



OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-1000

DEC 02 2004

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Kay Coles James
Director 

SUBJECT: Final Regulations on Performance-Based SES Pay System

I am pleased to inform you that the Office of Personnel Management (OPM) has issued final regulations addressing new, higher basic pay for members of the Senior Executive Service (SES). The final regulations are effective on December 6, 2004. These new regulations also address the higher aggregate limitation on pay for SES members and employees in senior-level (SL) and scientific or professional (ST) positions (copy attached). They complement OPM's regulations at 5 CFR chapter 430, subpart D, issued on July 29, 2004, which established the criteria for certifying SES and SL/ST performance appraisal systems in order to obtain access to these higher limits. Taken together, these two sets of regulations comprise the new SES pay-for-performance system.

With these new regulations, agencies that have certified performance appraisal systems for senior executives are permitted to pay their highest-performing SES members above the rate for level III of the Executive Schedule (\$145,600 in 2004)—up to the rate for level II of the Executive Schedule (\$158,100 in 2004). Agencies that have certified performance appraisal systems for senior executives and/or SL/ST employees must also apply a higher aggregate limitation on pay—up to the Vice President's salary (\$203,000 in 2004). Information on obtaining certification of performance appraisal systems for senior executives and SL/ST employees is available at <http://www.opm.gov/oca/compmemo/2004/2004-13.asp>.

Setting and Adjusting SES Rates of Basic Pay

The new SES performance-based pay system requires agencies to make decisions on setting and adjusting rates of basic pay for SES members based on individual performance and/or contribution to the agency's performance as determined under a rigorous performance management system. In assessing a senior executive's performance and/or contribution to the agency's performance, the agency may consider such things as unique skills, qualifications, or competencies that the individual possesses, and their significance to the agency's performance, as well as the senior executive's current responsibilities. Rates of basic pay higher than the rate for level III of the Executive Schedule must be approved by the head of the agency or designee and generally are reserved for those senior executives who have demonstrated the highest levels of individual performance and/or made the greatest

contributions to the agency's performance, or, in the case of newly-appointed senior executives, those who possess superior leadership or other competencies.

Each agency must establish a plan for setting and adjusting the rates of basic pay for SES members. Agency plans must ensure that individual pay rates or pay adjustments reflect meaningful distinctions within a single performance rating level (e.g., the higher the employee's relative performance within the rating level, the higher the pay adjustment) and/or between performance rating levels (e.g., the higher the rating level, the higher the pay adjustment). Agencies must provide for transparency in the processes for making pay decisions, while assuring confidentiality.

12-Month Rule

Generally, an authorized agency official may adjust (increase or reduce) the rate of basic pay of a senior executive not more than once in any 12-month period. However, OPM's regulations allow an agency to approve an increase more than once during a 12-month period where the head of an agency or designee determines that an additional increase is warranted (1) for an exceptionally meritorious accomplishment, (2) for a senior executive who is reassigned to a position with substantially greater scope and responsibility or to recruit a senior executive with superior leadership or other competencies from a position in another agency, (3) for a senior executive who is critical to the mission of the agency and who would be likely to leave the agency in the absence of a pay increase, or (4) to align a senior executive with the agency's senior executive appraisal and pay adjustment cycle.

On January 20, 2004, I delegated responsibility to agency heads to approve limited exceptions to the 12-month rule. (See CPM 2004-04 at <http://www.opm.gov/oca/compmemo/2004/2004-04.asp>.) Because the final SES regulations provide the head of an agency or designee the authority to make specific exceptions to the 12-month rule, I am withdrawing the general delegation of authority as of the effective date of the final regulations.

Reduction in Pay

An agency may reduce a career senior executive's SES rate of basic pay by not more than 10 percent for performance or disciplinary reasons. However, an agency may not reduce a senior executive's rate of basic pay below the rate that was in effect on November 24, 2003 (including any applicable locality payment), for 12 months following the effective date of the new SES pay system (not earlier than January 12, 2005).

Increases in the Minimum or Maximum Rates of the SES Rate Range

The minimum rate of basic pay for the SES rate range will increase consistent with any increase in the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376. The applicable maximum rate of basic pay for the SES rate range will increase with any increase in the rate for levels II or III of the Executive Schedule under 5 U.S.C. 5318. An agency may provide an increase in the rate of basic pay for a senior executive who meets or exceeds his or her performance expectations at the same time the minimum or maximum rate of the SES rate

range is increased by an amount that does not exceed the amount necessary to allow the senior executive to maintain his or her relative position in the SES rate range, with some exceptions. A pay increase made to allow a senior executive to maintain his or her relative position in the rate range is not considered a pay adjustment for the purpose of applying the 12-month rule. This provision does not provide senior executives with an entitlement to an annual pay adjustment—only consideration for such an adjustment.

