



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

**STATEMENT OF
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U.S. OFFICE OF PERSONNEL MANAGEMENT**

before the

**SUBCOMMITTEE ON FEDERAL WORKFORCE,
U.S. POSTAL SERVICE AND THE CENSUS
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES**

on

**“OVERSIGHT OF THE FEDERAL WORKFORCE: THE VIABILITY OF THE SENIOR
EXECUTIVE SERVICE”**

July 11, 2014

Chairman Farenthold, Ranking Member Lynch, and Members of the Subcommittee:

Thank you for inviting me to speak with you today about the Senior Executive Service (SES) and the U.S. Office of Personnel Management’s role in managing the SES. I very much appreciate your interest in ensuring we are jointly doing everything possible to enable and hold accountable an effective senior leadership corps.

We are presently in an extremely challenging period for the Federal Government. We are operating in a budget-constrained environment where Federal agencies are often asked to continue to perform the same workload – or, in some cases, an increased workload – with a lower level of resources. Consequently, Federal agencies need to ensure the optimal and appropriate management of resources – including our senior executive resources – to successfully meet increased and increasingly-complex mission requirements in the most effective and economical way. And we must always ensure we remain good stewards of taxpayer dollars so our citizens receive the best value for their money.

Members of the SES are also front and center in managing these challenges. SES members are responsible for providing leadership within agencies and across agencies as needed to meet the changing needs and priorities of the American people, and to provide consistency in leadership across administrations. SES members frequently have primary responsibility and visibility for

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directing the implementation of sizable programs that provide services to the public and that are highly publicized and scrutinized by stakeholders. SES members are directly accountable for individual and organizational performance. Their compensation is based upon their performance, and they are subject to removal from the SES for performance (as well as removal from Federal service for certain conduct and other situations, described below). SES members may be more readily assigned or reassigned to any position in the SES for which they are qualified, within any agency, and may also be transferred across agencies with the executive's consent.

Background

Congress established the SES, through the Civil Service Reform Act of 1978 (CSRA; P.L. 95-454, 92 Stat. 1111), to provide a Government-wide, mobile corps of managers within Federal agencies. The SES, comprised of mostly career appointees who are chosen through a merit staffing process, provides a strong interface between the politically-appointed heads of agencies and the career civil servants within those agencies. The SES constitutes a cadre of senior-level managers in the Government who provide effective management of agencies across administrations and oversee the implementation of Government programs to ensure continuous productivity and efficiency.

Consequently, the responsibilities for human capital management of the SES have been divided, by statute, between agencies and OPM, and this division reflects a balancing of the important needs of individual agencies and the entire Federal Government. On one hand, agencies strongly need direct control and flexibility, for example, with respect to pay-setting and making selections for appointments, to best address their mission and their agency-specific requirements, and their success depends on having appropriate autonomy to apply their expertise in determining the best way to perform their specialized operations. On the other hand, the Federal Government – and our entire Nation – has a strong interest in ensuring that agencies operate consistently, efficiently, and in accordance with merit system principles and applicable law, which is accomplished through centralized leadership, government-wide standards, and oversight, and for which OPM is responsible.

Agency Authorities

1. Recruitment and Hiring

By statute, agencies have authority to recruit, assess, and hire SES employees. Agencies make career SES appointments through a competitive merit staffing process that includes a number of requirements to ensure fair and open competition and selection based upon merit. Generally, an agency Executive Resources Board (ERB) directs recruitment for each career appointment to an agency SES position. Under the ERB's direction, an agency publishes a job announcement and rates and ranks eligible applicants. The ERB identifies and recommends the best qualified applicants to the appointing authority. The appointing authority makes the selection for each SES position. If the selectee has not been previously appointed to the SES, the agency must submit the executive qualifications of the candidate to OPM for review and certification by an OPM-

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administered Qualifications Review Board (QRB). Following QRB certification of the candidate's executive qualifications, the agency may appoint the candidate to the SES position.

