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UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

OFFICE OF THE DIRECTOR

AUG 31 2000

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: *Janice R. Lachance*
JANICE R. LACHANCE
DIRECTOR

SUBJECT: Employment Guidance on Transition to
a New Presidential Administration

The Office of Personnel Management (OPM) has developed a guide for your use during the transition to a new Presidential Administration. The guide provides information on a wide range of personnel topics and addresses issues that relate to departing employees, newly-appointed employees, and the career civil service.

OPM staff and I are here to assist you in any way we can. The guide includes a list of OPM program specialists who are available to answer questions your staff may have about information in the package or any civil service matters. We are sending a copy of the guide to your Chief of Staff, White House Liaison, and Human Resources Director. It is also available on OPM's website at www.opm.gov/transition. We will periodically update this website to reflect new information or additional transition issues.

Attachment

TRANSITION TO A NEW PRESIDENTIAL ADMINISTRATION

Employment Guidance for Agencies

AUGUST 2000



UNITED STATES OFFICE OF
PERSONNEL MANAGEMENT

Theodore Roosevelt Building
1900 E Street NW
Washington, DC 20415

TRANSITION TO A NEW PRESIDENTIAL ADMINISTRATION

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1. GENERAL TRANSITION INFORMATION

At the beginning of a new Presidential Administration, the incoming President makes personnel changes, including selecting new Cabinet secretaries and agency heads. These new appointees may appoint a number of officials on the basis of their support for the President's goals and policies. These are the officials who are responsible for formulating, advocating, and directing Administration policies and programs, or are those who serve such officials in a close and confidential relationship.

Most executive branch positions are in the "competitive service," or in a separate but similar competitive merit system. Governmentwide, there are relatively few positions whose incumbents are subject to change during periods of transition. Employees in positions that traditionally change when Presidential Administrations change are not part of the competitive civil service. Rather, they are excepted from competitive service requirements and protections by law, Executive order, or regulation.

Incumbents of these discretionary positions customarily resign at the request of the new incoming Administration officials or before a new agency head takes office. It also is common for an incoming Administration to ask certain persons to remain in their jobs during the transition to ensure continuity during the initial period of staffing.

POSITIONS OR INDIVIDUALS SUBJECT TO CHANGE

There are four broad categories of individuals or positions that may be changed during transition:

- Presidential appointments made with the advice and consent of the Senate (PAS) to positions in which the incumbent serves at the pleasure of the President;
- Other Presidential appointments (PA) to positions in which the incumbent serves at the pleasure of the President;
- Noncareer Senior Executive Service (SES) appointments; and
- Appointments to other positions in which the incumbent serves at the pleasure of the agency head. These positions are excepted from the competitive service by law, by Executive order, or by the Office of Personnel Management (OPM) based on their responsibility for determining or advocating agency policy or their confidential character (commonly known as "Schedule C" positions).

Positions in these four categories normally include Cabinet Officers and heads of other executive branch agencies; Under Secretaries; Assistant Secretaries; Directors of Bureaus and Services; and Chairpersons and Members of Boards, Commissions, and Committees. Positions in all four categories above are often authorized by specific provisions of law.

In the past, the first two categories above included most of the positions in Level I (Cabinet level) through Level V of the Executive Schedule. Now, however, Level IV and Level V positions that are managerial and do not require Senate confirmation are in the Senior Executive Service, although their titles may continue to be listed in sections 5315 and 5316 of title 5, U.S. Code.

Positions that are generally subject to change during transitions are listed in a document called, *United States Government Policy and Supporting Positions*, commonly known as the Plum Book. OPM prepares this document every four years at the request of Congress. It is published immediately after the election in November, and it will be available on OPM's website (www.opm.gov).

INVOLUNTARY SEPARATIONS/RESIGNATIONS

Presidential Appointees and Immediate Staff. When the President accepts the resignation of a Presidentially-appointed policy-making officer, the separation is involuntary. A separation is involuntary at any time the resignation is submitted and accepted, whether or not it is related to a change in Presidential Administrations. Further, when it is known that a Presidential appointee is leaving, the resignation of a noncareer SES or Schedule C employee who works for that Presidential appointee is involuntary. Agencies should include documentation with a retirement application that the President has accepted the resignation of his appointee, or that the Presidential appointee for whom a noncareer SES or Schedule C appointee works is leaving.

Requested Resignations. When an agency separates an employee who submits his/her resignation in response to a request from a recognized representative of the new incoming Administration, that separation is involuntary for retirement purposes. The agency should attach a copy of the request for the resignation with the individual's retirement application. Unsolicited resignations, i.e., those based on an anticipated request for a resignation and those prompted by personal choice, are voluntary for retirement purposes. [See sections 7 (p. 21) and 8 (p. 23) for additional information about involuntary separations and resignations.]

Caution about Separations. When an agency separates an employee, Constitutional requirements oblige the agency to provide a hearing if the employee's moral character is implicated by the reasons given for the dismissal. These rights arise only when disreputable reasons for dismissal are recorded in any document that might be disseminated to others, either inside or outside Government. For this reason, notices of separation should avoid a tone that implicates the employee's reputation. [See APPENDIX B for a sample separation notice.]

OVERLAPPING IN KEY POSITIONS

Agencies cannot employ two individuals in the same position at the same time ("dual incumbency"). However, there are options available to agencies to provide continuity in key positions and meet other transition 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 pending the incumbent's departure. For example, when an office director is leaving, the agency could establish a temporary special assistant position 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. [See section 4, pp. 9-10.]
- Agencies may also establish temporary transitional Schedule C positions for similar non-executive positions to help with transitions. [See section 5, p. 12.]

CAUTION ABOUT COMPETITIVE APPOINTMENTS

In a February 18, 2000, Memorandum to Heads of Departments and Agencies, the Director of OPM asked agencies to review all personnel actions carefully to make sure that they meet the civil service laws, rules, and regulations and are free of impropriety. The Director reminded agencies specifically that OPM and agencies are obligated to ensure that all personnel actions conform fully to the spirit and the letter of the merit system principles and do not involve prohibited personnel practices. [See APPENDIX A for copy of this memorandum.]

The General Accounting Office (GAO) is also reviewing appointments of former political appointees to career positions in the Federal Government during the period October 1998 through April 2001 to ensure that these actions comply with law and regulation. Agencies should be aware that all individuals have the right to compete for any civil service position when advertised, in accordance with proper merit staffing procedures.

CAUTION ON AWARDS AND PROMOTIONS FOR POLITICAL APPOINTEES

The law prohibits granting cash awards at any time to individuals serving in Executive Schedule positions who are appointed by the President, with Senate confirmation [5 U.S.C. 4509].

The law also prohibits granting awards to senior politically-appointed officers during the Presidential election period, defined as June 1, 2000, through January 20, 2001 [5 U.S.C. 4508]. This prohibition applies to Schedule C appointees and SES members who are not career appointees. In addition to this statutory ban, the Clinton Administration placed the following additional restrictions on cash awards and promotions for political appointees that remain in effect until January 20, 2001.

Restriction on Cash Awards. Agencies should not give cash awards to political employees (i.e., Executive Schedule, noncareer SES, Schedule C employees) paid a salary level that exceeds that of a GS-12. Agencies may grant monetary awards to others only for performance that is clearly exceptional. Agencies should continue to recognize other political appointees through the prudent use of nonmonetary awards.

Restriction on Schedule C Promotions. Promotions for Schedule C employees are limited to situations where significant changes to a position's level of duties and responsibilities justify reclassification at a higher grade. Positions should not be reclassified just to create a promotion opportunity for a deserving employee.

DETAILS TO THE TRANSITION TEAM

The Presidential Transition Act of 1963, as amended, establishes the transition team as a Federal entity to provide for the orderly transfer of power between Administrations [3 USC 102 note]. In addition to providing that the transition team may hire its own staff, the Act provides for the detail of Federal employees to the transition team after the November election as follows:

- Any employee of any agency of any branch of the Government may be detailed to the office staff of either the President-elect or the Vice-President elect.
- The employee must be detailed on a reimbursable basis, and the detail must be with the consent of the lending agency head.

2. ETHICS RESTRICTIONS

There are a number of ethics restrictions that apply to new appointees and to individuals who are leaving or have left Government.

ROLE OF THE OFFICE OF GOVERNMENT ETHICS

The U. S. Office of Government Ethics (OGE) provides overall policy leadership for executive branch departments and agencies in the conduct of their ethics programs. OGE reviews public financial disclosure reports of executive branch Presidential appointees requiring Senate confirmation and certain White House officials to determine if any entries on the forms may give rise to potential or actual violations of applicable laws or regulations and to recommend any appropriate corrective action. OGE also provides advice on other ethics matters for new Presidential appointees, SES appointees, and Schedule C employees.

AGENCY ETHICS PROGRAMS

Each agency head has primary responsibility for administering that agency's ethics program. He/she appoints a Designated Agency Ethics Official (DAEO) and an Alternate DAEO who, along with their supporting ethics officials, administer the agency's ethics program. The ethics program consists generally of the following:

- Liaison with the Office of Government Ethics;
- Reviewing financial disclosure reports;
- Developing and maintaining ethics education and training programs;
- Providing counseling and advisory services; and
- Monitoring administrative actions and sanctions for ethics violations.

The ethics regulations outline 14 basic principles of ethical conduct for executive branch personnel and provide uniform rules in various areas. These "Standards of Ethical Conduct for Employees of the Executive Branch," are found at 5 CFR Part 2635.

CURRENT EMPLOYEES LOOKING FOR A JOB

A criminal conflict of interest law prohibits executive branch employees generally from working in their Government jobs on matters that would affect the financial interest of someone with whom they are discussing possible employment [18 U.S.C. 208]. The Standards of Ethical Conduct for Executive Branch Employees [5 CFR Part 2635] have a similar rule that applies even before employment discussions begin, and may apply even when an employee has only sent a resume to a prospective employer. Participation in some procurement matters can subject employees to special additional requirements relating to private employment contracts.

Employees should also be careful not to misuse Government resources (such as official time, the services of other employees, equipment, supplies, and restricted information) in connection with job-seeking. After an employee has accepted a job outside the Government, he/she must continue to

refrain from working on matters in his/her Government job that would affect the financial interest of the prospective employer.

If an agency offers outplacement services to all its employees, departing noncareer employees may use these services. However, an agency may not establish outplacement services for noncareer employees only. [See Appendix C, Question 6, for additional information.]

POST EMPLOYMENT ETHICS RESTRICTIONS

There are certain limitations on employment after Government service. Some parts of a criminal law apply to all former executive branch employees, while other parts restrict only former senior officials or those with specified duties [18 U.S.C. 207]. Agency ethics officials are also available to provide more specific advice on post employment restrictions before and after Government service. A summary of these restrictions may be accessed in *DAEO gram DO-00-006*, February 17, 2000, and the pamphlet, *Understanding the Revolving Door*, at the Office of Government Ethics website (www.usoge.gov).

CLINTON ADMINISTRATION SENIOR APPOINTEE PLEDGE

In addition to the general post employment ethics restrictions, President Clinton in Executive Order 12834, dated January 20, 1993, required every "senior appointee" to sign a contractual ethics pledge. Some of the post employment restrictions in the criminal law become more restrictive under this pledge. With certain exceptions, senior appointees are full-time, noncareer employees in the executive branch who are appointed by the President, the Vice President, or an agency head and who are paid at an Executive Schedule rate or equivalent. Employees whose basic pay is below that for SES level 5 are not subject to the pledge. Under these restrictions:

- Senior appointees are barred for 5 years from lobbying any employee of their former agency.
- If they served as senior appointees in the Executive Office of the President, the 5-year ban also extends to any other agency for which they have had personal and substantial responsibility as senior appointees.
- They are barred permanently from activity on behalf of any foreign government or foreign political party that would require them to register under the Foreign Agents Registration Act.

The pledge provides a few exceptions to the definition of "lobbying," similar to the exceptions in the post-employment law. Also, there is an exception for some communications in connection with judicial or administrative proceedings, and law enforcement inquiries and investigations.

PROTECTING FEDERAL RECORDS AND OTHER DOCUMENTS FROM UNAUTHORIZED REMOVAL

National Archives and Records Administration (NARA) guidance reminds heads of Federal agencies that official records must remain in the custody of the agency. [See NARA Bulletin 2000-03, dated May 16, 2000, (www.nara.gov).] Federal officials should be aware that there are criminal penalties for the unlawful removal or destruction of Federal records [18 U.S.C. 2071] and the unlawful disclosure of national security information [18 U.S.C. 793, 794, and 798]. Departing Federal officials

should contact their agency records officer if they have questions about maintaining and disposing of records and extra copies of records.

Agency records officers should have copies of *Personal Papers of Executive Branch Officials* and *Agency Recordkeeping Requirements*, two NARA publications that address records creation and maintenance procedures and distinguishing between records and personal documentary materials. These publications are available on the NARA website at www.nara.gov/records/index.html. NARA records management regulations address the identification and protection of Federal records and are also accessible from the website mentioned above [36 CFR Chapter XII, Subchapter B].

THE LOBBYING DISCLOSURE ACT

Public Law 104-65 [2 U.S.C.1602] requires certain executive branch officials to disclose contacts with lobbyists. The Act also imposes disclosure and registration requirements on lobbyists concerning their lobbying activities and contacts with regard to their clients. In addition, the Act provides that an organization that engages in lobbying activities is not eligible to receive Federal funds that constitute an award, grant, or loan. Executive branch officials covered by the lobbying disclosure requirements include:

- (A) the President;
- (B) the Vice President;
- (C) any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President;
- (D) any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order;
- (E) any member of the uniformed services whose pay grade is at or above 0-7 under section 201 of title 37, United States Code;
- (F) any member or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character described in section 7511(b)(2)(B) of title 5, United States Code.

Generally, the Act applies to Presidential appointees (PAS) and Schedule C employees, but does not apply to members of the SES (unless they meet the criteria in C or D, above). If you have any questions about who is considered a lobbyist, how you should respond to contacts from lobbyists, and what your responsibilities are under the Act, you should contact your agency General Counsel.

3. INDIVIDUALS APPOINTED BY THE PRESIDENT

[OPM Contact: James Green, 202-606-1700]

Officers and employees who serve "at the pleasure of" the President or other appointing official may be asked to resign or may be dismissed at any time. They are not covered by standard civil service removal procedures and have no right of appeal. Agencies should consult their General Counsel or OPM's General Counsel for assistance in this area.

In certain cases, the organic statute creating a position provides that an individual appointed by the President may be removed only for cause or at the end of a statutory term of appointment. These provisions are most commonly found in statutes establishing quasi-judicial entities or regulatory agencies. Individuals in positions with statutory terms can continue in the position until the end of the term, unless they resign for personal reasons or are removed for cause. The Office of Legal Counsel at the Department of Justice is the expert on Presidential appointments. The issue is discussed in such cases as: *Myers v. U.S.*, 272 U.S. 52 (1926); *Humphrey's Executor v. U.S.*, 295 U.S. 602 (1935); *Wiener v. U.S.*, 357 U.S. 349 (1958); and *Buckley v. Valeo*, 424 U.S. 1 (1976).

