

Appendix 2: Questions and Answers on Schedule Policy/Career Final Regulations

A. General

1) What is Schedule Policy/Career?

Schedule Policy/Career is a new schedule in the excepted service for positions that are of a confidential, policy-determining, policy-making, or policy-advocating character (i.e., policy-influencing), and filled by individuals not normally subject to replacement or change as a result of a Presidential transition.

2) How was Schedule Policy/Career established?

The predecessor to Schedule Policy/Career was Schedule F, which was established on October 21, 2020, by Executive Order (EO) 13957. On January 20, 2025, President Trump signed EO 14171, which reinstated and amended EO 13957 to include references to Schedule Policy/Career. With EO 14171, the President used his authority to exempt employees in policy-influencing positions from unacceptable performance and adverse action procedures under chapter 43 and chapter 75 of title 5, United States Code. At the same time, the EO directed the Office of Personnel Management (OPM) to adopt regulations required to implement Schedule Policy/Career. OPM issued the attached final rule on February 5, 2026. OPM's rule amends various parts of title 5, Code of Federal Regulations.

3) Why did the President establish Schedule Policy/Career?

The President determined that the civil service did not possess adequate tools to ensure accountability for employees' performance or conduct. Surveys show few Federal employees believe their agencies take effective action to address poor performance. Surveys also show that less than half of Federal supervisors believe they could remove an employee who engaged in serious misconduct, and only a quarter believe they could remove a seriously underperforming employee. This is borne out by the fact that agencies rarely dismiss tenured employees. For example, the Department of Health and Human Services only removed 5, 4, and 7 career tenured employees for poor performance out of an employee population of 90,000 in fiscal years 2022, 2023, and 2024, respectively. This happened despite the 2024 Federal Employee Viewpoint Survey showing less than a quarter of HHS employees believe there are no poor performers in their work unit, while 30 percent reported poor performers exist in their unit, and typically remain on the job and continue to underperform, rather than being removed.

Employee accountability is particularly important in positions that can help shape Federal policy. Therefore, the President determined that principles of good administration necessitated the

exemption of certain career positions of a policy-influencing character from statutory unacceptable performance and adverse action procedures.

4) What makes Schedule Policy/Career different than other excepted service schedules?

Schedule Policy/Career positions will be generally filled using merit-based hiring procedures applicable to competitive service positions. Those who encumber such positions will be excepted from chapter 43 and 75 procedures for adverse actions and performance-based actions. In addition, protections against prohibited personnel practices (PPPs) such as whistleblower reprisal and political discrimination regarding these employees will be enforced by the employing agency and not the Office of Special Counsel. This rule will principally affect removal procedures for employees in policy-influencing positions whose performance or conduct is judged to be deficient. This new schedule increases accountability to the President for positions that are responsible for influencing the policies of the administration.

5) What does the phrase “confidential, policy-determining, policy-making, or policy-advocating character” mean?

The phrase “confidential, policy-determining, policy-making, or policy-advocating character,” describes positions that are confidential or involved in determining, making, or advocating for policy. OPM’s regulations make use of the plain English meaning of these terms.

6) OPM previously stated that the terms “confidential, policy-determining, policy-making or policy advocating” only apply to noncareer employees. What changed?

OPM’s April 2024 rulemaking asserted for the first time that employees appointed to policy-influencing positions exclusively occupy political appointments. OPM had never previously taken this position. EO 13957, as amended, and OPM’s final regulations on Schedule Policy/Career explain that some career positions may be policy-influencing and, therefore, placed into Schedule Policy/Career.

7) What is the difference between Schedules C and G and Schedule Policy/Career?

Schedule C and G positions are noncareer positions in the excepted service normally subject to replacement or change as a result of a Presidential transition (i.e. political appointments). They will typically be appointed by the agency head following review by the White House Office of Presidential Personnel. Schedule Policy/Career positions are career positions in the excepted service filled using merit hiring procedures and with no involvement from the White House Office of Presidential Personnel. Unlike with political appointments, there is no expectation that Schedule Policy/Career employees personally support the President or leave office at the conclusion of his term.

