

**OPM
SENIOR EXECUTIVE
SERVICE
DESK GUIDE**

2009

Preface

This desk guide is a reference tool for senior executives and agency executive resources managers and staff, who have the responsibility of managing and developing their senior executives. The desk guide provides guidance on statutory and regulatory provisions that encompass the Senior Executive Service, as well as the senior leaders, scientific and professional personnel.

This desk guide is to be used as a ready-reference for agency executive resources personnel and is not a policy-making guide. It is a document intended to accommodate regulatory updates and policy changes regarding the SES, and will be updated as they occur. Should you have any questions about the material in the desk guide, please contact the Center for Learning, Executive Resources, and Policy Analysis at the address below.

Where the terms “must” or “shall/will” or “should/would” are used, the provisions reflect statutory or regulatory requirements or interpretations, or they are processing instructions.

Send SES policy-related questions, correspondence, and requests to the Center for Learning, Executive Resources, and Policy Analysis at following address, unless otherwise indicated in the desk guide:

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INTRODUCTION

The Senior Executive Service (SES) was established by Title IV of the Civil Service Reform Act (CSRA) of 1978 [P.L. 95-454, October 13, 1978] and became effective on July 13, 1979. The CSRA envisioned a Senior Executive Service whose members shared values, a broad perspective of Government, and solid executive skills. Members of a “corporate SES” respected and embraced the dynamics of American democracy - an approach to governance that provided a continuing vehicle for change.

The CSRA’s stated purpose was to “ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the nation and otherwise is of the highest quality.” To achieve this purpose, CSRA gave greater authority to agencies to manage their executive resources and stated the SES was to be administered to:

- attract and retain highly competent executives;
- assign executives where they will be most effective in accomplishing the agency’s mission and where best use will be made of their talents;
- provide for the systematic development of managers and executives;
- hold executives accountable for individual and organizational performance;
- reward the outstanding performers and remove the poor performers; and
- provide an executive personnel system free of prohibited personnel practices and arbitrary actions.

SES Coverage

The SES covers positions in the executive branch that are classified above GS-15, or equivalent positions that are not required to be filled by Presidential appointment with or without Senate confirmation, and generally are responsible for managerial, supervisory, and/or policy functions. Under CSRA, the SES was set up as a “third” service, completely separate from the competitive and excepted services.

Statutory Exclusions from the SES

The following agencies and agency components are excluded from the SES by law

[5 U.S.C. 3132(a)(1)]:

- legislative and judicial branch agencies;
- independent Government corporations;
- Federal Election Commission;
- Federal Aviation Administration;
- Central Intelligence Agency;
- Defense Intelligence Agency;
- National Imagery and Mapping Agency;

- National Security Agency;
- Department of Defense intelligence activities the civilian employees of which are subject to section 1606 of title 10;
- Federal Bureau of Investigation;
- Drug Enforcement Administration; and
- as determined by the President, an Executive agency or unit thereof whose principal function is the conduct of foreign intelligence or counterintelligence activities; certain financial management regulatory agencies, including the Comptroller of the Currency and Office of Thrift Supervision in the Department of the Treasury, Federal Housing Finance Board, Farm Credit Administration, Office of Federal Housing Enterprise Oversight in the Department of Housing and Urban Development, and the National Credit Union Administration.
- the Securities and Exchange Commission;
- the Commodity Futures Trading Commission; and
- the Transportation Security Administration.

The following positions are excluded from the SES by law [5 U.S.C. 3132(a)(2), or the citation indicated]:

- positions to which appointment is by the President with Senate confirmation;
- Foreign Service positions;
- Administrative Law Judge positions; and
- agency boards of contract appeals positions.

Presidential Exclusions from the SES

By law, the President may exclude agencies and/or positions from the SES and such is the case for the following positions: staff positions at the National Security Council as well as temporarily appointed U.S. Attorneys and paid supervisory Assistant U.S. Attorneys at the Department of Justice. For further information on SES exclusions see 5 U.S.C. 3132(c) thru (f).

Agency Responsibilities

Most SES operational responsibilities are assigned by law to the agencies, with particular emphasis given to the key roles of the Executive Resources Board (ERB) and the Performance Review Board (PRB). Agencies may hire or fire, develop, assign work to, manage performance, pay, and remove their executives. Agencies are accountable for managing their SES resources in compliance with law and regulation. Agencies are also accountable for maintaining current SES and equivalent executive records in the Executive and Schedule C System (ESCS). To promote the sense of a unified and unique SES, agencies are encouraged to take steps to provide SES members timely information about such SES matters as administration and agency initiatives, publicizing awards for accomplishment and performance of SES members, and providing formal swearing in and orientation programs for new appointees.

Some agencies may have executive authorities or positions in other executive personnel systems, such as the SL (senior level) system and the ST (scientific and professional) system, for specially qualified scientific and professional personnel primarily engaged in research and development, the Senior Foreign Service, or a military or other uniformed service. Heads of such agencies should, as much as possible, integrate all special authorities and systems into a comprehensive approach for meeting their executive resources needs.

OPM Responsibilities

OPM oversees the development, selection, and management of Federal executives and is responsible for overall management of Federal executive personnel programs. Key responsibilities include:

- developing Governmentwide executive resources policies and regulations;
- certifying agency SES performance management systems with OMB concurrence;
- providing guidance and technical assistance to agencies;
- developing legislative initiatives related to executive personnel systems;
- allocating position and appointment authorities;
- administering Qualifications Review Boards (QRBs) and the Presidential Rank Awards program;
- providing assistance on executive and management development, including SES candidate development programs;
- managing the executive information management systems, e.g. Executive and Schedule C System (ESCS);
- communicating with senior executives, the Federal human resources community, and other stakeholders on executive resources matters; and ensuring compliance with laws and regulations pertaining to executive personnel systems.

Executive Resources Forums: OPM periodically hosts Executive Resources Forums and convenes Work Groups, to provide updates, address common concerns, and obtain field perspectives on continuing and future executive resource issues and initiatives.

Senior Executives

Senior executives share the responsibilities for executive resources management. They have the challenge and responsibility to transform the Nation's laws and administration policies into effective service to the public. This demands leadership, professional integrity, and commitment to the highest ideals of public service. Federal executives must develop a sense of ownership and pride in a set of common goals, values, and attitudes that extend beyond individual aspirations and transcend their commitment to a specific agency mission.

Merit System Principles and Prohibited Personnel Practices

Merit principles: The Senior Executive Service is to be administered in a manner consistent with the merit system principles prescribed at 5 U.S.C. 2301.

Prohibited personnel practices: Under 5 U.S.C. 2302(a)(2)(B), any position in the SES occupied by a career appointee is considered a “covered position” for the purpose of prohibited personnel practices.

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CHAPTER 1: EXECUTIVE RESOURCES MANAGEMENT

Executive positions are those above GS-15, including those in the Senior Executive Service (SES), as well as those in other pay systems, such as senior-level (SL) and scientific and professional (ST) systems. Positions listed in 5 U.S.C. sections 5315 (Executive Schedule Level IV) and 5316 (Executive Schedule Level V) that do not require Senate confirmation but do meet the SES criteria, are placed in the SES.

Executive resources management is making the most effective and efficient use of the employees at the top levels of the agency to ensure the success of public programs. The SES is designed to give greater authority to agencies to manage their executive resources and hold executives accountable for individual and organizational performance. Although OPM is responsible for leadership and oversight of the SES and other executive personnel systems Governmentwide, each agency head makes the decisions that directly impact agency staff and program results: to hire, develop, assign work, evaluate performance, and compensate the agency's executives. The agency head also decides how best to use the executive spaces OPM allocates to the agency. How well each agency manages its executive resources determines the ability to accomplish its mission and to improve Government, both through the quality of the executives it attracts and retains and the teamwork that good management creates.

Effective executive resources management integrates decisions about executive position management, staffing, training and development, performance management, and compensation. Efficient performance of these functions involves partnership between OPM, agency heads, Executive Resources Boards (ERBs), and senior executives.

EXECUTIVE RESOURCES BOARDS

Each agency is required by 5 U.S.C. 3393(b) to establish one or more Executive Resources Boards to conduct the merit staffing process for career entry into the SES. To be most effective, however, the ERB should have a much broader charter. Ideally, the ERB would have general oversight of the management of the agency's executive resources and function as an advisor to the agency head in executive personnel planning, utilization of executive resources, executive development, and evaluation of executive personnel programs. Some level of ERB involvement in setting pay policy is also desirable. The ERB established for the SES may also be used to oversee other agency personnel programs for positions above GS-15, such as the senior-level (SL) and scientific and professional (ST) pay systems.

MEMBERSHIP

The ERB members are appointed by the agency head and must be employees of the agency. (Employees include commissioned officers in the uniformed services in the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, or National Oceanic and Atmospheric Administration.) The ERB membership should include, to the extent practicable, a mix of Presidential and SES appointees, career and noncareer appointees, civilian personnel and commissioned officers, headquarters and field representatives, and representation of women and minorities. It is particularly helpful to include such a mix for the sake of continuity.

The top-level ERB is generally chaired by a key policy official (such as the deputy agency head). Subordinate ERBs are typically chaired by the head or deputy head of the organization. Most ERB members are top-line management officials with responsibility for a significant portion of the agency's or organization's budget and a significant number of its SES positions. The human resources director usually serves as a member of the ERB or in a staff capacity, such as Executive Secretary.

The ERB functions and responsibilities are an ongoing and integral part of agency management and decision-making. Therefore, it is not appropriate for experts or consultants to serve as ERB members. The nature of the work of these positions, as defined in 5 CFR Part 304, precludes experts and consultants from performing the operational work of the agency. Additionally, an individual who is on an interagency detail cannot serve as an ERB member (voting or non-voting) in the agency to which the individual is detailed.

RESPONSIBILITIES

Merit staffing: The ERBs are required by 5 U.S.C. 3393(b) to conduct the merit staffing process for career appointments in the SES, including reviewing the executive qualifications of candidates for career appointment and making written recommendations to the appointing authority. [See Chapter 2 for information on the merit staffing process.]

Individual development: The ERBs are required by 5 CFR 412.104(d) to approve development plans for each candidate participating in the agency's SES candidate development program. [See Chapter 7 for information on executive and candidate development.] Additionally, ERBs are required by 5 CFR 362.204 to evaluate and certify, as appropriate, each Presidential Management Fellow or Senior Fellow under its jurisdiction.

Other: Agency heads may delegate additional functions and authorities, or the entire spectrum of executive resources management, to the ERBs. Assigning the full range of executive resources management responsibilities to the ERB has several advantages:

- Key executives participate in the development and management of SES policy and systems, ensuring that needs and conditions in all parts of the agency are considered.
- It ensures executives and managers understand and support the policies and systems established.
- The various executive personnel functions are integrated and the SES system is used to further the agency mission.

EXECUTIVE RESOURCES PLANNING AND EVALUATION

Agencies are required to carefully consider how to make the best use of their resources, including those at the executive and management levels, to ensure public programs produce high-quality, cost-effective results for the American people.

PLANNING

The executive planning process should begin with a strategic analysis of current and future executive resource needs:

- identify current and anticipated vacancies;
- analyze the organization to eliminate unnecessary management layers;
- review each vacant and occupied position in terms of agency mission, strategic plans and budget projections, and identify positions that should be abolished or restructured to reflect new priorities and goals;
- analyze positions to determine if individual positions are classifiable above the GS-15 level and if they should be SES, SL, or ST positions; and
- prioritize supportable SES/SL/ST positions.

In addition, such a comprehensive analysis of current and future executive personnel needs would provide an informed basis for an agency's biennial allocations request to OPM (see upcoming section on allocating spaces).

EVALUATION

Agencies should monitor SES resource management on a continuous basis to ensure that SES positions are used to respond most effectively to changing conditions. Periodic evaluations, especially those in advance of the biennial allocation request to OPM, should take the following into account:

- the extent to which the organization has successfully accomplished its mission objectives;
- changes in program priorities and emphasis, as reflected in budget or legislative developments, the vacancy attrition rate, or other indicators;
- the number of vacant SES positions in the organization, and the length of time they have been vacant; and
- changes in the duties and responsibilities of individual SES positions that could affect the extent to which the positions continue to satisfy SES criteria.

It is good management to reassess and reprioritize SES positions in light of the agency's current program requirements, either on an ad hoc basis (as they become vacant), or as part of a comprehensive review. This could determine any changes in the duties and responsibilities of the positions since they were established or last reviewed. The analysis would form the basis for a decision to refill an SES position or to use the space elsewhere, either because the position no longer warrants SES designation, or because a greater need exists in another area. The agency approach to SES position review should provide a systematic basis to either reaffirm or adjust the distribution of SES resources so as to be most responsive to the agency's current requirements.

ALLOCATING SPACES

OPM allocates spaces to the head of the agency on a biennial cycle as specified in law. Flexibility is built into the allocation process to allow for necessary adjustments; however the extent of such adjustments is limited. Generally, agencies are expected to manage their executive resource needs within the levels set during the biennial allocation process. This includes reprogramming existing resources to meet the agency's highest priority requirements, as well as maintaining sufficient flexibility to meet unanticipated needs. When it is not possible to accommodate needs in a timely manner, OPM will work with the agency to identify acceptable alternatives, such as the use of a temporary allocation.

It is in an agency's best interest to minimize the number of spaces deployed to support established, vacant SES positions. Accordingly, agencies should consider approaches whereby an SES space within the agency's allocation could be "floated" from one vacant position to another, and be officially assigned to a position at the time a staffing action is completed. Recruitment action to fill the remaining position(s) could continue and before a selection is made, a space could be transferred from a more recent vacancy, for which the recruiting process has not progressed as far. In this way, a space need not remain unused for the entire duration of a position's vacancy. The number of positions established may exceed the number of spaces allocated, as long as the number of positions filled does not exceed the space allocation.

BIENNIAL ALLOCATION

Under 5 U.S.C. 3133, agencies are required during each even-numbered calendar year to examine their SES position needs and submit a written request to OPM for a specific number of SES position allocations for the 2 succeeding fiscal years (e.g., a request in December 2008, which is in Fiscal Year 2009, would be for the FY 2010/2011 biennial cycle). Although not required to do so by law, OPM also invites agencies to use this opportunity to assess Senior Level (SL) or Scientific/Professional (ST) requirements and request allocation adjustments, if needed. OPM then responds by issuing a memo calling for agencies to submit detailed justification of their allocation requests. This justification may be required from all agencies or from a subset of agencies, e.g., only those requesting an increase.

Agency Justifications for Requested Increases: OPM's call letters for agency justifications to support their biennial requests will require an agency to submit a comprehensive, agency-wide assessment of its executive resources needs, covering existing (established) positions as well as projected positions for which any additional resources are sought. While specific requirements may vary from cycle to cycle, the following generally summarizes the information required.

Agency submissions must identify the specific positions (by title and organizational location) for which any additional executive spaces are sought and the basis for the need determination.

- Describe the particular circumstances giving rise to the need, e.g., legislative mandate or presidential directive; new agency mission or expanded agency program; succession planning requirements; issues raised by OMB.

- Identify source of funding or other resources to support the new/expanded initiative(s) if resources are being reprogrammed within the agency, identify those functions from which resources are being diverted.
- Specify the results expected from each additional position. For example, an increase in casework does not necessarily dictate a need for additional executive slots; if an additional position is requested, what result will it bring to the management of the program? How will it impact the administration's goals?

Agency submissions must prioritize *all* current (i.e., established) and proposed positions, whether vacant or encumbered, in terms of their relative contributions to the agency's mission requirements. (Note that the number of positions prioritized may exceed an agency's current allocation, since agencies may establish and recruit for positions in excess of their allocation; however, an agency's number of filled positions cannot exceed the number allocated.)

- Priorities must be identified in terms of agency-wide goals and objectives. While an executive may believe that a particular position (e.g., a deputy or assistant) is critical to his or her specific program area, the position may not rank as high in relation to the agency's mission.
- Positions in the lowest priority category will be those which present opportunities for reprogramming of executive resources – i.e., positions that may be filled at a lower level or abolished, as turnover occurs, or positions from which the current incumbent may be reassigned if an appropriate opportunity is identified. Provide an analysis (including estimated time frames) of how the agency can best meet its highest priority needs by redirecting resources from lower priority areas.

OPM may consider other information in addition to that provided by the agency. Other factors may include:

- Changes in functions or programs;
- Overall agency funding levels or personnel ceilings;
- Number of vacancies and length of time positions remain vacant;
- The extent to which individual positions do not appear to meet SES criteria;
- Consultation with OMB

OPM Action: After completing its review of agency justifications and consulting with the Office of Management and Budget (OMB) as required by law, OPM issues each agency its position allocation for the upcoming 2 years. It may include SES, SL and/or ST positions as determined by the review. This is the biennial allocation.

INTERIM ALLOCATION ADJUSTMENTS

After OPM issues the biennial allocation, 5 U.S.C. 3133(d) authorizes OPM to adjust an agency's allocation up or down at any time during the biennial cycle. This may be done based upon an agency's written request or at OPM's initiative. By law, upward adjustments Government-wide may not exceed 5 percent of the total number of SES positions initially authorized for the fiscal year. Downward adjustments may become necessary for such reasons as unanticipated changes in budgets or programs, or a reduction-in-force affecting SES members.

OPM may grant a temporary space to support an agency sending an executive or senior professional on a short term assignment, e.g., an interagency detail, during which the individual will occupy an agency space even though he or she is not available for agency work. The temporary space "compensates" an agency for the fact that the executive continues to encumber an agency space while on detail. Examples of short term assignments include certain intra-agency details, IPA assignments, short term transfers that involve a reemployment right (e.g., to an international organization), and short term reassignments, if the position to which the individual would be reassigned cannot be established within the agency's current allocation. Requests for a temporary space should be submitted to OPM's Executive Resources Services Group.

SES CAREER RESERVED MINIMUM

5 U.S.C. 3133(e)(1) required OPM to establish a minimum number of SES Career Reserved positions that must be maintained Governmentwide at all times. OPM may revise this number from time to time, but may not set it lower than the number of positions placed in the SES in July 1979 that were authorized to be filled through competitive civil service examination as of October 12, 1978 (the day before enactment of CSRA), i.e., 3571, except as provided in statute.

To ensure the Governmentwide figure is maintained, OPM establishes a minimum number ("floor") of Career Reserved positions for each agency. An agency must maintain a number of established CR positions that equals or exceeds its CR floor at all times. For this purpose, an established CR position counts whether it is vacant or filled. An agency may cancel CR positions and establish new ones without OPM approval, as long as the agency's numerical floor is maintained. However, changes in the designation of an established position (e.g., from career reserved to general) require prior approval from OPM. [5 CFR 214.403] See *Changing Position Designations*, under *SES Position Designations and Appointment Authorities*, later in this chapter. Changes in the floor must also be approved by OPM [5 CFR 214.402(e)].

NON-SES ALLOCATIONS

The biennial SES allocation cycle is also used to allocate the SL and ST spaces.

ESTABLISHING SES POSITIONS

STATUTE: 5 U.S.C. 3132(a)(2)

REGULATIONS: 5 CFR 214.202

Each agency determines, within the allocation authorized by OPM, which of its positions will be in the SES. These positions must meet both the SES functional and grade level criteria prescribed in 5 U.S.C. 3132(a)(2) and must be within the allocation authorized by OPM. The agency does not need a new allocation from OPM as long as there is an existing space. A position must be formally cancelled (either permanently or temporarily) when a space allocation is withdrawn from the position for use elsewhere. [See *Allocating Spaces* earlier in this chapter.]

SES CRITERIA

Grade level criteria: The position must be classifiable above GS- 15 or equivalent, based on the level of duties, responsibilities, and qualifications required by the job.

Functional criteria: A position meets the SES functional criteria if its incumbent engages in any of the following activities:

- directs the work of an organizational unit;
- is held accountable for the success of one or more specific programs or projects;
- monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;
- supervises the work of employees (other than personal assistants); or
- otherwise exercises important policy-making, policy-determining, or other executive functions.

APPLYING THE SES CRITERIA

The SES is intended to be a corps of executives, not technical experts. As stated in 5 U.S.C. 3131, “It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality.” The following guidelines interpret the section 3132(a)(2) criteria in the context of the SES as an executive corps.

Determining if a position meets the criteria for placement in the SES should not be a mechanical process. Rather, the agency needs to evaluate the position as a whole and determines if it functions as part of the management team, or as an independent advisor or technical expert. This evaluation should consider the position’s duties, responsibilities, and qualifications. In borderline cases, particular attention should be given to the position’s qualifications and the impact these qualifications have on the position’s duties and responsibilities. For example, a staff assistant position should be placed in the SES if executive qualifications are critical to successful performance of the position’s duties and responsibilities.

Directing the work of an organizational unit includes the responsibility to:

- assess policy, program, and project feasibility;
- determine program goals and develop implementation plans;
- design an organizational structure to promote effective work accomplishment; and
- set effectiveness, efficiency, productivity, and management/internal control standards.

At the SES level, *accountability for the success of a program or project* encompasses responsibility for the full range of factors that affect program and project accomplishment. This includes:

- obtain the resources necessary to accomplish the program or project and assume responsibility for their effective use; and
- deal with key officials from within and/or outside the agency to gain understanding and support for the program or project.

Responsibility for *monitoring progress toward organizational goals and making appropriate adjustments to such goals* is an extension of an individual's responsibility for directing the work of an organization. It includes:

- monitoring work status through formal and informal means to evaluate progress toward objectives;
- assessing overall effectiveness, efficiency, and productivity of the organization; and
- identifying, diagnosing, and consulting on problem areas related to implementation and goal achievement and making decisions on alternative courses of action.

A position should be credited with *supervising the work of employees* only if it meets the minimum requirements for coverage under OPM's *General Schedule Supervisory Guide* (June 1998). Specifically, the position's supervisory and related managerial responsibilities must:

- require accomplishment of work through combined technical and administrative direction of others;
- constitute a major duty occupying at least 25 percent of the incumbent's time; and
- meet at least the lowest level of Factor 3 in the *General Schedule Supervisory Guide* based on supervision of non-contractor personnel.

A position with *policy-making or policy-determining functions* would be expected to include responsibility for:

- reviewing staff recommendations of policies developed to affect the organization's mission;
- considering political, social, economic, technical, and administrative factors with potential impact on the recommended policies; and
- approving the policies or formally recommending action to the approving official.

As long as a position satisfies both the grade level and functional criteria, it must be established in the SES.

ANALYZING POSITIONS

Before establishing a position in the SES, agencies should make a systematic and documented analysis of the position to determine that it meets both the functional and executive criteria for SES. The following analytical methods are suggested:

Comparison with existing SES positions: A key element in the analysis normally entails comparing the proposed position against one or more positions, within or outside the organization that satisfies both the functional and executive criteria for inclusion in the SES. The positions used should be comparable to the subject position in terms of function, role (e.g., compare managers to managers and staff advisers to staff advisers), and rationale for SES designation (e.g., don't compare positions where technical considerations are paramount with positions where size and complexity of the organization supervised are paramount). Agencies should analyze the similarities to and differences from the subject position in terms of factors such as:

- organizational characteristics, including the level in the agency where the position is located, and the size and complexity of the organization (including subordinate organizational units);
- functional and program responsibilities, including geographic scope (e.g., local, regional, national, or international), budget size, and impact on accomplishment of the agency's and organization's mission;
- degree and scope of executive, managerial, and/or supervisory authorities and responsibilities;
- level and purpose of contacts (Contacts should be essential for successful performance of the work, be a recurring requirement of the position, and have a demonstrable impact on the difficulty and responsibility of the position.); and
- nature of the staff, e.g., staff size (including staff in subordinate organizational units) and grade levels of individuals reporting directly to the position.

Comparison with classification standards and guides: This method can be used where a standard or guide provides valid comparison criteria.

Guides include the *General Schedule Supervisory Guide* and the *Research Grade Evaluation Guide*. Note that even if a position appears to exceed the level in a GS-15 classification standard, that in itself does not necessarily mean the position is classifiable above GS-15 and should be placed in the SES, since standards generally provide a minimum threshold for classification at a particular grade level. A comparison with existing SES positions may still be needed.

Documentation: To document the analysis, agencies should prepare a position description and an evaluation statement. These documents should be retained at least for the life of the position.

The **position description** should set forth the duties and responsibilities of the position in sufficient detail to support the evaluation statement, the qualifications standard, and the performance standards.

The **evaluation statement** should support the position's placement in the SES in terms of both the SES functional and grade level criteria. Evaluation statements will vary in length and detail; for example, the statement for a position that supervises a number of SES subordinates can be brief and straightforward. On the other hand, positions near the borderline in terms of function or grade level will require more critical and detailed analysis. The statement should avoid generalizations and be as specific as possible. Agencies should keep the following factors in mind when preparing the statement:

- If an existing position (e.g., GS-15) is being placed in the SES, the agency should identify specific growth factors (e.g., budget, programs).
- If a new position is being established, the source of the duties should be identified. If the position places an additional layer of supervision or management over other SES positions, or takes duties from other SES positions, the affected positions should be reviewed to determine if they still support the SES designation
- If the position is being established at a lower organizational level than where SES positions previously existed, the statement should explain why this is being done and what the effect is on other positions at that level (e.g., whether this is a precedent for other SES designations).
- If the position is being placed in the SES based primarily on the impact of the proposed incumbent, this should be indicated so that when the incumbent leaves, the position can be reviewed to determine whether it still supports an SES designation.

DISTINGUISHING BETWEEN SES, SL, AND ST POSITIONS

Positions that are classifiable above the GS-15 level, but do not meet the SES functional criteria, are placed in the ST system, in accordance with 5 U.S.C. 3104, or the SL system, depending on the nature of the work. [See Chapter 12 for additional information about the SL/ST systems].

Scientific and Professional Positions: Positions that are classifiable above the GS-15 level, but do not meet the SES functional criteria, are appropriately placed in the ST system if they involve performance of high-level research and development in the physical, biological, medical, or engineering sciences, or a closely-related field. ST positions are established under 5 U.S.C. 3104. All ST positions are in the competitive service.

Research and development positions are characterized by the following features:

- systematic investigation of theory, experimentation, or simulation of experiments;
- application of the scientific method, including problem exploration and definition, planning of the approach and sequence of steps, execution of experiments or studies, interpretations of findings, and documentation or reporting of findings; and
- exercise of creativity and critical judgment, variation in which may materially affect the nature of the end product.

Additional discussion of research and development functions is contained in Appendix 2 of the *Introduction to the Position Class Standards*.

The qualifications, stature, and contributions of an individual involved in research and development have a direct and major impact on the level of difficulty and responsibility for the work performed. The ST incumbents would be expected to possess a graduate degree, significant research experience, and a national or international reputation in their field. Typically, the incumbent of an ST position:

- has authored fundamental papers in the field of expertise that are widely used and cited;
- has received significant honors from major organizations for his/her accomplishments and contributions; and

- is sought as an advisor and consultant on scientific and technological problems that extend beyond his/her specialty.

Senior-Level Positions: The SL pay system was established under the Federal Employees Pay Comparability Act of 1990 (FEPCA) to replace grades GS-16, 17, and 18 of the General Schedule, which were abolished. Positions in the SL system are classified above GS-15, but do not meet the executive criteria characteristic of the SES, nor do they involve the fundamental research and development responsibilities that are characteristic of the ST pay system. However, the SL system is used for positions that meet the SES executive criteria in agencies that are excluded from the SES. The SL positions may be in either the competitive or excepted service.

CLASSIFICATION APPEALS

There is no classification appeal right to OPM for an employee who asserts the position he/she occupies should be in the SES. In 5 U.S.C. 5112, a classification appeal applies in determining if a position is in its appropriate class and grade. The SES is excluded from coverage by that section since the SES is gradeless and separate from the General Schedule.

OTHER FACTORS

In an agency identified in 5 U.S.C. 3132(a)(1) as covered by the Senior Executive Service (SES), positions that meet the criteria of 5 U.S.C. 3132(a)(2) are placed in the SES. Occasionally, laws will establish positions in the Executive Schedule but fail to specify an appointment authority for them. If the positions meet the functional and grade level criteria of 5 U.S.C. 3132(a)(2), they are placed in the SES and are subject to SES provisions, including the agency head's authority to determine the pay level. If a law establishes an Executive Schedule position in level IV or level V that performs SES functions but does not require appointment by the President with Senate confirmation, then the position meets the criteria of 5 U.S.C. 3132(a)(2). It therefore is placed in the SES even if the law identifies an appointing authority, e.g. the President or an agency head. Note also that positions listed in 5 U.S.C. 5315 (Executive Schedule Level IV) and 5316 (Executive Schedule Level V) that do not require Senate confirmation and meet the SES criteria are placed in the SES. Similarly, if a statute gives an agency an independent appointing authority that could otherwise be used for positions classified or paid above GS-15, the authority does not apply to positions meeting the criteria of 5 U.S.C. 3132(a)(2). (The examples above assume that the agency is subject to SES provisions and the law does not contain language that explicitly removes the position(s) from coverage by SES provisions.)

SES POSITION DESIGNATIONS AND APPOINTMENT AUTHORITIES

STATUTE: 5 U.S.C. 3132(b)

REGULATIONS: 5 CFR Part 214, Subpart D

Agency heads are authorized to establish SES positions within the numerical space authorizations and appointment authorities allocated by OPM and to set the qualifications standards for these positions.

SES POSITION DESIGNATIONS

SES positions are designated as either **General** or **Career Reserved**. A General position may be filled by a career, noncareer, or limited appointee. The same General position may be filled by a career appointee at one time and by a noncareer or limited appointee at another time. However, a Career Reserved position must be filled by a career appointee. **Note:** There are no “noncareer or career positions” in the SES.

Criteria for Career Reserved Positions: A position shall be designated Career Reserved if it must be filled by a career appointee to ensure the impartiality, or the public’s confidence in the impartiality of the Government [See U.S.C. 3132(b)].

Agencies must follow the criteria established by 5 CFR 214.402 to determine if a position is to be designated as Career Reserved. Such positions include those having duties which involve day-to-day operations, without responsibility for or substantial involvement in the determination, or public advocacy of the major controversial policies of the administration or agency, in these occupational disciplines:

- adjudication and appeals;
- audit and inspection;
- civil or criminal law enforcement and compliance;
- contract administration and procurement;
- grants administration;
- investigation and security matters; and
- tax liability, including the assessment or collection of taxes and the preparation or review of interpretative opinions.

Career Reserved positions also include:

- scientific or other highly technical or professional positions where the duties and responsibilities of the position are such that they must be filled by career appointees to ensure impartially;
- other positions requiring impartiality, or the public’s confidence in impartiality, as determined by the agency in light of its mission; and
- positions that are specifically required by law to be Career Reserved or to be filled by a career appointee.

Changing Position Designations: Agency heads are authorized to establish SES positions within the agency allocation and to designate them as either Career Reserved or General, subject to the above criteria and to the requirement to maintain a career reserved floor. However, once the designation has been made, it may not be changed without written approval from OPM [5 CFR 214.403]. Requests for a designation change should be sent to OPM’s Executive Resources Services Group. The request should be submitted by the agency head or the Executive Resources Board, or a designee at the human resources director level or above, and should describe the circumstances that warrant a change in the designation.

Supervisory Relationships

SES positions: Agencies have asked whether appointees in Career Reserved positions may supervise noncareer appointees in General positions. The statute and regulations are silent on this point. The duties and requirements of the position should determine the position's designation, in accordance with the above criteria. While there is no prohibition on a noncareer appointee reporting to a career appointee in a career reserved position, it is not likely that such a situation would occur given the criteria for career reserved positions. However, should there be a need to fill a subordinate position with a noncareer appointee, the agency is advised to review the career reserved position to verify that the supervisory position meets the criteria and is properly designated as career reserved.

There is also no prohibition on a noncareer appointee reporting to a career appointee in a general position.

Schedule C positions: The supervisor of a Schedule C appointee may only be a Presidential appointee, an incumbent of an SES General position, or another Schedule C appointee. The supervisor may not be an incumbent of an SES Career Reserved position.

SES APPOINTMENT AUTHORITIES

There are four types of SES appointment authorities: career, noncareer, limited term, and limited emergency. Agency heads are authorized to make all types of SES appointments under procedures established by OPM and within the agency's numerical allocation of appointment authorities. [See Chapter 2, General Staffing and Career Appointments, for information about these four types of appointments.]

ALLOCATING APPOINTMENT AUTHORITIES

STATUTE: 5 U.S.C. 3134 and 3394(b)

REGULATIONS: 5 CFR 317.601

NONCAREER APPOINTMENT AUTHORITY

In addition to allocating spaces, OPM also allocates specific appointment authorities to agencies. (Noncareer appointment allocations for all components of the Department of Defense are made to the Secretary of Defense.) Adjustments in the number of SES appointment authorities are limited by law.

Under 5 U.S.C. 3134(b), the total number of SES noncareer authorities may not exceed 10 percent of the Governmentwide SES position allocation. Further, under 5 U.S.C. 3134(d), the number of SES positions in any agency filled by noncareer appointees may not exceed the greater of 25 percent of the agency's SES allocation, or the number of positions filled on October 13, 1978 by noncareer executive assignment, or appointment to level IV or V of the Executive Schedule not requiring Senate confirmation. This limitation does not apply to agencies having fewer than four SES space allocations. (Note that some agencies may have a specific statutory limitation in their

own legislation on the number or percentage of noncareer SES appointments that may be made in the agency. The White House may also impose a limit for any agency.)

Under 5 CFR 317.601(b), each use of a noncareer appointment authority must be approved individually by the Office of Personnel Management, and the authority reverts to the Office upon departure of the incumbent, unless otherwise provided by the Office. In this way, OPM continuously resets the number of noncareer appointment authorities in each agency, ensures that the 10 percent Governmentwide limit is not exceeded, and meets OPM's statutory obligation to determine annually the number of noncareer allocations for each agency.

An agency initiates a request for a noncareer appointment authority by entering it into the Executive and Schedule C System (ESCS). Each request must be for a named individual to fill a specific SES General position. If the individual is currently a SES noncareer within the agency, the request is made for a SES noncareer reassignment. Otherwise, it is for a new SES noncareer appointment. The agency then uses ESCS to generate an OPM form 1652 for documentation of agency approvals. (If ESCS is temporarily unavailable and the need is urgent, the agency may download OPM 1652 from OPM's website at <http://www.opm.gov/forms/html/opm.asp> but must enter the request into ESCS as soon as it becomes available.) After completing OPM 1652, the agency faxes it to OPM. To facilitate timely OPM approval, the agency should work with the Presidential Personnel Office to fulfill any preliminary vetting requirements for the prospective appointee before faxing OPM 1652 to OPM. OPM documents approval by faxing OPM form 1652 back to the agency, signed by the OPM approving official. An agency may only appoint the individual to the position authorized by OPM and may not do so until any previous incumbent has left. There is no provision for overlap or dual incumbency of a position.

SES noncareer appointment authorities are made on a case-by-case basis and are valid only for the individual and position for which approved. An agency when required can create all requests for noncareer appointment authorities in the ESCS. The OPM Form 1652 is generated from ESCS and the office fax number is in the right hand corner of the form. A request must be entered into ESCS before it is submitted to OPM for approval.

LIMITED APPOINTMENT AUTHORITY

5 U.S.C. 3134(e) restricts the combined number of limited term and limited emergency appointees Governmentwide to five percent of the total number of SES spaces allocated to all agencies. The conditions under which an agency may make limited term and limited emergency appointments are set out in 5 CFR Part 317, Subpart F.

Under 5 CFR 317.601, each agency is provided a pool of limited appointment authorities equal to three percent of its SES space allocation, with a minimum of one authority. These authorities may be used without prior OPM approval. The appointee currently must be a career or career-type appointee outside the SES. The agency must notify OPM of the appointment by entering the incumbency information into OPM's Executive and Schedule C System. OPM may suspend the pool authority if necessary, either Governmentwide or for an individual agency, e.g. if the agency does not make appointments from the pool in accordance with statutory and regulatory provisions. All limited term appointments count against SES allocation.

Agency requests for limited term and limited emergency appointment authorities are considered on an ad hoc basis upon submission of a written justification that outlines the circumstances

warranting use of the authority. Agency requests for a limited term appointment are created in ESCS. A form 1652, generated from ESCS, is submitted to OPM for approval. Agencies must request a specific authorization from OPM for the use of each authority outside the agency's pool, unless the agency has an agreement with OPM that authorizes the agency to make a certain number of limited appointments on its own under specified circumstances (e.g., 2-year rotating assignments to bring in individuals from universities to a scientific organization within the agency). Generally, agencies are expected to exhaust their pool authorities, provided the proposed appointees meet the requirement for holding career or career-type appointments outside the SES, before requesting OPM approval of a limited term or limited emergency appointment authority. (Note that OPM approval of a limited appointment authority does not imply authorization of an additional SES space allocation.)

OTHER APPOINTMENT AUTHORITIES

Some agencies have specific statutory authorities that cover positions classified above GS-15, or paid above step 10 of GS-15, and that were not repealed by CSRA. These authorities may still be used for a position, if the position does not meet the criteria for inclusion in the SES or the ST authority in 5 U.S.C. 3104. (CSRA abolished all authorities for scientific and professional positions engaged in research and development outside the ST authority.)

Terminal sick leave: If an employee is on terminal sick leave, the employee is not counted against the agency's allocation. The agency should notify OPM in writing that the individual is leaving the position on terminal leave. The agency may then cancel it or appoint another individual to the position. [24 Comp. Gen. 134, 136, and the unpublished decisions of the Comptroller General B-145957, October 25, 1961, and B-165593, December 16, 1968.]

Reporting changes: Agencies are required to report changes affecting positions (establishment, abolishment) or appointees (incumbency, vacancy) by updating incumbent or position records in ESCS.

OPM REVIEW AND OVERSIGHT

OPM evaluates SES programs and operations to improve and enhance management of the Government's executive resources; to determine the quality and effectiveness of SES programs, procedures, and processes; and to determine if actions are being taken in compliance with civil service laws, rules, regulations, and delegated authorities and are consistent with merit system principles.

GENERAL OVERSIGHT

OPM exercises general oversight of SES operations in accordance with these civil service laws and rules:

5 U.S.C. 1103(a)(5): execute, administer, and enforce civil service laws, rules, and regulations and other OPM activities; (Specific authority for OPM to regulate on SES matters is in 5 U.S.C. 3136, 3397, 3596, 4315, 5385, and 7543.) and

5 U.S.C. 1104 (b) (2): establish and maintain an oversight program which assures that activities delegated to or by OPM comply with merit system principles and OPM standards.

5 CFR Rule V, section 5.2:

evaluate the effectiveness of agency personnel policies, programs, and operations, including merit selection and employee development; agency compliance with and enforcement of applicable laws, rules, regulations, and OPM directives, and agency personnel management evaluation systems;

investigate, or direct an agency to investigate and report on apparent violations of applicable laws, rules, regulations, or directives requiring corrective action found during an evaluation; and

require agencies to report personnel information relating to positions and employees in the SES through the ESCS.

MONITORING SPECIFIC SES ACTIVITIES

OPM is required to monitor a number of specific SES activities and actions to determine if they meet the requirements of law and to take such corrective action as may be necessary. For example, the following regulations require OPM to:

5 U.S.C. 3132(b)(2): periodically review General positions to determine if they should be designated as Career Reserved.

5. U.S.C. 3396(b): monitor the implementation of programs for the systematic development of candidates for the SES and for the continuing development of senior executives.

5 U.S.C. 4312(c): review each agency's SES performance appraisal system and take such corrective action as may be required if the system does not meet the requirements of law or regulation.

5 CFR 214.202: review agency determinations of which positions to place in the SES, to ensure adherence with law and regulations. This authority extends to SL and ST positions, or equivalent positions subject to OPM jurisdiction, to ensure that all executive positions are placed in the proper pay system. If OPM concludes that a position established in the SES does not satisfy SES criteria, or that a position established outside the SES does meet those criteria, OPM will notify the agency. OPM may require corrective action, including:

- directing an SES position be removed from the SES and be established in the competitive or excepted service, as appropriate; and
- directing a non-SES position classified above GS-15, or the equivalent, found to satisfy SES criteria be placed in the SES.

The actions described above would not necessarily affect the SES appointment status and tenure of an incumbent, although they could require the incumbent's reassignment from the position in question. Any of these actions could be accompanied by an adjustment in the SES space and appointment authorities allocated to the agency.

5 CFR 317.1001: require an agency to take appropriate corrective action if OPM finds that it has taken an SES staffing action contrary to law or regulation.

