

Presidential Transition Guide
to Federal Human Resources
Management Matters

U.S. Office of Personnel Management
September 2016

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I. STANDARDS OF ETHICAL CONDUCT

This section provides general guidance on contacts with lobbyists, seeking work outside the Federal Government, post-employment restrictions, and the protection of Federal records from unauthorized removal. For answers to specific questions, guidance should be sought from agency ethics officials.

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 are also subject to supplemental regulations if 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:

- ³⁵₁₇ Providing counseling and advisory services;
- ³⁵₁₇ Providing ethics education and training programs;
- ³⁵₁₇ Reviewing financial disclosure reports;
- ³⁵₁₇ Monitoring administrative actions and sanctions for ethics violations; and
- ³⁵₁₇ Communicating with the 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 Act

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 résumé to a prospective employer. Participation in some procurement matters can subject employees to additional requirements relating to private employment contracts.

In accordance with the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), any employee who is required to file a public financial disclosure report must file a signed notification statement with his or her agency ethics official within three business days after commencing negotiations or entering into an agreement with a non-Federal entity to accept post-Government employment or compensation. The statement must identify the entity and specify the date the negotiations or agreement commenced. A public filer must also document his or her disqualification from any particular matter that would have a direct and predictable effect on the financial interests of the entity and submit that signed disqualification document to his or her agency ethics official.

Employees should 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]. Additional restrictions were imposed by Executive Order 13490. Information on these restrictions may be accessed at the Office of Government Ethics website (www.oge.gov) including, *FAQs on Post-Employment Under the Ethics Pledge*. 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 of 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/policy/agency-recordkeeping-requirements.html>, respectively. NARA records management regulations address the identification and protection of Federal records and are also accessible at 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 January 11, 2016, Memorandum to Heads of Departments and Agencies, the Director of OPM asked agencies to review all personnel actions to make sure they meet the requirements of civil service laws, rules, and regulations and are free of impropriety. The Director reminded agencies of their obligation to undertake personnel actions in a manner that conforms fully to the merit system principles and does not involve prohibited personnel practices. [See Appendix B for a copy of this memorandum, which is also available at <https://www.chcoc.gov/content/appointments-and-awards-during-2016-presidential-election-period>.]

OVERVIEW

Positions that are generally subject to change during transitions are listed in a document called *United States Government Policy and Supporting Positions*, commonly known as the Plum Book. OPM prepares this document every 4 years at the request of Congress. It is published after the election in November and is available on OPM's website (<https://www.opm.gov/policy-data-oversight/senior-executive-service/facts-figures/#url=Plum-Book>).

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

- ³⁵/₁₇ 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;
- ³⁵/₁₇ Other Presidential appointments (PA) to positions in which the incumbent serves at the pleasure of the President;
- ³⁵/₁₇ Noncareer Senior Executive Service (SES) appointments; and
- ³⁵/₁₇ 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 exempted from competitive service rules 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 most 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 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:

- ³⁵₁₇ 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.
- ³⁵₁₇ 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:

- ³⁵₁₇ 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.
- ³⁵₁₇ OPM may authorize the use of SES limited appointment authorities for short periods of time for temporary executive positions. [5 CFR 317.601(c)(2)]
- ³⁵₁₇ Agencies may also establish temporary transitional Schedule C positions for similar non-executive positions to help with transitions. [5 CFR 213.3302]

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. For legal reasons, notices of dismissals should avoid a tone that implicates in any way an employee's reputation. Agencies should consult their own General Counsel or legal office for guidance in this area. *[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: Kathie Whipple, 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 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 independent 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). Because these matters implicate complex legal issues, agencies should consult their own General Counsel for assistance in this area.

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

Presidential Appointments

The FVRA, as amended, 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, however, also recognizes other limited means to fill PAS positions, such as recess appointments and provisions in other specific statutory authorities applicable to particular agencies. The FVRA specifically provides 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 FVRA 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 FVRA, there are generally three categories of persons who can serve in an acting capacity for vacant PAS positions:

- ³⁵₁₇ The “first assistant” to the vacant position. The Act does not define this term, but legislative history indicates that it generally refers to the top deputy to the position.
- ³⁵₁₇ An existing PAS (from the agency at issue or from any other agency) designated by the President (and only the President).
- ³⁵₁₇ 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. [5 U.S.C. 3346] 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. Different rules apply 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 FVRA [see <http://www.justice.gov/sites/default/files/olc/opinions/1999/03/31/op-olc-v023-p0060.pdf>]. Specific questions should be addressed to that office (202-514-2051).

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

[NOTE: This section reflects the current interpretation of the FVRA by the Office of Legal Counsel. Litigation is pending before the Supreme Court that could affect this interpretation.]

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 a term PAS, 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; Level I is the highest, and Level V is the lowest. In 2016, annual pay rates for the Executive Schedule are: Level I (\$205,700), Level II (\$185,100), Level III (\$170,400), Level IV (\$160,300), and Level V (\$150,200). Locality pay

does not apply to the Executive Schedule. [*Note: There is a pay freeze for certain senior political officials in 2016. See page 19 for more information about this pay freeze.*]

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: Barbara Colchao, 202-606-2720*]

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 reassignments during that period.

OVERVIEW

The SES is a unique executive personnel system that 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.” OPM also assigns each agency a “Career Reserved floor,” which is the minimum number of Career Reserved positions that must be established within the agency at all times. Once an SES position has been designated as General or Career Reserved, an agency must obtain OPM approval to change that designation. [*See 5 CFR part 214.*] General positions may be filled by career, noncareer, or limited appointees. Career Reserved positions must be filled by career appointees to sustain 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 also must grant clearance for the appointment before the appointment takes effect, 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 positions with duties that will expire 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. [*See 5 U.S.C. 3592 and 5 CFR part 359, subpart I.*] 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. [*5 CFR part 317, subpart F.*] 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. [*5 CFR part 752, subpart F.*] 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 will 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 provide the incoming head of that agency with a 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 for 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 considered for certification.

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 advance written notice for a reassignment that does not require a geographical move. Consultation with the executive, followed by 60 days' advance written 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.

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 does not come into play. However, the agency, at its discretion, may choose to 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. *[See 5 U.S.C. 3395; 5 CFR part 317, subpart I.]*

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 2-day briefings for new career SES members a few times each 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

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. [5 U.S.C. 2103]

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 close and confidential working relationship with the head of an agency or other key appointed official. [5 CFR 213.3301] 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.

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 exception from the competitive service when the position is vacated. [5 CFR 213.3301] 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 1-year period immediately following a change in presidential administration, when a new department or agency head has entered on duty, or when a new agency is created.

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.

Briefings for New Schedule C Appointees

Historically, OPM, in conjunction with White House Presidential Personnel Office, has sponsored 1-day briefings for new Schedule C and Non-Career SES appointees. These briefings 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.

Overview: Schedules A, B, and D [OPM Contact: Katika Floyd, 202-606-0960]

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, B, and D for a variety of reasons. Employees in these positions are not subject to change during transitions.

Positions Excepted by Statute. 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 U.S. 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 President or the Office of Personnel Management. In certain circumstances, the President or OPM may except positions from the competitive service. These exceptions are Schedule A, B, and D positions.

Schedule A Positions. Positions other than those of a confidential or policy-determining character for which it is not practicable to examine. Examples include attorneys, individuals with certain disabilities, and short-term positions filled during an emergency. [5 CFR 213.3101-213.3102]

Schedule B Positions. Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination. These appointments shall be subject to noncompetitive examination as may be prescribed by OPM and are subject to the basic qualification standards established by OPM for the occupation and grade level. For example, developmental positions associated with the SES candidate development program are included under Schedule B. [5 CFR 213.3201]

Schedule D Positions. Positions other than those of a confidential or policy-determining character for which the competitive service requirements make impracticable the adequate recruitment of sufficient numbers of students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs. Schedule D (Pathways Programs) consists of three programs: the Internship Program, the Recent Graduates Program, and the Presidential Management Fellows Program. [*Executive Order 13562; 5 CFR 213.3401*]

Schedule A, B, and D appointees who are eligible for veterans' preference and who have 1 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, excepted service employees other than preference eligibles receive statutory procedural and appellate rights, provided they have completed a probationary or trial period under an initial appointment pending conversion to the competitive service or have completed 2 years of qualifying service. [*5 U.S.C. 7511*]

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 a position 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 or biweekly 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 Contacts: Jeanne Jacobson (pay), Jennifer Melvin (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.

The Consolidated Appropriations Act, 2016, contains a provision that continues the freezes on the payable pay rates for the Vice President and certain senior political appointees at 2013 levels during calendar year 2016. (See section 738 of title VII of Division E of the Act.) OPM's guidance on the pay freeze for certain senior political officials issued in 2014 is generally applicable in applying the pay freeze in 2016. (See OPM guidance memorandum CPM 2014-03 at <https://www.chcoc.gov/content/2014-pay-freeze-certain-senior-political-officials> and CPM2015-14 at <https://www.chcoc.gov/content/january-2016-pay-adjustments-0>.) The official statutory rates of pay for the Vice President and Executive Schedule positions are used in determining the rate ranges and aggregate pay limitations for employees and pay systems unaffected by the pay freeze.

The President's August 3, 2010, memorandum freezing discretionary awards, bonuses, and similar payments for political appointees continues in effect until further notice. Agencies should continue to apply this freeze until further notice in accordance with OPM's guidance at <https://www.chcoc.gov/content/guidance-freeze-discretionary-awards-bonuses-and-similar-payments-federal-employees-serving>.

Basic Salary Levels

Executive Schedule. Sections 5311 through 5318 of title 5, United States Code, prescribe the salaries of most positions filled by Presidential appointees at levels I through V of the Executive Schedule. In 2016, Executive Schedule salaries range from \$150,200 (level V) to \$205,700 (level I). Executive Schedule officials do not receive locality pay. Section 2 of the Presidential Appointment Efficiency and Streamlining Act of 2011 (Public Law 112-166, August 10, 2012) removed the Senate confirmation requirement for certain Presidential appointment positions in a number of agencies. Section 2(hh) provided that removal of the Senate confirmation requirement under section 2 would not (1) result in any such position being placed in the Senior Executive Service or (2) alter compensation for any such position under the Executive Schedule or other applicable compensation provisions of law.