VACANCIES ACT

The Vacancies Act [5 U.S.C. 3345-3349d] prescribes requirements for filling, both permanently and temporarily, vacancies that are required to be filled by Presidential appointment with Senate confirmation (PAS appointments). The Act was substantially amended in 1998.

The new Act provides revised rules for temporarily filling vacant PAS positions. In most cases, it is the exclusive means for filling vacant PAS positions with a person designated as the "Acting" officer. The Act also recognizes other limited means to fill PAS positions, such as recess appointments and other specific statutory authorities. The 1998 amendments specifically provide that an agency head's general authority to delegate or reassign duties within the agency does not remain a viable, separate authority for filling a vacant PAS position on a temporary basis.

An office becomes "vacant" when the incumbent "dies, resigns, or is otherwise unable to perform the functions and duties of the office." The Act does not specify the full range of other circumstances that would constitute such inability, but legislative history indicates it would include being fired, imprisoned, or a serious sickness. The Act also specifies that the expiration of a term of office constitutes such inability to perform the functions and duties of the office.

Under the Act, there are generally three categories of persons who can serve in an acting capacity for vacant PAS positions.

- First, the "first assistant" to the vacant office. Although the Act does not define this term, legislative history generally refers to the top deputy to the position. The law also appears to permit naming a first assistant by regulation where there is no statutory first assistant, if that action is taken at least 90 days before the vacancy occurs.
- Second, an existing PAS (from any other agency) designated by the President (and only the President).
- Third, certain senior agency employees designated by the President (and only the President).

Specific time frames and other statutory considerations limit service for all three categories. There is a general limit of 210 days for serving in an acting capacity. With respect to any vacancy that exists during the 60-day period beginning with a Presidential inauguration, the 210 days begins on the later of 90 days after the inauguration or 90 days after the date of the vacancy. There are also time constraints if the President nominates a person to fill the PAS position on a permanent basis during the period that the position is held on an acting basis

The Office of Legal Counsel (OLC) at the Department of Justice has issued extensive guidance on the Vacancies Act [see www.usdoj.gov/olc/mem_ops.htm] and is available to respond to specific questions (202-514-2051).

The Assistant to the President for Presidential Personnel coordinates all activities relating to Presidential appointments.

EFFECTIVE DATE OF PAS APPOINTMENTS

Presidential appointments subject to Senate confirmation (PAS) are effective on the date the President signs the commission document. However, the individual's pay does not begin until the appointee is sworn in and signs the oath of office.

For individuals serving under term PAS appointments, the term begins on the effective date of the appointment, i.e., the day the President signs the commission document.

PAY AND LEAVE

Individuals appointed by the President, with Senate confirmation, occupy positions that are placed by law in the Executive Schedule, or are established at pay rates equivalent to the Executive Schedule. This schedule has five levels: Levels I through V (the lowest). In 2000, annual pay rates for the Executive Schedule are: Level I (\$157,000), Level II (\$141,300), Level III (\$130,200), Level IV (\$122,400), and Level V (\$114,500). Locality pay does not apply to the Executive Schedule.

Individuals in the executive branch who are appointed by the President to positions in the Executive Schedule are not covered by the leave system. They do not earn annual or sick leave and, therefore, are not charged leave for absences from work.

4. APPOINTEES IN THE SENIOR EXECUTIVE SERVICE

[OPM Contact: Daliza Salas, 202-606-1610]

Senior Executive Service (SES) positions, appointments, and special tenure features are discussed in this section. Appointees in the SES who are subject to change during transitions are those with noncareer appointments.

The SES is a unique executive personnel system completely separate from the competitive and excepted services. The SES includes most of the top managerial, supervisory, and policy positions in the executive branch that are not required to be filled by Presidential appointment with Senate confirmation.

SES POSITIONS

Every 2 years, OPM allocates to each agency a specific number of SES "spaces" based on agency needs. Within that numerical allocation, each agency may establish SES positions and designate them as either "General" or "Career Reserved." General positions may be filled by career, noncareer, or limited appointees. Career Reserved positions must be filled by career SES appointees to ensure public confidence in the impartiality of the Government. OPM may make temporary SES allocations available to individual agencies to help with transitions.

SES NONCAREER APPOINTMENTS

Agencies may make noncareer SES appointments to any SES General position without regard to competitive requirements and may also set the pay level of the appointees. However, the White House Office of Presidential Personnel and OPM must approve each noncareer appointment before the agency makes that appointment. This applies to initial appointments, reassignments, and transfers to another department or agency. The law limits the total number of SES positions that can be filled by noncareer appointment to 10 percent of the governmentwide SES space allocation and 25 percent of an individual agency's allocation (unless the allocation is three or less). Additional limitations have been imposed, administratively or by other statutes, on an agency-by-agency basis.

Agencies can terminate noncareer appointments at any time with a 1-day notice. Noncareer appointees removed from the Federal service have no right of appeal to the Merit Systems Protection Board (MSPB). A sample separation notice is provided at APPENDIX B. [See 5 U.S.C. 3592; 5 CFR 359, Subpart I.]

SES LIMITED APPOINTMENTS

There are two types of SES limited appointments: limited term and limited emergency. *Limited term appointments* may be made for up to 36 months to a position with project-type work that will expire at the end of a specified period, or to a position that special circumstances require be filled on a rotating basis. *Limited emergency appointments* may be made for up to 18 months to meet an urgent need. Limited appointments may be made only to SES General positions. An individual may not serve more than 36 months in a 48-month period on any combination of limited appointments. Limited appointees must meet the qualification requirements established by the agency.

Agencies have to obtain limited appointment authorities from OPM on a case-by-case basis. However, for temporary SES appointments of career or career-type employees, OPM has given each agency a

"pool" of limited appointment authorities equal to 3 percent of its total SES space allocation to use for this purpose only. In addition, to help with transitions, OPM may authorize a limited term appointment authority for an individual who has been nominated by the President, but whose appointment is pending Senate confirmation. These limited appointments may not be made to the position for which the individual has been nominated. OPM may also authorize limited appointments in certain cases to provide continuity in key positions for short time periods.

Agencies may terminate limited appointments at any time with a 1-day notice. Limited SES appointees who are removed have no right of appeal to MSPB on termination of the appointment. However, some limited appointees have placement rights to positions outside the SES. A career or career-type employee who is given a limited appointment in the same agency has placement rights to his/her former position or to one with like status, tenure, and grade or pay. [See 5 U.S.C. 3592; 5 CFR 359, Subpart I.]

SES CAREER APPOINTMENTS

Career appointments may be made to either SES General or Career Reserved positions. Career appointments have no time limitation and provide certain job protections and benefits not conferred by noncareer and limited appointments. Initial career appointments must meet competitive SES merit staffing provisions at the time of selection for the SES. Following selection by the agency, the individual's executive qualifications must be approved by an OPM-administered Qualifications Review Board (QRB) before the career appointment can be made.

SUSPENSION OF QRB CASE PROCESSING

If an agency head leaves or announces the intention to leave, or if the President nominates a new agency head, OPM suspends QRB case processing for career SES appointments until a successor is appointed. This action is taken 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 case that it considers urgent, the agency may ask OPM to forward it to a QRB. OPM will consider such factors as whether the new agency head would have 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. [See 5 CFR 317.502(d).]

MORATORIUM ON SES CAREER REASSIGNMENTS

Agencies may reassign SES career appointees to any SES position in the agency for which they are qualified, following a 15-day notice (or a 60-day notice for geographic reassignments).

However, when there are changes in agency political leadership, the law provides for a 120-day moratorium on involuntary reassignments of career SES appointees. Career executives are always prepared to serve new leadership: balancing continuity and change is the fundamental responsibility of the senior executive. The moratorium was established to prevent preemptory reassignments by new appointees without adequate knowledge of the career executives. An SES career appointee may not be involuntarily reassigned within 120 days of the appointment of a new agency head (including recess appointment) or within 120 days after the appointment of a career appointee's new noncareer supervisor who has the authority to make that career appointee's initial performance appraisal. However, the career appointee may voluntarily waive the moratorium. [See 5 U.S.C. 3395; 5 CFR 317, Subpart I.]

The appointment of a new agency head always starts a 120-day moratorium. Another official may not take a reassignment action, even if that official has been in office more than 120 days. If a moratorium results from appointment of a new noncareer supervisor, the agency head may not take an involuntary reassignment action, even if the agency head has been in office more than 120 days.

Designating an "acting" agency head or noncareer supervisor (e.g., by a detail or when a deputy acts in the position) is not an **appointment**. Therefore, the statutory moratorium is not technically applicable. However, the agency at its discretion may apply the moratorium in such situations. In this case, if the "acting" individual later receives a permanent appointment to the position without a break in service, time spent under the agency-imposed moratorium counts toward the 120-day moratorium initiated by the permanent appointment.

In calculating the 120-day moratorium, 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 are not counted. However, the moratorium provision does not restrict the total length of a detail, i.e., it may exceed 60 days.

CAREER APPOINTEES WHO ACCEPT PRESIDENTIAL APPOINTMENTS

Although Presidential appointees are among the executives subject to change in a new Administration, certain former career members of the SES who accepted Presidential appointments are entitled to reinstatement in the SES after leaving the Presidential appointment. The reason for leaving the Presidential appointment cannot be misconduct, neglect of duty, or malfeasance. [See 5 U.S.C. 3593(b) and 5 CFR 317.703.]

ORIENTATIONS FOR NEW SES MEMBERS

The Office of Personnel Management sponsors 2-day orientations for new members of the SES several times during the year. These briefings provide an overview of current Government policy priorities and initiatives, introductory information about the SES, advice about working with Congress, and opportunities for networking. OPM will publish notices of these briefings and registration information on the SES home page on OPM's website (www.opm.gov/SES/orientation.html).

ADDITIONAL GUIDANCE

APPENDIX E contains additional technical guidance on the Senior Executive Service.

5. APPOINTEES IN THE EXCEPTED SERVICE

[OPM Contact: Larry Lorenz, 202-606-1143]

The "excepted service" consists of all positions in the executive branch that statute, the President, or the Office of Personnel Management has specifically excepted from the competitive service or the Senior Executive Service. This section covers excepted service positions in Schedules A, B, and C as well as experts and consultants.

SCHEDULE C POSITIONS AND APPOINTMENTS

Employees in the excepted service who are subject to change at the discretion of a new Administration are commonly referred to as "Schedule C" employees. Schedule C positions are excepted from the competitive service because they have policy-determining responsibilities or require the incumbent to serve in a confidential relationship to a key official. Most Schedule C positions are at the GS-15 level and below. Appointments to Schedule C positions require advance approval from the White House Office of Presidential Personnel and OPM, but appointments may be made without competition. OPM does not review the qualifications of a Schedule C appointee — final authority on this matter rests with the appointing official.

Agencies may separate Schedule C appointees at any time if the confidential or policy-determining relationship between the incumbent and his/her superior ends. Schedule C appointees are not covered by statutory removal procedures and generally have no rights to appeal removal actions to the Merit Systems Protection Board. This is true, regardless of veterans preference or length of service in the position. Agencies should consult their General Counsel or OPM's General Counsel on Schedule C separations. APPENDIX B contains a sample separation notice.

Establishing Regular Schedule C Positions. OPM authorizes the establishment of each Schedule C position and revokes the authority when the position is vacated. The agency head must certify that the position was not created solely or primarily for the purpose of detailing the incumbent to the White House. A list of Schedule C positions is published annually in the Federal Register, under Part 213 of OPM's regulations. The President can also authorize individual exemptions under Schedule C [5 CFR 6.8].

Temporary Transitional Schedule C Positions. To help with transitions, OPM has delegated authority to agencies to establish a limited number of temporary transitional Schedule C positions [5 CFR 213.3302]. Agencies can use this delegated authority during the first year of a new Presidential Administration and during a 1-year period immediately following the appointment of a new agency head, or the designation of an "acting" agency head. The number of temporary transitional Schedule C positions an agency establishes cannot exceed either 50 percent of the highest number of regular Schedule C appointees in that agency at any time over the previous 5 years, or three positions, whichever is higher.

Agencies can make appointments under this authority for up to 120 days and may extend the appointment once for up to 120 more days. The agency must notify OPM within 5 working days that they have made an appointment to a temporary transitional Schedule C position. Agencies must also notify OPM within 3 working days when the position has been vacated. In addition, the agency must give OPM a statement signed by the agency head, or his/her designee, certifying that the position was not created solely or primarily for the purpose of detailing the incumbent to the White House and identifying the position and incumbent.

When an agency intends to convert an employee in a temporary transitional Schedule C position to a nontemporary ("regular") Schedule C appointment, the temporary appointment may be designated as a "provisional appointment" [5 CFR 316.403]. This permits the agency to treat the employee as a nontemporary appointee for benefits purposes [see section 7, p. 19]. Provisional appointments must be made under an authority established by law, Executive order, or regulation, or granted by OPM [5 CFR 316.403(b)]. Documentation instructions are in OPM's *Guide to Processing Personnel Actions*, Chapter 11, Excepted Service Appointments.

OTHER EXCEPTED SERVICE POSITIONS AND APPOINTMENTS

In addition to the policy-determining or confidential positions described in the preceding section, Congress, the President, or OPM can except certain agencies and groups of positions from the competitive service and the Senior Executive Service. These exceptions are made for a variety of reasons, none of which relate to policy-determining or confidential factors. Like career appointees, employees in these positions are not generally subject to change during transitions.

Positions Excepted by Statute and the President. Examples of positions that have been excepted by statute include the Foreign Service of the Department of State, the Federal Bureau of Investigation of the Department of Justice; all positions in the Tennessee Valley Authority, the General Accounting Office, and the Postal Service; and certain employees of the Veterans Health Administration in the Department of Veterans Affairs. Most of these positions are under separate merit systems and are not subject to change during transitions. Examples of Presidential exceptions include jobs overseas held by foreign nationals.

Positions Excepted by the Office of Personnel Management. There are two other categories of positions that OPM has administratively excepted from the competitive service because it is not practical to hold competitive examinations for them. These are Schedule A and Schedule B positions.

- ***Schedule A Positions.*** Examples include chaplains, teachers in military dependent school systems overseas, faculty positions of service academies, and certain positions at isolated localities. Attorney positions are also in Schedule A because OPM is prohibited in its appropriations legislation from spending funds to examine for attorney positions.
- ***Schedule B Positions.*** Schedule B is used primarily for career-related work study positions.

The procedural and appellate rights governing the removal of Schedule A and B appointees vary. Employees with veterans preference who have 1 year of qualifying service are entitled to statutory procedural and appellate rights if they are removed from the Federal service for conduct or performance reasons. In addition, the Due Process Amendments of 1990 [P.L. 101-376, August 17, 1990] gave procedural and appeal protections to many excepted service employees who do not have veterans preference, provided they have completed 2 years of qualifying service.

EXPERT AND CONSULTANT APPOINTMENTS

Agencies may appoint experts and consultants without regard to competitive civil service requirements to positions that primarily require performance of advisory services, rather than performance of operating functions [5 U.S.C. 3109]. If the individual meets the definitions of expert or consultant in 5 CFR Part 304, and if the work assigned requires expert or consultant services, agencies may use

expert and consultant appointments for individuals who have been nominated by the President, but not yet confirmed, or for individuals whose permanent excepted appointments are pending.