2. GENERAL STAFFING AND CAREER APPOINTMENTS

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CHAPTER 2: GENERAL STAFFING AND CAREER APPOINTMENTS

STATUTE: 5 U.S.C. 3391- 3395

REGULATIONS: 5 CFR Part 317, Subparts E and F

THE GUIDE TO PERSONNEL ACTIONS: Chapter 13 Senior Executive Service (SES) and Chapter 14 - Promotions, Changes to lower grade, Reassignments, Position Changes, and Details

The SES offers agency managers considerable flexibility in filling executive vacancies while still providing fair access to executive jobs based on merit. The SES positions may be filled through competitive or noncompetitive appointment. Examples of noncompetitive appointment are: reassignment or transfer of a current SES appointee; reinstatement of a former SES career appointee; and the appointment of a graduate of an OPM-certified SES Candidate Development Program (CDP). CDP graduates may be noncompetitively appointed if they were selected through civil service-wide competition for the CDP. In rare cases, competition for CDPs may be limited to applicants within a single agency, in which case the CDP graduates of these programs must compete for their first SES career appointment.

AGENCY RESPONSIBILITIES

Written procedures: Each agency is responsible for establishing written procedures to implement the provisions of 5 CFR Part 317, Employment in the Senior Executive Service. The merit staffing procedures established to implement 5 CFR 317.501 (recruitment and selection for initial career SES appointment) should make clear to all parties, including selecting officials and applicants, how SES positions are filled competitively.

Executive Review Boards (ERB): Agency heads are required to establish one or more ERBs to conduct the merit staffing process for initial career appointments, as stated in 5 CFR 317.501. This includes reviewing the executive qualifications of eligible candidates and making written recommendations to the appointing authority regarding these candidates.

OPM RESPONSIBILITIES

Staffing requirements: OPM establishes basic staffing requirements and may review an agency's SES staffing process at any time to determine whether legal and regulatory requirements are being followed. OPM will direct corrective action when necessary to assure compliance with law and regulation.

Qualification Review Boards (QRB): OPM establishes interagency QRBs to certify the executive qualifications of candidates for initial career SES appointment. [more information about QRBs later in this chapter.]

Five years continuous service: OPM monitors the requirement in 5 U.S.C. 3392(b) that as a minimum, at least 70 percent of SES members Governmentwide must have 5 or more years of current continuous service in the civil service immediately preceding their initial SES appointment. There is no quota set in law or regulation for individual agencies.

MOBILITY

Among other objectives, 5 U.S.C. 3131, states that the Senior Executive Service is to be administered so as to, “enable the head of an agency to reassign senior executives to best accomplish the agency mission,” and to, “provide for the initial and continuing systematic development of highly competent senior executives.” The SES system provides flexible assignment rules to accomplish these fundamental and complimentary objectives.

The Senior Executive Service is a national asset. Mobility involves using a full range of assignment authorities to leverage the skills of executives for greater mission accomplishment and to prepare them for higher levels of service, whether within the agency, or elsewhere in Government or society. Our nation is best served when agencies and executives work together strategically to field the strongest and most agile executive corps possible.

Mobility encompasses both temporary and permanent job assignments involving change from previous assignment patterns, e.g. to different business lines, disciplines, program areas, components, regions, headquarters, or other divergent environments. Means can include details, short or long term reassignments and transfers, use of the Intergovernmental Personnel Act authority, sabbaticals, formal training and other creative ways to expose executives to challenges or otherwise expand their capacity to serve. Assignments could be to other agencies, state and local governments, Institutions of higher education, non-profit organizations, private sector companies or international organizations.

Mobility can be an important element in succession planning. Its benefits are best realized when agency leadership deliberately assesses the ability and potential of agency executives against current and future leadership requirements and actively builds its executive corps to address those requirements. Potential benefits include:

- Broadening and strengthening executive core qualifications of all executives
- Bringing greater creativity and broader perspectives to bear on agency problems
- Promoting career development and expanded opportunities for executives
- Selling potential leaders on desirability and potential of a career in the SES
- Providing the agency leaders who are able to handle greater challenges
- Enabling agile agency response to critical staffing requirements and new demands
- Developing bench strength for the agency’s future

Ultimately, SES rules require an executive to move when agency needs require it. Even where advance written notice and consultation are mandated, the bottom line is that an executive who declines a directed reassignment may be removed through adverse action procedures. Still, in most agencies, signing up for the SES is not the same as signing up for mobility. Certain allowances described elsewhere in this guide recognize this distinction, e.g. even an SES member removed through adverse action for declining a directed reassignment may be eligible for discontinued service retirement or severance pay, unless he or she serves under a specific memorandum of understanding or other written agreement that requires mobility.

Agencies should carefully evaluate whether a mobility program, whether broad or targeted, may strengthen their executive corps. Such programs should prove their worth by engaging the voluntary

participation of an agency's executives. Mobility may be equally useful in developing other senior professionals, e.g., senior level or scientific and professional (ST) employees. An agency may also request temporary increases to its executive resources allocations to support mobility assignments.

OPM encourages SES members to continually broaden their perspectives (see <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=1696> for a November 7, 2008, memorandum on "Guidelines for Broadening the Senior Executive Service.")

CONDITIONS OF EMPLOYMENT

Citizenship: The SES contains no citizenship requirement, but some agencies may have separate controlling legislation requiring citizenship. In addition, a general appropriations act restriction, with some exceptions, prevents agencies from using appropriated funds to pay non-citizens if they work in the continental United States. Further, an agency may administratively restrict consideration for SES positions to citizens. This decision may be a matter of agency policy or a job determination. No special justification is required.

Employment of Relatives: 5 CFR Part 310 and related requirements address the restrictions regarding the employment of relatives, and the exceptions which apply to the SES.

Selective Service Registration: SES appointees are subject to the statutory bar to appointment of SES potentials who fail to register under the Selective Service law. [5 CFR Part 300, Subpart C.]

Verification of Employment Eligibility: The Immigration Reform and Control Act of 1986 [99-603], requires SES appointees coming from outside the Federal service to verify they are eligible to work in the United States.

EMPLOYMENT RESTRICTIONS

Dual Incumbency: Agencies cannot employ two individuals in the same position at the same time ("dual incumbency"). Nevertheless, there are options available to agencies to provide continuity in key positions and to meet other transitional needs. When an incumbent's intention to leave has been documented, an agency may establish a different position to employ a designated successor for a brief period of time pending the incumbent's departure. For example, when an office director is leaving, a temporary special assistant position could be established for a short period to facilitate orientation of the incoming director to the office's operations. OPM may authorize the use of SES limited appointment authorities for short periods of time for temporary executive positions established under such circumstances. If the successor is eligible for career appointment (e.g., is a career appointee or was selected through SES merit staffing and has been QRB certified), he or she can be appointed as office director and the departing executive can be assigned to the temporary position to facilitate transition. This does not require OPM involvement since a career executive can serve in a temporary position without a change in type of appointment.

Experts/consultants: Under 5 U.S.C. 3109(c), positions in the SES cannot be filled by expert or consultant appointment. Therefore, it is not appropriate to assign such individuals to the policy-making or executive work which characterizes the SES.

Independent regulatory commissions: Under 5 U.S.C. 3392(d), the appointment of an individual to any SES position in an independent regulatory commission “shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.”

Private sector temporary employees: Under 5 CFR 300.502, private sector temporary employees cannot be used to perform SES work.

TYPES OF SES APPOINTMENTS

STATUTE: 5 U.S.C. 3132(a), 3393, 3394

REGULATIONS: 5 CFR Part 214 and 317 Subpart F

There are four types of SES appointments: career, noncareer, limited term, and limited emergency. Agency heads are authorized to make all types of SES appointments under regulations and procedures established by OPM and within the agency’s numerical space allocation.

CAREER APPOINTMENTS

Career appointments are made without time limitations and provide certain job protections and benefits not conferred by the other types of SES appointments. Career appointments may be made to either Career Reserved or General positions [SES Positions and Appointment Authorities, in Chapter 1]. Tenure and benefits are the same no matter the type of position to which appointed. Initial career appointments must meet the competitive SES merit staffing provisions in 5 U.S.C. 3393, at the time of selection for the SES or for an SES candidate development program. The individual’s executive qualifications must be certified by an OPM-administered QRB before appointment.

Career appointments may also be made under noncompetitive procedures to reassign or transfer a current career SES appointee or reinstate a former career SES appointee who completed an SES probationary period. These actions do not require QRB approval.

NONCAREER APPOINTMENTS

Noncareer appointments are made without time limitation, but the appointee serves at the pleasure of the appointing authority. The agency must have a noncareer appointment authority from OPM [Chapter 1]. The appointment can be made only to a General position in accordance with the staffing procedures for noncareer and limited appointments discussed in Chapter 3.

LIMITED TERM AND LIMITED EMERGENCY APPOINTMENTS

A limited term appointment can only be made to a position for which the duties will expire at the end of a specified period or under other special circumstances for a period not to exceed 3 years. A limited emergency appointment can only be made to meet a bona fide, unanticipated, urgent need for a period not to exceed 18 months.

Limited appointments are made only to General positions. The agency must have a limited appointment authority from OPM or use an authority from its limited appointment pool (three

percent of the agency SES allocation). If the incumbent of a Career Reserved position is temporarily absent, e.g., on extended training, and there is no available SES career appointee to do the work, an agency may establish a General position with similar duties and make a limited appointment for the period of the absence, provided that the duties of the new position do not require the position to be Career Reserved by law or regulation. For example, an audit or law enforcement position would have to remain Career Reserved. The appointment must be made in accordance with the staffing procedures for noncareer and limited appointments discussed in Chapter 3.

QUALIFICATIONS REQUIREMENTS

STATUTE: 5 U.S.C. 3392(a), 3393

REGULATIONS: CFR Part 317, Subpart D

QUALIFICATIONS STANDARDS

The agency head or a designee (e.g., the ERB) is responsible for establishing qualifications standards for each SES position in the agency. A qualifications standard must be established for a position before any appointment is made to that position. If a position is being filled competitively, the standard must be approved before the position is announced. If the duties and responsibilities of a position are substantially altered, the standard should be reviewed to determine if a new one is needed.

Qualifications standards may be established for individual SES positions or for groups of similar positions. Standards should be set at a high enough quality level so that those who meet the standards are well qualified, not just minimally qualified, to perform the job.

Developing Standards: Under 5 U.S.C. 3392, qualifications standards for Career Reserved positions must be developed in accordance with OPM requirements. Standards for General positions must be developed in consultation with OPM. Qualifications standards requirements for Career Reserved positions are listed below; and may also be used in developing standards for General positions in lieu of consultation with OPM.

The standard must be in writing and must identify the breadth and depth of the professional/technical and executive/managerial knowledge, skills, and abilities, or other qualifications (e.g., certification or licensure), that are essential and desirable for successful performance. Mandatory qualifications must be met for a candidate to be eligible for the position. Desirable qualifications are used to help rate and rank eligible candidates.

The standard must be specific enough to enable the user to identify qualified candidates and to enable the ERB to make qualitative distinctions among candidates for rating and ranking purposes when the position is being filled competitively.

Each qualifications criterion in the standard must be job related. However, the standard may not emphasize agency-related experience to the extent that it precludes well qualified candidates from outside the agency from appointment consideration.

Mandatory qualifications standards may not include any of the following:

- A minimum length of experience requirement beyond that authorized for similar positions in the General Schedule, e.g., generally 1 year of specialized experience at least equivalent to the GS-15 level [OPM's Operating Manual on Qualifications Standards for General Schedule Positions]. This means that the 1 year experience requirement at the GS 15 level is not required.
- A minimum education requirement beyond that authorized for similar positions in the General Schedule [OPM's Operating Manual on Qualifications Standards for General Schedule Positions].
- Any criterion prohibited by law or regulation.

Note that time in grade requirements do not apply to the SES, so applicants do not need to have spent a certain period of time at the GS-15 or equivalent level.

National Security Professional (NSP) Qualification for NSP SES: OPM and the NSP Executive Steering Committee (ESC) encourage agencies to implement a qualification requirement for NSP-designated SES positions for demonstrated ability to lead inter-agency, inter-departmental, inter-governmental activities, or comparable cross-organizational activities. Agencies may exercise discretion and flexibility in defining and elaborating upon the qualification requirement based on their positions and mission demands. OPM and the ESC recommend a multi-agency or equivalent experience for selection into NSP SES positions. OPM and the ESC have defined the qualifying "inter-agency" experience as follows:

Individuals should have "inter-agency" experience related to national security serving in a leadership capacity (formal or otherwise) on a temporary or permanent assignment, on a multi-agency task force, in an inter-agency liaison capacity, and/or as a volunteer. The experience should meet the following criteria:

- extensive involvement (i.e., substantial time commitment or decision-making responsibility);
- tangible results or accomplishments; and
- separate experiences in at least two organizations or a single experience involving multiple organizations.

For additional information see

<http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=1709>.

Possession of Certification as a Mandatory Technical Qualification: Unless authorized by statute, agencies may not use possession of certification (e.g., Program/Project Management Certification) as a mandatory technical qualification. Individuals who lack the certification yet possess the requisite experience and training to perform the duties of the position should be considered. However, agencies may require future acquisition of certification by specifying a timeframe for obtaining it (e.g., within eighteen months from the date of appointment to the position) in a mandatory technical qualification.

The following is an example of an acceptable technical qualification:

Program Management Certification: Applicants must possess or be eligible for Level III Program/Project Management (P/PM) certification in accordance with the Department of Homeland Security (DHS) Program Manager Certification Standards, the Defense

Acquisition Workforce Improvement Act (DAWIA), or Federal Acquisition Certification for Program and Project Managers (FAC-P/PM). Applicants who currently possess or are eligible for Level II Program/Project Management (P/PM) certification and can achieve Level III certification according to DHS, DAWIA, or FAC-P/PM standards within eighteen months from the date of appointment to this position will also be considered. Please indicate in your application your level and source (DHS, DAWIA, FAC-P/PM) of certification or eligibility for certification.

Retaining Qualifications Standards: If a qualifications standard is changed or a position is cancelled, the standard shall be retained at least 2 years.

EXECUTIVE CORE QUALIFICATIONS

“Executive Qualifications” is the term used in statute [U.S.C. 3393] to describe the qualifications required of all agency selectees for the SES and that must also be certified by a QRB for all initial career appointments to the SES. These qualifications are in addition to specific professional/technical qualifications that agencies establish for individual jobs. OPM has defined executive qualifications in terms of five meta-leadership competencies associated with SES-level jobs. These Executive Core Qualifications (ECQs) are leading change, leading people, results driven, business acumen, and building coalitions. Proficiency levels for the ECQs are available at <http://apps.opm.gov/ADT/ContentFiles/LeadershipCompProficiencyLevels.pdf>. Definitions and illustrations for the levels are provided. Agencies might use them to anchor responses to structured interviews or to assess leadership competencies.

ECQ 1: Leading Change

Definition: This core qualification involves the ability to bring about strategic change, both within and outside the organization, to meet organizational goals. Inherent to this ECQ is the ability to establish an organizational vision and to implement it in a continuously changing environment.

Competencies	
Creativity and Innovation	Develops new insights into situations; questions conventional approaches; encourages new ideas and innovations; designs and implements new or cutting edge programs/processes.
External Awareness	Understands and keeps up-to-date on local, national, and international policies and trends that affect the organization and shape stakeholders' views; is aware of the organization's impact on the external environment.
Flexibility	Is open to change and new information; rapidly adapts to new information, changing conditions, or unexpected obstacles.
Resilience	Deals effectively with pressure; remains optimistic and persistent, even under adversity. Recovers quickly from setbacks.
Strategic Thinking	Formulates objectives and priorities, and implements plans consistent with the long-term business and competitive interests of the organization in a global environment. Capitalizes on opportunities and manages risks.
Vision	Takes a long-term view and builds a shared vision with others; acts as a catalyst for organizational change. Influences others to translate vision into action.

ECQ 2: Leading People

Definition: This core qualification involves the ability to lead people toward meeting the organization's vision, mission, and goals. Inherent to this ECQ is the ability to provide an inclusive workplace that fosters the development of others, facilitates cooperation and teamwork, and supports constructive resolution of conflicts.

Competencies	
Conflict Management	Encourages creative tension and differences of opinions. Anticipates and takes steps to prevent counter-productive confrontations. Manages and resolves conflicts and disagreements in a constructive manner.
Leveraging Diversity	Fosters an inclusive workplace where diversity and individual differences are valued and leveraged to achieve the vision and mission of the organization.
Developing Others (New)	Develops the ability of others to perform and contribute to the organization by providing ongoing feedback and by providing developmental opportunities to learn through formal and informal methods.
Team Building	Inspires and fosters team commitment, spirit, pride, and trust. Facilitates cooperation and motivates team members to accomplish group goals.

ECQ 3: Results Driven

Definition: This core qualification involves the ability to meet organizational goals and customer expectations. Inherent to this ECQ is the ability to make decisions that produce high-quality results by applying technical knowledge, analyzing problems, and calculating risks.

Competencies	
Accountability	Holds self and others accountable for measurable high-quality, timely, and cost-effective results. Determines objectives, sets priorities, and delegates work. Accepts responsibility for mistakes. Complies with established control systems and rules.
Customer Service	Anticipates and meets the needs of both internal and external customers. Delivers high-quality products and services; is committed to continuous improvement.
Decisiveness	Makes well-informed, effective, and timely decisions, even when data are limited or solutions produce unpleasant consequences; perceives the impact and implications of decisions.
Entrepreneurship	Positions the organization for future success by identifying new opportunities; builds the organization by developing or improving products or services. Takes calculated risks to accomplish organizational objectives.
Problem Solving	Identifies and analyzes problems; weighs relevance and accuracy of information; generates and evaluates alternative solutions; makes recommendations.
Technical Credibility	Understands and appropriately applies principles, procedures, requirements, regulations, and policies related to specialized expertise.

ECQ 4: Business Acumen

Definition: This core qualification involves the ability to manage human, financial, and information resources strategically.

Competencies	
Financial Management	Understands the organization's financial processes. Prepares, justifies, and administers the program budget. Oversees procurement and contracting to achieve desired results. Monitors expenditures and uses cost-benefit thinking to set priorities.
Human Capital Management	Builds and manages workforce based on organizational goals, budget considerations, and staffing needs. Ensures that employees are appropriately recruited, selected, appraised, and rewarded; takes action to address performance problems. Manages a multi-sectorblended workforce and a variety of work situations.
Technology Management	Keeps up-to-date on technological developments. Makes effective use of technology to achieve results. Ensures access to and security of technology systems.

ECQ 5: Building Coalitions

Definition: This core qualification involves the ability to build coalitions internally and with other Federal agencies, State and local governments, nonprofit and private sector organizations, foreign governments, or international organizations to achieve common goals.

Competencies	
Partnering	Develops networks and builds alliances; collaborates across boundaries to build strategic relationships and achieve common goals.
Political Savvy	Identifies the internal and external politics that impact the work of the organization. Perceives organizational and political reality and acts accordingly.
Influencing/Negotiating	Persuades others; builds consensus through give and take; gains cooperation from others to obtain information and accomplish goals.

Fundamental Competencies

Definition: These competencies are the foundation for success in each of the Executive Core Qualifications.

Competencies	
Interpersonal Skills	Treats others with courtesy, sensitivity, and respect. Considers and responds appropriately to the needs and feelings of different people in different situations.
Oral Communication	Makes clear and convincing oral presentations. Listens effectively; clarifies information as needed.
Integrity/Honesty	Behaves in an honest, fair, and ethical manner. Shows consistency in words and actions. Models high standards of ethics.

Written Communication	Writes in a clear, concise, organized, and convincing manner for the intended audience.
Continual Learning	Assesses and recognizes own strengths and weaknesses; pursues self-development.
Public Service Motivation	Shows a commitment to serve the public. Ensures that actions meet public needs; aligns organizational objectives and practices with public interests.

CAREER APPOINTMENTS

STATUTE: 5 U.S.C. 3393

REGULATIONS: 5 CFR Parts 317, Subpart E

Because the SES is separate from the competitive and excepted services, there is no provision for noncompetitive movement from these services into a SES career appointment; even if an employee's current position is placed in the SES. (The provisions of 5 CFR 315.602 covering movement from the Office of the President or Vice President or the White House staff **do not apply** to SES career appointments. Additionally, Executive Order 11103 addressing the noncompetitive eligibility of returning Peace Corps volunteers does not apply to SES positions.)

Candidate Development Programs: The merit staffing procedures in this section also apply to the recruitment and selection of individuals for an OPM-approved SES candidate development program. An individual who successfully completes the program and is certified by a QRB may be appointed to the SES without further competition. Although it is rarely done, agencies under certain circumstances [5 CFR 412 (a)(2)] may elect to request OPM approval for a CDP whose candidates are selected through agency-wide, not civil service-wide, competition. Graduates of these programs may be approved by a QRB but must compete for their first SES career appointment. (See *Area of Consideration* below.)

Veteran's preference: The CSRA excluded the SES from veteran's preference [U.S.C. 2108(3)1], however, it did not exclude the SES from Indian preference. Therefore, vacancy announcements where Indian preference is applicable should contain the statement: "Preference will be given to American Indians."

Prohibited personnel practices: Agency records for all competitive actions should clearly show that the actions are proper and legitimate. The actions should fully conform to the spirit and the letter of 5 U.S.C. 2302 on prohibited personnel practices, including the prohibition against political consideration, either favorable or unfavorable. For a list and description of prohibited practices, see www.osc.gov. Further, in making career SES appointments, agencies should apply the same principles that are in Civil Service Rules 4.2 and 7.1 for filling vacancies in the competitive service, i.e., they should act solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status, or race.

Merit staffing reviews: OPM may review proposed career appointments of current or former noncareer appointees, as well as other proposed career appointments, to ensure they comply with all merit staffing requirements.

RECRUITMENT

AREA OF CONSIDERATION

Under 5 U.S.C. 3393(a), the search for candidates must at a minimum, include status applicants from “all groups of individuals within the civil service.” Agencies may also recruit from outside the civil service (i.e., All Qualified).

The “civil service” consists of all persons who occupy positions in the executive (includes excepted service), judicial, and legislative branches, except positions in the uniformed services (the armed forces, the Commissioned Corps of the Public Health Service, and the Commissioned Corps of the National Oceanic and Atmospheric Administration). Included are experts and consultants who occupy appointive positions, and individuals in the Postal Service and the Postal Rate Commission. The District of Columbia Government is not part of the Federal civil service.

A person is considered to be in the civil service only if occupying a civil service position at the time of application. When competitive recruitment for an SES position is limited to the civil service, SES reinstatement eligibles outside the civil service may apply for noncompetitive consideration for that position.

VACANCY ANNOUNCEMENTS

Agencies are required by law to announce the Senior Executive Service (SES) vacancies they intend to fill by initial career appointment to at least all Federal civil service employees. They must also notify the Department of Labor’s United States Employment Service offices of SES vacancies when recruitment for career appointment is extended outside the Federal service [5 U.S.C. 3327]. To meet these legal requirements, agencies are required to publish information about vacancies to be filled by initial career appointment in **USAJOBS** (<http://www.usajobs.opm.gov>) [CFR 317.501 (b) (2)].

Agencies are responsible for confirming that their individual SES vacancy announcements have been successfully entered into **USAJOBS**. If a vacancy to be filled by initial career SES appointment has not been published as required by 5 CFR 317.502(b), the consequences can be serious. OPM cannot assume that the agency has met the statutory requirements cited in the preceding paragraph and the proposed selection cannot be forwarded to a Qualifications Review Board. Evidence that a vacancy announcement has been included in **USAJOBS** is provided by entering the OPM Control Number into ESCS when creating a QRB case record.

The SES vacancy announcements are available through **USAJOBS** but can also be available through the respective agency and its website. Vacancy information is disseminated through the Federal Jobs Database to America’s Job Bank and state employment offices.

Entering data in **USAJOBS**: Agencies enter SES vacancy information, including job entries and full text vacancy announcements, directly into **USAJOBS**. For complete instructions/tutorial, see www.usajobs.opm.gov.

Closing date: The closing date of a vacancy must allow for a minimum open period of 14 calendar days and must be consistent with closing dates of any agency supplemental announcements [CFR 317.501 (b)(2)]. Extension of the original closing date must also be entered into **USAJOBS**. If there is a break between the closing date of the initial announcement and the beginning date of the

new announcement, the new announcement must be open at least 14 calendar days from date of its entry into USAJOBS.

Agency vacancy announcements: Agency announcements must include the position title, location, and duties; area of consideration; SES pay ranges; ECQ and technical qualification requirements and evaluation methods; opening and closing dates; equal employment opportunity and reasonable accommodation statements; how to request additional information; how to apply; and other required information [see 5 CFR 330.707].

NONPROFIT EMPLOYMENT SERVICES AND COMMERCIAL RECRUITING FIRMS

These services and firms may be used in addition to other recruitment sources in accordance with the provisions of 5 CFR Part 300, Subpart D, when their use is likely to provide well-qualified candidates who would otherwise not be available, or when well-qualified candidates are in short supply. The service or firm must use the agency's qualifications standard and the position must also be included in OPM's USAJOBS under the SES vacancy listing, and be open to 'All Qualified Persons.'

Candidates applying directly to the agency and those identified by a service or firm must be given equal consideration and must complete the full SES merit staffing process, including Executive Resources Board referral to the appointing authority and QRB certification, before appointment.

RECRUITING FOR SES CANDIDATE DEVELOPMENT PROGRAMS

The recruitment procedures described above also apply to entry into an SES CDP. All candidates are selected through SES merit staffing procedures. [See 5 CFR Part 412 and Chapter 7 of the Desk Guide for information about CDPs.]

Area of Consideration: Recruitment for CDPs is from either all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service. Agencies may request an exception to the recruiting area requirement, if they can show that during the 5 year period before the announcement of the program they made at least 15 percent of their initial career SES appointments from sources outside the agency [CFR 412.104(a) (2)]. Graduates of these specific CDPs who have been certified by a QRB must compete Governmentwide for entry to the SES, but do not have to obtain a second QRB certification before appointment.

Exceptions: In cases where CDPs are announced and conducted by individual agency components, rather than on a department-wide basis, exceptions may be requested for the component level. The appointment data used to support the request for exception must conform to the organizational level for which the exception is sought.

Non-status appointment requirements: If a candidate does not possess status (e.g., is not serving on a career or career-type appointment), the candidate must be appointed using the Schedule B authority at 5 CFR 213.3201. Schedule B appointments must be made in the same manner as merit staffing requirements prescribed for the SES, except that each agency shall follow the principle of veterans preference as far as administratively feasible. Positions filled through this authority are excluded under 5 CFR 302.101(c) (6) from the appointment procedures of Part 302, pertaining to employment in the excepted service. Appointment may not exceed or be extended beyond 3 years.

Assignments must be to a full-time non-SES position created for developmental purposes connected with the SES candidate development program. Candidates serving under Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis. Agencies must create SES CDP records in ESCS. See ESCS Handbook on the ESCS website.

MERIT STAFFING REQUIREMENTS (Rating and Selection)

The procedures an agency uses for rating and ranking candidates and for making the subsequent selection for an SES position or SES candidate development program must meet the requirements of applicable law, rule, and regulation, including the Uniform Guidelines on Employee Selection Procedures. As a minimum, under 5 CFR 317.501(c), an agency's procedures must provide the following:

- The ERB must consider the technical and executive qualifications of each eligible candidate. If only a small number of candidates are determined to be eligible and the agency wishes to proceed with the selection process, the ERB must still consider the qualifications of each eligible candidate. The ERB may delegate preliminary qualifications screening, rating, and ranking of candidates. Preliminary rating panel members do not have to be members of the SES or even Federal employees, and there are no grade level restrictions. However, such panel members should be recognized as subject matter experts or personnel specialists.
- All eligible candidates must be rated and ranked on the same basis. However, if a current SES career appointee or a reinstatement eligible applies in response to a merit staffing vacancy announcement, the agency has the option of including the individual in the competitive process (in which case the individual is rated and ranked in the same manner as other applicants) or considering the individual under noncompetitive appointment procedures (i.e., reassignment, transfer, or reinstatement).
- There must be adequate differentiation among candidates on the basis of the knowledge, skills, abilities, and other job related factors, as reflected by the position's qualifications standards to enable the relative ranking of candidates. Experience may be credited only to the closing date of the vacancy announcement to avoid inequities. Candidates need not be given numerical ratings, since veteran's preference and the "rule of three" do not apply to the SES. Instead, they may be grouped into broad categories (e.g. highly qualified, qualified, not qualified).
- The record must be adequately documented to show the basis for qualifications, rating, and ranking determinations.
- The ERB must give the appointing authority written recommendations on all the eligible candidates and identify the best qualified candidates. To avoid additional paperwork, the board may provide rating sheets on the candidates instead of preparing separate written recommendations on each candidate. However, the ERB must still certify in writing the list of candidates provided to the appointing authority. The ERB certificate may be sent first to a supervisory official who will make a selection recommendation to the appointing authority. In these instances, the full certificate and the board recommendations on all the candidates should be forwarded to the appointing authority along with the name of the proposed appointee.

- The appointing authority must make the selection in accordance with agency prescribed procedures from among the candidates the ERB identified as best qualified. Selection must be based solely on the qualifications of the candidates, not on political or other non-job-related factors.
- The appointing authority must certify in writing that the proposed appointee meets the qualifications requirements of the position. The appointing authority, or the ERB, must also certify that appropriate merit staffing procedures were followed.
- The executive qualifications of the proposed appointee must be sent to OPM for QRB certification.

RECOMMENDED MERIT STAFFING PRACTICES

OPM has recently conducted a study of SES selection across the Government. As a result, we offer the following recommendations based on practices currently in use at some but not all agencies.

- Be sure to give full weight to the Executive Core Qualifications (ECQs) along with the technical competencies required for the position. OPM's Qualifications Review Board certification of the candidate's ECQs is meant as a final check rather than a primary assessment of leadership qualifications. Generally, it should not be necessary to rewrite or otherwise enhance the narrative description of the candidate's possession of the ECQs beyond what was initially reviewed at the agency as part of the candidate assessment process.
- Be sure to consider the six "fundamental" competencies, which since October 2006 have been part of the ECQs and should be included in the candidate assessment process. These competencies underlie the five ECQs and should be addressed over the course of the ECQ narratives rather than in separate statements submitted by the candidate. As noted further in the next bullet, evidence of these essential underlying competencies can often be ascertained through means other than the candidate's narrative statements, such as interviews or reference checks.
- Try to use a variety of candidate assessment tools, rather than relying excessively on the assessment of candidate narratives against crediting plans. Interviews, especially structured interviews with standardized questions, should normally be an essential part of the assessment process. In some cases, formalized assessment centers may be an appropriate means to assess candidates. Reference checks are also useful, to verify information provided by the applicant and to assess competencies such as Integrity/Honesty.
- Use category rather than numeric ratings when rating ECQs, which are comprised of clusters of individual competencies and are therefore difficult to rate with any precision.
- Make sure rating panel members are trained. Rater training ensures all raters understand the rating process and ECQ definitions. It can range from short and simple to very detailed instructions.
- To increase efficiency, automate the selection process to the greatest extent possible. For example, some agencies provide candidate materials electronically to their ERBs in advance to expedite the assessment process.

INQUIRIES, APPEALS, AND CORRECTIVE ACTION

APPLICANT INQUIRIES AND APPEALS

Individuals are entitled to information about the nature of the procedures used in recruiting and selecting candidates for any position. Applicants are also entitled, upon request, to know if they were found qualified for the position and if they were referred to the selecting official for consideration for appointment. They may have access to qualifications questionnaires or reports of qualifications inquiries about themselves, except for information that would identify a confidential source.

Agencies may provide other procedures tailored to their needs, to handle complaints about the staffing process. An applicant has no right of appeal to OPM against actions taken by the ERB, QRB, or appointing official. Other avenues afforded by law or regulation (e.g., the Office of the Special Counsel or the Equal Employment Opportunity Commission) may be appropriate (e.g., prohibited personnel practice allegations). For additional information, see www.osc.gov.

CORRECTIVE ACTIONS

If it is determined that an individual was not placed on a selection certificate of best qualified candidates because of a statutory, regulatory, or procedural violation, the agency may, as a corrective action, select the individual for a career appointment to another SES position without conducting a new merit staffing action. However, the individual must meet the technical and executive qualifications for the new position and must be approved by a QRB. Note that the corrective action authority permits, but does not require, the agency to select the individual noncompetitively.

DOCUMENTING MERIT STAFFING ACTIONS

Under 5 CFR 317.501(d), an agency must keep sufficient records to allow reconstruction of the merit staffing process for 2 years after an initial career appointment. (If no appointment results from a vacancy announcement, the records must be kept for 2 years from the closing date of the announcement.) At a minimum, the records should include:

- the OPM Control Number for the vacancy listing in the automated **USAJOBS** and copies of any separate agency announcements (The control number is assigned when entering a vacancy announcement);
- list of recruitment sources used (e.g., agency vacancy announcement distribution list, any newspaper or journal advertisements, any use of nonprofit employment services or commercial recruiting firms);
- copy of qualifications standard and position description;
- originals of all applications received by the agency;
- the written selection procedures (rating plan), and names and organizational titles of rating panel members;

- written recommendations of the panel/ERB (signed and dated), including a list of the groupings of all applicants and the supporting rationale, or rating sheets;
- any references, or qualifications questionnaires or inquiries, obtained on the candidates;
- record of which, if any, candidates were interviewed;
- any recommendation by a selecting official to the appointing authority if the two are different individuals;
- the appointment action (signed and dated);
- appointing authority certification that the appointee meets the qualifications requirements of the position;
- appointing authority or ERB certification that appropriate merit staffing procedures were followed; and
- copies of any complaints about the staffing process and agency findings and response.

QUALIFICATIONS REVIEW BOARDS

STATUTE: 5 U.S.C. 3393(c)

REGULATIONS: 5 CFR 317.502

The CSRA stresses that the SES is primarily an executive corps and requires all new career appointees be certified by a QRB. Through independent peer review, QRB members ensure that all new executives have a broad perspective of Government and solid executive skills. They focus attention on the fact that, in the SES, executive skill is paramount — not technical expertise.

MEMBERSHIP

OPM administers QRBs, which includes drawing on members of the SES to participate on the Boards and to advise on QRB policy. OPM works with agencies to solicit names of executives to serve on QRBs. Each board consists of SES members from three different agencies. A majority of each Board's members must be SES career appointees. Board members are not permitted to review their own agency's candidates, and if a member otherwise believes he/she cannot provide an impartial review, the member will be excused from the case.

FUNCTIONS

The QRB determines whether a candidate possesses sufficient breadth and depth of executive qualifications for an initial career appointment to the SES. It certifies the nominee's executive qualifications on the basis of one of the following criteria specified in law [5 U.S.C. 3393(c) (2)]:

Criterion A: Demonstrated executive experience.

Criterion B: Successful participation in and graduation from, an OPM approved SES candidate development program.

Criterion C: Possession of special or unique qualities that indicate a likelihood of executive success. (Approval of these cases is based on the agency's entire submission, including the proposed Individual Development Plan (IDP), and imposes an obligation on the agency to carry out the proposed executive development activities.)

OPERATIONS

QRB members review a set of documents (i.e., "case") pertaining to an individual who has been selected for initial career appointment in the SES (see Submitting Cases for QRB Certification later in this section).

Approval: The QRB must find demonstrated executive level experience in all five Executive Core Qualifications (ECQs) to recommend approval under Criterion A.

A QRB may approve a case, but recommend formal managerial training to supplement experience in one or more of the ECQs. If that occurs, the agency may make the appointment, but should develop an IDP, in consultation with the employee, to assure that the individual receives the recommended training.

If a QRB finds that it cannot approve a case under Criterion A, it may approve the case under Criterion C, provided that an Individual Development Plan (IDP) and documentation of the candidate's unique and special qualifications are submitted with the case to the QRB. The board then determines if the individual meets the Criterion C requirements. However, it would not be appropriate for a QRB to approve a case under Criterion A if it was submitted as a Criterion C case.

Disapproval: If a QRB case is disapproved, the agency may choose to have the case submitted to the next regularly scheduled QRB, or have the case returned to the agency. Agencies are encouraged to resubmit a returned case within 60 working days of the QRB disapproval. In a resubmission, the QRB will still only consider experience obtained before the closing date of the announcement. Before resubmitting, the agency is advised to review the case to determine whether additional supporting material can be provided as to the candidate's executive qualifications. An agency may resubmit a case initially rejected on the basis of Criterion A as a Criterion C case, if appropriate (i.e., the candidate has "special or unique qualities"). The Criterion C case must include an IDP, documentation of the candidate's unique and special qualifications, and at least one reference letter from an appropriate person (agency's discretion) at a higher level than the candidate, who supports the ECQs of the candidate. A new case must then be entered into ESCS.

If a case is disapproved a second time, a new case on the candidate may not be submitted until the candidate acquires additional qualifying experience in those deficient areas noted by the QRB. Since qualifying experience is credited only to the closing date of an announcement, OPM generally requires the agency to hold a new merit staffing competition to credit the additional experience. The closing date of the new announcement will be at least 12 months later than that of the original announcement.

If a Criterion B case is disapproved, the agency has the option to resubmit the package, or it can ask the candidate to pursue additional development to address issues raised by the QRB.

Other: The names of QRB members, their organizations, and the records of their individual actions are not subject to release.

CERTIFICATIONS

There is no time limit on QRB certification — any existing time limit on a previously- approved certification is removed. OPM’s QRB Administrator or Agency Officer uses ESCS to validate the QRB certification. A copy of the signed and dated ESCS screen is returned to the agency. In addition, for Criterion B cases only, the individual candidate receives a printed certificate documenting his/her eligibility for either of the following:

“Career appointment to the Senior Executive Service without further competition in any agency to any position for which this individual is determined to be otherwise qualified.” [Graduates of OPM approved Candidate Development Programs (CDPs) for which the area of consideration was not restricted under 5 CFR 412.104(a) (2)]; or

“Career appointment to the Senior Executive Service in any agency to any position for which this individual is determined to be otherwise qualified, after competition in accordance with 5 CFR 317.501.” [Graduates of OPM approved Candidate Development Programs (CDPs) where an exception to the recruitment area requirement was granted; see Area of Consideration, under Recruiting for SES Candidate Development Programs, earlier in this chapter.]

QRB Recommendations for Executive Development: Agencies should advise appointees of any QRB recommendations for additional executive development, and this development should be included in their Individual Development Plans. OPM may ask agencies to provide written verification of progress toward implementing any such QRB recommendations.

Suspension of QRB Case Processing: If an agency head leaves, announces an intention to leave, or if the President nominates a new agency head, OPM imposes a moratorium on review of QRB cases from that agency until a successor is appointed. OPM suspends QRB case processing until a successor is appointed. Pending cases may be returned to the agency and the agency should not submit additional QRB cases during the moratorium. OPM also may suspend or return pending cases during a Presidential transition period. This action is taken as a courtesy to the new agency head to afford him/her the greatest flexibility in making executive resources decisions. If a QRB case is returned to the agency, the case is marked “Return Without Action” in ESCS. The agency must create a new case record in ESCS before resubmitting the case to OPM.

If an agency has a case that it considers mission critical, the agency may submit the case and request an exception to the QRB moratorium. Requests for exception should be signed by the agency head or the official who is designated to act in the agency head’s absence. Agencies should address the following factors in their requests:

- the impact on the agency should the position not be filled during the moratorium;
- the likelihood the new agency head will have personal interest in the case;
- the organizational level of the position (include organization chart);
- the degree to which the candidate would be involved in policy matters;
- any special or unique qualifications of the candidate;
- whether the candidate is currently on a Schedule C or noncareer SES appointment;
- whether the candidate is currently performing the duties of the position via detail or “acting” designation and the length of time for the detail or “acting” designation (e.g., 30 days);

- how long it may be before the new agency head is appointed;
- how long the position has been vacant; and
- when the Agency Head has not yet departed, whether he or she has certified that the action is necessary to ensure continuity of critical agency operations.

If OPM declines the request for an exception, the agency must withdraw the case.

Resumption of QRB Case Processing: After an agency head has been sworn in, agencies may request OPM to initiate the processing of QRB cases. A template for a message requesting the processing is provided below. The message must be sent from the senior Executive Resources Office official, or a higher level official. The Executive Resources office must receive verification that the identified cases are to be processed from either the agency head or senior level official in a position to represent the agency head, such as the Deputy Secretary, Chief of Staff, or ERB Chairperson. The message should be sent to the OPM Executive Resources Services Group.

Template message: This serves to confirm that (agency name) has a new (title of agency head). (Name) was sworn in on (date) as the new (title of agency head). The (name of the Executive Resources office) has confirmed with (name and title), that the new (title of agency head) has authorized that the following Qualifications Review Board (QRB) cases previously subject to a moratorium, be submitted for QRB review. (List cases to include selectee's name, organization, position title, and SES VA opening and closing date). Accordingly, I request that OPM initiate processing of the cases.

SUBMITTING CASES FOR QRB CERTIFICATION

GENERAL REQUIREMENTS

A case will be accepted only from an agency as a result of the SES merit staffing process, successful completion (as certified by the agency) of an OPM approved SES candidate development program, and evidence of a case record created in ESCS. No individual may request his/her own certification. Furthermore, OPM will not submit the conversion of a noncareer SES employee to a career SES appointment in the employee's own position or a successor to that position, since there is no bona fide vacancy [CFR 317.502(e)].

