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GENERAL INFORMATION ABOUT THE SES

BACKGROUND: The Senior Executive Service (SES) was established by the Civil Service Reform Act (CSRA) of 1978 and became effective in July 1979. CSRA envisioned a senior executive corps with solid executive expertise, public service values, and a broad perspective of government. In addition, executives would be held accountable for their performance. The SES was designed to overcome some key issues:

- There was no effective, governmentwide system for selecting, preparing, paying, and managing the government's top managers. They were governed by a variety of systems with multiple sets of complex rules and regulations. Comprehensive reform was needed to address problems in staffing and managing senior executive positions.
- Minimal attention was given to an executive's managerial skills and expertise. Individuals were placed in positions responsible for managing billion-dollar Federal programs and for supervising thousands of employees with little or no managerial experience. There was widespread recognition that greater emphasis had to be placed on certifying the managerial competence of the government's senior executives.
- Agencies had limited authority to appoint or reassign executives to meet mission and program changes. The rank-in-position system limited rotation and reassignment opportunities for career employees and prevented the best use of executive talent. It was difficult to reward executives whose performance was outstanding or to reassign or remove executives whose performance was unacceptable.
- Many of the top career positions were held by individuals who entered the government at junior levels and spent their entire careers in the Federal service, many in the same agency or agency component. Executives needed to broaden their perspectives and view their responsibilities in the context of the larger corporate and public policy interests of the government.

In creating the SES, CSRA established a distinct personnel system that applies the same executive qualifications requirements to all of its members. The new system was designed to provide greater agency flexibility for selecting and developing Federal executives within a framework that preserves the larger corporate interests of government. It also shifted to a rank-in-person concept to facilitate executive mobility.

KEY GOALS OF THE SES:

- Improve the executive management of the government.
- Select and develop a cadre of highly competent senior executives with leadership and managerial expertise.
- Hold executives accountable for individual and organizational performance.
- Base pay, retention, and tenure on performance.
- Provide for an executive system that is guided by the public interest and free from improper political interference.

COVERAGE: The SES covers managerial, supervisory, and policy positions above GS-15 (including Executive Schedule IV or V or equivalent positions) that are not filled by Presidential appointment with Senate confirmation. Some agencies and agency components are excluded by law, such as independent government corporations and the intelligence agencies. Some positions are excluded by law, such as the Foreign Service and Administrative Law Judges. There are other non-SES systems that govern *non-executive* positions above GS-15 B those for which *technical* expertise, not leadership, is paramount (e.g., Senior Level, Scientific/Professional systems).

STRUCTURE OF THE SES: There are two types of SES positions B General and Career Reserved. A General position may be filled by a career, noncareer, or limited appointee. The same General position may be filled by a career appointee at one time and by a noncareer or limited appointee at another time. However, a Career Reserved position must always be filled by a career appointee. (There are no "career or noncareer positions" in the SES.) By law, there is a governmentwide minimum number of positions (3,571) that must be Career Reserved.

- ***Criteria for Career Reserved positions:*** A position is 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. Career Reserved positions involve day-to-day operations, without responsibility for or substantial involvement in the determination or public advocacy of the major policies of the Administration or agency. They include positions 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. They also include:
 - scientific or other highly technical or professional positions where the duties and responsibilities of the position are such that it must be filled by a career appointee to ensure impartiality;
 - other positions requiring impartiality, or the public's confidence in impartiality, as determined by the agency in light of its mission; and
 - positions that the law specifically requires be Career Reserved or be filled by a career appointee.

SES APPOINTMENTS: There are four types of SES appointments B career, noncareer, limited term, and limited emergency.

- ***Career:*** Competitive selection requirements and entitlements; no time limit.
- ***Noncareer:*** No competitive selection requirements; no entitlements; no time limit.
- ***Limited Term:*** Non-renewable appointment for up to 3 years for time-limited, project-type work.
- ***Limited Emergency:*** Non-renewable appointment for up to 18 months to meet a bona-fide, unanticipated, urgent need.

EXECUTIVE RESOURCES ALLOCATIONS

OPM allocates executive “spaces” to each agency on a 2-year basis, as specified in law. Flexibility has been built into the allocation process to allow for some adjustments during the biennial cycle, within statutory limits, to meet unanticipated needs. OPM works with agencies to identify acceptable alternatives, such as the use of temporary allocations.

STATUTORY REQUIREMENTS: [5 U.S.C. 3133]:

- Each agency examines its SES position requirements and submits a written request to OPM for a specific number of SES positions for a 2-year period.
- OPM allocates SES, Senior Level (SL) and Scientific/Professional (ST) spaces to each agency on a biennial basis, after analyzing agency needs and consulting with the Office of Management and Budget. Once the biennial allocation is established, OPM may later adjust an agency’s allocation. However, the cumulative effect of all adjustments within the biennial cycle cannot increase the total governmentwide allocation by more than 5%.
- There is no statutory "cap" on total SES allocations. (Note: The Civil Service Reform Act of 1978 placed a governmentwide limit on the total number of SES positions, but this limit was removed in 1990 by the Federal Employees Pay Comparability Act.)

AGENCY FLEXIBILITY: Within their allocations, agencies have authority to establish and/or abolish positions and to reassign career executives to deal with variations in program and mission requirements. Agencies are responsible for their executive resources planning and utilization.

OPM ASSISTANCE: OPM can help agencies deal with unanticipated needs (e.g., critical program changes or emergencies) that make it difficult to live within their allocations. OPM can authorize some temporary spaces, and suggest other alternatives.

ALLOCATIONS PROCESS: Every 2 years, OPM formally asks agencies to review and prioritize their executive resources needs in conjunction with their strategic plans, budget requirements, and program performance. Based on this analysis, agencies send OPM a written request for SES, SL, and ST spaces.

- Agencies that ask for allocation increases provide a comprehensive, agencywide assessment of their executive resources needs. The agency assessment covers established and requested positions, and prioritizes all current and proposed positions in terms of their relative contribution to the agency mission.
- OPM considers the agency analysis and other factors, such as vacancy rates, overall agency funding levels, and personnel ceilings; OPM consults with OMB, including the Resources Management Officers, and issues position allocations to agencies for 2 years.

- OPM may adjust an agency's allocation (up or down) during that 2-year period, on a case-by-case basis, if there are unanticipated changes in budgets or programs that can't be met within current allocations. In such cases, OPM may authorize the use of temporary allocations until the next biennial.

IMPACT OF ALLOCATIONS ON NONCAREER AND LIMITED APPOINTMENTS:

There are statutory limits on the numbers of SES noncareer and limited appointments [5 U.S.C. 3134].

- Total SES noncareer appointees *governmentwide* cannot exceed 10% of SES allocations.
- Total SES noncareer appointees in an agency cannot exceed 25 % of that agency's allocation, with a few exceptions (i.e., agencies with fewer than 4 SES spaces and certain agencies that had a higher ratio before CSRA). Congress has imposed stricter limits on some agencies through enabling or appropriations legislation.
- Total SES limited appointees *governmentwide* cannot exceed 5% of SES total allocations.

Within statutory limits, the White House Office of Presidential Personnel distributes the total number of noncareer allocations for each agency. This number is the agency's "noncareer cap."

CURRENT SITUATION: Since the focus is on managing *total* executive resource levels, it would undermine the process to reduce an agency's SES positions and substantially increase its SL and ST positions. As of October 31, 2003, the *governmentwide* allocation levels are:

7,806	Senior Executive Service
422	Senior Level
404	Scientific and Professional

ESTABLISHING SES POSITIONS

Within the allocation OPM authorizes, each agency determines which positions will be established in the SES. Positions must meet both the SES functional criteria and grade level criteria prescribed in statute. The SES generally covers managerial, supervisory, and policy positions above GS-15 that are not filled by Presidential appointment with Senate confirmation.