B. Placement of Positions and Employees into Schedule Policy/Career

1) How will positions move into Schedule Policy/Career?

Agencies reviewed their workforces to identify policy-influencing positions and petitioned OPM to recommend that the President move specific positions into Schedule Policy/Career. OPM will review these petitions and make recommendations to the President, who may then issue an executive order placing positions into Schedule Policy/Career. No positions will be moved into Schedule Policy/Career until that order issues.

Agencies that appoint employees under agency-specific statutory personnel authorities, including title 5 authorities other than Government-wide competitive service and excepted service appointment authorities, must not place such positions into Schedule Policy/Career until OPM issues further guidance. This includes positions covered by agency-specific personnel systems or appointing authorities established by statute, whether located in title 5 or other titles of the United States Code.

2) How will agencies know which of its positions are placed into Schedule Policy/Career?

The President must issue an executive order placing certain positions into Schedule Policy/Career.

3) Will a Schedule Policy/Career appointment be a partisan appointment?

No. Section 6 of E.O. 13957, as amended, makes clear that agencies are prohibited from requiring Schedule Policy/Career employees to pledge personal or political loyalty to the President or his policies. Like all career employees, they must faithfully implement administration policies to the best of their ability, consistent with their constitutional oath and the vesting of executive authority solely in the President. Agencies will issue internal rules forbidding appointing or promoting Schedule Policy/Career employees based on their political affiliation or campaign activities.

4) What procedures must an agency follow to move positions into Schedule Policy/Career?

Once the President places the positions into Schedule Policy/Career, agencies should take steps to appropriately document the movement of the position to the Schedule Policy/Career by notifying employees that their positions are placed in Schedule Policy/Career and of the impact on their employment conditions; updating position descriptions and human resources information systems; and preparing documentation including Standard Form 50s and any internal agency documents to record movement to the new Schedule.

5) Will agencies need to provide certain information to employees who transfer into a Schedule Policy/Career position?

Agencies should notify employees subject to movement into Schedule Policy/Career of the changes to conditions of employment, including termination of unacceptable performance and adverse procedures, and transition from statutory to agency prohibitions on prohibited personnel practices. OPM is providing a sample letter (Appendix 4) agencies may adapt to fit their individual circumstances.

6) What should an agency do if an employee refuses to sign an acknowledgement that their position moved into Schedule Policy/Career?

Agencies should document that it placed the employee on notice of the employee's movement in Schedule Policy/Career including the date the employee refused to sign any acknowledgement and store the information with human resources. An employee's refusal to acknowledge movement into Schedule Policy/Career is not necessary to effectuate the move. Agencies should not take administrative action against an employee for refusing to do so.

7) Will agencies need to submit petitions to place additional positions performing the same duties under the same position description as those previously identified by the President for placement in Schedule Policy/Career?

No. If agencies fill new positions using the same position descriptions utilized to support positions previously placed in Schedule Policy/Career and those positions perform the same duties, agencies do not need to submit a petition to the Director of OPM to place the new positions into Schedule Policy/Career. Those positions will be covered by the President's prior determination that the applicable position description is classified in Schedule Policy/Career.

8) What hiring procedures must agencies follow to appoint individuals to Schedule Policy/Career positions?

5 CFR 213.3601(b) and (c) describe the hiring procedures agencies must follow in appointing employees to Schedule Policy/Career positions. Agencies will be required to publicly announce job opportunities: conduct applicant evaluations based on valid, job-related assessments; and select qualified individuals based on merit. However, agencies whose positions were listed in another schedule in the excepted service prior to their movement into Schedule Policy/Career will still be able to utilize the hiring rules applicable to those positions in the previous schedule (e.g., attorney positions listed under Schedule A).

9) What codes should agencies use to document movements and appointments of employees to Schedule Policy/Career positions?

OPM will provide separate guidance to address the proper coding for actions covered under the

Guide to Processing Personnel Actions (GPPA).

10) Should documentation acknowledging the status of an employee as Schedule Policy/Career be placed in the employee's eOPF file?