An ESCS record will show under which criterion (A, B, or C) that certification is requested.

The primary basis for submitting a case as Criterion A is "demonstrated executive experience" and relevant training and development activities may also be cited. Criterion C should not be used in lieu of Criterion A solely because an agency has difficulty proving "demonstrated executive experience." Therefore, for Criterion C, an agency must document "special or unique" qualifications in terms of the agency's program or mission, or some other directly related SES consideration.

Agencies are required to submit a Criterion A or C case not more than 90 working days from the closing date of the vacancy announcement. Cases that exceed this timeframe will be returned to the agency for a new merit staffing process. A criterion B case should also be submitted for SESCDP participants within 12 months from the ending date of an OPM-approved SES candidate development program.

DOCUMENTATION REQUIREMENTS

For Criterion “A” Cases (demonstrated executive experience), three collated copies of:

- an application form for Federal employment required by the agency (e.g., OF-6 12, resume);
- a statement from the ERB or appointing authority that states qualifications were met and the merit system was followed.
- an ECQ statement: a written assessment of the candidate’s potential for success in the SES, in relation to the five ECQs (10-page maximum, 10 font type or larger). Longer statements **will** result in the case being returned to the agency); and
- a vacancy announcement and the qualifications standard, if not fully reproduced in the announcement.

For Criterion “B” cases (CDP graduates) — Following data entry in the Executive and Schedule C System, please submit one copy of the following:

- ERB certification – a letter signed by the ERB chairperson;
- a statement that describes, or information that shows the assessment tool used to select candidates;
- a statement from the ERB or appointing authority that the merit system principles were followed;
- ECQs presentation (no more than 10 pages long);
- Job application or resume, please show salaries or grade level;
- Individual Development Plan (IDP) or Executive Development Plan (EDP)
 - Show how ECQs were addressed via training, e.g. IDP can be the map outline, etc;
 - IDP should be current and show activities, developmental assignments, rotational assignment, - title if applicable, location, etc.;
 - 80 hours and 4 months activities clearly spelled out;
 - Begin and end dates, show mm/dd/yy;
 - Mentor or ERB signature and date (mm/dd/yy) verifying the IDP is completed;
- SES Vacancy Announcement and USAJOBS number;
- Supervisory or Mentor evaluation of the candidate’s accomplishments to include how the candidate closed competency gaps;
- Candidate’s self evaluation or summary of his or her accomplishments to include how the competency gaps identified at the beginning of the program were addressed;
- Mentor’s verification; and
- Executive Personnel Transmittal Sheet for Criterion B cases.

For Criterion “C” Cases (“special or unique qualities “) — three copies of:

- application form for Federal employment required by the agency, e.g., SF- 171, OF-6 12, resume, etc;
- an ECQ statement: a brief written assessment of the candidate’s potential for success in the SES, in relation to the five ECQs (10-page maximum);
- a written description of the candidate’s unique and special qualifications that make him/her a superior choice for the SES position for which selected;
- a vacancy announcement and the qualifications standard, if not fully reproduced in the announcement;
- an IDP organized by the five ECQs, that shows how the candidate will obtain executive level knowledge and experience under the weak ECQ(s); and
- Optional, a reference letter addressing each ECQ by someone familiar with the candidate’s demonstrated executive level experience.

OPM 45 DAY MODEL

The SES merit staffing process does not need to be a protracted process. To achieve effective and efficient hiring, management must commit the necessary resources and attention. OPM has developed the following hiring model for SES positions:

ACTION	Work Days
Announcement closes; preliminary qualifications determinations made; Executive Resources Board (ERB) convened	5
ERB evaluates applicants; identifies those who are Best Qualified (BQ)	5
List/certificate of BQ prepared; BQ referred for consideration of Selecting Official	3
Selecting Official interviews, selects and secures approval of Appointing Authority	15
Case prepared for OPM review and presentation to the Qualifications Review Board (QRB), if required	10
Total Agency time:	38
OPM reviews case; QRB takes action	7
Total time from close of announcement to selection:	45

Unlike the 90 working day requirement for QRB submission, the 45 day model is intended to serve as a guide – the average time for hiring SES members. Of necessity, some hires will take longer than others.

PROBATIONARY PERIOD

STATUTE: 5 U.S.C. 3393(d), 3592

REGULATIONS: 5 CFR 317.503

An individual's initial SES career appointment becomes final only after the individual successfully completes a 1-year probationary period. This probationary period begins on the effective date of the personnel action initially appointing the individual to the SES as a career appointee and ends 1 calendar year later. Example; if an individual was appointed to the SES on June 1st, the probationary period ends on May 31st of the following year.

SUPERVISORY RESPONSIBILITIES DURING THE PROBATIONARY PERIOD

Follow through on agency initiated or QRB recommended training.

Observe the employee's performance and conduct.

Hold periodic, documented discussions of progress with the employee, clearly outlining the strengths and weaknesses of the employee in relation to the position's performance requirements.

Initiate action to remove the employee from the SES if it becomes apparent, after full and fair consideration, that the employee's performance is not suitable for satisfactory executive work. An employee's probationary period may not be extended beyond 1 year solely for the purpose of providing the employee an opportunity to improve performance. [See Chapter 8 for information on removal during probation.]

CREDITING SERVICE

The following conditions apply to credit service towards completing the probationary period, as stated in 5 CFR 317.503(c):

- time on leave with pay while in an SES position is credited. Earned leave for which the employee is compensated by lump-sum payment on separation is not credited;
- time in a non-pay status (e.g., LWOP and furlough) while in an SES position is credited up to a total of 30 calendar days (or 22 workdays). After 30 calendar days, the probationary period is extended by adding time equal to that served in a non-pay status (For example, if the individual was absent for 50 calendar days, the probationary period is extended by 20 calendar days);
- time following transfer to an SES position in another agency is credited (i.e., the employee does not have to start a new probationary period); and
- time absent on military duty or due to compensable injury is credited upon restoration to the SES when no other break in SES service has occurred [CFR Part 353].

MORATORIUM ON REMOVAL DURING PROBATION

The provisions of 5 U.S.C. 3592 that restricts the removal of individuals from the SES for 120 days after appointment of a new agency head or noncareer supervisor also apply to probationary

removals. If an individual completes the probationary period while the restriction is in force, removal when the restriction ends must be effected under procedures that apply to post-probationers. [See Chapter 8 for information on removal during probation and additional information on the moratorium.] There is no provision for extending the probationary period.

REAPPOINTMENT TO THE SES WHEN PROBATION IS NOT COMPLETED

A career appointee who leaves the SES before completing the probationary period must undergo a new merit staffing competition to be reappointed. However, the individual need not be recertified by a QRB unless the individual had been removed for performance or disciplinary reasons.

An individual who separated from the SES during the probationary period and has been out of the SES more than 30 calendar days must serve a new 1 year probationary period upon reappointment, except as provided in the next paragraph. Previous time in a probationary period may not be credited toward completion of the new probationary period when the separation exceeds the 30-day limit.

A new 1-year probationary period is not required in the following situations. The individual is only required to complete the remainder of the probationary period if it was not previously completed.

- the individual left the SES without a break in service for a Presidential appointment and is exercising reinstatement rights under 5 U.S.C. 3593(b) and 5 CFR 317.503(g);
- the individual left the SES without a break in service for other civilian employment that provides a statutory or regulatory reemployment right to the SES (e.g., service with an international organization) when no other break in service has occurred;
- the break in SES service was the result of military duty or compensable injury, and the time credited was not sufficient to complete the probationary period. [See *Crediting Service* earlier in this chapter.]

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CHAPTER 3: OTHER STAFFING ACTIONS

A major objective of Workforce Management is to acquire the right people to do the right job. In order to meet the challenges of creating and maintaining highly productive and efficient organizations, agency flexibilities in filling critical leadership positions are essential. This chapter provides information about other methods, in addition to competitive appointment, that agencies may use to staff SES positions.

CAREER REASSIGNMENTS

Statute: 5 U.S.C. 3395

Regulations: 5 CFR 317.901

This section applies to the movement of a career appointee from one SES position to another SES position *within* an executive agency, a military component, or department. An executive agency is an executive department (e.g. Commerce) or an independent establishment (e.g., General Services Administration). The military components are Army, Navy, and Air Force. The rest of the Department of Defense (DoD) is treated as one agency. (Movement of SES members between executive agencies is a transfer. See Career Transfers later in this chapter.)

A career appointee may be reassigned to any SES position for which the appointee is qualified, provided all conditions below are met.

CONDITIONS

Non-Geographic Reassignments: An agency must give a career appointee a written notice at least 15 calendar days before the effective date of the reassignment. The agency is encouraged to consult with the appointee before giving the written notice and the appointee may voluntarily waive the notice. The waiver must be in writing and be retained as a temporary record in the Official Personnel Folder.

Geographic Reassignments (i.e., to another commuting area): An agency must first consult with an appointee on the reasons for and the appointee's preferences about the proposed reassignment. In addition to agency needs and objectives, the agency should consider the economic consequences of a move and the individual's concerns about such matters as personal health and the health of family members. However, this consultation provision is not intended to limit agency flexibility to reassign. Congress stated in the section analysis for P.L. 98-615 of November 8, 1984, that "the basic premise of the SES is to foster position and geographic movement when in the best interest of the agency." Following consultation, the agency must provide the appointee a written notice at least 60 calendar days before the effective date of the reassignment. The notice must include the reasons for the reassignment. The appointee may voluntarily waive the notice – the waiver must be in writing, and be retained as a temporary record in the Official Personnel Folder.

FAILURE TO ACCEPT A DIRECTED REASSIGNMENT

Failure to accept a directed reassignment makes an individual subject to removal under adverse action procedures. If separation is for failure to accept reassignment to a different commuting area, the individual is entitled to discontinued service retirement (if eligible) or severance pay, unless a memorandum of understanding or other written agreement provides for such geographic reassignments. [See Chapter 8 for information on Removals.]

MORATORIUM ON INVOLUNTARY REASSIGNMENTS

Statute: 5 U.S.C. 3395(e)

Regulations: CFR 317.901(c)

To prevent peremptory reassignments by new appointees without adequate knowledge of the individuals involved, the law provides that an agency may not involuntarily reassign an SES career appointee:

- within 120 days after an appointment of the head of the agency; or
- within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who is a noncareer appointee, and has the authority to make an initial appraisal of the career appointee's performance under 5 U.S.C. Chapter 43, subchapter II.

An appointee may voluntarily waive the moratorium, but the waiver must be in writing and retained as a temporary record in the Official Personnel Folder.

Details during the moratorium: In calculating the 120-day moratorium, the agency should not count 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. The moratorium provision does not restrict the total length of a detail, which may exceed 60 days. Details should not be used to circumvent the 120-day moratorium. Any detail during the moratorium should be made only when there is clear, bona-fide need. [Information on details is provided later in this chapter.]

Definitions: "Head of the agency" means the head of an executive department (e.g., Treasury), a military department (e.g., Army), or an independent establishment (e.g., General Services Administration). It does not mean the head of a component within an agency (e.g., Internal Revenue Service in Treasury).

"Noncareer appointee" is defined in 5 CFR 317.901(c)(1)(ii) as an SES noncareer or limited appointee, a Schedule C appointee, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively. (Commissioned officers of the uniformed services are not considered noncareer appointees.)

"Most immediate supervisor" refers to the noncareer appointee who is closest to the career executive in the supervisory chain, who has the authority to make an initial appraisal of the career appointee's performance. This does not mean a supervisor who functions solely as the reviewing official or final rater.

"Initial appraisal" means the summary rating of the career appointee's performance made by the supervising official (normally the immediate supervisor) as part of the annual performance

appraisal process [information on performance appraisals, Chapter 5]. It does not include a recommendation by a higher level reviewer or the final rating made by the appointing authority.

New agency head: is the appointment of a new agency head (including a recess appointment) always initiates the 120-day moratorium, and an action may not be taken by another official even if that official has been in office more than 120 days.

“Acting” designations: The designation of an “acting” agency head or noncareer supervisor (e.g., by a detail or when a deputy acts in the position) is not legally an appointment (except in the case of a recess appointment). Therefore, the statutory moratorium is not technically applicable. However, the agency at its discretion may provide in its instructions that it will apply the moratorium in such situations. If the individual later receives a permanent appointment to the position without a break in service, any days spent under an agency applied moratorium in an acting capacity, shall be counted toward the 120-day moratorium initiated by the permanent appointment.

Applying the Moratorium:

Reassignment based on performance: When an executive is reassigned as a result of an unsatisfactory performance rating under 5 U.S.C. 4314(b)(3), the 120-day moratorium does not apply if the reassignment was issued before the appointment that initiated the moratorium. When a final rating of unsatisfactory has already been issued, the reassignment may proceed even if a new agency head or noncareer supervisor (with authority to make an initial appraisal) is subsequently appointed. However, any moratorium that is already underway at the time the final unsatisfactory rating is issued must be allowed to run its course before the reassignment action can be taken.

—**Reassignment notice:** The 15- and 60-day advance notices pertaining to reassignment may run concurrently with the 120-day moratorium. However, if the advance notice is issued after the moratorium begins; an involuntary reassignment may not be effected until the moratorium ends. [CFR 317.901(d)]

If an advance notice is issued before the moratorium begins, but the notice has not yet expired, an involuntary reassignment may be effected at the end of the notice period even if the moratorium has not ended. However, it would not be appropriate for a proposed agency head or noncareer supervisor to have some other official issue a reassignment notice before appointment to avoid application of the moratorium. The action needs to be taken independent of the incoming agency head or noncareer supervisor.

—**Effect on Other Personnel Actions:** There is a moratorium restriction on other personnel actions; see information on Details and Probation in this chapter and Removals (Chapter 8).

New noncareer supervisor: A moratorium initiated by the appointment of a noncareer supervisor applies only to those career appointees for whom the supervisor gives the initial performance appraisal. It does not apply to other career appointees, even if the noncareer appointee is their higher level supervisor and functions as a reviewing official or final rater, or has the authority to reassign them.

If a moratorium is initiated by the appointment of a noncareer supervisor, an involuntary reassignment action may not be taken by the agency head even if the agency head has been in office more than 120 days.

Realignments: The 120-day restriction **does not apply** to realignment, which is the movement of an employee and the employee's position when a transfer of function or an organization change occurs within the same agency and there is no change in the employee's position.

Abolishing positions: The 120-day restriction **does not preclude** the abolishment of a position during the moratorium. For example, a position could be abolished, and the incumbent could elect immediate discontinued service retirement or agree to an immediate voluntary reassignment. However, the incumbent could not be involuntarily reassigned until the 120 days have elapsed.

CAREER TRANSFERS

STATUTE: 5 U.S.C. 3395(a) and 3595(e)

REGULATIONS: 5 CFR 317.902

This section applies to the movement of a career appointee **between** executive agencies and/or military departments (Army, Navy, and Air Force). (Movements of SES members **within** executive agencies or military departments are reassignments and are covered in the previous section on Career Reassignments.)

CONDITIONS

A career appointee may be transferred only with the consent of the appointee and the gaining agency, except where there is a transfer of function between agencies. This provision is not intended to restrict the statutory authority of the Secretary of Defense under Title 10 of the U.S. Code, in the matter of transfers between major DOD components specifically directed by the Secretary.

The appointee must meet the qualification requirements of the position to which transferred.

TRANSFER OF FUNCTION

A career appointee affected by a transfer of function between agencies has rights comparable to a competitive service employee, as provided in 5 U.S.C. 3595(e). Therefore, the appointee is entitled to accompany his/her function if the appointee would otherwise be removed from the SES. [For information about competitive service provisions on transfer of function, see 5 CFR Part 351, Subpart C.]

A career appointee who fails to accompany a transfer of function may be removed from the SES and the Federal service under 5 CFR Part 752, Subpart F. [Chapter 8, Removals.] As an alternative to removal, the agency losing the function may reassign the appointee to another SES position in a different function.

NONCAREER AND LIMITED APPOINTMENT AUTHORITIES, REASSIGNMENTS, AND TRANSFERS

STATUTE: 5 U.S.C. 3394 and 3395(b) through (d)

REGULATIONS: 5 CFR Part 317, Subpart F

APPOINTMENT AUTHORITIES

Authority: An agency must have an approved noncareer appointment or limited term appointment authority from OPM before making the appointment, or an authority from its delegated limited term appointment authority pool. [See Chapter 1].

Position: Appointment may be made only to a General position.

Competition: Competitive procedures are not required to make the appointment.

Qualifications: The appointing authority must determine in writing that the appointee meets the qualifications requirements for the position.

Tenure: The appointee does not receive tenure and serves at the pleasure of the appointing authority.

Qualifications: Reassignment of a noncareer appointee in the same agency may be made only to a General position for which the individual is qualified.

OPM Approval: Reassignment of a noncareer appointee must have the prior approval of OPM. Reassignment of an appointee on a noncareer or limited term appointment authority, provided the duration has not expired, may be made without the prior approval of OPM. However, the new position must meet the same criteria as the original position.

Notice: No advance written notice of the reassignment is required, but notice should be given when possible.

TRANSFERS

Transfer of a noncareer or limited appointee on a noncareer or limited term appointment authority to another agency, may be made only to a General position for which the individual is qualified. OPM must provide prior approval of the appropriate appointment authority in the new agency.

In a transfer of function between agencies, appointees on a limited term appointment authority may be offered transfers at the discretion of the agency. Agencies must get prior approval of OPM for the transfer of appointment authorities.

CONDITIONS REGARDING LIMITED TERM APPOINTMENT AUTHORITIES

Time limit: A limited term appointment authority (LTA) may not exceed 3 years. A limited emergency appointment authority may not exceed 18 months. An individual serving on a limited term appointment authority may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual served in the aggregate more than 36 months under any combination of limited term emergency or limited term appointments.

Extension: A limited term appointment is not renewable. However, if the appointment is made for less than the period authorized by OPM, the agency may extend the appointment to that period.

Termination: A limited term appointment authority terminates automatically at the end of the appointment period but may be terminated by the agency at any time. [See Chapter 8 on Removals for information on termination actions other than expiration of appointment for noncareer and limited appointees.] When an appointee on a LTA has served the length of the appointment, the appointee is given an SF-50 notification. An agency may give any amount and type of additional advance notification.

Fallback rights: After termination, an appointee on a LTA is entitled to be placed in his/her former position or a position of like status, tenure, and grade if:

- the LTA is made without a break of service in the same agency as the one in which the individual holds a career or career conditional appointment or an appointment of equivalent tenure, as defined in 5 CFR 359.701(a), in a permanent civil service position outside the SES; and
- the LTA is terminated for reasons other than misconduct, neglect of duty, or malfeasance.

Provisional designation: A limited term emergency or limited term appointment authority of 1 year or less may be designated as “provisional” when the intent is to convert the individual to a position, e.g., Presidential appointment, or Presidential appointment requiring Senate confirmation, upon further action. When an appointment is designated as provisional, the individual may be treated as a nontemporary employee for the purposes of life insurance, health benefits, and retirement (5 CFR 316.403).

INTERGOVERNMENTAL PERSONNEL ACT (IPA) ASSIGNMENTS

The provisions of 5 U.S.C. 3374 and 5 CFR Part 334 pertaining to IPA appointments of employees of State or local governments, or other participating organizations, apply only to positions in the competitive service. To appoint an individual who would otherwise be covered by 5 U.S.C. 3374 to a position in the SES, the agency must use the SES limited term appointment authority provisions at 5 U.S.C. 3394 and 5 CFR Part 317, Subpart F. The maximum time limit for such an appointment is 3 years, even if the duties of the position will not expire at the end of the appointment. Note that, in lieu of an appointment in the Federal service, an individual on an IPA assignment may be detailed to the agency under 5 U.S.C. 3374. [See Chapter 7, Executive Development, for guidance about IPA assignments for SES members.]

TRANSITIONS AND PRESIDENTIAL NOMINEES

To assist in transitions, OPM may make noncareer and limited term appointment authorities available to agencies following the inauguration of a new President, or the nomination of a new agency head. OPM must approve use of the appointing authority. Tenure is the same as in any other noncareer or limited term appointment authority.

Presidential nominees may be given a noncareer or limited term appointment authority while awaiting Senate confirmation, but cannot be appointed to the target position, until confirmed by the Senate. These individuals normally function in an advisory or consultative capacity in another position until confirmed. OPM must approve use of the appointing authority.

CHANGE FROM CAREER TO NONCAREER OR LIMITED APPOINTMENT

A career SES appointee cannot be required to change his or her status to noncareer or limited term upon appointment to another SES position [5 CFR 317.904]. The individual must agree to the conditions of voluntarily accepting a noncareer or limited term appointment in writing, before the appointment. The agreement shall be retained as a permanent record in the Official Personnel Folder. [See OPM's Guide to Personnel Recordkeeping, Chapter 3].

If a career appointee is under regular CSRS coverage and is changing to a noncareer appointment, the individual must be informed that he/she will automatically acquire CSRS Offset coverage (CSRS plus Social Security) or FERS coverage depending on whether the individual has 5 years of service at the time of the action. (The action also triggers an opportunity to elect FERS coverage if the individual is not automatically covered.) The individual must also be informed that, if he/she later returns to a career SES appointment, it will not be possible to return to regular CSRS coverage without Social Security. The agency Retirement Counselor can answer any questions pertaining to these provisions.

A request for a noncareer or limited term appointment authority must be created in the ESCS. The form, 1652, Request for an SES Appointment Authority, after appropriated agency clearances is submitted to:

Mail or deliver requests for OPM approval to:

U.S. Office of Personnel Management
Executive Resources Services Group, HCLSMA
1900 E Street NW, Room 7470
Washington, DC 20415

DETAILS

STATUTE: 5 U.S.C. 3341

REGULATIONS: 5 CFR 317.903

A "detail" is the temporary movement of an employee within, into, or out of the SES for a specified period, usually with the expectation that the employee will return to his/her regular position at the end of the period. Administratively, for purposes of pay and benefits, the employee continues to be the incumbent of the position from which he/she is detailed. Details may be within the employing agency or negotiated between agencies. In either event, the provisions of this part apply.

DETAILS TO SES POSITIONS

Details of career SES members should not be used to circumvent the advance notice requirement for reassignments, or the 120-day moratorium on involuntary reassignments following the appointment of a new agency head, or noncareer supervisor. Any detail during these periods should be made judiciously and only when there is a clear, bona-fide need for the individual to serve in the position. The agency should document the reasons for the detail.

DETAILS OF NON-SES EMPLOYEES TO SES POSITIONS (and vice versa)

CSRA established the SES as totally separate from the competitive and excepted services. Therefore, details of non-SES employees to SES positions and details of SES employees to non-SES positions should be kept to an absolute minimum and strictly controlled. For purposes of pay and benefits, the employee continues to encumber the position from which detailed.

The duties of a vacant SES position may be restructured temporarily to an appropriate level outside the SES when a non-SES employee is to be detailed to an SES position. If that is not possible, an agency should make sure that the detail authority is used judiciously. If a position has to be filled on detail for an extended period, the agency may want to consider rotating qualified employees on the detail.

Details of non-SES employees should not be used as a means of providing a specific employee the opportunity to acquire the qualifications required for entry into the SES (other than in accordance with an OPM-approved SES candidate development program).

Details of SES employees to non-SES positions below the SES level are generally considered to be an inappropriate use of executive talent.

DETAILS OF LIMITED TERM SES EMPLOYEES

An agency may detail an SES limited term appointee to a SES general position the duties of which will expire at the end of 3 years or less.

An agency may not detail an SES limited term appointee to a continuing SES position because the continuing duties to which the individual would be assigned would not satisfy the statutory conditions for SES limited term. The statutory basis for the SES limited term appointment would disappear and the SES limited term appointment would need to be terminated. This does not preclude a reasonable, temporary “acting” assignment, e.g., during the short term absence of another executive, that does not become the individual’s new continuing assignment or prevent his or her timely return to the SES position and completion of the tasks for which SES limited term appointment was approved.

OTHER DETAILS

For details to non-Federal organizations, see the IPA provisions of 5 U.S.C. 3371-3376 and 5 CFR Part 334.

For details to international organizations, see 5 U.S.C. 3343 and 5 CFR 352 Subpart C.

For details to foreign governments, see 22 U.S.C. 2387, contact the Agency for International Development.

CONDITIONS

Initial details and extensions *within* a department or agency must be made in accordance with 5 U.S.C. 3341 and 5 CFR 317.903(b)(1), which authorizes details in increments of no more than 120

days. Although this requirement does not apply to details between departments and agencies, such details should be reviewed periodically to assure that they are still appropriate.

To Career Reserved positions: Only career SES employees and career-type non-SES employees may be detailed to a Career Reserved position. Any SES employee or non-SES employee may be detailed to a General position. A noncareer SES employee **may not** be detailed to a competitive service position outside the SES.

To Unclassified Duties: Agencies cannot detail an SES member to unclassified duties for more than 240 days. For a longer detail, the agency must determine whether the duties are at the SES level. The agency has the option of formally establishing an SES position if the duties are at that level.

Note: It is not appropriate to detail an SES member to a series of different positions with unclassified duties in order to “restart” the 240-day clock. This circumvents the purpose of the 240-day limit.

For more than 240 days: Competitive service merit promotion procedures must be observed when detailing non-SES employees to an SES position for more than 240 days. However, competition is not required if the employee is certified by a QRB following successful completion of an SES candidate development program. Agencies may use the competitive merit promotion procedures in 5 CFR Part 335 for this purpose, or their SES merit staffing procedures, because it is not necessary to open competition outside the agency.

OPM Approval: OPM approval is required for a detail of more than 240 days if a non-SES employee is being detailed to an SES position that supervises other SES positions, or if an SES employee is being detailed to a position at GS-15 or below or an equivalent level. Requests for approval should be entered in the ESCS data system. (OPM approval and competition are not required if the individual is in an SES-type system and is covered by an SES interchange agreement, as described in Chapter 12.)

Funding: In the absence of a specific statute authorizing non-reimbursable details, normally both intra-agency and inter-agency details between positions covered by different appropriations, must be made on a reimbursable basis. [See 64 Comp. Gen. 370, March 20, 1985.]

Notice: There is no requirement to give an executive advance notice of a detail. However, appropriate notice should be provided when possible, particularly for details to positions outside the commuting area.

EFFECT OF MORATORIUM ON DETAILS

The law provides that, in calculating the 120-day moratorium, any days (not to exceed a total of 60 days) during which the career appointee is serving on a detail or other temporary assignment apart from the appointee’s regular position are not counted. The moratorium provision does not restrict the total length of a detail, which may exceed 60 days.

If a career appointee is detailed during the moratorium, or already on detail at the start of a moratorium, the first 60 days of the detail (or any combination of details) do not count against the 120 days. For example, if the employee is placed on a 90-day detail, the first 60 days would be added to the 120 days, and the moratorium would last 180 days. Although there is no limit on the total length of a detail during the moratorium, any detail during the moratorium must meet the

detail requirements in the regulations. It also should be made judiciously and only when there is clear, bona-fide need. Details should not be used to circumvent the 120-day moratorium.

DOCUMENTATION

An SF-50 or 52 must be filled out:

- if the detail is expected to last 120 calendar days; or
- if the detail is over 30 days and is from a GS-15 or lower position (or equivalent), to an SES position.

However, an SF-50 or 52 is not required if the detail is to an identical position or the detail is from one SES position to another and the occupational series and basic duties are the same as the employee's current position.

REINSTATEMENT IN THE SES

STATUTE: 5 U.S.C. 3593(a)

REGULATIONS: 5 CFR 317.702

CONDITIONS

The following conditions apply for reinstatement to the SES as a career appointee:

- Reinstatement may be based only on prior career service in the SES. Reinstatement eligibility acquired in the competitive service is not transferable to the SES. (Similarly, a career appointment in the SES does not establish reinstatement eligibility in the competitive service.) Receipt of QRB certification is not a basis for reinstatement;
- The appointee must have successfully completed an SES probationary period or been exempt from probation (e.g., converted to the SES as a career appointee when the SES was established in 1979);
- Separation from the SES must not have been for reasons of performance, for disciplinary reasons, or a resignation in lieu of removal for these reasons. However, reinstatement is permitted if separation was because of failure to accept a directed geographic move and there was no written mobility agreement;
- There is no time limit after leaving the SES for reinstatement of an eligible appointee;
- Individuals apply for reinstatement to the agency where the individual wants to work, not to OPM;
- Reinstatement may be noncompetitive or agencies may apply merit staffing requirements at their discretion;
- The agency must determine that the individual meets the qualifications requirements of the position to which reinstated, but the individual need not receive a new QRB certification; and

- If the reinstatement is of a reemployed annuitant, the Standard Form 50 should indicate that the employee serves at the discretion of the appointing authority.

REINSTATEMENT AFTER PRESIDENTIAL APPOINTMENT

This section covers reinstatement of a former SES career appointee appointed by the President to a civil service position outside the SES, without a break in service from the career appointment and who left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance. It does not matter whether the Presidential appointment was with or without Senate confirmation, or at what level of the Executive Schedule (EX). Coverage includes an individual who was appointed by a Presidential designee under 3 U.S.C. 107(a) and (b) to a position in the White House Office, Office of Policy Development, or Office of Administration.

Under 5 U.S.C. 3593(b), the individual is entitled to be reinstated to the SES as a career appointee, if he/she applies to OPM within 90 days after separation from the Presidential appointment. However, an individual may negotiate his/her own reinstatement directly with an agency, rather than requesting OPM assistance. [See 5 CFR 317.703]

ELIGIBILITY

There must not be any break between the SES career appointment and the Presidential appointment. Intervening appointments, such as expert and consultant appointments, constitute a break and will result in loss of directed reinstatement rights.

Subsequent Presidential appointments: If an individual is serving in one Presidential appointment and receives another Presidential appointment without a break in service between the two appointments, the individual continues to be entitled to reinstatement to the SES following termination of the second appointment. If there is an interim period between expiration of the first Presidential appointment and onset of the second (e.g., while awaiting Senate confirmation), the individual must be reinstated to an appropriate position as an SES career appointee before the effective date of the new Presidential appointment to preserve his or her reinstatement entitlement following termination of the second appointment.

Effect of resignation: When a Presidential appointee resigns, voluntarily or upon request, the agency in which the Presidential appointment was held may give the individual a limited appointment authority (after OPM approval), pending reinstatement as an SES career appointee in that or another agency, to preclude a break in service.

PROCEDURES

A Presidential appointee may apply for reinstatement assistance as soon as the appointee's resignation is requested or submitted, but not later than 90 days after separation. The application must be in writing and specify the position held immediately before the Presidential appointment. There must also be an effective date for the resignation or separation, because OPM will not begin placement assistance until this date is specified.

To the extent practicable, OPM will direct reinstatement within 45 days of the date OPM receives the application for reinstatement, or the date of separation from the Presidential appointment,

whichever is later. The executive's expressed geographic availability will be honored when possible. OPM will use the following order of precedence in directing reinstatement:

- the agency in which the individual last served as an SES career appointee before accepting the Presidential appointment;
- the successor agency in which the individual last served as an SES career appointee;
- the agency or agencies in which the individual served as a Presidential appointee; and
- any other agency in the Executive branch with SES positions.

The agency being directed to take the reinstatement action is responsible for assigning the individual to an SES position for which he/she meets the qualifications requirements.

An individual may negotiate his/her own reinstatement with an agency, rather than requesting OPM assistance.

OPM may, as appropriate, provide an additional SES space to an agency that is reinstating a former Presidential appointee.

AGENCY COMPLIANCE

An agency must comply with an OPM order to reinstate as promptly as possible, but not more than 30 calendar days from the date of the order.

An agency must notify OPM of a reinstatement action within 5 workdays of the effective date of the reinstatement. The notification should be sent to ERSG/HCLMSA, by email or written correspondence.

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

SEPARATIONS

If an individual who is eligible for placement in the SES following a Presidential appointment decides instead to separate from the Federal service, the individual would be eligible for discontinued service retirement if otherwise covered.

OTHER

Probation: An individual who was serving an SES probationary period at the time of Presidential appointment is required to complete the probationary period upon reinstatement.

OPM notification: Agencies shall record the reinstatement action in the ESCS within 5 workdays.

PRESIDENTIAL APPOINTMENTS OF CAREER SES MEMBERS

STATUTE: 5 U.S.C. 3392(c)

REGULATIONS: 5 CFR Part 317, Subpart H

CSRA provides certain benefits and reinstatement rights to SES career members who receive Presidential appointments in order to encourage career executives to serve at the highest levels of the Government and broaden the pool from which the President could choose top managers. To be eligible, there must be no break in service between the SES career appointment and the Presidential appointment.

RETAINED SES BENEFITS

An SES career employee, who is appointed to a civil service position in the executive branch outside the SES, is entitled to elect to continue certain SES benefits if either of the following conditions is met:

- The appointment is by the President, with Senate confirmation (PAS), to a position at a rate of basic pay equivalent to Executive Schedule Level V or higher. Coverage includes a recess appointment; or
- The appointment, even though not PAS, is to a position covered by the Executive Schedule, or the rate of basic pay for the position is fixed by statute at a rate equal to one of the five levels of the Executive Schedule.

Coverage does not include a position where the minimum rate of basic pay for the position is below Executive Schedule Level V and the maximum rate is at or above Executive Schedule Level V (e.g., senior-level positions), even though at a particular time the pay of the incumbent is equivalent to Executive Schedule Level V or higher.

Benefits: The employee may elect to retain some, all, or none of the following SES benefits: basic pay (including the aggregate limitation on pay), performance awards, rank awards, severance pay, annual and sick leave, and retirement. The appointing agency is responsible for advising affected employees of their election opportunity. The election decision must be in writing.

Annual election: The employee may make a new election on an annual basis. The employee must wait 12 months after the anniversary date of the initial election to make the change. Thereafter, the election may be changed no more than once during any 12 month period. Any new election may be for the purpose of adding or dropping benefits listed in the previous paragraph.

Eligibility for awards: An employee who elects to retain SES performance and/or rank award eligibility remains subject to the SES performance appraisal system. This individual retains eligibility for consideration for awards, but the agency has discretion to determine whether to grant them.

Retirement Coverage: Due to changes introduced by the Miscellaneous Revenue Act of 1988 [P.L. 100-647], retirement coverage for an employee who receives a Presidential appointment with Senate confirmation on or after November 10, 1988 (the date of enactment), is determined by the position to which the employee is appointed and is not affected by any election on the employee's part under 5 U.S.C. 3392(c).

If the position is an Executive Schedule position listed in 5 U.S.C. 5312-17, the employee is subject to mandatory Social Security coverage under CSRS Offset or FERS. [See Chapter 11 for information about coverage.]

If the position is not listed in 5 U.S.C. 5312-17, the employee retains whatever retirement coverage was previously applicable under the SES career appointment, whether it was regular CSRS, CSRS Offset, or FERS.

Leave coverage: If an employee elects to retain SES leave coverage, the employee must continue both annual and sick leave coverage. See Chapter 11 for further information.

REINSTATEMENT IN THE SES

Any SES career appointee who receives a Presidential appointment is entitled to be reinstated to the SES under the conditions specified in the previous section, Reinstatement in the SES.

REEMPLOYMENT RIGHTS

Reemployment rights of SES members who accept certain assignments outside the SES and their agencies (e.g., to international organizations) are covered in 5 CFR Part 352. Generally, the individual must have held a career SES appointment before the assignment to be entitled to reemployment, and in some instances, must have completed the SES probationary period.

Restoration rights following military duty or recovery from a compensable injury are covered in 5 CFR Part 353.

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CHAPTER 4: PAY AND OTHER COMPENSATION

STATUTE: 5 U.S.C. 5307 and 5381-5385,

REGULATIONS: 5 CFR Part 534, Subpart D; Part 530, Subpart B

Strong performance appraisal systems provide the necessary foundation for establishing pay-for-performance systems where an individual's pay is directly linked to results that contribute strategically to mission accomplishment. It is within this framework that the Senior Executive Service (SES) pay-for-performance system operates. All agencies, regardless of whether they seek certification of their performance appraisal system(s), are required to operate pay-for-performance systems for their SES cadre. [See Chapter 12 for information on pay for senior-level and scientific and professional positions.]

SES RATE RANGE

The SES pay range has a minimum rate of basic pay equal to 120 percent of the basic pay rate for GS-15, step 1 and the maximum rate of basic pay is equal to the rate for level III of the Executive Schedule (EX III). However, for any agency certified under 5 U.S.C. 5307(d) as having a performance appraisal system which, as designed and applied, makes meaningful distinctions based on relative performance, the maximum rate of basic pay will be the rate for level II of the Executive Schedule (EX II). The minimum rate of basic pay for the SES rate range will increase consistent with any increase in the rate of basic pay for GS 15, step 1. The applicable maximum rate of basic pay for the SES rate range will increase with any increase in the rate for levels EX II or III under 5 U.S.C. 5318.

AGENCY RESPONSIBILITIES

POLICY REQUIREMENTS

Each agency must establish a written pay policy for setting and adjusting the rates of basic pay for SES members. It may be useful to include members of both the Executive Resources Board (ERB) and the Performance Review Board (PRB) in establishing or modifying this policy so that roles and perspectives of each are properly integrated. For example, while an agency's written pay policy should address aggregate compensation, including how pay decisions may be related to SES bonuses and incentive awards, it may not preempt the PRB responsibility to provide the agency head recommendations on SES bonuses for career appointees or the agency head's determination of SES bonus amounts after considering those recommendations.

The pay policy must do the following:

1. It must describe the review and approval process for setting and adjusting pay, including procedures for setting pay for new appointees, pay adjustments after appraisal, and any other circumstances that may result in the setting and adjusting of pay. It must specify who has authority for various pay adjustments consistent with regulatory provisions, e.g. which may be finalized by an authorized agency official and which require action by the agency head or the

official designated by the agency head to oversee and certify the results of the agency's SES performance appraisal system.

2. The policy must address administrative and management controls to meet the requirements of law and regulation. It should also address budget issues, such as procedures for determining how available funds will be allocated among pay adjustments, bonuses and other awards or what kinds of adjustments to make in the event of budget constraints. The policy should identify the role and nature of significant control points, external and internal, for these decisions. An agency should establish its internal rules and control points so as to encourage excellence in executive performance and communicate about them to executives to that end. Below are examples of rules or control points that can affect pay adjustments and awards.

a. External

- Statutory, e.g., pay cap at EX III or EX II based upon certification status of performance appraisal system
- Regulatory, e.g., requirements for justifying a "maintain relative position" (MRP) adjustment for an executive currently paid above EX III, or for whom the resulting rate is above EX III

b. Internal

- Factors that will be used to differentiate payouts among executives who receive the same rating
- Organizational performance measures that will be used to determine allocation of funds for bonuses or pay adjustments among components
- Formulas, ratios, or limits that specify how pay adjustments and awards may be combined to recognize exceptional performance or achievements
- Ranges of pay adjustments available to executives rated at certain levels
- Agency established tiers or other categorization of executive positions

3. The policy must provide for meaningful pay distinctions. Specifically, the policy must identify the criteria to be used to set and adjust a senior executive's pay, including any procedures, guides, rules or benchmarks that may be applied in setting and adjusting pay at levels above EX III. SES pay-for-performance systems must avoid any actual or perceived use of quotas or forced distribution of performance ratings; however, pay differentiation based upon performance ratings should be evident and consistently reinforced. The underlying tenet is that the highest performers should receive the best rewards. Agencies must also provide for transparency in the processes for making pay decisions and should publish the results to demonstrate the correlation between executive excellence and desirable pay outcomes.

CONSIDERATIONS WHEN CREATING PAY POLICY

Additionally, the pay policy should allow some flexibility in adjusting pay "up to" a certain percent or identify ranges by rating levels. Pay adjustment should occur annually based on available budget and range adjustment. The following example shows how an agency may choose to establish criteria for determining performance-based pay adjustments (without using the MRP

adjustment authority) based on the annual summary ratings, provided its executives are all currently positioned properly in the pay range:

Fully Successful - Will maintain relative position in the pay range

Exceed - Maintain relative position plus up to 1 percent

Outstanding - Maintain relative position plus up to 2.5 percent

Although the SES is established as a rank-in-person system, an agency policy may incorporate a concept of position value. This could, for example, involve establishing broad tiers of positions with distinguishing pay rules, ranges or limits, or structuring other ways to incorporate factors like scope of responsibility, level of accountability, and position in the organizational structure into pay decisions. At the top levels of an organization, personal qualifications and performance of an executive are often critical to the success or failure of a key program, and executives in these positions should be paid accordingly.

Pay is also a key element in the recruitment and retention of executives. In this regard, agencies may factor into their pay-setting decisions such elements as expertise brought to the position, qualifications required, scarcity of qualified personnel, and pay for comparable private sector executives.