- **Functional criteria:** A position meets the SES functional criteria if its incumbent engages in any of these 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.
- **Grade level criteria:** The position must be classifiable above GS-15, based on the level of duties, responsibilities, and qualifications required by the job.

APPLYING THE SES CRITERIA: The SES was intended to be a corps of senior executives B not technical experts. In determining whether a position meets the criteria for placement in the SES, the agency needs to evaluate the position and determine if it functions as a part of the management team, or as an independent advisor or technical expert. This evaluation should consider the position's duties, responsibilities, and qualifications requirements.

REQUIREMENT FOR A SPACE: An agency cannot fill a position in the SES without an authorized space allocation.

SENIOR LEVEL POSITIONS

There are two other personnel systems for positions that are classified above the GS-15: the Senior Level (SL) system and the Scientific/Professional (ST) system. The nature of the work determines which system is appropriate. The SL system was established by the Federal Employees Pay Comparability Act of 1990 (FEPCA) to replace GS-16, 17, and 18 of the General Schedule.

CRITERIA: The SL system is for *non-executive* positions above GS-15 that do not meet the criteria for the SES, nor do they involve the fundamental research and development responsibilities that are characteristic of the Scientific/Professional (ST) system. Examples include a high level special assistant or a senior attorney in a highly-specialized field who is not a manager, supervisor, or policy advisor.

SUPERVISORY DUTIES: SL positions may include some supervisory and related managerial duties, provided that these duties occupy less than 25 percent of the incumbent's time. Positions in which supervisory and managerial work constitutes 25 percent or more of the incumbent's time almost always meet the criteria for SES positions.

COMPETITIVE STATUS: SL positions are in the competitive service unless excepted from the competitive service under statute or regulations.

SPACE REQUIREMENT: Executive agencies must have a SL space allocation from OPM before filling a SL position.

PAY: The base pay range for SL positions is between 120 percent of GS-15/1 and Executive Schedule IV. SL employees also receive locality pay. Base pay and locality pay for SL employees is capped at Executive Schedule III.

SCIENTIFIC/PROFESSIONAL POSITIONS

The Scientific/Professional (ST) system covers non-executive positions classified above the GS-15 level that involve performance of high-level research and development in the physical, biological, medical, or engineering sciences, or a closely-related field. All ST positions are in the competitive service.

R&D CRITERIA: 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 of the work. An incumbent would be expected to have a graduate degree, significant research experience, and a national or international reputation in his/her field. Typically, the incumbent of a 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.

SUPERVISORY DUTIES: ST positions may include some supervisory and related managerial duties, provided that these duties occupy less than 25 percent of the incumbent's time. Positions in which supervisory and managerial work constitutes 25 percent or more of the incumbent's time almost always meet the criteria for SES positions.

SPACE REQUIREMENT: Executive agencies must have a ST space allocation from OPM before filling a ST position.

PAY: The base pay range for ST positions is between 120 percent of GS-15/1 and Executive Schedule IV. ST employees also receive locality pay. Base pay and locality pay for a ST employee is capped at Executive Schedule III.

EXECUTIVE CORE QUALIFICATIONS

Executive qualifications are the primary selection criteria for the SES. While technical job-specific qualifications are important, the essence of the SES is the ability to lead. OPM has developed Executive Core Qualifications (ECQs) that represent the critical leadership skills all executives need to succeed today and in the future.

The first set of executive qualifications, established at the beginning of the SES, remained in effect until 1994, when they were completely overhauled to reflect developments in executive competencies over time. OPM revised them again in September 1997, as a result of the rapidly-changing management environment and the need to focus increasingly on leadership and the ability to drive change. The current ECQs are Leading Change; Leading People; Results Driven; Business Acumen; and Building Coalitions/Communication. These ECQs represent a shift from passive management to active leadership. The emphasis today is on making things happen and getting results, rather than on managing a process.

RELIANCE ON RESEARCH: The ECQs, and their underlying competencies, are based on extensive research into the attributes of successful executives in both the private and public sectors, including: a behavioral indicators study to update the executive competencies identified through a 1991 OPM survey of 10,000 supervisors, managers, and executives; an extensive review of private sector competency models and current literature on executive competencies; and focus groups of executives from a cross section of agencies and occupations.

Federal agencies, private sector representatives, and the National Academy of Public Administration all played a role in developing the ECQs. Members of the SES and the Senior Executives Association were encouraged to review an early draft and share their comments.

QUALIFICATIONS REVIEW BOARDS

OPM convenes Qualifications Review Boards (QRBs) to provide an independent peer review of candidates proposed for initial career appointment to the SES. The candidate cannot be appointed to the SES until the QRB certifies his/her executive qualifications. The QRB review is the critical last step in the SES selection process. By focusing attention on executive qualifications, the QRB helps ensure that technical skills do not outweigh leadership expertise in the selection of new senior executives.

OPM prescribes the criteria for establishing executive qualifications for career appointees. The criteria provide for consideration of demonstrated executive experience or successful participation in an OPM-approved SES Candidate Development Program. They also provide flexibility to allow the appointment of individuals with special or unique qualities that indicate a likelihood of executive success.

PEER REVIEW: QRBs provide a critical, independent *peer* review of a candidate's executive qualifications to be a member of the SES. This objective review assures that the government is hiring executives with the leadership qualifications needed in today's environment, especially the ability to lead in times of change.

QRB MEMBERSHIP: OPM draws on SES members to serve on QRBs and to advise on QRB policy and procedures. The Board normally consists of three SES members, each from a different agency. A majority of Board members must be SES career appointees. QRB members cannot review candidates from their own agencies.

CERTIFICATION: After the agency completes its merit staffing process and makes a selection, the agency requests QRB certification of the selectee's executive qualifications. OPM administers the QRBs, which meet every Tuesday and Friday. A QRB reviews each case and either approves or disapproves the candidate's executive qualifications. If approved, the agency may proceed with the appointment. Disapprovals are usually due to the candidate not meeting the executive qualifications requirements or not adequately addressing his/her qualifications in terms of the five ECQs. The entire QRB certification process is usually completed in less than two weeks.

SUSPENSION OF QRB CERTIFICATION FOR SPECIFIC AGENCIES: When an agency head resigns or announces the intention to resign, or if the President nominates a new agency head, OPM suspends QRB case processing for SES career appointments until a successor is appointed at the agency. OPM takes this action as a courtesy to the new agency head, to afford him/her the greatest flexibility in making executive resources decisions. However, if an agency has a selection it considers urgent, the agency may ask OPM to forward it to a QRB. In determining whether to make an exception, OPM considers such factors as whether the new agency head would have a personal interest in the selection, the organizational level of the position, the degree to which the candidate would be involved in policy matters, and how long it may be before the new agency head is appointed.

SES CAREER APPOINTMENTS

SES career appointments are made without time limitation and provide certain job protections and benefits that are not conferred on SES noncareer or limited appointees. Agencies may make career appointments to either General or Career Reserved positions, provided the individual meets the qualifications requirements.

- Agencies must follow competitive merit staffing requirements for the initial career appointment to the SES or for appointment to a formal SES Candidate Development Program. A Qualifications Review Board (QRB), administered by OPM, must certify an individual's executive qualifications before he/she is appointed to the SES.
- Agencies may noncompetitively reassign or transfer a current SES career appointee.
- Agencies may noncompetitively reinstate a former career SES member who has completed SES probation and left the SES under circumstances that did not make the individual ineligible for reinstatement.
- Agencies may noncompetitively appoint a SES CDP graduate who has been certified by a Qualifications Review Board if the SES CDP was advertised at least to all civil service appointees.

