

FOIA MARKER

**This is not a textual record. This is used as an
administrative marker by the William J. Clinton
Presidential Library Staff.**

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Counsel Office

Series/Staff Member: Peter Belk

Subseries:

OA/ID Number: 18952

FolderID:

Folder Title:

Clearance: Clearance--SES [Senior Executive Service] Vetting

Stack:

S

Row:

114

Section:

2

Shelf:

8

Position:

2

Rules and Regulations

Federal Register

Vol. 60, No. 22

Thursday, February 2, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 214, 317, 319, 359, and 534

RIN 3206-AG14

Executive Positions and Employment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing employment procedures for Senior Executive Service, senior-level, and scientific and professional positions as part of the implementation of Federal Personnel Manual (FPM) sunset. The regulations incorporate certain requirements that existed only in the provisionally retained FPM, which was sunset on December 31, 1994.

EFFECTIVE DATE: February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Neal Harwood at 202-606-2826.

SUPPLEMENTARY INFORMATION: On October 18, 1994, OPM issued proposed regulations [59 FR 52459] affecting Senior Executive Service (SES), senior-level (SL), and scientific and professional (ST) positions and employment. The proposed regulations continued (in some cases in modified form) certain requirements and authorities that would go out of existence when the provisionally retained FPM was sunset on December 31, 1994, because they were not specified in other regulations or statute. The proposed regulations also clarified certain existing regulatory provisions and deleted out-of-date provisions.

The comment period, which was 60 days from the date of publication, ended on December 19, 1994. Written comments were received from seven agencies and the Senior Executives Association (SEA).

Before reviewing the comments on specific provisions, we want to note that three agencies and SEA included comments supporting the regulations in general. One agency wanted to substantially reduce what was included in the regulations. SEA, on the other hand, in its comments on specific provisions recommended in a number of places that the regulations be made more restrictive.

As we stated in the proposed regulations, we have tried to take into account the recommendations in the Report of the National Performance Review to allow agencies more flexibility in managing their personnel system, while maintaining a "corporate approach to managing executive resources." Under such an approach, there are some basic features of executive personnel systems that need to be administered uniformly on a Governmentwide basis.

We have tried to hold these requirements to a minimum; but as we said in the proposed regulations "a basic regulatory framework (including certain procedural requirements) is necessary to assure an executive personnel system that meets statutory requirements and carries out merit system principles."

We recognize that different parties will have different views as to what are the basic requirements that need to be maintained. We believe the regulations provide an appropriate balance between agency flexibility and Governmentwide requirements. (As we pointed out in the proposed regulations, no requirements are imposed on agencies under the regulations that did not exist in the former FPM; and a number have been deleted or modified.) We will continue, however, to see how these requirements work in practice and will make necessary modifications in the future if there are problems that arise.

Part 317—Employment in the Senior Executive Service

(1) Section 317.501, Recruitment and Selection for Initial SES Career Appointment

Paragraph (b)(2) requires that vacancies must be included in an OPM listing of SES vacancies for at least 14 calendar days. One agency recommended that agencies be allowed to use a shorter period if they had a legitimate reason, and another agency recommended not having any minimum

period. We believe the 14-day notice period is needed to assure full and open competition and does not place an undue delay on any agency in filling its positions.

Subsequent to publication of the regulations a question arose whether the reannouncement of an SES vacancy after the original announcement has closed must also be included in OPM's listing for at least an additional 14 days. The regulations apply to all announcements, including reannouncements.

(2) Section 317.502, Qualifications Review Board (QRB) Certification

Paragraph (b) is revised to eliminate time limits on the submission of QRB cases. Currently, cases must be received by OPM within 9 months from the closing date of the vacancy announcement. The proposed regulations would have extended the deadline to 12 months. Elimination of the deadline for the submission of QRB cases responds to agency requests for more flexibility to make decisions on executive selections. Although OPM will not prescribe a deadline, we expect that most QRB cases will be submitted within 9 months of the closing date of the vacancy announcement. Agencies may, of course, establish internal deadlines to facilitate timely processing of QRB cases.

Paragraph (d) clarifies OPM's authority regarding the disposition of QRB cases when an agency head has changed or will be changing, or when there is a Presidential transition. One agency felt that a moratorium on QRB actions should not apply to it because of its national security functions and because the Deputy by law exercises the full powers of the agency head in the absence of the Secretary. The regulatory provision give OPM authority to hold or return QRB cases, but does not require such action. Particular situations can be addressed with the agency involved depending on the circumstances.

Paragraph (e) states that OPM will not submit to a QRB the conversion of a noncareer-SES employee to a career SES appointment in the employee's own position or a successor to that position. One agency wanted to broaden the restriction to cover substantially similar positions. Another agency recommended eliminating the provision on the basis that it is a disenfranchising of the right to apply and be selected for

a position. The restriction is in the regulation because in this situation there is no genuine vacancy for which to compete since the position is currently occupied. Therefore, we do not believe it appropriate to extend the restriction to other positions that are vacant, even though they may be similar, or to eliminate the restriction.

(3) Section 317.601, Limited Appointments

The section provides a pool of limited appointment authorities equal to 2 percent of an agency's SES position allocation (with a minimum of one authority for each agency) that agencies can use without getting prior OPM approval as long as the appointee is currently a career or career-type appointee outside the SES.

Two agencies wanted to use the pool to make appointments from outside the Government. We have restricted the pool to career and career-type appointees to assure that it is used appropriately and not for noncareer or political-type appointments. As we noted in the proposed regulations, where appropriate OPM could still give an agency a separate quota for use in making limited appointments on its own under specified circumstances, e.g., to make appointments to scientific positions where there was a critical or emergency need.

(4) Section 317.901, Reassignments

Paragraph (d) states the authority of agencies to run 15-day (nongeographic) and 60-day (geographic) advance notices on reassignments of career SES appointees concurrently with the 120-day moratorium on involuntary reassignments following the appointment of a new agency head or noncareer supervisor (5 U.S.C. 3395(e)).

SEA stated that under 5 U.S.C. 3395(e) advance notices should not be issued until after the 120 days have expired. SEA argued that the intent of the law is to assure that the noncareer supervisor has at least 120 days to observe the performance of the career appointee before making a reassignment decision. We noted in the proposed regulations that if the notice could not be issued until after the moratorium, the moratorium in effect would be extended by the length of the notice period. SEA stated that the agency could detail the employee immediately after the moratorium expired until the notice period was over. That still extends by up to 60 days, however, the time before an official reassignment could be made.

Allowing the advance notice to run during the moratorium is not new. The authority had been explicitly stated in the former FPM since 1989. We see no conflict with the statutory provision on

moratoriums, which governs when the reassignment can be effected. We want to note that agencies are still free to wait until after the moratorium to issue the advance notice, or to cancel a proposed reassignment before it is effected if the notice is issued during the moratorium.

(5) Section 317.903, Details

Paragraph (b) modifies time limits on details that previously existed in the FPM in order to reduce paperwork, provide greater flexibility for the SES as a separate service, and protect the rights of employees.

One agency recommended eliminating all regulations on the duration of details. SEA, on the other hand, recommended retaining the current provisions.

SEA argued as follows. Allowing details of SES members to unclassified duties for up to 240 days (in lieu of the current 120 days) would permit political appointees to place career SES appointees "on the shelf" for the prolonged periods. Allowing non-SES employees to be detailed to the SES noncompetitively for up to 240 days (in lieu of the current 120 days) violates the concept of equal pay for equal work. Requiring OPM approval of the details of non-SES employees to the SES only if the detail exceeds 240 days (in lieu of the current 120 days) and only if the person on detail supervises other SES employees (in lieu of also including nonsupervisory details) will encourage agencies to use details, which involve no adjustment in pay, rather than limited SES appointments for temporary assignments.

We understand SEA's concerns. Details, however, are a legitimate method of temporarily staffing a position. Providing additional flexibility in personnel operations, one of the stated goals of the National Performance Review, does not automatically mean that agencies will abuse their increased authority. We believe these provisions still adequately protect employee rights. As we noted in the proposed regulations, we believe changes we have made in the regulations on limited SES appointments will in fact lead to greater use of those appointments in lieu of details.

Part 319—Employment in Senior-Level and Scientific and Professional Positions

(1) Subpart D, Recruitment and Examination

The subpart delegates authority to agencies to recruit and examine applicants and establish civil service registers for SL positions in the competitive service in accordance with criteria prescribed in the regulations.

The criteria implement provisions in statute (5 U.S.C. chapter 33, subchapter I) and elsewhere in the regulations for examination, certification, and selection of individuals who do not have status in the competitive service.

One agency said that all the procedures should be issued as guidance rather than incorporated in the regulations. Under 5 U.S.C. 1104, however, OPM is required to establish standards which shall apply to the activities of any agency under delegated authority.

Two agencies specifically recommended that the requirement to use a numerical rating scale of 100 points with 70 as passing in establishing a civil service register for competitive appointment be deleted. They said agencies should have the freedom to use any examining method they deem appropriate, provided all legal requirements are met.

The procedures in the regulations for staffing senior-level positions are based on existing statutory and regulatory provisions that govern the selection of non-status persons for competitive service positions. OPM is considering a number of proposed statutory and regulatory changes in the competitive examining system to make it less prescriptive in light of the National Performance Review recommendations on Federal staffing. One of the proposed changes would authorize agencies to examine for jobs using either the existing system of ranking candidates based on numerical ratings or a new method of placing candidates in quality groups based on qualifications (veterans would receive preference within quality groups). Under current law, numerical rating and ranking is required for competitive examining.

In order to simplify the regulations, however, we have deleted from subpart D the specific provisions in the proposed regulations covering establishment of a roster of eligibles, selection, and applicant rights. These provisions are covered elsewhere in 5 CFR where competitive examining for the civil service in general is discussed (e.g., section 337.101 on using a numerical rating scale of 100, section 332.404 on selecting from the highest three eligible on a certificate and section 300.104 on handling applicant complaints.)

Part 359—Removal From the SES; Guaranteed Placement in Other Personnel Systems

(1) Subpart F, Reduction in Force
Sections 359.603(a)(1) and (d)(2) are revised to permit the agency head to delegate to an official at the Assistant

Secretary level or above in departments or an equivalent official above the director of personnel in other agencies, the authority to certify to OPM that the agency does not have a vacant SES position for a RIF'd employee or that a RIF'd employee referred by OPM is not qualified for the referred position. Current regulations do not permit any delegation.

SEA commented that since the law states that the "agency head" shall make these determinations, there is no authority under the law for any delegation. There is general authority in title 5 of the U.S. Code, however, for agency heads to delegate personnel authorities. Under 5 U.S.C. 302(b), "the head of an agency may delegate to subordinate officials the authority vested in him—(1) by law to take final action on matters pertaining to the employment, direction, and general administration of personnel under his agency * * *." Delegation would be prohibited only if a law governing a particular authority specifically stated that the authority could not be delegated, or if OPM in exercising its regulatory authority under a law stated there could be no delegation.

SEA also wanted to have the agency head make the determinations because it believed that an official at the Assistant Secretary level would be subject to peer pressures that could preclude a correct determination. Individuals at the Assistant Secretary level make many decisions that affect managers throughout the agency (such as those affecting budget and personnel), and we believe these officials will be able to act in an impartial manner and protect employee rights, absent any facts to the contrary.

Waiver of Delay in Effective Date

I find that good cause exists for making this rule effective on February 2, 1995. The delay in the effective date of this rule is being waived since the requirements established in the rule are not new. They previously were contained in the provisionally retained Federal Personnel Manual, which sunset on December 31, 1994. The regulations need to be made effective immediately to avoid any significant break in the application of the affected requirements.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Federal Government employees who are in executive positions.

List of Subjects

5 CFR Parts 214, 317, 319, and 359

Government employees.

5 CFR Part 534

Government employees, hospitals, students, wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR parts 214, 317, 319, 359, and 534 as follows:

PART 214—SENIOR EXECUTIVE SERVICE

1. The authority citation for part 214 continues to read as follows:

Authority: 5 U.S.C. 3132.

2. In subpart B, § 214.203 and § 214.204 are added to read as follows:

Subpart B—General Provisions

§ 214.203 Reporting requirements.

Agencies shall report such information as may be requested by OPM relating to positions and employees in the Senior Executive Service.

§ 214.204 Interchange agreements.

(a) In accordance with 5 CFR 6.7, OPM and any agency with an executive personnel system essentially equivalent to the Senior Executive Service (SES) may, pursuant to legislative and regulatory authorities, enter into an agreement providing for the movement of persons between the SES and the other system. The agreement shall define the status and tenure that the persons affected shall acquire upon the movement.

(b) Persons eligible for movement must be serving in permanent, continuing positions with career or career-type appointments. They must meet the qualifications requirements of any position to which moved.

(c) An interchange agreement may be discontinued by either party under such conditions as provided in the agreement.

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

3. The authority citation for part 317, continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595.

4. In subpart C, § 317.301 is amended by redesignating paragraph (a)(4) as paragraph (a)(5) and by adding a new paragraph (a)(4) to read as follows:

Subpart C—Conversion to the Senior Executive Service

§ 317.301 Conversion coverage.

(a) * * * (4) The implementation of the SES in a formerly excluded agency when OPM determines that the agency is an "Executive agency" under 5 U.S.C. 3132(a)(1).

5. In subpart D, the current paragraph in § 317.401 is designated as paragraph (a), and paragraph (b) is added to read as follows:

Subpart D—Qualifications Standards

§ 317.401 General.

(b) A written qualification standard must be established for a position before any appointment is made to the position. If a position is being filled competitively, the standard must be established before the position is announced.

6. In subpart E, § 317.501 is amended by revising the last sentence of paragraph (a); revising paragraph (b)(2), and by adding paragraph (f) to read as follows:

Subpart E—Career Appointments

§ 317.501 Recruitment and selection for initial SES career appointment.