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 2016, SES basic salaries may range from a minimum rate of \$123,175 to a maximum rate of \$170,400 (or \$185,100 for SES positions covered by a certified SES performance appraisal system). SES members do not receive locality pay. [*Note: An exception applies to certain "grandfathered" SES members stationed in a nonforeign area on January 2, 2010.*] Generally, an SES member

may receive a pay adjustment only once during any 12-month period. [OPM Contact: Barbara Colchao, 202-606-2720]

Senior-Level Positions. The senior-level pay system [5 U.S.C. 5376] applies to both senior-level (SL) positions established under 5 U.S.C. 5108 and scientific and professional (ST) positions established under 5 U.S.C. 3104. These include 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 or ST employee at any rate within a range fixed by statute. In 2016, basic salaries may range from a minimum rate of \$123,175 to a maximum rate of \$170,400 (or \$185,100 for SL or ST positions covered by a certified performance appraisal system). SL and ST employees do not receive locality pay. [Note: An exception applies to certain “grandfathered” SL and ST employees stationed in a nonforeign area on January 2, 2010.] [OPM Contact: Barbara Colchao, 202-606-2720]

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 2016 is \$133,444 (GS-15, step 10), excluding locality pay. In 2016, additional locality payments for employees in the United States and its territories and possessions range from 14.16 percent to 35.15 percent. No locality-adjusted rate may exceed the rate for level IV of the Executive Schedule – \$160,300 in 2016. 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. Around 22 percent of the Federal Government’s 1.9 million white collar workers are not paid under the General Schedule but are paid under other statutory authorities. For example, 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 white collar Federal employees – including GS employees, but excluding most SES members, most SL and ST employees, and all Executive Schedule officials – are eligible for supplemental locality-based payments in addition to the rate of basic pay. These payments apply only in the United States and its territories and possessions. In 2016, the locality payments range from 14.35 to 35.75 percent. The maximum locality-adjusted rate of pay for GS employees is the rate for Executive Schedule level IV (\$160,300 in 2016).

Aggregate and Premium 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 and ST employees covered by certified performance appraisal systems, the aggregate pay limit is the annual rate of pay for the Vice President (\$237,700 in 2016). For all others, the aggregate pay limit is the annual rate of pay for level I of the Executive Schedule (\$205,700 in 2016) [5 CFR part 530, subpart B].

Also, General Schedule (GS) employees and other covered employees may receive certain types of premium pay (including overtime pay for employees exempt from the Fair Labor Standards Act, Sunday pay, night pay, and holiday pay) for a biweekly pay period only to the extent that the sum of basic pay and premium pay for the pay period does not exceed the greater of the biweekly rate payable for (1) GS-15, step 10 (including any applicable locality payment or special rate supplement), or (2) the rate payable for level V of the Executive Schedule. [See 5 U.S.C. 5547(a) and 5 CFR 550.105.] In certain emergency or mission-critical situations, an agency may apply an annual premium pay cap instead of a biweekly premium pay cap, subject to the conditions provided in law and regulation. [5 U.S.C. 5547(b) and 5 CFR 550.106 and 550.107.] For basic guidance on overtime pay and compensatory time off for Schedule C employees, see CPM 2009-13, July 20, 2009, at <https://www.chcoc.gov/content/overtime-pay-and-compensatory-time-schedule-c-employees>.

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. They should be used only when necessary to address documented staffing problems. Given the current fiscal environment, agencies should monitor the use of any compensation flexibilities so that they are also used in accordance with budgetary limitations.

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 as an agency head [5 CFR part 550, subpart B].

Above Minimum Hiring Rates – General Schedule

Agencies may set the pay of an individual newly appointed to a General Schedule position at a step above the first step of his or her grade based on the employee's superior qualifications or a special need of the agency for the employee's services. An agency may use this flexibility at any appropriate GS grade. The agency may set pay at the higher step only upon **initial** appointment or upon reappointment after a 90-day break in service. [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].

Recruitment and Relocation Incentives

Agencies have the authority to pay recruitment and relocation incentives. An agency may not pay a recruitment or relocation incentive to an employee in a position (1) to which the individual was appointed by the President; (2) in the Senior Executive Service (SES) 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 (Schedule C); (4) designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members; (5) in which the employee is expected to receive an appointment as the head of an agency; or (6) in the SES as a limited term appointee or limited emergency appointee when the appointment must be cleared through the White House Office of Presidential Personnel. An agency may pay an incentive to an employee newly-hired 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 and Premium Pay Limitations" section above.)

Retention Incentives

Agencies may also pay retention incentives, but the same categories of employees who are excluded from receiving recruitment and relocation incentives are also barred from receiving retention incentives. An agency may pay an incentive to a current employee if—

³⁵₁₇ 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

³⁵₁₇ 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 and Premium Pay Limitations" above.). *[5 CFR part 575, subpart C]*

Special Rates

OPM may establish higher rates of basic pay for a group or category of General Schedule positions in one or more geographic areas. The special rate authority is used to address significant or likely significant difficulties in recruiting or retaining well-qualified employees. OPM may establish special rates by occupational series, specialty, grade-level, and/or geographic area. Special rate supplements are applied to the base General Schedule. No special rate may be established in excess of the rate of basic pay payable for level IV of the Executive Schedule. *[5 U.S.C. 5305 and 5 CFR part 530, subpart C]*

Critical Position Pay

At an agency head's request, OPM may, in consultation with the Office of Management and Budget, grant authority to fix the rate of basic pay for one or more positions at a higher rate than would otherwise be payable for the position. The position under consideration must require an extremely high level of expertise in a scientific, technical, professional, or administrative field that is critical to the successful accomplishment of an important agency mission. Up to 800 positions may be covered Governmentwide. The authority allows for setting pay up to the rate for level II of the Executive Schedule, level I of the Executive Schedule if an agency demonstrates exceptional circumstances, or greater than the rate for level I of the Executive Schedule in rare circumstances. *[5 U.S.C. 5377 and 5 CFR part 535]*

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, when Federal retirees (covered by the Civil Service Retirement System or the Federal Employees' Retirement System) are reemployed in the Federal service, they continue to receive their annuities and their salaries are offset by the amount of their annuities [5 U.S.C. 8344 and 8468]. The offset also applies when retirees are appointed as experts or consultants. An agency may request that OPM waive the offset requirement in limited circumstances set out in statute and OPM regulations. [5 C.F.R. part 553]. In addition, the National Defense Authorization Act (NDAA) for Fiscal Year 2015, section 1107, provides the authority for the head of an agency to grant salary offset or "dual compensation" waivers on a temporary basis, and under specified circumstances, without OPM approval, through December 31, 2019.

Federal retirees who return to work under an appointment with the Department of Defense continue to receive their annuities and receive their full salaries without offset. (Under certain circumstances, though, retirees returning to work for the Department of Defense may elect to have their salaries offset by the amount of their annuities in order to obtain higher retirement benefits after their reemployment ends.)

The CSRS annuity of certain reemployed Members of Congress and CSRS retirees who receive a Presidential appointment may be terminated at reemployment.

Employees should consult with the Human Resources Office in their employing agency for further information.

LEAVE

In general, 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 if their rate of basic pay equals or exceeds the rate for level V of the Executive Schedule. [See 5 CFR 630.211(a)(3).] These Presidential appointees do not earn annual and sick leave and cannot be charged leave for absences from work. However, members of the SES and employees in senior-level (SL) and scientific and professional (ST) positions are covered by the Federal leave system even if they were appointed by the President. 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 or higher than level V of the Executive Schedule can elect to retain their SES leave benefits and continue to earn leave while serving in the Presidential appointment. Under 5 U.S.C. 6301(2)(xi) and 5 CFR 630.211, an agency head may exclude a Presidential appointee from coverage under the leave system under certain conditions.

Annual Leave

Generally, employees earn 13, 20, or 26 days of annual leave a year, depending on years of service. However, SES members, SL and ST employees, and certain employees in positions deemed by OPM to be equivalent to SES or SL/ST positions accrue 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 employees and employees in 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. A supervisor may grant advanced annual leave at his or her discretion, 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 individual's skills and experience 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. The determination must be made prior to the employee's entry on duty.

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 each biweekly pay period. Sick leave is a paid absence from duty that an employee is entitled to use for personal medical needs, general family care purposes, care of a family member with a serious health condition, adoption-related purposes, bereavement, and for the care of a covered service member with a serious injury or illness provided the employee invokes his or her entitlement to leave under the Family and Medical Leave Act (FMLA). There is no limitation on the amount of sick leave an employee can use for his or her own personal medical needs or for adoption-related purposes. An employee may use up to 12 weeks (480 hours) of sick leave each leave year to care for a family member with a serious health condition, which includes 13 days (104) hours) of sick leave for general family care or bereavement purposes. An employee is entitled to no more than a combined total of 12 weeks of sick leave each leave year for all family care purposes. Sick leave may be advanced at the discretion of the agency and consistent with agency policy. An agency may advance up to 30 days (240 hours) of sick leave to an employee for purposes that include the employee's or family member's serious health condition, for adoption-related purposes, and for the care of a covered service member with a serious injury or illness provided the employee invokes his or her entitlement to FMLA leave. An agency may advance up to 13 days (104 hours) of sick leave to an employee for the employee's or family member's general medical needs or certain other purposes, including bereavement.

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; (4) an employee's own serious health condition that makes him or her unable to perform the duties of his or her position; and (5) any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. Employees who are family members of a service member 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 service member, are entitled to up to 26 weeks of FMLA leave (military family leave) during a single 12-month period to care for the service member. 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. An employee may substitute annual leave, sick leave, advanced annual or sick leave, or donated annual leave under the leave sharing programs, consistent with current laws and OPM regulations for using such leave, for unpaid leave under the FMLA. Employees must have 12 months of service (which need not be continuous or recent months) to qualify to take FMLA 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 available paid leave may receive donated annual leave from other Federal employees through the voluntary leave transfer program (VLTP) or voluntary leave bank program (VLBP). All agencies must have a leave transfer program. In addition, agencies are strongly encouraged to establish a leave bank program for their employees. There is no limit on the amount of donated annual leave a leave recipient may receive from leave donors. However, any unused donated leave must be returned to the leave donors when the medical emergency ends. An employee may participate concurrently in both the VLTP and VLBP, if available.

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 statutory authority for this program was enacted on January 28, 2008. For an employee who was already undergoing medical treatment on that date, the 5-year period begins on the date of enactment.

Military Leave

Any full-time Federal civilian employee whose appointment is not limited to less than 1 year is entitled to military leave, which is time off at full pay for certain active or inactive duty in the National Guard or a Reserve of the Armed Forces. Two types of military leave are most common. First, employees are entitled to 15 days of military leave per fiscal year for active duty, active duty training, inactive duty training, or funeral honors duty. Up to 15 days may be carried over into the next fiscal year. Second, employees are entitled to 22 workdays of military leave per calendar year for duty as ordered by the President, the Secretary of Defense, or a State Governor when the employees perform military duties in support of civil authorities in the protection of life and property, or when they perform full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in section 101(a)(13) of title 10, United States Code. For the 22 days of military leave, an employee's civilian pay is reduced by the amount of military pay for the days of military leave. None of the 22 days may be carried over into the next calendar year.

Court Leave

An employee is entitled to time off at full pay without charge to leave for service as a juror or witness in a judicial proceeding in which the Federal, State, or local government is a party.

Leave for Bone-Marrow or Organ Donors

An employee is entitled to 7 days of paid leave each calendar year to serve as a bone-marrow donor and 30 days each calendar year to serve as an organ donor.