Agencies may not use expert and consultant appointments to avoid employment procedures or solely in anticipation of a competitive career-conditional appointment. An expert and consultant appointment authority may not be used to fill positions in the Senior Executive Service [5 U.S.C. 3109]. However, if a position meets the criteria for placement in the Senior Executive Service, OPM may authorize a limited appointment authority to appoint an individual during the transition period.

Experts and consultants may be paid a rate not to exceed the daily equivalent of the highest payable rate in the General Schedule (GS-15, step 10), excluding locality pay, unless a higher rate is specifically authorized by statute. They may also be reimbursed for travel (if they are intermittent employees), but not moving expenses. They may participate in orientation/training programs at Government expense.

ORIENTATIONS FOR NEW SCHEDULE C APPOINTEES

The Office of Personnel Management sponsors 1-day orientations for new Schedule C appointees several times during the year. These briefings are designed to provide appointees with information about working in the Federal environment, Government ethics, and the Hatch Act, as well as current domestic, economic, and foreign policy issues and initiatives. OPM will publish notices of these briefings and registration information on its website (www.opm.gov/events/index.htm).

6. PAY AND LEAVE

[OPM Contact: Jo Ann Perrini, 202-606-2858]

This section provides information on basic salary levels, locality pay, pay flexibilities available to address staffing difficulties, pay for reemployed annuitants, leave, and pay on separation from the Government.

BASIC SALARY LEVELS

Basic salary levels are set in several ways, including the following:

Executive Schedule. The law prescribes the salaries of most positions filled by Presidential appointees at levels I through V of the Executive Schedule. In 2000, Executive Schedule salaries range from \$114,500 (level V) to \$157,000 (level I).

Senior Executive Service. Agency heads may set the salaries of members of the Senior Executive Service (SES) at any one of six rates. In 2000, SES basic salaries range from \$106,200 (ES-1) to \$122,400 (ES-6), not including locality payments. (*Note:* The initial establishment of a pay rate for a new SES appointee is considered a pay adjustment. The agency must wait at least 12 months before changing the pay rate.)

Senior-Level Positions. The Senior-Level (SL) pay system includes high-level positions without executive responsibilities as well as positions that the law or the President excludes from the SES. Agency heads may set the pay of an SL employee at any rate within a range fixed by statute. In 2000, the basic pay for senior-level positions ranges between \$93,137 and \$122,400, excluding locality payments. There are some Schedule C employees under the SL pay system.

General Schedule. The General Schedule (GS) pay system has 15 grade levels, with 10 salary steps at each grade. The maximum rate of basic pay in 2000 is \$100,897 (GS-15, step 10). A new GS employee generally enters at the first step of the appropriate grade. Most Schedule C employees are under the GS pay system.

Special Pay Authorities. Some agencies have special authorities that govern the setting of pay for all or certain employees. For example, the Administrator of the Federal Aviation Administration (FAA) may set pay for FAA employees. The President may set the pay of certain White House employees.

LOCALITY PAY

Most Federal employees — including GS, SES, and Senior-Level employees, but excluding officials paid under the Executive Schedule — are eligible for supplemental locality-based payments in addition to the basic rate of pay. These payments apply only in the 48 contiguous States. In 2000, the locality payments range from 6.78 to 15.01 percent. The maximum locality-adjusted rate of pay for GS employees is the rate for Executive Schedule level IV (\$122,400); for SES and SL employees the maximum rate is the rate for Executive Schedule level III (\$130,200).

PAY FLEXIBILITIES

Agencies may use a number of discretionary pay flexibilities to deal with well-documented staffing difficulties. Specific statutory and regulatory conditions govern the use of each of these flexibilities, including agency justification and documentation requirements. We caution agencies to exercise these flexibilities judiciously, especially when hiring other than career employees. These payments are subject

to public scrutiny and third-party review. Use them only when absolutely necessary to address staffing problems.

Advance Payments. Agencies may provide for the advance payment of basic pay (including any locality payment) covering not more than two pay periods to any individual who is newly appointed to a position, except for appointment as agency head [5 CFR Part 550, Subpart B].

Above Minimum Hiring Rates — GS. Agencies may appoint individuals to General Schedule positions at a step above the first step of their grade based on the employee's superior qualifications or a special need of the agency for the employee's services. Agencies may make such appointments at any appropriate GS grade. Agencies may set pay at the higher step only upon **initial** appointment or upon reappointment after a 90-day break in service [5 CFR 531.203(b)(2)].

Pre-Employment Interviews — Payment of Travel and Transportation Expenses. Agencies may pay travel and transportation expenses for travel to and from pre-employment interviews to any individual they consider for employment. (Travel expenses to attend confirmation hearings are considered part of the pre-employment interview process.) Agencies may also pay the travel expenses of a new appointee from his/her place of residence at the time of selection or assignment to the duty station [5 CFR Part 572].

Recruitment and Relocation Bonuses. Agencies may make a lump-sum payment of up to 25 percent of basic pay to a newly-appointed employee (i.e., a recruitment bonus) or to an employee who must relocate (i.e., a relocation bonus) to fill a position that would otherwise be difficult to fill. In return, the employee must sign an agreement to fulfill a period of service with the agency (6-month minimum for recruitment bonuses). Agencies may pay recruitment and relocation bonuses to employees under the General Schedule, Senior Executive Service, Senior-Level, Executive Schedule, and certain other pay systems. Recruitment and relocation bonuses are subject to the aggregate limitation on total pay that an employee may receive in a calendar year (currently \$157,000) [5 CFR Part 575, Subparts A and B].

Note: Agencies may not pay recruitment or relocation bonuses to the head of a Federal agency or an individual appointed to a position in the expectation of receiving an appointment as the head of an agency.

Retention Allowances. Agencies may make continuing (i.e., biweekly) payments of up to 25 percent of basic pay to an employee with unusually high or unique qualifications, or to an employee who is serving a special agency need that makes it essential to retain the employee if he/she would be likely to leave the Federal Government (for any reason, including retirement) in the absence of a retention allowance. Agencies may pay retention allowances to employees under the General Schedule, Senior Executive Service, Senior-Level, Executive Schedule, and certain other pay systems. Retention allowances are also subject to the aggregate limitation on total pay that an employee may receive in a calendar year (currently \$157,000) [5 CFR Part 575, Subpart C].

Note: Agencies may not pay a retention allowance to the head of a Federal agency.

PAY FOR REEMPLOYED ANNUITANTS

In most cases, when Federal retirees (covered by the Civil Service Retirement System or the Federal Employees Retirement System) are re-employed in the Federal service, their salaries are reduced by the amount of their annuities [5 U.S.C. 8344 and 8468]. The reduction also applies when retirees are appointed as experts or consultants. However, there are some exceptions, so please consult with the Human Resources Office in your employing agency.

LEAVE

Officers and employees who are appointed by the President (PAS and PA) are not covered by the Federal leave system established by Chapter 63 of title 5, United States Code. Presidential appointees do not earn annual and sick leave and cannot be charged leave for absences from work. Employees who are members of the SES and Schedule C appointees are covered by the Federal leave system.

Annual and Sick Leave. Employees 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 members may carry over up to 90 days of annual leave to the next leave year; GS employees may carry over up to 30 days of annual leave.)

In addition, employees 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 purposes. They may use a total of 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 a total of 12 workweeks of *unpaid* leave during any 12-month period for: (1) the birth of a child and care of the newborn; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an employee's spouse, son or daughter, or parent with a serious health condition; and (4) 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 the Family and Medical Leave Act.

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 must have a leave transfer program. In addition, an agency may also choose to establish a leave bank for its 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. You can obtain additional information on the Federal Government's leave programs at OPM's website at <http://www.opm.gov/oca/leave/index.htm>.

SEPARATION PAYMENTS

Certain payments may be payable to an individual who is separated from the Federal service.

Severance Pay. Employees who are covered by the severance pay law are entitled to a series of payments equal to their normal salary following an involuntary separation that is not for misconduct or unacceptable performance. Presidential appointees, noncareer SES appointees, Schedule C employees, and other similar political appointees are **not** eligible for severance pay.

Lump-Sum Payments for Unused Annual Leave. Employees who separate from Federal service and who are covered by the Federal leave system are entitled to a lump-sum payment for unused annual leave. The lump-sum payment equals the pay the employee would have received on a biweekly basis had he/she remained in Federal service on annual leave. This payment excludes any allowances that are paid for the sole purpose of encouraging an employee to remain in Government service, such as retention

allowances and physicians comparability allowances. Most Presidential appointees (PAS and PA) are excluded from coverage under the Federal leave system.

A current Federal employee who receives a Presidential appointment does not receive a lump-sum payment for his/her unused annual leave. The unused annual leave is held in abeyance for recredit if and when the employee is subsequently reemployed in a position covered by the Federal leave system. If the individual separates from Federal service while under a Presidential appointment, he/she will receive a lump-sum payment for unused annual leave based on the rate of pay in effect for the position the employee held immediately before he/she accepted the Presidential appointment.

When an employee who received a lump-sum payment for unused annual leave is reemployed in the Federal service before the end of the annual leave period covered by the lump-sum payment, he/she must refund a portion of the lump-sum payment. The refunded portion covers the period between the date of reemployment and the expiration of the lump-sum leave period. The employing agency will recredit to the employee an amount of annual leave that is equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period.

You can obtain additional information on lump-sum payments for annual leave at OPM's website at <http://www.opm.gov/oca/leave/index.htm>.

7. RETIREMENT, HEALTH AND LIFE INSURANCE

[OPM Contact: Mary Sugar, 202-606-0788]

NEW EMPLOYEES

Note: Retirement and insurance coverage for reemployed Federal annuitants may be handled differently from other employees. Your agency's Human Resources Office can provide the necessary information to these employees.

Health Insurance. Eligibility for participation in the Federal Employees Health Benefits Program depends on the type of Federal appointment. Generally, Federal employees who receive appointments that are limited to 1 year or less are excluded.

However, individuals with temporary appointments designated as "provisional appointments" are eligible since this type of appointment is used to expedite placement in a position expected to be permanent while the necessary procedures required for non-temporary appointment are proceeding, such as a pending Senate confirmation or security clearance. After the initial opportunity, the Program permits enrollment changes during a 4-week period each November and upon certain changes in family status.

- **Plans.** Eligible new employees will receive materials describing available plans from the employing agency and must make an enrollment election within 31 days of becoming eligible. The Program offers each employee several governmentwide fee-for-service plans (some which require membership in employee organizations) and health maintenance organizations serving the geographic area in which the employee lives or works. Enrollment may be for self-only or for self-and-family.
- **Cost-sharing.** The Government contribution equals 72 percent of the program-wide weighted average of subscription charges in effect each year, for self-only enrollments and for self-and-family enrollments, subject to the maximum of 75 percent of the charges for any particular plan or option. Employees are subject to payroll withholdings for health plan costs in excess of the Government contribution.
- **Premium Conversion.** Eligible new employees who elect to participate in the Federal Employees Health Benefits Program are eligible to participate automatically in premium conversion. Premium conversion is a tax benefit. It allows an employee's contribution for health insurance to be made on a pre-tax basis, which means that the money is not subject to Federal income, Medicare, or Social Security taxes.

Life Insurance. Eligibility to participate in the Federal Employees' Group Life Insurance Program also depends on the type of Federal appointment. Generally, Federal employees who receive appointments which are limited to 1 year or less are excluded.

However, individuals with temporary appointments designated as "provisional appointments" are eligible as explained above under *Health Insurance*. If life insurance coverage is waived on first opportunity to enroll, subsequent opportunities are very limited.

- **Basic.** Eligible employees automatically receive Basic life insurance coverage unless they file a written waiver. The Basic insurance amount is equal to annual basic pay, rounded to the next

higher multiple of \$1,000, plus \$2,000, and additional coverage for employees under age 45, plus an equal amount of accidental death and dismemberment coverage (AD&D).

- *Optional.* In addition, the Program offers three types of Optional life insurance, without evidence of good health, which employees must elect within 31 days of becoming eligible. Option A, generally offers \$10,000 life insurance and AD&D coverage; Option B offers life insurance (no AD&D) coverage in multiples of 1, 2, 3, 4, or 5 times the employee's annual rate of basic pay (rounded to the next higher multiple of \$1,000); and Option C is life insurance (no AD&D) on the employee's family members in multiples of 1, 2, 3, 4, or 5 times the amount of \$5,000 on death of a spouse and \$2,500 on death of an eligible child.
- *Cost.* Basic life insurance is funded by a biweekly level premium of \$.1550 cents per \$1,000 of the Basic insurance amount; the Government contributes one-third of the cost of Basic insurance. Employees pay the full cost of all optional insurance; premiums are age-adjusted.

Retirement Coverage. Eligibility for retirement coverage depends upon the type of appointment. Most types of appointments, including "provisional appointments," will confer retirement coverage eligibility. However, generally, temporary appointments limited to a year or less and intermittent appointments are excluded from coverage eligibility. Other less common appointments may also be excluded from coverage eligibility.

- *Types of Coverage:* Retirement eligible appointees who are new to Government service will be covered under the Federal Employees Retirement System (FERS), a three-tiered system consisting of Social Security benefits, basic FERS (a defined benefits plan), and the Thrift Savings Plan (a defined contributions plan).

Appointees who are now Government employees, or who have prior Government service, may be covered under one of several plans, depending upon individual circumstances. Those plans include FERS, the Civil Service Retirement System (CSRS) without Social Security coverage, or a combination of CSRS with Social Security coverage called CSRS Offset.

See APPENDIX D for additional information about health benefits, life insurance, and retirement for new appointees.

SEPARATED EMPLOYEES

Health Insurance. After separation, your Federal Employees Health Benefits plan coverage continues at no cost to the employee for 31 days. In addition, if the employee files an election with the separating agency and pays **both** the employee and the Government share of costs (plus a 2 percent administration fee) coverage in the existing plan, or another plan in the Program, can be continued for up to 18 months. When group insurance eligibility ends, the employee has the right to convert the coverage to an individual health insurance policy.

If an employee retires under a retirement system for Federal employees, group health insurance can be continued into retirement, provided the employee qualifies for an immediate annuity and was enrolled in the Federal health program for the 5 years of service immediately preceding retirement, or — if less than 5 years — for all periods of eligibility since first opportunity to enroll.

Retirees have the same health plan choices and pay the same share of the costs for health insurance as active employees do.

Life Insurance. Life insurance continues for 31 days after separation at no cost. During this period all or any part of the coverage can be converted, without medical examination, to non-group coverage, with rates based on the individual's age and class of risk.

If the employee retires under a retirement system for Federal employees, Basic and Optional group life insurance can be continued into retirement, provided the employee qualifies for an immediate annuity and was enrolled for purposes of each type of coverage to be continued for at least the 5 years before retirement, or during all periods of eligibility since the first opportunity to enroll, whichever is less.

Retirees pay the same premiums as active employees, except that premiums stop at age 65, when the face value of insurance in effect at retirement begins to decrease by 2 percent per month. The post-retirement reduction continues until the Basic and the \$10,000 Optional insurance is 25 percent of the insurance in force at retirement and until other Optional coverages expire all together. At time of retirement, however, an employee eligible to continue Basic insurance can elect to pay additional premiums to prevent Basic insurance from decreasing.