(a) * * * The ERB shall, in accordance with the requirements of this section, conduct the merit staffing process for initial SES career appointment.

(b) * * * (2) Announcements of SES vacancies to be filled by initial career appointment must be included in the OPM SES vacancy announcement system for at least 14 calendar days, including the date of publication.

(f) *OPM review.* OPM may review proposed career appointments to ensure that they comply with all merit staffing requirements and are free of any impropriety. An agency shall take such action as OPM may require to correct an action contrary to any law, rule, or regulation.

7. Section 317.502 is amended by removing the last sentence of paragraph (b), revising paragraph (d), redesignating paragraph (e) as paragraph (f), and by adding a new paragraph (e) to read as follows:

§ 317.502 Qualifications Review Board certification.

(d) OPM may determine the disposition of agency QRB requests

where the QRB has not yet acted if the agency head leaves office or announces an intention to leave office, if the President has nominated a new agency head, or if there is a Presidential transition.

(e) OPM will not submit to a QRB any action to convert a noncareer SES employee to a career SES appointment in the employee's current position or a successor to that position.

8. Section 317.503 is amended by removing the last sentence in paragraph (b), redesignating paragraphs (c) and (d) as paragraphs (d) and (e) respectively, and adding a new paragraph (c) and paragraph (f) to read as follows:

§ 317.503 Probationary period.

(c) The following conditions apply to crediting service towards completion of the probationary period.

(1) Time on leave with pay while in an SES position is credited. Earned leave for which the employee is compensated by lump-sum payment upon separation is not credited.

(2) Time in a nonpay status while in an SES position is credited up to a total of 30 calendar days (or 22 workdays). After 30 calendar days, the probationary period is extended by adding to it time equal to that served in a nonpay status.

(3) Time absent on military duty or due to compensable injury is credited upon restoration to the SES when no other break in SES service has occurred.

(4) Time following transfer to an SES position in another agency is credited, i.e., the individual does not have to start a new probationary period.

(f) An individual who separated from the SES during the probationary period and who has been out of the SES more than 30 calendar days must serve a new 1-year probationary period upon reappointment and may not credit previous time in a probationary period. In the following situations, however, there is an exception and the individual is only required to complete the remainder of the previously served probationary period.

(1) The individual left the SES without a break in service for a Presidential appointment and is exercising reinstatement rights under 5 U.S.C. 3593(b).

(2) The individual left the SES without a break in service for other civilian employment that provides a statutory or regulatory reemployment right to the SES when no other break in service occurred.

(3) The break in SES service was the result of military duty or compensable

injury, and the time credited under paragraph (c)(3) of this section was not sufficient to complete the probationary period.

9. In subpart F, the heading for the subpart is revised to read as follows:

Subpart F—Noncareer and Limited Appointments

10. Section 317.601 is revised to read as follows:

§ 317.601 Authorization.

(a) An agency may make a noncareer or limited appointment only to a general position.

(b) Each use of a noncareer appointment authority must be approved individually by the Office of Personnel Management, and the authority reverts to the Office upon departure of the incumbent, unless otherwise provided by the Office.

(c) Use of a limited appointment authority is subject to the conditions in this paragraph.

(1) Agencies are provided a pool of limited appointment authorities equal to 2 percent of their Senior Executive Service (SES) position allocation, or one authority, whichever is greater. An agency may use the pool to make a limited appointment only of an individual who has a career or career-conditional appointment (or an appointment of equivalent tenure) in a permanent civil service position outside the SES. If necessary, the Office of Personnel Management may suspend use of the pool authority.

(2) Each use of a limited appointment authority other than under paragraph (c)(1) of this section must be approved individually by the Office, and the authority reverts to the Office upon departure of the incumbent, unless otherwise provided by the Office.

11. Section 317.602 is amended by revising the heading and removing the first sentence in paragraph (a) to read as follows:

§ 317.602 Conditions of a limited appointment.

12. Section 317.603 is amended by revising the heading and the first sentence to read as follows:

§ 317.603 Selection.

An agency may make a noncareer or limited appointment without the use of merit staffing procedures.

13. Section 317.604 is amended by revising the heading, redesignating paragraphs (a) and (b) as paragraphs (b)(1) and (b)(2) respectively, designating the introductory text of the section as the introductory text of

paragraph (b), and by adding a new paragraph (a) to read as follows:

§ 317.604 Reassignment.

(a) An agency may reassign a noncareer appointee only with the prior approval of the Office unless otherwise provided by the Office.

14. Section 317.605 is amended by revising paragraphs (a) and (b) to read as follows:

§ 317.605 Tenure of appointees.

(a) A noncareer or limited appointee does not acquire status within the Senior Executive Service on the basis of the appointment.

(b) An agency may terminate a noncareer or limited appointment at any time, unless a limited appointee is covered under 5 CFR 752.601(c)(2). The agency must give the noncareer or limited appointee a written notice at least 1 day prior to the effective date of the removal.

15. In subpart G, § 317.703 is amended by designating the text of paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) to read as follows:

Subpart G—SES Career Appointment by Reinstatement

§ 317.703 Guaranteed reinstatement: Presidential appointees.

(a) * * *

(2) If an individual is serving under a Presidential appointment with reinstatement entitlement and receives another Presidential appointment without a break in service between the two appointments, the individual continues to be entitled to be reinstated to the SES following termination of the second appointment. If there is an interim period between the two Presidential appointments, the individual must be reinstated as an SES career appointee before the effective date of the second appointment to preserve reinstatement entitlement following termination of the second appointment.

16. In subpart H, § 317.801 is amended by revising the heading for paragraph (b), designating the text of paragraph (b) as paragraph (b)(1), adding paragraphs (b)(2) and (b)(3), and by removing paragraph (d) to read as follows:

Subpart H—Retention of SES Provisions

§ 317.801 Retention of SES Provisions

(b) *Election.* * * *

(2) The appointing agency is responsible for advising the appointee of the election opportunity. The election decision must be in writing.

(3) If an appointee elects to retain SES basic pay, the appointee is entitled to receive locality-based comparability payments under 5 CFR, part 531, subpart F, if such pay is applicable to SES employees in the locality pay area, and any applicable special pay adjustment for a law enforcement officer under 5 CFR part 531, subpart C, even though the appointee may be in an Executive Schedule position otherwise excluded from such payments.

17. In subpart I, § 317.901 is amended by adding paragraph (d) to read as follows:

Subpart I—Reassignments, Transfers, and Details

§ 317.901 Reassignments.

(d) A 15 or 60-day advance notice described in paragraph (b) of this section may be issued during the 120-day moratorium on the involuntary reassignment of a career appointee described in paragraph (c) of this section, but an involuntary reassignment may not be effected until the moratorium has ended.

18. Section 317.903 is amended by revising paragraph (b)(2) and by adding paragraphs (b)(3) and (b)(4) to read as follows:

§ 317.903 Details.

(b) * * *

(2) An agency may not detail an SES employee to unclassified duties for more than 240 days.

(3) An agency must use competitive procedures when detailing a non-SES employee to an SES position for more than 240 days unless the employee is eligible for a noncompetitive career SES appointment.

(4) An agency must obtain OPM approval for a detail of more than 240 days if the detail is of:

(i) a non-SES employee to an SES position that supervises other SES positions; or

(ii) An SES employee to a position at the GS-15 or equivalent level or below.

PART 319—EMPLOYMENT IN SENIOR-LEVEL AND SCIENTIFIC AND PROFESSIONAL POSITIONS

19. Part 319 is revised to read as follows:

Subpart A—General

Sec.

319.101 Coverage.

319.102 Senior-level positions.

319.103 Scientific and professional positions.

319.104 Applicable instructions.

319.105 Reporting requirements.

Subpart B—Position Allocations and Establishment

319.201 Coverage.

319.202 Allocation of positions.

319.203 Establishment of positions.

Subpart C—Qualifications Requirements

319.301 Qualifications standards.

319.302 Individual qualifications.

Subpart D—Recruitment and Examination

319.401 Senior-level positions.

319.402 Scientific and professional positions.

Authority: 5 U.S.C. 1104, 3104, 3324, 3325, 5108, and 5376.

Subpart A—General

§ 319.101 Coverage.

(a) This part covers senior-level (SL) and scientific and professional (ST) positions that are classified above GS-15 and are paid under 5 U.S.C. 5376. See 5 CFR part 534, subpart E, for pay provisions.

(b) Positions that meet the criteria for placement in the Senior Executive Service (SES) under 5 U.S.C. 3132(a) may not be placed in the SL or ST system and are not covered by this part.

§ 319.102 Senior-level positions.

(a) SL positions are positions classified above GS-15 pursuant to 5 U.S.C. 5108 that are not covered by other pay systems (e.g. the SES and ST systems).

(b) Positions in agencies that are excluded from 5 U.S.C. chapter 51 (Classification) under section 5102(a), or positions that meet one of the exclusions in section 5102(c), are excluded from the SL system.

(c) SL positions in the executive branch are in the competitive service unless the position is excepted by statute, Executive order, or the Office of Personnel Management (OPM).

§ 319.103 Scientific and professional positions.

(a) ST positions are established under 5 U.S.C. 3104 to carry out research and development functions that require the services of specially qualified personnel.

(b) Research and development functions are defined in The Guide to Personnel Data Standards under the data element "Functional Classification." The guide is available for inspection at the Office of Personnel

Management library, 1900 E Street, NW., Washington DC 20415.

(c) An ST position must be engaged in research and development in the physical, biological, medical, or engineering sciences, or a closely related field.

(d) ST positions are in the competitive service.

§ 319.104 Applicable instructions.

Provisions in statute, Executive order, or regulations that relate in general to competitive and excepted service positions and employment apply to positions and employment under the SL and ST systems unless there is a specific provision to the contrary.

§ 319.105 Reporting requirements.

Agencies shall report such information as may be requested by OPM relating to SL and ST positions and employees.

Subpart B—Position Allocations and Establishment

§ 319.201 Coverage.

This section applies to SL positions in an executive agency per 5 U.S.C. 5108 and ST positions in any agency per 5 U.S.C. 3104.

§ 319.202 Allocation of positions.

SL and ST positions may be established only under a position allocation approved by OPM.

§ 319.203 Establishment of positions.

(a) Prior approval of OPM is not required to establish individual SL and ST positions within an allocation, but the positions must be established in accordance with the standards and procedures in paragraph (b) of this section. OPM reserves the right to require the prior approval of individual positions if the agency is not in compliance with these standards and procedures.

(b) Before an SL or ST position may be established, an agency must:

(1) Prepare a description of the duties, responsibilities, and supervisory relationships of the position; and

(2) Determine, consistent with published position classification standards and guides and accepted classification principles, that the position is properly classified above GS-15. In addition, for an ST position an agency must determine that the position meets the functional research and development criteria described in § 319.103.

Subpart C—Qualifications Requirements

§ 319.301 Qualifications standards.

(a) *General.* Agency heads are responsible for establishing qualifications standards in accordance with the criteria in this section.

(1) The standard must be in writing and identify the breadth and depth of the knowledges, skills, and abilities, or other qualifications, required for successful performance in the position.

(2) Each criterion in the standard must be job related.

(3) The standard may not include any criterion prohibited by law or regulation.

(b) *Standards for senior-level positions.* (1) The standard must be specific enough to enable applicants to be rated and ranked according to their degree of qualifications when the position is being filled on a competitive basis.

(2) The standard may not include a minimum length of experience or minimum education requirement beyond that authorized for similar positions in the General Schedule.

(c) *Standards for scientific and professional positions.* (1) Unless the agency obtains the approval of OPM, the standard must provide that the candidate have at least 3 years of specialized experience in, or closely related to, the field in which the candidate will work. At least 1 year of this experience must have been in planning and executing difficult programs of national significance or planning and executing specialized programs that show outstanding attainments in the field of research or consultation.

(2) Agencies may require that at least 1 year of the specialized experience must be at least equivalent to experience at GS-15.

(3) Agencies may require applicants to furnish positive evidence that they have performed highly creative or outstanding research where similar abilities are required in the ST position.

§ 319.302 Individual qualifications.

Agency heads are delegated authority to approve the qualifications of individuals appointed to SL and ST positions. The agency head must determine that the individual meets the qualifications standards for the position to which appointed.

Subpart D—Recruitment and Examination

§ 319.401 Senior-level positions.

(a) *General.* SL positions may be in either the competitive or excepted

service. This section only applies to appointments in the competitive service from a civil service register.

Reassignments, promotions, transfers, and reinstatements to SL positions in the competitive service shall be made in accordance with applicable statutory and regulatory provisions. Employment of SL employees in the excepted service is covered by 5 CFR, part 302.

(1) Agency heads are delegated authority to recruit and examine applicants for SL positions in the competitive service, establish competitor inventories, and issue certificates of eligibility in conformance with the requirements of this section, other applicable regulations, and statute.

(2) Agencies shall take such action as OPM may require to correct an action taken under delegated authority.

(3) Delegated authority may be terminated or suspended at any time by OPM for reasons such as, but not limited to:

(i) Evidence of unequal treatment of candidates; or

(ii) Identifiable merit system abuses.

(b) *Recruitment.* (1) A recruiting plan, with appropriate emphasis on affirmative recruitment, must be developed and followed.

(2) Vacancy announcements must remain open for a minimum of 14 calendar days. The closing date may not be a nonworkday.

(3) State Job Service offices must be notified of the vacancy in accordance with 5 CFR 330.102. Publication in OPM's listing of Senior Executive Service and other executive vacancies, which is provided the offices, will satisfy this requirement.

(c) *Evaluation and selection.* Examination and selection procedures, and rights of applicants, are subject to the same provisions in statute and regulation that govern civil service examinations and appointments in general.

(d) *Records.* (1) Agencies must maintain records sufficient to allow reconstruction of the merit staffing process.

(2) Records must be kept for 2 years after an appointment, or, if no appointment is made, for 2 years after the closing date of the vacancy announcement.