MERIT STAFFING REQUIREMENTS: Each agency head appoints one or more Executive Resources Boards (ERBs) to conduct the merit staffing process for career appointments. ERBs review the executive qualifications of each eligible candidate and make recommendations to the appointing official concerning the candidates.

- **Recruitment:** Agencies must announce SES vacancies that will be filled by initial career appointment to at least all Federal civil service employees. In addition, agencies must notify United States Employment Service offices. To meet these requirements, agencies list their vacancies in OPM's governmentwide automated SES vacancy announcement system (USAJOBS). Agencies and applicants can access job information through a variety of ways, including OPM's website (www.usajobs.opm.gov).
- **Rating and ranking:** All eligible candidates are rated and ranked on the basis of their knowledge, skills, and abilities and other job related factors, as reflected in the position's qualifications standard. The record must adequately document the basis for qualifications, rating, and ranking determinations. The ERB may delegate rating and ranking, but must certify the resulting list of Best Qualified candidates to the appointing official. The supervisor may recommend a selection, but the appointing official makes the final determination. The agency cannot appoint the executive until a QRB certifies his/her executive qualifications.

APPEALS: There is no appeal right on actions taken by the ERB, the QRB, or the appointing official. Other avenues afforded by law or regulation (e.g., prohibited personnel practice allegation or discrimination complaint) may be pursued, if appropriate. An agency's ERB is responsible for

answering applicant inquiries about the competition.

SES PROBATION: An individual's initial career appointment becomes final only after he/she has successfully completed a 1-year probationary period. This period begins on the effective date of the appointment and ends one calendar year later.

SES NONCAREER APPOINTMENTS

APPOINTMENT AFTER OPM AUTHORIZATION: Agencies may make SES noncareer appointments to General (not Career Reserved) SES positions. Agencies must obtain a noncareer appointment authorization from OPM and approval from the White House Office of Presidential Personnel for each appointment. There is no time limit on the appointment, but the individual serves at the pleasure of the appointing official. Competition is not required, nor is Qualifications Review Board certification. The appointing official determines that the individual meets the qualifications requirements.

REASSIGNMENT WITHIN AN AGENCY: An agency may reassign a noncareer appointee to another General SES position for which he/she qualifies, after obtaining approval from OPM and the Office of Presidential Personnel. The agency is not required to give the appointee advance written notice of the reassignment.

TRANSFER TO ANOTHER AGENCY: A noncareer appointee can be transferred to a General SES position in another agency, with approval from OPM and the Office of Presidential Personnel. The appointee must meet the qualifications requirements of the new position. If there is a transfer of function between agencies, noncareer appointees may be offered transfers at the discretion of the agency, with OPM approval.

REMOVAL: Noncareer appointees can be removed at any time, with a 1-day advance written notice that shows the effective date of the removal. The agency may include a statement of the reason for the action (optional).

SUSPENSION: The law does not specify procedures for suspending noncareer appointees for disciplinary reasons. Therefore, an agency may suspend noncareer appointees under whatever procedures it establishes.

- **120-day moratorium:** Removal or suspension of a noncareer appointee is *not* subject to the 120-day moratorium.
- **Appeals:** Removal or suspension of a noncareer appointee *cannot be appealed* to the Merit Systems Protection Board.

SES LIMITED APPOINTMENTS

Agencies may use two types of SES limited appointments to address short-term staffing needs at the senior executive level.

- **Limited emergency appointments:** Up to 18 months, to meet bona-fide, unanticipated, urgent needs.
- **Limited term appointments:** Up to 3 years, to positions that will expire in 3 years or less. Generally, these appointments are used for project-type positions or for positions established to facilitate transition between Administrations.

Limited appointments are not renewable. However, if the appointment is made for less than the period that OPM authorizes, the agency may extend the appointment to that period.

With few exceptions, limited appointments are not used to staff continuing positions B these positions are normally filled by career or noncareer appointment.

- **Additional time limits:** There is also a limit on the total time an individual can serve under a combination of limited term and limited emergency appointments - no more than an aggregate of 36 months in a 48-month period.
- **Limit on numbers of appointments:** The law restricts the total number of limited appointments to 5% of the total number of SES spaces allocated governmentwide.

OPM AUTHORIZATION: OPM must authorize each limited appointment in advance, unless the agency has signed a delegation agreement with OPM that authorizes the agency to make a certain number of limited appointments under specified circumstances without advance approval (e.g., 2-year rotating assignments to bring individuals from universities to a scientific organization within the agency). For example, OPM and the National Science Foundation (NSF) have an agreement that allows NSF to hire individuals from universities on a 3-year rotational basis.

Each written request for a limited appointment authority should provide information to explain the circumstances that warrant use of the authority.

- **Pool authority:** By regulation [5 CFR 317.601], OPM has given each agency a pool of limited appointment authorities equal to 3% of its total SES space allocation. Agencies may use this authority to make limited term appointments without OPM approval. However, an individual appointed under this pool authority must be a career or career-type Federal employee outside the SES. Agencies should exhaust their pool authorities before requesting OPM approval of a limited appointment authority.

APPOINTMENTS: Limited appointments can be made to General (not Career Reserved) SES positions. Competition is not required, nor is Qualifications Review Board certification. The appointing official determines that the appointee meets the qualifications requirements of the SES position. A limited appointee does not receive tenure and serves at the pleasure of the appointing official.

REASSIGNMENT WITHIN THE AGENCY: An agency can reassign a limited appointee to any General SES position for which he/she qualifies, without OPM approval. However, the new position must meet the same criteria (e.g., urgent need, special project). The agency is not required to give the appointee advance written notice of the reassignment.

TRANSFER TO ANOTHER AGENCY: A limited appointee can be transferred to a General SES position in another agency, with OPM approval. The position must meet SES limited criteria and the appointee must meet the qualifications requirements. If there is a transfer of function between agencies, limited appointees may be offered transfers at the discretion of the agency, with OPM approval.

TRANSITIONS AND PRESIDENTIAL NOMINEES: To help with transitions, OPM can make limited (and noncareer) appointment authorities available to agencies following the inauguration of a new President or the nomination of a new agency head. OPM must approve the use of each appointment authority.

Presidential nominees may be given limited (or noncareer) appointments while awaiting Senate confirmation, but cannot be appointed to the target positions. The appointee normally functions in an advisory or consultative capacity in another position until confirmation. OPM must approve the use of each appointment authority.

EXPIRATION OF THE APPOINTMENT: An agency must terminate a limited appointee when the appointment expires or when the executive has served the maximum period of time permitted under law, whichever occurs first. The appointee is given a Notification of Personnel Action (Standard Form 50), usually prepared by the agency's human resources office. An agency may give any amount and type of additional advance notice to the executive.

- ***Fallback rights:*** After termination, a limited appointee is entitled to placement in his/her former position (or a position of like status, tenure, and grade) if certain conditions are met: the limited appointment was in the same agency as the one in which he/she held a career or career-conditional appointment in a permanent non-SES position; there was no break in service; and the termination was not for misconduct, neglect of duty, or malfeasance.

REMOVAL: Limited appointees can be removed at any time, with a 1-day advance written notice that shows the effective date of the removal. The agency may include a statement of the reason for the action (optional). There is no placement right, unless the individual was appointed from a career or career-conditional appointment in a permanent position outside the SES in the same agency.

SUSPENSION: The law does not specify procedures for suspending limited appointees for disciplinary reasons. Therefore, an agency may suspend limited appointees under whatever procedures it establishes. However, see below for circumstances in which adverse action procedures are required.

