


**UNITED STATES GOVERNMENT**  
***National Labor Relations Board***  
**Office of Inspector General**



**Memorandum**

March 15, 2019

To: Chonita Young  
Director of Human Resources

From: Robert J. Brennan  
Lead Auditor 

Subject: SES Pay (OIG-AMR-86-19-01)

This memorandum transmits the compliance examination report on SES pay along with the Management Response. We contracted with Castro & Company, an independent public accounting firm, to perform the compliance examination. The contract required that the compliance examination be done in accordance with generally accepted government auditing standards.

In connection with the contract, we reviewed Castro & Company's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, opinions on the findings and conclusions in the attached report. Castro & Company is responsible for the attached report dated February 14, 2019, and the conclusions expressed in the report. However, our review disclosed no instances where Castro & Company did not comply, in all material respects, with generally accepted government auditing standards.

We appreciate the courtesies and cooperation extended to Castro & Company and our staff during the engagement.

**This report was originally posted on March 15, 2019.**

**On April 2, 2019, pursuant to Exemption 6 of the FOIA which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy, redactions were made to this report to remove identification of employees of the Office of Personnel Management in Attachment 3 and Attachment 5. See 5 U.S.C. § 552(b)(6).**

# **NATIONAL LABOR RELATIONS BOARD**



## **Senior Executive Service Pay and Adjustments Compliance Examination**

**Independent Examination Report  
March 15, 2019**

**FINAL REPORT**

**Table of Contents**

Independent Accountant’s Report..... 1

Material Non-Compliance Identified..... 2

    1. Agency Plan’s Compliance with OPM Requirements ..... 2

    2. Appraisal System Certification ..... 4

    3. SES Initial Pay and Adjustments including Violations of the 12-month Rule ..... 5

Appendix A – Management’s Examination Response Letter ..... 11

## **Independent Accountant's Report**

Inspector General  
National Labor Relations Board

We have examined the National Labor Relations Board (NLRB) compliance with regulations, U.S. Office of Personnel Management (OPM) guidance and Agency administrative policies regarding Senior Executive Service (SES) Performance Management System during the period of October 1, 2015 through September 30, 2017 as described within this report.

### **Management's Responsibility**

Compliance with those requirements is the responsibility of the NLRB management, including the design, implementation, and maintenance of internal control to prevent or detect and correct noncompliance due to fraud or error.

### **Accountant's Responsibility**

Our responsibility is to express an opinion on compliance with the specified requirements referenced above based on our examination. We conducted our examination in accordance with *Generally Accepted Government Auditing Standards* (GAGAS) issued by the Comptroller General of the United States, which incorporates by reference the statement on standards for attestation engagements (SSAE) established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the NLRB complied, in all material respects, with the specified requirements referenced above. An examination involves performing procedures to obtain evidence about whether the NLRB complied with the specified requirements. The nature, timing, and extent of the procedures selected depend on our judgment, including an assessment of the risks of material noncompliance, whether due to fraud or error. In making an assessment of the risks of material non-compliance, we considered and obtained an understanding of internal control relevant to the specified requirements in order to design procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control. Accordingly, no such opinion is expressed. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion. Our examination does not provide a legal determination on the NLRB's compliance with specified requirements.

Our examination disclosed the following material noncompliance with regulations, OPM guidance, and Agency administrative policies applicable to the NLRB during the period of October 1, 2015 through September 30, 2017. During our review, we noted that NLRB's Agency Plan did not include the required policies, the appraisal system operated under an expired status, and SES pay adjustments were not properly approved and violated the 12-month rule.

## **Opinion**

In our opinion, except for the material noncompliance described in the preceding paragraph, the NLRB complied, in all material respects, with the aforementioned requirements during the period of October 1, 2015 through September 30, 2017.

## **Additional Reporting Requirements**

In accordance with GAGAS, we are required to report significant deficiencies in internal control, identifying those considered to be material weaknesses; instances of fraud and noncompliance with provisions of laws or regulations that have a material effect on the specified requirements as stated above and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements that have a material effect on the specified requirements as stated above; and abuse that has a material effect on the specified requirements as stated above. We are also required to obtain the views of responsible officials on those matters. We performed our examination to express an opinion on the compliance with specified requirements as stated above and not for the purpose of expressing an opinion on internal controls over the subject matter discussed in management's assertion or on compliance and other matters; accordingly, we express no such opinions. Our examination disclosed items that are required to be reported under GAGAS.

