

QUESTIONS AND ANSWERS

EFFECT OF 2014 PAY INCREASE ON SES AND SL/ST

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These following questions and answers address the 1 percent pay increase effective January 12, 2014, as it affects SES and SL/ST employees.

Q1. When did the 1 percent pay increase take effect and how did it affect the pay range for SES and SL/ST positions?

A. In accordance with 5 U.S.C. 5303, the 1 percent increase for certain statutory pay systems (including the General Schedule) is effective on the first day of the first applicable pay period beginning on or after January 1, 2014. This means the increase is effective as of January 12, 2014. The minimum rate of the SES and SL/ST pay ranges is 120 percent of the minimum rate of basic pay for GS-15; thus, the SES/SL/ST minimum rate increased on January 12, 2014.

In accordance with 5 U.S.C. 5318, the Executive Schedule rates increased by 1 percent on January 12, 2014. The maximum rates of the SES and SL/ST pay ranges are based on Executive Schedule rates--EX-II for agencies with certified appraisal systems and EX-III for agencies without certified appraisal systems; thus, those maximum rates increased on January 12, 2014.

In summary, the GS increase raised the minimum of the rate range for SES/SL/ST by 1 percent and the Executive Schedule increase increased range maximums by approximately 1 percent.

Q2. Will all SL/ST employees receive an automatic across-the-board 1 percent increase to their rates of basic pay?

A. No; rates of basic pay for SL/ST employees paid under 5 U.S.C. 5376 are adjusted by an amount the agency head considers appropriate (which may be more than 1 percent, less than 1 percent, or no increase at all). Accordingly, any such adjustments to SL/ST employees' pay should be determined on a case-by-case basis as opposed to providing automatic across-the-board increases. In addition, those agencies seeking certification of their appraisal systems must make differentiations in pay in order to meet the certification criteria.

Q3. Will all SES members receive an automatic across-the-board 1 percent increase to their rates of basic pay?

A. No; the law does not provide for an automatic or across-the-board increase in the pay of individual SES members. It is important that the increase to the SES pay range not be misinterpreted as providing for automatic salary increases for individual SES members. Each agency must determine under applicable pay rules what pay increases, if any, to give to individual SES members.

Q4. Must agencies increase individual salaries for SES members and SL/ST employees paid less than the minimum rate of basic pay for their new rate range?

A. Yes; the statute at 5 U.S.C. 5382 states that the lowest rate of the SES range shall not be less than the minimum rate of basic pay payable under 5 U.S.C. 5376. Since the minimum rate of basic pay payable under 5 U.S.C. 5376 (which applies to SL/ST employees) must not be less than 120 percent of the minimum rate of basic pay for GS-15 of the General Schedule, agencies must ensure that each senior executive and senior professional with a pay rate less than the new minimum rate receives an increase that will at least meet the new range minimum.

Q5. Will agencies be able to grant pay adjustments to SES members if the adjustments are based on performance?

A. Yes; under 5 CFR 534.404(b)(3) an executive may be given a pay increase that advances the relative position of an executive's salary within the SES rate range based upon individual performance, contributions to agency performance, or both. Under 5 CFR 534.404(b)(4) an executive may be given a pay increase up to the amount necessary to maintain the relative position of the executive's salary within the SES rate range (this is also known as Maintain Relative Position (MRP)). Since MRPs also are performance-based, an agency may choose to incorporate any amounts otherwise available under MRPs into pay adjustments it provides under 5 CFR 534.404(b)(3).

Q6. What is a pay adjustment to maintain a senior executive's relative position (MRP) in the SES rate range?

A. When the minimum or maximum rate of basic pay of the SES rate range is increased, an agency may determine it is appropriate to increase the rate of basic pay of a senior executive who meets or exceeds 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 (See 5 CFR 534.404(b)(4)). When adjusting pay using MRP, the maximum MRP available must be calculated based upon specific changes that occur to the minimum and/or maximum SES rates of basic pay. The formula for that calculation can be found at <http://archive.opm.gov/oca/compmemo/2004/MaintainingRelativePosition.asp>.

Q7. What performance-based criteria apply when providing a pay increase to maintain a senior executive’s relative position (MRP) in the SES rate range?

A. Agencies must consider the limitations for granting MRPs listed in 5 CFR 534.404(b)(4)(i)-(iii). Additionally, agencies should keep in mind that MRPs are to be granted based on performance and should not result in across-the-board increases. The performance-based criteria for providing MRPs are described in the table below.

Senior Executive’s Rate of Basic Pay Prior to Adjustment	Resulting Rate of Basic Pay After Adjustment	Rating for Most Recent Appraisal Period	Pay Adjustment
Above EX-III	Above EX-III	Outstanding	May be granted upon approval by agency head or designee
		Below Outstanding but Above Fully Successful	May be granted by agency head or designee in rare circumstances (e.g., exceptionally meritorious accomplishment)
		Fully Successful or Below	May not be granted
At or Below EX-III	Above EX-III	Outstanding	May be granted upon approval by agency head or designee
		Below Outstanding	May not be granted
Below EX-III	Below EX-III	Fully Successful or above	May be granted

Q8. Is a pay increase to allow an employee to maintain his or her position in the SES rate range (MRP) considered a pay adjustment for the purpose of applying the 12-month rule?