When the maximum rate of the SES rate range is increased, an agency may grant an additional pay increase to a senior executive whose rate of basic pay is at the applicable maximum rate. Such an adjustment may be made after an agency has already granted pay increases to its senior executives following the SES performance appraisal period and is not considered a pay adjustment for the purpose of applying the 12-month rule. In addition, if there is an additional increase in the rates for the Executive Schedule in a calendar year, and if that increase becomes effective on the first day of the first pay period beginning on or after January 1 (i.e., the date prescribed in 5 U.S.C. 5318), an agency may review any previous determination to adjust the pay of a senior executive to determine whether, and to what extent, an additional pay increase may be warranted based on the same criteria used for the previous determination. If an additional pay increase is warranted, that increase must be made effective as of the effective date of the previous pay increase and is not considered a pay adjustment for the purpose of applying the 12-month rule.

No reduction in pay upon transfer to another agency or suspension of certification

A senior executive whose rate of basic pay is higher than the rate for level III of the Executive Schedule may not suffer a reduction in pay as a result of transferring to an agency where the maximum rate of basic pay for the applicable SES rate range is equal to the rate for level III of the Executive Schedule or as the result of a decision to suspend certification of the applicable performance appraisal system. The senior executive will continue to receive his or her current SES rate and is not eligible for a pay adjustment until the senior executive is assigned to a position that would allow the employee to receive a pay adjustment or the employing agency's applicable performance appraisal system is certified under 5 CFR part 430, subpart D.

Processing SES Pay Actions

Additional instructions for processing SES pay actions will be issued by OPM's Personnel Systems Group through updates of the Guide to Processing Personnel Actions. If you have any questions, please contact Mary Carter at mccarter@opm.gov.

Additional Guidance

To assist you, we have attached additional guidance on setting and adjusting rates of basic pay for members of the SES. For further information, agency Chief Human Capital Officers and Human Resources Directors may contact their assigned OPM Human Capital Officers. Employees should contact their agency human resources offices for information.

We look forward to working with you to ensure successful implementation of the performance-based SES pay system for the Federal Government's elite leadership corps.

cc: Chief Human Capital Officers
Human Resources Directors

Attachments

Setting and Adjusting Rates of Basic Pay for Members of the Senior Executive Service

The new performance-based pay system for the Senior Executive Service (SES) requires agencies to make decisions on setting and adjusting rates of basic pay for senior executives based on individual performance or contribution to the agency's performance, or both, as determined under a rigorous performance management system. In assessing a senior executive's performance and/or contribution to the agency's performance, an agency may consider such things as unique skills, qualifications, or competencies that the individual possesses and their significance to the agency's performance, as well as the individual's current responsibilities. In setting a new senior executive's rate of basic pay, an agency must consider the nature and quality of the individual's experience, qualifications, and accomplishments as they relate to the requirements of the SES position, as well as the individual's current responsibilities.

Under 5 U.S.C. 5383(c) and 5 CFR 534.404(c), an agency may adjust the rate of basic pay of a senior executive not more than once during any 12-month period, except as provided by regulation. The setting of an individual's rate of basic pay upon initial appointment to the SES is considered a pay adjustment for the purpose of applying the 12-month rule. OPM's regulations in 5 CFR 534.404(c)(3) and (4) permit an agency to increase a senior executive's rate of basic pay more than once during a 12-month period where the head of an agency or designee determines that an additional increase is warranted.

Pay Increases That Do Not Count Against the 12-Month Rule

OPM's regulations at 5 CFR 534.404(c)(3) permit the head of the agency or designee to provide additional pay increases that are not considered pay adjustments for the purpose of applying the 12-month rule. The agency head may provide an additional pay increase without regard to whether the employee received a pay adjustment during the previous 12-month period. The following pay actions are not considered a pay adjustment:

- (1) The conversion of senior executives to the SES pay system (5 CFR 534.404(c)(3)(i));
- (2) A zero adjustment in pay (5 CFR 534.404(c)(3)(ii) and (iii));
- (3) A determination to provide an additional pay increase when there is an increase in Executive Schedule rates of pay (5 CFR 534.404(f));
- (4) A determination to provide a pay increase to allow a senior executive to maintain his or her relative position in the SES rate range (5 CFR 534.404(b)(2)); and
- (5) An increase in pay equivalent to the minimum amount necessary to ensure that a senior executive's rate of basic pay does not fall below the minimum rate of the SES rate range (5 CFR 534.404(c)(3)(vi)).

An additional pay increase that is not considered a pay adjustment for the purpose of applying the 12-month rule does not begin a new 12-month period.

