUTION:** Do not apply too early for a waiver!

V. EXTENSIONS & TRANSFERS

Please note that once the NIH has provided its sponsor views to the DOS, your J-1 status (per your current Form DS-2019) can no longer be extended or transferred. Therefore, you must plan very carefully when to apply for a waiver and determining the start date of your future employment. Again we caution: Do not apply too early!

VI. TRAVEL OUTSIDE THE UNITED STATES

Once you submit a waiver application to the DOS, please note that you have initiated a waiver, whether or not you follow through to complete the process. Requesting a waiver is incompatible with the J-1 exchange visitor program goal of returning home. Therefore, you may not be successful in applying for any further J-1 visas abroad or be re-admitted to the United States in J-1 status. You must be aware that if you leave the U.S. in these circumstances, you do so at your own risk. You may not be able to return unless the DOS recommends the waiver and the USCIS approves the H-1B or other immigration status.

GLOSSARY OF ABBREVIATIONS

NIH = National Institutes of Health

IC = NIH Institute or Center

DIS = Division of International Services, NIH

DOS = U.S. Department of State

NOS = No-Objection Statement Waiver

212e = Two-year home country physical presence requirement

Form DS-2019 = Certificate of Eligibility for Exchange Visitor (J-1) status

FTE = full-time equivalent; an NIH employee position

H-1B = Temporary Skilled Worker visa/status

USCIS = United States Citizenship and Immigration Services, an agency of the U.S. Department of Homeland Security