Yes. Please see the previous question for information on the correct codes to be used to document personnel actions.

11) Do employees have the right to appeal the decision to move their position into Schedule Policy/Career?

No. Pursuant to the Schedule Policy/Career Final Rule, OPM rescinded regulations that granted employees a right to appeal movement to an excepted service position to the Merit Systems Protection Board (MSPB). Employees moved into Schedule Policy/Career may not appeal the President's decision to move the employee into the new Schedule.

For more information concerning employees' rights to appeal, please see the Employee Relations section below in this guidance.

12) If the President did not list a position in Schedule Policy/Career, does that mean that it may never be placed into the new Schedule?

No. Agencies should conduct periodic reviews of new and existing positions on at least an annual basis to determine whether positions should be placed in Schedule Policy/Career. Pursuant to Section 5 of E.O. 14171, when an agency head determines that a position should be placed into Schedule Policy/Career, the agency will petition OPM to recommend that the President place the position into Schedule Policy/Career. Therefore, positions may be converted to Schedule Policy/Career at a later date if the circumstances of the position warrant it.

13) Can the Agency reorganize and place positions in Schedule Policy/Career?

Yes. However, they must still petition OPM to recommend that the President designate the positions as Schedule Policy/Career. Agencies are further advised that the Schedule Policy/Career regulations are not a substitute and should not be used in lieu of OPM's reduction in force regulations, as may be necessary, to effectuate separations resulting from a reorganization.

14) May an agency take a position out of Schedule Policy/Career if it feels that the duties of the position no longer fall within the scope of policy-influencing duties?

No. An agency must first petition the OPM Director recommending why a position should be removed from Schedule Policy/Career. As part of any petition, agencies should provide the same information requested as part of their position reviews for placing positions into Schedule Policy/Career accompanied by a detailed explanation supporting their request. OPM will

transmit this recommendation to the President for his consideration.

15) Will agencies need to submit information to OPM documenting an employee's placement into a Schedule Policy/Career position?

Yes. OPM will request reports on a regular basis to conduct a review of positions and identify those that are policy-influencing.

16) Can an employee be promoted into a Schedule Policy/Career position?

Yes. However, the agency should ensure they provide the same notifications to the employee concerning the changes in conditions of employment when promoting an employee into a Schedule Policy/Career position.

17) Can a Policy/Career position be promoted without competition based on accretion of duties?

Accretion of duties is a concept associated with competitive service. Agencies may establish their own policies for accretion of duties promotions within the excepted service. The policy-influencing job duties that justify placing a position in Schedule Policy/Career may be increased, or the level of influence may increase, such that a promotion may be warranted. This decision is up to the individual agency. However, if an agency believes that the accretion of duties warrants placing a position into Schedule Policy/Career, it must be approved by the President unless he previously approved the placement of the higher-graded position, or else reviewed by OPM.

18) Can an employee in a Schedule Policy/Career position file a classification appeal?

Yes. An employee can appeal a grade, occupational series, and sometimes the title of their position directly to the agency at issue and then to OPM. If an employee is a General Schedule employee, they may appeal to OPM directly. However, employees will not be able to utilize the classification appeal procedures to challenge placement into Schedule Policy/Career.

19) Can an employee appointed under a non-title 5 statutory personnel system also be in Schedule Policy/Career?

Not necessarily. Schedule Policy/Career is established in the excepted service under Title 5 authorities. Any statutory personnel system, such as Title 10, Title 38, or Title 49, will not necessarily be governed by Title 5.

Agencies that appoint employees under agency-specific statutory personnel authorities, including title 5 authorities other than Government-wide competitive service and excepted service appointment authorities, must not place such positions into Schedule Policy/Career until OPM issues further guidance. This includes positions covered by agency-specific personnel systems or appointing authorities established by statute, whether located in title 5 or other titles of the

United States Code.

C. Hiring

1) How will future vacancies in Schedule Policy/Career positions be filled?

