OPM
SENIOR EXECUTIVE SERVICE
DESK GUIDE

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2016
Preface

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

This desk guide is to be used as a ready-reference for agency executive resources personnel and is not a policy-making guide. It is a document intended to accommodate regulatory updates and policy changes regarding the SES. The desk guide is protected under the Freedom of Information Act deliberative process privilege and is not releasable to the public. Should you have any questions about the material in the desk guide, please contact Executive Resources and Performance Management (ERPM) at the address below.

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

Send SES policy-related questions, correspondence, and requests to ERPM at the following address, unless otherwise indicated in the desk guide:

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INTRODUCTION

The Senior Executive Service (SES) was established by Title IV of the Civil Service Reform Act (CSRA) of 1978 [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 1-14, 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 are in compliance with the law. 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 [5 U.S.C. 3132(a)(1)]:

- legislative and judicial branch agencies;
- independent Government corporations;
- Federal Election Commission;
- Federal Aviation Administration;
- Central Intelligence Agency;
- Defense Intelligence Agency;
- National 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; and
- as determined by the President, an Executive agency or unit thereof whose principal function is the conduct of foreign intelligence or counterintelligence activities; certain financial management regulatory agencies, including the Comptroller of the Currency and Office of Thrift Supervision in the Department of the Treasury, Farm Credit Administration, Federal Housing Finance Agency, and the National Credit Union Administration;
- the Securities and Exchange Commission;
- the Commodity Futures Trading Commission; and
- the Transportation Security Administration.

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

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

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 notwithstanding 5 U.S.C. 3132(a)(2), 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. 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;
- administrating 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.,
- 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 share the responsibilities for executive resources management. They have the challenge and responsibility to transform the Nation’s laws and administration policies into effective service to the public. This demands leadership, professional integrity, and commitment to the highest ideals of public service. Federal executives must develop a sense of ownership and pride in a set of common goals, values, and attitudes that extend beyond individual aspirations and transcend their commitment to a specific agency mission.

**Merit System Principles and Prohibited Personnel Practices**

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

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

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CHAPTER 1: EXECUTIVE RESOURCES MANAGEMENT

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, SL (senior-level) positions, ST (scientific and professional) 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)).

Membership

ERB members are appointed by the agency head and must be 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, Public Health Service, or National Oceanic and Atmospheric Administration) serving on active duty in the agency. ERB membership should include, to the extent practicable, a mix of Presidential and SES appointees, career and noncareer appointees, civilian personnel (including senior-level (SL) employees) and commissioned officers, headquarters and field representatives, and representation of women and minorities. It is particularly helpful to include such a mix for the sake of continuity. Since an ERB is required for certain purposes and must consist of agency employees, the head of a very small agency may need to appoint one or more GS
employees.

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

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

Responsibilities

**Merit staffing.** 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.** ERB’s 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 SES candidate development program. The ERBs are also responsible for annual review and revision (as appropriate) of Executive Development Plans for current executives (5CFR412.401(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 or Senior Fellow under its jurisdiction.

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

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

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

**Planning**

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

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

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

**Evaluation**

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

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

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

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

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

Biennial Allocation

Under 5 U.S.C. 3133, agencies are required during each even-numbered calendar year to examine their SES position needs and submit a written request to OPM for a specific number of SES position allocations for the 2 succeeding fiscal years (e.g., a request in December 2016, which is in Fiscal Year 2017, would be for the FY 2018/2019 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 SERS@opm.gov by the required deadline of the notice.

Upward adjustments Governmentwide may not exceed 5 percent of the total number of SES positions initially authorized for the fiscal year.

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 particular circumstances giving rise to the need (e.g., legislative mandate or presidential directive; new agency mission or expanded agency program; succession planning requirements; issues raised by OMB).
- Identify source of funding or other resources to support the newexpanded 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.

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
**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**

After OPM issues the biennial allocation, 5 U.S.C. 3133(d) authorizes OPM to adjust an agency’s allocation up or down at any time during the biennial cycle. This may be done based upon an agency’s written request or at OPM’s initiative. By law, upward adjustments Governmentwide may not exceed 5 percent of the total number of SES positions initially authorized for the fiscal year. Downward adjustments may become necessary for such reasons as unanticipated changes in budgets or programs, or a reduction-in-force affecting SES members. Requested 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 may not simply exchange one type of allocation for another without OPM approval.

**Example:** An agency has an available SL allocation but does not have an available SES allocation and the agency needs to fill an SES position. The agency may not exchange the SL allocation for an SES allocation and fill the SES position. The agency must submit a written request to OPM to have its allocations adjusted.
**Temporary Allocations**

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

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

1. Identify who will be going on the assignment. Provide the individual's name, position, organizational component, location, and current appointment type.

2. Describe the assignment (developmental, IPA, short 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.

3. Identify the challenges or development opportunities that the assignment will provide that the individual has not had in previous positions.

4. 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?

**SES Allocations to Support Phased Retirement**

Agencies should monitor SES resource management on a continuous basis to ensure that SES positions are used to respond most effectively to changing agency conditions. As discussed on page 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;
- The Phased Employment/Phased Retirement Status Elections Form (SF3116) signed by all parties.

**SES Career Reserved Minimum**

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

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

**SL and ST Allocations**

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

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

REGULATIONS: 5 CFR 214.202

Each agency determines, within the allocation authorized by OPM, which of its positions will be in the SES. These positions must meet both the SES functional and grade level criteria prescribed in 5 U.S.C. 3132(a)(2) and must be within the allocation authorized by OPM. The agency does not need a new allocation from OPM as long as there is an existing space. 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.

[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 needs to evaluate the position as a whole and determines if it functions as part of the management team, or as an independent advisor or technical expert. This evaluation should consider the position’s duties, responsibilities, and qualifications. In borderline cases, particular attention should be given to the position’s qualifications and the impact these qualifications have on the position’s duties and responsibilities.
For example, a staff assistant position should be placed in the SES if executive qualifications are critical to successful performance of the position’s duties and responsibilities.

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

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

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

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

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

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

A position should be credited with **supervising the work of employees** 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.**
Analysis of 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 demonstratable 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 the grade levels of individuals reporting directly to the position.

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

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

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

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

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

**Distinguishing Between SES, SL, and ST Positions**

A position that is classifiable above the GS-15 level, but does not meet the SES functional criteria, may be appropriately established as a senior level (SL) position under 5 U.S.C. 5108 or a scientific and professional (ST) position under 5 U.S.C. 3104, depending on the nature of the work, provided the agency has the appropriate SL or ST position allocation from OPM. [See Chapter 12 for additional information about SL and ST positions.] Additional discussion of research and development functions is contained in Appendix 2 of the *Introduction to the Position Classification Standards*.

**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 impartially;
- other positions requiring impartiality, or the public’s confidence in impartiality, as determined by the agency in light of its mission; and
- positions that are specifically required by law to be Career Reserved or to be filled by a career appointee.
**Changing Position Designations.** Agency heads are authorized to establish SES positions within the agency allocation and to designate them as either Career Reserved or General, subject to the above criteria and to the requirement to maintain a career reserved floor. However, once the designation has been made, it may not be changed without written approval from OPM [5 CFR 214.403]. Requests for a designation change should be sent to 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 on a noncareer appointee reporting to a career appointee in a career reserved position, it is not likely that such a situation would occur given the criteria for career reserved positions. However, should there be a need to fill a subordinate position with a noncareer appointee, the agency is advised to review the career reserved position to verify that the supervisory position meets the criteria and is properly designated as career reserved. There is also no prohibition on a noncareer appointee reporting to a career appointee in a general position.

- 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.]
ALLOCATING APPOINTMENT AUTHORITIES

STATUTE: 5 U.S.C. 3134 and 3394(b)
REGULATIONS: 5 CFR 317.601

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

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

[Note: Some agencies may have a specific statutory limitation in their own legislation on the number or percentage of noncareer SES appointments that may be made in the agency. The White House may also impose a limit for any agency.]

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

An agency initiates a request for a noncareer appointment authority Each request must be for a named individual to fill a specific SES General position. 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.
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

Agencies must request a specific authorization from OPM for the use of each authority outside the agency’s pool, unless the agency has an agreement with OPM that authorizes the agency to make a certain number of limited appointments on its own under specified circumstances (e.g., 2-year rotating assignments to bring in individuals from universities to a scientific organization within the agency). Generally, agencies are expected to exhaust their pool authorities, provided the proposed appointees meet the requirement for holding career or career-type appointments outside the SES, before requesting OPM approval of a limited term or limited emergency appointment authority.

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

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

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

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

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

5 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.
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. Mobility may be equally useful in developing other senior professionals, e.g., senior-level (SL) or scientific and professional (ST) employees. 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 www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=1696 for a November 7, 2008, memorandum on “Guidelines for Broadening the Senior Executive Service”).

CONDITIONS OF EMPLOYMENT

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

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

Selective Service Registration. SES appointees are subject to the statutory bar to appointment of 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 [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.

EMPLOYMENT RESTRICTIONS

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

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

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

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

STATUTE: 5 U.S.C. 3132(a), 3393, 3394
REGULATIONS: 5 CFR Part 214 and 317 Subpart F

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

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

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

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

Limited Term and Limited Emergency Appointments
What is a Limited Term or Limited Emergency Appointee?
As 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 noncareer and limited appointments discussed in Chapter 3.

HR use only
An agency may use SES limited term and limited emergency appointment authorities to:

- Set pay at SES rates.
- Remove the appointee from the SES position at will.

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 period of time at the GS-15 or equivalent level.]

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

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

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


**Possession of Certification as a Mandatory Technical Qualification.** Unless authorized by statute, agencies may not use possession of certification (e.g., Program/Project Management Certification) as a mandatory technical qualification. Individuals who lack the certification yet possess the requisite experience and training to perform the duties of the position should be considered. However, agencies may require future acquisition of certification by specifying a timeframe for obtaining it (e.g., within eighteen months from the date of appointment to the position) in a mandatory technical qualification. 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 (FAC-P/PM). Applicants who currently possess or are eligible for Level II Program/Project Management (P/PM) certification and can achieve Level III certification according to DHS, DAWIA, or FAC-P/PM standards within eighteen months from the date of appointment to this position will also be considered. Please indicate in your application your level and source (DHS, DAWIA, FAC-P/PM) of certification or eligibility for certification.

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

Executive Core Qualifications

“Executive Qualifications” is the term used in statute [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.

<table>
<thead>
<tr>
<th>Competencies</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creativity and Innovation</td>
<td>Develops new insights into situations; questions conventional approaches; encourages new ideas and innovations; designs and implements new or cutting edge programs/processes.</td>
</tr>
<tr>
<td>External Awareness</td>
<td>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.</td>
</tr>
<tr>
<td>Flexibility</td>
<td>Is open to change and new information; rapidly adapts to new information, changing conditions, or unexpected obstacles.</td>
</tr>
<tr>
<td>Resilience</td>
<td>Deals effectively with pressure; remains optimistic and persistent, even under adversity. Recovers quickly from setbacks.</td>
</tr>
<tr>
<td>Strategic Thinking</td>
<td>Formulates objectives and priorities, and implements plans consistent with the long-term business and competitive interests of the organization in a global environment. Capitalizes on opportunities and manages risks.</td>
</tr>
<tr>
<td>Vision</td>
<td>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.</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Competencies</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conflict Management</td>
<td>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.</td>
</tr>
<tr>
<td>Leveraging Diversity</td>
<td>Fosters an inclusive workplace where diversity and individual differences are valued and leveraged to achieve the vision and mission of the organization.</td>
</tr>
<tr>
<td>Developing Others</td>
<td>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.</td>
</tr>
<tr>
<td>Team Building</td>
<td>Inspires and fosters team commitment, spirit, pride, and trust. Facilitates cooperation and motivates team members to accomplish group goals.</td>
</tr>
</tbody>
</table>
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.

<table>
<thead>
<tr>
<th>Competencies</th>
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<tbody>
<tr>
<td>Accountability</td>
<td>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.</td>
</tr>
<tr>
<td>Customer Service</td>
<td>Anticipates and meets the needs of both internal and external customers. Delivers high-quality products and services; is committed to continuous improvement.</td>
</tr>
<tr>
<td>Decisiveness</td>
<td>Makes well-informed, effective, and timely decisions, even when data are limited or solutions produce unpleasant consequences; perceives the impact and implications of decisions.</td>
</tr>
<tr>
<td>Entrepreneurship</td>
<td>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.</td>
</tr>
<tr>
<td>Problem Solving</td>
<td>Identifies and analyzes problems; weighs relevance and accuracy of information; generates and evaluates alternative solutions; makes recommendations.</td>
</tr>
<tr>
<td>Technical Credibility</td>
<td>Understands and appropriately applies principles, procedures, requirements, regulations, and policies related to specialized expertise.</td>
</tr>
</tbody>
</table>

ECQ 4: Business Acumen

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

<table>
<thead>
<tr>
<th>Competencies</th>
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</thead>
<tbody>
<tr>
<td>Financial Management</td>
<td>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.</td>
</tr>
<tr>
<td>Human Capital Management</td>
<td>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.</td>
</tr>
<tr>
<td>Technology Management</td>
<td>Keeps up-to-date on technological developments. Makes effective use of technology to achieve results. Ensures access to and security of technology systems.</td>
</tr>
</tbody>
</table>
### 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.

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

### Fundamental Competencies

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

<table>
<thead>
<tr>
<th>Competencies</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interpersonal Skills</td>
<td>Treats others with courtesy, sensitivity, and respect. Considers and responds appropriately to the needs and feelings of different people in different situations.</td>
</tr>
<tr>
<td>Oral Communication</td>
<td>Makes clear and convincing oral presentations. Listens effectively; clarifies information as needed.</td>
</tr>
<tr>
<td>Integrity/Honesty</td>
<td>Behaves in an honest, fair, and ethical manner. Shows consistency in words and actions. Models high standards of ethics.</td>
</tr>
<tr>
<td>Written Communication</td>
<td>Writes in a clear, concise, organized, and convincing manner for the intended audience.</td>
</tr>
<tr>
<td>Continual Learning</td>
<td>Assesses and recognizes own strengths and weaknesses; pursues self-development.</td>
</tr>
<tr>
<td>Public Service Motivation</td>
<td>Shows a commitment to serve the public. Ensures that actions meet public needs; aligns organizational objectives and practices with public interests.</td>
</tr>
</tbody>
</table>
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 rule), 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.)

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

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

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

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

Merit staffing checklist. Agencies may use the checklist in [ ] 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 SECDP graduates with noncompetitive eligibility may apply for noncompetitive consideration for that position.

Vacancy Announcements

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

Agencies are responsible for confirming that their individual SES vacancy announcements have been successfully entered into USAJOBS. If a vacancy to be filled by initial career SES appointment has not been published as required by 5 CFR 317.501(b), the consequences are serious and will affect recruitment actions. OPM cannot assume that the agency has met the statutory requirements cited in the preceding paragraph and the proposed selection cannot be forwarded to a Qualifications Review Board. Evidence that a vacancy announcement has been included in USAJOBS is provided by entering the OPM Control Number into 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(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 Executive Resources Board referral to the appointing authority and QRB certification, before appointment.
Recruiting for SES Candidate Development Programs

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

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

**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.

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 Qualifications Review Board (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.

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
- 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 SES CDP graduates can register for the CDPOpps listserv by following these steps:**

1. Click on the link: [http://listserv.opm.gov/wa.exe?A0=CDPopps](http://listserv.opm.gov/wa.exe?A0=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 send an email 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 Senior Executive Service (SES) hiring and accomplishment of mission. 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 Qualifications Review Board submission.

- Resume-Based Application Method: This method provides an alternative to the traditional submission by applicants of a resume and a 10-page written ECQ narrative statement, helping applicants and agencies reduce the burden of lengthy written materials at the onset of the application process. Because this method may reduce the quantum of information an applicant is capable of submitting, it is often best-suited for the senior-most positions requiring highly-experienced executives whose accomplishments may be readily presented. Incumbents in such positions typically have one or more subordinate SES members reporting to them, and may report directly to the top Presidential or political leadership in the agency or agency component. The resume-based method may also be appropriate for low- to mid-level SES positions if the hiring agency may want to mitigate the likelihood of difficulties in achieving an adequate volume of applications, based on past experience in filling identical or similar positions. Additionally, this method may be appropriate for positions for which technical qualifications are particularly important – including legal, engineering or scientific positions that typically require advanced degrees in a highly specialized field – and where hiring agencies will want to obtain information on applicants’ technical qualifications; in such instances, the resumes for such applicants will commonly highlight the applicant’s technical prowess and achievements and alleviate the need to seek information through a written TQ statement. The vacancy announcement should direct applicants to submit only a resume with the initial application. Applicants must show possession of the ECQs and technical qualifications via the resume.

- 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 ECQs or competencies (the hiring agency has the flexibility to leave the specific approach to the candidate’s discretion or the agency sets specific competencies depending on the requirements of the position to be filled), and the agency supplements the 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.

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, that 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 at least 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
ECQS - 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/](https://www.opm.gov/policy-data-oversight/senior-executive-service/executive-core-qualifications/).*
Summary of Applicant Submission Documentation Requirements (by Method)

<table>
<thead>
<tr>
<th>Method</th>
<th>Applicant Submission Materials</th>
<th>Candidate Level of Effort</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Resume</td>
<td>ECQ Narrative</td>
</tr>
<tr>
<td>Traditional</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Resume-Based</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Accomplishment Record</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

* 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

Agencies should carefully consider the extent to which technical qualifications are required for a given position. OPM strongly encourages agencies to conduct a rigorous analysis of qualification requirements and avoid duplicating qualification requirements that are already represented in the ECQs or which are not essential to the effective evaluation of candidate qualifications. In that analysis, agencies should consider eliminating requirements for applicants to submit written TQ statements, at least at the initial application stage, in cases where information about a candidate’s technical qualifications may be easily found in the resume or related application materials. Agency requirements for lengthy TQ narratives may potentially deter qualified candidates from applying. One 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, rather than applying numerous general TQ requirements that may detrimentally limit the diversity and quality of the applicant pool – both by deterring talented leaders from applying and by excluding talented leaders from further consideration for failure to address technical qualifications that may not be absolutely essential to success in the 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 must consider the technical and executive qualifications of each eligible candidate. If only a small number of candidates are determined to be eligible and the agency wishes to proceed with the selection process, the ERB must still consider the qualifications of each eligible candidate. The ERB may delegate preliminary qualifications screening, rating, and ranking of candidates. An agency should follow its SES merit staffing plan when selecting preliminary rating panel members. Panel members should be recognized as subject matter experts or human resources specialists.

- All eligible candidates must be rated and ranked on the same basis. However, if a current SES career appointee or a reinstatement eligible applies in response to a merit staffing vacancy announcement, the agency has the option of including the individual in the competitive process (in which case the individual is rated and ranked in the same manner as other applicants) or considering the individual under noncompetitive appointment procedures (i.e., reassignment, transfer, or reinstatement).

- There must be adequate differentiation among candidates on the basis of the knowledge, skills, abilities, and other job-related factors, as reflected by the position’s qualifications standards to enable the relative ranking of candidates. Experience may be credited only to the closing date of the vacancy announcement to avoid inequities. Candidates need not be given numerical ratings, since veteran’s preference and the “rule of three” do not apply to the SES. Instead, they may be grouped into broad categories (e.g. highly qualified/Top Group, qualified/Middle Group, not qualified/Bottom Group).

