

# A Handbook



## on Presidential Transition for Federal Career Executives



Version 2.0

*Prepared by the SEA Professional Development League  
with the support of the Distinguished Executives Advisory Network*

SEA PDL is releasing sections of the Handbook as they are developed throughout the year. The Handbook will be updated as new material becomes available and feedback is received. Your comments and suggestions are welcomed.

## Senior Executives Association

SEA is a non-profit, non-partisan professional association that has served as the voice of the career federal executive corps since 1980. SEA's mission is to improve the efficiency, effectiveness, and productivity of the federal government; and to enhance public recognition of their accomplishments.

For additional information about SEA, visit [www.seniorexecs.org](http://www.seniorexecs.org).

## SEA Professional Development League

The SEA Professional Development League, founded in 1981, is a non-profit educational organization which is committed to advancing the professionalism of career federal executives through the sponsorship of training, recognition activities, and research.

## DEAN's List

The Distinguished Executives Advisory Network (DEAN) was established by SEA's Professional Development League in 2015 to make the experience and expertise of individuals who have been recognized for their excellence through receipt of the Presidential Rank of Distinguished Executive or Distinguished Senior Professional, available for the advancement of government effectiveness, efficiency and improvement. This cadre of individuals is referred to as the "DEAN's List."

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# INTRODUCTION

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The year prior to a Presidential election typically finds many “good government” organizations, think tanks, political operatives and others preparing recommendations for the new Administration. In the past, virtually all of the activity around, and planning for, Presidential transitions has been focused on recommendations for incoming political leadership – the policies and management reforms they will pursue, and the preparation essential for political appointees to get confirmed and be effective in their new positions.

Little activity, however, has addressed the critical role of Federal career executives during Presidential transitions, although this is beginning to change in view of the requirement for each agency to designate a career executive to manage transition within their organization.

This year, with an Administration that has served two terms, many currently in the SES (Senior Executive Service) corps have not experienced a Presidential transition at the SES level, although many may have experienced transitions with their agency and/or organizational unit’s political appointees.

What particular roles, duties, and challenges should SESs assume during the Presidential transition period? That question is particularly important for executives without a specific role in the agency’s transition process. Perhaps surprisingly, few resources addressing that question currently exist.

For that reason, the Senior Executives Association (SEA), through its Professional Development League (PDL), decided to draw upon the knowledge and experience of the members of its Distinguished Executives Advisory Network, the DEAN’s List, to provide advice and support to help career executives prepare for, navigate, and succeed in the upcoming transition. The DEAN’s List is comprised of accomplished career executives who have received the Presidential Rank of Distinguished Executive or Distinguished Senior Professional, presented for “sustained extraordinary accomplishment” and given to a maximum of only 1% of the career corps each year.

In support of DEAN’s List efforts, SEA is hosting, with List members, a **series of webinars** throughout the year to focus on:

- The role of the career SES and Senior Professionals in providing institutional memory and maintaining program leadership during the transition;
- Best practices for career executives in managing the transition process during the year leading up to – and during – a change in Administration; and
- The perspective and approach most likely to ensure the career/political team works well as early as possible in a new Administration.

The series is complemented by the production of this ***Handbook on Presidential Transition for Federal Career Executives***, providing written guidance, best practices, and lessons learned, as well as relevant resources.

SEA PDL will release updates to the Handbook throughout the year as additional insight is gained through the webinar series and member comments. Our aim is to start a dialogue between our members, career executives and senior leaders, and within the community on these eminent topics. Your comments and suggestions are welcomed and should be submitted to the SEA email address at [action@seniorexecs.org](mailto:action@seniorexecs.org).

# TRANSITION BASICS

## The Impact of Transition

- Over 4000 political appointee positions will turn over with a new Administration and virtually all civilian employees will be touched by the changes.
- Agencies were asked to update their list of political appointees and submit to the Office of Personnel Management by July 2016. A list of these positions and the type of appointment, e.g., PAS (Presidential Appointment with Senate Confirmation), PA (Presidential Appointment without Senate Confirmation), and SC (Schedule C Excepted Appointment) are published in the **Plum Book**.
- A large percentage of the incoming appointees will likely not have a background in government.
- The new Administration and political appointees will bring in their agendas and priorities for Federal agencies, some of which may continue the prior Administration's agendas and priorities, but many of which will likely be new.

## Key Provisions of the New Presidential Transitions Improvement Act of 2015

The May 6 release of President Obama's executive order set into motion the next stage of transition planning – which some agencies had already begun – and provides the framework under which planning will be conducted. The executive order emphasizes the importance of career leadership during the transition, and makes mention of the potentially important role of the President's Management Council in fulfilling agency transition activities. It also green lights the White House Council to speak with outside individuals and organizations that have expertise in transition.

The key provisions of the new Presidential Transition Improvement Act of 2015 include:

- In May of a Presidential election year, the President must establish a **White House Transition Coordinating Council (WHTCC)**, and **Agency Transition Directors Council (ATDC)**.
- The General Services Administration (GSA) must appoint a Federal Transition Coordinator for managing across agencies and to co-chair the ATDC with the OMB Deputy Director for Management. **The Federal Transition Coordinator for the 2016-2017 Presidential Transition is GSA career Senior Executive Tim Horne.**
- The ATDC was created by the new law, and will include senior career executives from each CFO Act Agency, representatives from the Office of Personnel Management (OPM), the Office of Government Ethics (OGE), and the National Archives and Records Administration (NARA), as well as other agency leaders selected by the co-chairs.
- A member from each of the presidential transition teams will also be invited to attend both Council meetings.
- The WHTCC is responsible for:
  - *Providing guidance to agencies and the Federal Transition Coordinator regarding preparations for the Presidential transition, including succession planning and preparation of briefing materials*
  - *Facilitating communication and information sharing between the transition representatives of eligible candidates and senior employees in agencies and the Executive Office of the President*
- *Preparing and hosting interagency emergency preparedness and response exercises*
- The ATDC is responsible for:
  - *Creating an interagency strategy for transition preparation, including career succession planning.*
  - *Coordinating transition activities between the Executive Office of the President, agencies, and the transition team of eligible candidates and the President-elect and Vice-President-elect.*
  - *Drawing on guidance provided by the White House transition coordinating council and lessons learned from previous Presidential transitions in carrying out its duties.*

- *Providing guidance to agencies on the preparation of briefing materials for the incoming administration that must be prepared no later than November 1*
- *Ensuring agencies prepare career officials who are placed into acting leadership positions during the transition*
- Each agency must designate a senior career transition executive in May prior to the Presidential election.
- The Federal Transition Coordinator negotiates Memoranda of Understanding with each candidate by November 1 to ensure access to agency personnel, facilities and documents.
- The White House and GSA provide training resources for incoming political leadership orientation activities.
- If the election is contested, GSA is to provide services to candidates until election outcome is determined.