Effective April 24, 1999, at the time of retirement or becoming insured as a recipient of workers compensation, an employee may elect how many Option B and C multiples he/she wishes to continue into retirement and choose whether to have all of those multiples reduce (i.e., Full Reduction) or none of them reduce (i.e., No Reduction) upon reaching age 65 (or retire, if later).

Retirement. Under CSRS, individuals can retire voluntarily after reaching age 55 with 30 years of service, age 60 with 20 years, or age 62 with 5 years. Under FERS, voluntary retirement is available under these same combinations. Individuals can also retire at the minimum retirement age (age 55 to 57, depending on year of birth) with as little as 10 years of service.

Individuals may also be eligible for early retirement if they qualify for a discontinued service retirement (DSR) based on an involuntary separation and meet the following age and service requirements. Under both CSRS and FERS, individuals meet those requirements if they are age 50 and have at least 20 years of service, or if they have at least 25 years of service regardless of age.

An involuntary separation is qualifying for DSR unless it is based upon misconduct or delinquency. A resignation may also qualify for DSR if the individual resigns in response to a written request from an Administration representative having the authority to request such resignations or the new head of an agency. The resignation of a Presidentially-appointed policy-making officer qualifies for DSR whenever the individual's resignation is accepted by the President (not limited to the advent of a new Administration). When it is known that a Presidential appointee is leaving, the resignation of a noncareer SES appointee or Schedule C appointee who works for that person is also considered an involuntary separation for purposes of DSR.

- **Individuals Not Eligible For Immediate Retirement.** Such individuals might be eligible for a deferred annuity. Under both CSRS and FERS, if an individual has at least 5 years of civilian service, he/she can receive a deferred annuity at age 62. Also, a FERS employee with at least 10 years of Federal service (which must include at least 5 years of civilian service) may elect to receive a deferred annuity as early as the minimum retirement age (55-57, depending upon year

of birth). To qualify for deferred benefits, individuals must leave their retirement contributions in the retirement fund. Individuals with less than 5 years of civilian service do not qualify for a deferred annuity.

- *Refunds of Retirement Contributions.* Individuals not eligible for an immediate annuity (whether or not eligible for a deferred annuity) may elect to receive a refund of retirement contributions. To qualify for the refund, the individual must be separated for at least 31 days and apply for the refund at least 31 days before qualifying for a deferred annuity. Under CSRS, the service covered by the refund may be creditable towards retirement benefits if the individual returns to Government service. However, under FERS, receipt of the refund permanently terminates the right to use the service covered by the refund for retirement benefits under any circumstances.

8. UNEMPLOYMENT COMPENSATION AND DISLOCATED WORKER SERVICES

[Dept. of Labor Contacts for Unemployment Compensation: Robert Gillham and Mary Baldwin, 202-219-5626]

UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE)

Presidential appointees, noncareer and limited SES appointees, and Schedule C employees who resign by request or are separated due to a change in agency leadership or as a result of the transition to a new Presidential Administration may be eligible for Unemployment Compensation for Federal Employees (UCFE). Unemployment compensation is provided through the State in which the individual's last official duty station is located. Benefit levels and eligibility requirements vary from State to State. For further information about UCFE requirements and benefits, contact the specific State office listed in APPENDIX C, ATTACHMENT 1.

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 Presidential Administrations or agency leadership, it is important that this reason be clearly indicated on the SF-50 and all UCFE claims inquiry forms. Individuals are advised to provide a copy of the request for resignation to the State unemployment compensation office when filing.

DISLOCATED WORKER SERVICES

These employees may also be eligible for dislocated worker services, including retraining and placement assistance, which are funded through Department of Labor grants. Benefits and eligibility requirements vary from State to State. For further information about Dislocated Worker Services and eligibility requirements, contact the specific State Dislocated Worker Unit listed in APPENDIX C, ATTACHMENT 2.

There is also information on the Department of Labor's website at:

www.workforcsecurity.doleta.gov/unemploy/aboutui.asp



**UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415**

February 18, 2000

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

FROM: JANICE R. LACHANCE
DIRECTOR

SUBJECT: Limitations on Appointments and Awards During
the Election Period

When a Presidential election period approaches, it is important for agencies to review all personnel actions carefully to ensure the actions meet all civil service laws, rules, and regulations and are free of impropriety.

The record in all personnel actions must show clearly that the actions are proper and legitimate. Both OPM and agencies are obligated to ensure that all personnel actions conform fully to the spirit and letter of the merit system principles and do not involve prohibited personnel practices.

The appointment of Schedule C and noncareer SES employees to the competitive service warrants special attention to ensure compliance with merit system principles. As OPM has done in the past, we are instituting a requirement for OPM pre-appointment review of these actions before agency approval.

We will continue to conduct merit staffing reviews of proposed selections of Schedule C and noncareer SES employees for SES career appointments before they are presented to Qualifications Review Boards for certification of their executive qualifications.

Attached is guidance on SES appointments, awards and other employment issues, and instructions for submitting requests to OPM for approval. I appreciate your cooperation in these matters and look forward to working with you to ensure that personnel actions adhere faithfully to the merit system principles.

Attachment

LIMITATIONS ON APPOINTMENTS AND AWARDS DURING THE ELECTION PERIOD

The Office of Personnel Management (OPM) and Federal agencies share basic responsibilities: to ensure that all personnel actions adhere strictly to the merit system principles in 5 U.S.C. 2301 and to avoid the prohibited personnel practices in 5 U.S.C. 2302. During an election period, these considerations warrant special attention. OPM has traditionally issued guidance to agencies on the special considerations that apply in an election period to ensure that personnel actions adhere faithfully to the merit principles. These instructions specify those personnel actions that require particular attention this election period. They also establish procedures for OPM pre-appointment review of certain proposed personnel actions, and remind agencies of legal and regulatory requirements that apply during an election period.

Appointing Excepted Employees to the Competitive Service

OPM will review all proposed actions to place in the competitive service:

- (1) Current and former (within the past five years) incumbents of positions excepted by OPM under Schedule C; and
- (2) Current and former (within the past five years) noncareer SES employees.

Beginning immediately, and continuing through January 31, 2001, agencies must complete and sign the attached Pre-Appointment Review Record for these proposed actions, and send to:

U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Room 7675
1900 E Street, NW.
Washington, DC 20415

OPM will review the proposed actions for compliance with civil service laws, rules, and regulations. We will make every effort to complete our review within 10 working days of receipt of all required documentation. In no case may an agency make an appointment covered by this section prior to receiving OPM approval.

Appointing Employees in the Senior Executive Service

The Senior Executive Service (SES) was established by law as a distinct personnel system, separate from both the competitive and excepted services. The goal of this separate system is to ensure that the Government's executive leadership "is responsive to the needs, policies, and goals of the Nation and otherwise of the highest quality." The law requires under regulations prescribed by OPM, that candidates for initial career appointment to the SES have their executive qualifications approved by a Qualifications Review Board (QRB).

OPM will continue to conduct a merit staffing review of proposed selections of Schedule C (excepted service) and noncareer SES employees for career SES appointments before such cases are presented to a QRB for action. The authority for this review is provided in 5 CFR 317.501: "OPM may review proposed career appointments to ensure that they comply with all merit staffing requirements and are free of any impropriety. An agency shall take such action as OPM may require to correct an action contrary to any law, rule, or regulation."

However, agencies should closely review all actions which would result in the career SES appointment of a Schedule C or noncareer SES employee before such cases are forwarded to OPM. In addition, there is one circumstance under which a noncareer SES or Schedule C appointee may not receive a career appointment. These appointees cannot be converted to a career appointment in the same position that the individual currently occupies, or a successor position. This is covered in 5 CFR 317.502.

These same regulations also specify OPM's authority to suspend the processing of QRB cases under certain circumstances. Specifically, 5 CFR 317.502 indicates that OPM may determine the disposition of requests for QRB certification if the QRB has not yet acted when the agency head leaves office or announces an intention to leave office, if the President has nominated a new agency head, or if there is a Presidential transition. Typically, OPM will impose a moratorium on QRB cases for a specific agency when we learn that an agency head's departure is imminent. This is done as a courtesy to the incoming agency head to afford that individual maximum flexibility in making executive resource decisions. The moratorium notice is always provided in writing, and OPM will consider requests for exceptions on a case-by-case basis.

Awards for Political Appointees

Under 5 U.S.C. 4508, awards may not be granted to senior politically appointed officers from June 1, 2000, through January 20, 2001. The statute defines a senior politically appointed officer as any officer (1) in a Senior Executive Service position who is not a career appointee, or (2) in a position of a confidential or policy-determining character under Schedule C. The statute prohibits such officers from receiving awards under subchapter I of chapter 45, Incentive Awards, of title 5, United States Code, during a Presidential election period. This period is defined as ...any period beginning on June 1 in a calendar year in which the popular election of the President occurs, and ending on January 20 following the date of such election. The Presidential election of 2000 is the second time this provision of statute will apply.

Additional Considerations

Agencies should ensure that the following requirements are met:

- The Schedule C elements of a position (i.e., its confidential and/or policy determining characteristics) may not be unilaterally removed from the position solely for appointing the incumbent into the competitive service.
- Schedule C employees are not detailed to a competitive service position without prior OPM approval [5 CFR 300.301(c)] and only a career SES or career-type non-SES appointee is detailed to a career reserved position [5 CFR 317.903(c)].

- No competitive service or SES vacancy should be created and announced for the sole purpose of selecting a Schedule C, or noncareer SES employee.
- When filling competitive service or SES vacancies from among candidates outside their own competitive service workforce, agencies must make a public announcement through the OPM Federal employment information system as required by 5 U.S.C. 3327. Under 5 CFR 317.501, there must also be public announcement of all SES vacancies to be filled by initial career appointment.
- Before making selections of excepted service and noncareer SES employees to the competitive service, keep in mind that Interagency Career Transition Assistance Plan regulations apply.
- Many agencies have developed their own internal levels of approval that frequently involve review at the agency headquarters level. Agency personnel directors should closely review all pre-appointment actions to determine that they meet the test of merit. They should also ensure that all internal agency approvals have been obtained and are noted in the attached pre-appointment sheet. This will avoid delays and ensure more timely consideration of the OPM pre-appointment reviews.
- In addition to the above, agency personnel directors should carefully review all proposed actions to place in the competitive service other positions excepted by OPM (under Schedules A and B), or by Executive order, or statute.

Please direct questions you may have regarding the pre-appointment review process to the Washington Oversight Division at (202)606-2980. Questions regarding appointments to the SES should be directed to your SES Agency Officer at (202)606-2246. Questions about the prohibition on awards during this Presidential election period should be directed to your Agency Officer in the Performance Management and Incentive Awards Division at (202)606-2720.

Attachment

**PRE-APPOINTMENT REVIEW RECORD
FOR PROPOSED APPOINTMENT OF SCHEDULE C AND NONCAREER SES
EMPLOYEES INTO THE COMPETITIVE SERVICE**
(answer all questions)

1. Provide the appointment authority for the applicant's current or former appointment (i.e., Schedule C, or noncareer SES).
2. Provide a position description and fully executed Optional Form 8 (cover sheet) for the candidate's current appointment.
3. Describe the recruitment procedures used to identify/select the candidate for the current or past appointment.
4. Describe the relationship between the candidate's current or former position and the requested position (duties, reporting relationship, organizational location, etc.). If the duties of the requested position are similar to duties previously in the excepted service, state when and why the position was moved to the competitive service and the basis for doing so. Describe the evolution of the position.
5. If a selection is made for the requested position, what will happen to the position being vacated?
6. (A) What recruitment efforts have been made to identify other qualified candidates for the career vacancy? (B) How was the subject candidate identified?
7. Please furnish a copy of the competitive and/or merit promotion vacancy announcements, the public notice distribution list, and a copy of the job analysis and rating schedule.
8. Who is the selecting official? (Give name, title, phone number, and type of appointment, e.g., career, Schedule C.)
9. How has your agency met the regulatory requirements of the Interagency Career Transition Assistance Plan (ICTAP) as it relates to filling the position?

I have responded to the questions on this pre-appointment review record and determined that action(s) taken meet merit and fitness requirements of 5 U.S.C. 2301 and 2302, and Civil Service Rules 4.2 and 7.1.

Signature of Personnel Director

Date

Agency

Telephone Number

APPENDIX B — SAMPLE SEPARATION NOTICE

For information about removals and notice requirements, see pages 9-10 (for the SES) and page 12 (for Schedule C).

Notice of Removal to an Employee who does not have a property right to the job under law or regulation, e.g., Noncareer SES Appointee, Schedule C without status in the position.

Mr. C. B. Blank
4731 99th Avenue
Washington, D.C.

Dear Mr. Blank:

This is to notify you that your service as (insert position title) will be terminated effective at the close of business, (insert date).

Under the law, incoming leadership has the authority to select staff in whom it has personal confidence to carry out its policy goals. This often necessitates the replacement of existing personnel. As a result, this action should not be construed in any way as a reflection on you personally or on your performance under the prior leadership.

Sincerely yours,

(Insert Name)
(Insert Title)

APPENDIX C — QUESTIONS AND ANSWERS ABOUT SEPARATIONS

This appendix provides answers to questions that **noncareer Senior Executive Service (SES) or Schedule C appointees** are likely to have about their separation rights and benefits during the transition to the new Presidential Administration. We have also attached two lists from the Department of Labor with contact information for the State Employment Security Agencies (ATTACHMENT 1) and the State Dislocated Worker Units (ATTACHMENT 2).

The questions and answers are organized as follows:

- General Issues p. C (1)
- Benefits p. C (2)
- Post-Separation Employment. p. C (7)

If questions arise that are not answered in this appendix, please contact your Human Resources Director, or the OPM program contacts named in the previous sections of this guidance:

- Executive Schedule appointments and separations: James Green, 202-606-1700
- SES appointments and separations: Daliza Salas, 202-606-1610
- Schedule C appointments and separations: Larry Lorenz, 202-606-1143
- Pay and leave issues: Jo Ann Perrini, 202-606-2858
- Retirement, health and life insurance: Mary Sugar, 202-606-0788

For questions about Unemployment Compensation, please contact Robert Gillham or Mary Baldwin at the Department of Labor on 202-219-5626.

QUESTIONS AND ANSWERS ABOUT SEPARATIONS DURING TRANSITION FOR NONCAREER SES AND SCHEDULE C APPOINTEES

This information should answer questions that noncareer Senior Executive Service (SES) or Schedule C appointees are likely to have about their separation rights and benefits during the transition period. Except where a distinction is noted, the information applies equally, whether you are a noncareer SES or a Schedule C employee. If you have questions that are not answered here, please contact your agency's Human Resources Office.

The questions and answers are organized as follows: General Issues, Benefits, and Post-Separation Employment.

GENERAL ISSUES

1. Can I be separated before the resignation date of my agency head, and how much notice will I receive?

Yes. If you are a noncareer SES appointee, you may be removed at any time. Noncareer SES appointees must be given a written notice at least 1 day before the effective date of a removal.

If you are a Schedule C employee, you may be separated at any time that your confidential relationship with your superior and/or the confidential nature of your job ceases to exist. There is no statutory notice requirement. However, some agencies have elected to provide Schedule C employees with advance notice of their separations. Your Human Resources Office can advise you of your agency's policy on notice procedures.