§ 319.402 Scientific and professional positions.

(a) ST positions are filled without competitive examination under 5 U.S.C. 3325.

(b) ST positions are not subject to the citizenship requirements in 5 CFR part 338, subpart A. Agencies, however,

must observe any restrictions on the employment of noncitizens in applicable appropriations acts.

(c) ST employees acquire competitive status immediately upon appointment. They are not required to serve a probationary or trial period.

PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACEMENT IN OTHER PERSONNEL SYSTEMS

20. The authority citation for part 359 continues to read as follows:

Authority: 5 U.S.C. 1302 and 3596, unless otherwise noted.

21. In subpart F, § 359.601 is amended by adding paragraph (b)(3) to read as follows:

Subpart F—Removal of Career Appointees as a Result of Reduction in Force

§ 359.601 General.

(b) * * *

(3) Agency in this subpart means an executive department or an independent establishment.

22. Section 359.602 is amended by adding a sentence at the end of paragraph (a)(2) and by adding a new paragraph (a)(4) to read as follows:

§ 359.602 Agency reductions in force.

(a) * * *

(2) * * * When performance ratings are used, they shall be the final ratings under 5 CFR part 430, subpart C.

(4) Competitive procedures are not required if an agency is being abolished, without a transfer of functions, and all SES appointees will be separated at the same time or within 3 months of abolishment.

23. Section 359.603 is amended by revising the last sentence in paragraph (a)(1), adding a new paragraph (a)(4), revising the last sentence in paragraph (d)(2), adding paragraph (d)(3), and by revising paragraph (f) to read as follows:

§ 359.603 OPM priority placement.

(a) * * *

(1) * * * This certification may not be delegated below the Assistant Secretary level in a department, or an equivalent level above the director of personnel in other agencies.

(4) An individual remains a career SES appointee in his or her agency during the OPM placement period.

(d) * * *

(2) * * * The response may not be delegated below the Assistant Secretary level in a department, or an equivalent level above the director of personnel in other agencies.

(3) If an agency cancels a position while a referral to the position is pending, the appointee will be entitled to priority consideration for the position if it or a successor position is reestablished in the SES within 1 year of the cancellation date and the appointee has not been placed in another SES position.

(f) *Declination by employee.* If a career appointee declines a reasonable offer of placement, OPM's placement efforts will cease. The appointee may be removed from the SES at the expiration of the agency notice period.

24. Section 359.605 is revised to read as follows:

§ 359.605 Notice requirements.

(a) Each career appointee subject to removal under § 359.604(b) is entitled to a specific, written notice at least 45 calendar days before the effective date of the removal. The notice shall state, as a minimum—

(1) The action to be taken and its prospective effective date;

(2) The nature of the competition, including the appointee's competitive area, if less than the agency, and standing on the retention register;

(3) The place where the appointee may inspect the regulations and records pertinent to the action;

(4) Placement rights within the agency and through OPM, including how the employee can apply for OPM placement assistance; and

(5) The appointee's appeal rights, including the time limit for appeal and the location of the Merit Systems Protection Board office to which an appeal should be sent.

(b) A career appointee who has received a notice under paragraph (a) of this section is entitled to a second notice in writing at least 1 day before removal from the SES. The notice shall state, as a minimum—

(1) The basis for the removal, i.e., 5 U.S.C. 3595(b)(5) if the basis is expiration of the 45-day OPM placement period, or 5 U.S.C. 3595(b)(4) if the basis is declination of a reasonable offer of placement, in which case identify the position offered and the date on which it was declined;

(2) The effective date of the removal;

(3) Placement rights outside the SES and, when applicable, the appointee's eligibility for discontinued service retirement in lieu of placement; and

(4) Reminder of the appointee's appeal rights.

25. In subpart G, § 359.705 is amended by redesignating paragraph (b) as paragraph (d), by adding a new paragraph (b), and by adding paragraphs (c), and (e) to read as follows:

Subpart G—Guaranteed Placement

§ 359.705 Pay.

(b) An employee who is placed under this subpart in a position outside the SES in another agency is entitled to receive basic pay under the provisions of this section.

(c) An employee who is placed under this subpart in a General Schedule position is not subject to the limitation on General Schedule basic pay in 5 U.S.C. 5303(f) of level V of the Executive Schedule. The employee is subject, however, to the limitation on General Schedule basic pay plus locality-based comparability payments in 5 U.S.C. 5304(g)(1) of level IV of the Executive Schedule.

(e) Pay received under this section shall terminate if:

(1) The employee has a break in service of 1 workday or more; or

(2) The employee is demoted based on conduct or unacceptable performance or at the employee's request.

26. The authority citation for subpart H of part 359 continues to read as follows:

Authority: 5 U.S.C. 3133 and 3136.

27. Section 359.803 is amended by revising the first sentence to read as follows:

Subpart H—Furloughs in the Senior Executive Service

§ 359.803 Competition.

Any furlough for more than 30 calendar days, or for more than 22 workdays if the furlough does not cover consecutive calendar days, shall be made under competitive procedures established by the agency. * * *

PART 534—PAY UNDER OTHER SYSTEMS

28. The authority citation for part 534 is revised to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

29. Section 534.401 is amended by revising paragraph (c)(3) and paragraph (f) to read as follows:

Subpart D—Pay and Performance Awards Under the Senior Executive Service

§ 534.401 Definitions and setting individual basic pay.

(c) * * *

(3) An appointing authority may lower the pay for a senior executive only one rate at the time of an adjustment. Restrictions on reducing pay of career senior executives are in paragraph (f) of this section.

(f) *Restrictions on reducing pay of career senior executives.*

(1) The ES rate of a career senior executive may be reduced involuntarily in the appointee's agency or upon a transfer of function to another agency only:

(i) For performance reasons, i.e., the executive has received a less than fully successful performance rating under 5 CFR part 430, subpart C, or has been conditionally recertified or not recertified under 5 CFR 317.504; or

(ii) As a disciplinary action resulting from conduct related activity, e.g., misconduct, neglect of duty, or malfeasance.

(2) If the pay reduction is for performance reasons, the agency shall provide the executive at least 15 days' advance written notice.

(3) If the pay reduction is for disciplinary reasons, the agency shall:

(i) Provide the executive at least 30 days' advance written notice;

(ii) Provide a reasonable time, but not less than 7 days, for the executive to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(iii) Allow the executive to be represented by an attorney or other representative; and

(iv) Provide the executive a written decision and specific reasons therefor at the earliest practicable date.

30. Section 534.403 is amended by revising paragraph (a)(1), redesignating paragraph (a)(2) as paragraph (a)(3), adding new paragraphs (a)(2) and (a)(4), adding a sentence at the end of paragraph (c), and by adding a sentence at the end of paragraph (f) to read as follows:

§ 534.403 Performance awards.

(a) * * *

(1) To be eligible for an award, the individual must have been an SES career appointee as of the end of the performance appraisal period; and the individual's most recent performance rating of record under part 430, subpart

C. of this chapter for the appraisal period must have been "Fully Successful" or higher.

(2) Individuals eligible for a performance award include:

(i) A former SES career appointee who elected to retain award eligibility under 5 CFR part 317, subpart H. If the salary of the individual is above the ES-6 pay rate, the ES-6 rate is used for crediting the agency award pool under paragraph (b) of this section and the amount the individual may receive under paragraph (c) of this section.

(ii) A reemployed annuitant with an SES career appointment.

(iii) An SES career appointee who is on detail. If the detail is to another agency, eligibility is in the individual's official employing agency, i.e., the agency from which detailed. If the appointee is on a reimbursable detail, the agency to which the appointee is detailed may reimburse the employing agency for some or all of any award, as agreed upon by the two agencies; but the reimbursement does not affect the award pool for either agency as calculated under paragraph (b) or this section.

(4) The agency head must consider the recommendations of the Performance Review Board (PRB), but the agency head has the final authority as to who is to receive a performance award and the amount of the award.

(c) * * * The rate of basic pay does not include locality-based comparability payments under 5 U.S.C. 5304 and 5 CFR part 531, subpart F, or special law enforcement adjustments under section 404 of the Federal Employees Pay Comparability Act of 1990 and 5 CFR part 531, subpart C.

(f) * * * The full performance award, however, is charged against the agency bonus pool under paragraph (b) of this section for the fiscal year in which the initial payment was made.

31. Section 534.405 is added to subpart D to read as follows:

§ 534.405 Restrictions on premium pay and compensatory time.

(a) Under 5 U.S.C. 5541(2)(xvi) and 5 CFR 550.101(b)(18), members of the Senior Executive Service (SES) are excluded from premium pay, including overtime pay.

(b) Since SES members are not eligible for overtime pay, they also are not eligible for compensatory time in lieu of overtime pay for work performed as an SES member. SES members are eligible, however, for compensatory

time off for religious purposes under 5 U.S.C. 5550a and 5 CFR part 550, subject J.

[FR Doc. 95-2557 Filed 2-1-95; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RINs 3209-AA04, 3209-AA15

Further Grace Period Extension for Certain Existing Agency Standards of Conduct

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Government Ethics is granting a further grandfathering grace period extension for up to eleven months for certain existing executive agency standards of conduct, dealing with financial interest prohibitions and prior approval for outside employment and activities, which have been temporarily preserved. This further action (one previous extension was granted last year) is necessary because many agencies have not been able to issue, with OGE concurrence and co-signature, interim or final supplemental regulations during the first two years' grace period. This further extension will help ensure that agencies which have submitted draft supplementals to OGE will have adequate time to issue, if they so desire, successor regulatory provisions to replace grandfathered financial interest prohibitions and prior approval requirements.

EFFECTIVE DATE: February 3, 1995.

FOR FURTHER INFORMATION CONTACT:

William E. Gressman, Office of Government Ethics, telephone: 202-523-5757, FAX: 202-523-6325.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is granting under the executive branch standards of ethical conduct a further extension of time for up to eleven months, until January 3, 1996, for certain agencies' existing conduct standards dealing with prohibited financial interests and prior approval for outside employment and activities. When OGE published its ethical conduct standards for executive branch employees in the Federal Register on August 7, 1992 (as now codified at 5 CFR part 2635), it provided that most existing individual agency standards of conduct would be superseded once the executive branch-wide standards took effect on February

3, 1993. However, OGE also provided, by means of notes following 5 CFR 2635.403(a) and 2635.803, that any existing agency standards dealing with the two types of restrictions noted above would be preserved for one more year until February 3, 1994, or until the agency concerned issued (with OGE concurrence and co-signature) a supplemental regulation, whichever occurred first. See 57 FR 35006-35067, as corrected at 57 FR 48557 and 52583. Last year, OGE extended that original grace period for an additional year, until February 3, 1995 (or until agency issuance of a supplemental regulation), for those executive branch departments and agencies that had not yet had a chance to issue final or interim final successor rules. See 59 FR 4779-4780 (February 2, 1994) and, in particular, appendix A which was added to part 2635 at that time.

Through OGE's liaison efforts, the Office of the Federal Register (OFR) has assigned new chapters, including parts, at the end of title 5 of the Code of Federal Regulations to accommodate agencies' future supplemental standards regulations (on these two and other appropriate subject areas), as well as any supplemental agency regulations under OGE's executive branch-wide financial disclosure provisions at 5 CFR part 2634. Some 60 agencies have had such chapters reserved, including those which have by now already issued, with OGE concurrence and co-signature, interim final or final supplemental ethics regulations. However, many agencies have still not yet had the time to issue their planned supplemental standards regulations in interim or final form.

The Office of Government Ethics has therefore determined to permit a further preservation of existing agency regulatory standards of conduct setting forth financial interest prohibitions and outside employment and activities prior approval requirements for up to eleven more months, until January 3, 1996 (or until issuance by each agency of its supplemental regulation, whichever comes first), for those agencies which submitted draft supplemental standards regulations to OGE on or before January 25, 1995. This is the last grace period extension that OGE intends to grant. The agencies subject to this further grandfathering grace period extension, as provided in the notes (which are hereby being further amended) following 5 CFR 2635.403(a) and 2635.803, are enumerated at new appendix B which OGE is adding to part 2635. The agencies are listed in the order of the assignment of their chapter numbers at the end of 5 CFR. Agencies

THE WHITE HOUSE
WASHINGTON

April 14, 1994

MEMORANDUM FOR PHIL LADER

THROUGH: LLOYD N. CUTLER
SPECIAL COUNSEL TO THE PRESIDENT

JOEL I. KLEIN
DEPUTY COUNSEL TO THE PRESIDENT

FROM: BETH NOLAN 
ASSOCIATE COUNSEL TO THE PRESIDENT

RE: Recommended Procedures for Agency Vetting and Clearance of
Senior Executive Service Candidates

The Chiefs of Staff of each Cabinet Agency have been notified that the Office of Counsel to the President will no longer be responsible for the vetting and clearance of SES Candidates, and that from now on, each agency will perform this function. Additionally, they have been asked to designate one individual from their respective agencies to oversee the vetting process.

On Monday, April 18 and Thursday, April 21, the Counsel's Office will provide training to those designated agency officials. White House Liaisons from the agencies will also be invited to these sessions. At that time, we will ask that the agencies include the following steps when vetting and clearing their SES Candidates:

1. **Completion of the Personal Data Statement (PDS)** -- This is the questionnaire currently required of all potential appointees. The PDS covers financial holdings, tax history, membership in organizations, prior employment and potential conflicts of interests. The PDS also provides an opportunity for the candidate to reveal any possibly embarrassing information.
2. **Public Record research** -- The research should include a LEXIS/NEXIS search for anything appearing about the candidate in the available public media (newspapers, magazines, television, etc.), including any involvement as a party in litigation, and a review of anything written by the candidate.
3. **Vetting interview** -- The interview should be conducted by an attorney who has reviewed the completed PDS and the results of the public record research. This is an opportunity for

the interviewer to discuss with the candidate any negative information derived from the PDS and the public record research. It also provides the candidate another chance to disclose any potentially disqualifying or embarrassing information not previously revealed. An interview form with standard questions will be provided to the agencies.