Appointments to Schedule Policy/Career positions that were previously in the competitive service will continue to be made using merit-based competitive hiring procedures. For positions moved from the excepted service, they will continue to be filled using excepted service procedures. Agencies will also continue to apply veterans' preference whether positions are moved from the competitive service or another schedule in the excepted service. At a minimum, agencies will be required to publicly announce job opportunities; evaluate applicants based on valid, job-related assessments; and make selections of highly qualified individuals based on merit.

2) How will I know if a position I have applied to or accepted is classified as Schedule Policy/Career?

Position announcements and onboarding documents should clearly inform applicants and employees of the status of the position. It is critical that agencies ensure applicants and employees make informed employment choices to avoid any confusion and unnecessary disputes concerning Schedule Policy/Career. To assist agencies, OPM published sample language agencies may adopt when recruiting for positions and informing job applicants during the hiring process of the unique features of Schedule Policy/Career. See Appendix 4 attached to OPM's February 4, 2026 memorandum.

3) May agencies pay recruitment or relocation incentives to applicants seeking Schedule Policy/Career positions?

No. Applicants for Schedule Policy/Career positions are not eligible for recruitment or relocation incentives. Under limited circumstances established under 5 CFR 575.104(b) and 575.204(b), agencies may continue to pay such incentives under existing agreements.

As highlighted in the table below, there are other incentives agencies may use to recruit and retain talent to the federal government.

Award/Incentive	Authority	Eligible for Schedule Policy/Career?
Student loan repayment	5 CFR part 537	Employees under pre-existing service agreements
Recruitment, relocation, and retention (3Rs) incentives	5 CFR part 575 at subparts A, B, and C	Only under pre-existing service agreements or, for an employee receiving retention incentives without a service agreement at the time the employee's position is moved to Schedule Policy/Career, only until the agency terminates the incentive under conditions specified at 5 CFR 575.311.
GS superior qualifications and special needs pay	5 U.S.C. 5333 and 5 CFR 531.212	Yes
GS maximum payable rate rule	5 CFR 531.221-223	Yes
Critical position pay	5 U.S.C. 5377 and 5 CFR part 535	Yes
Approval of creditable service for annual leave based on non-federal civil service and uniformed service experience	5 U.S.C. 6303(e) and 5 CFR 630.205	Yes
Performance awards	5 U.S.C. Chapter 45	Yes, in accordance with policy
Severance pay	5 CFR part 432 or 752	Yes

D. Competitive Status

1) What is competitive status?

Competitive status refers to an individual's basic eligibility for noncompetitive assignment to a competitive position. An individual with competitive status may be, without open competitive examination, reinstated, transferred, promoted, reassigned, or demoted, subject to conditions

prescribed by the civil service rules and regulations. Competitive status is generally acquired by completion of a probationary period under a career-conditional or career appointment in the competitive service. However, Schedule Policy/Career employees will be able to retain competitive status or obtain competitive status after two years of service in a Schedule Policy/Career position.

2) What is the difference between competitive service and competitive status?

Competitive service refers to all civil service positions in the Executive Branch except Senior Executive Service positions and positions which are specifically excepted from the competitive service. Competitive status is an individual's basic eligibility for noncompetitive assignment to a competitive position that is acquired by completion of a probationary period under a career-conditional or career appointment following open competitive examination. See 5 CFR 212.301.

3) What is the difference between career tenure and competitive status?

Career tenure is associated with the permanent nature of an individual's employment and is attained typically upon completing 3 years of continuous service. Conversely, competitive status is an individual's basic eligibility for noncompetitive assignment to a competitive service position and is attained by completing a probationary period.

4) When does an employee appointed into a Schedule Policy/Career position achieve competitive status?

An employee appointed in the same manner as appointments in the competitive service will be required to serve in a Schedule Policy/Career position for two years of continuous service before obtaining competitive status.

5) Does an employee reassigned from the competitive service with competitive status into the excepted service maintain competitive status?

Yes. This final rule amends 5 CFR § 212.401(b) to state that “an employee who has competitive status at the time his or her position is first listed in an excepted service schedule, or who is moved to a position in the excepted service, is not in the competitive service for any purpose but shall retain competitive status.”

