

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

OPM

Senior Executive Service Desk Guide



Preface

The Office of Personnel Management (OPM) is pleased to announce the first official publication of the Senior Executive Service (SES) Desk Guide.

This Desk Guide is a reference tool for career and non-career senior executives, members of Executive Resources Boards, Performance Review Boards, and other 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 SES.

The guidance is intended to serve as explanatory material and is not a substitute for the statutes and regulations that form the basis for the SES. References and links to relevant statutory and regulatory citations have been included in the text. The Desk Guide also provides instructions and procedures that agencies must follow to comply with reporting and other informational requirements promulgated by OPM.

This Desk Guide is to be used as a reference for agency executive resources personnel and is not a policy-making guide. The Desk Guide is a document intended to accommodate regulatory updates and policy changes regarding the SES. Should you have any questions about the material in the Desk Guide, please contact Executive Resources and Performance Management (ERPM) at the address below.

Acting Director Michael J. Rigas and Associate Director of Employee Services Dennis Dean Kirk conceived of the need for such a product in April 2020. The Senior Executive Services and Performance Management (SESPM) team, led by Deputy Associate Director David LaCerte and Senior Advisor George Nesterzuk, completed the project in October 2020. Contributors include Corey D. Adams, William C. Collins, Karen S. English, Kristopher E. Goas, Thomas J. Hendershot, Chanel C. Jackson, Timothy A. Lehmann, Carol M. Matheis, Zelma Moore, Danielle Opalka, Eric Schmidt, and Tiana Young. Benjamin Esposito, Oriet Hemenway, and Peter Hong provided valuable assistance.

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INTRODUCTION

The Senior Executive Service (SES) was established by Title IV of the Civil Service Reform Act (CSRA) of 1978 [[Pub. 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 are in level IV or V of the Executive Schedule, or equivalent positions, which are not required to be filled by Presidential appointment with Senate confirmation, and are responsible for executive, managerial, supervisory, and/or policy functions characteristic of the SES. (See [5 U.S.C. 3132\(a\)\(2\)](#) and discussion on page 1-13, Other Factors.) Under CSRA, the SES was set up as a “third” service, completely separate from the competitive and excepted services.

Statutory Inclusions in the SES

Occasionally, laws will establish positions in the SES. Agencies should review their positions to ensure they comply with the law. For example, in 2013, the Small Business Act was amended to address placement of the Director of Small and Disadvantaged Business Utilization position into the SES if specific conditions were met (See [15 U.S.C. 644\(k\)\(2\)](#)).

Statutory Exclusions from the SES

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

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

- legislative and judicial branch agencies;
- independent Government corporations;
- Government Accountability Office;
- Federal Election Commission or Election Assistance Commission;
- Federal Aviation Administration;
- Central Intelligence Agency;
- Office of the Director of National Intelligence;
- Defense Intelligence Agency;
- National Geospatial-Intelligence 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;
- 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, the Resolution Trust Corporation, Farm Credit Administration, Federal Housing Finance Agency, National Credit Union Administration, Bureau of Consumer Financial Protection, and the Office of Financial Research;
- 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 [generally [5 U.S.C. 3132\(a\)\(2\)](#)]:

- positions to which appointment is required to be by the President with Senate confirmation;
- Foreign Service positions;
- Administrative Law Judge positions;

- any position established as a qualified position in the excepted service by the Secretary of Homeland Security under section 226 of the Homeland Security Act of 2002;
- any position established as a qualified position in the excepted service by the Secretary of Defense under section 1599f of title 10; and
- agency boards of contract appeals positions.

Public Law 112-166, the Presidential Appointment Efficiency and Streamlining Act of 2011, also prevented certain positions that met the definition of an SES position in [5 U.S.C. 3132\(a\)\(2\)](#) from being placed in the SES. Section 2 of the Act eliminated the requirement for Senate confirmation of specified presidentially-appointed positions in federal agencies and departments.

Many of these positions were in level IV or level V of the Executive Schedule and were responsible for executive functions. In the absence of Senate confirmation, straightforward application of [5 U.S.C. 3132\(a\)\(2\)](#) would require such a position to be established as an SES position if it is in an agency covered by the Senior Executive Service. Since that result was not intended for these positions, Congress included paragraph 2(hh) to specify that, notwithstanding [5 U.S.C. 3132\(a\)\(2\)](#), that removal of Senate confirmation would not require them to be placed in the SES or affect their compensation. Agencies therefore should keep track of those level IV and level V (or equivalent) positions identified in section 2 of the Act for which Senate confirmation is no longer required to assure they are not inadvertently placed in the SES. Please note that exclusion of a position from the SES under section 2(hh) of the Act applies only to the positions specified in section 2.

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, develop, assign work to, manage performance of, pay, and remove their executives. Agencies are accountable for managing their SES resources in compliance with law and regulation. Agencies are also accountable for keeping SES and equivalent executive records current 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 SES matters such 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 other positions above GS-15, such as SL (senior-level) and ST (scientific and professional), 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;
- approving agency SES and SL/ST performance management systems, and certifying, them with OMB concurrence;
- providing guidance and technical assistance to agencies on executive resources topics, including executive development;
- developing legislative initiatives related to executive personnel systems;
- allocating position and appointment authorities;
- administering Qualifications Review Boards (QRBs) and the Presidential Rank Awards program;
- reviewing and approving agencies' SES candidate development program (SESCDP) policies;
- managing the executive information management system, i.e., 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.

SES Insignia. The SES insignia or emblem represents a keystone – the center stone that holds all the stones of an arch in place. This represents the critical role of the SES as a central coordinating point between Government's political leadership, which sets the political agenda, and the line workers who implement it. Members of the SES translate that political agenda into reality. The upright lines in the center of the keystone represent a column in which individual SES members are united into a single leadership corps. There is no particular symbolism to the number of lines, which has varied over the years with different iterations of the logo. The SES insignia cannot be modified and may only be used for official Government business.

Senior Executives

Senior executives play an important role in the management of executive resources. 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

In addition to (or instead of) Senior Executive Service positions, some agencies have authority for other kinds of positions above GS-15, such as Executive Schedule (EX) positions, senior-level (SL) positions, scientific and professional (ST) positions, or positions in other executive services, such as the Defense Intelligence Senior Executive Service, Senior Foreign Service, or a military or other uniformed service.

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 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

Agencies are required by [5 U.S.C. 3393\(b\)](#) to establish one or more ERBs 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 system. ERB's also are required to oversee agency SES Candidate Development Programs ([5 CFR 412.302\(a\)](#)) and continuing development of executives ([5 CFR 412.401\(a\)\(4\)](#)).

Composition and Structure

Per [5 U.S.C. 3393\(b\)](#), each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees (see [5 U.S.C. 2105](#)) of the agency or commissioned officers in the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration) serving on active duty in the agency. The operational nature of ERB responsibilities may be best served by an agile, responsive structure of modest size.

The ERB performs an important advisory and policymaking role on behalf of the agency head in guiding the executive personnel system of the agency. It should be structured to be agile and responsive to evolving agency needs and its members should be individuals in whom the agency head has great confidence and trust. Since the ERB exercises statutory responsibilities and must consist of agency employees, the head of a very small agency may need to appoint one or more GS employees. It is appropriate for the human resources director to support the ERB in a staff capacity, or even as Executive Secretary.

ERB functions and responsibilities are an 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. 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.] As required by [5 CFR 412.302](#), ERBs are also responsible for ensuring agency SES candidate development programs follow merit staffing provisions.

Individual development. ERBs are required by [5 CFR 412.302\(a\)](#) to oversee an agency's SES Candidate Development Program (SESCDP). ERBs are also required by [5 CFR 412.302\(c\)\(1\)](#) to approve development plans for each candidate participating in the agency's SESCDP. The ERBs are also responsible for annual review and revision (as appropriate) of Executive Development Plans for current executives ([5 CFR 412.401\(a\)\(4\)](#)). [See [Chapter 7](#) for information on executive and candidate development.] Additionally, ERBs are required by [5 CFR 362.405](#) to evaluate and certify, as appropriate, each Presidential Management Fellow under its jurisdiction.

Pay Setting and Performance Management. Some level of ERB involvement in the execution of the agency's SES Pay Policy may be desirable, to include recommendations on pay setting/adjustments or performance-based awards ranges.

SL/ST Management. The ERB established for the SES also may be used to oversee agency personnel matters for other senior positions, such as the senior-level (SL) and scientific and professional (ST) pay systems.

Other

ERB Subcommittees. The ERB can create subordinate bodies or subcommittees to deal with some of its responsibilities depending on agency size and anticipated workloads, e.g., SES staffing, pay and performance management, workforce and succession planning (space allocations, reassignments, CDPs). The responsibility remains with the ERB; however, it can create substructures to facilitate issue development and decision making.

Performance Review Board. The agency should clearly delineate the relationship and separation of authorities between the ERB and PRB with respect to performance management. For example, the ERB may take responsibility for oversight of the performance management system, e.g., establishing cycles, standards, and administrative systems, while the PRB would be responsible for evaluating individual performance and making recommendations on awards and other recognition.

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.

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(s).

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 2018, which is in Fiscal Year 2019, would be for the FY 2020/2021 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 and Professional (ST) requirements and request allocation adjustments, if needed. OPM issues 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. The initial call memo to agencies will include a template that must be completed and submitted as record to OPM to SEERS@opm.gov by the required deadline of the notice. (A [memo](#) dated May 6, 2019, was sent to all Heads of Executive Departments, Agencies and Inspectors General communicating OPM's new streamlined process beginning with the FY 2020-2021 Biennial Cycle).

OPM's streamlined process focuses on the specific requirement resulting in the need for additional allocations, rather than a detailed analysis of the proposed position. Additionally, OPM will complete a comprehensive review of the agency's vacant allocations. This reduces the amount of information agencies are required to provide OPM, while focusing on the strategic requirement for increasing executive allocations.

Beginning with the FY 2020-2021 Biennial Cycle, OPM's streamlined process incorporates the following changes:

- Simplifying the templates;
- Eliminating the requirement for agencies to submit written correspondence if existing allocations are not changing;

- Eliminating the requirement to provide position descriptions (position titles will be required); and
- Eliminating the requirement to prioritize positions.

OPM expects agencies to be judicious in making requests for additional allocations. Agency biennial reviews should include a rigorous evaluation to ensure effective utilization of all existing allocations. Accordingly, priority will be given to requests based upon new or changed legislation, or unforeseen exigent needs. Additionally, agencies will be required to address vacancy rates at or exceeding 8%.

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). Position Descriptions (PD), with the certified OF8 form, are encouraged but not required. However, they may assist in OPM's review process by providing additional information.

Biennial packages will be submitted to the OMB MAX system where a model for Biennial has been developed.

- Describe the specific 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/outcome 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 mission/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.
- Address current position vacancies and the status of those vacancies (i.e., in X stage of recruitment).

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;
- Extent to which individual positions do not appear to meet SES criteria;
- Designation of SES position (i.e., Career Reserved or General);
- Consultation with OMB

Agencies' Biennial submissions must be uploaded to the OMB MAX (www.max.gov) system where a module for the current Biennial cycle is available.

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.

Out-of-Cycle Allocations

Agencies are expected to manage their executive resource needs within the levels set during the biennial allocation process. OPM is authorized by [5 U.S.C. 3133\(d\)](#) 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. OPM will work with the agency to identify acceptable alternatives, as it is in an agency's best interest to minimize the number of spaces deployed to support established, vacant SES positions. By law, the result of the upward adjustments Governmentwide may not exceed 105 percent of the total number of SES positions initially authorized by OPM, through the Biennial process, for each 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. Requests are submitted to OPM at SERS@opm.gov.

Please include the following information in your request for an Out-of-Cycle Allocation:

- Identify why the request is submitted outside the regular biennial cycle. Requests submitted outside the regular biennial cycle should be rare. If the number of filled positions is less than the number of allocated spaces, explain why the available allocated spaces cannot be used (e.g., selections under QRB review; anticipate filling positions within 30 days).
- Identify specific positions and provide position descriptions for each.
- 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; or issues raised by OMB).
- Specify the results expected from each additional position. For example, an increase in quantity of work 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?
- For each type of allocation requested (i.e., SES, SL, or ST), specify the priority of all established and proposed positions, whether vacant or encumbered, in terms of their relative contributions to the agency's mission requirements.
- Provide an organizational chart(s) and annotate the location of each requested position on the chart(s).

Agencies should consider approaches whereby unused allocations from other areas (i.e., SES, SL and/or ST) may be officially assigned to a position until a staffing action can be completed.

Agencies cannot convert one type of allocation for another without OPM approval. Example: An agency cannot convert an available SL allocation to an SES allocation to support an SES position. The agency must submit a written request to OPM to have its allocations adjusted.

Temporary Allocations (including Phased Retirement)

OPM may grant a temporary allocation 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, executive development assignments, Intergovernmental Personnel Act (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 allocation should be submitted in writing to OPM's Senior Executive Resources

Services. Please include the following information in your request for a temporary allocation to support the new or continuing development of an SES, SL or ST employee:

- Provide the individual's name, describe the assignment (developmental, IPA, short-term or Limited Term). Identify the position to which the individual will be assigned; the type of assignment, (e.g., detail, transfer, reassignment), including any applicable statutory or regulatory authority, such as the Intergovernmental Personnel Act or Detail or Transfer to International Organizations; the agency, organizational component and location; and the planned duration of the assignment.
- Identify the challenges or development opportunities that the assignment will provide that he individual has not had in previous positions.
- Describe the agency's future plans for the individual, presuming the anticipated benefits of the developmental assignments are fully realized. What position(s) will this assignment prepare the individual to assume?

Agencies should monitor the deployment of their SES resources on a continuous basis to ensure that SES positions are used to respond most effectively to changing agency conditions. As discussed on pages 1-6 under [Allocating Spaces](#), an SES allocation is required to establish and fill an SES position as long as the position is occupied; a space is not required for a vacant SES position. When an SES position becomes vacant, the allocation may be "floated" and used to establish and fill a different SES position, or it may be returned to a "pool" of unused agency SES allocations and redeployed as needed to support future SES staffing actions, including reassignment of an executive entering phased retirement to an appropriate SES position.

Generally, agencies are expected to manage within their existing executive allocations to support phased retirement. When this is no longer possible, an agency may request an additional temporary SES allocation to support an executive's phased retirement. SES allocations approved for this purpose will revert to OPM when the phased retirement ends.

Requests for such temporary allocations should be signed by the agency head (or designee in the agency head's absence) and must include and address the following factors:

- The agency's current Phased Retirement Plan and Policy (including identification and implementation of time-limited or open-ended plans);
- Analysis of space utilization, including numbers of SES allocations committed to encumbered SES positions, pending SES appointments, advertised SES positions, pending SES recruitments, and any other circumstance deemed to prevent committing an unused allocation for a phased retirement;
- Expected duration of the senior executive's phased retirement;
- Participating individual's name, current position, organizational component, location, and current appointment type;
- Proposed title, organizational component, location and position description of the position the individual will occupy during phased retirement; and

- The Phased Employment/Phased Retirement Status Elections Form (SF3116) signed by all parties.

SES Career Reserved Minimum

[CSRA](#) requires OPM to establish a minimum number of SES Career Reserved positions that must be maintained Governmentwide at all times. [5 U.S.C. 3133\(e\)\(1\)](#) requires that this number shall reflect the number of positions authorized to be filled through competitive civil service examination as of October 1978 (the day before the enactment of CSRA in 1978), that is, 3,571. It also authorizes the Director of OPM to subsequently establish by rule, as appropriate, a minimum number of Career Reserved positions that is higher than the 3,571 positions originally established in July 1979. [5 U.S.C. 3133\(e\)\(2\)](#) permits the Director to designate, by rule, a number of Career Reserved positions that is fewer than the original 3,571.

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 equal to or exceeding its CR floor at all times (agency CR numbers can be obtained from ESCS). For this purpose, an established CR position counts whether it is vacant or filled. An agency may cancel CR positions and establish new positions 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\(e\)](#)].

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 in ESCS (either permanently or temporarily) when a space allocation is withdrawn from the position for use elsewhere. [See [Allocating Spaces](#) earlier in this chapter.] Agencies are required to report changes affecting positions (establishment, abolishment) or appointees (incumbency, vacancy) by updating incumbent or position records in ESCS.

[**Note:** The prescribed titles outlined in position classification standards are not binding on positions that have been placed in the SES. Each agency has flexibility to apply its own policies and practices in titling SES positions.]

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 must evaluate the position as a whole and determine 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 paid 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:

- obtaining the resources necessary to accomplish the program or project and assume responsibility for their effective use; and
- dealing 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* if it requires accomplishing work through combined technical and administrative direction of employees other than personal assistants. For example, a position that meets the lowest level of Factor 3 in the *General Schedule Supervisory Guide* based on supervision of non-contractor personnel should receive this credit.

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 grade level 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 supervising 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.

Classification Appeals

There is no classification appeal right to OPM for an employee who asserts the position he or 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. The examples below assume that the agency is subject to SES provisions and the applicable law(s) does not contain language that explicitly removes the position(s) from coverage by SES provisions.

- 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 set and adjust pay within the SES rate range.
- 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\(a\)\(2\)](#).

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, assuming any applicable criteria are met, e.g., criteria for an SES limited term or limited emergency appointment. 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 impartiality;
- 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 Senior Executive Services and Performance Management. 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 questions regarding the supervisory relationships for SES positions.

- Can appointees in Career Reserved positions 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 against 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.
- Can an SES member report to a GS15 or equivalent employee? While the statute and regulations do not address this directly, agencies have a statutory obligation to place each GS position in its appropriate grade placing only positions meeting the SES definition in the SES. Since [5 U.S.C. 3132\(a\)\(2\)](#) requires an SES position to be classified above GS-15, placement of a GS-15 position above an SES position logically violates either the agency's obligation to appropriately classify its GS positions or to appropriately designate a position as SES, or both. While short term detail of a GS-15 employee to an SES position that supervises other SES positions may be permitted under extraordinary circumstances, placement of an SES position under the supervision of a GS-15 or equivalent position is not an appropriate continuing organizational or supervisory relationship.

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, and [Chapter 3](#), Other Staffing Actions, for information about these four types of appointments.]

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](#).

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 several 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. 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 U.S.C. 5307\(d\)](#): certify SES and SL/ST performance appraisal systems with OMB's concurrence when, as shown by meeting certification criteria in accordance with [5 CFR 430 subpart D](#), the system as designed and applied makes meaningful distinctions based on relative performance.

[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.

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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 PROCESSING PERSONNEL ACTIONS: Chapter 13 - Senior Executive Service (SES) and Chapter 14 - Promotions, Changes to Lower Grade, Level or Band, 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. (Under former regulations, there was a rarely used alternative of limiting a CDP to applicants within a single agency. A graduate of such a CDP must compete for his or her initial career SES appointment, as stated on the Qualifications Review Board certification issued to the graduate.)

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 Resources 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, making written recommendations to the appointing authority regarding these candidates, and identifying the best qualified candidates from which the selection is to be made. As discussed in [Chapter 1](#), however, an ERB should have a much broader charter to be most effective.

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, and 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;
- Developing broader networks that help carry out agency missions, particularly in times of heightened national security;
- 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; and
- 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., if a mobility agreement is accepted at the beginning of the SES member's service, he or she is not eligible for discontinued service retirement if he or she later declines a position outside the commuting area. However, if the mobility agreement is added after the SES member is in the position and he or she declines the position outside the commuting area, he or she would be eligible for discontinued service retirement. A separation is not qualifying for discontinued service retirement if, after the mobility agreement is added, the SES member accepts one reassignment outside of the commuting area and the SES member subsequently declines geographic reassignment.

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. An agency may also request temporary increases to its executive resources allocations to support mobility assignments.

Mobility can also be voluntary; SES members can seek opportunities and new positions on their own, at any time for personal development. OPM encourages SES members to continually broaden their perspectives (see <https://www.chcoc.gov/content/guidelines-broadening-senior-executive-service-ses> for a November 7, 2008, memorandum on "Guidelines for Broadening the Senior Executive Service"). [Also see [Chapter 7](#) for additional information on Mobility Assignments and the Fifteen Percent (15%) Governmentwide Rotation Goal.]

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 persons who fail to register under the Selective Service law. [[5 CFR part 300, Subpart G](#)]

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

Employment during Terminal Leave. Members of a uniformed service (Army, Navy, Marines, Air Force, etc.) on terminal leave pending separation may be appointed to and receive pay from another Government position, including an SES position.

[\[5 U.S.C. 5534a\]](#)

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\(b\)](#), 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 Position Designations 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 [Allocating Noncareer Appointment Authorities, in [Chapter 3](#)]. The appointment can be made only to a General position in accordance with the staffing procedures for noncareer appointments discussed in [Chapter 3](#).

Limited Term and Limited Emergency Appointments

Limited appointments are defined under [5 U.S.C. 3132](#):

- (a)(5) - *limited term appointee* means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term.
- (a)(6) - *limited emergency appointee* means an individual appointed under a nonrenewable appointment, not to exceed 18 months, to a Senior Executive Service position established to meet a bona fide, unanticipated, urgent need.

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). Appointments must be made in accordance with the staffing procedures for limited appointments discussed in [Chapter 3](#).

QUALIFICATIONS REQUIREMENTS

STATUTE: [5 U.S.C. 3392\(a\)](#), [3393](#)

REGULATIONS: [5 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:** Time in grade requirements does not apply to the SES, so applicants do not need to have spent a certain amount 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 <https://www.chcoc.gov/content/national-security-professional-development-nsdp-interagency-personnel-rotations-program>.

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 18 months from the date of appointment to the position) in a mandatory technical qualification. In their policy document, agencies should specify the consequences for employees who do not acquire certification within the specified timeframe.

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 (FACP/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 18 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 two years.

Executive Core Qualifications

“Executive Qualifications” is the term used in statute [[5 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 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; 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	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-sector blended 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.
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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 an 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. If a candidate graduated from an agency program that conducted an agency-wide competition only (under the previous [5 CFR 412](#) (i.e., published prior to December 2009), then the candidate must compete for his/her first SES career appointment. However, in this case, if selected for an SES career appointment, the candidate does not need to be certified by the QRB again. (See *Area of Consideration* below.)

Preferences. While the CSRA excluded the SES from veterans' preference [[5 U.S.C. 2108\(3\)](#)] it did not exclude the SES from Indian preference. Therefore, vacancy announcements in the very limited number of agencies 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 to ensure they comply with all merit staffing requirements and are free of any impropriety.

Merit staffing plan template. Agencies may review the template in ESCS to assist with developing an SES Merit Staffing Plan.

Merit staffing checklist. Agencies may use the checklist in ESCS for reviewing the staffing action for an SES vacancy to be filled by career appointment that utilized one of the following SES selection methods: traditional Executive Core Qualifications (ECQs), Accomplishment record, or Resume-based.

RECRUITMENT

Area of Consideration

Under [5 U.S.C. 3393\(a\)](#), the search for candidates must at a minimum, include "all groups of individuals within the civil service." Agencies may also recruit from outside the civil service (i.e., all groups of qualified individuals).

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 and SESCDP graduates with noncompetitive eligibility may apply for noncompetitive consideration for that position.

Vacancy Announcements

Agencies are required by law to announce the 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** (www.usajobs.gov) [[5 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 317.501\(b\)](#), the consequences are serious and will affect recruitment actions. The agency must demonstrate that it has met the statutory requirements cited in the preceding paragraph before the proposed selection can 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 <https://www.usajobs.gov/Support>.

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 [[5 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**.

Vacancy announcement content. Agency announcements must include the following:

- 1) name of the issuing agency;
- 2) announcement number;
- 3) position title, series, pay plan;

- 4) duty location;
- 5) number of vacancies;
- 6) opening and closing dates and any other information concerning how receipt of application will be documented and considered;
- 7) Selection Method (Traditional ECQs, Resume-Based or Accomplishment Record);
- 8) brief description of duties;
- 9) area of consideration;
- 10) SES pay ranges;
- 11) ECQ and technical qualification requirements;
- 12) basis of rating;
- 13) what to file;
- 14) equal employment opportunity and reasonable accommodation statements;
- 15) contact person or contact point;
- 16) instructions on how to apply; and
- 17) other required information [see [5 CFR 330.104](#)].

Note, however, that [5 CFR 330.104\(a\)\(13\), \(14\) and \(15\)](#) regarding veterans' preference, the career transition assistance program (CTAP) and the interagency career transition assistance program (ICTAP) do not apply to an SES vacancy announcement.

Multiple vacancies. Although rare, agencies may advertise for more than one vacancy for the same SES position (e.g., Regional Director positions in different geographic locations).

Multiple selections. If an agency advertises a position and the vacancy announcement states one vacancy is to be filled, the agency may NOT make multiple selections from that vacancy announcement.

Organization/location. Agencies should ensure the information in department and/or agency fields in **USAJOBS** is appropriate. Agencies may not fill a position in an organization or location other than that advertised (e.g., The Department of Homeland Security may not fill a position in [United States Immigration and Customs Enforcement](#) if the announcement was for a position in [United States Customs and Border Protection](#), a different organizational component, or fill a position in a duty location other than was specified in the announcement.)

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 groups of qualified individuals."

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 ERB referral to the appointing authority and QRB certification, before appointment.

Recruiting for SES Candidate Development Programs (SESCDP)

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

Area of Consideration. Recruitment for SESCOs is from either all groups of qualified individuals within the civil service, or all groups of qualified individuals.

Applicants who do not hold career or career-type appointments. If a candidate is not serving on a career or career-type appointment, the candidate must be appointed using the Schedule B authority at [5 CFR 213.3202\(j\)](#). 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 412.302\(d\)\(1\)](#) 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 SESCO records in ESCS. See ESCS How-To-Guides on the ESCS website.

OPM Support for QRB-Certified SESCO Graduates

CDP-Opps Listserv

The Senior Executive Service Candidate Development Program (SESCDP) Opportunities listserv (*CDP-Opps*) (CDPOpps@listserv.opm.gov), helps ALL agencies recruit for SES vacancies and helps place current QRB-certified SESCO graduates. The purpose of the listserv is to: (1) help agencies identify top talent for SES positions more quickly, and (2) increase the placement rate of QRB-certified CDP graduates. QRB-certified graduates who apply to vacancies and meet the position-specific technical qualifications can be immediately non-competitively appointed allowing agencies to potentially identify top talent in a manner that will reduce time-to-hire from months to weeks.

QRB-certified SESCO graduates who register for the *CDP-Opps* listserv will be alerted to SES vacancies submitted by Agency Offices of Executive Resources. While agencies will still regularly announce SES vacancies on USAJOBS, *CDP-Opps* participants will receive notifications through the listserv and have opportunity to apply and have their applications immediately reviewed, including before the USAJOBS announcement needs to be posted or before it closes.

Agency Executive Resources (ER) offices are encouraged to share SES vacancies with certified

graduates via the *CDP-Opps* listserv simply by sending an e-mail to CDPOpps@listserv.opm.gov.

Each SESCDP vacancy notification should include the following:

- Agency and Bureau
- Job Title
- Job Series
- Duty Location
- Travel
- Security Clearance
- Technical Qualifications Requirement
- Brief Description of Duties
- List of required application materials, for example:
 - Current Resume
 - Technical Qualifications Statements (if necessary)
 - OPM-issued SES Certificate
 - Any other required items
- Application Submission Deadline
- Agency ER Contact Information (where candidates send their resume and application)

Offices of Executive Resources are encouraged to announce to CDP-Opps as soon as a vacancy opens, but if the vacancy announcement is already on USAJOBS, please send the following to the listserv:

- Agency and Bureau
- Job Title
- USAJOBS link
- Agency ER Contact Information (where candidates send their resume and application for advance non-competitive consideration)

OPM will regularly evaluate the listserv in terms of usage, feedback, and requested improvements.

QRB-certified SESCDP graduates can register for the CDPOpps listserv by following these steps:

1. Click on the link: https://apps.opm.gov/Listserv_Apps/list-sub.cfm?Targetlist=CDPOpps

2. Click “Join or Leave CDPOpps” (*Only QRB-certified SESCDP graduates are eligible to enroll.*)
3. Enter your Name and Email Address and click “Join CDPOpps”

For more information on the CDP-Opps listserv, please send an email to SESDevelopment@opm.gov.