## The Phases of Transition - A Timeline

- **February 2016:** Primary season begins
- **May 2016:** Deadline for the President to establish White House Transition Coordinating Council and Agency Transition Directors Council
- *Deadline for GSA to designate the Federal Transition Coordinator (a career executive)*
- *Deadline for agencies to designate career SES transition coordinators*
- **July 2016:** Nominating conventions
- **July 2016:** Plum Book updates due to OPM
- **July – November:** Candidates' transition teams are created
- **August 1, 2016:** Eligible candidates offered transition services and facilities

*(It is possible that, as eligible candidates begin transition work, their staffs may reach out to agencies. It is important to note that agencies should not be engaging with eligible candidates or members of their agency review teams. Refer such requests to your agency transition coordinator, who will be receiving guidance regarding how to handle such requests)*

- **September 15, 2016:** Acting officers designated for vacant non-career positions
- **November 1, 2016:** Agency briefing materials finalized
- **November 8, 2016:** The Presidential election (first Tuesday after the first Monday in November)
- **November 9, 2016:** President-elect and Vice-President-elect offered support
- *Agency review teams ("transition teams") begin arriving at agencies*
- *Agencies will be notified, by the White House, of those authorized to enter agencies as part of transition teams*
- *Political appointment process begins*

- **November-January:** Transition teams of President-elect are at work at agencies, agency reviews conducted, budgets and priorities are defined, appointees are identified and vetted
- **January 20, 2017:** Inauguration Day
- *Onboarding of new political appointees begins*
- **January – May 2017:** New leadership moves into agencies, new initiatives begin to take shape, confirmation of appointees begins
- **May (First 100 Days) 2017 and Beyond:** Political appointees continue to move into place while career executives may remain in charge beyond the anticipated transition timeline, and major campaign proposals transform into legislative and executive action

#### **Resources:**

- Congressional Research Service: Presidential Transition Act: Provisions and Funding: <https://www.fas.org/sgp/crs/misc/RS22979.pdf>
- President Obama's May 6, 2016 Executive Order: <https://www.whitehouse.gov/the-press-office/2016/05/06/executive-order-facilitation-presidential-transition>
- Presidential Transitions Improvement Act of 2015: <https://www.congress.gov/bill/114th-congress/senate-bill/1172>
- Pre-Election Presidential Transition Act of 2010: <https://www.congress.gov/bill/111th-congress/senate-bill/3196>
- Presidential Transition Act of 1963: [http://www.gsa.gov/graphics/admin/Presidential\\_Act\\_of\\_1963.pdf](http://www.gsa.gov/graphics/admin/Presidential_Act_of_1963.pdf)
- Partnership for Public Service Transition Resources: <http://presidentialtransition.org/timeline/agency-review/2016-04-pre.php>
- Introduction to the Plum Book: <http://npat16.org/blog/5-getting-ready-for-2017-an-introduction-to-the-plum-book.html>
- Understanding Political Appointments: <http://www.npat16.org/blog/25-understanding-political-appointments-digging-deeper-into-the-numbers.html>

# THE ROLE OF CAREER FEDERAL EXECUTIVES IN THE TRANSITION PROCESS

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Career Senior Executives and Senior Professionals provide continuity in leadership and expertise during the transition from one Administration to another as changes in political appointees occur in the White House and in agencies. The cardinal role of the career Senior Executive is to serve every Administration to the very best of his or her ability without regard to personal political beliefs.

You, the career executive, are essential to the success of the political appointee(s) with whom you work. As an SES, you are the interface or link between policy and implementation. An effective working relationship between political appointees and career executives is key to carrying out new initiatives, reforms and improvements of existing programs, and ensuring increased attention to priority services.

During the transition period, you must continue to meet your responsibilities implementing the laws for which your organization or office is responsible, and to maintain the functions of your departments and agencies. Some career executives will be designated “acting” to serve in vacant political positions until new appointees are named and take office. If so named, you will have additional challenges as discussed in section 6 on “Acting in Political Positions”.

During the period of a Presidential transition, you have a number of specific tasks to prepare for a new Administration, including:

- Determine specific activities that need to continue during all phases of the transition period and assure they continue effectively without interruption
- Prepare for and support transition teams and incoming appointees immediately post-election and during the first 100 days and beyond
- Identify programs, projects, and policy decisions most likely to be affected by the departure of political appointees, arrival of new appointees, and policy changes associated with the winning candidate

- Establish a communications plan to improve flow of relevant information on transition process, leadership changes, potential priorities and upcoming changes
- Prepare the workforce for change and help to minimize stress. Maintain employee engagement to improve the transition process by allowing employees direct participation in the transition process while communicating often about the identity of future supervisors, the status of portfolios, and the incoming leadership’s commitment to agency mission
- Determine necessary knowledge to be transferred to new appointees, including knowledge they will need to make key decisions and lead programs effectively, and develop briefing materials and issue papers to support knowledge transfer
- Enable the new political leadership to be successful – collaborate with the appointees and agree upon decision-making protocols

During this period, even while preparing for new appointees, you must continue to serve incumbents, and take care not to marginalize outgoing political appointees. *Given the importance of transition activities and the time required to prepare, begin now to prepare for the transition if you have not already done so, as discussed in the following section.*

# BEGIN NOW TO PLAN FOR THE TRANSITION

## Key Areas of Focus

If you and your agency have already begun planning for the transition, great! It is never too early for you to begin to assess what needs to be done during all phases of the transition, and to develop a Transition work plan – to guide your transition activities from the early stages as the candidates narrow, all the way through the following year when political appointees come on board, and even beyond.

A Transition Governance structure will hopefully be established within your department or agency to manage the transition process, and to develop and properly resource the implementation of an overall Transition work plan. This work plan will include the selection of an Agency Transition Coordinator, the formation of a Transition Office, and the identification of Transition Leads for each of your agency organizational components to ensure optimal efficiency, effectiveness, and communication throughout the transition process.

Although your Agency Transition Coordinator will likely assign particular tasks to career executives within the agency or department, there are a number of key areas to focus on and consider in developing your own Transition work plan. Whether you are or are not part of an agency transition team, these are tasks which you can recommend for implementation agency-wide:

- Identify programs that may experience the most significant policy and personnel changes and determine how you and current staff can best support those changes
- Consider which personnel are likely to depart and which of their responsibilities need to be assumed by or assigned to new or current staff, and work with new appointees as they arrive, to make interim and permanent reassignments of responsibility as necessary
- Identify career officials able to assume the responsibilities of vacated positions, make sure the needed delegations are in place to enable them to do so and exercise needed authorities; and ensure they have the training and information needed to assume the

responsibilities. For additional information, see section 6 on “Acting in Political Positions,” including key provisions of The Vacancy Act

- Determine and work with relevant career staff to prepare for and deliver fast, effective onboarding of new appointees, including shepherding new appointees through the security clearance and human resources processes, and providing needed training about ethics, records management, security, and agency human resource practices once appointees are onboard to ensure their successful tenure
- Consider the needs of the workforce as employees anticipate change and determine how best to guide them through the transition process
- Put in place good communications processes to enable you to engage career leadership and the workforce continually as the transition takes place
- In preparation for the arrival of transition teams and the agency reviews likely to start immediately after the election, begin preparing materials to transfer appropriate knowledge to the incoming transition and leadership teams efficiently and successfully, identifying and assigning roles and responsibilities with career leadership and your leadership team
- Some current political appointees may leave over the course of the year, while others may stay through the transition if the President’s political party does not change. You will need to find the right balance continuing to work with the incumbent leadership while meeting the needs of transition teams and newly appointed leaders