Even the best-designed pay system can fail if not implemented properly, and a major aspect of any successful system is effective communication of the system and its results to participants. Therefore, all agencies must ensure that their SES members understand both the philosophy and mechanics of their pay system.

SETTING INDIVIDUAL PAY RATES

INITIAL APPOINTMENT TO THE SES

Agencies have broad discretionary authority to set pay upon initial appointment to the SES. An agency may set the rate of basic pay of a newly appointed SES member at any rate within the SES rate range, subject to the following limitations:

- In an agency with a certified performance appraisal system, rates of basic pay above the rate for EX III but less than or equal to the rate for EX II are generally reserved for those newly appointed executives who possess superior leadership or other competencies.
- If an individual receiving an initial career appointment in the SES has at least 5 years of current continuous service in one or more positions in the competitive service and is appointed without any break in service, the basic pay rate may not be less than the rate of basic pay (including any applicable locality payment, special rate supplement, or similar payment or supplement) last payable to the individual immediately before appointment.

The agency must determine the appropriate rate of pay based on the nature and quality of the individual's experience, qualifications, and accomplishments as they relate to the requirements of the SES position, as well as the individual's current responsibilities.

Example: In November 2008, a GS-15/4 employee in the Washington DC area was appointed to an SES position.

Calculations:

GS 15/4 salary (includes locality pay) prior to SES appointment:	\$ 126,850
6% pay increase per agency's general policy for new SES appointments:	<u>\$ 7,611</u>
Subtotal:	\$ 134,461
Jan 2008 projected 2% increase in the SES rate range; given the date of the appointment, the executive will not be considered in the agency end-of-year pay adjustments	<u>\$ 2,689</u>
Total:	\$ 137,150

The agency reviewed the individual's experience, qualifications, and accomplishments and made the determination to set pay at \$137,150.

FOLLOWING A BREAK IN SES SERVICE

Upon reappointment to the SES, an authorized agency official may set the rate of basic pay of a former senior executive at any rate within the SES rate range, subject to the limitations in 5 CFR 534.403(a), if there has been a break in SES service of more than 30 days.

If there has been a break in SES service of 30 days or less, the senior executive's rate of basic pay may be set at any rate within the SES rate range (without regard to whether the employee received a pay adjustment during the previous 12-month period), but not higher than the senior executive's former SES rate of basic pay. However, the agency head or designee who performs the functions described in 5 CFR 430.404(a)(5) and (6) (including the Inspector General, where applicable) may approve a higher rate than the senior executive's former rate of basic pay, if warranted. This may be supported where necessary to recruit an executive with superior leadership or other competencies from a position outside the agency or to reacquire the service of an executive whose services are critical to the agency. Factors used in deciding upon an exception to the 12-month rule under 5 CFR 534.404(c)(4)(ii) or (iii) may be applicable.

Setting a rate of basic pay upon reappointment to the SES is considered a pay adjustment for purposes of applying the 12-month rule at 5 CFR 534.404(c).

UPON REINSTATEMENT FROM A PRESIDENTIAL APPOINTMENT REQUIRING SENATE CONFIRMATION

The following provisions apply to a former career senior executive who is reinstated under 5 CFR 317.703:

- If the individual elected to remain subject to the SES pay provisions while serving under a Presidential appointment, his or her SES rate may be adjusted upon reinstatement, whether in the agency where the individual held the Presidential appointment or in another agency, if at least 12 months have elapsed since the employee's last SES pay adjustment.
- If fewer than 12 months have elapsed since the employee's last SES pay adjustment, an authorized agency official may approve an additional pay increase under 5 CFR 534.404(c)(4) if the additional pay increase is warranted.

- Any pay adjustment must be made in accordance with paragraphs (b), (d), and (e) of 5 CFR 534.404 and the agency's plan for adjusting SES rates of pay required by 5 CFR 534.404(g).
- If the individual did not elect to remain subject to the SES pay provisions while serving under a Presidential appointment, his or her SES rate may be set upon reinstatement at any rate within the SES rate range, subject to the limitations in 5 CFR 534.403(a).
- Setting a rate of basic pay upon reinstatement to the SES under this section is considered a pay adjustment under 5 CFR 534.404(c).

UPON TRANSFER

An authorized agency official may set the pay of a senior executive transferring from another agency at any rate within the SES rate range, subject to the limitation on the maximum rate of basic pay in 5 CFR 534.403(a). If pay is set at the same SES rate the senior executive received in his or her former agency, the action is not considered a pay adjustment for the purpose of applying 5 CFR 534.404(c).

A senior executive whose rate of basic pay is higher than EX III may not suffer a reduction in pay as a result of transferring to an agency where the maximum rate of basic pay for the applicable SES rate range is equal to EX III. The senior executive will continue to receive his or her current SES rate but is not eligible for a pay adjustment until the senior executive is assigned to a position that would allow the employee to receive a pay adjustment or the employing agency's applicable performance appraisal system is certified under 5 CFR part 430, subpart D. The SES rate of pay is not considered a retained rate of pay for the purpose of applying 5 U.S.C. 3594 and 5 CFR part 359, subpart G, or 5 U.S.C. 5363 and 5 CFR 536, subpart C.

ADJUSTING INDIVIDUAL PAY RATES

An agency may adjust (increase or reduce) the rate of basic pay of a senior executive consistent with the agency's plan for setting and adjusting SES rates of basic pay.

PERFORMANCE-BASED PAY INCREASE

An agency may provide a pay increase to allow a senior executive to advance his or her relative position with the SES rate range only upon a determination by the authorized agency official that the executive's individual performance and/or contribution to agency performance so warrant. A senior executive who receives an annual summary rating of Outstanding or equivalent must be considered for an annual pay increase. A senior executive who receives an annual summary rating of less than Fully Successful or equivalent may not receive an increase in pay for the current appraisal period. OPM expects that executives who are paid consistent with their current level of responsibilities and who receive an acceptable ("Fully Successful" or better) annual summary rating will receive a performance-based pay increase. Pay increases that advance an executive's position in the SES rate range restart the clock under the 12-month rule.

12-MONTH RULE

An agency may adjust the rate of basic pay of a senior executive not more than once during any 12-month period, except as provided by regulation. Provisions at 5 CFR 534.404(c)(3) and (4) permit an agency to increase a senior executive's rate of basic pay more than once during a 12-month period where the head of an agency or designee who performs the functions described in 5 CFR 430.404(a)(5) or (6) determines that an additional increase is warranted. Setting of an individual's rate of basic pay upon initial appointment, reappointment, or reinstatement is considered a pay adjustment for the purpose of applying the 12-month rule.

PAY INCREASES THAT DO NOT COUNT AGAINST THE 12-MONTH RULE

The head of the agency or appropriate authorized agency official can take certain pay actions, including actions that increase an executive's pay, that are not considered pay adjustments for the purpose of applying the 12-month rule. The agency may take such pay actions, which are listed in 5 CFR 534.404(c)(3), even if the employee received a pay adjustment during the previous 12-month period. The following pay actions are not considered a pay adjustment:

1. A zero adjustment in pay (5 CFR 534.404(c)(3)(ii) and (iii));
2. A determination to provide an additional pay increase under 5 CFR 534.404(e)(2) when an agency was prevented from establishing a rate of basic pay above EX III for an individual under 5 CFR 534.404(a) upon initial appointment to the SES, or from adjusting an individual's rate of pay above EX III under 5 CFR 534.404(c)(4)(i), (ii) or (iii) because the agency had not yet obtained certification of its performance appraisal system (5 CFR 534.404(c)(3)(v));
3. A determination to provide an additional pay increase under 5 CFR 534.404(f) when there is an increase in Executive Schedule rates of pay (5 CFR 534.404(c)(3)(iv));
4. A determination to provide a pay increase under 5 CFR 534.404(b)(4)(i) to allow a senior executive to maintain his or her relative position in the SES rate range (5 CFR 534.404(c)(3)(vi)); and
5. An increase in pay equivalent to the minimum amount necessary to ensure that a senior executive's rate of basic pay does not fall below the minimum rate of the SES rate range (5 CFR 534.404(c)(3)(vii)).

An additional pay increase that is not considered a pay adjustment for the purpose of applying the 12-month rule does not begin a new 12-month period.

EXCEPTIONS TO THE 12-MONTH RULE

The head of an agency or designee who performs the functions described in 5 CFR 430.404(a)(5) or (6) has the authority to make exceptions to the 12-month rule where he or she determines that an additional increase is warranted—

1. for an exceptionally meritorious accomplishment that significantly contributes to the agency's performance;
2. for a senior executive who is reassigned to a position with substantially greater scope and responsibility or for a senior executive with superior leadership or other competencies who is recruited from a position in another agency;
3. for a senior executive who is critical to the mission of the agency and who would be likely to leave the agency in the absence of a pay increase; or
4. to align a senior executive with the agency's senior executive appraisal and pay adjustment cycle (e.g., in the case of a senior executive who was appointed to an SES position within the past 12 months or a senior executive who was transferred to an SES position from an agency with a different senior executive appraisal and pay adjustment cycle within the past 12 months).

A pay increase made as a result of a determination to approve an exception to the 12-month rule must be documented in writing, is considered a pay adjustment, and begins a new 12-month period.

MAINTAIN RELATIVE POSITION IN THE RATE RANGE

When the minimum or maximum rate of basic pay of the SES rate range is increased, an agency may determine it is appropriate to increase the rate of basic pay of a senior executive who meets or exceeds performance expectations by an amount that does not exceed the amount necessary to allow the employee to maintain his or her relative position in the SES rate range. (See 5 CFR 534.404(b)(4).) As previously stated, a pay increase to allow an employee to maintain his or her position in the SES rate range is not considered a pay adjustment for the purpose of applying the 12-month rule. This pay increase may be given separately from a pay increase that allows the employee to advance his or her relative position in the SES rate range. The following limitations apply:

- A senior executive whose rate of basic pay is at or below the rate of EX III may receive a pay increase to maintain his or her relative position in the SES rate range up to an amount that results in a rate that does not exceed the new rate for level III. Only senior executives with an annual summary rating of outstanding or equivalent may receive a pay increase that results in a rate above the rate for EX III. A pay increase that results in a rate that exceeds EX III must be approved by the agency head or designee.
- Except as explained below, a senior executive whose rate of basic pay is above EX III may not receive a pay increase to maintain his or her relative position in the rate range unless he or she has an annual summary rating of outstanding and is in a position that is covered by a certified performance appraisal system. A senior executive whose rate of basic pay is above EX III and who is rated below outstanding, but above fully successful, and is in a position that is covered by a certified performance appraisal system may receive an increase to maintain his or her relative position in the rate range only in limited circumstances, e.g., for an exceptionally meritorious accomplishment. A pay increase that results in a rate that exceeds EX III must be approved by the agency head or designee.

A pay increase to allow an employee to maintain his or her position in the SES rate range is effective on the date the minimum and/or maximum rate range for the SES is adjusted (i.e., the first day of the first pay period beginning on or after January 1). Decisions to increase pay made during the first full pay period in January may be made effective on the first day of that pay period if the pay increase was officially approved no later than the end of the first full pay period.

Example: There were different percentage increases in the minimum (2.9 percent) and maximum (2.8 percent) rates of SES rate range. The example assumes the agency's performance appraisal system for senior executives is certified.

Former Minimum: \$114,468	New Minimum: \$117,787
Former Maximum: \$172,200	New Maximum: \$177,000
Former Rate for EX III: \$158,500	New Rate for EX III: \$162,900
Employee's Former Rate: \$139,930	Employee's New Rate: \$143,902

Calculations:

Step 1: Subtract the minimum rate of the range of the employee's position in effect on the day immediately preceding the pay adjustment from the employee's rate of basic pay on the day immediately preceding the pay adjustment.

$$\$139,930 - \$114,468 = \$25,462$$

Step 2: Subtract the minimum rate of the range in effect immediately preceding the pay adjustment from the maximum rate of that rate range.

$$\$172,200 - \$114,468 = \$57,732$$

Step 3: Divide the result of step 1 by the result of step 2. Carry the result to the seventh decimal place and truncate.

$$\$25,462 / \$57,732 = 0.4410378$$

Step 4: Subtract the minimum rate of the new rate range from the maximum rate of the new rate range.

$$\$177,000 - \$117,787 = \$59,213$$

Step 5: Multiply the result of step 3 by the result in step 4. Round to the closest whole dollar amount.

$$0.4410378 \times \$59,213 = \$26,115$$

Step 6: Add the result of step 5 to the minimum rate of the new rate range.

$$\$117,787 + \$26,115 = \$143,902$$

RESTRICTIONS ON REDUCING PAY

A senior executive whose rate of basic pay is higher than the rate for EX III may not suffer a reduction in pay as a result of transferring to an agency where the maximum rate of basic pay for the applicable SES rate range is equal to the rate for EX III, or as the result of a decision to suspend certification of the applicable performance appraisal system. The senior executive will continue to receive his or her current SES rate and is not eligible for a pay adjustment until the employing agency's applicable performance appraisal system is certified or the senior executive is assigned to a position that would allow the employee to receive a pay adjustment, such as reassignment from a position in a component with a non-certified system to a position in a component with a certified system.

An authorized agency official may reduce a career senior executive's SES rate of basic pay by not more than 10 percent for performance or disciplinary reasons, subject to the restrictions on reducing the pay of career senior executives in 5 CFR 534.406(b) and 534.404(c) and on setting pay below the minimum rate of the SES rate range in 5 CFR 534.403(a).

The SES rate of basic pay of a career senior executive may be reduced without the employee's consent by the senior executive's agency or upon transfer of function to another agency only—

- If the senior executive has received a less than Fully Successful annual summary rating under 5 CFR part 430, subpart C, or has otherwise failed to meet the performance requirements for a critical element as defined in 5 CFR 430.303; or
- As a disciplinary or adverse action resulting from conduct-related activity, including, but not limited to, misconduct, neglect of duty, or malfeasance.

Pay reduction may, if determined appropriate by the agency, be used alone or in combination with other responses to poor performance or to circumstances warranting disciplinary action. However, it may not be used in place of any action required by statute, e.g. reassignment or removal from the SES due to an unsatisfactory rating, or removal from the SES due to two less than fully successful ratings within 3 years or two unsatisfactory ratings within 5 years.

Prior to reducing a senior executive's rate of basic pay, whether for performance or disciplinary reasons, the agency must provide the senior executive with the following:

- Written notice of such reduction at least 15 calendar days in advance of its effective date;
- A reasonable period of time, but not less than 7 calendar days, for the senior executive to respond to such notice orally and/or in writing and to furnish affidavits and other documentary evidence in support of that response;
- An opportunity to be represented in the matter by an attorney or other representative;
- A written decision and specific reasons therefore at the earliest practicable date after the senior executive's response; and

- An opportunity to request, within 7 calendar days after the date of that decision, reconsideration by the agency's head, whose determination with respect to that request will be final and not subject to further review.
- Reductions in pay under 5 CFR 534.404(j) are not appealable under 5 U.S.C. 7543.

AGGREGATE LIMITATION ON PAY

An executive's aggregate compensation received in any given calendar year may not exceed the rate of pay for level I of the Executive Schedule (EX I) or the rate payable to the Vice President at the end of the calendar year, whichever is applicable to the employee based on the certification status under 5 CFR part 430, subpart D, of the performance appraisal system covering that executive.

Aggregate compensation for SES employees includes basic pay and certain payments made under the authority of title 5, United States Code, such as rank and performance awards, physicians' comparability allowances, recruitment, relocation, and retention incentives, and other similar payments.

An agency with a certified appraisal system may pay aggregate compensation in an amount up to the Vice President's salary. An agency that does not have a certified appraisal system must limit aggregate compensation to the rate for level I of the Executive Schedule. Any excess amount is carried over and paid as a lump sum at the beginning of the next calendar year. The excess payment must be taken into account when applying the applicable aggregate limitation for the new calendar year.

If a performance award, rank award, or other additional payment, when added to basic pay, would cause an executive's aggregate compensation to exceed the applicable aggregate limitation by the end of the calendar year, the excess amount is withheld from the award or other additional payment subject to the aggregate pay limit, rather than from the individual's basic pay. The withheld excess amount will be paid at the beginning of the following calendar year. Basic pay counts toward the aggregate limitation on pay, but basic pay itself is not reduced or withheld.

If an executive whose aggregate compensation will exceed the applicable aggregate limitation transfers to another agency, payment of any excess amount shall be made at the beginning of the next calendar year, not at the time of transfer, by the gaining agency. The previous employing agency must provide a fund transfer to the gaining agency. The gaining agency should keep a record of the payment since it counts against the employee's aggregate limitation for the new calendar year.

If the applicable aggregate limitation changes during a calendar year (e.g., due to a lapse in agency performance appraisal system certification), agencies must review any performance, rank award, or other additional payment subject to the aggregate pay limit that was paid before the new aggregate limitation was effective where the agency was required to withhold part of the payment because of the aggregate limitation that then existed. The agency shall then pay any part of the withheld payment that does not exceed the new aggregate limitation. If an SES member's pay rate

also changed, the agency should first recalculate the executive's aggregate compensation for the calendar year using the new rate and any award money previously paid. See 5 CFR 530.203(g) and (h) for information on redetermining an employee's aggregate compensation and excess payments in such situations.

OTHER PAY PROVISIONS

PREMIUM PAY

SES members are excluded from the premium pay provisions of 5 U.S.C. chapter 55, subchapter V (such as overtime pay, Sunday premium pay, holiday premium pay, night pay, standby duty pay, and hazardous duty pay) by 5 U.S.C. 5541(2)(xvi). As a result, SES members are also excluded from earning compensatory time off in lieu of overtime pay. [See Chapter 11 for more information on compensatory time off.]

PAY FOLLOWING PLACEMENT OUTSIDE THE SES

Saved pay: If a career appointee is entitled to guaranteed placement in a position outside the SES when removed during the probationary period for performance, or as the result of a reduction in force, saved pay is provided under 5 U.S.C. 3594. If the individual is placed in a General Schedule position, the saved pay is subject to the limitation on SES pay under 5 U.S.C. 5382 of Executive Schedule Level II. [See Chapter 10 for more information on saved pay.]

Retained rate: If an appointee is not eligible for saved pay under 5 U.S.C. 3594 following separation from the SES and is placed in a General Schedule position, the individual may still be eligible for pay retention under 5 CFR 536.301(a)(4), which states that the head of an agency must provide pay retention to an eligible employee whose payable rate of basic pay would otherwise be reduced as the result of a management action, as defined in 5 CFR 536.103. (See list of employees excluded from pay retention at 5 CFR 536.102(b).) Note: The termination of a noncareer SES appointment (or voluntary resignation in anticipation of such termination) because of a change in agency leadership is not a management action.

When initially established, a retained rate may not exceed (1) 150 percent of the maximum payable rate of basic pay of the highest applicable rate range for the grade of the employee's position of record or (2) Executive Schedule Level IV. At no time may a retained rate exceed Executive Schedule Level IV.

Examples of individuals who may be eligible for retained pay under the management action provision include a career SES member who voluntarily accepts a GS-15 position following receipt of a notice of position abolishment, a notice of directed geographic reassignment (if there is no mobility agreement), or other management action that causes or influences the employee to move to a lower-paid position.

However, an employee is not eligible for pay retention if placement in the General Schedule is at the employee's request, i.e., voluntary and not the result of a management action. Nor is an employee eligible if the employee declines a reasonable offer, as defined in 5 CFR 536.104.

Maximum payable rate: If an SES member takes a position in the General Schedule at the member’s request and is not eligible for saved pay, the individual may be paid under the “maximum payable rate” rule, as determined by the agency.

Individuals serving on a limited term appointment who return to the General Schedule are not eligible for retained pay, but they may have pay set under the “maximum payable rate” rule, as determined by the agency. It does not matter whether the return to the General Schedule is voluntary or is the result of a management decision. However, the SES appointment must have been for more than 90 days, even though the appointee may have not actually served that long. In determining the General Schedule rate, agencies may take into account such factors as how long the individual served under the limited appointment and what the individual’s pay would have been had the individual remained in the General Schedule. (See 5 CFR 531.221 – 531.223 for additional information.)

Example: In 2008, an SES employee in Washington, DC voluntarily moves to a GS-15 position in Washington, DC. The employee’s SES annual salary of \$139,000 is the highest previous rate. To calculate the maximum payable rate, compare \$139,000 with the highest applicable rate range as if the employee held the GS position. Identify the lowest step in that range equal to or higher than \$139,000. In this example, the highest applicable rate range is the DC locality rate schedule. GS-15, step 8 is the employee’s maximum payable rate. Pay may be set at any rate in the GS-15 rate range up to step 8.

2008 DC	1	2	3	4	5	6	7	8	9	10
GS-15	115,317	119,161	123,006	126,850	130,694	134,538	138,383	142,227	146,071	149,000

PAY FOR EMPLOYEES ON DETAIL OR TRANSFER TO AN INTERNATIONAL ORGANIZATION

An agency must consider any employee on detail or transfer to an international organization for all pay increases for which the employee would be considered if not absent. An increase is effective on the date it would have been made were the employee not absent.

RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES

Recruitment: An agency may pay a recruitment incentive to a newly appointed senior executive (excluding a noncareer appointee) if the agency has determined that the position is likely to be difficult to fill in the absence of an incentive. For this purpose, “newly appointed” is defined at 5 CFR 575.102 and essentially refers to an individual newly appointed to the Federal Government rather than an individual newly appointed to the SES. A recruitment incentive may not exceed 25 percent of the executive's annual rate of basic pay in effect at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years). With OPM approval, this cap may be increased to 50 percent (based on a critical agency need), as long as the total incentive does not exceed 100 percent of the executive's annual rate of basic pay at the beginning of the service period.

Relocation: An agency may pay a relocation incentive to a current senior executive (excluding a noncareer appointee) who must relocate to accept a position in a different geographic area if the agency determines that the position is likely to be difficult to fill in the absence of an incentive. A relocation incentive may be paid only when the executive's annual summary rating under an official performance appraisal or evaluation system is at least "Fully Successful" or equivalent. A relocation incentive may not exceed 25 percent of the executive's annual rate of basic pay in effect at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years). With OPM approval, this cap may be increased to 50 percent (based on a critical agency need), as long as the total incentive does not exceed 100 percent of the executive's annual rate of basic pay at the beginning of the service period.

Retention: An agency may pay a retention incentive to a current senior executive (excluding a noncareer appointee) if (1) the agency determines that the unusually high or unique qualifications of the executive or a special need of the agency for the executive's services makes it essential to retain the executive, and that the executive would be likely to leave the Federal service in the absence of a retention incentive or (2) the agency has a special need for the employee's services that makes it essential to retain the employee in her or her current position during a period of time before the closure or relocation of the employee's office, facility, activity, or organization and the employee would be likely to leave for a different position in the Federal service in the absence of a retention incentive. A retention incentive may be paid only when the executive's annual summary rating under an official performance appraisal or evaluation system is at least "Fully Successful" or equivalent. A retention incentive rate, expressed as a percentage of the executive's rate of basic pay, must not exceed 25 percent. With OPM approval, this cap may be increased to 50 percent (based on a critical agency need).

Recruitment, relocation, and retention incentives are not considered a part of basic pay for any purpose. Detailed information, including examples and payment methods, is available at <http://www.opm.gov/oca/index.asp>.

PAY FOR MILITARY AND CIVILIAN RETIREES

Generally, when a military retiree becomes a Federal employee there is NO reduction in his or her Federal pay or retirement pay or annuity. However, paid work may reduce Social Security retirement, survivor or disability benefits if earnings exceed the established limits.

If a civilian retiree is 'reemployed,' his or her salary is reduced or the annuity is terminated. The head of an agency may request OPM to approve individual exceptions on a case-by-case basis to meet temporary emergency hiring needs or when the agency has encountered difficulty in recruiting or retaining a qualified candidate for a particular position. (See 5 CFR 553.)

CRITICAL POSITION PAY

Critical position pay up to Level I of the Executive Schedule may be authorized only in exceptional cases under 5 U.S.C. 5377. Pay above Level I must be approved by the President. Critical position pay may be granted only for positions that require expertise of an extremely high level in a scientific, technical, professional, or administrative field, and are critical to the agency's

accomplishment of the agency's mission, and only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position. Agencies wishing to use the critical pay authority should review 5 CFR 535. All requests must be submitted to OPM which, in consultation with OMB, will make the determination to approve such a request.

PAY FOR SES POSITIONS INCLUDED AT 5 U.S.C. 5314 - 5316

Pay for SES positions that are included at 5 U.S.C. 5314 – 5316 is not restricted by the level of pay established by law for the corresponding Executive Schedule level. Pay for SES positions is determined in accordance with SES pay provisions.

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CHAPTER 5: PERFORMANCE MANAGEMENT

STATUTE: 5 U.S.C. 4311-4315

REGULATIONS: 5 CFR Part 430, Subparts C and D

One of the goals of the SES, as stated in 5 U.S.C. 3131, is “to ensure accountability for honest, economical, and efficient Government.” A primary way to achieve this goal is to hold senior executives accountable for their individual and organizational performance through an effective performance management program. Performance management incorporates planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance.

[Regulations under 5 CFR 430 subpart B cover performance management for senior-level and scientific and professional employees.]

PERFORMANCE MANAGEMENT SYSTEMS

AGENCY RESPONSIBILITIES

Each agency must establish and maintain one or more SES performance appraisal systems that will encourage excellence in performance.

The performance management system must provide for:

1. Planning and communicating performance elements and requirements that are linked with strategic planning initiatives.
2. Consulting with senior executives on the development of performance elements and requirements.
3. Monitoring progress in accomplishing elements and requirements.
4. Appraising each executive’s performance, at least annually, against requirements using measures that balance organizational results with customer and employee perspectives.
5. Using performance information to adjust pay, reward, reassign, develop, remove executives or make other personnel decisions.

Additionally, the performance appraisal system must:

1. Establish an official performance appraisal period for which an annual summary rating must be prepared.
2. Have at least three summary performance levels – one or more fully successful levels, a minimally satisfactory level, and an unsatisfactory level. For an agency with executives covered under 5 CFR 430 subpart C that is seeking certification of its performance appraisal system, the system must include at least four, but not more than five, summary rating levels – an outstanding level, a fully successful level, an optional level between outstanding and fully successful, a minimally satisfactory level, and an unsatisfactory level.

3. Describe a method for deriving summary ratings from appraisals of performance against performance requirements. The method, such as reviews of requirements and ratings for difficulty and strictness of application, must ensure that only those employees whose performance exceeds normal expectations are rated at levels above Fully Successful.

Agencies must:

1. Submit proposed SES performance management systems to OPM for approval. (Note: An Office of Inspector General should establish and submit its proposed SES performance management system separately from the agency SES system.)
2. Provide appropriate training and information to supervisors and executives on performance management.
3. Evaluate the effectiveness of their performance management system(s) on a periodic basis and implement improvements as needed.

OPM RESPONSIBILITIES

OPM approves agency performance appraisal systems and oversees their implementation. If OPM finds that an appraisal system does not meet legal and regulatory requirements, it shall direct the agency to correct operations under the current system and implement appropriate system changes.

INDIVIDUAL PERFORMANCE PLANS

Performance plans must be established for all SES members (including individuals serving on career, noncareer and limited appointments).

Performance plans must be developed in consultation with the executive. On or before the beginning of an appraisal period, the executive's immediate supervisor must communicate the plan to the executive.

Each executive performance plan must describe:

1. The critical elements of the executive's work and any other relevant performance elements. The elements must reflect individual and organizational performance with a focus on results.
2. The performance requirements for fully successful performance of the executive's work.

Critical elements and performance requirements must be consistent with the goals and performance expectations in the agency's strategic planning initiatives.

An agency performance management system may also provide for review or approval of an executive's proposed performance plan by a higher level supervisor or committee (e.g., the Performance Review Board). This may help ensure that performance elements and requirements are in accord with mission requirements and planned resource allocations, are consistent between supervisors and across organizational lines, and are fair and equitable. If the reviewer does not agree with the performance plan, it can be returned to the supervisor for modification.

The agency performance management system should provide for revision of the performance plan during the appraisal period if modifications are necessary because of such factors as changes in agency or organizational priorities, available resources (e.g., budget or staff), deadlines, or workload. The supervisor should consult with the executive and provide in writing any modification of the plan to the executive.

MONITORING PERFORMANCE

A supervisor must conduct at least one progress review with an executive during the appraisal period. Supervisors must monitor each executive's performance during the appraisal period and provide feedback to the executive on progress in meeting the performance elements and requirements described in the plan. Supervisors must provide advice and assistance to executives on how to improve their performance. The progress review may be conducted informally rather than by a written appraisal.

The progress review may also be used as an opportunity to modify performance elements or requirements to reflect changes that have taken place since the performance plan was initially developed.

APPRAISING PERFORMANCE

APPRAISAL PERIOD

SES appointees must be given an annual summary rating. The agency SES appraisal system shall indicate the beginning and ending dates of the official appraisal period.

The agency SES appraisal system shall also establish a minimum appraisal period of at least 90 days. If an executive has not served the minimum period as of the end of the appraisal period, the appraisal period must be extended.

Example: A new executive is appointed to a position effective September 1, 2006. The agency's appraisal cycle ends September 30, 2006. Listed below are possible options for extending the appraisal period.

Option A: The executive's appraisal period is extended to November 30, 2006.

Option B: The executive's appraisal period is extended to September 30, 2007. In the case of an executive who was appointed without a break in service from a civil service position that was 1) under the agency's jurisdiction and 2) covered under a performance appraisal program which required issuance of an annual rating or issuance of a performance rating upon leaving a position, the agency must make a reasonable effort to ensure a rating was assigned.

In considering the options for extending the appraisal period, agencies should review their pay policies and the impact possible extensions could have on an executive's pay.

An agency may terminate the appraisal period at any time after the minimum period if there is an adequate basis on which to appraise and rate an executive's performance.

When an executive cannot be evaluated due to special circumstances that take the executive away from normal duties (e.g., extended sick leave), the supervisor should document the special circumstances on the appraisal form.

REASSIGNMENT OR TRANSFER OF EXECUTIVE

If an executive is reassigned or transfers to a new agency and had been in the former position for more than the minimum appraisal period, the former supervisor must appraise the executive's performance in writing before the executive leaves.

At times, an executive may receive an interim summary rating in a former position upon reassignment or transfer, but will not have served in the new position for the minimum appraisal period before the end of the official appraisal period. (For example, the executive is reassigned on August 1, and the period ends on September 30.) The agency system should specify what to do in these instances. Listed below are possible options for addressing the situation.

Option A: The agency may provide that the appraisal period will be extended until the executive has served the minimum time in the new position, so that the executive's initial summary rating can take into account the appraisal for that position along with any interim summary ratings for former positions held during the appraisal period.

Option B: The agency may provide that the appraisal period will end as scheduled, and the initial rating will be based on the interim summary rating, or ratings, received during the appraisal period.

DETAIL OF EXECUTIVE

If an executive is detailed for more than 120 days to another position within the agency, the supervisor shall provide written critical elements and requirements as soon as possible after the beginning of the detail and appraise the executive's performance in writing at the end of the detail. A summary rating is not required. If the executive is detailed to a position outside the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization. For example, the employing agency of an executive who has been on detail under an Intergovernmental Personnel Act assignment for at least 90 days during the appraisal period must make a reasonable effort to obtain appraisal information from the non-Federal organization.

DEPARTURE OF SUPERVISOR

Although not required by regulation, agencies may provide that supervisors who are leaving their positions must give an interim summary rating for all executives who have been under their supervision for the minimum appraisal period.

APPOINTMENT OF NEW SUPERVISOR

If at the conclusion of the appraisal period the supervisor has served for less than the minimum appraisal period, there are several options available, depending on the agency plan, including the following:

- The supervisor may give the initial summary rating.
- The next level supervisor may give the initial summary rating, if that supervisor has been present for the minimum appraisal period.
- The appraisal period may be extended to allow a minimum appraisal period under the new supervisor before the initial summary rating is given.

In all cases, the initial summary rating must take into account interim summary ratings prepared by previous supervisors.

MORATORIUM

Performance appraisals and ratings for career appointees may not be made within 120 days after the beginning of a new Presidential administration (i.e., the administration of a President other than the one in office immediately before the beginning of the current administration) [5 U.S.C. 4314(b)(1)(C)]. When the new President is inaugurated on January 20, appraisal actions may not be taken until May 20.

The moratorium applies to all phases of the formal appraisal process leading to an annual summary rating: the initial summary rating recommendation by the supervisory official, any review by a higher level official, review and recommendation by the Performance Review Board (PRB) and the annual summary rating by the appointing authority. The length of the performance appraisal period is not extended by the moratorium, which merely delays the appraisal and rating actions.

The moratorium does not preclude the issuance of a written appraisal when an executive changes positions, as required by 5 CFR 430.307, or when the supervisor leaves if agency regulations require a rating at that time. A progress review is not subject to the moratorium. Additionally, a reduction in pay based on a less than Fully Successful annual summary rating assigned prior to the beginning of a new Presidential administration is not subject to the moratorium.

RATING PROCESS

INITIAL SUMMARY RATING

The initial rating is the summary rating of the executive's performance made by the supervising official (normally the immediate supervisor) and provided to the Performance Review Board. The supervising official assigns an initial summary rating based on the ratings on individual performance elements in the executive's performance plan. The agency's appraisal plan must state how to translate the ratings on individual elements into an overall summary rating.

Appraisal on elements: The executive must be appraised on each element in the performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element. The rating for each element depends on the degree to which the executive has achieved the

performance requirement(s) for the element. A brief explanation justifying the rating level selected, along with specific examples of accomplishments or failure, is desirable to communicate the basis for the agency's judgment and to support later steps in the process, particularly if the rating is below the fully successful level.

Consideration of interim ratings: In preparing the initial summary rating, the supervising official must consider and factor in appropriately any interim summary rating prepared for an executive who changed positions during the appraisal period, any ratings on critical elements prepared for an executive on detail within the agency, and any appraisal information obtained on an executive detailed to another agency or outside organization.

Discussion with executive: There must be a discussion between the supervising official and the executive so that the official can review the evaluation with the executive, provide guidance and any necessary counseling, and receive feedback from the executive. The official should discuss and document areas for future emphasis or training and development.

Proposed ratings: An agency may elect to have proposed initial summary ratings considered by the next level supervisor to help ensure that appraisals are being made in a uniform and equitable manner. Following this, the supervising official would assign the official initial summary rating.

Executive rights: The executive must be given a copy of the official initial summary rating and advised of the right to respond in writing to the rating. The executive must also be advised of the right to request a higher level review of the rating, if such a review is not mandatory following the initial rating.

HIGHER LEVEL REVIEW

The agency appraisal plan should specify when the higher level review is to take place and how the reviewer is to be determined. The review must be at a higher organizational level than the supervising official, but not necessarily in the same organization. The reviewer should be an individual who was not involved in the initial rating process. If agency policy requires all proposed initial ratings be reviewed by the next level supervisor, then the next level supervisor is considered to be involved in the initial rating process.

The higher level reviewer must be given a copy of any written response made by the executive to the initial rating. The review must precede action by the Performance Review Board, so that the Board will have the opportunity to consider the reviewer's comments in its deliberations.

An executive is entitled to only one higher level review during the rating process. Therefore, if the agency plan provides for a mandatory higher level review of all initial ratings by an official who was not involved in the initial rating process, and if the executive was provided an opportunity to have his or her written comments on the initial rating considered by the reviewer, no further opportunity for higher level review is required unless the agency plan so provides.

The official making the higher level review is authorized to present the findings of the review and make recommendations, but not to change the initial summary rating. Copies of the reviewer's findings and recommendations must be provided to the executive, the supervising official who

gave the initial summary rating, and the Performance Review Board. Although there is no statutory or regulatory requirement that the executive be given an opportunity to respond to the reviewer's findings and recommendations, agencies may want to permit a response, particularly if the reviewer recommends a lower summary rating.

ANNUAL SUMMARY RATING

The annual summary rating is the official rating of record assigned by the appointing authority, after considering the recommendations of a Performance Review Board.

The annual summary rating shall be provided to the executive and the supervising official who made the initial summary rating. Review of the annual summary rating is subject to the following provisions:

- Under 5 U.S.C. 4312(d), there is no appeal of the annual summary rating.
- A career appointee may file a complaint with the Office of Special Counsel on any aspect of the rating process which the individual believes to involve a prohibited personnel practice.
- A career appointee who is removed from the SES as a result of the performance rating may request an informal hearing before the Merit Systems Protection Board on the removal.

PERFORMANCE REVIEW BOARD (PRB)

Each agency must establish one or more Performance Review Boards to make recommendations to the appointing authority on the performance of executives (career, noncareer, and limited appointees), including recommendations on performance ratings and bonuses.

MEMBERSHIP

Size: Each PRB shall have three or more members appointed by the agency head or by another official or group (such as the Executive Resources Board) acting on behalf of the agency head.

Composition: PRB members must be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal. One way to help achieve this objective is to include members from different organizational components, from both headquarters and the field, from different functional disciplines, and to include representation of minorities and women.

PRB composition can include all types of Federal executives (e.g., noncareer appointees and military officials as well as career appointees) from both within and outside the agency. Individuals who are not Federal employees may also serve (e.g., retirees or university personnel). It is recommended that Federal members of the PRB have at least a current fully successful performance rating (or the equivalent of this rating in another rating system), have applied agency appraisal systems effectively in their own organizations, possess a thorough knowledge and understanding of the agency appraisal system gained through experience and/or training, and occupy SES or equivalent positions.

Career membership: When reviewing appraisals for career appointees, or recommending performance awards for career appointees, more than one-half of the membership of a PRB must be SES career appointees. SES members from other agencies may be used to meet this requirement when it cannot be reasonably met by using an agency's own career SES members, or when an agency desires to have outside expertise represented. Exceptions to this requirement may be granted by OPM on receipt of a written request from the agency. However, since SES career executives from outside an agency may serve on PRBs, exceptions will be granted infrequently.

Small agencies: Small agencies may find it beneficial to use an interagency PRB if desired.

Publication: Prior to serving on a PRB, the name of each PRB member must be published in the Federal Register. For large agencies, it may be beneficial to establish a PRB roster. An agency could appoint individuals to a PRB roster with membership terms of 2 years, publish their names in the Federal Register including the 2 year time period, and then establish specific PRBs from this roster.

PROCEDURES

Each PRB reviews and evaluates the initial summary rating by the executive's supervisor, the executive's written response (if any), and the written review of the initial summary rating by a higher-level executive, if such a review was made.

In its consideration of a case, a PRB may obtain additional records and statements, and may call witnesses.

The PRB should ensure that ratings adequately reflect consideration of both individual performance and the executive's contribution to organizational accomplishment. The PRB should attempt to achieve equity and consistency among the ratings of executives as well as the accuracy and fairness of individual ratings. Further, it should monitor ratings to ensure that they do not exceed the actual level of performance when compared against performance requirements and to ensure the overall rating distribution is aligned with organizational performance.

Individual PRB members must absent themselves from discussions and actions involving themselves in order to avoid even the appearance of any conflict of interest. Agencies may also, if they wish, exclude members from actions involving their own supervisors and subordinates. (An exception is when the member is called as a witness before the Board.) A majority of remaining Board members must be SES career appointees when acting on a career appointee's appraisal or performance award recommendation.

RECOMMENDATIONS TO THE APPOINTING AUTHORITY

The PRB must make a written recommendation concerning an executive's annual summary rating to the appointing authority. A written justification to accompany the recommendation is desirable when the PRB does not concur with the initial summary rating, or when the record shows employee or reviewing official disagreement with the initial summary rating.

The PRB must make recommendations concerning individual performance awards for career appointees whose recommended annual summary rating is fully successful or higher, in accordance with 5 U.S.C. 5384(c).

The PRB may make recommendations on other personnel actions related to performance, such as base pay adjustments, as provided in the agency SES performance appraisal system.

USING APPRAISAL AND RATING INFORMATION

The annual summary rating, and the appraisal information on which it is based, shall be used as a basis for making decisions in the following situations as indicated.

PERFORMANCE AWARD

Under 5 U.S.C. 5384, a career appointee who has a fully successful rating or higher is eligible for a performance award.

PERFORMANCE REMOVALS

If the annual summary rating is less than fully successful, the agency must take the personnel actions required by 5 U.S.C. 4314(b) as follows:

- The executive must be reassigned or transferred to another position within the SES, or removed from the SES, for one unsatisfactory rating.
- The executive must be removed from the SES for two unsatisfactory ratings in a 5-year period.
- The executive must be removed from the SES for two less than fully successful ratings (unsatisfactory or minimally satisfactory) in a 3-year period.

The agency must provide assistance in improving performance for those executives retained in the SES. This may include formal or on-the-job training, counseling, or closer supervision.

The agency must inform the executive of the effect of any personnel action being taken. If the executive is being retained in the SES, he or she should be advised of the effect of another less than fully successful rating.

