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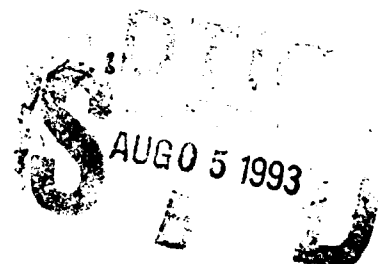
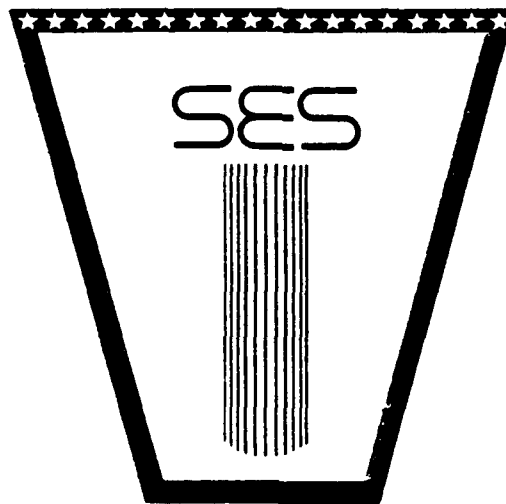
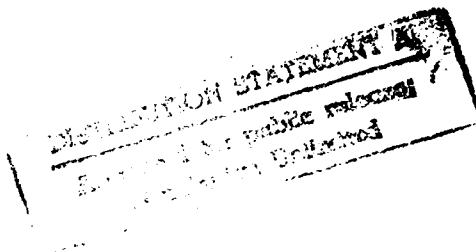
Director of Administration and Management
, Office of the Secretary of Defense
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DOD 1402.3-H

Chapter 7

2

SENIOR EXECUTIVE SERVICE Reinstatements



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Office of the Secretary of Defense, OSD Field Activities,
Organization of the Joint Chiefs of Staff, the U.S. Court of
Military Appeals, the U.S. Mission to NATO, and the Defense Agencies

MAY 1985

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SENIOR EXECUTIVE SERVICE
REINSTATEMENTS

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Senior Executive Service Handbook

Chapter 7



COMPTROLLER

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

DoD 1402.3-H
Chapter 7

(Administration)

FOREWORD

The Senior Executive Service Handbook is issued under the authority of DoD Directive 1402.3, "Administration of the Senior Executive Service Program in the Office of the Secretary of Defense and the Defense Agencies," August 16, 1984.

This chapter discusses the conditions under which former Senior Executive Service (SES) members may be reinstated. It also differentiates between actions taken at the agency's discretion and those mandated by law or regulation.

This chapter applies to the Office of the Secretary of Defense (OSD), DoD field activities, the Organization of the Joint Chiefs of Staff (OJCS), the Defense Agencies (except the National Security Agency/Central Security Service and the Defense Intelligence Agency), the Office of the Inspector General (OIG), the U.S. Court of Military Appeals (USCOMA), and the U.S. Mission to the North Atlantic Treaty Organization (NATO).

This chapter is effective immediately, and its use is mandatory.

Send recommended changes to this chapter through channels to the following:

SES and Classification Division
Directorate for Personnel and Security
Washington Headquarters Services
Room 3B347, The Pentagon
Washington, D.C. 20301-1155

Copies may be obtained from OSD Publications, Room 3B960, The Pentagon.

D. O. Cooke
Deputy Assistant Secretary of Defense

REFERENCES

- (a) DoD Directive 1442.2, "Personnel Actions Involving Civilian Attorneys," June 26, 1967
- (b) Title 5, United States Code, Section 3323
- (c) Title 5, United States Code, Sections 3593 and 3595
- (d) Federal Personnel Manual, Chapter 352

CHAPTER 7

REINSTATEMENTSA. GENERAL

1. Initial career appointments to the SES are made through a competitive process (see Chapter 2, Executive Staffing). Subject to certain restrictions, however, subsequent career appointments may be made noncompetitively.