- 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 board may provide rating sheets on the candidates instead of preparing separate written recommendations on each candidate. However, the ERB must still certify in writing the list of candidates provided to the appointing authority. The ERB certificate may be sent first to a supervisory official who will make a selection recommendation to the appointing authority. In these instances, the full certificate and the board recommendations on all the candidates should be forwarded to the appointing authority along with the name of the proposed appointee.

- The appointing authority must make the selection in accordance with agency prescribed procedures from among the candidates the ERB identified as best qualified. Selection must be based solely on the qualifications of the candidates, not on political or other non-job-related factors.

- The appointing authority must certify in writing that the proposed appointee meets the qualifications requirements of the position. The appointing authority, or the ERB, must also certify that appropriate merit staffing procedures were followed.
• The executive qualifications of the proposed appointee must be sent to OPM for QRB certification.

RECOMMENDED MERIT STAFFING PRACTICES

OPM offers the following recommendations based on practices currently in use at some but not all agencies:

• Be sure to follow your agency’s written ranking and rating procedures (Rating Plan).

• Be sure to give full weight to the Executive Core Qualifications (ECQs) along with the technical competencies required for the position. OPM’s Qualifications Review Board certification of the candidate’s ECQs is meant as a final check rather than a primary assessment of leadership qualifications. When using the traditional selection method (see Merit Staffing Selection Methods, 2-17), an agency may find it is unnecessary to enhance the narrative description of the candidate’s possession of the ECQs beyond what was initially reviewed as part of the candidate assessment process.

• Be sure to consider the six “fundamental” competencies, which since October 2006 have been part of the ECQs and should be included in the candidate assessment process. These competencies underlie the five ECQs and should be addressed over the course of the ECQ narratives rather than in separate statements submitted by the candidate. As noted further in the next bullet, evidence of these essential underlying competencies can often be ascertained through means other than the candidate’s narrative statements, such as interviews or reference checks.

• Try to use a variety of candidate assessment tools, rather than relying excessively on the assessment of candidate narratives against crediting plans. Interviews, especially structured interviews with standardized questions, should normally be an essential part of the assessment process. In some cases, formalized assessment centers may be an appropriate means to assess candidates. Reference checks are also useful, to verify information provided by the applicant and to assess competencies such as Integrity/Honesty.

• Use category rather than numeric ratings when rating ECQs, which are comprised of clusters of individual competencies and are therefore difficult to score with a degree of precision supporting numerical rating.

• Make sure rating panel members are trained. Rater training ensures all raters understand the rating process and ECQ definitions. It can range from short and simple to very detailed instructions.

• To increase efficiency, automate the selection process to the greatest extent possible. For example, some agencies provide candidate materials electronically to their ERBs in advance to expedite the assessment process.

• Notify applicants of their status at four points in a timely fashion: 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 because of a statutory, regulatory, or procedural violation, the agency may, as a corrective action, select the individual for a career appointment to another SES position without conducting a new merit staffing action. However, the individual must meet the technical and executive qualifications for the new position and must be approved by a QRB.

[Note: The corrective action authority permits, but does not require, the agency to select the individual noncompetitively.]

DOCUMENTING MERIT STAFFING ACTIONS

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

- the OPM Control Number for the vacancy listing in the automated USAJOBS and copies of any separate agency announcements (The control number is assigned when entering a vacancy announcement);
- list of recruitment sources used (e.g., agency vacancy announcement distribution list, any newspaper or journal advertisements, any use of nonprofit employment services or commercial recruiting firms);
- copy of qualifications standard and position description;
- originals of all applications received by the agency;
the 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 a broad perspective of Government and solid executive skills. They focus attention on the fact that, in the SES, executive skill is paramount — not technical expertise.

Membership

OPM administers QRBs, which includes drawing on members of the SES to participate on the Boards and to advise on QRB policy. OPM works with agencies to solicit names of executives to serve on QRBs. Each board consists of SES members from three different agencies. A majority of each Board’s members must be SES career appointees. Board members are not permitted to review their own agency’s candidates, and if a member otherwise believes he 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 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 that indicate a likelihood of executive success. (Approval of these cases is based on the agency’s entire submission, including the proposed Individual Development Plan (IDP), and imposes an obligation on the agency to carry out the proposed executive development activities). 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).

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

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

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 on the basis of Criterion A as a Criterion C case, if appropriate (i.e., the candidate has "special or unique qualities"). The Criterion C case must include an IDP, documentation of the candidate’s unique and special qualifications, and at least one reference letter from an appropriate person (agency’s discretion) at a higher level than the candidate, who supports the ECQs of the candidate. A new case must then be entered into [Redacted] 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.

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 [Redacted] 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)]; 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

If an agency head leaves, announces an intention to leave, or if the President nominates a new agency head, OPM imposes a moratorium on review of QRB cases from that agency, effective on the earliest date of any of these three events, until a successor is appointed. OPM suspends QRB processing of Criterion A and Criterion C cases until a successor is appointed. Pending cases may be returned to the agency and the agency should not submit additional QRB cases during the moratorium, except for Criterion B cases, if applicable. OPM may also suspend or return pending cases during a Presidential transition period. This action is taken as a courtesy to the new agency head to afford him/her the greatest flexibility in making executive resources decisions. If a QRB case is returned to the agency, the case is marked . The agency must create a new case record in before resubmitting the case to OPM.

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

- the impact on the agency should the position not be filled during the moratorium;
- the likelihood the new agency head will have personal interest in the case;
- the organizational level of the position (include organization chart);
- the degree to which the candidate would be involved in policy matters;
- any special or unique qualifications of the candidate;
- 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.

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

**Requesting OPM to resume processing of agency QRB cases.** The message should specifically indicate the new agency head’s intention to resume processing of 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 letter 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.

There may be times when OPM initiates a message to the agency asking if it would like to have the QRB moratorium removed. This is subject to specific authorization by the new agency head to resume processing of agency QRB cases. When this is obtained, the individuals identified above under **Resumption of QRB Case Processing** 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. 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 with substantive information highlighting a candidate’s demonstrated ECQs, obtained by the agency from interviews and 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; however, it is very appropriate 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 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 regard 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.

This submission method is best suited to executive positions below the highest level. Unlike more highly-experienced executives, candidates for these positions will generally benefit from the opportunity to address in greater detail specific executive competencies in their applications since their experience may not necessarily indicate clearly their ability to perform executive duties.
Summary of QRB Submission Documentation Requirements (by Method)

<table>
<thead>
<tr>
<th>Method</th>
<th>USAJobs Vacancy Announcement</th>
<th>Resume</th>
<th>ECQ Narrative</th>
<th>QRB Template</th>
<th>Accomplishment Record</th>
<th>Candidate Level of Effort</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traditional ECQ Narrative (up to 10 pages)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<tr>
<td>QRB Template</td>
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<td>Yes</td>
<td>*</td>
<td>Yes</td>
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</tr>
<tr>
<td>Accomplishment Record (5 page narrative)</td>
<td>Yes</td>
<td>Yes</td>
<td>*</td>
<td>Yes</td>
<td>Yes</td>
<td>Moderate to Significant</td>
</tr>
</tbody>
</table>

* 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, successful completion (as certified by the agency) of an OPM approved SES candidate development program, and evidence of a case record created in 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)].

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

Agencies 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 SECDP participants within 12 months from the ending date of an OPM-approved SES candidate development program.
### CRITERION A

<table>
<thead>
<tr>
<th>Traditional</th>
<th>QRB Template</th>
<th>Accomplishment Record</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Vacancy Announcement</td>
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<td>- Vacancy Announcement</td>
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<td>- Resume</td>
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<td>- 10 page ECQ Narrative</td>
<td>- QRB Template</td>
<td>- 5 page Accomplishment Narrative</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- QRB Template</td>
</tr>
</tbody>
</table>

### CRITERION B

- Mentor Evaluation
- Resume
- 10 page ECQ Narrative **OR** QRB Template
- IDP (signed)

**NOTE:** Additional documents for Criterion B cases need not be submitted, however, you may be asked to provide those documents, if needed.

HR use only
CRITERION C
- Vacancy Announcement
- Resume
- 10 page ECQ Narrative OR QRB Template
- Special & Unique Qualifications Memo (written description of the candidate’s unique and special qualifications that make him/her a superior choice for the SES position for which selected)
- Reference Letter(s) (addressing each ECQ by someone familiar with the candidate’s demonstrated executive level experience)
- IDP (organized by the five ECQs that show how the candidate will obtain executive level knowledge and experience under the weak ECQ(s))

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 1-year probationary period. This probationary period begins on the effective date of the personnel action initially appointing the individual to the SES as a career appointee and ends 1 calendar year later. 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 qualifications (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.]
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 (For example, if the individual was absent for 50 calendar days, the probationary period is extended by 20 calendar days);
- time following transfer to an SES position in another agency is credited (i.e., the employee does not have to start a new probationary period). 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 [CFR part 353].

Moratorium on Removal During Probation

The provisions of 5 U.S.C. 3592 that restricts the removal of individuals from the SES for 120 days after appointment of a new agency head or noncareer supervisor also apply to probationary removals. If an individual completes the probationary period while the restriction is in force, removal when the restriction ends must be 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 1-year probationary period is not required in the following situations. (The individual is only required to complete the remainder of the probationary period if it was not previously completed.)

- the individual left the SES without a break in service for a Presidential appointment and is exercising reinstatement rights under 5 U.S.C. 3593(b) and 5 CFR 317.703;
- 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; and
- the break in SES service was the result of military duty or compensable injury, and the time credited was not sufficient to complete the probationary period. [See Crediting Service earlier in this chapter.]

**Other Guidance**

A new 1-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 job. In order to meet the challenges of creating and maintaining highly productive and efficient organizations, agency flexibilities in filling critical leadership positions are essential. This chapter provides information about other methods, in addition to competitive appointment, that agencies may use to staff SES positions.

CAREER REASSIGNMENTS

STATUTE: 5 U.S.C. 3395
REGULATIONS: 5 CFR 317.901

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

A career appointee may be reassigned to any SES position for which the appointee is qualified provided all conditions below are met. 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. In addition to agency needs and objectives, the agency should consider the economic consequences of a move and the individual’s concerns about such matters as personal health and the health of family members. However, this consultation provision is not intended to limit agency flexibility to reassign. Congress stated in the section analysis for 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 waive the moratorium, but the waiver must be in writing and must 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.

NONCAREER AND LIMITED APPOINTMENT AUTHORITIES, REASSIGNMENTS, AND TRANSFERS

STATUTE: 5 U.S.C. 3394 and 3395(b) through (d)
REGULATIONS: 5 CFR Part 317, Subpart F

Appointment Authorities
Authority. An agency must have prior approval from OPM to make a noncareer, limited term, or limited emergency appointment (5 CFR 317.601(b); 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].

Faxed forms are not accepted.

[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.]
**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. Reassignment of a noncareer, limited term or limited emergency appointee in the same agency may be made only to a General position for which the individual is qualified.

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

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**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 [system]. Request for an SES Appointment Authority, is submitted by email to SERS@opm.gov after appropriate agency clearances. Faxed forms are not accepted.

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 [system].

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**Transfers**

Transfer of a noncareer or 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, noncareer and limited appointees may be offered transfers at the discretion of the agency. Agencies must get prior approval of OPM for the transfer of appointment authorities.

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**Conditions Regarding Limited Term 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. 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. An agency may use the pool to make a limited appointment only 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 of a limited appointment authority when proposing to appoint the types of individuals noted below.

- Prospective appointees who are from outside government, or who are civil service employees but do not hold career or career-conditional appointments or equivalent appointments in the excepted service.
- Individuals who are career or career-conditional or equivalent non-SES civil service employees when the agency has exhausted its 3% pool.

Time limit. A limited term appointment authority (LTA) may not exceed 3 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. However, if the appointment is made for less than the period authorized by OPM, the agency may extend the appointment to that period. 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 then extend the appointment up to an additional 12 months. The total appointment length including the extension equals the original 24 months approved by OPM. The request to OPM should be based upon factors of exigencies not anticipated at the time of the original request and must be submitted early enough for OPM to evaluate and, if warranted, extend the authorized period. Upon approval, the agency may extend the appointment. OPM lacks authority to renew a limited appointment after it expires.

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 a 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 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 (see 5 CFR 359.701(a)).

**Provisional appointment.** Under 5 CFR 316.403(a), an agency is authorized under certain circumstances to designate a temporary appointment of 1 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 1 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 Term 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 3 years or less to a Senior Executive Service position the duties of which will expire at the end of the term. Therefore, in addition to showing that a position’s duties support SES, it is necessary for an agency requesting an SES limited term appointing authority to explain why those duties will expire at the end of the requested term. Normally this should be demonstrated by reference to an external factor or factors beyond the control of the appointing authority that will cause the position’s duties to end, e.g., statutory, organizational, or business-related time restrictions not subject to extension beyond 3 years.

This is important because limited term appointments are made without competition. If the agency grants 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 3 years.
• A statute or other external factors require a program to be terminated within a 3 year period and the last career SES program leader has departed, leaving a new program leader 3 years or less to close down program operations.

• The position is established to oversee a project that has a defined end-date within 3 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 3 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, 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 term 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 within 3 years 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 term appointment would only be possible if the temporary position could be structured so as 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).

3. This approach is appropriate only so long as the absent career appointee continues to encumber the continuing position and will be returning to it within 3 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 term appointment. The agency may still detail non-SES employees under 5 CFR 317.903 to the continuing position. 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 3 year period.

**Limited Term Required Documentation**

Agencies requesting a limited term appointment authority should submit the following documents to OPM:

- SES Limited Emergency Examples

OPM considers a position acceptable for staffing by SES limited emergency appointment when it has been established to meet a bona fide, unanticipated, urgent need. All three criteria must be met. The following examples do not meet the criteria for a limited emergency appointment:

- Time and effort it takes to recruit for an SES position: SES merit staffing requirements for career appointments are regulatory and are not unanticipated. Agencies may use details or reassignments of current SES members pending completion of normal merit staffing efforts.
- Agency’s preference to recruit an individual who is not interested in and will not accept career SES appointment.

**SES Limited Emergency Examples**

- Limited Emergency Required Documentation

Agencies requesting a limited emergency appointment authority should submit the following documents to OPM:

-
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 3 year period. If an agency requests limited term authority to appoint an IPA assignee to such a position for only 2 years and later decides to extend the individual, OPM can authorize an extension of not more than 1 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. An SES limited term 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 noncareer and limited term appointment authorities available to agencies following the inauguration of a new President, or the nomination of a new agency head. OPM must approve use of the appointing authority.
Tenure is the same as in any other noncareer or limited term appointment authority. 

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

**Change from Career to Noncareer or Limited Appointment**

A career SES appointee cannot be required to accept a noncareer or limited appointment as a condition for appointment to another SES position [5 CFR 317.904]. If a career appointee voluntarily elects to accept a noncareer or 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 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 5 years of service at the time of the action. (The action also triggers an opportunity to elect FERS coverage if the individual is not automatically covered.) The individual must also be informed that, if he 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.

**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 within the employing agency or negotiated between agencies. In either event, the provisions of this part apply.

**Details to SES Positions**

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

CSRA 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 so as 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.

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 3 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 appointment was approved.

Other Details

For details to non-Federal organizations, see the IPA provisions of 5 U.S.C. 3371-3375 and 5 CFR part 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 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 outside the SES.

**To Unclassified Duties.** Agencies cannot detail an SES member to unclassified duties for more than 240 days. For a longer detail, the agency must determine whether the duties are at the SES level. 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 only in 120 day increments, competition should normally be deferred until it becomes evident a third 120 day increment will be required. 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;
- 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;
- A written explanation of reasons the agency has not filled the position by an appropriate SES appointment and the progress of agency efforts to fill the position;
- The agency’s assessment of potential adverse impact on morale of its executive corps and steps by which the agency plans to ameliorate such impact; 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 an extremely compelling case why such a detail is needed. No more specific instructions or criteria are provided for such a request because OPM considers the detail of SES members to such positions to be an inappropriate use of executive talent.

**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 the agency 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 already on detail at the start of a moratorium, the first 60 days of the detail (or any combination of details) do not count against the 120 days. For example, if the employee is placed on a 90-day detail, the first 60 days would be added to the 120 days, and the moratorium would last 180 days. Although there is no limit on the total length of a detail during the moratorium, any detail during the moratorium must meet the detail requirements in the regulations. It also should be made judiciously and only when there is clear, bona-fide need. Details should not be used to circumvent the 120-day moratorium.

**Documentation**

An SF-50 or 52 must be filled out:

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

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

**REINSTATEMENT IN THE SES**

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

**REGULATIONS:** 5 CFR 317.702

**Conditions**

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

- Reinstatement may be based only on prior career service in the SES. Reinstatement eligibility acquired in the competitive service is not transferable to the SES. (Similarly, a career appointment in the SES does not establish reinstatement eligibility in the competitive service.) Receipt of QRB certification is not a basis for reinstatement;
The appointee must have successfully completed an SES probationary period or been exempt from probation (e.g., converted to the SES as a career appointee when the SES was established in 1979);

Separation from the SES must not have been for reasons of performance, for disciplinary reasons, or a resignation in lieu of removal for these reasons. However, reinstatement is permitted if separation was because of failure to accept a directed geographic move and there was no written mobility agreement;

There is no time limit after leaving the SES for reinstatement of an eligible appointee;

Individuals apply for reinstatement to the agency where the individual wants to work, not to OPM;

Reinstatement may be noncompetitive or agencies may apply merit staffing 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 negotiate his/her own reinstatement directly with an agency, rather than requesting OPM assistance. [See 5 CFR 317.703]

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

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

**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 5 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 within 5 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 who has 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 1 year, unless the appointee leaves the position sooner.

**Changes in election.** After the initial election has been in effect 1 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.
CHAPTER 4: PAY AND OTHER COMPENSATION

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CHAPTER 4: PAY AND OTHER COMPENSATION

STATUTE: 5 U.S.C. 5307 and 5381-5385,
REGULATIONS: 5 CFR Part 534, Subpart D; Part 530, Subpart B

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

CHAPTER NOTES

1. On December 18, 2015, the President signed an Executive order to implement the January 2016 pay adjustments. OPM issued a memorandum, CPM 2015-14, available at https://www.chcoc.gov/content/january-2016-pay-adjustments-0, providing guidance and general information on the 2016 pay rates for various pay systems.


3. On December 15, 2015, the President issued Executive Order 13714 on Strengthening the Senior Executive Service, which among other things provided at Section 3(a)(ii):

(ii), The heads of agencies with SES positions that supervise General Schedule (GS) employees shall implement policies, as permitted by and consistent with applicable law and regulation, for initial pay setting and pay adjustments, as appropriate, for career SES appointees to result in compensation exceeding the rates of pay, including locality pay, of their subordinate GS employees. Similar policies shall be implemented by heads of agencies for Senior Professional (i.e., SL or ST) employees that supervise GS employees.