## Questions to Consider

During transition planning efforts, there are some important questions to ask yourself:

- Is your agency working in an area that is highly politicized? Is it working in an area that was featured in campaign rhetoric? Are candidates promising “reform” that could positively or negatively impact your agency? Are candidates advocating new policies that could create new programs for your agency?
- *If the answer is “yes” to any of the questions, plan accordingly, readying relevant background information and options for new appointees.*
- Are you working on any initiatives that are likely to be especially appealing to the winning candidate?
- *Prepare materials explaining the initiative and options to consider for rolling it out.*
- Are any defunct agency initiatives eligible for revival based on candidate’s positions?
- *Think about how to present the history of these initiatives – good and bad – and how you can support the revival efforts once the new leadership is in place.*
- Are you working on any initiatives that are over or under budget, behind or ahead of schedule, or have failed to meet or have significantly exceeded organizational goals and/or expected value? Which programs don’t have much outside constituency support or overlap with other federal programs?
- *These will be initiatives that you’ll want to pay particular attention to – as the transition teams certainly will.*
- What needs to be continued to maintain operations for mission critical functions? What aspects of programs can be changed, tweaked or revamped?
- *Think about how to highlight and present your ideas in white papers and strategic initiatives in a way that will gain support and give the new administration the opportunity to realize their own agenda.*

- Are you prepared to present the agency budget and current services baseline to the transition team during the review process?

- *Per the 4/29/16 OMB Memorandum, the FY 2018 Budget will be submitted by the next President. Therefore, a budget database with current services baseline is to be developed but no budget request or Performance Plans will go to OMB in September and there will be no Director’s Review and no Passback in the fall. Rather, agencies are to proceed with internal review procedures to develop program-level current services estimates for submission to OMB in September. The bottom line: agencies will likely be operating on continuing resolutions at the time of the election and the inauguration.*

# DEVELOP BRIEFING MATERIALS FOR THE TRANSITION

## Agency 101 Briefing Book/ Online Repository

Begin early to outline an internal “Agency 101” briefing book, as well as briefing or “white” papers, to assist in the knowledge transfer process for transition teams and new political appointees. Although the delivery and consumption of these materials may change depending on the particular style of the incoming leadership, having this information in one place (including an online repository) to serve as a central reference for your agency or organization that can be updated as necessary is very important.

Key elements to consider for a briefing book (or, in some cases, for complementary verbal briefings) might include:

- The mission and basic organization of the agency (including specific laws, authorities and delegations affecting the work; strategic [long-term] and shorter term [annual and two-year priority] goals and objectives; and organizational chart)
- Historic trends and accomplishments for Key Performance Indicators (KPIs), arrayed concisely and coherently
- Lessons learned about strategies used to influence KPIs, with brief overview of what has worked well and what has not
- Agency assets (people, programs, budget/current services baseline)
- Major budget changes in the last few years, as well as an overview of funding sources
- Key Congressional committees and committee members, recently passed legislation, recently proposed legislation, and recent hearings
- Imminent policy decisions due to deadlines in law, regulations in the queue, court cases, and campaign promises; other key deadlines over the

next four years, with more detail for the first year, noting decisions that need to be made during the first month, the first 6 months, and the first year

- Imminent decisions and conditions that may affect agency operations and political climate
- Summaries of the agency’s major internal management, legal and infrastructure challenges, including issues identified by GAO as being high risk
- A directory of agency leadership, ideally with photos and a short resume for each leader, to help acquaint the transition teams and new leadership with the career leadership team
- Key stakeholders and areas of interest
- Opportunities to consider
- Security processes, evacuation plans, computer and IT information, current office floor plan

Begin the briefing book with a concise, complete and understandable Executive Summary that highlights the contents and provides a roadmap to additional information provided in the “briefing book” and complementary material available in a “transition repository.”

If possible, have your career and incumbent leadership team independently review your transition materials and references. Political incumbents likely have a great perspective in determining what material would be most helpful to the incoming leadership to help them hit the ground running.

The ATDC will be providing specific guidance to agencies on the content of briefing materials, so agencies should look for that guidance. The Center for Presidential Transition at the Partnership for Public Service may also be a helpful resource in preparing for the transition, as it has not only helped the ATDC shape its approach to preparing briefing materials based on best practices from previous transitions, but has also supported the candidate transition teams from both major political parties in their efforts to prepare for the transition into office.

## Be Ready to Present a Strategic Plan and Issue Papers

Political appointees typically arrive with an agenda and a desire to accomplish goals relatively quickly. Experienced executives have learned that this actually works in their favor, because it gets them focused and helps accelerate their activities. It also provides an opportunity to take advantage of the transition and contribute to developing an agenda that's realistic and achievable. Ways to contribute to this dialogue and facilitate the direction of the agenda are by:

- Presenting a long-term strategic plan (required by the Government Performance and Results Act and the GPRA Modernization Act of 2010), including options for long-term strategic goals and objectives and for two-year implementation-focused priority goals, ready for the new leadership to consider. This is required by law, so help new leadership take advantage of the requirement to decide, articulate, and communicate their priorities and agenda.
- Preparing "white papers" or "issue papers" on certain issues that you know will arise, papers that provide factual information and analysis, that review and recommend the initiatives which should continue and those which should not, and that recommend new solutions.
- Preparing brief "white papers" on opportunities the new leadership might want to consider to advance the new President's agenda, especially for opportunities that could show fast, significant progress on that agenda.

## Getting Ahead of the GAO

The Government Accountability Office (GAO) has a responsibility to brief transition teams, and the Comptroller General will be meeting with every department and agency head as soon as he or she is confirmed. Those briefings and meetings will rely on the key issues GAO has identified for each agency. Be aware of and describe how you are addressing the issues for your agency and options for future action in the briefing materials you provide the transition team and new political leadership, alerting them to the forthcoming GAO briefing.

# ACTING IN POLITICAL POSITIONS

## The Role of the Caretaker

Be well versed in the Federal Vacancies Reform Act of 1998 (see next section). Ensure the needed delegations are in place, and understand your limits when serving in an acting position, but don't freeze up or fail to act as needed. The caretaker is a balancing act – avoid “getting in front” of new political appointees before they are named, and if needed, confirmed, but continue to make decisions necessary for your agency to meet its mission.

Draw on both your internal and external support. Check in regarding decisions with those who remain in political leadership positions. Recognize that your actions will be subject to scrutiny by the next administration; however, meeting your responsibilities is essential.

When acting in political positions, your role is to keep the trains on the tracks, maintain key operations and a positive work environment, and ensure a positive handover to the new team. It is important to be bold, and lead and coach your people through this challenging transition, without overstepping your political support. At times, you will have to make some difficult decisions that cannot be delayed and that are necessary to maintain a viable operation. Be ready to reach out to internal and external groups, gain their support for those difficult decisions, document that support and the decision-making process, and be ready to defer to the new team.

Some may be in acting positions for months, and sometimes in excess of a year, into a new Administration. Those career executives, who are not part of the new political team, will have to ensure they reach out to get to know, and to engage with, the political leadership. A Distinguished Executive who acted for over a year advises the use of memoranda rather than phone calls, creating a record of the information provided to new appointees, especially when it relates to checking in regarding necessary decisions. “A phone call is fleeting, but, if you put it in writing, they'll ask questions if they don't understand.”

