

OPM
SENIOR EXECUTIVE
SERVICE
DESK GUIDE

2009

Preface

This desk guide is a reference tool for senior executives and agency executive resources managers and staff, who have the responsibility of managing and developing their senior executives. The desk guide provides guidance on statutory and regulatory provisions that encompass the Senior Executive Service, as well as the senior leaders, scientific and professional personnel.

This desk guide is to be used as a ready-reference for agency executive resources personnel and is not a policy-making guide. It is a document intended to accommodate regulatory updates and policy changes regarding the SES, and will be updated as they occur. Should you have any questions about the material in the desk guide, please contact the Center for Learning, Executive Resources, and Policy Analysis at the address below.

Where the terms “must” or “shall/will” or “should/would” are used, the provisions reflect statutory or regulatory requirements or interpretations, or they are processing instructions.

Send SES policy-related questions, correspondence, and requests to the Center for Learning, Executive Resources, and Policy Analysis at following address, unless otherwise indicated in the desk guide:

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INTERIM ALLOCATION ADJUSTMENTS

After OPM issues the biennial allocation, 5 U.S.C. 3133(d) authorizes OPM to adjust an agency's allocation up or down at any time during the biennial cycle. This may be done based upon an agency's written request or at OPM's initiative. By law, upward adjustments Government-wide may not exceed 5 percent of the total number of SES positions initially authorized for the fiscal year. Downward adjustments may become necessary for such reasons as unanticipated changes in budgets or programs, or a reduction-in-force affecting SES members.

OPM may grant a temporary space to support an agency sending an executive or senior professional on a short term assignment, e.g., an interagency detail, during which the individual will occupy an agency space even though he or she is not available for agency work. The temporary space "compensates" an agency for the fact that the executive continues to encumber an agency space while on detail. Examples of short term assignments include certain intra-agency details, IPA assignments, short term transfers that involve a reemployment right (e.g., to an international organization), and short term reassignments, if the position to which the individual would be reassigned cannot be established within the agency's current allocation. Requests for a temporary space should be submitted to OPM's Executive Resources Services Group.

SES CAREER RESERVED MINIMUM

5 U.S.C. 3133(e)(1) required OPM to establish a minimum number of SES Career Reserved positions that must be maintained Governmentwide at all times. OPM may revise this number from time to time, but may not set it lower than the number of positions placed in the SES in July 1979 that were authorized to be filled through competitive civil service examination as of October 12, 1978 (the day before enactment of CSRA), i.e., 3571, except as provided in statute.

To ensure the Governmentwide figure is maintained, OPM establishes a minimum number ("floor") of Career Reserved positions for each agency. An agency must maintain a number of established CR positions that equals or exceeds its CR floor at all times. For this purpose, an established CR position counts whether it is vacant or filled. An agency may cancel CR positions and establish new ones without OPM approval, as long as the agency's numerical floor is maintained. However, changes in the designation of an established position (e.g., from career reserved to general) require prior approval from OPM. [5 CFR 214.403] See *Changing Position Designations*, under *SES Position Designations and Appointment Authorities*, later in this chapter. Changes in the floor must also be approved by OPM [5 CFR 214.402(e)].

NON-SES ALLOCATIONS

The biennial SES allocation cycle is also used to allocate the SL and ST spaces.

ESTABLISHING SES POSITIONS

STATUTE: 5 U.S.C. 3132(a)(2)

REGULATIONS: 5 CFR 214.202

Each agency determines, within the allocation authorized by OPM, which of its positions will be in the SES. These positions must meet both the SES functional and grade level criteria prescribed in 5 U.S.C. 3132(a)(2) and must be within the allocation authorized by OPM. The agency does not need a new allocation from OPM as long as there is an existing space. A position must be formally cancelled (either permanently or temporarily) when a space allocation is withdrawn from the position for use elsewhere. [See *Allocating Spaces* earlier in this chapter.]

SES CRITERIA

Grade level criteria: The position must be classifiable above GS- 15 or equivalent, based on the level of duties, responsibilities, and qualifications required by the job.

Functional criteria: A position meets the SES functional criteria if its incumbent engages in any of the following activities:

- directs the work of an organizational unit;
- is held accountable for the success of one or more specific programs or projects;
- monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;
- supervises the work of employees (other than personal assistants); or
- otherwise exercises important policy-making, policy-determining, or other executive functions.

APPLYING THE SES CRITERIA

The SES is intended to be a corps of executives, not technical experts. As stated in 5 U.S.C. 3131, “It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality.” The following guidelines interpret the section 3132(a)(2) criteria in the context of the SES as an executive corps.