This executive order requires agencies to develop and implement the described policies within the context and subject to requirements of law and regulation, including 5 U.S.C. 5307, 5382, 5383, and 5376; 5 CFR 534 subparts D and E; and 5 CFR 430 subparts B, C, and D. The executive order does not establish an entitlement for any employee, nor does it require or authorize “corrective action” to achieve the objective for any employee within any specified time period.
In that both pay setting and pay adjustments are mentioned, the objective may be achieved over time through (1) pay setting upon initial appointment or upon movement to another position, and (2) pay adjustments consistent with statute and regulation that reflect pay differentiation based upon individual performance, contributions to agency performance, or both, as determined through appraisal of affected SES, SL or ST employees under a rigorous performance appraisal system. For additional guidance, see Answers to Frequently Asked Questions Regarding the Executive Order to Strengthen the Senior Executive Service at https://www.chcoc.gov/print/7147.

**SES RATE RANGE**

The SES pay range has a minimum rate of basic pay equal to 120 percent of the basic pay rate for GS-15, step 1 and the maximum rate of basic pay is equal to the rate for level III of the Executive Schedule (EX-III). However, for any agency certified under 5 U.S.C. 5307(d) as having a performance appraisal system which, as designed and applied, makes meaningful distinctions based on relative performance, the maximum rate of basic pay will be the rate for level II of the Executive Schedule (EX-II). The minimum rate of basic pay for the SES rate range will increase consistent with any increase in the rate of basic pay for GS 15, step 1. The applicable maximum rate of basic pay for the SES rate range will increase with any increase in the rate for levels EX-II or 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, and the Northern Mariana Islands, Puerto Rico, and 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 various pay adjustments consistent with regulatory provisions, e.g. which may be finalized by an authorized agency official and which require action by the agency head or the official designated by the agency head to oversee and certify the results of the agency’s SES performance appraisal system.

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

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

   b. Internal
      - Factors that will be used to differentiate payouts among executives who receive the same rating;
      - Organizational performance measures that will be used to determine allocation of funds for 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;
• Agency established tiers or other categorization of executive positions.

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

**Considerations When Creating Pay Policy**

Additionally, the pay policy should allow some flexibility in adjusting pay “up to” a certain percent or identify ranges by rating levels. Pay adjustment should occur annually based on available budget and range adjustment. The following example shows how an agency may choose to establish criteria for determining performance-based pay adjustments (without using the MRP adjustment authority) based on the annual summary ratings, provided its executives are all currently positioned properly in the pay range:

- **Fully Successful** - Will maintain relative position in the pay range
- **Exceed** - Maintain relative position plus up to 1 percent
- **Outstanding** - Maintain relative position plus up to 2.5 percent

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

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

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

Initial Appointment to the SES

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

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

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

Example: In November 2015, a GS-15/4 employee in the Washington DC area was appointed to an SES position.

Calculations

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</thead>
<tbody>
<tr>
<td>GS-15/4 salary (includes locality pay) prior to SES appointment:</td>
<td>$138,871</td>
</tr>
<tr>
<td>6% pay increase per agency’s general policy for new SES appointments:</td>
<td>$8,332</td>
</tr>
<tr>
<td>Subtotal:</td>
<td>$147,203</td>
</tr>
<tr>
<td>Jan 2016 projected 1.0% increase in the SES rate range; given the date of the appointment, the executive will not be considered in the agency end-of-year pay adjustments</td>
<td>$1,472</td>
</tr>
<tr>
<td>Total:</td>
<td>$148,675</td>
</tr>
</tbody>
</table>

The agency reviewed the individual’s experience, qualifications, and accomplishments and made the determination to set pay at $148,675.

Following a Break in SES Service

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

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

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

**Upon Reinstatement from a Presidential Appointment Requiring Senate Confirmation**

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

- If the individual elected to remain subject to the SES pay provisions while serving under a Presidential appointment, his or her SES rate may be adjusted upon reinstatement, whether in the agency where the individual held the Presidential appointment or in another agency, if at least 12 months have elapsed since the employee’s last SES pay adjustment.

- If fewer than 12 months have elapsed since the employee’s last SES pay adjustment, an authorized agency official may approve an additional pay increase under 5 CFR 534.404(c)(4) if the 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 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**

Except in the case of an executive transferring under circumstances described in the next paragraph, a senior executive is NOT entitled to retain his or her rate of pay upon transfer to another agency. 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 received in the executive’s former agency, the action is processed as a transfer and it restarts the clock under the 12-month rule.
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 the agency 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 an increase in pay for the current appraisal period. OPM expects that executives who are paid 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, including a pay increase that could otherwise have been authorized under 5 CFR 534.404(b)(4) without restarting the clock.

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 of 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. In addition, 5 CFR 534.404(c)(4) provides certain 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—

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

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

**Maintain Relative Position in the Rate Range**

When the minimum or maximum rate of basic pay of the SES rate range is increased, an agency may determine it is appropriate to increase the rate of basic pay of a senior executive who meets or exceeds performance expectations by an amount that does not exceed the amount necessary to allow the employee to maintain his or her relative position in the SES rate range. (See 5 CFR 534.404(b)(4).) As previously stated, a pay increase to allow an employee to maintain his or her position in the SES rate range is not considered a pay adjustment for the purpose of applying the 12-month rule. This pay increase may be given separately from a pay increase that allows the employee to advance his or her relative position in the SES rate range. However, like increases that advance an employee's position in the pay range, these increases to maintain relative position (MRP) are performance based and should not result in across-the-board increases. The following table presents the MRP limitations as listed in 5 CFR 534.404(b)(4)(i)-(iii):

<table>
<thead>
<tr>
<th>Senior Executive's Rate of Basic Pay Prior to Adjustment</th>
<th>Resulting Rate of Basic Pay After Adjustment</th>
<th>Rating for Most Recent Appraisal Period</th>
<th>Pay Adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Above EX-III</td>
<td>Above EX-III</td>
<td>Outstanding</td>
<td>May be granted upon approval by agency head or designee</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Below Outstanding but Above Fully Successful</td>
<td>May be granted by agency head or designee in rare circumstances (e.g., exceptionally meritorious accomplishment)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fully Successful or Below</td>
<td>May not be granted</td>
</tr>
<tr>
<td>At or Below EX-III</td>
<td>Above EX-III</td>
<td>Outstanding</td>
<td>May be granted upon approval by agency head or designee</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Below Outstanding</td>
<td>May not be granted</td>
</tr>
<tr>
<td>Below EX-III</td>
<td>Below EX-III</td>
<td>Fully Successful or above</td>
<td>May be granted</td>
</tr>
</tbody>
</table>

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 SES rate range are adjusted by one 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.

<table>
<thead>
<tr>
<th>Former Minimum: $121,956</th>
<th>New Minimum: $123,175</th>
</tr>
</thead>
<tbody>
<tr>
<td>Former Maximum: $183,300</td>
<td>New Maximum: $185,100</td>
</tr>
<tr>
<td>Former Rate for EX-III: $168,700</td>
<td>New Rate for EX-III: $170,400</td>
</tr>
<tr>
<td>Employee's Former Rate: $145,342</td>
<td>Employee's New Rate: $146,782</td>
</tr>
</tbody>
</table>

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.

$145,342 - $121,956 = $23,386

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

$183,300 - $121,956 = $61,344

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

$23,386/$61,344 = 0.3812271

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

$185,100 - $123,175 = $61,925
Step 5: Multiply the result of step 3 by the result of step 4. Round to the closest whole dollar amount.

0.3812271 x $61,925 = $23,607

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

$123,175 + $23,607 = $146,782

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 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 as the result of a decision to suspend certification of the applicable performance appraisal system. The senior executive will continue to receive his or her current SES rate and is not eligible for a pay adjustment until the employing agency’s applicable performance appraisal system is certified or the senior executive is assigned to a position that would allow the employee to receive a pay adjustment, such as reassignment from a position in a component with a non-certified 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, or removal from the SES due to two less than Fully Successful ratings within 3 years or two Unsatisfactory annual summary ratings within 5 years.
Prior to reducing a senior executive’s rate of basic pay, whether for performance or disciplinary reasons, the agency must provide the senior executive with the following:

- Written notice of such reduction at least 15 calendar days in advance of its effective date;
- A reasonable period of time, but not less than 7 calendar days, for the senior executive to respond to such notice orally and/or in writing and to furnish affidavits and other documentary evidence in support of that response;
- An opportunity to be represented in the matter by an attorney or other representative;
- A written decision and specific reasons therefore at the earliest practicable date after the senior executive’s response; and
- An opportunity to request, within 7 calendar days after the date of that decision, reconsideration by the agency’s head, whose determination with respect to that request will be final and not subject to further review.

Reductions in pay under 5 CFR 534.404(j) are not appealable under 5 U.S.C. 7543.

AGGREGATE LIMITATION ON PAY

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., 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 2016, an SES employee in Washington, DC voluntarily moves to a GS-15 position in Washington, DC. The employee’s SES annual salary of $141,000 is the highest previous rate. To calculate the maximum payable rate, compare $141,000 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 $141,000. In this example, the highest applicable rate range is the DC locality rate schedule. GS-15, step 5 is the employee’s maximum payable rate. Pay may be set at any rate in the GS-15 rate range up to step 5.

<table>
<thead>
<tr>
<th>2016 DC GS-15</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>128,08</td>
<td>132,35</td>
<td>136,62</td>
<td>140,89</td>
<td><strong>145,162</strong></td>
<td>149,43</td>
<td>153,70</td>
<td>157,97</td>
<td>160,300*</td>
<td>160,300*</td>
</tr>
</tbody>
</table>

*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 essentially refers to an individual newly appointed to the Federal Government rather than an individual newly appointed to the SES. A recruitment incentive may not exceed 25 percent of the executive’s annual rate of basic pay in effect at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years). With OPM approval, this cap may be increased to 50 percent (based on a critical agency need), as long as the total incentive does not exceed 100 percent of the executive’s annual rate of basic pay at the beginning of the service period.

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

**Retention.** An agency may pay a retention incentive to a current senior executive (excluding a noncareer appointee) if (1) the agency determines that the unusually high or unique qualifications of the executive or a special need of the agency for the executive’s services makes it essential to retain the executive, and that the executive would be likely to leave the Federal service in the absence of a retention incentive or (2) the agency has a special need for the employee’s services that makes it essential to retain the employee in 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 certain 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;
- Appointments are limited to one-year or less;
- Hours worked by any annuitant reemployed under these provisions are limited to 520 during the first 6 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 only 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 as the issue of limited term and emergency appointments being non-renewable by law.

Given that by law a reemployed annuitant 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 of the not to exceed 1 year stipulation.

**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 at 5 U.S.C. 5314 - 5316**

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

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

REGULATIONS: 5 CFR Part 430, Subparts C and D

One of the goals of the SES, as stated in 5 U.S.C. 3131, is “to ensure accountability for honest, economical, and efficient Government.” A primary way to achieve this goal is to hold senior executives accountable for their individual and organizational performance through an effective performance management program. Performance management incorporates planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance. [Regulations under 5 CFR 430 subpart B cover performance management for senior-level and scientific and professional employees.]

Chapter Notes – a revised 5 CFR part 430 subpart C was published on October 26, 2015. Agencies without OPM approval to use the Basic SES Appraisal System must have designed and obtained OPM approval for, and implemented, systems conforming to 5 CFR part 430 subpart C no later than October 25, 2016.

PERFORMANCE APPRAISAL SYSTEMS

Basic SES Performance Appraisal System

In January 2012, the U.S. Office of Personnel Management (OPM), in conjunction with the U.S. Office of Management Budget (OMB), issued the “Basic SES Appraisal System.” The Basic SES Appraisal System satisfies the regulatory system standards at 5 CFR 430.305 and promotes consistency, clarity, equity, and transferability of performance processes, standards, feedback, and ratings across Government. Additionally, implementation of the Basic SES Appraisal System provides a streamlined and more efficient process for SES performance appraisal system approval and certification by OPM. Agencies were strongly encouraged to adopt the Basic SES Appraisal System (and adapt accordingly as needed to meet their specific needs). Most agencies have adopted and implemented the basic SES appraisal system. For more information on the Basic SES Appraisal System, see the memo at https://www.chcoc.gov/content/senior-executive-service-performance-appraisal-system. The Basic SES Appraisal System template is available on the SES and SL/ST MAX Portal.

The implementation of the revised streamlined SES Performance Appraisal System Certification Process, available to agencies that have adopted the Basic SES Appraisal System, was effective October 1, 2015. The revised process empowers agencies with significantly more responsibility in determining the appropriateness of certification for their SES performance appraisal systems. The expanded role and involvement by agencies will achieve a number of positive outcomes, including: (1) allowing for more reliance upon agency familiarity and expertise with their own missions and operations, (2) reducing the administrative burden on agencies, and (3) streamlining the process by significantly decreasing the quantity of information and materials required for review.
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 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 if the agency determines that there is an adequate basis to appraise and rate the executive’s performance and the shortened appraisal period promotes effectiveness.
6. Establishing criteria and procedures to address performance of executives who are on detail, temporarily reassigned, or transferred.
7. Holding executives, with responsibility for hiring, accountable for recruiting and hiring highly qualified employees and supporting their successful transition into Federal service.
8. Monitoring the development of Executive Development Plans (EDPs) for each executive.

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. Define performance standards for each of the summary rating levels.
4. Appraise each executive’s performance, at least annually, against requirements and standards.
5. Derive an annual summary rating through a mathematical method that ensures executive’s performance aligns with level descriptors contained in performance standards that clearly differentiate levels above fully successful, while prohibiting a forced distribution of rating levels.
6. 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.

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.

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 correct operations under the current system and 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. If OPM determines that an agency's appraisal system does not comply with system approval requirements, OPM may suspend the system's certification until the agency makes corrections OPM requires.

**INDIVIDUAL PERFORMANCE PLANS**

Performance plans must be established for all SES members (including individuals serving on career, noncareer and limited appointments). 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. On or before the beginning of an appraisal period, the executive’s immediate supervisor must communicate the plan to the executive in writing, including through the use of automated systems.
Each executive performance plan must describe—

1. Critical elements that reflect individual performance results or competencies. The elements must reflect individual and organizational performance for which the executive is responsible.

2. Performance standards at each level of performance at which a senior executive’s performance can be appraised. Performance standards also provide the benchmarks for developing performance requirements.

3. Performance requirements with the expected accomplishments or demonstrated competencies for the executive’s work at the Fully Successful level of performance. An agency may establish performance requirements at other levels of performance as well. Performance requirements must include quality indicators and generally include other performance measures such as 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, any modification of the plan. If plan revisions are made with less than the minimum appraisal period (i.e., 90 days) left in the official appraisal period, the agency should either consider making the changes at the beginning of the next appraisal period, extend the current appraisal period so that an executive’s initial and annual summary ratings can take into account performance under the revised plan, or close out the current appraisal period and initiate a new appraisal period that might run longer than 12 months. Otherwise, the revised performance requirements cannot be used to rate the executive during the current appraisal period.

**MONITORING PERFORMANCE**

A supervisor must conduct at least one progress review with an executive during the appraisal period. Supervisors must monitor each executive’s performance during the appraisal period and provide feedback to the executive on progress in meeting the performance elements and requirements described in the plan. Supervisors must provide advice and assistance to executives on how to improve their performance. The progress review may be conducted informally rather than by a written appraisal and should be documented.
The progress review may also be used as an opportunity to modify critical elements and performance requirements to reflect changes that have taken place since the performance plan was initially developed.

APPRAISING PERFORMANCE

Appraisal Period

Senior executives must be given an annual summary rating. The agency SES appraisal system must indicate the beginning and ending 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 as of the end of the appraisal period, the appraisal period must be extended.

Example: A new executive is appointed to a position effective September 1. 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.

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.

At times, an executive may receive an interim summary rating in a former position upon reassignment or transfer, but will not have served in the new position for the minimum appraisal period before the end of the official appraisal period. (For example, the executive is reassigned on August 1, and the period ends on September 30.) The agency system 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.

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, at the end of the detail. A summary rating is not required. If the executive is detailed to a position outside the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization. For example, the employing agency of an executive who has been on detail under an Intergovernmental Personnel Act assignment for at least 90 days during the appraisal period must make a reasonable effort to obtain appraisal information from the non-Federal organization.

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

**Appointment of New Supervisor**
If at the conclusion of the appraisal period the supervisor has served for less than the minimum appraisal period, there are several options available, depending on 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.
- The appraisal period may be extended to allow a minimum appraisal period under the new supervisor before the initial summary rating is given.

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

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

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

The moratorium does not preclude the issuance of a written appraisal when an executive changes positions, as required by 5 CFR 430.310, or when the supervisor leaves if agency policy requires a rating at that time. A progress review is not subject to the moratorium. Additionally, a reduction in pay based on a less than Fully Successful annual summary rating assigned prior to the beginning of a new Presidential administration is not subject to the moratorium.

RATING PROCESS

Initial Summary Rating

The initial 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 a comparison of the executive’s performance with 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.

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

If a senior executive declines review by an agency-designated higher-level official, the agency may offer an alternative review by another higher-level official though it is not obligated to do so. The agency must document the executive’s declination of the higher level review opportunity provided by the agency before offering an alternative review.
When an agency cannot provide a review by a higher-level official because no such higher-level official exists in the agency (e.g., the agency head provided the initial summary rating, the higher-level reviewer position is vacant, etc.), the agency must offer an alternative review by an official the agency deems appropriate.

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

**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 or a higher level review, and 3) 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 3 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.
- A career appointee who is removed from the SES as a result of the performance rating may request an informal hearing before the Merit Systems Protection Board on the removal.

An annual summary rating cannot be changed based on additional information obtained after the annual summary rating is issued to the executive. If the additional information the agency receives regarding the executive’s performance has any bearing on his/her performance in the current appraisal period, it should be addressed appropriately and considered during the upcoming rating process.

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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. One way to help achieve this objective is to include members from different organizational components, from both headquarters and the field, from different functional disciplines, etc. 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 at least a current Fully Successful performance rating, have applied agency appraisal systems effectively in their own organizations, possess a thorough knowledge and understanding of the agency appraisal system gained through experience and/or training, and occupy SES or equivalent positions.

Career membership. When reviewing appraisals and recommending performance-based pay adjustments or performance awards for career appointees, more than one-half of the membership of a PRB must be SES career appointees. SES members from other agencies may be used to meet this requirement when it cannot be 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.

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

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

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.

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The PRB must be provided and take into account when making recommendations appropriate assessment of organizational performance, as communicated by the oversight official through performance appraisal guidelines.

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

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 remaining 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**

The PRB must make a written recommendation, including through the use of automated systems, concerning an executive’s annual summary rating and performance-based pay adjustments to the appointing authority. A written justification to accompany the recommendation is desirable when the PRB does not concur with the initial summary rating, or when the record shows employee or reviewing official disagreement with the initial summary rating.

The PRB must make recommendations concerning individual pay adjustments in accordance with 5 U.S.C. 5382 and for performance awards for career appointees whose recommended annual summary rating is Fully Successful or higher, in accordance with 5 U.S.C. 5384(c).

**USING APPRAISAL AND RATING INFORMATION**

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

**Pay Adjustments**

Under 5 U.S.C. 5382, 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 4, SES Pay, Adjusting Individual Pay Rates]
**Performance Award**

Under 5 U.S.C. 5384, a career appointee who has a Fully Successful rating or higher is eligible for a performance award. [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 5-year period.
- The executive must be removed from the SES for two less than Fully Successful ratings (Unsatisfactory or Minimally Satisfactory) in a 3-year period.

