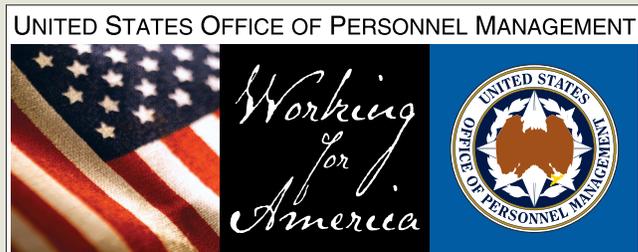




UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

**PRESIDENTIAL  
TRANSITION GUIDE  
TO  
FEDERAL HUMAN  
RESOURCES MANAGEMENT**

June 2008



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## I. STANDARDS OF ETHICAL CONDUCT

This section provides guidance on contacts with lobbyists, seeking work outside the Federal Government, post-employment restrictions, and the protection of Federal records from unauthorized removal.

### OVERVIEW

All executive branch employees are subject to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. The standards include 14 basic principles of ethical conduct and provide uniform rules about gifts from outside sources, gifts between employees, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and outside activities. Some employees also are subject to supplemental regulations promulgated by their agencies.

Each agency head is responsible for administering that agency's ethics program and for appointing a Designated Agency Ethics Official (DAEO) and an Alternate DAEO who, along with their supporting ethics officials, administer the agency's ethics program. The agency's ethics program office is generally responsible for the following:

- Providing counseling and advisory services;
- Providing ethics education and training programs;
- Reviewing financial disclosure reports;
- Monitoring administrative actions and sanctions for ethics violations; and
- Communicating with the U.S. Office of Government Ethics (OGE).

The OGE provides overall policy leadership for executive branch departments and agencies. OGE reviews public financial disclosure reports of executive branch Presidential appointees requiring Senate confirmation and certain White House officials to determine whether any entries on the forms may give rise to potential or actual violations of applicable laws or regulations and to recommend any appropriate corrective action. OGE also provides advice on other ethics matters for new Presidential appointees, Senior Executive Service (SES) appointees, and Schedule C employees. Schedule C employees are those who are excepted from the competitive service because they have policy-determining responsibilities or are required to serve in a confidential relationship to a key official.

### TRANSITION ISSUES

#### Lobbying Disclosure

The Lobbying Disclosure Act, Public Law 104-65 [2 U.S.C. 1601 *et seq.*], imposes disclosure and registration requirements on lobbyists who contact covered legislative and executive branch officials. It also requires that a "covered executive branch official" who is contacted by a lobbyist disclose the fact that he or she is a covered executive branch official upon the request of the person making the lobbying contact. "Covered executive branch officials" are:

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

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

### **Federal Employees Seeking Non-Federal Employment**

Pursuant to 18 U.S.C. 208, executive branch employees are generally prohibited from performing work in their Government jobs on matters that would affect the financial interest of someone with whom they are negotiating for employment. The Standards of Ethical Conduct for Executive Branch Employees [5 CFR part 2635] have a similar rule that applies even before back-and-forth negotiations begin, and may apply even when an employee has only sent a resumé to a prospective employer. Participation in some procurement matters can subject employees to additional requirements relating to private employment contracts.

Employees should also be careful not to misuse Government resources (such as official time, the services of other employees, equipment, supplies, or restricted information) in connection with job-seeking. After an employee has accepted a job outside the Government, he or she must continue to refrain from working on matters in his or her Government job that would affect the financial interest of the future employer.

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

### **Post-Employment Restrictions**

There are certain restrictions on employees after their separation from Government service. Generally, these restrictions apply to representational activities, and their application varies depending on the employee's duties and level of authority [18 U.S.C. 207]. A summary of these restrictions may be accessed at the Office of Government Ethics website ([www.usoge.gov](http://www.usoge.gov)) in DAEOgram DO-07-04, Reissuance of Post-employment Summary (November 15, 2007), and the pamphlets *Rules for the Road* and *Understanding the Revolving Door*, issued November 17, 2007. Agency ethics officials are also available to provide more specific advice on post-employment restrictions before and after Government service.

## **Protecting Federal Records from Unauthorized Removal**

National Archives and Records Administration (NARA) guidance reminds heads of Federal agencies that official records must remain in the custody of the agency. Federal officials should be aware that there are criminal penalties for the unlawful removal or destruction of Federal records [18 U.S.C. 2071] and the unlawful disclosure of national security information [18 U.S.C. 793, 794, and 798]. Departing Federal officials should contact their agency records officer if they have questions about maintaining and disposing records and extra copies of records.

Agency records officers should have copies of *Documenting Your Public Service* and *Agency Recordkeeping Requirements*, two NARA publications that address records creation and maintenance procedures and distinguishing between records and personal documentary materials. These publications are available on the NARA website at <http://www.archives.gov/records-mgmt/policy/documenting-your-public-service.html> and at <http://www.archives.gov/records-mgmt/publications/agency-recordkeeping-requirements.html>, respectively. NARA records management regulations address the identification and protection of Federal records and are also accessible on the NARA website at <http://www.archives.gov/about/regulations/subchapter/b.html> [36 CFR Chapter XII, Subchapter B].

## II. POSITIONS AND INDIVIDUALS SUBJECT TO CHANGE IN A TRANSITION

This section provides an overview on positions subject to change, assigning Federal employees to a transition team, providing continuity in key operations through overlapping assignments, and separating political appointees. In a March 17, 2008, Memorandum to Heads of Departments and Agencies, the Director of OPM asked agencies to review all personnel actions to make sure they meet the civil service laws, rules, and regulations and are free of impropriety. The Director reminded agencies that OPM and agencies are obligated to ensure all personnel actions conform fully to the spirit and the letter of the merit system principles and do not involve prohibited personnel practices. [See Appendix B for a copy of this memorandum].

### OVERVIEW

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

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

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

Positions in these four categories normally include Cabinet Officers and heads of other executive branch agencies; Under Secretaries; Assistant Secretaries; Directors of Bureaus and Services; and Chairpersons and Members of Boards, Commissions, and Committees.

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

## **TRANSITION ISSUES**

### **Details to the Transition Team**

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

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

### **Overlapping in Key Positions**

Agencies cannot employ two individuals in the same position at the same time (“dual incumbency”). However, to provide continuity in key positions and meet other transition needs, agencies can use the following options:

- When an incumbent’s intention to leave has been documented, an agency may establish a different position to employ a designated successor for a brief period pending the incumbent’s departure. For example, when an office director is leaving, the agency may establish a temporary special assistant position for a short period to facilitate orientation of the incoming director to the office’s operations.
- OPM may authorize the use of SES limited appointment authorities for short periods of time for temporary executive positions.
- Agencies may also establish temporary transitional Schedule C positions for similar non-executive positions to help with transitions.

### **Involuntary Separations and Resignations**

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

*Requested Resignations.* When an agency separates an employee who submits his or her resignation in response to a request from a recognized representative of the new Presidential term, that separation is involuntary for retirement purposes. The representative must have the authority to request the employee’s resignation, and the resignation must be requested specifically from that employee. The agency should attach a copy of the request for the resignation with the individual’s retirement application. Unsolicited resignations, i.e., those

based on an anticipated request for a resignation and those prompted by personal choice, are voluntary for retirement purposes.

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

### III. APPOINTMENTS

This section provides a discussion of Presidential appointments, Senior Executive Service appointments, and appointments in the excepted service.

**PRESIDENTIAL APPOINTMENTS** [OPM Contact: Alan Miller, 202-606-1700]

#### OVERVIEW

Officers and employees who serve at the pleasure of the President or other appointing official may be asked to resign or may be dismissed at any time. They are not covered by standard civil service removal procedures and generally have no right to appeal terminations, unless they are alleging that such action was taken for prohibited discriminatory reasons. Agencies should consult their own General Counsel or OPM's General Counsel for assistance in this area.

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

The Vacancies Act [5 U.S.C. 3345-3349d] (referred to as "the revised Act") prescribes requirements for filling, both permanently and temporarily, vacancies that are required to be filled by Presidential appointment with Senate confirmation (PAS appointments). The Act was substantially amended in 1998, by the Federal Vacancies Reform Act of 1998 [Public Law 105-277, section 151].

#### Presidential Appointments

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

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

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

- The “first assistant” to the vacant office. The Act does not define this term, but legislative history generally refers to the top deputy to the position.
- An existing PAS (from the agency at issue or from any other agency) designated by the President (and only the President).
- Certain senior agency employees designated by the President (and only the President).

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

The Office of Legal Counsel at the Department of Justice has issued extensive guidance on the Vacancies Act [see <http://www.usdoj.gov/olc/finalqa.htm>]. That Office should be contacted to respond to specific questions (202-514-2051).

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

### **Effective Date of PAS Appointments**

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

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

### **Pay and Leave**

Individuals appointed by the President, with Senate confirmation, occupy positions that are placed by law in the Executive Schedule, or are established at pay rates equivalent to the Executive Schedule. This schedule has five levels: Levels I through V (the lowest). In 2008, annual pay rates for the Executive Schedule are: Level I (\$191,300), Level II (\$172,200), Level III (\$158,500), Level IV (\$149,000), and Level V (\$139,600). Locality pay does not apply to the Executive Schedule.

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

## **SENIOR EXECUTIVE SERVICE (SES) APPOINTMENTS**

*[OPM Contact: Paul Thompson, 202-606-1429]*

This subsection provides an overview of career and noncareer SES positions and key transition issues, such as suspending the processing of SES selections during a change of agency head and a 120-day moratorium on SES reassignment during that period.