Exceptions to the 12-Month Rule

OPM's regulations at 5 CFR 534.404(c)(4) provide the head of an agency or designee with the authority to make exceptions to the rule that prohibits an agency from adjusting a senior executive's rate of basic pay more than once during a 12-month period (12-month rule) where he or she determines that an additional increase is warranted—

- (1) for an exceptionally meritorious accomplishment;
- (2) for a senior executive who is reassigned to a position with substantially greater scope and responsibility or for a senior executive with superior leadership or other competencies who is recruited from a position in another agency;
- (3) for a senior executive who is critical to the mission of the agency and who would be likely to leave the agency in the absence of a pay increase; or
- (4) to align a senior executive with the agency's senior executive appraisal and pay adjustment cycle (e.g., in the case of a senior executive who was appointed to an SES position within the past 12 months or a senior executive who was transferred to an SES position from an agency with a different senior executive appraisal and pay adjustment cycle within the past 12 months).

A pay increase made as a result of a determination to approve an exception to the 12-month rule is considered a pay adjustment and begins a new 12-month period.

Examples

All of the following examples assume that the senior executive received a pay adjustment during the previous 12-month period:

Additional pay increase after certification of senior executive appraisal system

Many agencies gave their senior executives a pay increase in January 2004 as a result of the increase in the rates of pay for the Executive Schedule. Such an increase began a new 12-month period. An agency with a certified executive performance appraisal system may determine prior to January 2005 it is appropriate to use one of the four exceptions in 5 CFR 534.404(c)(4) to provide an additional pay increase to a senior executive whose rate of basic pay is equal to the rate for level III of the Executive Schedule. A pay increase made as a result of approving an exception to the 12-month rule is considered a pay adjustment and begins a new 12-month period.

Additional pay increase to maintain relative position in rate range

On the effective date of an increase in the minimum or maximum rate of basic pay of the SES rate range, an agency may determine it is appropriate to increase the rate of basic

pay of a senior executive who meets or exceeds his or her performance expectations by an amount that does not exceed the amount necessary to allow the employee to maintain his or her relative position in the SES rate range. However, if such an increase would cause the senior executive's rate of basic pay to exceed the rate for level III of the Executive Schedule or if the senior executive's rate of basic pay is already above the rate for level III of the Executive Schedule, the agency must ensure that the employee received an annual summary rating of outstanding for the most recently completed appraisal period, and the increase must be approved by the agency head or designee. In the case of a senior executive whose rate of basic pay is above the rate for level III and who has been rated below outstanding, but above fully successful, for the most recently completed appraisal period, the agency head or designee may approve an increase to allow the employee to maintain his or her relative position in the SES rate range in limited circumstances, such as for an exceptionally meritorious accomplishment. The additional pay increase is not considered a pay adjustment for the purpose of applying the 12-month rule and does not begin a new 12-month period.

Additional pay increase when there is an increase in Executive Schedule rates of pay

1. An agency may provide an additional pay increase to a senior executive whose rate of basic pay is equal to the applicable maximum rate when that rate is increased as a result of an increase in Executive Schedule rates of pay that becomes effective after an agency has already granted a pay increase to its senior executives following the SES performance appraisal period. For example, an agency with a certified executive performance appraisal system may provide an additional pay increase, if warranted, to a senior executive whose rate of basic pay is equal to the rate for level II. The additional pay increase must be made effective as of the effective date of increases in the Executive Schedule under 5 U.S.C. 5318 (i.e., the first day of the first pay period beginning on or after January 1). The determination to provide such an additional pay increase must be made no later than the end of the pay period during which the increase in the Executive Schedule becomes effective. The additional pay increase is not considered a pay adjustment for the purpose of applying the 12-month rule and does not begin a new 12-month period. In this example, the agency would not be able to use this rule to provide an additional increase to a senior executive whose rate of basic pay is equivalent to the rate for level III of the Executive Schedule, since the applicable maximum rate of the SES rate range for a certified executive performance appraisal system is level II.

2. If there is an additional increase in the rates for the Executive Schedule in a calendar year, and if that increase becomes effective on the first day of the first pay period beginning on or after January 1 (i.e., the date prescribed in 5 U.S.C. 5318), an agency may review any previous determination to increase the pay of a senior executive that was made effective on or after the effective date of the first increase in the rates for the Executive Schedule to determine whether an additional pay increase may be warranted for the senior executive. If an agency determines that an additional pay increase is warranted, that increase must be made effective as of the effective date of the previous pay increase. The determination to provide such an additional pay increase must be made no later than the end of the pay period during which the increase in the Executive Schedule becomes effective. The additional pay increase is not considered a pay

adjustment for the purpose of applying the 12-month rule and does not begin a new 12-month period.