More Information

Additional information about the Federal Government's leave programs, including those described above, is available on OPM's website at <http://www.opm.gov>.

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. (Career SES appointees who accept Presidential appointments may elect to retain

severance pay benefits. See 5 U.S.C. 3392(c) and 5 CFR part 317, subpart H.) [5 U.S.C. 5595 and 5 CFR part 550, subpart G]

Lump-Sum Payments for Unused Annual Leave

Employees who are covered by the Federal leave system and who separate from Federal service or who enter on active duty and elect to receive a lump-sum payment are entitled to a lump-sum payment for unused annual leave. The lump-sum payment generally 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 Federal employee covered by the Federal leave system who receives a Presidential appointment to a leave-exempt position 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 such 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. [**Reminder:** *These lump sum payments are treated as taxable income.*]

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. Upon full refund, 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.

RETIREMENT, HEALTH AND LIFE INSURANCE, OTHER BENEFITS [OPM Contact: Karen McManus, 202-606-0788]

NEW EMPLOYEES

Note: Reemployed Federal annuitants' benefits may be handled differently from that of other employees. Each agency's Human Resources Office can provide the necessary information to these employees.

Health Insurance (FEHB)

Eligibility for participation in the Federal Employees Health Benefits (FEHB) Program depends on the type of Federal appointment. Generally, full-time and part-time Federal employees, as

well as seasonal, temporary or intermittent Federal employees for whom the employing office expects the total hours in pay status (including overtime hours) plus qualifying leave without pay hours to be at least 130 hours per calendar month, are eligible to enroll in FEHB.

Members of Congress and certain “designated” Congressional staff are not eligible to purchase a health benefit plan for which OPM contracts and approves under the FEHB, but may purchase health benefit plans, as defined in 5 U.S.C. 8901(6), that are offered on a Health Insurance Marketplace (Exchange) as determined by the Director of OPM, pursuant to the Affordable Care Act. These individuals may receive a Government contribution toward that purchase just as other Federal employees receive such a contribution toward FEHB.

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 an employee organization) and health maintenance organizations serving the geographic area in which the employee lives or works. Enrollment may be for self-only, self-plus one, or 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, self-plus one, and 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 will 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 (for 2016, a minimum of \$1,300 for self only and \$2,600 for self-plus-one or self and family coverage) than other traditional health plans. The maximum out-of-pocket limitations for HDHPs participating in the FEHB Program in 2016 are \$6,550 for self

only and \$13,100 for self-plus-one and 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. Monies in an employee's HSA belong to the employee and will remain in that account until used for qualified medical expenses. Monies in an employee's HRA belong to the employer, and not the employee, and are managed by the health plan. They do not earn interest and are not portable. The HRA may continue to be used for qualified medical expenses so long as the employee does not switch to another health plan or separate from Federal service, except to retire. More information on this option is on OPM's website at <http://www.opm.gov/insure/health/hsa>.

Life Insurance (FEGLI)

Eligibility to participate in the Federal Employees' Group Life Insurance (FEGLI) Program 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 during a new employee's first opportunity to enroll, which ends 60 days after the employee's appointment date in an eligible position, subsequent open enrollment opportunities to elect coverage are very limited. Enrollment will be accepted within 60 days after a change in family circumstances (marriage or divorce, a spouse's death, or acquisition of an eligible child) or, for any coverage except Option C, upon medical evidence of insurability.

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. Basic must be in effect in order to elect any Optional coverage. The Program offers three types of Optional life insurance, which employees may elect within 60 days of becoming eligible without evidence of good health. 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 eligible 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 based on 5-year age bands beginning at age 35.

Flexible Spending Accounts (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 care flexible spending account, and a dependent care flexible spending account. Information on this program is on the FSAFEDS website at 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 Flexible Spending Accounts for the following year.

Long Term Care Insurance (FLTCIP)

Most Federal and U.S. Postal Service employees and annuitants, active and retired members of the uniformed services, and their qualified relatives are eligible to apply for insurance coverage under the Federal Long Term Care Insurance Program (FLTCIP). 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 in FEHB. New employees can apply with abbreviated underwriting within 60 days of the hire or eligibility date. Spouses are also eligible to apply with abbreviated underwriting during those 60 days. After the 60 days, employees and spouses can apply with full underwriting. Qualifying relatives, including same-sex domestic partners, can apply at any time with full underwriting. The Program is medically underwritten, which means that applicants will have to answer questions about their health on the application. Certain medical conditions, or combinations of conditions, will prevent some people from being approved for coverage. FLTCIP does not offer a "self and family" option. Each applicant must apply on his/her own. Long Term Care Partners, the administrator of the program, evaluates each application to determine eligibility to enroll in the Program.

Members of Congress and Congressional staff who are eligible to purchase health benefit plans, as defined in 5 U.S.C. 8901(6), on the Health Insurance Marketplace (Exchange) and receive a Government contribution toward that purchase are eligible to enroll in FLTCIP.

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.

Dental and Vision Insurance (FEDVIP)

Dental and vision benefits are available to eligible Federal and U.S. Postal Service employees, retirees, and their eligible family members on an enrollee-pay-all basis through the Federal Employees Dental and Vision Insurance Program (FEDVIP). 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 in FEHB, except that employees with certain temporary and intermittent

appointments are excluded from eligibility. An eligible employee may apply for FEDVIP coverage as a new employee within 60 days after beginning his or her Federal employment or change in employment to a covered position. A survivor annuitant not already covered may apply within 60 days of becoming a survivor annuitant. After the initial opportunity to enroll, FEDVIP permits enrollment and enrollment changes during a 4-week open season each November/December and upon the occurrence of qualifying life events such as changes in family, employment or coverage status.

Members of Congress and Congressional staff who are eligible to purchase health benefit plans, as defined in 5 U.S.C. 8901(6), on the Health Insurance Marketplace (Exchange) and receive a Government contribution toward that purchase are eligible to enroll in FEDVIP.

Plans. FEDVIP currently offers a choice of four nationwide vision plans and six nationwide dental plans. Four additional dental plans offer coverage in specific regions. Enrollment may be for self only, self plus one, or self and family. Eligible employees and annuitants may enroll in either a dental plan or a vision plan, or both.

Cost-sharing. FEDVIP is an enrollee-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.

More information can be found at <https://www.opm.gov/healthcare-insurance/dental-vision/>.

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, 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. Appointees who are eligible for retirement coverage will generally be covered under either the Federal Employees’ Retirement System (FERS) or the Civil Service Retirement System (CSRS), depending upon individual circumstances. FERS and CSRS are the two principal retirement plans for Federal employees. FERS is a three-tiered system consisting of Social Security benefits, basic FERS (a defined benefits plan), and the Thrift Savings Plan (a defined contribution plan). An employee covered by FERS will be covered under either FERS, FERS-Revised Annuity Employee (FERS-RAE), or FERS-Further Revised Annuity Employee (FERS-FRAE). FERS-RAE and FERS-FRAE employees receive the same FERS retirement benefit, but pay a higher deduction for FERS. See Benefits Administration Letter (BAL) 14-107 for additional information on determining whether an employee is covered by FERS, FERS-RAE or FERS-FRAE <https://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2014/14-107.pdf>. CSRS is a defined benefit plan that pre-dates Social

Security and was originally established as a stand-alone staff retirement plan. Beginning in 1984, however, certain employees subject to CSRS coverage also became covered by Social Security. Coverage under both CSRS and Social Security is often referred to as CSRS-Offset. Employees covered under CSRS or CSRS-Offset may also participate in the Thrift Savings Plan.

New Appointees. In most cases, appointees eligible for retirement coverage who are new to Government service will be covered under FERS.

Appointees with Prior Government Service. If an appointee has prior Government service and is eligible for retirement coverage, the appointee may be covered under FERS, FERS-RAE, FERS-FRAE, CSRS, or CSRS- Offset, depending on their work history with the Government. The appointee's Human Resources Office will determine the appropriate type of retirement coverage and will advise the appointee of any retirement coverage election opportunities.

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

SEPARATED EMPLOYEES

Health Insurance (FEHB)

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 offered by his or her health plan or to purchase a plan on or off the Health Insurance Marketplace (Exchange).

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 the 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. Annuitants are subject to withholdings from their monthly annuity to pay for health plan costs in excess of the Government contribution.

Retired Members of Congress and Congressional staff are subject to the same rules of participation in the FEHB Program in retirement as other Federal annuitants. Time covered under a health benefit plan as defined in 5 U.S.C. 8901(6) on the Exchange with a Government contribution pursuant to 5 U.S.C. chapter 89 counts toward the 5-year requirement to carry coverage into retirement under 5 U.S.C. 8905(b).

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 Health Savings 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. Monies in their HRA belong to the employer, and not the annuitant, and are managed by the health plan. They do not earn interest and are not portable. The HRA may continue to be used for qualified medical expenses so long as the annuitant does not switch to another health plan.

Life Insurance (FEGLI)

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.

If a retiring employee is eligible to continue Option B and/or Option C insurance into retirement or while receiving workers' compensation benefits, the retiring employee can elect how many Option B/Option C multiples to carry into retirement and how those multiples will reduce after he or she reaches age 65. The employee will be able to choose from two levels of coverage: Full Reduction or No Reduction, for the respective multiples.

If a retiring employee chooses Full Reduction, premiums stop at age 65, and the coverage begins to reduce by 2 percent per month until it reduces to zero. If a retiring employee chooses No Reduction, the coverage does not reduce at age 65, and the retiree continues to pay premiums for the appropriate age group. The retiring employee can choose mixed multiples of coverage for Option B and Option C. For example, if the retiring employee has three multiples of an Optional insurance (B, C, or both), he or she can elect to have two multiples with Full Reduction and one

with No Reduction. **The reduction elections are irrevocable after retirement, except that the retiree can change a No Reduction election to Full Reduction at any time (unless the coverage is assigned).**

Flexible Spending Accounts (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, for the Health Care FSA only, 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 from the employee. This could happen, for example, if the employee signed up for \$2,500 and used it all up by the separation date. Because this amount (\$2,500) 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 (FLTCIP)

Long term care insurance coverage is fully portable, which means it continues without change when insured individuals 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 insured individual is paying premiums through direct bill or automatic bank withdrawal, those arrangements continue unchanged. However, individuals paying through payroll deduction should contact Long Term Care Partners directly so that they can switch their payment method to direct bill or automatic bank withdrawal.

Dental and Vision Insurance (FEDVIP)

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 FERS may retire after reaching the minimum retirement age (MRA, currently age 56) 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 under CSRS and CSRS-Offset may retire voluntarily after reaching age 55 with 30 years of service, age 60 with 20 years, or age 62 with 5 years.

