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# ADS Chapter 413

## Civil Service Appointments and Employment

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 ADS 413 – Civil Service Appointments and Employment  
 POC for ADS 413: Cherie Mennel, (202) 712-0656, [cmennel@usaid.gov](mailto:cmennel@usaid.gov)

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## ADS 413 – Civil Service Appointments and Employment

### 413.1 OVERVIEW

This chapter sets forth the policies and essential procedures for the appointment and employment of the Agency's Civil Service (CS) employees.

### 413.2 PRIMARY RESPONSIBILITIES

- a. The **Administrator (A/AID) (or designee)** is responsible for:
  - (1) Approving or disapproving all appointments, reassignments, compensation, class, and separation of executive personnel.
- b. The **Deputy Administrator (DA/AID) (or designee)** is responsible for:
  - (1) Consulting with Assistant Administrators (AAs) of Bureaus and Offices on executive personnel staffing requirements;
  - (2) Examining Executive Personnel nominations, evaluating candidates' suitability for vacancies, and recommending candidates to the Administrator; and
  - (3) Providing written notification to the Assistant Administrator for Management (AA/M) and Deputy Assistant Administrator for Human Resources (DAA/HR) of approval, subject to required clearances, or disapproval of Executive Personnel appointments.
- c. The **Assistant Administrator for Management (AA/M), Bureau for Management** is responsible for:
  - (1) Recommending to the Agency Management Council for final approval, position ceilings for each fiscal year based on Operating Expense (OE) budget projections, historical positions ceilings and on board levels, and the R-4 and Bureau Budget Submission processes; and
  - (2) Reviewing requests for changes in established position ceilings received from Bureaus and Offices for clearance and approval or referral to the Agency Management Council for final decision.
- d. The **Bureau for Management, Office of Budget and Performance, Budget Division (M/MPBP/BUD)** is responsible for:
  - (1) Issuing approved fiscal year position and consultant/expert workday ceilings to all USAID Bureaus and Offices and clearing all requests for changes to established position ceilings.

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**e.** The **Deputy Assistant Administrator, Office of Human Resources (DAA/HR)** is responsible for:

- (1) Consulting with DA/AID, AA/M, and AAs of Bureaus and Offices, or their designated representatives, on Executive Personnel staffing requirements and discussing prospective candidates; and
- (2) Giving final approval to return an employee to a non-supervisory or non-managerial position during the employee's probationary period and notifying the employee in writing of the reasons for the action.

**f.** The **Office of Human Resources, Executive Management Staff (HR/EM)** is responsible for:

- (1) Recruiting, evaluating qualifications and appointing all Senior Executive Service (SES) candidates. ADS 423 contains information on SES appointments. (See [ADS 423](#));
- (2) Making firm offers of appointment to SES, Schedule C, Presidential (PAS), and Administratively Determined (AD) candidates after the completion of all pre-appointment requirements;
- (3) Determining rates of pay for new appointees;
- (4) Maintaining continuing contact with the White House liaison for AD, Schedule C and non-career SES appointments and USAID/W Bureaus and Offices to decide current and future executive level work force requirements;
- (5) Recruiting available candidates to fill executive level vacancies; i.e., promotion or reassignment; transfers from other U.S. agencies; details from State; or hiring from outside the U.S. Government;
- (6) Maintaining a list of qualified senior personnel for executive positions;
- (7) Referring candidates for counseling regarding eligibility for certain benefits;
- (8) Consulting with currently assigned executive level personnel to find out their preferences for future assignments;
- (9) Maintaining an up-to-date listing of all executive level positions;
- (10) Counseling newly assigned Executive Level and AD employees regarding the excepted service and other pertinent matters relating to their assignment; and

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(11) Advising the Office of Human Resources, Employee and Labor Relations Division, HR/ELR, of any changes in position status of all AD and CS senior level positions as these changes occur.

**g. The Office of Human Resources, Employee and Labor Relations Division (HR/ELR) is responsible for:**

- (1) Classifying positions;
- (2) Deciding, in consultation with Bureaus/Offices, methods of filling positions;
- (3) Advertising, establishing basic eligibility, verifying job relatedness of rating/ranking criteria and appointing personnel for USAID/W positions except SES, Schedule Cs, PAS (Presidentially Appointed, Senate-confirmed) and AD personnel;
- (4) Rendering final Agency decisions on suitability of candidates;
- (5) Making firm offers of appointment to candidates after the completion of all pre-appointment requirements;
- (6) Deciding rates of pay for appointees;
- (7) Establishing requirements for probationary periods;
- (8) Providing guidance and assistance to Bureaus and Offices on the part-time, intermittent and seasonal employment programs;
- (9) Counseling employees on impact to benefits due to changes in work schedules. Approving requests for changes in part-time employees' tours of duty;
- (10) Administering probationary period plans for supervisory/managerial and newly appointed employees;
- (11) Managing Stay-in-School, Student Educational Employment, Presidential Management Intern, and other student related programs; and
- (12) Developing, maintaining and retiring civil service employees' official personnel and performance evaluation files.

**h. The Office of Human Resources, Policy, Planning and Information Management Division (HR/PPIM) is responsible for:**

- (1) Formulating and interpreting personnel policies and regulations relating to USAID's personnel systems for, Civil Service (as well as Foreign Service and

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Foreign Service National) employees.

