



Department of Energy
Washington, DC 20585

March 31, 2010

MEMORANDUM FOR HUMAN RESOURCES OFFICERS

FROM: SARAH J. BONILLA, DIRECTOR
OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER

SUBJECT: POLICY GUIDANCE MEMORANDUM #7
CURRENT APPROPRIATIONS LAW AND COMPENSATION
OF FOREIGN NATIONALS

Due to recent changes in appropriations law, the Department no longer has the authority to compensate a noncitizen, unless the noncitizen is lawfully admitted for permanent residence, or falls within one of a few very narrow exceptions based on the individuals profession. This change will impact the hiring of employees in the excepted service, and in particular, the Senior Executive Service (SES) and the Federal Intern Programs (Federal Career Intern Program, Student Career Employment Program, Student Temporary Employment Program, and Summer Student Intern and Employment Program).

In the past, there has been a yearly appropriations ban on paying certain non-citizens; this ban included numerous exemptions for individuals from specific countries. The Consolidated Appropriation Act, 2010, Pub. L. No. 111-117, div C, tit VII, §704 (December 16, 2009), eliminates the different treatment of individuals by country of origin and now permits the hiring of individuals who are lawfully admitted for permanent residence and are seeking United States citizenship (see attachment). Accordingly, the "allied country" country exception, which was widely used as the basis for compensating non-citizens, is no longer in effect.

The prohibition against hiring noncitizens in the competitive service remains unchanged. Only United States citizens and nationals may be appointed in the competitive civil service. Under Executive Order 11935, only United States citizens and nationals (residents of American Samoa and Swains Island) may compete for, and be appointed to, competitive service jobs. In specific cases, the Office of Personnel Management may authorize the appointment of aliens to competitive service jobs to promote the efficiency of the service, as an exception to the Executive Order, and to the extent permitted by law. 5 C.F.R. 7.3(c)



Additional information about citizenship in Federal employment is on the following website: <http://www.usajobs.gov/ei/noncitizensemployment.asp>. Any conversions or extensions of temporary appointments after December 16, 2009, are subject to the requirements of the Appropriations Act. If you have any questions related to a specific appointment of a foreign national currently on board, please consult with your local legal counsel's office for legal guidance.

Should you have any questions, please contact Antoinette Hawkins at (202) 586-0083.

Attachment

Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, div. C, tit. VII, § 704 (12/16/2009)

SEC. 704. Unless otherwise specified during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in the continental United States unless such person: (1) is a citizen of the United States; (2) is a person who is lawfully admitted for permanent residence and is seeking citizenship as outlined in 8 U.S.C. 1324b(a)(3)(B); (3) is a person who is admitted as a refugee under 8 U.S.C. 1157 or is granted asylum under 8 U.S.C. 1158 and has filed a declaration of intention to become a lawful permanent resident and then a citizen when eligible; or (4) is a person who owes allegiance to the United States: *Provided*, That for purposes of this section, affidavits signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his or her status are being complied with: *Provided further*, That any person making a false affidavit shall be guilty of a felony, and upon conviction, shall be fined no more than \$4,000 or imprisoned for not more than 1 year, or both: *Provided further*, That the above penal clause shall be in addition to, and not in substitution for, any other provisions of existing law: *Provided further*, That any payment made to any officer or employee contrary to the provisions of this section shall be recoverable in action by the Federal Government: *Provided further*, That this section shall not apply to any person who is an officer or employee of the Government of the United States on the date of enactment of this Act, or to international broadcasters employed by the Broadcasting Board of Governors, or to temporary employment of translators, or to temporary employment in the field service (not to exceed 60 days) as a result of emergencies: *Provided further*, That this section does not apply to the employment as Wildland firefighters for not more than 120 days of nonresident aliens employed by the Department of the Interior or the USDA Forest Service pursuant to an agreement with another country.

From the accompanying Conference Report, H.R. Conf. Rep. No. 111-366 at 939 (2009) (emphasis added).

Section 704 modifies provisions proposed by the House and the Senate that prohibit the use of appropriated funds to compensate officers or employees of the Federal Government in the continental United States unless they are citizens of the United States or qualify under other specified exceptions. This provision eliminates the differential treatment of individuals by country of origin and excepts from the prohibition individuals who are lawfully admitted for permanent residence and are seeking United States citizenship.