

**Subpart C—Private Startup Loans**

**PART 24—SENIOR BIOMEDICAL RESEARCH SERVICE**

**§ 23.41 What conditions are applicable to loans under this subpart?**

The regulations set out in subpart B of this part are fully applicable to loans awarded under section 338C(e)(1) of the Public Health Service Act, except as noted below:

(a) *Eligibility.* (1) In lieu of § 23.23(a), the following applies to loans made under this subpart:

(i) Eligibility for loans is limited to NHSC scholarship recipients who plan to enter private practice and have not begun fulfilling their scholarship service obligation or are currently fulfilling their scholarship service obligation under section 338B of the Act and have completed less than 2 years of this obligation.

(2) In lieu of § 23.23(c), the following applies to loans made under this subpart:

(i) NHSC scholarship recipients who have received loans under either this subpart or subpart B of this part are ineligible for loans under this subpart.

(b) *Loan amounts.* (1) In lieu of § 23.24, the following applies to loans made under this subpart:

(i) The Secretary may make loans in the amount of \$12,500 if the recipient agrees to practice in accordance with the loan agreement for a period of at least 1 year but less than 2 years or the remaining period of the borrower's NHSC scholarship service obligation, whichever is shorter.

(ii) The Secretary may make loans in the amount of \$25,000 if the recipient agrees to practice in accordance with the loan agreement for a period of at least 2 years or the remaining period of the borrower's NHSC scholarship service obligation, whichever is shorter.

(c) *Use of funds.* (1) In lieu of § 23.32(a), the following applies to loans made under this subpart:

(i) The borrower must use the total amount of the loan only to purchase or lease, or both, the equipment and supplies needed for providing health services in his or her private practice. Equipment and supplies purchased and/or leased shall be limited to the items requested in the loan application and approved by the Secretary.

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AUTHORITY: Section 228(g) of the Public Health Service Act; 5 U.S.C. 301.

SOURCE: 61 FR 6557, Feb. 21, 1996, unless otherwise noted.

**§ 24.1 Establishment.**

There is established in the Public Health Service (PHS) a Senior Biomedical Research Service (SBRS) consisting of members the maximum number of which is prescribed by law.

**§ 24.2 Allocation.**

(a) The Secretary, within the number authorized in the PHS Act, shall determine the number of SBRS slots to be allocated to each participating Operating Division.

(b) The SBRS Policy Board may advise the Secretary to make adjustments to the allocation at any time.

(c) The majority of the SBRS allocation is to be reserved for recruitment. The remaining SBRS allocation may be used for the retention of current employees.

(d) SBRS slots will be used judiciously, resulting in SBRS appointments only where other senior-level appointing authorities are not sufficient to recruit or retain scientific talent.

(e) The Secretary will ensure that SBRS slots are used in support of high priority programs authorized by Congress and which directly support the research goals and priorities of the Department.

**§ 24.3 Policy Board.**

The Secretary or his/her designee shall establish an SBRS Policy Board to serve in an advisory capacity, recommending SBRS allocations among the participating Operating Divisions,

reviewing the operations of the SBRS and ensuring consistent application of regulations, policies, and procedural guidelines, and recommending changes to the Secretary as necessary. Membership, to the extent possible, will include SBRS eligibles nominated by their respective Operating Divisions, will be weighted in proportion to Operating Divisions' SBRS allocations, and will include representation from the Office of the Secretary. The Secretary or his/her designee will select the board membership and the Chair.

#### § 24.4 Eligibility.

To be eligible for appointment to the Service an individual must have a doctoral-level degree in biomedicine or a related field and must meet the qualification standards prescribed by the U.S. Office of Personnel Management for appointment to a position at GS-15 of the General Schedule. In addition, the individual must be outstanding in the field of biomedical research or clinical research evaluation. Appointment to the Service will be made only to individuals actively engaged in either biomedical research or clinical research evaluation.

(a) Outstanding in the field of biomedical research means an individual who is actively engaged in peer-reviewed original biomedical research and whose work in this area is considered by his or her peers to be outstanding. In order to meet the eligibility criteria, an individual must have conducted original peer-reviewed biomedical research resulting in major accomplishments reflected by a steady and current record of highly cited publications in peer-reviewed journals of high stature. In addition, the individual should be the recipient of major prizes and awards (such as visiting professorships and named lectureships) in recognition of original contributions to research.

(b) Outstanding in the field of clinical research evaluation means that an individual is actively engaged in clinical research evaluation and is considered by his or her peers to be outstanding. In order to meet the eligibility criteria, an individual, by force of his or her own technical expertise, must be in a position to shape the

course of drug or device evaluation or exert a similar influence on the PHS handling of other agents that may affect the public health. The individual would normally have dealt with complex, precedent-setting evaluation issues that involved significant scientific controversy, had far reaching implications for clinical research or resulted in a widespread economic effect in the health-care delivery system. In addition, the individual should have been involved in the development of scientific or regulatory guidelines for clinical research and been the recipient of invitations to speak at or to chair major national or international meetings and symposia.

