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OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

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MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

FROM: CONSTANCE HORNER
DIRECTOR *Constance Horner*

SUBJECT: Civil Service and Transition To A New
Presidential Administration

Attached please find an information package regarding the civil service concerns which may arise in conjunction with the upcoming Presidential transition period. I hope you find this information useful in preparing for the change in administrations. If our Office can be of further help, please contact our General Counsel or the appropriate program office for more detailed information.

1 Attachment

DDA REGISTRY
FILE: OPM 130-AR

CIVIL SERVICE AND TRANSITION TO
A NEW PRESIDENTIAL ADMINISTRATION

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CIVIL SERVICE AND TRANSITION TO
A NEW PRESIDENTIAL ADMINISTRATION

I. INTRODUCTION: CIVIL SERVICE AND TRANSITION TO A NEW
PRESIDENTIAL ADMINISTRATION

Each Administration has the opportunity to appoint a number of officials in the civil service essentially on the basis of their support for its aims and policies. These officials are generally those responsible for formulating, advocating and directing Administration policies and programs, or who serve such officials in a confidential relationship.

A. Generally

In the context of the total Government, only a relatively few positions are subject to change at the discretion of a Presidential Administration. Most executive branch positions are in the competitive civil service or are under a separate merit system. For these latter positions, it is a violation of civil service law and regulations to base personnel decisions on any factor not related to job performance. (See 5 U.S.C. §§ 2301, 2302; 5 CFR Parts 4, 7, 1250.)

Incumbents of positions which are subject to change at the discretion of a Presidential Administration customarily resign before any new Administration takes office or at the request of Administration officials. It also is common for an incoming Administration to ask certain persons to remain on their jobs during the early stages of the new Administration to ensure needed continuity and to provide required personnel during the initial period of staffing.

In any event, employees in positions that are subject to change at the discretion of the Administration are not part of the competitive civil service. Rather, they are excepted from the requirements placed on the competitive service by statute, Executive order or regulation. There are a variety of such employees.

B. Positions or Individuals Subject to Change

Positions or individuals subject to change at the discretion of a new Administration include:

- (1) Presidential appointments made with the advice and consent of the Senate to positions in which the incumbent serves at the pleasure of the President;
- (2) Other Presidential appointments to positions in which the incumbent serves at the pleasure of the President;

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- (3) Individuals serving in the Senior Executive Service on either a noncareer or limited basis; and,
- (4) Appointments to positions in which the incumbent serves in the excepted service at the pleasure of the agency head. Excepted service positions in this category are those which are excepted from the competitive service by statute, executive order, or OPM action (e.g., Schedule C positions).

Positions in these categories normally include Cabinet Officers and heads of other Executive branch agencies; Under Secretaries; Assistant Secretaries; Directors of Bureaus, Services, and Administrations; and Chairpersons and Members of Boards, Commissions, and Committees. Positions in all four categories are often authorized by specific provisions of law. Many are in the Executive Schedule, some are under the General Schedule or other position-oriented pay system.

In the past, categories (1) and (2) included most of the positions in Level I (Cabinet level) through Level V of the Executive Schedule. Now managerial Level IV and Level V positions (not requiring Senate confirmation) are in the SES, although their titles may continue to be listed in sections 5315 and 5316 of title 5 pending revision of the statute. Also, now included in SES are most of the former managerial GS-16, 17, and 18 positions in the Executive branch and equivalent positions in other pay systems.

C. Details To Transition Team

The Presidential Transition Act of 1963 (amended by Public Law 100-398, August 17, 1988) establishes the transition team as a federal entity in order to provide for the orderly transfer of power between administrations. 3 U.S.C. § 102 note. In addition to the hiring of its own staff, the Transition Act provides for the detail of federal employees to the transition team after the November election as follows:

- (1) Any employee of any agency of any branch of the Government may be detailed to the office staff of either the President-elect or the Vice President-elect.
- (2) The employee must be detailed on a reimbursable basis.
- (3) The detail must be with the consent of the lending agency head.