MERIT STAFFING SELECTION METHODS

Streamlined Agency Initial SES Application Requirements

Agencies are encouraged to identify opportunities to streamline their initial application requirements for SES positions. While there is no one-size-fits-all approach, agencies should seek to eliminate or minimize application requirements that may deter candidates from applying, while at the same time adopt hiring and QRB submission methods most effective for each agency’s successful SES hiring and accomplishment of mission. The following are some options that agencies may consider:

- **Traditional Application Method:** This method directs applicants to submit a resume, a separate narrative (no more than 10 pages) addressing the ECQs, and, if applicable, a narrative addressing any mandatory technical qualifications. The ECQ statement must address all five ECQs and is limited to a maximum of ten pages. An advantage of this approach is that the ECQ narrative submitted by the selected individual may suffice with little or no additional information for the QRB submission.
 - Under [5 CFR 317.501\(c\)\(1\)](#) an agency must provide that competition be fair and open and that all candidates compete and be rated and ranked on the same basis. An agency should therefore be careful to state the recruitment method in the vacancy announcement and require applicants to submit materials in accordance with the chosen method, as determined by the agency. NOTE: If the traditional application method is used, agencies should pay close attention to the restrictions they impose relating to ECQ narrative format. While it is usually understood and encouraged that each ECQ should be addressed in 2 pages, agencies should not exclusively disqualify (through indication in the vacancy announcements) those candidates that exceed the 2 pages per ECQ, if the entire narrative conforms to the 10-page limit. In addition, agencies should also not disqualify those candidates that provide more, or less, than 2 examples per ECQ. If these restrictions are annotated on the vacancy announcement, they must then be enforced by the agency and further, OPM. Draft language is provided below for the traditional application method as it pertains to addressing the ECQs:
 - *Draft Language:*

EXECUTIVE CORE QUALIFICATIONS (ECQ): The ECQs were designed to assess executive experience and potential, not technical expertise. They measure whether an individual has the broad executive skills needed to succeed in a variety of

SES positions. All applicants must submit a written narrative to address the ECQs. Your narrative must address each ECQ separately and should contain one or two examples per ECQ describing your experiences and accomplishments/results. The narrative should be clear, concise, and emphasize your level of responsibility, scope and complexity of programs managed, program accomplishments, policy initiatives undertaken and the results of your actions. Applicants should not enter "Refer to Resume" to describe your experiences. Applications directing the reviewer to search within the application or to see the resume are considered incomplete and may not receive further consideration. The narrative must **not exceed 10 pages**.

There are five ECQs:

- ECQ1 - Leading Change
- ECQ2 - Leading People
- ECQ3 - Results Driven
- ECQ4 - Business Acumen
- ECQ5 - Building Coalitions

- Failure to submit a narrative statement addressing each of the ECQs may cause your application to be deemed incomplete and not be considered. Additional information on the ECQs is available at <https://www.opm.gov/policy-data-oversight/senior-executive-service/executive-core-qualifications/>
- **Resume-Based Application Method:** This method provides an alternative to the Traditional Application Method. In the Resume-Based Method, applicants submit only a resume with no written ECQ narrative thereby reducing the burden of lengthy written materials at the onset of the application process. The burden rests with the applicants to show possession of the ECQs and technical qualifications via their resumes.
- **Accomplishment Record:** This application method involves a hybrid version of the traditional application method and the resume-based application method, where the applicant provides a streamlined written accomplishment record (not to exceed five pages) addressing **certain** (not all) ECQs or competencies. The hiring agency can set specific competencies to be addressed or allow the candidate discretion to choose those competencies which best reflect their executive experience. The hiring agency should decide which approach is most appropriate depending on the requirements of the position to be filled. When the time comes for the agency to submit a selected candidate's file for review to the QRB, the agency supplements the accomplishment narrative with a shortened QRB Template. The Accomplishment Record allows an agency to identify specific competencies underlying the ECQs deemed by the agency to be most critical in assessing candidates for the advertised position. Some human resources practitioners consider rating and ranking candidates against more narrowly defined competencies chosen for their relevance to the SES position to improve the validity of results.

Application Documentation Requirements

Method	Applicant Submission Materials				Candidate Level of Effort
	Resume	ECQ Narrative (No more than 10 pages)	Technical Qualifications (TQ) Responses	Accomplishment Record (5 page narrative)	
Traditional	Yes	Yes	Yes	No	Significant
Resume-Based	Yes	No	*	No	Minimum
Accomplishment Record	Yes	No	*	Yes	Moderate to Significant

* Agency may require candidates to clearly address TQs within their resume or submit separate responses to no more than two TQ requirements (Per OPM Guidance).

USE OF TECHNICAL QUALIFICATIONS

When recruiting for executive positions, agencies should seek to balance executive skills and technical qualification requirements. OPM encourages agencies to conduct an analysis of qualification requirements to avoid duplicating requirements that may already be reflected in the ECQs. Likewise, agency requirements for lengthy TQ narratives may potentially deter qualified candidates from applying. A possible approach is for agencies to modify the language within vacancy announcements to instruct applicants to clearly demonstrate their technical competencies through their resumes. Another possible approach is for agencies to limit TQ requirements to no more than one or two specific qualifications which are focused and critically-relevant to the specific position.

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 may delegate preliminary qualifications screening, rating, and ranking of candidates. An agency should follow its SES merit staffing plan when selecting preliminary rating panel members. The ERB must consider the technical and executive qualifications of each eligible candidate.
- 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).

- Candidates may be grouped into broad categories (e.g., highly qualified/Top Group, well qualified/Middle Group, and qualified/Bottom Group). Candidates need not be given numerical ratings, since veterans' preference and the "rule of three" do not apply to the SES. 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.
- The record must be adequately documented to show the basis for qualifications, rating, and ranking determinations. If the ERB delegates rating and ranking of applicants in a given case, the ERB retains responsibility for the result. Therefore, the ERB must endorse the rating and ranking results as its own or document the basis for any adjustments made by the ERB before certifying the list of best qualified candidates to the appointing authority. 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 ERB 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 ERB 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

The following are some best practices currently in use at some agencies:

- 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 score with a degree of precision supporting numerical rating.
- It is good practice to provide training for members of rating panels. Rater training ensures all raters have a common understanding of the rating process and ECQ definitions. The training can range from short and simple instructions to very detailed presentations.
- 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.
- It is good practice to notify applicants of their status at key points in the selection process: 1) application received, 2) application assessed for qualifications, 3) applicant referred for appointment consideration (or not) and, 4) applicant selected (or not).

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 <https://osc.gov/>.

Corrective Actions

If it is determined that an individual was not placed on a selection certificate of best qualified candidates as a result of a statutory, regulatory, or procedural violation, the agency may, as a corrective action, select the individual for 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:** The corrective action authority does not require, but does permit, 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 two years after an initial career appointment. (If no appointment results from a vacancy announcement, the records must be kept for two 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 rating and ranking 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 solid executive skills.

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 or she cannot provide an impartial review, the member will be excused from the case.

Functions

The QRB certifies the executive qualifications of candidates for initial career SES appointments. QRB members judge the overall scope, quality, and depth of a candidate's executive qualifications and experience within the context of the five Executive Core Qualifications (ECQs) by fairly and objectively assessing all documents in the candidate's QRB case.

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 forecasting executive success. Criterion "C" cases are appropriate when exceptional candidates with demonstrated executive experience have been sought out but are not available. This criterion case applies to candidates whose professional and technical backgrounds suit them particularly well for the SES position despite a lack of demonstrated experience in one or two of the executive core qualifications. Such candidates must also demonstrate, however, high potential for quickly acquiring full competence in all of the core qualifications. For example, an attorney may have outstanding legal skills and in-depth knowledge of the specialized field for which the SES position is responsible, but he or she may not have managed human, financial, and information resources. In this instance, an agency may propose such a candidate for consideration under Criterion "C". (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). The IDP should be developed for the candidate to accomplish within a 12-month time frame (probationary period).

Operations

An OPM staff member serves as a QRB Administrator for each Board. The QRB Administrator conducts a briefing about the hiring selection methods used by agencies, gives instructions on the certification process and Board member roles, answers questions from QRB members, and provides any other guidance and staff support as appropriate.

The Board members independently review each set of documents (i.e., "case") pertaining to an individual who has been selected for initial career appointment (see Submitting Cases for QRB Certification later in this section). After review of each case, the administrator facilitates discussion to reach consensus. The final decision to approve or disapprove is by majority vote. Prior to a final decision, Board members can elect to have candidates and agencies re-write those ECQs (no more than two) that are identified as falling short of demonstrating executive

leadership.

Approval. The QRB must find demonstrated executive-level experience in a majority of competencies in each of the five ECQs to recommend approval under Criterion A and Criterion B. 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.

To approve a Criterion C case, the QRB should find demonstrated executive level experience in a majority of competencies in at least three of the five ECQs, with the remaining one or two ECQs that need further development clearly addressed by the Special and Unique Qualities Memo and IDP (see “PROCEDURES for document submission” section).

Disapproval. If a QRB case is disapproved, the agency may choose to have the case submitted to the next regularly scheduled QRB as is or returned to the agency for improvements. Agencies are encouraged to resubmit a returned case within 60 working days of the initial 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 based on 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 and documentation of the candidate’s unique and special qualities. A new case must then be entered into ESCS for the subject position.

If a case is disapproved a second time, a new case on the candidate may not be submitted for the same position 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. There is no appeal for second time disapproval.

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. If a Criterion B case is disapproved two consecutive times, the agency must provide the candidate additional development before submitting the case again.

Re-Write. Not considered a full approval or disapproval, this option allows Board members to give candidates and agencies an opportunity to re-address those ECQs (no more than two) that lack evidence of executive leadership. Upon notification of the re-write option, the agency has 14 working days to ensure the re-write is completed and returned to OPM. Re-writes are returned to the Board members that conducted the initial review.

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 uses ESCS to validate the QRB certification. 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 the previous version of [5 CFR 412.104\(a\)\(2\)](#) (i.e., published prior to December 2009)]; 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 under the previous version of [5 CFR 412](#) 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 Executive Development Plans. OPM may ask agencies to provide written verification of progress toward implementing any such QRB recommendations within 18 months of appointment.

Suspension of QRB Case Processing

- In accordance with its authority under 5 U.S.C. [3393\(c\)](#) and [3397](#), and its regulation at [5 CFR 317.502\(d\)](#), the U.S. Office of Personnel Management (OPM) will continue to accept and process new agency QRB cases when an agency head departs, announces his or her departure, or when the President announces the nomination of a new agency head, in certain circumstances. OPM guidance, [Modified Agency-Specific Senior Executive Service \(SES\) Qualifications Review Board \(QRB\) Moratorium during Agency Head Transitions \[August 15, 2019\]](#) can be found on the CHCOC website. Placement of agency-specific QRB moratoriums will depend upon the means by which the individual serving as the acting agency head received that designation —
- When an acting agency head serves under a Presidential Appointment (with or without Senate confirmation), immediately preceding the designation, the agency is not placed on a QRB moratorium.
- When bi-partisan boards and commissions, and agencies that have acting agency heads that are not currently serving on a Presidential Appointment, that entity may request a blanket exception to the moratorium, which OPM will consider on a case-by-case basis.

When an agency blanket exception is approved, the agency should fill only positions that are necessary to ensure continuity of critical agency operations. In circumstances where an agency blanket exception is not approved, the agency will still be able to request exceptions for specific positions. Requests for exceptions 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;
- candidate's resume;
- 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.

The Governmentwide QRB moratorium issued when there is a change in Administration will continue to be followed to provide the incoming Administration some ability to determine its executive leadership. [A [memo dated November 18, 2016](#), was sent to all Agency Heads and Chief Human Capital Officers regarding the Governmentwide Moratorium on Senior Executive Services (SES) Qualifications Review Board (QRB) cases.]

As agencies may already process noncompetitive SES selections (e.g., reassignments, transfers, etc.), the modified SES QRB moratorium provides them with similar latitude as to merit staffing selection, in accordance with applicable regulations. This will also reduce burden to agencies and their SES time-to-hire and create a more efficient process for agencies to respond to critical and exigent needs.

Resumption of QRB Case Processing. After an agency head has been sworn in, agencies may request (by email to SERS@opm.gov) that OPM resume the processing of QRB cases.

Requesting OPM to resume processing of agency QRB cases. The message must be sent from the senior Executive Resources Office official, or higher-level official (such as the Deputy Secretary, Chief of Staff, or ERB Chairperson), and should specifically indicate the new agency head's intention to resume processing its QRB cases. Additionally, the information should include the title and name of the new agency head and the date he/she was sworn in. If QRB cases are being submitted in conjunction with the request to remove the moratorium, the email should list those specific cases. An agency need not wait until it has a QRB case to submit to request the moratorium be

ended; however, it is required that the agency head be sworn in and approve the request. OPM will respond via email regarding the agency's request.

When OPM initiates a message to the agency asking if it would like to have the QRB moratorium removed, the agency may respond by email to convey the new agency head's decision.

SUBMITTING CASES FOR QRB CERTIFICATION

QRB Submission Methods

OPM requires a hiring agency to submit to the QRB the following basic materials: the specific vacancy announcement for the SES position for which the agency is hiring (Criterion A and C); the resume of the candidate selected by the agency for initial appointment to the SES; and evidence the agency has applied merit staffing procedures through certification by the agency's appointing official that documents the selection of, and decision to submit, the candidate for QRB certification.

Additionally, OPM requires the hiring agency to submit evidence that demonstrates the candidate's proficiency in the ECQs. OPM accepts agencies' evidence/demonstration of ECQs by using one of three submission methods: (1) traditional written ECQ narrative; (2) QRB Template; and (3) Accomplishment Record.

1. Traditional ECQ Narrative

This traditional method involves the submission of a written narrative statement (limited to **no more than** 10 pages) in which the candidate provides information about the results achieved that reflect the candidate's proficiency in each of the ECQs through a demonstration of a majority of the competencies in *each* ECQ. Agencies have the flexibility to use a resume-based application intake method and require only the final selectee to complete the ECQ narrative for QRB submission. This submission method provides the most comprehensive and detailed evidence-supporting information for QRB review but may also be the most burdensome and time-consuming for the candidate.

2. QRB Template

In lieu of an ECQ narrative, an agency may elect to submit a QRB Template. This is a submission method that allows the agency to populate a standard template provided by OPM. The template can include substantive information highlighting a candidate's demonstrated ECQs, obtained by the agency from interviews, as well as any other materials required by the agency during the agency's merit staffing process. The template is meant to be completed by the ER Staff in conjunction with the ERB and interview panels and the selecting official. This submission method may be the least burdensome for the candidate because it eliminates the requirement for the candidate to prepare an ECQ narrative and requires the agency to obtain and describe the candidate's information. It is appropriate, however, for the agency to consult with and involve the candidate in the completion of the template. The signing appointing authority or ERB Chairman is responsible for its content and affirmations. On average, a completed template

of seven to eight pages in length should be sufficient to provide the best evidence for all ECQs.

3. Accomplishment Record

This QRB submission method is a hybrid version of the ECQ narrative and QRB Template methods that includes the candidate’s written accomplishment record (not to exceed five pages) addressing certain ECQs or competencies (which the hiring agency determined), and the agency supplements the accomplishment record with a shortened QRB Template. This method typically occupies a middle ground with respect to the comprehensiveness of information provided to the QRB – between the ECQ Narrative method and the QRB Template method – and also balances the preparation of materials between the agency and the candidate.

Summary of QRB Documentation Requirements

Method	QRB Submission Requirements					Candidate Level of Effort
	USAJobs Vacancy Announcement	Resume	ECQ Narrative	QRB Template	Accomplishment Record	
Traditional ECQ Narrative (up to 10 pages)	Yes	Yes	Yes	No	No	Significant
QRB Template	Yes	Yes	*	Yes	No	Minimum
Accomplishment Record (up to 5 pages)	Yes	Yes	*	Yes	Yes	Moderate to Significant

* Agency may elect to submit ECQs in lieu of the QRB template (Resume-Based Method) or the QRB template and Accomplishment Record (for the Accomplishment Record Method).

General Requirements

A case will be accepted only from an agency, as a result of the SES merit staffing process or successful completion (as certified by the agency) of an OPM-approved SES candidate development program. Agency requests for certification of a candidate by a QRB must validate in ESCS that merit staffing procedures were followed and that the appointing authority certified the candidate’s qualifications for the position. No individual may request his/her own certification. Furthermore, OPM will not submit for QRB review 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) a certification is requested.

The primary basis for submitting a case as Criterion A is “demonstrated executive experience”; 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” qualities in terms of the agency’s program or mission, or some other directly related SES consideration. In the rare event that a candidate’s experience is so highly specialized that it would not be possible for someone outside of that field to provide a fair, competent, and objective assessment

of the candidate's executive core qualifications, the submitting agency can request that OPM assign the case to a review board with at least one member with a comparable career background. OPM will review each request on a case-by-case basis, and make a reasonable effort to accommodate the request, if possible. Such requests may cause a delay in reviewing the candidate's package.

Agencies must 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. Submission of QRB cases by agencies covered by a QRB moratorium will be reviewed only if an exception to the QRB moratorium processing has been approved, which is done on a case-by-case basis. As agencies become aware of the possibility of not meeting the 90-day deadline, they must request an extension for each case affected **prior** to the 90th day. OPM may grant a brief extension for good cause.

A Criterion B case should be submitted for SESCO participants within 12 months from the ending date of an OPM-approved SES candidate development program.

PROBATIONARY PERIOD

STATUTE: 5 U.S.C. [3393\(d\)](#), [3592](#), [10 U.S.C. 1599e](#)

REGULATIONS: [5 CFR 317.503](#)

An individual's initial SES career appointment becomes final only after the individual successfully completes a one-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 one calendar year later. For example, if an individual was appointed to the SES on June 1st, the probationary period ends on May 31st of the following year. However, a probationary appointee is considered to have completed probation at the end of his/her last tour of duty within the probationary period.

Note: Newly appointed SES members of the Department of Defense must serve a probationary period of two years. See [10 U.S.C. 1599e](#).

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.
- Complete a probationary assessment of the individual's performance before the probationary period ends. If QRB certification was based upon special or unique qualities (criterion C), document results of executive developmental activities undertaken based upon agency commitments or QRB recommendations related to that certification.

- Certify that the appointee performed at the level of excellence expected of a senior executive during the probationary period or, if it becomes apparent after full and fair consideration that the employee's performance is not suitable for satisfactory executive work, initiate action to remove the employee from the SES. 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. Note that an agency's failure to meet its regulatory obligation to timely certify a probationer's performance does not prevent the probationary period from ending. [See [Chapter 8](#) for notice and timing requirements that must be met to affect removal under probationary procedures.]

Electronic Submission and Documentation Requirements

All QRB cases should be submitted electronically through ESCS. No e-mail submissions will be accepted unless submission via ESCS is not possible and the agency has previously communicated the ESCS issue with SERS and received approval to submit the QRB case via e-mail as an exception. Any QRB cases submitted via e-mail must be followed up with an ESCS submission once the ESCS issue has been resolved.

PROCEDURES for document submission are as follows: A labeled cover sheet should be placed to separate each document listed below (in that order) and should be scanned as one document (these are the only documents forwarded to Board members). Additional documents and extension approvals should be sent as separate PDF attachments.

CRITERION A

Traditional

- Vacancy Announcement
- Resume
- ECQ Narrative

QRB Template

- Vacancy Announcement
- Resume
- QRB Template

Accomplishment Record

- Vacancy Announcement
- Resume
- Accomplishment Narrative
- QRB Template

CRITERION B

- Mentor Evaluation
- Resume
- ECQ Narrative **or** QRB Template
- IDP (signed)

NOTE: Agencies will be asked to provide additional documents for Criterion B cases as needed.

CRITERION C

- Vacancy Announcement
- Resume
- ECQ Narrative **or** QRB Template
- Special & Unique Qualities Memo written by the selecting official or higher, addressing:
 1. why this candidate is so special or unique and will be an effective executive
 2. what makes this candidate a superior choice for this SES position over other candidates who demonstrated executive level experience in all five ECQs

3. Which one or two ECQs need further development (weak) for the candidate
4. How the candidate will acquire full competence in the one or two weak ECQs in the next 12 months (can reference the IDP)

- Signed IDP addressing:

1. A clear executive development plan to ensure that the candidate will acquire executive level knowledge and experience in the one or two weak ECQs and associated competencies in the next 12 months (i.e., the probationary period)

Crediting Service

The following conditions apply to credit service towards completing the probationary period, as stated in [5 CFR 317.503\(d\)](#):

- 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 (e.g., 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). Credit is given for time served during a probation period prior to transfer; 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 [[5 CFR part 353](#)].

Moratorium on Removal During Probation

The provisions of [5 U.S.C. 3592](#) restricting the removal of individuals from the SES for 120 days after the 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 affected 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 one-year probationary period is not required in the following situations:

- 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 317.703](#);
- 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; or
- the break in SES service was the result of military duty or compensable injury, and the time credited was insufficient to complete the probationary period. [See [Crediting Service](#) earlier in this chapter.]

Other Guidance

A new one-year probationary period is not required if the individual left the career SES without a break in service for a noncareer-SES appointment and is selected for another career SES appointment under merit staffing procedures, when no other break in service has occurred. The individual is only required to complete the remainder of the probationary period if it was not previously completed.

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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 jobs. 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.

NONCAREER APPOINTMENT AUTHORITIES

STATUTE: 5 U.S.C. [3134](#), [3394](#), and [3395](#)

REGULATIONS: [5 CFR 317, Subpart F](#)

Allocating Noncareer Appointment Authorities

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:** 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 OPM, and the authority reverts to OPM upon departure of the incumbent, unless otherwise provided by OPM. 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 noncareer SES within the agency, the request is made for an 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 should contact OPM (SERS) for guidance. After completing OPM form 1652, the agency forwards the form to SERS@opm.gov. 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** forwarding 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.

Authorities for Appointment

Authority. An agency must have prior approval from OPM to make a noncareer appointment ([5 CFR 317.601\(b\)](#); [5 U.S.C. 3394\(b\)](#)). All other pertinent documentation including the form, 1652, Request for an SES Appointment Authority, should also be uploaded into ESCS by the agency. The form, 1652, Request for an SES Appointment Authority, is submitted in ESCS after appropriate agency clearances. If ESCS is temporarily unavailable and the need is urgent, the agency should contact OPM (SERS) for guidance.

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

Competition. Competitive procedures are not required to make these appointments.

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

Tenure. The appointee does not have career tenure and serves at the pleasure of the appointing authority.

Reassignments

OPM Approval. An agency may reassign a noncareer appointee to a different General position only upon approval by OPM. An agency initiates a request for a noncareer reassignment by entering it into ESCS. The form, 1652, Request for an SES Appointment Authority, is submitted in ESCS after appropriate agency clearances. If ESCS is temporarily unavailable and the need is urgent, the agency should contact OPM (SERS) for guidance.

Transfers

Transfer of a noncareer appointee to another agency, may be made only to a General position for which the individual is qualified. The new agency must obtain prior OPM approval of the required appointment authority in order to transfer the appointee.

In a transfer of function between agencies, noncareer appointees may be offered transfers at the discretion of both agencies but subject to the ceiling on noncareer appointments that applies to the executive agency to which the function is being transferred. Agencies must get prior approval from OPM for the transfer of appointment authorities.

Transitions and Presidential Nominees

To assist in transitions, OPM may make noncareer 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. The appointee does not have career tenure and serves at the pleasure of the appointing authority.

Presidential nominees may be given a noncareer 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 Appointment

A career SES appointee cannot be required to accept a noncareer appointment as a condition for appointment to another SES position [[5 CFR 317.904](#)]. If a career appointee voluntarily elects to accept a noncareer appointment, the voluntary nature of the action must be documented in writing before the appointment. The documentation must be retained permanently in the appointee's 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 or she will automatically acquire CSRS Offset coverage (CSRS plus Social Security) or FERS coverage depending on whether the individual has five 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 or she later returns to a career SES appointment, it will not be possible to return to regular CSRS coverage without Social Security. The agency Benefits Officer can answer any questions pertaining to these provisions.

LIMITED APPOINTMENT AUTHORITIES

STATUTE: 5 U.S.C. [3134](#), [3394](#), and [3395](#)

REGULATIONS: [5 CFR 317, Subpart F](#)

[**Note:** Limited term appointment and limited emergency appointment are two distinct types of SES appointment each with its own statutory criteria. They are normally not interchangeable, but for the sake of convenience we may refer to them jointly as “limited appointments” or to individuals holding either as “limited appointees” when making statements that apply to both types of appointment.]

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.

Under [5 CFR 317.601\(c\)](#), 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 to appoint an individual who meets the stated criteria. The pool authorities may not be used to appoint a retired SES member.

OPM approval of a limited appointment authority does not imply authorization of an additional SES position allocation. Limited term and limited emergency appointments count against the agency's SES position allocation. An additional SES position allocation must be requested if the agency does not have an available allocation to use to appoint approved limited term or limited emergency appointees.

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. 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., two-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.

Appointment Authorities

Authority. An agency must have prior approval from OPM to make a limited-term or limited emergency appointment ([5 CFR 317.601\(c\)\(2\)](#); [5 U.S.C. 3394\(b\)](#)), except when using its pool of delegated limited appointment authorities provided under [5 CFR 317.601\(c\)\(1\)](#) to make a limited term or a limited emergency appointment [See [Chapter 1](#)]. A request for a limited-term or limited emergency appointment authority must be created in the ESCS. All other pertinent documentation including the form, 1652, Request for an SES Appointment Authority, should also be uploaded into ESCS by the agency. The form, 1652, Request for an SES Appointment Authority, is submitted in ESCS after appropriate agency clearances. If ESCS is temporarily unavailable and the need is urgent, the agency should contact OPM (SERS) for guidance.

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

Competition. Competitive procedures are not required to make these appointments.

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

Tenure. The appointee does not have career tenure and serves at the pleasure of the appointing authority.

Conditions Regarding Limited Appointment Authorities

The following information is provided to assist agencies in determining whether a proposed use of SES limited term or limited emergency appointment is appropriate, and if so, what information should be provided to justify the request.

Pool. By regulation ([5 CFR 317.601\(c\)\(1\)](#)), each agency is provided a pool of limited appointment authorities equal to three percent of its SES space allocation, or one authority, whichever is greater. An agency may use these authorities only to make a limited term or limited emergency SES appointment of an individual who holds a career or career-conditional appointment (or an appointment of equivalent tenure) in a permanent civil service position 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.

Staffing. When filling an SES position by limited-term or limited emergency appointment, an agency is not required to hold a competition or even announce the position is available. Also, QRB review of the appointee's qualifications is not required. Agencies must request OPM approval when proposing to make a limited term or limited emergency appointment under the following circumstances:

- Prospective appointee is not a civil service employee, or is a civil service employee but does not hold a career or career-conditional appointment (or an appointment of equivalent tenure) in a permanent civil service position outside the SES.
- Prospective appointee meets the criteria for limited appointment by the agency under [5 CFR 317.601\(c\)\(1\)](#) (i.e., holds a career or career-conditional appointment or an appointment of equivalent tenure in a permanent civil service position outside the SES), but all of the agency's pool authorities are in use.

Time limit. A limited term appointment authority (LTA) may not exceed three years. A limited emergency appointment authority (LEA) may not exceed 18 months. An individual serving on a limited appointment 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 or limited emergency appointments.

Extension. A limited appointment is nonrenewable. If an agency makes an appointment for less than the period authorized by OPM, the agency may extend the appointment to that period but only if the agency does so before the initial appointment expires. An SES member whose limited appointment expires may not be reappointed to the position. For example, if OPM authorizes a limited term appointment for a period of 24 months and the agency makes an initial appointment of 12 months, the agency may extend the appointment up to an additional 12 months. The total appointment length including the extension equals the original 24 months approved by OPM. If an agency needs to ask OPM to extend the time period originally authorized by OPM, the agency must do so well before the appointment expires. The request should be based upon factors that were not anticipated when the limited appointment was approved. If OPM approves, the

agency may only extend if the individual's appointment has not expired. In no case may the appointment exceed the applicable statutory time limit.

Termination. A limited appointment terminates automatically at the end of the appointment period authorized by OPM 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 a limited appointee 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.

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

- the limited appointment was made without a break in service from a career or career-conditional appointment or an appointment of equivalent tenure (see [5 CFR 210.102](#)) the individual held in the same agency in a permanent civil service position outside the SES; and
- the limited appointment is terminated for reasons other than misconduct, neglect of duty, or malfeasance. Note, however, that a limited appointee with such a return right would normally have access to adverse action procedures that apply to career SES appointees (see [5 CFR 752.601\(c\)\(2\)](#) and [Chapter 8](#)).