2. As provided by DoD Directive 1442.2 (reference (a)), all requests for reinstatement of former career SES members to SES attorney positions in organizations covered by this chapter must be coordinated/approved by the DoD General Counsel/Director, Defense Legal Services Agency (DLSA) prior to submission to the Deputy Assistant Secretary of Defense Administration (DASD(A)).

B. DEFINITIONS

1. Reinstatement. The noncompetitive appointment as an SES career employee of an individual who was formerly employed as an SES career appointee.

2. Reinstatement Eligibility. An opportunity for noncompetitive appointment accorded to a former nonprobationary SES career appointee who was separated from that appointment for nonprejudicial reasons.

3. Reinstatement Right. Entitlement to a noncompetitive appointment granted to a former SES career appointee following separation either from a Presidential appointment or under a reduction in force.

4. Reemployment Right. Entitlement of a former SES career appointee to return to the SES after an assignment of a temporary nature with, for example, another Federal agency or a public international organization.

5. Reemployed Annuitant. An individual retired under the Civil Service Retirement Law who is reemployed as an SES appointee. A reemployed annuitant serves at the pleasure of the appointing authority.

6. Agency. Collectively, the Office of the Secretary Defense (OSD), DoD field activities, the Organization of the Joint Chiefs of Staff (OJCS), the Office of the Inspector General (OIG), the U.S. Mission to the North Atlantic Treaty Organization (NATO), the U.S. Court of Military Appeals (USCOMA), Defense Advanced Research Projects Agency (DARPA), Defense Audiovisual Agency (DAVA), Defense Security Assistance Agency (DSAA), Defense Legal Services Agency (DLSA), and the Defense Agencies.

7. Defense Agencies

- a. Defense Communications Agency (DCA)
- b. Defense Contract Audit Agency (DCAA)
- c. Defense Investigative Service (DIS)
- d. Defense Logistics Agency (DLA)
- e. Defense Mapping Agency (DMA)
- f. Defense Nuclear Agency (DNA)

7. Employing Organization

- a. Each of the six Defense Agencies.
- b. OSD (includes all other components listed under "Agency").

C. REINSTATEMENT (OPTIONAL)

1. Reinstatement to the SES is authorized by 5 U.S.C. 3323 and 3593 (references (b) and (c)). Except as described in Sections D, E and F, an agency is not obligated to reinstate a former SES career appointee.

2. A former SES career appointee is eligible for reinstatement if he or she meets the following two conditions:

a. The individual had completed an SES probationary period under his or her last SES career appointment (or was exempted from that requirement); and

b. The individual had been separated from that last appointment for reasons other than performance, misconduct, neglect of duty, malfeasance, or national security.

3. Application for reinstatement should be directed to the personnel office which services the employing organization having the vacancy.

4. A former appointee who is eligible for reinstatement may file and be considered under a vacancy announcement.

5. The individual must meet the qualifications requirement for the position to which reinstated.

6. The procedural requirements for reinstatement actions are discussed in Section D.2.b. of Chapter 2, Executive Staffing.

7. There is no time limit for a reinstatement under these provisions.

8. An individual reinstated under these provisions becomes an SES career appointee.

9. Failure to be reinstated is not appealable to the Merit Systems Protection Board (MSPB). Unless the individual is a current agency employee, failure to be reinstated is not a grievable action. Allegations of prohibited personnel practices shall be submitted to the Office of the Special Counsel, MSPB.

D. REINSTATEMENT AFTER A PRESIDENTIAL APPOINTMENT

1. A former SES career appointee who was appointed by the President to a civil service position outside the SES without a break in service and who left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance is guaranteed reinstatement to the SES (5 U.S.C. 3593 and 3595, reference (c)).

2. The individual's application for reinstatement shall be made to the Office of Personnel Management (OPM) within 90 days after his or her separation from the Presidential appointment.

3. The agency has 30 days to comply with a reinstatement order from OPM. The agency is responsible for assigning the individual to a position for which he or she meets the qualifications requirement. When appropriate, OPM may authorize an additional SES resource allocation to accompany the reinstatement order.

4. An individual reinstated under these provisions becomes an SES career appointee. An individual who was serving an SES probationary period at the time of the Presidential appointment is required to complete the probationary period upon reinstatement.

5. If the individual seeking reinstatement was not serving an SES probationary period at the time of the Presidential appointment, the agency may effect the reinstatement under the procedures discussed in either this section or Section C. If, however, the individual was serving a probationary period, the reinstatement must be effected under the provisions in Section D.

6. There is no provision for appeal to the MSPB with regard to the OPM reinstatement order or the agency's response to that order. Failure to be reinstated is not a grievable action. Allegations of prohibited personnel practices shall be submitted to the Office of the Special Counsel, MSPB.

E. REINSTATEMENT FOLLOWING A REDUCTION IN FORCE

1. The statutes governing reduction in force under the SES provide a reinstatement right to former SES career appointees who meet the following conditions (reference (c)):

- a. The individual was an SES career appointee on May 31, 1981.
- b. The individual was removed from the SES by a reduction-in-force action.

c. The individual had completed an SES probationary period or was exempted from that requirement.

d. The individual applies for the vacancy and the agency determines that the individual meets the qualifications requirement for the position.

2. The time limit for applying for reinstatement under these provisions is one year from the date on which the Secretary of Defense certifies to the OPM that the Department is unable to place the appointee in a vacant SES position and, as a result, the appointee is subject to removal by reduction in force.

3. The servicing personnel office shall be responsible for notifying individuals (entitled to reinstatement under these provisions) of such vacancies.

4. An individual who makes a timely application for reinstatement but is found not qualified for the position may appeal the agency determination to the MSPB. Allegations of prohibited personnel practices shall be submitted to the Office of the Special Counsel, MSPB.

F. REINSTATEMENT UNDER A REEMPLOYMENT AGREEMENT

1. In order to induce employees in the career service to accept special assignments of a temporary nature in other Federal agencies or public international organizations, FPM 352 (reference (d)) outlines provisions for reemployment rights. In addition to the rights which are mandated by statute, executive order, or regulation, the agency may, as circumstances warrant, grant such rights administratively. Reemployment rights may be granted to SES career appointees. Further information on the criteria for granting reemployment rights may be obtained from the servicing personnel office. The discussion in this section is limited to the exercise of such rights.

2. The SES career appointee will have been notified of his or her reemployment rights prior to acceptance of the assignment with the new organization. The appointee will also have been advised of the procedures and time limit for exercising those rights.

3. The agency is expected to meet the contractual obligations specified in the reemployment agreement. Thus, a former SES career appointee who makes a timely application for reemployment and who is not otherwise disqualified for appointment shall be reemployed. The employee shall be given an SES career appointment and assigned to any position in the SES for which he or she meets the qualifications requirement. However, the employee may elect to accept an appointment outside the SES.

4. Agency failure to honor reemployment rights granted by statute, executive order, or regulation (by denying the reemployment request, failing to act on the reemployment request in a timely manner, or appointing the employee to a position outside the SES without the employee's consent) is appealable to the MSPB.

5. Questions on effecting an appointment under a reemployment agreement may be addressed to the servicing personnel office or the Director of Personnel and Security, Washington Headquarters Services.

G. REEMPLOYED ANNUITANTS

1. An individual who is receiving an annuity under the Civil Service Retirement System based on his or her own Federal service may be appointed to the SES as a reemployed annuitant. The annuitant must meet all of the requirements associated with the type of SES appointment being made. However, regardless of the type of appointment, a reemployed annuitant serves at the pleasure of the appointing authority. The removal of a reemployed annuitant from the SES is effected under the procedures discussed in Section E of Chapter 9, Removals.

2. The foregoing OSD policy requires the employing organization to justify all such appointments. OSD considers it preferable to employ retirees at grade GS-15, step 10. Thus, the following steps must be taken before an SES appointment may be made:

a. The employing organization must document the reasons why another type appointment would not be appropriate.

b. The Director of the Defense Agency or the OSD Component Head must certify that an SES appointment would be in the best interests of the agency.

c. The proposed appointment must be approved by the DASD(A).

d. The annuitant must be advised that the appointment will be terminated within six months. The SF 50, Notification of Personnel Action, documenting the appointment must include a not-to-exceed date in the Nature of Action block.