- **120-day moratorium:** Removal or suspension of a limited appointee is *not* subject to the 120-day moratorium.
- **Appeals:** Removal or suspension of a limited appointee *cannot be appealed* to the Merit Systems Protection Board.

ADVERSE ACTION PROCEDURES: By OPM regulation, a career or career-type employee who received a SES limited term appointment without a break in service within his/her own agency and who was covered by 5 U.S.C. 7511 prior to the limited appointment is entitled, while serving in the limited appointment, to the adverse action procedures that apply to career SES members (e.g., if the agency proposes removal from the civil service or suspension for more than 14 days for misconduct, neglect of duty, or malfeasance, these procedures include a right of appeal to the Merit Systems Protection Board.

SES CAREER REASSIGNMENTS AND TRANSFERS

REASSIGNMENTS: An agency can reassign a career SES member to any SES position in the agency for which he/she is qualified.

- Non-geographic reassignments require a 15-day advance written notice, which the employee may waive.
- Geographic reassignments require consultation with the executive and a 60-day advance written notice.

Failure to accept a directed reassignment subjects the individual to removal under adverse action procedures. If separation is for failure to accept a directed reassignment to a different commuting area, the individual is entitled to discontinued service retirement (if eligible) or severance pay, unless a memorandum of understanding or other written agreement provides for such geographic reassignments. Under these circumstances, the executive can appeal the removal to the Merit Systems Protection Board.

- ***Moratorium on involuntary reassignments:*** Career appointees cannot be reassigned *involuntarily* within 120 days of the appointment of a new agency head, or the appointment of the career appointee's most immediate supervisor who is a noncareer appointee with the authority to make an initial appraisal of the career appointee's performance. The intent of this moratorium is to provide a "get acquainted" period to allow the new agency head and noncareer appointees to get to know the career senior executives and their skills and expertise. However, after 120 days, they are free to reassign their career appointees.

TRANSFERS: A career appointee may be transferred to another agency to a SES position for which he/she is qualified, with the consent of the appointee and the gaining agency.

TRANSFER OF FUNCTION: A career appointee is entitled to accompany his/her function if the appointee would otherwise be removed from the SES. Executives are subject to removal under adverse action procedures if they fail to accompany a transferred function. If separation is for failure to accept a transfer of function to a different commuting area, the individual is entitled to discontinued service retirement (if eligible) or severance pay. Removal under these circumstances *can* be appealed to the Merit Systems Protection Board.

SES DETAILS

Details are a management tool for dealing with short-term staffing needs. A detail is the temporary movement of an individual within, into, or out of the SES for a specified period, usually with the expectation that the employee will return to his/her regular position at the end of the detail. SES members can be detailed within the agency or to another agency. They can also be detailed to certain non-Federal organizations, to international organizations, and to foreign governments.

Details do not affect an SES member's appointment, pay, or benefits.

CONDITIONS: SES members may be detailed to other SES positions or to non-SES positions, generally in increments of 120 days. This 120-day increment requirement does not apply to interagency details.

- **Position restrictions:** Any SES employee or non-SES employee can be detailed to a General SES position. However, only career SES employees and career-type non-SES employees can be detailed to Career Reserved positions. A SES noncareer employee cannot be detailed to a competitive service position outside the SES.
- **To unclassified duties:** Agencies may not 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 and then decide whether or not to establish an SES position.
- **For more than 240 days:** Competitive service merit promotion procedures must be observed when detailing *non-SES* employees to a SES position for more than 240 days. However, competition is not required if the employee is eligible for a noncompetitive SES career appointment (e.g., a QRB-certified graduate of a SES Candidate Development Program).
- **OPM approval:** OPM approval is required for a detail of more than 240 days only if a *non-SES* employee is being detailed to a SES position that supervises other SES positions, or if a SES employee is being detailed to a position at GS-15 or below or an equivalent level.
- **Notice:** The agency is not required to give the executive advance written notice of the detail.

DETAILS DURING A MORATORIUM: If a career appointee is detailed during a moratorium, the first 60 days of the detail (or any combination of details) are not counted in calculating 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.

120-DAY MORATORIUM

The Civil Service Reform Act of 1978 established a "get acquainted period" during top management transitions. This is a time for new Presidential appointees and noncareer appointees to get to know their senior career executives and their skills and expertise. The moratorium (120 calendar days) applies in the following situations:

- appointment of the agency head, or
- appointment of a career appointee's most immediate supervisor, who is a noncareer appointee with the authority to make an initial appraisal of that career appointee's performance. (For removal actions, the restriction pertains to an immediate supervisor who is a noncareer appointee with the authority to remove the career appointee.)

This 120-day restriction affects involuntary reassignments, details, removals for performance, and removals during probation. However, appointees may voluntarily waive the moratorium on reassignments and removals.

In addition, agencies cannot appraise and rate career appointees in the 120-day period following the beginning of a new Presidential Administration.

KEY 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*** (for this purpose) means a 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 to make an initial appraisal of the career appointee's performance. This does not mean a supervisor who functions solely as the reviewing official or final rater. However, this definition is different when it concerns removal of a SES member for performance reasons. In those situations, the most immediate supervisor is the noncareer appointee who has the authority to remove the career appointee.
- ***Initial appraisal*** is the initial summary rating of the career appointee's performance made by the supervisor as part of the annual performance appraisal process. It does not include a recommendation by a higher level reviewer or the annual summary rating made by the appointing official.

INVOLUNTARY REASSIGNMENTS: Agencies cannot involuntarily reassign SES career appointees during the 120-day moratorium, unless the appointee waives the moratorium in writing. This 120-day moratorium does not apply to a reassignment that results from an unsatisfactory performance rating, provided the rating was given before the appointment that triggered the moratorium. The 15- and 60-day advance notices pertaining to reassignment may run concurrently with the 120-day moratorium.

DETAILS: Agencies can detail SES members during the moratorium. In calculating the 120 days for the moratorium on reassignments, any days (not to exceed a total of 60) during which the career appointee serves on detail are not counted 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 B the moratorium on involuntary reassignments would last 180 days. Moratoriums on other actions are not affected (e.g., removals).

PERFORMANCE APPRAISALS: There is also a restriction on performance appraisals and ratings for career appointees within 120 days after the beginning of a new Presidential Administration. "New Presidential Administration" means the Administration of a President other than the one in office immediately before the beginning of the current Administration. When the new President is inaugurated on January 20, agencies cannot appraise their executives until May 20.

The moratorium applies to all phases of the formal appraisal process leading to an annual summary rating: the supervisor's initial summary rating; any review by a higher level official; review and recommendation by the Performance Review Board (PRB); and the appointing official's annual summary rating. The length of the performance appraisal period is not extended by the moratorium B it delays appraisal and rating actions.

REMOVALS FOR PERFORMANCE: The 120-day moratorium requirement also applies to the removal of a career appointee for performance reasons, except for a removal based on an unsatisfactory rating given before the appointment of the new agency head or noncareer supervisor that triggered the moratorium.

REMOVAL OF A PROBATIONER: Removal of a career appointee during the probationary period is subject to the 120-day moratorium, except for a disciplinary removal that was initiated before the appointment of the agency head or SES noncareer supervisor that triggered the moratorium.

PERSONNEL ACTIONS *NOT* AFFECTED BY A MORATORIUM: The 120-day restriction does not generally affect post-probationary removals or suspensions for disciplinary reasons, removals as a result of reduction in force, or removals of noncareer and limited appointees and reemployed annuitants.