We will also identify for the agencies those sensitive issues that may disqualify a candidate. The agencies will be instructed to consult with the White House Counsel's Office if any such issues arise during the vetting process. We will distribute a standard form by which the agencies will notify the White House when they have cleared the SES appointees, to ensure that the agencies follow these vetting procedures.

We have already implemented the new process for part-time Boards and Commissions (although there is a transition period in which we are finishing vets already started). While the agencies will not be asked to vet these Boards and Commissions, we have alerted the Chiefs of Staff that their agency ethics officials will be receiving financial disclosure forms for review. We have requested cooperation in ensuring review by those ethics officials.

cc: J. Veronica Biggins
Antonella Pianalto

MEMORANDUM

TO: Doug Sheorn, Deputy Director of Information Systems,
Presidential Personnel, Rm 133/OEOB, (202) 456-2966

FROM: _____ (Name, title)
 _____ (Department or Agency)
 _____ (Phone number)

DATE: _____

RE: _____

This NC-SES appointee has cleared our Counsel review process and is ready to proceed:

NAME OF APPOINTEE _____

TITLE/AREA

DEPARTMENT/AGENCY _____

DATE PUBLIC RECORD RESEARCH COMPLETED: _____

PERSONAL DATA STATEMENT: _____ (DATE SENT TO CANDIDATE)

_____ (DATE RECEIVED FROM
CANDIDATE)

DATE CANDIDATE WAS INTERVIEWED: _____

(WHITE HOUSE COUNSEL NOTIFIED, IF APPLICABLE: _____)

**PERSONAL DATA STATEMENT QUESTIONNAIRE FOR NON-CAREER SES
APPOINTEES**

As part of the clearance procedures for your prospective position, please answer all of the following questions (please do not respond "not applicable" or "N/A" if your response is "no" or "none"). In responding to the questions, please supply any information regarding your spouse or relatives that you deem to be relevant. Your responses to this questionnaire, which is not subject to public disclosure, are confidential.

You can type your responses in memorandum form on a separate sheet of paper with each answer corresponding to the number of the question. You do not need to retype the questions, but please sign and date the response.

If you have any questions or need assistance in responding to this questionnaire, please do not hesitate to contact this office. Thank you for your cooperation.

Personal and Family Background

1. Please list your full name; home address and telephone number; office address and telephone number; date and place of birth; citizenship; and social security number.

2. Please identify your current marital status; spouse's name, citizenship, occupation, and current employer; and the names and ages of your children.

3. Do you have any medical conditions that could interfere with your ability to fulfill your duties? Please explain.

Professional and Educational Background

4. Please list each high school, college, and graduate school you attended; the dates of your attendance; and degrees awarded.

5. Please furnish a copy of your resume and a brief biographical statement.

6. Please chronologically list activities, other than those listed on your resume, from which you have derived earned income (e.g., self-employment, consulting activities, writing, speaking, royalties, and honoraria) since age 21.

7. Please list each book, article, or publication you have authored, individually or with others.

8. Identify each instance in which you have testified before Congress in a non-governmental capacity and specify the subject matter of each testimony.

9. Please list all corporations, partnerships, trusts, or other business entities with which you have ever been affiliated as an officer, director, trustee, partner, or holder of a significant equity or financial interest (i.e., any ownership interest of more than 5%), or whose decisions you had the ability to influence.

10. Please provide the names of all corporations, firms, partnerships, trusts, or other business enterprises, and all non-profit organizations and other institutions with which you are now, or during the past five years have been, affiliated as an advisor, attorney or consultant. It is only necessary to provide the names of major clients and any client matter in which you and your firm are involved that might present a potential conflict of interest with your proposed assignment. Please identify the clients by name unless it would breach a confidential relationship or duty respecting a privileged matter. In addition, please provide the names of any other organizations with which you were associated which might present a potential conflict or the appearance of conflict of interest with your prospective appointment.

11. Please describe any contractual or informal arrangement you may have made with any person or any business enterprise in regard to future employment or termination payments or financial benefits that will be provided you if you enter government employment.

12. If you are a member of any licensed profession or occupation (such as lawyer, doctor, accountant, insurance or real estate broker, etc.), please specify: the present status of each license; and whether any such license has ever been withdrawn, suspended, or revoked, and the reason therefor.

13. Does your spouse or any family member or business in which you, your spouse or any family members have a significant interest have any relationship with the federal government through contracts, consulting services, grants, loans or guarantees? If yes, please provide details.

14. If you have performed any work for and/or received any payments from any foreign government, business, or individual in the past 10 years, please describe the circumstances, and identify the source and amount.

15. Please list any registration as an agent for a foreign principal, or any exemption from such registration.

16. Have you ever registered as a lobbyist or other legislative agent to influence federal or state legislation or administrative acts? If yes, please supply details.

Tax and Financial Information

17. As of the date of this questionnaire, please list all assets and liabilities with a fair market value in excess of \$5,000 for you and your spouse and provide a good faith estimate of value. As to liabilities, please list the name and address of the creditor, the amount owed to the nearest thousand dollar, a brief description of the nature of the obligation, the interest rate (if any), and the date on which due.

18. Please describe all real estate held in your name or in your spouse's name during the last six years, including any real estate held in combination with others or on your or your spouse's behalf in trust, by a nominee, or through any other title-holding entity.

19. Have you and your spouse filed all federal, state and local income tax returns?

20. Have you or your spouse ever filed a late income tax return without a valid extension? If so, describe the circumstances and the resolution of the matter.

21. Have you or your spouse ever paid any tax penalties? If so, describe the circumstances and the resolution of the matter.

22. Has a tax lien or other collection procedure ever been instituted against you or your spouse by federal, state or local authorities? If so, describe the circumstances and the resolution of the matter.

Public and Organizational Activities

23. Please list current and past political party affiliations.

24. Please list each membership you have had with any civic, social, charitable, educational, professional, fraternal, benevolent or religious organization, private club, or other membership organization (including any tax-exempt organization) during the past 10 years.

25. Have you or your spouse at any time belonged to any membership organization, including but not limited to those described in the preceding paragraph, that as a matter of policy or practice denied or restricted affiliation (as a matter of either policy or practice) based on race, sex, ethnic background, religious or sexual preference?

Legal and Administrative Proceedings and Filings

26. Please list any lawsuits you have brought as a plaintiff or which were brought against you as a defendant or third party. Include in this response any contested divorce proceedings or other domestic relations matters.

27. Please list and describe any administrative agency proceeding in which you have been involved as a party.

28. Please list any bankruptcy proceeding in which you or your spouse have been involved as a debtor.

29. Have you or your spouse ever been investigated by any federal, state, military or local law enforcement agency, or arrested for, charged with, or convicted of violating any federal, state or local law, regulation or ordinance (excluding traffic offenses for which the fine was less than \$100)? If so, please identify each such instance and supply details, including: date; place; law enforcement agency; and court.

30. Please list any complaint ever made against you or by any administrative agency, professional association or organization, or federal, state or local ethics agency, committee, or official.

Miscellaneous

31. Have you ever had any association with any person, group or business venture that could be used, even unfairly, to impugn or attack your character and qualifications for a government position?

32. Do you know anyone or any organization that might take any steps, overtly or covertly, fairly or unfairly, to criticize your appointment, including any news organization? If so, please identify and explain the basis for the potential criticism.

33. Please provide any other information, including information about other members of your family, that could suggest a conflict of interest or be a possible source of embarrassment to you, your family or the President.

34. Do you now, or have you in the past employed any individuals in your household on a part-time or full time basis? If so, is the worker(s) in compliance with all applicable immigration laws? Have you paid all applicable employment taxes?

LEXIS/NEXIS SEARCHES

The following is an example of the searches constructed from the name: John Jay Doe

Library: nexis;allnws

- I. **NAME SEARCH:** (john or john j or john jay or johnny or johnny j or johnny jay or j jay or j j or jay) pre/1 doe and doe

****Note:** We try to use every possible nickname and combination of names. Always include the last name alone so that it is highlighted throughout the article. If you do not have a middle name or initial, use pre/2 instead of pre/1.

If the Name Search retrieves more than about 150 articles, narrow it by adding the following searches to the end of the name search:

AND NOT: and not (fns or reuter!)

****Note:** Always put this last. Other terms can be added inside the parenthesis if they definitely apply to the wrong person. For example, use: and not (fns or reuter! or football) if many of the stories relate to a football player who is not our candidate.

JOBS SEARCH: and doe w/30 (current job or old job or old job or old job or school)

****Note:** Jobs should be listed broadly enough to retrieve all references to candidate but narrowly enough to avoid too many other people being pulled in.

SCANDAL SEARCH: and doe w/30 (illegal! or drug! or convict! or arrest! or indict! or discriminat! or harass! or clinton or republican* or scandal! or critic! or blam! or embarrass! or improper! or complain! or dispute!)

****Note:** The Scandal Search is programmed into all three lexis computers as a macro. Just type Alt-1 and it magically appears. If the Scandal Search and the Scandal Search combined with the Job Search do not get you below 200 stories, eliminate words from the Scandal Search. If at all possible, retain the words that, in the example above, appear before clinton. If you still have too many articles, discuss the search with someone else.

-
- II. **BYLINE SEARCH:** (john or john j or john jay or johnny or johnny j or johnny jay or j jay or j j or jay) pre/1 doe and doe and byline (doe)

****Note:** If you do a Jobs Search or a Scandal Search, you **must** do a separate Byline Search.

Change Library: genfed;mega

- III. **GENFED SEARCH:** name ((john or john j or john jay or johnny or johnny j or johnny jay or j jay or j j or jay) pre/1 doe) and doe

****Note:** This may only be narrowed by using the candidate's birth date: and date aft (00/00/1900)

Printing the cite list: .pa;.ci;2;y

Printing selected items: .pa;.fu;2;sel;1,3,5;y

Guidelines for Public Record Research

Public record research is conducted using the Lexis/Nexis on-line research service on all political Senior Executive Service ("SES") candidates for government office. Depending upon the sensitivity of the position and the amount of time allowed to complete the research, one should expect to review approximately 80 cites on each candidate.

I. NEXIS;ALLNWS

A. "Name Search"

The first database used is "nexis;allnws." All candidate searches begin with a "name" search in this file. If you are researching Jane Doe, for example, you should type in Jane pre/2 Doe and Doe. You should use "pre/2" because you want NEXIS to catch all the Jane's that are one or two words before the word Doe. You should type "and Doe" so that Nexis picks up references to the name throughout an article, and not just when the first name appears with it. In a long article about Jane Doe, for example, she will undoubtedly be referred to as "Doe," or "Ms. Doe," after the author's initial reference to her.

If you know the middle name or initial of the candidate, you should type in (Jane or Jane L.) pre/1 Doe and Doe or (Jane or Jane L. or Jane Lane) pre/1 Doe and Doe. With these searches, you can eliminate all the Jane Doe's with other middle initials or middle names. (If you have a candidate with an extremely unusual first or last name, you could skip this step, as you would have no need to limit your search.) If there are too many cites to look through, you should modify the search by using one of the mechanisms described in the following sections.

B. "Job Search"

If the "Name Search" produces cites on many different people with the same name, one can conduct a "Job Search" in order to narrow the search. The "Job Search" attaches previous jobs or activities in which the candidate has been involved to the general "Name Search." This often happens if someone has a common name, or if we do not have a middle initial or middle name.

A job search is conducted by typing in the candidate's name and then adding on key words to your search so that it will only produce articles about your candidate. For example, you would type Jane pre/2 Doe and Doe and Doe w/30 (assistant secretary or department of defense or DOD or acquisition or Clinton campaign or professor or military or army or Wesleyan or Illinois Clean Water or Governor's Task Force). As the above example illustrates, a job search should

include jobs that the candidate has held, schools attended, boards on which the candidate has served and any other words that would help limit your search to just your candidate, but would not lead you to miss crucial articles.

C. "Issue Search"

If the "Name Search" alone or the "Name Search" in conjunction with the "Job Search" still generates too many articles, you can conduct an "Issue Search" which will focus the search on articles that are controversial in nature.

An "Issue Search" should be conducted by typing **Jane pre/2 Doe and Doe and Doe w/30 (controv! or scandal! or illegal! or illicit! or drug! or investigat! or indict! or arrest! or convict! or discriminat! or harass!)**. If you are conducting a job search and an issue search concurrently, you should type **Jane pre/2 Doe and Doe and Doe w/30 [job search] and Doe w/30 [issue search]** because a search should always include the last name by itself, and then w/30 modifiers should each be connected to a separate entry of the last name.

D. "Headline/Lead Searches"

If there are still too many cites to look through with an issue search, you have two options: (1) limit the words in the issue search or, preferably, (2) do a headline/lead search. A headline/lead search will produce only stories in which your candidate is mentioned in the headline, or lead sentence, of an article. You write such a search by typing **Jane pre/2 Doe and Doe and Hlead (Doe)**. You should only use this as a last resort, as it severely limits the number of stories your search will produce.

E. "Byline Searches"

Whenever you limit a search by using a job, issue or headline/lead search, you should couple that with a byline search, produced by typing **Jane pre/2 Doe and Doe and Byline (Doe)**. This ensures that you will catch all of the articles or letters written by Ms. Doe.

F. Special Notes

It is very important to remember two things:

1. Always have one entry of a candidate's last name by itself, one connected to the candidate's first name and one for each modification.

2. Always conduct a byline search when you do a jobs, issue or headline/lead search.

II. GENFED;MEGA

The second database you will use is "genfed;mega." All candidate searches begin with a basic "name" search. (See above, I.A.) If there are too many cites to look through at this point (determined by the level of the position, as described earlier), you should modify the search by using name ((Jane or Jane L. or Jane Lane) pre/1 Doe) and Doe.

