- (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