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Governmentwide Moratorium on Senior Executive Service (SES) Qualifications Review Board (QRB) Cases



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Friday, November 18, 2016

From: BETH F. COBERT, ACTING DIRECTOR

In accordance with 5 CFR 317.502(d), the U.S. Office of Personnel Management (OPM) may suspend processing of an agency's SES Qualifications Review Board (QRB) cases when the head of an agency departs or announces his or her departure. This is done to ensure the incoming head of the agency will have the full opportunity to exercise his or her prerogative to make or approve executive resources decisions that will impact the agency's performance during his or her tenure. To that end, OPM has imposed a moratorium on the processing of a particular agency's SES QRB cases when the head of that agency departs for any reason, effective immediately upon the effective date of his or her departure. A QRB moratorium will also be imposed when the head of an agency announces his or her intention to leave that office, effective immediately upon that announcement.

On November 7, 2016, President Barack Obama requested letters of resignation from all non-termed presidential appointees by December 07, 2016. This was done to provide the maximum flexibility to the President-elect in assembling his/her administration. Accordingly, effective December 7, 2016, OPM is imposing a Governmentwide moratorium on all SES QRB cases.

While a QRB moratorium is intended to preserve the prerogatives of an incoming agency head, this must be balanced against the need to ensure the continuity of agency operations during such transitions. Accordingly, OPM will consider requests for exceptions to the Governmentwide QRB moratorium on a case-by-case basis. Requests for exceptions should be signed by the agency head or the official who is designated to act in the agency head's absence and must specifically address the potential for adverse impact on national security, homeland security, or a critical agency mission, program, or function if a particular SES candidate is not immediately certified.

Please direct any questions or requests to: Stephen Shih, Deputy Associate Director, Senior Executive Services and Performance Management, by email at Stephen.Shih@opm.gov ^[1] or telephone at (202) 606-

8046, or to Laura Lynch, Manager, Senior Executive Resources Services, by email at Laura.Lynch@opm.gov [2] or telephone at (202) 606-2773.

cc: Human Resources Directors

QRB MORATORIUM GUIDANCE

This guidance is issued to agencies on the process and appropriate instances to request any exception to the December 7, 2016 Governmentwide QRB moratorium.

Background

In accordance with OPM's authority under 5 CFR 317.502(d), and consistent with past practice, OPM stops accepting and processing new agency Senior Executive Service (SES) Qualifications Review Board (QRB) cases, effective when an agency head departs, announces his or her departure, or upon the nomination of a new agency head. Such QRB moratoriums are imposed to ensure the incoming head of the agency will have the full opportunity to exercise his or her prerogative to make or approve executive resource decisions that will impact the agency's performance during his or her tenure.

During Presidential election years, OPM has followed an established practice to impose a Governmentwide QRB moratorium in situations where the President requests letters of resignation from all non-termed presidential appointees to provide the President-elect with maximum flexibility to assemble the new leaders of a new upcoming administration. On November 7, 2016, the President requested letters of resignation – due on December 7, 2016 – from all Presidential Appointees with the exception of the following: U.S. Marshals; U.S. Attorneys; Inspectors General; Appointees serving in termed appointments; Appointees of independent and regulatory agencies headed by termed appointees; and Appointees serving on part-time boards and commissions. Consequently, OPM is implementing a Governmentwide QRB moratorium effective December 7, 2016.

Suspension of QRB Case Processing

Under a Governmentwide QRB moratorium, OPM suspends QRB case processing for career SES appointments. During the period of the QRB moratorium:

- OPM will not accept the agency submission of any new QRB cases;
- OPM will suspend the usual 90-day deadline for agency submissions of QRB cases; and
- OPM will continue to process QRB cases submitted by agencies prior to the effective date of the QRB moratorium.

Agencies are permitted to continue conducting SES merit staffing actions in the absence of an agency head or designated official, up to the point of submission of the selected candidate for QRB review and certification for initial appointment to the SES. Additionally, each agency is strongly encouraged to closely track QRB cases held during the moratorium so the agency may immediately submit the cases to OPM once a new agency head is appointed, resulting in the end of the moratorium for the agency.