### **OVERVIEW**

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

### **SES Positions**

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

### **SES Noncareer Appointments**

Agencies may make SES noncareer appointments to any SES General position without regard to competitive requirements and may also set the pay level of the appointees. However, an agency must receive a noncareer appointment authority from OPM before making the appointment. The White House Office of Presidential Personnel must also approve the appointment before it can be made, except that an appointment to any SES position within an independent regulatory commission is not subject to review or approval by any officer or entity within the Executive Office of the President. [See 5 U.S.C. 3392(d).] This applies to initial appointments, reassignments, and transfers to another Department or agency. The law limits the total number of SES positions that can be filled by noncareer appointment to 10 percent of the Governmentwide SES space allocation and 25 percent of an individual agency’s allocation (unless the allocation is three or less). Additional limitations have been imposed, administratively or by other statutes, on an agency-by-agency basis.

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

## **SES Limited Appointments**

There are two types of SES limited appointments: limited term and limited emergency. *Limited term appointments* may be made for up to 36 months to a position with duties that will end within 36 months or an earlier specified time period. Limited term appointments are not used to temporarily promote individuals to continuing SES positions. *Limited emergency appointments* may be made for up to 18 months to meet a bona-fide, unanticipated, urgent need. Limited appointments may be made only to SES General positions. An individual may not serve more than 36 months in a 48-month period on any combination of limited appointments. Limited appointees must meet the qualification requirements established by the agency.

Agencies must obtain limited appointment authorities from OPM on a case-by-case basis. However, OPM has provided each agency a pool of limited authorities equal to 3 percent of its total SES position allocation, or one authority, whichever is greater. An agency may use this pool to appoint a career or career-type non-SES employee to a position that is appropriate for SES limited term or SES limited emergency appointment without obtaining OPM approval. In addition, to help with transitions, OPM may authorize a limited term appointment authority for an individual who has been nominated by the President, but whose appointment is pending Senate confirmation. These limited appointments may not be made to the position for which the individual has been nominated.

Agencies may terminate limited appointments at any time with a 1-day notice. Limited SES appointees who are removed have no right of appeal to MSPB on termination of the appointment. However, some limited appointees have placement rights to positions outside the SES. A career or career-type non-SES employee who is given a limited appointment in the same agency has placement rights to his or her former position or to one with like status, tenure, and grade or pay. [See 5 U.S.C. 3592; 5 CFR part 359, subpart I.] If such an individual was covered by 5 U.S.C. 7511 immediately before the SES limited appointment, he or she is also entitled to adverse action procedures applicable to career SES appointees in the event a removal based on conduct is proposed. A career or career-type employee who accepts a limited appointment in another agency has neither of these benefits.

## **SES Career Appointments**

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

## **TRANSITION ISSUES: SES**

### **Suspension of Processing of SES Candidates**

In accordance with 5 CFR 317.502(d), OPM may suspend processing of an agency's SES Qualifications Review Board (QRB) cases when the agency's head departs or announces his or her departure. This is done to ensure that the incoming head of that agency will have the full opportunity 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. To that end, OPM will impose a moratorium on the processing of a particular agency's SES QRB cases when the head of that agency departs for any reason, effective immediately upon the effective 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.

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.

### **Moratorium on SES Career Reassignments**

Agencies may reassign SES career appointees to any SES position in the agency for which they are qualified, following a 15-day notice for a reassignment that does not require a geographical move. Consultation with the executive, followed by 60 days' advance notice, is required for a reassignment that includes a geographical move.

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

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

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

In calculating the 120-day moratorium, any days (not to exceed a total of 60) during which the career appointee is serving on a detail or other temporary assignment apart from the appointee’s regular position are not counted. However, the moratorium provision does not restrict the total length of a detail; i.e., it may exceed 60 days.

### **Career Appointees Who Accept Presidential Appointments**

Presidential appointees are among the executives subject to change in a new administration. However, a former SES career appointee who was appointed by the President to a civil service position outside the SES without a break in service, and who leaves the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance, is entitled by law to be reinstated to the SES. If not voluntarily reinstated through direct negotiations with an agency, the former career appointee may apply to OPM up to 90 days after separation for a directed reinstatement. [See 5 U.S.C. 3593(b) and 5 CFR 317.703.]

### **Briefings for New SES Members**

OPM sponsors 1-day briefings for new SES members several times during the year. These programs provide executives with an understanding of the administration’s goals and priorities and an opportunity to gain a broader perspective of executive branch domestic, economic, and foreign policy issues and initiatives. SES members also gain information about the SES, advice about working with Congress, knowledge of effective leadership strategies, and opportunities for networking.

### **Additional Guidance**

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

### **EXCEPTED SERVICE APPOINTMENTS** [OPM Contact: Christina Vay, 202-606-0960]

The “excepted service” includes all positions in the executive branch that have been excepted from the competitive service or the Senior Executive Service (SES) by statute, the President, or OPM. This section covers positions excepted from the competitive service by OPM under Schedules C (the policy-determining positions), A (e.g., attorneys), and B (e.g., work-study positions), and expert and consultant positions excepted by law.

## **Overview: Schedule C Positions and Appointments**

Schedule C positions are excepted from the competitive service because they have policy-determining responsibilities or require the incumbent to serve in a confidential relationship to a key official. Most Schedule C positions are at the GS-15 level and below. Appointments to Schedule C positions require advance approval from the White House Office of Presidential Personnel and OPM. OPM does not review the qualifications of a Schedule C appointee; final authority on this matter rests with the appointing official. Employees in Schedule C positions are subject to removal at the discretion of the administration or appointing official.

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

### **Transition Issues: Schedule C**

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

***Temporary Transitional Schedule C Positions.*** To help with transitions, OPM has delegated authority to agencies to establish a limited number of temporary transitional Schedule C positions [5 CFR 213.3302]. Agencies can use this delegated authority during the first year of a new Presidential administration, or during a 1-year period immediately following the appointment of a new agency head or the designation of an "acting" agency head.

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

When an agency plans to convert an employee in a temporary transitional Schedule C position to a nontemporary ("regular") Schedule C appointment, the temporary appointment may be designated as a "provisional appointment" [5 CFR 316.403]. This permits the agency to treat the employee as a nontemporary appointee for benefits purposes. Provisional appointments must be made under an authority established by law, Executive order, or regulation, or granted by OPM [5 CFR 316.403(b)]. Documentation instructions are in OPM's *Guide to Processing Personnel Actions*, Chapter 11, Excepted Service Appointments, available at [www.opm.gov/feddata/gppa/gppa.asp](http://www.opm.gov/feddata/gppa/gppa.asp).

## **Briefings for New Schedule C Appointees**

OPM sponsors 1-day briefings for new Schedule C appointees several times a year. These programs provide appointees with an understanding of the President's expectations, a broader perspective on executive branch initiatives and priorities, and information on Government ethics, the Hatch Act, and current domestic, economic, and foreign policy issues and initiatives. OPM publishes notices of these briefings and registration information on its website ([www.opm.gov/events/index.htm](http://www.opm.gov/events/index.htm)).

## **Overview: Schedules A and B**

In addition to the policy-determining or confidential positions described in the preceding section, Congress, the President, or OPM can except other positions from the competitive service and the Senior Executive Service. OPM excepts positions under Schedules A and B for a variety of reasons. Employees in these positions are not generally subject to change during transitions.

***Positions Excepted by Statute and the President.*** Positions that have been excepted by statute include those in the Foreign Service (Department of State); the Federal Bureau of Investigation in the Department of Justice; all positions in the Tennessee Valley Authority, the Government Accountability Office, and the Postal Service; and medical employees of the Veterans Health Administration in the Department of Veterans Affairs. Most of these positions are under separate merit systems and are not subject to change during transitions.

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

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

***Schedule B Positions.*** Schedule B is used primarily for career-related work study positions.

Schedule A and B appointees with veterans' preference who have one year of qualifying service are entitled to statutory procedural and appellate rights if they are removed from the Federal service for conduct or performance reasons. In addition, many excepted service employees without veterans' preference receive statutory procedural and appellate rights, provided they have completed two years of qualifying service.

## **EXPERT AND CONSULTANT APPOINTMENTS**

Agencies may appoint experts and consultants to positions that primarily require performance of advisory services, rather than performance of operating functions, without regard to competitive civil service requirements [5 U.S.C. 3109]. Agencies may use expert and consultant appointments for individuals who have been nominated by the President, but not yet confirmed.

In addition, agencies may use this authority to appoint individuals whose permanent excepted appointment is pending [5 CFR 304.103(b)(6)]. The individual and the work assigned must comply with the expert or consultant requirements in 5 CFR part 304.

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

Experts and consultants appointed under 5 U.S.C. 3109 may not be paid more than the daily rate for GS-15, step 10, excluding locality pay, unless a higher rate is specifically authorized by statute. [See also 5 CFR 304.105.] They may also be reimbursed for travel (if they are intermittent employees), but not for moving expenses. They may participate in orientation and training programs at Government expense.

## IV. COMPENSATION

**PAY AND LEAVE** [*OPM Contact: Jeanne Jacobson (pay), Brenda Roberts (leave), 202-606-2858, unless otherwise stated*]

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

### Basic Salary Levels

*Executive Schedule.* The law prescribes the salaries of most positions filled by Presidential appointees at levels I through V of the Executive Schedule. In 2008, Executive Schedule salaries range from \$139,600 (level V) to \$191,300 (level I). Executive Schedule officials do not receive locality pay.

