QUESTIONS AND ANSWERS: SENIOR EXECUTIVE SERVICE

This appendix provides technical guidance, in the form of questions and answers, on transition to a new Presidential term or Presidential administration as it may affect the Senior Executive Service (SES). This material supplements the information in other parts of the Transition Guidance. The questions and answers are organized as follows:

- Career Appointments
- Reassignments and Details of Career Appointees
- Career Appointees Who Accept Appointment Outside the SES
- Noncareer and Limited Appointments
- Pay and Other Compensation
- Leave
- Performance Appraisals
- Awards
- Removals and Other Separations
- Experts and Consultants
- Miscellaneous

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 the memorandum of January 11, 2016, to agency heads concerning limitations on appointments and awards during the election period (Appendix B). (See also Question 27; page 77.)

All initial career appointments to the SES must be made under SES merit staffing procedures, and the executive qualifications of the selected candidate must be approved by an OPM-administered Qualifications Review Board (QRB) before appointment can occur. 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. [5 U.S.C. 3393; 5 CFR part 317, subpart E.]

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

OPM will impose a moratorium on the processing of an agency’s SES Qualifications Review Board (QRB) cases when the agency head departs for any reason, effective on the date of his or her departure. A QRB moratorium will also be imposed when the head of an agency announces his or her intention to leave that office, effective immediately upon that announcement. This is done to enable the incoming head of that agency to exercise his or her prerogative to make or
approve executive resource decisions that will affect the agency’s performance during his or her tenure.

While a QRB moratorium is intended to preserve the prerogatives of an incoming agency head, this must be balanced against the need to ensure the continuity of agency operations during such transitions. Accordingly, OPM will consider requests for exceptions to an agency’s QRB moratorium on a case-by-case basis. Requests for exceptions should be signed by the agency head or the official who is designated to act in the agency head’s absence and must specifically address the potential for adverse impact on national security, homeland security, or critical agency mission, program, or function if a particular SES candidate is not immediately certified. [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 on reinstatement eligibility after leaving the SES. [5 U.S.C. 3593; 5 CFR part 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 Questions 5 through 14. [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 providing a 60-day advance notice for a geographic reassignment, and the advance notice must include the reasons for the action. [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 or her career status?

No. A career SES appointee may be reassigned to any SES position and retain career status. If a career appointee elects to accept a noncareer or limited appointment, the voluntary nature of the action must be documented in writing before the effective date of the action, and a copy of the
documentation must be maintained as a permanent record in the individual’s Official Personnel Folder. [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 action 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 cannot be effected until the moratorium ends. (See Question 26; page 77 concerning the moratorium on appraisal and rating of a career appointee’s performance within 120 days after the beginning of a new President’s term of office.) [5 U.S.C. 3395(e); 5 CFR 317.901]

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

The 120-day moratorium does not interrupt or affect the progress of a 15- or 60-day advance notice; however, it can prevent the agency from taking action immediately upon expiration of the advance notice period. This depends upon when the advance notice is issued. If an advance notice is issued after the 120-day moratorium begins, the reassignment may not be effected until after the moratorium ends. If an advance notice is issued before the 120-day moratorium starts, the reassignment may be effected when the advance notice period ends even if the moratorium is still in effect.

It is not appropriate for a proposed agency head or noncareer supervisor to have someone else issue a reassignment notice before the 120-day moratorium starts to avoid application of a moratorium. The action must be initiated independent of the incoming agency head or noncareer supervisor. [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 but does not give the initial performance appraisal. While this moratorium precludes involuntarily reassigning specific career appointees, it does not otherwise restrict a new noncareer appointee’s delegated authority to reassign other career appointees to whom no moratorium applies. [5 U.S.C. 3395(e); 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 appointment, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively. [5 CFR 317.901(c)]

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

If a moratorium is initiated by the appointment of a noncareer appointee, the agency head may not involuntarily reassign a career appointee to whom the moratorium applies (as defined in Question 9), even if the agency head has been in office more than 120 days. [5 U.S.C. 3395(e); 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. [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. [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. [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. [See 5 CFR 317.901(a) for definition of reassignment]

