



July 30, 2024

## Political-to-Career Conversions (“Burrowing In”)

Some individuals who are serving in appointed (noncareer) positions in the executive branch convert to career positions in the competitive service, the Senior Executive Service (SES), or the excepted service. This practice, commonly referred to as “burrowing in,” is permissible when laws and regulations governing career appointments are followed. While such conversions may occur at any time, they frequently do so during the transition period between Administrations.

Generally, these appointees were selected noncompetitively and are serving in such positions as Schedule C, noncareer SES, or limited tenure SES that involve policy determinations or require a close and confidential relationship with the department or agency head and other top officials. Career employees, on the other hand, are to be selected on the basis of merit and without political influence following a fair and open process evaluating their knowledge, skills, and experience compared against that of other applicants. The tenure of noncareer and career employees also differs. The former is generally limited to the terms of the Administrations in which they are appointed or serve at the pleasure of the persons who appointed them. The latter constitute a workforce that continues the operations of government without regard to the change of Administrations.

Beyond the fundamental concern that the conversion of an individual from an appointed (noncareer) position to a career position may not have followed applicable legal and regulatory requirements, “burrowing in” can raise other concerns. Observers might raise concerns about potential outcomes of the decision (whether valid or not), such as that an appointee converting to a career position may limit the promotion opportunities for other employees—who were competitively selected for their career positions following examination of their knowledge, skills, and experience—or that the individual who is converted to a career position may seek to undermine the work of the new Administration whose policies may be different from those that he or she espoused when serving as an appointee. Both perceptions may increase the tension between political and career staff and hinder the effective operation of government, which relies on career staff to provide the continuity and expertise that underpins it. Public administration literature emphasizes the importance of effective working relationships between noncareer and career staff.

### Appointments to Career Positions

Appointments to career positions in the executive branch are governed by laws and regulations that are codified in Title 5 of the *U.S. Code* and Title 5 of the *Code of Federal Regulations*, respectively. For purposes of both,

appointments to career positions are among those activities defined as “personnel actions,” a class of activities that can be undertaken only in accordance with strict procedures. In taking a personnel action, each department and agency head is responsible for preventing prohibited personnel practices; for complying with and enforcing applicable civil service laws, rules, and regulations and other aspects of personnel management; and for ensuring that agency employees are informed of their rights and the remedies available to them. These personnel actions must adhere to the nine merit principles and avoid 14 prohibited personnel practices that are codified at Title 5, Sections 2301(b) and 2302(b), respectively, of the *U.S. Code*. These principles and practices are designed to ensure that the process for selecting career employees is fair and open (competitive) and free from political influence.

Department and agency heads must also follow regulations, codified at Title 5 of the *Code of Federal Regulations*, that govern career appointments. These include Civil Service Rules 4.2 (which prohibits racial, political, or religious discrimination) and 7.1 (which addresses an appointing officer’s discretion in filling vacancies). Other regulations provide that Office of Personnel Management (OPM) approval is required before employees in Schedule C positions may be detailed to competitive service positions, that public announcement is required for all SES vacancies that will be filled by initial career appointments, and that details to SES positions that are reserved for career employees (known as Career-Reserved) may be filled only by career SES or career-type non-SES appointees.

During the period June 1, 2024, through January 20, 2025, which is defined as the Presidential Election Period, certain appointees are prohibited from receiving financial awards. These appointees—referred to as senior politically appointed officers—are (1) individuals serving in noncareer SES positions, (2) individuals serving in confidential or policy-determining positions as Schedule C employees, and (3) individuals serving in limited-term and limited emergency positions.

Certain conversions may invite scrutiny, such as when a department or agency converts an employee from an appointed (noncareer) position to a career position without any apparent change in duties and responsibilities, or when the new position appears to have been tailored to the individual’s knowledge and experience. OPM conducts ongoing oversight related to conversions of employees from noncareer to career positions to ensure that proper procedures have been followed. The Government Accountability Office also periodically conducts such oversight.