There is a challenge for those in acting positions, who are doing a good job and running something, which is going well. They have to be mentally prepared to step back when the time comes and hand the job over to the political appointee who will lead the organization make the policy decisions. “Acting roles are [short-lived]. Do the best you can, but remember that someone else will take that position.”

## The Vacancies Act

The Vacancies Act [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). The Act was substantially amended in 1998.

The 1998 Act revised the rules for temporarily filling vacant PAS positions. An office becomes “vacant” when the incumbent “dies, resigns, or is otherwise unable to perform the functions and duties of the office.” The 1998 amendments specifically provide that an agency head's general authority to delegate or reassign duties within the agency does not remain a viable, separate authority for filling a vacant PAS position on a temporary basis.

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

- First, the “first assistant” to the vacant office. The Act does not define this term, but legislative history generally refers to the top deputy to the position. The law also appears to permit creating a first assistant by regulation where there is no statutory first assistant.
- Second, an existing PAS (from the agency at issue or from any other agency) designated by the President (and only the President).
- Third, certain senior agency employees designated by the President (and only the President).

Specific time frames and other statutory considerations limit service for all three categories. There is

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

In most cases, these are the exclusive means for filling vacant PAS positions with a person designated as the "Acting" officer, although the Act also recognizes other limited means to fill PAS positions, such as recess appointments and other specific statutory authorities.

*Resources:*

- The Department of Justice's Office of Legal Counsel (OLC) has issued extensive guidance on the Vacancies Act:  
<https://www.justice.gov/olc>
- Guidance on Application of Federal Vacancies Reform Act of 1998:  
<https://www.justice.gov/sites/default/files/olc/opinions/1999/03/31/op-olc-v023-p0060.pdf>

# TRANSITION TEAMS

## The Agency Review Process

The transition agency review teams are charged with collecting information about the unique roles and responsibilities of each major department and agency of the federal government, and capturing not just critical policy issues and deadlines, but the positive initiatives at the agency, existing and potential cross-agency partnerships, and the people who are making a positive impact.

As agency review teams have a clear line of sight into key staff positions, potential personnel issues and leadership gaps within each agency, they can easily provide timely information that is relevant, useful and important to the new administration.

The agency review process is often an unstated way of onboarding incoming political appointees, and is generally broken into three phases:

**July or early August:** Transition Team agency review team leads should be identified and working with a handful of staff to prepare to enter the agencies post-election.

**August/September:** The various agency review teams should begin training transition staff to enter agencies and prepare information using publically available resources.

**Election – Inauguration:** The formal agency review process will begin immediately after the election and last through to the inauguration, when teams will develop their final deliverables and brief incoming agency leadership on their new jobs and organizations.

## Agency's Role

Agency review teams will reach out to agencies immediately after the election and aim to be seen as “working with” and not “doing to” agencies. In the past, agencies created work space for the new administration’s representatives to facilitate open communication between all parties during post-election transition.

Agency reviews require significant internal prepara-

tions from agencies (prior to the election) to guide agency review teams in working with agency transition liaisons and career employees to develop an overall understanding of the issues that the incoming administration will face.

Agency staff will provide information that will aid the agency review team in delivering an oral briefing to incoming agency heads and White House staff on the key functions of their agency or office, how various offices interact with one another, staff roles, pressing challenges and other “need to know” information. Briefing materials developed in advance will help facilitate this agency review process, the typically unstated way of onboarding incoming political appointees.

## Access to Information

The transition team’s function is to gather information about the agency and its mission so that the incoming political leadership team is postured for immediate effectiveness. Consequently, the team members will seek information from each Agency including organizational structure, staffing, program information, and policy issues. All Federal agencies are obligated to assist the teams in this task and facilitate the collection of information. If a request for information is perceived as bordering on pre-decisional or deliberative, the affected agency should direct the team member’s request to the agency’s lead career transition official.

Work with your agency’s legal office to determine what is releasable. A general “rule of thumb” regarding disclosure of information is to use the Freedom of Information Act (FOIA) as a baseline. If the requested information is available through a FOIA request, then it is releasable to members of the transition team.

Many of the members of a transition team may not have the requisite security clearance or have undergone the basic screening requirements of Homeland Security Presidential Directive (HSPD-12), the Presidential guidance that dictates proper access to federal facilities, systems and information. Without proper security clearances, transition teams should not be granted access to pre-decisional and deliberative information, or to trade secrets and confi-

dential commercial or financial information, e.g., contract bids and other business or financial information related to private individuals or companies, especially where such is designated as confidential, or to private personal information such as personnel records or medical records.

Pre-decisional information is that which is communicated for use before the adoption of an agency policy. Deliberative information is that which makes recommendations or expresses opinions on

legal or policy matters. Examples of pre-decisional deliberative information include, but are not limited to, budget recommendations, legislative proposals, and contemplated or proposed policies or courses of action which agency officials will use or rely on to effect a decision.

*Source:* Presidential Transition Frequently Asked Questions for Career Transition Executives, Office of Management and Budget and General Services Administration, September 17, 2008.  
<http://seniorexecs.org/images/PresidentialTransition-FAQsforCareerTransitionExecutives.pdf>

# HOW TO ENGAGE EFFECTIVELY AND SUPPORT NEW POLITICAL LEADERSHIP

“Every transition eventually becomes a transformation. It moves from initial distrust from the political appointee to (his or her) eventually saying, ‘Civil servants are great. Their contribution is invaluable and I didn’t realize it when I walked in.’”

(Reflections of Presidential Distinguished Rank Executives, Senior Executives Association, 2003, p. 15).

The challenge is to minimize the time it takes for that transformation to take place and for the career-political team to function well, enabling the Administration’s agenda to be met. A brief piece, “The Political Appointee’s Challenge” provides information and recommendations to appointees to enable them to successfully engage with career executives. Their interest in doing so – and their ability to do so successfully – will also depend on your approach to the relationship.

## Characteristics of New Appointees

Political appointees accept government service with varied backgrounds, goals, experiences, and expectations. As a result, appointees’ preparation, needs, and motivations also vary. Identifying these motivations and needs will assist you to establish a cooperative and meaningful relationship with political appointees.

Because of the lack of knowledge about one another, and because of preconceptions each may have about the other, the initial relationship between appointees and career executives is often an uneasy one.

New political appointees, particularly in an incoming administration, sometimes reflect backgrounds that may not have fully prepared them for their Federal assignments. They may have limited specialized expertise in the fields of the agency mission; little recognition of major issues and/or management concerns facing the programs and agencies they supervise; or limited managerial experience, perhaps stemming from a professional or academic background. Many

will be unlikely to understand the role of the White House, the Office of Management and Budget and policy councils in their areas of responsibility.

They are thrust into a large, complex organization faced with diverse and often conflicting issues, and many are in an environment totally different from any they have known. Unless they have prior state, local, or Federal political or executive experience, it is unlikely that they will arrive with an understanding of the sharp differences between successful management of government programs and successful management of private-sector enterprises. Even if they have prior state and local experience, they may not have worked in an organization faced with such large scope, large operational scale, and large problems (and, consequently, substantial opportunities).