(2) Establishing guidelines governing the appointment and use of experts and consultants overseas and in USAID/W.

i. The **Assistant Administrators of Bureaus or Heads of Offices** are responsible for:

(1) Consulting with the DA/AID, AA/M, and other AAs or their designated representatives, on Executive Personnel staffing requirements and discussing prospective candidates;

(2) Request for Employment of Experts and Consultants; and

(3) Recommending reassignment/demotion/separation of a probationary employee when warranted.

j. **Bureaus and Offices** are responsible for the following:

(1) Ensuring the availability of funds and fiscal year work force ceilings for requested appointments;

(2) Submitting requests to exceed authorized ceiling levels when necessary;

(3) Reviewing positions as they become vacant to decide recruitment needs for the Bureau/Office;

(4) Deciding, in consultation with HR, employment mechanisms most appropriate for filling positions;

(5) Identifying positions and/or occupations suitable for permanent full or part-time, term or temporary, intermittent or student volunteer employment;

(6) Deciding, in consultation with internal staff, the need for expert or consultant positions in USAID/W and overseas; and

(7) Authorizing work schedule changes.

k. **Administrative Management Staffs (AMs)** are responsible for:

(1) Submitting documentation to HR/ELR for all Bureau/Office recruitment activity;

(2) Requesting HR/ELR to reappoint or terminate expert or consultant appointments; and

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(3) Coordinating supervisory/managerial and other probationary period requirements with supervisors and HR/ELR.

**I. Supervisors** are responsible for:

(1) Reporting recruitment needs to HR/ELR, through Administrative Management Staff;

(2) Selecting candidates from among qualified candidates referred by HR/ELR to fill vacant positions, subject to required clearances;

(3) Ensuring employees' work schedules are consistent with established USAID and higher authority guidelines;

(4) Initiating the proper documentation to employ, reappoint or terminate expert or consultant appointments;

(5) Using the expert or consultant only for those duties described on the approved Form AID 4-483;

(6) Controlling the number of days the expert or consultant works in any one service year;

(7) Managing part-time employees' work hours, work schedules and overtime usage;

(8) Reviewing the office's use of student volunteers to ensure compliance with regulatory and Agency requirements; and

(9) Rating employees' progress and recommending demotion/reassignment/separation of unsuccessful probationary employees.

**m. Overseas Missions** are responsible for the following:

(1) Determining the need for, and requesting the services of, experts and consultants through the appropriate USAID/W Bureau/Office;

(2) Ensuring proper clearances, salary payments, travel and utilization of experts and consultants; and

(3) Reporting the number of days and the dates an expert or consultant worked to HR/ELR when the employee departs post.

**n. The Office of the General Counsel, Assistant GC for Ethics and Administration, GC/EA,** is responsible for:

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(1) Reviewing the statements of employment and financial interests (public and confidential financial disclosure statements) for conformity to applicable laws and regulations as outlined in ADS 101. (See [ADS 101](#))

**o. The Office of Security (SEC)** is responsible for:

(1) Completing security investigations as prescribed in E.O. 10450 and ADS 101. (See [E.O. 10450](#) and [ADS 101](#))

### **413.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES**

The statements contained within the .3 section of this ADS chapter are the official Agency policies and corresponding essential procedures.

#### **413.3.1 General Provision**

The Agency shall follow all Federal laws and regulations in the management of its civilian workforce.

#### **413.3.2 Restrictions on the Employment of Relatives**

The Agency **and employees** shall adhere to all Federal requirements regarding employment of relatives, **including the laws and rules on nepotism and conflicts of interest**. (See [5 CFR 310](#) and [5 USC 3110](#))

#### **413.3.3 Effective Date of Appointment**

An appointment becomes effective on the date that the appointee enters on duty and is available to perform Federal functions.

#### **413.3.4 Citizenship Requirement**

No person shall be given an appointment in the Civil Service (CS) unless the person is a citizen or national of the United States of America. (See **E.O. 11935, 5 CFR 7.4 and 5 CFR 338**)

#### **413.3.5 Statutory Bar to Appointment of Persons Who Fail to Register under the Selective Service Law**

The Agency shall adhere to the policies and essential procedures in 5 CFR 300, Subpart G. (See **5 CFR 300, Subpart G**)

#### **413.3.6 Prohibition Against Political Recommendations**

An individual concerned in appointing an applicant in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative,

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except as to the character or residence of the applicant. (See **5 USC 3303**)

#### **413.3.7 Security Clearance Requirement**

Before appointment, candidates must meet Agency established security requirements as prescribed in Executive Order 10450. (See [E.O. 10450](#) and [ADS 101](#))

#### **413.3.8 Types of Employment**

The different types of human resource categories in the Agency discussed in the remainder of Section 5 are a guide to managers in defining the appropriate treatment of differing staff resources.

##### **413.3.8.1 Volunteer Service**

The agency shall adhere to Section 301 of the Civil Service Reform Act of 1978, Public Law 95-454, 5 CFR 308, 31 USC 1342, and 5 USC 3111. (See Mandatory Reference Section 301 of the Civil Service Reform Act of 1978, Public Law 95-454, 5 CFR 308, 31 USC 1342, and 5 USC 3111)

##### **413.3.8.2 Prohibitions on the Use of the Student Volunteer Program**

The student volunteer service program must not be used in the following situations:

- a.** To displace any Agency employee or to staff a position that is a normal part of the Agency's work force;
- b.** When assigned duties are the same as those of students or contractors in a paid status or those being performed by direct-hire employees;
- c.** When it will adversely affect other Agency student employment programs, i.e., the summer employment program, the stay-in-school program and student educational employment programs authorized by 5 CFR 213.3202; (See **5 CFR 213.3202**)
- d.** To imply that volunteer service ensures the student a future job with the Agency;
- e.** To perform duties other than to provide educational experience for the student, e.g., a student majoring in Economics must not be assigned only typing or messenger functions; and
- f.** When the student is a relative of person(s) having authority to make or recommend appointment to a position in the Agency.