An employee under FERS, FERS-RAE, or FERS-FRAE, may retire after reaching the minimum retirement age with 30 years of service, age 60 with 20 years, or age 62 with 5 years. Minimum retirement age depends on the year of birth of the applicant and ranges from age 55, when the year of the applicant's birth is before 1948, to age 57, when the year of the applicant's birth is after 1969. See 5 U.S.C. § 8412(h); 5 CFR 842.202. Under FERS, FERS-RAE, or FERS-FRAE, one can also retire on a reduced annuity at MRA with as little as 10 years of service. An employee under CSRS and CSRS-Offset may retire voluntarily after reaching age 55 with 30 years of service, age 60 with 20 years, or age 62 with 5 years.

An employee may also be eligible for early retirement (discontinued service retirement (DSR)), based on an involuntary separation. Under both FERS and CSRS, 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. Employees who do not meet the age and service requirements for voluntary retirement may be eligible for deferred retirement. Under both FERS and CSRS, at least 5 years of civilian service are needed to qualify for deferred retirement 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 deferred retirement as early as the minimum retirement age. To qualify for deferred retirement, individuals must leave their retirement contributions in the retirement fund. Individuals with less than 5 years of civilian service do not qualify for deferred retirement.

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 an annuity. Under FERS and CSRS, the service

covered by the refund may be creditable towards retirement benefits if the individual returns to Government service and is subject to retirement coverage.

UNEMPLOYMENT COMPENSATION AND DISLOCATED WORKER SERVICES

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 generally 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 a 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/general/topic/training/dislocatedworkers>.

V. PERSONAL IDENTITY VERIFICATION

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

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, March 2006) and the Office of Management and Budget (OMB Memorandum M-05-24, August 2005), personal identity verification (PIV) cards are to be issued. Pursuant to Executive Order 13467, dated June 30, 2008, OPM issued a Memorandum to Heads of Departments and Agencies, dated July 31, 2008, entitled "[Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12.](#)" This memorandum provides Governmentwide credentialing standards to be used by all Federal agencies in determining whether to issue or revoke PIV cards for their employees and contractor personnel. Under the credentialing standards, a PIV card will not be issued to a person if—

- ³⁵₁₇ The individual is known to be or reasonably suspected of being a terrorist;
- ³⁵₁₇ The employer is unable to verify the individual's claimed identity;
- ³⁵₁₇ There is a reasonable basis to believe the individual has submitted fraudulent information concerning his or her identity;
- ³⁵₁₇ 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;
- ³⁵₁₇ There is a reasonable basis to believe the individual will use an identity credential outside the workplace unlawfully or inappropriately; or
- ³⁵₁₇ 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.

The above criteria are the minimum standards for initial eligibility for a PIV card. However, if an individual is found to be unsuitable for the competitive service under 5 CFR part 731, ineligible for access to classified information under Executive Order 12968, or disqualified from appointment in the excepted service or from working on a contract, the unfavorable decision is sufficient basis for non-issuance or revocation of a PIV card.

In addition, the July 31, 2008, memorandum provides a set of "supplemental credentialing standards" that agencies may use, in addition to the basic standards, in adjudicating whether the grant of a PIV card to an individual would create unacceptable risk, when the individual is not subject to an adjudication of suitability for employment in the competitive service, the senior executive service, or certain excepted service positions under 5 CFR part 731; qualification for employment in the excepted service under 5 CFR part 302 or under a similar authority; or

eligibility for access to classified information under E.O. 12968. Under the supplemental credentialing standards, an agency may consider denying or revoking a PIV card if:

- ³⁵₁₇ There is a reasonable basis to believe, based on the individual's misconduct or negligence in employment, that issuance of a PIV card poses an unacceptable risk;
- ³⁵₁₇ There is a reasonable basis to believe, based on the individual's criminal or dishonest conduct, that issuance of a PIV card poses an unacceptable risk;
- ³⁵₁₇ There is a reasonable basis to believe, based on the individual's material, intentional false statement, deception, or fraud in connection with Federal or contract employment, that issuance of a PIV card poses an unacceptable risk;
- ³⁵₁₇ There is a reasonable basis to believe, based on the nature or duration of the individual's alcohol abuse without evidence of substantial rehabilitation, that issuance of a PIV card poses an unacceptable risk;
- ³⁵₁₇ There is a reasonable basis to believe, based on the nature or duration of the individual's illegal use of narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation, that issuance of a PIV card poses an unacceptable risk;
- ³⁵₁₇ A statutory or regulatory bar prevents the individual's contract employment or would prevent Federal employment under circumstances that furnish a reasonable basis to believe that issuance of a PIV card poses an unacceptable risk; or
- ³⁵₁₇ The individual has knowingly and willfully engaged in acts or activities designed to overthrow the U.S. Government by force.

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 verify that 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. [5 U.S.C. 3592(c); 5 CFR 359.902]

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. 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 working relationship with your boss and the need for such a working 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.

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 is taxable and 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 incentives 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 make State unemployment compensation offices aware that 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 State-specific eligibility requirements. If you resign before being requested to do so, you may not be eligible. To assure that State Workforce Agencies are aware that 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 will then summarize the reason you provided 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; pages 41 and 42.)

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, applications are generally 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 (Notification of Personnel

Action), and/or copies of your leave and earnings statement. A copy of the SF-8 is shown in Appendix D.

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 your SF-8 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 by contacting the unemployment insurance (UI) agency of the State of your last duty station, or you may contact the UI agency of your State of 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 offered by your health plan or you can enroll on or off the Health Insurance Marketplace.

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. Under the conversion privilege, you may convert all or any part of your Basic and Optional insurance to a non-group policy, with rates based on age and class of risk. No medical examination is required, although you may be asked a few questions about your health to see if you qualify for a lower premium.

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 if you had coverage for less than 5 years. 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 Option A coverage is 25 percent of its original value in force at retirement and until the other optional insurance expires completely. At the time of retirement, you can also elect (via the Standard Form 2818

“Continuation of Life Insurance as an Annuitant or Compensation”) to pay additional premiums to prevent the Basic and Option B and/or Option C coverages (if applicable) from reducing after you reach age 65.

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 method 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 Federal Employees’ Retirement System (FERS), voluntary retirement is available at the minimum retirement age (MRA, currently age 56) 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. 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.

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 have the required combination of age and service. Under both FERS and CSRS, 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 FERS and CSRS, if you have at least 5 years of civilian service, you may 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 (see Question 18; page 44). 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). You can reinstate credit for the service if you return to Federal service under CSRS or FERS and redeposit the refund with interest.

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

You should ask your agency Human Resources Office 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 specific answers to your 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.

³⁵₁₇ You can make a partial withdrawal of your account in a single payment.

³⁵₁₇ 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 website (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 percent) Contributions in your account and their earnings.

Most FERS employees become vested in their Agency Automatic (1 percent) 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:

³⁵₁₇ A noncareer SES appointment.

³⁵₁₇ An Executive Schedule position listed in 5 U.S.C. 5312, 5313, 5314, 5315, or 5316.

³⁵₁₇ A position placed in level IV or level V of the Executive Schedule, under 5 U.S.C. 5317.

³⁵₁₇ 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).

³⁵₁₇ A position as 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:

³⁵₁₇ 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.

³⁵₁₇ 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.

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 or ordered by calling 1-800-772-1213. Benefit estimates received from the Social Security Administration do not reflect reductions under the WEP or GPO.

The Social Security website, <http://www.socialsecurity.gov>, also allows workers to view an online version of their Social Security earnings and benefits statements. You can also estimate your retirement, disability and survivor benefits. 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 that 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 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.gov.

USAJOBS enables job seekers to use a single system to locate many positions across the Federal Government and use a single résumé to apply for positions across the Government.

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 a competitive service job, you do have reinstatement eligibility in the competitive service. This means that 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.

However, you have lifetime reinstatement *eligibility* if you left a permanent competitive service job with career tenure or you are a veterans' preference eligible and left with career-conditional tenure. (Non-veterans' preference eligibles who separate with career-conditional tenure generally have 3 years of reinstatement eligibility.) [5 CFR 315.401].

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. [5 CFR 317.702]

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. If you are reemployed following a break in service of at least 90 days, an agency may, if its internal rules permit, use the superior qualifications and special needs pay-setting authority to set your GS pay above step 1, not to exceed step 10, based on your superior qualifications or a special need of the agency for your services.

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

Yes. However, depending on the type of annuity you receive, in most cases your annuity will terminate or your salary as a reemployed annuitant will be offset by the amount of the annuity. There are exceptions, as indicated in the paragraph on "Reemployed Annuitants" on page 24. 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. Upon full refund, 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



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

JAN 11 2016

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

FROM: BETH F. COBERT
ACTING DIRECTOR 
SUBJECT: Appointments and Awards During the 2016 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 political appointees, Schedule C employees, and Noncareer Senior Executive Service (SES) members to competitive or non-political excepted service positions or to career SES positions require careful attention to ensure they comply with merit principles regarding fair and open competition.

The U.S. Office of Personnel Management's (OPM's) current policy requires the pre-appointment review of all competitive and non-political excepted service appointment actions that involve the appointment or conversion of a current or former political appointee, Schedule C employee, or Noncareer SES member. OPM will continue to conduct merit staffing reviews of proposed career SES selections of political, Schedule C, and Noncareer SES appointees before those selections are presented to a Qualifications Review Board (QRB) for certification of executive qualifications. As it has in the past, OPM will suspend the processing of QRB cases during agency head transitions.

I have attached additional guidance concerning these 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 regarding pre-appointment reviews, contact Ana A. Mazzi, Deputy Associate Director for Merit System Accountability and Compliance, at (202) 606-4309 or PoliticalConversions@opm.gov. For questions concerning executive resources management or incentive awards, contact Steve Shih, Deputy Associate Director for Senior Executive Services and Performance Management, at (202) 606-8046 or PerformanceManagement@opm.gov.

Attachments

1. Guidelines on Processing Certain Appointments and Awards during the 2016 Election Period, including OPM's Memo on Political Appointees and Career Civil Service Positions, Pre-Appointment Review Checklists, and Q&As
2. Merit System Principles, Prohibited Personnel Practices, and Civil Service Rules
3. Do's and Don'ts for Converting Schedule C and Noncareer SES Employees to the Competitive Service

cc: Chief Human Capital Officers and Human Resources Directors

GUIDELINES ON PROCESSING CERTAIN APPOINTMENTS AND AWARDS DURING THE 2016 ELECTION PERIOD

OPM and Federal agencies share basic responsibility for ensuring all personnel actions adhere to the Federal merit principles at 5 U.S.C. 2301 and remain free of any prohibited personnel practices set forth at 5 U.S.C. 2302. During an election period, these requirements demand particularly close attention to ensure all agency personnel actions adhere faithfully to these principles.

I. Appointment of Current or former Political Appointees to Career Civil Service Positions

Agencies must seek prior approval from OPM before appointing a current or recent political appointee to a competitive or non-political excepted service position at any level under the provisions of title 5, United States Code. A former or recent political appointee is someone who held a political appointment covered by OPM's policy within the previous five-year period. OPM reviews these proposed appointments to ensure they comply with merit system principles and applicable civil service laws. OPM's memo and instructions regarding political appointees and career civil service positions is available at <https://www.chcoqmv/content/political-appointees-and-career-civil-service-positions>. The memo includes pre-appointment review checklists to assist agencies in preparing their submissions for review.