CAREER APPOINTEES WHO ACCEPT APPOINTMENT OUTSIDE THE SES

16. What benefits may career SES appointees retain if they accept Presidential appointments or certain other appointments to positions 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 (PAS), to a civilian position in the executive branch which is not in the SES, and for which the rate of basic pay payable is equal to or greater than the rate payable for level V of the Executive Schedule. The same provisions apply to a career appointee who is appointed (by the President or other appointing authority) to a civilian position in the executive branch which is not in the SES and which either is covered by the Executive Schedule or has a rate of basic pay 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 the following SES benefits: SES basic pay (including the SES aggregate pay limit); eligibility for performance and rank awards; severance pay; annual and sick leave; and retirement. (The individual retains his or her current retirement coverage. However, if the position to which the individual is appointed is an Executive Schedule position listed in 5 U.S.C. 5312-5317, 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 and if otherwise eligible, even if the individual is entitled to reinstatement in the SES (see Question 17; page 73). A resignation is considered an involuntary separation for severance pay purposes if the SES member resigns after receiving a written resignation request or notice of separation from the President or an authorized representative. A self-initiated resignation is not qualifying for severance pay.

See Question 27 on page 77 for information about restrictions on granting awards to Presidential appointees who were SES career appointees and retained awards eligibility. [5 U.S.C. 3392(c); 5 CFR part 317, subpart H]
17. What are the reinstatement rights of a former career SES appointee who took a Presidential appointment?

A former career SES member who received a Presidential appointment without a break in service from the career SES appointment is entitled to reinstatement to the SES. (This applies regardless of the pay rate of the position held as a Presidential appointee.) The individual must have left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance. OPM 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 or her own reinstatement without OPM assistance. Note that a former post-probationary career SES appointee who can elect to retain certain SES benefits under 5 U.S.C. 3392(c) (see Question 16; page 72) but is not a Presidential appointee is eligible for, but not entitled to, reinstatement to the SES. A former probationary career SES appointee who can elect to retain benefits under 5 U.S.C. 3392(c) but is not a Presidential appointee is not eligible for reinstatement to the career SES appointment. [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; page 72), the appointee’s pay rate does not change on reinstatement unless 12 months have elapsed since his or her last pay adjustment, except as allowed under OPM regulations. If 12 months have elapsed, the appointee’s pay may be increased. Any adjustments in the individual’s pay will be subject to the normal SES pay rules. If the individual did not elect to continue SES pay and is later reinstated in the SES, the agency may set his or her pay at a rate within the SES pay range, subject to the requirements in OPM regulations. [5 CFR part 534]

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. [CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 44 – see http://www.opm.gov/retire/pubs/handbook/hod.htm]

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 or salary level, including senior-level positions. We advise appointees interested in reinstatement to the competitive service to consult with their agency’s Human Resources Office to verify their reinstatement eligibility. [5 CFR 315.401 and 335.103(c)(3)(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 to reassign a noncareer appointee to another SES position or to transfer a noncareer appointee from another agency.) The agency approves the qualifications of the appointee, and the appointment is made noncompetitively. The White House Office of Presidential Personnel must also approve each noncareer appointment before the agency makes that appointment, except that an appointment to or from any SES position within an independent regulatory commission is not subject to review or approval by any entity of the Executive Office of the President. [See 5 U.S.C. 3392(d).]

Agencies must obtain limited appointment authorities from OPM on a case-by-case basis, but OPM has provided a “pool” of authorities equal to 3 percent of each agency’s SES space allocation. An agency can use its pool without prior OPM approval for SES limited appointment of career or career-type non-SES employees to positions appropriate for the type of appointment. Such appointments are made to SES positions established within the agency’s existing number of SES spaces, unless the agency requests and OPM approves a new temporary SES space.