2. Do I have appeal or grievance rights?

There is no appeal right to the Merit Systems Protection Board on the removal of a noncareer SES appointee. Most employees separated from their Schedule C positions have no appeal rights to MSPB. In some agencies, noncareer SES appointees and Schedule C employees may grieve their separations under an agency administrative grievance system or another agency dispute resolution system. Your Human Resources Office can advise you if your agency permits such grievances.

3. Do I have additional procedural and/or appeal rights if I am a veteran?

An employee's status as a veteran does not change an employee's rights beyond those described in the answers to Questions 1 and 2 above.

4. If my boss has a statutory term appointment that extends beyond the resignation date of my agency head, do I have to leave before the resignation date?

Not necessarily. This, too, will be up to your agency.

5. If my boss is asked to stay beyond the agency head's resignation date, will I be allowed to remain in my position also?

Your continued employment may depend on whether both your confidential relationship with your boss and the need for such a relationship to do your job continue to exist.

6. Can my agency provide outplacement assistance?

If your agency offers outplacement services to all agency employees, noncareer SES appointees and Schedule C employees may use them. The Comptroller General has ruled that an agency may not provide outplacement assistance to political appointees unless it generally offers these services to all its employees. The CG decision says, "... an agency may not expend public money for the specific purpose of helping political appointees return to private life. ... although an agency may offer its existing outplacement assistance program to political appointees, it may not provide outplacement services exclusively to appointees of the outgoing Administration" [B-251488, January 6, 1993].

7. Can my agency pay my travel and transportation expenses when I leave Government service?

The Government is not authorized to pay relocation expenses for separating Presidential appointees, noncareer SES appointees, or Schedule C appointees to return to private industry or to place of actual residence. See the General Services Administration's website for additional information about travel and transportation allowances, in particular those for departing political appointees. (www.policyworks.gov/org/main/mt/homepage/mtt/TRAVELALLOWANCES.pdf)

BENEFITS

8. What happens to my accrued annual and sick leave?

You will be paid a lump-sum upon separation for accrued annual leave. You will be paid at the rate you were earning at separation, less applicable deductions. No payment is made for accrued sick leave. Sick leave will be recredited if you are reemployed in a Federal position.

9. Will I be eligible for severance pay?

No. Employees with noncareer SES or Schedule C appointments are not eligible for severance pay.

10. If I am separated, will I be eligible for unemployment compensation?

The Department of Labor (the agency in charge of the unemployment compensation program for Federal workers) advises that Presidential appointees, noncareer and limited SES appointees, and Schedule C employees are generally eligible for benefits under the Unemployment Compensation for Federal Employees (UCFE) program when the employee is separated due to a change in agency leadership or otherwise as a result of transition to a new Presidential Administration. However, to assure that State unemployment offices are aware that your separation is due to a change in agency leadership, it is important that this reason be clearly indicated on the SF-50 (Notification of Personnel Action) and all UCFE claims inquiry forms. See Question 12 below for more information on documenting these actions.

Eligibility for, and the amount of, unemployment benefits vary from State to State. We recommend that you check with the State unemployment office of your last duty station with any questions in this respect. We have attached a list of State unemployment agencies for your information. (*Note:* Employees returning from overseas assignments should check with the State office in the State to which they have selected to return.)

11. If I resign, will I be eligible for unemployment compensation?

If you resign *by request* due to a change in Presidential Administrations or agency leadership, you should be eligible. If you resign before being requested to do so, you may not be eligible. To assure that State unemployment offices are aware that your resignation is by request due to a change in Presidential Administrations or agency leadership, it is important that this be clearly stated in your written resignation and indicated on the SF-50 and all UCFE claims inquiry forms. You should also take a copy of the request for your resignation when filing for unemployment compensation. Again, you should check with your State unemployment office if you have any questions.

12. What will my SF-50 (Notification of Personnel Action) say if I resign or if I am separated?

If you *resign* from your position due to a change in agency leadership or otherwise as a result of a transition to a new Presidential Administration, the "Remarks" section of your SF-50 (Block 45) will state "Reason for Resignation" and then summarize whatever reason you give in your written resignation. You should state as your reason for resignation, "Resignation due to a change in Presidential Administrations" or "Resignation due to a change in agency leadership." If your resignation is requested, you should state, "Resignation by request due to a change in Presidential Administrations" or "Resignation by request due to a change in agency leadership." If you are *separated*, your agency will state in Block 45 under the "Reason for Termination" that you were separated "due to a change in Presidential Administrations" or "due to a change in agency leadership." (Note: The reason given for resignation may affect your 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. See also Questions 10, 11, and 13.)

13. How do I apply for unemployment compensation?

Unemployment benefits are payable through State unemployment insurance laws. To receive these benefits, you must register with the local unemployment office in the State of your last duty station. Employees returning from overseas file in the State of selected residence. When you file a claim with the unemployment office, you must take a completed copy of Standard Form SF-8, Notice to Federal Employee About Unemployment Insurance, and proof of your Federal employment earnings (an earnings and leave statement). If you have moved out of the area of your last duty station, you can file your claim with the State office nearest to your new location. If you resigned by request, provide a copy of the request when filing. Your agency's Human Resources Office will provide you with a copy of form SF-8 and answer any questions you may have in this area.

14. Can I keep my Federal employee health insurance coverage when I leave?

After separation, your group health insurance continues at no cost for 31 days. In addition, if you file an election with the separating agency and you pay **both** the employee and employer cost (plus 2 percent administrative cost), your current plan, or another Federal Employees Health Benefits plan you may choose, can be continued temporarily for 18 months. When the group coverage ends, you have a right to convert it to non-group coverage.

If you retire under a retirement system for Federal employees, you can continue your group health insurance into retirement, provided you qualify for an immediate annuity and you were enrolled for the 5 years of service immediately before retirement, or — if less than 5 years — for all service since your first opportunity to enroll. As a retiree, you would pay the same contribution for health insurance as active employees do.

15. Can I keep my Federal employee life insurance coverage when I leave?

Life insurance continues for 31 days after separation at no cost, and the insurance can be converted, without medical examination, to non-group coverage at that time, with rates based on age and class of risk.

You may be eligible to continue your Option B coverage when it would normally terminate. This is called portability of coverage. If eligible, you may continue your enrollment in Option B by paying the same premium as employees, plus a monthly administrative fee. This portability provision is a 3-year demonstration project and is available to you only if you separate from service or complete 12 months in a nonpay status on or after April 24, 1999.

If you retire under a retirement system for Federal employees, your group life insurance (but not accidental death and dismemberment) can be continued into retirement, provided you qualify for an immediate annuity and you were enrolled for purposes of each type of coverage for at least the 5 years before retirement, or since the first opportunity to enroll. As a retiree, you would pay the same premiums as employees, except that premiums stop at age 65, when the amount of insurance begins to decrease by 2 percent per month. The post-retirement reduction continues until the Basic and the \$10,000 Optional coverage is 25 percent of insurance in force at retirement and until other optional insurance expires completely. At the time of retirement, you can also elect to pay additional premiums to prevent the Basic and Optional insurance B and C from decreasing.

16. What are the basic age and service rules for retirement?

Under the Civil Service Retirement System (CSRS), you can retire voluntarily after reaching age 55 with 30 years of service, age 60 with 20 years, or age 62 with 5 years. Under the Federal Employees Retirement System (FERS), voluntary retirement is available under these same combinations, but you can also retire at the minimum retirement age (age 55 to 57, depending on year of birth) with as little as 10 years of service.

17. How do I know if I am eligible for early retirement?

You would be eligible for early retirement if you qualify for a discontinued service retirement (DSR) based on an involuntary separation (see next question) and meet the following age and service requirements. Under both CSRS and FERS, you must be age 50 and have at least 20 years of service, or you may retire at any age if you have at least 25 years of service.

18. What is considered an involuntary separation for purposes of qualifying for discontinued service retirement?

A resignation qualifies you for DSR if you resign in response to a written request from an Administration representative having the authority to request such resignation or the new agency head. The resignation of a Presidentially-appointed policy-making officer qualifies for DSR whenever the individual's resignation is accepted by the President. When it is known that a Presidential appointee is leaving, the resignation of a noncareer SES or Schedule C appointee who works for that person is also considered an involuntary separation for purposes of DSR.

19. Will I be eligible for the "alternative form of annuity"?

The alternative form of annuity (that is, a reduced annuity plus a lump-sum payment of retirement contributions) based on an involuntary separation is no longer generally available to employees. It is only available to employees who suffer from a life-threatening medical condition and retire under a non-disability provision.

20. What if I am not yet eligible for retirement?

You might be eligible for a deferred annuity. Under both CSRS and FERS, if you have at least 5 years of civilian service, you can receive a deferred annuity at age 62. Also, a FERS employee with at least 10 years of Federal service (which must include at least 5 years civilian service) may elect to receive a deferred annuity as early as the minimum retirement age (see Question 16). To qualify for deferred benefits, you must leave your retirement contributions in the retirement fund. If you have less than 5 years of civilian service, you do not qualify for a deferred annuity.

Whether or not you qualify for a deferred benefit, you may elect to receive a refund of your contributions as long as you are not eligible for an immediate annuity. To qualify for the refund, you must be separated for at least 31 days and apply for the refund at least 31 days before you qualify for a deferred annuity.

Generally, market rate interest is payable in FERS refunds, but no interest is payable in CSRS refunds. Desirability of the refund depends on individual circumstances (how far or close you are to retirement and whether you anticipate future Federal employment). Under CSRS rules, you can reinstate credit for the service if you return to Federal service under CSRS or FERS, and redeposit the refund with interest. However, you cannot repay a refund of FERS deductions if you return to Federal service. In addition, the service will not count toward retirement.

21. With regard to my benefits, is there anything else I need to watch out for?

Your agency Human Resources Office needs to get involved to look at your particular circumstances. For example, you may need to make a deposit for military service before you leave the agency. Your Human Resources Office will be able to give you more specific answers to your particular questions.

Thrift Savings Plan (TSP)

22. What are my TSP withdrawal options after I leave Federal service?

The TSP provides three basic ways to withdraw your account. These options are the same whether or not you are eligible to retire when you leave.

- Have the TSP purchase a life annuity for you. You have a choice of many different types of annuities.
- Receive your account in a single payment.
- Receive your account in a series of monthly payments.

23. Can I leave my money in my account, and can I add to this money after I leave Federal service?

You can leave the money in your account, but you cannot add to it. Your account will continue to accrue earnings, and you can continue to move your money among the TSP investment funds by making interfund transfers.

Caution: You must receive your account in a single payment or begin receiving monthly payments from the Thrift Savings Plan, or from the annuity vendor, by April 1st of the year following the year you turn 70½.

24. If I leave Federal service, can I have the TSP transfer my payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan?

Yes, you can have the TSP transfer all or part of a single payment to an IRA or other eligible retirement plan. You also can transfer certain monthly payments.

25. Where can I find tax information about TSP disbursements?

For detailed information about withdrawing your account, see the booklet, *Withdrawing Your TSP Account After Leaving Federal Service*. For detailed information about the tax consequences of your withdrawal choices and Federal income tax withholding requirements, see the TSP tax notice, "Important Tax Information about Payments from your TSP Account." The booklet and notice are available from the TSP website (<http://www.tsp.gov>). Also, your agency Human Resources Office must give you this information when you leave Federal service. You should also ask your State and local tax authorities about State and local taxes.

26. Will I keep the FERS Agency Automatic (1 percent) Contributions to TSP when I leave?

If you meet the TSP vesting requirements when you leave Federal service, you are entitled to the Agency Automatic (1%) Contributions in your account and their earnings.

Most FERS employees become vested in their Agency Automatic (1%) Contributions after completing 3 years of Federal (generally civilian) service. However, employees who are in one of the following positions at separation are vested after 2 years of civilian service.

- A noncareer SES appointee.
- Executive Schedule positions listed in 5 U.S.C. 5312, 5313, 5314, 5315, or 5316.
- A position placed in level IV or level V of the Executive Schedule, under 5 U.S.C. 5317.
- A position in the executive branch that is excepted from the competitive service by the Office of Personnel Management because of the confidential and policy-determining character of the position (i.e., a Schedule C position).
- A Member of Congress or a Congressional employee.

27. How soon can employees start participating in the Thrift Plan?

If you are a new employee, you must be covered by FERS and have completed a waiting period – generally 6 to 12 months – before you can participate in the Thrift Savings Plan. If you are a rehired

employee and covered by FERS or CSRS, your previous TSP eligibility determines when you can begin to participate in the TSP. Also, if you transfer to FERS, you have a personal 30-day period to begin participating in the TSP.

Note: Pending legislation (H.R. 208) would allow new FERS employees and rehired FERS or CSRS employees to begin contributing to their TSP accounts immediately.

Social Security

28. Does my Federal employment have an impact on my Social Security benefits?

Yes, it could affect your benefits. If you have ever worked under the Civil Service Retirement System (CSRS) or another retirement plan for Federal employees that doesn't include Social Security, such as the Foreign Service Retirement System, and you receive an annuity based on that service, these two provisions of the Social Security law may affect your Social Security benefits:

- The *Windfall Elimination Provision (WEP)* may reduce the benefit you earned based on your work. The WEP doesn't apply if you were automatically covered by the Federal Employees Retirement System (FERS) or if you have 30 or more years of "substantial earnings" in Social Security-covered employment.
- The *Government Pension Offset (GPO)* may reduce or eliminate any spousal benefit you are otherwise eligible to receive. The GPO doesn't apply if you were required by law to have coverage under the CSRS Offset provisions that are a combination of CSRS coverage and Social Security, or if you were automatically covered by FERS without electing coverage.

The Social Security Administration now sends an annual *Social Security Statement* to everyone who has paid Social Security taxes. The benefit estimates contained in the *Statement* are not adjusted to consider the WEP or GPO. Your agency's benefits officer can help you determine whether either of these provisions will affect your benefits. The Social Security Administration also has factsheets: *A Pension From Work Not Covered by Social Security* (Publication No. 5-10045) and *Government Pension Offset* (Publication No. 5-10007), that can be printed from www.ssa.gov or ordered by calling 1-800-772-1213.

This website, www.ssa.gov/retire, also provides a detailed calculator. If you enter your earnings history (found on your *Social Security Statement*) and specific information about your non-covered pension, the detailed calculator can refigure your benefit, including the adjustment for the WEP.

POST-SEPARATION EMPLOYMENT

29. Are there restrictions on my seeking non-Federal employment while I am currently employed? Will I have any post-employment restrictions?

Yes, there are a number of restrictions. However, because of the complexity of the issues involved, you should address any questions to your agency's Designated Ethics Official or to the Office of Government Ethics.

30. May I compete for other Federal jobs in my agency or in other Federal agencies?

You may compete for any Federal career jobs that are open for applications from the general public. This would include jobs announced through OPM and jobs announced by agencies when the

announcement specifies that applications will be accepted from all sources. However, many agency jobs are open only to current career employees or status candidates. You could not apply for those positions unless you had previous Federal career service and the announcements were open to reinstatement or status candidates.

Some nonpolitical jobs are filled in what is called the excepted service. These jobs are excepted from the specific appointment procedures required for competitive career jobs although they are subject to the basic principle of selection based on merit. Each agency establishes its own procedures and qualification requirements for filling excepted service positions. If you qualify for such a position, you will be considered in accordance with the agency's procedures.