Note: Schedule C employees may not be detailed to competitive service positions without prior OPM approval [see 5 CFR 300.301(c)], and no competitive service vacancy should be created for the sole purpose of selecting a Schedule C or Noncareer SES employee.

OPM prepared a series of questions and answers (Q&As) to respond to agency inquiries about its policy for pre-appointment reviews and to provide additional details that will help agencies meet the policy's requirements. These Q&As, which follow, are also available at <http://www.opm.gov/FAOs/tomc/ppa/index.aspx?page-1>.

II. Appointing Employees to the Senior Executive Service

OPM will continue to conduct merit staffing reviews of proposed career SES selections that involve a current or former political, Schedule C, or Noncareer SES appointee before such cases are formally presented to a Qualifications Review Board (QRB). Agencies should carefully review all actions that would result in the career SES appointment of a political, Schedule C, or Noncareer SES before forwarding such cases to OPM.

Note: All SES vacancies to be filled by initial career appointment must be publicly announced (5 CFR 317.501). Only a career SES or career-type non-SES appointee may be detailed to a Career-Reserved position (5 CFR 317.903(c)).

In addition, OPM will suspend the processing of QRB cases when an agency head leaves office or announces his or her intention to leave office, or if the President has nominated a new agency head. OPM imposes a moratorium on QRB cases as a courtesy to a new agency head when it learns of an agency head's planned departure. However, OPM will consider requests for exceptions to such a moratorium on a case-by-case basis. When a presidential transition occurs,

OPM will determine the disposition of QRB cases based upon the policy of the new administration.

III. Prohibition on Awards to Certain Appointees

Under 5 U.S.C. 4508, an incentive award may not be given during the period beginning June 1, 2016, through January 20, 2017, to a senior politically appointed officer, defined as:

1. An individual who serves in an SES position and is not a career appointee as defined in 5 U.S.C. 3132(a)(4), or
2. An individual who serves in a position of a confidential or policy determining character as a Schedule C employee.

Because Limited Term/Limited Emergency appointees are not "career appointees," they meet this definition of senior politically appointed officer and cannot receive incentive awards during the 2016 election period.

In addition, all political appointees continue to be covered by a freeze on discretionary awards, bonuses, and similar payments. This freeze was established by Presidential Memorandum on August 3, 2010 (<https://www.whitehouse.gov/the-press-office/2010/08/03/presidential-memorandum-freeze-discretionary-awards-bonuses-and-similar-payments>) and continues to remain in effect until further notice (<https://www.chcoc.gov/content/guidance-awards-fiscal-year-2014>). Agencies should continue to apply this freeze in accordance with OPM's guidance at <https://www.chcoc.gov/content/guidance-freeze-discretionary-awards-bonuses-and-similar-payments-federal-employees-serving>.

For additional guidance regarding appointments of current or former political appointees to competitive service, non-political excepted service, or career SES position, contact Ana A. Mazzi, Deputy Associate Director for Merit System Accountability and Compliance, at (202) 606-4309 or PoliticalConversions@opm.gov. For guidance on awards during the 2016 Presidential election period, contact Steve Shih, Deputy Associate Director for Senior Executive Services and Performance Management, by calling (202) 606-8046 or PerformanceManagement@opm.gov.

OPM Policy on Political Appointees and Career Civil Service Positions Questions and Answers

Q: Is this the first time OPM has put a policy in place covering the hiring of current or former political appointees for career civil service positions?

A: No. It has been OPM policy since the Carter Administration and under every President since to ensure that politics play no role when agencies hire political appointees for career Federal jobs. In the past, OPM conducted a pre-hiring review of proposed appointments to the career competitive service during the year leading up to a Presidential election. Effective January 1, 2010, OPM's pre-hiring oversight expanded beyond the Presidential election year to ensure that, going forward, hiring of current or former political appointees-whenver it occurs-is fair, open, and free from political influence.

Q: What is different about the policy effective January 1, 2010, compared with previous OPM policy?

A: There were two changes in OPM's policy. First, as noted above, OPM now conducts pre-hiring reviews on a continuing basis, not just during the year leading up to a Presidential election. Second, we expanded the scope of our review for future hiring decisions. In the past OPM only reviewed an agency's proposed hiring of a current or former political appointee when the career Federal job was in the competitive service. Under our revised policy, OPM reviews proposed hiring of current or former political appointees for jobs in the excepted service as well. OPM's responsibility to ensure merit-based hiring for Federal jobs includes both the excepted and competitive service.

Q: Why did OPM revise its policy in this way?

A: One of OPM's most important roles by law is to ensure that agencies comply with merit system principles and conduct fair and open competition for Federal jobs. OPM leadership is committed to upholding these principles every day of every year. So, OPM expanded its oversight to safeguard Federal hiring from political influence. The revised policy is also in line with recommendations from the Government Accountability Office.

Q: Why does OPM review the proposed hiring of individuals who held political positions as long as five years ago?

A: Consistent with past OPM policy, our review looks back five years to ensure we safeguard merit principles in consecutive administrations.

Q: How will OPM determine the five-year period for former political appointees?

A: We determine this period by looking back five years from the closing date of the vacancy announcement. If an applicant for a career Federal job held a political appointment covered by OPM's policy during that five-year period, OPM will review the proposed selection to ensure it meets merit system principles. We recognize that vacancy announcements are not always used for excepted service positions. In such cases, the five-year period will be determined by looking

back five years from the date an agency submits its request for pre-hiring review to OPM.

Q: Will the policy change the way OPM conducts merit staffing reviews and the Qualifications Review Board for SES applications?

A: No. OPM will continue to conduct merit staffing reviews first followed by the Qualifications Review Board.

Q: How long will it take OPM to complete its pre-hiring review?

A: OPM will complete its review and notify the agency of our decision within 15 business days from the date we receive all of the information needed from the agency.

Q: What will OPM look for during its pre-hiring review?

A: OPM's objective is to safeguard fair and open competition and protect against political influence in the hiring for career Federal jobs. With this in mind, the two most common reasons for OPM not to approve a proposed selection are (1) when the career job appears to have been created or tailored solely for the benefit of the current or former political appointee, or (2) when competition for the career job has been limited inappropriately.

Q: Will OPM go back and review the hiring of former political appointees who are currently serving in career appointments?

A: No. The policy only applies prospectively to hiring on or after January 1, 2010.

Q: Does OPM's pre-hiring review apply to a current political appointee who held a career Federal job in the past and is eligible for reinstatement?

A: It depends. OPM will not conduct a pre-hiring review if an agency wants to non-competitively select a current or former political appointee for reinstatement to a Federal job at the same or lower grade than previously held. However, OPM will review the proposed selection of a current or former political appointee who is competing for a career Federal job at a higher grade or with greater promotion potential than the career job previously held.

Q: Does OPM's pre-hiring review apply to proposed selections for Senior Level (SL) and Scientific or Professional (ST) positions?

A: Yes.

Q: Will OPM review proposed appointments under the Pathways for Students and Recent Graduates?

A: Yes. OPM will review initial appointments that may lead to non-competitive conversion.

Q: Which Schedule A political appointees are subject to OPM's pre-appointment review?

A: Consistent with past OPM policy, appointments made under the following Schedule A authorities are subject to pre-hiring review:

Appointments made by the President without confirmation by the Senate [5 CFR 213.3102(c)].

- Assistants to top-level Federal officials if the position is being filled by a person designated by the President as a White House Fellow [5 CFR 213.3102(z)].

Q: Does OPM's policy apply to a former political appointee who is a current career Federal employee and who applies for another Federal job?

A: No. For example, if a person was a political appointee in 2007, was hired for a career Federal job in 2008, and then applies for and is selected for another career Federal job, OPM would not review the selection under the revised policy.

Q: Will OPM conduct a pre-hiring review when an agency wants to select a current or former political appointee for a temporary or term position?

A: No. We will not review temporary or term appointments.

Q: Are there other circumstances under which OPM will not review the proposed hiring of a current or former political appointee for a career position?

A: Yes. We will not review hiring under 5 CFR 315, subpart F, and 5 CFR 337, subpart B. These regulations allow for non-competitive appointments to the Federal civil service under certain conditions (e.g., direct-hire, the appointment of 30 percent or more disabled veterans, the appointment of Peace Corps personnel and certain former overseas employees).

Merit System Principles, Prohibited Personnel Practices,
and Civil Service Rules

§ 2301. Merit system principles

(a) This section shall apply to—

- (1) an Executive agency; and
- (2) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

- (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—
 - (A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) 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) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—

(1) with respect to any agency (as defined in section 2302(aX2XC) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

§ 2302. Prohibited personnel practices

(a)(1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b).

(2) For the purpose of this section-

(A) "personnel action" means-

- (i) an appointment;
- (ii) a promotion;
- (iii) an action under chapter 75 of this title or other disciplinary or corrective action;
- (iv) a detail, transfer, or reassignment;
- (v) a reinstatement;
- (vi) a restoration;
- (vii) a reemployment;
- (viii) a performance evaluation under chapter 43 of this title;
- (ix) a decision concerning pay, benefits, or awards concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;
- (x) a decision to order psychiatric testing or examination;

(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and

(xii) any other significant change in duties, responsibilities, or working conditions; with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;

(B) "covered position" means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action-

(i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration; and

(C) "agency" means an Executive agency and the Government Printing Office, but does not include-

(i) a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8);

(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the Government Accountability Office.

(D) "disclosure" means a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences—

(i) any violation of any law, rule, or regulation; or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(1) discriminate for or against any employee or applicant for employment-

- (A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);
 - (B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
 - (C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));
 - (D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
 - (E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
- (2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—
- (A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
 - (B) an evaluation of the character, loyalty, or suitability of such individual;
- (3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
- (4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;
- (5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
- (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
- (7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because ~~of~~-

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences-

- (i) a violation of any law, rule or regulation, or
- (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences-

- (i) a violation of any law, rule, or regulation, or
- (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because ~~of~~-

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation-

- (i) with regard to remedying a violation of paragraph (8); or
- (ii) other than with regard to remedying a violation of paragraph (8);

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) for refusing to obey an order that would require the individual to violate a law; (IO)

discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;

(IXA) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement;

(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or

(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title; or

(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of 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, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under-

- (1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
 - (2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;
 - (3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 (d)), prohibiting discrimination on the basis of sex;
 - (4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or
 - (5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.
- (e)(1) For the purpose of this section, the term "veterans' preference requirement" means any of the following provisions of law;
- (A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 751 I(a)(I)(B)) subchapter II of chapter 75 and section 7701.
 - (B) Sections 943(c)(2) and 1784(c) of title 10.
 - (C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.
 - (D) Section 301(c) of the Foreign Service Act of 1980.
 - (E) Sections 106(t), 7281(e), and 7802(e) of title 38.
 - (F) Section 1005(a) of title 39.
 - (G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference requirement for the purposes of this subsection.
 - (H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.
- (2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).
- (f)(I) A disclosure shall not be excluded from subsection (b)(8) because—

(A) the disclosure was made to a supervisor or to a person who participated in an activity that the employee or applicant reasonably believed to be covered by subsection (b)(5)(A)(i) and (ii);

(B) the disclosure revealed information that had been previously disclosed;

(C) of the employee's or applicant's motive for making the disclosure;

(D) the disclosure was not made in writing;

(E) the disclosure was made while the employee was off duty; or

(F) of the amount of time which has passed since the occurrence of the events described in the disclosure.