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 3 or less). Additional limitations are imposed, administratively or by other statutes, on an agency-by-agency basis. The law also limits the number of SES positions that can be filled by limited appointment to 5 percent of the Governmentwide SES space allocation. [5 CFR part 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, e.g., the position is senior-level rather than SES, 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.) [See 5 CFR 213.3302 for Schedule C]

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 33 and 34; page 79, 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 non-temporary 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. [See 5 CFR 316.403; 5 CFR 317.602 for provisional appointments]

**PAY AND OTHER COMPENSATION**

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

The agency determines the rate of pay within the SES rate range applicable to the agency, subject to the requirements in OPM regulations. The maximum for an agency with a certified performance appraisal system is a rate equivalent to Executive Level II; otherwise, the maximum is the rate for Executive Level III. In determining the initial rate of basic pay, agencies must consider the nature and quality of the individual’s experience, qualifications, and accomplishments as they relate to the requirements of the SES position, as well as the individual’s responsibilities in the job held immediately before the SES appointment. Rates of basic pay above the rate for Executive Level III generally are reserved for those executives who possess superior leadership or other competencies. However, a senior executive’s salary above EX-III may not be reduced due to transfer from an agency with a certified performance appraisal system to an agency that does not have one. Generally, an SES member may receive a pay adjustment only once during any 12-month period. The setting of the initial SES pay rate triggers the 12-month clock. However, an agency may provide additional pay increases under certain circumstances as provided in OPM regulations. [5 U.S.C. 5383; 5 CFR part 534] [Note: There is a pay freeze for certain senior political officials in 2016. See page 19 for more information about this pay freeze.]

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

Agencies may use several discretionary pay flexibilities to deal with documented staffing difficulties. Specific statutory and regulatory conditions 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 necessary to address documented 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. [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. [5 U.S.C. 5524a; 5 CFR part 550, subpart B]

• Recruitment or relocation incentives of up to 25 percent of annual basic pay times the number of years in the service agreement (see pages 22-23 for higher limits available with OPM approval), when it would otherwise be difficult to fill a position and the action involves recruitment of a new appointee in the Federal Government or relocation of a current appointee to a different commuting area. In return, an employee must sign an agreement to serve for a specified period of time – at least 6 months in the case of a recruitment incentive. These incentives may not be paid to an employee in a position (1) to which the individual was appointed by the President, (2) in the Senior Executive Service as a noncareer appointee, (3) which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, (4) designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members, (5) in which the employee is expected to receive an appointment as an the head of an agency; or (6) in the SES as a limited term appointee or limited emergency appointee when the appointment must be cleared through the White House Office of Presidential Personnel.. [5 U.S.C. 5753; 5 CFR part 575, subparts A and B]

• Retention incentives of up to 25 percent of basic pay (see pages 22-23 for higher limits available with OPM approval) for an employee with unusually high or unique qualifications or serving a special agency need when the employee would be likely to leave Federal service or, under certain limited conditions, likely to leave for a different position in the Federal service. (The employee coverage exclusions noted above for recruitment and relocation incentives also apply to retention incentives.) [5 U.S.C. 5754; 5 CFR part 575, subpart C]

• Waiver of dual compensation restrictions for civilian retirees in certain situations. In general, approval must be obtained from OPM on a case-by-case basis, and the agency must have experienced exceptional difficulty in recruiting a qualified employee for the position. 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 Deputy Associate Director for Executive Resources and Employee Development.) As noted in the paragraph on “Reemployed Annuitants” on page 24, there are exceptions under which agencies may grant waivers without OPM approval under limited circumstances. [5 U.S.C. 8344 and 8468; 5 CFR part 553]

**LEAVE**

25. **What leave benefits are available to SES employees?**

SES employees are covered by the Federal leave system. They have access to the same leave benefits that are available to other covered employees, as described on pages 24 through 28.
PERFORMANCE APPRAISALS

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 a new President (i.e., from January 20 through May 19, 2017). 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. [5 U.S.C. 4314(b)(1)(C); 5 CFR 430.309(b)]

AWARDS

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

Yes. 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 the period from June 1, 2016, through January 20, 2017. 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 chapter 45 of title 5, United States Code, to Executive Schedule officials at any time. These restrictions do not preclude a Presidential Rank Award under 5 U.S.C. 4507 for a former career SES appointee who elected to retain eligibility for Presidential ranks under 5 U.S.C. 3392(c) upon appointment to an Executive Schedule position. Nor do they preclude an SES performance award under 5 U.S.C. 5384, which is granted under chapter 53 rather than chapter 45, for such an employee who elected to retain eligibility for performance awards. An agency may take a broad range of factors into account in exercising its discretion to determine whether to grant an award in individual cases, including budget limitations, restrictions on the size of the award pool, Congressional concerns, and Administration policy.