6) Does an employee who has obtained competitive status maintain that status if the employee is transferred from Schedule Policy/Career into another excepted service category?

Yes. OPM modified the final rule at § 212.401 to make clear that an employee who has competitive status at the time his or her position is first listed in an excepted service schedule, or

moved into a position in the excepted service, retains competitive status even if the employee moves to another position in the excepted service.

E. Trial Periods

1) Are employees in Schedule Policy/Career required to serve a trial period?

Yes. Employees serving in Schedule Policy/Career positions will serve a trial period unless and until the President exempts such positions from this requirement. However, prior service in the competitive or excepted service counts towards completion of a trial period (5 CFR 11.4(a)). OPM expects that few, if any, employees moved into the Schedule Policy/Career will be subject to the trial period regulations under 5 CFR part 11.

F. Compensation and Incentives

1) Will Schedule Policy/Career employees have the same pay and benefits as other career federal employees?

Yes. As career employees, Schedule Policy/Career employees will be in positions that have the same pay and benefits that apply to other Title 5 employees with few exceptions (e.g., eligibility for Presidential Rank Awards for senior career employees; 3R incentives; and student loan repayment).

2) Can an agency use appropriated funds for the purposes of providing external training for Schedule Policy/Career employees?

Generally, yes. However, agencies may not select and assign Schedule Policy/Career employees to academic degree training as defined in 5 U.S.C. § 4107.

G. Employee Relations

1) How do the Schedule Policy/Career regulations impact the procedures for addressing unacceptable performance and adverse actions?

For those employees moved or hired into Schedule Policy/Career positions, they will be excepted from the procedures established under chapters 43 and 75 of title 5, United States Code, and OPM regulations at parts 432 and 752 (“employee accountability procedures”). Agencies will no longer be required to give employees an opportunity to improve performance (i.e., performance improvement plan or PIP) nor advance notice and an opportunity to respond to suspend, demote, or terminate employees under OPM’s regulations.

2) Can Schedule Policy/Career employees be fired for any reason?

No. Although Schedule Policy/Career employees are no longer covered under the employee accountability procedures, E.O. 13957 extends the prohibited personnel practice protections established under 5 U.S.C. 2302(b) to such employees. Other federal laws continue to protect employees, such as the laws administered by the Equal Employment Opportunity Commission (e.g., Title VII of the Civil Rights Act of 1964) and the Department of Labor (e.g., Uniformed Services Employment and Reemployment Rights Act).

3) Should agencies provide Schedule Policy/Career employees advance notice, an opportunity to respond, and a decision of a disciplinary action?

Agencies should not establish procedures requiring providing advance notice to their employees when effecting adverse actions. Agency supervisors have discretion to provide advance notice to Schedule Policy/Career employees as part of their investigation into whether separation is warranted. Agencies should also establish procedures for notifying employees of any discipline. Additionally, agencies whose bargaining unit employees are placed into Schedule Policy/Career may be subject to additional requirements under an applicable collective bargaining agreement.

4) Are agencies required to follow the administrative and investigative leave regulations when investigating a Schedule Policy/Career employee?

Agencies may utilize the authorities under subparts N and O of part 630 to place employees on administrative and investigative leave, respectively, when investigating a Schedule Policy/Career employee. However, agencies should not utilize notice leave, as established under subpart O of part 630, as Schedule Policy/Career employees are not entitled to advanced notice of discipline.

5) How will agencies protect Schedule Policy/Career employees against whistleblower retaliation, discrimination based on political affiliation or other protected characteristics, and other prohibited personnel practices (PPPs) under 5 U.S.C. 2302(b)?

Agencies are required under Section 6(a) of E.O. 13957 to establish rules prohibiting the same personnel practices prohibited by 5 U.S.C. 2302(b). These procedures should protect Schedule Policy/Career employees against PPPs including whistleblower reprisal, political discrimination, and discrimination based on other protected characteristics. Agencies must establish these policies within 30 days from the effective date of the Schedule Policy/Career Final Rule.

Agencies may issue an interim policy while developing a more comprehensive policy. OPM has attached template agency policies as Appendix 3.