(2) If a disclosure is made during the normal course of duties of an employee, the disclosure shall not be excluded from subsection (b)(5) if any employee who has authority to take, direct others to take, recommend, or approve any personnel action with respect to the employee making the disclosure, took, failed to take, or threatened to take or fail to take a personnel action with respect to that employee in reprisal for the disclosure.

Civil Service Rule 4.2

Prohibition against racial, political or religious discrimination. No person employed in the executive branch of the Federal Government who has authority to take or recommend any personnel action with respect to any person who is an employee in the competitive service or any eligible or applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation, or religious beliefs of any such employee, eligible, or applicant. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation, or religious beliefs, except as may be authorized or required by law.

Civil Service Rule 7.1

Discretion in filling vacancies. In his discretion, an appointing officer may fill any position in the competitive service either by competitive appointment from a civil service register or by noncompetitive selection of a present or former Federal employee, in accordance with the Civil Service Regulations. He shall exercise his discretion in all personnel actions solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status, or race.

**Do's and Don'ts for Converting
Political Appointees, Schedule C, and Noncareer SES Employees to the
Competitive or Non-Political Exceptive Service**

Effective January 1, 2010, OPM conducts on-going pre-appointment reviews of current or former political appointee, Schedule C employee, and Noncareer SES member appointments to the competitive or exceptive service. OPM seeks to ensure that the merit system principle of fair and open competition is protected. With this in mind, these are the two most common reasons for OPM not to approve an appointment or a conversion:

- I. the new position appears to have been designed solely for the individual who is being converted, and/or
2. competition has been limited inappropriately.

Below are "Do's" that will help agencies with the conversion approval process:

- *Do* make a public announcement through OPM's USAJOBS when filling competitive or excepted service vacancies from candidates outside your own agency's workforce.
- *Do* carefully consider the Interagency Career Transition Assistance Plan for Displaced Employees regulations (5 CFR 330, Subpart G) before making selections.
- *Do* ensure the Chief Human Capital Officer and Human Resources Director closely review all such proposed actions to determine if they meet the test of merit.
- *Do* ensure the Chief Human Capital Officer and Human Resources Director gather all necessary internal agency approvals before presenting a case to OPM for review.

And "Don'ts":

- *Don't* create or announce a competitive or excepted service vacancy for the sole purpose of selecting a current or former political appointee, Schedule C employee, or Noncareer SES member.
- *Don't* remove the Schedule C or Noncareer SES elements of a position solely to appoint the incumbent into the competitive or excepted service.

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.

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, incoming leadership 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 prior leadership.

Sincerely yours,

(Insert Name)
(Insert Title)

APPENDIX D

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

UNEMPLOYMENT BENEFIT COMPLAINT FOR FEDERAL EMPLOYEES (UCFE) PROGRAM
NOTICE TO FEDERAL EMPLOYEE ABOUT UNEMPLOYMENT INSURANCE

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

Unemployment Insurance (UI) for Federal workers. When unemployed, Federal workers may be entitled to UI benefit 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, you may qualify for my benefits.

To help EXPEDITE your claim, take THIS FORM with your SOCIAL SECURITY ACCOUNT NUMBER CARD, 1b. Form NOTICE of your WOLA recent SEPARATION or of your previous NON-PAY status (S) administered by a Federal agency.

FEDERAL AGENCY will insert in the box:
1. Title - Parent Federal Agency
2. Name and 3 digit extension number
3. Indent - Major Component (if any)
3rd and 4th line - comment to which an form 6 pertaining to a claim should be sent (IES-911, 931A, 934, 936, = 1 notices of appeal, hearings, and termination)

3 Digit
FED iCY
To be completed by the Federal Agency:
Office Name/Office
Telephone No. (in C/Jude area code)

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

FORM 8 (REV. 1-78)

STANDARD FORM 8 (Rev. 1-78)
FORM 8 (Rev. 1-78) or
20 CFR 101.11

UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) PROGRAM

UNEMPLOYMENT COMPENSATION FOR FEDERAL WORKERS

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

GENERAL INFORMATION:

1. WOULD YOUR UNEMPLOYMENT BENEFITS?

If you are eligible, you will be paid a State unemployment benefit weekly benefit amount and the period for which benefits will be paid will be determined by the State.

In certain circumstances, you may be eligible for additional benefits. For example, if you are laid off from a job at a Federal Government agency, you may be eligible for additional benefits. For more information, contact the Department of Labor, Bureau of Labor Statistics, Washington, DC.

For more information, contact the Department of Labor, Bureau of Labor Statistics, Washington, DC.

UCFEUI for unemployed Federal Workers is paid from U.S. Government funds. No deduction will be taken from your pay to fund the UCFEUI.

2. UNDER WHAT CONDITIONS WILL 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 office;
- c. You must continue to report to the office as directed; and
- d. You must have had a certain amount of work on the day you became unemployed.

All State UI laws will deny you benefits for certain reasons:

- a. If you quit your job without good cause.
- b. If you were discharged from your 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 bonus) for unemployment, accrued annual leave).

3. DO I HAVE THE RIGHT TO APPEAL?

Yes. If a:

4. ARE THERE ANY PENALTIES?

Yes. If you willfully refuse to accept suitable work, you may be fined, imprisoned, or both. If you do not report to the local UI claim office as soon as you discover that you are unemployed, you may be penalized.

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

IF YOU BECOME REEMPLOYED, you will have to file a claim for UCFEUI benefits. It is your RESPONSIBILITY to notify the local office, in writing, to discontinue paying benefits now that you are employed.

STANDARD FORM 8 (Rev. 8-87) BACK

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:

³⁵ ₁₇	Career Appointments
³⁵ ₁₇	Reassignments and Details of Career Appointees
³⁵ ₁₇	Career Appointees Who Accept Appointment Outside the SES
³⁵ ₁₇	Noncareer and Limited Appointments
³⁵ ₁₇	Pay and Other Compensation
³⁵ ₁₇	Leave
³⁵ ₁₇	Performance Appraisals
³⁵ ₁₇	Awards
³⁵ ₁₇	Removals and Other Separations
³⁵ ₁₇	Experts and Consultants
³⁵ ₁₇	Miscellaneous

CAREER APPOINTMENTS

1. Are there any special procedures that agencies must follow in making career appointments during the transition?

As with staffing actions at any time, appointments must meet all civil service laws, rules, and regulations and be free of any impropriety. Agencies should also refer to the memorandum of January 11, 2016, to agency heads concerning limitations on appointments and awards during the election period (Appendix B). (See also Question 27; page 77.)

All initial career appointments to the SES must be made under SES merit staffing procedures, and the executive qualifications of the selected candidate must be approved by an OPM-administered Qualifications Review Board (QRB) before appointment can occur. Since the SES is separate from the competitive and excepted services, there is no provision for noncompetitive movement from the other services to a career SES appointment. [5 U.S.C. 3393; 5 CFR part 317, subpart E.]

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

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

approve executive resource decisions that will affect the agency's performance during his or her tenure.

While a QRB moratorium is intended to preserve the prerogatives of an incoming agency head, this must be balanced against the need to ensure the continuity of agency operations during such transitions. Accordingly, OPM will consider requests for exceptions to an agency's QRB moratorium on a case-by-case basis. Requests for exceptions should be signed by the agency head or the official who is designated to act in the agency head's absence and must specifically address the potential for adverse impact on national security, homeland security, or critical agency mission, program, or function if a particular SES candidate is not immediately certified. [5 CFR 317.502 (d)]

3. Do individuals who formerly held career SES appointments need to compete and be approved by a Qualifications Review Board to get a new career SES appointment?

If the individual successfully completed the SES probationary period or did not have to serve one (e.g., converted to the SES as a career appointee when the SES was established in 1979), the individual may be noncompetitively reinstated in the SES. However, separation from the SES must not have been for performance or disciplinary reasons. There is no time limit on reinstatement eligibility after leaving the SES. [5 U.S.C. 3593; 5 CFR part 317, subpart G]

REASSIGNMENTS AND DETAILS OF CAREER APPOINTEES

4. What authority does an agency head have to reassign career SES appointees?

Career SES appointees may be reassigned to any SES position in the agency for which they are qualified without OPM approval. One of the basic premises of the SES was to enable an agency head to reassign senior executives to best accomplish the agency's mission. However, there are a number of restrictions in the law to protect career executives from arbitrary or capricious actions, as indicated in Questions 5 through 14. [5 U.S.C. 3395; 5 CFR 317.901]

5. What advance notice requirements apply to the reassignment of career SES appointees?

The appointee must be given a 15-day advance written notice if the reassignment is within the same commuting area and a 60-day advance written notice if the reassignment is between commuting areas. The agency must consult with the appointee before providing a 60-day advance notice for a geographic reassignment, and the advance notice must include the reasons for the action. [5 U.S.C. 3395(a)(2); 5 CFR 317.901(b)]

6. If a career SES appointee is reassigned to an SES position where the individual will have a policy-making role, is it necessary for the appointee to give up his or her career status?

No. A career SES appointee may be reassigned to any SES position and retain career status. If a career appointee elects to accept a noncareer or limited appointment, the voluntary nature of the action must be documented in writing before the effective date of the action, and a copy of the

documentation must be maintained as a permanent record in the individual's Official Personnel Folder. [5 CFR 317.904]

7. What protections do career SES appointees have against involuntary reassignment?

A career SES appointee cannot be involuntarily reassigned within 120 days after the appointment of a new agency head or the appointment of a new noncareer supervisor who has authority to make the initial performance appraisal of the career appointee. The 120-day moratorium is a protection built into the law to prevent peremptory reassignments before the capabilities of the career appointee are known.