3 U.S.C. § 102 note, sec. 3(a)(2).

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II. INDIVIDUALS APPOINTED BY THE PRESIDENT OR HEAD OF THE AGENCY

A. Generally

Officers and employees who serve "at the pleasure of" the President or other appointing official may be asked to resign or may be dismissed at any time. They are not covered by standard Civil Service removal procedures and have no right of appeal. A sample notice of removal is included in Tab A of the Appendix. Agencies should consult their General Counsel or OPM's General Counsel for assistance in this area.

In certain cases, the organic statute creating a position provides that an individual appointed by the President may be removed only for cause. These provisions are most commonly found in statutes establishing quasi-judicial entities or regulatory agencies. The Office of Legal Counsel at the Department of Justice is the expert in this field. The issue is discussed in such cases as: Myers v. U.S., 272 U.S. 52 (1926); Humphrey's Executor v. U.S., 295 U.S. 602 (1935); Wiener v. U.S., 357 U.S. 349 (1958); and Buckley v. Valeo, 424 U.S. 1 (1976).

B. Role of the Office of Government Ethics

The Ethics Act established a statutory role for the Office of Government Ethics within OPM. With respect to every Presidential nominee requiring Senate confirmation, the Director of the Office, currently Frank Q. Nebeker, must sign and deliver the nominee's public financial disclosure report to the Senate Committee responsible for the confirmation process. He provides an opinion letter certifying the nominee's compliance with all applicable laws and regulations. This letter is a condition precedent to scheduling each confirmation hearing. Opinion letters culminate a review process by the agencies and the Office of Government Ethics which focuses on the formal requirements of Title II of the Ethics Act ("Executive Personnel Public Financial Disclosure Requirements") and the substantive conflict of interest laws (18 U.S.C. § 202-209). The confirmation committees may require other detailed information.

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III. APPOINTEES IN THE SENIOR EXECUTIVE SERVICE

A. Generally

SES positions, appointments, and special tenure features are discussed below. Appointees in the SES who are subject to change at the discretion of a new Administration are those in noncareer, limited term, and limited emergency appointments.

Each agency receives a number of SES position spaces in a biennial position allocation, based on the agency's demonstrated need for the positions. The agency is then free to establish within that limit Career Reserved or General positions as appropriate. Career Reserved positions must be filled by career SES appointees; General positions can be filled by career, noncareer or limited appointees. About one-half of SES positions governmentwide are in each category. Since, by statute, only 10 percent of SES positions governmentwide may be filled by noncareer appointees and 5 percent by limited appointees, most General positions are filled by career appointees.

B. Noncareer SES Appointees

Noncareer SES appointments may be made by an agency to any General position. The agency has the authority to establish the qualifications requirements for the position, approve the candidate's qualifications, make the appointment without regard to the competitive process, and fix the pay of the appointee. Before making the appointment, however, the agency must obtain OPM approval for use of the noncareer appointing authority. For most agencies, no more than 25 percent of SES positions may be filled by noncareer appointment.

A noncareer appointee may be removed following written notice, or requested to resign at any time at the discretion of the appointing authority. 5 CFR Part 359. Noncareer SES appointees removed from the Federal service have no right of appeal to the Merit Systems Protection Board (MSPB). A sample removal notification letter is shown in Tab A of the Appendix.

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The removal of a noncareer SES appointee in an independent regulatory commission may not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President. 5 U.S.C. § 3392(d).

C. Limited Term and Limited Emergency SES Appointees

Limited Term SES appointments are made to General positions having duties terminating within 3 years of the date of appointment. Limited Emergency SES appointments not to exceed 18 months are made to General positions when an unexpected situation develops that does not permit the more time-consuming process of advertising and competitive selection. Prior OPM approval for the appointment is required. As in all SES appointments, the limited term or limited emergency appointee must meet the qualification requirements established for the position by the agency. A limited term or limited emergency SES appointee may serve no more than 36 months on any combination of such appointments in any 48-month period. 5 U.S.C. § 3132(a)(5) and (6); 5 U.S.C. § 3395(b) and (c).