The visible trappings of power initially mask the very real dispersion of power and the many countervailing forces that limit it. During the Reagan Administration, the Kennedy School of Government conducted interviews with over 100 political appointees. When asked what had surprised them most about their careers in Washington, they overwhelmingly noted the invasive presence of Congress. The new political appointee often does not realize that, because of limits established by the Constitution to contain power by balancing it not only across the branches of government but also with other levels of government, Federal service is characterized by the need for continual compromise and working together to build alliances, as well as by sets of values quite different for those coming from the private sector. Even those coming from state and local government, however, may be surprised by the level of media scrutiny, not just of every decision, but also of problems that arise.

The new appointee may, and usually is, faced with a backlog of decisions - many of them urgent, held over during the transition period while awaiting new political leadership - in difficult and complex areas such as staff resource allocation, budget, scale and scope of programs, regulations and guidance under development, legislative initiatives, pending awards, and other “hot potatoes.”

Appointees find themselves “in a government of strangers.” They are most likely just getting to know other appointees in the agency and to figure out the Cabinet member’s style and priorities as well as that of the senior political appointee to whom they report if it is not the Cabinet member. They inherit a ready-made staff about whom they know very little. Appointees may harbor reservations born of life-long exposure to detractors of the civil service, concerning the dedication, industry, intelligence, and ideological orientation of career managers and staff.

Appointees also frequently enter their new jobs with a conviction that things are done better in the private sector, and that the Federal government ought to be remade in the private sector image. An occasional appointee may harbor resentment of the treatment he/she, or clients, friends, or associates, received at the hands of the government.

Most appointees have a predetermined agenda - ideological, programmatic, and/or managerial - that they hope to translate into government policy and action. It is, after all, what their administration was elected for and the reason they sought their appointments.

## A Difference In Approach

In general, career executives and political appointees bring distinctive skills and competencies.

Careerists have a long-developed understanding of the government process, more functional and deep subject matter expertise, and a strong historical perspective. While career executives usually stress continuity, appointees come in with short-term goals, often requiring substantial agency changes. These differing time horizons and perspectives can be a source of contention and misunderstanding and must be reconciled in developing a relationship. One Distinguished Executive said, “If a political and a careerist were both told to get ice, we’d go get a glacier, slow moving and large. They’d go get a hail storm.”

The “quick strike” mentality of many appointees may necessitate careerists sometimes serving as the buffer during wild swings of policy ideas. Appointees may lurch from one crisis to another and, if a career ex-

ecutive simply transfers a request that stems from political overreaction, chaos may result. Another Distinguished Executive said, “My single biggest job is to act as a dam to keep it from getting further down the line.”

Recognizing these differences in background and approach, and accepting their reality rather than getting frustrated by them, should enable you to take appropriate steps to develop an effective relationship with the appointees with whom you work and to gain their trust.

## Guidelines for Career Executives

You will help appointees by gradually introducing them to agency staff and resources, and by serving as an “institutional memory.” Conversely, you also may help a new appointee by occasionally pointing out what the government does not allow, or by cautioning about making abrupt decisions without building consensus. **It is your responsibility to point out the possible ethical or legal problems that might arise during the course of changing a current practice or implementing a new procedure.**

This should not be an excuse to erect a roadblock to change, however. Thus, you also must identify alternative methods which are legal and ethical to enable the new appointee to accomplish his/her goals, to the extent possible.

The following guidelines should aid you in dispelling any initial mutual suspicions and speeding the adjustment to a new working relationship:

**1. Learn about the new appointees for whom and with whom you will work.** News releases and other published materials, along with Google searches and Congressional hearing information for appointees needing Senate confirmation, will inform you of their past experience and interests and may lead you to additional contact sources.

**2. Make an honest assessment of your own strengths and weaknesses.** A common area of interest or background can sometimes open the door to constructive dialogue. One executive noted, “Knowing yourself, where you can add value, is important because that is your ‘currency’ going into a meeting or project.” It is also important to

understand your own weaknesses, particularly in areas where the previous appointee was strong. Doing so may enable you to address that weakness, which will be particularly important should the new appointee have different strengths than the prior one and, consequently, have a need for a skill which you weren't required to demonstrate the last time around.

**3. Inform yourself of the policies and programs the new appointees are likely to promote.** Campaign platforms and literature, speeches and statements by the President-elect and Cabinet nominees, as well as published articles by political appointees are essential preparatory materials.

**4. Prepare programmatic, written briefing materials for the new appointees.** Whether handed to them or used by you in a meeting, these materials should contain the concise, lucid, and objective facts about your programs - their strengths and limitations - as well as a concluding list of the major program issues.

**5 Develop a list of program objectives in anticipation of a discussion with the new appointees.**

The list should:

- include substantive and important objectives most likely to be supported by the new political leadership;
- be long enough to cover the new appointees' range of interest, but short enough to be achievable during their term of office;
- present long-term objectives in a way that progress can be identified in the short term;
- include objectives for reducing programs if the new appointees have a mandate for doing so;
- avoid listing the objectives in order of your own priority - but be prepared to do so if asked.

To simplify the preparatory process for #3 and #4, build on what already exists, including your strategic plan, strategic reviews, and annual performance reports. If these documents do not align well with the program objectives you think you should present, fix that in the future to be certain political leaders and your team can use the goals and objectives in

your organization's plans and performance reports to focus the organization and drive progress on its objectives. Flag objectives and strategies established by the prior Administration to which the new appointee might want to give more attention. Consider including specific questions you hope the new appointee will answer. If you don't let them know what you want to know, the new appointee must assume the burden of figuring it out.

**6. Obtain a meeting with the new political appointees with whom you will work directly.** As reactions are given to your briefing materials and program objectives, listen carefully, be prepared to elaborate and to learn about new objectives and priorities, and offer to "try again" based on the explicit or implied direction you perceive.

**7. Develop relationships with an appointee's key advisors.** One executive said, "It's important because some Schedule C appointees act as 'Praetorian guards' to keep you from direct communication to the top. If you can get their advisors to reinforce what you're saying, they'll probably trust what you say."

**8. Learn about and adjust to the management style of the new appointees.** You will soon know whether one-on-one contacts or staff meetings are preferred. It is more important that your behavior encourages the development of some trust and confidence in the working relationship than that it reflect your own ideas of "good management." Don't be afraid to ask about the new appointees preferred management approach. Offer options to sort out, together, increasingly effective ways to manage progress on their priorities and for them to keep informed about lower priority organizational objectives required by law or important for other reasons, as well as risks. Do this not just when the appointee starts working, but also as their tenure and your relationship evolves.

**9. Prepare well for meetings.** Typically, the time of appointees is very precious and an ill-prepared briefing is an assault upon that time. You must walk a fine line between informing and over-informing. One Distinguished Executive advised, "We need to decide what is important for them to know and what we don't need to burden them with."

**10. Be patient, honest, and open - but also be cautious.** "Say it all," and explain it as fully as possible.

Understand that new appointees may not be aware that both career and political executives are under constraints unique to the Federal government, so that what you mean to convey simply as information, they may hear as criticism. Always explain the “whys” and “wherefores” when stating what is in the interest of the appointee, and state it in the context of a normal conversation rather than a lecture. Full disclosure is essential because, if an appointee is ever blindsided, he or she will never trust you again.