Provisional appointment. Under [5 CFR 316.403\(a\)](#), an agency is authorized under certain circumstances to designate a temporary appointment of one year or less as "provisional" to make the appointee eligible for life insurance, health benefits, and retirement coverage. When OPM grants an SES limited appointment authority for one year or less for an appointee who is to be converted to a non-temporary appointment upon completion of such further action as required, e.g., Presidential Appointment with Senate Confirmation (PAS), OPM normally specifies that the appointment is considered provisional; however, see also [5 CFR 317.602\(a\)](#). Provisional designation is generally not needed for appointments of more than 1 year in which an appointee is eligible for life insurance, health benefits and retirement coverage.

SES Limited Appointment Examples

[5 U.S.C. 3132\(a\)\(5\)](#) states that a limited term appointee is an individual appointed under a nonrenewable appointment for a term of three years or less to a Senior Executive Service position the duties of which will expire at the end of the term. [5 U.S.C. 3132\(a\)\(6\)](#) states that a limited emergency appointee is an individual appointed under a nonrenewable appointment for a term of 18 months or less to a Senior Executive Service position established to meet a bona-fide, unanticipated, urgent need. Therefore, in addition to showing that a position's duties support SES, it is necessary for an agency requesting an SES limited appointing authority to explain why those duties will expire at the end of the requested term.

It is important to note, because limited appointments are made without competition, if an agency grants an SES limited appointment and later holds a merit competition to fill the same position or a successor position by career appointment, the limited appointee will appear to have been given an unfair competitive advantage. In such circumstances, an agency should anticipate OPM will

conduct a merit staffing review.

Over the years, OPM has reviewed and approved agency requests for SES limited term appointment in circumstances such as the following:

1. When the duties and responsibilities that are the basis for the SES position will expire, so that at the end of the term there will be no need for an SES position.
 - A statute requires a new program to be established and its mission completed within a period of less than three years.
 - A statute or other external factors require a program to be terminated within a three-year period and the last career SES program leader has departed, leaving a new program leader three years or less to close program operations.
 - The position is established to oversee a project that has a defined end-date within three years.
 - A program or mission normally led by a GS-15 requires an SES leader to address new and substantially increased but time limited challenges, e.g., to accomplish a major turnaround or restructuring due to adverse findings from a program audit. This assumes the challenge is reliably determined to be subject to resolution within three years after which the program will be led by an employee at GS-15 or below, i.e., the duties requiring SES leadership will end and there will be no SES successor position. (If it is anticipated continuing leadership will be at the SES level, an SES limited term appointment is not appropriate. The agency should recruit for a career SES leader at the beginning.)
2. When the incumbent of an existing SES position is not available to perform the duties of his or her position but still encumbers the position and is expected to return to it, the agency may establish a second temporary SES position to perform those duties and fill it by SES limited appointment until the career SES incumbent returns to the continuing position. Upon the career appointee's return, the need for and duties of the temporary position expire.
 - Such a need may arise due to a career executive's absence for reasons such as a detail (e.g., intra-agency, inter-agency, international organization, IPA), a sabbatical, a developmental assignment, or similar circumstances in which a career appointee continues to hold a position and will return to it in three years or less but is not available to perform its duties.
 - It will normally not be possible to use this approach if the absent executive's position of record is career reserved ([5 CFR 214.402](#)), because a temporary position performing the same duties must also be career reserved and a limited term appointment may only be made to a general position. SES limited appointment would only be possible if the temporary position could be structured to remove duties that require career reserved designation without also eliminating the basis for establishing the position as SES, (i.e., classifiable above GS-15 and meeting the SES functional criteria).
 - This approach is appropriate only so long as the career appointee continues to encumber the continuing position and will be returning to it within three years. If the career appointee is reassigned to another SES position or leaves the agency, the agency should

abolish the temporary position and end the limited appointment. The agency may still detail a non-SES employee under [5 CFR 317.903](#) to the continuing position.

3. An agency mission requires periodic or occasional time-limited employment in SES positions of individuals from outside government who are uniquely qualified to make critical contributions to the agency's mission, but are not otherwise available for federal service due to their career paths and professional commitments. Appointment should be made to a time limited SES general position distinct from the agency's continuing positions. In addition to the position's duties and responsibilities, the position description should focus particularly on results expected from the position, the unique qualifications necessary to achieve those results, and the anticipated impact on program goals, objectives or mission beyond what could be accomplished through agency employees or other staffing methods.

For example, an agency may request a limited term authority to appoint a non-Federal Intergovernmental Personnel Act (IPA) assignee to an SES general position the duties of which will expire within a three-year period.

Required Documentation for Limited Appointment Requests

Agencies needing to request a limited appointment authority should submit the following documents to OPM:

- A letter from agency appointing authority requesting SES limited appointment (term or emergency), identifying the position, organizational location, and why the authority is needed. Additionally, for limited term requests the agency's objective basis for concluding that the duties of the position will expire by the end of the requested term (not exceeding three years);
- A request (OPM Form 1652) created in the Executive and Schedule C System (ESCS);
- The position description that lists the duties and shows the duties expire during a period not to exceed three years;
- The proposed appointee's current resume; and
- The applicable agency organizational chart.

Reassignments

OPM Approval. Subject to the expiration date specified by OPM, an agency may reassign a limited term or limited emergency appointee without prior OPM approval, but only to a General position that meets the same statutory criteria under which OPM authorized the original appointment ([5 CFR 317.604\(b\)](#)). OPM must be notified of the reassignment and the agency must document the change of position in ESCS.

Transfers

Transfer of a limited appointee to another agency, may be made only to a General position for

which the individual is qualified. The new agency must obtain prior OPM approval of the required appointment authority in order to transfer the appointee.

In a transfer of function between agencies, limited appointees may be offered transfers at the discretion of both agencies but subject to the ceiling on noncareer appointments that applies to the executive agency to which the function is being transferred. Agencies must get prior approval from OPM for the transfer of appointment authorities.

Details of Limited SES Employees

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

An agency may detail an SES limited emergency appointee to a different SES general position established to meet an urgent, unanticipated, bona-fide need.

An agency may not detail an SES limited appointee to a position that does not meet the same conditions that supported OPM approval of the limited term or limited emergency appointment authority, as applicable. In that event, the statutory basis for the SES limited appointment would disappear and the 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.

Intergovernmental Personnel Act (IPA) Assignments

The Intergovernmental Personnel Act (IPA) provides for IPA assignments to or from state and local governments, institutions of higher education, Indian tribal governments and other eligible organizations (as defined in the Act) in order to facilitate cooperation between the Federal Government and those non-Federal entities through the temporary assignment of skilled personnel ([5 U.S.C. 3374](#) and [5 CFR Part 334](#)).

IPA Assignment of a Career SES Member to Non-Federal Entity

An agency may enter into an agreement for a career SES member to serve in a position in a covered non-Federal entity. The executive may be detailed to the assignment or placed on leave without pay and appointed by the receiving organization during the assignment.

[See also [Chapter 7, Executive Development](#), concerning IPA assignments for SES members.]

Appointment of a Non-Federal IPA Assignee to an SES General Position

An agency may enter into an agreement providing for appointment of a non-Federal IPA assignee to an SES general position, but the IPA appointing authority provided in [5 U.S.C. 3374\(a\)\(1\)](#) may not be used for that purpose. The agency may request an SES limited term appointment authority from OPM to appoint an IPA assignee to a position the duties of which will expire within a three-year period. If an agency requests limited term authority to appoint an

IPA assignee to such a position for only two years and later decides to extend the individual, OPM can authorize an extension of not more than one year. The agency must submit its request in time for OPM to approve and the agency to extend the IPA assignee's appointment before it expires because an SES limited appointment is nonrenewable. Also, an individual may not serve more than 36 months during any 48-month period under any combination of SES limited term or limited emergency appointments.

Detail of a Non-Federal IPA Assignee to an SES General Position

Alternatively, an agency may enter into an agreement under which a non-Federal IPA assignee is deemed on detail to a Federal agency ([5 U.S.C. 3374\(a\)\(2\)](#)). An IPA agreement providing for the IPA assignee to be deemed on detail to an SES general position under this provision is not subject to restrictions in [5 CFR 317.903](#). However, an IPA assignee serving in a GS-15 position, whether by detail or appointment, may only be detailed to an SES position subject to [5 CFR 317.903](#). This does not preclude amendment of an IPA agreement to provide for assignment to an SES position.

Transitions and Presidential Nominees

To assist in transitions, OPM may make 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. The appointee does not have career tenure and serves at the pleasure of the appointing authority.

Presidential nominees may be given a 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 Limited Appointment

A career SES appointee cannot be required to accept a limited appointment as a condition for appointment to another SES position [[5 CFR 317.904](#)]. If a career appointee voluntarily elects to accept a limited appointment, the voluntary nature of the action must be documented in writing before the appointment. The documentation must be retained permanently in the appointee's 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 limited appointment, the individual must be informed that he or she will automatically acquire CSRS Offset coverage (CSRS plus Social Security) or FERS coverage depending on whether the individual has five 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 or she later returns to a career SES appointment, it will not be possible to return to regular CSRS coverage without Social Security. The agency Benefits Officer can answer any questions pertaining to these provisions.

Similarly, some agencies had statutory authorities prior to CSRA that authorized scientific or professional positions outside the General Schedule that were not expressly repealed by the CSRA. Under [5 U.S.C. 3104](#), the Director, OPM is given authority to determine the maximum number of such positions that may be established in any agency, accordingly those authorities are no longer used to establish such positions.

Agencies covered by the Senior Executive Service that seek approval of new statutory authorities that would conflict with the definition of an SES position [5 U.S.C. 3132\(a\)\(2\)](#) should include the statute language specifying that the authority applies notwithstanding [5 U.S.C. 3132\(a\)\(2\)](#). Similarly, agencies seeking approval of statutory authorities that would conflict with the OPM Director's authority under [5 U.S.C. 3104](#) to establish the maximum number of scientific and professional positions that may be established outside the General Schedule in any agency should include language specifying that the authority applies notwithstanding [5 U.S.C. 3104](#).

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. There is no prohibition on reassigning a career appointee during the probationary period.

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. Congress stated in the section analysis for [Pub. 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.

Change of Duty Station that is Not a Reassignment. A career appointee's position may be moved from one geographic location to another (i.e., performing the same job but in a different location). An agency must apply the rules for geographic reassignments above.

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 (if eligible), unless a memorandum of understanding or other written agreement provides for such geographic reassignments. For example, if a mobility agreement is accepted at the beginning of the SES member's service, he or she is not eligible for discontinued service retirement if the member later declines a position outside the commuting area. However, if the mobility agreement is added after the SES member is in the position and he or she declines the position outside the commuting area, the member would be eligible for discontinued service retirement. [See [Chapter 8](#) for information on Removals.]

MORATORIUM ON INVOLUNTARY REASSIGNMENTS

STATUTE: [5 U.S.C. 3395\(e\)](#)

REGULATIONS: [5 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 filling either a career reserved or general position:

- 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 accept a reassignment during the moratorium but must agree in writing before the reassignment can occur. The agreement should be retained as a temporary record in the Official Personnel Folder.

Details during the moratorium. In calculating the 120-day moratorium, the agency must 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 and who has the authority identified in statute as the basis for initiating the moratorium.

- For the 120-day moratorium on reassignments, it is the noncareer appointee closest to the career executive in the supervisory chain who has authority to make an initial appraisal of the career appointee’s performance ([5 U.S.C. 3395\(e\)](#)). This does not mean a supervisor who functions solely as the reviewing official or final rater.
- For the 120-day moratorium on removals, it is the noncareer appointee closest to the career executive in the supervisory chain who has the authority to remove the career executive ([5 U.S.C. 3592\(b\)](#)).

“Initial appraisal” means the initial 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 annual summary rating made by the appointing authority.

Applying the Moratorium

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

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.

“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 on involuntary reassignments

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 on involuntary reassignments initiated by the permanent appointment ([5 CFR 317.901\(c\)\(5\)](#)). However, an agency may not count time served by an individual in an acting capacity toward the 120-day moratorium on involuntary removals (See [5 CFR 359.406](#); [5 CFR 359.503](#)).

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 final performance rating 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. ([5 CFR 317.901\(d\)](#)).

If an advance notice is issued before the moratorium begins but the notice has not yet expired, the 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.

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, if all eligibility requirements are met, or agree to an immediate voluntary reassignment. However, the incumbent could not be involuntarily reassigned until the 120 days have elapsed.

[**Note:** Information about the 120-day moratorium on removals ([5 U.S.C. 3592\(b\)](#)) is provided in [Chapter 8](#)]

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.

Transfers may be noncompetitive; however, 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 transfer with the function if the only alternative upon remaining in the losing agency would be removal through reduction in force. [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.

DETAILS

STATUTE: [5 U.S.C. 3341](#)

REGULATIONS: [5 CFR 317.903](#)

A “detail” is the temporary assignment of an SES member to another position (within or outside of the SES) or the temporary assignment of a non-SES employee to an SES position, with the expectation that the employee will return to his/her regular position at the end of the period. A detail may be mandated by an agency. For purposes of pay and benefits, the employee continues to be the incumbent of the position from which he or she is detailed. Details may be made within the employing agency or negotiated between agencies. In either event, the provisions of section [317.903](#) 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 created the Senior Executive Service as a new “service” separate and apart from the two existing services (competitive and excepted). 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. An employee may not receive pay in addition to the pay of his or her position for performing the duties of another position ([5 U.S.C. 5535\(b\)](#)).

The duties of a vacant SES position may be restructured temporarily to an appropriate level outside the SES. The agency may then detail or temporarily promote a non-SES employee to the restructured position subject to applicable rules, e.g., [5 CFR 300.301](#), [5 CFR 335.103](#), and [5 CFR 302](#). If the position cannot be restructured to remove it from the SES, an agency should make sure that the detail authority is used judiciously. If the duties of an SES position must be performed by detail for an extended period, the agency should consider rotating several qualified employees through the position.

Details should not be used as a means of providing a specific non-SES 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.

Other Details

For details to non-Federal organizations, see the IPA provisions of [5 U.S.C. 3371-3375](#) and [5 CFR 334](#).

For details to the White House and its organizational components, see [3 U.S.C. 112](#).

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.

For details to congressional committees, see Chapter 12 of the [U.S. Government Accountability Office Report on Principles of Federal Appropriations Law, Third Edition, Volume III](#).

For vacant positions that are required to be filled by Presidential Appointment with Senate confirmation, see the [Federal Vacancies Reform Act of 1998](#). The Department of Justice has issued extensive guidance on the Act.

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 authorize 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.

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. If the duties are at that level, the agency has the option of formally establishing an SES position and continuing the detail. If the duties are determined to be GS-15 or below, or equivalent, [5 CFR 317.903\(b\)\(4\)](#) requires OPM approval for any extension.

[**Note:** It is not appropriate to detail an SES member to a series of different positions with unclassified duties or at the GS-15 or equivalent level or below in order to “restart” the 240-day clock. This circumvents the purpose of the 240-day limit.]

For more than 240 days. An agency must use competitive procedures when detailing a non-SES employee to an SES position for more than 240 days. An agency may apply its competitive procedures under [5 CFR part 335](#) or [5 CFR part 317 subpart E](#) or comparable procedures devised by the agency; however, it is not necessary to open competition outside the agency. Since details of non-SES employees to SES positions should be kept to a minimum and must be made in increments of not more than 120 days, competition should normally be deferred until it becomes evident there will be a need to exceed 240 days. Even then, competition is only required if a non-SES employee whose selection would result in a detail exceeding 240 days is under consideration. Competition would not be required to detail a different individual to the position. However, competition is not required to detail an employee for more than 240 days who is eligible for noncompetitive career SES appointment, e.g., is a QRB certified SESCDP graduate or eligible for reinstatement under [5 CFR 317 subpart G](#).

[**Note:** It is not appropriate to detail a non-SES employee to an SES position and intentionally create a break before completing 240 consecutive days to “restart” the 240-day clock. This circumvents the purpose of the 240-day limit.]

OPM Approval. In addition to competitive procedures, 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. Since this could enable a non-SES employee to appraise, rate, discipline and remove career senior executives, presumably with adverse impact on morale, an agency must present a compelling case. Approval will be rare and for not more than 120 days. 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](#). An agency requesting OPM approval for a detail should submit the following documents to OPM, Senior Executive Services and Performance Management, Senior Executive Resources Services:

- A letter from the agency official requesting extension/approval of the detail;
- A detailed written justification outlining the circumstances requiring the

- extension, including the proposed number of days up to a maximum of 120 days;
- A written description of how the position's duties have been performed since it became vacant and alternatives the agency considered before requesting the extension; and
 - The applicable agency organizational chart and the name and appointment type of the official who would supervise the employee on detail.

OPM approval is also required for a detail of more than 240 days if an SES employee is being detailed to a non-SES position at GS-15 or below, or equivalent. The agency would need to submit a letter from the agency head and detailed written justification making a compelling case why such a detail is needed.

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. GAO has identified limited circumstances in which non-reimbursable interagency details may be considered:

- Details involving a matter similar or related to matters ordinarily handled by the loaning agency and will aid the loaning agency in accomplishing a purpose for which its appropriations are provided;
 - Details for brief periods when necessary services cannot be obtained, as a practical matter, by other means and the numbers of persons and cost involved are minimal; and
 - Details involving an agency faced only with the choice of implementing such details or carrying out a reduction in force.
- When considering a non-reimbursable detail, it is recommended that the agency's Office of General Counsel be consulted. [See [64 Comp. Gen. 370, B211373, March 20, 1985.](#)]

[**Note:** 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 is 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\(a\)](#) and [\(b\)](#)

REGULATIONS: [5 CFR 317.702](#) and [317.703](#)

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 procedures 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 the position is compensated. 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 or she applies to OPM within 90 days after separation from the Presidential appointment; however, an individual may also negotiate his/her own reinstatement directly with an agency. An individual who obtains reinstatement by negotiating directly with an agency is not entitled to further assistance from OPM. [[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. (Note that having received an initial Presidential appointment without a break in service makes the individual eligible for reinstatement as a career appointee under [5 CFR 317.703](#) while awaiting a new Presidential appointment, even if not eligible for general reinstatement due to not having completed the probationary period. See cautions stated below at Other.)

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 to the one 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 or 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 allocation to an agency that is reinstating a former Presidential appointee.

Pending the reinstatement. When a Presidential appointee resigns, voluntarily or upon request, the agency in which the Presidential appointment was held, upon approval by OPM, may place the individual on a limited term or limited emergency appointment, as appropriate, to avoid a break in service pending reinstatement to a career SES appointment.

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 five workdays of the effective date of the reinstatement. The notification should be sent to Senior Executive Services and Performance Management 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, and if the individual meets all requirements, such as age and service requirements, for discontinued service retirement.

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. It is important to make sure that such an individual does not lose the reinstatement entitlement of [5 CFR 317.703](#) due to any break in service, whether before the initial Presidential appointment or any subsequent Presidential appointment. If the entitlement is lost, the individual would not be eligible for general reinstatement under [5 CFR 317.702](#) due to not having finished the probationary period.

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

RETENTION OF SES BENEFITS UPON CERTAIN NON-SES APPOINTMENTS

STATUTE: [5 U.S.C. 3392\(c\)](#)

REGULATIONS: [5 CFR Part 317, Subpart H](#)

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 civilian position in the executive branch that is outside the SES at a rate of basic pay equivalent to Executive Schedule level V (EX-V) or higher.
- The appointment is to a civilian position in the executive branch 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 for which the minimum rate of basic pay is below EX-V and the maximum rate is at or above EX-V (e.g., senior-level positions), even though at a particular time the pay of the incumbent is equivalent to EX-V or higher. To be eligible, there must be no break in service between the SES career appointment and the non-SES appointment.

This CSRA provision is intended to encourage career appointees to serve at the highest levels of Government and to broaden the pool of individuals from which the President and heads of certain Federal agencies can choose top officials. Consistent with that purpose and [5 U.S.C. 3392\(c\)\(1\)\(B\)](#), OPM considers the opportunity to elect to retain SES benefits to continue when a former career appointee with the election opportunity in a PAS position is appointed without a break in service to a different PAS position that also meets the requirement of [5 U.S.C. 3392\(c\)\(1\)](#) (i.e., having a rate of basic pay equal to or greater than EX-V). However, if there is a break in service between the PAS appointments, the individual must be reinstated to a career SES appointment and be appointed to the second PAS position without a break in service in order to have the election opportunity.

[**Note:** Neither the election of benefits described in this section nor the reinstatement rights described in the previous section apply to SES noncareer or limited appointees who receive such appointments outside the SES.]

Benefits. Upon appointment, 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 if elected before November 10, 1988, Social Security coverage. The appointing agency is responsible for advising affected employees of their election opportunity. The election decision must be in writing and will remain in effect no less than one year, unless the appointee leaves the position sooner.

Changes in election. After the initial election has been in effect one year, the appointee may make a change in election for the purpose of adding or dropping coverage no more than once in any 12-month period.

Basic Pay, Performance Awards, and Awarding of Ranks. An employee who elects to retain SES basic pay or eligibility for SES performance awards or awarding of Presidential ranks remains subject to the SES performance appraisal system. Although the individual is eligible to be considered for performance or rank awards, the agency has discretion to determine whether to grant them.

Retirement Coverage. Due to changes introduced by the Miscellaneous Revenue Act of 1988 ([Pub. 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. If the employee returns to an SES position, the employee remains subject to full FICA deductions in the SES position, regardless of any election the employee made under [5 U.S.C. 3392\(c\)](#). [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.

Individuals who have the opportunity to elect to retain benefits under [5 U.S.C. 3392\(c\)\(2\)](#) in a non-SES position but who are not Presidential appointees are not entitled to reinstatement.

However, these individuals have general reinstatement eligibility if they meet the conditions of [5 CFR 317.702](#), including completion of the probationary period for career appointees.

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: PERFORMANCE MANAGEMENT

STATUTE: [5 U.S.C. 4311-4315](#)

REGULATIONS: [5 CFR Part 430, Subparts C and D](#)

An essential goal of the SES, as stated in [5 U.S.C. 3131](#), is “to ensure accountability for honest, economical, and efficient Government.” In order to achieve this goal, senior executives must be held accountable for their individual and organizational performance through an effective performance management system. 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.]

USING APPRAISAL AND RATING INFORMATION

Important consequences flow from executive performance appraisals, as they should in any performance-based personnel system. To underscore the importance for agencies to establish sound performance management systems, below is a list of executive personnel actions that must be based on performance appraisals and ratings. 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:

Pay Adjustments

Under [5 U.S.C. 5382](#) and [5383](#), each senior executive shall be paid at one of the rates within the SES pay range based on individual performance, contribution to the agency’s performance, or both, as determined under a rigorous performance management system. [See [Chapter 5, SES Pay, Adjusting Individual Pay Rates.](#)]

Performance Award

Under [5 U.S.C. 5384](#), only a career appointee who has a Fully Successful rating or higher is eligible for a performance award. [See [Chapter 6, Awards, Performance Awards.](#)]

Performance Removals

If the annual summary rating is less than the Fully Successful level, 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 five-year period; or
- The executive must be removed from the SES for two less than Fully Successful ratings (Unsatisfactory or Minimally Satisfactory) in a three-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 reduction in force (RIF) is made through competitive procedures based primarily on performance. [See [Chapter 9, Reduction in Force.](#)]

Executive Development

Under [5 CFR 412.401\(a\)](#), each agency must establish a program(s) for the continuing development of its senior executives in accordance with [5 U.S.C. 3396\(a\)](#). Such agency programs must include preparation, implementation, and regular updating of an Executive Development Plan (EDP) for each senior executive. Using input from the performance evaluation cycle, EDPs should be reviewed annually and revised, as appropriate, by an ERB or similar body designated by the agency to oversee executive development. [See [Chapter 7, Executive Development.](#)]

PERFORMANCE APPRAISAL SYSTEMS

Basic SES Performance Appraisal System

The Basic SES Appraisal System, developed by OPM with extensive participation by inter-agency working groups, satisfies the regulatory system standards at [5 CFR 430.305](#) and promotes consistency, clarity, equity, and mutual regard for SES appraisal processes, standards, feedback, and ratings across Government. Implementation of the Basic SES Appraisal System also provides a streamlined and efficient means for SES performance appraisal systems to be approved and certified by OPM. Agencies are strongly encouraged to adopt and adapt, as appropriate, the Basic SES Appraisal System to meet their specific needs. Agencies must continue to comply with all laws and regulations pertaining to SES and SL/ST certification, pay, awards, and performance management. Visit the [SES and SL/ST MAX Portal](#) for the latest information and resources on the Basic SES Appraisal System.

Agency Responsibilities

Each agency must establish and maintain one or more SES performance appraisal systems that will encourage excellence in performance. An agency may develop its own performance appraisal system that must include the requirements identified below or adopt the Basic SES Appraisal System, which incorporates all the requirements.

The performance appraisal system must provide for—

1. Identifying executives covered by the system;
2. Monitoring progress in accomplishing critical elements and performance requirements and conducting progress reviews at least once during the appraisal period;
3. Establishing an official performance appraisal period for which an annual summary rating must be prepared;
4. Establishing a minimum appraisal period of at least 90 days;
5. Ending the appraisal period at any time after the minimum period is completed, but only if the agency determines there is an adequate basis on which to appraise and rate the executive's performance and the shortened appraisal period promotes effectiveness; and
6. Establishing criteria and procedures to address performance of executives who are on detail, temporarily reassigned, or transferred.

Each agency performance appraisal system also must incorporate the following system standards—

1. Use critical elements based on OPM-validated executive competencies;
2. Align critical elements and performance requirements with agency mission and strategic planning initiatives;
3. Establish five summary performance levels as follows:
 - An Outstanding level;
 - An Exceeds Fully Successful level;
 - A Fully Successful level;
 - A Minimally Satisfactory level; and
 - An Unsatisfactory level.

Agencies choosing to use agency-specific terms for the levels must include equivalency statements for the five summary levels:

4. Define performance standards for each of the summary rating levels;
5. Appraise each executive's performance at least annually against requirements and standards;
6. Derive an annual summary rating through a mathematical method that ensures an executive's performance aligns with level descriptors contained in performance standards, which clearly differentiate levels above fully successful, while prohibiting a forced distribution of rating levels; and
7. Use performance appraisal as a basis to adjust pay, reward, retain, develop, remove executives, or make other personnel decisions.

Agencies must—

1. Submit proposed SES performance appraisal systems to OPM for approval;

[**Note:** An Office of Inspector General should establish and submit its proposed SES performance appraisal system separately from the agency SES system.]
2. Provide appropriate training and information to agency leadership, supervisors and

executives on the performance appraisal system;

3. Evaluate the effectiveness of their performance appraisal system(s) on a periodic basis and implement improvements as needed. Evaluations must provide for both assessment of effectiveness and compliance with relevant laws, OPM regulations, and OPM performance appraisal policy; and
4. Establish timelines for communicating performance plans, conducting appraisals, and assigning and communicating annual summary ratings.

OPM Responsibilities

OPM approves agency performance appraisal systems and provides guidance on their implementation. If OPM finds that an appraisal system does not meet legal and regulatory requirements, it shall direct the agency to implement appropriate system changes.

OPM, with concurrence from OMB, certifies agency performance appraisal systems. If 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. An agency's system certification is automatically suspended when OPM withdraws performance appraisal system approval or mandates corrective action because of misapplication of the system.

PLANNING PERFORMANCE

Individual Performance Plans

Performance plans must be established for all SES members (**including individuals serving on career, noncareer and limited appointments**) on or before the beginning of the appraisal period. A template for an executive performance plan is included as part of the Basic SES Appraisal System and is available on the [SES and SL/ST MAX Portal](#).

Performance plans must be developed in consultation with the executive. The executive's immediate supervisor must communicate the plan to the executive in writing, including through the use of automated systems. Additionally, executive performance plans must describe the individual and organizational expectations for the appraisal period that clearly fall within the senior executive's area of responsibility and control.

Each executive performance plan must include—

1. Critical elements that reflect individual performance results or competencies and organizational performance priorities within the executive's area of responsibility and control, which are based on OPM-validated executive competencies;
2. Performance standards describing each level of performance at which a senior executive's performance can be appraised. Performance standards for a level of performance establish the general expectations an executive must meet to be rated at a particular level and the benchmark for developing associated performance requirements; and
3. At a minimum, performance requirements that describe expected accomplishments or

demonstrated competencies at the Fully Successful level. Performance requirements may also be established for other levels of performance. Performance requirements must be aligned with agency mission and strategic planning initiatives and must contain measures of the quality, quantity, timeliness, cost savings, or manner of performance, as appropriate, expected for the applicable level of performance.

