

THE SENIOR EXECUTIVE SERVICE

Existing Personnel Flexibilities and Authorities

When the Civil Service Reform Act established the Senior Executive Service (SES) in 1978, a corporate SES culture was envisioned and a distinct personnel system was mandated. The SES was designed to balance overall system uniformity with considerable agency flexibility for individual actions. Managers may exercise these authorities in accordance with law, OPM regulations, and agency delegations.

A. POSITION MANAGEMENT

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Within the overall allocation authorized by OPM, agencies have full responsibility for determining their executive resource priorities and establishing SES positions to meet these priorities. The number of positions established may exceed the number allocated, as long as the number filled does not exceed the allocation.

- Establish SES positions within their allocation. [5 U.S.C. 3133, 5 CFR 214.202]
- Designate positions as General or Career Reserved. [5 U.S.C. 3132(b)(1), 5 CFR 214.402]

B. STAFFING

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SES offers agency managers considerable flexibility in filling executive vacancies and for resolving executive staffing problems.

1. Recruitment and Appointment

- Decide how positions will be filled (i.e., competitively or noncompetitively) and what recruitment methods will be used. [5 U.S.C. 3132, 3134, 3393]
- Decide whether appointees to General positions will be career, noncareer, or limited. [5 U.S.C. 3132, 3143, 3393, 3394]
- Establish qualification standards for SES positions. [5 U.S.C. 3392(a); 5 CFR Part 317, Subpart D]
- Establish Executive Resources Boards (ERBs) to conduct the merit staffing process leading to career SES appointments, including determining the area of consideration, establishing recruitment programs to locate highly qualified candidates, conducting the merit staffing process, evaluating qualifications, rating and ranking applicants, and making selection recommendations to the appointing authority. [5 U.S.C. 3393; 5 CFR Part 317, Subpart E]
- Determine whether candidates meet the qualifications for positions to be filled. (Qualifications Review Boards, established by OPM, certify that appointees meet managerial/executive qualifications for initial career appointment to the SES.) [5 U.S.C. 3393; 5 CFR 317.501]
- Make noncareer appointments without competition, after receiving a noncareer appointment authority from OPM. [5 U.S.C. 3134, 3394]

- Use commercial recruiting firms and nonprofit employment services to recruit for vacancies. [5 CFR Part 300, Subpart D]

2. Short-Term Staffing Needs

- Make limited term appointments (up to 3 years) for temporary project-type work, without competition, using an authority from the limited appointment pool allocated by OPM, or using a specific limited appointment authority from OPM. [5 U.S.C. 3132, 3394; 5 CFR 317.601]
- Make limited emergency appointments (up to 18 months) to meet unanticipated temporary staffing needs, without competition, using an authority from the limited appointment pool allocated by OPM, or using a specific limited authority from OPM. [5 U.S.C. 3132, 3394; 5 CFR 317.601]
- Detail SES members to other SES positions in increments of 120 days; detail SES members to non-SES positions or to unclassified duties for up to 240 days. [5 CFR 317.903]

3. Lateral Movement

- Reassign career appointees to any SES position in the same agency for which qualified, with advance written notice. [5 U.S.C. 3395(a); 5 CFR 317.901]
- Reassign noncareer appointees to any General SES position in the same agency for which qualified, after receiving approval from OPM. [5 U.S.C. 3395(d)(1); 5 CFR 317.901]
- Reassign limited appointees to any General SES positions in the same agency that meet the same criteria under which the original appointment was made, without prior OPM approval. [5 U.S.C. 3395; 5 CFR 317.604]
- Transfer career appointees to an SES position for which qualified in another agency, with the consent of the gaining agency and the employee. [5 U.S.C. 3395(a)(1); 5 CFR 317.902]
- Transfer noncareer appointees to any SES General position for which qualified in another agency, with approval of the gaining agency and OPM. [5 U.S.C. 3395(d)(2); 5 CFR 317.902]

Exception: A career appointee may not be involuntarily reassigned within 120 days of appointment of new agency head or new noncareer supervisor who has authority to make an initial appraisal of the appointee's performance. [5 U.S.C. 3395(e), 5 CFR 317.901]

C. COMPENSATION

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Agencies have considerable discretionary authority to set basic SES pay and to provide additional compensation to meet their recruitment, relocation, and retention needs. Under 5 U.S.C. 5307, most additional payments are subject to the limitation that aggregate pay may not exceed the rate for Executive Level I (currently \$148,400).