*Senior Executive Service.* Agency heads may set the salaries of members of the Senior Executive Service (SES) at a rate within a range fixed by statute. The maximum SES rate is the rate for level II or III of the Executive Schedule, with the higher level II maximum applicable only to SES positions covered by a certified SES performance appraisal system. In 2008, SES basic salaries may range from a minimum rate of \$114,468 to a maximum rate of \$158,500 (or \$172,200 for SES positions covered by a certified SES performance appraisal system). SES members do not receive locality pay. Generally, an SES member may receive a pay adjustment only once during any 12-month period. [*OPM Contact: Paul Thompson, 202-606-1429*]

*Senior-Level Positions.* The senior-level (SL) pay system includes high-level positions without executive responsibilities, as well as positions that the law or the President excludes from the SES. Agency heads may set the pay of an SL employee at any rate within a range fixed by statute. In 2008, the basic pay for senior-level positions ranges from \$114,468 to \$149,000, excluding locality payments. The maximum locality-adjusted rate is \$158,500. Some Schedule C employees are under the SL pay system. [*OPM Contact: Paul Thompson, 202-606-1429*]

*General Schedule.* The General Schedule (GS) pay system has 15 grade levels, with 10 salary steps at each grade. The maximum rate of basic pay in 2008 is \$124,010 (GS-15, step 10), excluding locality pay. Additional locality payments for employees in the 48 contiguous States range from 13.18 percent to 32.53 percent in 2008. No locality-adjusted rate may exceed the rate for level IV of the Executive Schedule – \$149,000 in 2008. A new GS employee generally enters at the first step of the appropriate grade. Most Schedule C employees are under the GS pay system.

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

## **Locality Pay**

Most Federal employees – including GS and SL employees, but excluding SES members and Executive Schedule officials – are eligible for supplemental locality-based payments in addition to the basic rate of pay. These payments apply only in the 48 contiguous States. In 2008, the locality payments range from 13.18 to 32.53 percent. The maximum locality-adjusted rate of pay for GS employees is the rate for Executive Schedule level IV (\$149,000 in 2008); for SL employees the maximum rate is the rate for Executive Schedule level III (\$158,500 in 2008).

## **Aggregate Pay Limitations**

Most Federal employees are subject to an annual aggregate pay limitation under 5 U.S.C. 5307 that restricts the total amount of pay an employee may receive in any calendar year. Pay in excess of the limitation is payable at the beginning of the next calendar year and counts toward the next year's limit. For SES members and SL employees covered by certified performance appraisal systems, the aggregate pay limit is the annual rate of pay for the Vice President (\$221,100 in 2008). For all others, the aggregate pay limit is the annual rate of pay for level I of the Executive Schedule (\$191,300 in 2008) [5 CFR part 530, subpart B].

## **PAY FLEXIBILITIES**

Agencies may use a number of discretionary pay flexibilities to deal with well-documented staffing difficulties. Specific statutory and regulatory conditions govern the use of each of these flexibilities, including agency justification and documentation requirements. Agencies should exercise these flexibilities judiciously, especially when hiring other than career employees. These payments are subject to public scrutiny and third-party review. Use them only when necessary to address documented staffing problems.

### **Advance Payments**

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

### **Above Minimum Hiring Rates – GS**

Agencies may set the pay of individuals newly appointed to General Schedule positions at a step above the first step of their grade based on the employee's superior qualifications or a special need of the agency for the employee's services. Agencies may use this flexibility at any appropriate GS grade. Agencies may set pay at the higher step only upon **initial** appointment or upon reappointment after a 90-day break in service. (See 5 CFR 531.212(a)(3) for exceptions to the 90-day break-in-service requirement.) [5 CFR 531.212].

## **Pre-Employment Interviews – Payment of Travel and Transportation Expenses**

Agencies may pay travel and transportation expenses for travel to and from pre-employment interviews to any individual they consider for employment. Travel expenses to attend confirmation hearings are considered part of the pre-employment interview process. Agencies may also pay the travel expenses of a new appointee from his or her place of residence at the time of selection or assignment to the duty station [5 CFR part 572]. [OPM Contact: Janice Warren, 202-606-0960]

## **Recruitment and Relocation Incentives**

An agency may pay an incentive to an employee newly-appointed in the Federal Government (i.e., a recruitment incentive) or to an employee who must relocate (i.e., a relocation incentive) to fill a position that would otherwise be difficult to fill. In return, the employee must sign an agreement to complete a period of service with the agency (6-month minimum for recruitment incentives). The total amount of recruitment or relocation incentive payments may not exceed 25 percent of the annual rate of basic pay of the employee at the beginning of the service period, multiplied by the number of years in the service period. With OPM approval, this cap may be raised to 50 percent (based on a critical agency need), as long as the total incentive does not exceed 100 percent of the employee's annual rate of basic pay at the beginning of the service period. An agency may pay a recruitment or relocation incentive as an initial lump-sum payment at the beginning of the service period, in equal or variable installment payments throughout the service period, as a final lump-sum payment upon completion of the service period, or in a combination of these methods. Agencies may pay recruitment and relocation incentives to employees under the General Schedule, Senior Executive Service, senior-level pay system, Executive Schedule, and certain other pay systems. Recruitment and relocation incentives are subject to the aggregate limitation on total pay that an employee may receive in a calendar year [5 CFR part 575, subparts A and B]. (See "Aggregate Pay Limitations" above.)

## **Retention Incentives**

An agency may pay an incentive to a current employee if—

- The agency determines that the unusually high or unique qualifications of the employee or a special agency need for the employee's services makes it essential to retain the employee if he or she would be likely to leave the Federal Government (for any reason, including retirement) in the absence of a retention incentive; or
- The agency has a special need for the employee's services that makes it essential to retain the employee in his or her current position during a period of time before the closure or relocation of the employee's office, facility, activity, or organization and the employee would be likely to leave for a different position in the Federal service in the absence of a retention incentive.

An agency must establish a single retention incentive rate for each individual or group of employees, expressed as a percentage of each employee's rate of basic pay, not to exceed 25 percent (for an individual employee) or 10 percent (for a group or category of employees). With OPM approval, this cap may be increased to as much as 50 percent. An agency may pay a retention incentive in installments after the completion of specified periods of service or in a

single lump sum after completion of the full period of service required by the service agreement. Agencies may pay retention incentives to employees under the General Schedule, Senior Executive Service, senior-level pay system, Executive Schedule, and certain other pay systems. Retention incentives are also subject to the aggregate limitation on total pay that an employee may receive in a calendar year. (See “Aggregate Pay Limitations” above.). [5 CFR part 575, subpart C]

*Note:* An agency may not pay a recruitment, relocation, or retention incentive 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; or (5) in which the employee is expected to receive an appointment as the head of an agency.

### **Student Loan Repayments**

For most types of employees, agencies can establish a program under which they may repay certain types of Federally-made, insured or guaranteed student loans as an incentive to recruit or retain highly qualified personnel. Under this authority, an agency may make loan payments to a loan holder of up to \$10,000 for an employee in a calendar year up to an aggregate maximum of \$60,000 for any one employee. In return, the employee must sign a service agreement to remain in the service of the paying agency for a period of at least 3 years. If the employee separates voluntarily or is separated involuntarily for cause or poor performance before fulfilling the service agreement, he or she must reimburse the paying agency for all student loan repayment benefits received. An agency may not provide student loan repayment benefits to an employee occupying a position excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character (e.g., Schedule C appointees) [5 CFR part 537].

### **REEMPLOYED ANNUITANTS**

In most cases, unless reemployment is with the Department of Defense, when Federal retirees (covered by the Civil Service Retirement System or the Federal Employees’ Retirement System) are reemployed in the Federal service, their salaries are reduced by the amount of their annuities [5 U.S.C. 8344 and 8468]. The reduction also applies when retirees are appointed as experts or consultants. However, there are some exceptions, so please consult with the Human Resources Office in your employing agency. [OPM Contact: Janice Warren, 202-606-0960]

### **LEAVE**

Officers and employees who are appointed by the President (PAS and PA) are not covered by the Federal leave system established by 5 U.S.C. chapter 63 as long as their rate of basic pay is greater than the rate of basic pay for GS-15, step 10, excluding locality pay (\$124,010 in 2008). These Presidential appointees do not earn annual and sick leave and cannot be charged leave for absences from work. Employees who are members of the SES and Schedule C appointees are covered by the Federal leave system (unless they are Presidential appointees whose rate of basic pay is greater than the rate of basic pay for GS-15, step 10). Career SES members who accept a

Presidential appointment without a break in service to a position outside the SES at a rate of basic pay equivalent to Executive Level V or higher, can elect to retain their SES leave benefits and continue to earn leave while serving in the Presidential appointment.

### **Annual Leave**

Generally, employees earn 13, 20, or 26 days of annual leave a year, depending on years of service. However, SES members, employees in senior-level and scientific or professional (SL/ST) positions, and certain employees in “SES equivalent” positions earn 8 hours of annual leave each biweekly pay period, regardless of years of service. Annual leave accrues incrementally, i.e., 4, 6, or 8 hours every pay period. SES members, as well as SL/ST and positions designated under 10 U.S.C. 1607(a) as Intelligence Senior Level positions, may carry over up to 90 days of annual leave to the next leave year; most other employees may carry over up to 30 days of annual leave. Supervisors may grant advance annual leave consistent with the agency’s leave policy. The amount of annual leave that may be advanced may not exceed the amount of annual leave the employee will accrue in the remainder of the leave year.

*Note:* Under certain conditions, an agency may give a newly-appointed employee, or an employee who is reappointed following a break in service of at least 90 calendar days, credit for qualifying non-Federal service in determining the employee’s rate of annual leave accrual. The employing agency must determine that the skills and experience the individual possesses are essential to the new position and were acquired through performance in a non-Federal or uniformed service position having duties directly related to the position to which he or she is being appointed and that the use of this authority is necessary to achieve an important agency mission or performance goal.