Critical elements, performance standards, and requirements must be consistent with the goals and performance expectations in the agency's strategic planning initiatives. An agency performance appraisal 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) prior to implementation. This may help ensure that performance elements and requirements are in accord with mission requirements and planned resource allocations, are consistent among 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 and executive for modification.

The agency performance appraisal system should provide for revision of the performance plan during the appraisal period if modifications are necessary due to factors such 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 the executive in writing, including through the use of automated systems, with any modification of the plan. If changes occur with fewer than 90 days (or other agency prescribed minimum) remaining in the official appraisal period, the agency should consider: (1) ending the appraisal period on schedule, appraising affected elements based on prior performance requirements, and implementing new performance requirements in the next appraisal period; (2) extending the current appraisal period so that an executive's ratings can take into account performance under the revised performance requirements; or (3) closing out the current appraisal period early and initiating a new appraisal period that will run longer than 12 months. Whenever possible, an executive should be rated on schedule to promote consistency, stability, and objectivity in appraisal. However, an executive must have adequate time to perform before being appraised against performance requirements that have changed.

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 on meeting the performance requirements described in the plan. Supervisors must advise executives on how to improve their performance. The progress review may be conducted informally rather than formally with a written appraisal but the fact that it took place should be documented.

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

APPRAISING PERFORMANCE

Rating all Executives

All senior executives (including individuals serving on career, noncareer and limited appointments) must be assigned an annual summary rating. The following are inappropriate reasons for not assigning a rating to an executive at least annually (this list is not exhaustive, but rather represents common situations):

- The executive's rating official departed before a rating was assigned – in such a situation, the next-level supervisor and/or reviewing official should assume the responsibility for observing and appraising performance and assigning an initial rating;
- Not rating executives because they are limited term, limited emergency, or noncareer appointees – all executives, regardless of appointment type, must be rated at least annually; or
- Not rating executives because they were not assigned to a performance plan – all executives should be assigned to a performance plan on or before the beginning of the appraisal period.

Extending the Appraisal Period

The agency SES appraisal system must indicate the beginning and end dates of the official appraisal period. The agency SES performance appraisal system must also establish a minimum appraisal period of at least 90 days. If an executive has not served the minimum period, the appraisal period must be extended.

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

1. The executive's appraisal period is extended to November 30 allowing for completion of the 90-day minimum period; or
2. The executive's appraisal period is extended to a total of 13 months, adding the additional month to the next 12-month appraisal period.

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 and doing so will promote effectiveness.

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 transferred 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, including through the use of an automated system, before the executive leaves and provide this information to the executive.

The most recent annual summary rating and any subsequent appraisals must be transferred to the gaining agency or organization. The gaining supervisor must consider the rating and appraisals when deriving the initial summary rating at the end of the appraisal period.

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. (For example, the executive is reassigned on August 1, and the period ends on September 30.) The agency system description or policy documentation should specify what to do in these instances. Listed below are possible options for addressing the situation:

1. The agency may provide that the appraisal period will be extended until the executive has served the minimum period 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; or
2. 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 120 days or longer to another position within the agency, the supervisor shall provide written critical elements, performance standards, and requirements as soon as possible after the beginning of the detail and appraise the executive's performance in writing, including through the use of automated systems. A detail does not remove the requirement for an agency to rate executives annually, and the supervisor of the executive's position of record remains responsible for preparing the initial rating used in determining the detailed executive's annual summary rating for the appraisal cycle. The supervisor of the detail must therefore provide timely appraisal information for the executive's supervisor of record to consider in preparing the initial rating. If an executive is detailed to a position outside the agency, to include by Intergovernmental Personnel Act (IPA) assignment to a non-federal organization, for more than the agency's minimum appraisal period, the supervisor of record must make a reasonable effort to obtain appraisal information from the outside organization for use in preparing the detailed executive's initial summary rating. For any interagency detail, the borrowing agency's obligation to provide appraisal information to enable the lending agency to conduct performance appraisal for the executive should be addressed before the detail begins.

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 agency policy, including the following:

- the new supervisor may give the initial summary rating;
- the next level supervisor may give the initial summary rating, if that supervisor has sufficient knowledge of the executive's performance; or
- 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 [[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 21 unless the inauguration is for a second term of a continuing presidency.

The moratorium applies to all phases of the formal appraisal process—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 430.310](#), or when the supervisor leaves if agency policy requires a rating at that time. A progress review is not a formal appraisal and 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 summary 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 an evaluation of the executive's performance against individual critical elements, performance standards, and requirements in the executive's performance plan.

In addition to balanced measures based on customer and employee perspective found in the performance plan, the agency's SES appraisal system also must require the consideration of performance appraisal guidelines as a factor when assigning an initial summary rating. Guidelines must be based upon assessments of organizational performance and provided by the oversight official to senior executives, rating and reviewing officials, PRB members, and appointing authorities at the conclusion of the appraisal period and before completion of the initial summary ratings.

Appraisal of elements. The executive must be appraised on each critical element in the performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element. The rating for each critical element depends on the degree to which the executive has achieved the performance requirement(s) for the element and met the performance standards. A brief explanation justifying the rating level selected, along with specific examples of accomplishments or failure, is desirable to communicate the basis for the supervising official's judgment and to support later steps in the process, particularly if the rating is below the Fully Successful level. The agency's appraisal system must include a mathematical method to derive an initial summary rating from the assessments/ratings on individual elements.

Consideration of interim ratings. In preparing the initial summary rating, the supervising official must consider and appropriately factor in 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 appraisal 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 done in a uniform and equitable manner. Following this review, 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. 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's performance appraisal system or internal operational policy should specify when the higher-level review is to take place and how the reviewer is to be determined. The reviewer must be at a higher organizational level than the supervising official, but not necessarily in the same organization. The reviewer should not be a member of the PRB or an official who participated in determining the initial summary rating. If agency policy requires that 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 regarding the initial rating. The agency may also provide the reviewer with additional information deemed relevant for conducting the review as outlined in the agency's policy. 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. Some agencies provide for a mandatory higher-level review of all initial ratings by an official who was not involved in the initial rating process. In those circumstances, if the executive's written comments on the initial rating are considered by the mandated reviewer, then no further higher-level review is required. However, an executive must be given the opportunity to respond in writing to the initial appraisal provided to the PRB. An official who has authority to change the initial rating provided to the PRB cannot provide the higher-level review to which an executive is entitled.

If a senior executive declines review by agency-designated higher-level officials, the agency may offer an alternative review but is not obligated to do so since the agency has provided an opportunity for higher-level review. The agency must document the executive's declination of the higher-level review opportunity before offering an alternative review.

Alternative Review

When an agency cannot provide a review by a higher-level official for an executive who receives an initial summary rating from the agency head because no such higher-level official exists in the agency, the agency must offer an alternative review by an official the agency deems appropriate other than an official involved in determining the initial summary rating or a PRB member. An agency should also offer an alternative review in other circumstances where no higher-level official exists in the agency.

OPM regulations provide for alternative review only when the higher-level review, as defined in statute, is not possible, or those higher-level review opportunities offered by the agency are declined (in which case, alternative review is at the agency's option). Since this applies where higher-level review as provided in statute is not available or has been declined, an agency may provide for alternative review by an official who is not at a higher-level or who is not within the agency, as needed.

An official providing the higher-level review or an alternative 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.

Annual Summary Rating

The annual summary rating is the official final rating for the appraisal period assigned by the appointing authority (and may not be delegated to an official who does not have authority to make SES appointments), after considering (1) the initial summary rating; (2) any input from the

executive; (3) any higher-level review; and (4) the recommendations of a Performance Review Board. Agencies should complete all steps in the rating process in time for the annual summary rating to be communicated to the executive in writing, including through the use of automated systems, normally no later than three months after the end of the appraisal period. Annual summary ratings should be based on an appraisal of both individual and organizational performance.

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\(d\)](#) and [5 CFR 430.309\(d\)](#), 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 that the individual believes to involve a prohibited personnel practice; and
- A non-probationary 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.

An annual summary rating cannot be changed based on additional information obtained after the annual summary rating. If the agency receives additional information regarding the executive's performance that has any bearing on his/her performance in the current appraisal period, it should be addressed appropriately and given consideration during the ensuing rating cycle.

PERFORMANCE REVIEW BOARD (PRB)

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

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. Agency heads are encouraged to consider diversity and inclusion in establishing their PRBs.

PRB composition can include all types of executives (e.g., noncareer appointees and military officials as well as career appointees) from both within and outside the agency. OPM recommends that members of the PRB have maintained at least Fully Successful performance ratings, possess an understanding of the agency appraisal system, and occupy SES or equivalent positions.

Career membership. More than one-half of the membership of a PRB must be SES career appointees when reviewing appraisals and recommending performance-based pay adjustments or performance awards for career appointees. SES members from other agencies may be used to meet this requirement when it cannot be met by using an agency's own career SES members. 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 only in very rare circumstances.

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 practical to establish a PRB roster. An agency could appoint individuals to a PRB roster with multi-year membership terms, publish their names in the Federal Register, including the membership time period, and then establish specific PRBs from this roster.

Small agencies. PRB requirements in [5 U.S.C. 4314\(c\)](#) and [5 CFR 430.311](#) apply to all executive agencies, including very small agencies where the agency head makes both the initial and final appraisal for each agency executive. The head of the agency must establish a PRB, publish names of PRB members in the Federal Register before their service begins, and finalize executive ratings only after considering PRB recommendations. A small agency intending to select PRB members from another agency's published list should either arrange to state that intent in the applicable FR notice or publish its own FR notice to identify the published agency list from which its PRB members will be drawn.

Procedures

Each PRB reviews and evaluates the initial summary rating by the executive's supervisory official, 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.

The PRB must be provided and take into account appropriate assessments of organizational performance when making recommendations on performance ratings of executives. Guidelines for using organizational performance results are provided by the oversight official to senior executives, rating and reviewing officials, PRB members, and appointing authorities at the conclusion of the appraisal period and before completion of the initial summary ratings. In its deliberations, a PRB may obtain additional records and statements, and may call witnesses. The PRB may not review an initial summary rating to which the executive has not been given the opportunity to respond in writing, including through the use of automated systems.

The PRB should attempt to achieve equity and consistency among the ratings of executives as well as the accuracy and fairness of individual ratings. It is within the PRB's purview to ensure that organizational accomplishments have been properly taken into account in the appraisals of individual performance. The PRB should consider guidance provided by the Oversight Official or agency head concerning the extent to which performance of senior executives has brought about organizational accomplishments consistent with strategic targets established for those components.

What to Avoid in the PRB

PRB members are prohibited from making recommendations to achieve a forced or artificial distribution (such as a bell curve) of rating levels for senior executives.

PRB members may not be involved in deliberations involving their own appraisals, performance-based pay adjustments, and performance awards. 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 PRB.) A majority of participating PRB members must be SES career appointees when acting on a career appointee's appraisal, performance-based pay adjustments, or performance award recommendation.

Recommendations to the Appointing Authority

As provided in [5 CFR 430.311\(b\)\(2\)](#), the PRB must make a written recommendation, including through the use of automated systems, to the appointing authority concerning an executive's annual summary rating ([5 U.S.C. 4314\(c\)](#); [5 CFR 430.311](#)), performance-based pay adjustment ([5 U.S.C. 5382](#); [5 CFR 534.404](#)) and performance award ([5 U.S.C. 5384](#); [5 CFR 534.405](#)). When the PRB does not concur with the initial rating, or when the record shows employee or reviewing official disagreement with the initial rating, the PRB should provide a written explanation of the basis for its recommendation that is consistent with the derivation method used in the agency's SES appraisal system.

PRBs should establish adequate means for documenting the written recommendations to the appointing authority about each senior executive's annual summary rating, performance-based pay adjustment, and performance award. The written recommendations provided by the PRB should also be distinguishable from documentation of the appointing authority's final determinations.

OTHER GUIDANCE***USERRA***

Appraisal law and regulations require appraising executives at least annually and USERRA requires the agency to treat the executive as if he or she never left the agency. When no current rating is available and there is no way to conduct an appraisal for the executive (i.e., the minimum appraisal period cannot be met and the appraisal period cannot be extended), agencies must find another method, such as a carryover or modal rating, to serve as a basis for granting pay adjustments and/or performance-based award (if warranted by OPM and agency policy). (See [Chapter 5](#) for information on SES pay.) OPM has no preferred method for doing this. An agency must decide upon the most appropriate method in view of the agency's performance appraisal practices and results.

If the executive was on military duty for a majority of the appraisal period and returned prior to the end of the appraisal cycle (but will not have satisfied the minimum appraisal period at the time appraisals are conducted), agencies should follow [5 CFR 430.309\(c\)](#) and extend the

appraisal period until the minimum appraisal period is met. This may require a reconvening of the PRB.

The rating that is used for USERRA purposes is not used as a rating of record; it is only used to provide the pay adjustment and/or performance-based bonus that the employee would have received if not away serving the military.

Timing of Rating

Agencies should complete all the steps in the rating process in time for the annual summary rating to be communicated to the executive in writing, including through the use of automated systems, normally within 3 months of 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/a forced distribution.

Communication of System Application Results

Agencies must communicate to executives in writing, including through electronic communication, the results of the previous appraisal period (i.e. overall ratings distribution, and average pay adjustment and average performance award percentages for each rating level). Such action is likely to promote confidence in the fairness of the process and is a certification criterion with which agencies must comply. Where such communication might compromise individual performance information, it is acceptable to communicate only the average rating, pay increase, and award. In very small organizations (less than five executives), this requirement may be waived.

Documentation and Records

Agencies must retain SES annual summary ratings and the performance plans on which they are based for at least five 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

Certification, which applies to SES and Senior-Level (SL) or Scientific and Professional (ST) appraisal systems only, provides access to a higher maximum rate of pay and a higher limit on aggregate compensation, as described in the *Pay Limitations* section below. The statutes and regulations requiring agencies to implement a pay-for-performance system and apply a higher aggregate compensation limitation to senior executives or senior professionals are 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 statutes and 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 must obtain certification of its SES 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 six additional months (this request is granted in limited circumstances such as when an agency has requested approval of its adoption of the Basic SES or SL/ST Appraisal System). 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 under the Basic SES or SL/ST Appraisal System should submit its request for certification three months prior to the expiration of its current certification. Other agencies using agency-designed appraisal systems should submit their requests for certification six months prior to the expiration of their current certification.

Pay Limitations

An agency may set the rate of basic pay for a senior executive or senior professional covered by a certified appraisal 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 or senior professional 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 5](#) for information on SES pay.)

CERTIFICATION PROCESSES

Certification regulations contained in [5 CFR 430 Subpart D](#) require performance appraisal systems for SES and SL/ST employees to meet the same certification criteria (see Certification Criteria section below). The processes used by OPM to review systems' compliance with those requirements differ based on the type of system for which certification is requested. Meaningful distinctions in performance must be accomplished through an agency's performance appraisal systems for both SES and SL/ST employees. Additionally, systems must ensure pay differentiation, so that SES or SL/ST employees who have received the highest performance ratings also receive the largest corresponding pay adjustments, performance awards, and levels of pay.

Certification 2.0 - Changes to SES and SL/ST Performance Appraisal System Certification Process

In November 2018, OPM revised the [SES and SL/ST Performance Appraisal System Certification Process](#). A significant amount of administrative improvement was made to the process, hereafter referred to as *Certification 2.0*, that reduces agency burden and minimizes the time and resources spent on preparing and reviewing certification submissions. *Certification 2.0* applies to agencies that request certification of OPM-approved basic SES or SL/ST performance appraisal systems; agencies that have designed their own appraisal systems will continue to use the SES or SL/ST Performance Appraisal Assessment Tool (PAAT) to request certification. The

certification criteria at [5 CFR 430.404\(a\)](#) have not changed and agencies must continue to comply with all laws and regulations pertaining to SES and SL/ST certification, pay, awards, and performance management.

Certification 2.0 places more responsibility on agencies in verifying the proper application of their SES performance system, thereby reducing the administrative burden on agencies and significantly decreasing the quantity of information and materials required for certification reviews. Templates and checklists to aid agencies in fulfilling certification requirements are available.

Key changes under *Certification 2.0* include—

- Agencies are no longer required to submit performance plans with certification requests;
- Automatic renewal of fully certified appraisal systems based on OPM and OMB review of annual data submissions to determine that ratings, pay, and awards decisions comply with statutory and regulatory requirements; and
- The option for agencies to show pay differentiation using the combination of performance-based pay adjustments and performance awards, referred to as “annual performance-based compensation.”

Descriptions of Key Changes

Automatic Renewal of Fully Certified Appraisal Systems

Following full certification under *Certification 2.0*, an agency’s system will be renewed for an additional two calendar years if the agency meets the annual reporting requirements in [5 CFR 430.405\(g\)](#) and, based on those annual reports, OPM determines and OMB concurs, that the appraisal system continues to meet the certification criteria in [5 CFR part 430, subpart D](#).

Aligned Results - Removing Review of Performance Plans

Agencies are no longer required to submit a sample of SES or SL/ST performance plans as part of a certification submission. Instead, the agency’s Oversight Official will verify in the certification request letter that the agency is in compliance with the Aligned Results criterion. Agencies continue to be responsible for establishing SES and SL/ST performance plans in accordance with law, regulation, and the SES and SL/ST basic systems.

Pay Differentiation through “Annual Performance-Based Compensation”

Senior employees who have demonstrated the highest levels of individual performance and/or contribution to the agency’s performance must receive the highest annual summary ratings or ratings of record, as well as the largest corresponding performance-based pay adjustments and performance awards. Prior to *Certification 2.0*, agencies were required to demonstrate pay differentiation in performance-based pay adjustments and performance awards separately; however, *Certification 2.0* introduced an additional option for agencies to demonstrate pay differentiation—the annual performance-based compensation (APBC) methodology. APBC allows agencies to show differentiation using the combination of performance-based pay adjustments and performance awards.

Performance Distinctions when Modal Rating is Level 5 (or bimodal rating of levels 4 and 5)

The application of the appraisal system must result in meaningful distinctions based on relative performance; agencies must be able to justify to OPM and OMB senior employees' ratings using organizational performance results. Agencies will continue to use the Ratings Distribution Justification template to justify ratings using organizational performance results. However, agencies are only required to submit the template if there is a modal rating of Level 5 (or bimodal rating of levels 4 and 5) and—

- 1) it is the initial request for system certification under *Certification 2.0*; or
- 2) the system's most recent certification under *Certification 2.0* was provisional.

Organizational Assessment and Guidelines

Agencies are required to conduct assessments of organizational performance and share the results with senior employees, rating and reviewing officials, and Performance Review Board (PRB) and central review panel members to demonstrate that appraisal of SES and SL/ST performance is based on both individual and organizational performance. OPM provides an optional template that agencies may use in crafting communication of Organizational Assessment and Guidelines. Agencies are only required to submit Organizational Assessment and Guidelines documentation if—

- 1) it is the agency's initial request for system certification under *Certification 2.0*; or
- 2) the system's most recent certification under *Certification 2.0* was provisional.

Agency Verification and Agency Responsibility

The following will be verified by the Oversight Official in the certification request letter and accompanying verification statement available on the [SES and SL/ST MAX Portal](#):

- 1) Aligned Results
- 2) Oversight
- 3) Communication of System Application Results
- 4) Consultation
- 5) Accountability
- 6) Balance (balanced measures)
- 7) Training
- 8) Performance Distinctions (when requesting automatic renewal)
- 9) Organizational Assessment and Guidelines (when requesting automatic renewal)

OPM reserves the right to request any documentation deemed necessary to support a certification determination.

Automatic Renewal

Under *Certification 2.0*, an agency's applicable performance appraisal system (SES or SL/ST) will be eligible for automatic renewal when that system receives full certification. Under the automatic renewal process, OPM will—

- Review the agency's pay policy whenever updated or, if there are no updates, review at least every five years;

- Ensure (per regulation), the agency head or designee requests certification through a written request to OPM every two years; (however, the request letter, verification statement, and annual ratings, pay, and awards data will be the only required submission materials); and
- Review the agency's **annual** data submission and contact the agency to address any issues that may arise.

Tools and Templates

To assist agencies in fulfilling *Certification 2.0* criteria, a variety of tools and templates are available. They can be found on the [SES and SL/ST MAX Portal](#) in the Resources section.

Required Templates

- **Oversight Verification Statement** - Enables the Oversight Official to attest that all of the certification criteria, as outlined and defined in [5 CFR part 430, subpart D](#) and OPM policy, have been met.
- **Ratings Distribution Justification Template** - Designed to capture the number of senior employees rated at each rating level and the justification for that distribution based on the organizational assessment and any additional factors, as described by the agency.
- **Annual Data Call Spreadsheet** - Mechanism used by agencies to submit annual data on senior employees' final summary performance ratings, and all pay and awards data.

Optional Templates

- **SES/SL/ST Certification Request Letter** - May be used by the agency head (or designee) to request certification.
- **Organizational Assessment and Guidelines Template** - Designed to assist agencies in describing guidelines for using organizational performance results when assigning senior employee ratings.
- **SES and SL/ST Pay Policy Templates** - May be used by agencies to establish the written procedures required by regulation for setting and adjusting pay for senior employees.
- **SES/SL/ST Appraisal System Certification 2.0 Request Checklist** - Designed for agencies to use when developing and/or reviewing required documentation and templates submitted to OPM for requesting certification.
- **SES Pay Policy Checklist** - Designed as a convenient tool for agencies to use to compare their SES pay policy with regulatory requirements and recommendations of OPM.
- **SES Pay Fact Sheet with Questions and Answers** - Covers SES pay sections in [5 CFR part 534, subpart D](#) along with frequently asked SES pay questions.
- **SL/ST Pay Policy Guidance** – Designed to assist agencies in developing pay policies for their SL/ST employees. The requirements for developing an SL/ST pay policy are provided in outline format for ease of use and understanding.

SES and SL/ST Performance Appraisal Assessment Tool (PAAT)

Agencies using their own OPM-approved appraisal system (different from the Basic SES or

SL/ST Appraisal System) must request system certification using the SES Performance Appraisal Assessment Tool (PAAT) and/or the SL/ST PAAT, as appropriate. Agencies may contact OPM's Executive Resources and Performance Management (ERPM) for assistance in submitting systems using the PAAT.

CERTIFICATION CRITERIA

To obtain certification of one or more appraisal systems, agencies must demonstrate that each appraisal system, as designed and applied, makes meaningful distinctions based on relative performance and meets the certification criteria below.

Aligned Results

Individual performance expectations must be derived from and clearly linked to the agency's mission, strategic goals, program/policy objectives, and/or annual performance plan and budget priorities. Alignment should be clear and transparent so that senior employees understand how their performance aligns with organizational goal achievement and can be cascaded down to subordinates, if applicable, to ensure alignment of their performance as well. The performance requirements for individual senior employees must —

- apply to their respective areas of responsibility;
- reflect expected agency and/or organizational outcomes and outputs, performance targets or metrics, or policy/program objectives;
- identify specific programmatic crosscutting, external, and partnership-oriented goals or objectives;
- include quality indicators and generally include other performance measures such as quantity, timeliness, cost savings, manner of performance, or other factors; and
- be stated in terms of observable, measurable, and/or demonstrable results.

For agencies using the Basic SES or SL/ST Appraisal System, all performance requirements or objectives for results-focused critical elements must be written in terms of measurable results.

Consultation

Agencies must consult with senior employees in the development of their performance requirements. These performance requirements must be communicated to the employees at the beginning of the appraisal period and at appropriate times thereafter, e.g., upon onboarding of a new employee. This is necessary to provide a continuing basis for direction of federal programs and to enable senior employees to establish performance plans for their subordinates, if applicable, that appropriately cascade responsibility for organizational goal achievement to their subordinates at the beginning of their appraisal period, and/or appropriate times thereafter. For agencies using the Basic Appraisal System(s), this criterion is no longer reviewed for certification purposes, but compliance is verified by the Oversight Official.

Balance

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, including two-way communication with customers and with employees. For agencies using the Basic Appraisal System(s), this criterion is no longer reviewed for certification purposes, but compliance is verified by the Oversight Official.

Organizational 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 success in achieving its 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. Agencies must communicate the assessments and guidelines to senior employees, rating and reviewing officials, Performance Review Board/Centralized Review Panel members, and appointing authorities 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. Agencies should involve their Performance Improvement Officers when developing these assessments and guidelines. For agencies using the Basic Appraisal System(s), this criterion will be assessed by the agency with appropriate documentation provided to OPM as instructed.

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 performance awards based on the results of the appraisal process accurately reflect individual performance and/or contribution to agency performance.

The oversight official provides a centralized review and assurance that the performance appraisal system is functioning as designed throughout the organization.

Agencies should review the delegations of authority or other appropriate sources of assigned responsibilities to determine which official has been assigned these duties. Agencies are responsible for checking to see that the official has performed the assigned duties in a manner that ensures the appraisal requirements have been met. For agencies using the Basic Appraisal System(s), this criterion will be assessed by the agency with appropriate documentation provided to OPM as instructed.

Accountability

For supervisory senior employees, performance plans must include a critical element that holds them accountable for aligning subordinate performance plans with organizational goals and the rigor with which they appraise subordinate employees. For agencies using the Basic Appraisal System(s), this criterion is no longer reviewed for certification purposes, but compliance is verified by the Oversight Official.

Performance Distinctions

For agencies that have not adopted the Basic SES or SL/ST appraisal system, the appraisal system must include at least one summary level of performance above fully successful, including a summary level that reflects outstanding performance, as defined in [5 CFR 430.402](#), and the annual administration of the system results in meaningful distinctions based on relative performance that take into account the assessment of the agency's performance against relevant program performance measures, employee performance expectations, and such other relevant factors as may be appropriate. Relative performance does not require ranking senior employees against each other; such ranking is prohibited for the purpose of determining performance ratings. For equivalent systems that do not use summary ratings, the appraisal system must provide for clear differentiation of performance at the outstanding level. For agencies that have adopted the Basic SES or SL/ST system, this requirement is incorporated into the system design. Agencies must justify their rating distributions using organizational performance.

Pay Differentiation

The appraisal system must support pay differentiation so that those senior executives and senior professionals who have demonstrated the highest levels of performance and/or contributions to the agency's performance receive the highest annual summary ratings or ratings of record, and the largest corresponding pay adjustments, performance awards, and levels of pay, particularly above the rate for level III of the Executive Schedule. OPM reviews agency pay policies to understand the association between individuals' ratings and their performance pay (i.e., pay adjustments and performance awards). Time-off awards and contribution-based cash awards (special act awards) may not be used to demonstrate pay differentiation.

All agencies requesting certification are expected to demonstrate pay differentiation across all the applicable system's population and the pay differentiation criterion is met only when an agency's data demonstrates—

- every individual with a Level 5 rating must receive more than an individual with a Level 4 rating (i.e., All Level 5 > All Level 4; Any Level 4 ≠ Any Level 5), **and**
- every individual with a Level 4 rating must receive more than an individual with a Level 3 rating (i.e., All Level 4 > All Level 3; Any Level 3 ≠ Any Level 4).

OPM recognizes that there may be circumstances that support excluding individual cases from the pay differentiation criteria. For example, agencies have been permitted to exclude individuals at or near the pay caps from consideration when demonstrating compliance with the pay differentiation criteria. Other circumstances may also arise and in those cases the agency must submit a justification to OPM requesting a variance explaining why the agency proposes to exclude the cases from the agency's demonstration of pay differentiation. The agency request for variance should be made in advance of the submission of the request for certification.

Methodologies for Demonstrating Pay Differentiation

As part of *Certification 2.0*, OPM introduced greater flexibility for agencies to demonstrate pay differentiation using the combined total of a senior employee's rating-based pay adjustment(s) and rating-based award, referred to as annual performance-based compensation (APBC).

Alternatively, agencies may choose to continue demonstrating pay differentiation in the rating-based pay adjustment(s) and rating-based award, separately.

Agencies may demonstrate pay differentiation through one of two methodologies:

- *Separate*, in which each senior employee's rating-based award and rating-based pay adjustment(s) are evaluated independently of the other; or
- *APBC*, which is a combination (i.e., sum) of rating-based pay adjustment(s) and a rating-based award.