## OPM Approval

A December 30, 2022, an OPM memorandum on “Political Appointees and Career Civil Service Positions” reminded agencies of the policies that govern OPM’s oversight of conversions of employees from appointed positions to career positions. It identified the types of appointments that are subject to OPM pre-appointment review and approval:

- A.** appointment of a current or former political appointee as described under 5 U.S.C. sections 5312 through 5316 (relating to the Executive Schedule) to a permanent competitive service, non-political excepted service, or career Senior Executive Service (SES) position;
- B.** appointment of a current or former political Schedule A, Schedule C, or an individual who serves or served in a political capacity under agency-specific authority in the Executive Branch to a permanent competitive service, non-political excepted service, or career SES position;
- C.** appointment of a current or former noncareer SES appointee, or an individual who serves or served in a political capacity under Limited Term SES or Limited Emergency SES appointment in the Executive Branch, to a permanent competitive, non-political excepted service, or career SES position;
- D.** appointment of a current or former political appointee in the Executive Branch ... to an agency position covered by an interchange agreement with OPM established under Civil Service Rule 6.7 allowing movement from the agency’s merit system to the competitive civil service; and
- E.** appointment of a current or former political appointee to permanent positions involving noncompetitive and direct-hire appointments, under 5 C.F.R. § 315, subpart F, and 5 C.F.R. § 337, subpart B.

The memorandum stated that OPM “will continue to conduct merit staffing reviews of proposed selections of current or former political appointees for career SES positions before they are presented to OPM’s Qualification Review Board (QRB) for certification of executive qualifications.” OPM reminded agencies to “carefully review all proposed SES selections to ensure they accord with merit staffing requirements before such cases are forwarded to the QRB.” “Pre-Appointment Checklists” for competitive service positions and non-political excepted service positions and a merit staffing review checklist for SES positions were included as attachments.

For the current Presidential Election Period, OPM also issued a May 24, 2024, memorandum on appointments and awards. Attachment 2 cautioned departments and agencies not to

[c]reate or announce a competitive or excepted service vacancy for the sole purpose of selecting a

current or former political appointee, Schedule C employee, or noncareer SES member; or

[r]emove the Schedule C or noncareer SES elements of a position solely to appoint the incumbent into the competitive or excepted service.

OPM publishes a *Presidential Transition Guide to Federal Human Resources Management Matters*. The current edition, dated December 2020, includes detailed guidance on standards of ethical conduct, appointments, and compensation for federal employees.

## Reporting Requirement for OPM

Section 4(b)(1) of P.L. 114-136 requires the OPM director to provide annual reports to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Accountability on agencies’ requests to appoint current or former political appointees to covered civil service positions. The law states the data requirements for the reports and requires that certain of the reports be provided quarterly and cover each quarter of the year and that the last quarterly report cover January 1 through January 20 of the following year. Such quarterly reports are required in the last year of a presidential term. The name or title of a current or former political appointee may be excluded from a quarterly report at the discretion of the OPM director. This circumstance would occur for an appointee who was requested to be appointed to a covered civil service position and was not appointed to this position or to whom a request to be appointed to a covered civil service position is pending at the end of the period covered by the report.

## Issues for Congressional Consideration

Congress may decide that existing oversight of conversions from appointed positions to career positions is sufficient. If it determines that additional measures are needed to ensure that they are properly conducted and transparent, it could direct OPM to report on its pre-appointment review policies and recommend whether the policies should be codified in Title 5, Section 1104, of the *U.S. Code*. Alternatively, Congress could encourage OPM to loosen its review requirements but maintain ongoing oversight. Congress could direct OPM or the Chief Human Capital Officers Council to provide training to federal managers and supervisors on the policies. Congress could direct OPM to regularly provide standardized reports or maintain information on conversions in a format that permits quick and secure access. Congress could also direct OPM to recommend whether amendments are needed to the Presidential Election Period to either authorize more or further restrict financial awards to senior politically appointed officers. It could increase the penalties for violating civil service laws by “creat[ing] a misdemeanor offense for agency personnel who violate or contribute to the violation of the federal hiring statutes” or prohibit conversions in statute.

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