##### **413.3.8.3 Written Agreement**

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The student volunteer service program is conducted through written agreements between the Agency and the volunteer student, with the permission of the institution at which the student is enrolled.

The volunteer service agreement must specify the following:

- a. The period of assignment, to be set at a length of time that best serves the needs of the requesting bureau/office and the Agency;
- b. Scope of work;
- c. Attendance and performance requirements guidelines; and
- d. That the student volunteer may not be converted to employment by the Agency in a paid status under contractual arrangement within 30 days after completion of the volunteer period unless such action is approved by the Office of Human Resources, Employee and Labor Relations Division (HR/ELR). Employment on a paid status after termination is permitted if such employment is not contrary to any applicable law, rule, or regulation.

#### **413.3.8.4 Student Eligibility and Status**

Student volunteers

- a. Must be at least 16 years old;
- b. Are subject to a security investigation;
- c. Are not considered Federal employees and are not eligible for any employee benefits (e.g., travel, subsistence expenses, quarters, or reimbursement or payment in kind); and
- d. Are covered under the Federal Tort Claims Act and the Worker's Compensation Act. (See **28 USC 2671 through 2680**, and **5 USC 81**)

#### **413.3.9 The Competitive Service and Competitive Status**

The Agency shall adhere to the policies and essential procedures in 5 CFR 212. (See **5 CFR 212**)

##### **413.3.9.1 Career and Career-Conditional Employment System**

The Agency shall adhere to all Federal law and regulation regarding career and career-

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conditional employment. (See 5 CFR 315, Subparts A-G)

#### **413.3.10 Probationary Period**

All persons selected from registers of eligibles for career or career-conditional appointments and employees promoted, transferred, or otherwise assigned, for the first time, to supervisory or managerial positions shall be required to serve a probationary period. (See **5 CFR, 315 Subchapter A, 2.4**).

The probation rules do not apply to employees in the Senior Executive Service (SES), Foreign Service (FS), Administratively Determined (AD) positions, or to other excepted service employees.

##### **413.3.10.1 Probation on Initial Appointment to a Competitive Position**

The Agency shall adhere to the policies and essential procedures in 5 CFR 315, Subpart H, Sections 315.801 through 315.806. (See **5 CFR 315, Subpart H, Sections 315.801 through 315.806**)

##### **413.3.10.2 Probation on Initial Appointment to a Supervisory or Managerial Position**

The Agency shall adhere to the policies and essential procedures relating to probationary requirements for supervisors and managers in 5 CFR 315, Subpart I, Section 315.901 through 315.909. (See **5 CFR 315, Subpart I, Sections 315.901 through 315.909**)

Employees who convert from the Foreign Service or other excepted service appointments to competitive non-SES positions in USAID, shall complete the probationary period. A probationary period is not required if the conversion is from a supervisory or managerial position comparable to or qualifying for the one for which the probationary period applies.

##### **413.3.10.3 Failure to Complete the Probationary Period**

The Agency shall adhere to the policy and essential procedures in 5 CFR 315.907, 5 USC 5362 through 5363 and 5 CFR 531 for salary setting requirements for an employee returned to a nonsupervisory or nonmanagerial position for failure to complete the probationary period. (See **5 CFR 315.907, 5 USC 5362 through 5363, 5 CFR 531**)

##### **413.3.10.4 Appeal of Position Change to Nonsupervisory or Nonmanagerial**

The Agency shall adhere to the policies and essential procedures in 5 CFR 315.908, 315.909 and 29 CFR 1614, if appropriate. (See **5 CFR 315.908, 315.909 and 29 CFR**

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1614, if appropriate)

An Agency action to return an employee to a nonsupervisory or nonmanagerial position may be grievable under Agency procedures when:

- a. The employee asserts that removal from the supervisory or managerial position was based upon other than a deficiency in supervisory or managerial skills; or
- b. The employee believes that they have served in a former qualifying or comparable supervisory or managerial position and wishes to contest the Agency's determination of a probationary requirement in a new position.

#### **413.3.11 Other than Full-time Career Employment (Part-time, Seasonal, On-call, and Intermittent)**

The Agency shall adhere to the policies and essential procedures in 5 CFR 340, Subparts A, B and D, 5 USC 3401-3408 and 5 CFR 630. (See **5 CFR 340, Subparts A, B and D, 5 USC 3401-3408** and **5 CFR 630**)

#### **413.3.12 Part-time Employment Opportunities**

The Agency shall provide part-time employment opportunities in positions through GS-15 or equivalent subject to Agency resources and needs. **Management has the option to establish job sharing opportunities, offering part-time work schedules in positions where full-time coverage is needed.** (See [Implementation Guidelines for New Job Share Program](#))

##### **413.3.12.1 Converting from Full-Time Employment to Part-Time Employment**

A full-time permanent employee may request to be converted to part-time duty. Conversion is contingent on the Agency's ability to accomplish the following:

- a. Change the employee's position to part-time taking into account such factors as whether the regular or peak workloads lend themselves to a part-time schedule, adaptability of the work to be performed on a part-time basis, necessity of having full-time coverage for the position, and benefits to the employee; or
- b. Reassign or promote the employee to a previously established part-time position.