Agencies also have the flexibility to demonstrate pay differentiation agency-wide, by component/bureau, or pay tier, as specified in the agency's pay policy or closeout guidance. OPM assesses an agency's compliance with the pay differentiation criterion according to the methodology chosen by the agency, thereby giving an agency maximum flexibility with regard to how it compensates its highest performers.

Demonstrating Pay Differentiation Separately versus APBC

The table below describes and delineates the methodologies by which agencies may demonstrate compliance with the pay differentiation criterion:

<p>APBC <i>Rating-Based Pay Adjustment(s) + Rating-Based Award</i></p>	<p>SEPARATE <i>Rating-Based Pay Adjustment(s) and Rating-Based Award, separately</i></p>
<ul style="list-style-type: none"> • All senior employees rated Level 5 receive a combination (i.e., sum) of rating-based pay adjustment(s) and a rating-based award that is <i>more than</i> any senior employee rated at Level 4; • All senior employees rated Level 4 receive a combination of rating-based pay adjustment(s) and a rating-based award that is <i>more than</i> any senior employee rated at Level 3; and <ul style="list-style-type: none"> ○ If any senior employee is rated at Level 3, then all employees at Level 4 must receive a higher combination than all individuals at Level 3. <p><i>Senior employees rated below Level 3 are ineligible for rating-based pay adjustments or rating-based awards and are not included in the pay differentiation review.</i></p>	<ul style="list-style-type: none"> • All senior employees rated Level 5 receive rating-based pay adjustment(s) and a rating-based award, separately, that are <i>more than</i> that distributed to those senior employees rated at Level 4; and • All senior employees rated Level 4 receive rating-based pay adjustment(s) and a rating-based award, separately, that is <i>more than</i> that distributed to any senior employee rated at Level 3. <ul style="list-style-type: none"> ○ If any senior employee is rated at Level 3, then all employees at Level 4 must receive a higher rating-based pay adjustment(s) and a rating-based award, separately than all individuals at Level 3. <p><i>Senior employees rated below Level 3 are ineligible for rating-based pay adjustments or rating-based awards and are not included in the pay differentiation review.</i></p>
<ul style="list-style-type: none"> • No overlap of amounts distributed across rating levels (e.g., a Level 4 and a Level 3 cannot both receive APBC of \$0 or 0%). • May demonstrate pay differentiation using \$ amounts or %; however, agencies must use the same approach for both rating-based pay adjustments and rating-based awards. • All senior employees rated at or above Level 3 are assessed for pay differentiation, including those with a salary at the pay/tier cap. <ul style="list-style-type: none"> ○ Since employees at a pay/tier cap may still receive a rating-based award, these individuals are not excluded from the review of the agency’s pay differentiation under APBC. 	<ul style="list-style-type: none"> • No overlap of rating-based pay adjustment(s) or rating-based award amounts distributed across rating levels. • May demonstrate differentiation in \$ amounts or %, separately, in rating-based pay adjustments and rating-based awards. • Senior employees with a salary at the pay/tier cap are not assessed for pay differentiation in the rating-based pay adjustment(s) review; however, they are assessed in the rating-based award review.

MRPs and Pay Differentiation

For the purpose of demonstrating pay differentiation in SES populations, a pay increase to maintain relative position (MRP) is incorporated with the rating-based pay adjustment. Agencies do not need to show differentiation in MRPs unless it is the only type of rating-based pay adjustment being used to show pay differentiation (and the agency is using the *Separate* methodology to demonstrate pay differentiation). In such a case, an agency must ensure that executives with higher ratings receive higher MRPs.

Lack of Pay Differentiation

An agency's performance appraisal system(s) must demonstrate compliance with all certification criteria to be eligible for certification. If an agency's appraisal system does not demonstrate compliance with the pay differentiation criterion as described in regulation and guidance, the system will be ineligible for certification until such time as the agency demonstrates compliance. Agencies must demonstrate pay differentiation as described in this guidance utilizing their available budgets. In other words, running out of funds is not an acceptable justification for showing a lack of pay differentiation. It is critical that agencies' SES and SL/ST performance appraisal systems and accompanying pay and awards policies reflect applicable statutory and regulatory requirements, as well as requirements for certification, when seeking certification of such systems. OPM encourages all agencies to continue to engage with the OPM Executive Resources and Performance Management Group to ensure a full understanding of all certification criteria to avoid a lapse or suspension of certification.

Other Requirements

OPM, with OMB concurrence, will certify only those agency performance appraisal systems that comply with relevant laws and regulations.

Agencies should train senior executives and senior professionals on the policies and operation of their performance appraisal and pay systems as well as communicate the results of the previous appraisal period (i.e., overall ratings distribution, average pay adjustments, and average performance awards for each rating level, as applicable). Agencies with few senior employees should keep in mind that they may neither disclose ratings for individuals nor pay or award amounts that would reveal the recipient's rating.

Agencies must provide OPM with ratings, pay and awards data for their senior executives and senior professionals in accordance with the annual data call and at any other time as requested to support a certification request. OPM may also request an agency provide other additional information, as needed.

EXPIRATION OF CERTIFICATION

If an agency's appraisal system certification expires (e.g., due to late submission, incomplete documentation, or a need for corrections), the agency will lose its authority to apply the higher maximum rate of pay and higher aggregate limit. Once certification expires, the agency cannot

set or adjust a senior executive's or senior professional's pay at a rate that exceeds level III of the Executive Schedule. (The rate of basic pay of a senior executive or senior professional that is above level III is not reduced upon expiration of certification.) Additionally, the agency must limit aggregate compensation received by a senior executive or senior professional to the rate for level I of the Executive Schedule. See [5 CFR part 550, subpart B](#) for further information.

OPM, with OMB concurrence, will certify the agency's system once the agency demonstrates the system meets the certification criteria.

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 a senior employee's pay at a rate that exceeds level III of the Executive Schedule. (The rate of basic pay of a senior employee that is above level III is not reduced upon suspension of certification. See [Chapter 5, Restrictions on Reducing Pay](#).) Additionally, the agency must limit aggregate compensation received by a senior employee 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. Reinstatement of a suspended certification does not alter the certification's original expiration date.

Chapter 5

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CHAPTER 5: 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 in which an individual's pay is directly linked to accomplishments. 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.

CHAPTER NOTES

1. On December 26, 2019, the President signed an Executive Order to implement the January 2020 pay adjustments. OPM issued a memorandum, CPM 2019-25, available at <https://www.chcoc.gov/content/january-2020-pay-adjustments>, providing guidance and general information on the 2020 pay rates for various pay systems.
2. Section 749 of division C of the Consolidated Appropriations Act of 2020 contains a provision that continues the pay freeze on the payable pay rates for the Vice President and certain senior political appointees at the rates of pay and applicable limitations on payable rates of pay in effect on December 31, 2019, by operation of section 749 of division D of [Public Law 116-6](#) (February 15, 2019). The section 749 pay freeze is scheduled to end on the last day of the last pay period that begins in calendar year 2020 (i.e., January 2, 2021, for those on the standard biweekly pay period cycle). Future Congressional action will determine whether the pay freeze continues beyond that date.

On December 26, 2019, OPM issued guidance providing information on the employees covered by the pay freeze, the rates of pay affected and exceptions to the pay freeze. See CPM 2019-28 at <https://www.chcoc.gov/content/continued-pay-freeze-certain-senior-political-officials-3>.

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 having a performance appraisal system that is certified under [5 U.S.C. 5307\(d\)](#) as making, in its design and application, 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 EX-III under [5 U.S.C. 5318](#).

For SES employees stationed in Alaska, Hawaii, and U.S. Territories, Section 1912 of the

[National Defense Authorization Act for Fiscal Year 2010 \(Pub. L. 111-84, October 28, 2009\)](#) provides that SES employees whose official worksite was in one of the nonforeign areas on the day before the effective date of the section (defined as the first day of the first pay period beginning on or after January 1, 2010) will receive the locality pay rate for that area. The locality rates are subject to the limitations in [5 U.S.C. 5304\(g\)](#) and section [1915\(b\) of the Act](#). Employees who are assigned to SES positions in the nonforeign areas on or after the effective date are not eligible for locality payments but will be eligible for the applicable cost-of-living allowance (COLA) rate in effect for their official worksite. The nonforeign areas include Alaska, Hawaii, Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands and other islands and atolls as described in [5 CFR 591.205](#). For additional information see:

Nonforeign Area Retirement Equity Assurance Act, CPM 2009-27, available at <https://www.chcoc.gov/content/nonforeign-area-retirement-equity-assurance-act>.

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 performance awards and incentive awards, it may not preempt the PRB responsibility to provide the agency head recommendations on SES performance awards for career appointees or the agency head's determination of SES performance award 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 pay adjustments consistent with regulatory provisions, e.g., which pay adjustments 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 address budget issues, such as procedures for determining how available funds will be allocated among pay adjustments, performance awards and other awards or what kinds of adjustments to make in the event of budget constraints. The policy should also identify the role and nature of significant control points, external and internal, for these decisions. 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; and

- 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, if applicable, will be used to differentiate payouts among executives who receive the same rating;
 - Organizational performance measures that, if applicable, will be used to determine allocation of funds for performance awards 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; and
 - 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 quotas or forced distribution of performance ratings; however, pay differentiation based on performance ratings should be evident and applied consistently so that the highest performers receive the highest rewards. Agencies must provide transparency in the pay decision process and will communicate the results to demonstrate the correlation between executive excellence and desirable pay outcomes.

Considerations When Creating Pay Policy

Although the SES is established as a rank-in-person system, an agency’s pay policy may incorporate the concept of “position value.” This could, for example, involve establishing tiers of positions with distinct pay rules, ranges or limits, or accommodating other ways to include factors such as scope of responsibility, degree of accountability, and position in the organization. At the top levels of an organization, the 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 qualifications and level of expertise, scarcity of qualified personnel, and compensation levels for comparable executive positions in the private sector.

Agencies should inform their SES members how their pay system works. Even the best-designed pay system can fail if not implemented properly, and a major aspect of any successful system is effective communication about the workings of the system and its results.

SETTING INDIVIDUAL PAY RATES

Initial Appointment to the SES

Agencies have broad discretionary authority to set pay on initial entry 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 2019, 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:	\$ 151,633
6% pay increase per agency's general policy for new SES appointments:	<u>\$ 9,098</u>
Subtotal:	\$ 160,731

Jan 2020 projected 2.6% increase in the SES rate range. Given the appointment occurs in November, the executive will not have time to satisfy the minimum period of performance (90 days) necessary to receive a performance rating and an increase to maintain his/her relative position in the SES rate range. The agency may exercise discretion to incorporate into the initial SES rate an amount equivalent to the projected increase in the SES rate range.

Projected SES rate range increase (2.6%):	<u>\$ 4,179</u>
Total:	\$ 164,910

The agency reviewed the individual's experience, qualifications, and accomplishments and made the determination to set pay at \$164,910.

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 (a)(5) and (6) (including the Inspector General, where applicable) may approve a higher rate [5 CFR 430.404](#) 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, either 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 agency head or the official designated to oversee and certify the results of the agency's SES appraisal system determines 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 setting and 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

A senior executive is **not** entitled to retain his or her rate of pay upon transfer to another agency, except in the case of an executive transferring under circumstances described in the next paragraph. 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 the executive considering the transfer is not satisfied with the proposed rate of pay, the executive need not accept the position. 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\(c\)](#). If pay is set at a rate higher than that held in the former agency, the pay action initiates a new 12-month restriction. If pay is to be increased upon transfer within 12 months of the executive's last pay adjustment, the agency should first document an exception to the 12-month rule under [5 CFR 534.404\(c\)\(4\)\(ii\)](#) and [\(c\)\(5\)](#), i.e., to recruit an executive with superior leadership or other competencies from a position in another agency.

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, such as reassignment from a position in a component with a non-certified appraisal system to a position in a component with a certified appraisal system, or the employing agency's applicable performance appraisal system is certified. 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. When adjusting the rate of basic pay for noncareer appointees, it is recommended that the agency's Office of White House Liaison be consulted.

Performance-Based Pay Increase

An agency may provide a pay increase to allow a senior executive to advance his or her relative position within 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. (See [5 CFR 534.404\(b\)\(3\)](#)). 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 a pay increase for the current appraisal period. OPM expects that executives who are paid at a rate that is consistent with their current level of responsibilities and performance and who receive an acceptable (Fully Successful or higher) annual summary rating will receive a performance-based pay increase. A pay increase of any amount that is granted under [5 CFR 534.404\(b\)\(3\)](#) restarts the clock under the 12-month rule.

12-Month Rule

An agency may not adjust the rate of basic pay of a senior executive more than once during any 12-month period, except as provided by regulation. Provisions at [5 CFR 534.404\(c\)\(2\)](#) identify pay adjustments that are subject to the 12-month rule, including setting an individual's rate of pay upon initial appointment, reappointment, or reinstatement, and, generally, any other increase

or reduction in a senior executive's rate of pay. However, certain pay actions are identified in [5 CFR 534.404\(c\)\(3\)](#) that are not considered pay adjustments for purposes of the 12-month rule; and [5 CFR 534.404\(c\)\(4\)](#) provides conditions under which the head of an agency – or the official designated to oversee and certify the results of the agency's SES appraisal system – may authorize a pay increase even though an applicable 12-month waiting period has not expired.

Pay Actions 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 following pay actions may be taken whether or not the employee received a pay adjustment during the previous 12-month period and do not initiate a new 12-month period.

1. The conversion of senior executives to the new SES pay system under [§534.406](#) and the conversion of other employees to equivalent senior executive positions ([5 CFR 534.404\(c\)\(3\)\(i\)](#));
2. A determination by an authorized agency official to make a zero adjustment in pay after considering an executive's annual summary rating ([5 CFR 534.404\(c\)\(3\)\(ii\)](#));
3. A determination to provide an additional pay increase under the circumstances specified in [5 CFR 534.404\(f\)\(1\)](#) or (2) 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\(b\)\(4\)](#) that is equal to or less than the amount needed to maintain the relative position of a senior executive's rate of basic pay within 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\(c\)\(3\)\(vii\)](#)).

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 (under [5 CFR 534.404\(c\)\(4\)](#)) to make exceptions to the 12-month rule where he or she determines that an additional increase is warranted. These include—

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 [**Note:** A performance appraisal and rating are necessary to document the basis for a pay increase upon a senior executive's reassignment to a position with substantially greater scope and responsibility. The exception to the 12-month rule at [5 CFR 534.404\(c\)\(4\)\(ii\)](#) only provides authority to forgo the otherwise required 12-month waiting period.];
3. for a senior executive with superior leadership or other competencies that is recruited from a position in another agency;
4. 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

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

An executive is not entitled to receive an exception under [5 CFR 534.404\(c\)\(4\)\(iv\)](#) to re-align the executive with the agency’s senior executive appraisal and pay adjustment cycle because he or she receives a pay increase under [5 CFR 534.404\(c\)\(4\)\(i\),\(ii\)](#), or (iii), which initiates a 12-month waiting period that will not expire before the current cycle ends. If an exception is granted to re-align the executive, the agency head or designee should document under [5 CFR 534.404\(c\)\(5\)](#) how the reduced period of performance during the cycle (i.e., since the last pay increase) was considered in calculating any pay increase.

Maintain Relative Position in the Rate Range

When the minimum or maximum rate of basic pay of the SES rate range is increased (typically during the first pay period beginning on or after January 1), an agency may choose to increase the basic pay of fully performing senior executives (those who meet or exceed performance expectations as reflected in their performance rating) by an amount that does not exceed the amount necessary to allow the executive to maintain his or her relative position in the SES rate range ([5 CFR 534.404\(b\)\(4\)](#)). As previously stated, a pay increase to maintain relative position in the SES rate range (MRP) is not considered a pay adjustment for the purpose of applying the 12-month rule. An MRP adjustment may be made separately from a pay increase that results in a senior executive advancing his or her relative position in the SES rate range.

Agencies should be aware of the regulatory requirements and limitations associated with granting MRPs as listed in [5 CFR 534.404\(b\)\(4\)\(i\)-\(iii\)](#) and summarized in the following table:

Senior Executive’s Rate of Basic Pay Prior to Adjustment	Resulting Rate of Basic Pay After Adjustment	Rating for Most Recent Appraisal Period	MRP
Above EX-III	Above EX-III	Outstanding	May be granted upon approval by agency head or designee who performs the Oversight function
		Below Outstanding but Above Fully Successful	May be granted by agency head or designee, who performs the Oversight function, in limited circumstances (e.g., exceptionally meritorious accomplishment)
		Fully Successful or Below	May not be granted

Senior Executive's Rate of Basic Pay Prior to Adjustment	Resulting Rate of Basic Pay After Adjustment	Rating for Most Recent Appraisal Period	MRP
At or Below EX-III	Above EX-III	Outstanding	May be granted upon approval by agency head or designee who performs the Oversight function
		Below Outstanding	May not be granted
Below EX-III	Below EX-III	Fully Successful or above	May be granted by an authorized agency official

A pay increase to allow an employee to maintain his or her relative 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.

To accurately calculate a pay increase intended to maintain an employee's relative position in the pay range, agencies must use the following process. The process applies whether the minimum and maximum rates of the range are adjusted by the same amount or different amounts.

Example: The minimum and maximum rates of the SES rate range are adjusted by 2.6 percent. The example assumes the agency's performance appraisal system for senior executives is certified, allowing for a maximum pay rate equivalent to EX-II.

Former Minimum: \$127,914	New Minimum: \$131,239
Former Maximum: \$192,300	New Maximum: \$197,300
Former Rate for EX-III: \$176,900	New Rate for EX-III: \$181,500
Employee's Former Rate: \$157,594	Employee's New Rate: \$161,691

Calculations

Step 1: Subtract the minimum rate of the range for 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.

$$\$157,594 - \$127,914 = \$29,680$$

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

$$\$192,300 - \$127,914 = \$64,386$$

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

$$\$29,680/\$64,386 = 0.4609697$$

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

$$\$197,300 - \$131,239 = \$66,061$$

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

$$0.4609697 \times \$66,061 = \$30,452$$

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

$$\$131,239 + \$30,452 = \$161,691$$

This is the executive's new rate of basic pay preserving his/her relative position in the pay range.

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:

- (1) transferring to an SES position in an agency where the maximum rate of basic pay for the applicable SES rate range is equal to the rate for EX-III; or
- (2) 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 a pay adjustment. For example, if the executive was reassigned from a position in a component with a non-certified appraisal system to a position in a component with a certified appraisal 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) (i.e., the 12-month rule) 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 Minimally Satisfactory or Unsatisfactory annual summary rating under [5 CFR part 430, subpart C](#), or has otherwise failed to meet the performance requirements and standards 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 annual summary rating of Unsatisfactory, removal from the SES due to two less than Fully Successful ratings within three years or removal due to two Unsatisfactory annual summary ratings within five 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 seven 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 for the reduction at the earliest practicable date after the senior executive's response; and
- an opportunity to request, within seven 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

Under [5 CFR 530.203\(b\)](#), 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 (under [3 U.S.C. 104](#)) 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 ([5 CFR 530.202](#)).

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, unless such payment would cause the employee's aggregate compensation to exceed the limit for that new 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 re-determining 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, as allowed for other employees under [5 U.S.C. 5543](#). [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 rate of basic pay of the highest applicable rate range payable for the grade of the employee's position of record or (2) EX-IV. At no time may a retained rate exceed Executive Schedule level IV. There are exceptions for former National Security Personnel System employees with a pay rate determinant code Y and certain employees in nonforeign areas as provided in [5 CFR 536.310\(a\)](#).

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., placement is 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 2020, an SES employee in Washington, DC voluntarily moves to a GS-15 position in Washington, DC. The employee's SES annual salary of \$155,000 is the highest previous rate. To calculate the maximum payable rate, compare \$155,000 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 \$155,000. In this example, the highest applicable rate range is the DC locality rate schedule. GS-15, step 4 is the employee's maximum payable rate. Pay may be set at any rate in the GS-15 rate range up to step 4.

2020 DC	1	2	3	4	5	6	7	8	9	10
GS-15	142,701	147,458	152,215	156,973	161,730	166,487	170,800*	170,800*	170,800*	170,800*

*Rate limited to the rate for level IV of the Executive Schedule ([5 U.S.C. 5304\(g\)\(1\)](#)).

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 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 four 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 four 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 make 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 his 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/policy-data-oversight/pay-leave/recruitment-relocation-retention-incentives/#url=Fact-Sheets>.

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 generally reduced, or the annuity is terminated. However, in accordance with the National Defense Authorization Act (NDAA) for Fiscal Year 2010, the head of an agency is authorized to grant their own dual compensation (salary off-set) waivers on a temporary basis under specified circumstances. Agencies must adhere to the following conditions:

- Agencies must report to OPM on their use of this authority no later than February 1, 2010, and no later than February 1 of each year through 2015 (the NDAA for FY 2015 extended this authority until December 31, 2019, and the NDAA for FY 2020 extends this authority until December 31, 2024);
- Appointments are limited to one-year or less;
- Hours worked by any annuitant reemployed under these provisions are limited to 520 during the first six months of retirement, 1,040 during any 12-month period, and 3,120 for total hours worked during any period;
- Reemployment may not exceed 2.5 percent of the full-time workforce at any time, and if 1 percent is exceeded agencies are required to provide a justification and a succession plan to the Congress and OPM; and

OPM recommends using the SES reinstatement hiring authority, instead of the limited term or emergency hiring authority, when authorizing a dual compensation waiver under the NDAA 2010 provisions for an individual filling an SES position. Using the SES reinstatement authority enables an agency head to act without prior OPM review, consistent with the law's requirement to provide justification and a succession plan to OPM if the number of such waivers exceeds 1 percent of the agency's number of employees. It also avoids an agency having to satisfy limited term and emergency criteria as well. Limited term and emergency appointments are also non-renewable by law.

An agency head may use the limited time dual compensation waiver authority for career reinstatement if the appointment does not exceed one year, the appointee is notified up front of the duration, and duration is properly documented. Given that by law a reemployed annuitant (i.e., an employee whose annuity under [subchapter III of chapter 83 of title 5, United States Code](#)

was continued on reemployment in an appointive position on or after October 1, 1956) serves at the pleasure of the agency head, an agency head may direct that an annuitant's appointment will not exceed one year. On the SF-50 documenting the appointment, an agency should include a remark that states the appointment is not to exceed 1 year. An individual accepting the appointment must be notified up front that the appointment will not exceed one year.

For more information, see the December 9, 2011, OPM memorandum, Policy Guidance on the Reemployment of Civilian Retirees Under the National Defense Authorization Act for Fiscal Year 2010, at <https://www.chcoc.gov/content/policy-guidance-reemployment-civilian-retirees-under-national-defense-authorization-act-ndaa>.

Critical Position Pay

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 accomplishment of an agency's mission, and only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position. Critical position pay may be set up to level II of the Executive Schedule or level I of the Executive Schedule in exceptional cases under [5 U.S.C. 5377](#). Pay above level I must be approved by the President. 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. For additional information, see the fact sheet at <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/critical-position-pay/>.

Pay for SES Positions Included under [5 U.S.C. 5314 - 5316](#)

Pay for SES positions that are included under [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.

Chapter 6

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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, Presidential Distinguished and Meritorious Rank Awards, and other forms of recognition. Only career appointees are eligible for rank and performance awards.

CHAPTER NOTE

Guidance on Awards Spending

On July 12, 2019, OMB issued OPM/OMB Memorandum [M-19-24](#), Subject: Guidance on Awards for Employees and Agency Workforce Fund Plan, which applies during fiscal year (FY) 2020 and subsequent fiscal years. The memorandum rescinded prior OPM/OMB guidance limiting aggregate awards spending. Agencies granting awards for Senior Executive Service (SES), Senior-Level (SL), Scientific and Professional (ST), and non-SES/SL/ST employees are to follow requirements in applicable statute and regulation. Awards are to be paid in accordance with Agency Workforce Fund Plans designed to guide agency spending toward the strategic use of employee awards and recognition.

This guidance applies to all departments and agencies for all employees, except political appointees covered by the [President's memorandum of August 3, 2010](#), freezing discretionary awards, bonuses, and similar payments for political appointees, as communicated in [OPM Guidance](#) CPM 2010-14, posted on the CHCOC website.

GENERAL INFORMATION AND COMPARISON OF SES AWARD PROGRAMS

Award Programs

The three SES award programs are—

- Performance Awards;
- Presidential Rank Awards; and
- Other Awards

Agencies should develop written pay and awards policies that incorporate policies for all three SES award programs.

Relationship Among Award Programs

Performance awards and Presidential Rank Awards both recognize overall high-level

performance by SES career appointees.

SES performance awards reflect performance over a single appraisal period while rank awards are based upon service over an extended period of time. A single Outstanding annual summary rating does not justify a rank nomination, but it may justify a performance award. 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 performance award each year.

Performance Awards. Recognizes excellence in performance at the end of the performance appraisal period. Career SES members with a performance rating of Fully Successful or higher are eligible for a performance award. The statute does not specify a limit on the number of awards that may be given by an agency. The supervisor nominates the executive for the award, the agency Performance Review Board (PRB) recommends, and the agency head or designee considers the recommendations but he/she has the final authority as to who is to receive a [performance](#) award and the amount of the award. SES performance awards are 5 to 20 percent of the SES member's 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 executives covered by a certified appraisal system or over the rate of pay for Executive Schedule level I for executives not covered by a certified appraisal system, the excess is rolled over to the next CY ([5 CFR 530.302\(b\)](#)).

Presidential Rank Awards. Recognizes sustained extraordinary accomplishment (Distinguished) or sustained accomplishment (Meritorious) over at least three years as SES or equivalent. (Service does not have to be all in same agency.) To be eligible, an executive must have at least three years of career or career-type Federal civilian service at the SES level, currently hold a career appointment in the SES, and be an employee of the nominating agency on OPM's nomination date. An executive cannot receive the same rank award within four 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, the SES member receives an amount equal to 35 percent of his/her annual basic pay, a gold lapel pin, and a Presidential certificate. For a Meritorious Rank Award, the SES member receives an amount equal to 20 percent of his/her annual basic pay, a 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 one percent of the career SES members can receive the Distinguished Rank and five percent of the career SES members can receive the Meritorious Rank.

In 2003, Distinguished Senior Professional and Meritorious Senior Professional rank awards were also established and made available ([5 U.S.C. 4507a](#)) for senior career employees paid under [5 U.S.C. 5376](#) (i.e., Senior-Level and Scientific or Professional (SL/ST)) under the same terms and conditions that apply to rank awards for career members of the SES.

Other Awards. Other forms of recognition are available to recognize a single, significant act or contribution that 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. Unless otherwise restricted, e.g., by statute or by a Presidential Administration, all SES members are eligible.

The statute does not specify a limit on the number of awards. 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 cash awards of up to \$10,000; OPM approves awards greater than \$10,000 up to \$25,000; and the President approves cash awards over \$25,000. 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, accomplishment on 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 performance award would not be appropriate.

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

Given the sensitivity associated with executive awards, agencies should carefully document the reasons for any award to make clear that it is not being given in lieu of a performance award or in addition to an award that already recognized 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.

If a career SES appointee transfers to a new agency after receiving an annual summary rating but before his/her performance award is paid out, the losing agency may still pay the award to the executive. Payment procedures should be coordinated between the losing and gaining agencies.

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 26, 1989).

Documentation

Agencies should document Presidential Rank Awards on an SF 50 and file it on the right side of the Official Personnel Folder (OPF). Agencies must document SES performance awards and other awards but OPM does not require an SF 50, and agencies may not file these awards on the right side of the OPF. [See OPM's Guide to Processing Personnel Actions, [Chapter 29](#).]

Reporting Requirements

While OPM approval is not required before payment of most awards, there is a reporting requirement. Agencies must submit a report of their final distribution of performance ratings and performance awards to OPM in accordance with instructions in OPM's annual data call.

PERFORMANCE AWARDS

STATUTE: [5 U.S.C. 5384](#)

REGULATIONS: [5 CFR 534.405](#)

Performance awards recognize and reward excellence of career appointees over a performance appraisal period based on the annual summary rating.

Eligibility

To be eligible for an SES performance award, an individual must have received a Fully Successful (FS) or higher annual summary rating for the most recent appraisal period under [5 CFR part 430, subpart C](#) and as of the end of the performance appraisal period must have been—

- an SES career appointee, including a reemployed annuitant with an SES career appointment; or
- a former SES career appointee who elected to retain award eligibility under [5 CFR part 317, subpart H](#).