You may compete for an SES career appointment when the position is advertised under proper merit staffing procedures. However, if you are a noncareer SES appointee, you cannot receive a career SES appointment in your current position, or a successor position, since there is no bona fide vacancy.

31. Where and how can I find current job openings and other information on applying for other Federal jobs?

OPM's Federal Employment Information System, the official source for employment information, provides access to not only Federal job listings but some state and local government and private sector listings. The system provides listings of the latest job openings, gives access to application materials, and provides information on a wide variety of Federal employment-related topics and programs. You can request application packages, forms, and other employment-related materials through the system.

The system is accessible from a number of user friendly mediums that are updated daily and most are available 24 hours a day, 7 days a week:

- **USAJOBS.** The address for employment information on OPM's worldwide website is <http://www.usajobs.opm.gov>. The USAJOBS website, like all components of the employment information delivery system, provides access to the Federal Jobs Database of worldwide opportunities, full text job announcements, answers to frequently-asked Federal employment questions via delivery of Employment Info Line fact sheets, and access to electronic and hard copy application forms.
- **USAJOBS Automated Telephone System.** By calling 912-757-3000 [the Washington, DC, local number is 202-606-2700; TDD Service is at 912-744-2299], you can obtain current worldwide Federal job opportunities.
- **USAJOBS "Touch Screen" Kiosks** are located in OPM Service Centers and Government buildings throughout the country. The OPM Service Center in Washington, DC, is located at 1900 E Street NW, and is open to the public from 8:00 am to 4:00 pm, Monday through Friday.

32. What are my reinstatement rights if I previously worked for the Federal Government in a career (competitive) position?

You do not have a right (i.e., an entitlement) to be reinstated to a career job. However, if you are eligible for veterans preference, if you had career tenure, or if you have not had a break in Federal service of more than 3 years since you left your competitive job, you do have reinstatement eligibility in the competitive service. This means that you may apply for jobs open only to status candidates and do not have to compete for employment with candidates from outside the Government. However,

agencies do not have to consider reinstatement candidates for any particular job. Some jobs may be open only to current competitive employees or may be filled from other sources.

If you are considered for reinstatement, you will have to compete with other employees and status candidates for any job that is at a higher grade than you held under your last competitive service appointment. If the job is at the same grade as your last competitive career job, the agency may reinstate you without competition, but that would be subject to the agency's internal merit staffing policy. The agency could require you to compete with employees and status candidates at any grade.

You may be reinstated in the SES if you previously successfully completed the 1-year SES probationary period as a career appointee, or if you converted to a career SES appointment when the SES was established in 1979. However, separation from the SES career appointment must not have been for performance or disciplinary reasons.

33. If I am reemployed in the Federal Government, must the agency match my current salary and grade?

An agency is not required to match your salary and grade. However, if you are reemployed in a General Schedule (GS) position, an agency may, if its internal rules permit, set your basic pay based on the highest previous rate you received in the Federal Government, but not above the highest rate for the grade of the new position.

34. If I retire, can I later return to Federal service?

Yes. However, depending on the type of annuity you receive, your annuity will terminate or your salary as a reemployed annuitant will be reduced by the amount of the annuity.

If you received a lump-sum payment for unused annual leave and are reemployed in the Federal service before the end of the annual leave period covered by the lump-sum payment, you must refund that portion of the lump-sum payment. The refunded portion covers the period between the date of reemployment and the expiration of the lump-sum leave period. Your employing agency will recredit to you an amount of annual leave that is equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period.

STATE EMPLOYMENT SECURITY AGENCIES

Alabama	Department of Industrial Relations, 649 Monroe Street, Room 204, Montgomery 36130
Alaska	Employment Security Division, Department of Labor, P.O. Box 25509, Juneau 99802
Arizona	Department of Economic Security, 1789 West Jefferson St, P. O. Box 6123-010A, Phoenix 85005
Arkansas	Employment Security Department, P. O. Box 2981, Little Rock 72203-2981
California	Employment Development Department, 800 Capitol Mall, Sacramento 95814
Colorado	Department of Labor and Employment, 1515 Arapahoe St, Tower 2, Suite 400, Denver 80202-2117
Connecticut . . .	State Labor Department, 200 Folly Brook Boulevard, Wethersfield 06109-1114
Delaware	State Department of Labor, 4425 North Market Street, Wilmington 19802
District of Columbia	D.C. Department of Employment Services, 500 C Street NW, Room 600, Washington, DC 20001
Florida	Department of Labor and Employment Security, 2102 Capital Circle SE, Suite 303, Tallahassee 32399-2152
Georgia	Georgia Department of Labor, 148 International Blvd NE, Atlanta 30303
Hawaii	Department of Labor and Industrial Relations, 830 Punchbowl St, Room 321, Honolulu 96813
Idaho	Department of Employment, 317 Main Street, Boise 83735
Illinois	Department of Employment Security, 401 S. State Street, Suite 624, Chicago 60605
Indiana	Department of Workforce Development, 10 N. Senate Ave, Room E 204, Indianapolis 46204
Iowa	Department of Employment Services, 1000 E. Grand Avenue, Des Moines 50319
Kansas	Kansas Department of Human Resources, 401 Topeka Boulevard, Topeka 66603
Kentucky	Department for Employment Services, 275 E. Main Street, Frankfort 40621
Louisiana	Department of Labor, P. O. Box 94094, Baton Rouge 70804-9094
Maine	Maine Department of Labor, P. O. Box 309, Augusta 04330
Maryland	Department of Labor, Licensing and Regulation, 1100 N. Eutaw St, Room 600, Baltimore 21201
Massachusetts . .	Department of Employment and Training, 19 Staniford Street, 3rd Floor, Boston 02114
Michigan	Michigan Unemployment Agency, 7310 Woodward Ave, Detroit 48202
Minnesota	Minnesota Department of Economic Security, 390 N. Robert Street, St. Paul 55101
Mississippi . . .	Employment Security Commission, P. O. Box 1699, Jackson 39215-1699
Missouri	Department of Labor and Industrial Relations, P. O. Box 504, Jefferson City 65102
Montana	Department of Labor and Industry, P. O. Box 1728, Helena 59624
Nebraska	Department of Labor, 550 S. 16th Street, Lincoln 68509-4600
Nevada	Department of Employment, Training, and Rehabilitation, 500 E. Third Street, Carson City 89713
New Hampshire . .	Department of Employment Security, 32 S. Main Street, Concord 03301-4857
New Jersey . . .	NJ Department of Labor, P. O. Box 110, Trenton 08625-0110
New Mexico . . .	New Mexico Department of Labor, P. O. Box 1928, Albuquerque 87103
New York	NY State Department of Labor, State Office Building Campus, Building 12, Room 500, Albany 12240
North Carolina . .	Employment Security Commission of North Carolina, P. O. Box 25903, Raleigh 27611
North Dakota . .	Job Service North Dakota, P. O. Box 550, Bismark 58506-5507
Ohio	Ohio Bureau of Employment Services, 145 S. Front Street, Columbus 43215
Oklahoma	Employment Security Commission, 2401 N. Lincoln, 215 Will Rogers Memorial Office Bldg, Oklahoma City 73105
Oregon	Employment Division, 875 Union Street NE, Salem 97311
Pennsylvania . . .	Department of Labor and Industry Building, Room 1700, Seventh & Forster Streets, Harrisburg 17121
Puerto Rico . . .	Bureau of Employment Security, 505 Munoz Rivera Avenue, Hato Rey 00918
Rhode Island . . .	Department of Employment and Training, 101 Friendship Street, Providence 02903-3740
South Carolina . .	Employment Security Commission, P. O. Box 995, Columbia 29202
South Dakota . . .	South Dakota Department of Labor, 700 Governors Drive, Pierre 57501-2277
Tennessee	Tennessee Department of Employment Security, 12th Floor - Volunteer Plaza Bldg, 500 James Robertson Pkwy, Nashville 37245-0001
Texas	Texas Employment Commission, Room 668, 101 E. 15th Street, Austin 78778
Utah	Department of Employment Security, 140 East 300 South, 174 Social Hall Ave, Salt Lake City 84147-0249
Vermont	Department of Employment and Training, P. O. Box 488, Montpelier 05601-0488
Virginia	Virginia Employment Commission, 703 E. Main Street, Richmond 23219
Virgin Islands . .	Department of Labor, 2203 Church Street, Christenstead, St. Croix 00820
Washington	Employment Security Department, P. O. Box 9046, Olympia 98507-9046
West Virginia . . .	West Virginia Bureau of Employment Programs, 112 California Ave, Charleston 25305-0112
Wisconsin	Department of Workforce Development, P. O. Box 7946, Madison 53707
Wyoming	Wyoming Department of Employment, P. O. Box 2760, Casper 82602

STATE DISLOCATED WORKER UNITS

STATE	PHONE
Alabama	334-242-5300
Alaska	907-269-4680
Arizona	602-542-3957
Arkansas	501-682-3137
California	916-654-7799
Colorado	303-620-4200
Connecticut	860-263-6593
Delaware	302-761-8117
District of Columbia	202-565-0010
Florida	850-488-9250
Georgia	404-656-6336
Hawaii	808-586-8812
Idaho	208-334-6298
Illinois	217-785-6006
Indiana	317-232-7461
Iowa	515-281-9034
Kansas	785-296-5115
Kentucky	502-564-5630
Louisiana	504-342-7637
Maine	207-624-6390
Maryland	410-767-2833
Massachusetts	617-727-8158 x 319
Michigan	517-373-2162
Minnesota	651-296-7918
Mississippi	601-949-2234
Missouri	573-751-3349

STATE	PHONE
Montana	406-444-1827
Nebraska	402-471-9903
Nevada	775-687-4310
New Hampshire	603-228-9500 x 440
New Jersey	1-800-343-3919
New Mexico	505-827-6827
New York	518-457-3101
North Carolina	919-733-6383 x 211
North Dakota	701-328-2843
Ohio	614-466-3817
Oklahoma	405-557-5339
Oregon	503-373-7084
Pennsylvania	717-787-0781
Puerto Rico	787-754-5504
Rhode Island	401-828-8283
South Carolina	803-737-2601
South Dakota	605-773-5017
Tennessee	615-741-1031
Texas	512-936-0425
Utah	801-526-4312
Vermont	802-828-4177
Virginia	804-786-3037
Washington	360-438-4629
West Virginia	304-558-1847
Wisconsin	608-266-0745
Wyoming	307-235-3293

U. S. Department of Labor, Office of Worker Retraining, 202-219-5577

APPENDIX D: HEALTH BENEFITS, LIFE INSURANCE, AND RETIREMENT COVERAGE FOR NEW POLITICAL APPOINTEES

This appendix answers some of the basic questions that new political appointees might ask about their eligibility for Federal health benefits, life insurance, and retirement coverage. It is intended primarily for first-time employees and employees (and annuitants) who are returning to Government service after a break in service of a year or more. This material supplements the information in other parts of the Transition Guidance. For more detailed information, please contact your agency's Human Resources Office.

1. Will I be eligible for Federal health benefits coverage?

Health benefits coverage depends on the type of appointment you receive. Generally, employees with permanent appointments are eligible to enroll for health benefits coverage, while employees with temporary appointments limited to 1 year or less are not eligible. However, if your appointment is designated as a "provisional appointment," you will be eligible for health benefits coverage. (Provisional appointments are used to fill positions that are known to be permanent with the expectation that the appointee will be converted to permanent status.)

2. Will I be eligible for premium conversion if I enroll in a health benefits plan?

Premium conversion is a tax benefit. It allows an employee to allot a portion of salary back to the employer, which the employer then uses to pay the employee's contribution for Federal Employees Health Benefits (FEHB) coverage. The allotment is made on a pre-tax basis, which means that the money is not subject to Federal income, Medicare, or Social Security taxes. All employees in the executive branch of the Federal Government who are participating in the FEHB Program, and whose pay is issued by an executive branch agency, are eligible to have their FEHB premiums paid under the premium conversion plan. Also, individuals enrolled in the Program who are employed outside the executive branch, or whose pay is not issued by an agency of the executive branch, may be eligible if their employer agrees to offer participation in the plan.

3. If I am eligible for Federal health benefits coverage, do I need to take any action, or is coverage automatic?

Coverage is not automatic. You must enroll within 31 days after you become eligible, and select the plan in which you want to be covered. You will be able to choose from among several fee-for-service plans and health maintenance organizations.

4. Will I be eligible for Federal life insurance coverage?

Life insurance coverage also depends on the type of appointment you receive. Generally, employees with permanent appointments are eligible for life insurance coverage, while employees with temporary appointments limited to 1 year or less are not eligible. However, if your appointment is designated as a "provisional appointment," you will be eligible for life insurance coverage.

5. If I am eligible for Federal life insurance coverage, do I need to take any action or is there automatic coverage?

If you are eligible for Federal life insurance coverage, you will have basic life insurance coverage automatically unless you waive it. If you want more than basic coverage, you must act to select one or more of three types of optional coverage within 31 days.

6. I am an annuitant. How will my health benefits and life insurance coverage be affected when I become reemployed in the Federal service?

That depends on the kind of appointment you have when you become reemployed (see Question 13) and other factors. If you are a reemployed annuitant, your coverage may be handled differently from other employees. Your Human Resources Office can provide the necessary information.

7. Will I be eligible for retirement coverage?

That will depend on the type of appointment you receive. If you receive a permanent appointment, you will be eligible for retirement coverage. Also, a "provisional appointment" (see Question 1) will confer retirement coverage. Generally, if you receive a temporary appointment limited to 1 year or less, or if you are an intermittent employee, you will not be eligible for retirement coverage. Other less common appointments may also exclude you from coverage, so you should check with your employing agency on this point.

8. If I am appointed to a position that *does* confer retirement coverage, what type of coverage will I have?

If this will be your first civilian Government service, you will be covered by the Federal Employees Retirement System (FERS), a three-tiered system consisting of Social Security benefits, a basic benefit plan, and a savings plan.

If, on the other hand, you have had previous civilian service in the Government, you may be covered, depending on the circumstances addressed in Questions 9 and 10, either by FERS or a combination of the Civil Service Retirement System (CSRS) and Social Security coverage called CSRS Offset. (*Note:* CSRS coverage without Social Security is available only to people who: (1) had only CSRS coverage; (2) return to CSRS-covered employment after a break in service of less than 1 year; and (3) are not required by law to have Social Security coverage in the new position.)

9. What factors will determine the specific retirement plan by which I am covered?

If your previous Federal service was covered by FERS, your new appointment will automatically be covered by FERS. You will also be covered automatically by FERS if your previous civilian service totaled less than 5 years. Generally, FERS coverage also applies if none of your prior service was covered by CSRS (or the Foreign Service Retirement System).

If you are not automatically covered by FERS, you will be covered under the CSRS-Offset provision, and have an opportunity to elect FERS coverage within 6 months. Except as provided in the next question, this is true regardless of any election during your previous service.

10. I was a senior official with special election opportunities during the 1987 FERS open season. What is the effect of the retirement coverage I elected at that time on my new appointment?

Whatever you elected then (FERS, CSRS, Offset, no coverage) will continue in your new appointment. However, you may elect FERS coverage within 6 months after your new appointment.