### **Sick Leave**

Employees earn 13 days of sick leave each year (which accumulates without limit in succeeding years). Sick leave also accrues incrementally, i.e., 4 hours every 2 weeks. In certain situations, employees may use sick leave for family care purposes. They may use a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition. They may also use sick leave for adoption or bereavement. At the discretion of the agency, a maximum of 30 days of sick leave may be advanced to an employee with a medical emergency, for purposes related to the adoption of a child, for family care or bereavement purposes, or to care for a family member with a serious health condition.

### **Family and Medical Leave**

Under the Family and Medical Leave Act of 1993 (FMLA), an employee is entitled to a total of 12 workweeks of *unpaid* leave during any 12-month period for: (1) the birth of a child and care of the newborn; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an employee’s spouse, son or daughter, or parent with a serious health condition; and (4) an employee’s own serious health condition that makes him or her unable to perform the duties of his or her position. An employee may substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA. Employees must have 12 months of service (need not be continuous months) to qualify to take FMLA leave. Employees who are family members of a servicemember with a serious injury or illness that he or she incurred in the line of

duty while on active duty in the Armed Forces, and who are providing care for that servicemember, are entitled to up to 26 weeks of FMLA leave (military family leave) during a single 12-month period to care for the servicemember. During the single 12-month period, the employee is entitled to a combined total of 26 weeks of regular FMLA leave and military family leave.

### **Leave Transfer and Leave Bank Programs**

An employee who has a personal or family medical emergency and who has exhausted his or her own leave may receive donated annual leave from other Federal employees through the voluntary leave transfer or leave bank programs. All agencies must have a leave transfer program. In addition, an agency may also choose to establish a leave bank for its employees.

### **Leave Transfer for Combat-related Disability**

An employee who sustains a combat-related disability while serving as a member of the Armed Forces (including a reserve component) and is undergoing medical treatment for that disability may receive donated annual leave from other Federal employees through the voluntary leave transfer program without having to exhaust his or her available paid leave. A qualified leave recipient is eligible to receive donated annual leave for up to 5 years from the start of the employee's treatment, as long as the employee continues to undergo such medical treatment. The amendments to 5 U.S.C. 6333(b) made by Public Law 110-181 took effect on January 28, 2008. For an employee who was already undergoing medical treatment on January 28, the 5-year period begins on the date of enactment.

### **Other Leave**

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

## **SEPARATION PAYMENTS**

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

### **Severance Pay**

Severance pay is authorized for full-time and part-time employees who are involuntarily separated from Federal service and who meet other conditions of eligibility. To be eligible for severance pay, an employee must be serving under a qualifying appointment, have completed at least 12 months of continuous service, and be removed from Federal service involuntarily for reasons other than misconduct or unacceptable performance. A Presidential appointment, an excepted appointment under Schedule C, a noncareer appointment in the SES (as defined in 5 U.S.C. 3132(a)), and an equivalent appointment made for similar purposes, are not qualifying appointments; therefore, an individual serving under one of these appointments is not eligible for severance pay. For additional information on severance pay, see 5 CFR part 550, subpart G.

## **Lump-Sum Payments for Unused Annual Leave**

Employees who separate from Federal service and who are covered by the Federal leave system are entitled to a lump-sum payment for unused annual leave. The lump-sum payment equals the pay the employee would have received if the employee had remained in Federal service on annual leave (as provided in OPM regulations). This payment excludes (among other things) any incentives or allowances that are paid for the sole purpose of encouraging an employee to remain in Government service, such as retention incentives and physicians comparability allowances. Most Presidential appointees (PAS and PA) are excluded from coverage under the Federal leave system and therefore do not receive lump-sum annual leave payments upon separation.

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

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

Additional information on lump-sum payments for annual leave is available on OPM's website at <http://www.opm.gov/oca/leave>.

**RETIREMENT, HEALTH AND LIFE INSURANCE, OTHER BENEFITS** [*OPM Contact: Ray Kirk, 202-606-0788*]

### **NEW EMPLOYEES**

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

#### **Health Insurance**

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

However, individuals with temporary appointments designated as "provisional" are eligible for FEHB coverage, since this type of appointment is used to expedite placement in a position

expected to be permanent while the necessary procedures required for non-temporary appointment are proceeding, such as a pending Senate confirmation or security clearance.

After the initial opportunity to enroll, the Program permits enrollment changes during a 4-week Open Season each November/December and upon the occurrence of certain other qualifying life events such as changes in family status.

*Plans.* Eligible new employees will receive materials describing available plans from the employing agency and must make an enrollment election within 60 days of becoming eligible. The Program offers each employee several Governmentwide fee-for-service plans (some of which require membership in employee organizations) and health maintenance organizations serving the geographic area in which the employee lives or works. Enrollment may be for self-only or for self and family.

*Cost-sharing.* The Government contribution equals 72 percent of the program-wide weighted average of subscription charges in effect each year, for self-only enrollments and for self-and-family enrollments, subject to the maximum of 75 percent of the charges for any particular plan or option. Employees are subject to payroll withholdings for health plan costs in excess of the Government contribution.

*Premium Conversion.* Eligible new employees who elect to enroll in the FEHB Program are eligible to participate automatically in premium conversion unless they waive participation. Premium conversion is a tax benefit. It allows an employee's contribution for health insurance to be made on a pre-tax basis, which means that the money is not subject to Federal income, Medicare, or Social Security taxes.

*Consumer-Driven Health Plans.* High Deductible Health Plans (HDHP) are offered in the FEHB Program, with health savings accounts (HSAs) and, for those not eligible, health reimbursement arrangements (HRAs). An HDHP with a Health Savings Account (HSA) provides traditional medical coverage and a tax-free way to build savings for future medical expenses. The HDHP features higher annual deductibles (a minimum of \$1,100 for Self and \$2,200 for Self and Family coverage) than other traditional health plans. The maximum out-of-pocket limitations for HDHPs participating in the FEHB Program in 2008 are \$5,600 for Self and \$11,200 for Self and Family enrollment. The HSA and HRA associated with each HDHP will be funded from premiums. The contribution or credit amount will vary from plan to plan. More information on this option is on OPM's website at [www.opm.gov.hsa](http://www.opm.gov.hsa).

## **Life Insurance**

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

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

*Basic.* Eligible employees automatically receive Basic life insurance coverage unless they file a written waiver. The Basic insurance amount is equal to annual basic pay, rounded to the next higher multiple of \$1,000, plus \$2,000. It includes additional coverage for employees under age 45, plus accidental death and dismemberment coverage (AD&D).

*Optional.* The Program offers three types of Optional life insurance, without evidence of good health, which employees may elect within 31 days of becoming eligible. Option A offers \$10,000 life insurance and AD&D coverage; Option B offers life insurance (no AD&D) coverage in multiples of 1, 2, 3, 4, or 5 times the employee's annual rate of basic pay (rounded to the next higher multiple of \$1,000); and Option C is life insurance (no AD&D) on the employee's family members in multiples of 1, 2, 3, 4, or 5 times the amount of \$5,000 on death of a spouse and \$2,500 on death of an eligible child.

*Cost.* The cost of Basic life insurance is shared by the employee and the Government; the employee pays two-thirds, and the Government pays one-third. The employee's biweekly premium is 15 cents per \$1,000 of the Basic insurance amount. Employees pay the full cost of all Optional insurance, and premiums for Optional insurance are age-adjusted.

## **FSAFEDS**

New employees working for an executive branch agency, or an agency that has adopted the Federal Flexible Benefits Plan ("FedFlex"), can elect to participate in the Federal Flexible Spending Accounts Program (FSAFEDS). FSAFEDS offers two different flexible spending accounts (FSAs): a health flexible spending account, and a dependent care flexible spending account. Information on this program is on the FSAFEDS website at [www.fsafeds.com](http://www.fsafeds.com).

New and newly-eligible employees have 60 days after their entry on duty to enroll in this program. However, there is also an enrollment opportunity each year at the same time as the FEHB Open Season during which eligible employees may enroll in an FSA for the following year.

## **Federal Long Term Care Insurance Program**

Eligible employees may apply for long term care insurance as a new employee within 60 days after beginning their Federal position. An eligible employee is one who serves in a position that conveys eligibility for the FEHB Program, even if he or she does not enroll. New employee applications require only abbreviated underwriting. Spouses are also eligible to apply with abbreviated underwriting during those 60 days. Either or both may choose to apply; however, there is no "self and family" option. Long Term Care Partners, the administrator of the program, evaluates each application to determine eligibility to enroll in the Program.

*Cost-sharing.* The Federal Long Term Care Insurance Program is an employee-pay-all program. By law, there is no Government contribution.

OPM's long term care website is at [www.ltcfeds.com](http://www.ltcfeds.com).

## **Federal Employee Dental and Vision Insurance Program (FEDVIP)**

An eligible employee may apply for FEDVIP coverage as a new employee within 60 days after beginning his or her Federal position. An eligible employee is a Federal or U.S. Postal Service employee who is eligible for FEHB coverage, whether or not the employee is enrolled. After the initial opportunity to enroll, FEDVIP permits enrollment changes during a 4-week Open Season each November/December and upon the occurrence of certain other qualifying life events such as changes in family status.

*Plans.* New employees must make an election within 60 days of becoming eligible. FEDVIP currently offers each employee the choice of three nationwide vision plans and four nationwide dental plans. Three additional dental plans offer coverage in specific regions. Enrollment may be for self only, self plus one, or self and family. Eligible new employees may enroll in either a dental plan or a vision plan, or both.

*Cost-sharing.* FEDVIP is an employee-pay-all program. By law, there is no Government contribution.

*Premium Conversion.* Premiums are paid for FEDVIP coverage on a pre-tax basis (premium conversion) for active employees. Unlike the FEHB Program, employees may not opt out of premium conversion for FEDVIP. The FEDVIP website can be found at [www.opm.gov/insure/dentalvision](http://www.opm.gov/insure/dentalvision).