**11. Listen carefully, but don’t over-interpret the words.** New political executives may ask questions or try out opinions and positions that staff hear as a directive. Help new appointees appreciate this possibility so they can decide how to communicate in a way that effectively distinguishes directives from questions intended to gain information or comments intended to invite discussion. Also, work with staff to help them learn how to ask questions of the new appointee to determine if they are correctly interpreting the new appointee’s intent and, in situations where they are worried about the feasibility of a directive, to help the appointee understand the concerns.

**12. Provide options: Laying out all the options for a decision, including some that are anathema to the administration, is necessary.** Recognize that the appointee may appreciate you doing so, but can also misread it as indicating that you aren’t “on the team.” In responding to an appointee’s vague vision, however, one Distinguished Executive suggested, “When you go in and say, ‘It sounds like you’re going this way and here are three ways we can get it done,’ they love it.”

**13. Help the personnel you supervise adapt to and implement change.** Keep them informed of changes you know about, the reasons behind them, and the possible implications. Help them appreciate the situation from the appointee’s perspective. Don’t be an alarmist.

**14. Risk a little - but also protect yourself. Find ways to develop trust, but recognize that a satisfactory relationship cannot always be established.** The worst thing you can do is to assume that removal from your position can never happen. Ultimately, the responsibility of career executives is to carry out the policies and programs of the political leadership. If you find that you cannot do so, be prepared to move and consider if and how you can support the political executive in finding a better fit for his or her style.

*Resources:*

- Reflections of Presidential Distinguished Rank Executives: The Second Morning - Career-Political Relations:  
<https://seniorexecs.org/images/documents/morning-reflections/Morning%20of%20Reflections%201999%20Scan.pdf>

# ADDITIONAL QUICK TIPS

## FROM SEASONED EXECUTIVES

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Apart from the need to prepare a Transition work plan and necessary materials, seasoned executives stress that executives need to be prepared to:

- Be flexible and agile
- Anticipate, prepare for, prevent if possible and assume responsibility for reacting to crises in the absence of political leadership, figuring out as quickly as possible whom to update even as you make decisions
- Coach and mentor employees to help them understand how they, as the continuity in their organization, can enable a smooth transition
- Communicate early and often
- Don't cling to old ideas
- Accept confusion and uncertainty as the new team gets in place and develops its agenda and try to help your career staff and the new team operate through that
- Expect pushback until the new team develops trust in you
- Keep your focus on the mission, not the people or organizational problems
- Seize opportunities to influence the agenda with facts and ideas
- Build trust through displaying competence with integrity, honesty and facts
- Keep things moving: understand which decisions are critical and which aren't
- Take charge when you're in charge
- Be honest, and share bad news when necessary
- Figure out the style of your political leadership, what they want to do and how they want to do it
- Train political leadership, including Schedule C appointees, many of whom are young and eager and who can utilize coaching and mentoring
- Find another job if you're unable to work well with the new team

# PERSONNEL RULES APPLICABLE TO THE SENIOR EXECUTIVE SERVICE DURING TRANSITION

This section of the Handbook is intended to familiarize members of the Senior Executive Service (SES) with the personnel laws, rules, and policies applicable to SES personnel during a Presidential transition.

Material in this guide serves to summarize applicable human resources policies and guidance pertaining to the SES during the transition period.

Agencies generally have great discretion to utilize their Senior Executive resources as they see fit to meet organizational needs. Under existing law and personnel rules agencies have broad flexibility in assigning, reassigning or otherwise tasking career and non-career SES executives during and following Presidential transitions. However, career executives are afforded some rights and protections to guarantee they are not treated in an arbitrary and capricious manner during transition. In this regard, laws specifically limit reassignments and other types of personnel actions taken immediately following the inauguration of a new President, the appointment of a new agency head and/or of a new non-career supervisor with authority to take personnel actions affecting a career senior executive.

The protections afforded by the moratoria on involuntary reassignments, removals, and other actions, in effect, provide for a “get acquainted” period that provides an opportunity for career executives and political appointees to get to know one another and to ensure career executives are given an opportunity to demonstrate their competence to appointees in the beginning of new Administrations. In this regard, career executives as well as new political appointees are urged to honor the spirit of these policies which seek to maximize the potential of their new relationships in support of mission accomplishment.

**Specifically, there are several 120 calendar day moratoriums that may come into play with regard to career SES appointees during Presidential Transition:**

## Reassignment

**When the head of the department or agency (not a component agency, except within the Department of Defense - DoD) is new or when a new non-career immediate supervisor is appointed who has authority to conduct an initial appraisal of the career executive’s performance:** *no involuntary reassignments or performance-based removals of career SES may take place for 120-days (unless the performance based removal is based on a less than Fully Successful rating given before the appointment of the new agency head that triggered the moratorium). If a career SES is detailed, the first 60 days of the detail counts towards fulfilling the 120-day requirement (see discussion of details below). However, an executive can waive his/her rights under the 120-day reassignment moratorium requirements. (5 U.S.C. & 3395)*

## Performance Appraisal

**With the beginning of a new Presidential Administration:** *no performance appraisals and ratings may be given to career SES. (5 U.S.C. & 4314)*

## Performance-Based Removal

**When the head of the department or agency (not a component agency, except within the Department of Defense - DoD) is new or when a new non-career immediate supervisor is appointed who has authority to remove the career executive:** *no involuntary performance based removal action against a career SES may be taken (unless the performance based removal is based on a less than Fully Successful rating given before the appointment of the new non-career appointee that triggered the moratorium). (5 U.S.C. & 3592)*

As discussed below these moratoria do not necessarily operate independently of one another and may not apply in some limited circumstances. The following discussions provide further information on the application of the moratoria as well as other personnel rules applicable to career and non-career SES employees during Presidential transitions, including their

rights and responsibilities. This summary of applicable policies should not be relied upon solely as the basis for agency decisions. Agencies as well as SES employees should seek additional information and counsel applicable to specific circumstances.

## Reassignment and Transfer of Career Senior Executives

**General Rules on Reassignment:** As a general rule, a career SES employee may be reassigned to any SES position in the same agency for which he/she is qualified. However, the career senior executive must be given 15-days advance written notice of a reassignment within his or her commuting area and 60-days advance written notice if the reassignment is outside the executive's commuting area. The 15-day and 60-day advance notice requirements may be waived only when the SES employee consents in writing. Before the 60-day notice for geographic relocation is given, the agency must consult with the executive regarding the reasons for the reassignment and seek the executive's preferences. Following the consultation, the agency must provide the executive with a written determination on whether it will relocate the employee geographically, and, if so, its reasons. (5 U.S.C. & 3395)

**When and How the 120-day Reassignment Moratorium Applies:** During transition, however, a career SES may not be reassigned involuntarily within 120 days of the appointment of a new agency head or of a new non-career appointee (and the SES employee's immediate supervisor) who has authority to rate the career SES employee's performance. (5 U.S.C. & 3395) This 120-day moratorium, as alluded to above, promotes a "get acquainted" opportunity and prevents the reassignment of a career senior executive at the beginning of each new administration, without adequate knowledge of the abilities of the employee involved.