PRESIDENTIAL (AND CERTAIN OTHER) APPOINTMENTS OF SES CAREER MEMBERS

SES career members who are appointed by the President with Senate confirmation to certain positions outside the SES can elect to retain certain SES career benefits while serving in those appointments. Also, SES career members who are appointed (not necessarily by the President) to certain other kinds of senior positions outside of the SES can elect to retain these benefits. In addition, career SES members who are appointed by the President to positions outside of the SES have a guaranteed reinstatement right. (Those on other than Presidential appointments do not have the guarantee, although they may have general reinstatement eligibility.)

RETENTION OF SES BENEFITS: An SES career appointee is entitled to elect to continue certain SES benefits, if the following conditions are met:

- The appointment is by the President, with Senate confirmation, to a civil service position in the Executive branch outside the SES, at a rate of basic pay at or equivalent to the Executive Schedule V or higher. OR
- The appointment is to a non-SES position 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. (This does not have to be a Presidential appointment.) AND
- There is no break in service between the SES career appointment and the Presidential or other covered appointment.
- **SES benefits:** The executive may elect to retain some, all, or none of these SES benefits: basic pay, performance awards, rank awards, severance pay, annual and sick leave, and retirement. The appointing agency is responsible for advising executives of their election opportunity. The election decision must be in writing. The executive may change his/her election only once in a 12-month period.
 - *Awards:* An executive who retains SES performance and/or rank award eligibility remains subject to the SES performance management system. The agency has the discretion to grant or not grant awards to an executive who retains this eligibility.
 - *Retirement:* Retirement coverage for an employee who receives a Presidential appointment with Senate confirmation depends on the position to which he/she is appointed and is not affected by any election to retain SES benefits. If the employee holds an Executive Schedule position listed in 5 U.S.C. 5312-17, he/she is subject to mandatory Social Security coverage under CSRS Offset or FERS. If the position is not listed at 5 U.S.C. 5312-17, the employee retains the retirement coverage that applied under the SES career appointment.
 - *Leave:* If an executive retains SES leave coverage, he/she continues both annual and sick leave coverage.

- *Pay:* If an executive retains SES basic pay, he/she is eligible for locality pay and special law enforcement pay that he/she would receive as an SES member. This is true even if the appointee is in an Executive Schedule position otherwise excluded from these payments.

REINSTATEMENT IN THE SES: An SES career appointee who receives a Presidential appointment (with or without Senate confirmation) is entitled to be reinstated to the SES after the Presidential appointment ends if: the Presidential appointment was to a civil service position out-side the SES; there was no break in service between the career SES appointment and the Presidential appointment; and the executive leaves the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance. (Intervening appointments, such as expert and consultant appointments, constitute a break in service and result in loss of directed reinstatement rights.)

OPM will direct the executive's reinstatement. The executive must apply 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 asking OPM for assistance.

- *Subsequent Presidential appointments:* If an executive is serving in a Presidential appointment and receives another Presidential appointment without a break in service, the executive continues entitlement to SES reinstatement following termination of the second appointment. If there is an interim period between the end of the first Presidential appointment and the beginning of the second (e.g., while awaiting Senate confirmation), the executive must be reinstated to the career SES before the effective date of the new Presidential appointment to preserve his/her reinstatement entitlement following the second appointment.
- *Effect of a resignation:* When a Presidential appointee resigns, voluntarily or upon request, the agency in which the Presidential appointment was held may place the individual on a limited appointment (after OPM approval), pending reinstatement as an SES career appointee in that or another agency, to avoid a break in service.
- *Reinstatement procedures:*
 - *Applying for reinstatement.* A Presidential appointee may apply for reinstatement assistance as soon as his/her resignation is requested or submitted, but not later than 90 days after separation. The appointee must apply in writing, specify the position held immediately before the Presidential appointment, and state the effective date for the resignation or separation. 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. Whenever possible, OPM will honor an executive's expressed geographic availability. An appointee may negotiate his/her own reinstatement with an agency, rather than asking for OPM assistance, but the time frames still apply.

- *Order of precedence.* OPM directs reinstatement in this order: the agency in which the appointee served as an SES career appointee before accepting the Presidential appointment, or its successor agency; the agency or agencies in which the executive served as a Presidential appointee; any other agency in the Executive branch with SES positions. The agency directed to reinstate the executive is responsible for assigning the employee to an SES position for which he/she meets the qualifications requirements. OPM may provide a temporary SES space to an agency that is reinstating a former Presidential appointee.
- *Agency compliance.* An agency has 30 days to comply with an OPM reinstatement order. An executive who declines a reinstatement ordered by OPM is not entitled to further OPM placement assistance.
- ***Separation:*** If an executive who is eligible for placement in the SES following a Presidential appointment decides instead to separate from Federal service, he/she may elect discontinued service retirement (if eligible).
- ***Probation:*** An executive who was serving a SES probationary period at the time of the Presidential appointment must complete his/her probation upon reinstatement.

SES PAY

The National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, November 24, 2003) established a new performance-based pay system for members of the Senior Executive Service effective on the first day of the first applicable pay period beginning on or after January 1, 2004 (January 11, 2004 for most employees).

The former six levels of SES pay established under 5 U.S.C. 5382 (i.e., ES-1 through ES-6) were abolished and replaced by an open pay range. In addition, locality pay is no longer extended to SES members. Under the new pay system, a SES member's rate of basic pay, upon conversion, is the base salary plus the locality pay in effect on the day prior to the conversion. The new SES pay range has a minimum rate of basis pay equal to 120 percent of the rate of GS-15, step 1, and the maximum rate of basic pay is equal to the rate for Executive Schedule III. However, for an 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 Executive Schedule II.

(See the President's Pay Agent Memorandum of December 17, 2003, at <http://www.opm.gov/oca/compmemo/2003/extmemo.asp> for details)

RATES OF BASIC PAY FOR SES MEMBERS:

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	\$104,927	\$158,100
Agencies without a Certified SES Performance Appraisal System	\$104,927	\$145,600

PAY FLEXIBILITIES: Agencies have discretionary authority to provide additional compensation to meet recruitment, relocation, and retention needs.

- ***Recruitment and relocation bonuses:*** Agencies may pay, as a lump sum, *recruitment bonuses* for new appointees and *relocation bonuses* for current employees who are moving to a different commuting area of up to 25 percent of basic pay, when they would encounter difficulty in filling the position in the absence of a bonus. To receive these bonuses, an employee must sign an agreement to complete a period of service with the agency B at least 6 months in the case of a recruitment bonus. These payments are not considered a part of basic pay.

- ***Retention payments:*** Agencies may pay a *retention allowance* (paid bi-weekly) of up to 25 percent of basic pay to an employee in the following circumstances: the employee has unusually high or unique qualifications and the agency has a special need for the employee's services, making it essential to retain the employee; and the agency determines that without the allowance the employee would be likely to leave the Federal government, whether or not other employment is planned. These payments are not considered a part of basic pay.
- ***Other flexibilities:*** Agencies may also pay preemployment interview expenses and travel and moving costs for new appointees. Agencies may advance pay for new appointees up to 2 pay periods (unless the appointee is the agency head). SES members are also covered by the special pay provisions for law enforcement officers and physician comparability allowances.

ANNUAL AND SICK LEAVE

SES appointees are covered by the Federal leave system B they earn annual and sick leave. However, individuals who are appointed by the President, with or without Senate confirmation, are not covered by the Federal leave system B they do not earn annual and sick leave and cannot be charged leave for absences from work.

ANNUAL LEAVE: Like other employees, SES appointees earn 13, 20, or 26 days of annual leave a year, depending on years of service. Annual leave accrues incrementally, i.e., 4, 6, or 8 hours every 2 weeks. SES appointees may carry over up to 90 days of annual leave to the next leave year.