1. Agency-Based Discretionary Authorities

- Determine which of the six SES basic pay rates will be paid to each senior executive. [5 U.S.C. 5383(a)]

- Adjust basic pay rates for each executive upward or downward once in any 12-month period. (Basic pay may be raised any number of rates, but reduced only one rate. Pay for career appointees may be reduced only for performance or disciplinary reasons. Pay for all SES members may be reduced at the executive's request.) [5 U.S.C. 5383(c) and (d); 5 CFR 534.401]
 - Provide an advance in pay up to two pay periods to any individual newly-appointed in the agency. [5 U.S.C. 5524a; 5 CFR Part 550, Subpart B]
 - Pay recruitment bonuses for new appointees and relocation bonuses for current employees who move to a different commuting area of up to 25% of basic pay for difficult to fill positions. [5 U.S.C. 5753; 5 CFR Part 575, Subparts A and B]
 - Pay retention allowances up to 25% of basic pay to an employee, when unusually high or unique qualifications of the individual or a special need of the agency makes it essential to retain an individual who would likely leave the government in the absence of an allowance. [5 U.S.C. 5754; 5 CFR Part 575, Subpart C]
 - Pay travel expenses of candidates for SES positions for preemployment interviews requested by the agency. [5 U.S.C. 5752; 5 CFR Part 572]
 - Pay travel and transportation expenses for new appointees to the first post of duty. (Implementation regulations are issued by GSA as part of Federal Travel Regulations.) [5 U.S.C. 5723; 5 CFR Part 572]
 - Pay travel and transportation expenses for career appointees for "last move home." If reassigned or transferred geographically (when eligible for optional or discontinued service retirement or within 5 years of eligibility for optional retirement), they are entitled to moving expenses at retirement. (Implementation regulations are issued by GSA as part of Federal Travel Regulations.) [5 U.S.C. 5724]
 - Authorize flexible or compressed work schedules under an alternative work schedule (AWS) for SES members. (SES members may not accumulate credit hours under AWS.) [5 U.S.C. Chapter 61, Subchapter II; 5 CFR Part 610, Subchapter D]
2. Authorities Available with OPM and/or OMB Approval
- Increase the rate of basic pay up to the rate for Executive Level I, after receiving authorization from OMB in consultation with OPM, for positions that require expertise of an extremely high level in a scientific, technical, professional, or administrative field and are critical to the accomplishment of an important agency mission. Critical pay may be granted only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position. [5 U.S.C. 5377 and OMB Bulletin 91-09]
 - Request OPM to waive dual compensation requirements for civilian and military retirees, on a case-by-case basis, for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee, or to meet an emergency hiring need as specified in law. [5 U.S.C. 5532(g); CFR Part 553, Subpart B]

D. PERFORMANCE MANAGEMENT*[Bill Collins, 202-606-2683]*

Performance management in the SES provides for systematically assessing individual and organizational performance against agency goals and objectives, establishing accountability for achieving results, and linking performance with decisions about pay, awards, and other personnel actions.

1. Performance Planning and Appraisal

- Establish performance management policies and systems to plan for and appraise individual and organizational performance of senior executives. Once OPM approves an agency performance management plan, the agency has full responsibility for SES performance management. [5 U.S.C. 4312; 5 CFR Part 430, Subpart C]
- Implement performance appraisal including: identifying, establishing, and communicating performance elements and standards for individual executives; monitoring progress and providing feedback to executives; appraising performance against standards annually (with provision for shortening an executive's appraisal period when appropriate); establishing Performance Review Boards to review initial appraisals and make recommendations to the agency head on final ratings and bonuses. [5 U.S.C. 4312; 5 CFR Part 430, Subpart C]
- Agency head decisions on ratings, bonuses, or removals based on ratings are not subject to appeal. [5 U.S.C. 3592(a)(2), 4312(d), and 5384(b)(2)]

Exception: Performance ratings for career appointees may not be made within 120 days after beginning of a new Presidential administration. [5 U.S.C. 4314(b)]