The term "agency head" refers to the head of an executive department (e.g., Treasury), a military agency within DoD (e.g., Army), or an independent government establishment (e.g., General Services Administration), and not the head of a component within an agency (e.g., the Internal Revenue Service within the Department of the Treasury). The term "non-career appointee" includes an SES non-career employee or limited appointee, a Schedule C employee, or an equivalent position. The term

"immediate supervisor" refers to the closest non-career employee in the career SES employee's supervisory chain who has the authority to make a decision. (5 CFR 317.901)

Importantly, the 120-day get acquainted period begins to run either when a new agency head is appointed or a new supervisor is appointed, whichever is earlier. The appointment of a new agency head always initiates a 120-day moratorium period agency wide. OPM has taken the position, however, that if the agency head is designated in an acting capacity, the agency has the discretion to determine whether the 120-day moratorium is in effect. OPM also holds that once the 120-day period has ended, an agency head may take action to reassign a Senior Executive even if, in the interim, a new non-career supervisory official has been appointed over the Senior Executive. (5 CFR 317.901)

**Waiver of the Moratorium Requirement:** The 120-day moratorium time period (as with the general 15 and 60-day notice periods) may be waived voluntarily, in writing, by the career senior executive. Also, the 15- and 60-day notice of involuntary reassignment may run concurrently with the 120-day notice period, but, if the 120-day moratorium has not expired at the end of the 15- or 60-day advance notice period, the reassignment cannot be effected until the moratorium has ended, even if the reassignment was proposed prior to the beginning of the 120-day moratorium (unless the employee has waived his or her right). (5 CFR 317.901)

Since reassignment may occur following the expiration of the moratorium, following is more specific information regarding the reassignment process.

**Flexibilities and Restrictions in Reassignments:** Questions often arise about specific jobs or positions to which a career executive can be assigned or reassigned, and the authority of the agency to do so. Generally speaking, an agency has the right to assign or reassign an SES employee to any position for which he or she is qualified and which is in the best interest of the agency. More specifically, career members of the SES are subject to reassignment within their cabinet department or independent agency for any legitimate management reason, so long as the real reason is not illegal. In this regard, assignments cannot be made for reasons which constitute:

- Illegal discrimination on the basis of age, race, sex, gender, religion or other reason prohibited by

federal laws.

- Retaliation against an employee for utilizing the agency appeals procedure or other government appeals procedure, or for cooperating in the conduct of an EEO or criminal investigation.
- Retaliation for whistleblowing activities where the whistle-blowing is done in good faith and constitutes allegations of violation of a law, rule or regulation, or of gross mismanagement, an excessive waste of funds, an abuse of authority, or a considerable and specific danger to public health or safety.
- A prohibited personnel practice under 5 USC 2302(b). A prohibited personnel practice means taking a personnel action (such as a detail, appointment, reassignment, performance appraisal, etc.) against an employee with the intent of retaliating for whistleblowing, discriminating on the basis of race or other prohibited purpose, or for partisan political reasons.

Some career SES employees become concerned because they are placed in positions which report to a non-career SES, Schedule C, GS-15 employee, or to a military officer of less than flag rank. However, so long as they are assigned to valid positions with substantial SES level duties, they are legitimate assignments. If, however, an assignment or reassignment is made to these positions for an illegal purpose (see above) they would be inappropriate and subject to challenge.

**Refusal of Geographic Reassignment:** If a career SES refuses geographic reassignment, and is eligible for discontinued service retirement, he or she may retire. (5 U.S.C. & 8336) Career SES are not eligible for discontinued service retirement, however, if, at the time of appointment, his or her position description, or other written agreement, provided for geographic mobility. SES employment in itself does not automatically establish a mobility agreement. Otherwise, when career executives refuse a directed reassignment (regardless of whether it involves geographic relocation) they can be removed from federal service. (5 CFR 752.603)

**Appealing Removals Based on Refusal to Accept Geographic Reassignment:** If the executive feels the agency did not have a legitimate management reason for the directed reassignment resulting in their removal and/or that their removal is based on illegal discrimination, retaliation or partisan political reasons (see above), he or she may be able to appeal to the Merit Systems Protection

Board (MSPB), Office of Special Counsel (OSC) or in some cases file a discrimination complaint under Equal Employment Opportunity Commission (EEOC) regulations) and seek to be restored to their original position.

**Transfer to Another Federal Agency:** A career senior executive may be transferred to another agency only if both he/she and the receiving agency consents. In other words, an agency may not transfer a career executive involuntarily to another agency. However, a career senior executive has the right to transfer with his/her position if there is a transfer of function between agencies. (5 CFR 317.902)

## Details of Senior Executives

**General Rules on Details:** A detail of an SES employee is a temporary movement of the employee from the employee's position of record to a different position or set of duties for a specified period, usually with the employee returning to his or her regular position at the end of the period. SES members can be detailed within the agency or to another agency. They can also be detailed to certain non-Federal organizations, to international organizations, and to foreign governments. Details do not affect an SES member's appointment, pay, or benefits. Details within agencies must be made in no more than 120 day increments. (5 CFR 317.903) The following restrictions apply to detailing members of the SES:

- Any SES appointee or non-SES employee can be detailed to a General SES position.
- Only career SES appointees and career-type non-SES employees can be detailed to a Career Reserved position.
- An SES non-career appointee cannot be detailed to a competitive service position outside the SES. (5 CFR 317.903)

**Flexibilities and Restrictions in Detailing Career SES:** Generally, career members of the SES may be detailed during the 120-day moratorium. The agency will inform the executive of the detail, including its reasons for the temporary change of assignment. Advance notice periods for reassignments do not apply to details. As concerns calculating the 120-day get acquainted period, any days, up to a total of 60, during which the career SES employee is serving on a detail or other temporary assignment apart from the employee's regular position, will not be counted in determining the number of days that elapsed since

the appointment of the agency head or the career SES employee's non-career supervisor. Any days beyond 60 will be counted. (5 CFR 317.901) For example, if the 120-day period begins on January 1 and the employee is detailed for the months of February, March, and April (i.e., 90 days), the 120-day period would stop running during the last month of the detail (April) and would resume again during the month of May until the 120-days requirement had been met.

## Reassignment, Transfer and Termination of Non-Career Employees

**General Rules on Reassignment of Non-Career SES:** The 120-day moratorium does not apply to employees in non-career and limited SES positions.

**Termination of Appointment:** SES non-career and limited SES appointees, unlike career appointees, have no tenure or due process rights in retaining their positions and essentially serve at the discretion of their appointing authority. Thus, in the event of a transition to an incoming Administration, limited and non-career SES employees may have their appointments terminated. (5 CFR 317.605)

**Rights of Former Career SES Who Serve in Presidential Appointments:** Former career SES employees who accept Presidential appointments are eligible for OPM placement assistance and to be reinstated in a career SES position at the conclusion of the Presidential appointment. (5 CFR 317.703)

## Performance Evaluations of Career Senior Executives

No performance appraisal or ratings may be issued during the 120-day period after the commencement of a new Presidential Administration. (5 U.S.C. & 4314) Some agencies, however, may require that each departing supervisor issue interim summary performance ratings of career SES members prior to leaving.