##### **413.3.12.2 Converting from Part-Time to Full-Time Employment**

If a full-time position of equal or lower grade is vacant and the part-time employee meets the basic job requirements, the employee may be placed in the job

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noncompetitively.

If the position being sought results in a promotion or has promotion potential, the part-time employee must compete with other applicants according to the requirements of the Agency's Promotion and Internal Placement Program.

#### **413.3.12.3 Workweek/Schedule**

A part-time employee must work no more than 32 hours per week and no less than 16 hours per week.

The Agency may temporarily increase an employee's hours of duty above the number of hours scheduled, including above the 32-hour limit. Increases shall be held to emergency or extremely heavy workload situations that are temporary in nature or for training opportunities.

An increase in the tour of duty above 32 hours per week must not exceed two consecutive pay periods.

A part-time employee must not work on a non-work day to make up for an absence on a scheduled workday.

A change in a part-time employee's workweek/schedule exceeding two consecutive pay periods requires an SF-50, Notification of Personnel Action, documentation.

The part-time employee's scheduled workweek must be stated on the SF-50 in terms of actual days of the week and number of hours each day (not to exceed eight) to be worked, e.g., 24 hours, Monday through Thursday, six hours per day.

#### **413.3.12.4 Pay**

The Agency shall adhere to the policies and essential procedures in 5 CFR 550. (See Mandatory Reference, 5 CFR 550)

A part-time employee is not entitled to Sunday premium pay.

If a part-time employee is relieved or prevented from working on a day within the employee's scheduled tour of duty that is designated as a holiday by Federal statute or Executive Order, the employee is entitled to basic pay with respect to the holiday for the number of hours the employee is scheduled to work on that day, not to exceed eight hours. When a holiday falls on a nonworkday of a part-time employee, the employee is not entitled to an in-lieu-of day for that holiday. (See [5 CFR 610, Subpart D, Section 610.405](#))

#### **413.3.12.5 Service Credit**

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A part-time employee receives a full year of service credit for each calendar year worked (whatever the schedule) for the purposes of computing dates for the following:

- a. Retirement eligibility;
- b. Career tenure;
- c. Completion of a probationary period;
- d. Within-grade increases;
- e. Change in leave accrual category; and
- f. Time-in-grade restrictions on advancement.

Qualifications: An employee receives credit for part-time work experience on a pro rata basis. If an employee worked more than the documented scheduled tour of duty, the employee receives the service credit when the employee provides documentation of the additional time.

#### **413.3.12.6 Training**

Part-time employees are eligible for training opportunities on the same basis as full-time employees.

An employee may exceed their regularly scheduled hours to participate in a training program.

#### **413.3.13 Seasonal and On-Call Employment**

The Agency shall adhere to the policy and essential procedures in 5 CFR 340, Subpart D. (See [5 CFR 340, Subpart D](#))

#### **413.3.14 Intermittent Employment**

The Agency shall adhere to the policy and essential procedures in 5 CFR 340, Subpart D (See [5 CFR 340, Subpart D](#)).

#### **413.3.15 Temporary and Term Appointments**

The Agency shall adhere to the policies and essential procedures in 5 CFR 316, Subparts B-D, F and G, 330, 333, and 5 USC 3327 and 3330. (See [5 CFR 316, Subparts B-D, F and G, 330, 333](#), [5 USC 3327](#) and [3330](#))

#### **413.3.16 Excepted Service**

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The Agency **shall** adhere to 5 CFR 213 and 5 CFR 302. (See [5 CFR 213](#) and [5 CFR 302](#))

#### **413.3.16.1 Schedule A**

The Agency shall adhere to the policies and essential procedures in 5 CFR 213.3101 through 3199. (See 5 CFR [213.3101](#) through [3199](#))

#### **413.3.16.2 Schedule B**

The Agency shall adhere to the policies and essential procedures in 5 CFR 213.3201 through 213.3202. (See 5 CFR [213.3201](#) through [213.3202](#))

#### **413.3.16.3 Schedule C**

The Agency shall adhere to the policies and essential procedures in 5 CFR 213.3301 through 213.3302. (See 5 CFR [213.3301](#) through [213.3302](#))

#### **413.3.17 Administratively Determined (AD) Personnel**

The Agency shall adhere to the policies and essential procedures in Section 625(b) of the Foreign Assistance Act (FAA) of 1961, as amended and 22 USC 2385 (b). (See [Section 625\(b\) of FAA of 1961](#) and [22 USC 2385](#))

The head of the Bureau or Office, or designee, in which the proposed position is located forwards, through the DAA/HR, to the Administrator, or designee, the request for appointment of a candidate to an Administratively Determined (AD) position.

Each request for appointment contains a description of the proposed position on a Position Description Form (Optional Form-8), a completed Personal Qualifications Statement (OF-612) of the proposed candidate and a statement justifying the need for the AD appointment.

The DAA/HR evaluates the request, secures appropriate clearances, and recommends grade and rate of pay to the Administrator, or designee, who makes the final decision on grade, rate of pay, and appointment. AD candidates are not under the Office of Personnel Management's (OPM's) jurisdiction. However, the Agency uses comparable criteria (SES criteria) at the discretion of the Administrator (A/AID), or designee, in its selection of AD executives. Congress has fixed the maximum number of AD employees allowed in the Agency at 110 AD positions.