6) Should agencies authorize Schedule Policy/Career employees to utilize their administrative grievance procedures or other internal, alternative dispute resolution (ADR) procedures?

Agencies may authorize Schedule Policy/Career employees to utilize their administrative grievance procedures or other internal ADR procedures. However, agencies should not do so as a means to frustrate the purpose of E.O. 13957 to streamline the process for holding employees accountable for poor performance, misconduct, or corruption. Additionally, agencies are required under Section 6(a) of E.O. 13957 to establish rules prohibiting the same personnel practices prohibited by 5 U.S.C. 2302(b). These procedures should allow Schedule Policy/Career employees to raise, for example, complaints of whistleblower reprisal and prohibited discrimination, and for agencies to take prompt corrective action. For more information, see Section H below.

7) Can Schedule Policy/Career employees engage in whistleblowing by contacting their agency's Office of Inspector General and receive protection from reprisal?

Schedule Policy/Career will not affect the ability of employees to make whistleblower disclosures pursuant to 5 U.S.C. 1213. Each agency is also required to adopt procedures to ensure that prohibited personnel practices such as whistleblower reprisal are not tolerated.

8) Does a Schedule Policy/Career employee have rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA)?

Yes. USERRA rights still apply to Schedule Policy/Career employees.

9) Are Schedule Policy/Career employees still covered by the Federal Employees' Compensation Act (FECA)?

Yes. FECA as administered by the Department of Labor still applies to Schedule Policy/Career employees.

10) Should agencies continue to engage in the reasonable accommodation process with Schedule Policy/Career employees?

Yes. The Schedule Policy/Career regulations do not impact an agency's responsibility to provide reasonable accommodations to its employees.

11) Should an agency continue using alternative dispute resolution for employee-employer disputes with Schedule Policy/Career employees?

An agency should use alternative dispute resolution pursuant to existing collective bargaining agreements for bargaining unit Schedule Policy/Career employees. As to non-bargaining unit

Schedule Policy/Career employees, the agency maintains discretion to continue using alternative dispute resolution while acknowledging that the purpose behind Schedule Policy/Career is to quickly remove employees who are underperforming or engaging in misconduct.

12) Will existing employee relations training need to be changed?

Yes. Any No FEAR Act training will need to be modified to address Schedule Policy/Career employees' rights concerning whistleblowing and their right to contact the Office of Special Counsel.

H. Performance Management and Awards

1) Is my agency still required to establish performance plans and issue performance appraisals for Schedule Policy/Career employees?

Yes, agencies are still required to establish performance plans and issue performance appraisals to employees as part of their performance management programs. While 5 U.S.C. 4301(2)(G) permits OPM to exclude Schedule Policy/Career employees from coverage under all performance management requirements, OPM exercised its discretionary regulatory authority to only exclude such employees from OPM's regulations that prescribe procedures for addressing poor performance under Part 432. The Schedule Policy/Career regulations do not change any other aspect of OPM's performance management regulations.

2) What types of awards are Schedule Policy/Career employees eligible to receive?

Schedule Policy/Career employees remain eligible to receive the same ratings-based and non-ratings-based awards as career employees with the exception of Presidential Rank Awards (PRA) for Senior-Level (SL) and Scientific-Professional (ST) employees. Out of the policy-influencing positions, an employee holding a career appointment in either a SL or ST position that is excepted from the competitive service because of its confidential or policy-determining character is ineligible for a PRA. 5 CFR 451.302(b)(3)(ii). When submitting SL and ST employees for PRAs, agencies should review their submissions to OPM to determine whether any of the positions placed into Schedule Policy/Career are eligible for PRA consideration.

I. Reductions in Force

1) Are agencies authorized to use the Schedule Policy/Career regulations to conduct workforce reshaping in lieu of applying reduction in force procedures?