Exceptions to the Governmentwide QRB Moratorium

A number of exceptions exist to the Governmentwide QRB moratorium. First, the Governmentwide QRB moratorium does not apply to agencies whose agency head's resignation was not required by the President. Second, the moratorium does not apply to agency submissions of "Criterion B" cases – these involve individuals who have successfully completed an OPM-approved SES Candidate Development Program (CDP) and whose executive qualifications are then submitted to OPM for QRB review and certification for general non-competitive SES appointment eligibility; these candidates are not submitted for certification for appointment to a specific SES position for which they were competitively selected. Third, an exception may be requested by an agency for a specific position based upon critical need.

1. Agencies with Agency Heads whose Resignations were not Required by the President

The Governmentwide QRB moratorium does not apply to any agency with an agency head whose resignation was not specifically required by the President. As mentioned above, a number of categories of appointees were not required to submit letters of resignation; consequently, any agency head not required to submit a letter of resignation remains in place, and their agency therefore is not subjected to the moratorium.

2. Graduates of OPM-Approved SES CDPs (Criterion B Submissions to the QRB)

The Governmentwide QRB moratorium does not apply to agency Criterion B submissions. Criterion B cases involve the agency submission to the QRB of the executive qualifications of individuals who have successfully completed an OPM-approved SES CDP. Following the completion of the SES CDP, a graduate's executive qualifications may be reviewed and certified by the QRB – this QRB certification gives the SES CDP graduate eligibility for non-competitive appointment to the SES. Because such submissions do not involve a selection and appointment to a specific SES position following a competitive process, any QRB certification of a SES CDP graduate will not significantly impinge upon the prerogative of a new agency head to select his/her senior executives.

3. Agency Requests for Specific Exceptions to the Governmentwide QRB Moratorium

In other circumstances, an agency may submit a request to OPM for an exception to the Governmentwide QRB moratorium, for a specific position, based upon critical need. OPM considers such requests on a case-by-case basis to balance the important prerogative of a new agency head to select his/her senior executives against the agency's critical operational needs.

Requests for exception should be signed by the agency head or the official who is designated to act in the agency head's absence. Agencies must address the following factors in agency requests:

- O the impact on the agency should the position not be filled during the moratorium; specifically addressing why it is critically important that an exception be granted given the potential for adverse impact on national security, homeland security, or a critical agency mission, program, or function;
- O the likelihood the new agency head will have specific interest in the position or the individual appointed to the position;
- O the organizational level of the position (provide organization chart) including to whom the position reports;
- O the degree to which the candidate would be involved in policy matters;
- O any special or unique qualifications of the candidate (a resume should be included);
- O whether the candidate is currently on a Schedule C or noncareer SES appointment, or has been within the most recent 5 years;
- O whether the candidate is currently performing the duties of the position via detail or "acting" designation and the length of time for the detail or "acting" designation (e.g., 30 days);
- O how long the position has been vacant; and
- O when the Agency Head has not yet departed, whether he or she has certified that the action is necessary to ensure continuity of critical agency operations.

What is Considered Mission Critical?

Mission critical positions are directly related to national security, homeland security, or an agency mission, program, or function critically important to the operation of the agency. For any of these positions, the agency's justification must identify the impact to the agency's mission or the public if the agency's candidate for initial appointment to the SES is not certified by the QRB.

What is Considered When Evaluating Organizational Level?

The purpose of the QRB Moratorium is to ensure the incoming agency head, or new Administration's ability to determine who will have the full opportunity to exercise his or her prerogative to make or approve executive resource decisions that will impact the agency's performance during his or her tenure. Therefore, requests for moratorium exceptions for positions reporting directly to the agency head should be extremely rare, and may not be granted.

Resumption of QRB Case Processing

After a new agency head has been appointed, agencies may request OPM to resume the processing of their agency QRB cases and should specifically indicate the new agency head's intention to resume processing of its QRB cases, as follows:

- The QRB cases held by the agency due to the Governmentwide QRB moratorium must be sent to OPM within 120 calendar days of the appointment of the new agency head.
- Once a new agency head has been appointed, the 90-day timeline for submitting new QRB cases (i.e., cases other than ones an agency has been holding due to the moratorium) is reinstated.
- The request to resume QRB case processing should include the title and name of the new agency head and the date he/she was sworn in.
- The request must be sent from the senior Executive Resources Office official, or a higher level official, and OPM will respond via email.

Stakeholders: AGENCY HEADS AND CHIEF HUMAN CAPITAL OFFICERS ^[3]

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Links:

[1] <mailto:Stephen.Shih@opm.gov>

[2] <mailto:Laura.Lynch@opm.gov>

[3] <https://www.chcoc.gov/legend/agency-heads-and-chief-human-capital-officers>