SICK LEAVE: SES appointees also earn 13 days of sick leave each year (which accumulates without limit in succeeding years). Sick leave also accrues incrementally, i.e., 4 hours every 2 weeks. In certain situations, employees may use sick leave for family care. They may use up to 12 weeks of sick leave each year to care for a family member with a serious health condition. They may also use sick leave for adoption or bereavement.

FAMILY AND MEDICAL LEAVE: Under the Family and Medical Leave Act of 1993 (FMLA), an employee is entitled to 12 workweeks of *unpaid* leave during any 12-month period for: the birth of a child and care of the newborn; the placement of a child with the employee for adoption or foster care; the care of an employee=s spouse, son or daughter, or parent with a serious health condition; and an employee=s own serious health condition that makes him/her unable to perform the duties of his/her position. An employee may substitute annual leave or sick leave, as appropriate, for unpaid leave under FMLA.

LEAVE TRANSFER AND LEAVE BANK PROGRAMS: An employee who has a personal or family medical emergency and who has exhausted his/her own leave may receive donated annual leave from other Federal employees through the voluntary leave transfer or leave bank programs. All agencies have a leave transfer program, and they may also choose to establish a leave bank for their employees.

OTHER LEAVE: In addition, employees are entitled to court leave, military leave, leave for bone marrow or organ donation, and other types of leave. Additional information on the government=s leave programs is available at OPM=s website at: www.opm.gov/oca/leave/index.htm.

PERFORMANCE MANAGEMENT

One of the goals of the SES is to hold executives accountable for their individual and organizational performance. Using a performance management program that is results-driven and linked with the agency's strategic planning initiatives is an effective means of achieving this goal.

PAY FOR PERFORMANCE: The National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, November 24, 2003) established a new performance-based system for SES members. The new system establishes Executive Schedule III as the base salary limit for all SES members. However, an agency certified under 5 U.S.C. 5307(d) as having a performance appraisal system which makes meaningful distinctions based on relative performance, can pay their executives up to Executive Schedule II. The certification is done by OPM, with concurrence by the Office of Management and Budget.

PERFORMANCE MANAGEMENT SYSTEMS: Agencies establish SES performance management systems that provide for planning and communicating performance expectations, identifying performance elements and the requirements against which performance will be assessed, monitoring performance, appraising and rating performance, and using performance results as a basis for pay, awards, and other personnel decisions. The law requires that systems have at least three summary rating levels: unsatisfactory, minimally satisfactory, and fully successful.

SENIOR EXECUTIVE PERFORMANCE PLANS: Each SES member (including career, noncareer, and limited appointees) must have an individual performance plan that outlines goals and expectations for the appraisal period. These plans may be modified during the appraisal period, if there are changes in agency or organizational priorities (e.g., available resources).

- **Consultation:** Supervisors develop plans in consultation with their executives.
- **Performance elements:** The plan identifies performance elements (the goals or work to be done) and designates which are critical B those of such importance that unsatisfactory performance on the elements would result in unsatisfactory performance in the position. The elements must reflect both individual and organizational performance.
- **Performance requirements:** The plan identifies performance requirements (accomplishment expectations) for each element.

APPRAISING PERFORMANCE: SES appointees must be given an annual summary rating at least once a year. The agency sets a minimum appraisal period (at least 90 days) that an executive must serve under his/her performance plan before being rated. The agency can end the appraisal period any time after the minimum period if there is an adequate basis on which to rate an executive's performance.

- **Progress review:** Supervisors must monitor each senior executive's performance during the appraisal period and give him/her feedback on progress in meeting performance goals and expectations. The supervisor must hold at least one progress review with the executive during the appraisal period.
- **Initial summary rating:** The supervisor rates each critical performance element, derives an overall summary rating, and discusses the initial rating with the executive.
- **Higher level review:** The agency system must provide an opportunity for a higher level review of the supervisor's initial summary rating, which occurs before the rating is forwarded to the Performance Review Board.
- **Performance Review Board action:** Agencies must establish Performance Review Boards (PRB) to make recommendations to the appointing official on the performance of executives, including recommendations on performance ratings and bonuses. A PRB helps to assure consistency and objectivity in appraising executive performance.
 - Each PRB has three or more members appointed by the agency head. A PRB can include all types of Federal executives (e.g., noncareer appointees, military officers, and career appointees) from within and outside the agency, preferably at the SES or equivalent level. Non-federal employees may also serve (e.g., retirees or university personnel). However, when appraising career appointees or recommending performance awards for career appointees, more than one-half of the PRB membership must be SES career appointees.
- **Annual summary rating:** The annual summary rating is the official rating of record assigned by the appointing official, after considering the PRB's recommendations. There is no appeal of the annual summary rating. 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. However, the MSPB has no authority to take official action as a result of the hearing.

MORATORIUM: Career appointees may not be given performance ratings 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).

USING APPRAISAL AND RATING INFORMATION: The annual summary rating and the appraisal information on which it is based should be used as a basis for making decisions on pay adjustments, performance awards, removals, and reduction in force. Performance should also be a factor in assessing a senior executive's need for continuing development.

AWARDS AND OTHER RECOGNITION

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

- *Presidential rank awards* and *performance awards* (bonuses) recognize overall high-level performance by SES career appointees. Rank awards are based on service over an extended period of time, while bonuses reflect performance over a single appraisal period. A single outstanding performance rating does not justify a rank award nomination, but it may justify a bonus. Conversely, a record of outstanding ratings over a period of years suggests an individual may be a candidate for a rank award whether or not the individual has received a bonus each year.
- *Other forms of recognition* are available to recognize a single, significant act or service that may have occurred in a day, a month, or any other specified time frame and is not tied to overall performance.

PERFORMANCE AWARDS: Agencies may give performance awards (bonuses) to career appointees to recognize and reward excellence over a 1-year performance appraisal cycle. To be eligible, individuals must have received at least a fully successful rating.

- ***Award pool:*** The law provides two methods for configuring the award pool: bonuses paid cannot exceed the greater of 10% of the aggregate basic pay for the agency's career SES appointees for the year before bonuses are paid, or 20% of the average annual rates of basic pay to career SES appointees in the year bonuses are paid. (Note: the latter equation produces a larger pool only if the agency has one career SES appointee.)
- ***Individual award amounts:*** Performance awards must be at least 5% but no more than 20% of basic pay as of the end of the performance appraisal period. An individual may not voluntarily agree to accept a bonus of less than 5%.
- ***Award determinations:*** The agency head determines who receives a performance bonus and the amount of the award, after considering recommendations from the agency's Performance Review Board (PRB). When making bonus recommendations, the PRB must be composed of a majority of career SES members.
- ***Payment procedures:*** Bonuses are paid in a lump sum. Payments are not subject to retirement, health benefits, or life insurance deductions, and they are not included in the "high-three" average pay computation for retirement benefits or in basic pay for thrift savings plan computations. Payments are subject to income tax withholding, and are subject to FICA tax withholding if the individual is in FERS or CSRS Offset. Bonuses are subject to the Executive Schedule I ceiling on total compensation for a calendar year. However, SES members in an agency with a certified executive performance appraisal system (see Performance Management section of this

publication) have a higher aggregate compensation limit; the limit is equivalent to the Vice President's salary.

OTHER FORMS OF RECOGNITION: Agencies may grant cash, honorary, or informal recognition awards to SES members, individually or as a member of a group, to recognize 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. Agencies may also recognize a special act or service in the public interest in connection with official employment.

- ***Restrictions on cash awards for noncareer appointees:*** There is a statutory prohibition on granting awards to senior politically-appointed officers during the Presidential election period (between June 1 of a Presidential election year and the following January 20). This prohibition applies to Schedule C appointees and SES members who are not career appointees.