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

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

**Reduction in Force**

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

**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.]

**Other Actions**

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

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, agencies must find another method, such as a carryover or modal rating, to serve as a basis for granting pay adjustments. (See Chapter 4 for information on SES pay).

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 electronic communication, the results of the previous appraisal period (i.e. overall ratings distribution, average pay adjustments, and average performance award for each rating level). Where such communication might compromise individual performance information, it is acceptable to communicate only the average rating, pay increase, and award. In extremely small organizations (less than 5 executives), this requirement may be waived. Such action is likely to promote confidence in the fairness of the process and is one of the certification criteria.

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

Agencies must retain SES annual summary ratings and the performance plans on which they are based for at least 5 years from the date the annual summary rating is issued. [See 5 CFR part 293 and OPM’s Guide to Personnel Recordkeeping]
PERFORMANCE APPRAISAL CERTIFICATION FOR PAY PURPOSES

The 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 implement significant features of a Federal compensation system that give 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 6 additional months (this request is granted in limited circumstances such as when an agency has requested approval of its adoption of the Basic SES Appraisal System). Only one extension may be granted for a single certification period. 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 Appraisal System should submit its request for certification 3 months prior to the expiration of its current certification. Other agencies using agency-designed SES appraisal systems should submit their requests for certification 6 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 4 for information on SES pay and Chapter 12 for information on SL/ST pay.)

CERTIFICATION PROCESSES

Certification regulations contained in 5 CFR 430 Subpart D require performance appraisal systems for SL/ST and SES 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 system 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, separately.
Streamlined SES Certification Process

Since the design of the Basic Appraisal Systems (SES and SL/ST) meets all certification criteria, OPM and OMB only need to review the implementation and application of the system, reducing the amount of documentation required to be submitted to OPM for certification. Under the revised process, Performance Distinctions, Pay Differentiation, and Aligned Results (merging the former Alignment and Results criteria), are assessed by OPM and OMB. Agencies verify Organizational Assessment and Guidelines, Oversight, and Communication of System Application Results (previously included in Evidence of Training) with a provision for OPM spot check after the agency’s initial submission under the revised process. Consultation, Accountability, Balance, and Training are no longer reviewed for certification purposes since these have been incorporated into the Basic Appraisal systems and are well established and incorporated practices within agencies’ performance culture.

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 Senior Executive Service Performance Appraisal Assessment Tool (SES PAAT) and/or the Senior-level (SL) and Scientific or Professional (ST) PAAT, as appropriate.

CERTIFICATION CRITERIA

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

Aligned Results

OPM requires measurable results and alignment for each performance requirement of the Results Driven critical element. Performance expectations must be derived from/aligned with the agency’s mission, strategic goals, program/policy objectives, and/or annual performance plan. Alignment should be clear and transparent so that senior executives understand how their performance aligns with organizational goal achievement and can be cascaded to their subordinates to ensure alignment of their performance as well. The performance requirements for individual senior executives 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 not using the Basic SES or SL/ST Appraisal System, the threshold to meet this
criterion in member performance plans is crediting measurable results as at least 60 percent of the
summary rating.

For agencies using the Basic SES or SL/ST Appraisal System, all performance requirements for
the Results-Driven element must be written in terms of measurable results.

**Consultation**

Agencies must consult an executive in the development of his or her performance requirements.
These performance requirements must be communicated to the executive at the beginning of the
appraisal period and/or at appropriate times thereafter. For agencies using the Basic Appraisal
System(s), this criterion is no longer reviewed for certification purposes.

**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.

**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 executives and senior professionals, rating
and reviewing officials, PRB 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 executives and senior professionals—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.

**Performance Distinctions**
For agencies not using the basic SES appraisal system, the appraisal system must include summary rating level of performance that comply with the system standards in 5 CFR 430.305. For agencies using the basic SES appraisal system, this is incorporated into the system design. The system must result in meaningful distinctions among ratings based on relative performance. Agencies need to justify their rating distribution 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 level of performance and/or contribution to the agency’s performance receive the highest annual summary ratings 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 may not be used to demonstrate pay differentiation.

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

OPM requires agencies to 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 a small number of senior employees should keep in mind that they may not disclose ratings for individuals, or 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.

**GAP IN 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 experience a gap in 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.

OPM, with OMB concurrence, will grant an agency certification again when the agency has demonstrated it 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 4, 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 6: AWARDS

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HR use only
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

Awards Guidance on Spending Limitations


Agencies must limit total awards spending on the following categories of awards:

- **SES individual rating-based performance awards:** Agencies may spend up to 7.5 percent of the aggregate salaries of their career executives at the end of the previous fiscal year on individual rating-based performance awards for career members of the SES.

- **SL/ST individual rating-based performance awards:** Agencies may spend up to 7.5 percent of the aggregate salaries of their SL/ST employees in career, career-conditional, or equivalent positions in the excepted service at the end of the previous fiscal year on individual rating-based performance awards for those SL/ST employees.

- **SES individual contribution awards:** Agencies may spend up to 1.0 percent of the aggregate salaries of their career executives at the end of the previous fiscal year on individual contribution awards (e.g., special act awards) that are paid throughout the fiscal year for career members of the SES.

- **SL/ST individual contribution awards:** Agencies may spend up to 1.0 percent of the aggregate salaries of their SL/ST employees in career, career-conditional, or equivalent positions in the excepted service at the end of the previous fiscal year on individual contribution awards (e.g., special act awards) that are paid throughout the fiscal year for those SL/ST employees.
[NOTE: This guidance limits awards spending calculations to the aggregate salaries of SES career and SL/ST career-type appointments based on the prohibition on discretionary payments to political appointees in the August 2010 Presidential Memo and the ban on awards under 5 U.S.C. chapter 45 during the Presidential election period (June 30 to January 20).]

Agencies should allocate awards made under the new recommended limit to be able to reward and retain more top performers by:

- providing substantial monetary awards for the very best SES and SL/ST performers; and
- allowing more variance of award amounts among rating levels, which is a common attribute of pay-for-performance systems.

In addition, The President’s August 3, 2010, memorandum freezing discretionary awards, bonuses, and similar payments for political appointees continues, as communicated in the memorandum posted on the CHCOC Website (https://www.chcoc.gov/content/guidance-freeze-discretionary-awards-bonuses-and-similar-payments-federal-employees-serving). Prohibitions on awards during a Presidential election period are also in effect June 1, 2016, to January 20, 2017.

GENERAL INFORMATION AND COMPARISON OF SES AWARD PROGRAMS

The 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 performance 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 high quality performance during a 1-year appraisal period. Career SES members are eligible with Fully Successful performance ratings or higher. There is no specific numerical limitation in law on the number of awards that may be given by an agency. The supervisor nominates, the agency Performance Review Board (PRB recommends, and the agency head or designee decides. 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.

Presidential Rank Awards. Recognizes sustained extraordinary accomplishment (Distinguished) or sustained accomplishment (Meritorious) over at least 3 years as SES or equivalent. (Service does not have to be all in same agency.) To be eligible, an executive must have at least 3 years of career or career-type Federal civilian service at the SES level, currently hold a career appointment is the SES, and be an employee of the nominating agency on OPM’s nomination date. An executive cannot receive the same rank award within 4 fiscal years following receipt of that award. The agency head nominates, the OPM Director recommends (assisted by outside panels), and the President selects. For a Distinguished Rank Award, the SES member receives 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 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 1 percent of the career SES members can receive the Distinguished Rank and five percent of the career SES members can receive the Meritorious Rank.

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 by a Presidential Administration, all SES members are eligible.

There are no numerical limitations in law. The process for these awards is determined by the agency in accordance with OPM regulations. Awards can be monetary, honorary, or informal recognition. The agency approves up to $10,000; OPM approves up to $25,000; and the President approves any higher amount. Payment is a lump sum and is subject to the applicable aggregate pay limitation (the same as for the performance and rank awards).

[Note: See previous information regarding spending limitations.]
**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, 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 one-year performance appraisal period.

**Eligibility**

To be eligible for an SES performance award, the individual must be—

- an SES career appointee as of the end of the performance appraisal period and have at least a Fully Successful rating as the most recent annual summary rating;
- a former SES career appointee who elected to retain award eligibility under 5 CFR part 317, subpart H
- a reemployed annuitant with an SES career appointment; or
- 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.

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

**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 5 percent of the individual’s SES rate of basic pay as of the end of the performance appraisal period.
**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 2017 (FY 2017), the pool is calculated as of September 30, 2016 (end of FY 2016). However, if the payments are made in November 2017 (FY 2018), the pool is calculated as of September 30, 2017 (end of FY 2017)); or

- 20 percent of the average annual rates of basic pay to career SES appointees as of the end of the fiscal year before the fiscal year in which the performance award payments are made.

The salary of a former SES career appointee who elected to retain award eligibility under 5 CFR 317 subpart H is included 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 and calculating the award amount the individual may receive.

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 5 percent.
For performance award purposes, basic pay includes the salary of a career SES member who receives critical position pay. If the executive’s pay exceeds the agency’s maximum SES rate, the amount credited to the bonus pool and the minimum (5.0%) and maximum (20.0%) should be calculated based upon the agency’s maximum SES rate (EX-III or EX-II, as applicable).

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

**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 employees 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 2016 (e.g., August 2016), but $1,000 could not be paid until the beginning of CY 2017, that $1,000 counts against the executive’s applicable CY 2017 aggregate pay limitation; but the full $15,000 is charged against the agency’s FY 2016 award pool.

[Note: Agencies should pay performance awards generally within 5 months following the end of the applicable appraisal period.]
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 Senior Career Employees (Senior-level (SL) and Scientific and Professional (ST)) who have demonstrated exceptional performance over an extended period of time. There are four types of rank awards:

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

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

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

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

Eligibility
SES Career Appointees – Distinguished and Meritorious Ranks
Nominees must —

- hold a career appointment in the SES;
- be an employee of the nominating agency; and
- have at least 3 years of career or career-type Federal civilian service at the SES level. Service does not have to be continuous. Qualifying service includes 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.
A reemployed annuitant who holds a career appointment or an executive with a part-time or intermittent work schedule is eligible as long as the individual meets the other criteria for nomination. However, agencies are advised to carefully consider whether such a nomination would be in the best interests of the agency and the program, in view of the limitation on awards that can be given.

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

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 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. However, PAS employees who were career Senior Executives and elected to retain their SES eligibility, remain eligible for rank awards [5 U.S.C. 3392]. Please use caution with these nominations, since Congress expressed concern about Executive Schedule awards and President Obama froze discretionary payments for political appointees.

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. Other SES members in IG offices are eligible for performance and other awards, including the Presidential Rank Awards. Under Pub. L. 110-409, SES IG office members other than the IG may be nominated for rank awards by the Council of the Inspectors General on Integrity and Efficiency established under the Act.

**Senior Career Employees (SL/ST) - Distinguished and Meritorious Ranks**

Nominees must—

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

Restrictions
The recipient of either a Distinguished or Meritorious Rank Award may not receive the same category of award again during the 4 fiscal years following the one for which the award is given. (For example, if an individual received a meritorious award in FY 2011, he or she is not eligible for another meritorious award until FY 2016.) However, there is no restriction on receiving one of the two categories (i.e., either Distinguished or Meritorious) of rank award and subsequently receiving the other category of rank award at a closer interval. There is no requirement that an individual receive a meritorious award before receiving a distinguished award.

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

Nomination Criteria
SES career appointees are nominated and evaluated on the following criteria:
1. Program Results
2. Executive Leadership

Senior Career Employees (Senior-level (SL) and Scientific and Professional (ST)) are nominated and evaluated on the following criteria:
1. Program Results
2. Stature in Professional Field

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

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

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

OPM and 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 such as: federal taxes, Inspector General’s complaints, EEO or equivalent related issues, 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 agency as a lump-sum payment, in addition to basic salary. It is not subject to retirement, health benefits, or life insurance deductions. It is not included in the “high three” average pay computation for retirement benefits or in basic pay for thrift savings plan computation. The payment is subject to income tax withholding as well as FICA tax withholding if the individual is in FERS or CSRS Offset.

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

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

**Tips for Writing Nominations**

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

- Avoid acronyms and “bureaucrat speak.” Most PRA board members have not worked in a Federal environment and some are turned off by overly bureaucratic language. Be direct, be clear.
- Avoid broad statements. Describe how the nominee’s actions led to specific results.
- Show the nominee’s performance was exceptional and sustained. Board members give low scores to individuals who were “just doing their job.”
OTHER 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.

It is recommended the agency Office of White House Liaison be consulted prior to processing awards for noncareer SES members.

**Movement to an SES appointment.** If permitted by agency policy, SES members can use a time off-award received prior to their SES appointment. However, they may not receive compensation in lieu of the time-off award.

**Eligibility**

In general, SES appointees of all types may receive other awards under chapter 45 under circumstances that warrant recognition. However, this general eligibility is subject to specific restrictions imposed based upon other applicable statutes and regulations or administration policy.

**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 incentive award to noncareer or limited SES appointees, or Schedule C appointees, between June 1 of a Presidential election year and the following January 20 [5 U.S.C. 4508];

- 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)]


- 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 03, 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.
# CHAPTER 7: EXECUTIVE DEVELOPMENT

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CHAPTER 7: EXECUTIVE DEVELOPMENT

STATUTE: 5 U.S.C., 3373-3375, 3396, 4103, 4121
EXECUTIVE ORDER 13318

Faced with constant challenges, changing technologies, and a fluid environment, executives must continually broaden their perspectives and strive for continual professional executive development. Executives must specifically strengthen and reinforce their Executive Core Qualifications (ECQs), skills, and knowledge to make informed decisions and devise new innovative solutions to the complex challenges they continuously encounter. Engaging in continued development will also ensure executives are able to think systemically, create an organizational vision, and ultimately lead their organization to the accomplishment of its strategic objectives.

There are many ways to provide learning and developmental opportunities for executives. Leadership development typically relates to instruction-led development, experiential activities, developmental relationships, assessments and feedback, and self-development. Specific activities may include: structured training programs, formal course work, skills workshops, web-based training, case discussion, cultural assimilation, action learning, personal growth programs, service learning, scenario planning, error management training, simulations, behavioral modeling, developmental assignments, job rotation, coaching, networking, mentoring, adaptive guidance, multisource feedback, formal classes, readings, seminars and conferences.

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.
Agencies are 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 the continued learning of executives. The information was gathered through an extensive literature review, as well as through interviews with a number of Fortune 500 companies and Federal agencies. OPM developed this guide to help agencies meet the development needs of Federal executives.

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.

Agencies need onboarding solutions/programs that address three types of new SES:

- Those from outside the agency, but still within the Government
- External executives from outside the Federal Government
- Those who are promoted from within the agency

Onboarding of key executives is even more critical than it is for other employees because of the significantly greater performance expectations leaders face and the greater impact they have on the overall performance of the organization.
How to Plan an Executive Onboarding Program:

- **Step 1: Create a Business Case**—Creating a business case and securing top leadership support for the program will ensure new executives have optimal support and resources in place to quickly and successfully assimilate into the organization. Use the 2011 Executive Onboarding Guide *Hit the Ground Running: Establishing a Model Executive Onboarding Program* to create and present a business case for executive onboarding for agency leaders.

- **Step 2: Plan Your Program**—Incorporate the key program requirements (see below) into the planning phase.

- **Step 3: Create Onboarding Checklists**—Use the checklists in the executive onboarding guide, mentioned above, along with the *Enhanced Executive Onboarding Model* to create checklists for executives, supervisors, and other individuals involved in the process (e.g., mentors, sponsors).

**Key Program Requirements (Planning Phase):**

Lessons learned from OPM executive onboarding pilots indicate the need for structure in the planning of the program. To help introduce and initiate structural changes, these components must be designed **before** program implementation:

- **Program Champion**—Executive onboarding programs should be led by a senior executive or other influential leader in the organization. Change management is a very important factor in program success so leadership support is critical. The program champion will keep the program visible while mitigating risks and solving organizational problems as they arise and risk compromising the integrity of the program.

- **Program Goal**—As a strategic business process, onboarding should be clearly tied to the organization’s mission. Clear contribution to the mission should be articulated in the program goal, communicated, and agreed upon by agency senior leaders. OPM has established four program objectives that must be incorporated into all executive onboarding programs. At the conclusion of the onboarding program, new executives should, at a minimum:
  - Understand the organizational culture;
  - Understand their performance expectations;
  - Have access to influential networks; and
  - Feel valued and supported by leadership.

- **Evaluation Plan**—Onboarding programs should benefit both individual and organizational performance; therefore, organizations should identify and establish *meaningful* evaluation criteria to measure program success and goal accomplishment.

- **Standard Operating Procedures**—Standard operating procedures are the “how to” for the program. It’s the document that describes the activities necessary to complete onboarding tasks and the individuals/offices/stakeholders integral to the process.
• **Training**– Training of those involved in the process is critical to success of the onboarding process and program. Agency partners (e.g., security, IT, facilities) must know and understand their roles in the process.

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](http://www.opm.gov/WIKI/training/New-Employee-Orientation.ashx).

**How to Implement an Executive Onboarding Program**

Your program is ready to implement after you have achieved buy in from top leadership, met all program requirements, and made the structural/process changes necessary to move forward.

• **Phase 1: Initial Implementation**– During initial implementation, individuals begin to put into practice all that has been planned for during the planning stage. Keep in mind that practicing and implementing new skills with fidelity will take time. Demonstrated leadership support is critical to guide and manage the change process and help mitigate fear, feelings of loss, and resistance.

• **Phase 2: Full Implementation**– Full implementation occurs when the program is integrated into the organization processes and culture. It now becomes especially important to maintain and improve the program through excellent monitoring, evaluation and purposeful improvement. Evaluations should determine if the program is being delivered as intended and if the program objectives are met.

• **Phase 3: Program Sustainability**– Sustainability is only possible when full implementation has been achieved. Sustaining change can be challenging. As an executive development tool, onboarding programs are not frozen in time and must adapt continually to changes in the political environment, funding streams, and organizational priorities. At this stage, an organization should institutionalize a process to evaluate and use program data to continually assess the organizational effectiveness and quality of the program.

Documented examples show that the effective onboarding of executives minimizes the need for terminations and costly replacements, by helping newly placed executives navigate the area’s most critical to their success. In light of the current hiring challenges, high-performing organizations use effective onboarding strategies to assimilate their leaders strategically; they do not apply a "sink or swim" mentality to new executives. Instead, these organizations understand they must provide support systems for new executives. The most successful organizations choose to invest valuable time and money positioning their executives to succeed rather than expending those same resources in lost productivity and turnover.

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 for the continuing development of senior executives. One tool that OPM has created to assist agencies is the SES Situational Mentoring program. Situational mentoring involves short-term discussions where executives have the benefit of obtaining valuable ideas and guidance on high-impact issues, problems, challenges or opportunities. The short-term discussion can be via email, telephone, over lunch, etc. This Governmentwide program will provide Federal executives with timely advice and support from experienced executive mentors across Government who can commit to short-term assistance. Through this program, executives will be able to easily connect to mentors across agencies 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


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 between agencies
- Developmental assignment internal to the agency (e.g. Acting in an executive position)
- Detail or developmental assignment external to the agency (e.g. Intergovernmental Personnel Act (IPA) program; temporary assignment/detail to another Federal agency)
- Cross-agency projects that require practical knowledge and a deeper understanding of other organizations
- Assignment to certain “liaison” positions which provide the individual significant inter-agency experience
- 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)
- Annual reporting to OPM on SES rotations
It is recommended that opportunities for rotation be linked to individual Executive Development Plans (EDP) and the agency’s overarching annual talent management and succession planning processes that all Agencies will be creating in phases as outlined in the EO. 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.

