

February 18, 2000

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

FROM: JANICE R. LACHANCE  
DIRECTOR

SUBJECT: Limitations on Appointments and Awards During  
the Election Period

When a Presidential election period approaches, it is important for agencies to review all personnel actions carefully to ensure the actions meet all civil service laws, rules, and regulations and are free of impropriety.

The record in all personnel actions must show clearly that the actions are proper and legitimate. Both OPM and agencies are obligated to ensure that all personnel actions conform fully to the spirit and letter of the merit system principles and do not involve prohibited personnel practices.

The appointment of Schedule C and noncareer SES employees to the competitive service warrants special attention to ensure compliance with merit system principles. As OPM has done in the past, we are instituting a requirement for OPM pre-appointment review of these actions before agency approval.

We will continue to conduct merit staffing reviews of proposed selections of Schedule C and noncareer SES employees for SES career appointments before they are presented to Qualifications Review Boards for certification of their executive qualifications.

Attached is guidance on SES appointments, awards and other employment issues, and instructions for submitting requests to OPM for approval. I appreciate your cooperation in these matters and look forward to working with you to ensure that personnel actions adhere faithfully to the merit system principles.

Attachment

## LIMITATIONS ON APPOINTMENTS AND AWARDS DURING THE ELECTION PERIOD

The Office of Personnel Management (OPM) and Federal agencies share basic responsibilities: to ensure that all personnel actions adhere strictly to the merit system principles in 5 U.S.C. 2301 and to avoid the prohibited personnel practices in 5 U.S.C. 2302. During an election period, these considerations warrant special attention. OPM has traditionally issued guidance to agencies on the special considerations that apply in an election period to ensure that personnel actions adhere faithfully to the merit principles. These instructions specify those personnel actions that require particular attention this election period. They also establish procedures for OPM pre-appointment review of certain proposed personnel actions, and remind agencies of legal and regulatory requirements that apply during an election period.

### **Appointing Excepted Employees to the Competitive Service**

OPM will review all proposed actions to place in the competitive service:

- (1) Current and former (within the past five years) incumbents of positions excepted by OPM under Schedule C; and
- (2) Current and former (within the past five years) noncareer SES employees.

Beginning immediately, and continuing through January 31, 2001, agencies must complete and sign the attached Pre-Appointment Review Record for these proposed actions, and send to:

U.S. Office of Personnel Management  
Office of Merit Systems Oversight and Effectiveness  
Room 7675  
1900 E Street, NW.  
Washington, DC 20415

OPM will review the proposed actions for compliance with civil service laws, rules, and regulations. We will make every effort to complete our review within 10 working days of receipt of all required documentation. In no case may an agency make an appointment covered by this section prior to receiving OPM approval.

### **Appointing Employees in the Senior Executive Service**

The Senior Executive Service (SES) was established by law as a distinct personnel system, separate from both the competitive and excepted services. The goal of this separate system is to ensure that the Government's executive leadership "is responsive to the needs, policies, and goals of the Nation and otherwise of the highest quality." The law requires under regulations prescribed by OPM, that candidates for initial career appointment to the SES have their executive qualifications approved by a Qualifications Review Board (QRB).

OPM will continue to conduct a merit staffing review of proposed selections of Schedule C (excepted service) and noncareer SES employees for career SES appointments before such cases are presented to a QRB for action. The authority for this review is provided in 5 CFR 317.501: "OPM may review proposed career appointments to ensure that they comply with all merit staffing requirements and are free of any impropriety. An agency shall take such action as OPM may require to correct an action contrary to any law, rule, or regulation."

However, agencies should closely review all actions which would result in the career SES appointment of a Schedule C or noncareer SES employee before such cases are forwarded to OPM. In addition, there is one circumstance under which a noncareer SES or Schedule C appointee may not receive a career appointment. These appointees cannot be converted to a career appointment in the same position that the individual currently occupies, or a successor position. This is covered in 5 CFR 317.502.

These same regulations also specify OPM's authority to suspend the processing of QRB cases under certain circumstances. Specifically, 5 CFR 317.502 indicates that OPM may determine the disposition of requests for QRB certification if the QRB has not yet acted when the agency head leaves office or announces an intention to leave office, if the President has nominated a new agency head, or if there is a Presidential transition. Typically, OPM will impose a moratorium on QRB cases for a specific agency when we learn that an agency head's departure is imminent. This is done as a courtesy to the incoming agency head to afford that individual maximum flexibility in making executive resource decisions. The moratorium notice is always provided in writing, and OPM will consider requests for exceptions on a case-by-case basis.