AD employees are eligible to participate in all the benefit programs applicable to CS employees. They

- a. Accrue annual and sick leave under title 5 USC;

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- b. May be promoted if appointed to a higher graded position. Promotion actions must be conducted according to the procedures for initial appointment.

#### **413.3.17.1 Position, Grade and Rate of Pay**

AD position grades are normally decided by the duties and responsibilities assigned, using standards applicable to General Schedule positions or equivalent standards.

The Bureau for Management, Office of Human Resources, Executive Management Staff (M/EM) fixes the initial rate of pay at the first step of the AD grade of the position, unless the qualifications and/or the candidate's salary history warrant a higher step.

AD personnel are eligible to receive within grade salary increases and quality increases.

#### **413.3.17.2 Position Management**

An AD position may be committed only with prior approval of the Deputy Administrator or Administrator.

An AD position is assigned only to the incumbent. When vacated, the Agency examines its needs to retain the AD position.

#### **413.3.17.3 Performance Evaluation**

AD employees are evaluated in the same manner as career and career-conditional CS employees. (See [ADS 462](#))

#### **413.3.17.4 Separation of an AD Employee**

A person appointed to an AD position at any level serves at the discretion of the Administrator and may be terminated at any time.

An AD employee is given a 30-calendar day notice before termination of appointment. The notice period may be shortened, but never will the employee receive less than 10-calendar days notice. An employee who has statutory reinstatement rights is given a 45-calendar day notice and informed of such rights.

An AD employee is not eligible for severance pay upon termination.

An AD appointment shall be terminated when it is decided that the services of the AD employee are no longer required. The DAA/HR, after consultation with the Administrator, sets the termination date.

M/EM prepares the letter notifying the employee that the AD appointment will be terminated. The letter contains the following:

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- a. The proposed termination date of the AD appointment;
- b. Information concerning unemployment compensation; and
- c. Information concerning reinstatement rights, if any.

#### **413.3.17.5 Reinstatement Rights Following AD Service**

Upon separation from an AD appointment for any reason other than misconduct or delinquency, the employee may be entitled to reinstatement to the position occupied at the time of appointment, or to a position of comparable grade and salary, provided the former position was one of the following:

- a. In the competitive service under a career or career-conditional appointment;
- b. In the excepted service under an appointment without a specific time limitation; or
- c. Under an appointment or assignment made in accordance with authority contained in the FS Act of 1980, as amended. (See [FSA of 1980, as amended](#))

#### **AD employees at all levels may be eligible for reinstatement rights to their former agency.**

Unless an arrangement is made for reinstatement without a break in service, an employee who wishes to exercise reinstatement rights must apply directly to their parent agency (or to HR/ELR when USAID is the re-employing office), in writing, no later than 30 calendar days after the employee's AD appointment.

Parent agencies reinstate eligible applicants when possible after receipt of the application. In any event, such applicants are restored within 30 calendar days after receipt of the application, or upon termination of the AD appointment, whichever is later.

When USAID/W is the re-employing office, HR/ELR notifies the employee promptly on receipt of the application if the employee is considered ineligible for reemployment. The notice is in writing and includes a statement of the basis for such determination and of the employee's right to appeal.

### **413.3.18 Executive Personnel**

The Agency shall adhere to the policies and essential procedures in 5 USC 5311 through 5316, and 22 USC 2384 and 2385 (c). (See 5 USC [5311](#) through [5316](#), and **22 USC [2384](#) and [2385 \(c\)](#)**)

#### **413.3.18.1 Covered Personnel**

Executive personnel are those employees who are appointed to executive positions under the Foreign Assistance Act of 1961, as amended, including Presidentially Appointed, Senate-confirmed (PAS) positions. Senior Executive Service (SES) personnel (career and non-career) are covered in ADS 423. (See [ADS 423](#))

FS Officers of the Department of State may be appointed or detailed to USAID to fill any executive level position. The employee's status as a FS Officer of the Department of State shall not be lost by virtue of such an assignment to USAID.

#### **413.3.18.2 Executive Level Assessment and Assignment**

Only persons of acknowledged executive skills are appointed to executive level positions. The assessment of a candidate's qualifications and the selection is made before the clearance process.

The appointment is effective on the date the appointee enters on duty and is available to perform a Federal function. Candidates for Executive Personnel assignments may be recruited from within or outside the Federal government.

Statutory officers (Presidential Appointees) are exempt from the competitive requirements of the Office of Personnel Management (OPM). The President nominates all Presidential Appointees and their appointments are made with the advice and consent of the Senate. The Agency may have only 12 Presidential Appointees, including the Administrator, and at least four of these must be Assistant Administrators for Geographic Bureaus.

Prior to appointment, candidates must read and sign the "Conditions of Appointment for AD Executive Personnel." (See [Conditions of Appointment for AD Executive Personnel](#))

#### **413.3.18.3 Statutory Executive Personnel**

As employees of the Federal government, executives may participate in most of the benefit programs available to other Federal employees (e.g., life and health insurance and the CS or FS retirement system). ([See ADS 476](#))

Statutory executives are paid under the Executive Pay Schedule, at Level I, II, III, IV

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and V depending on the executive's position. The Administrator is Level II, the Deputy Administrator is Level III, all Assistant Administrators and the Inspector General are Level IV and the General Counsel is Level V.

