



## **FRAGMENTATION OF THE SENIOR EXECUTIVE SERVICE**

Aside from the ongoing, general fragmentation of the larger corps of Federal executives and managers (See other fact sheet, “Chronology of Senior Executive and Equivalent Pay Systems,” first compiled by SEA in 1996 and updated on several occasions thereafter); and aside from the explosion of pay systems permitting *compensation* exceeding GS-15 (10) (See other fact sheet, “Fragmentation of the Senior Executive Corps --Positions Paid Above GS-15 (10), compiled by SEA and dated September 7, 2010), we find that even the original Senior Executive System itself has been split into a number of separate, mostly “look-alike” systems, in each case created by an Act of Congress, but with some differences:

1. **Senior Executive Service**: Original SES, created by Civil Service Reform Act. Authorized 1979, 5 USC 3132.
2. **FBI-DEA Senior Executive Service**: Authorized 1988, 5 USC 3151.

Comments: FBI and DEA were excluded from the definition of an “agency” in 5 USC 3132. When in 1988, the FBI-DEA SES was established by 5 USC 3151, virtually all aspects of the new service were specifically required to be the same as for the SES (including requirements for appointment, performance appraisal systems, and even sabbaticals, *except* (a) “an individual may not be selected for the FBI-DEA Senior Executive Service unless such individual is a career employee in the civil service,” and (b) regarding removals or suspensions, rather than appeals to MSPB, “any hearing or appeal to which a member of the FBI-DEA Senior Executive Service is entitled shall be held or decided pursuant to procedures established by regulations of the Attorney General ....” The FBI-DEA SES operates outside of OPM control and oversight.

3. **Defense Intelligence Senior Executive Service**: Authorized 1996, “1997 Defense Authorization Act,” PL 104-21, 110 STAT 2747

Comments: In 1981, the Defense Intelligence Agency was specifically given separate hiring authority, 10 USC 1601 et seq., under which the Secretary of DOD was authorized to create the Defense Intelligence Senior Executive Service (DISES) for DIA senior executives, but specifically as part of the excepted service. At this time, other DOD components had their own, separate systems for classifying their senior executives; For example, NSA had its “Senior Cryptological Executive Service.” However, 10 USC 1601 was amended by the Defense Authorization Act of 1996, under which senior executives at DIA, NSA, and the Defense Mapping Agency (now known as NGA), as well as intelligence senior executives at the major DOD components (Army, Navy, Air Force) were for the first time combined into a single organization, still known as the Defense Intelligence Senior Executive Service (DISES). Since it was created under Title 10 rather than Title 5, it is not responsible to and does not report to OPM. Sec. 1606 of PL 104-201 directed the Secretary of DOD to “prescribe regulations for the Defense Intelligence SES which are consistent with the requirements set forth in [a number of enumerated provisions of Title 5]”, as well as, “to the extent that the Secretary determines it practicable ... other provisions of title 5” that apply to members of the (regular) SES. Appeals from reductions in force are to be determined solely within DOD, as are appeals from terminations for other reasons {“if the Secretary considers that action to be in the interests of the United States; and, if the Secretary determines that other

procedures “cannot be invoked in a manner consistent with the national security.” (Sec. 1609). The statute specifically makes Presidential Rank Awards available to members of DISES.

4. **Senior National Intelligence Service (SNIS):** Authorized by, *inter alia*, the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). This Act established the Director of National Intelligence (DNI) as the hub of the intelligence activities of the 17 members of the “IC” (Intelligence Community). These members include Federal intelligence executives in FBI and DEA, as well as in DISES (e.g. executives in NGA, NSA, and DIA, and elsewhere in DOD), and some other agencies and departments. Somewhat confusingly, the above-listed 6 IC organizations continued to have their separate SES systems, as described in paragraphs 2 and 3 above. The only SES that we are confident are specifically classified as members of SNIS are those in the Office of the Director of National Intelligence, but we also think those senior executives in the CIA. Much of the information about their personnel system remains unpublished, probably classified. However, there exists an unclassified document, “Intelligence Community Directive Number 656,” which makes it clear that all entities that are part of the IC need to comply with this Directive, but those that have intelligence employees covered by Title 5 (State, Treasury, Defense Justice, Energy, and Homeland Security are enumerated) must also comply with the requirements of that title. The 14-page Directive Number 656 requires, for IC senior executives, such Title 5 features as competencies, interim evaluations, midterm reviews, performance elements and evaluations, 360 degree feedback, linkage between performance evaluations and promotion opportunities and compensation and bonuses, and even Performance Review Boards (PRBs.). The performance system must have at least 4 levels; a 5<sup>th</sup>, minimally satisfactory, is optional. There needs to be alignment of performance objectives with “strategic goals and objectives of the National Intelligence Strategy.” Finally, the Directive requires, “to the extent applicable, adherence to and compliance with 5 USC 5307(d) and 5382, and CFR 534.404 with respect to certification and pay, as a matter of policy.” Since these IC organizations do not report to OPM, it is likely they self-certify, in accordance with OPM standards. It is our recollection that at least one senior executive at ODNI has received a Presidential Rank Award, though we have been unable to find mention of that in Directive 656 or IRTPA.

5. **Federal Aviation Authority Executives:** Authorized 1996, DOT Appropriations Act. At the time of the Civil Service Reform Act of 1979, FAA senior executives became members of the traditional SES. However, the DOT Appropriations Act of 1996 directed FAA to develop and implement a new, more flexible personnel system, one expressly exempted from Title 5. Subsequently, FAA created its Executive Compensation Plan, which encompassed EVs 1-3. Terms of that system have evolved slowly, over a number of years. Former SES became links between the highest level of management, known as “Officers,” and the operating staff. Senior Executives at FAA now have their own pay-for-performance system, with their own incentives and compensation plans, and among other things, are not eligible for Presidential Rank Awards. The FAA senior executive system for the most part operates outside the authority of OPM.

6. **Transportation Security Executive Service:** TSA was first authorized by ATSA in 2001 as part of DOT. 49 USC sec. 114. In 2003, along with other agencies, it was transferred to DHS. ATSA applied the personnel management system of FAA to TSA employees, but TSA was authorized it to make any modifications it considered necessary. With certain exceptions, TSA and its system fall outside the authority of OPM, and it has greater flexibility than most Title 5 agencies in managing its SES. It has only two types of SES appointments: career appointments with OPM-approved ECQs, and limited term appointments (unlike with Title 5 agencies, no limitation on numbers.) Maximum rate of pay is EL II. TSA certifies its own pay system, not OPM. By agreement, career SES appointees at TSA can apply for SES positions at other agencies without undergoing the merit staffing process.