#### § 24.5 Peer review.

An individual may not be considered for appointment into the SBRS unless his/her qualifications have been reviewed by a PHS peer review committee and the committee has recommended appointment to the Service.

#### § 24.6 Pay and compensation.

The SBRS is an ungraded system, with a single, flexible pay range to include all members.

(a) Pay of the members of the Service shall be determined by the Secretary or his/her designee.

(b) The pay of a member of the Service shall be not less than the minimum rate payable for GS-15 of the General Schedule and shall not exceed:

(1) The rate payable for level I of the Executive Schedule unless a higher rate of pay is expressly approved on an individual basis by the President, pursuant to 5 U.S.C. 5377(d)(2), or

(2) The rate payable for level II of the Executive Schedule unless a higher rate of pay is expressly approved on an individual basis by the Secretary.

(c) While the full pay range will be used, individual pay at the higher end of the range will be used only as needed to recognize individual scientific value and as necessary to recruit or retain an exceptionally well-qualified scientist.

(d) The following factors will be used in establishing appropriate pay rates for individual members:

(1) Impact of the individual on the scientific field;

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(2) Recognition of the individual by the scientific community;

(3) Originality of the individual's ideas/work products;

(4) Specific "clinical" or highly technical skills of the individual which are of benefit to the agency and which are in addition to requirements of the basic scientific assignment;

(5) The individual's earnings and monetary benefits;

(6) Salary surveys of similar skills in pertinent labor markets; and

(7) Other relevant factors.

(e) Annual adjustments to pay rates may be made effective on the first day of the first pay period on or after January 1 of each calendar year. The rate of such adjustments will be at the discretion of the Secretary or his/her designee, except that the minimum rate payable in the SBRS will be increased to the amount of the minimum rate of the GS-15 of the General Schedule.

(f) Other pay adjustments will be made on an individual basis by the Secretary or his/her designee.

(g) Except as provided in paragraph (h) of this section, new appointees to the Service, who are not covered by the Civil Service Retirement System, will be covered by the Federal Employees Retirement System.

(h) Upon the request of a member who performed service in the employ of an institution of higher education immediately prior to his appointment as a member of the Service, and retains the right to make contributions to the retirement system of such institution, the Department of Health and Human Services may contribute an amount not to exceed ten percent per annum of the member's basic pay to such institution's retirement system on behalf of such member. A member who participates in this program shall not be covered by any retirement system established for employees of the United States under title 5, United States Code.

### § 24.7 Performance appraisal system.

The members of the Service shall be subject to a performance appraisal system which shall be designed to encourage excellence in performance and shall provide for a periodic and system-

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atic appraisal of the performance of the members.

### § 24.8 Applicability of provisions of Title 5, U.S. Code.

(a) Appointments to the Service shall be made without regard to the provisions of title 5, U.S. Code regarding appointments.

(b) Members of the Service shall not be covered by the following provisions of title 5, U.S. Code:

(1) Subchapter I of Chapter 35 (relating to retention preference in the event of reduction in force);

(2) Chapter 43, Performance Appraisal (and performance-based actions);

(3) Chapter 51 (relating to classification);

(4) Subchapter III of Chapter 53, The General Schedule; and

(5) Chapter 75, Adverse Actions.

(c) Other provisions of Title 5 will be applied as administratively determined by the Secretary or his/her designee.

### § 24.9 Removal from the Service.

(a) A member of the Service may be subject to disciplinary action, including removal from the Service, for substandard performance of duty as a member of the service, for misconduct, for reasons of national security or for other reasons as determined by the Secretary.

(b) A member for whom disciplinary action is proposed is entitled to:

(1) Written notice of the proposed action and the basis therefor;

(2) A reasonable opportunity to answer the notice of proposed action both orally and in writing;

(3) The right to be represented by an attorney or other representative in making such answer; and

(4) A written decision on the proposal.

(c) The decision may be made by an official with delegated authority to take such action, but in no case may the official be at a level below the head of the Operating Division where the member is assigned.

(d) A member who is separated from the Service involuntarily and without cause and who, immediately prior to his appointment to the Service, was a career appointee in the civil service or the Senior Executive Service, may be

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appointed to a position in the competitive civil service at grade GS-15 of the General Schedule. Such an appointment may be made by the Secretary or his/her designee without regard to the provisions of title 5, U.S. Code regarding appointments in the civil service.

(e) A member who is separated from the Service involuntarily and without cause and who, immediately prior to appointment to the Service, was not a career appointee in the civil service or the Senior Executive Service may be appointed to a position in the excepted civil service at grade GS-15 of the General Schedule for a period not to exceed two years.

(f) There shall be no right to further review of the final decision on a disciplinary action. At his/her discretion,

the Secretary may review an action taken under this section and may reduce, suspend, or overrule the action taken.

(g) A member of the Service may be removed from the Service for such other reasons as may be prescribed by the Secretary.

**§ 24.10 Reporting.**

For each quarter of the first year of implementation and annually thereafter, participating Operating Divisions shall maintain reports on the operation of the SBRS. At a minimum, these reports should include the number of appointees, the source of those appointees, their earnings immediately prior to appointment, and their SBRS pay at appointment.