PRESIDENTIAL RANK AWARDS: There are two types of rank awards to recognize SES career appointees who have demonstrated exceptional performance over an extended period of time. The *Distinguished Executive* rank, which the President confers for "sustained extraordinary accomplishment" to no more than 1 percent of the career SES governmentwide, includes a lump-sum payment of 35 percent of base pay, a distinctive gold pin, and a framed certificate signed by the President. The *Meritorious Executive* rank, which the President gives for "sustained accomplishment" to no more than 5 percent of the career SES governmentwide, includes a lump-sum payment of 20 percent of base pay, a distinctive silver pin, and a framed certificate signed by the President.

- ***Restrictions:*** The recipient of either a Distinguished or Meritorious Executive rank award may not receive the same award during the following 4 fiscal years. However, there is no restriction on receiving one rank award and then the other at a closer interval, nor is there a requirement that an individual receive a Meritorious Executive rank before receiving a Distinguished Executive rank. There are no restrictions on receiving both a rank award and a performance award during the same calendar year.
- ***Nomination and selection procedures:*** OPM issues an annual call for rank award nominations, which includes the criteria and deadline for submitting nominations. The OPM Director reviews agency nominations and recommends candidates to the President. Review boards, composed of private citizens, assist the Director in identifying candidates. OPM also conducts an inquiry to verify the qualifications of nominees that the boards recommend for the Distinguished Executive rank. The President makes the final selections from the nominees recommended by the OPM Director.
- ***Payment:*** Rank awards are paid in a lump sum, and are subject to the Executive Schedule I ceiling on total compensation. However, SES members in an agency that has a certified executive performance appraisal system (see Performance Management section of this publication) have a higher aggregate compensation limit; the limit is equivalent to the Vice President's salary. Rank awards are not subject to retirement, health benefits, or life insurance

deductions, nor included in the "high three" average pay computation for retirement benefits or in basic pay for thrift savings plan computation. Payments are subject to income tax withholding and to FICA tax withholding if the individual is in FERS or CSRS Offset.

REMOVALS FROM THE SES FOR POOR PERFORMANCE

Agency managers can take a performance-based action after the career appointee has: received a performance plan; been given a progress review; served the minimum appraisal period; and been rated on his/her performance.

RATING REQUIREMENTS:

- Each career appointee must be given an individual performance plan with performance elements (work to be done or goals) and performance requirements (performance expectations). Plans must be developed in consultation with the appointee.
- Appraisal periods are generally 1 year, but they can be as short as 90 days, as long as there is an adequate basis on which to rate the executive's performance. The appointee cannot be rated until he/she has served under the plan for a minimum of 90 days.
- The supervisor must conduct at least one progress review with the executive during the rating period.
- The supervisor makes the initial summary rating, to which the appointee may respond. The appointee may obtain a higher level review. The agency Performance Review Board then reviews the rating, the executive's response, and the higher level review and makes a recommendation to the appointing official. The appointing official determines the annual summary rating.
- If the rating is unsatisfactory, the agency has two options: remove the individual from the SES, or reassign or transfer him/her to another SES position. If the executive is retained in the SES, the agency should provide assistance in improving performance. There is no requirement for a formal performance improvement plan, as there is for positions at GS-15 and below.

REMOVAL REQUIREMENTS:

- The appointee is given a 30-day written notice before the removal from the SES.
- If eligible, the individual may elect discontinued service retirement.
- Performance removals cannot be appealed, but the individual can request an informal hearing before MSPB.
- A performance removal is subject to the 120-day moratorium, unless it is based on an unsatisfactory rating given before the appointment of the new agency head or noncareer appointee that triggered the moratorium.

PLACEMENT AT GS-15: Following removal from the SES, the individual is entitled to placement in a non-SES position at GS-15 or above, for which he/she is qualified, with saved base pay. If there is no vacant position, the agency must create one. If the individual has not completed the SES probationary period, the fallback right applies only if he/she entered the SES from a career or career-type appointment.

RECERTIFICATION

The Ethics Reform Act of 1989 established triennial SES recertification "to ensure that the performance of career appointees demonstrates the excellence needed to meet the goals of the SES." Every 3 years, agencies determined whether their career SES members had performed satisfactorily over that time period. Recertification was conducted in 1991, 1994, 1997, and 2000.

The Homeland Security Act of 2002 repealed SES recertification.

CONTINUING LEARNING

Ongoing development of current and potential executives is critical to their effective performance as leaders in an environment of constant change and advancing technology, as well as to enhancing organizational achievement. There are many ways to provide training and development opportunities for executives, including formal and informal training experiences, seminars, forums, and mobility assignments. OPM offers orientation programs for newly-appointed SES members as well as development opportunities at three residential training centers.

SES BRIEFINGS: Several times a year, OPM sponsors 2-day orientation programs for new career and noncareer SES appointees. Participants are briefed about their role as senior executives and given introductory information about the SES. Key Administration officials and others provide insights and information on current domestic and foreign policy issues and initiatives, as well as advice about working with Congress. Presentations emphasize the senior executive's corporate leadership responsibilities for meeting the challenges facing a government undergoing change. These sessions also provide an opportunity for new executives to begin to interact as a community and build the corporate perspective.

RESIDENTIAL PROGRAMS: OPM manages three interagency residential training and development centers for current and future executives and managers: the Federal Executive Institute (FEI) and two Management Development Centers (MDCs). At each facility, the curriculum is designed to contribute to the corporate education of government leaders, including career and noncareer executives and managers, senior policy specialists, political appointees, and Presidential Management Interns, as well as personnel in similar positions from State and local governments and the governments of other nations.

- ***Federal Executive Institute (FEI):*** FEI is a residential learning facility that helps SES members and high-performing GS-15s (or equivalents in other pay systems) develop broad corporate viewpoints, understand their Constitutional roles, and enhance essential skills. “Leadership for a Democratic Society” is a 4-week program that brings together executives from 25-30 domestic and defense agencies for a unique learning experience. The objective is to help agencies develop their career executive corps, linking individual development to improved agency performance. The “Center for Executive Leadership” offers shorter programs (2 to 5 days) with a special emphasis on team building and organizational growth. The Center also offers single-agency consulting and training tailored to specific agency needs.

The Federal Executive Institute
1301 Emmet Street
Charlottesville, VA 22903-4899
(434) 980-6200; Fax: (434) 979-1030
Email: fei@opm.gov

- **Management Development Centers (MDCs):** OPM has Management Development Centers in Shepherdstown, WV, and Aurora, CO. The Centers offer residential training courses in management and public policy. The core management curriculum addresses the competencies Federal managers need at the full performance level. In addition, the Centers offer courses that support employees as they transition from manager to executive.

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

Western Management Development Center
3151 South Vaughn Way, Suite 300
Aurora, CO 80014-3513
(303) 671-1010 Fax: (303) 671-1018
email: wmdc@opm.gov

Additional information about the Federal Executive Institute and the Management Development Centers is on the OPM website at www.opm.gov/leader.

SES CANDIDATE DEVELOPMENT PROGRAMS (CDPs): These programs are designed to develop pools of qualified candidates for the SES. Agencies have the authority to establish formal CDPs, but OPM must approve programs before they are conducted for the first time. Participants are selected through competitive merit staffing procedures. Graduates whose executive qualifications are certified by a Qualifications Review Board are eligible for noncompetitive career appointment to the SES. All programs must include: at least 80 hours of interagency training that addresses the Executive Core Qualifications and includes individuals from outside the candidate's agency; at least 4 months of developmental assignments outside the candidate's position of record; an Individual Development Plan; and a SES mentor.