## Removal from the SES of Career and Non-Career SES Employees

**Moratorium on Performance-Based Removals of Career SES:** Non-probationary, career SES members may not be removed for performance rea-

sons during the 120-day moratorium period, except where removal is based on a less than Fully Successful performance rating issued prior to the appointment of a new agency head or a new non-career supervisor that triggered the 120-day moratorium. The moratorium applies to the following circumstances: when the head of the department or agency is new or when a new non-career immediate supervisor is appointed who has authority to remove the career executive. (5 U.S.C. & 3592)

Since removal may occur following the expiration of the moratorium, following is more specific information regarding performance-based removal and disciplinary actions.

**Due Process Rights in Performance-Based Removals of Career SES:** Proposed removal actions based on less than Fully Successful performance must provide a career, non-probationary SES with an advance 30-day notice stating the reasons for the action, an opportunity for the employee to respond to the agency's proposed action, the appointee's rights to fallback to a GS-15 position (as applicable), the agency's final decision, the effective date of the removal and the appointee's right to request an informal hearing at the MSPB. The informal MSPB hearing results in a non-binding determination by the Board that the agency is free to adopt or ignore. Where applicable, the agency will inform the career SES of his or her eligibility for retirement. (5 CFR 359.502)

*Rules differ for Senior Executives employed by the Department of Veterans Affairs (VA).* The Veterans Access, Choice, and Accountability Act of 2014 (P.L. 113-146) allows the VA Secretary to remove or demote VA SES employees for performance or misconduct at the Secretary's discretion. There is no requirement of notice or opportunity to respond pre-removal or demotion. The executive has right to appeal to MSPB within 7 days and an expedited review of the appeal by an MSPB Administrative Judge, who must issue a decision in 21 days or the decision is final. The executive has no right to appeal the MSPB AJ's decision to Board or federal court. This authority is currently the subject of a constitutional challenge at the United States Court of Appeals for the Federal Circuit (Helman v. Dept. of Veterans Affairs, Case No. 15-3086 (Fed. Cir. 2015)). In May 2016 Attorney General Lynch expressed to Congress that DOJ believes eliminating the Board members from the appeal process violates the Appointments Clause of the Constitution.

### **Disciplinary Actions Taken Against Career SES:**

Under adverse action procedures for the SES, career, non-probationary SES members can be removed or suspended for more than 14 days for misconduct, neglect of duty, or malfeasance. (5 U.S.C. & 7542) These actions can be taken without regard to the 120-day moratorium period.

### **Due Process Rights in Career SES Disciplinary Cases:**

Briefly, a career SES employee against whom such an adverse action is proposed is entitled to: a 30-day advance notice stating the reasons for the agency's action; an opportunity to review the material relied upon for the action and a reasonable amount of time to address the proposed action orally and/or in writing; review of the employee's oral and/or written reply by a higher level official with the authority to make a final decision; a final written decision providing the reasons for the agency's determination; and a right to appeal the decision to the MSPB. (5 CFR 752.604 and 605)

### **Performance-Based Removal of Probationary SES Employees:**

Importantly, the 120-day grace period does not act to extend the one-year probationary period required of each new career SES appointee. Thus, any performance based removal action contemplated against a probationary SES employee at or after the commencement of the moratorium may only be continued at the end of the 120 days. A formal performance rating is not needed to take removal action against an SES probationer. In removing the probationer based on unacceptable performance, the agency must provide the probationer with written notice prior to the effective date which states the agency's conclusions about the employee's performance inadequacies and indicate whether the employee has placement rights to a fallback GS-15 position. If the probationary period ends prior to the expiration of the moratorium, the removal can proceed but must be taken under regulations applicable to non-probationary employees. (5 CFR 359.402 - 406)

### **Disciplinary Actions Taken Against SES Probationers:**

Although disciplinary actions based on misconduct, neglect of duty and malfeasance against probationary SES employees are generally barred during the 120 moratorium period, formal actions initiated against a probationary employee prior to commencement of the moratorium period may proceed despite the moratorium. Also, the agency may proceed with removal of SES probationers (without regard to the moratorium) where there is reasonable cause to believe the probationer has

committed a criminal offense, where the retention of the employee may pose a threat to the appointee or others or result in loss or damage to government property or might jeopardize legitimate government interests. (5 CFR 359.406) In removing a probationer for misconduct, the agency must notify the employee prior to the effective date of the removal action, state its conclusions regarding the inadequacies or his or her conduct, and provide the effective date of the action. (5 CFR 359.403)

## **Pay Reduction of the Career SES**

Agencies may reduce the pay of career SES up to 10% for less than fully successful performance or serious disciplinary reasons (i.e., misconduct, malfeasance, neglect of duty). Pay cannot be reduced below the minimum pay level established for SES employees. Pay may be reduced (or increased) only once per year. (5 CFR 534.404) Prior to a reduction in pay, affected employees must be given:

- A 15-day advance written notice with the reason for the pay reduction;
- A reasonable period of time (not less than 7-days) to respond to the notice orally and/or in writing (and to provide documentary evidence);
- A right to be represented by legal or other counsel;
- A written determination by the agency as soon practicable after the employee's response with the agency's decision and reasons for any pay reduction; and
- An opportunity for the employee to request, within seven days of the decision, reconsideration by the head of the agency.

The agency head's decision is final and not subject to further review on the merits. (5 CFR 534.404)

An employee may attempt to seek redress outside the agency (e.g., to the Office of Special Counsel) claiming the action was taken on the basis of a prohibited personnel action (e.g., illegal discrimination, whistleblower retaliation, political affiliation, etc.) – although there is an expressed right to do so.

As a practical matter, *given the moratorium on formally rating career SES performance during the 120-day period following commencement of a new Presidential Administration, any pay reduction actions based on performance must be initiated prior to or following the moratorium period.* However, the 120-day moratorium during the start of a Presidential Administration does not impede the agency's ability to take pay reduction actions for disciplinary reasons.

# ADDITIONAL RESOURCES

In addition to the resources cited in each section, following are additional resources which you may find helpful.

## Senior Executives Association

- SEA Presidential Transition webinars:  
<https://seniorexecs.org/44-transition/691-webinar-series-strategies-and-best-practices-for-managing-the-transition-to-a-new-administration>
- The Political Appointee's Challenge: Minimize the time it takes for the career-political team to function well, enabling the Administration's agenda to be met:  
<https://seniorexecs.org/images/documents/PoliticalAppointeesChallenge2015.pdf>
- A Message to the 44th President:  
[https://seniorexecs.org/images/documents/Transition\\_Book.pdf](https://seniorexecs.org/images/documents/Transition_Book.pdf)
- The Senior Executive Service: A Management Primer for Political Appointees:  
<https://seniorexecs.org/images/documents/TheSES-AManagementPrimer2015.pdf>

## Partnership for Public Service

- PPS Transition Center website:  
<http://presidentialtransition.org/>

## IBM Center for the Business of Government

- Getting It Done: A Guide for Government Executives:  
<http://businessofgovernment.org/book/getting-it-done-guide-government-executives>
- The Best Transition in History:  
<http://www.businessofgovernment.org/blog/business-government/best-transition-history>
- The Guide: Helping the New Administration Succeed in Washington:  
<http://www.businessofgovernment.org/report/guide-helping-new-administration-succeed-washington>

## National Academy of Public Administration

- Transition 2016, Equipping the Government for Success in 2016 and Beyond:  
<http://www.napat16.org/>

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