Note: Until further notice, agencies may not grant discretionary awards, bonuses, and similar payments to politically-appointed Federal employees. The President’s August 3, 2010, memorandum freezing discretionary awards, bonuses, and similar payments for political appointees continues in effect until further notice. Agencies should continue to apply this freeze in accordance with OPM’s guidance. (See CPM 2010-14 at https://www.chcoc.gov/content/guidance-freeze-discretionary-awards-bonuses-and-similar-payments-federal-employees-serving).

REMOVALS AND OTHER SEPARATIONS

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

Under 5 U.S.C. 3393(g), a career appointee may not be removed from the Senior Executive Service or civil service except in accordance with applicable provisions of sections 1215 (disciplinary action by the Merit Systems Protection Board based on a written complaint by the

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Special Counsel), 3592 (removal during the probationary period or removal at any time for less than fully successful executive performance), 3595 (removal by reduction in force), 7532 (removal in the interests of national security), or 7543 (adverse action removal).

A career SES appointee cannot be involuntarily removed for performance 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 (1) any adverse action removal of a post-probationary career SES appointee under 5 U.S.C. 7543, (2) a removal under 5 U.S.C. 4314(b)(3) based on an unsatisfactory performance rating issued before the moratorium, or (3) a disciplinary removal of a probationer that was initiated before the moratorium. [5 U.S.C. 3592(b); 5 CFR 359.406 and 359.503]

29. 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 120-day moratorium on removals does not interrupt or affect the progress of an SES member’s 1-year probationary period. If the 120-day moratorium prevents an agency from carrying out a decision to remove a career appointee before the probationary year ends, the agency loses its opportunity to remove the individual under probationary procedures. There is one exception. The moratorium does not prevent a disciplinary removal of a probationer that was initiated before the moratorium began. [5 U.S.C. 3592(b); 5 CFR 359.406]

30. Can the resignation of an SES appointee 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. Agencies submitting retirement applications should document the President’s acceptance of the resignation or that the Presidential appointee for whom a separating Schedule C or noncareer SES works is leaving.

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.

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

To be eligible for severance pay, an employee must be serving under a qualifying appointment, must have completed at least 12 months of continuous service, and must be removed from Federal service involuntarily.

An employee is not eligible for severance pay if he or she is serving under a nonqualifying appointment, declines a reasonable offer, is serving under a qualifying appointment in an agency scheduled by law or Executive order to be terminated within 1 year after the date of the appointment, is receiving injury compensation payments under subchapter I of chapter 81 of title 5, United States Code (unless the compensation is being received concurrently with pay or is the result of someone else’s death), or is eligible upon separation for an immediate annuity from a Federal civilian retirement system or from the uniformed services. For additional information on severance pay, see 5 CFR part 550, subpart G.

See also Question 16; page 72 concerning former career SES appointees who are entitled to elect to continue severance pay benefits.

32. 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. [See 5 CFR 550.703 for definition of "nonqualifying appointment"]

EXPERTS AND CONSULTANTS

33. 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. [5 U.S.C. 3109; 5 CFR part 304]

34. 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. An appointment is intermittent if the appointee does not have a regular work schedule.

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. [5 U.S.C. 3109; 5 CFR part 304]

35. How are experts and consultants paid?

Each agency determines the pay for experts and consultants based on qualifications and the work to be performed. Experts and consultants appointed under 5 U.S.C. 3109 may not be paid more than the daily or biweekly rate for GS-15, step 10, excluding locality pay, unless authorized by some other law. They may also be appointed without compensation. Experts and consultants are not subject to the General Schedule classification provisions in chapter 51 of title 5. See 5 CFR part 304 for additional information on pay limitations. [5 U.S.C. 3109; 5 CFR part 304]

MISCELLANEOUS

36. 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. [See 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]
37. 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. [5 U.S.C. 3392(d)]