

Highlights of [GAO-12-1035T](#), a testimony before the Subcommittee on Health, Committee on Energy and Commerce, House of Representatives

Why GAO Prepared This Testimony

HHS and EPA have been using special hiring authority provided under 42 U.S.C. §§209(f) and (g)—referred to in this testimony as Title 42—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 review the extent to which HHS and EPA have (1) used authority under Title 42 to appoint and compensate employees since 2006, and (2) followed applicable agency policy, guidance, and internal controls for appointments and compensation. GAO was also asked to determine if there are statutory caps on pay for consultants and scientists appointed pursuant to Title 42.

This testimony is based on GAO's July 2012 report ([GAO-12-692](#)) and a legal opinion on whether there are statutory caps on pay for consultants and scientists appointed pursuant to 42 U.S.C. §§ 209(f) or (g). (B-3223357)

What GAO Recommends

In the report on which this testimony is based, GAO made recommendations to HHS to improve oversight and management of its Title 42 authority and a recommendation to EPA to improve enforcement of its ethics requirements. HHS agreed with GAO's recommendations, while EPA disagreed, citing actions already taken. GAO acknowledged EPA's plans to address these issues, but maintained the recommendation was needed to ensure implementation.

View [GAO-12-1035T](#). For more information, contact Robert Goldenkoff at (202) 512-2757 or goldenkoffr@gao.gov, or Robert Cramer at (202) 512-7227 or cramerr@gao.gov.

HUMAN CAPITAL

The Department of Health and Human Services' and Environmental Protection Agency's Use of Special Pay Rates for Consultants and Scientists

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, from 5,361 positions in 2006 to 6,697 positions in 2010, an increase of around 25 percent. 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). 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 needed to compete with the private sector. In 2010, 1,461 of HHS's Title 42 employees earned salaries over \$155,500. The highest base pay amount under the General Schedule – the system under which most federal employees are paid – was \$155,500 in 2010. Under certain types of Title 42 appointments, statutory pay caps may apply. 2010 was the last year of HHS data available at the time of GAO's review.

HHS does not have reliable data to manage and provide oversight of its use of Title 42. Moreover, HHS did not consistently adhere to certain sections of its Title 42 section 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 employees under Title 42 section 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. Fifteen of EPA's 17 Title 42 employees earned salaries over \$155,500 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.

In its legal opinion, GAO concluded that an appropriations pay cap applies to certain, but not all, employees appointed under 42 U.S.C. §§ 209(f) and (g). If Congress desires upper pay limits for appointments not currently subject to the pay cap, it may wish to consider legislation to specifically establish such limits.