No. As stated in the Schedule Policy/Career regulations, OPM believes such actions would be inconsistent with the purpose of the final rule. It would be inappropriate for agencies to exercise authority under this rule as a tool to conduct broad workforce reshaping simply to avoid

reduction-in-force procedures. The proposed rule is intended to provide agencies with authority to address individual instances of unacceptable performance, misconduct, and corruption demonstrated by career Schedule Policy/Career officials whose duties and responsibilities are critical to executing the President's policy agenda. Agencies should apply OPM's regulations at part 351 of title 5, Code of Federal Regulations, as appropriate.

2) Are Schedule Policy/Career employees eligible for Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments (VSIP)?

All Schedule Policy/Career employees under the Civil Service Retirement System and the Federal Employees Retirement System may be eligible for VERA and VSIP if they meet the eligibility criteria of the programs.

3) Is an agency required to follow the Career Transition Assistance Plan (CTAP) or the Interagency Career Transition Assistance Plan (ICTAP) when filling Schedule Policy/Career positions?

CTAP and ICTAP apply when filing competitive service positions. Schedule Policy/Career positions are in the excepted service. An agency is not required to provide CTAP or ICTAP selection priority when filling positions in the excepted service.

4) If an agency is conducting a reduction in force (RIF), are Schedule P/C employees subject to the procedures contained in 5 CFR Part 351?

Yes, agencies must apply the reduction in force procedures under 5 CFR Part 351 for Schedule Policy/Career employees.

J. Senior Executive Service (SES)

1) Should SES employees be placed in Schedule Policy/Career?

No. Schedule Policy/Career policies and processes only apply to the competitive and excepted services. Under CSRA, the SES was set up as a separate "third" service. The SES covers positions in the executive branch that are classified above GS-15 or are in level IV or V of the Executive Schedule, or equivalent positions, which are not required to be filled by Presidential appointment with Senate confirmation, and are responsible for executive, managerial, supervisory, and/or policy functions characteristic of the SES.

K. Labor Relations

1) Are Schedule Policy/Career positions automatically excluded from collective bargaining?

No. Neither EO 13957 nor the Schedule Policy/Career regulations excluded employees serving in such positions from collective bargaining. However, many such positions meet the definition of management official under 5 U.S.C. 7103(a)(11). Agencies should expeditiously file a petition with the Federal Labor Relations Authority (FLRA) asking for clarification on whether any positions moved into Schedule Policy/Career on the basis of its policy-making or policy-determining functions is eligible to remain included in a bargaining unit. Agencies should coordinate with OPM on such submissions. Agencies should continue to honor any collective bargaining agreements (CBAs) and its obligations under the Federal Service Labor-Management Relations Statute (FSLMRS) until the FLRA makes any determination on an agency petition.

2) Can a labor union grieve the President's determination placing specific positions into Schedule Policy/Career?

No, the President is not party to a CBA and, therefore, not subject to its terms. However, agencies should keep in mind that they are responsible for implementing the President's decision and such implementation may be subject to the terms of any applicable CBAs and the FSLMRS.

3) How should agencies engage their labor unions when implementing the Schedule Policy/Career regulations and placing any bargaining unit employees in Schedule Policy/Career positions?

Agencies need not bargain with unions regarding the President's action moving specific positions into Schedule Policy/Career, but after the President's placement of the position into Schedule Policy/Career, agencies may be required to bargain over the impact-and-implementation of the President's decision to move employees into Schedule Policy/Career. In developing a collective bargaining strategy, agencies should take a number of steps including:

- Reviewing which internal agency policies or CBA provisions require modification and determining whether they have an obligation to bargain over any changes to these policies; and,
- Identifying the bargaining unit status of each position impacted by the President's determination placing them into Schedule Policy/Career.

Agencies should engage their labor unions as early as possible to ensure full and expeditious implementation of E.O. 13957, as amended, and the Schedule Policy/Career regulations.

4) During negotiations, can a labor union negotiate whether positions should be exempt from placement into Schedule Policy/Career?

No. Any proposal or negotiated provision that contravenes the President's determination to place positions into Schedule Policy/Career are nonnegotiable or unlawful, respectively. Title 5 authorizes unions to bargain over agency policies, but does not authorize them to bargain over Presidential determinations. Agencies should not agree to any such proposals and, upon agency head review, strictly enforce this prohibition.