REDUCTION IN FORCE

Under 5 U.S.C. 3595(a), the determination of who shall be removed from the SES in a RIF is made primarily on the basis of performance ratings received under the appraisal system. [See Chapter 9, Reduction in Force.]

OTHER ACTIONS

Performance is to be considered in making decisions about pay adjustments, reassignments, and training and development activities, but other factors may also be considered as appropriate (e.g., the qualifications of the executive and the needs of the agency in a reassignment decision).

OTHER GUIDANCE

RATERS AND REVIEWERS

The initial summary rating, review by higher level official, PRB review, and issuance of the annual summary rating should be separate steps carried out by different individuals. However, exceptions may be necessary at times, such as when the executive reports directly to the head of the agency. In that instance, there is no official available to provide a higher level review of the initial rating and the initial and annual summary ratings will be given by the same official, although there still must be PRB action between the initial and annual summary ratings.

TIMING OF RATING

If possible, agencies should attempt to complete all the steps in the rating process in time for the annual summary rating to be given normally no later than 90 days after the end of the appraisal period.

DISTRIBUTION OF RATINGS

An agency may not prescribe a distribution of levels of ratings for executives. Agencies must avoid any policies or practices that would lead to pre-determined ratings.

PUBLICIZING RESULTS

Agencies should let their executives know the outcome of the appraisal process, including the distribution of ratings and accompanying rewards. Such action is likely to promote confidence in the fairness of the process.

DOCUMENTATION AND RECORDS

Individual PRB members and the appointing authority may document their recommendations and actions by signing the appraisal form of each executive, but this is not required as long as other adequate means are used. For example, it would be permissible for the Executive Secretary or the Chairman of the PRB to sign off for the Board on its written recommendations to the appointing authority and to indicate the action of the appointing authority on the annual summary rating (e.g., if the appointing authority approves the PRB recommendations as a group). If the annual summary rating does not actually appear on the appraisal form, documentation of the action should be attached to the form.

Agencies must retain SES annual summary ratings and the performance plans on which they are based for at least 5 years from the date the annual summary rating is issued. [See 5 CFR Part 293 and OPM's Guide to Personnel Recordkeeping]

PERFORMANCE APPRAISAL CERTIFICATION FOR PAY PURPOSES

The regulations allowing agencies to implement a pay-for-performance system for senior executives and apply a higher aggregate compensation limitation to senior employees (senior executives or senior professionals) implement significant features of a Federal compensation system that gives the highest pay to agencies' highest performing employees. In order to access the flexibilities offered by these regulations, agencies must first obtain certification from OPM, with OMB concurrence, of their applicable performance appraisal system(s) under subpart D of 5 CFR part 430. An Office of Inspector General should obtain certification of its performance appraisal system separately from the agency SES system.

Certification may be granted for a period not to exceed 24 months beginning on the date of certification, unless extended by the Director of OPM for up to 6 additional months. Generally the length of the period for which certification is granted will be determined by the degree to which the agency submission meets the criteria for certification. To assist in preventing a lapse in certification, an agency should submit its request for renewed certification by March 15 of the year it is scheduled to expire.

PAY LIMITATIONS

Senior executives: An agency with a certified appraisal system may set the rate of basic pay for a senior executive covered by the certified system at a rate that does not exceed the rate for level II of the Executive Schedule and must limit aggregate compensation in a calendar year to the Vice President's salary. An agency that does not have a certified appraisal system may set the rate of basic pay for a senior executive at a rate that does not exceed the rate for level III of the Executive Schedule and must limit aggregate compensation in a calendar year to the rate for level I of the Executive Schedule. [See Chapter 4 for information on pay.]

Senior professionals: An agency with a certified appraisal system must limit aggregate compensation for a senior professional in a calendar year to the Vice President's salary. An agency that does not have a certified appraisal system must limit aggregate compensation for a senior professional in a calendar year to the rate for level I of the Executive Schedule.

CERTIFICATION CRITERIA

To obtain certification, agencies must demonstrate that their appraisal system(s) makes meaningful distinctions based on relative performance and meets the certification criteria below.

ALIGNMENT

Individual performance expectations must be derived from/linked to the agency's mission, strategic goals, program/policy objectives, and/or annual performance plan. Alignment should be clear and transparent so that senior employees and their subordinates understand how their performance links to organizational goal achievement. Linkage of results-focused critical element(s) to a specific organizational goal(s) is required rather than a generic alignment statement

included in the performance plan.

CONSULTATION

An executive must be involved with and provide input to the development of his or her performance expectations. These performance expectations must be communicated to the executive at the beginning of the appraisal period and/or at appropriate times thereafter.

RESULTS

Senior employees must be held accountable for achieving results in their performance plans. A results-oriented performance plan should describe requirements in terms of measurable results. Elements or performance requirements must be demonstrable, measurable, and observable, focusing on organizational outputs and/or outcomes, milestones, and other deliverables. Critical elements that merely describe activities or behaviors without incorporating the desired, measurable results and targets of those achievements do not meet the certification criterion.

BALANCED MEASURES

Individual performance expectations must include measures of customer/stakeholder and employee perspectives and feedback, and leadership competencies or behaviors that contribute to and are necessary to distinguish outstanding performance.

ASSESSMENTS AND GUIDELINES

The appraisal system must provide for appropriate assessments of an agency's performance. Such assessments may include reports of the agency's Government Performance and Results Act goals or annual organizational performance plans and targets. The appraisal system must also provide for individual performance evaluation guidelines based, in part, upon the assessments. The assessments and guidelines must be communicated to senior employees, appropriate senior rating and reviewing officials and PRB members at the conclusion of the appraisal period, but before individual performance ratings are recommended, so they may serve as a basis for individual performance evaluations.

OVERSIGHT

The appraisal system must provide for oversight by the designated individual who certifies that 1) the appraisal process makes meaningful distinctions based on relative performance; 2) the results of the appraisal process take into account the agency's organizational performance assessment; and 3) pay levels and adjustments and cash awards based on the results of the appraisal process accurately reflect individual performance and/or contribution to agency performance.

ACCOUNTABILITY

For supervisory senior employees, a senior employee's performance plan must include a critical element that holds the executive accountable for aligning subordinate performance plans with organizational goals and the rigor with which the executive appraises subordinate employees.

PERFORMANCE DIFFERENTIATION

The appraisal system must include at least one summary rating level of performance above fully successful, including a summary level that reflects outstanding performance. The system must result in meaningful distinctions among ratings based on relative performance.

PAY DIFFERENTIATION

The appraisal system must provide for pay differentiation so that those executives who have demonstrated the highest level of performance and/or contribution to the agency's performance receive the highest annual summary ratings and the largest corresponding pay adjustments, cash awards, and levels of pay.

In support of the certification request, OPM requires an agency to submit its senior employee pay policy, a description of performance and pay training provided to senior employees, and a description of the information provided to senior employees on the final ratings and payouts of a performance cycle. OPM may request an agency provide additional information, as needed.

OTHER REQUIREMENTS

In support of the certification request, OPM requires an agency to submit (1) a description of the training provided to senior employees, rating officials, PRBs, and human resources staff on the policies and operation of the agency performance management and pay systems and (2) a description of the methodology used to communicate to senior employees, rating officials, and PRBs the results of the application of the appraisal process (overall rating distribution and average payout).

SUSPENSION OF CERTIFICATION

When OPM determines that an agency's certified appraisal system is no longer in compliance with certification criteria, OPM, with OMB concurrence, may suspend the agency's certification. OPM will notify the head of the agency at least 30 calendar days in advance of the suspension and the reason(s) for the suspension, as well as any expected corrective action. OPM, with OMB concurrence, may reinstate an agency's suspended certification after the agency has taken appropriate corrective action. Upon receiving a notice of suspension and until certification is reinstated, the agency cannot set an executive's pay at a rate that exceeds level III of the Executive Schedule. (The rate of basic pay of an executive that is above level III is not reduced upon suspension of certification. See Chapter 4, Restrictions on Reducing Pay.) Additionally, the agency must limit aggregate compensation received by an executive to the rate for level I of the Executive Schedule.

An agency's certification is automatically suspended when OPM withdraws performance appraisal system approval or mandates corrective action. Upon an agency's compliance with mandated corrective action(s), OPM may reinstate the certification of an appraisal system that had been automatically suspended.

6. AWARDS

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CHAPTER 6: AWARDS

STATUTE: 5 U.S.C. 4501 - 4509 and 5384

REGULATIONS: 5 CFR Parts 451 and 534, Subpart D

The law authorizes the granting of special recognition, awards, and incentive payments to members of the SES to help attract, retain, recognize, reward, and motivate highly competent executives. These payments and forms of recognition include: agency performance awards (bonuses); Presidential Distinguished and Meritorious Rank Awards; and other forms of recognition. Only career appointees are eligible for rank and performance awards.

GENERAL INFORMATION AND COMPARISON OF SES AWARD PROGRAMS

THE AWARD PROGRAMS

The three SES award programs are:

- Performance Awards (bonuses);
- Presidential Rank Awards; and
- Other Awards

RELATIONSHIP AMONG AWARD PROGRAMS

Performance awards (bonuses) and Presidential Rank Awards both recognize overall high-level performance by SES career appointees.

Performance Awards (Bonuses): High quality performance during a 1 year appraisal period. Career SES members are eligible with fully successful performance ratings or higher. There is no specific numerical limitation in law on the number of awards that may be given by an agency. The supervisor nominates, the agency PRB recommends, and the agency head or designee decides. Bonuses are 5 to 20 percent of the SES' base salary; payment is a lump sum. If the amount brings total compensation for the calendar year (CY) over the Vice President's pay for agencies with a certified appraisal system or over the rate of pay for Executive Schedule Level I for agencies without a certified appraisal system, the excess is rolled over to next CY.

Presidential Rank Awards: Sustained extraordinary accomplishment (Distinguished) or sustained accomplishment (Meritorious) over at least 3 years as SES or equivalent. (Service does not have to be all in same agency.) To be eligible an employee must have at least 3 years as a career SES, currently be in a career SES position, and be an employee of nominating agency on or before OPM's nomination date. An executive cannot receive the same rank award within 4 fiscal years following receipt of that award. The agency head nominates, the OPM Director recommends (assisted by outside panels), and the President selects. For a Distinguished Rank Award, SES member receives: 35 percent of his/her annual basic pay, a gold lapel pin, and a Presidential certificate. For a Meritorious Rank Award, SES member receives 20 percent of his/her annual basic pay, silver lapel pin, and a Presidential certificate. Payment is made in a lump sum and is

subject to the applicable aggregate pay limitation; same as the performance awards. There are Governmentwide limitations on the number of SES members who can receive Presidential Rank Awards each year. Only 1 percent of the career SES and 1 percent of the senior career employees (SL/ST) can receive the Distinguished Rank. Five percent of the career SES and 5 percent of the senior career employees (SL/ST) can receive the Meritorious Rank.

Bonuses reflect performance over a single appraisal period while rank awards are based upon service over an extended period of time. A single outstanding performance rating does not justify a rank nomination, but it may justify a bonus. Conversely, an unbroken record of outstanding ratings over a period of years suggests that an individual may be a candidate for a rank award whether or not the individual has received a bonus each year.

Other Awards: Other forms of recognition are available to recognize a single, significant act or service that may have occurred in a day, a month, or any other specified time frame and is not tied to overall performance. Examples include: suggestion, invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork or a special act or service in the public interest in connection with/related to official employment. All SES members are eligible. There are no numerical limitations in law. The process for these awards is determined by the agency in accordance with OPM regulations. Awards can be monetary, honorary, or informal recognition. The agency approves up to \$10,000; OPM approves up to \$25,000; and the President approves any higher amount. Payment is a lump sum and is subject to the applicable aggregate pay limitation; the same as for the performance and rank awards.

APPROPRIATE USE OF OTHER AWARDS

An award may be used to recognize a contribution (e.g., service on a task force, a detail to other duties, or an extraordinary effort on a project not anticipated in the employee's annual performance plan) or a scientific achievement that may have culminated after a significant period of time. These other forms of recognition should be considered for SES members only in those limited circumstances where a bonus would not be appropriate.

Receiving one of these forms of recognition does not bar an executive from receiving a performance bonus, or vice versa. Each award must be judged on its own merits. However, agencies should give careful consideration before granting both a performance bonus and another award to an SES employee during the same year.

Given the sensitivity associated with executive awards, agencies are encouraged to carefully document the reasons for the award to make clear that it is not being given in lieu of a performance bonus or in addition to a bonus for the same accomplishment.

PAYING FOR AWARDS

Except as otherwise authorized by law, the cost of awards to SES members must be borne by the agencies in which they are employed. Because Presidential rank awards and performance awards occur on an annual basis and are a significant part of executive compensation, it is important that each agency budget for the resources necessary for their payment.

PRESENTING AWARDS

Agencies are encouraged to have the agency head or other high ranking official present awards at an appropriate ceremony recognizing the contributions recipients made to the agency and to publicize the awards to the workforce as well as outside the agency. Agencies may fund travel for an employee and a guest to receive an award at a major award ceremony (e.g., Presidential rank awards) under the conditions in Comptroller General decision B-233607 (October 16, 1989).

DOCUMENTATION

Presidential Rank Awards should be documented on an SF 50 and filed on the right side of the Official Personnel Folder (OPF). Performance bonuses and other awards must be documented but an SF 50 is not required and these awards may not be filed on the right side of the OPF. [See OPM's Guide to Processing Personnel Actions, Chapter 29.]

PERFORMANCE AWARDS

STATUTE: 5 U.S.C. 5384

REGULATIONS: 5 CFR 534.405

Performance awards, commonly called "bonuses," recognize and reward excellence of career appointees over a one-year performance appraisal cycle.

ELIGIBILITY

To be eligible for a performance award, the individual must be:

- an SES career appointee as of the end of the performance appraisal period and have at least a "fully successful" rating as the most recent performance annual summary rating;
- a former SES career appointee who elected to retain award eligibility under 5 CFR part 317, subpart H (If the level of basic pay of the individual is higher than the maximum rate of basic pay for the applicable Executive Schedule Level of pay, the maximum rate of that SES rate range is used for crediting the agency award pool and the amount the individual may receive.);
- a reemployed annuitant with an SES career appointment;
- an individual who is no longer in the SES at the time the bonus decision is made, but who was an SES career appointee at the end of the performance appraisal period.

A career SES appointee on detail to another agency is eligible in his/her official employing agency, i.e., the agency from which detailed.

Section 5 of the Inspector General Reform Act of 2008 (P.L. 110-409) provides that an Inspector General of an establishment or a designated Federal entity may not receive any cash award or cash bonus.

RESTRICTIONS

To be recognized by a bonus, service should have been performed under an SES career appointment and should have been for no less than the agency's minimum appraisal period. If an individual has served less than a full year as an SES career appointee, the agency may consider prorating the amount of the bonus. However, the amount of the prorated bonus may not be less than 5 percent of the individual's rate of basic pay as of the end of the performance appraisal period.

AWARD POOL

The total amount of performance bonuses an agency pays during a fiscal year may not exceed the greater of:

- 10 percent of the aggregate amount of basic pay for SES career appointees in the agency as of the end of the fiscal year before the fiscal year in which the bonus payments are made. (For example, if the payments are made in September 2005 (FY 2005), the pool is calculated as of September 30, 2004 (end of FY 2004). However, if the payments are made in November 2005 (FY 2006), the pool is calculated as of September 30, 2005 (end of FY 2005)); or
- 20 percent of the average annual rates of basic pay to career SES appointees as of the end of the fiscal year before the fiscal year in which the bonus payments are made.

The salary of a Presidential appointee who elected to continue bonus eligibility is included in calculating the pool.

The salary of a career appointee who is on detail to another agency is included in calculating the pool. If the appointee is on a reimbursable detail, the agency to which the appointee is detailed may reimburse the employing agency for some or all of any bonus, as agreed upon by the two agencies; but the reimbursement does not affect the pool of either agency.

NUMBER AND AMOUNT OF INDIVIDUAL AWARDS

An agency may determine the number of executives who receive bonuses and the amount of each bonus, based on the dollars available in the pool and the guidelines below.

Number of Awards: The law does not intend that the maximum number of eligible executives necessarily receive bonuses. Bonuses are intended to be given only when there is a clear demonstration they are merited by performance. Bonuses are not to be used merely as supplements to basic pay and agencies should avoid giving bonuses on a rotational basis (giving half of their SES members a bonus 1 year and the other half a bonus the next year).

Amount of Awards: A bonus may not be less than five percent or more than 20 percent of basic pay as of the end of the performance period [5 CFR 534.405(c)]. These percentages may not be rounded, i.e., the bonus amount may not be less than 5.0 percent or more than 20.0 percent.

An individual may not voluntarily agree to accept a bonus of less than 5 percent.

For bonus purposes, basic pay includes critical position pay [5 CFR 534.402, "Rate of basic pay" definition].

If a former SES career appointee elects to retain award eligibility under 5 CFR part 317, Subpart H, and the individual's basic pay is higher than the maximum range in the agency's SES pay range, the agency will use its maximum SES pay range in crediting the agency award pool [5 CFR 534.405(a)(2)].

AWARD DETERMINATIONS

When making recommendations on a performance bonus, a Performance Review Board (PRB) must be composed of a majority of career SES members, unless OPM has approved a waiver [5 CFR 534.405(a)(3)]. The agency head (or designee) must consider PRB recommendations, but he/she has the final authority as to who receives a bonus and the amount of the bonus [5 CFR 534.405(a)(4)].

PAYMENT PROCEDURES

Bonuses are paid in lump sums. Payments are not subject to retirement, health benefits, or life insurance deductions, nor are they included in the "high-three" average pay computation for retirement benefits or in basic pay for thrift savings plan computations. Payments are subject to income tax withholding, and are subject to FICA tax withholding if the individual is in FERS or CSRS Offset.

Bonuses are subject to the EX-I aggregate pay limitation for a calendar year for agencies without a certified appraisal system. In agencies with a certified appraisal system, bonuses are subject to an aggregate pay limitation equal to the Vice President's salary. If the full bonus cannot be paid because of the ceiling, the excess amount is carried over and paid at the beginning of the next calendar year. However, the full bonus is charged against the agency bonus pool for the fiscal year in which the initial payment was made. For example, if an executive received a bonus of \$15,000 in FY 2006 (e.g., August 2006), but \$1,000 could not be paid until the beginning of CY 2007, that \$1,000 counts against the executive's applicable CY 2007 aggregate pay limitation; but the full \$15,000 is charged against the agency's FY 2006 bonus pool.

REPORTING REQUIREMENTS

While OPM approval is not required before payment there is a reporting requirement. Agencies must submit a report of their distribution of performance ratings and bonuses to OPM within 14 days after the agency head, or designee, makes the final determinations.

Agencies shall include the following general information in their submissions (references to career SES appointees include Presidential appointees eligible for bonuses):

- the start and end dates of the appraisal period for the ratings reported;
- the effective date of the performance based pay adjustments;
- the summary rating pattern (D, F, G, or H);
- the total dollar amount of a performance awards pool and the percentage of aggregate base pay for which the awards were calculated;
- the total number of SES members, including career, noncareer, and limited;
- the total number of SES members eligible to be rated; and

- the total number of SES members who did not receive a rating for the appraisal period, i.e., those who had not been under an appraisal period for the minimum period or whose rating period was extended for some other reason.

Agencies shall include the following specific award information for each SES member in their submissions:

- the last name and first initial or other unique identifier. If a unique identifier is used, agencies must ensure that the same identifier is used for the same employee in subsequent years to allow for longitudinal analysis.
- the appointment type and, if applicable, an indicator to identify SES members newly appointed to the agency or component who have not received a performance rating or pay adjustment based on the appraisal period reported;
- the summary rating for the appraisal period reported;
- the total dollar amount for a performance award given based on the rating for the appraisal period reported;
- the percentage of base pay of a performance award given based on the rating for the appraisal period reported;
- the total dollar amount for individual or group cash awards given during the period reported;
- the percent of base pay of individual or group cash awards given during the period reported;
- the total dollar amount of a Presidential Rank award given during the period reported; and
- the total dollar amount of basic pay, relocation, retention, recruitment incentives, cash awards, and lump sum payments in excess of the aggregate limitation on compensation received in any given calendar year.

The above submission requirements are subject to change.

PRESIDENTIAL RANK AWARDS

STATUTE: 5 U.S.C. 4507

REGULATIONS: 5 CFR, Subpart C

RANK AWARD DESCRIPTIONS

The Presidential Rank Award (PRA) recognizes and rewards career Senior Executive Service (SES) members and Senior Career Employees (Senior-Level (SL) and Scientific and Professional (ST)) who have demonstrated exceptional performance over an extended period of time. There are four types of rank awards:

The *Distinguished Executive Rank Award* is given for “sustained extraordinary accomplishment” to no more than one percent of the career SES members Governmentwide. The award includes a lump-sum payment of an amount equal to 35 percent of annual basic pay, a distinctive gold lapel pin, and a framed certificate signed by the President.

The *Meritorious Executive Rank Award* is given for “sustained accomplishment” to no more than 5 percent of the career SES members, Governmentwide. The award includes a lump-sum payment of an amount equal to 20 percent of annual basic pay, a distinctive silver lapel pin, and a framed certificate signed by the President.

The *Distinguished Senior Professional Rank Award* is given for “sustained extraordinary accomplishment” to no more than one percent of the senior career employees Governmentwide. The award includes a lump-sum payment of an amount equal to 35 percent of annual basic pay, a distinctive gold lapel pin, and a framed certificate signed by the President.

The *Meritorious Senior Professional Rank Award* is given for “sustained accomplishment” to no more than five percent of the senior career employees Governmentwide. The award includes a lump-sum payment of an amount equal to 20 percent of annual basic pay, a distinctive silver lapel pin, and a framed certificate signed by the President.

ELIGIBILITY

SES career appointees – Distinguished and Meritorious Awards

Nominees must:

- hold a career appointment in the SES;
- be an employee of the nominating agency; and
- have at least 3 years of career or career-type Federal civilian service at the SES level. (Service does not have to be continuous. Qualifying service includes appointments in the SES, Senior Foreign Service, and the Defense Intelligence Senior Executive Service. Appointments not qualifying include noncareer, limited term, and limited emergency.)

A reemployed annuitant who holds a career appointment or an executive with a part-time or intermittent work schedule is eligible as long as the individual meets the other criteria for nomination. However, agencies are advised to carefully consider whether such a nomination would be in the best interests of the agency and the program, in view of the limitation on awards that can be given.

An individual who leaves the SES after being nominated (e.g., retires, resigns, or takes a position outside the SES), but before being approved by the President, remains eligible unless the agency withdraws the nomination. An individual also remains eligible posthumously.

Appointed employees in PAS Executive Schedule positions may **not** receive incentive awards, including Presidential Rank Awards, according to 5 U.S.C. 4509. However, PAS employees who were career Senior Executives and elected to retain their SES eligibility, remain eligible for rank awards [5 U.S.C. 3392]. Please use caution with these nominations, since Congress expressed concern about Executive Schedule awards.

Section 5 of the Inspector General Reform Act of 2008 (P.L. 110-409) provides that an Inspector General of an establishment or a designated Federal entity may not receive any cash award or cash bonus, including a Presidential Rank Award. Other SES members in IG offices are eligible for performance and other awards, including the Presidential Rank Awards. Under P.L. 110-409, SES IG office members other than the IG may be nominated for rank awards by the Council of the Inspectors General on Integrity and Efficiency established under the Act.

Senior Career Employee (SL/ST) Distinguished and Meritorious Awards

Nominees must:

- hold a career appointment in a SL or ST position;
- be an employee of the nominating agency;
- have at least 3 years of career or career-type Federal civilian service above the GS-15 or equivalent. (Service does not have to be continuous. Qualifying service does not include appointments that are time limited, or to positions that are excluded from the competitive service because of their confidential or policy-making character.)

RESTRICTIONS

The recipient of either a Distinguished or Meritorious Rank Award may **not** receive the same award again during the 4 fiscal years following the one for which the award is given. (For example, if an individual received a meritorious award in FY 2004, he/she is not eligible for another meritorious award until FY 2009.) However, there is no restriction on receiving one category of rank award and then another at a closer interval. There is no requirement that an individual receive a meritorious award before receiving a distinguished award.

An individual may receive both a rank award and a performance award during the same calendar year.

NOMINATION CRITERIA

SES career appointees are nominated and evaluated on the following criteria:

1. Program Results
2. Executive Leadership

Senior Career Employees (Senior-Level (SL) and Scientific and Professional (ST) are nominated and evaluated on the following criteria:

1. Program Results
2. Stature in Professional Field

Specific examples are requested for each criterion cited showing how the nominee has demonstrated qualities of strength, leadership, integrity, industry, and personal conduct of a level that has established and maintained a high degree of public confidence and trust.

Although nominees will come from professional fields too diverse to permit a common definition of unusual accomplishment, their contributions will clearly have to greatly exceed simply “doing the job well.” These awards carry significant prestige — they are **not** to be proposed simply to recognize long and faithful service.

NOMINATION AND SELECTION PROCEDURES

OPM call: OPM issues an annual call for rank award nominations. The current criteria and deadline for submitting nominations are stated in the call. The call letter also includes nomination forms.

OPM and Board review: Review boards composed of private citizens, normally from outside the Government, are established to assist the Director reviewing and ranking nominations from agencies. The Distinguished Review Board is held at OPM Headquarters in Washington, DC. The Meritorious Review Boards are held in four different cities each year. OPM also conducts a background inquiry to verify the qualifications and suitability of nominees recommended by the boards for distinguished rank. After the completion of the review boards and background inquiries, the Director of OPM recommends candidates to the President for approval.

Nominees for Distinguished Rank are considered for Meritorious Rank if the individual is not rated among the top one percent as set forth in 5 U.S.C. 4507, and if the nominee did not receive a Meritorious Rank within the previous 4 fiscal years. Nominees are considered on the basis of relative merit Governmentwide and not on the basis of agency size or number of submissions.

Agency withdrawals: Heads of Agencies may withdraw a nomination at any time during the process, up until the time the President approves the OPM Director's recommendations.

Presidential action: The President makes the final selections from among the nominees recommended by the Director of OPM. Agencies must wait for OPM authorization to make external announcements of award recipients. Agencies may hold internal recognition ceremonies as long as there is no announcement outside the agency.

AWARD PAYMENT PROCEDURES

The award is paid by the recipient's agency as a lump-sum payment, in addition to basic salary. It is not subject to retirement, health benefits, or life insurance deductions. It is not included in the "high three" average pay computation for retirement benefits or in basic pay for thrift savings plan computation. The payment is subject to income tax withholding as well as FICA tax withholding if the individual is in FERS or CSRS Offset.

Awards are subject to the applicable aggregate limitation on pay for a calendar year. (See Chapter 4, Aggregate Limitation on Pay.)

Agency payment of ceremonial expenses in connection with the actual presentation of awards is authorized under 5 U.S.C. 4503.

TIPS FOR WRITING NOMINATIONS

Based on feedback we receive from board members as they review agency cases, here is some advice on preparing agency nominations for Presidential Rank Awards. In general, board members are impressed by the professionalism and accomplishments of the executives. However, there are some things that you can do to strengthen the case for your nominees:

- Avoid acronyms and "bureaucrat speak". Most PRA board members have not worked in a Federal environment and some are turned off by overly bureaucratic language. Be direct, be clear.

- Avoid broad statements. Describe how the nominee's **actions** led to specific **results**.
- Show the nominee's performance was exceptional and sustained. Board members give low scores to individuals who were "just doing their job."

OTHER FORMS OF RECOGNITION

STATUTE: 5 U.S.C. 4501-4503, 4505, 4508, 4509

REGULATIONS: 5 CFR Part 451, Subpart A

Under Chapter 45 of Title 5, agencies may grant cash, honorary, or informal recognition awards, or grant time-off without charge to leave or loss of pay to SES members, individually or as a member of a group to recognize the following:

- a suggestion, an invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork; or
- a special act or service in the public interest in connection with or related to official employment.

In a memorandum for Cabinet Members and Agency Heads (March 29, 2002) the White House Chief of Staff clarified that political appointees, including noncareer SES members, are eligible for awards. Specifically, "Noncareer SES employees are eligible for awards based on contributions to Government economy, efficiency, or effectiveness, but are not eligible for SES performance bonuses."

ELIGIBILITY

All SES members, no matter what their appointment, are eligible for these other awards when circumstances warrant that recognition.

RESTRICTIONS

Agencies **cannot use** these Chapter 45 awards **to circumvent** either the statutory or regulatory provisions concerning:

- the limitations on eligibility for performance bonuses. For example, an agency should not give superior accomplishment awards to noncareer appointees in recognition of performance of their regular job duties and responsibilities to make up for their exclusion from bonus eligibility under 5 U.S.C. 5384;
- the limitations on the size of individual performance bonuses. For example, an agency should not give job-related superior accomplishment awards to career SES employees to supplement bonuses for overall performance; and
- the limitations on the total amount of funds available to pay performance bonuses. For example, an agency should not give superior accomplishment awards to career SES

employees in order to grant larger or more awards for job performance to executives than the agency's bonus pool can support.

The following statutory restrictions have been placed on awards under Chapter 45, Subchapter I, for senior political officials:

- agencies may not grant any incentive award to noncareer or limited SES appointees, or Schedule C appointees, between June 1 of a Presidential election year and the following January 20 [5 U.S.C. 4508]; and
- agencies may not grant a cash award to Presidential appointees with Senate confirmation (PAS) in Executive Schedule positions or positions for which pay is set in statute by reference to a section or level of the Executive Schedule [5 U.S.C. 4509]. However, career SES members who are appointed to PAS positions and elect to continue SES bonus and rank award eligibility under 5 U.S.C. 3392(c) may still receive a bonus or rank award.

7. EXECUTIVE DEVELOPMENT

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CHAPTER 7: EXECUTIVE DEVELOPMENT

STATUTE: 5 U.S.C. 3396, 3373, 4103, 4121

REGULATIONS: 5 CFR 412.102, 412.103; 5 CFR Part 334

EXECUTIVE ORDER 13318

Current and future Senior Executives face programmatic and leadership challenges that require them to maintain, strengthen and expand their Executive Core Qualifications and Competencies. It is imperative that current executives continue their development and broaden their perspectives. Executive leaders must maintain technical proficiency in their career field as well as leadership proficiency that will enable them to think systemically, create organizational vision and lead their organization to the accomplishment of its strategic objectives.

Professional development enhances performance, provides individuals the opportunity to develop skills and knowledge, and remain relevant, competent, and viable in the Federal workforce, as well as tracking current trends and best practices, continuing development is critical to effective performance as leaders. There are many ways to provide executive training and development opportunities, including formal and informal training experiences, seminars, forums, and mobility assignments.

DEVELOPMENT OF CURRENT EXECUTIVES

GOVERNMENTWIDE POLICY

The Federal Workforce Flexibility Act of 2004 requires agencies to have an integrated training program that support the accomplishment of the agency mission. The program must build the agencies leadership capacity and include training for managers on actions, options, and strategies to improve employee performance and productivity, conducting performance appraisals, mentoring employees, and dealing with unacceptable performance.

Agencies must establish systematic and comprehensive management succession programs for executive and managerial positions. These programs should be designed to:

- provide future executives with the competencies and experiences needed to lead the continuing transformation of Government;
- transition supervisors and managers into executives. The movement from manager to executive represents a fundamental shift of identity from one who manages human capital resources to one who sets the vision and leads the way; and
- transform an organizational environment where members of the SES develop and maintain a corporate perspective, align with the management philosophy and agenda of the President, become grounded in Constitutional values, and encompass respect for both merit and diversity.

Continuing training and development improves both individual and organizational effectiveness. It can take many forms including new job assignments; interagency task forces and projects; sabbaticals; temporary assignments in other agencies, State or local governments, or the private

sector; and formal classroom experiences. The following sections outline areas for executive and management development. Specific programs offered by OPM are outlined later in this chapter.

TRAINING TO MANAGE EMPLOYEE PERFORMANCE

There is heightened concern regarding executive accountability and the importance of managing employee performance in an effective, results-focused manner. The Federal Workforce Flexibility Act of 2004 requires all Federal managers and executives to be trained on managerial actions, options, and strategies that they may use in:

- relating to employees with unacceptable performance;
- mentoring employees and improving employee performance and productivity; and
- conducting employee performance appraisals.

MOBILITY ASSIGNMENTS

Leadership development can be enhanced by providing mobility opportunities such as special/short-term assignments, rotational assignments, or projects that provide executives with diverse experiences. OPM encourages executives to pursue these types of developmental opportunities (see the November 17, 2008 memorandum to Chief Human Capital Officers, “Guidelines for Broadening the Senior Executive Service,” at <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=1696>). This approach will enable executives to broaden their perspective, prepare for positions of higher authority and responsibility, develop skills and insights, and broaden their experience base.

OPM encourages agencies, together with their executives, to plan mobility assignments and opportunities that align with agency missions and incorporate these assignments into agencies’ HR strategies. Agencies are urged to be flexible about mobility, both in letting their executives seek other assignments to enhance their development and to foster better Government, and in taking the risk of hiring executives from other agencies for both permanent and temporary assignments. At the same time, executives are encouraged to seriously consider new and different job opportunities and assignments to promote professional growth.

INTERGOVERNMENTAL PERSONNEL ACT ASSIGNMENTS

Career SES appointees are eligible for temporary assignments to State, local, and Indian tribal governments, institutions of higher education, and other eligible organizations, under provisions of the Intergovernmental Personnel Act (IPA) and title VI of the Civil Service Reform Act, in accordance with requirements in 5 CFR Part 334.

Assignments: Assignments may be made for up to 2 years and may be extended by the head of the agency (or designee) for another 2 years.

Details: Individuals may be detailed to the assignment or placed on leave without pay, but they continue to encumber the positions held before the temporary assignment and remain an employee of the agency. Individuals on detail receive SES pay, earn and are charged for leave, are evaluated under the SES performance appraisal system, and maintain retirement and insurance coverage. The 720-hour limit on annual leave carryover remains in effect.

Leave Without Pay: Individuals on leave without pay may choose to retain full retirement and life and health insurance benefits by continuing to pay the employee share of the costs.

End of IPA Assignment: When IPA assignments end, the individuals return to the positions occupied before the IPA assignments, or they may be reassigned to other SES positions.

IPA Agreement: The individual must agree in writing to serve with the Federal Government upon completion of the IPA assignment for a period equal to the length of the assignment. The individual and the organization to which he or she is temporarily assigned shall enter into a written agreement that records the obligations and responsibilities of all parties, as specified in 5 U.S.C. 3373 and 3375. The participating organizations determine the cost-sharing arrangements in an IPA assignment; Federal agencies may pay all, some, or none of the costs of assignments.

SABBATICALS

Agency heads may grant sabbaticals for up to 11 months to SES career appointees for full-time study or uncompensated work experience which will contribute to their development and effectiveness. Sabbaticals can broaden professional skills and provide an opportunity for personal growth. Sabbatical activities can include:

- teaching, study (independent or structured), research, or some combination of these at a college or university;
- non-institutional study or research (independent or guided);
- periods of relevant and developmental work experience in the private sector; with non-profit organizations, or with State, local, or foreign governments; and
- an activity or a project not covered above, e.g., bench research, invention, design, development; trouble-shooting or problem-solving assignments; writing.

Eligibility: Career appointees must have completed 7 years of service in SES positions or equivalent civil service positions (i.e., grade level above GS-15 or equivalent), and at least 2 of the 7 years must have been in the SES. The appointee cannot be eligible for voluntary (optional) retirement at the time the sabbatical begins. A sabbatical may not be granted to the same individual more than once in a 10-year period.

Conditions: Agencies must assure that sabbaticals do not violate conflict-of-interest regulations. A sabbatical is a prolonged period of time away from work with all the benefits and is not a part-time activity. An agency's designated ethics official should advise on procedures appropriate to the agency's needs.

The SES member must sign an agreement to continue in the civil service for a period of 2 years following the sabbatical. The agency head may waive this requirement for "good and sufficient reasons" (e.g. disability retirement, reduction in force, or other involuntary separation). The following is suggested language for the agreement:

"I _____ agree, as a condition of accepting the sabbatical, to serve in the civil service upon completion of the sabbatical for a period of 2 consecutive years. I further agree that if I fail to carry out this agreement (except for good and sufficient reasons as determined by the agency head), I am liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due the United States."

Employment Provisions: While on sabbatical, the executive:

- continues to occupy his/her SES position of record and to receive SES pay;
- continues to earn leave and is charged for any leave taken;
- may receive such travel expenses (including per diem) as the head of the agency determines to be essential for the sabbatical study or experience. (In some cases, agencies have arranged to have the host organizations pay or share in travel and certain other expenses.); and
- remains subject to the SES performance appraisal system, but should be evaluated against standards appropriate to activities involved in the sabbatical. It would not be appropriate to award bonuses for performance while on sabbatical. However, SES members may receive bonuses while on sabbatical for performance before the sabbatical.

Documentation and Program Review: No later than the beginning of each sabbatical, agencies should submit the following information to OPM:

- name of the SES member;
- a general description of planned activities, developmental benefits, and expected contributions to the Government; and
- the approximate dates of the sabbatical.

Agencies should monitor their sabbatical programs, including the nature of participants' activities during their sabbaticals, to determine if developmental objectives have been met.

Records documenting the decision process in granting a sabbatical must be maintained for 2 years from the date the sabbatical is approved by the agency.

Submit the SES sabbatical documentation by letter or fax to:

The Center for Learning, Executive Resources, and Policy Analysis

ATTN: Executive Resources Group

U.S. Office of Personnel Management

1900 E Street NW, room 6355

Washington, DC 20415

Fax 202-606-1637

OPM EXECUTIVE DEVELOPMENT PROGRAMS

SES BRIEFINGS

Several times a year, OPM sponsors briefings for new career and noncareer appointees to the SES and equivalent. Participants are briefed about their role as executives and provided with introductory information about the SES. Key Administration officials provide insights and information on current domestic and foreign policy issues and initiatives. Other relevant topics

such as working with Congress and dealing with the media are covered by speakers as well. Presentations emphasize the senior executive's corporate responsibilities for meeting the challenges facing a Government undergoing change and for leading effectively in a results-focused organization. These sessions also provide an opportunity for new executives to interact as a community and build the corporate perspective. The briefings conclude with a formal swearing-in ceremony for the new SES members and presentation of SES certificates.

RESIDENTIAL LEADERSHIP DEVELOPMENT PROGRAMS

OPM offers leadership and management development programs for new supervisors all the way up to senior executives at the Federal Executive Institute and the two Management Development Centers (MDCs). These professional development programs, taken separately or as an integrated 'Leadership Journey', employ a wide range of learning methods and approaches to cover the Executive Core Qualifications and the Executive Core Competencies as identified by OPM for success in the Federal work environment. The programs at Federal Executive Institute (FEI) and the MDCs are open to leaders and managers in career and noncareer position, senior policy specialists, political appointees, and participants in similar positions and at appropriate levels in local, state, and foreign governments.

Federal Executive Institute: One of the nation's leading centers for executive development, FEI was established in 1968 to serve the learning needs of our nation's senior public servants. No matter the program, FEI uses the U.S. Constitution and the notion of public service as underlying foundations as participants build their talents and perspectives required for leadership in today's complex world. Whether in FEI's four-week *Leadership for a Democratic Society* program, in a short open enrollment program, or in a carefully and collaboratively designed custom program, FEI helps participants explore their knowledge and skills in personal leadership, transforming organization, the policy framework in which public sector leadership occurs, and the broad context of international trends that shape Government agendas.

For more information about these programs contact:

Federal Executive Institute
1301 Emmet Street
Charlottesville, VA 22903-4899
Voice: 434-980-6200
TDD: 434-980-6299
Fax: 434-979-1030
Email: fei@opm.gov

Management Development Centers (MDCs): The Eastern and Western Management Development Centers focus on developing leadership and management skills of beginning supervisors through seasoned managers in an interagency residential environment. The core management curriculum addresses the competencies needed by Federal managers at the full performance level and supports the transition from manager to executive. Other professional development programs deal with public management and national policy issues. The centers offer a variety of 1 to 2-week residential seminars.

The Eastern MDC in Shepherdstown, West Virginia, is a self-contained, executive and management residential training facility located 70 miles from downtown Washington, DC. The Center houses residential training courses for Government leaders in the areas of management and public policy.

Eastern Management Development Center
239 Lowe Drive
Shepherdstown, WV 25443-9601
Voice: 304-870-8000
Fax: 304-870-8001
Email: emdc@opm.gov

The Western MDC is a campus-style learning environment convenient to both the Denver metropolis and the vast natural and recreational resources of the majestic Rocky Mountains. It is 30 minutes from Denver International Airport in Aurora, Colorado, a suburb of Denver.