Statutory executives are exempted from the leave laws by 5 USC 6301, and as such do not earn or accrue leave under the normal formula. They are, however, granted leave of absence with pay. Leave of absence is the informal leave system not covered by title 5 of the United States Code, but comparable to the annual and sick leave benefits of other Federal employees. Statutory executives may take leave at their discretion but shall inform their superiors of any absences.

Statutory executives are not given official performance ratings.

The President may terminate the appointments of all Presidential employees with minimal notice if their services are no longer required. These employees do not have statutory re-employment rights back to their former agency.

#### **413.3.19 Experts and Consultants**

The Agency shall adhere to the policies in 5 USC 3109, 5 CFR 304 and the additional requirements outlined below. (See Mandatory References, 5 USC 3109 and 5 CFR 304)

- a.** Experts and consultants are appointed or may volunteer to provide specialized advice and services involving Agency projects, policies, or operating functions when such advice and services are not readily available in USAID or from other Federal agencies, or when an outside point of view is needed.
- b.** Experts and consultants shall be employed on either an intermittent or temporary appointment. They are not employed to fill what are essentially continuing positions.
- c.** A retired USAID employee shall not be employed or begin work as an expert or consultant until after the 60-day period following retirement. Any exception to this requirement must be approved by the DAA/HR or designee.
- d.** USAID retirees shall not be employed as experts or consultants if a substantial portion of the proposed duties is to evaluate, advise on, or carry out functions on which they worked before retirement.

USAID shall employ experts and/or consultants on either temporary or intermittent appointments.

- a.** Types of appointments: Qualified experts or consultants may be appointed to either intermittent or temporary employment. Such appointments are excepted from competition, position classification, and the General Schedule

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pay rates.

- b.** Time limits for appointments: Experts or consultants employed on an intermittent appointment may be appointed without time limit or for any period determined by the Agency. An intermittent work schedule is appropriate when the nature of the work is sporadic and unpredictable so that a work schedule cannot be regularly scheduled in advance. All other experts and consultants shall receive temporary appointments not to exceed one year.
- c.** Ceiling allocations: Workday ceilings for experts and consultants shall be allocated each fiscal year (FY) by the Bureau for Management, Office of Budget (M/B) to each organization. This workday ceiling is the cumulative number of days that all experts or consultants within an organization can work in a fiscal year. Position ceilings shall be reduced by 1 for every 260 workdays (1 work year) or significant portion thereof.
- d.** Reappointments: An expert or consultant who works on a part-time or intermittent work schedule may be reappointed to perform substantially the same duties in accordance with one of the following options. USAID shall determine which option will be used prior to any reappointment action. For experts and consultants appointed without compensation, option 1 shall be used.
- (1)** Option 1 - Annual service. USAID has the option to reappoint an expert or consultant, with no limit on the number of reappointments, as long as the individual is paid for no more than 6 months (130 days OR 1040 hours) of work.
- (2)** Option 2 - Cumulative earnings. Each expert or consultant shall have a lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations.
- e.** Determining rate of pay: The appropriate rate of basic pay, either on an hourly or daily basis, shall be set based on the level and difficulty of the work to be performed; the qualifications of the expert or consultant; the pay rates of comparable individuals performing similar work in Federal or non-Federal sectors; and the availability of qualified candidates. An expert or consultant shall not be paid for any biweekly pay period an aggregate amount of pay exceeding the GS-15 step 10 under the General Schedule.
- f.** Pay and leave administration: Experts and consultants paid on a daily rate basis are not entitled to overtime pay; those paid on an hourly basis qualify for premium pay. Those experts and consultants who are on a temporary appointment with a regularly scheduled work schedule, whether part-time or full-time, are eligible to earn sick and annual leave. Those with an intermittent work schedule do not earn any kind of leave and are not entitled to holiday pay.

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**g.** Procedures for requesting an expert or consultant: If the requested workdays are within the authorized FY allocation, Bureaus/Offices shall submit to their Administrative Management Staff (AMS) the Request for Employment of Consultant or Expert form AID-4-483 (7-99) and an SF-52 (Request for Personnel Action) for approval and processing through HR/ELR. If the requested workdays exceed the authorized FY allocation, the following procedures shall be followed:

(1) Bureau/Office forwards a memorandum to the AA/M through M/MPBP/BUD requesting additional ceiling. This memorandum shall include the number of additional workdays being sought and the proposed dates of employment.

(2) M/MPBP/BUD reviews and recommends approval or disapproval subject to Agency-wide ceiling availability. Approved requests involving periods of service which overlap FYs will be taken into account in the annual ceiling approval process.

(3) Once the additional ceiling has been approved, the Bureau/Office shall submit form AID-4-483 and an SF-52 to HR/ELR for processing and a copy of the ceiling approval.

#### **413.4 MANDATORY REFERENCES**

##### **413.4.1 External Mandatory References**

- a. [5 CFR, Subchapter A, Parts 1-7 and 2.4, The Civil Service Rules](#)
- b. [5 CFR 212, Competitive Service and Competitive Status](#)
- c. [5 CFR 213, Excepted Service](#)
- d. [5 CFR 300, Employment \(General\)](#)
- e. [5 CFR 302, Employment in the Excepted Service](#)
- f. [5 CFR 308, Volunteer Service](#)
- g. [5 CFR 310, Employment of Relatives](#)
- h. [5 CFR 315, Subpart H, Probation on Initial Appointment to a Competitive Position](#)
- i. [5 CFR 315, Subpart I, Probation on Initial Appointment to a Supervisory or Managerial Position](#)