By statute, agencies are authorized to fill an SES position by reassigning a career SES member within the agency who is qualified for the position to which he/she is being reassigned. By statute, agencies are further authorized to transfer an SES member from one agency to a position in another agency for which the appointee is qualified with the agreement of the executive and receiving agency.

Initial career appointees to the SES are required to serve a one-year probationary period, during which an appointee's supervisor may take action to remove the individual from the SES for unsatisfactory performance or other reasons. After the one-year probationary period, an SES career appointee may be removed from the SES by the agency for less than fully successful performance. SES members may also be removed from Federal service for a number of reasons.

2. Compensation

By statute, agencies have the authority to determine, in accordance with OPM criteria, initial pay for SES members and then determine subsequent compensation levels through salary adjustments and performance awards based upon individual performance.

The current pay system for SES members includes statutory changes, resulting from the Homeland Security Act of 2002 and the Fiscal Year 2004 National Defense Authorization Act, that strengthened the pay for performance system to provide stronger performance incentives to SES members, and also provided an incentive for agencies to make meaningful distinctions based upon relative performance in evaluating the performance of senior executives and other senior level staff. An agency may seek OPM certification that its SES performance appraisal system makes meaningful distinctions and also adheres to other sound performance management criteria, and such certification enables the agency to access higher rates of SES salary.

By statute, agencies are also responsible for paying performance awards to career SES appointees to encourage excellence in performance. SES performance awards range from a minimum of 5 percent of an individual's rate of basic pay to a maximum of 20 percent of basic pay. Currently, the Administration has placed administrative limitations on agencies' spending on awards, including imposing a spending cap that restricts each agency's annual spending on SES performance awards to no more than a total of 5 percent of its aggregate SES salaries (this cap was further reduced to 4.8 percent due to reductions in discretionary spending).

3. Performance Management

By statute, each agency is required to develop one or more performance appraisal systems for SES members, subject to OPM standards. Through the administration of these performance appraisal systems, and within basic standards provided by OPM, agencies are responsible for: establishing performance requirements; evaluating SES performance; providing performance

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appraisals to SES members; and determining performance awards for SES members. The appointing authority issues final performance ratings for SES members in the agency.

For probationary SES members, agencies have the authority to immediately remove individuals from the SES for poor performance after receiving written notice. A formal performance rating is not required, and the individual does not have an appeal right.

For non-probationary career SES members, agencies are required to reassign or transfer within the SES, or to remove from the SES, any senior executive who receives an unsatisfactory rating. Agencies are required by statute to remove from the SES any senior executive who receives two unsatisfactory ratings in any period of five consecutive years. Agencies are also required by statute to remove from the SES any senior executive who twice in any period of three consecutive years receives two less than fully successful ratings. The underlying statute requires an agency to notify a career appointee in writing before taking such action, and provide the appointee with an opportunity to request an informal hearing before the U.S. Merit Systems Protection Board (MSPB) (the hearing does not constitute an appeal and need not delay the removal). By OPM regulation, the required notice period is at least 30 calendar days before the effective date of the action.

4. Actions for Misconduct and other Issues

By statute, agencies can address misconduct; neglect of duty; malfeasance; failure to accept a directed reassignment; or failure to accompany a position in a transfer of function by taking actions against SES members –after affording the procedural rights established in the statute—such as removal from Federal service, reduction in pay, and suspensions lasting more than 14 days. Generally, an agency must provide at least 30 days’ advance written notice, and the affected individual has the right to an MSPB appeal.

5. Training and Development

Agencies have been delegated broad responsibility by OPM for planning, establishing, implementing, and evaluating training and career development programs for their employees, including for SES members. This approach has provided agencies with helpful flexibility on determining the appropriate learning and development programs to provide to their SES members – particularly giving agencies an opportunity to tailor training programs to meet their specific missions and needs. Because of this decentralized approach, however, SES members in different agencies receive different developmental opportunities and experiences – sometimes impacted by the specific budgetary situation and other factors in each agency.