Western Management Development Center
Cherry Creek Place
3151 South Vaughn Way, Suite 300
Aurora, CO 80014-3513
Voice: 303-671-1010
Fax: 303-671-1018
Email: wmdc@opm.gov

In addition to residential sessions, OPM through its Center for Leadership Capacity Services can custom design a program to satisfy a one-time need or engage in a long-term strategic partnership to address an organization's ongoing needs or challenges. Such programs are tailored to meet customers' specific requirements.

Executive in Residence Program: The Federal Executive Institute and Management Development Centers offer a limited number of Executive in Residence (EIR) developmental assignments to members of the SES and senior managers. Individuals selected as EIRs are detailed to a center to serve as a member of the faculty for periods of up to 2 years. Information on the EIR program can be found at <http://www.leadership.opm.gov/programs> under the heading of special services.

FORMAL SES CANDIDATE DEVELOPMENT PROGRAMS

STATUTE: 5 U.S.C. 3396

REGULATION: 5 CFR Part 412

The SES candidate development programs (CDPs) are one succession management tool agencies may use to identify and prepare future senior leaders. CDPs provide SES candidates with the training and development opportunities needed to enhance their executive competencies and increase their understanding of the wide range of Government programs and issues beyond their individual agencies and professions. Graduates of an OPM-approved CDP who are selected

through civil service-wide competition may receive a career SES appointment without further competition. Agencies must have a written policy describing how their program operates. Requirements for agency candidate development programs are in 5 CFR Part 412.

OPM APPROVAL OF SES CANDIDATE DEVELOPMENT PROGRAMS

Agencies must obtain OPM approval of SES candidate development programs before they are conducted for the first time and whenever there are substantial changes to the program.

Mail or deliver requests for OPM approval to:

U.S. Office of Personnel Management
Executive Resources Services Group, HCLSMA
1900 E Street NW, Room 7470
Washington, DC 20415

CHECKLIST TO USE WHEN DEVELOPING SES CDP POLICIES FOR OPM APPROVAL

OPM has developed an outline for agencies to use as they develop their programs and write their policies describing how the programs will operate. The information in the “checklist” below lists the necessary requirements stated in 5 CFR 412.104 to obtain OPM approval for an SES CDP. Some of the components of this “checklist” are described in more detail in the next sections of this chapter.

A. PROGRAM OVERVIEW – This section should describe your agency’s workforce goals and objectives of this program, and how it will contribute to meeting the mission of the agency. The overview should provide a brief description of the program, measures of the program’s success, and how the agency plans to facilitate the placement of graduates in open SES vacancies. The information in this section should include:

- Statement of program’s purpose, goals and objectives;
- Description of how the program supports the agency’s strategic plan;
- Description of program conformance to relevant statutory and regulatory authorities related to staffing and SES CDPs;
- Description of how the program’s success will be measured;
- Description of methods to be used to ensure program graduates are considered when executive vacancies occur and the ways in which the agency will facilitate placement of program graduates into the SES; and
- Description of how the program ties into the agency succession plan, how the program is linked to projected SES vacancies within the agency, and how the program will help the agency achieve its succession and workforce diversity goals.

B. PROGRAM ADMINISTRATION AND OVERSIGHT – This section should describe how an agency will organize and run the program. This section should include roles and responsibilities of team members including the Executive Resources Board (ERB) and Agency Head. Other components that should be discussed in this section are the: planning

and budget phase, selection of candidates, program requirements, and submission of Qualifications Review Board (QRB) certification. The information in this section should include:

- Defined program scope--whether it is agency-wide or limited to a major organization, duration (including procedures for documenting the dates each candidate starts and finishes the program), and target audience;
- Description of the program-related roles and responsibilities of each of the following entities: Agency Head, ERB, SES Mentors, Human Resources Office, SES CDP Program Office, Developmental Assignment Supervisors, and SES Candidates. This section should include a description of how the agency will:
 - Periodically evaluate the program and incorporate the evaluation results into planning for future programs
 - Plan, budget, and manage the overall program
 - Document the specifics of the candidate selection process
 - Ensure proper merit staffing procedures are followed in recruiting and selecting program participants
 - Determine candidates' development requirements and approve each candidate's individual development plan
 - Document the completion of all program requirements
 - Monitor candidate performance (particularly in developmental assignments) and completion of all program requirements, as well as removing candidates who do not make adequate progress
 - Submit for QRB review only those graduates the ERB determines possess the executive qualifications for career appointment to the SES; and
- Description of how external agency selections will be handled for purposes of placement and payment of program expenses.

C. PROGRAM ANNOUNCEMENT – This section should describe all necessary components to be included in the vacancy announcement. The information in this section should include:

- The scope of the announcement. For example, will the announcement provide for recruitment from all groups of qualified individuals within the civil service, or from all sources;
- Length of time announcement will remain open. The announcement must be open at least 14 days (5 U.S.C. 3396); and
- Minimum recruitment sources:
 - Must include announcement in USAJOBS;
 - Reflects efforts to solicit applications from women, minorities, and persons with disabilities to help create and maintain a diverse SES workforce.

D. CANDIDATE EVALUATION AND SELECTION – This section should describe the selection process and all relevant assessment criteria needed to evaluate the candidates. The information in this section should include:

- Information applicants must submit as part of the application process and the qualification requirements against which candidates will be evaluated (e.g., the five executive core qualifications and fundamental competencies);
- Basis for evaluating the degree to which candidates possess the required qualifications (e.g., demonstrated experience, executive potential, competencies, education, training);
- Description of the mechanism(s) to be used to evaluate the candidates (e.g., review of applications, structured interviews, assessment centers):
 - All eligible candidates must be rated and ranked on the same basis. Veteran's preference should be applied when necessary (i.e., to non-status candidates), 5 CFR 412.203(b)(3); and
- Documentation outlining the methodology used by the ERB to evaluate the qualifications of each candidate:
 - Preliminary qualifications screening, rating, and ranking of candidates, which may be delegated by the ERB;
 - Written recommendations on each candidate for the ERB to give to the appointing authority;
 - Identification of the appointing authority and an outline of his/her options for acting on the ERB's recommendations;
 - Description of how the merit staffing records will be maintained (i.e., for at least 2 years after the appointing authority approves the selections); and
 - Description of agency procedures for handling inquiries regarding the staffing process.

E. PROGRAM CURRICULUM – This section should describe the training program components including formal training, developmental assignments, assessment, mentoring and an executive development plan. The information in this section should include:

- Description of the process to be used to assess each candidate's individual executive development needs (e.g., 360, assessment center report);
- A description of how each candidate will develop the required SES development plan addressing developmental needs, which covers the entire period of the program. The development plan should include the following required components of an SES CDP:
 - Documentation that candidates receive a minimum of 80 hours of formal, interagency training addressing the executive core qualifications. Description includes how the agency intends to address the “wide mix” requirement for interagency training;
 - Explanation of the kinds of developmental activities (e.g., projects, details) candidates will be expected to complete in general, and specifically the 4 month (120 day) executive level assignment(s) outside the candidate's position of record. (It is recommended and may be required that at least one assignment is a minimum of 90 consecutive days.) Minimum time interval for the executive level assignment(s) must be stated; and
 - Explanation of the agency's mentoring program and how the candidate will be matched up with a mentor who is a current SES member. Description also includes how often they will meet and any instructions both the mentor and protégé are provided; and

- Description of any standard courses, seminars, activities, etc., which all candidates will be required to participate.

F. PROGRAM COMPLETION AND CANDIDATE CERTIFICATION – This section should describe criteria and documentation needed for candidates to complete the program and receive QRB certification. The information in this section should include:

- Agency procedures for monitoring candidate progress throughout the program including:
 - Procedures for documenting candidate's in-program performance and progress;
 - Procedures for documenting successful completion of the program; and
 - Procedures for a pause in the program (i.e. medical emergency); and
- Description of agency procedures for requesting Qualifications Review Board (QRB) certification including a requirement such certification should be completed in a timely fashion upon completion of the program; it is recommended all candidate's QRB packages be sent to OPM for QRB certification *within 90 days of* a candidate's successful completion of the program.

ORGANIZATIONAL LEVEL OF SES CANDIDATE DEVELOPMENT PROGRAMS

The organizational scope of a candidate development program is entirely at the agency's discretion. Departments and agencies may establish a single program on a department or agencywide basis, establish several programs at component levels, or pursue any combination of these options. However, a bureau or organization within a department may not independently propose a program to OPM without the approval of the department headquarters.

The organizational level at which program approval is sought must conform to the organizational scope of the program.

The organizational level at which OPM approval is granted becomes the organizational level responsible for assuring that all programs conducted by the covered components are consistent with the OPM-approved CDP plan. This includes reviewing the documentation for proposed CDP graduates and certifying compliance with program requirements and successful completion of the individual's executive development plan as approved by the agency Executive Resources Board (ERB).

Department/agency-level approval: Departments/agencies may choose to obtain OPM approval of a single program at the department/agency level that covers all department/agency components. In this case, the department/agency is responsible for assuring that programs conducted meet the requirements of the department/agency approved plan. This includes reviewing the documentation and obtaining ERB certification of compliance with the plan and successful completion of the program.

Component-level approval: Departments/agencies may choose to allow major components to develop their own programs and individually seek OPM approval of their programs. In this case, each component is responsible for compliance with the plan and ERB certification.

Multiple-level approval: Departments/agencies may pursue a combination of these options. For example, they may permit major components to develop separate programs, while the department

develops a program to cover those components that have not developed individual programs. In this case, the components may seek approval for their separate programs, while the department seeks approval for the remaining components.

RECRUITING FOR CANDIDATE DEVELOPMENT PROGRAMS

The merit staffing procedures described in Chapter 2 also apply to entry into an SES candidate development program.

Area of Consideration: Recruitment for CDP's is either from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service. Agencies may request an exception to the recruiting area requirement if they can show that during the 5-year period before the announcement of the program they have made at least 15 percent of their initial career SES appointments from sources outside the agency [CFR 412.104(a)(2)]. Graduates of these programs who have been certified by a QRB must then compete Governmentwide for entry to the SES; however they do not have to obtain a second QRB certification before appointment. In cases where CDP's are announced and conducted by individual agency components, rather than on a departmentwide basis, exceptions may be requested for the component level. The appointment data used to support the request for exception must conform to the organizational level for which the exception is sought. For example, a request for departmentwide CDP exception must be based on departmentwide selection data.

Non-status appointment requirements: Candidates from outside Government and/or employees serving on other than career or career-type appointments (e.g., term, temporary) are considered "non-status." These candidates must be appointed using the Schedule B authority, see 5 CFR 213.3202(j). The appointment may not exceed or be extended beyond 3 years.

Assignments must be to full-time non-SES positions created for developmental purposes connected with the SES candidate development program. Candidates serving under Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis.

Schedule B appointments must be made in the same manner as merit staffing requirements prescribed for the SES, except that each agency shall follow the principle of veterans preference as far as administratively feasible. Positions filled through this authority are excluded under 5 CFR 302.101 (c)(6) from the appointment procedures of Part 302 pertaining to employment in the excepted service.

MEMORANDUM OF UNDERSTANDING

If an agency sponsors an SES CDP and selects one or more candidates from outside the agency, OPM recommends developing a memorandum of understanding (MOU) with the candidate's home agency. The MOU would indicate the candidate can participate in the program even if leadership changes occur within the candidate's home agency. The MOU should be signed by an official at a higher level than the candidate's first line supervisor, preferably the Chief Human Capital Officer. Items that could be included in the MOU are:

- Candidate's Name;
- Home Agency;

- SES CDP Sponsoring Agency;
- Program Duration;
- Components of the program to be completed; and
- A provision that establishes which of the two agencies pays for what program-related costs (e.g. who pays for training, who pays for details, who pays for travel, etc.).

FORMAL TRAINING EXPERIENCE

Candidates are required to complete at least 80 hours of formal training throughout the duration of the program. The formal training must address the ECQs and their application to SES positions, and it is recommended the training target competency gaps identified during the initial assessment phase of the program. Candidates' training must include interaction with a wide mix of senior managers and executives outside the candidate's department or agency to foster a broader perspective. A "wide mix" of senior managers and executives can also include state, local, and foreign governments, and private and non-profit sector personnel. The 80 hours of formal training requirement does not have to be met through one 80 hour course; it can be met through a series of courses. However, the formal training should target specific ECQs identified during the initial assessment for each candidate.

EXCEPTION TO INTERAGENCY MIX REQUIREMENT

The exception currently in 5 CFR 412.104(e)(2) allows candidates to count work experience or developmental assignments outside the candidate's home agency towards the interagency part of this requirement as long as the assignment is considered to be "interagency." The assignment must be longer than 80 hours to be counted towards the "interagency" component of the training requirement. The candidate will still need to complete 80 hours of formal training, regardless. The "interagency" detail or assignment is not a substitute for the training. Training is a requirement to complete an SESCO.

"GRANDFATHERING" RECENTLY ATTENDED TRAINING

Candidates do have the option to count training they have recently attended towards the 80 hour interagency requirement. Below are guidelines if a candidate wants to count previous training towards the 80 hour interagency training requirement:

- **A maximum of 40 hours of training can be counted towards the 80 hour requirement.** Types of training include:
 - Classroom training
 - Training targeted to meet one or more ECQs the candidate is trying to develop
 - Online training
 - Graduate level courses in a degree program accredited the U.S. Department of Education. Based on American Council for Education guidelines, 40 hours of instruction are equivalent to about 3 graduate semester hours.

- **The nature of the training must be interagency and/or multi-sector.** This guideline can be met by providing one or more of the following documents:
 - Syllabus of the training;
 - List of speakers;
 - Description of the types of participants including the participant’s agency or organization; and
 - A combination of the three documents

“Interagency” and “multi-sector” include state, local, and foreign governments as well as private sector and non-profit organizations.
- **The candidate must show evidence of course completion and the training must address one of the ECQs the candidate identified at the beginning of the program as needing development.** Agencies must verify the candidate’s completion of the training and ensure the training addressed the ECQs.
- **The training must have been completed within a 1 year period prior to selection.** However, the training could have begun anytime before the 1 year period prior to selection.

The focus of the entire program should be on closing competency gaps identified at the beginning of the program. If after all the requirements are met and the candidate’s competency gap(s) are not all addressed, the agency will need to provide training or other developmental opportunities (e.g. developmental assignments, reading a book) to the candidate prior to QRB certification. Ultimately, the agency must provide the appropriate developmental needs to candidates to address their competency gap(s) to meet the Criterion B qualifications.

DEVELOPMENTAL ASSIGNMENTS

One of the requirements listed in 5 CFR 412.104 is a developmental assignment totaling at least 4 months of full-time service outside the candidate’s position of record. The purpose of the assignment is to broaden the candidate’s experience and/or increase the knowledge of the overall function of the agency so the candidate is prepared for a variety of SES positions. OPM recommends at least one assignment be at least 90 consecutive days. A longer duration will provide candidates the opportunity to develop relationships with peers, work across boundaries, and gain a broader understanding of other parts of the organization. The longer assignment helps ensure the development of the candidate’s executive competencies.

- In line with the National Strategy for the Development of National Security Professionals, agencies should place particular emphasis on developmental assignments for SES CDP candidates who are designated as National Security Professionals (NSP) under Executive Order 13434, May 17, 2007. A developmental assignment is almost essential if the SES CDP candidate is currently in a NSP position or would like to develop NSP competencies. See OPM’s November 13, 2008 memorandum to the Chief Human Capital Officers “Recommended National Security Professional Qualification for NSP SES” on

<http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalId=1709> for more information.

Documentation for a QRB Certification: Participation in a CDP must be documented for each candidate in the ESCS data system, including the dates the candidate started and completed the program. Prior to submitting requests to OPM for a QRB certification of graduates' executive qualifications, the agency must update all pertinent data for the CDP in the ESCS (e.g. date individual completes SES-CDP), and create a request for the criterion B QRB case. Refer to the Criterion B cases in chapter 2 of this guide, which details requirements for submitting Criterion B cases.

QUALIFICATIONS REVIEW BOARD CERTIFICATION

QRB ACTION

The criteria for QRB Criterion B certification are the same as criterion A cases – possession of the Executive Core Qualifications. The QRB reviews each candidate's initial assessment, EDP, and training and developmental experiences, based on the documentation provided, to ensure the information provides the basis for certification of the individual's executive qualifications as required by 5 U.S.C. 3393. If the agency has an OPM-approved CDP and the candidate has completed the program requirements in 5 CFR 412.104(e), the QRB will determine if the candidate possesses the executive qualifications required for initial career appointment to the SES.

If a candidate is not certified by the QRB, the agency has the option to revise the package and clarify any areas identified by the QRB panel. If a candidate is disapproved a second time, then the agency must address any competency gaps identified by the QRB panel before submitting the candidate for approval a third time.

CERTIFICATION

To distinguish between candidates who may be appointed to the SES without further competition and those who must still compete because their entry into the program was based on an exception to Governmentwide competition, the candidate's QRB certificate will include either of the following statements:

- “This certification permits career appointments to the Senior Executive Service, without further competition, in any agency to any position for which this individual is determined to be otherwise qualified.”
- “This certification permits career appointment to the Senior Executive Service in any agency to any position for which this individual is determined to be otherwise qualified, after competition in accordance with 5 CFR 317.501.”

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CHAPTER 8: REMOVALS AND SUSPENSIONS

STATUTE: 5 U.S.C. 3393(g), 3592, and 7541-7543

REGULATIONS: 5 CFR Part 359 and Part 752

Procedural protections and placement or other rights to which a SES member is entitled are determined by law and regulation. They depend on the nature of the action being taken, the type of SES appointment held by the member and, at times, by the member's appointment status just before entry into the SES.

GENERAL INFORMATION

Discipline vs. unacceptable performance: An agency may find it difficult at times to distinguish between unacceptable performance and misconduct, neglect of duty, or malfeasance. Each may result in the appointee's failure to carry out significant duties and responsibilities of the position. However, unacceptable performance generally results from the appointee's inability to perform due to a lack of technical knowledge or managerial competency. Misconduct, neglect of duty, and malfeasance, on the other hand, denote intentional wrongdoing on the part of the appointee.

The U.S. Court of Appeals for the Federal Circuit ruled in *Berube v. General Services Administration* (820 F.2d 396, Fed Cir 1987) that "an employee's actions or inaction related to his job performance may or may not amount to misconduct, neglect of duty, or malfeasance depending on the circumstances. When they do not, the agency must proceed under 5 U.S.C. 3592 [performance removal]. When they do, the agency may proceed under 5 U.S.C 7543 [adverse action removal]."

The MSPB ruled in *Beverly J. Berger v. Department of Energy* (DC07528610398, December 14, 1987) that although an agency may proceed to take an adverse action removal under 5 U.S.C. 7543 in a performance related case involving misconduct, neglect of duty, or malfeasance, there is nothing to preclude the agency from proceeding to take a performance removal action under U.S.C. 3592.

Off-duty conduct: If an agency wishes to take disciplinary action based on the appointee's off-duty actions or misconduct, it must demonstrate a nexus between the off-duty actions and the appointee's ability to carry out the assigned responsibilities of the position to which assigned.

PROHIBITED ACTIONS

Agencies should refer to 5 U.S.C. 2301 (merit system principles) and 5 U.S.C. 2302 (prohibited personnel practices) for information on practices that cannot be used as a basis for taking actions covered in this chapter.

Under 5 U.S.C. 3393(g), a career appointee may not be removed from the SES or the civil service except in accordance with specifically cited provisions in Title 5, U.S.C. If a career appointee takes a position outside the SES under other circumstances, the voluntary nature of the action should be agreed to in writing before the action is effected, and the agreement should be retained as a permanent record in the Official Personnel Folder.

Under 5 U.S.C. 3392(d), the removal of an individual from any SES position in an independent regulatory commission “shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.”

120-DAY MORATORIUM ON CERTAIN REMOVALS

The law [5 U.S.C. 3592(b)(1)] prohibits removals of career appointees during the probationary period or for performance reasons after completion of the probationary period:

- within 120 days after an appointment of the head of the agency; or
- within 120 days after the appointment in the agency of the career appointee’s most immediate supervisor who is a noncareer appointee and has the authority to remove the career appointee. Time spent “acting” in the supervisory position does not count toward the 120 day time period.

The purpose of the moratorium is to prevent peremptory actions during transition periods when the agency head or noncareer supervisor does not have adequate knowledge of an SES career appointee.

Definitions and interpretations: See Career Reassignments in Chapter 3.

Waiver: An appointee may voluntarily waive application of the 120-day moratorium to a specific removal action. The waiver must be in writing and be retained as a temporary record in the Official Personnel File.

Effect on advance notice: Any advance notice requirements for a removal action may run concurrently with the 120-day moratorium, but the removal normally may not be effected until the moratorium has ended.

APPEALS

Merit System Protection Board (MSPB) requirements on what a decision notice regarding matters appealable to the Board should include and the procedures for filing an appeal are found at 5 CFR 1201.21 through 1201.24.

REMOVAL DURING THE PROBATIONARY PERIOD

STATUTE: 5 U.S.C. 3592

REGULATIONS: 5 CFR Part 359, Subpart D

An individual who receives an SES career appointment must serve a 1 year probationary period. Under 5 CFR 317.503, the probationary period as established by 5 U.S.C. 3393(d) is defined as a full calendar year. [See Chapter 2, General Staffing and Career Appointments, for guidance on the probationary period.]

A career appointee may be removed from the SES at any time during the probationary period for a variety of reasons, such as unacceptable performance, misconduct, conditions arising before appointment, and reduction in force. The procedural protections and placement rights to which the

probationer is entitled are determined by the basis for the removal action and the individual's appointment status just before entering the SES.

Timing: MSPB has ruled that an employee is considered to have completed the SES probationary period as of the end of the employee's last workday of the year following SES appointment [D. Morris v. Department of Interior (HQ359286 10024, February 4, 1987)]. For example, when the last workday is a Friday and the 1-year anniversary date is the following Monday, any probationary separation under the MSPB interpretation would have to take place before the end of the tour of duty on Friday.

Reemployed annuitants: A career appointee who is a reemployed annuitant serves at the pleasure of the appointing authority. The removal of a reemployed annuitant who is serving a probationary period is effected under 5 CFR Part 359, Subpart I. Actions taken under that subpart are discussed later in this chapter.

REMOVAL OF PROBATIONERS FOR UNACCEPTABLE PERFORMANCE

Agencies use the probationary period to observe and evaluate the appointee's performance of assigned duties and responsibilities. If an agency finds that the probationer's managerial or professional/technical performance is unacceptable, the agency should consider whether remedial action (such as specialized training or assignment to other SES duties) or removal action is appropriate. Removal for unacceptable performance during the probationary period is effected under 5 CFR Part 359, Subpart D.

The removal of a probationer for unacceptable performance need not be predicated on a formal unsatisfactory rating under the performance appraisal system established under 5 U.S.C. 4312-14 and 5 CFR Part 430, Subpart C. However, if the agency has given a probationer a formal unsatisfactory (or minimally satisfactory) rating of record, it can use that rating as the basis for the removal action.

Even though one minimally satisfactory rating is not the basis for removal of an individual who has completed the probationary period, it does not prevent the removal of a probationer on the basis of the rating. Further, even if an individual receives a formal fully successful or higher rating of record during the probationary period, it does not prevent the removal of the individual later in the probationary period if the individual's performance has become unacceptable. A new formal rating is not necessary.

Notice: The agency must give the probationer a written notice at least 1 day before the effective date of the removal. However, the agency may want to consider a longer notice period. The notice must:

- state the agency's conclusions as to the inadequacies of the probationer's performance;
- state whether the probationer has placement rights to another position outside the SES and, if so, identify the position to which the individual will be assigned; and
- show the effective date of the action.

Guaranteed Placement: Guaranteed placement at GS-15 or above (e.g., Senior Level) upon removal from the SES is limited to those probationers who, at the time of appointment to the SES held a career or career-conditional appointment, or an appointment of equivalent tenure as defined

in 5 CFR 359.701(a). Probationers who are not entitled to guaranteed placement are separated from the Federal service.

120-Day Moratorium: The removal of a probationer for performance reasons is subject to the 120-day moratorium described at the beginning of this section, except as follows:

- there is an exception to the moratorium if the removal is based on a formal unsatisfactory performance rating given before the appointment of the new agency head or noncareer supervisor which initiated the moratorium; and
- the moratorium does not extend the probationary period. Thus, it is possible for a probationer against whom an agency is contemplating removal action to complete the probationary period during a moratorium. In such case, a subsequent removal action for performance could not be processed as a probationary removal under 5 CFR Part 359, Subpart D, but would be taken under 5 CFR Part 359, Subpart E.

Appeal: The removal of a probationer for performance reasons is not appealable to the Merit Systems Protection Board and does not entitle the employee to an informal hearing before the Board. [MSPB decision, Brenda J. Gaines vs. HUD, HQ 12018110066, February 2, 1983.]

REMOVAL OF PROBATIONERS FOR DISCIPLINARY REASONS

Removal during the probationary period for disciplinary reasons is effected by 5 CFR Part 752 or Part 359, as appropriate. Part 752, Subpart F, applies when the probationer has adverse action coverage under 5 U.S.C. 7511 immediately before entry into the SES. Part 359, Subpart D, applies in all other instances. The requirements for taking a removal action under Part 752 are discussed later in this chapter.

Basis for action: Under the CSRA, a removal under 5 U.S.C. 7543 had to meet the standard of “for such cause as would promote the efficiency of the service.” Subsequent legislation deletes that standard and substitutes for it “misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.” Although these amendments do not directly alter the language dealing with the removal of probationers for disciplinary reasons under 5 U.S.C. 3592, equity considerations require the use of a uniform standard. Thus, the removal of a probationer for disciplinary reasons under 5 CFR Part 359 should meet the same standard as in 5 U.S.C. 7543.

Off-duty actions or misconduct could support removal under 5 CFR Part 359 provided there is a nexus between the off-duty actions and the probationer’s ability to discharge the responsibilities of the position.

Notice: Procedural requirements for effecting the removal of a probationer under 5 CFR Part 359, Subpart D, for disciplinary reasons are similar to those governing removals for performance reasons. The agency must give the probationer a written notice at least 1 day before the effective date of the action. (To the extent that circumstances warrant and permit, it is recommended that the notice be given to the probationer at an earlier date.) The notice must indicate the basis for the removal action (e.g., misconduct, neglect of duty, or malfeasance), and show the effective date of the removal. These procedures are modified when a moratorium exists and the agency invokes a specific exception, as discussed below.

120-day Moratorium: The removal of a probationer under Part 359, Subpart D, for disciplinary reasons is subject to the 120-day moratorium described at the beginning of this chapter, with the following exceptions:

- the disciplinary action was initiated before the appointment of the agency head or SES noncareer supervisor (i.e., before the appointment which initiated the moratorium); or
- there is reasonable cause to believe that the probationer committed a crime punishable by a prison sentence, or that retention of the probationer may pose a threat to the appointee or others; may result in loss of or damage to Government property; or may otherwise jeopardize legitimate Government interests. When this exception is invoked, the following additional procedural requirements must be met:

(1) the agency's notice shall include the reasons for invoking the exception. The probationer shall be given a reasonable time (not less than seven days) to respond regarding the propriety of the exception. The agency shall give the probationer a notice of decision on the propriety of using the exception at or before the time the action will be effective; and

(2) when circumstances require immediate action, the agency may place the probationer in a nonduty status with pay for such time as necessary to effect the removal.

Imposing a moratorium does not extend the probationary period. Thus, it is possible for a probationer against whom an agency is contemplating disciplinary action to complete the probationary period during a moratorium.

In such case, a subsequent disciplinary removal action could not be processed under 5 CFR Part 359, Subpart D, but would have to be taken under 5 CFR Part 752, Subpart F (Adverse Actions).

Guaranteed Placement: A probationer removed for disciplinary reasons is not entitled to placement in a position outside the SES.

Appeal: The removal of a probationer for disciplinary reasons under 5 CFR Part 359, Subpart D, is not appealable to the Merit Systems Protection Board.

REMOVAL OF PROBATIONERS FOR CONDITIONS ARISING BEFORE APPOINTMENT

An agency may separate a probationer for conditions arising before appointment to the SES when those conditions have a bearing on the probationer's fitness or qualifications for continued employment in the SES. Cases of this type should occur infrequently. Generally, they would involve an appointee from outside the Federal service, and the derogatory information would become known as a result of a post-appointment background review. In such cases, a removal for pre-appointment conditions would be effected under 5 CFR Part 359, Subpart D.

However, in the event that the probationer had coverage under 5 U.S.C. 7511 immediately before entering the SES, the removal would be effected under 5 CFR Part 752, Subpart F. If the circumstance does not satisfy the standard of action at 5 CFR 752.603, the agency may want to consider whether action should be taken under Part 731 (Suitability) for such cause as would promote the efficiency of the service.

Procedures: The procedural requirements governing the removal of a probationer for pre-appointment conditions differ significantly from those governing removal for performance or

misconduct. When the removal is based, in whole or in part, on conditions arising before appointment to the SES, the probationer is afforded an opportunity to answer or refute the derogatory information bearing on fitness or qualifications for continued employment. The probationer is entitled to the following:

- an advance written notice showing the reasons for the removal;
- a reasonable time to respond;
- the right to reply orally or in writing, to furnish documentary evidence in support of the answer, and to be represented by an attorney or other representative; and
- a written decision which shows the reasons for the action and the effective date and which is delivered at or before the time the action will be made effective.

As discussed below, these procedures are modified when a moratorium exists and the agency invokes a specific exception.

120-day moratorium: The removal of a probationer for pre-appointment conditions is subject to the 120-day moratorium described at the beginning of this chapter. The moratorium may be waived under the same conditions previously described in this section.

Guaranteed placement: A probationer removed for pre-appointment conditions is not entitled to placement in a position outside the SES.

Appeal: The removal of a probationer for pre-appointment conditions under 5 CFR Part 359, Subpart D, is not appealable to the Merit Systems Protection Board.

REMOVAL OF A PROBATIONER UNDER A REDUCTION IN FORCE (RIF)

The provisions on competition for job retention in a RIF apply to all SES career appointees, probationers and post-probationers alike. All requirements for conducting a competition for job retention in a RIF situation are covered in Chapter 9.

Placement rights: A probationer who is affected by a RIF has no statutory or regulatory placement rights within the SES. However, an agency may on its own place the probationer in a vacant SES position for which qualified, if there is no post-probationer affected by the RIF who is entitled to the position.

If the probationer is not placed in another SES position, removal from the SES is effected under 5 CFR Part 359, Subpart D, except that removal of a reemployed annuitant is effected under 5 CFR Part 359, Subpart I.

Notice: The agency must give the probationer a written notice before the effective date of the removal showing:

- the action to be taken and its effective date;
- the reason for the action;
- the nature of the competition for job retention including the probationer's competitive area (if the competitive area is not agencywide) and competitive standing;
- a statement on whether the probationer has placement rights to another position outside the SES and, if so, the position to which he/she will be assigned;

- the probationer's eligibility for discontinued service retirement, if the applicable age and/or service requirements are met; [Chapter 11]
- the place where the probationer may inspect the regulations and records pertinent to the action; and
- the probationer's right of appeal to the Merit Systems Protection Board on the competitive procedures used for determining job retention, the time limit for making an appeal, and the MSPB office to which the appeal should be sent.

120-day moratorium: The removal of a probationer from the SES by RIF is not subject to the moratorium.

Guaranteed placement: The probationer's placement rights outside the SES, if any, are governed by 5 CFR Part 359, Subpart G. Guaranteed placement upon removal from the SES by RIF is limited to those probationers who, at the time of appointment to the SES, held a career or career-conditional appointment, or an appointment of equivalent tenure as defined in 5 CFR 359.701(a). [See Chapter 10 on placement provisions.] Probationers who are not entitled to a guaranteed placement are separated from the Federal service.

REMOVAL FOR PERFORMANCE REASONS

STATUTE: 5 U.S.C. 3592

REGULATIONS: 5 CFR Part 359, Subpart E

This section covers the removal of a post-probationer from the SES for less-than-fully-successful executive performance under 5 CFR Part 359, Subpart E. The term "post-probationer" refers to an SES career appointee who completed the SES probationary period or was not required to serve a probationary period.

A career appointee who is a reemployed annuitant serves at the pleasure of the appointing authority. The removal of a reemployed annuitant is effected under 5 CFR Part 359, Subpart I. Actions taken under that subpart are discussed later in this chapter.

For those situations that involve both performance and conduct factors, see *Removal and Suspension for Disciplinary Reasons*, for guidance on whether to effect a removal under performance or adverse action procedures.

PERFORMANCE APPRAISAL

Each agency is required to have an SES performance appraisal system. One of the purposes of an appraisal system is to provide a basis for determining that an individual's performance either merits retention in the SES or warrants some remedial action, including the individual's removal from the SES. [See Chapter 5 for performance appraisal systems.]

The removal of a career appointee from the SES under 5 CFR Part 359, Subpart E, must be based on the appointee's final SES rating (or ratings) of record assigned by the appointing authority following recommendation of a Performance Review Board.

An agency may terminate a performance appraisal period before its completion when it finds there is adequate basis on which to appraise and rate the executive [5 U.S.C. 4314(b)(1)(D)].

This means that an agency need not retain an unsatisfactory performer in a position until the end of the SES rating cycle, although the executive must be given a reasonable opportunity to demonstrate competence in a position before being appraised. At the least, the minimum appraisal period must be met and the agency must complete the full rating process, including action by a Performance Review Board, and final rating by the appointing authority.

If an executive receives an unsatisfactory rating and is retained in the SES in another position, or if the executive receives a minimally satisfactory rating, the agency is required under 5 CFR 430.306 to provide the executive with advice and assistance, to improve his/her performance before the next annual summary rating is given.

OPTIONAL REMOVAL: ONE UNSATISFACTORY RATING

An appointee who receives a final rating of “unsatisfactory” cannot remain in the same position [5 U.S.C. 4314(b) (3)]. The agency must either place the appointee in a position outside the SES, or in another position in the SES for which the appointee is qualified. This may be done by reassignment within the agency, or with the appointee’s approval, by transfer to another agency. Placement in another SES position, rather than removal from the SES, would be appropriate when the individual is capable of performing at the SES level, but was not suited for the original SES position. However, should the agency choose to take a reassignment action, it cannot subsequently remove the individual from the SES solely on the basis of this one unsatisfactory rating. The individual must receive another unsatisfactory rating, or a minimally satisfactory rating, as described in the next paragraph.

MANDATORY REMOVAL: TWO LESS THAN FULLY SUCCESSFUL RATINGS

Under 5 U.S.C. 4314(b)(3) and (4), an agency must remove a career appointee from the SES when the appointee receives the following final ratings of record under an SES performance appraisal system:

- two ratings of “unsatisfactory” within 5 consecutive years;
- two ratings of “minimally satisfactory” within 3 consecutive years; or
- one rating of “unsatisfactory” and one rating of “minimally satisfactory” within 3 consecutive years.

The final ratings of record used to support the removal action may have been assigned under two different SES performance appraisal systems, or by two different agencies. Further, both ratings may be based on a shortened appraisal period when issued in accordance with the Performance Appraisal section above.

PROCEDURES

The agency must give the career appointee a written notice at least 30 calendar days before the effective date of removal from the SES. The notice must include the following information:

- the reason for the removal, i.e., the final summary rating(s) and date(s) when given, and which the agency is using to support the removal action;
- the appointee's right to be placed in a position outside the SES. (If the agency makes a decision regarding the specific position to which the appointee will be assigned, this information should be included in the advance notice. As an alternative, the agency may advise the appointee of the new position in a supplementary notice issued at least 10 calendar days before the effective date of the action);
- the appointee's right to request an informal hearing before an official designated by MSPB. (Advise the appointee that the request should be made to the Headquarters Office of the MSPB at least 15 days before the effective date of the action, paragraph #7 below.);
- the effective date of the removal; and
- when applicable, the appointee's eligibility for discontinued service retirement under 5 U.S.C. 8336(h) for CSRS or 5 U.S.C. 8414(a) for FERS.

120-DAY MORATORIUM

The removal of a career appointee for performance reasons is subject to the 120-day moratorium, except for a removal based on an unsatisfactory rating given before the appointment of the new agency head or noncareer supervisor that initiated the moratorium. This exception covers:

- an optional removal based on one unsatisfactory rating;
- a mandatory removal based on two unsatisfactory ratings in 5 years; and
- a mandatory removal based on two less than fully successful ratings in 3 years when the second rating is an unsatisfactory rating.

For additional information on the moratorium, see *Career Reassignments* in Chapter 3.

PLACEMENT

A post-probationer removed for performance reasons is entitled to placement in a position outside the SES (See Chapter 10 for placement provisions). Note also that an SES appointee removed for performance reasons is not eligible for reinstatement in the SES (See guidance on reinstatement in Chapter 3).

INFORMAL MSPB HEARING

A removal for performance is not appealable to MSPB under 5 U.S.C. 7701. However, under 5 U.S.C. 3592(a), a career appointee may request (and MSPB shall grant) an informal hearing before an official designated by MSPB.

Under MSPB regulations [5 CFR 1201.141-1201.143], the appointee and/or a representative may appear and present arguments. A transcript is made of the hearing.

The MSPB indicates that it lacks authority to change a performance rating or to order a specific remedy such as reinstatement to the SES, as a result of the hearing. However, it can comment on the executive's arguments and recommend appropriate action if a serious defect in the personnel

action is manifest (e.g., misapplication of relevant statutory provisions, departure from important procedural rights, or an error going to the heart of the agency's removal determination). [*Alfredo Mathew, Jr. v. Equal Employment Opportunity Commission*, HQ 12018110009, October 19, 1981, and *Pauline G. Johnson v. Agency for International Development*, HQ359283 10004, August 11, 1983. In March 21, 1995], (case *James R. Alliston*, CB-3592-95-0016-U-1), the Administrative Law Judge (ALJ) stated in the summary of proceedings: "There are no provisions for the submission of testimony or other evidence by the appointee. There are no provisions for the presentation of evidence or arguments by the employing agency" and stated, "There are no provisions [the statute or regulations] for the issuance of a decision or for the granting of relief."

The MSPB normally refers a copy of the record and any recommendations to the Special Counsel, as well as to OPM and the employing agency, for whatever action may be appropriate.

Conducting an informal hearing does not delay the effective date of removal.

REMOVAL AND SUSPENSION FOR DISCIPLINARY REASONS (ADVERSE ACTIONS)

STATUTE: 5 U.S.C. 7541-7543

REGULATIONS: 5 CFR Part 752

This Section deals with adverse actions resulting in the removal from the Federal service or suspension of SES career appointees and certain limited appointees for disciplinary reasons.

COVERAGE

Career appointees who have completed the SES probationary period, or were not required to serve one.

Career appointees who are serving an SES probationary period if they were covered under 5 U.S.C. 7511 immediately before entering the SES. Essentially, 5 U.S.C. 7511 covers employees in the competitive service who are not serving a probationary period, preference eligible employees in the excepted service who have completed 1 year of current continuous service in an executive agency, and certain other employees in the excepted service who are not preference eligibles.

Limited emergency and limited term appointees who were covered by 5 U.S.C. 7511 immediately before entering the SES and who received their limited appointment in the same agency.

A career appointee who is a reemployed annuitant serves at the pleasure of the appointing authority. Removal of a reemployed annuitant is effected under 5 CFR Part 359, Subpart I. Actions taken under this subpart are discussed later in this chapter.

STANDARD FOR ACTION

The adverse action statute in 5 U.S.C. 7512 covers removal, suspension for more than 14 days, reduction in grade or pay, and furlough for 30 days or less for competitive service employees and certain excepted service employees. The standard for action is "for such cause as would promote the efficiency of the service." By contrast, the corresponding section on adverse actions in the SES covers only two actions: removal and suspension for more than 14 days. Moreover, the standard

for action in accordance with 5 U.S.C. 7543 is “misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.”

Removal: “Removal” means removal from the Federal service.

Suspension: “Suspension” means more than 14 days. The law is silent on short-term suspensions, i.e., a suspension of 14 days or less. Since there is no statutory authority for such action, agencies may not take a suspension of 14 days or less against an SES member. However, this does not restrict the agency from issuing a reprimand or admonishment for offenses which do not warrant a suspension.

Disciplinary reasons: A disciplinary reason is defined as misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function. [Note, however, that 5 U.S.C. 8336(d) provides that separation for failure to accept a directed reassignment or a transfer of function outside of the commuting area shall not be considered a removal for cause on charges of misconduct or delinquency for purposes of determining eligibility for discontinued service retirement.]

PROCEDURES

Procedural requirements for taking an adverse action against an appointee are in 5 CFR Part 752, Subpart F.

Notice: The agency must give the appointee 30 days’ advance written notice that includes this information:

- the nature of the proposed action (If a proposed suspension, give the duration.);
- the specific reasons for the proposed action. (Identify and/or describe the instances of misconduct, neglect of duty, or malfeasance, or the reassignment or transfer of function the appointee declined);
- the appointee’s right to review the material the agency is using to support the charges;
- the appointee’s right to reply orally and in writing and to furnish affidavits and other documentary evidence (Identify the agency official authorized to hear the oral reply. Advise the appointee of the time limit for making an oral and/or written reply);
- if agency regulations provide for one, the appointee’s right to a hearing in place of or in addition to the opportunity for written and oral reply; and [See 5 U.S.C. 7543(c)]
- the appointee’s right to be represented by an attorney or other representative.

Exception to the 30-day notice period: The 30-day advance notice period may be curtailed only if the agency has reasonable cause to believe that the appointee committed a crime for which a sentence of imprisonment may be imposed. In such cases:

- the advance notice must explain the reasons for curtailing the notice period;
- the agency may require the appointee to provide an answer to the proposed action, including any supporting affidavits or other documentary evidence within such time as the agency considers reasonable under the circumstances, but not less than 7 days; and

- if the appointee challenges both the curtailment of the notice period and the proposed adverse action and the agency's final decision is to proceed with the action in less than 30 days, the agency may want to include in the final decision notice a statement on its conclusion about the propriety of curtailing the notice period.

Other considerations: If the agency does not have reasonable cause to believe that the appointee committed a crime for which an imprisonment may be imposed, the appointee has a right to the 30-day notice period. Even so, there may be circumstances where keeping the appointee in his/her present position may pose a threat to the appointee or others, result in loss or damage to Government property, or otherwise jeopardize legitimate Government interests. In such cases, an agency may act to reduce or remove the threat during the notice period. Such actions could include:

- assigning the appointee to duties where he/she is no longer a threat;
- placing the appointee on leave with his/her consent; and
- carrying the appointee in an appropriate leave status (i.e., annual, sick, leave without pay, absent without leave) if the appointee is voluntarily absent for reasons not originating with the agency.

If these options are not available, the agency could place the appointee in a paid, nonduty status during all or part of the 30-day advance notice period.

Appointee review and response: The documentary evidence used by the agency to support a disciplinary action must be made available for review by the appointee or a representative or designated physician. An appointee in an active duty status must be given a reasonable amount of official time to review the documentary evidence and prepare a response. The agency official designated to hear the oral reply must be one who has authority either to make or to recommend a final decision on the proposed action.

Appointee representative: The appointee is entitled to be represented by an attorney or other representative. The agency may, under certain circumstances, disallow an appointee's choice of representative. This may occur when the appointee's choice would result in a conflict of interest. In addition, if the proposed representative is an agency employee, the agency may disallow the choice when that employee's assumption of the representational responsibilities would give rise to unreasonable costs, or undue interruption of priority work assignments.

Agency decision: In arriving at a decision, the agency shall consider only the reasons specified in the advance notice and any written and/or oral response thereto by the appointee or a representative.

Notice of decision: The agency must give the appointee a notice of decision that:

- states the reasons for the agency's decision to take the removal or suspension action (The notice should indicate the agency's decision on each of the reasons specified in the advance notice.);
- shows the effective date of the removal or the duration and effective dates of the suspension (Except as provided for in the above paragraph on exceptions, the effective date may not be less than 30 calendar days from the date of the advance notice.);

- advises the appointee of the right of appeal to the Merit Systems Protection Board (The notice should indicate the time limit for making an appeal and the MSPB office to which the appeal should be sent.); and
- is delivered to the appointee at or before the time the action will be effective.

Imposing a less severe penalty: After consideration of the appointee's response, an agency may decide to substitute a less severe penalty. The substitute penalty may be a suspension for more than 14 days or a letter of reprimand. For the reasons discussed in the paragraph above, an agency may not impose a suspension of 14 days or less. The agency's decision to mitigate the penalty should be included in the notice of decision given the appointee.

120-DAY MORATORIUM

The removal of a career appointee SES from Federal service or suspension from the SES under 5 CFR Part 752, Subpart F, is **not** subject to the 120-day moratorium.

PLACEMENT

An appointee removed from the SES under 5 CFR Part 752, Subpart F, is **not** entitled to placement in a position outside the SES.

Further, there is no authority for an agency to move the appointee directly from the SES to a non-SES position. However, following the action removing the appointee from the Federal service, an agency may subsequently as a separate action appoint the individual to a position outside the SES for which eligible. Note that the career transition regulations [5 CFR 330, Subparts F and G] apply to placement actions in the competitive service and in the excepted service in certain cases. Agencies should also make sure that the employee meets all the requirements pertinent to the new appointment, including suitability standards.

APPEALS

Removal or suspension from the SES under 5 CFR Part 752, Subpart F, is **appealable** to the MSPB under 5 U.S.C. 7701.

Under 5 U.S.C. 7701(b)(3), the Board has the authority to mitigate an adverse action penalty of a career SES appointee (e.g., change a removal to a suspension or change a 30-day suspension to 15 days). The Board's policy on mitigation is addressed through case law [e.g., *Douglas v. Veterans Administration*, 5 M.S.P.B. 280 (1981)]. Generally, the Board will review a penalty only to determine if the agency conscientiously considered all of the relevant mitigating factors and exercised management discretion within tolerable limits of reasonableness. The agency should be able to show that the penalty was appropriate and reasonable under the circumstances. The Board has indicated that it may review a penalty to determine whether it is clearly excessive, disproportionate to the sustained charge, or arbitrary, capricious, or unreasonable.

REMOVAL AND SUSPENSION OF NONCAREER AND LIMITED APPOINTEES AND REEMPLOYED ANNUITANTS

STATUTE: 5 U.S.C. 3592(c)

REGULATIONS: 5 CFR Part 359, Subpart I, Part 317, Subpart F, and Part 752, Subpart F

This section covers the removal and suspension from the SES of noncareer appointees, limited emergency appointees, limited appointees, and reemployed annuitants holding any type of appointment under the SES. A reemployed annuitant serves at the pleasure of the appointing authority whether holding a career, noncareer, or limited appointment.

Limited appointees who were covered by 5 U.S.C. 7511 immediately before SES appointments are covered by 5 CFR Part 752 in disciplinary cases. Removal and suspension of these limited appointees is discussed in the previous section on disciplinary removals.

REMOVAL

Notice: An individual covered by this section can be removed at any time. Removal is effected under 5 CFR Part 359, Subpart I. The agency must give the appointee a written notice at least 1 day prior to the effective date of the removal and the notice must show the effective date of the removal. The notice should be given on a workday for the employee and not be effective on a non-workday (i.e., Saturday, Sunday, or holiday), unless there is at least 1 intervening workday following the day on which the notice was given. The agency may include a statement of the reason for the action, but it is optional.

Expiration of appointment: A limited appointment must be terminated when the appointment expires, or when the employee completes the maximum period of service permitted under law. The termination is processed as prescribed in the material on noncareer and limited appointments in Chapter 3 and not as a removal.

Placement: The appointee is not entitled to placement in a position outside the SES, except as provided in the material on special conditions regarding limited appointments in Chapter 3.

SUSPENSION

The law does not specify procedural requirements regarding the suspension for disciplinary reasons of appointees covered by this section. Thus, an agency may suspend these appointees under whatever procedures it establishes.

120-DAY MORATORIUM

A removal or suspension covered by this section is **not** subject to the 120-day moratorium.

APPEALS

A removal or suspension covered by this section is **not appealable** to the Merit Systems Protection Board.

9. REDUCTION IN FORCE (RIF), RIF PLACEMENT, AND FURLOUGH

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CHAPTER 9: REDUCTION IN FORCE (RIF), RIF PLACEMENT, AND FURLOUGH

STATUTE: 5 U.S.C. 3595, 3595a

REGULATIONS: 5 CFR Part 359, Subpart F and Subpart H

GENERAL INFORMATION

This chapter covers SES RIF, OPM's RIF placement program, and furlough. The procedures on competition for job retention in a RIF described in this chapter, apply to both probationers and post-probationers. The procedures on placement, separation, notice, and appeal rights apply only to post probationers (See Chapter 8 for procedures for probationers).

As defined in 5 U.S.C. 3595(d), RIF includes the elimination or modification of a position due to reorganization, lack of funds, curtailment of work, or any other factor. These would include OPM withdrawal of SES spaces, a total agency shutdown, or the determination that a position no longer meets the criteria for inclusion in the SES.

For RIF purposes, "agency" means a cabinet department or an independent establishment. For example, the Department of Defense is one agency, with Army, Navy, and Air Force being components within that agency.

REDUCTION IN FORCE

Agencies are required by law to establish competitive procedures to determine who shall be removed from the SES in reductions in force. These procedures must be designed to ensure RIF determinations are based primarily on performance.

AGENCY RIF PLANS

Each agency is responsible for implementing the statutory provisions on RIF. An agency must publish its written RIF procedures before initiating any specific RIF action. These procedures should:

- identify the area or areas of competition, i.e., the full agency or a specified portion of the agency;
- indicate how positions or employees will be grouped within a competitive area;
- indicate how retention registers will be set up;
- describe the competitive procedures used to determine job retention;
- establish a mechanism for considering post-probationers for vacant SES positions and indicate whether probationers will be considered for such positions;
- establish a procedure for referring post-probationers to OPM for placement assistance when they cannot be placed in the SES within the agency;

- provide for placement outside the SES of post-probationers who cannot be placed in the SES;
- provide for the separation, or placement outside the SES, of probationers affected by RIF;
- provide for the separation from the Government of a post-probationer who declines a directed reassignment in his/her own agency (an adverse action taken under 5 CFR Part 752); and
- set forth the notice requirements for implementing RIF actions.

Agencies may consult with OPM's Center for Leadership and Executive Resources Policy when developing or significantly modifying their plans, to ensure the plans comply with law and regulation.

Agencies shall provide the OPM Center for Leadership and Executive Resources Policy a copy of their final SES RIF plan and any substantive changes.

AGENCY PRE-RIF ACTIONS

Agency management organizes the SES workforce to accomplish agency objectives within the given constraints on funds and personnel spaces. When faced with the possibility of a RIF, the agency should carefully examine its SES positions and determine how each may be affected. If necessary, the agency can draw up new SES staffing requirements.

Minimize negative impact: Agencies can take action to minimize the negative impact of a RIF on their SES members. For example, an agency may find that by taking a series of reassignment actions, it can reduce the number of SES members affected or, perhaps, obviate the need for a RIF. If an SES member's position is abolished, the agency can reassign the individual to a vacant SES position for which qualified, without invoking RIF procedures. In addition, the agency may help interested executives locate suitable positions in other Federal agencies or the private sector, either through its own efforts, or through OPM's RIF placement program. The agency may also consider searching the Senior Leaders website, or contacting OPM about the appropriateness of discontinued service retirement or a voluntary "early out" retirement authority.

Effect on SES spaces: As soon as it is evident that a RIF cannot be avoided, the agency should decide how the cuts will be distributed among its career, noncareer, and limited appointees. In making this decision, the agency should consider the impact on its SES structure with respect to the position authorization requirements in 5 U.S.C. 3133 and the appointment limitation requirements of 5 U.S.C. 3134 (e.g., the 25 percent limit on noncareer authorities), and consult with OPM on any necessary adjustments. Depending on the circumstances, agencies that apply RIF to their SES workforce are subject to withdrawal of the affected SES spaces, and should be prepared to justify any proposal to retain the spaces.

Advance notice: Agencies are asked to advise OPM as far ahead as possible about potential RIF activity, so that OPM can plan for placement assistance and ask other agencies for assistance. It would also be beneficial for agencies to advise executives early about possible RIFs, as they must search for job opportunities themselves, and obtain placement assistance provided by their agencies and OPM.

COMPETITIVE PROCEDURES

5 U.S.C. 3595(a) requires competition for job retention. This requirement applies to all SES career appointees, probationers as well as post-probationers. However, reemployed annuitants who serve at the pleasure of the appointing authority, are excluded from SES RIF procedures by 5 CFR 359.601(a) (2), and may be removed without competition under 5 CFR Part 359, Subpart I.

If an agency is being abolished (without a transfer of functions) and its SES members are being separated at the same time or within 3 months of the abolishment, it is not necessary to use competitive procedures [5 CFR 359. 602(a)(4)].

Competitive Area: As a first step, the agency establishes the area of competition. The competitive area may be the full agency or a major component of the agency (normally one that reports to the head of the agency). Agencies are advised to define the competitive area in such a way as to ensure adequate competition, especially in situations where the competitive area is other than the full agency.

Retention Registers: Retention registers must be developed for affected employees. There are different ways this can be done, and two examples are shown below:

(1) An agency can establish competitive levels within each competitive area and then develop a retention register for each level, as is done in the non-SES RIF [5 CFR Part 351]. Competitive levels consist of all positions in the competitive area that are sufficiently alike in qualifications requirements, duties, and responsibilities, that the agency may readily assign the incumbent of any one position to any of the other positions, without unduly interrupting the work.

Under this procedure, when a position in a competitive level is abolished, selection for release is in inverse order of standing on the retention register for that level beginning with the employee with the lowest retention standing. If employees are listed by group, the agency may select for release any SES member in the lowest group on the retention register.

(2) An agency can develop a retention register that contains all SES incumbents within the competitive area. Under this procedure, when a position is abolished, the incumbent displaces the lowest ranking person on the retention register (or a person in the lowest group on the register). The incumbent must meet the qualifications requirements of the displaced person's position.

Ranking: An agency must have a method for ranking individuals on the retention register. The competitive procedures used for ranking must be designed to assure that retention determinations are primarily based on performance, as determined under an approved SES performance appraisal system. Beyond this, however, the agency has a good deal of flexibility in developing a ranking plan. The agency could group employees by performance rating level and then use factors such as length of SES service or receipt of a Presidential Rank Award or a performance award to rank employees within the group. (Veterans' preference may not be considered since SES members are excluded by law from such preference.) As an alternative to grouping employees by performance rating level, the agency could use a point system, provided the majority of points are assigned for performance (e.g., 75 points for performance and 25 points for other factors).

Performance Rating: In ranking SES members on a retention register, an agency must use the final annual summary rating given under an SES performance appraisal system, and not any interim rating [5 CFR 359.602(a)(2)]. The agency may consider performance for more than 1 year.

The following are two examples of how an agency could group SES members on a retention register. As indicated below, individuals can be further ranked within each group. The use of unnecessarily large groups from which any employee can be chosen for release may subject the agency's actions to challenge as being arbitrary or capricious.

Plan I

Post-probationer with outstanding rating
Probationer with outstanding rating
Post-probationer with exceeds fully successful rating
Probationer with exceeds fully successful rating
Post-probationer with fully successful rating
Probationer with fully successful rating
Post-probationer with minimally satisfactory rating
Probationer with minimally satisfactory rating
Post-probationer with unsatisfactory rating
Probationer with unsatisfactory rating

Plan II

Post-probationer with outstanding rating
Post-probationer with exceeds fully successful rating
Post-probationer with fully successful rating
Probationer with outstanding rating
Probationer with exceeds fully successful rating
Probationer with fully successful rating
Post-probationer with minimally satisfactory rating
Probationer with minimally satisfactory rating
Post-probationer with unsatisfactory rating
Probationer with unsatisfactory rating

If a probationer and a post-probationer have the same retention standing, the post-probationer must be retained over the probationer.

PLACEMENT IN THE SES

In the Agency: A post-probationer who is selected by competition for release from the retention register, has a statutory right to be assigned to any vacant SES position in the agency for which the employee meets the qualifications requirements, whether in the same or a different commuting

area, and without regard to the type of appointment used to fill the position in the past. Since “agency” refers to a cabinet department or an independent establishment, this placement right cannot be restricted to SES jobs in an organizational component, regardless of the competitive area established for the RIF. (Note that the Department of Defense is considered one agency for this purpose.)

If an individual is qualified for two or more vacant positions, the agency may decide to place the individual in either position.

If two or more individuals released from a retention register are qualified for the same vacant position, the agency may decide which individual to place in the position. Note that a post-probationer has priority placement rights over a probationer.

If an individual fails to accept a directed reassignment in a RIF placement, the agency may initiate an adverse action removal under 5 CFR Part 752, Subpart F. Note that the agency cannot refer this individual to OPM for priority placement, if there is a vacant SES position within the agency for which he/she is qualified. [See Chapter 8, Removals.]

If there is no vacant SES position within the agency for which a post-probationer is qualified, the executive is entitled to placement assistance by OPM. This includes individuals from abolished agencies where competitive RIF procedures were not used.

During the period of OPM placement assistance, the individual remains on the agency rolls in an SES pay status. Further, the agency has a continuing obligation during the period to place the post-probationer in the SES, should a vacancy occur in the agency for which the individual is qualified.

OPM Placement Assistance: The specifics of OPM’s RIF placement assistance program are described later in this chapter, including the responsibilities of agencies, SES members, and OPM.

For a post-probationer to receive OPM placement assistance, the agency head must certify in writing that there is no vacant SES position in the agency for which the employee is qualified. Placement assistance begins when OPM acknowledges the agency head’s certification and continues for 45 calendar days, unless the employee is appointed to another SES position, declines a reasonable offer of placement, leaves the Government, or fails to request assistance.

If, in an emergency, the agency lacks work or funds for all or part of the period during which OPM is attempting to place the employee, the agency may, with or without the employee’s consent, place the employee on annual leave or in a leave without pay (LWOP) or non-pay status. Placement in an LWOP or non-pay status, however, may require the use of furlough procedures.

REMOVAL AND PLACEMENT OUTSIDE THE SES

If a post-probationer declines a reasonable offer of placement, OPM will advise the employing agency. OPM’s notice will identify the agency that made the offer, the title of the position offered, its geographical location, the date the offer was made, and the date the offer was declined. Under 5 U.S.C. 3595(b)(4), the employing agency may initiate a removal action from the SES based on the declination.

If a post-probationer is not placed in another SES position by the end of the 45-day OPM placement period, OPM will notify the employing agency in writing that it may initiate a removal action from the SES.

A post-probationer is entitled to placement outside the SES (See Chapter 10 on Guaranteed Placement.). The agency must place the individual in a continuing position at the GS-15 level or above, or an equivalent position. An individual affected by a RIF may accept placement outside the SES before the end of the 45-day OPM placement period, if they voluntarily agree in writing.

NOTICE REQUIREMENTS

On release from the retention register and certification to OPM: The agency must give a written notice to a post-probationer if the employee is released from a retention register and cannot be placed in another SES position in the agency. The notice must be given at least 45 days before the employee's removal from the SES. Typically, the notice should be given no later than the time when the employee is referred to OPM for the 45-day placement period. The notice must include the following information:

- the nature of the RIF competition, including the appointee's competitive area (if less than the agency) and standing on the retention register;
- the place where the appointee may inspect the regulations and records pertinent to the competition for job retention;
- efforts made to place the employee in a vacant SES position within the agency;
- the date on which the agency certified the employee to OPM for placement assistance;
- information about OPM's placement assistance program, including what the employee has to do to apply;
- the prospective effective date of removal if the individual cannot be placed elsewhere in the SES during the 45-day OPM placement period. If the specific date is not known, the agency may use a "not later than" date. (A specific termination date is needed to ensure eligibility for discontinued service retirement.); and
- the appointee's right to appeal the competitive procedures used in the RIF to the Merit Systems Protection Board if removed from the SES, the time limit for making an appeal, and the MSPB office to which the appeal should be sent.

Removal from the SES: at least 1 day before removal the agency must inform the post-probationer in writing of:

- the basis for the removal, i.e., 5 U.S.C. 3595(b)(5) if the basis is expiration of the 45-day OPM placement period, or 5 U.S.C. 3595(b)(4) if the basis is declination of a reasonable placement offer. In the latter case, identify the position offered and the date the employee declined;
- the effective date of the removal;
- reminder of the employee's appeal rights;
- placement rights outside the SES, i.e., the GS-15 or above position in which the executive will be placed;
- when applicable, the appointee's eligibility for discontinued service retirement; and

- if the employee is being separated from the Federal service (e.g., due to the abolishment of the agency), information concerning how to apply for unemployment insurance. [See Chapter 11 for other provisions affecting the SES.]

120-DAY MORATORIUM

The 120-day moratorium does not apply to a removal as a result of RIF.

The MSPB maintains that the 120-day moratorium addressed in 5 U.S.C. 3592(b)(1) on removals of career appointees following the appointment of a new agency head or noncareer supervisor, “is not applicable to a removal pursuant to a RIF” [*Gordon C. Facer v. Department of Energy* (DC035 18310289, November 9, 1984)]. The Board noted that in the case of post-probationers, section 3592 covered only performance removals and that Congress had created a separate provision for RIF removals in section 3595, because it did not does not have the 120-day moratorium (Note that RIF is traditionally understood as a means to take actions solely for bona fide management needs, such as lack of work or shortage of funds, and not for personal reasons related to the individual.).

However, agencies also need to consider the 120-day moratorium regarding involuntary reassignments in 5 U.S.C. 3395(e). When applicable, an agency must observe this restriction except when doing so would result in the violation of another law taking precedence. For example, an agency may involuntarily reassign a career appointee during the moratorium period if funding for an activity stopped, all the positions in the activity are being abolished in a RIF, or failure to make the reassignment would violate the Anti-Deficiency Act. Also, an agency may offer a reassignment and, if the offer is acceptable to the appointee, make the reassignment without regard to the moratorium. [See Chapter 3 for information on the moratorium on reassignments.] Agencies should take care to ensure that RIF actions, even when legally permitted, are not used to circumvent the moratorium provisions on removals and involuntary reassignments. To the extent possible and practicable, agencies may want to avoid RIF actions while the moratorium periods are in effect, to avoid even the appearance of circumvention.

APPEALS

5 U.S.C. 3595(c) provides a right of appeal to MSPB, under 5 U.S.C. 7701, for career appointees (both probationers and post-probationers) on the competitive procedures taken under a RIF.

NONCAREER AND LIMITED TERM APPOINTEES AND REEMPLOYED ANNUITANTS

This section covers actions affecting SES noncareer, limited term, and limited emergency appointees, as well as reemployed annuitants holding career appointments.

Under a RIF situation, an agency is not required to use competitive procedures in making reductions from among these groups of employees, but may do so at its discretion. Noncareer and limited appointees must be placed on separate retention registers from career appointees and the agency plan should include information regarding the treatment of these employees.

The removal of an employee covered by this section is effected under 5 CFR Part 359, Subpart I [See Chapter 8 on Removals.] The employee is not entitled to receive placement assistance from

OPM, to be placed in a position outside the SES (except a limited appointee with “fallback” rights as described in Chapter 3), or to appeal to the MSPB.

RECORDS

The agency must retain all records pertaining to a RIF for at least 2 years from the effective date of the RIF. These records include retention registers and information on efforts made to place the appointee within the SES.

OPM RIF PLACEMENT PROGRAM

STATUTE: 5 U.S.C. 3595(b)(3)

REGULATIONS: 5 CFR 359.603

ELIGIBILITY FOR PRIORITY PLACEMENT

OPM provides priority placement assistance to career SES members who successfully completed the SES probationary period and who, but for placement rights accorded under 5 U.S.C. 3595, would be removed from the SES because of a RIF within an agency. Eligible SES members are entitled to priority placement assistance from OPM for a period of 45 **calendar** days. This 45-day period begins on the date OPM acknowledges receipt of the agency’s certification that the individual cannot be placed in an SES position in that agency. Agency RIF certifications should be mailed to:

U.S. Office of Personnel Management
Executive Resources Services Group, HCLSMA
1900 E Street NW, Room 7470
Washington, DC 20415

The key to successful RIF placements is partnership; OPM, the agencies, and the executives share the responsibility for working together cooperatively to place career executives affected by RIF. Agencies are expected to seriously consider referred executives. Executives are expected to join with agencies and OPM and actively search for placement opportunities and to tailor their application packages when they are referred to positions. OPM will promote the partnership, assist the agencies and the executives, and facilitate the placement initiative.

Status during priority referral: During the priority referral period, the executive remains an SES career appointee of the agency that certified him or her as surplus.

Declination of offer: If an SES member turns down an offer for a career SES appointment from any agency to which referred by OPM, OPM’s placement efforts will cease immediately, and all outstanding priority referrals will be cancelled. The appointee may be removed from the SES at the expiration of the agency notice period.

AGENCY ACTION

Agency placement action: The agency must place the surplus employee internally in a vacant SES position for which the SES member is qualified.

Agency head certification: If the agency cannot place the surplus SES member in a vacant position, the agency head must certify, in writing, to the Director of OPM that there is currently no vacant SES position in the agency for which the individual is qualified. (By regulation, this certification authority may not be delegated below the Assistant Secretary level in departments, or an equivalent official above the director of personnel in other agencies.) The certification should include a copy of the employee's RIF notice and a statement describing internal placement efforts made on the employee's behalf.

OPM acknowledgement: OPM's 45-day placement assistance program begins after the OPM Director acknowledges receipt of the certification, in writing, to the agency head.

Agency notice to SES member: The agency should notify the SES member that he/she must apply to OPM for placement assistance.

Agency action during OPM placement period: The agency taking the RIF action has a continuing obligation to seek opportunities to place the SES member in an SES position if a vacancy occurs for which he/she is qualified.

Certification on QRB cases: If an agency has certified an SES member as surplus, that agency shall certify, in writing, any QRB case submitted to OPM during the OPM placement period. The certification must state that the RIF'ed executive does not meet the position's technical qualifications.

SES MEMBER ACTION

Application for assistance: The SES member must apply to OPM for placement assistance. The individual provides the Executive Resources Service Group a completed, signed, and current application for employment (SF 171, OF-612, resume, or equivalent) along with the most recent SES performance evaluation, information about geographic availability, information about the pay level the executive is willing to accept, and a Privacy Act statement that gives permission to release this information to other agencies and other potential sources of employment. If this information is not provided, OPM will consider the individual declined OPM placement assistance.

Resumes: Individuals are encouraged to prepare a one-to-two-page synopsis of their technical and managerial accomplishments, addressing the five executive core qualifications, that is suitable for publication. Individuals are also encouraged to post their resumes on OPM's Senior Leaders website.

Tailored applications: Individuals are urged to tailor applications to meet specialized qualifications requirements of the positions to which they are referred in the OPM placement process.

OPM PLACEMENT ACTIVITY

Information sources: OPM reviews SES vacancy announcements on USAJobs to identify vacant positions to which surplus executives may be referred.

Qualifications review: OPM matches individual qualifications with qualifications requirements of vacant positions, based on information provided by the agency and SES member.

Referral to agencies: OPM Agency Officers call their SES contacts in agencies where there are vacancies, to give advance notice about potential referrals. Informal contacts are followed by formal letters referring surplus executives for particular vacancies and these referral letters specify action the agency must take and a set a time limit for response. Executives may be referred to more than one agency at a time. OPM gives the executive a copy of each referral notice.

Temporary space: OPM may provide an additional SES space when appropriate, at the agency's request, to facilitate a priority placement.

Intervention in the staffing process: OPM has the authority to intervene in the staffing process to make a priority referral at any time before the QRB approves a candidate's executive qualifications. Such intervention could defer QRB consideration of one or more agency cases until the priority referral has been resolved. However, unless OPM determines that an agency is not giving serious consideration to referrals, it will not intervene in a staffing action after a selection has been approved by the appointing authority.

Action at the end of the placement period: At the end of the 45-day priority placement period, OPM will advise the agency that the placement period expired and summarize the results of the placement activity. The agency may then proceed with actions to separate from the SES the executives who were not placed during the 45 calendar days.

AGENCY ACTION ON OPM REFERRALS

Suspension of Appointment Action: When OPM refers a priority candidate for a vacant SES position, the agency may not fill that position with anyone from outside the SES or another agency, until OPM informs the agency that the priority candidate was offered an SES position in another agency, or the agency informs OPM why it is not placing the priority candidate.

Consideration of the Referred Executive: The agency must place the referred executive in the position to which referred unless it determines that the individual does not meet the position's qualifications requirements (see *Agency Objections* below). The agency must ensure that the selecting official gives a priority referral bona fide consideration for the position. Agencies are strongly encouraged to interview priority referrals.

Alternate position: If there is another SES position in the agency for which the referred executive is qualified and which falls within his/her area of geographic availability, the agency may offer the executive that position instead of the one to which referred.

Pay rate: The agency must match a priority candidate's current rate of basic pay unless the individual voluntarily agrees to accept a lower rate.

Timeframe: The agency has 10 calendar days to respond in writing to the referral, unless OPM grants an extension. When an extension has been granted, the agency should keep OPM informed

of consideration action. If an agency fails to respond to the referral in a timely manner, OPM may intervene in the staffing process or take other appropriate action.

Agency Objections:

Qualifications: A referred executive is entitled to be placed in the agency unless the head of that agency determines that the appointee is not qualified for the position to which referred. Since all SES members whose performance is not in question meet the basic SES executive qualifications by virtue of QRB certification, any objection to placement of a priority candidate must be based on failure to meet the professional/technical qualifications for the position. Required professional/technical qualifications must be clearly justified by the duties of the position. It is inappropriate for an agency to object to an SES member on the basis that he/she lacks experience that can be gained only in that agency.

Certification to OPM: If an agency declines to place a priority candidate because it determines that the candidate is not qualified for the position, or for any other reason (e.g., cancellation of the position), the agency head (or acting agency head in the absence of the agency head) must certify this decision in writing to OPM. (The agency head may not delegate this authority below the Assistant Secretary level in departments or an equivalent official above the director of personnel in other agencies.) A certification that a priority candidate is not qualified for a position must be accompanied by a copy of the qualifications standard and a detailed explanation of why the candidate is not qualified.

Cancelled positions: If the agency fails to place a priority candidate because the agency cancels the position, the candidate will be entitled to priority consideration for the position if it or a successor position is reestablished in the SES within 1 year of the cancellation date (and the candidate has not been placed in another SES position).

RIF IN INSPECTOR GENERAL ORGANIZATIONS

Inspector General (IG) organizations are subject to the RIF placement provisions of 5 U.S.C. 3595. Where laws and regulations refer to the agency or agency head, this means "agency head." Where laws and regulations refer to the appointing authority, for purposes of Inspector General organizations, this means "the Inspector General." Agency heads are encouraged to delegate certain RIF authorities to Inspectors General. Since the SES RIF law [5 U.S.C. 3595] refers to the agency or agency head, the following instructions will apply:

Competitive area: The Inspector General organization may have its own competitive area, separate from other competitive areas in the agency.

Agency certifications of surplus executives: The agency head must certify that there are no positions in the agency for which the surplus SES member qualifies, including surplus executives from IG Offices. The agency head and the Inspector General should determine how a surplus executive's placement rights will be affected within the agency. This includes considering IG executives for vacant positions in non-IG offices and vice versa. OPM will accept the certification only from the agency head, or an individual with delegated authority to certify for the agency head as to the availability of positions in the entire agency, as stated in 5 CFR 359.603.

OPM priority referrals to agencies: If the agency head has delegated authority to the Inspector General, as stated in 5 CFR 359.603, OPM will make priority referrals directly to the Inspector

General for placement in IG organizations. If there are no delegations, OPM will make the priority referrals to the agency head.

Agency objections: If the agency head has delegated this certification authority to the Inspector General, as stated in 5 CFR 359.603, OPM will accept technical qualifications determinations directly from the Inspector General for priority referrals to positions in IG organizations. Where there is no delegation, OPM will accept the certification from the Inspector General through the agency head.

[See Chapter 11, *Other Actions Affecting the SES*, for information on actions affecting Inspector General Organizations.]

CAREER TRANSITION REGULATIONS

In accordance with 5 CFR 330, Subparts F and G, agencies are required to offer career transition services to their employees to give them the skills and resources needed to find other employment. Services may include such things as skills assessment; resume preparation counseling, and job search assistance. These career transition services are available to all employees, including SES members. Although not required, agencies are encouraged to develop career transition and outreach programs especially for executives that include information about job search techniques as well as employment opportunities in the private as well as the public sector.

Agencies are also required to establish Career Transition Assistance Plans (CTAP) and Interagency Career Transition Assistance Plans (ICTAP), which provide priority selections to well-qualified RIFed employees before other candidates from within or outside the agency and for reemployment priority to former employees separated through RIF. These programs and requirements do not apply to the SES, although they do apply to SL and ST employees in the competitive service, and in the excepted service in certain cases.

FURLOUGHS

STATUTE: 5 U.S.C. 3595a

REGULATIONS: 5 CFR Part 359, Subpart H.

“Furlough” means placing an SES appointee in a temporary status without duties and pay because of lack of work or funds, or other nondisciplinary reasons.

Former career SES appointees who accepted appointments at Level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392(c) are subject to furlough at the agency’s discretion.

SHORT FURLOUGHS

A short furlough is one that will last for 30 consecutive calendar days or less (or for 22 workdays or less if the furlough does not cover consecutive days) within a 12-month period beginning on the first day of the furlough.

An agency need not use competitive procedures in selecting the SES appointees to be furloughed for short periods. However, it should make its selections for sound management reasons.

LONG FURLOUGHS

A long furlough is one that will last for more than 30 consecutive calendar days (or for more than 22 workdays if the furlough does not cover consecutive days) within a 12-month period beginning on the first day of the furlough. The furlough may not exceed 1 year.

An agency may furlough an SES appointee for more than 30 days only when it intends to recall the appointee to a duty status with pay within 1 year from the beginning of the furlough. A furlough should not be used when an agency knows it will have to separate an SES appointee through a RIF action when the furlough ends.

An agency must use competitive procedures in selecting SES career appointees for long furloughs of more than 30 days. Agencies may use the same procedures they established for competition for job retention under a RIF situation.

REQUIREMENTS FOR CAREER APPOINTEES

Notice Requirements: An agency must give the career appointee a written notice at least 30 calendar days before the effective date of the start of the furlough. The notice must include the following information:

- the reasons for the agency decision to take the furlough action;
- the expected duration and the effective dates of the furlough;
- the basis for selecting the appointee for furlough when some, but not all, SES appointees in a given organizational unit are being furloughed;
- the place where the appointee may inspect the regulations and records pertinent to the action;
- the appointee's right to appeal the furlough to MSPB, the time limit for making an appeal and the MSPB office to which the appeal should be sent; and
- if the appointee is serving a probationary period, the effect (if any) on the duration of the probationary period. [See information on Probationary Periods in Chapter 2.]

The 30-day notice period may be shortened or waived in the event of unforeseen circumstances, such as sudden emergencies requiring immediate curtailment of activities, or when furlough of employees is necessary to avoid violation of the Anti-Deficiency Act. If the notice period is shortened or waived, the agency must include the reason in the notice.

Agencies should inform SES members who are being put on long furloughs, of any changes to their retirement, health benefits, or life insurance coverage during such furloughs.

Appeals

The furlough of an SES career appointee (for any length of time) is appealable to the MSPB.

REQUIREMENTS FOR NONCAREER AND LIMITED TERM APPOINTEES AND REEMPLOYED ANNUITANTS

An agency may furlough an SES noncareer or limited term appointee, or a reemployed annuitant holding a career appointment, under agency designated procedures.

Agency procedures should meet certain minimum requirements. The appointee should be given a written notice, delivered at least one day prior to the beginning of the furlough, and it should indicate the reasons for, the duration of, and the effective dates of the furlough.

The furlough of noncareer and limited appointees and reemployed annuitants is not appealable to the MSPB.

10. GUARANTEED PLACEMENT

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CHAPTER 10: GUARANTEED PLACEMENT

STATUTE: 5 U.S.C. 3594

REGULATIONS: 5 CFR Part 359, Subpart G

GENERAL INFORMATION

Guaranteed placement (“fallback”) to a position outside the SES applies to a career appointee (other than a reemployed annuitant) who is removed from the SES under the following circumstances:

- during the SES probationary period for other than disciplinary reasons, if at the time of appointment to the SES the individual held a career or career-conditional appointment, or an appointment of equivalent tenure as defined in this section [See Chapter 8, Removals and Suspensions, for information on removal during probation.];
- after the SES probationary period as the result of less than fully successful performance [See Chapter 8 for information on removal for performance.]; and
- after the SES probationary period as the result of a reduction in force. [See Chapter 9, Reduction in Force, RIF Placement, and Furlough, for information on RIF removal of post-probationers.]

CONDITIONS OF OFFER

The placement offer must meet the following conditions:

- the offer must be to a continuing position; (To be considered “continuing” a position must be at least 3 months.)
- the position must be one that will last at GS-15 or above, or equivalent, even if the individual entered the SES from a position below the GS-15 level;
- the individual must meet the qualifications requirements for the position; and
- the tenure of the appointment must be equivalent to the tenure of the appointment held by the individual at the time of entry into the SES, if it was a career or career-conditional appointment (or an appointment of equivalent tenure). This provision does not apply if the agency does not have a position with an appointment of equivalent tenure or if the appointee is willing to accept a position having a different tenure.
- if a post-probationer does not have reinstatement eligibility in the competitive service and if there is no regular excepted appointment authority the agency can use, the agency may use the Schedule B authority under 5 CFR 213.3202(m).

The placement may not cause the separation or reduction in grade of any other employee. If there is no current vacant position for which the individual is qualified, the agency must create one.

EQUIVALENT TENURE

Appointment to a position in the excepted service that is of “equivalent tenure” [defined at 5 CFR 359.701(a)] to that of a career or career-conditional appointment in the competitive service means an appointment other than:

- an appointment to a Schedule C position established under 5 CFR Part 213;
- an appointment to a position that meets the same criteria as a Schedule C position (i.e., is policy determining or involves a close and confidential working relationship with the head of an agency or other key appointed official), but which is filled under a different appointment authority; or
- an appointment to a position where the incumbent traditionally changes when Presidential administrations change.

AGENCY RESPONSIBILITY FOR PLACEMENT

It is the agency’s responsibility to place the employee in an appropriate position within the agency. In the rare event that internal placement is not possible, the agency will arrange for a transfer to an appropriate position in another agency. Except when a transfer of function is involved, the transfer must be mutually acceptable to both the employee and the gaining agency.

RIF situations: A RIF will often affect both SES and non-SES positions and personnel. It may be difficult to find a position outside the SES in which to place an SES member. Even so, the agency is obligated by law to place the individual in a continuing position at GS-15 or above unless the action would violate the Anti-Deficiency Act or other applicable statute.

If it appears that the position in which the individual is placed outside the SES will be abolished sometime after the 3 month period, the agency should continue its effort to find an appropriate position for the individual, either internally or in another agency.

Any future RIF action affecting an individual after placement outside the SES would be taken under 5 CFR Part 351. Although the agency could issue a Part 351 RIF notice during the 3 month period, the action may not be made effective until the period is over.

Abolished agencies: If an agency is being abolished (without a transfer of functions) and an employee is being removed from the SES within 3 months of the effective date of the abolishment, the employee is not entitled to placement in a position outside the SES in the agency since there is no continuing position.

Note: If an individual has placement rights outside the SES following removal, the agency is subject only to the notice requirements governing the removal and not to the notice requirements governing SES reassignments. For example, if the non-SES position is in a different geographic area, the agency does not have to provide a 60-day advance notice to the individual, but the agency would be subject to any advance notice requirements applicable outside the SES to geographic moves. If the individual fails to report to the new position, the individual may be removed from the

civil service under adverse action procedures that are applicable for employees outside the SES, i.e., 5 CFR Part 752, Subpart D.

Effect of Career Transition Requirements: SES members exercise placement rights without regard to priority selection requirements for certain RIFed employees provided under the career transition regulations. [See 5 CFR 330.606 and 330.705]

SAVED PAY

Under 5 U.S.C. 3594(c)(1)(B), an employee placed in a non-SES position under the guaranteed placement provisions at 5 U.S.C. 3594 is entitled to be paid at the highest of:

- the rate of basic pay for the non-SES position to which assigned;
- the current rate of basic pay for the civil service position which the employee held immediately before entry into the SES; or
- the rate of basic pay held under the SES immediately before removal.

In determining which of the above three alternatives is highest for purposes of establishing the saved pay rate, the “basic rate of pay” for the first two alternatives includes any applicable locality payment under 5 U.S.C. 5304, special rate supplement under 5 U.S.C. 5305, or similar payment under other legal authority (see 5 CFR 359.705(b)). However, for an employee placed in a General Schedule position, once the saved pay rate has been established, it is not to be supplemented by a locality payment, a special rate supplement, or a similar payment under other legal authority (see 5 CFR 359.705(c)).

If placement is in a position in another agency, the employee is still entitled to saved pay.

The saved pay of an employee receiving saved pay under 5 U.S.C. 3594(c) based on the rate of basic pay held in the SES immediately before removal is subject to the limitation on SES pay under 5 U.S.C. 5382 of EX II if the individual is placed in a General Schedule position. [5 CFR 359.705(c)]

Effect of rate increase: An employee receiving saved pay will have his/her basic pay rate increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade in which placed (including any applicable locality payment, a special rate supplement, or a similar payment under other legal authority), until the pay rate is equal to the rate in effect for the position in which placed [5 U.S.C. 3594(c)(2)]. If, as a result of an increase in the scheduled rate(s) of the grade of the employee’s position, the employee’s saved pay becomes equal to or lower than the maximum rate of that grade, saved pay ceases and the employee receives the maximum rate. For example, if the saved pay falls to between GS-15/8 and GS-15/9, the employee is entitled to the GS-15/10 rate.

