



Strategies and Best Practices for Career Executives: Managing the Transition to a New Administration



“SES Personnel Rules During Presidential Transition”

October 26, 2016

Fifth in a Webinar Series with the Support of The Distinguished Executives Advisory Network –
“The DEAN’s List”



Panelists

Tim Dirks, former Director of Human Resources Management, Department of Energy, and former Director of Agency and Member Liaison, Senior Executives Association

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Moderator

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Transition Webinars Series Schedule

- **Webinar 1 - May 18, 2016** - What to expect during the year, the role of the SES in the transition, and what executives can and should begin to do right now to prepare themselves and their agencies for the transition. *Recording and slides available on SEA's website.*
- **Webinar 2 - July 21, 2016** - What agencies are required to do – and are doing now – to prepare for transition. *Recording and slides available on SEA's website.*
- **Webinar 3 – September 21, 2016** - What the White House Transition Coordinating Council and the Agency Transition Directors Council have been up to. *Recording and slides available on SEA's website.*
- **Webinar 4 - October 5, 2016** - What to expect from transition teams and the next Administration, and determining and integrating information relevant to candidates' policies and commitments. *Recording and slides available on SEA's website.*
- **Webinar 5 - October 26, 2016** - The SES personnel rules which are of particular concern during the transition, including the 4 different 120 day “get acquainted” periods and those which apply to reassignment or transfer, as well as removal. Given the importance of the f.y.16 performance appraisal, the Performance Reviews Board process will also be reviewed.
- **Webinar 6 - December 7, 2016** - How to engage effectively and support new political leadership after arrival.



Transition Resources on SEA's Website

- Recordings and Slides from the First Two Webinars on Transition for Federal Career Executives.
- A List of Key References and Resources for the Presidential Transition
- **SEA's Presidential Transition Handbook version 2.0, which covers:**
 - Transition Basics
 - The Role of Career Federal Executives in the Transition Process
 - Begin Now to Plan for the Transition
 - Develop Briefing Materials for the Transition
 - Acting in Political Positions
 - Transition Teams
 - How to Engage Effectively and Support New Political Leadership
 - Additional Tips from Seasoned Executives
 - Personnel Rules Applicable to the Senior Executive Service During Transition



120 Day Rule: The “Get Acquainted” Period

- Provides an opportunity for the career executive and political appointee to get to know one another
- There are four 120 calendar day moratoriums:
 - With the beginning of a new Administration: no performance appraisals and ratings 5 USC 4314(b)(1)(C)
 - When the head of the department (not a component agency, except DoD) is new: no involuntary reassignments or removals. If you are detailed, the first 60 days of the detail do not count toward the 120 days. (An executive can waive his or her right, however.)
 - When a new non-career appraising official is appointed: no involuntary reassignments. (An executive can waive his or her right, however.)
 - When a new non-career immediate supervisor is appointed who has authority to remove the career executive: no removal.



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). 5 USC 3395(e) and 3592(b)



Reassignment (cont.)

- If a career SES is detailed, the first 60 days of the detail do not count 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(b)(1)(C))



Performance Appraisal (cont.)

- 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 an Unsatisfactory rating given before the appointment of the new non-career appointee that triggered the moratorium). (5 U.S.C. 3592)



Common Questions

- Do the dates run concurrently or in sequence?
 - OPM Guidance
 - Internal Department/Agency Policies
 - Check with your HR office
- Recourse if the “Get Acquainted” period is not observed
 - To waive or not to waive?



120 Day Scenario 1

- The Secretary of the Department of Commerce has been on the job for 5 days. Bill, a career Senior Executive, has a boss who is a Presidential Appointee Senate Approved (PAS) and has been on the job for 6 months. He wants to reassign Bill to a different job within the Department and his local commuting area. Bill doesn't want to be reassigned as he likes his current position.

Can the reassignment be made effective immediately?



Answer

No. The Secretary of the Department of Commerce has to be in place for at least 120 days before Bill can be involuntarily reassigned. It doesn't matter that his immediate supervisor has been supervising him for 6 months.