NOTES AND COMMENTS:

1. Do you have any medical problems that might interfere with your ability to fulfill your duties?

2. Have you ever experienced problems on or off the job because of any emotional or mental condition (i.e., problems that could interfere with your ability to fulfill your responsibilities to the Administration)?

- a. Any treatment or counseling by a psychologist, psychiatrist or similar professional?

- b. Symptoms?

- c. Diagnosis/prognosis?

- d. Medication?

3. a. Have you ever had any problems with alcohol or any incidents of public drunkenness?

- b. Any DWI/DUI or similar traffic charges involving alcohol or drugs?

4. a. Have you ever been charged with or convicted of a felony offense?

- b. Misdemeanors (including reckless driving, etc)?

- c. Have you ever been arrested at all (including juvenile offenses)?

5. Are there currently any charges pending against you for any criminal offense?

6. To the best of your knowledge, are you currently the subject of any criminal, civil, or administrative investigation?

7. Have you ever been a defendant in a lawsuit?

- a. Party to an arbitration proceeding?

- b. Party to an EEOC complaint?

8. a. Have you filed and paid all federal, state and local taxes when due?

- b. Do you ever file for valid extensions?

- c. Have you ever filed beyond the extended date?

- d. Have you ever paid any tax penalties?

- e. Are there any tax problems or issues that the Agency should be made aware of?

9. Have you ever been the subject of an audit by the Internal Revenue Service or a state or local agency responsible for tax collection?

10. a. Have you used any illegal substances, including marijuana, since age 18?

- b. Have you ever sold or purchased any illegal substances? Manufactured?

11. Do you currently have outstanding debts that exceed your assets?

a. Do you currently have excessive balances on any of your credit cards (if yes, how much and why) ? Are they current?

b. Any student loan problems (defaults, payment lapses, judgements etc.)?

c. Any incidents of bankruptcy in your personal or professional background?

d. Are there any problems with your credit history (credit cards revoked, credit denied, etc.) ?

12. Is there anything in your personal, professional or political background that you think might be used by others to either compromise or embarrass yourself or the Administration?

13. Are there any individuals or organizations that you believe might oppose your appointment?

14. Have you ever been disciplined or cited for, or been the subject of a complaint regarding a breach of ethics or unprofessional conduct?

15. Are you now or have you ever been a registered agent for any foreign country, government or political party or organization?

16. Do you currently have any foreign clients or business associates that could create a potential or perceived conflict of interest?

17. Is there any possibility that any of your current, prior work, and past or present clients could create an actual or perceived financial or other conflict of interest, related to your new position with the Federal Government?

18. a. Are you married? _____ b. Is your spouse a U.S. citizen? _____
c. Divorced? _____ d. Any potentially embarrassing issues related to the divorce?

19. a. Do you now, or have you in the past, employed individuals in your household on a part-time or full-time basis? _____

b. What type of employees? _____

Do you comply with the following:

- Immigration laws (post-1986 bar on hiring individuals who do not have authorization to work in the U.S.):

I-9 Form ? _____

- FICA Requirements:

- Federal Unemployment Tax Requirements:

- Worker's Compensation:

- Fair Labor Standards Act:

- State and local tax and employment laws:

20. Have you ever had any problems with employees or co-workers, including any allegations of racial discrimination or sexual harassment?

21. Have you had a chance to review the ethics forms (usually distributed with financial disclosure forms, some agencies may not require them)? _____

-
-
22. Are you a member of any clubs or organizations? Do any of them discriminate in policy or practice? Do they have any minority membership?

-
-
23. Are you a member of any Boards of Directors? Do you intend to say on those boards after you are appointed? (They are prohibited from doing so in most cases).

-
-
24. Have you ever been the subject of any adverse media attention?

-
-
25. As a candidate for public office, did you ever receive controversial or allegedly illegal contributions?

-
-
26. Is there anything that I have not specifically asked that you think we should know before you are appointed to this position?

-
-
27. Additional Notes and Comments:

One Hundred Third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the twenty-fifth day of January, one thousand nine hundred and ninety-four*

An Act

To make improvements in the old-age, survivors, and disability insurance program
under title II of the Social Security Act.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Social Security Domestic Employment Reform Act of 1994".

SEC. 2. SIMPLIFICATION OF EMPLOYMENT TAXES ON DOMESTIC SERVICES.

(a) THRESHOLD REQUIREMENT FOR SOCIAL SECURITY TAXES.—

(1) AMENDMENTS OF INTERNAL REVENUE CODE.—

(A) GENERAL RULE.—Subparagraph (B) of section 3121(a)(7) of the Internal Revenue Code of 1986 (defining wages) is amended to read as follows:

"(B) cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service described in subsection (g)(5)), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in subsection (x)) for such year;"

(B) APPLICABLE DOLLAR THRESHOLD.—Section 3121 of such Code is amended by adding at the end thereof the following new subsection:

"(x) APPLICABLE DOLLAR THRESHOLD.—For purposes of subsection (a)(7)(B), the term 'applicable dollar threshold' means \$1,000. In the case of calendar years after 1995, the Commissioner of Social Security shall adjust such \$1,000 amount at the same time and in the same manner as under section 215(a)(1)(B)(ii) of the Social Security Act with respect to the amounts referred to in section 215(a)(1)(B)(i) of such Act, except that, for purposes of this paragraph, 1993 shall be substituted for the calendar year referred to in section 215(a)(1)(B)(ii)(II) of such Act. If any amount as adjusted under the preceding sentence is not a multiple of \$100, such amount shall be rounded to the next lowest multiple of \$100."

(C) EMPLOYMENT OF DOMESTIC EMPLOYEES UNDER AGE 18 EXCLUDED FROM COVERAGE.—Section 3121(b) of such Code (defining employment) is amended—

- (i) by striking "or" at the end of paragraph (19),
- (ii) by striking the period at the end of paragraph (20) and inserting "; or", and

(iii) by adding at the end the following new paragraph:

“(21) domestic service in a private home of the employer which—

“(A) is performed in any year by an individual under the age of 18 during any portion of such year; and

“(B) is not the principal occupation of such employee.”.

(D) CONFORMING AMENDMENTS.—The second sentence of section 3102(a) of such Code is amended—

(i) by striking “calendar quarter” each place it appears and inserting “calendar year”, and

(ii) by striking “\$50” and inserting “the applicable dollar threshold (as defined in section 3121(x)) for such year”.

(2) AMENDMENT OF SOCIAL SECURITY ACT.—

(A) GENERAL RULE.—Subparagraph (B) of section 209(a)(6) of the Social Security Act (42 U.S.C. 409(a)(6)(B)) is amended to read as follows:

“(B) Cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service described in section 210(f)(5)), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in section 3121(x) of the Internal Revenue Code of 1986) for such year;”.

(B) EMPLOYMENT OF DOMESTIC EMPLOYEES UNDER AGE 18 EXCLUDED FROM COVERAGE.—Section 210(a) of such Act (42 U.S.C. 410(a)) is amended—

(i) by striking “or” at the end of paragraph (19),

(ii) by striking the period at the end of paragraph (20) and inserting “; or”, and

(iii) by adding at the end the following new paragraph:

“(21) Domestic service in a private home of the employer which—

“(A) is performed in any year by an individual under the age of 18 during any portion of such year; and

“(B) is not the principal occupation of such employee.”.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to remuneration paid after December 31, 1993.

(B) EXCLUDED EMPLOYMENT.—The amendments made by paragraphs (1)(C) and (2)(B) shall apply to services performed after December 31, 1994.

(4) NO LOSS OF SOCIAL SECURITY COVERAGE FOR 1994; CONTINUATION OF W-2 FILING REQUIREMENT.—Notwithstanding the amendments made by this subsection, if the wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) paid during 1994 to an employee for domestic service in a private home of the employer are less than \$1,000—

(A) the employer shall file any return or statement required under section 6051 of such Code with respect to such wages (determined without regard to such amendments), and

(B) the employee shall be entitled to credit under section 209 of the Social Security Act with respect to any

such wages required to be included on any such return or statement.

(b) COORDINATION OF COLLECTION OF DOMESTIC SERVICE EMPLOYMENT TAXES WITH COLLECTION OF INCOME TAXES.—

(1) IN GENERAL.—Chapter 25 of the Internal Revenue Code of 1986 (relating to general provisions relating to employment taxes) is amended by adding at the end thereof the following new section:

“SEC. 3510. COORDINATION OF COLLECTION OF DOMESTIC SERVICE EMPLOYMENT TAXES WITH COLLECTION OF INCOME TAXES.

“(a) GENERAL RULE.—Except as otherwise provided in this section—

“(1) returns with respect to domestic service employment taxes shall be made on a calendar year basis,

“(2) any such return for any calendar year shall be filed on or before the 15th day of the fourth month following the close of the employer’s taxable year which begins in such calendar year, and

“(3) no requirement to make deposits (or to pay installments under section 6157) shall apply with respect to such taxes.

“(b) DOMESTIC SERVICE EMPLOYMENT TAXES SUBJECT TO ESTIMATED TAX PROVISIONS.—

“(1) IN GENERAL.—Solely for purposes of section 6654, domestic service employment taxes imposed with respect to any calendar year shall be treated as a tax imposed by chapter 2 for the taxable year of the employer which begins in such calendar year.

“(2) EMPLOYERS NOT OTHERWISE REQUIRED TO MAKE ESTIMATED PAYMENTS.—Paragraph (1) shall not apply to any employer for any calendar year if—

“(A) no credit for wage withholding is allowed under section 31 to such employer for the taxable year of the employer which begins in such calendar year, and

“(B) no addition to tax would (but for this section) be imposed under section 6654 for such taxable year by reason of section 6654(e).

“(3) ANNUALIZATION.—Under regulations prescribed by the Secretary, appropriate adjustments shall be made in the application of section 6654(d)(2) in respect of the amount treated as tax under paragraph (1).

“(4) TRANSITIONAL RULE.—In the case of any taxable year beginning before January 1, 1998, no addition to tax shall be made under section 6654 with respect to any underpayment to the extent such underpayment was created or increased by this section.

“(c) DOMESTIC SERVICE EMPLOYMENT TAXES.—For purposes of this section, the term ‘domestic service employment taxes’ means—

“(1) any taxes imposed by chapter 21 or 23 on remuneration paid for domestic service in a private home of the employer, and

“(2) any amount withheld from such remuneration pursuant to an agreement under section 3402(p).

For purposes of this subsection, the term 'domestic service in a private home of the employer' includes domestic service described in section 3121(g)(5).

"(d) EXCEPTION WHERE EMPLOYER LIABLE FOR OTHER EMPLOYMENT TAXES.—To the extent provided in regulations prescribed by the Secretary, this section shall not apply to any employer for any calendar year if such employer is liable for any tax under this subtitle with respect to remuneration for services other than domestic service in a private home of the employer.

"(e) GENERAL REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section. Such regulations may treat domestic service employment taxes as taxes imposed by chapter 1 for purposes of coordinating the assessment and collection of such employment taxes with the assessment and collection of domestic employers' income taxes.

"(f) AUTHORITY TO ENTER INTO AGREEMENTS TO COLLECT STATE UNEMPLOYMENT TAXES.—

"(1) IN GENERAL.—The Secretary is hereby authorized to enter into an agreement with any State to collect, as the agent of such State, such State's unemployment taxes imposed on remuneration paid for domestic service in a private home of the employer. Any taxes to be collected by the Secretary pursuant to such an agreement shall be treated as domestic service employment taxes for purposes of this section.

"(2) TRANSFERS TO STATE ACCOUNT.—Any amount collected under an agreement referred to in paragraph (1) shall be transferred by the Secretary to the account of the State in the Unemployment Trust Fund.

"(3) SUBTITLE F MADE APPLICABLE.—For purposes of subtitle F, any amount required to be collected under an agreement under paragraph (1) shall be treated as a tax imposed by chapter 23.

"(4) STATE.—For purposes of this subsection, the term 'State' has the meaning given such term by section 3306(j)(1)."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end thereof the following:

"Sec. 3510. Coordination of collection of domestic service employment taxes with collection of income taxes."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to remuneration paid in calendar years beginning after December 31, 1994.

(4) EXPANDED INFORMATION TO EMPLOYERS.—The Secretary of the Treasury or the Secretary's delegate shall prepare and make available information on the Federal tax obligations of employers with respect to employees performing domestic service in a private home of the employer. Such information shall also include a statement that such employers may have obligations with respect to such employees under State laws relating to unemployment insurance and workers compensation.

SEC. 3. ALLOCATIONS TO FEDERAL DISABILITY INSURANCE TRUST FUND.

(a) ALLOCATION WITH RESPECT TO WAGES.—Section 201(b)(1) of the Social Security Act (42 U.S.C. 401(b)(1)) is amended by striking "(O) 1.20 per centum" and all that follows through "Decem-

ber 31, 1999, and so reported,” and inserting “(O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 1994, and so reported, (P) 1.88 per centum of the wages (as so defined) paid after December 31, 1993, and before January 1, 1997, and so reported, (Q) 1.70 per centum of the wages (as so defined) paid after December 31, 1996, and before January 1, 2000, and so reported, and (R) 1.80 per centum of the wages (as so defined) paid after December 31, 1999, and so reported,”.

(b) ALLOCATION WITH RESPECT TO SELF-EMPLOYMENT INCOME.—Section 201(b)(2) of such Act (42 U.S.C. 401(b)(2)) is amended by striking “(O) 1.20 per centum” and all that follows through “December 31, 1999,” and inserting “(O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 1994, (P) 1.88 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1993, and before January 1, 1997, (Q) 1.70 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1996, and before January 1, 2000, and (R) 1.80 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999,”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to wages paid after December 31, 1993, and self-employment income for taxable years beginning after such date.

(d) STUDY ON RISING COSTS OF DISABILITY BENEFITS.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall conduct a comprehensive study of the reasons for rising costs payable from the Federal Disability Insurance Trust Fund.