Determining if a position meets the criteria for placement in the SES should not be a mechanical process. Rather, the agency needs to evaluate the position as a whole and determines if it functions as part of the management team, or as an independent advisor or technical expert. This evaluation should consider the position’s duties, responsibilities, and qualifications. In borderline cases, particular attention should be given to the position’s qualifications and the impact these qualifications have on the position’s duties and responsibilities. For example, a staff assistant position should be placed in the SES if executive qualifications are critical to successful performance of the position’s duties and responsibilities.

Directing the work of an organizational unit includes the responsibility to:

- assess policy, program, and project feasibility;
- determine program goals and develop implementation plans;
- design an organizational structure to promote effective work accomplishment; and
- set effectiveness, efficiency, productivity, and management/internal control standards.

At the SES level, *accountability for the success of a program or project* encompasses responsibility for the full range of factors that affect program and project accomplishment. This includes:

- obtain the resources necessary to accomplish the program or project and assume responsibility for their effective use; and
- deal with key officials from within and/or outside the agency to gain understanding and support for the program or project.

Responsibility for *monitoring progress toward organizational goals and making appropriate adjustments to such goals* is an extension of an individual's responsibility for directing the work of an organization. It includes:

- monitoring work status through formal and informal means to evaluate progress toward objectives;
- assessing overall effectiveness, efficiency, and productivity of the organization; and
- identifying, diagnosing, and consulting on problem areas related to implementation and goal achievement and making decisions on alternative courses of action.

A position should be credited with *supervising the work of employees* only if it meets the minimum requirements for coverage under OPM's *General Schedule Supervisory Guide* (June 1998). Specifically, the position's supervisory and related managerial responsibilities must:

- require accomplishment of work through combined technical and administrative direction of others;
- constitute a major duty occupying at least 25 percent of the incumbent's time; and
- meet at least the lowest level of Factor 3 in the *General Schedule Supervisory Guide* based on supervision of non-contractor personnel.

A position with *policy-making or policy-determining functions* would be expected to include responsibility for:

- reviewing staff recommendations of policies developed to affect the organization's mission;
- considering political, social, economic, technical, and administrative factors with potential impact on the recommended policies; and
- approving the policies or formally recommending action to the approving official.

As long as a position satisfies both the grade level and functional criteria, it must be established in the SES.

ANALYZING POSITIONS

Before establishing a position in the SES, agencies should make a systematic and documented analysis of the position to determine that it meets both the functional and executive criteria for SES. The following analytical methods are suggested:

Comparison with existing SES positions: A key element in the analysis normally entails comparing the proposed position against one or more positions, within or outside the organization that satisfies both the functional and executive criteria for inclusion in the SES. The positions used should be comparable to the subject position in terms of function, role (e.g., compare managers to managers and staff advisers to staff advisers), and rationale for SES designation (e.g., don't compare positions where technical considerations are paramount with positions where size and complexity of the organization supervised are paramount). Agencies should analyze the similarities to and differences from the subject position in terms of factors such as:

- organizational characteristics, including the level in the agency where the position is located, and the size and complexity of the organization (including subordinate organizational units);
- functional and program responsibilities, including geographic scope (e.g., local, regional, national, or international), budget size, and impact on accomplishment of the agency's and organization's mission;
- degree and scope of executive, managerial, and/or supervisory authorities and responsibilities;
- level and purpose of contacts (Contacts should be essential for successful performance of the work, be a recurring requirement of the position, and have a demonstrable impact on the difficulty and responsibility of the position.); and
- nature of the staff, e.g., staff size (including staff in subordinate organizational units) and grade levels of individuals reporting directly to the position.

Comparison with classification standards and guides: This method can be used where a standard or guide provides valid comparison criteria.

Guides include the *General Schedule Supervisory Guide* and the *Research Grade Evaluation Guide*. Note that even if a position appears to exceed the level in a GS-15 classification standard, that in itself does not necessarily mean the position is classifiable above GS-15 and should be placed in the SES, since standards generally provide a minimum threshold for classification at a particular grade level. A comparison with existing SES positions may still be needed.

Documentation: To document the analysis, agencies should prepare a position description and an evaluation statement. These documents should be retained at least for the life of the position.

The **position description** should set forth the duties and responsibilities of the position in sufficient detail to support the evaluation statement, the qualifications standard, and the performance standards.

