

§ 317.801

5 CFR Ch. I (1-1-03 Edition)

without an order from OPM directing such action.

(3) The agency is responsible for assigning the individual to a position for which he or she meets the qualification requirements.

(4) Direct negotiations with an agency do not extend the time limit stated in paragraph (b) of this section for making application to OPM.

(5) OPM may, when appropriate and upon request by the agency, allocate an additional SES space authority to an agency that voluntarily reinstates a former Presidential appointee under this paragraph.

(6) An individual who is reinstated under this paragraph because of direct negotiations with an agency is not entitled to further assistance by OPM.

(e) *Tenure upon reinstatement.* (1) An individual reinstated under § 317.703 becomes an SES career appointee.

(2) An individual reinstated under § 317.703 who was serving an SES probationary period at the time of his or her Presidential appointment is required to complete the 1-year SES probationary period upon reinstatement.

(f) *Compliance.* (1) An agency must comply with an order to reinstate issued by OPM under this section as promptly as possible, but not more than 30 calendar days from the date of the order.

(2) The agency will notify OPM of a reinstatement action taken under this section within 5 workdays of the effective date of the reinstatement.

(3) An individual who declines a reinstatement ordered by OPM is not entitled to further placement assistance by OPM under this section.

[54 FR 9759, Mar. 8, 1989, as amended at 60 FR 6386, Feb. 2, 1995]

Subpart H—Retention of SES Provisions

§ 317.801 Retention of SES provisions.

(a) *Coverage.* This subpart applies to—

(1) A career appointee in the SES appointed at any time by the President to a civilian position in the executive branch with the advice and consent of the Senate at a rate of basic pay which

is equal to or greater than the rate payable for Executive Level V; or

(2) A career appointee in the SES who is not covered under paragraph (a)(1) of this section and who was appointed on or after November 1, 1986, to a civilian position in the executive branch which is covered by the Executive Schedule, or the rate of basic pay for which is fixed by statute at a rate equal to one of the levels of the Executive Schedule.

(b) *Election.* (1) At the time of appointment, an appointee covered by paragraph (a) of this section may elect to retain some, all, or none of the following SES provisions: Basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement. That election shall remain in effect for no less than one year, unless the appointee leaves the position sooner.

(2) The appointing agency is responsible for advising the appointee of the election opportunity. The election decision must be in writing.

(3) If an appointee elects to retain SES basic pay, the appointee is entitled to receive locality-based comparability payments under 5 CFR, part 531, subpart F, if such pay is applicable to SES employees in the locality pay area, and any applicable special pay adjustment for a law enforcement officer under 5 CFR part 531, subpart C, even though the appointee may be in an Executive Schedule position otherwise excluded from such payments.

(c) *Change in election.* Except as provided by paragraph (b) of this section, a career appointee is permitted to make an election for purposes of adding or dropping coverage no more than once during any twelve-month period.

[50 FR 6154, Feb. 14, 1985, as amended at 56 FR 15273, Apr. 16, 1991; 57 FR 54677, Nov. 20, 1992; 60 FR 6386, Feb. 2, 1995]

Subpart I—Reassignments, Transfers, and Details

SOURCE: 54 FR 9760, Mar. 8, 1989, unless otherwise noted.

§ 317.901 Reassignments.

(a) In this section, *reassignment* means a permanent assignment to another SES position within the employing executive agency or military department. (See 5 U.S.C. 105 for a definition of “executive agency” and 5 U.S.C. 102 for a definition of “military department.”)

(b) A career appointee may be reassigned to any SES position for which qualified in accordance with the following conditions:

(1) *Reassignment within a commuting area.* For reassignment within a commuting area, the appointee must receive a written notice at least 15 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(2) *Reassignment outside of a commuting area.* For reassignment outside of a commuting area, (i) the agency must consult with the appointee on the reasons for, and the appointee’s preferences with respect to, the proposed reassignment; and (ii) following such consultation, the agency must provide the appointee a written notice, including the reasons for the reassignment, at least 60 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(c) A career appointee may not be involuntarily reassigned within 120 days after the appointment of the head of an agency, or within 120 days after the appointment of the career appointee’s most immediate supervisor who is a noncareer appointee and who has the authority to make an initial appraisal of the career appointee’s performance under subpart C of part 430 of this chapter.

(1) In this paragraph—

(i) *Head of an agency* means the head of an executive or military department or the head of an independent establishment.

(ii) *Noncareer appointee* includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively.

(2) These restrictions do not apply to the involuntary reassignment of a ca-

reer appointee under 5 U.S.C. 4314(b)(3) based on a final performance rating of “Unsatisfactory” that was issued before the appointment of a new agency head or a new noncareer supervisor as defined in paragraph (c)(1) of this section. If a moratorium is already underway at the time the final rating is issued, then that moratorium must be completed before the reassignment action can be effected.

(3) A voluntary reassignment during the 120-day period is permitted, but the appointee must agree in writing before the reassignment.

(4) For the purpose of calculating the 120-day period, any days, not to exceed a total of 60, during which the career appointee is serving on a detail or other temporary assignment apart from the appointee’s regular position shall not be counted. Any days in excess of 60 days on one or more details or other temporary assignments shall be counted.

(5) The prohibition in this paragraph on involuntary reassignments may be applied by an agency, at its discretion, in the case of a detail of an individual as the head of an agency or of a noncareer appointee as a supervisor, or when a noncareer appointee in a deputy position is acting as the agency head or in a vacant supervisory position. If the individual later receives a permanent appointment to the position without a break in service, the 120-day moratorium initiated by the permanent appointment shall include any days spent in the position on an acting basis.

(d) A 15 or 60-day advance notice described in paragraph (b) of this section may be issued during the 120-day moratorium on the involuntary reassignment of a career appointee described in paragraph (c) of this section, but an involuntary reassignment may not be effected until the moratorium has ended.

[54 FR 9760, Mar. 8, 1989, as amended at 57 FR 10124, Mar. 24, 1992; 58 FR 58261, Nov. 1, 1993; 60 FR 6387, Feb. 2, 1995; 63 FR 34258, June 24, 1998]

§ 317.902 Transfers.

(a) *Definition.* In this section, *transfer* means a permanent assignment or appointment to another SES position in a