## **Retirement Coverage**

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

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

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

See Appendix F for additional information about health benefits, life insurance, and retirement for new appointees.

## **SEPARATED EMPLOYEES**

### **Health Insurance**

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

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

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

*Consumer Driven Health Plan.* Employees who join a high deductible health plan (HDHP) and have a Health Savings Account (HSA) have funds that are fully portable. As long as their money stays in a qualified account and is used for qualified medical expenses, as established by the Department of the Treasury, both the interest and any withdrawals are tax free. This is true even for employees who elect a health care option in the future that is not a Consumer Driven Health Plan or the equivalent. The money in an HSA may continue to accrue – or be used – for future medical expenses. However, employees who retire and enroll in Medicare are not eligible for health savings accounts, so if they have a High Deductible Health Plan, a new health reimbursement arrangement (HRA) will be established by their health plan. Monies in their HSA will remain in that account until used for qualified medical expenses.

### **Life Insurance**

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

If an employee retires under a retirement system for Federal employees, Basic and Optional group life insurance can be continued into retirement, provided the employee qualifies for an immediate annuity and had the coverage for at least the 5 years of service immediately before retirement, or during all periods the coverage was available, if that is less than 5 years. (The employee may convert any coverage that he or she is not eligible to continue into retirement.)

Retirees pay the same premiums as active employees. The premiums for Basic insurance and Option A stop at age 65. At that time the face value of Option A insurance in effect at retirement begins to decrease by 2 percent per month. The post-retirement reduction continues until 75 percent of the coverage is gone and 25 percent (\$2,500) remains. There is a similar 75 percent reduction for Basic insurance; at the time of retirement, however, an employee eligible to

continue Basic insurance can elect to pay additional premiums to prevent Basic insurance from decreasing or to have a lesser (50 percent) reduction.

At the time of retirement or becoming insured as a recipient of workers' compensation, an employee may elect as many Option B and C multiples he or she wishes to continue into retirement and may choose whether to have all of those multiples reduce (i.e., Full Reduction) or to have none of them reduce (i.e., No Reduction) upon reaching age 65 (or retiring, if later.) If an employee chooses Full Reduction, premiums stop at age 65, and the coverage begins to reduce by 2 percent per month until it is gone. If an employee chooses No Reduction, the coverage does not reduce at age 65, and the individual continues to pay premiums.

## **FSAFEDS**

Money in an FSAFEDS flexible spending account – either the health care flexible spending account or the dependent care flexible spending account – has to be used by the date the employee separates from the Government, or he or she will lose the unused balance. However, the claims do not have to be submitted by the separation date. When an employee incurs eligible expenses before the separation date, he or she can submit bills for services up to 30 days after the end of the year.

Conversely, if an employee had more eligible expenses than money deducted from payroll, he or she will not have to reimburse the difference, and the balance will not be recovered against the employee. This could happen, for example, if the employee signed up for \$3,000 and used it all up by the separation date. Because this amount (\$3,000) is designated to be taken out of paychecks in equal amounts spread out over the course of the year, if the employee leaves before the end of the year, the missing payments can no longer be deducted from payroll, and he or she will not be required to otherwise make them up.

## **Federal Long Term Care Insurance Program**

Long term care insurance coverage is fully portable, which means it continues without change when employees leave the Federal Government – the same product and the same price – as long as they continue to pay premiums. OPM is still the policyholder, and the coverage continues to be administered by Long Term Care Partners, LLC. If the employee is paying premiums through direct bill or automatic bank withdrawal, those arrangements continue unchanged. However, employees paying through payroll deduction should contact Long Term Care Partners directly so that they can switch their payment methods to direct bill or automatic bank withdrawal.

## **Federal Employee Dental and Vision Insurance Program**

Coverage under the Federal Employee Dental and Vision Insurance Program (FEDVIP) terminates upon separation from Federal service, unless the employee is eligible for an immediate annuity.

If an employee retires under a retirement system for Federal employees, FEDVIP coverage eligibility is retained. Retirees must have retired with an immediate annuity (a FERS Minimum Retirement Age plus 10 annuity, postponed, counts as an immediate annuity). Those in receipt of a deferred annuity are not eligible to enroll in FEDVIP. However, unlike FEHB coverage and

FEGLI coverage, there is no length of time one must be enrolled in FEDVIP as an active employee in order to continue coverage after retirement.

## **Retirement**

An employee under CSRS may retire voluntarily after reaching age 55 with 30 years of service, age 60 with 20 years, or age 62 with 5 years. Under FERS, voluntary retirement is available at the minimum retirement age (MRA, 55 to 57, depending on year of birth) with 30 years of service, age 60 with 20 years, or age 62 with five years. Under FERS, one can also retire on a reduced annuity at MRA with as little as 10 years of service.

An employee may also be eligible for early retirement (discontinued service retirement (DSR)), based on an involuntary separation. Under both CSRS and FERS, one must be age 50 and have at least 20 years of service, or have at least 25 years of service regardless of age, in order to be eligible for discontinued service retirement.

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

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

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

## **UNEMPLOYMENT COMPENSATION AND DISLOCATED WORKER SERVICES**

*[Department of Labor Contacts for Unemployment Compensation: Stephanie C. Garcia, 202-693-3207, and Quinn Watt, 202-693-3483]*

### **UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE)**

Presidential appointees, noncareer and limited SES appointees, and Schedule C employees who resign by request or are separated due to a change in agency leadership or as a result of the transition to a new Presidential administration may be eligible for Unemployment Compensation for Federal Employees (UCFE). Unemployment compensation is provided through the State in which the individual's last official duty station is located. Benefit levels and eligibility requirements vary from State to State. For further information about UCFE requirements and benefits, contact the specific State Workforce Agency listed at <http://www.servicelocator.org/OWSLinks.asp>.

Whether an individual's resignation is requested or not requested may affect entitlement to unemployment compensation. Resigning before receiving a request to resign is generally considered an unprompted resignation and is not usually viewed as sufficient for unemployment compensation purposes. To assure that State Workforce Agencies are aware that the separation by request is due to a change in Presidential administrations or agency leadership, it is important that this reason be clearly indicated on the SF-50. Individuals are advised to provide a copy of the request for resignation to the State Workforce Agency when filing.

### **DISLOCATED WORKER SERVICES**

These employees may also be eligible for dislocated worker services, including retraining and placement assistance, which are funded through Department of Labor grants. Benefits and eligibility requirements vary from State to State. For more information about dislocated workers, visit <http://www.dol.gov/dol/topic/training/dislocatedmworkers.ht>.

## V. PERSONAL IDENTITY VERIFICATION

This section provides guidance on the requirements for ensuring individuals working on Presidential transition teams have appropriate personal Government-issued identity badges.

### OVERVIEW

The President's Homeland Security Policy Directive # 12 (HSPD-12) established a mandatory, Governmentwide standard for secure and reliable forms of identification to gain access to Federally-controlled facilities and information systems. Under this directive and implementing guidance by the National Institute of Standards and Technology (FIPS-201-1) and the Office of Management and Budget (OMB Memorandum M-05-25, August 2005), personal identity verification (PIV) cards are to be issued. Agencies are to apply an adjudicative policy for PIV cards under a framework jointly established by the U.S. Office of Personnel Management (OPM) and the National Security Council and issued by OPM on December 18, 2007.

Under the credentialing standards, a PIV card may not be issued to a person if—

- The individual is known to be or reasonably suspected of being a terrorist;
- The employer is unable to verify the individual's claimed identity;
- There is a reasonable basis to believe the individual has submitted fraudulent information concerning his or her identity;
- There is a reasonable basis to believe the individual will attempt to gain unauthorized access to classified documents, information protected by the Privacy Act, information that is proprietary in nature, or other sensitive or protected information;
- There is a reasonable basis to believe the individual will use an identity credential outside the workplace unlawfully or inappropriately; or
- There is a reasonable basis to believe the individual will use Federally-controlled information systems unlawfully, make unauthorized modifications to such systems, corrupt or destroy such systems, or engage in inappropriate uses of such systems.

In addition, an individual may not be granted a PIV card if found to be ineligible for access to classified information under Executive Order 12968. That is, for those positions that require security clearances, if the individual is unable to obtain a required security clearance, he or she will not be granted a PIV card.

### TRANSITION ISSUES

#### Transition Team Members

Members of transition teams needing long-term access (more than 6 months) to Federally-controlled facilities or information systems will need identification badges (PIV cards). Others needing access but not on a long-term basis can gain access under the particular agency's own procedures. Agencies needing expedited investigative services for members of transition teams requiring PIV cards can request such service from OPM. Members of transition teams who are detailed from Federal agencies to a transition team not within their agency will need to ensure their PIV cards are acceptable at the detail site.

## VI. APPENDICES

### APPENDIX A

#### QUESTIONS AND ANSWERS: SEPARATIONS FOR POLITICAL APPOINTEES

General Issues

Benefits

Thrift Savings Plan

Social Security

Post Separation Employment

#### GENERAL ISSUES

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

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

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

*2. Do I have appeal or grievance rights?*

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

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

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

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

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

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

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

6. *Can my agency provide outplacement assistance?*

If your agency offers outplacement services to all agency employees, noncareer SES appointees and Schedule C employees may use them. The Comptroller General has concluded an agency may not provide outplacement assistance to political appointees unless it generally offers these services to all its employees. The CG decision says, "... an agency may not expend public money for the specific purpose of helping political appointees return to private life. ... although an agency may offer its existing outplacement assistance program to political appointees, it may not provide outplacement services exclusively to appointees of the outgoing Administration." [B-251488, Letter to The Honorable William L. Clay, Chairman, Committee on Post Office and Civil Service, House of Representatives, December 23, 1992.].