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, with no agency-specific goal. It is expected some agencies may rotate more than 15 percent annually, and others may rotate less than 15 percent to achieve the Governmentwide goal.

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; however, each agency should implement a systematic process to assess the development needs of each executive, enabling the agency to make strategic decisions on rotations and other types of development (see below for information on the annual Talent Management and Succession Planning Process).

ANNUAL REPORTING TO OPM

The EO requires “regular reporting on the status of each agency’s implementation of the provisions of the order.” OPM will report to OMB and Congress annually on the status of agency rotations and accomplishment of the annual fifteen percent (15%) governmentwide goal. To facilitate this requirement, agencies will need to:

1) Establish a reliable internal executive rotations tracking process, and
2) Accurately report this data to OPM, upon request.
While agencies should track and measure data to determine effectiveness of rotations, agencies must also track and submit the following data to OPM, upon request:

- Total # of executives rotated for a minimum of 120 days from (date) to (date)
- Total # of agency executives from (date) to (date)
- # of each type of rotation (developmental assignment, detail, sabbatical, reassignment, transfer, acting in an executive position)
- # of internal agency rotations
- # of external agency rotations
- # of external Federal government rotations
- Qualitative data regarding executive’s satisfaction with rotations (see Appendix A for sample qualitative questions)

Note: In the case of transfers and details from one agency to another, both the losing and gaining organization will track and report the transfer/detail as a rotation.

Along with this information, OPM may also gather additional data, for reporting purposes, through interviews and focus groups with agency executives and those responsible for implementing the rotations process in the agency.

The first request for data will occur at the end of FY 2017. At that time OPM will contact each agency’s responsible executive, identified in the 2-year plan (i.e., SAO), with detailed information about data submission.

OPM encourages flexibility when agencies and their executives plan mobility assignments and opportunities. The assignments and opportunities should align with the agency’s missions, and be incorporated into the agency’s HR strategies. Agencies are urged to let their executives seek other assignments, positions or projects to enhance their development so as to foster better Government; and take the risk of hiring executives from other agencies for both permanent and temporary assignments. At the same time, executives are encouraged to seriously consider new and different job opportunities and assignments that promote professional growth and continued development.

**ROTATIONS AND THE ANNUAL TALENT MANAGEMENT AND SUCCESSION PLANNING PROCESS**

In addition to the executive rotations requirement, the EO includes other actions for phased implementation including an “annual talent management and succession planning process to assess the development needs of all SES members, and SL and ST employees as appropriate, to inform readiness decisions about hiring, career development, and executive reassignments and rotations. These assessments shall include input from each executive, as well as the executive’s supervisor, and shall be used to recommend development activities and inform the organization’s succession planning, decisions about duty assignments, and agency hiring plans.”
Select agencies will phase this annual process in over the period of 3 years (beginning in October 2016); however, OPM recommends every agency participating in executive rotations (agencies with 20 or more SES positions) establish and implement this or a similar process, to inform selection of executives for rotation or reassignment.

The annual talent management and succession planning process should take into consideration the capacity, potential, and career development needs of an executive before recommending development activities (e.g. reassignment, detail, coaching). The process is a series of structured, facilitated meetings involving the review of each executive’s key strengths, career goals, stage of readiness, and areas for development. The agency Executive Resources Board (ERB), or equivalent, and the executive’s supervisor should participate in the meeting. The information from these meetings is used to inform the executive’s formal development activities for the year. The information should also be captured on a summary spreadsheet (or an alternative appropriate method) and used as a working tool for managing talent. It is important to note that the talent review process is meant to be a regular, ongoing process. Organizational goals and career plans change over both the short- and long-term and it is essential to keep the information current. The talent review information should be a working document that changes regularly.

**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](http://www.opm.gov/programs/ipa/mobility.asp) for more information on this program for Federal employees and non–Federal employees.

**Means of Assignment.** The executive may be detailed to the assignment or placed on leave without pay and appointed by the receiving organization during the assignment.

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

**Detail.** The executive will continue to encumber the position held before the temporary assignment, and remain an employee of the agency. Executives on detail receive SES pay, earn and are charged for leave, are evaluated under the SES performance appraisal system, and maintain retirement and insurance coverage. The 720-hour limit on annual leave carryover remains in effect, as applicable.

**Leave Without Pay.** The executive is entitled to receive supplemental pay from the agency in the amount of the difference between pay in the receiving organization and the agency rate. The executive may choose to retain full retirement and life and health insurance benefits by continuing to pay the employee share of the costs. See 5 U.S.C. 3373(c) for further information.

**End of IPA Assignment.** When IPA assignments end, executives return to the positions occupied before the IPA assignments, or may be reassigned to other SES positions.
IPA Agreement. Executives must agree in writing to serve with the Federal Government upon completion of IPA assignments for a period equal to the length of the assignments. The executives and the organization to which they are temporarily assigned shall enter into written agreements that record the obligations and responsibilities of all parties, as specified in 5 U.S.C. 3373 and 3375. The participating organizations determine the cost-sharing arrangements in IPA assignments and, Federal agencies may pay all, some or none of the costs of assignments.

Sabbaticals
Agency heads may grant sabbaticals for up to 11 months to SES career appointees for full-time study or uncompensated work experience which will contribute to their development and effectiveness (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; writing).

Eligibility. Career appointees must have completed 7 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 2 of the 7 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 2 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). The following is suggested language for the agreement:

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

- continues to occupy his/her SES position of record and to receive SES pay;
- continues to earn leave and is charged for any leave taken;
- may receive such travel expenses (including per diem) as the head of the agency determines to be essential for the sabbatical study or experience. (In some cases, agencies have arranged to have the host organizations pay or share in travel and certain other expenses.); and
- remains subject to the SES performance appraisal system 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 2 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](mailto:SESDevelopment@opm.gov)
DEVELOPMENT OF FUTURE EXECUTIVES

Each agency is required to have an integrated training program, which supports the accomplishment of the agency mission (Federal Workforce Flexibility Act of 2004). The program must build the agency’s leadership capacity and provide training for supervisors, managers, executives and potential candidates on actions, options, and strategies to improve employee performance and productivity, conduct performance appraisals, mentor employees, and deal with unacceptable performance.

Agencies must also establish systematic and comprehensive management succession programs for supervisory, managerial, and executive positions (5 CFR 412.202). These programs should be designed to:

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

In January 2012, OPM began working with the Federal Chief Learning Officers Council to develop a comprehensive supervisory training framework that would offer more thorough guidance to Federal agencies. The framework and guidance outlines mandatory and recommended training for aspiring leaders, along with current and newly appointed supervisors and managers. The framework also includes important objectives outlined in the Government Performance and Results Modernization Act of 2010, as well as critical leadership competencies and technical HR knowledge needed to succeed as a supervisor. The framework also includes the requirements outlined in 5 CFR 412.202 which indicates 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.

All agencies are required to provide training within 1 year of a critical career transition (e.g., non-supervisory to supervisory or manager to executive), and must follow up periodically, but at least once every 3 years, by providing each supervisor, manager and executive with additional training on the topics above (see 5 CFR 412.202).

The framework is available at https://www.chcoc.gov/content/opm%E2%80%99s-supervisory-training-guidance-and-framework.
Continuing training and development improves both individual and organizational effectiveness. It can take many forms including new job assignments; interagency task forces and projects; sabbaticals; mentoring and coaching; temporary assignments in other agencies, State or local governments, or the private sector; and formal classroom experiences. According to OPM’s Executive Best Practices Guide, 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.

Coaching

Coaching is one of the most effective leadership development practices and highly used in the private sector. 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.

Coaching can be used to help individuals reach peak performance quickly and to support organizational change. Coaching is also a skill that Federal managers and executives can use to enhance employee performance and morale.

To be most effective coaching programs should:

- Support the agency’s strategic plan and performance objectives
- Be aligned with the agency’s training and continuous learning programs
- Include program evaluations

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.

Federal Coaching Network

A 2012 survey of agency leadership development efforts indicated coaching was being used widely at the executive level, often to remedy performance issues, and in a few agencies as a way to assist leaders’ transition into new roles. Benchmarking done in the private sector indicated coaching is effective as a developmental tool to all employees. Studies are now emerging to indicate that developing a cadre of internal coaches can lead to significant increases in retention, engagement, productivity, and performance.
The Federal Coaching Network emerged in early 2013 under the partnership between OPM and the Chief Learning Officer’s Council, in an effort to bring together a community of individuals across Government who are invested in the practice of coaching and support its role in leadership development. 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 the Federal Coaching Network, please send an email to SESDevelopment@opm.gov.

**OPM Approved SES Candidate Development Programs**

**STATUTE: 5 U.S.C. 3396**

**REGULATION: 5 CFR Part 412**

The SES candidate development program (SESCDP) is one succession management tool agencies may use to identify and prepare aspiring senior executive leaders. An SESCDP provides SES candidates 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 Governmentwide 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. Agencies must have a written policy describing their program. Requirements for agency candidate development programs are in 5 CFR part 412. Revised 5 CFR 412 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, as of December 2009, agencies must obtain OPM approval before they conduct an SESCDP. An agency that received approval prior to December 10, 2009 must apply for re-approval before initiating a new SESCDP and whenever there are substantial changes to the program. Agencies must seek re-approval every five years thereafter.
OPM Approval of SES Candidate Development Programs (SESCDPs)

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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: Julie.Brill@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 you must include 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 your agency’s workforce goals. The information in this section includes—

- Description of your program;
- Statement of 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, multi-level);

- Description of the program-related roles and responsibilities of the following: Agency Head, ERB, SES Mentors, Human Resources Office, SESCDP Program Office, Developmental Assignment Supervisors, and SES Candidates;

- How the agency will—
  - Handle external agency selections for the purposes of placement and payment of program expenses;
  - 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 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 SESCDP 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);

  - 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. For example, identify if the announcement will provide for recruitment from all groups of qualified individuals within the civil service, or from all groups of qualified individuals;

- Length of time announcement will remain open. The announcement must be open on USAJOBS at least 14 calendar days including the day of publication (5 CFR 317.501(b)(2));

- 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; and

- Description of outreach recruitment plans which includes a list of diverse professional organizational groups.

OPM highly suggests agencies have their draft program announcements reviewed by OPM. Please send them to HRDLeadership@opm.gov, or the current OPM SESCDP program manager, for review. In addition, please refer to the SESCDP 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);

- Basis for evaluating the degree to which candidates possess 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 Veteran’s 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 SESCDP:
  ➢ Documentation that candidates receive a minimum of 80 hours of formal, interagency training addressing the executive core qualifications. Description includes how the agency intends to address the “wide mix” requirement for interagency training;
  ➢ Explanation of the kinds of developmental activities (e.g., projects and details) candidates will be expected to complete in general, and specifically the 4-month (120-day) executive level assignment(s) outside the candidate’s position of record. (It is required that at least one assignment be for a minimum of 90 consecutive days.) Minimum time interval for the executive level assignment(s) must be stated; and
  ➢ Explanation of the agency’s mentoring program and how the candidate will be matched with a current SES member mentor. 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);
  - 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 SESCDP plan. This includes reviewing the documentation for proposed SESCDP 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 agencywide basis, establish several programs at component levels, or pursue any combination of these options. However, a bureau or organization within a department may not independently propose a program to OPM without the approval of the department headquarters. The organizational 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 SESCDP, 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 either from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within 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 3 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;
- SESCDP 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, and foreign governments, and private and non-profit sector personnel. The 80 hours of formal training requirement does not have to be met through one 80-hour course; it can be met through a series of courses. However, the formal training should target specific ECQs identified during the initial assessment for each candidate.
**Developmental Assignments**

One of the requirements listed in 5 CFR 412.302(c)(3) is a developmental assignment totaling at least 4 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 a NSP position or would like to develop NSP competencies. See OPM’s November 13, 2008 memorandum to the Chief Human Capital Officers “Recommended National Security Professional Qualification for NSP SES” on 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.
• 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 SECDP Mentor Requirements and the SECDP 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.** Participation in a CDP must be documented for each candidate in the [dates], including the dates the candidate started and completed the program. Prior to submitting requests to OPM for a QRB certification of graduates’ executive qualifications, the agency must update all pertinent data for the CDP in the [dates] (e.g., date individual completes SECDP), and create a request for the criterion B QRB case. Refer to the Criterion B cases in chapter 2 of this guide which details requirements for submitting Criterion B cases.

**OPM RE-APPROVAL OF SES CANDIDATE DEVELOPMENT PROGRAMS (SECDPs)**

As indicated in revised 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 SECDP. This approval helps to ensure the SECDP’s continued and current alignment with the agency’s succession plan. Agency should follow OPM’s guidance for developing SECDP policies and complete a thorough analysis of their program evaluation efforts. Additionally, agencies should submit their SECDP’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;

• 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: Julie.Brill@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.

**Certification**
To distinguish between candidates who may be appointed to the SES without further competition and those who must still compete because their entry into an SESCDP was based on an exception to civil service-wide competition, the candidate’s QRB certificate will include either of the following statements:

- “This certification permits 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.”
- “This certification permits career appointment to the Senior Executive Service in any agency to any position for which this individual is determined to be otherwise qualified, after competition in accordance with 5 CFR 317.501.”

The option of providing less than civil service competition for an SESCDP was removed upon OPM’s revision of 5 CFR 412 published December 10, 2009.
APPPOINTMENT 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
- 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 SES CDP graduates can register for the CDPOpps listserv by following these steps:

4. Click on the link: [http://listserv.opm.gov/wa.exe?A0=CDPopps](http://listserv.opm.gov/wa.exe?A0=CDPopps)

5. Click “Join or Leave CDPOpps” *(Only QRB-certified CDP graduates are eligible to enroll.)*

6. Enter your Name and Email Address and click “Join CDPOpps”

For more information on the CDP-Opps listserv, please send an email [SESDevelopment@opm.gov](mailto: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 directly based on a number of search criteria. QRB-certified CDP graduates have been asked 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 at each Agency will be identified to perform searches for their Agency in the CDP Registry. Version 1 of the CDP Registry will be administered by OPMs Leadership and Executive Development Team and future versions will be administered by Agency CDP Registry Points of Contact. Hiring Managers and other interested executives will then search the database based on their specific needs and will reach out to QRB-certified CDP graduates directly with invitations to interview for SES vacancies. The vision is that SES Hiring Managers will 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 send an email to SESDevelopment@opm.gov.

**OPM EXECUTIVE DEVELOPMENT PROGRAMS**

Through its Center for Leadership Development (CLD), OPM offers career-long professional leadership development programs delivered through the Federal Executive Institute (FEI) and the two management development centers in Washington, D.C. and Denver, Colorado. In addition, CLD includes USAlearning which provides IT solutions for aligning workforce development with organizational goals in order to attain the client agency’s mission; OPM’s Innovation Lab which provides Human Centered Design services worldwide; and the Presidential Management Fellows program.

The mission of OPM's Center for Leadership Development is to develop visionary leaders to transform government. [https://cldcentral.usalearning.net/mod/page/view.php?id=234](https://cldcentral.usalearning.net/mod/page/view.php?id=234) CLD programs:

- Include government-to-government educational courses, certificate programs, tailored solutions and technology systems by USAlearning to respond to immediate and emerging challenges.

- Are delivered at OPM’s facilities in Charlottesville, VA, Denver, CO, and Washington, D.C., as well as in locations throughout the country. [https://cldcentral.usalearning.net/mod/page/view.php?id=261](https://cldcentral.usalearning.net/mod/page/view.php?id=261)

- Employ a wide range of learning methods and approaches (including e-learning) to address the Executive Core Qualifications and competencies as identified by OPM for success in the Federal work environment.

- Are open to leaders and managers in career and noncareer positions, senior policy specialists, political appointees, and participants in similar positions and at appropriate levels in local, state, and foreign governments.
The Federal Executive Institute (FEI) helps senior government leaders (SES and GS-15) improve the performance of their organizations. FEI programs exclusively for SES and SES-Equivalents are described below, followed by highlights of other CLD programs and divisions.

**SES Leading EDGE**

The FEI’s new Executive Development Portfolio, *SES Leading EDGE*, strengthens the Federal senior executive through all phases of the senior executive life-cycle, starting with entry into the SES. Government-wide programs in the portfolio:

- Advance the enterprise leadership capacity of continuing networks of senior executives to deliver government excellence through constant and accelerating change;
- Promote cross-agency collaboration and innovation;
- Produce stronger performance across government;
- Deliver increased value to taxpayers, and
- Elevate esprit de corps and ideals of Federal service.

SES Leading EDGE provides senior executive development activities agencies are required to implement as indicated in the President’s December 2015 Executive Order -- Strengthening the Senior Executive Service.

SES Leading EDGE, which came on line during FY 2016, implements the next generation of a government-wide program initiated by the President’s Management Council and the Department of Veterans Affairs (VA) in conjunction with OPM’s CLD/FEI, OMB, and participating agencies, which ran as LeadingEDGE from 2012 to 2013.

**Onboarding for New Senior Executives**

As a major component of the new SES Leading EDGE Executive Development Portfolio the CLD/FEI government-wide SES onboarding program is offered for new members of the Career Senior Executive Service (SES), SES-Equivalent, Senior Level (SL) and Scientific and Professional (ST), and is designed for senior executives in their first or second year of service. It includes the SES Orientation Briefings and the SES Onboarding Forums. Senior Executives will usually find the most value from this government-wide onboarding program when they attend the SES Orientation Briefing followed by the SES Onboarding Forums; however, the Orientation Briefing is not a prerequisite for attending the Forums.

Orientation Briefings accelerate the success of newly appointed senior executives in their first two years of Federal executive service. The program is designed to help new senior executives to “hit the ground running” in completing the transition into their new enterprise leadership roles.
These programs are purposely designed to complement agency-level onboarding programs and to add a unique, enterprise perspective to the onboarding discipline.

**Career SES Orientation Briefings**

Twice each calendar year, OPM, through its Federal Executive Institute and in conjunction with the White House Presidential Personnel Office, conducts Briefings for new members of the career Senior Executive Service (SES) and SES-Equivalents as part of OPM’s government-wide executive onboarding framework.

Participants:

- Discuss the Administration’s priorities and initiatives,
- Gain practical advice and expanded networks to navigate unique challenges new career SES members face,
- Explore strategies to ensure the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and is otherwise of the highest quality
- Appreciate the career SES role as the major link between top Presidential appointees and the rest of the Federal workforce

The program is delivered by keynote speakers and panels with small group and plenary discussions. Speakers include a range of policymakers, current and former members of the SES, and subject matter experts. Each SES Briefing provides an opportunity for new executives to interact as a community and build the corporate perspective to meet the challenges facing a Government undergoing change and to lead a results-focused organization. Each Briefing concludes with an Oath of Office swearing-in ceremony, an affirmation of our Constitutional heritage and responsibility, and presentation of SES certificates.