## **NLRB's Response to Findings**

NLRB's response to the findings identified in our examination is described in the accompanying Examination Response Letter. NLRB's response was not subject to procedures applied in the examination and, accordingly, we express no opinion on it.

## **Restriction on Use**

This report is intended solely for the information and use of the NLRB management, the NLRB Office of Inspector General, and others within the organization and is not intended to be and should not be used by anyone other than these specified parties.

*Castro & Company, LLC*

February 14, 2019  
Alexandria, VA

## Material Non-Compliance Identified

### 1. Agency Plan's Compliance with OPM Requirements

As the keystone of the Civil Service Reform Act of 1978, the SES was established to "...ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality." As such, the SES is a performance-based pay system. Performance management incorporates planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance. Agencies are responsible for establishing performance management systems that hold senior executives accountable for their individual and organizational performance in order to improve the overall performance of the Government.

As part of our procedures, we reviewed the NLRB's Agency Plan, specifically the Administrative Policies and Procedures Manual (APPM) Chapter PER-20, Performance-Based Pay System for the Senior Executive Service, dated February 1, 2016, to determine whether the Agency's pay policies were in compliance with the OPM regulations. APPM PER-20 prescribes the NLRB's policy and procedures for establishing and adjusting SES rates of base pay, paying performance awards to SES members, and applying the aggregate limitation on pay. We compared the Agency's policies with OPM's criteria (5 C.F.R. 534.404 (g) and the 2016 Desk Guide). Additionally, we also compared APPM PER-20 to the previous version, dated June 28, 2008, to identify the changes in the new policy.

During our review, we noted the Agency Plan did not include policies on the following:

- Review and approval process for setting initial pay.
- Other circumstances that may result in the setting and adjusting of pay such as the adjusting pay policy did not include pay setting procedures following a break in SES Service and SES transfer from another Federal agency.
- Differentiating setting and adjusting pay above Executive Schedule Level III.
- Documenting approvals needed to set pay above Executive Schedule Level III.
- Addressing how available funds will be allocated among pay adjustments, performance awards and other awards or what kinds of adjustments to make in the event of budget constraints.
- Identifying the role and nature of significant control points, including proper segregation of duties for setting and adjusting pay decisions.

As discussed with OPM personnel, the NLRB had not requested OPM's guidance and expertise regarding establishing the Agency policies, specifically APPM PER-20 dated February 1, 2016 to ensure they were in compliance with OPM requirements.

5 C.F.R. § 534.404 - *Setting and Adjusting Pay for Senior Executives*, states:

(g) Agency plan for setting and adjusting SES rate of basic pay

Each agency must establish a plan for setting and adjusting the rates of basic pay for SES members. Agencies must provide for transparency in the processes for making pay decisions, while assuring confidentiality. In developing its plan for setting and adjusting SES rates, an agency may consider the senior executive's broad scope of authority and level of responsibility and his or her personal accountability for the

success (or failure) of an agency's programs. The agency's plan must require that any decisions to adjust pay must reflect meaningful distinctions among senior executives based on individual performance and/or contribution to agency performance and must include—

- (1) The criteria that will be used to set and adjust a senior executive's rate of basic pay to ensure that individual pay rates or pay adjustments, as well as their overall distribution within the SES rate range, reflect meaningful distinctions within a single performance rating level...and/or between performance rating levels;
- (2) The criteria that will be used to set and adjust a senior executive's rate of basic pay at a rate that exceeds the rate for Ex-III if the applicable agency performance appraisal system has been certified;
- (3) The designation of the authorized agency official who has authority to set and adjust SES rates of pay for individual senior executives, subject to the requirement that the agency head or designee must approve any determination to set a senior executive's rate of basic pay higher than the rate for Ex-III and must approve any determination to increase a senior executive's rate of basic pay more than once in any 12-month period; and
- (4) The administrative and management controls that will be applied to ensure compliance with applicable statutes, OPM's regulations, the agency's plan, and, where applicable, the certification requirements, and the limitation on the maximum rate of basic pay.

OPM's 2016 SES Desk Guide, states:

Policy Requirements:

Each agency must establish a written pay policy for setting and adjusting the rates of basic pay for SES members.