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

The Government is not authorized to pay relocation expenses for separating Presidential appointees, noncareer SES appointees, or Schedule C appointees to return to private industry or to their place of residence. See the General Services Administration's website for additional information about travel and transportation allowances, in particular those for departing political appointees. (<http://www.gsa.gov/travelpolicy>)

## **BENEFITS**

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

When your Federal employment ends, you will receive a lump-sum payment for any unused annual leave. The lump-sum payment equals the pay you would have received if you had remained in Federal service on annual leave (as provided in OPM regulations). This payment excludes any allowances that are paid for the sole purpose of encouraging an employee to remain in Government service, such as retention allowances and physicians comparability allowances. No payment is made for accrued sick leave. Generally, sick leave will be recredited if you are reemployed in a Federal position.

9. *Will I be eligible for severance pay?*

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

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

The U.S. Department of Labor advises that Presidential appointees, noncareer and limited SES appointees, and Schedule C employees are generally eligible for benefits under the Unemployment Compensation for Federal Employees (UCFE) program because their separation

from Federal service is viewed as being involuntary (i.e., occurring through no fault of their own). To ensure State unemployment compensation offices are aware your separation is due to a change in agency leadership, it is important that this reason be clearly indicated on the SF-50 (Notification of Personnel Action) and all UCFE claims inquiry forms. Agencies are encouraged to use reasons such as “separation due to change in agency leadership” or “separation due to transition to new Presidential administration.”

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

If you resign *by request* due to a change in Presidential administrations or agency leadership, you may be eligible, provided you meet all other eligibility requirements. If you resign before being requested to do so, you may not be eligible. To assure State Workforce Agencies are aware your resignation is by request due to a change in Presidential administrations or agency leadership, it is important that this be clearly stated in your written resignation. Your agency should also indicate the same on the SF-50 and all UCFE claims inquiry forms. Again, you should check with your State Workforce Agency if you have any questions.

*12. What will my SF-50 say if I resign or if I am separated?*

If you *resign* from your position due to a change in agency leadership or as a result of a transition to a new Presidential administration, the “Remarks” section of your SF-50 (Block 45) will state “Reason for Resignation” and then summarize whatever reason you give in your written resignation. You should state as your reason for resignation, “Resignation due to a change in Presidential administrations” or “Resignation due to a change in agency leadership.” If your resignation is requested, you should state, “Resignation due to a change in Presidential administrations” or “Resignation by request due to a change in agency leadership.” If you are *separated*, your agency will state in Block 45 under the “Reason for Termination” that you were separated “due to a change in Presidential administrations” or “due to a change in agency leadership.” (*Note:* The reason given for resignation may affect your eligibility for unemployment benefits. Resigning before receiving a request to resign is generally considered an unprompted resignation and is not usually viewed as sufficient for unemployment compensation purposes. See also Questions 10, 11, and 13.)

*13. How do I apply for unemployment compensation?*

States act as agents of the Department of Labor in the taking, processing, and payment of UCFE benefits. Therefore, all applications must be filed with a State Workforce Agency in the State of the employee’s last official duty station. Employees returning from overseas can file in the State of residence after the most recent period of employment. Most States accept UCFE applications by telephone or through the Internet, so you may not have to report in person to file a claim. To locate unemployment benefit information in the State of your choosing, visit <http://www.servicelocator.org/OWSLinks.asp>. When you file a claim with the appropriate State agency, you may be asked to provide a copy of your Standard Form (SF) 8 (Notice to Federal Employee about Unemployment Insurance), a copy of your SF-50, and/or copies of your leave and earnings statement.

Unemployment benefits are payable under State unemployment insurance laws. To receive these benefits, you usually must register with the local unemployment office in the State of your last

duty station. Employees returning from overseas file in the State of residence. When you file a claim with the State Workforce Agency, you must provide a completed copy of Standard Form SF-8, Notice to Federal Employee about Unemployment Insurance, and proof of your Federal employment earnings (an earnings and leave statement). If you have moved out of the State of your last duty station, you can file your claim with the State office nearest to your new residence. If you resigned by request, you may need to provide a copy of the request when filing. Your agency's Human Resources Office will provide you with a copy of form SF-8 and answer any questions you may have in this area.

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

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

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

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

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

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

*16. Can I keep my Federal long term care insurance coverage when I leave?*

Long term care insurance coverage is fully portable, which means it continues without change when employees leave the Federal Government – the same product and the same price – as long as premiums continue to be paid. OPM is still the policyholder and the coverage continues to be administered by Long Term Care Partners, LLC. If the employee is paying premiums through direct bill or automatic bank withdrawal, those arrangements continue unchanged. However,

employees paying through payroll deduction should contact Long Term Care Partners directly so that they can switch their payment methods to direct bill or automatic bank withdrawal.

*17. Can I keep my Federal dental and/or vision insurance coverage when I leave?*

After separation, FEDVIP coverage terminates unless you are eligible for an immediate annuity.

If an employee retires under a retirement system for Federal employees, FEDVIP coverage eligibility is retained. Retirees must have retired with an immediate annuity (a FERS Minimum Retirement Age plus 10 annuity, postponed, counts as an immediate annuity). Those in receipt of a deferred annuity are not eligible to enroll in FEDVIP. However, unlike FEHB coverage and FEGLI coverage, there is no length of time you must be enrolled in FEDVIP as an active employee in order to continue coverage after retirement.

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

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

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

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

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

Generally, a separation is qualifying for DSR if it is an agency-initiated action that is not a removal for cause on charges of misconduct or delinquency. A resignation qualifies you for DSR if you resign in response to a written request from an administration representative having the authority to request such resignation or the new agency head. The resignation of a Presidentially-appointed policy-making officer qualifies for DSR whenever the individual's resignation is accepted by the President. When it is known that a Presidential appointee is leaving, the resignation of a noncareer SES or Schedule C appointee who works for that person is also considered an involuntary separation for purposes of DSR.

*21. What if I am not yet eligible for retirement?*

You might be eligible for a deferred annuity. Under both CSRS and FERS, if you have at least 5 years of civilian service, you can receive a deferred annuity at age 62. Also, a FERS employee with at least 10 years of Federal service (which must include at least 5 years civilian service) may elect to receive a deferred annuity as early as the minimum retirement age (see Question

18). To qualify for deferred benefits, you must leave your retirement contributions in the retirement fund. If you have less than 5 years of civilian service, you do not qualify for a deferred annuity.

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

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

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

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

### ***Thrift Savings Plan (TSP)***

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

The TSP provides several ways to withdraw your account.

- You can make a partial withdrawal of your account in a single payment.
- You can make a full withdrawal of your account by any one, or any combination, of the following methods:
  - A single payment
  - A series of monthly payments
  - A life annuity.

A combination of any of the above three full withdrawal options is called a “mixed withdrawal.”

You can have the TSP transfer all or part of any single payment or, in some cases, a series of monthly payments, to a traditional Individual Retirement Arrangement (IRA) or eligible employer plan. Payments to you can be deposited directly into your checking or savings account by means of electronic funds transfer (EFT).

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

You can leave the money in your account. You cannot make direct deposits. However, under certain circumstances, you can make transfers (or rollovers) of eligible distributions from an eligible retirement plan, including a traditional IRA and an eligible employer plan (or its designated financial institution). Only TSP participants who have open accounts can transfer money into the TSP. This includes participants who are separated from Federal civilian service. However, a separated participant who is receiving monthly payments from his or her TSP account cannot transfer money into it.

Your account will continue to accrue earnings, and you can continue to move your money among the TSP investment funds by making interfund transfers. **Caution:** You must receive your account in a single payment or begin receiving monthly payments from the Thrift Savings Plan, or from the annuity vendor, by April 1 of the year following the year you turn 70 ½ .

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

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

26. *Where can I find tax information about TSP disbursements?*

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

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

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

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

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

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

If you are a new FERS employee or rehired FERS or CSRS employee, you may begin contributing to the TSP immediately.

### ***Social Security***

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

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

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

The Social Security Administration now sends an annual *Social Security Statement* to everyone who has paid Social Security taxes. The benefit estimates contained in the *Statement* are not adjusted to consider the WEP or GPO. Your agency's benefits officer can help you determine whether either of these provisions will affect your benefits. The Social Security Administration also has fact sheets: *The Windfall Elimination Provision* (Publication No. 05-10045) and *Government Pension Offset* (Publication No. 05-10007), that can be printed from [www.ssa.gov](http://www.ssa.gov) or ordered by calling 1-800-772-1213.

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

### **POST-SEPARATION EMPLOYMENT**

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

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

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

You may compete for any Federal career jobs that are open for applications from the general public. This would include jobs announced through OPM and jobs announced by agencies when the announcement specifies applications will be accepted from all sources. However, many agency jobs are open only to current career employees or status candidates. You could not apply for those positions unless you had previous Federal career service and the announcements were open to reinstatement or status candidates.

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

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

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

OPM's Federal Employment Information System, the official source for employment information, provides access not only to Federal job listings, but some State and local government and private sector listings. The system provides listings of the latest job openings, gives access to application materials, and provides information on a wide variety of Federal employment-related topics and programs. You can request application packages, forms, and other employment-related materials through the system. The system is accessible from a number of user-friendly media that are updated daily and most are available 24 hours a day, 7 days a week.

- **USAJOBS.** OPM provides access to employment information through USAJOBS, the official job site of the United States Federal Government. USAJOBS can be accessed through the Internet at [www.usajobs.opm.gov](http://www.usajobs.opm.gov).

USAJOBS enables job seekers to use a single system to locate all public positions in the Federal Government and use a single resumé to apply for positions across the Government.