For details go to: [https://cldcentral.usalearning.net/mod/page/view.php?id=3897](https://cldcentral.usalearning.net/mod/page/view.php?id=3897)

**SES Onboarding Forums**

SES Onboarding Forums are immersive, interactive development experiences that feature access to public-private sector strategies, structured networking with other newly appointed SES leaders and subject matter experts, heightened awareness of interrelationships among Executive Core Qualifications (ECQs), support for the construction of effective executive development plans, and promotion of continued learning. SES participants gain real-world perspectives and strengthen effectiveness as enterprise leaders applying the OPM Executive Core Qualifications (ECQs) synergistically to foster a more efficient, effective, performance-driven Federal government. The Forums feature:

- Content developed from agency and industry executive onboarding best practices.
- Keynote speakers and session moderators experienced with achieving results.
- Interaction and lessons learned with current and former SES members, public, private and nonprofit sector senior leaders.
- Discussions in small interagency groups; expert panel discussions.
- Individual study guides and self-assessment exercises.

The SES Onboarding Forums build upon the foundation created by the SES Leadership Onboarding Seminars which began in 2011 when the President’s Management Advisory Board partnered with OPM and several other agencies to create a pilot program of training sessions to help onboard and integrate individuals into the SES. For details go to:

https://cldcentral.usalearning.net/mod/page/view.php?id=16422

Continuing Development for SES
Following onboarding, FEI offers the SES Enterprise Leadership Labs for the continuing development for senior executives to hone their government-wide enterprise leadership skills to meet challenges inherent in leading federal agencies in a complex twenty-first century environment.

SES Enterprise Leadership Labs are immersive, interactive five-hour programs that generate new perspectives and approaches; and offer a safe, systemic, evidence-informed approach to hone skills to address enterprise and strategic “hot topics.” Two SES Enterprise Leadership Labs were offered during calendar 2016: “Using Strategic Foresight to Invent the Future” and “Cyber-Breach: What Every Senior Executive Needs to Know and Do When It Happens”.

For Details go to: https://cldcentral.usalearning.net/mod/page/view.php?id=15414

For more information on the SES Leading EDGE portfolio and its programs:

Federal Executive Institute
Voice: 434-980-6278
Email: SES-Leading-Edge@opm.gov

Other CLD Leadership Development Programs
The CLD faculty team designs and delivers innovative leadership development courses and services that build individual competencies and organizational capacity for outstanding leadership and management performance.

The full catalog of courses covers the competencies and methods to excel in leadership at all levels of public organizations. Courses may be taken separately or as an integrated 'Leadership Journey' through the very popular Leadership Education and Development (LEAD) Certificate Program. The Leadership and Education Development (LEAD) Certificate program provides a leadership development roadmap for veterans and employees who need to be qualified to lead at specific levels of their organizations.
Federal Executive Institute. One of the nation's leading centers for executive development, FEI was established in 1968 to serve the learning needs of our nation's senior public servants. No matter the program, FEI uses the U.S. Constitution and the notion of public service values as underlying foundations upon which participants build their talents and perspectives required for leadership in today's complex world. Whether in FEI's four-week Leadership for a Democratic Society program, in programs designed to meet specific needs of a single agency, or in one of FEI’s open enrollment programs, FEI guides participants to explore their personal strengths and to further develop their leadership capabilities related to personal leadership, organizational transformation, the policy framework in which the public sector leadership occurs, and the broad context of international trends that shape Government agendas.

For more information about FEI programs contact:

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

Eastern Management Development Center. EMDC delivers leadership courses in Washington, D.C.; Shepherdstown, WV; and at locations throughout the country in facilities designed for a variety of learning approaches that support knowledge acquisition and action learning. EMDC’s proximity to the center of Federal operations allows expanding experiential learning opportunities as well as easy access to top government experts.

  Eastern Management Development Center  
  1900 E Street, NW  
  Washington, D.C. 20415  
  Voice: 202-606-2005  
  Email: emdc@opm.gov

Western Management Development Center. WMDC is located in the heart of the downtown Federal District in Denver just three blocks from Denver’s famous 16th Street Pedestrian mall and conveniently located near light rail and numerous restaurants. The WMDC space includes two innovative learning spaces for up to 35 participants with conversion to a large auditorium space for 80, as well as eight breakout spaces for coaching and small group activities.

  Western Management Development Center  
  Byron Rogers Federal Building  
  1961 Stout Street, Suite 16-111  
  Denver, CO 80294  
  Voice: 303-671-1010  
  Email: wmdc@opm.gov

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**Customized Leadership Development.** OPM through its Center for Leadership Development can custom design a program to satisfy a one-time need or engage in a long-term strategic partnership to address an organization’s ongoing needs or challenges. Such programs are tailored to meet agency specific requirements. Please contact any of the above CLD divisions for more information.

**Executive in Residence Program.** The Center for Leadership Development offers a limited number of Executive in Residence (EIR) developmental assignments at the Federal Executive Institute to members of the SES and senior managers. Individuals selected as EIRs are detailed to a center to serve as a member of the faculty for periods of up to 2 years. Information on the EIR program can be found at [https://cldecentral.usalearning.net/mod/page/view.php?id=252](https://cldecentral.usalearning.net/mod/page/view.php?id=252).
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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.

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

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

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

Prohibited Actions

Agencies should refer to 5 U.S.C. 2301 (merit system principles) and 5 U.S.C. 2302 (prohibited personnel practices) for information on practices that cannot be used as a basis for taking actions covered in this chapter.
Under 5 U.S.C. 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 takes a position outside the SES under other circumstances, the voluntary nature of the action should be agreed to in writing before the action is effected, and the agreement should be retained as a permanent record in the Official Personnel Folder.

120-Day Moratorium on Certain Removals

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

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

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

Definitions and interpretations. See Career Reassignments in Chapter 3.

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

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

Appeals

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

STATUTE:  5 U.S.C. 3592
REGULATIONS:  5 CFR Part 359, Subpart D

An individual who receives an SES career appointment must serve a 1 year probationary period. Under 5 CFR 317.503, the probationary period as established by 5 U.S.C. 3393(d) is defined as a full calendar year. [See Chapter 2 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. Under a decision by an 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 (Walton D. Morris, Jr. v. Department of Interior, et al, Civil Action 88-2063, August 9, 1993), 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. 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 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. The removal of a reemployed annuitant who is serving a probationary period is effected under 5 CFR part 359, Subpart I. Actions taken under that subpart are discussed later in this chapter.

Removal of Probationers for Unacceptable Performance

Agencies use the probationary period to observe and evaluate the appointee’s performance of assigned duties and responsibilities. If an agency finds that the probationer’s managerial or professional/technical performance is unacceptable, the agency should consider whether remedial action (such as specialized training or assignment to other SES duties) or removal action is appropriate. Removal for unacceptable performance during the probationary period is effected under 5 CFR part 359, Subpart D.
The removal of a probationer for unacceptable performance need not be predicated on a formal Unsatisfactory rating under the performance appraisal system established under 5 U.S.C. 4312-14 and 5 CFR part 430, Subpart C. However, if the agency has given a probationer a formal Unsatisfactory (or Minimally Satisfactory) rating of record, it can use that rating as the basis for the removal action.

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

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

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

**Guaranteed Placement.** Guaranteed placement at GS-15 or above (e.g., Senior-level) upon removal from the SES is limited to those probationers who, at the time of appointment to the SES held a career or career-conditional appointment, or an appointment of equivalent tenure as defined in 5 CFR 359.701(a). Probationers who are not entitled to guaranteed placement are separated from the Federal service.

**120-Day Moratorium.** The removal of a probationer for performance reasons is subject to the 120-day moratorium described at the beginning of this section. 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 part 359, Subpart D, but would be taken under 5 CFR part 359, Subpart E.

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

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

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

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

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

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

- the disciplinary action was initiated before the appointment of the agency head or SES noncareer supervisor (i.e., before the appointment which initiated the moratorium); or

- there is reasonable cause to believe that the probationer committed a crime punishable by a prison sentence, or that retention of the probationer may pose a threat to the appointee or others; may result in loss of or damage to Government property; or may otherwise jeopardize legitimate Government interests. When this exception is invoked, the following additional procedural requirements must be met:
  1) the agency’s notice shall include the reasons for invoking the exception. The probationer shall be given a reasonable time (not less than seven days) to respond regarding the propriety of the exception.

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The agency shall give the probationer a notice of decision on the propriety of using the exception at or before the time the action will be effective; and

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

Imposing a moratorium does not extend the probationary period. Thus, it is possible for a probationer against whom an agency is contemplating disciplinary action to complete the probationary period during a moratorium.

In such case, a subsequent disciplinary removal action could not be processed under 5 CFR part 359, Subpart D, but would have to be taken under 5 CFR part 752, Subpart F (Adverse Actions).

**Guaranteed Placement.** A probationer removed for disciplinary reasons is not entitled to placement in a position outside the SES.

**Appeal.** The removal of a probationer for disciplinary reasons under 5 CFR part 359, Subpart D, is not appealable to the Merit Systems Protection Board.

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**Removal of Probationers for Conditions Arising Before Appointment**

An agency may separate a probationer for conditions arising before appointment to the SES when those conditions have a bearing on the probationer’s fitness or qualifications for continued employment in the SES. Cases of this type should occur infrequently. Generally, they would involve an appointee from outside the Federal service, and the derogatory information would become known as a result of a post-appointment background review. In such cases, a removal for pre-appointment conditions would be effected under 5 CFR part 359, Subpart D.

However, in the event that the probationer had coverage under 5 U.S.C. 7511 immediately before entering the SES, the removal would be affected under 5 CFR Part 752, Subpart F. If the circumstance does not satisfy the standard of action at 5 CFR 752.603, the agency may want to consider whether action should be taken under part 731 (Suitability) for such cause as would promote the efficiency of the service.

**Procedures.** The procedural requirements governing the removal of a probationer for pre-appointment conditions differ significantly from those governing removal for performance or misconduct. When the removal is based, in whole or in part, on conditions arising before appointment to the SES, the probationer is afforded an opportunity to answer or refute the derogatory information bearing on fitness or qualifications for continued employment. The probationer is entitled to the following:

- an advance written notice showing the reasons for the removal;
- a reasonable time to respond;
- the right to reply orally or in writing, to furnish documentary evidence in support of the answer, and to be represented by an attorney or other representative; and
- a written decision which shows the reasons for the action and the effective date and which is delivered at or before the time the action will be made effective.
As discussed below, these procedures are modified when a moratorium exists and the agency invokes a specific exception.

**120-day moratorium.** The removal of a probationer for pre-appointment conditions is subject to the 120-day moratorium described at the beginning of this chapter. The moratorium may be waived under the same conditions previously described in this section.

**Guaranteed placement.** A probationer removed for pre-appointment conditions is not entitled to placement in a position outside the SES.

**Appeal.** The removal of a probationer for pre-appointment conditions under 5 CFR part 359, Subpart D, is not appealable to the Merit Systems Protection Board.

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**Removal of a Probationer Under a Reduction in Force (RIF)**

The provisions on competition for job retention in a RIF apply to all SES career appointees, probationers and post-probationers alike. All requirements for conducting a competition for job retention in a RIF situation are covered in Chapter 9.

**Placement rights.** A probationer who is affected by a RIF has no statutory or regulatory placement rights within the SES. However, an agency may on its own place the probationer in a vacant SES position for which qualified, if there is no post-probationer affected by the RIF who is entitled to the position.

If the probationer is not placed in another SES position, removal from the SES is effected under 5 CFR part 359, Subpart D, except that removal of a reemployed annuitant is effected under 5 CFR part 359, Subpart I.

**Notice.** The agency must give the probationer a written notice before the effective date of the removal showing—

- the action to be taken and its effective date;
- the reason for the action;
- the nature of the competition for job retention including the probationer’s competitive area (if the competitive area is not agencywide) and competitive standing;
- a statement on whether the probationer has placement rights to another position outside the SES and, if so, the position to which he 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 on the competitive procedures used for determining job retention, the time limit for making an appeal, and the MSPB office to which the appeal should be sent.
**120-day moratorium.** The removal of a probationer from the SES by RIF is not subject to the moratorium.

**Guaranteed placement.** The probationer’s placement rights outside the SES, if any, are governed by 5 CFR part 359, Subpart G. Guaranteed placement upon removal from the SES by RIF is limited to those probationers who, at the time of appointment to the SES, held a career or career-conditional appointment, or an appointment of equivalent tenure as defined in 5 CFR 359.701(a). [See Chapter 10 on placement provisions.] Probationers who are not entitled to a guaranteed placement are separated from the Federal service.

### REMOVAL 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, Subpart E. The term “post-probationer” refers to an SES career appointee who completed the SES probationary period or was not required to serve a probationary period.

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

For those situations that involve both performance and conduct factors, see *Removal and Suspension for Disciplinary Reasons*, for guidance on whether to effect a removal under performance or adverse action procedures.

**Performance Appraisal**

Each agency is required to have an SES performance appraisal system. One of the purposes of an appraisal system is to provide a basis for determining that an individual’s performance either merits retention in the SES or warrants some remedial action, including the individual’s removal from the SES. [See Chapter 5 for performance appraisal systems.]

The removal of a career appointee from the SES under 5 CFR part 359, Subpart E, must be based on the appointee’s final SES rating (or ratings) of record assigned by the appointing authority following recommendation of a Performance Review Board.

An agency may terminate a performance appraisal period before its completion when it finds there is adequate basis on which to appraise and rate the executive [5 U.S.C. 4314(b)(1)(D)].

This means that an agency need not retain an Unsatisfactory performer in a position until the end of the SES rating cycle, although the executive must be given a reasonable opportunity to demonstrate competence in a position before being appraised. At the least, the minimum appraisal period must be met and the agency must complete the full rating process, including action by a Performance Review Board, and final rating by the appointing authority.
If an executive receives an Unsatisfactory rating and is retained in the SES in another position, or if the executive receives a Minimally Satisfactory rating, the agency is required under 5 CFR 430.307 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 5 consecutive years;
- two ratings of “Minimally Satisfactory” within 3 consecutive years; or
- one rating of “Unsatisfactory” and one rating of “Minimally Satisfactory” within 3 consecutive years.

The final ratings of record used to support the removal action may have been assigned under two different SES performance appraisal systems, or by two different agencies. Further, both ratings may be based on a shortened appraisal period when issued in accordance with the Performance Appraisal section above.

**Procedures**

The agency must give the career appointee a written notice at least 30 calendar days before the effective date of removal from the SES. The notice must include the following information:

- the reason for the removal, i.e., the 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 5 years; and

- a mandatory removal based on two less than Fully Successful ratings in 3 years when the second rating is an Unsatisfactory rating.

For additional information on the moratorium, see *Career Reassignments* in Chapter 3.

**Placement**

A post-probationer removed for performance reasons is entitled to placement in a position outside the SES (See Chapter 10 for placement provisions). Note also that an SES appointee removed for performance reasons is not eligible for reinstatement in the SES (See guidance on reinstatement in Chapter 3).

**Informal MSPB Hearing**

A removal for performance is not appealable to MSPB under 5 U.S.C. 7701. However, under 5 U.S.C. 3592(a), a career appointee may request (and MSPB shall grant) an informal hearing before an official designated by MSPB.

Under MSPB regulations [5 CFR 1201.143-1201.145], the appointee and/or a representative may appear and present arguments. A transcript is made of the hearing.

The MSPB indicates that it lacks authority to change a performance rating or to order a specific remedy such as reinstatement to the SES, as a result of the hearing. However, it can comment on the executive’s arguments and recommend appropriate action if a serious defect in the personnel action is manifest (e.g., misapplication of relevant statutory provisions, departure from important procedural rights, or an error going to the heart of the agency’s removal determination). [Alfredo Mathew, Jr. v. Equal Employment Opportunity Commission, HQ 12018110009, October 19, 1981, and Pauline G. Johnson v. Agency for International Development, HQ359283 10004, August 11, 1983]. In March 21, 1995, (case James R. Alliston, CB-3592-95-0016-U-1), the Administrative Law Judge (ALJ) stated in the summary of proceedings: “There are no provisions for the submission of testimony or other evidence by the appointee.
There are no provisions for the presentation of evidence or arguments by the employing agency” and stated, “There are no provisions [the statute or regulations] for the issuance of a decision or for the granting of relief.”

The MSPB normally refers a copy of the record and any recommendations to the Special Counsel, as well as to OPM and the employing agency, for whatever action may be appropriate.

Conducting an informal hearing does not delay the effective date of removal.

REMOVAL AND SUSPENSION FOR DISCIPLINARY REASONS (ADVERSE ACTIONS)

STATUTE: 5 U.S.C. 7541-7543
REGULATIONS: 5 CFR Part 752, 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 1 year of current continuous service in an executive agency, and certain other employees in the excepted service who are not preference eligibles.

Limited emergency and limited term appointees who were covered by 5 U.S.C. 7511 immediately before entering the SES and who received their limited appointment in the same agency.

A career appointee who is a reemployed annuitant serves at the pleasure of the appointing authority. Removal of a reemployed annuitant is effected under 5 CFR part 359, Subpart I. Actions taken under this subpart are discussed later in this chapter.

Standard for Action
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.”

Suspension. “Suspension” means more than 14 days. The law is silent on short-term suspensions, i.e., a suspension of 14 days or less. Since there is no statutory authority for such action, agencies may not take a suspension of 14 days or less against an SES member. However, this does not restrict the agency from issuing a reprimand or admonishment for offenses which do not warrant a suspension.

Disciplinary reasons. A disciplinary reason is defined as misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function. [Note, however, that 5 U.S.C. 8336(d) provides that separation for failure to accept a directed reassignment or a transfer of function outside of the commuting area shall not be considered a removal for cause on charges of misconduct or delinquency for purposes of determining eligibility for discontinued service retirement.]

Procedures
Procedural requirements for taking an adverse action against an appointee are in 5 CFR part 752, Subpart F.

Notice. The agency must give the appointee a 30 day 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. 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. In such cases:

- the advance notice must explain the reasons for curtailing the notice period;
- the agency may require the appointee to provide an answer to the proposed action, including any supporting affidavits or other documentary evidence within such time as the agency considers reasonable under the circumstances, but not less than 7 days; and
• if the appointee challenges both the curtailment of the notice period and the proposed adverse action and the agency’s final decision is to proceed with the action in less than 30 days, the agency may want to include in the final decision notice a statement on its conclusion about the propriety of curtailing the notice period.

Other considerations. If the agency does not have reasonable cause to believe that the appointee committed a crime for which an imprisonment may be imposed, the appointee has a right to the 30-day notice period. Even so, there may be circumstances where keeping the appointee in his/her present position may pose a threat to the appointee or others, result in loss or damage to Government property, or otherwise jeopardize legitimate Government interests. In such cases, an agency may act to reduce or remove the threat during the notice period. Such actions could include:

• assigning the appointee to duties where he 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.

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.

[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. For the reasons discussed in the paragraph above, an agency may not impose a suspension of 14 days or less. The agency’s decision to mitigate the penalty should be included in the notice of decision given the appointee.

120-Day Moratorium
The removal of a career appointee SES from Federal service or suspension from the SES under 5 CFR part 752, Subpart F, is not subject to the 120-day moratorium.

Placement
An appointee removed from the SES under 5 CFR part 752, Subpart F, is not entitled to placement in a position outside the SES.