The pay policy must do the following:

1. It must describe the review and approval process for setting and adjusting pay, including procedures for setting pay for new appointees, pay adjustments after appraisal, and any other circumstances that may result in the setting and adjusting of pay. It must specify who has authority for various pay adjustments consistent with regulatory provisions, e.g. which may be finalized by an authorized agency official and which require action by the agency head or the official designated by the agency head to oversee and certify the results of the agency's SES performance appraisal system.
2. The policy must address administrative and management controls to meet the requirements of law and regulation. It should also address budget issues, such as procedures for determining how available funds will be allocated among pay adjustments, performance awards and other awards or what kinds of adjustments to make in the event of budget constraints. The policy should identify the role and nature of significant control points, external and internal, for these decisions. An agency should establish its internal rules and control points so as to encourage excellence in executive performance and communicate about them to executives to that end.

3. The policy must provide for meaningful pay distinctions. Specifically, the policy must identify the criteria to be used to set and adjust a senior executive's pay, including any procedures, guides, rules or benchmarks that may be applied in setting and adjusting pay at levels above EX-III. SES pay-for-performance systems must avoid any actual or perceived use of quotas or forced distribution of performance ratings; however, pay differentiation based upon performance ratings should be evident and consistently reinforced. The underlying tenet is that the highest performers should receive the highest rewards. Agencies must also provide for transparency in the processes for making pay decisions and should publish the results to demonstrate the correlation between executive excellence and desirable pay outcomes.

The establishment of written, formal policies and procedures are critical in assuring that a system of internal controls is followed. The lack of monitoring compliance with established procedures can increase the risk of fraud, waste, and abuse occurring in setting initial SES pay and adjustments.

### **Recommendations:**

We recommend that NLRB management:

1. Establish, document and revise policies for setting and adjusting SES employee's rate of basic pay.
2. Seek guidance and assistance from OPM, including clarification on regulations and the SES Desk Guide, to ensure the NLRB establishes and implements policies for setting SES pay and SES pay adjustments in accordance with regulations and OPM guidance.

## **2. Appraisal System Certification**

The performance appraisal program/system is a fundamental tool to maximize performance effectiveness of an agency. Agencies develop performance management systems subject to OPM regulations and approval. OPM is required by statute to approve performance appraisal systems to ensure they meet statutory and regulatory requirements.

During our review, we noted that the NLRB operated under an expired certified SES Performance Appraisal system from September 9, 2016 through June 12, 2017. The NLRB Fiscal Year (FY) 2015 pay data submitted to OPM showed that the NLRB granted the same percentage performance-based pay adjustment amount (1.30 percent) to its executives rated at Level 4 as it did its executives rated at Level 5, resulting in no differentiation in pay adjustment amounts; therefore, the OPM certification team was unable to make a recommendation of NLRB's certification until 2017.

However, in June 2017, OPM determined that the NLRB FY 2016 pay data did show a differentiation in pay adjustments for senior executives with the highest individual performance/contribution receiving the highest corresponding performance-based pay adjustment and performance awards. Additionally, after making corrections to the NLRB's



performance plans as directed by OPM to meet OPM's benchmark for measurable results criterion, OPM granted the NLRB a 12-month provisional certification instead of a full certification starting June 13, 2017 that extended through June 12, 2018 after which the NLRB began operating under an expired status for its SES Performance Appraisal system. The NLRB continues to operate under expired status until FY 2018 data is provided to OPM for recertification.

On October 25, 2018, a memorandum from the OPM Deputy Associate Director for SES and Performance Management was sent to the NLRB regarding OPM's decision to not grant certification of the NLRB SES performance management system, citing that the NLRB violated regulations (5 CFR 534.404(c)(5)) and statute 5 U.S.C. 5383(c)) with respect to documentation of exceptions to the 12-month rule. Based on information provided, OPM did not require that the pay actions be reversed.

Despite communication and feedback from OPM during the appraisal system certification process, the NLRB FY 2015 pay data submitted to OPM did not demonstrate compliance with pay differentiation. Specifically, the SES performance appraisal application for all NLRB SES members did not include meaningful distinctions in ratings, and pay and awards differentiation, based on those ratings.

5 C.F.R, § 430.403(a) – *System Certification*, states:

The performance appraisal system(s) covering senior employees must be certified by OPM, with OMB concurrence, as making meaningful distinctions based on relative performance before an agency may apply a maximum annual rate of basic pay for senior executives equal to the rate for level II of the Executive.