11. I took a refund of my retirement contributions after my previous service. What effect will that have on my retirement coverage now?

None, but the amount of your eventual retirement benefits may be affected.

12. I am currently an annuitant. What will my retirement coverage be if I am reemployed as a senior official?

Reemployed CSRS annuitants, while generally exempt from Social Security coverage, are subject to Social Security coverage when reemployed as a senior official. (The term "senior official" is generally limited for this purpose to a Presidential appointee, noncareer member of the Senior Executive Service, a Federal judge, or a Member of Congress.) Consequently, CSRS annuitants reemployed as senior officials under circumstances in which the annuity continues have CSRS Offset coverage. However, you will have a 6-month window to elect FERS following reemployment. If you are a FERS annuitant, you will remain subject to FERS coverage upon reemployment.

13. I am an annuitant. What happens to my annuity if I accept a position with the new Administration?

In most cases, you will continue to receive your annuity, but the amount of your annuity will be offset from your salary. However, your annuity would be terminated upon reemployment if:

- You retired under CSRS, your annuity is based on an involuntary separation, and reemployment is to an appointment that provides retirement coverage (see Question 7);
- You retired under CSRS and reemployment is a Presidential appointment subject to retirement coverage; or
- You retired on disability under either CSRS or FERS, and OPM finds you recovered or restored to earning capacity.

14. I am a former Member of Congress. What will my retirement status be in my new appointment?

Because of the special rules that apply to the reemployment of Members of Congress, your agency benefits officer should request assistance from OPM's Benefits Officers Resource Center (202-606-0788).

APPENDIX E — ADDITIONAL QUESTIONS AND ANSWERS ABOUT THE SENIOR EXECUTIVE SERVICE

This appendix provides technical guidance, in the form of questions and answers, on transition to a new Presidential Administration, as it may affect the Senior Executive Service. This material supplements the information in other parts of the Transition Guidance.

The questions and answers are organized as follows:

Career Appointments	p. E (1)
Reassignments and Details of Career Appointees	p. E (2)
Career Appointees Who Accept Appointment Outside the SES	p. E (4)
Noncareer and Limited Appointments	p. E (6)
Pay and Other Compensation	p. E (7)
Leave	p. E (9)
Performance Appraisals and Recertification	p. E (10)
Awards	p. E (10)
Removals and Other Separations	p. E (11)
Experts and Consultants	p. E (13)
Miscellaneous	p. E (14)

We will provide further information as additional questions and issues arise. If you identify other areas that need to be addressed or if you have questions about this guidance, please contact Daliza Salas, Director, SES Staffing Center (202-606-1610), or your SES Agency Officer in OPM's Office of Executive Resources Management. You may also e-mail inquiries to SESstaff@opm.gov.

SENIOR EXECUTIVE SERVICE TRANSITION-RELATED PROVISIONS

CAREER APPOINTMENTS

1. Are there any special procedures that agencies must follow in making career appointments during the transition?

As with staffing actions at any time, appointments must meet all civil service laws, rules, and regulations and be free of any impropriety. Agencies should also refer to OPM Director Lachance's memorandum of February 18, 2000, to agency heads concerning limitations on appointments and awards during the election period, at APPENDIX A. (See also Questions 28 and 29.)

All initial career appointments to the SES must be made under merit staffing procedures, and the executive qualifications of the selected candidate must be approved by a Qualifications Review Board (QRB) administered by OPM. Since the SES is separate from the competitive and excepted services, there is no provision for noncompetitive movement from the other services to a career SES appointment.

[Reference: 5 U.S.C. 3393; 5 CFR 317, Subpart E]

2. Does a transition affect the processing of actions by a Qualifications Review Board (QRB)?

If an agency head leaves or announces the intention to leave or a new agency head is nominated by the President, OPM suspends the processing of QRB cases until a successor is appointed to afford the new agency head the greatest flexibility in making executive decisions. OPM may grant waivers in appropriate circumstances on a case-by-case basis. Requests for exceptions should address such factors as: the organizational level of the vacant position; the relative priority of the position with respect to other executive vacancies and agencywide staffing needs; the degree to which the proposed incumbent would be involved in policy matters; the likelihood that the new agency head would want to be personally involved in the selection process; and how long it will be until a new agency head is appointed.

[Reference: 5 CFR 317.502(d)]

3. Do individuals who formerly held career SES appointments need to compete and be approved by a Qualifications Review Board to get a new career SES appointment?

If the individual successfully completed the SES probationary period or did not have to serve one (e.g., converted to the SES as a career appointee when the SES was established in 1979), the individual may be noncompetitively reinstated in the SES. However, separation from the SES must not have been for performance or disciplinary reasons. There is no time limit after leaving the SES on reinstatement eligibility.

[Reference: 5 U.S.C. 3593; 5 CFR 317, Subpart G]

REASSIGNMENTS AND DETAILS OF CAREER APPOINTEES

4. What authority does an agency head have to reassign career SES appointees?

Career SES appointees may be reassigned to any SES position in the agency for which they are qualified without OPM approval. One of the basic premises of the SES was to enable an agency head to reassign senior executives to best accomplish the agency's mission. However, there are a number of restrictions in the law to protect career executives from arbitrary or capricious actions, as indicated in the following questions (5 - 14).

[Reference: 5 U.S.C. 3395; 5 CFR 317.901]

5. What advance notice requirements apply to the reassignment of career SES appointees?

The appointee must be given a 15-day advance written notice if the reassignment is within the same commuting area and a 60-day advance written notice if the reassignment is between commuting areas. The agency must consult with the appointee before a geographic reassignment, and the advance notice for a geographic reassignment must include the reasons for the action.

[Reference: 5 U.S.C. 3395(a)(2); 5 CFR 317.901(b)]

6. If a career SES appointee is reassigned to an SES position where the individual will have a policy-making role, is it necessary for the appointee to give up his/her career status?

No. A career SES appointee may be reassigned to any SES position and retain career status. However, any change in status to a noncareer or limited SES appointment must be voluntarily agreed to in writing before the appointment, and the agreement must be maintained as a permanent record in the individual's Official Personnel Folder.

[Reference: 5 CFR 317.904]

7. What protections do career SES appointees have against involuntary reassignment?

A career SES appointee cannot be involuntarily reassigned within 120 days after the appointment of a new agency head or the appointment of a new noncareer supervisor who has authority to make the initial performance appraisal of the career appointee. The 120-day moratorium is a protection built into the law to prevent peremptory reassignments before the capabilities of the career appointee are known.

This restriction does not apply to a reassignment taken as a result of an unsatisfactory performance rating, if the rating was given before the appointment of the new agency head or noncareer supervisor. However, if an unsatisfactory rating is given during a moratorium, the resulting reassignment can't be effected until the moratorium ends.

[Reference: 5 U.S.C. 3395(e); 5 CFR 317.901]

8. How is the advance notice requirement affected by the moratorium?

The 15- or 60-day advance notice requirement for a reassignment (see Question 5) may run concurrently with the 120-day moratorium, but the reassignment may not be effected until the moratorium has ended.

If an advance notice is issued before the 120-day moratorium starts, 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 be inappropriate for a proposed agency head or noncareer supervisor to have some other official issue a reassignment notice before the appointment to avoid application of a moratorium. The action must be initiated independent of the incoming agency head or noncareer supervisor.

[Reference: 5 U.S.C. 3395(e); 5 CFR 317.901]

9. Who is covered by a moratorium initiated by the appointment of a noncareer supervisor?

A moratorium on involuntary reassignments initiated by the appointment of a noncareer supervisor applies only to those career appointees for whom the noncareer supervisor gives the initial performance appraisal. It does not apply to those career appointees for whom the new noncareer appointee serves as the higher level supervisor and functions as a reviewing official or final rater or has the authority to reassign the appointees.

[Reference: 5 U.S.C. 3395(e)(1)(B); 5 CFR 317.901(c)]

10. Who is considered a "noncareer appointee" for purposes of initiating the moratorium on involuntary reassignments?

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

[Reference: 5 CFR 317.901(c)]

11. Can an agency head take an involuntary reassignment action in place of a noncareer supervisor?

If a moratorium is initiated by the appointment of a noncareer supervisor, the agency head may not take an involuntary reassignment action against that supervisor's career SES subordinates (as defined in Question 9), even if the agency head has been in office more than 120 days.

[Reference: 5 U.S.C. 3395(e)(1)(B); 5 CFR 317.901(c)]

12. Is a moratorium on involuntary reassignments initiated when an "acting" agency head or noncareer supervisor is named?

No. 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 considered an appointment. Therefore, the statutory moratorium technically does not apply. However, the agency at its discretion may apply the moratorium in such situations. In this case, if the "acting" individual is later permanently

appointed to the position without a break in service, time spent under the agency-imposed moratorium counts toward the 120-day moratorium initiated by the permanent appointment.

[Reference: 5 CFR 317.901(c)(5)]

13. May career SES appointees be reassigned voluntarily before the 15- or 60-day advance notice period and/or the 120-day moratorium on involuntary reassignments has ended?

Yes. However, the career appointee must agree in writing to the reassignment. The agreement is retained as a temporary record in the appointee's Official Personnel Folder.

[Reference: 5 CFR 317.901(c)(3)]

14. May career SES appointees be detailed during the 120-day moratorium on involuntary reassignments?

Yes. If a career appointee is detailed during the 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 period must meet the detail requirements in the regulations and should be made judiciously and only when there is a clear, bona-fide need.

[Reference: 5 U.S.C. 3395(e); 5 CFR 317.901(c)(4) and 317.903]

15. Does the moratorium on involuntary reassignments apply to a realignment or position abolishment?

No. The 120-day restriction does not apply to a 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 not a change in the employee's position.

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

[Reference for definition of reassignment: 5 CFR 317.901(a)]

CAREER APPOINTEES WHO ACCEPT APPOINTMENTS OUTSIDE THE SES

16. What benefits may career SES appointees retain if they accept a Presidential appointment to a position paid equivalent to Executive Level V or higher?

The following provisions apply to a career SES appointee who is appointed by the President, subject to Senate confirmation, to a civilian position in the executive branch that is not in the SES and the rate of pay for which is equal to or greater than the rate payable for level V of the Executive Schedule. They also apply to a career appointee who receives a Presidential appointment (without confirmation) to a non-SES position that 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.

If the appointment is made without a break in service, the individual may elect to retain any or all of these SES benefits: SES basic pay (including locality pay), eligibility for performance and rank awards, severance pay, annual and sick leave, and retirement. (The individual retains his/her current retirement coverage. However, if the position to which the individual is appointed is an Executive Level position listed in 5 U.S.C. 5312-17, the individual is subject to mandatory social security coverage. An individual under CSRS would then be covered under CSRS Offset.)

If the individual elects to retain severance pay coverage, the individual is entitled to severance pay if involuntarily separated from the Presidential appointment if otherwise eligible, even if the individual is entitled to reinstatement in the SES (see Question 17). A separation is considered involuntary for severance pay purposes if the President requests the resignation of the individual or requests all Presidential appointees to submit their resignations, or if the resignation is specifically requested by a recognized representative of the Administration who has authority to request resignations. A self-initiated resignation is not qualifying for severance pay.

See Question 29 for information about restrictions on granting awards to Presidential appointees who were SES career appointees and retained awards eligibility.

[Reference: 5 U.S.C. 3392(c); 5 CFR Part 317, Subpart H]

17. What reinstatement rights to the SES does a former career appointee who took a Presidential appointment have?

The appointee is entitled to reinstatement if the Presidential appointment was without a break in service from the career SES appointment. (This entitlement exists whether or not the position the individual held as a Presidential appointee was paid above or below Executive Level V.) The individual must have left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance. OPM's Office of Executive Resources Management will provide placement assistance (and direct placement if necessary) if the individual applies to OPM within 90 days after separation. The individual also may negotiate his/her own reinstatement without OPM assistance.

[Reference: 5 U.S.C. 3593(b); 5 CFR Part 317, Subpart G]

If the individual elected to continue SES pay while serving in the Presidential appointment (see Question 16), the appointee's pay rate does not change on reinstatement unless 12 months have elapsed since his/her last pay adjustment. If 12 months have elapsed, pay may be raised any number of ES rates. (Pay may not be reduced involuntarily, except for performance reasons — see 5 CFR 534.402(f)). However, there is nothing in law or regulation to preclude an appointee from voluntarily accepting a pay rate at one or more lower pay levels.)

If the individual did not elect to continue SES pay, pay may be set at any SES rate on reinstatement; but it is expected that the agency and the individual will negotiate an agreed-upon rate.

[Reference: 5 CFR 534.401(e)(2)]

If eligible, the individual may apply for discontinued service retirement (DSR) when the Presidential appointment is terminated, instead of reinstatement in the SES, whether or not the individual has received a job offer in the SES. OPM considers the resignation of a Presidential appointee to be an involuntary separation for DSR purposes whenever it is submitted and accepted.

[Reference: CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 44 — see www.opm.gov/asd/hod/pdf/CO44.pdf]

18. Can SES appointees be reinstated to the competitive service?

Yes, if they held a competitive service appointment before their SES appointment and meet certain other conditions. Career SES appointees who are eligible for reinstatement in the competitive service may be appointed to any competitive service position for which they qualify, at any grade level. We advise appointees interested in reinstatement to the competitive service to consult with their agency's Human Resources Office to verify their reinstatement eligibility.

[Reference: 5 CFR 315.401 and 335.103(c)(2)(vii)]

NONCAREER AND LIMITED APPOINTMENTS

19. Are there any restrictions on making noncareer or limited SES appointments?

Yes. The agency must receive a noncareer appointment authority from OPM before making the appointment. When the individual leaves the position, the appointment authority reverts to OPM. The agency must get a new authority from OPM before making another noncareer appointment to the position. (Note that an agency must obtain OPM approval for an appointment authority before reassigning a noncareer appointee to another SES position or transferring a noncareer appointee to another agency.) The agency approves the qualifications of the appointee, and the appointment is made noncompetitively.

The agency must also obtain limited appointment authorities from OPM on a case-by-case basis. However, for temporary SES appointments of career or career-type employees, the agency may use its "pool" authority (3 percent of the agency's SES allocation).

[Reference: 5 CFR 317, Subpart F]

20. What assistance is available from OPM to help agencies during transition?

OPM may make SES limited term appointment authorities available to agencies for positions related to a transition. These appointments normally are for no longer than 6 months. (If an SES authority would not be appropriate, under conditions prescribed in regulation, agencies may establish temporary transitional Schedule C positions during the 1-year period immediately following a change in Presidential Administration, the appointment of a new department or agency head, or the creation of a new department or agency to facilitate transition.)

[Reference for Schedule C: 5 CFR 213.3302]

21. Can SES noncareer or limited appointments be used for individuals who are awaiting Senate confirmation?

Yes. OPM may authorize a noncareer or limited appointment authority for an individual who has been nominated by the President, but whose appointment is pending Senate confirmation. Such appointments may not be made to the position for which the individual has been nominated. Rather, the individual normally serves in an advisory capacity in another position until confirmed. (Instead of an SES appointment, agencies may use a consultant appointment under 5 U.S.C. 3109 provided the appointment is not to an SES position, the individual meets the definition of a consultant, and the work assigned requires consultant services. See also Questions 35 and 36, and 5 CFR Part 304.)