A. No; an MRP does not count as a pay adjustment for the purpose of applying the 12-month rule as described in 5 CFR 534.404(c). This pay increase may be given separately from a pay increase that allows the employee to advance his or her relative position in the SES rate range. However, if both an MRP and a performance-based pay adjustment are provided, the 12-month restriction required for the performance-based pay adjustment applies. Alternatively, an agency may incorporate into its performance-based pay adjustments any amounts that might otherwise be provided to its executives through MRPs.

Q9. Does granting an annual pay adjustment to a senior professional (SL/ST) that exceeds the 1 percent general increase initiate a 12-month waiting period for the recipient?

A. The current regulations state that an annual pay adjustment that does not exceed the greater of the annual General Schedule adjustment or the Executive Schedule adjustment shall not be considered a pay adjustment for the purposes of applying the 12-month waiting period. However, an annual pay adjustment in excess of that amount does initiate a 12-month waiting period. Revised SL/ST pay regulations, which are expected to be effective soon, remove this 12-month rule. Agencies are required by law to make annual pay adjustments during the first applicable pay period on or after the first day of the month in which an adjustment takes effect in accordance with 5 U.S.C. 5376(b)(2).

Q10. How should agencies go about making determinations on pay adjustments for individual SES members?

A. Any decision to adjust pay must reflect meaningful distinctions among senior executives based on individual performance and/or contribution to agency performance such that the higher performing senior executives receive higher pay adjustments. Agencies should keep in mind that certification of their performance appraisal system(s) is in part dependent on the agency's ability to show pay differentiation as described in 5 CFR 430.404(a)(9). The regulation at 5 CFR 534.404(g) requires that agencies have a plan that includes criteria for setting and adjusting SES rates of basic pay. Given the length of time that the Government has been under a pay freeze, agencies are strongly encouraged to revisit their pay policies and update them as needed.

Q11. Can an individual SES/SL/ST employee's performance-based pay adjustment be more or less than 1 percent?

A. Yes; specific increases to the minimum and maximum pay rates of the SES pay range do not require any particular pay adjustment for individual SES members except one who has a pay rate that does not meet the new minimum. Furthermore, it is not required (or expected) that each SES member or SL/ST employee receive a pay adjustment. Agencies should utilize their pay pool to make adjustments that recognize and encourage executives' performance while also spending within the limits of the pay pool.

Q12. Does the 1 percent increase impact FY14 awards spending limitations?

A. No; the expiration of the pay freeze has no immediate impact on agencies' awards funding. Since agencies use rates of basic pay from the end of the previous fiscal year (e.g., September 30, 2013) to calculate aggregate salaries used as the basis for determining their awards funding (for individual rating-based awards and special act awards), these spending limits are not impacted by the January 2014 increase to the General Schedule.

Impact of Pay and Awards on Performance Appraisal System Certification

Q13. Now that the pay freeze has ended, may agencies grant pay adjustments (i.e., adjustments in the rate of basic pay) in place of SES/SL/ST performance awards to satisfy the “Pay Differentiation” requirement for performance appraisal system certification?

A. No; in addition to SES performance awards being required by law under 5 USC 5384, the “Pay Differentiation” certification criterion described at 5 CFR 430.404(a)(9) requires that senior employees (i.e., SL/ST and SES) who have demonstrated the highest levels of performance receive the highest ratings and the largest corresponding pay adjustments, cash awards, and levels of pay. The pay freeze that was previously in place limited agencies’ ability to demonstrate pay differentiation and, as a result, differentiation based on only performance awards was acceptable. However, with the pay freeze ending and adjustments to the SES pay range, agencies will now be expected to utilize the combination of pay adjustments and performance awards to demonstrate pay differentiation. Differentiation through pay adjustments alone is not sufficient.

Q14. What are some examples of pay and awards decisions that would have a negative impact on an agency obtaining certification of their performance appraisal system?

A. Certification of an agency’s performance appraisal system may be negatively impacted if the agency—

- Identifies excellence in performance (as evidenced by career SES members rated outstanding) but grants no performance awards to any of those members;
- Demonstrates differentiation in pay solely using pay adjustments and grants no performance awards;
- Violates the statutory minimum or maximum for individual career SES performance awards (5 percent and 20 percent of basic pay respectively);
- Grants special act awards to SES members in place of performance awards in order to circumvent the 5 percent minimum on individual SES performance award amounts or the 5 percent funding maximum; or
- Provides pay adjustments equally across-the-board to SES members or SL/ST senior-level employees without regard to performance.

Q15. How can agencies and employees get further guidance on this topic?

A. Agency Chief Human Capital Officers (CHCOs) and/or Human Resources Directors should contact Stephen T. Shih, Deputy Associate Director for Senior Executive Services and Performance Management, in OPM’s Employee Services, by telephone at (202) 606-8046 or by e-mail at perform-mgmt@opm.gov if they have any questions regarding this policy. Employees should contact their agency human resources offices for assistance.