(2) MATTERS TO BE INCLUDED IN STUDY.—In conducting the study under this subsection, the Commissioner of Social Security shall—

(A) determine the relative importance of the following factors in increasing the costs payable from the Trust Fund:

- (i) increased numbers of applications for benefits;
- (ii) higher rates of benefit allowances; and
- (iii) decreased rates of benefit terminations; and

(B) identify, to the extent possible, underlying social, economic, demographic, programmatic, and other trends responsible for changes in disability benefit applications, allowances, and terminations.

(3) REPORT.—Not later than October 1, 1995, the Commissioner of Social Security shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of the study conducted under this subsection, together with any recommendations for legislative changes which the Commissioner determines appropriate.

SEC. 4. NONPAYMENT OF BENEFITS TO INCARCERATED INDIVIDUALS AND INDIVIDUALS CONFINED IN CRIMINAL CASES PURSUANT TO CONVICTION OR BY COURT ORDER BASED ON FINDINGS OF INSANITY.

(a) **IN GENERAL.**—Section 202(x) of the Social Security Act (42 U.S.C. 402(x)) is amended—

(1) in the heading, by inserting “and Certain Other Inmates of Publicly Funded Institutions” after “Prisoners”;

(2) by striking “(x)(1) Notwithstanding” and all that follows through the end of paragraph (1) and inserting the following: “(x)(1)(A) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223 to any individual for any month during which such individual—

“(i) is confined in a jail, prison, or other penal institution or correctional facility pursuant to his conviction of an offense punishable by imprisonment for more than 1 year (regardless of the actual sentence imposed), or

“(ii) is confined by court order in an institution at public expense in connection with—

“(I) a verdict or finding that the individual is guilty but insane, with respect to an offense punishable by imprisonment for more than 1 year,

“(II) a verdict or finding that the individual is not guilty of such an offense by reason of insanity,

“(III) a finding that such individual is incompetent to stand trial under an allegation of such an offense, or

“(IV) a similar verdict or finding with respect to such an offense based on similar factors (such as a mental disease, a mental defect, or mental incompetence).

“(B)(i) For purposes of clause (i) of subparagraph (A), an individual shall not be considered confined in an institution comprising a jail, prison, or other penal institution or correctional facility during any month throughout which such individual is residing outside such institution at no expense (other than the cost of monitoring) to such institution or the penal system or to any agency to which the penal system has transferred jurisdiction over the individual.

“(ii) For purposes of clause (ii) of subparagraph (A), an individual confined in an institution as described in such clause (ii) shall be treated as remaining so confined until—

“(I) he or she is released from the care and supervision of such institution, and

“(II) such institution ceases to meet the individual’s basic living needs.”;

and

(3) in paragraph (3), by striking “any individual” and all that follows and inserting “any individual who is confined as described in paragraph (1) if the confinement is under the jurisdiction of such agency and the Commissioner of Social Security requires such information to carry out the provisions of this section.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to benefits for months commencing after 90 days after the date of the enactment of this Act.

SEC. 5. ADDITIONAL DEBT COLLECTION PRACTICES.

(a) **IN GENERAL.**—Section 204 of the Social Security Act (42 U.S.C. 404) is amended by adding at the end the following new subsection:

“(f)(1) With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, and 3718 of title 31, United States Code, as in effect on October 1, 1994.

“(2) For purposes of paragraph (1), the term ‘delinquent amount’ means an amount—

“(A) in excess of the correct amount of payment under this title;

“(B) paid to a person after such person has attained 18 years of age; and

“(C) determined by the Commissioner of Social Security, under regulations, to be otherwise unrecoverable under this section after such person ceases to be a beneficiary under this title.”.

(b) **CONFORMING AMENDMENT.**—Section 3701(d) of title 31, United States Code, is amended by inserting “, except to the extent provided under section 204(f) of such Act (42 U.S.C. 404(f)),” after “the Social Security Act (42 U.S.C. 301 et seq.)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to collection activities begun on or after the date of the enactment of this Act and before October 1, 1999.

SEC. 6. NURSING HOMES REQUIRED TO REPORT ADMISSIONS OF SSI RECIPIENTS.

(a) **IN GENERAL.**—Section 1631(e)(1) of the Social Security Act (42 U.S.C. 1383(e)(1)) is amended by adding at the end the following new subparagraph:

“(C) For purposes of making determinations under section 1611(e), the requirements prescribed by the Commissioner of Social Security pursuant to subparagraph (A) of this paragraph shall require each administrator of a nursing home, extended care facility, or intermediate care facility, within 2 weeks after the admission of any eligible individual or eligible spouse receiving benefits under this title, to transmit to the Commissioner a report of the admission.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to admissions occurring on or after October 1, 1995.

H. R. 4278—8

SEC. 7. RULE OF CONSTRUCTION.

Until March 31, 1995, any reference in this Act (other than section 3(d)) or any amendment made by this Act to the Commissioner of Social Security shall be deemed a reference to the Secretary of Health and Human Services.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

INTERVIEW OF PROPOSED SENIOR EXECUTIVE SERVICE APPOINTEE

Name:

Telephone:

Position:

SSN:

Date of Interview:

Interviewing Attorney:

RECOMMENDATION:

NOTES AND COMMENTS:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

1. Do you have any medical problems that might interfere with your ability to fulfill your duties?

2. Have you ever experienced problems on or off the job because of any emotional or mental condition (i.e., problems that could interfere with your ability to fulfill your responsibilities to the Administration)?

- a. Any treatment or counseling by a psychologist, psychiatrist or similar professional?

- b. Symptoms?

- c. Diagnosis/prognosis?

- d. Medication?

3. a. Have you ever had any problems with alcohol or any incidents of public drunkenness?

- b. Any DWI/DUI or similar traffic charges involving alcohol or drugs?

4. a. Have you ever been charged with or convicted of a felony offense?

- b. Misdemeanors (including reckless driving, etc)?

- c. Have you ever been arrested at all (including juvenile offenses)?

5. Are there currently any charges pending against you for any criminal offense?

6. To the best of your knowledge, are you currently the subject of any criminal, civil, or administrative investigation?

7. Have you ever been a defendant in a lawsuit?

- a. Party to an arbitration proceeding?

- b. Party to an EEOC complaint?

8. a. Have you filed and paid all federal, state and local taxes when due?

b. Do you ever file for valid extensions?

c. Have you ever filed beyond the extended date?

d. Have you ever paid any tax penalties?

e. Are there **any** tax problems or issues that the Agency should be made aware of?

9. Have you ever been the subject of an audit by the Internal Revenue Service or a state or local agency responsible for tax collection?

10. a. Have you used any illegal substances, including marijuana, since age 18?

b. Have you ever sold or purchased any illegal substances? Manufactured?

11. Do you currently have outstanding debts that exceed your assets?

a. Do you currently have excessive balances on any of your credit cards (if yes, how much and why) ? Are they current?

b. Any student loan problems (defaults, payment lapses, judgements etc.)?

c. Any incidents of bankruptcy in your personal or professional background?

d. Are there any problems with your credit history (credit cards revoked, credit denied, etc.) ?

12. Is there anything in your personal, professional or political background that you think might be used by others to either compromise or embarrass yourself or the Administration?

13. Are there any individuals or organizations that you believe might oppose your appointment?

14. Have you ever been disciplined or cited for, or been the subject of a complaint regarding a breach of ethics or unprofessional conduct?

15. Are you now or have you ever been a registered agent for any foreign country, government or political party or organization?

16. Do you currently have any foreign clients or business associates that could create a potential or perceived conflict of interest?

17. Is there any possibility that any of your current, prior work, and past or present clients could create an actual or perceived financial or other conflict of interest, related to your new position with the Federal Government?

18. a. Are you married? _____ b. Is your spouse a U.S. citizen? _____
c. Divorced? _____ d. Any potentially embarrassing issues related to the divorce?

19. a. Do you now, or have you in the past, employed individuals in your household on a part-time or full-time basis? _____

b. What type of employees? _____

Do you comply with the following:

- Immigration laws (post-1986 bar on hiring individuals who do not have authorization to work in the U.S.):

I-9 Form ? _____

- FICA Requirements:

- Federal Unemployment Tax Requirements:

- Worker's Compensation:

- Fair Labor Standards Act:

- State and local tax and employment laws:

20. Have you ever had any problems with employees or co-workers, including any allegations of racial discrimination or sexual harassment?

21. Have you had a chance to review the ethics forms (usually distributed with financial disclosure forms, some agencies may not require them)? _____

-
-
22. Are you a member of any clubs or organizations? Do any of them discriminate in policy or practice? Do they have any minority membership?

-
-
23. Are you a member of any Boards of Directors? Do you intend to say on those boards after you are appointed? (They are prohibited from doing so in most cases).

-
-
24. Have you ever been the subject of any adverse media attention?

-
-
25. As a candidate for public office, did you ever receive controversial or allegedly illegal contributions?

-
-
26. Is there anything that I have not specifically asked that you think we should know before you are appointed to this position?

-
-
27. Additional Notes and Comments:

Guidelines for Public Record Research

Public record research is conducted using the Lexis/Nexis on-line research service on all political Senior Executive Service ("SES") candidates for government office. Depending upon the sensitivity of the position and the amount of time allowed to complete the research, one should expect to review approximately 80 cites on each candidate.

I. NEXIS;ALLNWS

A. "Name Search"

The first database used is "nexis;allnws." All candidate searches begin with a "name" search in this file. If you are researching Jane Doe, for example, you should type in **Jane pre/2 Doe and Doe**. You should use "pre/2" because you want NEXIS to catch all the Jane's that are one or two words before the word Doe. You should type "and Doe" so that Nexis picks up references to the name throughout an article, and not just when the first name appears with it. In a long article about Jane Doe, for example, she will undoubtedly be referred to as "Doe," or "Ms. Doe," after the author's initial reference to her.

If you know the middle name or initial of the candidate, you should type in **(Jane or Jane L.) pre/1 Doe and Doe or (Jane or Jane L. or Jane Lane) pre/1 Doe and Doe**. With these searches, you can eliminate all the Jane Doe's with other middle initials or middle names. (If you have a candidate with an extremely unusual first or last name, you could skip this step, as you would have no need to limit your search.) If there are too many cites to look through, you should modify the search by using one of the mechanisms described in the following sections.

B. "Job Search"

If the "Name Search" produces cites on many different people with the same name, one can conduct a "Job Search" in order to narrow the search. The "Job Search" attaches previous jobs or activities in which the candidate has been involved to the general "Name Search." This often happens if someone has a common name, or if we do not have a middle initial or middle name.

A job search is conducted by typing in the candidate's name and then adding on key words to your search so that it will only produce articles about your candidate. For example, you would type **Jane pre/2 Doe and Doe and Doe w/30 (assistant secretary or department of defense or DOD or acquisition or Clinton campaign or professor or military or army or Wesleyan or Illinois Clean Water or Governor's Task Force)**. As the above example illustrates, a job search should

include jobs that the candidate has held, schools attended, boards on which the candidate has served and any other words that would help limit your search to just your candidate, but would not lead you to miss crucial articles.

C. "Issue Search"

If the "Name Search" alone or the "Name Search" in conjunction with the "Job Search" still generates too many articles, you can conduct an "Issue Search" which will focus the search on articles that are controversial in nature.

An "Issue Search" should be conducted by typing **Jane pre/2 Doe and Doe and Doe w/30 (controv! or scandal! or illegal! or illicit! or drug! or investigat! or indict! or arrest! or convict! or discriminat! or harass!)**. If you are conducting a job search and an issue search concurrently, you should type **Jane pre/2 Doe and Doe and Doe w/30 [job search] and Doe w/30 [issue search]** because a search should always include the last name by itself, and then w/30 modifiers should each be connected to a separate entry of the last name.

D. "Headline/Lead Searches"

If there are still too many cites to look through with an issue search, you have two options: (1) limit the words in the issue search or, preferably, (2) do a headline/lead search. A headline/lead search will produce only stories in which your candidate is mentioned in the headline, or lead sentence, of an article. You write such a search by typing **Jane pre/2 Doe and Doe and Hlead (Doe)**. You should only use this as a last resort, as it severely limits the number of stories your search will produce.

E. "Byline Searches"

Whenever you limit a search by using a job, issue or headline/lead search, you should couple that with a byline search, produced by typing **Jane pre/2 Doe and Doe and Byline (Doe)**. This ensures that you will catch all of the articles or letters written by Ms. Doe.

F. Special Notes

It is very important to remember two things:

1. Always have one entry of a candidate's last name by itself, one connected to the candidate's first name and one for each modification.

2. Always conduct a byline search when you do a jobs, issue or headline/lead search.

II. GENFED;MEGA

The second database you will use is "genfed;mega." All candidate searches begin with a basic "name" search. (See above, I.A.) If there are too many cites to look through at this point (determined by the level of the position, as described earlier), you should modify the search by using name ((Jane or Jane L. or Jane Lane) pre/1 Doe) and Doe.

LEXIS/NEXIS SEARCHES

The following is an example of the searches constructed from the name: John Jay Doe

Library: nexis;allnws

I. NAME SEARCH: (john or john j or john jay or johnny or johnny j or johnny jay or j jay or j j or jay) pre/1 doe and doe

****Note:** We try to use every possible nickname and combination of names. Always include the last name alone so that it is highlighted throughout the article. If you do not have a middle name or initial, use pre/2 instead of pre/1.

If the Name Search retrieves more than about 150 articles, narrow it by adding the following searches to the end of the name search:

AND NOT: and not (fns or reuter!)

****Note:** Always put this last. Other terms can be added inside the parenthesis if they definitely apply to the wrong person. For example, use: and not (fns or reuter! or football) if many of the stories relate to a football player who is not our candidate.

JOBS SEARCH: and doe w/30 (current job or old job or old job or old job or school)

****Note:** Jobs should be listed broadly enough to retrieve all references to candidate but narrowly enough to avoid too many other people being pulled in.