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- j. [5 CFR 316, Temporary and Term Employment](#)
- k. [5 CFR 330, Recruitment, Selection, and Placement \(General\)](#)
- l. [5 CFR 338, Qualification Requirements \(General\)](#)
- m. [5 CFR 340, Other Than Full-Time Career Employment \(Part-Time, Seasonal, On-Call, and Intermittent\)](#)
- n. [5 CFR 531, Pay Under the General Schedule](#)
- o. [5 CFR 550, Pay Administration \(General\)](#)
- p. [5 CFR 610, Hours of Duty](#)
- q. [5 CFR 630, Absence and Leave](#)
- r. [5 CFR 2635, Standards of Ethical Conduct for Employees of the Executive Branch](#)
- s. [5 USC 81, Compensation for work injuries](#)
- t. [5 USC 2301, Merit system principles](#)
- u. [5 USC 3109, Employment of experts and consultants; temporary or interim](#)
- v. [5 USC 3110, Employment of relatives; restrictions](#)
- w. [5 USC 3111, Acceptance of volunteer service](#)
- x. [5 USC 3303, Competitive service; recommendations of Senators or Representatives](#)
- y. [5 USC 3321, Competitive service; probationary period](#)
- z. [5 USC 3327, Civil service employment information](#)
- aa. [5 USC 3330, Government-wide list of vacant positions](#)
- bb. [5 USC 3401, Definitions](#)
- cc. [5 USC 3402, Establishment of part-time career employment programs](#)
- dd. [5 USC 3403, Limitations](#)
- ee. [5 USC 3404, Personnel ceilings](#)

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- ff. [5 USC 3405, Nonapplicability](#)
- gg. [5 USC 3406, Regulations](#)
- hh. [5 USC 3407, Repealed](#)
- ii. [5 USC 3408, Employee organization representation](#)
- jj. [5 USC 5311, The Executive Schedule](#)
- kk. [5 USC 5312, Positions at level I](#)
- ll. [5 USC 5313, Positions at level II](#)
- mm. [5 USC 5314, Positions at level III](#)
- nn. [5 USC 5315, Positions at level IV](#)
- oo. [5 USC 5316, Positions at level V](#)
- pp. [5 USC 5362, Grade retention following a change of positions or reclassification](#)
- qq. [5 USC 5363, Pay retention](#)
- rr. [5 USC 5365, Regulations](#)
- ss. [18 USC 208, Acts affecting a personal financial interest](#)
- tt. [22 USC 2384, Statutory officers](#)
- uu. [22 USC 2385, Employment of personnel](#)
- vv. [28 USC 2671, Definitions](#)
- ww. [28 USC 2672, Administrative adjustment of claims](#)
- xx. [28 USC 2673, Reports to Congress](#)
- yy. [28 USC 2674, Liability of United States](#)
- zz. [28 USC 2675, Disposition by federal agency as prerequisite; evidence](#)
- aaa. [28 USC 2676, Judgment as bar](#)

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- bbb. [28 USC 2677, Compromise](#)
- ccc. [28 USC 2678, Attorney fees; penalty](#)
- ddd. [28 USC 2679, Exclusiveness of remedy](#)
- eee. [28 USC 2680, Exceptions](#)
- fff. [29 CFR 1614, Federal Sector Equal Employment Opportunity](#)
- ggg. [31 USC 1342, Limitation on voluntary services](#)
- hhh. [Executive Order 10450, Security requirements for Government employment](#)
- hhh. [Executive Order 11935, Citizenship requirements for Federal employment](#)
- iii. [Foreign Service Act of 1980, as amended](#)
- jjj. [PL 95-454, Civil Service Reform Act](#)
- kkk. [Section 301 of the Civil Service Reform Act of 1978 \(5 USC 71\)](#)
- III. [Sec. 624\(a\) and Sec. 625 \(b\) of the Foreign Assistance Act of 1961, as amended](#)

**413.4.2 Internal Mandatory References**

Effective Date: 04/28/2015

- a. [ADS 101, Agency Programs and Functions](#)
- b. [ADS 413maa, Implementation Guidelines for New Job Share Program](#)
- c. [ADS 413mac, USAID Distinguished Fellows Programs](#)
- d. [ADS 423, Personnel Operations: Senior Executive Service \(Recruitment and Staffing\)](#)
- e. [ADS 462, Employee Evaluation Program, Civil Service](#)
- f. [ADS 476, Benefits](#)

**413.5 ADDITIONAL HELP**

- a. [Conditions of Appointment for AD Executive Personnel](#)
- b. [Evaluation of Supervisory/Managerial Performance](#)

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- c. [Methods of Filling USAID/Washington Vacancies](#)
- d. [Sample Waiver of Compensation for Experts and Consultants](#)

#### 413.6 DEFINITIONS

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for ADS terms and definitions.