2. Awards and Recognition

- Pay annual lump sum performance awards (bonuses) to SES career members, after considering the agency Performance Review Board recommendations. Awards may be between 5% and 20% of basic pay. [5 U.S.C. 5384; 5 CFR 534.403]
- Pay incentive awards for suggestions, inventions, or special acts or service. Gainsharing programs may also be used where organizational characteristics permit. [5 U.S.C. Chapter 45; 5 CFR Part 451]
- Nominate career executives for Presidential Rank Awards for sustained accomplishment over an extended period. Distinguished Executives receive \$20,000; Meritorious Executives receive \$10,000. [5 U.S.C. 4507; 5 CFR 451.201(c)]
- Grant time off without charge to leave or loss of pay as an incentive. [5 U.S.C. 4502; 5 CFR 451.104(a)]

3. Performance Development and Training

- Establish programs for the systematic development of candidates for the SES and for the continuing development of senior executives. [5 U.S.C. 3396; 5 CFR Part 412]
- Provide any training that will assist in achieving the agency's mission and performance goals, with no requirement that training be directly related to "official duties." [5 U.S.C. 4103]

- Retrain employees for placement in another agency when such training is in the interest of the government. [5 U.S.C. 4103]
- Take full advantage of available training sources with no distinction made between government and non-government sources. [5 U.S.C. 4105]
- Determine when a "continued service agreement" with an employee is appropriate and apply it to any training to protect the government's investment. [5 U.S.C. 4108]
- Grant sabbaticals to career SES members of up to 11 months during any 10-year period for study or uncompensated work experience contributing to the employee's development and effectiveness. The employee retains salary and benefits, and the agency may grant travel and per diem costs. [5 U.S.C. 3396(c); 5 CFR 412.107(d)(3)]

4. Poor Performance

Agencies have the authority to take performance-based reassignment or removal actions under 5 U.S.C. Chapter 43, Subchapter II, *Performance Appraisal in the SES*. Removal actions have specific procedural and documentation requirements that must be met. After removal, most career appointees will have placement rights to positions at grade 15.

- Reassign appointees to other SES positions and provide assistance in improving performance (e.g., counseling, training, or closer supervision). [5 U.S.C. 4314; 5 CFR 430.304(h)]
- Remove probationary career appointees from the SES for unacceptable performance, with a one-day advance written notice. [5 U.S.C. 3592, 4314; 5 CFR 359.402]
- Remove nonprobationary career appointees from the SES for unacceptable performance, with a 30-day advance written notice. [5 U.S.C. 3592, 4314; 5 CFR 359, Subpart E]
- Remove noncareer and limited appointees from the SES for unacceptable performance, with a one-day advance written notice. [5 U.S.C. 3592, 4314; 5 CFR 359, Subpart I]

E. OTHER SES REMOVAL ACTIONS

[*Bill Collins, 202-606-2683*]

Agencies have the authority to remove executives from the SES for a variety of reasons in addition to unacceptable performance, such as misconduct and reduction-in-force. Each method has specific procedural and evidentiary requirements that must be met. Some executives will have placement rights to positions at grade 15.

- Remove career appointees at any time during the probationary period, with a one-day written notice. The procedural protections and placement rights to which the probationer is entitled are determined by the basis for the removal action and the individual's appointment status just before entering the SES. [5 U.S.C. 3592; 5 CFR Part 359, Subpart D]
- Remove career appointees for disciplinary reasons (misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function), with a 30-day advance written notice. [5 U.S.C. 7543; 5 CFR Part 752, Subpart F]

- Remove career executives through reduction-in-force based on competitive procedures. Nonprobationers can be removed if there are no vacant SES positions in the agency for which the executive is qualified and if OPM has been unable to place the executive in another agency during the 45-day priority placement period. [5 U.S.C. 3595; 5 CFR Part 359, Subpart F]
- Remove noncareer and limited appointees at any time, with a one-day written notice. (Some limited appointees require additional notice, depending on position held before receiving the limited appointment.) [5 U.S.C. 3592(c); 5 CFR Part 359, Subpart I, and Part 752, Subpart F]
- Remove reemployed annuitants at any time, with a one-day written notice. [5 CFR Part 359, Subpart I]

Exception: Career appointees may not be removed during probation, for performance reasons, or for failure to be recertified during 120 days after appointment of new agency head or new noncareer supervisor with removal authority, except where removal is based on an unsatisfactory rating given prior to appointment. [5 U.S.C. 3592; 5 CFR 359.503]