SCANDAL SEARCH: and doe w/30 (illegal! or drug! or convict! or arrest! or indict! or discriminat! or harass! or clinton or republican* or scandal! or critic! or blam! or embarrass! or improper! or complain! or dispute!)

****Note:** The Scandal Search is programmed into all three lexis computers as a macro. Just type Alt-1 and it magically appears. If the Scandal Search and the Scandal Search combined with the Job Search do not get you below 200 stories, eliminate words from the Scandal Search. If at all possible, retain the words that, in the example above, appear before clinton. If you still have too many articles, discuss the search with someone else.

II. BYLINE SEARCH: (john or john j or john jay or johnny or johnny j or johnny jay or j jay or j j or jay) pre/1 doe and doe and byline (doe)

****Note:** If you do a Jobs Search or a Scandal Search, you must do a separate Byline Search.

Change Library: genfed;mega

III. GENFED SEARCH: name ((john or john j or john jay or johnny or johnny j or johnny jay or j jay or j j or jay) pre/1 doe) and doe

****Note:** This may only be narrowed by using the candidate's birth date: and date aft (00/00/1900)

Printing the cite list: .pa;.ci;2;y

Printing selected items: .pa;.fu;2;sel;1,3,5;y

**PERSONAL DATA STATEMENT QUESTIONNAIRE FOR NON-CAREER SES
APPOINTEES**

As part of the clearance procedures for your prospective position, please answer all of the following questions (please do not respond "not applicable" or "N/A" if your response is "no" or "none"). In responding to the questions, please supply any information regarding your spouse or relatives that you deem to be relevant. Your responses to this questionnaire, which is not subject to public disclosure, are confidential.

You can type your responses in memorandum form on a separate sheet of paper with each answer corresponding to the number of the question. You do not need to retype the questions, but please sign and date the response.

If you have any questions or need assistance in responding to this questionnaire, please do not hesitate to contact this office. Thank you for your cooperation.

Personal and Family Background

1. Please list your full name; home address and telephone number; office address and telephone number; date and place of birth; citizenship; and social security number.

2. Please identify your current marital status; spouse's name, citizenship, occupation, and current employer; and the names and ages of your children.

3. Do you have any medical conditions that could interfere with your ability to fulfill your duties? Please explain.

Professional and Educational Background

4. Please list each high school, college, and graduate school you attended; the dates of your attendance; and degrees awarded.

5. Please furnish a copy of your resume and a brief biographical statement.

6. Please chronologically list activities, other than those listed on your resume, from which you have derived earned income (e.g., self-employment, consulting activities, writing, speaking, royalties, and honoraria) since age 21.

7. Please list each book, article, or publication you have authored, individually or with others.

8. Identify each instance in which you have testified before Congress in a non-governmental capacity and specify the subject matter of each testimony.

9. Please list all corporations, partnerships, trusts, or other business entities with which you have ever been affiliated as an officer, director, trustee, partner, or holder of a significant equity or financial interest (i.e., any ownership interest of more than 5%), or whose decisions you had the ability to influence.

10. Please provide the names of all corporations, firms, partnerships, trusts, or other business enterprises, and all non-profit organizations and other institutions with which you are now, or during the past five years have been, affiliated as an advisor, attorney or consultant. It is only necessary to provide the names of major clients and any client matter in which you and your firm are involved that might present a potential conflict of interest with your proposed assignment. Please identify the clients by name unless it would breach a confidential relationship or duty respecting a privileged matter. In addition, please provide the names of any other organizations with which you were associated which might present a potential conflict or the appearance of conflict of interest with your prospective appointment.

11. Please describe any contractual or informal arrangement you may have made with any person or any business enterprise in regard to future employment or termination payments or financial benefits that will be provided you if you enter government employment.

12. If you are a member of any licensed profession or occupation (such as lawyer, doctor, accountant, insurance or real estate broker, etc.), please specify: the present status of each license; and whether any such license has ever been withdrawn, suspended, or revoked, and the reason therefor.

13. Does your spouse or any family member or business in which you, your spouse or any family members have a significant interest have any relationship with the federal government through contracts, consulting services, grants, loans or guarantees? If yes, please provide details.

14. If you have performed any work for and/or received any payments from any foreign government, business, or individual in the past 10 years, please describe the circumstances, and identify the source and amount.

15. Please list any registration as an agent for a foreign principal, or any exemption from such registration.

16. Have you ever registered as a lobbyist or other legislative agent to influence federal or state legislation or administrative acts? If yes, please supply details.

Tax and Financial Information

17. As of the date of this questionnaire, please list all assets and liabilities with a fair market value in excess of \$5,000 for you and your spouse and provide a good faith estimate of value. As to liabilities, please list the name and address of the creditor, the amount owed to the nearest thousand dollar, a brief description of the nature of the obligation, the interest rate (if any), and the date on which due.

18. Please describe all real estate held in your name or in your spouse's name during the last six years, including any real estate held in combination with others or on your or your spouse's behalf in trust, by a nominee, or through any other title-holding entity.

19. Have you and your spouse filed all federal, state and local income tax returns?

20. Have you or your spouse ever filed a late income tax return without a valid extension? If so, describe the circumstances and the resolution of the matter.

21. Have you or your spouse ever paid any tax penalties? If so, describe the circumstances and the resolution of the matter.

22. Has a tax lien or other collection procedure ever been instituted against you or your spouse by federal, state or local authorities? If so, describe the circumstances and the resolution of the matter.

Public and Organizational Activities

23. Please list current and past political party affiliations.

24. Please list each membership you have had with any civic, social, charitable, educational, professional, fraternal, benevolent or religious organization, private club, or other membership organization (including any tax-exempt organization) during the past 10 years.

25. Have you or your spouse at any time belonged to any membership organization, including but not limited to those described in the preceding paragraph, that as a matter of policy or practice denied or restricted affiliation (as a matter of either policy or practice) based on race, sex, ethnic background, religious or sexual preference?

Legal and Administrative Proceedings and Filings

26. Please list any lawsuits you have brought as a plaintiff or which were brought against you as a defendant or third party. Include in this response any contested divorce proceedings or other domestic relations matters.

27. Please list and describe any administrative agency proceeding in which you have been involved as a party.

28. Please list any bankruptcy proceeding in which you or your spouse have been involved as a debtor.

29. Have you or your spouse ever been investigated by any federal, state, military or local law enforcement agency, or arrested for, charged with, or convicted of violating any federal, state or local law, regulation or ordinance (excluding traffic offenses for which the fine was less than \$100)? If so, please identify each such instance and supply details, including: date; place; law enforcement agency; and court.

30. Please list any complaint ever made against you or by any administrative agency, professional association or organization, or federal, state or local ethics agency, committee, or official.

Miscellaneous

31. Have you ever had any association with any person, group or business venture that could be used, even unfairly, to impugn or attack your character and qualifications for a government position?

32. Do you know anyone or any organization that might take any steps, overtly or covertly, fairly or unfairly, to criticize your appointment, including any news organization? If so, please identify and explain the basis for the potential criticism.

33. Please provide any other information, including information about other members of your family, that could suggest a conflict of interest or be a possible source of embarrassment to you, your family or the President.

34. Do you now, or have you in the past employed any individuals in your household on a part-time or full time basis? If so, is the worker(s) in compliance with all applicable immigration laws? Have you paid all applicable employment taxes?

MEMORANDUM

TO: Doug Sheorn, Deputy Director of Information Systems,
Presidential Personnel, Rm 133/OEOB, (202) 456-2966

FROM: _____ (Name, title)
 _____ (Department or Agency)
 _____ (Phone number)

DATE:

RE: _____

This NC-SES appointee has cleared our Counsel review process and is ready to proceed:

NAME OF APPOINTEE _____

[illegible]

DEPARTMENT/AGENCY _____

DATE PUBLIC RECORD RESEARCH COMPLETED: _____

PERSONAL DATA STATEMENT: _____ (DATE SENT TO CANDIDATE)

____ (DATE RECEIVED FROM
CANDIDATE)

DATE CANDIDATE WAS INTERVIEWED:

(WHITE HOUSE COUNSEL NOTIFIED, IF APPLICABLE: _____)

4/20
ses Vetting
Packet.

Cliff

Guidelines for Public Record Research

Public record research is conducted using the Lexis/Nexis on-line research service on all political Senior Executive Service ("SES") candidates for government office. Depending upon the sensitivity of the position and the amount of time allowed to complete the research, one should expect to review approximately 80 cites on each candidate.

I. NEXIS;ALLNWS

A. "Name Search"

The first database used is "nexis;allnws." All candidate searches begin with a "name" search in this file. If you are researching Jane Doe, for example, you should type in **Jane pre/2 Doe and Doe**. You should use "pre/2" because you want NEXIS to catch all the Jane's that are one or two words before the word Doe. You should type "and Doe" so that Nexis picks up references to the name throughout an article, and not just when the first name appears with it. In a long article about Jane Doe, for example, she will undoubtedly be referred to as "Doe," or "Ms. Doe," after the author's initial reference to her.

If you know the middle name or initial of the candidate, you should type in **(Jane or Jane L.) pre/1 Doe and Doe** or **(Jane or Jane L. or Jane Lane) pre/1 Doe and Doe**. With these searches, you can eliminate all the Jane Doe's with other middle initials or middle names. (If you have a candidate with an extremely unusual first or last name, you could skip this step, as you would have no need to limit your search.) If there are too many cites to look through, you should modify the search by using one of the mechanisms described in the following sections.

B. "Job Search"

If the "Name Search" produces cites on many different people with the same name, one can conduct a "Job Search" in order to narrow the search. The "Job Search" attaches previous jobs or activities in which the candidate has been involved to the general "Name Search." This often happens if someone has a common name, or if we do not have a middle initial or middle name.

A job search is conducted by typing in the candidate's name and then adding on key words to your search so that it will only produce articles about your candidate. For example, you would type **Jane pre/2 Doe and Doe and Doe w/30 (assistant secretary or department of defense or DOD or acquisition or Clinton campaign or professor or military or army or Wesleyan or Illinois Clean Water or Governor's Task Force)**. As the above example illustrates, a job search should

include jobs that the candidate has held, schools attended, boards on which the candidate has served and any other words that would help limit your search to just your candidate, but would not lead you to miss crucial articles.

C. "Issue Search"

If the "Name Search" alone or the "Name Search" in conjunction with the "Job Search" still generates too many articles, you can conduct an "Issue Search" which will focus the search on articles that are controversial in nature.

An "Issue Search" should be conducted by typing **Jane pre/2 Doe and Doe and Doe w/30 (controv! or scandal! or illegal! or illicit! or drug! or investigat! or indict! or arrest! or convict! or discriminat! or harass!)**. If you are conducting a job search and an issue search concurrently, you should type **Jane pre/2 Doe and Doe and Doe w/30 [job search] and Doe w/30 [issue search]** because a search should always include the last name by itself, and then w/30 modifiers should each be connected to a separate entry of the last name.

D. "Headline/Lead Searches"

If there are still too many cites to look through with an issue search, you have two options: (1) limit the words in the issue search or, preferably, (2) do a headline/lead search. A headline/lead search will produce only stories in which your candidate is mentioned in the headline, or lead sentence, of an article. You write such a search by typing **Jane pre/2 Doe and Doe and Hlead (Doe)**. You should only use this as a last resort, as it severely limits the number of stories your search will produce.

E. "Byline Searches"

Whenever you limit a search by using a job, issue or headline/lead search, you should couple that with a byline search, produced by typing **Jane pre/2 Doe and Doe and Byline (Doe)**. This ensures that you will catch all of the articles or letters written by Ms. Doe.

F. Special Notes

It is very important to remember two things:

1. Always have one entry of a candidate's last name by itself, one connected to the candidate's first name and one for each modification.

2. Always conduct a byline search when you do a jobs, issue or headline/lead search.

II. GENFED;MEGA

The second database you will use is "genfed;mega." All candidate searches begin with a basic "name" search. (See above, I.A.) If there are too many cites to look through at this point (determined by the level of the position, as described earlier), you should modify the search by using name ((Jane or Jane L. or Jane Lane) pre/1 Doe) and Doe.

March 29, 1994

MEMORANDUM FOR PHIL LADER

FROM: J. VERONICA BIGGINS *JVB*
BETH NOLAN *BN*

RE: CLEARANCE PROCESS

The Office of Presidential Personnel and the Office of the Counsel to the President recommend that the clearance process be guided by the following stipulations:

Candidates for P.A.S. positions will continue to be handled by the White House Counsel's office. Clearance for P.A.S. candidates will be issued only after the Counsel's Office has completed a public record vet, an FBI background investigation, an IRS tax check, financial disclosure and conflict of interest review, and a Counsel interview.

Candidates for P.A. Boards or Commissions with fiduciary, or otherwise sensitive, responsibilities, and the chairs of certain other Boards or Commissions, will continue to be cleared by the White House Counsel's office, using the procedures outlined above.

Counsel clearance for **all other members of Boards or Commissions** will be limited to a public record vet, an FBI name check and an IRS tax check. These candidates will no longer be required to submit a Personal Data Statement or to be interviewed by the Counsel's Office. They will normally be required to file financial disclosure forms with their Designated Agency Ethics Officials (DAEOs.)

Candidates for S.E.S. positions will no longer be cleared by the White House Counsel, but instead by personnel from the agency in which the candidates are to serve. Crucial steps must be taken to ensure that the agency attorneys conducting the public record vet and interview of these S.E.S. candidates be impartial and their work confidential.

The White House will work with each agency, on a case-by-case basis, to identify who will handle candidate clearance for the agency. Those specified individuals will work with the White House Liaisons and Chiefs of Staff to formulate a process that ensures candidates are cleared in the best interest of both the White House and the agency. The White House Counsel retains the final right to issue or deny clearance to any S.E.S. candidate.