An individual who is no longer in the SES at the time the performance award decision is made but who was an SES career appointee at the end of the appraisal period normally remains eligible, but departure without participation in the rating process can hinder or prevent consideration.

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

An SES member who leaves an agency before the end of an applicable agency appraisal period is eligible for an award if:

- The agency ends the executive's appraisal period at any time after the minimum appraisal period is completed, as provided in [5 CFR 430.304\(b\)\(5\)](#), based upon the determination there is an adequate basis to appraise and rate the executive's performance;
- The agency's process for rating and granting awards is applied, including initial rating, PRB review and recommendation concerning rating and award, and final rating of the executive at Fully Successful or higher by the appointing authority; and
- The agency head approves an award between 5% and 20% of the executive's salary that is accommodated within the bonus pool for the fiscal year in which the award is paid. (See Award Pool below.)

Restrictions

To be recognized with an SES performance award, service must have been performed under an SES career appointment and must 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 take this into account in determining the amount of the award; however, an SES performance award may not be less than five percent of the individual's SES rate of basic pay as of the end of the performance appraisal period.

Since [5 U.S.C. 5384\(a\)](#) states that SES performance awards shall be paid to career SES appointees, a career appointee contemplating SES noncareer, limited term, or limited emergency appointment should consider that timing of such a change can preclude payment of a performance award.

An Inspector General (IG) is not eligible for SES performance awards, rank awards, or other cash awards (See the Inspector General Act of 1978, [5 U.S.C. Appendix Sec. 3\(f\)](#)). An IG who is otherwise eligible to elect to retain certain SES benefits under [5 U.S.C. 3392](#) and [5 CFR part 317, subpart H](#) may not retain eligibility for SES performance awards or rank awards ([Pub. L. 110-409, § 4\(c\), October 14, 2008, Inspector General Reform Act of 2008](#)).

Award Pool

The total amount of SES performance awards 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 award payments are made. [For example, if the payments are made in September 2020 (FY 2020), the pool is calculated as of September 30, 2019 (end of FY 2019). However, if the payments are made in November 2020 (FY 2021), the pool is calculated as of September 30, 2020 (end of FY 2020)]; or
- 20 percent of the average annual rates of basic pay for career SES appointees as of the end of the fiscal year before the fiscal year in which the performance award payments are made.

The salary of a former SES career appointee who elected to retain award eligibility under [5 CFR part 317, subpart H](#) is taken into account in calculating the pool. If the level of basic pay of the individual is higher than the maximum rate of basic pay for the applicable SES rate range, the maximum rate of that SES rate range is used for crediting the agency award pool. Similarly, the salary of a career appointee receiving critical position pay is taken into account, but only the maximum rate of the SES rate range is used for crediting the agency award pool.

The salary of a career appointee who is on detail to another agency is included in calculating the pool of the agency from which the appointee is detailed. 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 award, 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 performance awards and the amount of each award, 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 awards. Performance awards are intended to be given only when there is a clear demonstration they are merited by performance. Awards are not to be used merely as supplements to basic pay and agencies should avoid giving awards on a rotational basis (e.g., giving half of their SES members a performance award one year and the other half a performance award the next year). Agencies rating executives above Fully Successful would be expected to pay performance awards to at least some of those executives, based on the criteria established in their agency pay plans.

Amount of Awards. A performance award may not be less than 5.0 percent or more than 20.0 percent of the appointee's SES rate of basic pay as of the end of the appraisal period [[5 CFR 534.405\(c\)](#)]. These percentages may not be rounded (i.e., the award amount may not be less than 5.0 percent or more than 20.0 percent). An individual may not voluntarily agree to accept an SES performance award of less than five percent.

When an individual whose rate of basic pay exceeds the maximum rate of the SES rate range (e.g., a SES member receiving critical pay or a former SES career appointee who elects to retain award eligibility under [5 CFR part 317, Subpart H](#)) is considered for a performance award, the minimum (5.0%) and maximum (20.0%) award available to the individual is calculated using the agency's maximum SES rate (EX-III or EX-II, as applicable).

Award Determinations

When making recommendations on a performance award, a 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 or she has the final authority as to who receives a performance award and the amount of the award [[5 CFR 534.405\(a\)\(4\)](#)].

Payment Procedures

Awards 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.

Awards are subject to the EX-I aggregate pay limitation for a calendar year for executives not covered by a certified appraisal system. For executives covered by a certified appraisal system, awards are subject to an aggregate pay limitation equal to the Vice President’s salary. If the full award 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 award is charged against the agency award pool for the fiscal year in which the initial payment was made. For example, if an executive received a performance award of \$15,000 in FY 2020 (e.g., August 2020), but \$1,000 could not be paid until the beginning of CY 2021, that \$1,000 counts against the executive’s applicable CY 2021 aggregate pay limitation; but the full \$15,000 is charged against the agency’s FY 2020 award pool.

[**Note:** Agencies should pay performance awards generally within five months following the end of the applicable appraisal period to reinforce the linkage between performance excellence and its associated reward.]

PRESIDENTIAL RANK AWARDS

STATUTE: [5 U.S.C. 4507](#)

REGULATIONS: [5 CFR 451, Subpart C](#)

Rank Award Descriptions

The Presidential Rank Award (PRA) recognizes and rewards career Senior Executive Service (SES) members and career senior professionals [Senior-Level (SL) and Scientific or Professional (ST)] who have demonstrated exceptional performance over an extended period of time. There are two ranks:

The ***Distinguished Executive and Distinguished Senior Professional Rank*** may be awarded for “sustained extraordinary accomplishment” to no more than one percent of career SES members and no more than one percent of senior career professionals Governmentwide. The awards include 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 and Meritorious Senior Professional Rank*** may be awarded for “sustained accomplishment” to no more than five percent of career SES members and no more than five percent of career senior professionals Governmentwide. The awards include 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.

Agency Nominations

Each agency may nominate up to nine percent of its career SES members and/or up to nine percent of its career senior professionals for rank awards. Agencies are not subject to any prescribed ratio of Distinguished to Meritorious nominations but should keep in mind that the statute permits only one percent of career SES members and one percent of career senior professionals to receive the Distinguished Rank, and only five percent of career SES members and five percent of career senior professionals to receive the Meritorious Rank. Agencies with fewer than 12 career SES members or fewer than 12 career senior professionals may nominate one individual in either category.

The [IG Reform Act of 2008 \(Pub. L. 110-409\)](#) provides for the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to serve as agency head for Offices of Inspector General with respect to [5 U.S.C. 4507\(b\)](#) (SES Rank Awards). In that capacity, CIGIE reviews recommendations for career SES members from each Office of Inspector General to receive rank awards and may nominate up to nine percent of career SES appointees serving in Offices of Inspector General Governmentwide for rank awards, and [5 U.S.C. 4507a](#) provides for Senior Professional rank award recommendations to be “made, reviewed, and awarded under the same terms and conditions (to the extent determined by the Office of Personnel Management) that apply to rank awards for members of the Senior Executive Service under [section 4507.](#)”

Eligibility

SES Career Appointees – Distinguished and Meritorious Ranks

Nominees must —

1. Hold a career appointment in the SES;
2. Be an employee of the nominating agency; and
3. Have at least three years of career or career-type Federal civilian service at the SES level. Service does not have to be continuous. Qualifying service includes career or equivalent appointments in the SES, Senior Foreign Service, and the Defense Intelligence Senior Executive Service, and other SES-equivalent systems (e.g., FBI/DEA SES). Appointments not qualifying include noncareer, limited term and limited emergency SES appointments, and Senior-level (SL) or scientific and professional (ST) appointments.

Senior Career Employees (SL/ST)

Nominees must —

1. Hold a career appointment in a Senior-Level (SL) or Scientific or Professional (ST) position that is subject to [OPM](#) position allocations under [part 319](#) of this chapter and paid under [5 U.S.C. 5376](#) on the nomination deadline set by [OPM](#);
2. Be an [employee](#) of the [agency](#) on the nomination deadline set by [OPM](#); and
3. Have at least three years of career or career-type Federal civilian service above GS-15. Service need not be continuous. Qualifying service includes appointments that are not—
 - a. Time-limited; or

- b. To positions that are excepted from the competitive service because of their confidential or policy-making character.

A career SES member or career senior professional who is a reemployed annuitant or who has a part-time or intermittent work schedule is eligible as long as he or she 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 or senior professional position 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.

A Presidential Rank Award nominee remains eligible for the rank award even if the individual leaves the nominating agency:

- If the individual is selected as a finalist, the original nominating agency continues to have authority to award the individual after the individual leaves the agency and is responsible for paying the full award amount to the individual.
- The nominating agency can withdraw the nomination of the individual at any time during the process, however, should the nominating agency allow the individual to continue through the process, OPM recommends the nominating agency contact the new agency to verify that the individual is still deserving of the award and that there are no issues that would cause embarrassment to the President or Administration if the individual is selected.
- If the nominating agency withdraws its nomination that ends the individual's consideration for a rank award for that fiscal year.

Appointed employees in PAS Executive Schedule positions may **not** receive incentive awards, including Presidential Rank Awards, according to [5 U.S.C. 4509](#), except that a career SES member who receives such an appointment without a break in service and elects to retain eligibility for rank awards under [5 U.S.C. 3392](#) continues to be eligible. [OPM Guidance](#) on the CHCOC Website implementing the [President's memorandum of August 3, 2010](#), freezing discretionary awards, bonuses, and similar payments for political appointees also makes an exception for a former career SES member who elects to retain eligibility for awards under [5 U.S.C. 3392](#). Nevertheless, an agency may consider a variety of factors, including concerns expressed by Congress or the Administration regarding awards for political appointees when deciding on rank award nominations.

[Section 5 of the Inspector General Reform Act of 2008 \(Pub. L. 110-409\)](#) 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; however, other SES members in IG offices are eligible for performance and other awards, including Presidential Rank Awards. As noted above, [Pub. L. 110-409](#) provides for the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to determine which SES members from Offices of Inspector General are to be nominated for rank awards.

Restrictions

The recipient of either a Distinguished or Meritorious Rank Award may **not** receive the same rank again during the four fiscal years following the one for which the award is given. (For example, if an individual received a meritorious award in FY 2019, he or she is not eligible for another meritorious award until FY 2024.) However, there is no restriction on receiving one rank (i.e., either Distinguished or Meritorious) and subsequently receiving the other rank at a closer interval. There is also 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

Career SES and senior professional appointees are nominated and evaluated on the following criteria:

Career SES appointees

1. Program Results
2. Executive Leadership

Career Senior Professional appointees

1. Program Results
2. Stature in the 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 dedicated service.

Nomination and Selection Procedures

OPM call. OPM issues an annual call memorandum for rank award nominations which states the criteria and deadline for submitting nominations and includes nomination forms.

OPM and Review Boards. Review boards composed of private citizens (normally from outside the Government) are established to assist the Director in reviewing and ranking nominations from agencies. OPM also conducts a background inquiry and criminal records check to verify the qualifications and suitability of nominees recommended by the boards for distinguished and meritorious rank.

After the completion of the review boards, background inquiries, and records checks for potential concerns relating to federal taxes, EEO, prohibited personnel practice, Inspector General or other complaints, and criminal records, the Director of OPM recommends candidates to the President for a final decision.

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 of the President’s final decision.

Presidential action. The President makes the final selections from the nominees recommended by the Director of OPM. Agencies must wait for OPM authorization to make external announcements of award recipients and to hold internal recognition ceremonies.

Award Payment Procedures

The award is paid by the recipient’s nominating 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 5, 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 AWARDS

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.

A time-off award may not be converted to a cash payment under any circumstances. If permitted by agency policy, an SES member may use a time-off award received prior to the SES appointment.

Eligibility

In general, SES appointees of all types are eligible for awards under [chapter 45 of title 5](#) unless the award would conflict with certain related statutes or is restricted by applicable statute, regulation, or administration policy. See examples below.

Restrictions

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

- the limitations on eligibility for performance awards. 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 performance award eligibility under [5 U.S.C. 5384](#);
- the limitations on the size of individual performance awards. For example, an agency should not give job-related superior accomplishment awards to career SES employees to supplement performance awards for overall performance or pay less than the minimum performance award required; and
- the limitations on the total amount of funds available to pay performance awards. 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 award 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 award under [5 CFR part 451, subpart A](#) 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](#)];
- 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 performance award and rank award eligibility under [5 U.S.C. 3392\(c\)](#) may still receive a performance award or rank award; and
- an Inspector General may not receive any cash award or cash bonus, including any cash

award under [chapter 45 of title 5, United States Code](#). [See the Inspector General Act of 1978, [5 U.S.C. Appendix Sec. 3\(f\)](#)]

It is generally recommended that an agency consult with its White House Liaison on awards for noncareer SES members; however, on August 03, 2010, a [Presidential Memorandum](#) placed a freeze on discretionary awards for Federal Political Appointees (see [OPM guidance](#)).

- Agencies may not authorize or pay single contribution-based special act awards for either individual or group achievements under the authority of [5 U.S.C. 4503](#) and [5 CFR part 451, subpart A](#), to political appointees as of August 3, 2010.
- Time-off awards and nonmonetary awards (e.g., a plaque or certificate) are not subject to the freeze. Agencies may continue to authorize or grant time-off awards and nonmonetary awards to political appointees. However, time-off awards are among the awards prohibited for certain employees during a Presidential election period.
- The freeze on discretionary awards for Federal Political Appointees remains in effect until further notice.

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CHAPTER 7: EXECUTIVE DEVELOPMENT

STATUTE: [5 U.S.C., 3373-3375, 3396, 4103, 4121](#)

REGULATIONS: [5 CFR Part 410](#); [5 CFR 412.202, 412.301, 412.302, 412.401](#); [5 CFR Part 334](#)

EXECUTIVE ORDER – Strengthening the Senior Executive Service

Faced with constant challenges, changing technologies, and a fluid environment, executives need to continually broaden their perspectives and strive for professional development. Executives should seek to strengthen their Executive Core Qualifications (ECQs), skills, and knowledge to make more informed decisions and devise innovative solutions to the complex challenges they encounter. Engaging in continuing development can assist executives in achieving those goals.

There are many ways for executives to benefit from learning and developmental opportunities. There are many ways to provide learning and developmental opportunities for executives. Leadership and self-development typically relate to experiential activities, developmental relationships, assessments and feedback, and instruction-led development. Specific activities may include developmental assignments, job rotation, coaching, networking, mentoring, multisource feedback and other structured training programs.

DEVELOPMENT OF CURRENT EXECUTIVES

Executive Development Plan

Each senior executive is required to prepare, implement, and regularly update an Executive Development Plan (EDP) as specified in [5 CFR 412.401](#). EDPs must be reviewed annually and revised appropriately by the agency's ERB, or similar body designated by the agency, to oversee executive development using input from the performance evaluation cycle. EDPs will:

- function as a detailed guide of developmental experiences, including short and longer-term experiences, to help senior executives meet organizational needs for leadership, managerial improvement, and organizational results;
- address enhancement of existing executive competencies and other competencies to strengthen the senior executive's performance; and
- outline developmental opportunities and assignments to allow the senior executive to develop a broader perspective in the agency as well as Governmentwide.

Consistent with [5 U.S.C. 3396\(d\)](#) and other applicable statutes, EDPs may provide for sabbaticals and other long-term assignments outside the Federal Government.

Executives are encouraged to review [OPM's Framework for the Continuing Development of Federal Senior Executives](#) to assess their current state of development and create an EDP to strengthen specific competencies.

OPM has developed a sample EDP for Agency use, and this EDP is available at: <https://www.opm.gov/policy-data-oversight/senior-executive-service/executive-development/edptemplate.pdf>.

OPM's Framework for the Continuing Development of Federal Senior Executives

This executive development framework incorporates mandatory training, recommended key leadership behaviors, developmental objectives, and developmental opportunities at each specific stage of an executive's lifecycle of learning. Executives are also encouraged to review the framework to assess their current state of development and create a plan to strengthen specific competencies.

Each career stage of the SES lifecycle is characterized by key leadership behaviors that define the characteristics necessary to achieve and sustain executive excellence. Furthermore, the developmental objectives provide executives direction and focus to enhance the desired behaviors. The recommended developmental opportunities identified in the framework for each career stage provide the specific experiences that enable executives to build their leadership capability.

The framework, coupled with organizational and individual executive needs, should be used during the executive development phase of each agency's talent management process (for more information see the section below entitled Annual Leadership Talent Management and Succession Planning Process). It is critical to involve executives in identifying their developmental objectives and experiences, and to recognize that development should be individualized. No "one-size fits all" solution exists for individual development. Each executive and his/her supervisor should work together to outline developmental goals and select appropriate development to meet the requirements and learning needs of the specific executive.

Agencies are also encouraged to use multiple strategies to hold executives accountable for continued development (e.g., as part of the competency element in their performance standards, ERB regular talent management review). In 2012 OPM released the Executive Development Best Practices guide. This guide contains a compilation of best practices used by the public and private sector to support executives' continued learning.

Many private organizations have recently shifted the focus of their leadership learning and development efforts from formal, classroom-based training programs to less formal on-the-job learning experiences. These organizations have largely made this shift in recognition of the abundant research demonstrating that **70%** of learning takes place on-the-job; **20%** of learning results from meaningful relationships and coaching; and **10%** of learning occurs through formal training. The *70-20-10* model of learning and development has been widely accepted by organizations and learning institutions.

For your convenience, this comprehensive guide is also available online at: <https://www.chcoc.gov/sites/default/files/trans5241.pdf>.

Executive Onboarding

Executive onboarding refers to the acquiring, accommodating, assimilating and accelerating of new executives into the organizational culture and business. Onboarding is not “orientation” but is a longer, more involved and deliberate approach of a fast track to meaningful, productive work and strong employee relationships tailored specifically to the needs of the executives. Executive onboarding should be strategic, so that it not only prevents executive derailment, but expedites the executive’s contribution to optimize strategic achievement.

A 2017 study of Governmentwide executive onboarding programs as experienced by new executives highlights the need for:

- (1) agencies to provide onboarding executives with critical information to facilitate an efficient and effective assimilation into the organization;
- (2) supervisors to act as key facilitators of the onboarding process; and
- (3) executive coaching to ease the transition process for new executives.

Agency onboarding programs should address three types of new executives:

- those from outside the agency, but still within the Government;
- executives from outside the Federal Government; and
- executives promoted from within the agency.

Various agencies have piloted executive onboarding programs and have shared information, planning documents, and more. You can find these documents as well as templates and examples of these requirements on OPM’s Executive Onboarding Wiki page at: <http://www.opm.gov/WIKI/training/New-Employee-Orientation.ashx>.

For questions and/or assistance in executive onboarding planning and implementation, please email SESDevelopment@opm.gov.

SES Situational Mentoring

Federal agencies are required by law ([5 U.S.C. 3396](#)) to establish programs to assist senior executives in their continuing development. One tool that OPM has created to assist agencies in this regard is the SES Situational Mentoring program. This program provides executives the opportunity, through mentors, to obtain valuable ideas and guidance on high-impact issues, problems, challenges or opportunities. The contact with the mentor can be via email, telephone, over lunch, etc. This Governmentwide program provides Federal executives with timely advice and support from experienced executive mentors across Government through a new Situational Mentoring portal. For more information on enrolling executive mentees and mentors into the program, please email SESDevelopment@opm.gov.

Mobility Assignments

OPM encourages executives to pursue broadening developmental opportunities (see [Executive Order on Strengthening the Senior Executive Service](#)) to include rotational assignments.

A rotation is defined as, “...a development process, involving movement to another position, that

broadens the executive's knowledge, skill and experience in order to improve talent development, mission delivery and collaboration." A rotation must last 120 consecutive days and provide experience outside the scope of an executive's current role.

Examples of rotations may include, but are not limited, to the following:

- Executive reassignment;
- Executive transfer;
- Developmental assignment internal to the agency, for example to another subcomponent, functional area, or location (e.g., acting in another executive position, field executive rotating to HQ or vice versa);
- Detail or developmental assignment external to the agency (e.g., Intergovernmental Personnel Act (IPA) program; temporary assignment/detail to another Federal agency or private sector where permitted by law);
- An assignment that includes full-time, extended service on a multi-agency or joint task force or project team that may provide employees with sufficient interagency experience to qualify as a rotation; or
- Sabbatical.

The requirements (specific to the EO) that define, support, and promote executive rotations are as follows:

- Agencies with 20 or more SES positions shall develop and submit to OPM a 2-year plan to increase their number of SES on rotations;
- Rotations must be for a minimum period of 120 days;
- Annual Governmentwide goal, beginning in FY 2017, of 15% of SES members on rotations (no agency-specific goal); and
- Annual reporting to OPM on SES rotations.

Fifteen Percent (15%) Governmentwide Rotation Goal

The EO set an annual Governmentwide goal of 15 percent of executives on rotations lasting a minimum of 120 days. Since there are no agency-specific goals, it is expected that some agencies may rotate more than 15 percent annually while others will rotate less. The frequency of SES rotations in any specific agency will depend on agency and individual needs. Not every executive in an agency is *required* to rotate. Agencies should make strategic decisions on rotations based on mission and organizational needs (see below for information on the annual Talent Management and Succession Planning Process).

Annual Leadership Talent Management and Succession Planning Process

Federal agencies are legally required to develop a comprehensive management succession program, per [5 CFR 412.201](#). Additionally, [EO 13741](#) includes a phased implementation requirement of an annual talent management and succession planning process.

Talent management and succession planning are essential to effective human capital management – ensuring organizations take a planned, deliberate, and holistic approach to the cycles of selection, development, and engagement of their workforce. OPM's [Guidance on](#)

[Establishing an Annual Leadership Talent Management and Succession Planning Process](#) and supplemental infographic help agencies implement and enhance an annual leadership talent management and succession planning (TM&SP) process.

The process consists of five main stages: (1) determine future executive resources needs; (2) evaluate current talent state; (3) align talent to agency needs; (4) finalize executive development plans; and (5) implement and update plans.

The guidance and additional resources are located on [OPM's Leadership Talent Management & Succession Planning Wiki page](#). Agencies are encouraged to continue sharing resources and templates that align with this guidance.

Intergovernmental Personnel Act Temporary Assignments

Career SES appointees are eligible for temporary assignments to or from State, local, and Indian tribal governments, institutions of higher education, and other eligible organizations, under provisions of the Intergovernmental Personnel Act (IPA) of 1970 and title VI of the Civil Service Reform Act, in accordance with requirements in [5 U.S.C. 3373](#) and [5 CFR part 334](#). See <http://www.opm.gov/programs/ipa/mobility.asp> for more information on this program for Federal employees and non-Federal employees.

Further information pertaining to various provisions of the IPA, to include standards of conduct and conflict-of-interest provisions, can be found at <https://www.opm.gov/policy-data-oversight/hiring-information/intergovernment-personnel-act/#url=Provisions>. Use the following links to find information pertaining to additional areas of consideration, including pay and leave accumulation (<https://www.opm.gov/policy-data-oversight/senior-executive-service/compensation/#url=Overview>), or performance requirements (<https://www.opm.gov/policy-data-oversight/senior-executive-service/performance/#url=Overview>).

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 ([5 U.S.C. 3396\(c\)](#); [5 CFR 412.401\(b\)](#)). 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 or local governments; and
- activities or projects not covered above (e.g., bench research, invention, design, development, trouble-shooting or problem-solving assignments, or writing).

Eligibility. Career appointees must have completed seven years of service in SES positions or equivalent civil service positions (i.e., classified above GS-15 and having responsibilities consistent with SES functions described in [5 U.S.C. 3132\(a\)\(2\)](#)), and at least two of the seven

years specifically 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 two consecutive 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).

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 and must receive a performance rating in accordance with the requirements of that system. He or she should be evaluated against appropriate standards, including standards addressing activities involved in the sabbatical. Appropriate pay adjustments and performance awards may be given in accordance with agency's SES pay policy.

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 two years from the date the sabbatical is approved by the agency.

Submit the SES sabbatical documentation by letter to:

Senior Executive Services and Performance Management
ATTN: Work-Life & Leadership/Executive Development
U.S. Office of Personnel Management
1900 E Street NW, Room 7412
Washington, DC 20415

SESDevelopment@opm.gov

Work-Life Programs

A work-life program is the business practice of creating a flexible, supportive environment to engage employees and maximize organizational performance. Key work-life programs offered to Federal employees include workplace flexibilities, such as dependent care, telework, worksite health and wellness, and Employee Assistance Programs. When implemented well, these programs can demonstrate significant benefits for agencies and employees.

[OPM's Work-Life Toolkit for Managers](#) is a useful reference that provides executives with the information they need to deal with work-life issues in the workplace.

DEVELOPMENT OF FUTURE EXECUTIVES

Each agency is required to have an integrated training program, which supports the of the agency's mission ([Federal Workforce Flexibility Act of 2004](#)) by building the agency's leadership capacity. The training program is to include supervisors, managers, and executives on a range of management issues to improve employee performance and productivity.

- Agencies must also establish systematic and comprehensive management succession plans for supervisory, managerial, and executive positions ([5 CFR 412.202](#)) to ensure the smooth transition in leadership of agency programs.

To highlight the importance of a broader approach to supervisory development, OPM developed the [Federal Supervisory and Managerial Training Frameworks](#) which outline the full scope of mandatory and recommended training for aspiring leaders.

The frameworks also include the requirements outlined in [5 CFR 412.202](#), which indicate that all leaders should be trained on managerial actions, options, and strategies that they may use:

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

Coaching

OPM encourages agencies to provide coaching services as a supplement to leadership development efforts, particularly for new SES during their first year. Coaching is a practical, goal-focused form of one-on-one learning where the participant works with an internal or external coach who helps establish and monitor progress toward goals.

Agencies and executives can access internal federal coaching services through the Federal Coaching Network, which emerged in early 2013 under the partnership between OPM and the Chief Learning Officer's Council. The network has an overarching goal of building and sharing coaching services across Government at no cost, and in April 2014 began training a cadre of Internal Federal Coaches. These Internal Federal Coaches, along with other trained coaches in the Federal Government, are listed in an online inventory housed on MAX.gov. This Database

of Internal Coaches is accessible to points of contact within each agency, which can use this resource to share coaching services across agencies.

For more information about coaching or the Federal Coaching Network, please send an email to FederalCoachingNetwork@opm.gov.

To learn more about Coaching Services offered by OPM's Center for Leadership Development, please click <https://cldcentral.usalearning.net/mod/page/view.php?id=258>.

OPM Approved SES Candidate Development Programs

STATUTE: [5 U.S.C. 3396](#)

REGULATION: [5 CFR Part 412](#)

The SES Candidate Development Program (SESCDP) is a means that agencies can use to manage their succession planning needs. An SESCDP provides aspiring senior executive leaders with Governmentwide leadership challenges, interactions with senior employees outside their department and/or agency, interagency training experience, executive level development assignments, and mentoring. The combination of these experiences should enhance their executive competencies and increase their understanding of government programs and issues beyond their individual agency and profession. Graduates of an OPM-approved SESCDP who are selected through civil service-wide competition and are certified by OPM's Qualifications Review Board (QRB) may receive an initial career SES appointment without further competition. Certified graduates typically tend to be those who entered their SESCDP with experiences normally obtained at the GS-15 level. OPM encourages agencies' Executive Resources (ER) staff to make SESCDP graduates aware of support resources available, and more information on these tools can be found in the [OPM Support For QRB-Certified SESCDP Graduates](#) section of this chapter. Agencies must have a written policy describing their program. Requirements for agency candidate development programs are in [5 CFR part 412](#), which requires all agencies to submit their program's written policy to OPM for approval before announcing subsequent programs.

OPM Approval of SES Candidate Development Programs (SESCDPs)

As indicated in revised [5 CFR 412](#), agencies must obtain OPM approval before they conduct an SESCDP. Agencies must seek re-approval every five years.

Mail requests for OPM approval to:

U.S. Office of Personnel Management
Senior Executive Services and Performance Management
1900 E Street NW, Room 7412
Washington, DC 20415

Email requests for OPM approval to: SESDevelopment@opm.gov

Developing SESCDP Policies for OPM Approval

OPM has developed an outline to assist agencies as they develop their SESCDP and operations document. The outline below includes program requirements, as stated in [5 CFR 412.302](#), which must be included to obtain OPM approval. Some of the components are described in more detail in the next sections of this chapter.