Further, there is no authority for an agency to move the appointee directly from the SES to a non-SES position. However, following the action removing the appointee from the Federal service, an agency may subsequently as a separate action appoint the individual to a position outside the SES for which eligible.

[Note: The career transition regulations [5 CFR 330, Subparts F and G] apply to placement actions in the competitive service and in the excepted service in certain cases. Agencies should also make sure that the employee meets all the requirements pertinent to the new appointment, including suitability standards.]
**Appeals**

Removal or suspension from the SES under 5 CFR part 752, Subpart F, is appealable to the MSPB under 5 U.S.C. 7701.

Under 5 U.S.C. 7701(b)(3), the Board has the authority to mitigate an adverse action penalty of a career SES appointee (e.g., change a removal to a suspension or change a 30-day suspension to 15 days). The Board’s policy on mitigation is addressed through case law [e.g., *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981)]. Generally, the Board will review a penalty only to determine if the agency conscientiously considered all of 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.

Limited appointees who were covered by 5 U.S.C. 7511 immediately before SES appointments are covered by 5 CFR part 752 in disciplinary cases. Removal and suspension of these limited appointees is discussed in the previous section on disciplinary removals.

**Removal**

**Notice.** An individual covered by this section can be removed at any time. Removal is effected under 5 CFR part 359, Subpart I. The agency must give the appointee a written notice at least 1 day prior to the effective date of the removal and the notice must show the effective date of the removal. The notice should be given on a workday for the employee and not be effective on a non-workday (i.e., Saturday, Sunday, or holiday), unless there is at least 1 intervening workday following the day on which the notice was given. The agency may include a statement of the reason for the action, but it is optional.

**Expiration of appointment.** A limited appointment must be terminated when the appointment expires, or when the employee completes the maximum period of service permitted under law. The termination is processed as prescribed in the material on noncareer and limited appointments in Chapter 3 and not as a removal.
Placement. The appointee is not entitled to placement in a position outside the SES, except as provided in the material on special conditions regarding limited appointments in Chapter 3.

Suspension
The law does not specify procedural requirements regarding the suspension for disciplinary reasons of appointees covered by this section. Thus, an agency may suspend these appointees under whatever procedures it establishes.

120-Day Moratorium
A removal or suspension covered by this section is not subject to the 120-day moratorium.

Appeals
A removal or suspension covered by this section is not appealable to the Merit Systems Protection Board.
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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 the majority of points are assigned for performance (e.g., 75 points for performance and 25 points for other factors).

**Performance Rating.** In ranking SES members on a retention register, an agency must use the final annual summary rating given under an SES performance appraisal system, and not any interim rating [5 CFR 359.602(a)(2)]. The agency may consider performance for more than 1 year.

The following are two examples of how an agency could group SES members on a retention register. As indicated below, individuals can be further ranked within each group. The use of unnecessarily large groups from which any employee can be chosen for release may subject the agency’s actions to challenge as being arbitrary or capricious.

**Plan I**

Post-probationer with Outstanding rating
Probationer with Outstanding rating
Post-probationer with Exceeds Fully Successful rating
Probationer with Exceeds Fully Successful rating
Post-probationer with Fully Successful rating
Probationer with Fully Successful rating
Post-probationer with Minimally Satisfactory rating
Probationer with Minimally Satisfactory rating
Post-probationer with Unsatisfactory rating
Probationer with Unsatisfactory rating

**Plan II**

Post-probationer with Outstanding rating
Post-probationer with Exceeds Fully Successful rating
Post-probationer with Fully Successful rating
Probationer with Outstanding rating
Probationer with Exceeds Fully Successful rating
Probationer with Fully Successful rating
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 has to do to apply;
• the prospective effective date of removal if the individual cannot be placed elsewhere in the SES during the 45-day OPM placement period. If the specific date is not known, the agency may use a “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 1 day before removal the agency must inform the post-probationer in writing of:

• the basis for the removal, i.e., 5 U.S.C. 3595(b)(5) if the basis is expiration of the 45-day OPM placement period, or 5 U.S.C. 3595(b)(4) if the basis is declination of a reasonable placement offer. In the latter case, identify the position offered and the date the employee declined;

• the effective date of the removal;

• reminder of the employee’s appeal rights;

• placement rights outside the SES, i.e., the GS-15 or above position in which the executive will be placed;

• when applicable, the appointee’s eligibility for discontinued service retirement; and

• if the employee is being separated from the Federal service (e.g., due to the abolishment of the agency), information concerning how to apply for unemployment insurance. [See Chapter 11 for other provisions affecting the SES.]

**120-Day Moratorium**

The 120-day moratorium does not apply to a removal as a result of RIF.

The MSPB maintains that the 120-day moratorium addressed in 5 U.S.C. 3592(b)(1) on removals of career appointees following the appointment of a new agency head or noncareer supervisor, “is not applicable to a removal pursuant to a RIF” [Gordon C. Facer v. Department of Energy (DC035 18310280, 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 to take actions solely for bona fide management needs, such as lack of work or shortage of funds, and not for personal reasons related to the individual.]

However, agencies also need to consider the 120-day moratorium regarding involuntary reassignments in 5 U.S.C. 3395(e). When applicable, an agency must observe this restriction except when doing so would result in the violation of another law taking precedence. For example, an agency may involuntarily reassign a career appointee during the moratorium period if funding for an activity stopped, all the positions in the activity are being abolished in a RIF, or failure to make the reassignment would violate the Anti-Deficiency Act.
Also, an agency may offer a reassignment and, if the offer is acceptable to the appointee, make the reassignment without regard to the moratorium. [See Chapter 3 for information on the moratorium on reassignments.] Agencies should take care to ensure that RIF actions, even when legally permitted, are not used to circumvent the moratorium provisions on removals and involuntary reassignments. To the extent possible and practicable, agencies may want to avoid RIF actions while the moratorium periods are in effect, to avoid even the appearance of circumvention.

**Appeals**

5 U.S.C. 3595(c) provides a right of appeal to MSPB, under 5 U.S.C. 7701, for career appointees (both probationers and post-probationers) on the competitive procedures taken under a RIF.

**Noncareer and Limited Term Appointees and Reemployed Annuitants**

This section covers actions affecting SES noncareer, limited term, and limited emergency appointees, as well as reemployed annuitants holding career appointments.

Under a RIF situation, an agency is not required to use competitive procedures in making reductions from among these groups of employees, but may do so at its discretion. Noncareer and limited appointees must be placed on separate retention registers from career appointees and the agency plan should include information regarding the treatment of these employees.

The removal of an employee covered by this section is effected under 5 CFR part 359, Subpart I [See Chapter 8 on Removals.] The employee is not entitled to receive placement assistance from OPM, to be placed in a position outside the SES (except a limited appointee with “fallback” rights as described in Chapter 3), or to appeal to the MSPB.

**Records**

The agency must retain all records pertaining to a RIF for at least 2 years from the effective date of the RIF. These records include retention registers and information on efforts made to place the appointee within the SES. 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 Agency Officers call their SES contacts in agencies where there are vacancies, to give advance notice about potential referrals. Informal contacts are followed by formal letters referring surplus executives for particular vacancies and these referral letters specify action the agency must take and set a time limit for response. Executives may be referred to more than one agency at a time. OPM gives the executive a copy of each referral notice.

**Temporary space.** OPM may provide an additional SES space when appropriate, at the agency’s request, to facilitate a priority placement.

**Intervention in the staffing process.** OPM has the authority to intervene in the staffing process to make a priority referral at any time before the QRB approves a candidate’s executive qualifications. Such intervention could defer QRB consideration of one or more agency cases until the priority referral has been resolved. However, unless OPM determines that an agency is not giving serious consideration to referrals, it will not intervene in a staffing action after a selection has been approved by the appointing authority.

**Action at the end of the placement period.** At the end of the 45-day priority placement period, OPM will advise the agency that the placement period expired and summarize the results of the placement activity. The agency may then proceed with actions to separate from the SES the executives who were not placed during the 45 calendar days.
Agency Action on OPM Referrals

Suspension of Appointment Action. When OPM refers a priority candidate for a vacant SES position, the agency may not fill that position with anyone from outside the SES or another agency, until OPM informs the agency that the priority candidate was offered an SES position in another agency, or the agency informs OPM why it is not placing the priority candidate.

Consideration of the Referred Executive. The agency must place the referred executive in the position to which referred unless it determines that the individual does not meet the position’s qualifications requirements (see Agency Objections below). The agency must ensure that the selecting official gives a priority referral bona fide consideration for the position. Agencies are strongly encouraged to interview priority referrals.

Alternate position. If there is another SES position in the agency for which the referred executive is qualified and which falls within his/her area of geographic availability, the agency may offer the executive that position instead of the one to which referred.

Pay rate. The agency must match a priority candidate’s current rate of basic pay unless the individual voluntarily agrees to accept a lower rate.

Timeframe. The agency has 10 calendar days to respond in writing to the referral, unless OPM grants an extension. When an extension has been granted, the agency should keep OPM informed of consideration action. If an agency fails to respond to the referral in a timely manner, OPM may intervene in the staffing process or take other appropriate action.

Agency Objections.

Qualifications. A referred executive is entitled to be placed in the agency unless the head of that agency determines that the appointee is not qualified for the position to which referred. Since all SES members whose performance is not in question meet the basic SES executive qualifications by virtue of QRB certification, any objection to placement of a priority candidate must be based on failure to meet the professional/technical qualifications for the position. Required professional/technical qualifications must be clearly justified by the duties of the position. It is inappropriate for an agency to object to an SES member on the basis that he 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 1 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 6(d)) 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, 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(a)(3) specifies that “agency” means an executive department or an independent establishment for purposes of 5 CFR 359 subpart G, 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 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 nondisciplinary reasons.

Former career SES appointees who accepted appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392(c) are subject to furlough at the agency’s discretion.

Short Furloughs
A short furlough is one that will last for 30 consecutive calendar days or less (or for 22 workdays or less if the furlough does not cover consecutive days) within a 12-month period beginning on the first day of the furlough.

An agency need not use competitive procedures in selecting the SES appointees to be furloughed for short periods. However, it should make its selections for sound management reasons.
**Long Furloughs**

A long furlough is one that will last for more than 30 consecutive calendar days (or for more than 22 workdays if the furlough does not cover consecutive days) within a 12-month period beginning on the first day of the furlough. The furlough may not exceed 1 year.

An agency may furlough an SES appointee for more than 30 days only when it intends to recall the appointee to a duty status with pay within 1 year from the beginning of the furlough. A furlough should not be used when an agency knows it will have to separate an SES appointee through a RIF action when the furlough ends.

An agency must use competitive procedures in selecting SES career appointees for long furloughs of more than 30 days. Agencies may use the same procedures they established for competition for job retention under a RIF situation.


**Requirements For Career Appointees**

**Notice Requirements.** An agency must give the career appointee a written notice at least 30 calendar days before the effective date of the start of the furlough. The notice must include the following information:

- the reasons for the agency decision to take the furlough action;
- the expected duration and the effective dates of the furlough;
- the basis for selecting the appointee for furlough when some, but not all, SES appointees in a given organizational unit are being furloughed;
- the place where the appointee may inspect the regulations and records pertinent to the action;
- The 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 is not appealable to the MSPB.
CHAPTER 10: GUARANTEED PLACEMENT

GENERAL INFORMATION
CONDITIONS OF OFFER
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AGENCY RESPONSIBILITY FOR PLACEMENT
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CHAPTER 10: GUARANTEED PLACEMENT

STATUTE: 5 U.S.C. 3594
REGULATIONS: 5 CFR Part 359, Subpart G

GENERAL INFORMATION

Guaranteed placement (“fallback”) to a position outside the SES applies to a career appointee (other than a reemployed annuitant) who is removed from the SES under the following circumstances:

- during the SES probationary period for other than disciplinary reasons, if at the time of appointment to the SES the individual held a career or career-conditional appointment, or an appointment of equivalent tenure as defined in 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.]; and
- after the SES probationary period as the result of a reduction in force. [See Chapter 9, Reduction in Force, RIF Placement, and Furlough, for information on RIF removal of post-probationers.]

CONDITIONS OF OFFER

The placement offer must meet the following conditions:

- the offer must be to a continuing position; (To be considered “continuing” a position must last at least 3 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; and
- the tenure of the appointment must be equivalent to the tenure of the appointment held by the individual at the time of entry into the SES, if it was a career or career-conditional appointment (or an appointment of equivalent tenure). This provision does not apply if the agency does not have a position with an appointment of equivalent tenure or if the appointee is willing to accept a position having a different tenure.
- if a post-probationer does not have reinstatement eligibility in the competitive service and if there is no regular excepted appointment authority the agency can use, the agency may use the Schedule B authority under 5 CFR 213.3202(m).

The placement may not cause the separation or reduction in grade of any other employee. If there is no current vacant position for which the individual is qualified, the agency must create one.

HR use only
EQUIVALENT TENURE

Appointment to a position in the excepted service that is of “equivalent tenure” [defined at 5 CFR 359.701(a)] to that of a career or career-conditional appointment in the competitive service means an appointment other than—

- an appointment to a Schedule C position established under 5 CFR part 213;
- an appointment to a position that meets the same criteria as a Schedule C position (i.e., is policy determining or involves a close and confidential working relationship with the head of an agency or other key appointed official), but which is filled under a different appointment authority; or
- an appointment to a position where the incumbent traditionally changes when Presidential administrations change.

AGENCY RESPONSIBILITY FOR PLACEMENT

It is the agency’s responsibility to place the employee in an appropriate position within the agency. In the rare event that internal placement is not possible, the agency is responsible 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.

RIF situations. A RIF will often affect both SES and non-SES positions and personnel. It may be difficult to find a position outside the SES in which to place an SES member. Even so, the agency is obligated by law to place the individual in a continuing position at GS-15 or above unless the action would violate the Anti-Deficiency Act or other applicable statute.

If it appears that the position in which the individual is placed outside the SES will be abolished sometime after the 3 month period, the agency should continue its effort to find an appropriate position for the individual, either internally or in another agency.

Any future RIF action affecting an individual after placement outside the SES would be taken under 5 CFR part 351. Although the agency could issue a part 351 RIF notice during the 3 month period, the action may not be made effective until the period is over.

Abolished agencies. If an agency is being abolished (without a transfer of functions) and an employee is being removed from the SES within 3 months of the effective date of the abolishment, the employee is not entitled to placement in a position outside the SES in the agency since there is no continuing position.
Note: If an individual has placement rights outside the SES following removal, the agency is subject only to the notice requirements governing the removal and not to the notice requirements governing SES reassignments. For example, if the non-SES position is in a different geographic area, the agency does not have to provide a 60-day advance notice to the individual, but the agency would be subject to any advance notice requirements applicable outside the SES to geographic moves. If the individual fails to report to the new position, the individual may be removed from the civil service under adverse action procedures that are applicable for employees outside the SES, i.e., 5 CFR part 752, Subpart D.

Effect of Career Transition Requirements. SES members exercise placement rights without regard to priority selection requirements for certain RIFed employees provided under the career transition regulations 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.

In determining which of the above three alternatives is highest for purposes of establishing the saved pay rate, the “basic rate of pay” for the first two alternatives includes any applicable locality payment under 5 U.S.C 5304, special rate supplement under 5 U.S.C. 5305, or similar payment under other legal authority (see 5 CFR 359.705(b)). However, for an employee placed in a General Schedule position, once the saved pay rate has been established, it is not to be supplemented by a locality payment, a special rate supplement, or a similar payment under other legal authority (see 5 CFR 359.705(c)(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 of 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 amount of each increase in the maximum rate of basic pay for the grade in which placed (including any applicable locality payment, a special rate supplement, or a similar payment under other legal authority), until the pay rate is equal to the rate in effect for the position in which placed [5 U.S.C. 3594(c)(2)].
If, as a result of an increase in the scheduled rate(s) of the grade of the employee’s position, the employee’s saved pay becomes equal to or lower than the maximum rate of that grade, saved pay ceases and the employee receives the maximum rate. For example, if the saved pay falls to between GS-15/8 and GS-15/9, the employee is entitled to the GS-15/10 rate.

**Effect of limited appointment.** If an employee on saved pay at GS-15 receives a limited SES appointment and then returns to the GS-15 position after the limited appointment terminates, without a break in service, the employee shall resume the saved pay based on what the pay would have been had the employee remained at GS-15.

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

**Termination of saved pay.** Termination of saved pay is covered by 5 CFR 359.705(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: OTHER PROVISIONS AFFECTING SES MEMBERS

STATUTE: 5 U.S.C. Chapter 61 and Chapter 34
REGULATIONS: 5 CFR Part 340, Chapters 13 and 24; and Part 610

GENERAL INFORMATION

The Civil Service Reform Act (CSRA) did not remove Senior Executive Service (SES) members from the normal provisions of law governing leave and hours of work. Therefore, as a general rule, it is necessary to establish a 40-hour basic administrative workweek under 5 U.S.C. 6101(a), for SES members on a full-time work schedule in the same way agencies must for other employees who are subject to the leave system. There are certain flexibilities, however, available to agencies. For example, agencies may adopt flexible or compressed work schedules under an alternative work schedule (AWS) program for SES members under 5 U.S.C. Chapter 61, Subchapter II. (For additional information, see 5 CFR part 610, subpart D, and OPM’s Handbook on Alternative Work Schedules at http://www.opm.gov/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, effective December 1, 1993. SES members can use credit hours accumulated prior to their SES appointment. However, they may not receive compensation in lieu of any unused credit hours.

Part-time and intermittent employment. SES members may be employed on a part-time basis (regularly scheduled tour of duty) or an intermittent basis (no prearranged scheduled tour of duty), when appropriate. The employee must be able to perform at the SES level under the work schedule established.
Under 5 U.S.C. 3405(b), employees in positions paid at a rate equal to or greater than the minimum rate for SL positions are exempt from the part-time career program requirements (5 U.S.C. 5376) e.g., the 16 to 32 hours per week tour-of-duty requirements. Therefore it is possible for a part-time SES employee to be placed on a tour of duty that exceeds 32 hours per week.

Intermittent employment in the SES is rare, due to the nature of the duties SES members must perform, but might be used, for example, in a rare instance when someone may be returning from sick leave.

**LEAVE**

**STATUTE: 5 U.S.C. Chapter 63**

**REGULATIONS: 5 CFR Part 630**

**General.** SES members are subject to the same annual and sick leave system and policies as other non-SES employees, except for the annual leave rate of accrual and a higher maximum annual leave carryover ceiling.

**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](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 an SES member had remained in Federal service and would have received a pay adjustment, the lump-sum payment is adjusted to reflect the increased rate beginning on the effective date of the pay adjustment (5 U.S.C. 5551). See https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/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 2016 to be effective on January 8, 2017. The SES member retires effective December 31, 2016, with 500 hours of unused accumulated and accrued annual leave. The member’s lump-sum payment for 40 hours of annual leave (January 1 and January 2-6) is calculated using the employee’s pay prior to the pay adjustment and 460 hours of annual leave is calculated to include the 3 percent pay adjustment. (Note that the January 2 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 4 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 1 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/fact-sheets/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 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 USC 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 720 hours, and the employee loses 90 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 such 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 but 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 and when the employee is subsequently reemployed in a position covered by the Federal leave system. If the individual separates from Federal service while under a Presidential appointment, he 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.