##### **Administratively Determined (AD) Appointment**

An appointment action under which personnel may be appointed, compensated, and removed by the Administrator without regard to the provisions of any other law. (Chapters 413 and [103](#))

##### **appeal**

A request by an employee for review of an agency action by an outside agency. The right to such review is provided by law or regulation and may include an adversary-type hearing and a written decision in which a finding of facts is made and applicable law, Executive Order and regulations are applied. (Chapter 413)

##### **appointment - limited**

An appointment of a specified duration from one to five years. (Chapter 413, [414](#))

##### **appointment - temporary**

An appointment limited to a period of one year or less. (Chapter 413 and [414](#))

##### **career**

Tenure of a permanent employee in the competitive service who has completed three years of substantially continuous creditable Federal service. (Chapter 413)

##### **career conditional appointment**

An appointment which gives competitive status upon completion of a probationary period and which automatically converts to a career appointment upon completion of 3 years of creditable service. ([Chapter 412](#), 413)

##### **competitive service**

All civilian positions in the Federal Government that are not specifically excepted from civil service laws by or pursuant to statute, by the President, or by OPM under Rule VI, and that are not in the Senior Executive Service. (Chapter [412](#), 413, [418](#))

##### **competitive status**

Basic eligibility of a person to be selected to fill a position in the competitive service without open competitive examination. Competitive status may be acquired by career-conditional or career appointment through open competitive examination, or may be granted by statute, executive order, or civil service rules without competitive

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examination. A person with competitive status may be promoted, transferred, reassigned, reinstated, or demoted subject to the conditions prescribed by civil service rules and regulations. (Chapter 413)

**consultant**

A person serving as an advisor to an officer or instrumentality of the Government, as distinguished from an officer or employee carrying out an agency's duties and responsibilities. Ordinarily, consultants are expert in the field in which they advise, but need not be specialists. (Chapter 413)

**excepted service**

Positions in the Federal service not subject to appointment requirements of the competitive service. Exceptions to the normal, competitive requirements are authorized by law, executive order, and/or regulation. (**Chapters 412, 413, 414**)

**executive personnel**

Employees who are appointed to USAID/W executive positions under the Foreign Assistant Act (FAA) of 1961. These executives are identified as either statutory officers who are appointed by the advice and consent of the Senate, or individuals serving within the AD Senior Level (SL) pay band. (Chapter 413)

**expert**

A person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. The expert's knowledge and mastery of the principles, practices, problems, methods, and techniques of the field of activity, or a specialized area in the field, are clearly superior to those usually possessed by competent persons in that activity. (Chapter 413)

**intermittent employment**

Employment where there has not been established in advance a regular work schedule and where compensation is based on a "When Actually Employed" (WAE) basis.

The non-full-time employment of an individual serving under a competitive or excepted service appointment in tenure group I or II without a regularly scheduled tour of duty. (Chapters 413 and [499](#))

**job sharing**

A form of part-time employment in which the schedules of two part-time employees are arranged to cover the duties of a single full-time position. Job sharers are subject to the same personnel rules as other part-time employees. (Chapter 413)

**manager**

A manager directs the work of an organization, is held accountable for the success of specific line or staff programs, monitors the progress of the organization toward goals and periodically makes adjustments. (Chapter 413)

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**part-time career employment**

The employment of an individual serving under an excepted or competitive service appointment in tenure group I or II under a part-time work schedule of 16-32 hours per week. (Chapter 413)

**reemployment rights**

Rehire rights granted to a former Agency employee(s) when hired by another executive agency without a break in service of a full workday by transfer, reinstatement, or by excepted appointment, in a position which the Agency is currently authorized to fill with reemployment rights. (**Chapters 413, 415, and 418**)

**reinstatement**

The noncompetitive reappointment of a career employee in the SES who, under a previous career appointment successfully completed the SES probationary period.

Noncompetitive reemployment in the competitive service based on previous service under a career or career-conditional appointment.

The non-competitive employment of a career or career conditional employee, or a person formerly employed in the competitive service who held competitive status or who was serving probation when separated from that service. (Chapter 413)

**reinstatement eligibility**

Refers to the ability for those individuals who previously held a career or career-conditional appointment to apply for jobs in the competitive federal service open to status applicants. There is no time limit on reinstatement eligibility for those who either have veterans' preference, or acquired career tenure by completing three years of substantially continuous creditable service. (**Chapter 413 and 418**)

**Schedules A, B, and C**

Categories of positions excepted from the competitive service by regulation. (Chapter 413)

**Schedule A Position**

Positions other than those of a confidential or policy-determining character for which it is impracticable to examine. (Chapter 413)

**Schedule B position**

Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination. (Chapter 413)

**Schedule C position**

Positions of a confidential or policy-determining character. (Chapter 413)

**Senior Executive Service (SES)**

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A separate personnel system for persons who set policy and administer programs at the top levels of the Government (equivalent to GS-16 through Executive Level IV). (Chapter 413)

**student**

An individual accepted for enrollment or enrolled and seeking a degree (diploma, certificate, etc.) in a qualifying educational institution, on a full or half-time basis (as defined by the institution in which the student is enrolled), including awardees of the Harry S. Truman Foundation Scholarship Program under Public Law 93-842. Students need not be in actual physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load immediately prior to graduating is still considered a student for purposes of this Program. Students may work a full-time or a part-time schedule. (Chapter 413, [460](#))

**supervisor**

An employee that is responsible for the "direction" of subordinates within his/her organization unit and whose supervisory responsibilities meet at least the minimum requirements for coverage under the General Schedule Supervisory Guide. Those directed may be subordinate Federal Civil Service employees; assigned military employees; non-federal workers; unpaid volunteers; student trainees; or others. Supervisors serve as coaches that empower staff to accomplish work. Traditional supervisory duties include evaluating employee performance; selecting or participating with considerable weight in the selection of subordinate employees; reviewing and approving leave requests; hearing and resolving complaints and grievances; and effecting disciplinary measures. (Chapter [405](#), 413)

**volunteer service**

Service performed without compensation by a full or half-time student, including graduate student, with the written permission of the institution at which the student is enrolled. (Chapter 413)

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