### **Awards for Political Appointees**

Under 5 U.S.C. 4508, awards may not be granted to A senior politically appointed officers@ from June 1, 2000, through January 20, 2001. The statute defines a senior politically appointed officer as any officer (1) in a Senior Executive Service position who is not a career appointee, or (2) in a position of a confidential or policy-determining character under Schedule C. The statute prohibits such officers from receiving awards under subchapter I of chapter 45, Incentive Awards, of title 5, United States Code, during a Presidential election period. This period is defined as A...any period beginning on June 1 in a calendar year in which the popular election of the President occurs, and ending on January 20 following the date of such election.@ The Presidential election of 2000 is the second time this provision of statute will apply.

### **Additional Considerations**

Agencies should ensure that the following requirements are met:

- ! The Schedule C elements of a position (i.e., its confidential and/or policy determining characteristics) may not be unilaterally removed from the position solely for appointing the incumbent into the competitive service.
- ! Schedule C employees are not detailed to a competitive service position without prior OPM approval [5 CFR 300.301(c)] and only a career SES or

career-type non-SES appointee is detailed to a career reserved position [5 CFR 317.903(c)].

- ! No competitive service or SES vacancy should be created and announced for the sole purpose of selecting a Schedule C, or noncareer SES employee.
  - ! When filling competitive service or SES vacancies from among candidates outside their own competitive service workforce, agencies must make a public announcement through the OPM Federal employment information system as required by 5 U.S.C. 3327. Under 5 CFR 317.501, there must also be public announcement of all SES vacancies to be filled by initial career appointment.
  - ! Before making selections of excepted service and noncareer SES employees to the competitive service, keep in mind that Interagency Career Transition Assistance Plan regulations apply.
  - ! Many agencies have developed their own internal levels of approval that frequently involve review at the agency headquarters level. Agency personnel directors should closely review all pre-appointment actions to determine that they meet the test of merit. They should also ensure that all internal agency approvals have been obtained and are noted in the attached pre-appointment sheet. This will avoid delays and ensure more timely consideration of the OPM pre-appointment reviews.
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- ! In addition to the above, agency personnel directors should carefully review all proposed actions to place in the competitive service other positions excepted by OPM (under Schedules A and B), or by Executive order, or statute.

Please direct questions you may have regarding the pre-appointment review process to the Washington Oversight Division at (202)606-2980. Questions regarding appointments to the SES should be directed to your SES Agency Officer at (202)606-2246. Questions about the prohibition on awards during this Presidential election period should be directed to your Agency Officer in the Performance Management and Incentive Awards Division at (202)606-2720.

Attachment

PRE-APPOINTMENT REVIEW RECORD  
FOR PROPOSED APPOINTMENT OF SCHEDULE C AND NONCAREER SES  
EMPLOYEES INTO THE COMPETITIVE SERVICE

(answer all questions)

1. Provide the appointment authority for the applicant's current or former appointment (i.e., Schedule C, or noncareer SES).
2. Provide a position description and fully executed Optional Form 8 (cover sheet) for the candidate's current appointment.
3. Describe the recruitment procedures used to identify/select the candidate for the current or past appointment.
4. Describe the relationship between the candidate's current or former position and the requested position (duties, reporting relationship, organizational location, etc.). If the duties of the requested position are similar to duties previously in the excepted service, state when and why the position was moved to the competitive service and the basis for doing so. Describe the evolution of the position.
5. If a selection is made for the requested position, what will happen to the position being vacated?
6. (A) What recruitment efforts have been made to identify other qualified candidates for the career vacancy? (B) How was the subject candidate identified?
7. Please furnish a copy of the competitive and/or merit promotion vacancy announcements, the public notice distribution list, and a copy of the job analysis and rating schedule.
8. Who is the selecting official? (Give name, title, phone number, and type of appointment, e.g., career, Schedule C.)
9. How has your agency met the regulatory requirements of the Interagency Career Transition Assistance Plan (ICTAP) as it relates to filling the position?

I have responded to the questions on this pre-appointment review record and determined that action(s) taken meet merit and fitness requirements of 5 U.S.C. 2301 and 2302, and Civil Service Rules 4.2 and 7.1.

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Signature of Personnel Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Telephone Number

