



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Tuesday, January 20, 2004

CPM 2004-04

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: KAY COLES JAMES
Director

Subject: Exceptions to the "12-Month Rule" for Senior Executive Pay Increases

On January 9, 2004, I issued a memorandum on "Conversion to the New SES Performance-Based Pay System." (See [CPM 2004-03](#).) Attached to the memorandum were the interim regulations that set forth the requirements for converting members of the Senior Executive Service (SES) to a new performance-based pay system and for adjusting SES rates of basic pay. Section 534.401(c)(2) of title 5, Code of Federal Regulations, allows an agency to request an exception from the Director of the Office of Personnel Management (OPM) 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. Because of the extraordinary circumstances of this situation, in that we are implementing a new performance-based pay system for SES members within an extremely short timeframe, I am delegating responsibility to the heads of executive departments and agencies to approve limited exceptions to the 12-month rule. I am making this strictly limited delegation for this very specific transition situation under the authority vested in me by 5 U.S.C. 1104(a)(2), which permits the Director of OPM to delegate responsibility for personnel management functions.

Section 534.406(a) of the interim regulations permits an agency to increase an SES member's 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, as long as the senior executive's rate of basic pay does not exceed the new rate for level III of the Executive Schedule (\$144,600). Generally, agencies may provide this pay adjustment only upon a determination that the senior executive's performance and/or contributions to the agency's performance 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 during the previous 12-month period). Under this delegated authority, the head of an agency may now approve exceptions to the 12-month rule in situations where a senior executive has received a pay adjustment during the previous 12 month period (including a pay adjustment upon appointment or reappointment to the SES). In such cases, the agency must determine that the senior executive's performance and/or contributions to the agency's performance warrant a pay increase. Agencies must document in writing each exception to 5 CFR 534.401(c)(1) that is approved by the agency head. Additional information on processing exception actions is attached.

This delegated authority will apply only until it is withdrawn later this year after the transition to the new pay system has been accomplished. During this period, additional pay adjustments may be granted to individual senior executives under this authority as long as the senior executive's rate of basic pay does not exceed the rate for level III of the Executive Schedule consistent with OPM's interim regulations. 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 may be granted only in situations where the agency has determined that the senior executive's performance and/or contributions to the agency's performance warrants a pay increase.

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

Attachment

Processing Personnel Actions To Make Exceptions to the 12-Month Rule

To document exceptions to the rule (under 5 CFR 534.401(c)(1)) that prohibits an agency from adjusting a Senior Executive Service (SES) member's rate of basic pay more than once during a 12-month period, under the authority delegated by the Director of the Office of Personnel Management (OPM) under 5 U.S.C. 1104(a)(2), agencies should use Nature of Action (NOA) code "894/Pay Adjustment" and newly established Legal Authority code "VWS/CPM 2004-04, January 20, 2004" on the SES member's SF-50. A copy of the written documentation approving an exception to 5 CFR 534.401(c)(2) must be attached to the SF-50.

Processing Payroll Actions Under the New Open-Range SES Performance-Based Pay System

The statutory changes to the SES pay system require reprogramming of human resources transactional and payroll systems to eliminate all references to the six levels of the former SES pay system (ES-1 through ES-6) and any automatic processing of annual across-the-board or locality pay adjustments, as well as permit exceptions to the 12-month rule as outlined in this memorandum. In addition, the systems will have to be reprogrammed to accommodate the availability of an open pay range under the new SES pay system as adjustments are made to the rates of pay for current senior executives and as individuals are newly appointed to the SES. OPM will provide pay administration policy developments and advice through the Payroll Advisory Council as these immediate changes are implemented and in the future to manage the further implications of operating the SES pay system in agencies that have had their performance appraisal systems certified.