This restriction does not apply to a reassignment action taken as a result of an unsatisfactory performance rating, if the rating was given before the appointment of the new agency head or noncareer supervisor. However, if an unsatisfactory rating is given during a moratorium, the resulting reassignment cannot be effected until the moratorium ends. (See Question 26; page 77) concerning the moratorium on appraisal and rating of a career appointee's performance within 120 days after the beginning of a new President's term of office.) [5 U.S.C. 3395(e); 5 CFR 317.901]

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

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

It is not appropriate for a proposed agency head or noncareer supervisor to have someone else issue a reassignment notice before the 120-day moratorium starts to avoid application of a moratorium. The action must be initiated independent of the incoming agency head or noncareer supervisor. [5 U.S.C. 3395(e); 5 CFR 317.901]

9. Who is covered by a moratorium initiated by the appointment of a noncareer supervisor?

A moratorium on involuntary reassignments initiated by the appointment of a noncareer supervisor applies only to those career appointees for whom the noncareer supervisor gives the initial performance appraisal. It does not apply to those career appointees for whom the new noncareer appointee serves as the higher level supervisor and functions as a reviewing official or final rater but does not give the initial performance appraisal. While this moratorium precludes involuntarily reassigning specific career appointees, it does not otherwise restrict a new noncareer appointee's delegated authority to reassign other career appointees to whom no moratorium applies. [5 U.S.C. 3395(e); 5 CFR 317.901(c)]

10. Who is considered a “noncareer appointee” for purposes of initiating the moratorium on involuntary reassignments?

A noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C appointment, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively. [5 CFR 317.901(c)]

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

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

12. Is a moratorium on involuntary reassignments initiated when an “acting” agency head or noncareer supervisor is named?

No. The designation of an “acting” agency head or noncareer supervisor (e.g., by a detail or when a deputy acts in the position) is not considered an appointment. Therefore, the statutory moratorium technically does not apply. However, the agency, at its discretion, may apply the moratorium in such situations. In this case, if the “acting” individual is later permanently appointed to the position without a break in service, time spent under the agency-imposed moratorium counts toward the 120-day moratorium initiated by the permanent appointment. [5 CFR 317.901(c)(5)]

13. May career SES appointees be reassigned voluntarily before the 15- or 60-day advance notice period and/or the 120-day moratorium on involuntary reassignments has ended?

Yes. However, the career appointee must agree in writing to the reassignment. The agreement is retained as a temporary record in the appointee’s Official Personnel Folder. [5 CFR 317.901(c)(3)]

14. May career SES appointees be detailed during the 120-day moratorium on involuntary reassignments?

Yes. If a career appointee is detailed during the moratorium, the first 60 days of the detail (or any combination of details) do not count against the 120 days. For example, if the employee is placed on a 90-day detail, the first 60 days would be added to the 120 days, and the moratorium would last 180 days. Although there is no limit on the total length of a detail during the moratorium, any detail during the period must meet the detail requirements in the regulations and should be made judiciously and only when there is a clear, bona-fide need. [5 U.S.C. 3395(e); 5 CFR 317.901(c)(4) and 317.903]

15. Does the moratorium on involuntary reassignments apply to a realignment or position abolishment?

No. The 120-day restriction does not apply to a realignment, which is the movement of an employee and the employee's position when a transfer of function or an organization change occurs within the same agency and there is not a change in the employee's position.

The 120-day restriction does not preclude the abolishment of a position during the moratorium. For example, a position could be abolished, and the incumbent could elect immediate discontinued service retirement or agree to an immediate voluntary reassignment. However, the incumbent could not be involuntarily reassigned until the 120 days have elapsed. [*See 5 CFR 317.901(a) for definition of reassignment*]

CAREER APPOINTEES WHO ACCEPT APPOINTMENT OUTSIDE THE SES

16. What benefits may career SES appointees retain if they accept Presidential appointments or certain other appointments to positions paid equivalent to Executive Level V or higher?

The following provisions apply to a career SES appointee who is appointed by the President, subject to Senate confirmation (PAS), to a civilian position in the executive branch which is not in the SES, and for which the rate of basic pay payable is equal to or greater than the rate payable for level V of the Executive Schedule. The same provisions apply to a career appointee who is appointed (by the President or other appointing authority) to a civilian position in the executive branch which is not in the SES and which either is covered by the Executive Schedule or has a rate of basic pay fixed by statute at a rate equal to one of the levels of the Executive Schedule.

If the appointment is made without a break in service, the individual may elect to retain any or all of the following SES benefits: SES basic pay (including the SES aggregate pay limit); eligibility for performance and rank awards; severance pay; annual and sick leave; and retirement. (The individual retains his or her current retirement coverage. However, if the position to which the individual is appointed is an Executive Schedule position listed in 5 U.S.C. 5312-5317, the individual is subject to mandatory Social Security coverage. An individual under CSRS would then be covered under CSRS-Offset.)

If the individual elects to retain severance pay coverage, the individual is entitled to severance pay if involuntarily separated from the Presidential appointment and if otherwise eligible, even if the individual is entitled to reinstatement in the SES (see Question 17; page 73). A resignation is considered an involuntary separation for severance pay purposes if the SES member resigns after receiving a written resignation request or notice of separation from the President or an authorized representative. A self-initiated resignation is not qualifying for severance pay.

See Question 27 on page 77 for information about restrictions on granting awards to Presidential appointees who were SES career appointees and retained awards eligibility. [*5 U.S.C. 3392(c); 5 CFR part 317, subpart H*]

17. *What are the reinstatement rights of a former career SES appointee who took a Presidential appointment?*

A former career SES member who received a Presidential appointment without a break in service from the career SES appointment is entitled to reinstatement to the SES. (This applies regardless of the pay rate of the position held as a Presidential appointee.) The individual must have left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance. OPM will provide placement assistance (and direct placement if necessary) if the individual applies to OPM within 90 days after separation. The individual also may negotiate his or her own reinstatement without OPM assistance. Note that a former post-probationary career SES appointee who can elect to retain certain SES benefits under 5 U.S.C. 3392(c) (see Question 16; page 72) but is not a Presidential appointee is eligible for, but not entitled to, reinstatement to the SES. A former probationary career SES appointee who can elect to retain benefits under 5 U.S.C. 3392(c) but is not a Presidential appointee is not eligible for reinstatement to the career SES appointment. [5 U.S.C. 3593(b); 5 CFR part 317, subpart G]

If the individual elected to continue SES pay while serving in the Presidential appointment (see Question 16; page 72), the appointee's pay rate does not change on reinstatement unless 12 months have elapsed since his or her last pay adjustment, except as allowed under OPM regulations. If 12 months have elapsed, the appointee's pay may be increased. Any adjustments in the individual's pay will be subject to the normal SES pay rules. If the individual did not elect to continue SES pay and is later reinstated in the SES, the agency may set his or her pay at a rate within the SES pay range, subject to the requirements in OPM regulations. [5 CFR part 534]

If eligible, the individual may apply for discontinued service retirement (DSR) when the Presidential appointment is terminated, instead of reinstatement in the SES, whether or not the individual has received a job offer in the SES. OPM considers the resignation of a Presidential appointee to be an involuntary separation for DSR purposes whenever it is submitted and accepted. [CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 44 – see <http://www.opm.gov/retire/pubs/handbook/hod.htm>]

18. *Can SES appointees be reinstated to the competitive service?*

Yes, if they held a competitive service appointment before their SES appointment and meet certain other conditions. Career SES appointees who are eligible for reinstatement in the competitive service may be appointed to any competitive service position for which they qualify, at any grade or salary level, including senior-level positions. We advise appointees interested in reinstatement to the competitive service to consult with their agency's Human Resources Office to verify their reinstatement eligibility. [5 CFR 315.401 and 335.103(c)(3)(vii)]

NONCAREER AND LIMITED APPOINTMENTS

19. *Are there any restrictions on making noncareer or limited SES appointments?*

Yes. The agency must receive a noncareer appointment authority from OPM before making the appointment. When the individual leaves the position, the appointment authority reverts to

OPM. The agency must get a new authority from OPM before making another noncareer appointment to the position. (Note that an agency must obtain OPM approval for an appointment authority to reassign a noncareer appointee to another SES position or to transfer a noncareer appointee from another agency.) The agency approves the qualifications of the appointee, and the appointment is made noncompetitively. The White House Office of Presidential Personnel must also approve each noncareer appointment before the agency makes that appointment, except that an appointment to or from any SES position within an independent regulatory commission is not subject to review or approval by any entity of the Executive Office of the President. [*See 5 U.S.C. 3392(d).*]

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

The law limits the total number of SES positions that can be filled by noncareer appointment to 10 percent of the Governmentwide SES space allocation and 25 percent of an individual agency’s allocation (unless the allocation is 3 or less). Additional limitations are imposed, administratively or by other statutes, on an agency-by-agency basis. The law also limits the number of SES positions that can be filled by limited appointment to 5 percent of the Governmentwide SES space allocation. [*5 CFR part 317, subpart F*]

20. What assistance is available from OPM to help agencies during transition?

OPM may make SES limited term appointment authorities available to agencies for positions related to a transition. These appointments normally are for no longer than 6 months. (If an SES authority would not be appropriate, e.g., the position is senior-level rather than SES, under conditions prescribed in regulation, agencies may establish temporary transitional Schedule C positions during the 1-year period immediately following a change in Presidential administration, the appointment of a new department or agency head, or the creation of a new department or agency to facilitate transition.) [*See 5 CFR 213.3302 for Schedule C*]

21. Can SES noncareer or limited appointments be used for individuals who are awaiting Senate confirmation?

Yes. OPM may authorize a noncareer or limited appointment authority for an individual who has been nominated by the President, but whose appointment is pending Senate confirmation. Such appointments may not be made to the position for which the individual has been nominated. Rather, the individual normally serves in an advisory capacity in another position until confirmed. (Instead of an SES appointment, agencies may use a consultant appointment under 5 U.S.C. 3109, provided the appointment is not to an SES position, the individual meets the definition of a consultant, and the work assigned requires consultant services. See also Questions 33 and 34; page 79, and 5 CFR part 304.)

22. *Are individuals who receive SES limited emergency and limited term appointments eligible for health benefits, life insurance, and retirement coverage?*

Yes, if the agency designates the appointment as provisional or the appointment is for more than 1 year. For example, an agency may designate an appointment of 1 year or less as provisional when it is expected that the individual will be converted to a nontemporary SES appointment (career or noncareer) or to a non-temporary Presidential appointment upon OPM approval, White House clearance, and/or confirmation by the Senate. The limited emergency or limited term appointment must be designated as a “provisional appointment” on the SF-50, Notification of Personnel Action. The appointee will then be eligible for health benefits, life insurance, and retirement coverage. [See 5 CFR 316.403; 5 CFR 317.602 for provisional appointments]

PAY AND OTHER COMPENSATION

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

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

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

Agencies may use several discretionary pay flexibilities to deal with documented staffing difficulties. Specific statutory and regulatory conditions govern the use of each of these flexibilities. Full documentation required by laws and regulations must be maintained, and pertinent information will be subject to public scrutiny and third-party review. We caution agencies to exercise these flexibilities judiciously, especially when hiring other than career employees, and use them only when necessary to address documented staffing problems.