Effect of limited appointment: If an employee on saved pay at GS-15 receives a limited SES appointment and then returns to the GS-15 position after the limited appointment terminates, without a break in service, the employee shall resume the saved pay based on what the pay would have been had the employee remained at GS-15.

Limited appointees who return to the General Schedule: These appointees are not eligible for retained pay, but they may have pay set under the “maximum payable rate” rule, as determined by the agency. It does not matter whether the return to the General Schedule is voluntary or is the result of a management decision. However, the SES appointment must have been for more than 90 days, even though the appointee may have not actually served that long. In determining the General Schedule rate, agencies may take into account such factors as how long the individual served under the limited appointment and what the individual’s pay would have been had the individual remained in the General Schedule.

Termination of saved pay: Termination of saved pay is covered by 5 CFR 359.705(e).

DISCONTINUED SERVICE RETIREMENT

An employee may elect discontinued service retirement if eligible in lieu of guaranteed placement. [See Chapter 11, *Other Provisions Affecting the SES.*]

11. OTHER PROVISIONS AFFECTING SES MEMBERS

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CHAPTER 11: OTHER PROVISIONS AFFECTING SES MEMBERS

Statute: 5 U.S.C. Chapter 61 and Chapter 34

Regulations: 5 CFR Part 340, Chapters 13 and 24; and Part 610

GENERAL INFORMATION

The Civil Service Reform Act (CSRA) did not remove Senior Executive Service (SES) members from the normal provisions of law governing leave and hours of work. Therefore, as a general rule, it is necessary to establish a 40-hour basic administrative workweek under 5 U.S.C. 6101(a), for SES members on a full-time work schedule in the same way agencies must for other employees who are subject to the leave system. There are certain flexibilities, however, available to agencies. For example, agencies **may adopt** flexible or compressed work schedules under an alternative work schedule (AWS) program for SES members under 5 U.S.C. Chapter 61, Subchapter II. (For additional information, see 5 CFR Part 610, subpart D, and OPM's Handbook on Alternative Work Schedules at <http://www.opm.gov/oca/aws/index.asp>.)

WORK SCHEDULES

Prohibition on compensatory time off: SES members **are not eligible** for overtime pay. Therefore, they also **may not receive** compensatory time off in lieu of overtime pay for work performed as an SES member. Each agency should establish policies governing the handling of accrued compensatory time off for an employee who is subsequently placed in an SES position and thus no longer covered by 5 U.S.C. 5543. The agency may choose to (1) provide payment for any balance of compensatory time off accrued before placement in the SES position at the rate at which it was earned; or (2) allow the employee to use the accrued compensatory time off while in the SES position, subject to the normal time limits established in 5 CFR 550.114. Members of the SES are not eligible to earn compensatory time off for travel under 5 U.S.C. 5550b and 5 CFR 550, subpart N. If an individual has unused compensatory time off for travel at the time of appointment to the SES, the individual forfeits it. SES members are covered by the adjustments to work schedules for religious observances provisions under 5 U.S.C. 5550a and 5 CFR 550, subpart J.

Credit hours: SES members **are prohibited** from accumulating credit hours under a flexible work schedule program, effective December 1, 1993. SES members can use credit hours accumulated prior to their SES appointment. However, they may not receive compensation in lieu of any unused credit hours.

Part-time and intermittent employment: SES members **may be employed** on a part-time basis (regularly scheduled tour of duty) or an intermittent basis (no prearranged scheduled tour of duty), when appropriate. The employee must be able to perform at the SES level under the work schedule established.

Under 5 U.S.C. 3405(b), employees in positions paid at a rate equal to or greater than the minimum rate for SL positions are exempt from the part-time career program requirements (5 U.S.C. 5376) e.g., the 16 to 32 hours per week tour-of-duty requirements. Therefore it is possible for a part-time SES employee to be placed on a tour of duty that exceeds 32 hours per week.

Intermittent employment in the SES is rare, due to the nature of the duties SES members must perform, but might be used, for example, in a rare instance when someone may be returning from sick leave.

LEAVE

Statute: 5 U.S.C. Chapter 63

Regulations: 5 CFR Part 630

General: SES members are subject to the same annual and sick leave system and policies as other non-SES employees, except for the annual leave rate of accrual and a higher maximum annual leave carryover ceiling. **NOTE:** This section does not apply to noncareer SES members who were appointed by the President and whose rate of basic pay exceeds the highest rate payable under 5 U.S.C. 5332. These noncareer SES members are not covered by the Federal leave system.

Annual leave rate: SES members and employees in SL/ST positions are entitled to accrue annual leave at the rate of 8 hours per bi-weekly pay period, without regard to their length of service in the Federal Government.

Coverage: SES members have a maximum annual leave ceiling of 720 hours. Public Law 103-356 amended 5 U.S.C. 6304 to place a 90-day (720-hour) limit on the amount of annual leave an SES member could carry over from 1 leave year to the next. (**NOTE:** Previous to the amendment, there was no limit.) Effective October 13, 1994, SES members who had fewer than 720 hours of annual leave and new SES members became subject to the maximum annual leave ceiling of 720-hours. However, SES members who had an accumulated annual leave balance of more than 720 hours were permitted to carry that balance forward as a personal leave ceiling (excluding any restored or advanced annual leave).

SES members employed on a part-time basis (regularly scheduled tour of duty) are also subject to an annual leave ceiling of 720 hours.

Personal leave ceiling: The personal leave ceiling is the maximum amount of annual leave in excess of 720 hours that an SES member may carry over to a new leave year. The personal leave ceiling is subject to reduction under the rules in 5 U.S.C. 6304(c). An SES member's personal leave ceiling must be reduced by the number of hours used in excess of the number of hours earned during the previous leave year. When the personal leave ceiling falls below 90 days (720 hours), the ceiling is eliminated and the SES member becomes subject to the 90-day (720-hour) limit. Agencies are responsible for notifying employees of any reduction in the personal leave ceiling. Amounts of annual leave that are advanced or restored to SES members **are not included** in the personal leave ceiling.

Use or Lose Leave: If an SES member has annual leave in excess of the applicable leave ceiling on the last day of the leave year, he or she is subject to the “use or lose” rules for the forfeiture of excess annual leave under 5 CFR 630.301. Thus, an SES member who has 1,000 hours as personal leave ceiling at the start of a leave year and earns 100 hours more than he or she uses in that year, will lose those 100 hours, and his or her personal ceiling remains at 1,000 hours at the beginning of the next leave year.

Lump-sum payments at separation: At the time of an SES member’s separation, all unused accumulated and accrued annual leave is payable as a lump-sum. Generally, a lump-sum payment will equal the pay the employee would have received had he or she remained employed until expiration of the period covered by the annual leave. Therefore, if an SES member had remained in Federal service and would have received a pay adjustment, the lump-sum payment is adjusted to reflect the increased rate beginning on the effective date of the pay adjustment (5 U.S.C. 5551). See www.opm.gov/oca/leave/HTML/lumpsum.htm for additional information.

Example: The agency appointing authority approves a 4 percent performance-based pay adjustment for an SES member in December 2008 to be effective on January 4, 2009. The SES member retires effective January 2, 2009, with 500 hours of unused accumulated and accrued annual leave. The member’s lump-sum payment for 500 hours of annual leave is calculated to include the 4 percent pay adjustment (5 CFR 550.1204).

Restoring unused leave: SES members are subject to the same rules on restoration of unused annual leave as other employees covered under the Federal annual and sick leave programs established under chapter 63 of title 5, United States Code. Annual leave must be scheduled in writing prior to the start of the third biweekly pay period prior to the end of the leave year to be subject to restoration. Agencies may restore forfeited annual leave if the leave was forfeited because of an administrative error, exigency of the public business, or sickness of the employee. (5 U.S.C. 6304(d)) Annual leave forfeited because of exigencies of the public business may be restored only upon approval by the head of the agency or a designee. Restored leave is placed in a separate account and normally must be used within 2 years. (5 CFR 630.306) See www.opm.gov/oca/leave/html/restore.asp for additional information.

Military Leave: An employee is entitled to time off at full pay for certain types of active or inactive duty in the Armed Forces’ Reserves and National Guard. Any full-time Federal civilian employee whose appointment is not limited to 1 year is entitled to military leave under 5 U.S.C. 6323(a) and (b). For additional information on military leave, see www.opm.gov/oca/leave/html/military.asp.

Movement to an SES appointment: If an individual moves from a non-SES appointment to an SES appointment, any annual leave at the time of the move in excess of the employee’s maximum accumulation level is subject to forfeiture, if not used by the beginning of the first full biweekly pay period in the leave year immediately following entry into the SES. (5 CFR 630.301(f)(1)) Annual leave can be restored under conditions provided by 5 U.S.C. 6304(d). Entry into the SES does not change the time limit under 5 CFR 630.306 during which restored leave must be used to avoid forfeiture.

Example: A GS-15 employee with a maximum accumulation level of 240 hours of annual leave is selected for an SES position. At the time of appointment, the employee has 300 hours of accumulated annual leave, i.e., 60 hours in excess of the 240-hour ceiling. The employee earns 100 additional hours in the SES before the end of the leave year. If the employee uses less than the 60 hours of excess leave (e.g., 40 hours) during the remainder of the leave year while in the SES, the employee's leave balance at the beginning of the new leave year is 340 hours (the maximum 240 hours that the employee could accumulate as a GS-15 plus the 100 hours earned in the SES). The employee forfeits 20 hours of leave (i.e., the 60 hours excess leave brought into the SES, minus the 40 hours used). If the employee uses more than the 60 hours of excess leave (e.g., 80 hours) during the remainder of the leave year while in the SES, there is no forfeiture since the amount of leave used exceeds the 60 hours of excess leave. In this case, the employee's leave balance at the beginning of the new leave year is 320 hours (the maximum 240 hours that the employee could accumulate as a GS-15, plus the 100 hours earned in the SES, minus the 20 hours used above the 60 hours of excess leave).

Movement from an SES appointment: If an individual moves from an SES position to a non-SES position, any annual leave in excess of that which otherwise would be permitted remains to the individual's credit. Subsequently, if the individual uses more annual leave in a leave year than earned, the balance carried forward will become the new personal leave ceiling if it is still above the maximum limit normally permitted for the position (5 CFR 630.301(g)).

Example with a personal leave ceiling: An individual was in the SES in October 1994 with accumulated leave in excess of 720 hours and became entitled to retain that leave as a personal leave ceiling when 720 hours was set as the annual limit on the accumulation of annual leave for SES members. Later, the SES member moved to a non-SES position with a retained personal leave ceiling of 800 hours of accumulated annual leave. The individual earned an additional 100 hours before the end of the leave year. If the individual uses 150 hours of annual leave in the non-SES position (i.e., 50 hours more than the 100 hours earned), the individual's personal leave ceiling for the next leave year is reduced to 750 hours. However, if the individual uses only 40 hours (i.e., 60 hours less than the 100 hours earned), the personal leave ceiling for the next leave year remains at 800 hours and the individual loses 60 hours of annual leave.

Example without a personal leave ceiling: An SES member with 750 hours of accumulated annual leave moves to a non-SES position. The individual does not have a personal leave ceiling as described in 5 CFR 630.301(h). The individual earns 100 additional hours in the new (non-SES) position before the end of the leave year. If the individual uses 150 hours of annual leave in the new position (i.e., 50 hours more than the 100 hours earned), the individual's carry over amount to the next leave year is 700 hours. However, if the individual uses only 40 hours (i.e., 60 hours less than the 100 hours earned), the carry over amount to the next leave year is 720 hours, and the individual loses 90 hours of annual leave.

In addition, an employee who moves to a non-SES or equivalent position will no longer be entitled to the higher annual leave accrual rate. The employee's annual leave accrual rate is determined based on years of creditable service as provided in 5 U.S.C. 6303(a). (5 CFR 630.301(d)).

Appointed by the President with or without Senate confirmation: Officers and employees who are appointed by the President (PAS or PA), are not covered by the Federal leave system established by chapter 63 of Title 5, United States Code (5 U.S.C. 6301(2)). Presidential appointees do not earn annual and sick leave and cannot be charged leave for absences from work. This includes employees appointed by the President serving on a noncareer SES appointment whose rate of basic pay exceeds the highest rate payable under 5 U.S.C. 5321. Employees who are members of the SES, except the noncareer members noted above, and Schedule C appointees are covered by the Federal leave system.

Career SES members who are appointed by the President, with Senate confirmation, to a civil service position outside the SES at a rate of pay equivalent to Executive Schedule Level V or higher, are entitled to elect to retain annual and sick leave coverage in accordance with 5 U.S.C. 3392(c)(1). If coverage is retained, the individual continues to accrue leave and is charged leave as if still in the SES. If the individual separates from the Government immediately following the Presidential appointment, any lump-sum annual leave payment is based on his/her current pay (i.e., SES pay, if retained, or Executive Schedule or equivalent pay, if SES pay was not retained). (See 5 CFR 550, subpart L)

A noncareer, limited, or career SES member who did not retain leave coverage and a current Federal employee who receives a Presidential appointment does not receive a lump-sum payment for his/her unused annual leave. The unused annual leave is held in abeyance for re-credit if and when the employee is subsequently reemployed in a position covered by the Federal leave system. If the individual separates from Federal service while under a Presidential appointment, he/she will receive a lump-sum payment for unused annual leave based on the rate of pay in effect for the position the employee held immediately before the employee accepted the Presidential appointment. (5 U.S.C. 5551(b) and 5 CFR 550, subpart L)

UNEMPLOYMENT COMPENSATION

Statute: 5 U.S.C. Chapter 85

UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES

Presidential appointees, noncareer and limited SES appointees, and Schedule C employees who resign by request, are separated due to a change in agency leadership, or as a result of the transition to a new Presidential Administration or Term, may be eligible for Unemployment Compensation for Federal Employees (UCFE). Career SES appointees who are involuntarily separated from the civil service may also be eligible for unemployment compensation, depending on the reason for the involuntary separation.

Unemployment compensation is provided through the State in which the individual was employed. Eligibility requirements and benefit levels vary from State to State. For further information about UCFE requirements and benefits, contact the appropriate State Employment Security Office.

Whether an individual's resignation is requested or not requested may affect entitlement to unemployment compensation. Resigning before receiving a request to resign is generally considered an unprompted resignation and is not usually viewed as sufficient for unemployment compensation purposes. To assure that State unemployment offices are aware that the separation by request is due to a change in agency leadership, it is important that this reason is clearly indicated on the SF-50 and all UCFE claims inquiry forms. Individuals are advised to provide a copy of the request for resignation to the State unemployment compensation office when filing.

DISLOCATED WORKER SERVICES

These employees may also be eligible for dislocated worker services, including retraining and placement assistance, which are funded through Department of Labor grants. Benefits and eligibility requirements vary from state to state. For further information about Dislocated Worker Services and eligibility requirements, contact the State Dislocated Worker Unit in the state in which the individual was employed.

For additional information about these services, see www.dol.gov/dol/topic/training/dislocatedworkers.htm.

RETIREMENT

Statute: 5 U.S.C. Chapters 83 and Chapter 84

Regulations: 5 CFR Parts 841 - 891

Guide to Processing Personnel Actions: Chapter 30

Coverage: For individuals appointed to the SES after December 31, 1986, with no prior civilian service that is creditable under the retirement system:

- all career appointees are covered by the Federal Employees' Retirement System (FERS);
- all noncareer appointees are covered by FERS even if the appointment is designated as "indefinite; and
- a limited appointee is covered by FERS if the appointment is for more than 1 year.

For individuals appointed to the SES after December 31, 1986 with prior Government service, refer to the CSRS and FERS Handbook for Personnel and Payroll Offices to determine the retirement coverage. Some provisions to note regarding noncareer and limited SES appointees:

- noncareer appointees; (They are covered by Social Security, even though they may have continuous service with no break from an appointment where they were under regular CSRS;
- If they have less than 5 years of total creditable civilian service as of the date of the noncareer appointment, they are covered by FERS. Otherwise, they are covered by a reduced CSRS Offset; and
- limited appointees. (Individuals normally are excluded from FERS or CSRS if they are serving under an appointment limited to 1 year or less. This exclusion does not apply, however, if the individual moves from a position covered by FERS or CSRS into the excluded type of appointment with no break in service or a break of 3 days or less.)

Certain noncareer appointees who were covered by CSRS on December 31, 1983 and were mandatory covered by Social Security on January 1, 1984, had a special retirement election during the July-December 1987 FERS open season. At that time, they could elect to retain the coverage previously elected (full CSRS with Social Security, reduced CSRS and Social Security, or Social Security only) or to have CSRS Offset or FERS coverage. These elections generally remain in effect upon subsequent appointments.

Under P.L. 100-647, if an SES career appointee takes a PAS appointment at Executive Schedule Level V or higher on or after November 10, 1988, and the position is listed in 5 U.S.C. 5312-5317, the appointee is subject to mandatory Social Security coverage even if the appointee elected to continue SES benefits under 5 U S C 3392(c). (See the CSRS and FERS Handbook, Chapter 101, Special Retirement Provisions for Senior Officials.)

If the appointee was under full CSRS in the SES and had at least 5 years of creditable civilian service at the time of the Presidential appointment, the appointee goes under CSRS Offset and has a six month opportunity to elect FERS.

If the appointee was under FERS or CSRS Offset in the SES, the appointee remains under FERS or the CSRS Offset.

If an individual under Social Security coverage in a civil service position (e.g., in a Presidential or noncareer SES appointment) takes an SES career appointment on or after November 10, 1988, the individual remains subject to full FICA deductions in the SES position.

Under FERS there is no authority to allow credit for service performed after 1988 under appointments excluded from FERS coverage. Thus, service after 1988 under an SES limited appointment that is for 1 year or less not only is not covered by FERS at the time of the appointment, but also is not creditable for computation purposes, if the individual takes an appointment that is covered by FERS.

Optional retirement: Eligibility for optional retirement is the same for SES members as for other employees.

If the individual is covered by CSRS, eligibility is at least age 55 with 30 years of service or more, at least age 60 with 20 years of service or more, or at least age 62 with 5 years of service or more.

If the individual is covered by FERS, eligibility is at least 5 years of service and age 62, at least 10 years of service and the Minimum Retirement Age (reduced benefits), at least 20 years of service and age 60, or at least 30 years of service and the Minimum Retirement Age. The Minimum Retirement Age is the first year in which an individual can receive benefits and varies according to the year born.

Under both CSRS and FERS, a minimum of 5 years of civilian service is required. There are special provisions for law enforcement officers and certain other personnel.

Discontinued service retirement. To be eligible for discontinued service retirement (DSR), an individual must have completed 25 years of service or have completed 20 years of service and be 50 years of age. Further, the individual must be involuntarily separated other than for cause on charges of misconduct or delinquency. General information on DSR is in the CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 44. Note that although the eligibility criteria for DSR are the same under CSRS (5 U S C 8336(d)) and FERS (5 U S C 8414(b)), the benefit formulas differ.

Subject to the provisions of Chapter 44 of the CSRS and FERS Handbook, resignation after a notice of specific action in lieu of separation does not affect eligibility. An SES appointee may retire on DSR when otherwise eligible, based on age and length of service, if the appointee was separated under any of the conditions below:

- separates from the SES as the result of a reduction in force following notification that there is no vacant SES position in the agency for which qualified. (Eligibility exists even if the individual declines OPM placement assistance, declines an SES position offer in another agency, separates during the OPM placement period, or declines placement in a position outside the SES.);
- separates from the SES following position abolishment, even though no reduction in force was conducted, if the employee did not have an offer of another SES position in the agency at the time of separation;
- separates from the SES following notice of directed reassignment to another commuting area or transfer of function to another commuting area, and the notice indicates the employee would be subject to removal under adverse action procedures for declining the proposed move; or removed under adverse action procedures (or during the probationary period) for declining to accept the proposed move. (The individual is eligible for DSR even if the separation occurs before the effective date of the reassignment. The employee is not eligible for DSR, however, if at the time of appointment the employee's position description, or other written agreement or understanding, provided for geographic mobility. (SES employment in itself does not automatically establish a mobility agreement.);
- separates from the SES, when reporting directly to a Presidential appointee, in response to a specific written request from a recognized representative of a new Administration having authority to request such resignation or from a new department or agency head. (Note that the separation of a career appointee in these circumstances cannot be required; the appointee must voluntarily agree to the request.);
- separates from the SES, if a noncareer appointee, when reporting directly to a Presidential appointee who is leaving; (Otherwise a noncareer appointee who resigns without being asked is not eligible for DSR.) An SES appointee may retire on DSR under the conditions below based on age; and
- length of service even if the appointee has placement rights in a position outside the SES:
 - (1) removed from the SES for less than fully successful performance under 5 U.S.C. Chapter 43, Subchapter II; or
 - (2) removed from the SES during the probationary period for reasons not involving conduct.

A Presidential appointee who is eligible for DSR upon separation maintains that eligibility even if entitled to reinstatement to the SES as a former career SES appointee. This is true even if the

appointee has received a job offer in the SES since tenure is different in the SES from that under the Presidential appointment.

Disability retirement. The eligibility requirements for disability retirement are the same for SES as for non-SES personnel and the same under FERS as under CSRS. The individual must have at least 18 months of civilian service for FERS and 5 years for CSRS.

TRAVEL AND TRANSPORTATION

Statute: 5 U.S.C. 5723 and 5724

Regulations: 5 CFR Part 572

Pre-employment interviews: An agency may pay candidates' travel expenses incurred for pre-employment interviews requested by the agency. This authority may be used regardless of whether the candidate is presently in another SES position, is currently employed by a Federal agency in a non-SES position, is applying for reinstatement to the SES from outside the Government, or never worked for the Government. The authority covers candidates for career, noncareer, or limited SES appointment (5 U.S.C. 5752).

Travel to first duty station: An agency may pay travel expenses of a new appointee (career, noncareer, or limited) to the SES from outside the Government. (A new appointee includes not only individuals first appointed to Government service, but also individuals appointed after a break in Government service.) An agency may also pay transportation expenses of the appointee's immediate family and household goods and personal effects, to the extent authorized by 5 U.S.C. 5724, from the appointee's place of residence at the time of selection to the duty station (5 U.S.C. 5723(a)).

Payment may be made only after the individual agrees in writing to remain in Government service for 12 months after appointment, unless separated for reasons beyond the individual's control which are acceptable to the agency concerned. If the individual violates the agreement, the payment is recoverable from the individual as a debt due the United States (5 U.S.C. 5723(b)).

Change of duty station: The provisions in law (5 U.S.C. 5724) and the travel regulations concerning payment of travel and transportation expenses when an employee is moved in the interest of the Government are applicable to SES members, including those individuals newly appointed to the SES from other positions in Government without a break in Government service.

Last move home: Under 5 U S C 5724(a)(3), an SES career appointee is entitled to travel, transportation, and household goods moving expenses upon retirement from Government service, to the place where the individual will reside, if the individual:

- retires on or after September 22, 1988;
 - was moved geographically by the Federal Government as a career appointee in the SES;
- and

- was eligible for optional retirement, or within 5 years of optional retirement; or was eligible for discontinued service retirement at the time of the last Federal Government directed move.

Eligibility includes individuals who were geographically moved while a career appointee in the SES as the result of a reassignment or a transfer, as well as individuals who at the time of the move were going from an appointment outside the SES (e.g., at GS-15) to a career appointment in the SES.

Coverage includes families of deceased employees who were eligible for the benefits at the time of death, effective January 1994.

Noncareer and Limited appointees are not eligible for “last move home”.

Regulatory provisions: See the Federal Travel Regulation issued by the General Services Administration for further information. The information on Relocation Allowances is codified in 41 CFR Chapter 302. Questions may be directed to the Transportation Management Division, General Services Administration, Washington, DC 20406, telephone (703) 605-5618.

STUDENT LOAN REPAYMENTS

The Federal student loan repayment program permits agencies to repay certain types of Federally made, insured, or guaranteed student loans as a recruitment or retention incentive for job candidates or current employees of the agency. The program implements 5 U.S.C. 5379, which authorizes agencies to set up their own student loan repayment programs to attract or retain highly qualified employees. The authority is used at the discretion of the agency. SES members are eligible, unless otherwise excluded in the agency’s implementation plan. Agencies may wish to consider the following when implementing this program:

- Limiting SES eligibility to executives serving on career appointments only, and
- Using the standard recruitment incentive as a first choice in recruiting new executives.

OFFICE OF INSPECTOR GENERAL POSITIONS

Introduction: The Inspector General (IG) Act (P.L. 95-452) and the CSRA (P.L. 95-454) both became law in October 1978. Under the former act, IGs were granted substantial management and personnel authority to ensure their independence. At the same time, under the CSRA, agency heads were granted controlling authority over SES positions and other aspects of SES management. In the Inspector General Act Amendments of 1988 (P.L. 100-504, October 18, 1988), provision was made for reconciling the two Acts as far as SES appointees are concerned. The Inspector General Reform Act of 2008 (P.L. 110-409, October 14, 2008) further clarified the authority of the Inspector General.

Statutory provisions: Section 6 of the IG Act was amended by P.L. 110-409 to provide as follows:

“(d)(1)(A) For purposes of applying the provision of law identified in subparagraph (B)—

(i) each Office of Inspector General shall be considered to be a separate agency; and
(ii) the Inspector General who is the head of an office referred to in clause (i) shall, with respect to such office, have the functions, powers, and duties of an agency head or appointing authority under such provisions.

(B) This paragraph applies with respect to the following provision of title 5, United States Code:

(i) Subchapter II of chapter 35.
(ii) Sections 8335(b), 8336, 8344, 8414, 8468, and 8425(b).
(iii) All provisions relating to the Senior Executive Service (as determined by the Office of Personnel Management), subject to paragraph (2).”

Application of provisions: The IG Act amendments discussed above are applicable to all agencies subject to the Act, whether the IG is appointed by the President or by the agency head.

When the IG is appointed by the agency head, the agency should evaluate the position on the same basis as any other position in determining whether it should be in the SES.

Requests for SES or SL position allocations in the IG office and for certification of the IG’s SES and/or SL/ST performance appraisal system(s) should be made by the Inspector General to OPM.

The IG should establish an Executive Resources Board (ERB) and Performance Review Board (PRB) in accordance with statute and regulation.

The agency head may delegate to the IG authority to make performance awards. The performance award pool, however, is still computed on an agency-wide basis.

A separate competitive area may be established for the IG office for reduction-in-force purposes.

Pay and Awards for Inspector General Positions: Section 4 of the Inspector General Reform Act of 2008 establishes new provisions governing the setting of the rate of basic pay for Inspector General positions. IGs at an “establishment,” as defined under section 12(2) of the IG Act of 1978 (formerly designated as section 11(2)), are entitled to a rate of basic pay equal to EX-III plus 3 percent. These IGs have been removed from the list of EX-IV positions in 5 U.S.C. 5315.

Also, notwithstanding any other provision of law, IGs at a “designated Federal entity” as defined under section 8G(a)(2) of the IG Act of 1978 must, for pay and other purposes, be classified at a grade, level, or rank designation at or above those of a majority of the senior-level executives in such entity, and their pay may be no less than the average total compensation (including bonuses) of the senior level executives in the entity. However, the total increase in pay provided to an IG of a designated Federal entity under this special authority may not, in any fiscal year, exceed 25 percent of the average total compensation (including bonuses) of the IG of that entity for the preceding 3 fiscal years. This limitation does not apply to any adjustment made in fiscal year 2013 or thereafter.

Section 4(c) provides that the provisions of 5 U.S.C. 3392 (dealing with continuation of various SES entitlements for certain Presidential appointees) continue to apply to career SES members

who are appointed to an IG position, except that SES performance awards and awarding of ranks will not apply. Furthermore, notwithstanding any provision of law, career Federal employees serving on an appointment under an authority other than 5 U.S.C. 3392 may not suffer a reduction in pay (not including any bonus or performance award) as a result of being appointed to an IG position.

Section 5 provides that an IG of an establishment or a designated Federal entity may not receive any cash award or cash bonus, including any cash award under 5 U.S.C. chapter 45.

Sections 4 and 5 were effective on October 14, 2008, the date of enactment. The sections apply solely to IG positions and do not apply to positions such as Deputy IG. Other SES members in IG offices are eligible for performance and other awards, including the Presidential Rank Awards. Under P.L. 110-409, SES IG office members other than the IG may be nominated for rank awards by the Council of the Inspectors General on Integrity and Efficiency established under the Act. Each Inspector General office is responsible for implementing and administering these provisions. OPM does not have the authority to regulate or administer the provisions of Public Law 110-409.

OPM has established a new pay plan code "IG" for Inspectors General in establishments whose rate of basic pay is fixed at the rate for EX-III plus 3 percent. In addition, OPM has established a new pay rate determinant code "D" for Inspectors General in designated Federal entities to recognize their coverage under a provision providing a special classification authority and pay rate floor, as described above. (Note: There is no new pay plan code for Inspectors General in designated Federal entities. The pay rate floor does not constitute a pay system but rather interacts with the applicable pay system. Each Inspector General in a designated Federal entity will have his/her pay rate fixed under the applicable pay system and the resulting rate will be compared to the pay rate floor. The higher rate will be payable.)

12. EXECUTIVE POSITIONS OUTSIDE THE SES

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CHAPTER 12: EXECUTIVE POSITIONS OUTSIDE THE SES

EXECUTIVE SCHEDULE POSITIONS

At the top of the Federal civilian personnel hierarchy are positions placed by statute in the Executive Schedule, or established at pay rates equivalent to the Executive Schedule. This personnel system is divided into five levels, EX-I (the highest) through EX-V (the lowest). The Executive Schedule includes cabinet secretaries; under, deputy, and most assistant secretaries; heads of most of the independent agencies; members of regulatory commissions; and a number of other key officials (e.g., certain general counsels, bureau directors, and inspectors general). Executive Schedule and equivalent positions are generally filled by Presidential appointment with Senate confirmation.

TITLE 5 LISTINGS

Positions placed by statute in the Executive Schedule are listed in 5 U.S.C. 5312 through 5316. By Executive order, the President may also place up to 34 positions in EX-IV and V combined, under 5 U.S.C. 5317, if the positions do not meet SES criteria. Requests should be sent to the Office of Management and Budget. (A note to 5 U.S.C. 5317 contains a listing of Executive Schedule or equivalent positions authorized by statutes other than title 5 or placed in Executive Schedule Level IV or V by Executive order.)

Occasionally, laws will establish positions in the Executive Schedule with a set pay level, but fail to specify an appointment authority for these positions. Absent a specific appointment authority, if these positions meet the SES functional and grade level criteria, they are covered by the SES provisions of title 5. The law provides that the agency head determines the pay level for SES positions. [5 U.S.C. 5383]

Note also that positions listed in 5 U.S.C. sections 5315 (Executive Schedule Level IV) and 5316 (Executive Schedule Level V) that do not require Senate confirmation but do meet the SES criteria are placed in the SES. Their titles will be deleted from these sections of the statute when it is next revised.

PAY

Section 5318 of title 5, United States Code, provides that the annual rate of pay for Executive Schedule positions will be adjusted at the beginning of the first pay period beginning on or after the first day of the month in which the General Schedule rates are adjusted. The adjustment will be an amount, rounded to the nearest multiple of \$100 (or if midway between multiples of \$100, to the next higher multiple of \$100), equal to the percentage of such annual rate of pay that corresponds to one-half of one percent less than the percent change in the Employment Cost Index (ECI) over a specified time period, but not less than zero or greater than 5 percent, or more than the General Schedule across-the-board pay increase in basic rates of pay.

These provisions may be superseded by law. For example, there were no adjustments in the Executive Schedule in 1994-1997.

SENIOR-LEVEL (SL) AND SCIENTIFIC AND PROFESSIONAL (ST) POSITIONS

STATUTE: 5 U.S.C. 3104, 3324, 5108, and 5376

REGULATIONS: 5 CFR Parts 319 and 534, Subpart E

Unless an agency is excluded from the SES by statute or by the President, any position classifiable above the GS-15 level is to be placed in the SES, if it meets any of the functional criteria set forth in 5 U.S.C. 3132(a)(2). Positions that are classifiable above the GS-15 level, but do not meet the SES functional criteria, are placed either in the ST or SL systems, depending on the nature of the work. [See *Establishing SES Positions* in Chapter 1 for information on the SES functional criteria and distinguishing between SES and SL/ST positions.]

SCIENTIFIC AND PROFESSIONAL POSITIONS

Positions that are classifiable above the GS-15 level, but do not meet the SES functional criteria, are appropriately placed in the ST system if they involve performance of high-level research and development in the physical, biological, medical, or engineering sciences, or a closely-related field. ST positions are established under 5 U.S.C. 3104. All ST positions are in the competitive service.

Research and development positions are characterized by the following features:

- systematic investigation of theory, experimentation, or simulation of experiments;
- application of the scientific method, including problem exploration and definition, planning of the approach and sequence of steps, execution of experiments or studies, interpretations of findings, and documentation or reporting of findings; and
- exercise of creativity and critical judgment, variation in which may materially affect the nature of the end product.

Additional discussion of research and development functions is contained in Appendix 2 of the Introduction to the Position Classification Standards.

The qualifications, stature, and contributions of an individual involved in research and development, have a direct and major impact on the level of difficulty and responsibility for the work performed. ST incumbents would be expected to possess a graduate degree, significant research experience, and a national or international reputation in their field. Typically, the incumbent of an ST position:

- authored fundamental papers in the field of expertise that are widely used and cited;
- received significant honors from major organizations for his/her accomplishments and contributions; and
- is sought as an advisor and consultant on scientific and technological problems that extend beyond his/her specialty.

SENIOR-LEVEL POSITIONS

The SL pay system was established under the Federal Employees Pay Comparability Act of 1990 (FEPCA) to replace grades GS-16, 17, and 18 of the General Schedule, which were abolished. Positions in the SL system are classified above GS-15, but do not meet the executive criteria characteristic of the SES nor do they involve the fundamental research and development responsibilities that are characteristic of the ST pay system. However, the SL system is used for positions that meet the SES executive criteria in agencies that are excluded from the SES. The SL positions may be in either the competitive or excepted service. When advertising a vacancy for an SL position in the competitive service, there is no requirement for Governmentwide recruitment.

SUPERVISORY DUTIES

The SL and ST positions may include supervisory and related managerial duties, provided these duties occupy less than 25 percent of the position's time. Positions in which supervisory and managerial work as defined in OPM's General Schedule Supervisory Guide constitutes a major duty that occupies 25 percent or more of the position's time, and most always meet the criteria for SES positions.

SL/ST EMPLOYMENT AND PAY PROVISIONS

Employment provisions for SL and ST positions are in 5 CFR Part 319. Executive agencies must have an allocation from OPM before establishing an SL or ST position. [See *Allocating Spaces and Appointment Authorities* in Chapter 1.] Time in grade requirements do not apply to SL positions, so applicants do not need to have spent a certain period of time at the GS-15 or equivalent level.

An SES member may be appointed to an SL position noncompetitively if he or she has reinstatement eligibility and is qualified for the position. If the agency has a vacant allocated SL space, OPM approval is not required for this type of appointment.

Pay provisions are in 5 CFR Part 534, Subpart E. Both the SL and ST pay systems are ungraded in law (although some agencies have established grades on their own). The pay range for both SL and ST positions is between 120 percent of GS-15/1 and Executive Schedule Level IV. These positions are covered by locality pay. With locality pay, the pay cap is Executive Schedule Level III. The regulations allow agencies to implement apply a higher aggregate compensation limitation to SL and ST employees if they obtain certification from OPM, with OMB concurrence, of their applicable performance appraisal system(s) under subpart D of 5 CFR part 430.

Public Law 110-372, *The Senior Professional Performance Act of 2008*, changed the pay system for SL/ST employees. The law does not take effect until April 12, 2009. The current SL/ST pay system will remain in place until then. As of April 12, 2009, pay for all SL/ST employees will convert to single base pay rate. This rate will be equal to current base rate plus applicable locality pay, the sum of which is capped at Executive Schedule Level III. **The pay an SL/ST employee actually receives will not change on April 12 as a result of this conversion.** OPM will issue regulations in 2009 addressing conversion and other features of SL/ST performance pay. They will include special rules addressing the conversion of SL/ST employees outside the contiguous 48

states, who are not currently covered under locality pay. Major features of the SL/ST pay-for-performance system will parallel those of the Senior Executive Service. However, the amount of SL/ST cash awards was not changed by the law and remains the same.

SL and ST employees are eligible to earn compensatory time off in lieu of overtime pay and compensatory time off for travel.

SL/ST ANNUAL LEAVE MAXIMUM CARRYOVER CEILING

Effective January 28, 2008, the annual leave carryover ceiling for employees in SL and ST positions is 90 days (720 hours). An SL or ST employee's restored annual leave does not count towards the 90 day annual leave carryover ceiling. Under the provisions of 5 U.S.C. 6304(d)(2), restored annual leave is credited to a separate leave account, and leave in a restored leave account does not count towards an employee's annual leave carryover cap.

MISCELLANEOUS POSITIONS

ADMINISTRATIVE LAW JUDGE (ALJ) POSITIONS

The ALJ positions were formerly paid at GS-15 through GS-18. Under FEPCA, they were placed in a separate pay system with maximum pay equal to Executive Schedule Level IV. The ALJ positions are in the competitive service. A person may become an ALJ only by appointment from an ALJ register, established as the result of a competitive examination administered by OPM. An ALJ may be reassigned, transferred, reinstated, or detailed between agencies; but such actions may be taken only within the ALJ occupation and with the approval of OPM. [See 5 U.S.C. 3105 and Subpart B of 5 CFR Part 930].

SCHEDULE C POSITIONS

Agencies must obtain the approval of OPM before making a Schedule C appointment or reassigning a Schedule C employee. Requests for these positions should be sent to OPM's Executive Resources Service Group.

BOARD OF CONTRACT APPEALS POSITIONS

The Contract Disputes Act of 1978 [P.L. 95-563, November 1, 1978] establishes Boards of Contract Appeals in certain departments and agencies, the heads of which are authorized to appoint individuals noncompetitively to Board member positions. The positions were formerly paid at GS-16 through GS-18. Under FEPCA, they were placed in a separate pay system with maximum pay equal to Executive Schedule Level IV. With locality pay, employees in these positions may be paid up to Executive Schedule Level III.

EXPERTS AND CONSULTANTS

In accordance with 5 U.S.C. 3109 and 5 CFR Part 304, agencies may make expert and consultant appointments without regard to competitive civil service requirements, to positions which primarily require performance of advisory services rather than performance of operating functions.

Experts: Have unique or superior education, skills, and accomplishments in a particular field, and are regarded as authorities by others in the field. The expert performs unusually difficult work beyond the usual range of competent employees in the field.

Consultants: Provide advice, options, or recommendations on issues or problems and usually have a high degree of administrative, professional, or technical experience. A consultant may also be a person affected by a program who can provide public input based on personal experience.

Limitations on work: There are limits on the nature of the work. Experts and consultants may not serve in an SES position or a position requiring Presidential appointment and/or Senate confirmation (but may serve in an advisory capacity pending confirmation). It is not appropriate to assign consultants to the policy-making or managerial work that characterizes the SES.

Experts and consultants may not do work performed by the agency's regular employees or function in the agency's chain of command. For example, they may not supervise agency employees, direct the preparation of a report or special study, or make decisions regarding agency policies or programs. Their work must be strictly advisory in nature (reviewing/recommending) or limited to a special project requiring an exceptional level of expertise.

INTERCHANGE AGREEMENTS AND COOPERATION

Under Civil Service Rule 6.7 and 5 CFR 214.204, OPM and any agency with an executive personnel system essentially equivalent to the SES may, pursuant to legislative and regulatory authorities, enter into an agreement providing for the movement of persons between the SES and the other system. Such agreements may be established when it is mutually determined that movement between the two systems is in the interest of good administration and is consistent with the intent of civil service and other applicable laws. Each agreement must prescribe the conditions for interchange of persons and define the status and tenure acquired by persons when they move from one system to another.

CRITERIA FOR APPROVAL

The criteria OPM considers in a proposal to authorize the interchange of personnel between the SES and another Federal executive system is:

- the basic framework of the system is established through law, rules, regulations, or instructions in written form; is designed to ensure that personnel management is based on and embodies merit system principles; and is free from prohibited personnel practices; and
- the provisions for movement between systems specify that executives eligible for movement are serving in permanent, continuing career-type positions and that executives meet the technical and managerial qualifications of any position to which movement is proposed.

Procedures allow for periodic personnel management evaluations conducted by OPM, or by the independent agency, with OPM representatives on the evaluation team.

The system includes a stipulation for discontinuance of the interchange agreement at the request of either party.

CURRENT AGREEMENTS

Currently, only the following agencies have an interchange agreement:

- the Government Accountability Office;
- the Transportation Security Agency; and
- the United States Postal Service, Office of the Inspector General.