By operating under an expired system, the NLRB may be limited to the range of pay it could offer new SES employees, further preventing the NLRB from hiring qualified candidates. Additionally, without a well-established and certified appraisal system, SES employees may not fully understand their roles and how their roles relate to the goals of the Agency, setting expectations, and holding employees and managers accountable.

### **Recommendations:**

We recommend that NLRB management:

1. Communicate with OPM during the certification process and attend OPM workshops and forums related to the SES performance appraisal system and program to ensure any feedback and recommendations from OPM can be addressed and applied to the certification package.

### **3. SES Initial Pay and Adjustments including Violations of the 12-month Rule**

Pursuant to the Civil Service Reform Act of 1978, the Government's senior executives would be held accountable for individual and organizational performance. To achieve this purpose, the Civil Service Reform Act gave greater authority to agencies to manage their executive resources

and assigned OPM the responsibility for Governmentwide leadership, direction, and oversight. As such, agencies are required to establish a written pay policy for setting and adjusting the rates of basic pay for SES members, set and adjust the rate of basic pay on the basis of the individual's performance and/or contribution to the agency's performance and may not adjust pay more than once during any 12-month period (with few exceptions).

Our testing identified issues with non-compliance over the setting of initial rate of basic pay and pay adjustments, including the 12-month rule. During our review we noted the following issues:

#### **Setting Initial Rate of Base Pay for SES Appointments and Conversions to SES Career**

As part of our procedures, we obtained a list of SES employees that received an appointment during FYs 2016 and 2017 and reviewed personnel actions for the SES appointments, conversions to career SES, corrections related to the SES appointment or conversion, and additional supporting documentation.

During our review, we noted that there were 18 SES appointments or conversions to SES career in FY 2016. Two (2) of the 18 SES employees had salaries established at a higher than Level III on the Executive Schedule; however, their initial pay was approved by the Deputy General Counsel and not by the Agency's appointing authority/authorized agency official.

Discussions between the Deputy General Counsel and the appointing authority/authorized agency official and proper approvals for establishing initial SES pay above the Level III cap were not documented and maintained.

#### **Pay Adjustments Granted After Base Pay Rate Increase and Performance Adjustments**

Based on our procedures, we identified 39 SES employees that received pay adjustments in 2017, of which we noted one or more of the following exceptions in 26 of the 39 SES employees:

- For 26 SES employees tested, the SES employees had pay adjustment percentage increases granted under OPM authority code Q3E and were approved by the Deputy General Counsel and not approved by the appointing authority/authorized agency official.
- For 26 SES employees tested, the personnel actions had a pay adjustment effective date of between 8 to 22 days prior to the action approval date.
- For seven (7) SES employees, the Agency did not provide documentation of the approval of the percentage increase.
- For seven (7) employees, documentation was not provided to justify the pay adjustment increase above the Executive Schedule Level III cap.
- For 13 SES employees that received more than one (1) pay adjustment within the same fiscal year, sufficient support with respect to documentation of exceptions to the 12-month rule was not maintained; therefore, the NLRB violated the 12-month rule (5 CFR 534.404(c)(5)).

We noted that in FY 2018, the NLRB provided OPM with documentation from the NLRB Senior Management with the authority to approve the additional adjustments; however, approvals from NLRB's appointing authority were not done at the time of the initial decision in 2017, but rather after the fact.

As noted above, on October 25, 2018, OPM notified the NLRB that OPM was unable to grant certification of the NLRB's SES performance management system certification request. Based on FY 2017 data and information provided to OPM in FY 2018, OPM determined that the NLRB violated regulation (5 CFR 534.404(c)(5)) and statute (5 U.S.C. 5383(c)) with respect to documentation of exceptions to the 12-month rule. Upon further discussion with OPM personnel, OPM noted that about 47 percent of NLRB's SES employees received a meritorious pay increase for exceptional work in FY 2017, and OPM generally expects to see similar meritorious pay increases in only 4 or 5 SES employees of any given agency.