An executive holding either a limited term or limited emergency SES appointment may be removed or requested to resign at any time on the decision of the appointing authority. However, many limited appointees have return rights to positions outside the SES. 5 CFR § 317.605(d).

The procedures for removal are the same as for noncareer SES executives. Limited SES appointees being removed have no right of appeal to MSPB upon termination of the appointment. Also, the removal of a limited SES appointee in an independent regulatory commission cannot be subject to review or approval in the Executive Office of the President.

D. Transition Provisions

With the prior approval of OPM, agencies may make noncareer or limited appointments, as appropriate:

1. To assist in the transition following the inauguration of a new President. Tenure is the same as in any other noncareer or limited appointment.
2. To bring into the agency an individual who has been nominated by the President and is awaiting Senate confirmation. The individual could not be appointed to the target position, but could function in an advisory capacity in another position until confirmed.

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E. Statutory Controls on Career SES Personnel Actions

With the creation of the Senior Executive Service, it became possible for an agency to assign a career executive to any position for which he or she qualified. This possibility is in contrast to the previous system in which some positions were identified as "noncareer" and only noncareer executives could be assigned to them. Now, an agency head has greater flexibility to assign either a career or noncareer SES member to a position within the statutory controls described below:

- (1) SES members may be assigned into or out of critical positions to meet the staffing needs of the new leadership, except that positions designated Career Reserved must be filled by a career executive.
- (2) A career executive may not be involuntarily reassigned to another SES position in the agency or involuntarily removed from the SES within 120 days after the appointment of a new agency head or the appointment of an immediate supervisor who is a noncareer appointee and who has authority to remove or reassign the career executive. This restriction does not apply to an action already underway or being taken as a result of an unsatisfactory performance appraisal, nor generally to removal from Federal service for misconduct. However, a career executive's performance appraisal and rating may not be made within 120 days after the beginning of a new Presidential Administration. 5 U.S.C. § 3395(e); 5 U.S.C. § 3592(b); 5 U.S.C. § 4314(b)(1)(C).
- (3) A career executive may be reassigned to any SES position only if the career executive receives a 15-day written notice. However, the executive may not be reassigned to an SES position outside his or her commuting area without receiving 60 days written notice. 5 U.S.C. § 3395.

Although Presidential appointees are among the executives subject to change in a new administration, it should be noted that certain former SES career executives have entitlement to reinstatement in the Senior Executive Service after leaving the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance. The number of such appointees is small, and the special circumstances must be addressed individually in each case. See 5 U.S.C. § 3593(b).

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IV. APPOINTEES IN THE EXCEPTED SERVICE

A. Noncareer Executive Assignments

Positions filled by Noncareer Executive Assignment (NEA) are positions at GS-16, 17, and 18 that are administratively excepted from the competitive service through action of OPM. The exception is based on the degree of involvement of the incumbent in the policies and actions of the Administration or on a confidential relationship with a political appointee. 5 CFR Part 305, subpart F. Before the Senior Executive Service was established, NEAs were the primary Administration officials below the Executive Levels. There now are very few of these positions because most were incorporated into the SES.

Except in the rare case of an NEA with status in his or her position, an NEA has no right to appeal a removal action to the Merit Systems Protection Board. Nonetheless, the removal of such an individual must be in accordance with any procedures which have been established by the employing agency. A sample notice of separation for these employees is contained in Tab A. In the rare case of an individual having status in the position, the Office of Executive Personnel of OPM will provide advice.

B. Schedule C Positions

Another category of individuals who are subject to change at the discretion of a new Administration are appointees to Schedule C positions, or to equivalent positions in agencies that are statutorily excepted from the competitive service. Schedule C positions consist of jobs at GS-15 and below which the Office of Personnel Management has excepted from the competitive civil service because they include policy-determining responsibilities or require the incumbent to serve in a confidential relationship to a key official. Also, the President has made individual, specified exceptions under Schedule C. 5 CFR § 6.8.

(1) Establishment of Positions

OPM authorizes the establishment of each Schedule C position and may revoke the authority when the position changes. OPM does not review the qualifications of a Schedule C appointee; final authority on this matter rests with the appointing official. As of September 1987 about 1600 employees were under a Schedule C appointment. A list of them is published annually in the Federal Register, under Part 213 of OPM's regulations.

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(2) Procedures for Removal

Schedule C employees may be separated at any time if the confidential or policy-determining relationship between the incumbent and his or her superior no longer exists. They also may be removed based on political affiliation if political affiliation is required for effective job performance. Agencies should consult their General Counsel or OPM's General Counsel on this matter. The only Schedule C employees covered by statutory appeal procedures and who, therefore, may appeal removal actions to the Merit Systems Protection Board (MSPB) are those who were serving in a position in the competitive service when OPM authorized its conversion to Schedule C and who still serve in those positions (i.e., have status in the position -- cf. Roth v. Brownell, 215 F.2d 500 (D.C. Cir. 1954)).

Incumbents of Schedule C positions who have no status in those positions regardless of veterans preference or length of service in the positions, are not covered by statutory procedures and have no rights to appeal removal actions to MSPB. 5 U.S.C. § 7511(b)(2). (Refer to FPM Chapter 752, Adverse Actions, subchapter 3-1, d(2)(A).) However, the removal of any Schedule C employees must be in accordance with any internal appeal procedures which have been established by the employing agency. Vitarelli v. Seaton, 359 U.S. 535 (1959); Watson v. U.S., 162 F. Supp. 755 (Ct. Cl. 1958).

According to a recent Supreme Court opinion, the Civil Service Reform Act does not afford judicial or administrative review of an adverse personnel action under 5 U.S.C. chapter 75 for nonpreference eligibles in the excepted service. U.S. v. Fausto, 484 U.S. ____ (1988). As members of the excepted service, Schedule C employees would clearly be included in the scope of this decision, except as noted below.

An employee who was serving in a position in the competitive service when OPM authorized its conversion to Schedule C and is still serving in that position may be removed from that position "for such cause as will promote the efficiency of the service". Moreover, the action must be taken in accordance with the procedures established by 5 U.S.C. § 7511 et seq. and Part 752 of OPM's regulations. These procedures provide for the right: (1) to a 30-day advance written notice

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which states the reasons for the proposed removal specifically and in detail; (2) to reply personally and in writing; (3) to be represented; (4) to have the reply considered; and (5) to a written decision stating the reasons for the action. The employee may appeal the action to MSPB.

In this connection it should be noted that removal for loss of confidence comes within the concept of "for such cause as will promote the efficiency of the service" when the incumbent occupies the policy-determining or confidential position, i.e., a Schedule C position. Leonard v. Douglas, 321 F.2d 749 (D.C. Cir. 1963). Additionally, agencies are reminded that there are very few instances where an employee has status in his/her Schedule C position since OPM does not generally authorize conversion of encumbered competitive positions to Schedule C. Therefore, we would expect very few if any of these cases.

A sample notice of separation for all Schedule C employees except those with status in their positions is contained in Tab A. Tabs B and C contain sample letters of proposed removal for an individual with status in his/her position who is covered by Part 752 of OPM's regulations.

(3) Temporary Schedule C Positions

Pursuant to OPM's regulations, agencies are permitted to establish temporary Schedule C positions at the GS-15 grade level and below following Inauguration in order to facilitate the orderly transition of duties as a consequence of a change in Presidential Administration, changes in department or agency heads or changes resulting from the creation of a new department or agency. 5 CFR § 213.3302. This authority permits the establishment of (1) positions identical to existing Schedule C positions if an intent to vacate these positions has been put in writing by management or the present incumbents, and (2) new temporary Schedule C positions when it is determined that the department or agency heads' needs cannot be met through the establishment of a position identical to an existing Schedule C position. Appointments under this authority may be made for 120 days, with one additional extension of 120 days.