22. Are individuals who receive SES limited emergency and limited term appointments eligible for health benefits, life insurance, and retirement coverage?

Yes, if the agency designates the appointment as provisional or the appointment is for more than 1 year. For example, an agency may designate an appointment of 1 year or less as provisional when it is expected that the individual will be converted to a nontemporary SES appointment (career or noncareer) or to a nontemporary Presidential appointment upon OPM approval, White House clearance, and/or confirmation by the Senate. The limited emergency or limited term appointment must be designated as a "provisional appointment" on the SF-50, Notification of Personnel Action. The appointee will then be eligible for health benefits, life insurance, and retirement coverage.

[Reference for provisional appointments: 5 CFR 316.403; 5 CFR 317.602]

PAY AND OTHER COMPENSATION

23. Are there any restrictions on what a new SES appointee can be paid?

The agency determines rate of pay — a new appointee may be paid at any of the six SES basic pay rates, except as provided in 5 CFR 534.401(b)(2). In addition to basic pay, SES members in the continental U.S. are currently entitled to locality pay, which varies in amount by area. In determining a basic pay rate, agencies may consider a variety of factors, such as the individual's current pay, pay for comparable private sector personnel, the duties and responsibilities of the position to which appointed, and the qualifications of the individual.

Agencies should especially note that the initial establishment of a pay rate for a new SES appointee is considered a pay adjustment — the initial pay rate may not be changed for 12 months. For example, if an agency appoints an individual as a special assistant at ES-1 and subsequently obtains an appointment authority for that individual as a Deputy Assistant Secretary, the agency cannot adjust that individual's pay until 12 months after the initial SES appointment.

However, if an appointee transfers to another agency, the new appointing authority may set his/her pay at any rate — the 12 month restriction does not apply. If a former SES appointee is being reappointed in the SES, pay may be set at any rate if there has been a break in SES service of more than 30 days.

[Reference: 5 U.S.C. 5383; 5 CFR 534.401]

24. What pay and other flexibilities are available to help recruit SES personnel?

There are several discretionary pay flexibilities that agencies may use to deal with well-documented staffing difficulties. There are specific statutory and regulatory conditions that govern the use of each of these flexibilities. Full documentation required by laws and regulations must be maintained, and pertinent information will be subject to public scrutiny and third party review. We caution agencies to exercise these flexibilities judiciously, especially when hiring other than career employees, and use them only when absolutely necessary to address staffing problems.

- Payment of travel and transportation expenses to any individual for pre-employment interviews and to a new appointee for moving expenses from his/her place of residence to the duty station.

[Reference: 5 U.S.C. 5706b and 5723; 5 CFR Part 572]

- Advance payment of basic pay covering not more than 2 pay periods for a new appointee, except for appointment as agency head.

[Reference: 5 U.S.C. 5524a; 5 CFR Part 550, Subpart B]

- Lump-sum bonuses of up to 25 percent of basic pay, when it would otherwise be difficult to fill a position and the action involves recruitment of a new appointee or relocation of a current appointee to a different commuting area. To receive these bonuses, an employee must sign an agreement to serve for a specified period of time — at least 6 months in the case of a recruitment bonus. These bonuses may not be paid to an agency head or to an individual appointed to a position in the expectation of receiving an appointment as an agency head (e.g., an individual who has received a noncareer or limited SES appointment pending Senate confirmation).

[Reference: 5 U.S.C. 5753; 5 CFR Part 575, Subparts A and B]

- Waiver of dual compensation restrictions for civilian retirees in certain situations. Approval must be obtained from OPM on a case-by-case basis, and the position must involve exceptional difficulty in recruiting a qualified employee. Agencies are cautioned that these waivers are intended to be *rare exceptions*, used only in the most unusual circumstances — a detailed justification that covers the criteria specified in the regulations must accompany the waiver request. (Agencies should send waiver requests for positions above GS-15 to the Director, Office of Executive Resources Management.)

[Reference: 5 U.S.C. 8344 and 8468; 5 CFR Part 553]

LEAVE

25. What leave flexibilities are available to SES employees?

SES employees are covered by the Federal leave system.

- *Annual and Sick Leave.* Employees earn 13, 20, or 26 days of annual leave a year, depending on years of service. This leave accrues incrementally, i.e., 4, 6, or 8 hours every 2 weeks. SES employees may carry over up to 90 days of annual leave to the next leave year. Employees receive a lump-sum payment for unused annual leave when they separate from Federal service.

Employees also earn 13 days of sick leave a year. Sick leave also accrues incrementally, i.e., 4 hours every 2 weeks. Sick leave accumulates without limit in succeeding years. In certain situations, employees may use sick leave for family care, including using a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition, and for adoption or bereavement purposes.

[Reference: 5 U.S.C. 6301-6312; 5 CFR Part 630 (Subparts B, C, and D)]

- *Family and Medical Leave.* Under the Family and Medical Leave Act of 1993 (FMLA), an employee is entitled to a total of 12 workweeks of *unpaid* leave during any 12-month period for: (1) the birth of a child and care of the newborn; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an employee's spouse, son or daughter, or parent with a serious health condition; and (4) 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 the Family and Medical Leave Act.

[Reference: 5 U.S.C. 6381-6387; 5 CFR Part 630 (Subpart L)]

- *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 must have a leave transfer program. In addition, an agency may also choose to establish a leave bank for its employees.

[Reference: 5 U.S.C. 6331-6373; 5 CFR Part 630 (Subparts I and J)]

In addition, employees are entitled to court leave, military leave, leave for bone marrow or organ donation, and other types of leave. You can obtain additional information on the Federal Government's leave programs at OPM's website at <http://www.opm.gov/oca/leave/index.htm>.

[Reference: 5 U.S.C. 6321-6327; 5 CFR Part 630 (Subparts F, G, and H)]

PERFORMANCE APPRAISALS AND RECERTIFICATION

26. What effect does a change in Presidential Administrations have on performance appraisals?

Agencies cannot appraise or rate career SES appointees' performance for 120 days following the inauguration of the new President (i.e., from January 20 through May 19, 2001). This includes the supervisor's initial appraisal, higher level official's review, a Performance Review Board's recommendations, and an appointing authority's final rating. The length of the performance appraisal period is not extended by this moratorium — it just delays the appraisal and rating actions. However, this moratorium does not preclude an interim appraisal when an appointee changes positions or a supervisor leaves, nor does it preclude a progress review during the appraisal period.

[Reference: 5 U.S.C. 4314(b)(1)(C); 5 CFR 430.305(a)(3)]

27. Does the transition have any affect on recertification determinations made in 2000?

The transition would not affect an agency's recertification determinations, but it could affect a removal action that results from a decision not to recertify a career appointee. The 120-day moratorium on appraisal actions following a new Presidential Administration applies only to the annual performance appraisal and not to recertification determinations. However, there *is* a 120-day moratorium on involuntary removals of career appointees from the SES after the appointment (including a recess appointment) of a new agency head or a new noncareer supervisor who has the authority to remove the appointee. Therefore, an agency could decide not to recertify a career appointee during a moratorium on removals, but the agency could not effect the removal action until after the moratorium ended. (See Question 30 on the moratorium on removals).

[Reference: 5 U.S.C. 3592; 5 CFR 359.303]

AWARDS

28. Are there restrictions on awards during the transition period?

Yes. There are legal restrictions, and there are administratively-imposed restrictions. There is a statutory prohibition on granting awards under 5 U.S.C. Chapter 45 to senior politically-appointed officers during the Presidential election period, defined as from June 1, 2000, through January 20, 2001. This prohibition applies to Schedule C appointees and SES members who are not career appointees. There is also a statutory prohibition on granting cash awards under 5 U.S.C. Chapter 45 to Executive Schedule officers at any time.

In addition, the Clinton Administration placed further restrictions on cash awards for political appointees, as outlined in the August 1994 Memorandum to Cabinet and Agency Heads from Leon Panetta, Chief of Staff to the President, which remains in effect until January 20, 2001. Agencies are asked to refrain from giving cash awards to political employees (i.e., noncareer SES and Schedule C employees) paid a salary level that exceeds that of a GS-12 and to grant monetary awards to others only for performance that is clearly exceptional. Agencies should continue to recognize other political appointees through the prudent use of nonmonetary awards.

[Reference: 5 U.S.C. 4508 and 4509; 5 CFR 451.105]

29. Do the statutory and administrative restrictions described in the previous question apply to Presidential appointees who were career SES members and elected to retain SES benefits on receiving the Presidential appointment?

No. Presidential appointees who are former career SES members and who elected to retain eligibility for performance and Presidential Rank Awards may be considered for such awards. Other awards covered under 5 U.S.C. Chapter 45 are not among the benefits that a former career SES member may elect to retain under 5 U.S.C. 3392(c). (Note that SES performance awards are governed by 5 U.S.C. Chapter 53 and are therefore not covered by the statutory restrictions.)

However, an agency has the discretion to decide whether or not to grant individual awards. An agency may take a broad range of factors into account in exercising its discretion, including budgetary limitations, statutory restrictions on the size of the award pool, Congressional concerns, and Administration policy. Moreover, agencies are cautioned to use award authorities judiciously. Each award or nomination must be extremely well-justified, as they will be subject to public scrutiny and third party review. Documentation required by laws and regulations must be maintained.

[Reference: 5 U.S.C. 3392(c); 5 CFR Part 317, Subpart H, for retention of SES provisions.]

REMOVALS AND OTHER SEPARATIONS

30. What restrictions are there on the removal of career appointees from the SES?

A career SES appointee cannot be involuntarily removed for performance or failure to be recertified, or during the probationary period, within 120 days after the appointment (including a recess appointment) of a new agency head or the appointment of a new noncareer supervisor who has authority to remove the career appointee. This restriction does not apply to adverse action removals (e.g., for misconduct) or to a removal being taken as the result of an unsatisfactory performance rating issued before the moratorium.

[Reference: 5 U.S.C. 3592(b); 5 CFR 359.406 and 359.503]

31. What effect does the 120-day moratorium on removals from the SES have on completion of the 1-year SES probationary period by career appointees?

The moratorium applies to all career appointees, including those serving a probationary period. Therefore, a probationary removal cannot be effected until the moratorium ends, if the individual is still in the probationary period at that time. However, if an individual completes the probationary period while the moratorium is in effect, removal when the moratorium ends must be effected under procedures that apply to post-probationers. The moratorium does not extend the probationary period. This restriction does not apply to a disciplinary action that was initiated before the moratorium began.

[Reference: 5 U.S.C. 3592(b); 5 CFR 359.406]

32. Can the resignation of SES appointees during the change in Presidential Administrations or a change in agency leadership be considered involuntary for the purpose of eligibility for discontinued service retirement (DSR)?

Yes, in certain circumstances. A resignation qualifies for DSR if the SES appointee (i.e., any noncareer appointee, or a career appointee who reports to a Presidential appointee) resigns in response to a written request from an Administration representative having the authority to request such resignation or from the new agency head. A copy of the request must accompany the retirement application. (Note that a career appointee is not obligated to comply with a request to resign, nor may the career appointee be removed for not submitting a resignation.)

The resignation of a Presidentially-appointed policy-making officer qualifies for DSR whenever the President accepts the individual's resignation. When it is known that a Presidential appointee is leaving, OPM considers the resignation of a noncareer SES or Schedule C appointee who works for that person to be an involuntary separation for purposes of DSR.

In all cases, to be eligible for DSR, the appointee must meet all the other DSR requirements, e.g., must have 25 years of service (at any age), or be age 50 and have 20 years of service.

[Reference: CSRS and FERS Handbook for Personnel and Payroll Offices — www.opm.gov/benefits]

33. Under what conditions are career SES appointees who are involuntarily separated entitled to severance pay?

The appointee must have been employed for at least the previous 12 months without a break in service of more than 3 calendar days, must not be eligible for an immediate retirement annuity, must not have declined to accept reassignment in the SES in the same commuting area, and must be separated involuntarily (not for personal cause, i.e., misconduct or unacceptable performance).

A resignation may be considered an involuntary separation for severance pay purposes *only* if it is submitted following receipt of a written notice of separation. If an appointee resigns after receiving notice of separation for failure to accept reassignment outside the commuting area, the resignation is considered an involuntary separation and provides entitlement to severance pay if the appointee is otherwise eligible, unless the appointee was serving under a mobility agreement. See also Question 16 concerning former career SES appointees who are entitled to elect to continue severance pay benefits.

[Reference: 5 U.S.C. 5595; 5 CFR Part 550, Subpart G]

34. Are noncareer or limited SES appointees entitled to severance pay?

No, since they accept their appointments with a presumed understanding that their tenure is less than career and that they are subject to removal at any time. (Exception: if a full-time limited SES appointment begins within 3 days after separation from a qualifying appointment without a time limit, the limited appointment *may* convey severance pay eligibility — see your agency's Human Resources Office.) Presidential appointees are similarly not eligible for severance pay.

[Reference: 5 CFR 550.703 definition of "nonqualifying appointment"]

EXPERTS AND CONSULTANTS

35. How do you define "experts and consultants"?

An "expert" has unique or superior education, skills, and accomplishments in a particular field and is regarded as an authority by others in the field. The expert performs unusually difficult work beyond the usual range of competent employees in the field.

A "consultant" provides advice, options, or recommendations on issues or problems and usually has a high degree of administrative, professional, or technical experience. The consultant may also be a person affected by a program who can provide public input based on personal experience.

[Reference: 5 U.S.C. 3109; 5 CFR Part 304]

36. What are the limitations on expert and consultant appointments?

There are limitations on the length and type of appointment as well as on the nature of the work they can do. Experts and consultants serve under temporary appointments that are either *temporary not to exceed 1 year* or they are *intermittent*. Expert and consultant appointments are *temporary not to exceed 1 year* if the appointee has a regular work schedule and/or works more than 130 days a year. The appointments are *intermittent* if the appointee does not have a regular work schedule *and* works no more than 130 days a year.

Experts and consultants may **not** serve in Senior Executive Service positions or positions that require Presidential appointment and/or Senate confirmation (but they 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.

[Reference: 5 U.S.C. 3109; 5 CFR Part 304]

37. How are experts and consultants paid?

The agency determines the pay for experts and consultants, based on qualifications and the work to be performed. Pay may not exceed the daily rate for GS-15, step 10, excluding locality pay, unless the agency's authorization sets another limit. They may also be appointed without compensation. Experts and consultants are not subject to the Classification Act. See 5 CFR Part 304 for additional information on pay limitations.

[Reference: 5 U.S.C. 3109; 5 CFR Part 304]

MISCELLANEOUS

38. Can agencies have an overlap in an SES position for continuity during a change in Presidential Administrations or a change in agency leadership?

No. 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 meet other transition 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 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. Agencies may also establish temporary transitional Schedule C positions for similar non-executive positions to assist with transitions, under circumstances described in Question 20.

[Reference: 5 U.S.C. 3132, 3134, and 3394; 5 CFR Part 317, Subpart F, for limited appointments. 5 CFR 213.3302 for transitional Schedule C appointments]

39. What special requirements are there for SES actions in independent regulatory commissions?

The appointment or removal of an SES appointee in an independent regulatory commission may not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

[Reference: 5 U.S.C. 3392(d)]