The **evaluation statement** should support the position's placement in the SES in terms of both the SES functional and grade level criteria. Evaluation statements will vary in length and detail; for example, the statement for a position that supervises a number of SES subordinates can be brief and straightforward. On the other hand, positions near the borderline in terms of function or grade level will require more critical and detailed analysis. The statement should avoid generalizations and be as specific as possible. Agencies should keep the following factors in mind when preparing the statement:

- If an existing position (e.g., GS-15) is being placed in the SES, the agency should identify specific growth factors (e.g., budget, programs).
- If a new position is being established, the source of the duties should be identified. If the position places an additional layer of supervision or management over other SES positions, or takes duties from other SES positions, the affected positions should be reviewed to determine if they still support the SES designation
- If the position is being established at a lower organizational level than where SES positions previously existed, the statement should explain why this is being done and what the effect is on other positions at that level (e.g., whether this is a precedent for other SES designations).
- If the position is being placed in the SES based primarily on the impact of the proposed incumbent, this should be indicated so that when the incumbent leaves, the position can be reviewed to determine whether it still supports an SES designation.

DISTINGUISHING BETWEEN SES, SL, AND ST POSITIONS

Positions that are classifiable above the GS-15 level, but do not meet the SES functional criteria, are placed in the ST system, in accordance with 5 U.S.C. 3104, or the SL system, depending on the nature of the work. [See Chapter 12 for additional information about the SL/ST systems].

Scientific and Professional Positions: Positions that are classifiable above the GS-15 level, but do not meet the SES functional criteria, are appropriately placed in the ST system if they involve performance of high-level research and development in the physical, biological, medical, or engineering sciences, or a closely-related field. ST positions are established under 5 U.S.C. 3104. All ST positions are in the competitive service.

Research and development positions are characterized by the following features:

- systematic investigation of theory, experimentation, or simulation of experiments;
- application of the scientific method, including problem exploration and definition, planning of the approach and sequence of steps, execution of experiments or studies, interpretations of findings, and documentation or reporting of findings; and
- exercise of creativity and critical judgment, variation in which may materially affect the nature of the end product.

Additional discussion of research and development functions is contained in Appendix 2 of the *Introduction to the Position Class Standards*.

The qualifications, stature, and contributions of an individual involved in research and development have a direct and major impact on the level of difficulty and responsibility for the work performed. The ST incumbents would be expected to possess a graduate degree, significant research experience, and a national or international reputation in their field. Typically, the incumbent of an ST position:

- has authored fundamental papers in the field of expertise that are widely used and cited;
- has received significant honors from major organizations for his/her accomplishments and contributions; and

- is sought as an advisor and consultant on scientific and technological problems that extend beyond his/her specialty.

Senior-Level Positions: The SL pay system was established under the Federal Employees Pay Comparability Act of 1990 (FEPCA) to replace grades GS-16, 17, and 18 of the General Schedule, which were abolished. Positions in the SL system are classified above GS-15, but do not meet the executive criteria characteristic of the SES, nor do they involve the fundamental research and development responsibilities that are characteristic of the ST pay system. However, the SL system is used for positions that meet the SES executive criteria in agencies that are excluded from the SES. The SL positions may be in either the competitive or excepted service.

CLASSIFICATION APPEALS

There is no classification appeal right to OPM for an employee who asserts the position he/she occupies should be in the SES. In 5 U.S.C. 5112, a classification appeal applies in determining if a position is in its appropriate class and grade. The SES is excluded from coverage by that section since the SES is gradeless and separate from the General Schedule.

OTHER FACTORS

In an agency identified in 5 U.S.C. 3132(a)(1) as covered by the Senior Executive Service (SES), positions that meet the criteria of 5 U.S.C. 3132(a)(2) are placed in the SES. Occasionally, laws will establish positions in the Executive Schedule but fail to specify an appointment authority for them. If the positions meet the functional and grade level criteria of 5 U.S.C. 3132(a)(2), they are placed in the SES and are subject to SES provisions, including the agency head's authority to determine the pay level. If a law establishes an Executive Schedule position in level IV or level V that performs SES functions but does not require appointment by the President with Senate confirmation, then the position meets the criteria of 5 U.S.C. 3132(a)(2). It therefore is placed in the SES even if the law identifies an appointing authority, e.g. the President or an agency head. Note also that positions listed in 5 U.S.C. 5315 (Executive Schedule Level IV) and 5316 (Executive Schedule Level V) that do not require Senate confirmation and meet the SES criteria are placed in the SES. Similarly, if a statute gives an agency an independent appointing authority that could otherwise be used for positions classified or paid above GS-15, the authority does not apply to positions meeting the criteria of 5 U.S.C. 3132(a)(2). (The examples above assume that the agency is subject to SES provisions and the law does not contain language that explicitly removes the position(s) from coverage by SES provisions.)

SES POSITION DESIGNATIONS AND APPOINTMENT AUTHORITIES

STATUTE: 5 U.S.C. 3132(b)

REGULATIONS: 5 CFR Part 214, Subpart D

Agency heads are authorized to establish SES positions within the numerical space authorizations and appointment authorities allocated by OPM and to set the qualifications standards for these positions.