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C. Other Excepted Service Positions

In addition to the policy-determining or confidential positions described in the preceding section, certain agencies and groups of positions are also excepted by statute, Executive order, or OPM action from the competitive civil service. These exceptions have been made for a variety of reasons, none of which relate to the policy-determining factors associated with the initial three categories. Examples of positions which have been excepted by statute include doctors, dentists, and nurses in the Department of Medicine and Surgery of the Veterans Administration, the Foreign Service of the Department of State, the Federal Bureau of Investigation of the Department of Justice; and, all positions in the Tennessee Valley Authority, the General Accounting Office and the Postal Service. Most of these positions are under separate merit systems and are not subject to change in a new Administration. In addition to positions excepted by statute and by OPM action, there are other positions which are excepted from the competitive service by Executive order. Most of these are jobs overseas held by foreign nationals.

Finally, there are two other categories of positions which the Office of Personnel Management has administratively excepted from the competitive service.

(1) Schedule A Positions

Schedule A positions are those which are not of a confidential or policy-determining character, but for which it is not practicable to hold any examination. Examples of positions in Schedule A include chaplains, teachers in military dependent school systems overseas, faculty positions of Service academies, and certain positions at isolated localities. Attorney positions are also in Schedule A because OPM is prohibited in its appropriations legislation from spending funds to examine for attorney positions. There are about 134,000 employees in this schedule.

(2) Schedule B Positions

Schedule B positions are those which are not of a confidential or policy-determining character, but for which it is impracticable to administer open competitive examinations. However, an individual must meet qualification requirements established by OPM for the occupation and grade level in order to be appointed to a Schedule B position. There are about 13,000 employees in this schedule, including those who are under cooperative education programs.

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It should be noted that since Schedule A and B positions are not of a confidential or policy-determining nature, individuals serving in such positions cannot be removed for reasons of political affiliation. Further, although employees in Schedule A and B positions (other than veterans) have no adverse action removal protections as do those in the competitive service, agencies should be mindful of following the applicable procedures in removing Schedule A and B employees for bona fide management reasons.

D. Consultant Appointments

Consultant appointments made under authority of 5 U.S.C. § 3109 to positions which primarily require performance of advisory services, rather than performance of operating functions. They may be used for individuals who have been nominated by the President, but not confirmed, or for individuals whose permanent appointments are in process. (Note that where the prior approval of OPM has been obtained, agencies may also use Senior Executive Service noncareer or limited appointments when an individual is pending confirmation; see section III-D.)

Consultant appointments may not be used to avoid employment procedures or solely in anticipation of a competitive career-conditional appointment. Further, positions in the Senior Executive Service may not be filled by use of a consultant appointment authority under 5 U.S.C. § 3109.

Consultants may be paid a rate not to exceed the daily equivalent of the highest payable rate in the General Schedule, unless specifically authorized by statute. They may also be reimbursed for travel but not moving expenses and may participate in orientation/training programs at government expense.