An exception applies for all regional S.E.S. positions, which will continue to be handled by the White House Counsel.

**PERSONAL DATA STATEMENT QUESTIONNAIRE FOR NON-CAREER SES
APPOINTEES**

As part of the clearance procedures for your prospective position, please answer all of the following questions (please do not respond "not applicable" or "N/A" if your response is "no" or "none"). In responding to the questions, please supply any information regarding your spouse or relatives that you deem to be relevant. Your responses to this questionnaire, which is not subject to public disclosure, are confidential.

You can type your responses in memorandum form on a separate sheet of paper with each answer corresponding to the number of the question. You do not need to retype the questions, but please sign and date the response.

If you have any questions or need assistance in responding to this questionnaire, please do not hesitate to contact this office. Thank you for your cooperation.

Personal and Family Background

1. Please list your full name; home address and telephone number; office address and telephone number; date and place of birth; citizenship; and social security number.

2. Please identify your current marital status; spouse's name, citizenship, occupation, and current employer; and the names and ages of your children.

3. Do you have any medical conditions that could interfere with your ability to fulfill your duties? Please explain.

Professional and Educational Background

4. Please list each high school, college, and graduate school you attended; the dates of your attendance; and degrees awarded.
5. Please furnish a copy of your resume and a brief biographical statement.
6. Please chronologically list activities, other than those listed on your resume, from which you have derived earned income (e.g., self-employment, consulting activities, writing, speaking, royalties, and honoraria) since age 21.
7. Please list each book, article, or publication you have authored, individually or with others.
8. Identify each instance in which you have testified before Congress in a non-governmental capacity and specify the subject matter of each testimony.
9. Please list all corporations, partnerships, trusts, or other business entities with which you have ever been affiliated as an officer, director, trustee, partner, or holder of a significant equity or financial interest (i.e., any ownership interest of more than 5%), or whose decisions you had the ability to influence.

10. Please provide the names of all corporations, firms, partnerships, trusts, or other business enterprises, and all non-profit organizations and other institutions with which you are now, or during the past five years have been, affiliated as an advisor, attorney or consultant. It is only necessary to provide the names of major clients and any client matter in which you and your firm are involved that might present a potential conflict of interest with your proposed assignment. Please identify the clients by name unless it would breach a confidential relationship or duty respecting a privileged matter. In addition, please provide the names of any other organizations with which you were associated which might present a potential conflict or the appearance of conflict of interest with your prospective appointment.

11. Please describe any contractual or informal arrangement you may have made with any person or any business enterprise in regard to future employment or termination payments or financial benefits that will be provided you if you enter government employment.

12. If you are a member of any licensed profession or occupation (such as lawyer, doctor, accountant, insurance or real estate broker, etc.), please specify: the present status of each license; and whether any such license has ever been withdrawn, suspended, or revoked, and the reason therefor.

13. Does your spouse or any family member or business in which you, your spouse or any family members have a significant interest have any relationship with the federal government through contracts, consulting services, grants, loans or guarantees? If yes, please provide details.

14. If you have performed any work for and/or received any payments from any foreign government, business, or individual in the past 10 years, please describe the circumstances, and identify the source and amount.

15. Please list any registration as an agent for a foreign principal, or any exemption from such registration.

16. Have you ever registered as a lobbyist or other legislative agent to influence federal or state legislation or administrative acts? If yes, please supply details.

Tax and Financial Information

17. As of the date of this questionnaire, please list all assets and liabilities with a fair market value in excess of \$5,000 for you and your spouse and provide a good faith estimate of value. As to liabilities, please list the name and address of the creditor, the amount owed to the nearest thousand dollar, a brief description of the nature of the obligation, the interest rate (if any), and the date on which due.

18. Please describe all real estate held in your name or in your spouse's name during the last six years, including any real estate held in combination with others or on your or your spouse's behalf in trust, by a nominee, or through any other title-holding entity.

19. Have you and your spouse filed all federal, state and local income tax returns?

20. Have you or your spouse ever filed a late income tax return without a valid extension? If so, describe the circumstances and the resolution of the matter.

21. Have you or your spouse ever paid any tax penalties? If so, describe the circumstances and the resolution of the matter.

22. Has a tax lien or other collection procedure ever been instituted against you or your spouse by federal, state or local authorities? If so, describe the circumstances and the resolution of the matter.

Public and Organizational Activities

23. Please list current and past political party affiliations.

24. Please list each membership you have had with any civic, social, charitable, educational, professional, fraternal, benevolent or religious organization, private club, or other membership organization (including any tax-exempt organization) during the past 10 years.

25. Have you or your spouse at any time belonged to any membership organization, including but not limited to those described in the preceding paragraph, that as a matter of policy or practice denied or restricted affiliation (as a matter of either policy or practice) based on race, sex, ethnic background, religious or sexual preference?

Legal and Administrative Proceedings and Filings

26. Please list any lawsuits you have brought as a plaintiff or which were brought against you as a defendant or third party. Include in this response any contested divorce proceedings or other domestic relations matters.

27. Please list and describe any administrative agency proceeding in which you have been involved as a party.

28. Please list any bankruptcy proceeding in which you or your spouse have been involved as a debtor.

29. Have you or your spouse ever been investigated by any federal, state, military or local law enforcement agency, or arrested for, charged with, or convicted of violating any federal, state or local law, regulation or ordinance (excluding traffic offenses for which the fine was less than \$100)? If so, please identify each such instance and supply details, including: date; place; law enforcement agency; and court.

30. Please list any complaint ever made against you or by any administrative agency, professional association or organization, or federal, state or local ethics agency, committee, or official.

Miscellaneous

31. Have you ever had any association with any person, group or business venture that could be used, even unfairly, to impugn or attack your character and qualifications for a government position?

32. Do you know anyone or any organization that might take any steps, overtly or covertly, fairly or unfairly, to criticize your appointment, including any news organization? If so, please identify and explain the basis for the potential criticism.

33. Please provide any other information, including information about other members of your family, that could suggest a conflict of interest or be a possible source of embarrassment to you, your family or the President.

34. Do you now, or have you in the past employed any individuals in your household on a part-time or full time basis? If so, is the worker(s) in compliance with all applicable immigration laws? Have you paid all applicable employment taxes?

Guidelines for Public Record Research

Public record research is conducted using the Lexis/Nexis on-line research service on all political Senior Executive Service ("SES") candidates for government office. Depending upon the sensitivity of the position and the amount of time allowed to complete the research, one should expect to review approximately 80 cites on each candidate.

I. NEXIS;ALLNWS

A. "Name Search"

The first database used is "nexis;allnws." All candidate searches begin with a "name" search in this file. If you are researching Jane Doe, for example, you should type in **Jane pre/2 Doe and Doe**. You should use "pre/2" because you want NEXIS to catch all the Jane's that are one or two words before the word Doe. You should type "and Doe" so that Nexis picks up references to the name throughout an article, and not just when the first name appears with it. In a long article about Jane Doe, for example, she will undoubtedly be referred to as "Doe," or "Ms. Doe," after the author's initial reference to her.

If you know the middle name or initial of the candidate, you should type in **(Jane or Jane L.) pre/1 Doe and Doe** or **(Jane or Jane L. or Jane Lane) pre/1 Doe and Doe**. With these searches, you can eliminate all the Jane Doe's with other middle initials or middle names. (If you have a candidate with an extremely unusual first or last name, you could skip this step, as you would have no need to limit your search.) If there are too many cites to look through, you should modify the search by using one of the mechanisms described in the following sections.

B. "Job Search"

If the "Name Search" produces cites on many different people with the same name, one can conduct a "Job Search" in order to narrow the search. The "Job Search" attaches previous jobs or activities in which the candidate has been involved to the general "Name Search." This often happens if someone has a common name, or if we do not have a middle initial or middle name.

A job search is conducted by typing in the candidate's name and then adding on key words to your search so that it will only produce articles about your candidate. For example, you would type **Jane pre/2 Doe and Doe and Doe w/30 (assistant secretary or department of defense or DOD or acquisition or Clinton campaign or professor or military or army or Wesleyan or Illinois Clean Water or Governor's Task Force)**. As the above example illustrates, a job search should

include jobs that the candidate has held, schools attended, boards on which the candidate has served and any other words that would help limit your search to just your candidate, but would not lead you to miss crucial articles.

C. "Issue Search"

If the "Name Search" alone or the "Name Search" in conjunction with the "Job Search" still generates too many articles, you can conduct an "Issue Search" which will focus the search on articles that are controversial in nature.

An "Issue Search" should be conducted by typing **Jane pre/2 Doe and Doe and Doe w/30 (controv! or scandal! or illegal! or illicit! or drug! or investigat! or indict! or arrest! or convict! or discriminat! or harass!)**. If you are conducting a job search and an issue search concurrently, you should type **Jane pre/2 Doe and Doe and Doe w/30 [job search] and Doe w/30 [issue search]** because a search should always include the last name by itself, and then w/30 modifiers should each be connected to a separate entry of the last name.

D. "Headline/Lead Searches"

If there are still too many cites to look through with an issue search, you have two options: (1) limit the words in the issue search or, preferably, (2) do a headline/lead search. A headline/lead search will produce only stories in which your candidate is mentioned in the headline, or lead sentence, of an article. You write such a search by typing **Jane pre/2 Doe and Doe and Hlead (Doe)**. You should only use this as a last resort, as it severely limits the number of stories your search will produce.

E. "Byline Searches"

Whenever you limit a search by using a job, issue or headline/lead search, you should couple that with a byline search, produced by typing **Jane pre/2 Doe and Doe and Byline (Doe)**. This ensures that you will catch all of the articles or letters written by Ms. Doe.

F. Special Notes

It is very important to remember two things:

1. Always have one entry of a candidate's last name by itself, one connected to the candidate's first name and one for each modification.

2. Always conduct a byline search when you do a jobs, issue or headline/lead search.

II. GENFED;MEGA

The second database you will use is "genfed;mega." All candidate searches begin with a basic "name" search. (See above, I.A.) If there are too many cites to look through at this point (determined by the level of the position, as described earlier), you should modify the search by using name ((Jane or Jane L. or Jane Lane) pre/1 Doe) and Doe.

1. Do you have any medical problems that might interfere with your ability to fulfill your duties?

2. Have you ever experienced problems on or off the job because of any emotional or mental condition (i.e., problems that could interfere with your ability to fulfill your responsibilities to the Administration)?

- a. Any treatment or counseling by a psychologist, psychiatrist or similar professional?

- b. Symptoms?

- c. Diagnosis/prognosis?

- d. Medication?

3. a. Have you ever had any problems with alcohol or any incidents of public drunkenness?

- b. Any DWI/DUI or similar traffic charges involving alcohol or drugs?

4. a. Have you ever been charged with or convicted of a felony offense?

b. Misdemeanors (including reckless driving, etc)?

c. Have you ever been arrested at all (including juvenile offenses)?

5. Are there currently any charges pending against you for any criminal offense?

6. To the best of your knowledge, are you currently the subject of any criminal, civil, or administrative investigation?

7. Have you ever been a defendant in a lawsuit?

a. Party to an arbitration proceeding?

b. Party to an EEOC complaint?

8. a. Have you filed and paid all federal, state and local taxes when due?

b. Do you ever file for valid extensions?

c. Have you ever filed beyond the extended date?

d. Have you ever paid any tax penalties?

e. Are there **any** tax problems or issues that the Agency should be made aware of?

9. Have you ever been the subject of an audit by the Internal Revenue Service or a state or local agency responsible for tax collection?

10. a. Have you used any illegal substances, including marijuana, since age 18?

b. Have you ever sold or purchased any illegal substances? Manufactured?

11. Do you currently have outstanding debts that exceed your assets?

a. Do you currently have excessive balances on any of your credit cards (if yes, how much and why) ? Are they current?

b. Any student loan problems (defaults, payment lapses, judgements etc.)?

c. Any incidents of bankruptcy in your personal or professional background?

d. Are there any problems with your credit history (credit cards revoked, credit denied, etc.) ?

12. Is there anything in your personal, professional or political background that you think might be used by others to either compromise or embarrass yourself or the Administration?

13. Are there any individuals or organizations that you believe might oppose your appointment?

14. Have you ever been disciplined or cited for, or been the subject of a complaint regarding a breach of ethics or unprofessional conduct?

15. Are you now or have you ever been a registered agent for any foreign country, government or political party or organization?

16. Do you currently have any foreign clients or business associates that could create a potential or perceived conflict of interest?

17. Is there any possibility that any of your current, prior work, and past or present clients could create an actual or perceived financial or other conflict of interest, related to your new position with the Federal Government?

18. a. Are you married? _____ b. Is your spouse a U.S. citizen? _____
c. Divorced? _____ d. Any potentially embarrassing issues related to the divorce?

19. a. Do you now, or have you in the past, employed individuals in your household on a part-time or full-time basis? _____

b. What type of employees? _____

Do you comply with the following:

- Immigration laws (post-1986 bar on hiring individuals who do not have authorization to work in the U.S.):

I-9 Form ? _____

- FICA Requirements:

- Federal Unemployment Tax Requirements:

- Worker's Compensation:

- Fair Labor Standards Act:

- State and local tax and employment laws:

20. Have you ever had any problems with employees or co-workers, including any allegations of racial discrimination or sexual harassment?

21. Have you had a chance to review the ethics forms (usually distributed with financial disclosure forms, some agencies may not require them)? _____

22. Are you a member of any clubs or organizations? Do any of them discriminate in policy or practice? Do they have any minority membership?

23. Are you a member of any Boards of Directors? Do you intend to say on those boards after you are appointed? (They are prohibited from doing so in most cases).

24. Have you ever been the subject of any adverse media attention?

25. As a candidate for public office, did you ever receive controversial or allegedly illegal contributions?

26. Is there anything that I have not specifically asked that you think we should know before you are appointed to this position?

27. Additional Notes and Comments:
