

NONCAREER AND LIMITED SENIOR EXECUTIVE SERVICE EMPLOYMENT

1. Purpose

This directive establishes Department of Homeland Security (DHS) policy, procedures, and requirements for noncareer and limited Senior Executive Service (SES) employment, consistent with the requirements of subchapter VIII of chapter 33 of title 5 United States Code and Subpart F of 5 CFR Part 317.

2. Scope

- A. This directive applies to all DHS organizational elements.
- B. This directive applies to all DHS noncareer and limited SES appointments pursuant to 5 U.S.C. 3394.

3. Authorities

This directive is governed by numerous Public Laws and regulations, such as:

- A. Title 5, United States Code, subchapter VIII of chapter 33.
- B. 5 CFR Part 317, Subpart F.

4. Definitions

N/A

5. Responsibilities

- A. **The Secretary** (or delegated appointing authority) shall manage the DHS SES complement, has authority to carry out the functions specified in applicable statutes, will implement regulations of the Office of Personnel Management (OPM), and has such additional responsibilities as may be delegated, unless otherwise specified.

- B. **The White House Office of Presidential Personnel (PPO)** shall establish requirements for clearing proposed appointments to Non-career SES positions. DHS must obtain PPO clearance prior to filling any Non-career SES or to moving Non-career SES between positions.
- C. **The Department's White House Liaison** shall manage PPO clearance requests and respond to questions about PPO clearance.
- D. **The Under Secretary for Management** (through the DHS Chief Human Capital Officer) shall be responsible for all aspects of this directive.
- E. **The Chief Human Capital Officer (Chief HCO)** shall establish written procedures for making SES appointments in DHS in accordance with provisions of law and the regulations of OPM.
- F. **The Inspector General** shall manage the SES complement within the Office of Inspector General, as authorized by the Secretary, in accordance with applicable statutes, regulations, and this directive.
- G. **The Executive Resources Board (ERB)** is responsible for reviewing the executive qualifications of candidates for SES positions and for making written recommendations to the appointing authority.

6. Policy & Procedures

A. **Policy.**

1. **Non-career SES Appointments**

Non-career SES appointments are made without time limitation, but appointees serve "at the pleasure of" the appointing authority. Officers and employees, who serve "at the pleasure of" the President or other appointing authority may be asked to resign or be dismissed at any time. They are not covered by standard civil service removal procedures and have no right of appeal.

DHS may make noncareer SES appointments only to SES General positions without regard to competitive requirements and may also set the pay level of those appointees. However, the White House Office of Presidential Personnel and OPM must approve each noncareer SES appointment before the agency makes that appointment. This provision applies to initial appointments, reassignments, and transfers to another agency.

2. **Limited SES Appointments**

Limited SES appointments may be made only to SES General positions. An individual may not serve more than 36-months in any 48-month period on any

combination of limited appointments.

Approval must be obtained for limited appointment authorities from OPM on a case-by-case basis. However, for temporary appointment of a non-SES career or career-type employee to an SES position, OPM has authorized a “pool” of limited SES appointment authorities equal to 3 percent of DHS’s permanent SES allocation to use for this purpose.

To assist with transition operations, DHS may ask OPM to authorize a limited term appointment authority for an individual who has been nominated by the President, but whose appointment is pending Senate confirmation. Such individuals normally function in an advisory capacity until confirmed. A limited SES appointment of 1-year or less may be designated “provisional” when the intent is to convert the individual to a nontemporary appointment in the SES or to a Presidential appointment upon further action.

DHS may also request that OPM authorize limited SES appointments in certain cases to provide continuity in key positions for short time periods.

B. **Procedures.**

1. **Non-career SES:**

(a) **Statutory Limitation.** 5 U.S.C. Section 3134(d) limits the total number of SES positions that can be filled by noncareer SES appointment to no more than 25 percent of the DHS’s permanent SES allocation. Additional limitations may be imposed either administratively or by other statutes.

(b) **Qualification Requirements.** Noncareer SES appointees must meet the qualification requirements of the position to which appointed, as determined in writing by the appointing authority. The Secretary or his/her designee will serve as the appointing authority.

(c) **Reassignment.** The reassignment of a noncareer SES appointee must have the prior approval of OPM.

(d) **Termination.** DHS may terminate a noncareer SES appointment at any time with a 1-day notice. Noncareer SES appointees removed from the Federal service have no right of appeal to the Merit Systems Protection Board (MSPB).

2. **Limited SES:**

(a) **Types of Limited SES Appointment.** There are two types of limited SES appointments: limited term and limited emergency:

(1) Limited Term SES appointments of up to 36-months may be made to a position with project-type work that will expire at the end of a specified period, or to a position that special circumstances require be filled on a rotating basis.

(2) Limited Emergency SES appointments of up to 18-months may be made to meet a “bona fide, unanticipated, urgent need.”

(b) Chief HCO Approval. Any actions to fill limited term, emergency, or non-career SES positions must be reviewed and approved by the Chief HCO. This includes initial appointments, as well as changes in appointments. The Chief HCO will seek approval, as appropriate from PPO and/or OPM.

(c) OPM Authorization/Approval. The circumstances which require prior OPM authorization include:

(1) Limited emergency SES appointments or “project-type” limited term appointments for current career employees, when the agency has exhausted its delegated authority.

(2) Limited emergency SES appointments or “project-type” limited term appointments for individuals who are not current career employees.

(3) Limited term SES appointments for political appointees whose permanent noncareer SES or PAS appointments are pending White House or Congressional clearance.

If a case involves the limited appointment of an individual whose permanent noncareer SES or PAS appointment is pending, or where other political considerations warrant, OPM’s White House Liaison will ensure that the White House Office of Presidential Personnel concurs in the appointment.

Limited SES appointments which do not involve political considerations may be approved by OPM without White House endorsement.

(d) Qualification Requirements. Limited SES appointees must meet the qualification requirements of the position to which appointed, as determined in writing by the appointing authority. The Secretary or his/her designee will serve as the appointing authority.

(e) Reassignment. The reassignment of a limited SES appointee may be made without prior approval of OPM. However, the new position must meet the same criteria under which the original appointment was made.

(f) Termination. DHS may terminate a limited SES appointment at any time with a 1-day notice. Limited SES appointees who are removed from the Federal service have no right of appeal to the MSPB on termination of appointment. However, a career or career-type employee outside the SES who is given a limited SES appointment in the same agency has placement rights to his/her former position or to one of like status, tenure, and grade or pay.

3. Qualifications Standards. The Executive Resources Board (ERB) will establish a written qualifications' standard for each SES position within DHS. Qualifications standards may be established for individual positions or groups of positions. Standards should be set high enough so that those who meet the standards are "Well-Qualified" to perform the job.

In addition to any professional or technical qualification standards, all SES positions are subject to the mandatory Executive Core Qualifications (ECQs). ECQs can be accessed at www.opm.gov/ecq.

4. Appointment Authority. Noncareer and limited SES appointment authorities must request from OPM.

5. Case Review. DHS's White House Liaison will coordinate with OPM's White House Liaison and the White House Office of Presidential Personnel, on limited term appointments involving the temporary appointment of political appointees.

The transfer of a noncareer or limited SES appointee may be made only to a SES General position for which the individual is qualified. In a transfer-of-function between agencies, noncareer and limited SES appointees may be offered transfers at the discretion of DHS.

C. **Questions or Concerns Regarding the Process**. Questions or concerns regarding this directive should be addressed to the Office of the DHS Chief Human Capital Officer.