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V. OTHER MATTERS

- A. The involuntary separation for "discontinued-service retirement" provisions apply to Presidential appointees, NEA's, Schedule C employees, and noncareer and limited SES appointees. Material from the FPM on this subject is included in Tab D. For additional information on eligibility for retirement, contact the Advisory Services Division, Retirement and Insurance Group.
- B. Presidential appointees, NEA's, Schedule C employees, and noncareer and limited SES appointees who are separated due to a change in administration are considered involuntarily separated and may be eligible for Unemployment Compensation for Federal Employees (UCFE). For further information concerning the UCFE program, contact Millie Enten at (202) 535-0312 at the Department of Labor.
- C. In dismissal cases, Constitutional requirements oblige agencies to provide an employee with a hearing if his or her moral character is impugned by the stated reasons for dismissal. These rights arise only when the stigmatizing reasons for dismissal are recorded in any document which may be disseminated to others either inside or outside Government. For this reason, notices of separation should be mild in tone.
- D. Salary levels are set in four ways. Salaries of most Presidential appointees are prescribed in law at levels I (\$99,500) through V (\$75,500) of the Executive Schedule, effective January 1989. SES salaries may be set at any one of six steps by agency heads, from ES-1 (\$68,700) to ES-6 (\$80,700), effective January 1989. For General Schedule positions there is a range of salary steps prescribed for each grade level. A new General Schedule employee can only be paid the first step unless the employing agency authorizes a higher step in advance based on the new employee's superior qualifications, provided the new employee is a GS-11 or above. 5 CFR 531.203(b). There are Special Presidential authorities to set the pay of White House employees.
- E. Pre-employment interview travel expenses may be paid to applicants for Presidential appointments, Schedule C positions and Senior Executive Service positions. Travel expenses to attend confirmation hearings are considered part of the pre-employment interview process.

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Moving expenses may be paid to new Senior Executive Service and Presidential appointees. (Schedule C appointees are not covered.) The Federal government may reimburse the appointee for transportation of the appointee's family, household goods and personal effects in accordance with applicable law and regulations. Under amendments made to 5 U.S.C. § 5723 by the Presidential Transitions Effectiveness Act (Public Law 100-398, August 17, 1988), moving expenses of transition staff who later receive Senior Executive Service or Presidential appointments are allowed to be paid from the time of the move to the transition team.

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VI. APPENDIX

Tab A

SAMPLE OF NOTICE OF REMOVAL OF AN EMPLOYEE WHO IS NOT
COVERED BY TENURE AND PROCEDURE PROVISIONS OF LAW,
CIVIL SERVICE REGULATION OR APPROPRIATE AGENCY
REGULATION - E.G., NEA AND SCHEDULE C WITHOUT STATUS IN
THE POSITION, AND SES NONCAREER

Mr. C. B. Blank
4731 99th Avenue
Washington, D.C.

Dear Mr. Blank:

This is to notify you that your service as _____
_____ will be terminated effective at the close of
business, _____ 1989.

Under the law, incoming leadership has the authority to
select staff with whom it has personal confidence to carry
out its policy goals. This often necessitates the replacement
of existing personnel. As a result, this action should not be
construed in any way as a reflection on you personally or on
your performance in the prior Administration.

Sincerely yours,

(Name)
(Title)

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Tab B

SAMPLE OF ADVANCE NOTICE UNDER SECTION 752.404 OF
THE CIVIL SERVICE REGULATIONS TO REMOVE AN EMPLOYEE
IN A POLICY-DETERMINING SCHEDULE C POSITION WHO
HAS STATUS IN THAT POSITION

Mr. A.C. Waters
7809 Mayday Avenue
Washington, D.C. 23456

Dear Mr. Waters:

As Secretary of Public Insurance I plan to make several adjustments in the immediate staff upon which I must depend to carry out my day-to-day responsibilities. The position of Special Assistant that you occupy is one of those affected. It is excepted from the competitive service under Schedule C of Part 213 of the Civil Service Regulations because of its policy-determining character, as is evidenced by the attached description of its duties which is hereby made a part of this letter.

Because your position requires that you participate in determining agency policies, it is an inherent qualification that the incumbent be an individual who has the full confidence of and can work closely with the Secretary of Public Insurance in determining the policies of the agency. With the departure of the previous Secretary, and as a result of my accession to the position, this relationship has ceased to exist and does not now exist between you and me. For this reason I propose to remove you from your position as Special Assistant no earlier than 30 days from the date of your receipt of this notice.