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Role and Functions of OPM

1. Allocations

By statute, OPM is required, in consultation with the U.S. Office of Management and Budget (OMB), to: (a) review requests from each agency submitted during each even-numbered calendar year, for a specific number of SES positions for each agency for the two fiscal years beginning after the calendar year, and (b) to authorize a specific number of SES positions for each agency for each of the two fiscal years covered by the requests. OPM's responsibilities in determining SES allocations help ensure appropriateness and consistency in the establishment of SES positions, and also helps ensure an appropriate level of senior executive positions are in place across the Federal Government to ensure effective and continual operations of Government agencies and programs.

2. Appointment

OPM has reserved the authority to review agencies' proposed career SES appointments to ensure they comply with all merit staffing requirements and are free of any impropriety. OPM may require agencies to take any action necessary to correct an action contrary to any law, rule, or regulation.

By statute, OPM is required to establish one or more QRBs to certify the executive qualifications of agencies' proposed candidates for initial appointment to the SES. An agency may only make an initial appointment of a candidate to the SES after an OPM-administered QRB has certified the candidate's executive qualifications. This QRB review and approval provides a whole-of-Government assurance on the leadership capabilities of initial appointees, applicable across agencies, and helps ensure consistency in the executive core qualifications of the SES corps and adherence to merit staffing procedures in SES selection.

3. Compensation

OPM annually reviews data on agencies' SES performance ratings, pay adjustments, and performance awards to assess whether agencies differentiate pay based upon performance and grant SES performance awards to encourage excellence in performance. Upon request, OPM also reviews agencies' SES performance appraisal systems, for the purpose of determining whether to provide the certification that enables agencies to access the higher rates of pay for their SES members.

4. Performance Appraisal System Approval and Certification

By statute, OPM is responsible for reviewing agencies' SES performance appraisal system for basic compliance with the requirements of law, regulations, and OPM policy, and approving their implementation by agencies. If OPM finds that an agency system does not meet the

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requirements and intent of law, OPM will direct the agency to take corrective action, and the agency must comply.

By statute, OPM is also responsible for reviewing approved agency SES performance appraisal systems upon an agency's request to determine – with OMB concurrence – the appropriateness for certification. To receive OPM certification, agency systems must satisfy OPM certification criteria, including the requirements that they make meaningful distinctions based on relative performance, provide accountability, and provide pay differentiation. If OPM determines an agency's certified system is no longer in compliance with certification criteria, OPM may – with OMB concurrence – suspend the certification.

5. Training and Development

By statute, OPM is responsible for establishing programs for the continual development of SES members or requiring agencies to establish such programs, and OPM has delegated broad authority to agencies to administer programs for the training and development of their employees. OPM provides policy and guidance to agencies on training, including for SES members, and also offers enterprise training programs and products.

OPM also specifically requires each agency to establish one or more programs for the continuing development of senior executives in compliance with OPM criteria. OPM provides assistance to agencies in the establishment of these executive development programs and reserves the authority to monitor the implementation of the programs. OPM has the ability to require an agency to take corrective action necessary to bring the program into compliance with OPM criteria.

Additionally, OPM is responsible for reviewing agency SES Candidate Development Programs (SESCDP) for compliance with OPM criteria, and approving the implementation of these SESCDPs. SESCDPs are training programs designed to develop the executive qualifications of employees with strong executive potential to qualify them for and authorize their initial career appointment to the SES. An agency with an OPM-approved SESCDP may submit graduates of their program to OPM for QRB review of the graduates' executive qualifications independent of any application for a particular position. A graduate certified by a QRB may subsequently receive an initial career SES appointment without further competition to any position for which he/she meets the professional and technical requirements, just as an existing senior executive can.

