

## SENIOR EXECUTIVE SERVICE (SES)

### ADDRESSING POOR PERFORMANCE

An agency may take a performance based action against a post-probationary career SES appointee based upon one or more final ratings under an OPM-approved SES performance appraisal system. A final rating is not required to remove a probationary career appointee from the SES for unsatisfactory performance. The following table briefly describes rules and procedures for addressing poor performance of career appointees. Information provided below must be read in context of the moratorium on any performance appraisal and any rating within 120 days after the beginning of a new Presidential Administration.

	<b>Removal During Probation</b>	<b>Removal After Probation</b>
General Information	<p>An individual’s initial career SES appointment becomes final only after completion of a 1-year probationary period during which the agency observes and evaluates the appointee. If the agency finds a probationer’s performance unacceptable, it may consider remedial action, such as specialized training or assignment to other SES duties. If remedial action is not considered appropriate or proves unsuccessful, the agency may remove the appointee from the SES based upon unacceptable performance.</p> <p>A probationer who was appointed to the SES from a career or career conditional or equivalent appointment will have a guaranteed placement right to a non-SES civil service position upon removal.</p>	<p>Removal of a career SES appointee who has completed the probationary period or was not required to serve one must be based on the appointee’s final rating(s) under an OPM approved SES performance appraisal system. This is normally the annual summary rating prepared at the end of an appraisal period. However, an agency is also authorized to end a senior executive’s appraisal period at any time after the agency’s minimum appraisal period is completed if there is an adequate basis on which to appraise the executive and prepare a final rating using the same process required for an annual summary rating. Such a final rating may also serve as the basis, or part of the basis, for a performance based action.</p> <p>These career appointees will have a guaranteed placement right to a non-SES civil service position upon removal from the SES.</p>
Rating	<p>A probationary career appointee may be removed from the SES for unacceptable performance. A final rating is not required.</p>	<p>A career appointee who receives a single final rating of unsatisfactory must be —</p> <ul style="list-style-type: none"> <li>• Reassigned or transferred within the SES, or</li> <li>• Removed from the SES</li> </ul> <p>A career appointee must be removed from the SES who receives —</p> <ul style="list-style-type: none"> <li>• two final ratings of unsatisfactory within 5 consecutive years, or</li> <li>• two final ratings of less than fully successful (i.e., unsatisfactory or minimally</li> </ul>

	<b>Removal During Probation</b>	<b>Removal After Probation</b>
		<p>satisfactory) within 3 consecutive years</p> <p>Moratorium on Reassignment: A career appointee may not be reassigned within 120 days after appointment of a new agency head or of a new noncareer who is the initial rater for the career appointee. However, an exception applies if reassignment is based upon a final rating of unsatisfactory completed before the moratorium began.</p>
Procedures	<p>Agency must notify the SES member in writing at least one day before the effective date of removal.</p> <p>Notification shall include the following:</p> <ul style="list-style-type: none"> <li>• Agency’s conclusions as to the inadequacies of the SES member’s performance</li> <li>• Whether the probationer has placement rights to another position outside the SES and, if so, to what position</li> <li>• Effective date of removal</li> </ul> <p>Moratorium on Removal: A career appointee may not be removed for performance within 120 days after appointment of a new agency head or the appointment of the career appointee’s most immediate supervisor who is a non-career appointee and has the authority to remove the career appointee. However, the following exception applies:</p> <ul style="list-style-type: none"> <li>• The career appointee received an unsatisfactory rating under the SES appraisal system before the appointment that initiated the moratorium</li> </ul> <p>If the career appointee’s probationary period expires during the moratorium, a subsequent removal must be effected under post-probationary removal procedures.</p>	<p>Agency must notify the SES member in writing at least 30 days before effective date of removal.</p> <p>Notification shall include the following:</p> <ul style="list-style-type: none"> <li>• Basis for the action</li> <li>• Whether the SES member has placement rights to another position outside the SES and, if so, to what position</li> <li>• SES member’s right to request an informal hearing from the MSPB at least 15 days before the removal</li> <li>• Eligibility for immediate retirement under 5 U.S.C. 8336(h) or 8414(a), if applicable</li> <li>• Effective date of removal</li> </ul> <p>Moratorium on Removal: Same as described for probationers; however, an exception allowing the agency to proceed with the removal applies if removal is based upon –</p> <ul style="list-style-type: none"> <li>• A final rating of unsatisfactory, or</li> </ul> <p>The second of two unsatisfactory ratings within a 5 year period, completed before the moratorium began.</p>
Fallback Rights	<p>A probationary career appointee who is –</p> <ul style="list-style-type: none"> <li>• appointed to the SES without a break in service from a civil service position held under a career or career-conditional appointment or an appointment of equivalent tenure, and</li> </ul>	<p>Post-probationary career appointees removed for performance have a guaranteed placement right to a position at GS-15 or above (or equivalent) with SES saved pay.</p> <ul style="list-style-type: none"> <li>• Those who held a career or career conditional or equivalent appointment immediately before SES are entitled to an appointment of equivalent tenure.</li> <li>• Those who did not hold such an</li> </ul>