Additional pay increase upon reassignment to 48 States

A senior executive who is assigned 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, will be converted to a new rate of basic pay that equals his or her current rate of basic pay, plus the amount of locality pay authorized for the applicable locality pay area, upon reassignment to a position in the 48 contiguous States or the District of Columbia. A pay increase resulting from conversion to the new SES pay system for these SES members is not considered a pay adjustment for the purpose of applying the 12-month rule and does not begin a new 12-month period. In addition, an agency may approve an exception to the 12-month rule to provide an additional pay increase to a senior executive who is reassigned to a position in the 48 contiguous States with substantially greater scope and responsibility. This additional pay increase, made because of the position's substantially greater scope and responsibility, is considered a pay adjustment for the purpose of applying the 12-month rule and begins a new 12-month period.

Additional pay increase for an exceptional meritorious accomplishment

An agency may consider approving an exception to the 12-month rule to provide an additional pay increase to a senior executive for an exceptional meritorious accomplishment. The additional pay increase is considered a pay adjustment for the purpose of applying the 12-month rule and begins a new 12-month period. Subsequently, the agency may give an additional pay increase to the senior executive when the minimum or maximum rate of basic pay of the SES rate range is increased to allow the employee to maintain his or her relative position in the SES rate range. The second pay increase is not considered a pay adjustment for the purpose of applying the 12-month rule and does not begin a new 12-month period.

Additional pay increase to align with agency's appraisal and pay adjustment cycle

A senior executive may have transferred from another agency that has a different senior executive performance appraisal and pay adjustment cycle. The employee's new agency may determine it is appropriate to provide a pay increase upon completion of its performance appraisal period. The pay increase is considered a pay increase for the purpose of applying the 12-month rule and begins a new 12-month period.

Pay increase following a zero pay adjustment

At the completion of the agency's senior executive appraisal cycle, an agency may make a determination not to provide a pay increase to a senior executive whose performance does not warrant such an adjustment. A zero pay adjustment is not considered a pay adjustment for the purpose of applying the 12-month rule. Subsequently, the agency may determine that the senior executive's performance warrants a pay increase. Such a pay increase is considered a pay adjustment for the purpose of applying the 12-month rule and begins a new 12-month period.

Setting pay upon transfer to another agency

An agency may set the rate of basic pay of a senior executive transferring from another agency at any rate within the SES rate range, except an agency may not reduce the pay of a senior executive who transfers to an agency with a performance appraisal system that is not certified. If the rate of basic pay is set at the same SES rate the senior executive received in his or her former agency, the action is not considered a pay adjustment for the purpose of applying the 12-month rule. An agency may approve an exception to the 12-month rule to provide an additional increase to a senior executive with superior leadership or other competencies to recruit him or her from another agency. The additional pay increase is considered a pay adjustment for the purpose of applying the 12-month rule and begins a new 12-month period.

An SES member whose rate of basic pay is higher than the rate for level III of the Executive Schedule may not suffer a reduction in pay as a result of transferring from a position for which the maximum SES rate of basic pay is equal to the rate for level II of the Executive Schedule to a position for which the maximum SES rate of basic pay is equal to the rate for level III of the Executive Schedule. In addition, the senior executive may not suffer a reduction in pay if he or she then transfers to another position for which the maximum SES rate of basic pay is equal to the rate for level III. The SES member will continue to receive his or her current SES rate of basic pay and is not eligible for further pay adjustments until the applicable SES performance appraisal system is certified or until he or she is reassigned to a position that would allow the SES member to receive a pay adjustment.

Setting pay upon reappointment to the SES

Upon reappointment to the SES, an agency may set the rate of basic pay for a former SES member at any rate within the applicable SES rate range if there has been a break in service of more than 30 days. If there has been a break in SES service of 30 days or less, the senior executive's rate of basic pay may be set at any rate within the SES rate range, but not higher than the senior executive's former SES rate of basic pay. However, where there has been a break in service of 30 days or less, the agency head or designee may approve a higher rate than the senior executive's former rate, if warranted. In all cases, setting a rate of basic pay upon reappointment to the SES is considered a pay adjustment and begins a new 12-month period.

Setting pay upon reinstatement to the SES

The SES rate of basic pay of a former career senior executive may be adjusted upon reinstatement to the SES if the individual elected to remain subject to the SES pay provisions while serving under a Presidential appointment and if at least 12 months have elapsed since the individual's last SES pay adjustment. If fewer than 12 months have elapsed since the employee's last SES pay adjustment, the agency head or designee may approve an exception to the 12-month rule to provide an additional pay increase, if warranted. The SES rate of basic pay may be increased whether in the agency where the individual held the Presidential appointment or in another agency. An increase in pay

upon reinstatement to the SES is considered a pay adjustment for the purpose of applying the 12-month rule and begins a new 12-month period.

A former career senior executive who elects not to remain subject to the SES pay provisions while serving under a Presidential appointment may have his or her SES rate of basic pay set at any rate within the applicable SES rate range upon reinstatement to the SES. Setting pay upon reinstatement to the SES is considered a pay adjustment for the purpose of applying the 12-month rule and begins a new 12-month period.