



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Tuesday, December 16, 2003

CPM 2003-19

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: Kay Coles James, Director

Subject: New Performance-Based Pay System for the Senior Executive Service

Introduction.

In January 2004, 25 years after the creation of the Federal Government's Senior Executive Service (SES), a new performance-based pay system will take effect for members of that elite leadership corps. Initially proposed by President George W. Bush in his Fiscal Year 2004 budget, the new pay system was passed as part of this year's National Defense Authorization Act (Public Law 108-136, November 24, 2003). The new system assures a clear and direct linkage between SES performance and pay, a cornerstone of the President's Management Agenda. As such, it is grounded firmly in the Merit System Principle which states that "equal pay should be provided for work of equal value...and appropriate incentives and recognition should be provided for excellence in performance."

OPM has drafted implementing regulations which are currently under review at OMB. Agencies will be notified when the review process is complete and will be advised if edits change any of the guidance provided in this memorandum.

Among other things, the new system no longer offers SES members access to automatic locality pay adjustments or to an automatic, across-the-board pay increase at the time of the annual pay adjustment for General Schedule (GS) employees and Executive Schedule officials. Instead, the new system requires that all future SES pay increases (beginning in January 2004) be based exclusively on individual and organizational performance, and it allows significantly higher base pay limits for the best performing executives. In this regard, the new pay system applies to career and non-career SES members alike - both are to be judged, and paid, strictly according to their performance and/or contributions to the mission of their agency. Other features of the new system are described below, along with initial implementing guidance, as appropriate:

- **New Base Salary Ceiling.**

The new system establishes level III of the Executive Schedule (currently \$142,500) as the base salary limit for all SES members. However, those agencies that can demonstrate that their executive appraisal systems make "meaningful distinctions based on relative performance," as certified by OPM, with concurrence by the Office of Management and Budget (OMB), may grant base pay increases to their highest performing executives up to level II of the Executive Schedule (currently \$154,700). To emphasize this link between

pay and performance, the law eliminates across-the-board pay increases, including locality pay increases, for SES members. The higher base salary limit and the elimination of locality pay do not apply to senior-level (SL) and scientific or professional (ST) employees.

- **New, More Rigorous Performance Evaluation.**

As noted, only those agencies with executive performance appraisal systems certified by OPM, with concurrence by OMB, will be permitted to set an individual executive's pay up to the rate for level II of the Executive Schedule. OPM and OMB will jointly issue new regulations establishing certification criteria and procedures; as currently envisioned, these regulations will describe the elements and practices that typify the best executive performance appraisal systems, especially insofar as they assure a linkage between agency results and individual accountability.

- **New "Open" Pay Range.**

The new pay system eliminates the six ES pay levels that have determined executive salaries for over two decades, in favor of an open pay range (that is, a "payband") with a minimum base salary equivalent to 120 percent of the rate for grade 15, step 1, of the General Schedule (currently \$102,168). The maximum rate will be either the rate for level III or the rate for level II of the Executive Schedule, depending on whether the agency's executive performance appraisal system has been certified by OPM, with OMB concurrence. An executive's salary may be set at any rate in the applicable pay range, based on his or her performance and/or contributions and according to regulations to be issued by OPM.

As noted above, OPM has drafted the implementing regulations for using the open pay range, and they are currently under review at OMB.

- **New Aggregate Compensation Limit.**

Under 5 U.S.C. 5307, SES members in an agency with a certified executive performance appraisal system will also be subject to a substantially higher aggregate compensation limit (that is, base salary, plus performance bonus for career SES members, and other allowances and incentives) equivalent to the pay of the Vice President, currently set at \$198,600. That higher limit may also apply to an agency's senior-level (SL) and scientific or professional (ST) employees if their performance appraisal systems are similarly certified by OPM, with OMB concurrence. Absent certification, annual aggregate compensation remains limited to the rate for level I of the Executive Schedule (currently \$171,900).

- **New Post-Employment Restrictions Trigger.**

Finally, the new pay system establishes a salary-based "trigger" for post-employment restrictions. When the new system goes into effect, any SES member whose basic pay is at least 86.5 percent of the rate for level II of the Executive Schedule will be subject to those restrictions; under this criterion, OPM estimates that most SES members will be covered. OPM will issue regulations requiring that agencies provide written notification to each executive who will be covered by the restrictions as a result of the new law. The Administration is pursuing a technical amendment to the statute that would raise the

"trigger" to 96 percent of the rate for level II, as originally proposed by the President; however, unless and until the law is changed, the lower threshold applies. Please note that even if the Administration's proposed technical amendment is adopted, senior executives currently at the ES-5 and ES-6 levels will continue to be subject to these restrictions for 2 years.

Conversion to the New Pay System.

Most members of the SES will be converted to the new system on January 11, 2004. At that time, a member's rate of basic pay plus any applicable locality payment in effect immediately prior to January 11 will be combined to establish the member's new rate of basic pay within the new open pay range. In addition, the rate of basic pay, plus any applicable locality payment, in effect for an SES member on the date of enactment of the National Defense Authorization Act (November 24, 2003) may not be reduced during the 12-month period following January 11, 2004. SES members will no longer receive an across-the-board pay increase coincident with the annual GS and Executive Schedule pay adjustment. However, pursuant to the issuance of appropriate OPM implementing regulations for pay administration, agencies will be authorized, at their discretion, to increase the rate of basic pay of eligible executives (i.e., those executives who have not received a pay adjustment in the previous 12-month period) up to the new rate for level III of the Executive Schedule in those situations where their performance, responsibilities, and/or contributions warrant.

Additional Information.

The Act requires OPM to issue implementing regulations for all these changes to the way senior executives are to be paid, in part jointly with OMB. These will be published in the Federal Register as soon as possible. In addition, we will provide further information as it becomes available. For additional guidance, agency Chief Human Capital Officers (CHCO's) 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.

In the event OMB review of OPM's draft implementing regulations causes any changes to this memorandum's guidance, we will advise you of those changes.

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