For additional information about these services, see www.dol.gov/dol/topic/training/dislocatedworkers.htm.

RETIREMENT

STATUTE:  5 U.S.C. Chapters 83 and Chapter 84
REGULATIONS:  5 CFR Parts 841 – 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 1 year.

For individuals appointed to the SES after December 31, 1986 with prior Government service, refer to the CSRS and FERS Handbook for Personnel and Payroll Offices to determine the retirement coverage. Some provisions to note regarding noncareer and limited SES appointees:

- noncareer appointees; (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 1 year or less. This exclusion does not apply, however, if the individual moves from a position covered by FERS or CSRS into the excluded type of appointment with no break in service or a break of 3 days or less.)

Certain noncareer appointees who were covered by CSRS on December 31, 1983 and were mandatory covered by Social Security on January 1, 1984, had a special retirement election opportunities during the July-December 1987 FERS open season. At that time, they could elect to retain the coverage previously elected (full CSRS with Social Security, reduced CSRS and Social Security, or Social Security only) or to have CSRS Offset or FERS coverage.
These elections generally remain in effect upon subsequent appointments. 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 5 years of service or more.

If the individual is covered by FERS, eligibility is at least 5 years of service and age 62, at least 10 years of service and the Minimum Retirement Age (reduced benefits), at least 20 years of service and age 60, or at least 30 years of service and the Minimum Retirement Age. The Minimum Retirement Age is the first year in which an individual can receive benefits and varies according to the year born. 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 5 years of civilian service is required. There are special provisions for law enforcement officers and certain other personnel.

**Discontinued service retirement.** To be eligible for discontinued service retirement (DSR), an individual must have completed 25 years of service or have completed 20 years of service and be 50 years of age. Further, the individual must be involuntarily separated other than for cause on charges of misconduct or delinquency. General information on DSR is in the CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 44.
[Note: 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 is qualifying for discontinued service retirement.

- separates from the SES as the result of a reduction in force following notification that there is no vacant SES position in the agency for which qualified. (Eligibility exists even if the individual declines OPM placement assistance, declines an SES position offer in another agency, separates during the OPM placement period, or declines placement in a position outside the SES.);

- separates from the SES following position abolishment, even though no reduction in force was conducted, if the employee did not have an offer of another SES position in the agency at the time of separation;

- separates from the SES following notice of directed reassignment to another commuting area or transfer of function to another commuting area, and the notice indicates the employee would be subject to removal under adverse action procedures for declining the proposed move; or removed under adverse action procedures (or during the probationary period) for declining to accept the proposed move. (The individual is eligible for DSR even if the separation occurs before the effective date of the reassignment. The employee is not eligible for DSR, however, if at the time of appointment the employee’s position description, or other written agreement or understanding, provided for geographic mobility. SES employment in itself does not automatically establish a mobility agreement.);

- separates from the SES, when reporting directly to a Presidential appointee, in response to a specific written request from a recognized representative of a new Administration having authority to request such resignation or from a new department or agency head

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

- separates from the SES, if a noncareer appointee, when reporting directly to a Presidential appointee who is leaving; (Otherwise a noncareer appointee who resigns without being asked is not eligible for DSR.); 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.

HR use only
Disability retirement. The eligibility requirements for disability retirement are the same for SES as for non-SES personnel and the same under FERS as under CSRS. The individual must have at least 18 months of civilian service for FERS and 5 years for CSRS.

TRAVEL AND TRANSPORTATION

STATUTE: 5 U.S.C. 5723 and 5724
REGULATIONS: 5 CFR Part 572

Pre-employment interviews. An agency may pay candidates’ travel expenses incurred for pre-employment interviews requested by the agency. This authority may be used regardless of whether the candidate is presently in another SES position, is currently employed by a Federal agency in a non-SES position, is applying for reinstatement to the SES from outside the Government, or never worked for the Government. The authority covers candidates for career, noncareer, or limited SES appointment (5 U.S.C. 5752).

Travel to first duty station. An agency may pay travel expenses of a new appointee (career, noncareer, or limited) to the SES from outside the Government. (A new appointee includes not only individuals first appointed to Government service, but also individuals appointed after a break in Government service.) An agency may also pay transportation expenses of the appointee’s immediate family and household goods and personal effects, to the extent authorized by 5 U.S.C. 5724, from the appointee’s place of residence at the time of selection to the duty station (5 U.S.C. 5723(a)).

Payment may be made only after the individual agrees in writing to remain in Government service for 12 months after appointment, unless separated for reasons beyond the individual’s control which are acceptable to the agency concerned. If the individual violates the agreement, the payment is recoverable from the individual as a debt due the United States (5 U.S.C. 5723(b)).

Change of duty station. The provisions in law (5 U.S.C. 5724) and the travel regulations concerning payment of travel and transportation expenses when an employee is moved in the interest of the Government are applicable to SES members, including those individuals newly appointed to the SES from other positions in Government without a break in Government service. 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:

- retires on or after September 22, 1988;
- was moved geographically by the Federal Government as a career appointee in the SES; and
was eligible for optional retirement, or within 5 years of optional retirement; or was eligible for discontinued service retirement at the time of the last Federal Government directed move.

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 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.

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 Act designated the Office of Inspector General (OIG) 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 3 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 the 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 with respect 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 considers 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(d)(1)(B)(iii) of title 5 Appendix to determine how SES provisions apply for purposes of section 6(d), that for the purpose of SES performance appraisal a DFE IG should not be considered to occupy a DFE position but a position in the DFE Office of Inspector General, which under section 6(d)(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 Act, including a removal action that is not based on a performance rating.
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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 personnel system is divided into five levels, EX-I (the highest) through EX-V (the lowest). The Executive Schedule includes cabinet secretaries; under, deputy, and most assistant secretaries; heads of most of the independent agencies; members of regulatory commissions; and a number of other key officials (e.g., certain general counsels 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. section 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 4 regarding the pay freeze for certain senior political appointees.
SENIOR-LEVEL (SL) AND SCIENTIFIC AND PROFESSIONAL (ST) POSITIONS

STATUTE: 5 U.S.C. 5376, 5108, 3324, 3104, 3325
REGULATIONS: 5 CFR Part 319 and Part 534, Subpart E

Unless an agency is excluded from the SES by statute (e.g., 5 U.S.C. 3132(a)(1)) or by the President under 5 U.S.C. 3132(c), any agency position classified above the GS-15 level or in level IV or V of the Executive Schedule, or an equivalent position, that is not required to be filled by Presidential appointment with Senate confirmation is to be placed in the SES, if it meets any of the functional criteria set forth in 5 U.S.C. 3132(a)(2). Positions that are classified above the GS-15 level in an agency covered by the SES but do not meet the SES functional criteria are established as SL positions or ST positions depending on the nature of the work. (See Establishing SES Positions in Chapter 1 for information on the SES functional criteria and determining whether a position should be established as SES, SL or ST.)

Scientific and Professional Positions
Under 5 U.S.C. 3104, OPM is authorized to determine, and from time to time revise, the maximum number of scientific and professional positions for carrying out research and development functions requiring the services of specially qualified personnel that may be established outside the General Schedule. OPM authorizes agencies to establish such positions under 5 CFR 319.202 and they are assigned the pay plan code ST. By regulation, a position is appropriately established as ST only if it is classified above the GS-15 level and involves performance of high-level research and development in the physical, biological, medical, or engineering sciences, or a closely related field (e.g., cybersecurity research). However, the statute also provides that 5 U.S.C. 3104 shall not apply to a position that is an SES position under 5 U.S.C. 3132(a). Therefore, a position classified above GS-15 that meets the SES functional criteria is to be established as SES even if it involves research and development functions otherwise supporting establishment of an ST position.

Research and development positions are characterized by the following features:

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

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

- has authored fundamental papers in the field of expertise that are widely used and cited;
- has received significant honors from major organizations for his/her accomplishments and
  contributions; and
- is sought as an advisor and consultant on scientific and technological problems that extend
  beyond his/her specialty.

**Senior-Level Positions**

A position classified above GS-15 that is established in an executive agency based upon a position
allocation from OPM under 5 U.S.C. 5108 is called a Senior-level (SL) position and is assigned
the pay plan code SL. OPM allocates these positions to agencies under 5 CFR 319.202. Before
the Civil Service Reform Act (CSRA), positions classified above GS-15 were in GS-16, 17 and 18
of the General Schedule and were covered by the Executive Assignment System. When CSRA
was implemented in agencies covered by the Senior Executive Service, most of those positions
became SES because they met the SES functional criteria. In general, positions that remained in
GS-16, 17 and 18 (also called supergrades) were classified at those levels based on other criteria,
or were executive positions in agencies not covered by the SES. The Federal Employees Pay
Comparability Act of 1990 (FEPCA) abolished grade levels GS-16, 17 and 18, authorized OPM
under 5 U.S.C. 5108 to determine the maximum number of positions in any executive agency that
may be classified above GS-15 (i.e., SL positions) and included those positions, along with
Scientific and Professional (ST) positions established under 5 U.S.C. 3104, in the new pay system
for “certain senior-level positions” established by 5 U.S.C. 5376.

**Distinguishing Among SES, SL and ST Positions**

In an agency that is covered by the Senior Executive Service, an SL or ST position may not be
established based upon duties classified above GS-15 that meet the SES functional criteria because
5 U.S.C. 3132(a)(2) defines such positions as SES positions.

In any agency, an SL position should not be established based upon duties classified above GS-15
that involve performance of high-level research and development in the physical, biological,
medical, or engineering sciences, or a closely related field because 5 U.S.C. 3104 states that it
provides for the maximum number of such positions (i.e., ST positions) that may be established
outside the General Schedule.

By regulation, a position classified above GS-15 is not established as ST if it involves performance
of high level research and development in a field other than the physical, biological, medical and
engineering sciences or a closely related field. For example, a position classified above GS-15 that
performs research in the field of economics or social sciences is not appropriately established as
ST; however, an SL position could be established for that purpose.
In an agency that is not covered by the Senior Executive Service, a position that is classified above GS-15 that meets the SES functional criteria normally will be an SL position. An ST position could also be used for such a position if it involves performance of high-level research and development in the physical, biological, medical and engineering sciences, or a closely related field. As in any of these cases, establishment of such position requires the appropriate position allocation from OPM.

**Supervisory Duties**

Among the five SES functional criteria identified in 5 U.S.C. 3132(a)(2)(A) through (E), questions are most frequently asked about paragraph (D), which includes in the SES a position above GS-15 that—

(D) supervises the work of employees other than personal assistants.

In particular, agencies ask about how to determine whether the extent of supervision exercised by a position classified above GS-15 precludes it from being established as an SL or ST position. Generally, for those agencies covered by the SES, an appropriately established SL or ST position will not include duties incorporating the full range of supervisory authorities (e.g., authority to hire, promote, reward etc.), as such duties would cause the position to meet the SES criterion in paragraph (D) of § 3132(a)(2). Instead, SL and ST positions usually involve leading projects and teams in a capacity similar to that of a Team Leader position. SL positions incorporate duties that are broad and complex enough to be classified above GS-15 but do not involve supervisory authority to an extent that meets the SES criterion. The same holds true for ST positions that are focused primarily on performance of high-level research and development. If an agency determines that an SL or ST position incorporates some supervisory responsibilities, it should carefully examine each of the SES criteria at § 3132(a)(2). If the position meets any of the other SES criteria, the position is to be established as an SES position.

**SL/ST Employment and Pay Provisions**

**Recruitment.** An SL position is in the competitive service as provided in 5 U.S.C. 2102, unless the position is excepted from the competitive service by or under statute. Under 5 U.S.C. 1104, OPM has delegated authority to agency heads through 5 CFR 319.401 to recruit and examine for SL positions in the competitive service, establish competitor inventories, and issue certificates of eligibles. Recruitment actions under this delegation must conform to section 319.401 and other applicable statutory and regulatory requirements, e.g., use of the category rating approach (as authorized by section 3319, U.S.C.) to assess and select job applicants for positions filled through competitive examining. Veteran’s preference must be applied to SL positions consistent with rules of competitive and excepted service examining. OPM provides training, guidance and oversight in the conduct of delegated examining activities and certifies individuals identified by agencies to conduct examining operations. Employees involved in delegated examining must receive initial training from OPM, and instructions in the Delegated Examining Operations Handbook ([http://www.opm.gov/deu/Handbook_2007/DEO_Handbook.pdf](http://www.opm.gov/deu/Handbook_2007/DEO_Handbook.pdf)) are applicable to recruitment for SL positions in the competitive service.
Actions to fill SL positions in the competitive service by reassignment, promotion, transfer, or reinstatement of individuals with competitive status are subject to the regulatory provisions applicable to those actions in general. Under 5 CFR 335.103(a), an agency may establish a promotion or internal placement program that will apply in recruiting to fill SL positions from among individuals with competitive status. Under 5 CFR 335.103(c)(3)(vii), an agency has discretion to except from such competitive procedures the appointment of a career SES member who has competitive service reinstatement eligibility (at any level) to any position in the competitive service for which he or she qualifies, including an SL position. If the agency has a vacant allocated SL space, OPM approval is not required for such an appointment. An agency may make a temporary or term SL appointment in accordance with 5 CFR 316, if the position is in the competitive service.

Regulatory provisions related to the excepted service in general apply to SL positions in the excepted service. SL positions may be established and filled in the excepted service under schedules A, B or C, as applicable, in accordance with the requirements of 5 CFR parts 302 and 213, provided that there is no grade level or other applicable restriction on use of the particular excepted service appointment authority. Temporary or time-limited appointments may be made consistent with the requirements of 5 CFR 213.104.

As provided at 5 U.S.C. 3325, all ST positions are in the competitive service but are filled without competitive examination upon approval of the qualifications of the proposed appointee by OPM or its designee. Accordingly, competitive procedures are not required for any appointment to an ST position, including a temporary or term ST appointment under 5 CFR 316. An agency that elects to hold a competition for an ST position is not obligated to follow delegated examining rules. An ST appointee has competitive status immediately, and no probationary period is required. OPM has delegated to agency heads authority to approve the qualifications of SL and ST appointees under 5 CFR 319.302.

Pay. The Senior Professional Performance Act of 2008 (Pub. L. 110-372, October 8, 2008) changed the pay system for SL/ST employees effective April 12, 2009. Under the law, the pay range for both SL and ST positions 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 payable for level III of the Executive Schedule (EX-III). However, for any agency certified under 5 U.S.C. 5307(d) as having a performance appraisal system which, as designed and applied, makes meaningful distinctions based on relative performance, the maximum rate of basic pay is the rate payable for level II of the Executive Schedule (EX-II). As of April 12, 2009, pay for all SL/ST employees converted to a single base pay rate. This rate was equal to current rate of basic pay plus any applicable locality pay, the sum of which was capped at EX-III. The amount of SL/ST cash awards was not changed by the law and remains the same. Under 5 CFR part 534, subpart E, agencies are required to set and adjust pay for SL and ST employees based on individual performance, contribution to the agency’s performance, or both, as determined under a rigorous performance appraisal system. Agencies must also establish written procedures that provide transparency in the processes for making pay decisions.
The aggregate compensation limit for an SL or ST employee not covered by a certified performance system is level I of the Executive Schedule (EX-I). Agencies that obtain certification of their SL/ST performance appraisal system must apply a higher aggregate compensation limitation that is equivalent to the total annual compensation payable to the Vice President.

Section 1912 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84, October 28, 2009) provides that SL and ST employees whose official worksite is 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 SL and ST positions in the nonforeign areas on or after the effective date are not eligible for locality payments, but will be eligible for an offset COLA rate in effect for their official worksite. The nonforeign cost-of-living allowance (COLA) areas include Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. For additional information see CPM 2009-27, available at https://www.chcoc.gov/content/nonforeign-area-retirement-equality-assurance-act.

SL or ST employees are eligible to earn compensatory time off in lieu of overtime pay and compensatory time off for travel (http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/compensatory-time-off/ and http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/compensatory-time-off-for-travel/). They may also earn credit hours if an agency’s policies for flexible work schedules or union agreements permit (http://www.opm.gov/policy-data-oversight/pay-leave/work-schedules/fact-sheets/credit-hours-under-a-flexible-work-schedule/).

**SL/ST Annual Leave Maximum Carryover Ceiling**

Effective January 28, 2008, the annual leave carryover ceiling for employees in SL and ST positions is 90 days (720 hours). Any restored annual leave that an SL or ST employee may have does not count towards the 90 day annual leave carryover ceiling. Under the provisions of 5 U.S.C. 6304(d)(2), restored annual leave is credited to a separate leave account, and leave in a restored leave account does not count towards an employee’s annual leave carryover cap.

**Movement to an SL/ST appointment.** If an employee moves from a GS position to an SL/ST position, any annual leave accumulated prior to the move in excess of the employee’s maximum accumulation limit for the former position is subject to forfeiture, if not used by the beginning of the first full biweekly pay period in the leave year immediately following appointment to an SL/ST position (5 CFR 630.301(f)(1)). Annual leave can be restored under conditions provided by 5 U.S.C. 6304(d). The SL/ST appointment 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 SL/ST 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 SL/ST position 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 SL/ST position, 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 SL/ST position). The employee forfeits 20 hours of leave (i.e., the 60 hours excess leave brought into the SL/ST position, 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 SL/ST position, 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 SL/ST position, minus the 20 hours used above the 60 hours of excess leave).

Movement from an SL/ST appointment. If an employee moves from an SL/ST position to a GS-15 position, any annual leave in excess of that which otherwise would be permitted remains to the employee’s credit (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). Subsequently, if the employee uses more annual leave in a leave year than earned, the balance carried forward will become the new personal leave ceiling if it is still above the maximum limit normally permitted for the position (5 CFR 630.301(g)).

Example: An SL/ST member with 750 hours of accumulated annual leave moves to a GS-15 position. 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.
- 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. Under 5 U.S.C. 6304(c), the expanded annual leave ceiling is reduced by the amount used that is in excess of the amount accrued. The employee does not exceed the amount accrued (using only 40 of the 100 hours accrued), so his/her leave ceiling remains as 750 hours. The 60 hours accrued, but not used, exceeds the leave ceiling and is forfeited.
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 and/or Senate confirmation (but may serve in an advisory capacity pending confirmation). It is not appropriate to assign consultants to the policy-making or managerial work that characterizes the SES.

Experts and consultants may not do work performed by the agency’s regular employees or function in the agency’s chain of command. For example, they may not supervise agency employees, direct the preparation of a report or special study, or make decisions regarding agency policies or programs. Their work must be strictly advisory in nature (reviewing/recommending) or limited to a special project requiring an exceptional level of expertise.

INTERCHANGE AGREEMENTS AND COOPERATION

Under Civil Service Rule 6.7 and 5 CFR 214.204, OPM and any agency with an executive personnel system essentially equivalent to the SES may, pursuant to legislative and regulatory authorities, enter into an agreement providing for the movement of persons between the SES and the other system. Such agreements may be established when it is mutually determined that movement between the two systems is in the interest of good administration and is consistent with the intent of civil service and other applicable laws. Each agreement must prescribe the conditions for interchange of persons and define the status and tenure acquired by persons when they move from one system to another.
Criteria for Approval
The criteria OPM considers in a proposal to authorize the interchange of personnel between the SES and another Federal executive system 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.

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