Scenario 2

The Secretary of the Department of Energy has been on the job for more than 120 days. Jane's supervisor is a PAS and was confirmed 2 weeks ago. He wants to reassign Jane to another job. She does not want to go to the new position as she believes she can be effective working with her new supervisor.

Can the reassignment be made effective immediately?



Answer

No, she cannot be reassigned.

Although the Secretary has been in the position for more than 120 days, the new immediate political supervisor has not been.



Your Agency Has the Right to Reassign You

- Transfers can involve geographic relocation
- If you refuse, and are eligible for discontinued service retirement, you may retire. Otherwise, you are subject to removal from the Federal service. Note: You are not eligible for DSR, however, if, at the time of appointment, your position description, or other written agreement or understanding, provided for geographic mobility. (SES employment in itself does not automatically establish a mobility agreement.)
- 15 days written notice for non-geographic reassignment. 60 days for relocation. Before the notice for relocation is given, the agency must consult with the executive.



Performance Appraisal

- Performance plans must be developed in consultation with you. *On or before the beginning of an appraisal period*, your immediate supervisor must communicate the plan to you, which must describe:
 1. The critical elements of your work and any other relevant performance elements. Elements must reflect individual and organizational performance with a focus on results.
 2. The requirements for fully successful performance. (OPM uniform system provides numerical and descriptive definitions of rating levels.)



Performance Appraisal (cont.)

- Your supervisor must conduct at least one progress review with you during the appraisal period, providing feedback on your progress in meeting the performance plan, and advice re: how to improve your performance. The review may be informal and may also be used to modify performance elements or requirements in the initial plan.
- You must be given a rating annually. (You may request a higher level review and submit a response before your appraisal goes to the Performance Review Board.)
- The appraisal period must cover at least 90 days
- Your supervisor must review your evaluation with you



Performance Review Boards

- Every agency must have one or more
- PRB's make written recommendations to the appointing authority on the performance of executives, including on ratings and bonuses.



Performance Review Boards (cont.)

- **Members:**
 - Are appointed by the agency head or another official or group acting on the agency head's behalf (such as the ERB)
 - Can be career or non-career appointees, retirees or even academics, but should be knowledgeable about SES and equivalent positions. It is recommended that they occupy an SES or equivalent position
 - More than ½ of the members must be SES career appointees – from another agency, if necessary – when appraising career SES or recommending their performance awards
 - Their names must be published in the Federal Register



Performance Review Boards (cont.)

- You have the right to ask for a higher level review and to submit a response before your appraisal goes to the PRB. If you make a written response, whether or not you request a higher level review, your response must be considered by the PRB. Your response must be submitted under very tight deadlines (often 5 days) and there is no further appeal
- After the PRB makes its recommendations, the appointing authority assigns a “summary rating” for the appraisal year. (Note: There is no right to feedback from the PRB with regard to the Board’s recommendation on your rating.)
- An executive removed for less than fully successful performance can
 - If he or she believes a prohibited personnel practice has been committed, appeal to the Office of Special Counsel and/or file an EEO complaint
 - Request an “informal hearing” before the Merit Systems Protection Board, but such a review can only result in a non-binding recommendation to the agency. 5 USC 3592(a)(2)



Other Rules

- Fallback rights to GS-15 (w/ saved SES pay) if removed during probationary period. (Ultimate placement may differ for a Senior Executive who was not hired from the competitive service. Fallback is to a permanent job, i.e., one expected to continue for 90 days.) 5 USC 3594(a) and (c)
- Removal for misconduct, neglect of duty, or malfeasance: no fallback rights but MSPB appeal rights. May also be suspended for these reasons, with same appeal rights, but must be for more than 14 days.
5 USC 3594(b) and 5 USC 7542
- If your position is abolished, your agency must place you in another SES position. You cannot be removed from the SES without a RIF. 5 USC 3595(b)



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