³⁵₁₇ 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]

- ³⁵₁₇ 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]
- ³⁵₁₇ Recruitment or relocation incentives of up to 25 percent of annual basic pay times the number of years in the service agreement (see pages 22-23 for higher limits available with OPM approval), when it would otherwise be difficult to fill a position and the action involves recruitment of a new appointee in the Federal Government or relocation of a current appointee to a different commuting area. In return, an employee must sign an agreement to serve for a specified period of time – at least 6 months in the case of a recruitment incentive. These incentives may not be paid to an employee in a position (1) to which the individual was appointed by the President, (2) in the Senior Executive Service as a noncareer appointee, (3) which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, (4) designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members, (5) in which the employee is expected to receive an appointment as an the head of an agency; or (6) in the SES as a limited term appointee or limited emergency appointee when the appointment must be cleared through the White House Office of Presidential Personnel.. [5 U.S.C. 5753; 5 CFR part 575, subparts A and B]
- ³⁵₁₇ Retention incentives of up to 25 percent of basic pay (see pages 22-23 for higher limits available with OPM approval) for an employee with unusually high or unique qualifications or serving a special agency need when the employee would be likely to leave Federal service or, under certain limited conditions, likely to leave for a different position in the Federal service. (The employee coverage exclusions noted above for recruitment and relocation incentives also apply to retention incentives.) [5 U.S.C. 5754; 5 CFR part 575, subpart C]
- ³⁵₁₇ Waiver of dual compensation restrictions for civilian retirees in certain situations. In general, approval must be obtained from OPM on a case-by-case basis, and the agency must have experienced exceptional difficulty in recruiting a qualified employee for the position. Agencies are cautioned that these waivers are intended to be *rare exceptions*, used only in the most unusual circumstances – a detailed justification that covers the criteria specified in the regulations must accompany the waiver request. (Agencies should send waiver requests for positions above GS-15 to the Deputy Associate Director for Executive Resources and Employee Development.) As noted in the paragraph on “Reemployed Annuitants” on page 24, there are exceptions under which agencies may grant waivers without OPM approval under limited circumstances. [5 U.S.C. 8344 and 8468; 5 CFR part 553]

LEAVE

25. What leave benefits are available to SES employees?

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

PERFORMANCE APPRAISALS

26. *What effect does a change in Presidential administrations have on performance appraisals?*

Agencies cannot appraise or rate career SES appointees' performance for 120 days following the inauguration of a new President (i.e., from January 20 through May 19, 2017). This includes the supervisor's initial appraisal, higher level official's review, a Performance Review Board's recommendations, and an appointing authority's final rating. The length of the performance appraisal period is not extended by this moratorium – it just delays the appraisal and rating actions. However, this moratorium does not preclude an interim appraisal when an appointee changes positions or a supervisor leaves, nor does it preclude a progress review during the appraisal period. [5 U.S.C. 4314(b)(1)(C); 5 CFR 430.309(b)]

AWARDS

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

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

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

REMOVALS AND OTHER SEPARATIONS

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

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

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

A career SES appointee cannot be involuntarily removed for performance or during the probationary period within 120 days after the appointment (including a recess appointment) of a new agency head or the appointment of a new noncareer supervisor who has authority to remove the career appointee. This restriction does not apply to (1) any adverse action removal of a post-probationary career SES appointee under 5 U.S.C. 7543, (2) a removal under 5 U.S.C. 4314(b)(3) based on an unsatisfactory performance rating issued before the moratorium, or (3) a disciplinary removal of a probationer that was initiated before the moratorium. [5 U.S.C. 3592(b); 5 CFR 359.406 and 359.503]

29. What effect does the 120-day moratorium on removals from the SES have on completion of the 1-year SES probationary period by career appointees?

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

30. Can the resignation of an SES appointee during the change in Presidential administrations or a change in agency leadership be considered involuntary for the purpose of eligibility for discontinued service retirement (DSR)?

Yes, in certain circumstances. A resignation qualifies for DSR if the SES appointee (i.e., any noncareer appointee or a career appointee who reports to a Presidential appointee) resigns in response to a written request from an administration representative having the authority to request such resignation or from the new agency head. A copy of the request must accompany the retirement application. (Note that a career appointee is not obligated to comply with a request to resign, nor may the career appointee be removed for not submitting a resignation.)

The resignation of a Presidentially-appointed policy-making officer qualifies for DSR whenever the President accepts the individual's resignation. When it is known that a Presidential appointee is leaving, OPM considers the resignation of a noncareer SES or Schedule C appointee who works for that person to be an involuntary separation for purposes of DSR. Agencies submitting retirement applications should document the President's acceptance of the resignation or that the Presidential appointee for whom a separating Schedule C or noncareer SES works is leaving.

In all cases, to be eligible for DSR, the appointee must meet all the other DSR requirements, e.g., must have 25 years of service (at any age), or be age 50 and have 20 years of service.

[*CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 44 – see <http://www.opm.gov/retire/pubs/handbook/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 1 year after the date of the appointment, is receiving injury compensation payments under subchapter I of chapter 81 of title 5, United States Code (unless the compensation is being received concurrently with pay or is the result of someone else's death), or is eligible upon separation for an immediate annuity from a Federal civilian retirement system or from the uniformed services. For additional information on severance pay, see 5 CFR part 550, subpart G.

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

32. *Are noncareer or limited SES appointees entitled to severance pay?*

No, since they accept their appointments with a presumed understanding that their tenure is less than career and that they are subject to removal at any time. (Exception: if a full-time limited SES appointment begins within 3 days after separation from a qualifying appointment without a time limit, the limited appointment *may* convey severance pay eligibility -- see your agency's Human Resources Office.) Presidential appointees are similarly not eligible for severance pay. [See 5 CFR 550.703 for definition of "nonqualifying appointment"]

EXPERTS AND CONSULTANTS

33. *How do you define "experts and consultants"?*

An "expert" has unique or superior education, skills, and accomplishments in a particular field and is regarded as an authority by others in the field. The expert performs unusually difficult work beyond the usual range of competent employees in the field.

A "consultant" provides advice, options, or recommendations on issues or problems and usually has a high degree of administrative, professional, or technical experience. The consultant may also be a person affected by a program who can provide public input based on personal experience. [5 U.S.C. 3109; 5 CFR part 304]

34. *What are the limitations on expert and consultant appointments?*

There are limitations on the length and type of appointment as well as on the nature of the work they can do. Experts and consultants serve under temporary appointments that are either

temporary not to exceed 1 year or they are *intermittent*. An appointment is *intermittent* if the appointee does not have a regular work schedule.

Experts and consultants may **not** serve in Senior Executive Service positions or positions that require Presidential appointment and/or Senate confirmation (but they may serve in an advisory capacity pending confirmation). It is not appropriate to assign consultants to the policy-making or managerial work that characterizes the SES.

Experts and consultants may **not** do work performed by the agency's regular employees or function in the agency's chain of command. For example, they may not supervise agency employees, direct the preparation of a report or special study, or make decisions regarding agency policies or programs. Their work must be strictly advisory in nature (reviewing/recommending) or limited to a special project requiring an exceptional level of expertise. [5 U.S.C. 3109; 5 CFR part 304]

35. *How are experts and consultants paid?*

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

MISCELLANEOUS

36. *Can agencies have an overlap in an SES position for continuity during a change in Presidential administrations or a change in agency leadership?*

No. Agencies cannot employ two individuals in the same position at the same time ("dual incumbency"). Nevertheless, there are options available to agencies to provide continuity in key positions and meet other transition needs. When an incumbent's intention to leave has been documented, an agency may establish a different position to employ a designated successor for a brief period pending the incumbent's departure. For example, when an office director is leaving, a temporary special assistant position could be established for a short period to facilitate orientation of the incoming director to the office's operations. OPM may authorize the use of SES limited appointment authorities for short periods of time for temporary executive positions established under such circumstances. Agencies may also establish temporary transitional Schedule C positions for similar non-executive positions to assist with transitions, under circumstances described in Question 20. [See 5 U.S.C. 3132, 3134, and 3394; 5 CFR part 317, subpart F, for limited appointments; 5 CFR 213.3302 for transitional Schedule C appointments]

37. What special requirements are there for SES actions in independent regulatory commissions?

The appointment or removal of an SES appointee in an independent regulatory commission may not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President. *[5 U.S.C. 3392(d)]*

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, full-time and part-time Federal employees, as well as temporary or intermittent Federal employees for whom the employing office expects the total hours in pay status (including overtime hours) plus qualifying leave without pay hours to be at least 130 hours per calendar month, are eligible to enroll in FEHB. Members of Congress and their staff should review the discussion at p. 28 above.

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, will have FEHB premiums paid under the premium conversion plan unless they affirmatively elect out of premium conversion. 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 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) account?

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 \$1,300 for self only and \$2,600 for self-plus-one or for Self and Family coverage) than other traditional health plans. The maximum out-of-pocket limit for HDHPs participating in the FEHB Program in 2016 are \$6,550 for self only and \$13,100 for self-plus-one and 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. 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. 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 will be 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 60 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; page 85). If you are a reemployed annuitant, your coverage may be handled differently from other employees. You must consult with your Human Resources Office; in some instances, the OPM Retirement Office must be notified of your reemployment for FEGLI purposes.

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

If you are employed 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. Also, if your appointment is designated as a “provisional appointment,” you will be eligible for FEHB coverage. (Provisional appointments are used to fill positions that are 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; page 82) 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.

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 the Thrift Savings Plan. Depending on your prior Federal service, you may be covered by FERS, FERS-RAE or FERS-FRAE. FERS-RAE and FERS-FRAE receive the same retirement benefit as FERS employees, but pay a higher retirement deduction.

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 below, either by FERS or a 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 and your appointment is not excluded from retirement coverage, you will be covered under the CSRS-Offset and have an opportunity to elect FERS coverage within 6 months.

17. 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 future retirement benefits may be affected.

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

Generally, if you are a FERS annuitant, you will remain subject to FERS coverage upon reemployment.

Reemployed CSRS annuitants have differing rules, depending on the type of appointment they receive when reemployed and their prior service history. Your Human Resources Office can provide you with specific information regarding your retirement coverage. If you are covered under CSRS or CSRS-Offset, you will have a 6-month window to elect FERS.

If you are employed by the Department of Defense, you will be excluded from FERS and CSRS and will be covered only by Social Security (unless your retirement was an involuntary retirement and you elect to be covered under FERS or CSRS).

19. 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:

³⁵₁₇ 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; page 84);

³⁵₁₇ You retired under CSRS and you are reemployed in a Presidential appointment subject to retirement coverage; or

³⁵₁₇ You retired on disability under either CSRS or FERS, and OPM finds you recovered or restored to earning capacity.

If you are employed by the Department of Defense, generally your annuity will continue and you will receive the full salary for your position. Under these circumstances, you will earn no additional retirement benefits. If your retirement was an involuntary retirement, however, and you elect to be covered under CSRS or FERS (based on the retirement coverage you had at retirement), the rules described in the first paragraph will apply.

20. 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 (202-606-0788).

APPENDIXG

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

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—
 - ³⁵₁₇ protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
 - ³⁵₁₇ 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—
 - ³⁵₁₇ a violation of any law, rule, or regulation, or
 - ³⁵₁₇ mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.