	<b>Removal During Probation</b>	<b>Removal After Probation</b>
	<ul style="list-style-type: none"> <li>removed for reasons other than misconduct, neglect of duty or malfeasance (e.g., for performance reasons)</li> </ul> <p>has a guaranteed right to –</p> <ul style="list-style-type: none"> <li>A position at GS-15 or above (or equivalent) with an appointment of tenure equivalent to that held prior to appointment to the SES, and</li> <li>SES saved pay</li> </ul> <p>Probationers who did not have such an appointment prior to the career SES appointment are removed from the civil service.</p>	<p>appointment before SES may be appointed using Schedule B authority - 5 CFR 213.3202(m), if no other authority is available.</p> <p>SES saved pay is set at the highest of three alternative rates –</p> <ul style="list-style-type: none"> <li>Rate of pay for position in which placed</li> <li>Rate of pay for position from which appointed to SES</li> <li>Rate of pay earned immediately before removal from SES</li> </ul>
No Appeal	An SES member may not appeal any appraisal or rating under an SES appraisal system.	An SES member may not appeal any appraisal or rating under an SES appraisal system.
Informal Hearing	Does not apply to a probationary career appointee.	At least 15 days before removal, the SES member may request an informal hearing before an MSPB-designated official. MSPB provides a verbatim record to the agency, the Office of Special Counsel, and OPM but has no authority to change agency action. The removal is not delayed if a hearing is requested or held and shall not provide a basis for appeal to MSPB.
Pay Reduction for Performance	Generally not possible during the probationary period because pay setting upon appointment initiates a 12 month restriction on pay adjustments including reductions or increases.	If an executive receives a less than fully successful rating or otherwise fails to meet requirements of a critical performance element and remains in the SES, the agency may apply procedures in 5 CFR 534.404(j) to reduce pay by not more than 10 percent, subject to the 12 month restriction on pay adjustments.

### Useful References for SES Unacceptable Performance

- 5 U.S.C. 43, Subchapter II; 5 CFR 430 subpart C – SES Performance Appraisal
- 5 U.S.C. 3393(d) – SES Probationary Period
- 5 U.S.C. 3592 – Probationary Removals; Performance Removal After Probation; Moratorium on Removal of Career Appointees
- 5 CFR 359 subparts D and E – Probationary Removals; Performance Removal After Probation
- 5 CFR 359 359.402 – Removal of Probationer for Unacceptable Performance
- 5 U.S.C. 4314(b)(3) and (4) – SES Ratings Requiring Performance-Based Action

- 5 CFR 3594; 5 CFR 359 subpart G – Guaranteed Placement and SES Saved Pay
- 5 U.S.C. 4312(d) – No appeal of Appraisal and Rating under an SES Appraisal System
- 5 CFR 1201.143-145 – Informal Hearing Before MSPB
- 5 U.S.C. 5383(d); 5 CFR 534.404(j) – Pay Reduction for Performance or Conduct Reasons
- OPM memorandum and guidance regarding management tools for maximizing employee performance:  
<https://www.chcoc.gov/content/management-tools-maximizing-employee-performance>