6. SES Reform and the President's Management Agenda

As described in the 2015 President's Budget, employee performance and human capital management are core components of the President's Management Agenda. Under the People & Culture pillar of the Agenda, OPM is working to create a culture of excellence and engagement to enable higher performance, to enable agencies to hire the best talent from all segments of society, as well as to enhance our world-class management team, starting with the SES.

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We are currently examining the SES hiring process to help agencies better anticipate and plan for vacancies, as well as to identify efficiencies and effective processes for hiring the best executive talent. For example, we are working to help agencies identify, project, and prioritize among SES vacancies, particularly for critical positions. We are also exploring means to streamline the recruitment, application, and selection processes, with a focus on removing barriers to and the successful hiring from diverse and inclusive applicant pools, including from the private sector. This includes exploring means to help agencies complement USAJobs.gov postings with more active recruitment and outreach strategies to reach all qualified talent and modifying requirements for applicants to submit lengthy written executive qualifications statements, resumes, or other application materials.

We are also seeking to expand the experience base of our executive corps. We are developing a stronger SES onboarding program, so our leaders can more effectively transition into organizations, hit the ground running, and understand the high standards that are expected of them from the beginning. We are developing SES leadership and engagement training opportunities that emphasize diversity and the changing needs of a 21st Century workforce. This includes expanding management development opportunities for SES and SES candidates by linking and coordinating existing cross-agency and cross-sector leadership initiatives.

Finally, we are developing personnel analytics that our SES can use to drive decision making, and means to better integrate personnel analytics to improve the SES performance appraisal system.

Conclusion

In general, members of the SES are exceptionally dedicated to public service and are working extremely diligently, under very challenging circumstances, to provide leadership so the Federal Government may successfully operate and accomplish increasingly complex and important missions for the American people. SES members have remained committed to public service while taking on more responsibilities with significantly-reduced resources and negligible increases in compensation, if at all.

OPM takes seriously its responsibilities pertaining to the SES and remains committed to providing centralized leadership and oversight on the management of SES members across the Government – respecting and empowering the expertise, discretion, and autonomy of Federal agencies to determine the best use of their executive resources to accomplish agency-specific needs, while providing Government-wide policy, guidance, assistance, and accountability to ensure Federal agencies manage their SES members in a manner to optimize the success of the Government and our Nation. Thank you for inviting me here today, and I am happy to answer any questions you may have.



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BIOGRAPHY

Steve Shih

Steve Shih serves at the U.S. Office of Personnel Management (OPM) in the position of Deputy Associate Director for Executive Resources and Employee Development. In this capacity, Mr. Shih leads OPM's office responsible for managing the overall Federal personnel program relating to the Senior Executive Service (SES) and other senior professionals (i.e., Senior Level (SL) and Scientific and Professional (ST)). Mr. Shih is responsible for the development and implementation of regulations and policies, as well as providing day-to-day oversight and assistance to agencies on the selection, development, performance management, and recognition of Federal executives and senior professionals. Mr. Shih is also responsible for providing Government-wide leadership to agencies for all other Federal employees with respect to performance management and awards. Prior to his appointment at OPM, Mr. Shih was employed at the U.S. Department of Homeland Security from August 2008 to October 2010, where he served in the position of Deputy Civil Rights and Civil Liberties Officer for EEO and Diversity Programs, and also served in an acting capacity as the Officer for Civil Rights and Civil Liberties. From October 2004 to August 2008, Mr. Shih served as the EEO Director at OPM. From November 1993 to August 2004, Mr. Shih was employed at the U.S. Equal Employment Opportunity Commission's Washington Field Office, where he served as an Administrative Judge and later as the Chief Administrative Judge.

Mr. Shih received a Bachelors of Science degree from Duke University and a Juris Doctors degree from the Washington University School of Law. Mr. Shih is a member of the Bar Associations for both Virginia and Washington, DC.