- **USAJOBS Interactive Voice Response System.** By calling (703) 724-1850 or TDD (978) 461-8404, job seekers can obtain current worldwide Federal job opportunities, Employment Information Fact Sheets, and Optional Federal Application Forms.

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

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

only to status candidates and do not have to compete for employment with candidates from outside the Government. However, agencies do not have to consider reinstatement candidates for any particular job.

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

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

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

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

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

Yes. However, depending on the type of annuity you receive, your annuity will terminate or your salary as a reemployed annuitant will be reduced by the amount of the annuity, unless you return to work for the Department of Defense. If you received a lump-sum payment for unused annual leave and are reemployed in the Federal service before the end of the annual leave period covered by the lump-sum payment, you must refund that portion of the lump-sum payment. The refunded portion covers the period between the date of reemployment and the expiration of the lump-sum leave period. Your employing agency will recredit to you an amount of annual leave that is equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period.

## APPENDIX B

d



The Director

### UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

#### MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

FROM: LINDA M. SPRINGER  
DIRECTOR

A handwritten signature in black ink, appearing to be "LMS", written over the printed name of Linda M. Springer.

Subject: Appointments and Awards During the 2008 Presidential Election Period

During this Presidential election year, I would like to remind agency heads of the need to ensure all personnel actions remain free of political influence or other improprieties and meet all relevant civil service laws, rules, and regulations. All official personnel records should clearly document continued adherence to Federal merit principles and remain free of any prohibited personnel practices. In particular, any appointments of Schedule C and Noncareer Senior Executive Service (SES) employees to competitive service positions or to SES positions by career appointment require careful attention to ensure they comply with merit principles regarding fair and open competition.

As the U.S. Office of Personnel Management (OPM) has done in the past, I am instituting a requirement for the pre-appointment review of all competitive service appointment actions that involve the appointment or conversion of a Schedule C or Noncareer SES employee.

During this period, OPM will continue the current practice of conducting merit staffing reviews of proposed SES selections of Schedule C and Noncareer SES appointees before those selections are presented to a Qualifications Review Board for certification of executive qualifications. OPM will also suspend the processing of Qualifications Review Board cases during Agency Head transitions.

I have attached additional guidance concerning competitive service and SES appointments, incentive awards, and other employment matters, as well as instructions for submitting requests for pre-appointment review. If you have questions or need further information, please contact me at (202) 606-1000. Staff inquiries should be referred to your agency's OPM Human Capital Officer.

#### Attachments

1. Guidelines on Processing Certain Appointments and Awards during the 2008 Election Period
2. Pre-Appointment Review Checklist
3. Merit System Principles, Prohibited Personnel Practices, Civil Service Rules
4. Dos and Don'ts for Converting Schedule C and Noncareer SES Employees to the Competitive Service

cc: Chief Human Capital Officers  
Human Resources Directors

APPENDIX C

**SAMPLE SEPARATION NOTICE**

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

Mr. C. B. Blank  
4731 99th Avenue  
Washington, D.C. 20xxx

Dear Mr. Blank:

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

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

Sincerely yours,

*(Insert Name)*  
*(Insert Title)*

**Appendix D SAMPLE STANDARD FORM (SF) 8 (NOTICE TO FEDERAL EMPLOYEE ABOUT UNEMPLOYMENT INSURANCE)**

**UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) PROGRAM**

**NOTICE TO FEDERAL EMPLOYEE ABOUT UNEMPLOYMENT INSURANCE**

This form has been given to you because (1) you have been separated from your job, or (2) you were placed in a nonpay status, or (3) your records have been transferred to a different payroll office.

*Unemployment insurance (UI) for Federal workers.* When unemployed, Federal workers may be entitled to UI benefits similar to those of workers in private industry. If you become unemployed or are in a nonpay status and want to FILE A CLAIM, go to the nearest LOCAL PUBLIC EMPLOYMENT SERVICE OFFICE of the STATE EMPLOYMENT SECURITY AGENCY to register for work and file your claim for UI. Your ELIGIBILITY for UI CANNOT be determined until AFTER you file a claim. DO NOT DELAY filing a UI claim; if you wait, your unemployment benefits may be reduced or you may not qualify for any benefits.

To help EXPEDITE your claim, take THIS FORM with you, your SOCIAL SECURITY ACCOUNT NUMBER CARD, the OFFICIAL NOTICE of your most recent SEPARATION or of your present NONPAY status (Standard Form 50 if available), EARNINGS and LEAVE statements, or similar documents that indicate you were employed by a Federal agency.

**FEDERAL AGENCY** will insert in the box:

**1st line** - Parent Federal Agency Name and 3 digit code number

**2nd line** - Major Component (if any)

**3rd and 4th line** - complete address to which all forms pertaining to a claim should be sent (ES-931, 931A, 934, 936, and notices of appeal, hearings, and determinations)

3 Digit  
Identification  
FEDERAL AGENCY  
CODE NO.

	3 Digit Identification FEDERAL AGENCY CODE NO.
--	---

To be completed by the *Federal Agency*:

Contact Name/Office

\_\_\_\_\_  
Telephone No. (include area code)

**KEEP THIS FORM** and **TAKE IT WITH YOU** if you file a UCFE/UI claim for unemployed Federal workers provided by Federal law (U.S. CODE, Title 5, Chapter 85). For more information about UCFE/UI, read the REVERSE SIDE of this form.

# UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) PROGRAM

## UNEMPLOYMENT INSURANCE (UI) FOR FEDERAL WORKERS

### TAKE THIS FORM WITH YOU IF YOU GO TO FILE A CLAIM

#### GENERAL INFORMATION:

#### 1. WHO WILL PAY UNEMPLOYMENT BENEFITS?

If you are eligible, you will be paid by a State employment security agency under the provisions of its unemployment insurance (UI) law. The amount of your regular weekly benefits and the period for which benefits will be paid will generally be determined by the law of the State in which you had your last Official Duty Station. This Duty Station will be printed on your final "Notification of Personnel Action", SF-50. If you have received all the regular benefits for which you are eligible, you may, under certain circumstances, become eligible for additional weeks of extended benefits; check with a State local office official. If your last duty station was outside the United States, you will not be eligible until you return to the United States, including the District of Columbia, Puerto Rico, and Virgin Islands. Your benefit rights will then be determined under the law of your State of residence.

UCFE/UI for unemployed Federal workers is paid from U.S. Government funds. No deductions were taken from your pay to finance these benefits.

#### 2. UNDER WHAT CONDITIONS WILL I BE ELIGIBLE?

All State UI laws require that:

- a. You must be unemployed, able to work, and available for suitable work; (In some cases, you may be eligible if you are employed less than full time);
- b. You must register for work and file a claim at a local public employment service/UI claim office;
- c. You must continue to report to the office as directed; and
- d. You must have had a certain amount of employment/wages within a base period of 1 year specified in the State law and have been separated through no fault of your own.

All State UI laws will deny you benefits for such reasons as:

- a. Quitting your job voluntarily without good cause or being discharged for misconduct connected with work; or
- b. Refusing an offer of a suitable job without good cause.

Some State UI laws deny or reduce UI benefits for certain types of payments you may receive (retirement, severance, and/or lump-sum amount for unused, accrued annual leave).

#### 3. DO I HAVE THE RIGHT OF APPEAL?

Yes. If a determination is made denying you benefits, you have the right to appeal as provided in the applicable State law.

#### 4. ARE THERE ANY PENALTIES?

Yes. If you willfully make a false (fraudulent) claim, you may be fined, imprisoned, or both. If you make a mistake in giving information when you file your claim, notify the local UI claim office as soon as you discover the mistake: prompt notification may avoid a penalty.

(The above statements are issued for general information; they do not have the effect of law, regulation, or ruling).

IF YOU BECOME REEMPLOYED and have been collection UCFE/UI benefit payments, it is your RESPONSIBILITY to notify the local office, in writing, to discontinue paying benefits now that you are employed. Failure to do so may result in a *penalty such as a fine, imprisonment, or both.*

## APPENDIX E

### 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 OPM Director Springer's memorandum of March 17, 2008, to agency heads concerning limitations on appointments and awards during the election period (Appendix B). (See also Question 27.)

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 may suspend processing of an agency's SES QRB cases when the agency's head departs or announces his or her departure. This is done to ensure that the incoming head of that agency will have the full opportunity to exercise his or her prerogative to make or approve executive resource decisions that will impact the agency's performance during his or her tenure. To that end, OPM will impose a moratorium on the processing of a particular agency's SES QRB cases when the head of that agency departs for any reason, effective immediately upon 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.

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 QRB 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 the following questions (5 - 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 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, depending upon when the advance notice was 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. 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, a Schedule C appointee, 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 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; 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 Level 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). 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 does not qualify for severance pay.

(See Question 27 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 post-probationary career SES appointee who took a Presidential appointment?*

A former post-probationary 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 post-probationary former career SES appointee who can elect to retain certain SES benefits under 5 U.S.C. 3392(c) (see Question 16) but is not a Presidential appointee is eligible for, but not entitled to, reinstatement to the SES. [*5 U.S.C. 3593(b); 5 CFR part 317, subpart G*]

If the individual elected to continue SES pay while serving in the Presidential appointment (see Question 16), the appointee's pay rate does not change on reinstatement unless 12 months have elapsed since his 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/asd/htm/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 last 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, 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]

*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 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, 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, or (5) in which the employee is expected to receive an appointment as the head of an agency. [5 U.S.C. 5753; 5 CFR part 575, subparts A and B]
- Retention incentives of up to 25 percent of basic pay 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. 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, Center for Leadership and Executive Resources Policy.) [5 U.S.C. 8344 and 8468; 5 CFR part 553]

## LEAVE

### 25. What leave flexibilities are available to SES employees?

SES employees are covered by the Federal leave system.

