



United States
**Office of
Personnel Management** Washington, DC 20415-0001

CPM 2004-03

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MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: KAY COLES JAMES
Director

SUBJECT: Conversion to New SES Performance-Based Pay System

The National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, November 24, 2003) authorized a new performance-based pay system for members of the Senior Executive Service (SES). (See [CPM 2003-19](#), December 16, 2003.) The Office of Personnel Management (OPM) recently issued interim regulations to set forth the requirements for converting SES members to the new pay system and adjusting SES rates of basic pay ([copy attached](#)). This memorandum provides additional guidance on establishing and adjusting SES rates of basic pay under the new SES pay system.

Effective Date

OPM's interim regulations require agencies to convert SES members to the new SES pay system on the first day of the first applicable pay period beginning on or after January 1, 2004 (January 11, 2004, for most employees).

SES Pay Structure

The Act amends 5 U.S.C. 5382 to replace the current six-level pay system for the SES with a single, open-range "payband" that has only its minimum and maximum rates fixed by statute. The new SES pay system establishes an open pay range with a minimum rate of basic pay (excluding locality pay) equivalent to the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376 (\$103,700 in 2004) and a maximum rate equivalent to the rate for level III of the Executive Schedule (\$144,600 in 2004). Section 5382 also allows the maximum rate of basic pay to be set at level III of the Executive Schedule for a position in a system

equivalent to the SES, as determined by the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget (OMB) and OPM).

For any agency certified under 5 U.S.C. 5307(d) as having a performance appraisal system for its SES members which, as designed and applied, makes meaningful distinctions based on relative performance, the maximum SES rate of basic pay will be the rate for level II of the Executive Schedule (\$157,000 in 2004). In addition, agencies granted such certification also may apply a higher aggregate limitation on pay equivalent to the total compensation payable to the Vice President (\$201,600 in 2004). OPM and OMB will issue regulations prescribing the requirements agencies must meet to obtain certification for these purposes.

Conversion to New SES Pay-for-Performance System

- ***SES Members.*** Most current SES members will convert to the new SES pay range on January 11, 2004. The senior executive's converted rate of basic pay is his or her rate of basic pay plus any applicable locality pay in effect immediately prior to January 11, 2004. The newly converted SES rate becomes the SES member's rate of basic pay for all pay computation purposes. An agency may not involuntarily reduce a senior executive's rate of basic pay, including any applicable locality payment, below the rate that was in effect on November 24, 2003, for 12 months after January 11, 2004.
- ***FBI and DEA SES Members.*** Under 5 U.S.C. 3151, the rates of basic pay for the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) SES may not be less than nor greater than the rates of basic pay established for the SES under 5 U.S.C. 5382 and may be adjusted by the Attorney General "at the same time and to the same extent as rates of basic pay for the [SES] are adjusted." As a result, the new minimum and maximum rates of basic pay for the SES under 5 U.S.C. 5382 also will apply to the FBI and DEA SES. In addition, the converted rates of basic pay for FBI and DEA senior executives will include any applicable locality payment in effect for the employee immediately before January 11, 2004.
- ***Law Enforcement Officers.*** Upon conversion to the new SES pay system, a law enforcement officer (LEO) who is a member of the SES (including an LEO in the FBI and DEA SES) will continue to receive his or her rate of basic pay, plus any applicable special geographic pay adjustment established for LEOs under section 404(a) of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509) to which he or she was entitled immediately before January 11, 2004. Currently, a special geographic pay adjustment (16 percent) applies only to LEOs in the Boston-Worcester-Lawrence, MA-NH-ME-CT Consolidated Metropolitan Statistical Area (CMSA). When the special geographic pay adjustment for LEOs in Boston no longer applies (because a higher locality pay percentage becomes applicable to employees in the Boston locality pay area), the senior executive's converted rate of basic pay will be his or her previous rate of basic pay plus the special geographic pay adjustment for LEOs in effect immediately before the effective date of the higher locality-based comparability payment.

- ***Employees with Geographic Mobility Assignments Outside the 48 Contiguous States and the District of Columbia.*** SES members in positions subject to geographic mobility requirements and who are on assignment outside the 48 contiguous States or the District of Columbia to a position overseas or in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, or other U.S. territories and possessions in January 2004 will convert to the new SES pay system at their rate of basic pay (exclusive of any locality rate of pay). However, upon reassignment to a locality pay area, their converted rate of basic pay will be adjusted to include an amount that corresponds to the locality pay authorized for the applicable locality pay area upon reassignment. The adjustment will be prospective, not retroactive.