- A. Program Overview** – This section describes how your program’s objectives contribute to the agency’s workforce goals. The information in this section includes—
- Description of the program;
 - Statement of the program’s purpose, goals and objectives;
 - Description of how the program supports the agency’s strategic plan;
 - Description of how the program conforms to relevant statutory and regulatory authorities related to staffing and SESCDPs;
 - 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’s 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 describes how an agency will organize and run the program. This section includes the program scope and the roles and responsibilities of team members. The information in this section includes—
- Defined program scope– duration (including procedures for documenting the dates each candidate starts and finishes the program); target audience (e.g., all qualified individuals or only civil service employees); and organizational level responsible for program oversight (e.g., agency level, component level, or multi-level);
 - Description of the program-related roles and responsibilities of the following, as appropriate: Agency Head, ERB, SES Mentors, Human Resources Office, SESCDP Program Office, Developmental Assignment Supervisors, and SES Candidates; and
 - How the agency will—
 - Handle external selections for the purposes of placement and payment of program expenses; and
 - Periodically evaluate the program and incorporate the evaluation results into planning for future programs (please see OPM’s Training Evaluation Field Guide for information on evaluating your programs -- <http://www.opm.gov/policy-data->

[oversight/training-and-development/reference-materials/training_evaluation.pdf](#));

[5 CFR 410.202](#) requires all agencies to evaluate their training programs annually, to include SESCOs, "...to determine how well such plans and programs contribute to mission accomplishment and meet organizational performance goals." There are several methods agencies can use to evaluate training programs. One common method is Kirkpatrick's Four Levels of Evaluation. The four levels are reaction, learning, behavior, and results. OPM has created the Training Evaluation Field Guide to help agencies evaluate their training programs. The OPM presentation on Evaluating the Effectiveness of SESCO also contains helpful information, sample outcomes, metrics and a dashboard to further assist agencies in evaluating their CDPs at the results level. This presentation is available on OPM's Training and Development wiki (see the SES Candidate Development Program page) and includes guidance on how to:

- 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; and
- Submit for QRB review only those graduates the ERB determines possess the executive qualifications for career appointment to the SES.

C. Program Announcement – This section should describe all necessary vacancy announcement components. The information in this section must include—

- Scope of the announcement – Identify if the announcement will be limited to recruitment from qualified individuals within the civil service, or be open to all groups of qualified individuals;
- Length of time announcement will remain open. The announcement must be open on **USAJOBS** for at least 14 calendar days including the day of publication ([5 CFR 317.501\(b\)\(2\)](#)); and
- Minimum recruitment sources must include an announcement on **USAJOBS** and reflect efforts to solicit applications from women, minorities, and persons with disabilities to help create and maintain a diverse SES workforce.

OPM encourages agencies to have their draft program announcements reviewed by OPM. Please send them to HRDLeadership@opm.gov, or the current OPM SESCO program manager, for review. In addition, please refer to the SESCO announcement template on OPM's Training and Development wiki for additional guidance

(<http://www.opm.gov/wiki/training/Senior-Executive-Service-Candidate-Development-Program.ashx>).

D. Candidate Evaluation and Selection – This section must describe the selection process and all relevant assessment criteria needed to evaluate the candidates. The information in this section must 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);
- Note: SESC DP participants will serve in a position no higher than GS-15, therefore *an agency may require one year of specialized experience, including supervision, at the GS-14 or equivalent level, based upon job.*
- The basis for determining how well candidates meet the required qualifications (e.g., demonstrated experience, executive potential, competencies, and training);
- Description of the mechanism(s) to be used to evaluate the candidates (e.g., review of applications, structured interviews, and assessment centers):
 - All eligible candidates must be rated and ranked on the same basis ([5 CFR 317.501\(c\)\(1\)](#)). Veteran's preference should be applied when necessary (i.e., to non-status candidates) in accordance with [5 CFR 412.302\(d\)\(1\)](#).
 - Note: Supervisor evaluations and other recommendations on candidates may not be used in the rating and ranking process.
- Description on how Veterans' preference will be applied during the selection process; 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;
 - Provision of written recommendations on each candidate by the ERB 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 degree assessment and assessment center report);
- Description of how each candidate will develop the required executive development plan addressing developmental needs, which covers the entire period of the program. The development plan should include the following required components of an SESCO:
 - Documentation that candidates receive a minimum of 80 hours of formal, interagency training addressing the executive core qualifications. A 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 and details) candidates will be expected to complete in general, and specifically the four-month (120-day) executive level assignment(s) outside the candidate’s position of record. (It is required that at least one assignment be for a minimum of 90 consecutive days.) The 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 with a current SES member mentor. A description also includes how often they will meet and any instructions both the mentor and protégé are provided; and
- Description of any required standard courses, seminars, activities, etc.

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;
 - Procedures for a pause in the program (i.e., medical emergency); and
 - Procedures for discontinuing a candidate’s participation in the program; and
- Description of the agency’s procedures for requesting Qualifications Review Board (QRB) certification including a requirement that certification should be completed in a timely fashion upon completion of the program. It is recommended all candidates’ QRB packages be sent to OPM for QRB certification *within 90 days of* a candidate's successful completion of the program.

Organizational Oversight Level of SES Candidate Development Programs

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 SESCO plan. This includes reviewing the documentation for proposed SESCO graduates, certifying compliance with program requirements, and successful completion of the individual's executive development plan as approved by the agency Executive Resources Board (ERB). Departments and agencies may establish a single program on a department or agency-wide 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 oversight level of a candidate development program is entirely at the agency's discretion.

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.

Conducting Candidate Development Program in Partnership with Other Agencies

Agencies may conduct a program in partnership with other agencies (see [5 CFR 412.301\(b\)](#)). The benefits of partnering with other agencies include sharing costs and other resources of a CDP, as well as sharing developmental assignments across agencies.

For example, two agencies partner to conduct a CDP. Each agency selects 10 candidates. The two agencies mutually decided to share the costs by having one agency pay for the development and administration of the assessment portion of the program and another agency pay for the candidate orientation and interagency training.

If agencies decide to partner to conduct an SESCO, the partnership must be documented in the program overview submitted to OPM for approval. Agencies must describe in their policy overview document each agency's roles and responsibilities.

Agencies may announce a program using a joint or separate USAJOBS vacancy announcement. If separate, the vacancy announcements must be consistent. Agencies may jointly rate and rank candidates. Each agency's ERB is responsible for identifying its best qualified candidates for the program.

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 SESCDPs is from all groups of qualified individuals within or outside the civil service. Graduates of programs, who were excepted from the recruiting area under the previous regulations (prior to December 2009) and who have been certified by a QRB must compete for entry to the SES. However, they do not have to obtain a second QRB certification before appointment.

Non-status appointment requirements. Candidates from outside Government and/or employees serving on other than career or career-type appointments (e.g., term and temporary) are considered “non-status.” Agencies must consider non-status civil service employees when announcing their program to all qualified individuals within the civil service. 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 three years.

Assignments must be to full-time non-SES positions created for developmental purposes connected with the SESCDP. 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 412.302\(d\)\(1\)](#) from the appointment procedures of part 302 pertaining to employment in the excepted service.

Use of Recommendations in Selection Process

Some agencies request an “executive letter of reference” during the application process. Solicitation of recommendations from supervisors for use in the rating and ranking process is not allowed. An ERB can take an executive letter of reference into account after candidates have been rated and ranked and the best qualified list has been determined. An appointing authority might also consider such recommendations when making selections from among candidates on the Best Qualified list.

Memorandum of Understanding

If an agency sponsors an SESCDP and selects candidates from outside the agency, [5 CFR 412.302\(d\)\(3\)](#) requires that the sponsoring agency develop 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). A copy of the MOU must be submitted to OPM.

Terms of the MOU must be consistent with applicable provisions of [5 U.S.C. Chapter 41](#). Items that could be included in the MOU are:

- Candidate's Name;
- Home Agency;
- SESCO DP 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., for training, details, travel, etc.).

Either agency may decline or discontinue a candidate's participation if such terms cannot be negotiated or fulfilled.

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, foreign governments, and private and non-profit sector personnel. The requirement for 80 hours of formal training 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.

"Grandfathering" Recently Attended Training

To some extent, candidates do have the option to count training they have recently attended towards the 80-hour interagency requirement provided that training included the necessary interaction with senior employees from outside the candidate's department or agency. For this purpose, "interagency" and "multi-sector" participation is credited and includes state, local, and foreign governments as well as private sector and non-profit organizations.

- **A maximum of 40 hours of recent 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/web-based training – it is unlikely a candidate would utilize web-based training to meet the 80-hour training requirement because the candidate needs to show how interaction with other senior employees met the requirement for substantive interaction with other senior executives; or
 - Graduate level courses in a degree program accredited by the U.S. Department of Education. Based on American Council for Education guidelines, 40 hours of

instruction are equivalent to about three graduate semester hours.

- **The nature of the training must be interagency and/or multi-sector.** This should be verified through review of sufficient supporting information, such as:
 - Syllabus of the training;
 - List of speakers; and
 - Description of the types of participants including the participant's agency or organization; and the nature of interaction during the training.
- **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 one-year period prior to selection.** However, the training could have begun any time before the one-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) to the candidate prior to QRB certification. Ultimately, the agency must provide the appropriate developmental strategies to enable candidates to address their competency gap(s) to meet the Criterion B qualifications.

Developmental Assignments

One of the requirements listed in [5 CFR 412.302\(c\)\(3\)](#) is a developmental assignment totaling at least four months of full-time service outside the candidate's position of record. One assignment must be at least 90 continuous days in a position other than, and substantially different from, 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. The assignment(s) must include executive-level responsibilities and differ from the candidate's current and past assignments. The assignment(s) should challenge the candidate with respect to leadership competencies and the ECQs.

Developmental assignments do not need to be restricted to the candidate's home or sponsoring agency, the Executive Branch, or even the Federal Government, so long as the assignment(s) can be accomplished in compliance with applicable law and Federal and agency-specific ethics regulations.

Candidates are held accountable for organizational and/or agency results achieved during the assignment. If an assignment is in a non-Federal organization, the agency's ERB must provide for adequate documentation of the individual's actions and accomplishments and must determine the assignment will contribute to the development of the candidate's executive qualifications.

In line with the National Strategy for the Development of National Security Professionals, agencies should place particular emphasis on developmental assignments for SESCDP

candidates who are designated as National Security Professionals (NSP) under [Executive Order 13434, May 17, 2007](#). A developmental assignment is almost essential if the SESCDP candidate is currently in an 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 Qualification for NSP SES" on <https://www.chcoc.gov/content/recommended-national-security-professional-qualification-nsp-ses> for more information.

An SESCDP developmental assignment listing has been developed to aid SESCDP candidates to find developmental assignments. Agencies submit developmental assignment opportunities to OPM by emailing HRDLeadership@opm.gov for review and approval. Once these developmental assignment opportunities are approved, they will be sent to SESCDP coordinators. Agencies should use this listing as a tool to offer opportunities for all SESCDP candidates and encourage their candidates to utilize this website when searching for developmental assignment opportunities.

SES Mentors for SESCDP Candidates

All SESCDP candidates are required to have an SES mentor. The SES mentor should have the knowledge and capacity to advise the candidate, consistent with the goals of the agency SESCDP. The SES mentor must be approved by the agency ERB. Candidates have the option of finding their own mentors, or agencies can facilitate the selection of mentors and candidates through the following options:

Develop a list of ERB-approved SES mentors. Candidates can indicate their top choices. The program coordinator matches the candidates with one of their choices, if possible. Alternatively, match mentors and candidates using an automated tool. Candidates complete a profile online and indicate their top choices. The tool would assist the program coordinator in matching the candidate with a mentor.

Candidates and mentors are jointly responsible for developing a productive relationship during the program. However, agencies are responsible for establishing methods to assess these relationships, and facilitate or make appropriate changes, if necessary.

More information about SESCDP Mentor Requirements and the SESCDP Candidate Evaluation Form can be found on the OPM Training & Development Policy Wiki at <http://www.opm.gov/WIKI/training/Senior-Executive-Service-Candidate-Development-Program.ashx>.

Documentation for a QRB Certification. Prior to submitting requests to OPM for a QRB certification of graduates' executive qualifications, the mentor must provide a completed Mentor Evaluation.

OPM Re-Approval of SES Candidate Development Programs (SESCDPs)

As indicated in [5 CFR 412](#), agencies must submit for re-approval an updated or new program overview every five years from the approval date of their original plan to continue operating an SESCDP. This approval helps to ensure the SESCDP's continued and current alignment with the agency's succession plan. Agencies should follow OPM's guidance for developing SESCDP

policies and complete a thorough analysis of their program evaluation efforts. Additionally, agencies should submit their SESCO's program evaluation results including:

- Description of cohort(s) characteristics (e.g., candidate demographic data, program completion rate, QRB-certification rate, SES placement rate, etc.);
- Description of candidate satisfaction with program components (e.g., interagency training, developmental assignment, mentoring relationship, etc.);
- Description of evaluation methods used to collect data (e.g., candidate surveys, focus groups, etc.);
- Description of the program impact on the agency's succession plan, SES vacancies within the agency, and workforce diversity goals; and
- Description of evaluation conclusions and recommendations including strengths of the program, recommendations for improvement, and other implications of the findings (e.g., policy implications, curriculum revisions, etc.).

Mail requests for OPM re-approval to:

U.S. Office of Personnel Management
Senior Executive Services and Performance Management
1900 E Street NW, Room 7412
Washington, DC 20415

Email requests for OPM re-approval to: SESDevelopment@opm.gov

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 mentor 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 initially approved 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.

APPOINTMENT OF SESCDP GRADUATES INTO THE SES

SESCDP graduates, who competed at least civil service-wide, are eligible for an initial career appointment without further competition to any SES position for which they meet professional/technical qualification requirements. An agency may noncompetitively appoint any certified SESCDP graduate, regardless of whether they currently work in that agency. Positions filled noncompetitively do not need to be posted on USAJOBS or otherwise advertised. However, QRB certification does not guarantee placement in the SES.

The few SESCDP candidates who were selected through agency-wide competition under the previous [5 CFR 412](#) rule, not civil service-wide competition, must compete for their first SES career appointment even if they are certified by the QRB.

Certified graduates can also compete for any vacancy and be selected and remain certified by the QRB.

OPM Support For QRB-Certified SESCDP Graduates

CDP-Opps Listserv

The U.S. Office of Personnel Management (OPM) has launched a new Senior Executive Service (SES) Candidate Development Program (CDP) Opportunities listserv (*CDP-Opps*) (CDPOpps@listserv.opm.gov) to help all agencies recruit for SES vacancies as well as to help place current QRB-certified Candidate Development Program (CDP) graduates. The purpose of the listserv is to: (1) help agencies identify top talent for SES positions more quickly, and (2) increase the placement rate of QRB-certified CDP graduates. QRB-certified graduates who apply to vacancies and meet the position-specific technical qualifications can be immediately non-competitively appointed, allowing agencies to potentially identify top talent in a manner that will reduce time-to-hire from months to weeks.

Qualifications Review Board (QRB)-certified SES CDP graduates who register for the *CDP-Opps* listserv will be alerted to SES vacancies submitted by Agency Offices of Executive Resources. While agencies will still regularly announce SES vacancies on USAJOBS, *CDP-Opps* participants will receive notifications through the listserv and have opportunity to apply and have their applications immediately reviewed, including before the USAJOBS announcement needs to be posted or before it closes.

Agency Executive Resources (ER) offices are encouraged to share SES vacancies with certified graduates via the *CDP-Opps* listserv simply by sending an e-mail to CDPOpps@listserv.opm.gov. Each SES vacancy notification should include the following:

- Agency and Bureau;
- Job Title;
- Job Series;
- Duty Location;
- Travel;
- Security Clearance;
- Technical Qualifications Requirement;
- Brief Description of Duties; and

- List of required application materials, such as:
 - Current Resume;
 - Technical Qualifications Statements (if necessary);
 - OPM-issued SES Certificate; and
 - Any other required items;
- Application Submission Deadline; and
- Agency ER Contact Information (where candidates send their resume and application).

Offices of Executive Resources are encouraged to announce to CDP-Opps as soon as a vacancy opens, but if the vacancy announcement is already on USAJOBS, please send the following to the listserv:

- Agency and Bureau;
- Job Title;
- USAJOBS link; and
- Agency ER Contact Information (where candidates send their resume and application for advance non-competitive consideration).

OPM will regularly evaluate the listserv in terms of usage, feedback, and requested improvements.

QRB-certified SES CDP graduates can register for the CDP-Opps listserv by following these steps:

1. Click on the link: https://apps.opm.gov/Listserv_Apps/list-sub.cfm?Targetlist=CDPOpps.
2. Click “Join or Leave CDPOpps” (*Only QRB-certified CDP graduates are eligible to enroll.*).
3. Enter your Name and Email Address and click “Join CDPOpps.”

For more information on the CDP-Opps listserv, please email SESDevelopment@opm.gov.

CDP Registry

The SES Candidate Development Program (CDP) Graduate Registry is a searchable database that contains profiles of Qualifications Review Board (QRB)-certified CDP Graduates that are ready to be appointed to the Senior Executive Service (SES). QRB-certified CDP graduates are available to be non-competitively appointed to SES vacancies, saving weeks or months when compared to traditional hiring timeframes using USAJOBS.

The goals of the CDP Registry are to increase the placement rate of QRB-certified CDP graduates and to fill SES vacancies more rapidly.

While many agencies also utilize the CDP-Opps listserv to announce SES vacancies, the CDP Registry allows SES Hiring Managers to search for QRB-certified CDP graduates based on search criteria. QRB-certified CDP graduates are encouraged to send in their resume and profile

form to SESDevelopment@opm.gov; and many have done so.

The CDP Registry is hosted at MAX.gov, offering SES Hiring Managers across government real-time access to a secure database of CDP Graduates. Points of Contact have been identified at each Agency to perform searches for their Agency in the CDP Registry. The goal is for SES Hiring Managers to better recognize the existing talent that makes up the leadership bench and convert many to SES positions.

For more information on the CDP Registry, please email SESDevelopment@opm.gov.

CDP LinkedIn Group

The SES Candidate Development Program (CDP) participants also have access to a LinkedIn group specifically for use while in a CDP. This group acts as a place for aspiring SES in a CDP to receive information on Developmental Assignments, share professional articles related to executive and leadership development, and build their network as they make steps toward finding a spot in the Senior Executive Service. Participants can gain access to this [private LinkedIn group](#) by selecting “Ask to Join.”

OPM EXECUTIVE DEVELOPMENT PROGRAMS

OPM maintains an online catalogue of Federal Government Leadership Development Programs (FedLDP). This is a searchable electronic library of programs offered by Federal departments and agencies to foster the development of leadership skills in their agencies. See <https://www.opm.gov/services-for-agencies/federal-leadership-development-programs/>.

OPM’s Center for Leadership Development (CLD) in OPM’s Human Resources Solutions Division provides professional and leadership development through a rigorous career-long continuum of offerings that support advancement within the civil service to achieve our Nation’s missions and goals. CLD programs are delivered governmentwide and worldwide through virtual, blended eLearning, and residential or in-person settings. CLD operates training facilities in Washington DC (Eastern Management Development Center), Charlottesville, VA (Federal Executive Institute), and Denver, CO (Western Management Development Center).

For overall information about CLD programs please email: CLDConnect@opm.gov

See <https://leadership.opm.gov/> for a CLD overview; see the CLD Schedule at a Glance which shows CLD Open-enrollment programs: <https://leadership.opm.gov/search.aspx?p=4>.

Information about CLD programs tailored to individuals in the Senior Executive Service and for those aspiring to the SES, may be found on OPM.GOV at the following links:|

- OPM FEI SES Leading EDGE for the onboarding and continuing development of career Senior Executives (SES, SL, ST, and SES equivalents): <https://www.opm.gov/services-for-agencies/center-for-leadership-development/federal-executive-institute/#url=SES-Leading-EDGE>.
- Leadership for a Democratic Society for GS-15, Senior Executive Service members, or

their equivalent: <https://www.opm.gov/services-for-agencies/center-for-leadership-development/federal-executive-institute/#url=Leadership-for-a-Democratic-Society>.

- LEAD Institute programs for team leads, supervisors, managers and senior leaders
<https://www.opm.gov/faq/leadership/How-do-I-get-a-LEAD-certificate.ashx>.

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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 an 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. Unacceptable performance results when the employee cannot perform acceptably in their job because they lack the skill, specific knowledge, or the ability to meet the performance standard of an element or elements in their performance plan. Misconduct, neglect of duty, and malfeasance, on the other hand, denote a wrongful act on the part of the employee. Corrective action of Senior Executive Service employees does not require a finding of intent.

An employee's actions or inaction related to job performance may or may not constitute misconduct, neglect of duty, or malfeasance. When they do not, [5 U.S.C. 3592](#) (performance removal) applies. When they do, [5 U.S.C. 7543](#) applies. When elements of both exist, an agency has discretion to proceed under the statute the agency determines will best fit the circumstance and yield the more appropriate result.

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 ([5 U.S.C. 2302\(b\)\(10\)](#)). Where the circumstance meets the standard of action at [5 CFR 752.603](#), [5 CFR 752.604](#) supports taking into account off-duty actions involving criminal conduct that implicate legitimate Government interests in making certain determinations.

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. 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."

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 volunteers to take a position outside the SES, 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.

120-Day Moratorium on Certain Removals

The law [[5 U.S.C. 3592\(b\)\(1\)](#)] prohibits involuntary 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 preemptory actions during transition periods when the agency head or noncareer supervisor does not have adequate knowledge of an SES career appointee. For more details on removals during the probationary period, see the next section. For more details on post-probationary removals during the 120-day moratorium, see section on removal of post-probationers.

Definitions and interpretations. See [Moratorium on Involuntary 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-.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 one-year probationary period as established by [5 U.S.C. 3393](#). Under [5 CFR 317.503](#), the probationary period is

defined as a full calendar year, which must include credit for time in accordance with all provisions of that section. If an agency action cannot be effected before the probationary period ends (see below), the agency may only proceed under rules that apply to non-probationary career SES appointees. [See [Chapter 2](#) for guidance on the probationary period.]

A career appointee may be removed from the SES 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. The SES probationary period is considered to end when the individual completes his/her last scheduled tour of duty before the anniversary date of the appointment. After this, the individual is considered a non-probationary career appointee even if the anniversary date has not yet occurred. For example, when the last workday is a Friday and the 1-year anniversary date is the following Monday, any probationary separation would have to take place before the end of the tour of duty on Friday. For reference, see decision by MSPB Chief Administrative Law Judge in the case of *Walton D. Morris, Jr. v. Department of Interior* (HQ35928610024, February 4, 1987), which was later affirmed by a U.S. District Court Order in *Walton D. Morris, Jr. v. Department of Interior, et al*, Civil Action 88-2063, August 9, 1993. Also, see *Hardy v. MSPB* (1994) 13 F.3d 1571. An agency must also provide written notice to the employee before the effective date of a probationary removal for performance, conduct or reduction in force ([5 CFR part 359, subpart D](#)). If the removal action takes effect on the individual's last workday, the removal notice must specify a time prior to the end of the individual's tour of duty. Otherwise, removal on the date would be presumed to be effective at the end of the day, which would normally be after the individual has completed the tour of duty and, consequently, the probationary period.

Reemployed annuitants. A career appointee who is a reemployed annuitant serves at the pleasure of the appointing authority, except when he or she is not receiving an annuity from the Civil Service Retirement and Disability Fund. As used in this chapter hereafter, the term "reemployed annuitant" refers solely to an annuitant who is reemployed and continues to receive an annuity from the Civil Service Retirement and Disability Fund, consistent with definition of the same term in [5 CFR 210.102](#). Removal of a reemployed annuitant (so defined) who is serving a probationary period is effected under [5 CFR part 359, subpart I](#), because he or she serves at the pleasure of the appointing authority. In general, an annuitant who is reemployed but not receiving an annuity will not be described as a reemployed annuitant in this chapter. Such individuals who are career SES appointees are generally subject to procedures applicable to a probationer if serving a probationary period, or to procedures applicable to a post probationer, if not serving a probationary period.

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 359.401-407](#). 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 ([5 CFR 359.402\(b\)](#)).

Notice. The agency must give the probationer a written notice at least one day before the effective date of the removal. However, the agency may want to consider a longer notice period. In accordance with [5 CFR 359.402\(c\)](#), 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. However, it should be noted that:

- 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 359.401-407](#), but would be taken under [5 CFR 359.501-.504](#).

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. *McNair v. EEOC* (2011) 116 MSPR 315; [5 CFR 1201.143\(a\)](#), [5 CFR 359.407\(a\)](#).

Removal of Probationers for Disciplinary Reasons

This section pertains only to probationary career SES appointees for whom disciplinary action may be taken under [5 U.S.C. 3592\(a\)\(1\)](#) and [5 CFR 359.403](#) for conduct or [5 CFR 359.404](#) for conditions arising before appointment. Procedures in this section do not apply to a career SES probationer who held a civil service position in which he or she was covered by [5 U.S.C. 7511](#) immediately before SES appointment. Under [5 U.S.C. 7541](#), such probationers are covered by the adverse action procedures described later in this chapter that apply to non-probationary career appointees; however, they are covered by [5 U.S.C. 3592\(a\)\(1\)](#) and [5 CFR 359 subpart D](#) for other removal actions. Since [5 U.S.C. 3392\(b\)](#) requires most SES positions to be filled from within the civil service, disciplinary procedures herein described apply to a minority of probationers.

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,” which pertains to removals under [5 U.S.C. 7511](#). Subsequent legislation substituted for that standard of action “misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.” Although [5 U.S.C. 3592\(a\)\(1\)](#) was not changed, OPM provided in [5 CFR 359.403](#) that removal of probationers covered by that section should meet the standard applicable to other career SES appointees.

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. Notice requirements for effecting the removal of a probationer under [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 [5 CFR 359.403-.404](#) 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. Refer to [5 CFR 731.202](#) and [5 U.S.C. 2302\(b\)\(10\)](#). 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;
 - 2) the probationer shall be given a reasonable time (not less than seven days) to

- respond regarding the propriety of the exception;
- 3) 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
 - 4) 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 359.403-.404](#), but would have to be taken under [5 CFR 752.601-606](#) (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 359.403-.404](#), 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 359.404](#).

However, in the event that the probationer had coverage under [5 U.S.C. 7511](#) immediately before entering the SES, the removal would be affected under [5 CFR 752.601-.606](#).

Procedures. The procedural requirements governing the removal of a probationer for pre-appointment conditions differ significantly from those governing removal for performance or misconduct. Pursuant to [5 CFR 359.404](#), 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 stating the specific reasons for the proposed 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.

Thus, it is possible for a probationer against whom an agency is contemplating removal for conditions arising before appointment to complete the probationary period during a moratorium. In such a case a subsequent disciplinary removal action could not be processed under [5 CFR 359.404](#), but would have to be taken under [5 CFR 752.601-606](#) (Adverse Actions).

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 359.404](#), 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 359.405](#), except that removal of a reemployed annuitant is effected under [5 CFR 359.901-.902](#).

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 or 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 (MSPB) 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 359.701-.705](#). 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 OF POST-PROBATIONERS 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 359.501-.504](#). 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 359.901-.902](#). 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 4 for performance appraisal systems](#).]

The removal of a career appointee from the SES under [5 CFR 359.501-.504](#) 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 430.307](#) 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 five consecutive years;
- two ratings of “Minimally Satisfactory” within three consecutive years; or
- one rating of “Unsatisfactory” and one rating of “Minimally Satisfactory” within three 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

In accordance with [5 CFR 359.502](#), 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 annual summary rating(s) and date(s) when given that 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);
- 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 five years; and
- a mandatory removal based on two less than Fully Successful ratings in three 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\(a\)\(2\)](#), a career appointee may request (and MSPB shall grant) an informal hearing before an official designated by MSPB.

Under MSPB regulations [[5 CFR 1201.143-.145](#)], the appointee and/or a representative may appear and present arguments. A transcript is made of the hearing. The MSPB lacks jurisdiction to hear appeals regarding dismissal from the SES based on performance and to modify or order modification of performance evaluations. *Charrow v. Federal Retirement Thrift Investment Board* (June 21, 2006) 102 M.S.P.R. 345.

The MSPB normally refers a copy of the record and any recommendations resulting from an informal hearing 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, Subpart F](#)

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 one year of current continuous service in an executive agency, and certain other employees in the excepted service who are not preference eligible.

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 359.901-902](#). Actions taken under this subpart are discussed later in this chapter.

Standard for Action

Adverse actions in the SES cover 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 separation from Federal service initiated by the employing agency, OPM, or MSPB.