- *Annual Leave.* Under the Workforce Flexibility Act of 2004, which was enacted on October 30, 2004, SES members became entitled to earn eight hours of annual leave per full biweekly pay period, regardless of their years of service. SES members may carry over up to 90 days (720 hours) of annual leave to the next leave year. They may receive a lump-sum payment for unused annual leave when they separate from Federal service.
- *Sick Leave.* Employees earn 13 days of sick leave a year. Sick leave also accrues incrementally, i.e., four hours every two weeks. Sick leave accumulates without limit in succeeding years. In certain situations, employees may use sick leave for family care, including using a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition, and for adoption or bereavement purposes. [5 U.S.C. 6301-6312; 5 CFR part 630 (subparts B, C, and D)]
- *Family and Medical Leave.* Under the Family and Medical Leave Act of 1993 (FMLA), an employee is entitled to a total of 12 workweeks of *unpaid* leave during any 12-month period for: (1) the birth of a child and care of the newborn; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an employee's spouse, son or daughter, or parent with a serious health condition; and (4) an employee's own serious health condition that makes him or her unable to perform the duties of the employee's position. An employee may substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA. [5 U.S.C. 6381-6387; 5 CFR part 630 (subpart L)]
- *Leave Transfer and Leave Bank Programs.* An employee who has a personal or family medical emergency and who has exhausted his or her own leave may receive donated annual leave from other Federal employees through the voluntary leave transfer or leave bank programs. All agencies must have a leave transfer program. In addition, an agency may also choose to establish a leave bank for its employees. [5 U.S.C. 6331-6373; 5 CFR part 630 (subparts I and J)]

In addition, employees are entitled to court leave, military leave, leave for bone marrow or organ donation, and other types of leave. Additional information on the Federal Government's leave programs is available on OPM's website at [www.opm.gov/oca/leave/index.htm](http://www.opm.gov/oca/leave/index.htm). [5 U.S.C. 6321-6327; 5 CFR part 630 (subparts F, G, and H)]

## **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, 2009). 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 430.305(a)(3)]

## **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, 2008, through January 20, 2009. 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.

## **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 SES 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 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 one-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 one-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. [CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 44 – see <http://www.opm.gov/retire/asd/htm/HOD.htm>]

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 one year after the date of the appointment, is receiving injury compensation payments under subchapter I of chapter 81 of title 5, United States Code, 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 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 three 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. [5 CFR 550.703 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 one 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 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, U.S. Code. 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)]

## APPENDIX F

### **QUESTIONS AND ANSWERS: FEDERAL BENEFITS FOR NEW POLITICAL APPOINTEES**

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

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

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

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

Premium conversion is a tax benefit, which allows you to allot a portion of your salary back to your employer, which your employer then uses to pay your contribution for FEHB coverage. The allotment is made on a pre-tax basis, which means that the money is not subject to Federal income, Medicare, or Social Security taxes. All employees in the executive branch of the Federal Government who are participating in the FEHB Program, and whose pay is issued by an executive branch agency, are eligible to have FEHB premiums paid under the premium conversion plan. Also, if you are enrolled in the FEHB Program, employed outside the executive branch, or your pay is not issued by an agency of the executive branch, you may be eligible if your employer agrees to offer participation in the plan. See OPM's website at [www.opm.gov/insure](http://www.opm.gov/insure) for more information on premium conversion.

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

Coverage is not automatic. You must enroll within 60 days after you become eligible, and select the plan in which you want to be covered. You will be able to choose from among several fee-for-service plans and health maintenance organizations.

#### *4. Am I able to elect an FEHB health plan option for a High Deductible Health Plan (HDHP) and a Health Savings Account (HSA)?*

The FEHB Program offers HDHPs with HSAs and Health Reimbursement Arrangements (HRAs) for those not eligible for HSAs. An HDHP with an HSA provides traditional medical coverage and a tax-free way to help you build savings for future medical expenses.

The HDHP features higher annual deductibles (e.g., a minimum of \$1,100 for Self and \$2,200 for Self and Family coverage) than other traditional health plans. The maximum out-of-pocket limit for HDHPs participating in the FEHB Program in 2008 is \$5,600 for Self and \$11,200 for Self and Family enrollment. Depending on the HDHP, you may have the choice of using in-network and out-of-network providers. Using in-network providers will save you money. With the exception of preventive care, you must meet the annual deductible before the plan pays benefits. Preventive care services are generally paid as first-dollar coverage or after a small deductible, or co-payment. A maximum dollar amount (up to \$300, for instance) may apply.

When you enroll in an HDHP, the health plan determines if you are eligible for a Health Savings Account (HSA) or a Health Reimbursement Arrangement (HRA). If you are enrolled in Medicare, you are not eligible for an HSA. Each month, the plan automatically credits a portion of the health plan premium into your HSA or HRA, based on your eligibility as of the first day of the month. You can pay your deductible with funds from your HSA or HRA. If you have an HSA, you can also choose to pay your deductible out-of-pocket, allowing your savings account to grow.

*5. Will I be eligible for FSAFEDS?*

If you are an employee working for an executive branch agency or an agency that has adopted the Federal Flexible Benefits Plan (“FedFlex”), you can elect to participate in the Federal Flexible Spending Accounts Program (FSAFEDS). FSAFEDS offers two different flexible spending accounts (FSAs): a health care flexible spending account, and a dependent care flexible spending account.

New and newly-eligible employees have 60 days after their entry on duty to enroll in this program. However, there is also an open season each year at the same time as the Federal Employees Health Benefits Program open season during which you enroll in an FSA for the following year.

*6. Will I be eligible for Federal life insurance coverage?*

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

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

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

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

That depends on the kind of appointment you have when you become reemployed (see Question 15). If you are a reemployed annuitant, your coverage may be handled differently from other employees. Your Human Resources office can provide the necessary information.

*9. Will I be eligible to apply for long term care insurance through the Federal Long Term Care Insurance Program?*

If you are in an eligible position, you may apply for this insurance as a new employee using abbreviated underwriting, within 60 days after you begin your Federal position. Your spouse is also eligible to apply with abbreviated underwriting during those 60 days. Either or both of you may choose to apply. There is no “Self and Family” option. Long Term Care Partners, the administrator of the program, will evaluate your application and let you know if you are eligible to enroll in the Program.

An “eligible” position means that you are in a position that conveys eligibility for the Federal Employees Health Benefits Program, even if you do not enroll in the FEHB Program. If you are unsure of your eligibility, please ask someone in your agency’s Human Resources office.

*10. Will I be eligible for coverage under the Federal Employee Dental and Vision Insurance Program (FEDVIP)?*

Federal employees eligible to enroll in the FEHB Program are eligible to enroll in FEDVIP. As noted above, eligibility for FEHB coverage depends on the type of appointment you receive. Generally, employees with permanent appointments are eligible to enroll in FEHB, while employees with temporary appointments limited to 1 year or less are not eligible. However, if your appointment is designated as a “provisional appointment,” you will be eligible for FEHB coverage. (Provisional appointments are used to fill positions known to be permanent with the expectation that the appointee will be converted to permanent status.)

*11. If I am not enrolled in FEHB, can I still enroll in FEDVIP?*

Yes, while you need to be eligible for FEHB, you don’t have to be enrolled in FEHB to enroll in FEDVIP.

*12. If I am eligible for FEDVIP coverage, do I need to take any action, or is coverage automatic?*

Coverage is not automatic. You must enroll within 60 days after you become eligible and select the plan in which you want to be covered. You may enroll in either a dental plan or a vision plan, or both.

*13. Are FEDVIP premiums paid pre-tax?*

Premiums are paid on a pre-tax basis (premium conversion) for active employees. This is mandatory. Unlike the FEHB Program, employees may not opt out of premium conversion for FEDVIP.

*14. Will I be eligible for retirement coverage?*

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

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

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

If, on the other hand, you have had previous civilian service in the Government, you may be covered, depending on the circumstances addressed in Questions 16 and 17, either by FERS or a coordinated combination of the Civil Service Retirement System (CSRS) and Social Security coverage called CSRS Offset. (*Note: CSRS coverage without Social Security is available only to people who (1) had only CSRS coverage; (2) return to CSRS-covered employment after a break in service of less than 1 year; and (3) are not required by law to have Social Security coverage in the new position.*)

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

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

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

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

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

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

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

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

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

If you are employed by the Department of Defense (DOD), unless your retirement was based on an involuntary separation, you will be excluded from CSRS or FERS, and you will be covered only by Social Security. However, you will receive both your full salary and your annuity.

*20. I am an annuitant. What happens to my annuity if I accept a position with the new administration?*

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

- You retired under CSRS, your annuity is based on an involuntary separation, and reemployment is to an appointment that provides retirement coverage (see Question 10);
- You retired under CSRS and you are reemployed in a Presidential appointment subject to retirement coverage; or
- You retired on disability under either CSRS or FERS, and OPM finds you recovered or restored to earning capacity.

If you are employed by DOD, unless your retirement was based on an involuntary separation, your annuity will continue and you will receive the full salary for your position, you will be excluded from CSRS or FERS, and you will be covered only by Social Security. Under these circumstances, you will earn no additional retirement benefits.

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

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

## APPENDIX G

### **MERIT SYSTEM PRINCIPLES (5 U.S.C. 2301)**

1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
2. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
3. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
4. All employees should maintain high standards of integrity, conduct, and concern for the public interest.
5. The Federal work force should be used efficiently and effectively.
6. Employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
7. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
8. Employees should be—
  - protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
  - prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
9. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—
  - a violation of any law, rule, or regulation, or
  - mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.



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