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), 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 DIS to consider providing a favorable sponsor view to DOS, you must meet the NIH’s NOS waiver policy requirements. This handout describes the criteria by which NIH may comment favorably on a waiver request.

**PLEASE NOTE:** DIS/NIH will not begin our review for sponsor views until we are formally contacted by DOS. Please do not submit any documentation until DIS contacts you by email with instructions on the submission of the items.

**I. BACKGROUND**

As a J-1 Exchange Visitor sponsored or funded by 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.” NIH hosts J-1 Exchange Visitors with the goal of increasing worldwide biomedical knowledge and expertise. NIH-sponsored J-1 Exchange Visitors become subject to 212e by receiving sponsorship or funding 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 DOS. If you apply for a waiver, you (not NIH) must make an application directly with DOS. Information on waivers and how to apply is at the DOS website: [https://travel.state.gov/content/travel/en/us-visas/study/exchange/waiver-of-the-exchange-visitor/how-to-apply-waiver.html](https://travel.state.gov/content/travel/en/us-visas/study/exchange/waiver-of-the-exchange-visitor/how-to-apply-waiver.html).

**II. NIH POLICY ON NOS WAIVERS**

NIH does not encourage J-1 Exchange Visitors to remain in the United States. However, extenuating circumstances may warrant remaining in the U.S. A policy has been created in order to allow these exceptional circumstances. NIH (through 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 NIH;

OR

B. Received a formal offer of employment in the biomedical sciences from a bona fide employer outside NIH, but located within the United States.

Note that an employment offer as an NIH contractor does NOT meet the above requirements. NIH contractors are individuals acquired via a contract/task order and placed at an NIH facility to perform a specific task or function. It is the policy of NIH not to grant No-Objection Statement (NOS) Waivers for any Contract Workers working at the NIH, either on an individual basis or through a contractor. You may find this policy at [https://oir.nih.gov/sourcebook/personnel/recruitment-processes-policies-checklists/policy-use-contract-workers-support-scientific-functions-irp](https://oir.nih.gov/sourcebook/personnel/recruitment-processes-policies-checklists/policy-use-contract-workers-support-scientific-functions-irp) under the section marked “Visas.” 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 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 another immigration classification – whichever comes first! In addition, you cannot return to 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, your two (2) years began after your last day at NIH. Note that this policy also applies to any J-2 dependents working at NIH.

[https://oir.nih.gov/sourcebook/personnel/recruitment](https://oir.nih.gov/sourcebook/personnel/recruitment)
II.A. EMPLOYMENT WITH NIH

In order for NIH to provide a favorable sponsor view on your waiver application, 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 position must have a minimum duration of 13 months in order for DIS to consider a favorable sponsor view. Please note that you must fulfill the duration of your FTE appointment BEFORE you are eligible to move to a position as an NIH contractor.

To receive the NIH’s favorable sponsor views based on employment with NIH, DIS will require the following documents –

1. Properly endorsed NIH Form 829-1 and attachments;
2. Confirmation of your understanding of your ability to move to an NIH contractor position; and
3. Confirmation of your NIH laboratory/branch sponsor’s understanding of your inability to move to an NIH contractor position.

II.A. 1 FTE APPROVALS

Contact your IC’s administrative office to prepare the FTE appointment documents. The following web site provides guidance on what your IC must send to the DIS: https://www.ors.od.nih.gov/pe/dochelp/NIH工业园AvailabilityFTEA.pdf. Once the properly endorsed NIH Form 829-1 and attachments are received by DIS, NIH will comment favorably on your waiver and seek to change your status from J-1 to H-1B Temporary Worker.

II.A. 2-3 UNDERSTANDING OF ABILITY TO MOVE TO NIH CONTRACTOR POSITION

You must indicate in writing that you understand the NIH policy restrictions concerning FTE appointments and placement as an NIH contractor. As noted in Section II (page 1), an NIH contractor position does NOT meet NIH requirements to issue favorable sponsor views. However, some individuals who receive an NIH employment/FTE offer often wish to resign from that position to later take an employment offer with an NIH contractor. As this may be perceived as circumventing the NIH waiver policy, please understand that you may only accept employment with an NIH contractor AFTER the duration of your FTE appointment as indicated on the endorsed NIH Form 829-1 (see Section II.A. 1 above).

To indicate your understanding, simply copy the following text and place in an email to DIS contact (refer to item III). Note that this may be sent in advance of the FTE approvals:

“This is to confirm that I, <<insert your name here>>, have read and understand NIH policy restrictions in that I will not accept a position as an NIH Contractor/Contract Worker until fulfilling my initial NIH FTE appointment.”