In all cases, conversion to the new SES pay system or “equivalent SES system” is not considered a pay adjustment for the purpose of limiting an agency’s flexibility to adjust a senior executive’s rate of basic pay more than once during a 12-month period.

Pay Adjustments for SES Members

SES members will no longer receive annual across-the-board or locality pay adjustments. (See memorandum on “Extension of Locality Payments to Non-General Schedule Employees” at <http://www.opm.gov/oca/compmemo/2003/extmemo.asp>.) Pay adjustments for SES members must be based on the employee’s individual performance and/or contribution to the agency’s performance. An agency may increase an SES member’s converted rate of basic pay on the first day of the first applicable pay period beginning on or after January 1, 2004, or on any date thereafter, only up to the new rate for level III of the Executive Schedule. Agencies may provide this pay adjustment only upon a determination that the senior executive’s performance and/or contributions so warrant and that the senior executive is otherwise eligible for such a pay adjustment (i.e., he or she has not received a pay adjustment in the previous 12-month period). Agencies may assess an individual’s performance and/or contribution to the agency’s performance by considering such things as the unique skills, qualifications, or competencies of the individual and their significance to the agency’s mission, as well as the individual’s current responsibilities. Any such pay adjustment will be considered a pay adjustment for the purpose of applying the prohibition on authorizing a pay adjustment not more than once during a 12-month period. (The interim regulations also allow an agency to request an exception from the Director of OPM to the rule that limits an agency’s authority to adjust a senior executive’s rate of basic pay more than once during a 12-month period.)

If there is an additional increase in the rate for level III of the Executive Schedule in 2004, and if that increase becomes effective as of the first day of the first applicable pay period beginning on or after January 1, 2004, an agency may review the previous determinations to increase the pay of a senior executive to determine whether, and to what extent, any additional pay increases may be warranted based on the same criteria used for the previous determinations to increase pay. If the agency determines that an additional pay increase is warranted, that increase must be made effective as of the effective date of the previous increase.

Processing Personnel Actions to Convert to the New Pay System

For the purpose of processing a personnel action (SF-50) to effect conversion to the new SES pay system, a “pay adjustment” is any increase or reduction in an employee’s rate of basic pay where there is no change in the duties or responsibilities of the employee’s position, or where there is a change in the pay system under which the employee is paid. To document the conversion, agencies should use Nature of Action (NOA) code “894/Pay Adjustment” and Legal Authority code “ZLM/P.L. 108-136, Sec. 1125.” For subsequent adjustments in the employee’s rate of basic pay, agencies should use NOA “894/Pay Adjustment” and Legal Authority code “VWH.” However, if such an adjustment results from an automatic annual pay adjustment for a senior executive whose pay is at the minimum of the rate range, the appropriate documentation will be NOA “894/Pay Adjustment,” and the Legal Authority code will be “ZLM/[cite the Executive Order that established the new rate].” When processing the above actions for SES members who are subject to the 1-year post-employment conflict of interest restrictions set forth in 18 U.S.C. 207(c), agencies should include a remarks code (“M97”) on the SF-50 which reads as follows: “SES member subject to post-employment restrictions under 18 U.S.C. 207(c).”

Notification of Post-Employment Restrictions

Section 1125 of the Act established a new salary-based threshold for determining the applicability of certain post-employment conflict of interest restrictions to SES members as set forth in 18 U.S.C. 207(c). (See [CPM 2004-01](#), “Notification of Changes in Post-Employment Restrictions Coverage for Members of the Senior Executive Service (SES).”) Following consultation with the Attorney General and the Office of Government Ethics, OPM will issue regulations requiring agencies to notify affected employees about these post-employment restrictions. In the meantime, you should **notify** affected SES members of the post-employment restrictions in 18 U.S.C. 207(c) and must formally document that coverage using remarks code (“M97”) on the SF-50, as noted under “Processing Personnel Actions to Convert to the New Pay System.”

Additional Information

For additional guidance, agency Chief Human Capital Officers and Human Resources Directors should contact the Center for Leadership & Executive Resources Policy on (202) 606-1050. Staff inquiries should be referred to the appropriate OPM Human Capital Officer.

[Attachment](#)

cc: President’s Management Council
Chief Human Capital Officers
Human Resources Directors