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 752.601-.606](#).

Notice. The agency must give the appointee at least 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 (e.g. medical documentation)—identify the agency official authorized to hear the oral reply and 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 and is proposing a removal or suspension. Refer to [5 CFR 752.604\(d\)](#). Per [5 U.S.C. 7543\(b\)](#), the SES employee is entitled to a reasonable time, but not less than seven days to answer orally and in writing and to furnish affidavits and other documentary evidence in support of his answer to the action. The employee is also entitled to be represented by an attorney or other representative and to have a written decision and specific reasons therefor at the earliest practicable date.

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 or 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. Refer to [5 CFR 752.604\(b\)](#).

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, as applicable. 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 review of medical information. When medical information is supplied by the appointee, the agency may, if authorized,

- require a medical examination under [5 CFR 339.301](#), or
- offer a medical examination in accordance with [5 CFR 339.302](#).

If the appointee has the requisite years of service under CSRS or FERS, the agency must provide information concerning disability retirement. All of these procedural requirements are contained in [5 CFR 752.604](#). It is contemplated these actions would be taken in consultation with agency legal counsel.

[**Note:** Agencies must be aware of the requirements pertaining to reasonable accommodation of a qualified individual with a disability.]

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. As provided in [5 CFR 752.601\(b\)](#), an agency may not suspend a senior executive for 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 SES appointee from Federal service pursuant to [5 CFR 752.601-.606](#), is **not** subject to the 120-day moratorium.

Placement

An appointee removed from the SES under [5 CFR 752.601-.606](#), 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:** The career transition regulations [5 CFR [330.601-.613](#); [330.701-.711](#)] 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 752.601-.606](#), 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.R. 280 (1981)]. Generally, the Board will review a penalty

only to determine if the agency conscientiously considered all the relevant aggravating and 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.

Reemployed annuitants. As noted above, in this chapter the term “reemployed annuitant” is used consistent with the definition in [5 CFR 210.102](#) to refer solely to an annuitant who is reemployed and continues to receive an annuity from the Civil Service Retirement and Disability Fund. Removal of a reemployed annuitant (so defined) is effected under [5 CFR 359.901-.902](#), because he or she serves at the pleasure of the appointing authority. In general, an annuitant who is reemployed but does not receive an annuity is subject to the same procedures that apply to other SES members based upon the type of appointment held and, if a career appointee, based upon whether serving a probationary period.

Limited appointees who were covered by [5 U.S.C. 7511](#) immediately before SES appointments are covered by [5 CFR 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 359.901-.902](#). The agency must give the appointee a written notice at least one 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 one 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.

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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 and the appeal rights described in this chapter, apply to both probationers and post-probationers. The procedures on placement, separation, and notices, 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 an executive 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 Senior Executive Services and Performance Management when developing or significantly modifying their plans, to ensure the plans comply with law and regulation.

Agencies shall provide Senior Executive Services and Performance Management 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 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 a 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 a 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 one 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 an executive 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:** 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:** 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:** The agency cannot refer this individual to OPM for priority placement, if there is a vacant SES position within the agency for which he or 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 must 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 "no 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 one 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 does not have the 120-day moratorium.

[**Note:** RIF is traditionally understood as a means of taking 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 (i.e., an employee whose annuity under [subchapter III of chapter 83 of title 5, United States Code](#), was continued on reemployment in an appointive position on or after October 1, 1956) 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 two 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. The agency shall allow the inspection of its retention registers and related records by an appointee to the extent that they have a bearing on the appointee’s situation.

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
Senior Executive Services and Performance Management
1900 E Street NW, Room 7412
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 a 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 or 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 or 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 Senior Executive Services and Performance Management a completed, signed, and current application for employment (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.

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 will contact 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 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 to an agency for a vacant SES position, the agency may not fill that position with anyone from outside the SES or the 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 or 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 one year of the cancellation date (and the candidate has not been placed in another SES position).

RIF in Inspector General Organizations

SES reduction in force provisions in [5 U.S.C. 3595](#) apply to any Office of Inspector General (OIG) that employs career SES appointees. The Inspector General Reform Act of 2008, PL 110-409, October 14, 2008 ([5 U.S.C. App Inspector General Act of 1978 §6\(e\)](#)) provides that the Office of Inspector General is a separate agency and the Inspector General (IG) is the head of that agency for all provisions related to the Senior Executive Service (as determined by the Office of Personnel Management). However, as provided in [5 U.S.C. 3591](#), the term “agency” in [5 U.S.C. 3595](#) has the meaning set forth in [5 U.S.C. 3132\(a\)\(1\)](#). Consistent with this, [5 CFR 359.601\(b\)\(3\)](#) specifies that “agency” means an executive department or an independent establishment for purposes of [5 CFR 359 subpart F](#), Removal of Career Appointees as a Result of Reduction in Force. OPM considers the statutory and regulatory definitions of agency to govern a career appointee’s placement right described in [5 U.S.C. 3595\(b\)\(3\)\(A\)](#) and [5 CFR 359.602\(b\)](#). Even though an OIG is a separate agency, it is not an executive department or an independent establishment. Accordingly, the following instructions apply.

Competitive area. As the head of a separate agency for purposes of SES statutes, an IG may determine when SES RIF is required in the OIG and establish any OIG competitive area separate and apart from the parent agency. An OIG should not be included in an SES RIF conducted by a parent agency.

Competitive procedures. Before conducting an SES RIF within the OIG, the IG must establish competitive procedures in writing to be used in identifying which career appointees will be displaced in any reduction in force of career appointees within the OIG. If the IG wants to adopt or adapt existing written competitive procedures of the agency within which the OIG is established, the IG must establish them in writing for the OIG and assure the written procedures meet the requirements of [5 CFR 359.602\(a\)](#).

Agency certifications of surplus executives. Upon identifying through competitive procedures any career appointees to be displaced, the IG must determine and certify to OPM that there are no positions in the Office of Inspector General for which the surplus career appointee qualifies. However, [5 U.S.C. 3595\(b\)\(3\)\(A\)](#) also requires the head of the agency within which the OIG is established to determine and certify that there are no vacant non-OIG SES positions within the agency for which the executive qualifies. To confirm the career appointee’s assignment entitlement has been addressed, the IG and the agency head must each provide the certification required under [5 CFR 359.603\(a\)](#) to enable OPM to initiate placement efforts affecting other agencies.

OPM priority referrals to agencies. If OPM directs a priority referral to an OIG, the IG must consider the career appointee for SES vacancies within the OIG and OPM will accept technical objections from the IG. Such a referral will not obligate the head of the agency within which the OIG is established.

Similarly, if OPM directs a priority referral to an agency head, the agency head must

consider the career appointee for non-OIG SES vacancies within the agency and OPM will accept technical objections from the agency head. The referral will not obligate the IG unless OPM so provides.

Placement upon removal through SES RIF. Under [5 CFR 359.703](#), the IG is responsible for placing an executive removed from the OIG under [5 U.S.C. 3595\(b\)\(4\) or \(5\)](#) in an appropriate non-SES civil service position within the OIG, arranging placement in an appropriate position in the agency within which the OIG is established, or arranging transfer to an appropriate position in another agency.

[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 and 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 non-disciplinary 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 one 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 one 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.

Additional information on shutdown furloughs or administrative furloughs may be found at <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/>.

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 reason if the notice period is less than 30 days;
- 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, Limited Term or Limited Emergency Appointees and Reemployed Annuitants

An agency may furlough an SES noncareer, limited term, or limited emergency 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 (i.e., an employee whose annuity under [subchapter III of chapter 83 of title 5, United States Code](#), was continued on reemployment in an appointive position on or after October 1, 1956) is not appealable to the MSPB.

Chapter 10

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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 for 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 [5 CFR 359.701\(a\)](#) [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.]; or
- 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 last at least three months);
- the position must be one 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;
- 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; and

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.

EQUIVALENT TENURE

Appointment 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, without causing the separation or reduction in grade of any other employee, or for arranging a transfer to an appropriate position in another agency ([5 CFR 359.703](#)). Except when a transfer of function is involved, the transfer must be mutually acceptable to both the employee and the gaining agency.

Reductions in Force (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 ([5 U.S.C. 3594\(c\)\(1\)\(A\)](#)) 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 three-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 three 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 in [5 CFR part 330, Subparts F and G.](#)

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.

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\(c\)\(1\)](#)).

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](#) (EX-II) if the individual is placed in a General Schedule position. [[5 CFR 359.705\(c\)\(2\)](#)]

Effect of rate increase. An employee receiving saved pay will have his/her basic pay rate increased by 50 percent of the dollar 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\(c\)\(2\)](#)].

Example: In 2019 an employee was placed in a GS-15 position in the DC area with SES saved pay and the increase to which the employee is entitled under [5 CFR 359.705\(d\)\(1\)](#) for 2020 needs to be calculated. First, identify the maximum payable rate in 2020 for GS-15, step 10 (i.e., \$170,800) and subtract from that the maximum payable rate in 2019 for GS-15, step 10 (i.e., \$166,500). The difference in the amount of the maximum payable rate for a GS-15 employee in DC is $\$170,800 - \$166,500 = \$4,300$. [5 CFR 359.705\(d\)\(1\)](#) entitles the employee to a pay adjustment equal to 50% of that dollar amount, which would be \$2,150.

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, step 8 and GS-15, step 9, the employee is entitled to the GS-15, step 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\(f\)](#).

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](#)].

Chapter 11

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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](#) 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. Certain flexibilities, however, are 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/policy-data-oversight/pay-leave/reference-materials/handbooks/alternative-work-schedules/>.)

WORK SCHEDULES

Prohibition on compensatory time off (overtime and travel). SES members **are not eligible** for overtime pay. Therefore, they also **may not receive** compensatory time off in lieu of overtime pay under [5 U.S.C. 5543](#) 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.

Credit hours. SES members **are prohibited** from accumulating credit hours under a flexible work schedule program ([5 CFR 610.408](#)). 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 ([5 U.S.C. 3401\(2\)](#)). 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. Unlike employees on a part-time schedule, intermittent employees are excluded from the definition of “employee” at [5 U.S.C. 6301\(2\)\(ii\)](#) and therefore do not accrue annual and 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.

Annual leave accrual. SES members and employees in SL/ST positions are entitled to accrue annual leave at the rate of 8 hours per biweekly pay period, without regard to their length of service in the Federal Government.

Annual leave accumulation. 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 one 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.

Leave year. Each new leave year begins on the first day of the first full biweekly pay period in a calendar year and ends on the day immediately before the first day of the first full biweekly pay period in the following calendar year. Specific leave year beginning and ending dates are found at <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-year-beginning-and-ending-dates>.

Personal leave ceiling. The personal leave ceiling is the maximum amount of annual leave in excess of 720 hours that may be carried over to a new leave year. The personal leave ceiling is subject to reduction under the rules in [5 U.S.C. 6304\(c\)](#) and [5 CFR 630.301](#). An SES member’s personal leave ceiling must be reduced at the

beginning of any leave year in which the annual leave balance falls below the personal leave ceiling. When the personal leave ceiling falls below 90 days (720 hours), the personal leave 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 U.S.C. 6304\(c\)](#) and [5 CFR 630.301](#). Thus, an SES member who has 1,000 hours as a 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. Conversely, an SES member who has 1,000 hours as a personal leave ceiling at the start of the leave year and a balance of 920 hours of annual leave at the beginning of the next leave year will have his or her personal leave ceiling reduced to 920 hours for that next leave year.

Lump-sum payments upon separation. At the time of an SES member’s separation from Federal service, the member is entitled to a lump-sum payment for any unused accumulated and accrued annual leave to his or her credit, including any restored annual leave. 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 and used that leave. Therefore, if according to agency policy an SES member had remained in Federal service and would have received a pay adjustment during this period, 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 <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/factsheets/lump-sum-payments-for-annual-leave/> for additional information.

Example: The agency appointing authority approved a 3 percent performance-based pay adjustment for an SES member in December 2020 to be effective on January 3, 2021. The SES member retires effective December 31, 2020, with 500 hours of unused accumulated and accrued annual leave. The member’s lump-sum payment for 8 hours of annual leave (January 1) is calculated using the employee’s pay prior to the pay adjustment and 492 hours of annual leave is calculated to include the pay adjustment. (Note that the January 1 holiday is counted as a day on which the annual leave would have been used. See [5 U.S.C. 5551\(a\)](#) and [5 CFR 550.1204\(a\)](#).)

Home leave. SES members who have completed 24 months of continuous service outside the United States may be granted leave of absence at a rate not to exceed 1 week for each four months of service. The leave is for use in the United States or if the employee’s residence is outside the area of employment, in its territories or possessions ([5 U.S.C. 6305](#) and [5 CFR 630, subpart F](#)).

Military leave. SES members are entitled to military leave 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 one year is entitled to military leave under [5 U.S.C. 6323\(a\) and \(b\)](#). For additional information on military leave, see

<http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/factsheets/military-leave/>.

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 at [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 SES member moves to a non-SES or equivalent position, any annual leave in excess of that which otherwise would be permitted in the new position remains to the employee'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\(g\)](#)). The employee's annual leave balance is subject to reduction under the rules in [5 U.S.C. 6304\(c\)](#).

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 GS-15 position with a retained personal leave ceiling of 800 hours of accumulated annual leave. The employee earned an additional 100 hours before the end of the leave year.

If the employee uses 150 hours of annual leave in the GS-15 position (i.e., 50 hours more than the 100 hours earned), the employee's personal leave ceiling for the next leave year is reduced to 750 hours. However, if the employee 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 employee 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 GS-15 position. The individual does not have a personal leave ceiling as described in [5 CFR 630.301\(h\)](#). The employee earns 100 additional hours in the new (GS-15) position before the end of the leave year. If the employee uses 150 hours of annual leave in the new position (i.e., 50 hours more than the 100 hours earned), the employee's carry over amount to the next leave year is 700 hours. However, if the employee uses only 40 hours (i.e., 60 hours less than the 100 hours earned), the carry over amount to the next leave year is 750 hours, and the employee loses 60 hours of annual leave.

In addition, an SES member 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. In general, officers and employees who are appointed by the President to a PAS or PA position are not covered by the Federal leave system established by [5 U.S.C. Chapter 63](#) if their rate of basic pay equals or exceeds the rate for level V of the Executive Schedule. (See [5 U.S.C. 6301\(2\)\(x\)](#) and [5 CFR 630.211\(a\)\(3\)](#).) These Presidential appointees do not earn annual and sick leave and cannot be charged leave for absences from work. Nevertheless, OPM has determined that an individual who is appointed by the President to an SES, SL or ST position (regardless of his or her rate of basic pay) is covered by the Federal leave system unless the individual is an officer designated (for exclusion) by the President under [5 U.S.C. 6301\(2\)\(xi\)](#). The President has delegated the responsibility for making exclusions under section [6301\(2\)\(xi\)](#) to OPM, and OPM has delegated responsibility to the head of each agency consistent with the provisions of [5 CFR 630.211](#).

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 SES annual and sick leave coverage (and certain other career SES benefits, including SES basic pay) in accordance with [5 U.S.C. 3392\(c\)\(1\)](#). Career SES members who are appointed by the President (without Senate confirmation) to a civil service position outside the SES, which is covered by the Executive Schedule, or the rate of basic pay for which is fixed by statute at a rate equal to one of the levels of the Executive Schedule, have the same entitlement under [5 U.S.C. 3392\(c\)\(2\)](#). If Federal leave system 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 current Federal employee who receives a Presidential appointment to a civil service position (other than an SES, SL or ST position) with a rate of basic pay that equals or exceeds level V of the Executive Schedule (including an employee who held a career SES position immediately before the Presidential appointment and who does not retain leave coverage under [5 U.S.C. 3392\(c\)\(1\) or \(2\)](#)), is not covered by the Federal leave system and does not receive a lump-sum payment for his/her unused annual leave at the

time of the Presidential appointment. The unused annual leave is held in abeyance for re-credit if 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 or 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](#)). (If the Presidential appointment is to an SES or SL/ST position, the employee is covered by the Federal leave system regardless of the employee's rate of basic pay.)

UNEMPLOYMENT COMPENSATION

STATUTE: [5 U.S.C. Chapter 85](#)

Unemployment Compensation for Federal Employees

Presidential appointees, noncareer SES appointees, and Schedule C employees who resign by request 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 and limited 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.

In general, unemployment compensation is provided through the State of the individual's last official duty station. 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.

For additional information about these services, see <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>.

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 ([20 CFR 680.130](#)).

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 [831](#), [841 – 847](#), [850](#), [880](#), [891](#)

THE 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 for retirement:

- 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 one 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: these individuals are covered by Social Security, even though they may have continuous service without a break in service of more than 365 after December 31, 1983, from an appointment where they were under regular CSRS); and
- limited appointees: individuals normally are excluded from FERS or CSRS if they are serving under an appointment limited to one 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 three days or less.)

These elections generally remain in effect upon subsequent appointments. See [Chapter 101, Appendix A of the FERS & CSRS Handbook for Personnel and Payroll Offices](#)

Under [Pub. L. 100-647](#), if an SES career appointee takes a PAS appointment on or after November 10, 1988, where the maximum rate of pay payable for their position is at or above the rate for level V of the Executive Schedule, 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 is 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, in addition to CSRS or FERS coverage, as appropriate.

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 eligibility or 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 five 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. See Chapters [41](#) and [42](#) of the CSRS & FERS Handbook for more information about the minimum Retirement Age.

Under both CSRS and FERS, a minimum of five 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 or charges of misconduct or delinquency. General information on DSR is in the CSRS and FERS Handbook for Personnel and Payroll Offices, [Chapter 44](#).

[**Note:** 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 requirements described in [Chapter 44 of the CSRS and FERS Handbook](#), after a notice of specific action, a resignation in lieu of involuntary action is qualifying for discontinued service retirement. These are the actions that qualify you for discontinued service retirement:

- separation 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.);
- separation 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;

- separation 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.);
- separation 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:** The separation of a career appointee in these circumstances cannot be required; the appointee must voluntarily agree to the request.]; or

- separation 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); 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 five years for CSRS ([5 CFR 844.202](#)).

TRAVEL AND TRANSPORTATION

STATUTE: 5 U.S.C. [5723](#), [5724](#), and [5752](#)

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. A permanent change in duty station which is outside the employee's commuting area shall take effect only after the employee has been given advance notice for a reasonable period.

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:

- was moved geographically by the Federal Government as a career appointee in the SES; and
- at the time of the last Federal directed move was eligible for optional retirement, or within five years of optional retirement, or was eligible for discontinued service retirement.

Entitled individuals include:

- individuals who were geographically moved while a career appointee in the SES as the result of a reassignment or a transfer;
- 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; and
- individuals who at the time of the move were going from a limited or noncareer SES appointment 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](#). For more information visit <http://www.gsa.gov/transportationpolicy>.

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.

For more information visit <http://www.opm.gov/policy-data-oversight/pay-leave/student-loan-repayment/>.

OFFICE OF INSPECTOR GENERAL POSITIONS

The Inspector General Reform Act of 2008 ([Pub. L. 110-409, October 14, 2008](#)) revised the Inspector General (IG) Act of 1978 ([Pub. L. 95-452](#)). A key provision of the 2008 IG Reform Act designated the Office of Inspector General (OIG) as a separate agency for the purpose of applying statutory provisions relating to the SES but did not make it an executive agency, as that term is defined in [5 U.S.C. 105](#). Otherwise, every OIG could be considered an executive agency covered by the SES under [5 U.S.C. 3132\(a\)\(1\)](#) whether or not the agency within which the OIG is established is covered by the SES. If the agency within which an OIG is established is covered by the SES, so is the OIG, but if the agency within which an OIG is established is not covered by the SES, then neither is the OIG. In an OIG to which the SES applies, a reference to the agency head in any SES statute is considered to be a reference to the IG. Where there is a question of how this principle specifically applies, agencies should consult with Senior Executive Services and Performance Management. It should be noted that the IG Reform Act of 2008 did not designate the OIG a separate agency, and the IG the head of that agency, with respect to senior-level (SL) positions or scientific and professional positions (ST). However, for allocation requests of SL/ST positions, the OIGs should independently submit separate requests from the ones submitted by their agencies.

[Section 4\(a\) of the IG Reform Act of 2008](#) revised the pay of Inspectors General in an “establishment” (as defined in [section 12\(3\) of the IG Act of 1978](#)) by providing for a rate of basic pay equal to EX-III plus 3 percent. For these IGs, biweekly pay is computed by

multiplying the applicable hourly rate by 80 hours. The applicable hourly rate is derived by dividing the annual rate of EX-III plus 3% by 2,087 hours and rounding to the nearest cent.

[Section 4\(b\) of the IG Reform Act of 2008](#) also provided rules for establishing and compensating IGs in a “designated Federal entity” (DFE) (as defined in section [8G of the IG Act of 1978](#)). First, section 4(b) provided that an IG at a DFE must be classified at a grade, level, or rank designation, as the case may be, at or above those of a majority of the senior-level executives of that DFE. For example, this provision could result in an IG at a DFE being placed in the SES pay system instead of the General Schedule classification and pay system. Second, section 4(b) provided that the pay of a DFE IG shall be not less than the average total compensation (including performance awards) of the senior-level executives of that designated Federal entity calculated on an annual basis—i.e., section 4(b) establishes a pay floor. The DFE agency head must continue to determine the IG’s pay in accordance with the applicable pay system rules (i.e., regular pay entitlement without regard to the pay floor) and the resulting pay will be compared to the pay floor established by section 4(b). The higher amount will be payable.

OPM established a pay plan code “IG” for IGs in establishments whose rate of basic pay is fixed at the rate for EX-III plus three percent. In addition, OPM established a pay rate determinant code “D” for IGs in DFEs to recognize their coverage under a provision providing a special classification authority and pay floor.

[**Note:** There is no new pay plan code for IGs at DFEs. The pay floor provision in section 4(b) does not constitute a pay system but rather interacts with the applicable pay system. (The applicable pay system may have been determined under the other provision in section 4(b) guaranteeing that a DFE IG has the same grade or level as a majority of senior executives in the same DFE).]

Career SES members who are appointed to an IG position and are entitled to elect to continue certain SES benefits under [5 U.S.C. 3392](#) may do so with the exception 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. (See section [4\(c\) of the IG Reform Act of 2008](#).) 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](#). (See [section 3\(f\) of the IG Act of 1978](#), as added by [section 5 of the IG Reform Act of 2008](#).) These provisions apply solely to an IG and not to other SES members within an OIG. Accordingly, other SES members in IG offices are eligible for performance and other awards. Career SES appointees in an OIG may be nominated for rank awards. (See [Chapter 6, Presidential Rank Awards](#), for additional information.)

Each IG or agency head, as applicable, is responsible for implementing and administering the provisions of the IG Reform Act; however, OPM has responsibility to determine how to interpret and apply SES provisions with respect to the designation of each OIG as a separate agency and the IG as the head of that agency. Where there is a question of how to apply SES provisions, agencies should consult with Senior Executive Services and Performance Management.

As head of a separate agency, each IG has the authorities and responsibilities of an agency head with respect to the OIG pertaining to the administration of any SES statute. (See [section 6\(d\) of the IG Act of 1978](#), as amended by [section 14 of the IG Reform Act of 2008](#).) For example, each

IG establishes an Executive Resources Board (ERB) to conduct merit staffing for career appointments and establishes a Performance Review Board (PRB) to make recommendations regarding SES performance ratings and SES performance awards for OIG senior executives. IGs normally establish a separate performance appraisal system to cover OIG SES members. With respect to such a system, the IG is the highest-level official in the OIG; therefore, higher-level review is not available to a senior executive for whom the IG is the initial rater, although the IG can administratively provide for an alternative review. IGs determine rates of basic pay for their senior executives and may provide SES performance awards from an SES performance award pool calculated based upon salaries of career SES appointees within the OIG. As head of a separate agency, each IG is independent of the agency within which the OIG is established with regard to SES actions, e.g., recruitment and selection of executives, reassignment or transfer of executives, position management, performance appraisal, compensation, awards, adverse actions, and reduction-in-force.

When an IG is appointed as a career SES member by the head of a DFE, normal application of SES rules would require the DFE agency head to appraise the DFE IG's performance annually. Based upon the results of appraisal, the DFE agency head could adjust the pay of the DFE IG or even remove the DFE IG. However, OPM holds that such authority would contradict the purpose of the IG Reform Act of 2008 to "amend the Inspector General Act of 1978 to enhance the independence of Inspectors General." We therefore advise, pursuant to OPM's authority under [section 6\(e\)\(1\)\(B\)\(iii\) of title 5 Appendix](#) to determine how SES provisions apply for purposes of section 6(e), that for the purpose of SES performance appraisal a DFE IG should not be considered to occupy a DFE position but rather a position in the DFE Office of Inspector General, which under section 6(e)(1)(A)(i) "shall be considered to be a separate agency."

Since the DFE IG does not occupy a position in the DFE for this purpose, a DFE agency head should not establish performance requirements for the DFE IG under [5 U.S.C. 4312\(b\)\(1\)](#) or appraise the DFE IG's performance. It follows that a DFE agency head will not be able to adjust SES pay for a DFE IG under SES rules or remove a DFE IG from the SES based upon performance ratings. A DFE agency head must still set pay in accordance with [section 4 of the IG Reform Act of 2008](#), which includes setting the DFE IG's pay at his or her existing SES rate of basic pay—computed under normal rules without regard to the section 4(b) pay floor—if it is higher than that pay floor. The head of a DFE may also take an adverse action against a DFE IG under [5 U.S.C. 7543](#), consistent with [section 3 of the IG Act of 1978](#), including a removal action that is not based on a performance rating.

Chapter 12

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CHAPTER 12: SENIOR 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 compensation 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 other key officials (e.g., general counsels and bureau directors). 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](#). Requests should be sent to the Office of Management and Budget; however, section [5317](#) is not appropriately applied to any position that would meet the definition of an SES position at [5 U.S.C. 3132\(a\)\(2\)](#) if placed in EX-IV or V.

[**Note:** Many positions listed in 5 U.S.C. [5315](#) (EX-IV) and [5316](#) (EX-V) or that have been placed in EX-IV or V under section [5317](#) are established as positions in the SES if they are in an agency to which the SES applies and meet the definition of an SES position at [5 U.S.C. 3132\(a\)\(2\)](#), e.g., a position at EX-IV or EX-V, or equivalent, that performs SES functions and is not required to be filled by Presidential appointment with Senate confirmation.]

Occasionally, a new law will establish a position that performs SES functions and place it in level IV or V of the Executive Schedule without providing for it to be filled by Presidential appointment with Senate confirmation. Unless the law specifies that the position is exempt from the SES definition at [5 U.S.C. 3132\(a\)\(2\)](#), the position is to be established in the SES and becomes subject to SES provisions, including determination of pay by the agency head under 5 U.S.C. [5382](#) and [5383](#).

Pay

[Section 5318 of title 5, United States Code](#), provides for annual adjustment of the rates of pay for Executive Schedule positions at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes place under [5 U.S.C. 5303](#) in the rates of basic pay under the General Schedule. OPM calculates the rates of basic pay for levels I through V of the Executive Schedule annually based upon the formula in section [5318](#) and publishes them online at: <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>.

See the chapter notes for [Chapter 5](#) regarding the pay freeze for certain senior political appointees.

SENIOR-LEVEL (SL) AND SCIENTIFIC AND PROFESSIONAL (ST) POSITIONS

NOTE: Information on SL and ST positions is now available in the Senior Professional (SL/ST) Handbook, which can be found on ESCS under Resources.

MISCELLANEOUS POSITIONS

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 with or without Senate confirmation, but an agency may appoint an individual awaiting final action on a Presidential appointment to an expert or consultant position. 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 are—

- 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;
- positions covered by the system are fully comparable to Senior Executive Service positions, as defined in [5 U.S.C. 3132\(a\)\(2\)](#), i.e., being classified above GS-15 and performing work characteristic of the SES functional criteria;
- provisions for career-type appointment in the system include competition and certification of qualifications commensurate with Senior Executive Service requirements such that appointees who will be eligible for noncompetitive movement can be expected to perform effectively in SES positions; and
- 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.

An interchange agreement may not be established if the statute providing for the executive system requires the agency to credit veterans' preference when selecting executives, since this is not compatible with the provision of [5 U.S.C. 2108\(3\)](#) that the term "preference eligible" does not include applicants for, or members of, the Senior Executive Service.

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 Office of the Inspector General of the United States Postal Service.



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