We must also have confirmation that your FTE lab/branch sponsor understands this NIH policy restriction concerning FTE appointments. Please ask your FTE lab/branch sponsor to send an email to DIS contact (refer to item III). Again, this may be sent in advance of the FTE approvals. The sponsor simply needs to state:

“This is to confirm that I have read and understand the NIH policy restriction concerning FTE appointments. I will not appoint <<name of J-1 waiver applicant>> as an NIH Contractor/Contract Worker before the end date of his/her initial NIH FTE appointment.”

Further information on the use of NIH Contract Workers can be found at https://oir.nih.gov/sourcebook/personnel/recruitment-processes-policies-checklists/policy-use-contract-workers-support-scientific-functions-irp.

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 a bona fide offer in a position that will utilize the knowledge, skills, and abilities gained during your J-1 training at the NIH. Such a position does not have to be in bench research, but must be one that is consistent with your NIH training. In addition, the offer must constitute a long-term commitment by the employer.

As a reminder, employment offers by a contractor to place you at NIH are NOT acceptable. Per the NIH Policy on waivers (item II on page 1), 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 start 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 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). Note that DIS will not review any documentation submitted before a request for sponsor views are received from the U.S. Department of State. Please do not submit any documentation until DIS contacts you by email with instructions on the submission of the items.

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

You can fax 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 that represents a long-term commitment by the employer. It cannot be a tentative or potential offer contingent upon the availability of a grant or other similar factor. Carefully work out a reasonable, proposed starting date with the employer. We understand that immigration processes take time, thereby making it difficult to list a starting date. However, consider that if all processes go well, what would be the earliest date that the employer can place you on their payroll in the near future? This is the date that should be listed as the proposed start date.

Indicate your acceptance of the position on the job offer letter (note: 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(ed) 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, DIS will contact the employer to verify the employment offer. DIS will not provide a favorable sponsor view without verifying the job offer! In addition, the employment offer must be with a valid bona fide employer**

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 NIH submits favorable comments to DOS based on my outside employment, then I must leave NIH or the NIH facility by the end date of my current NIH-sponsored Form DS-2019 OR my earlier change of status to H-1B or other immigration status. I also understand that I am not eligible to return to NIH for a period of two (2) years from my departure from NIH. If I have already departed NIH, then my two (2) years began after my last day at NIH. In addition, I understand that this policy also applies to any J-2 dependents.”

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 DIS contact (refer to item III) to confirm his/her understanding of the NIH NOS waiver policy. The sponsor simply needs to state:

“This is to confirm that I have no objections to DIS/NIH providing a favorable sponsor view on the waiver application by <<name of J-1 waiver applicant>>. I understand that she/he provided evidence of an outside employment offer and that due to NIH NOS waiver policy, she/he must depart NIH or the NIH facility by the end date of his/her current NIH-sponsored Form DS-2019 OR when he/she changes to a different immigration status. I also understand that she/he cannot return to NIH for a period of two (2) years from his/her departure from NIH. If she/he has already departed NIH, then the two (2) years started after her/his last day at NIH.”
III. DIS Contact

All waiver correspondence should be sent to the “DIS Waiver Coordinator” 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 NIH to provide our comments as soon as possible. In order to comply with this requirement, you must immediately forward the necessary employment paperwork based on receiving either an FTE with NIH or a scientific position outside NIH. DOS requires NIH sponsor views within ninety (90) days of their request. In turn, we will provide you this time-frame to submit the necessary documents. However, if you do not provide the documents within the 90-day period, DIS may be forced to comment unfavorably on your waiver! Therefore, notify the DIS Waiver Coordinator on the status of the documentation before the 90th day.

In special cases, the DOS may require our views at any time; therefore, we may be unable to wait 90 days and must provide an immediate answer. The DIS Waiver Coordinator will notify you if this occurs, but we may be compelled to respond unfavorably if the necessary documents are not received promptly.

It is YOUR responsibility to ensure that all documents are sent to DIS. DIS will not follow-up with you.

CAUTION: Do not apply too early for a waiver!

V. EXTENSIONS & TRANSFERS

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

VI. J-1 TRAVEL OUTSIDE THE UNITED STATES

Once you submit a waiver application to 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 (or J-2) visas abroad and/or being re-admitted to the United States in J-1 (or J-2) 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 DOS recommends the waiver and the USCIS approves the H-1B or other immigration status. Carefully weigh the benefits of travel versus the possible risks.

VII. DISCLAIMER

Any policy or guidance contained on this handout is for general information only. NIH reserves the right to add, delete, or otherwise modify the contents of this handout at any time without notice. Accordingly, NIH gives no guarantee or assurance that “favorable” views will be granted despite compliance with this handout. Violations of immigration rules and regulations as well as NIH program requirements will be viewed negatively in any determination.

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