I wish to assure you that these are the only reasons for this action and that this notice is provided to meet the requirements of section 752.404 of the Civil Service Regulations. Your written answer to this proposal with any supporting documents or affidavits, and any request to answer personally, should be directed to my personal attention within the next seven calendar days. Under regulation, you have a right to an attorney or other representation in this matter.

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Let me assure you that full consideration will be given to any reply and support therefore that you care to submit. As promptly as possible after such consideration, or after the time for reply has passed, a final notice of decision will be issued to you. Meanwhile, you may continue in your position in either an active duty or leave status, as you prefer.

Sincerely yours,

T. B. Bernard
Secretary of Public Insurance

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Tab C

SAMPLE OF ADVANCE NOTICE UNDER SECTION 752.404 OF THE
CIVIL SERVICE REGULATIONS TO REMOVE AN EMPLOYEE IN A
CONFIDENTIAL SCHEDULE C POSITION WHO HAS STATUS IN
THAT POSITION

Mr. D. O. Davis
1234 Ace Place
Washington, D.C. 24680

Dear Mr. Davis:

As Secretary of Public Insurance I plan to make several adjustments in the immediate staff upon which I must depend to carry out my day-to-day responsibilities. The position of Special Assistant that you occupy is one of those affected. It is excepted from the competitive service under Schedule C of Part 213 of the Civil Service Regulations because of its confidential character, as is evidenced by the attached description of its duties which is hereby made a part of this letter.

It is inherent in the character of a confidential position that the incumbent thereof shall be an individual suitable to his superior and a person in whom he has complete personal confidence and trust. With the departure of Mr. Brown from the position of Secretary of Public Insurance, this relationship ceased to exist and does not now exist between you and me. For this reason, I propose to remove you from your position of Confidential Assistant no earlier than 30 days from the date of your receipt of this notice.

I wish to assure you that these are the only reasons for this action and that this notice is provided to meet the requirements of section 752.404 of the Civil Service Regulations. Your written answer to this proposal with any supporting documents or affidavits, and any request to answer personally, should be directed to my personal attention within the next seven calendar days. Under regulation, you have a right to an attorney or other representation in this matter.

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Let me assure you that full consideration will be given to any reply and support therefore that you care to submit. As promptly as possible after such consideration, or after the time for reply has passed, a final notice of decision will be issued to you. Meanwhile, you may continue in your position in either an active duty or leave status, as you prefer.

Sincerely yours,

T. B. Bernard
Secretary of Public Insurance

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Tab D

OPM INTERPRETATION OF "INVOLUNTARY SEPARATION"
FOR PURPOSES OF "DISCONTINUED-SERVICE RETIREMENT"
AND UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES

The following quotations from Federal Personnel Manual Supp. 831-1, S11-2, contain the Office of Personnel Management's interpretation of involuntary separation:

"m. Separation of Presidential appointees and their immediate staff. The separation of a Presidentially appointed policy making officer because of acceptance of his or her resignation by the President is considered involuntary. It is considered involuntary at any time the resignation is submitted and accepted, not only with the advent of a new administration. Further, the separation of a Schedule C, Excepted Service, assistant to the appointee who resigns when it is known that the Presidential appointee for whom he or she works is leaving, is involuntary for retirement purposes . . . As minimum documentation, the agency should include with the retirement application documentation that the President has accepted the resignation of his appointee, or, in the second case, that the Presidential appointee for whom a Schedule C, Excepted Service, assistant works is leaving."

"n. Resignation requested. Separation of an employee who submits his or her resignation in response to a request from a recognized representative of a new incoming administration having the authority to request such resignation, is involuntary for retirement purposes. The resignation request must be specific about the particular employee. Unsolicited resignations, those based on the belief or possibility that resignation will be requested and those prompted solely by personal conviction or choice, are voluntary rather than involuntary for retirement purposes. A copy of each resignation in this category must accompany the retirement application."

Questions in this area should be directed to the Advisory Services Division, Retirement and Insurance Group, OPM and the Unemployment Insurance Service at the Department of Labor (Millie Enten (202) 535-0312).