REDUCTION IN FORCE

Reduction in force (RIF) is a management tool for dealing with the consequences of abolishing functions or positions. It is not a tool for dealing with performance issues.

When an agency abolishes SES positions due to reorganizations, eliminated programs or functions, or reduced resources, there are several ways to deal with the affected SES members. They can be reassigned to vacant positions anywhere in the agency. They can be offered early retirement (if eligible). Agencies can help them find job opportunities elsewhere in government.

Reduction in force is usually the last resort. Once an agency decides that a RIF is necessary, executive performance is the primary factor in determining which SES members will be affected by the RIF.

KEY STATUTORY REQUIREMENTS: [5 U.S.C. 3595]

- Agencies establish competitive procedures for determining who is removed during a RIF that affects career appointees. These procedures must ensure that RIF determinations are based primarily on performance.
- The agency must place a career executive who has completed the probationary period in a vacant SES position for which he/she is qualified.
- If the agency cannot place the executive, OPM offers placement assistance (45 days) to try to place the executive elsewhere in the government. If the executive cannot be placed in any SES position, he/she is removed from the SES, but is entitled to placement in his/her agency at GS-15, with saved base pay.
- OPM can require an agency to take any action that OPM considers necessary to carry out a RIF placement.
- A career executive has an appeal right to MSPB on agency compliance with competitive RIF procedures.

THE RIF PROCESS:

There is more than one way to conduct a SES reduction in force. Both the law and regulations give agencies a great deal of flexibility to develop RIF plans that meet the size, function, and mission needs of their organizations. (Note: procedures may vary slightly depending on whether or not the SES member has completed probation.)

- **RIF plan:** The agency's written RIF plan sets the competitive area, and describes how retention registers will be constructed, how executives will be ranked, and how performance will be factored into decisions.

- ***Competitive procedures:*** The agency defines the area of competition. It may be the full agency or a major component of the agency, but it should be defined to ensure adequate competition. The agency's career SES members in the competitive area are organized on retention registers, based on performance and other factors, as set out in the agency plan. Individuals with the lowest retention standing are identified for reduction in force. (Note: For RIF purposes, "agency" means a cabinet department, or an independent establishment. For example, the Department of Defense is one agency, with Army, Navy, and Air Force being components within that agency.)
- ***Placement in the agency:*** Executives identified for RIF are entitled to placement in any SES position (for which qualified) in the agency. Since "agency" refers to cabinet department or independent establishment, this right cannot be restricted to jobs in an organizational component, regardless of the competitive area established for the RIF. If there is no such position, the agency head certifies that fact, in writing, to the OPM Director. The individual is then entitled to OPM placement assistance. The agency must continue to try to place the individual in the agency during the OPM priority placement period.
- ***Advance notice:*** The executive is entitled to two notices. The first notice advises that he/she has been released from the retention register and cannot be placed in the agency. This notice must be given at least 45 days before removal from the SES. This usually occurs at the time the agency refers the executive to OPM for placement assistance. The second is a 1-day notice before the removal date, which is given after OPM notifies the agency that the placement effort was unsuccessful.
- ***Removal and placement outside the SES:*** If OPM cannot place the executive in an SES position in another agency, the original agency removes the executive from the SES and places him/her in a vacant GS-15 position in the agency. If no GS-15 vacancy exists, the agency must create one. Executives removed from the SES as a result of RIF are entitled to appeal to the Merit Systems Protection Board on the competitive procedures used by the agency. If eligible, the executive may take discontinued service retirement in lieu of placement at GS-15.

OPM 45-DAY PLACEMENT PROGRAM:

- The executive asks for placement assistance from OPM and provides qualifications and other background information to help with OPM referrals.
- OPM formally refers the executive to agencies for specific SES vacancies or for general priority consideration. The agency must give the executive bona fide consideration. OPM strongly encourages agencies to interview referred executives.
- If there is another SES position for which the individual is qualified within his/her area of availability, the agency may offer that position to the executive. The agency must match a priority candidate's current rate of basic pay, unless the individual voluntarily agrees to accept a lower rate.

- Any agency objection to the candidate's qualifications must be based on the professional/ technical qualifications in the position standard. If the appointee is otherwise qualified for the position, the agency may not object solely on lack of agency-specific experience.
- If the executive declines a reasonable offer, OPM will end its placement assistance. The appointee may be removed from the SES at the expiration of the agency notice period.

OPM may provide a temporary SES space allocation to facilitate a priority placement.

MORATORIUM: The 120-day moratorium on certain removal actions does not apply to a removal as a result of RIF.

FALLBACK RIGHTS

A career SES appointee is entitled to be placed ("fallback") in a position outside the SES, with saved base pay, when removed from the SES under certain circumstances. The appointee may elect discontinued service retirement, if eligible, in lieu of fallback. The appointee has fallback rights in the following circumstances:

- During SES probation, for other than disciplinary reasons, if the individual held a career or career-conditional appointment, or an appointment of equivalent tenure, at the time of his/her appointment to the SES.
- After SES probation, as the result of a less than fully successful performance rating.
- After SES probation, as the result of a reduction in force.

CONDITIONS OF OFFER: The placement offer must be to a continuing position (i.e., one that will last at least 3 months); the position must be at GS-15 or above, or equivalent; 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 he/she held at the time of entry into the SES. The placement may not cause the separation or grade reduction of any other employee. If there is no vacant position for which the individual is qualified, the agency must create a position.

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 arranges for a transfer to an appropriate position in another agency. Except when a transfer of function is involved, the transfer must be mutually acceptable to both the employee and the gaining agency.

- **RIF situations:** A reduction in force (RIF) often affects both SES and non-SES positions and personnel, and it may be difficult to find a position outside the SES in which to place an SES member. Even so, the agency is required by law to place the individual in a continuing position at GS-15 or above.
- **Abolished agencies:** If an agency is being abolished (without a transfer of function) 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 an agency position outside the SES (since there are no continuing positions).

ADVERSE ACTIONS

SES appointees may be removed from the Federal service or suspended for more than 14 days for misconduct, neglect of duty, malfeasance, failure to accept a directed reassignment, or failure to accompany a position in a transfer of function.

COVERAGE: Career appointees who have completed SES probation. Some probationers and limited appointees are covered, depending on their status before entering the SES.

SUSPENSION: Agencies may suspend members of the SES for more than 14 days. The law is silent on suspensions of 14 days or less, so there are no provisions for such suspensions. An agency may issue a reprimand or admonishment for offenses that do not warrant a suspension for more than 14 days.

DISCIPLINARY REMOVAL V. 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 generally results from the appointee's inability to perform due to a lack of managerial competence or technical knowledge. Misconduct, neglect of duty, and malfeasance, on the other hand, denote intentional wrongdoing on the part of the appointee.

OFF-DUTY CONDUCT: If an agency wishes to take disciplinary action based on an appointee's off-duty actions or misconduct, it must demonstrate a nexus between the off-duty actions and the appointee's ability to discharge the responsibilities of his/her position.

PROCEDURES: A 30-day advance written notice is required that addresses the nature of the proposed action, specific reasons for the action, and other information. The appointee has a right to review the documentary evidence used to support the disciplinary action, is entitled to respond both orally and in writing, and is entitled to representation. After considering the appointee's response, the agency may substitute a less severe penalty, such as suspension for more than 14 days or a reprimand. The agency must give the appointee a notice of final decision (including mitigation of penalty), with the reason and effective date of the action.

120-DAY MORATORIUM: It does not apply to adverse action removals or suspensions.

PLACEMENT: An appointee removed for adverse action is not entitled to placement in a position outside the SES.

APPEALS: Adverse action removals and suspensions can be appealed to the Merit Systems Protection Board.