Lastly, we noted that two (2) SES employees were granted Maintain Relative Position (MRP) pay adjustments in FY 2017. Based on inquiries with NLRB's Office of Human Resources personnel, we determined that the miscellaneous pay actions were erroneously coded on the personnel actions and not corrected. We noted that for both SES employees, the pay adjustment was not approved by the appointing authority but rather by the Deputy General Counsel. Additionally, we noted that for both SES employees, the effective date of the personnel action was between 8 and 11 days prior to the Action Approval date.

The NLRB did not have a properly implemented process for evaluating, approving and processing SES pay adjustments.

5 C.F.R. § 534.404 - *Setting and Adjusting Pay for Senior Executives*, states

(b) Adjusting the pay of SES members

- (1) An authorized agency official may adjust the rate of basic pay of a senior executive consistent with the agency's plan for setting and adjusting SES rates of basic pay under paragraph (g) of this section.
- (3) An agency may provide a pay increase to allow a senior executive to advance his or her relative position within the SES rate range only upon a determination by the authorized agency official that the senior executive's individual performance and /or contributions to agency performance so warrant. Senior executives who demonstrate the highest levels of individual performance and/or make the greatest contributions to the agency's performance, as determined by the agency through the administration of its performance appraisal system, or in the case of newly appointed senior executives, those who possess superior leadership or other competencies, as determined by the agency as part of its strategic human capital plan, must receive the highest rates of basic pay or pay adjustment.
- (4)(i) On the effective date of an increase in the minimum or maximum rate of basic pay of the SES rate range, an authorized agency official may 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 maintain the senior executive's relative position in the SES rate range, except as provided in paragraph (b)(4)(ii) and (b)(4)(iii) of this section. A pay increase made under this paragraph is not considered a pay adjustment for the purpose of applying § 534.404(c) (p. 2).
  - (iii) A pay increase under paragraph (b)(4)(i) of this section may not be provided to a senior executive whose rate of basic pay is above Ex-III unless the senior

executive has received an annual summary rating of outstanding for the most recently completed appraisal period and the agency head or designee has approved the increase in pay.

(c) 12-month rule

- (1) An authorized agency official may adjust the rate of basic pay of a senior executive not more than once during any 12-month period. However, an agency may make a determination to provide an additional pay increase under certain conditions as prescribed in paragraph (c)(3) and (4) of this section without regard to whether the senior executive has received a pay adjustment during the previous 12-month period.
- (2) The following pay actions are considered pay adjustments for the purpose of applying this paragraph:
  - i. The setting of an individual's rate of basic pay upon initial appointment or reappointment or reinstatement to the SES; and
  - ii. Any adjustment in an SES rate of basic pay granted to a senior executive, except as provided in paragraph (c)(3) of this section.
- (3) The following pay actions are not considered pay adjustments for the purpose of applying this paragraph:
  - i. The conversion of senior executives to the new SES pay system under § 534.406 and the conversion of other employees to equivalent senior executive positions;
  - ii. A determination by an authorized agency official to make a zero adjustment in pay after reviewing a senior executive's annual summary rating;
  - iii. A zero adjustment in pay made during the 12-month period preceding the first day of the first applicable pay period...
- (4) An authorized agency official may approve increases in a senior executive's rate of basic pay more than once during a 12-month period if the agency head or designee determines that—
  - i. The senior executive's exceptionally meritorious accomplishment significantly contributes to the agency's performance;
  - ii. A pay increase is necessary to reassign a senior executive 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;
  - iii. The retention of the senior executive is critical to the mission of the agency and the senior executive would be likely to leave the agency in the absence of a pay increase; or
  - iv. Such action conforms to an otherwise applicable 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).

- (5) An authorized agency official must provide written documentation approving an exception under paragraph (c)(4) of this section. Any pay adjustment made as a result of a determination under paragraph (c)(4) of this section is considered a pay adjustment for the purpose of applying 12-month rule) and begins a new 12-month period.
- (d) Adjustments in pay prior to certification of applicable performance appraisal system.  
An authorized agency official may adjust a senior executive'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 prior to obtaining certification, but only up to the rate for Ex-III. The authorized agency official may provide an increase in pay if warranted under the conditions prescribed in paragraph (b) of this section and the senior executive is otherwise eligible for such an increase (i.e., he or she did not receive a pay adjustment under § 534.404(c) during the previous 12-month period). An adjustment in pay made under this paragraph is considered a pay adjustment for the purpose of applying 12-month rule.
- (e) Adjustments in pay after certification of applicable performance appraisal system.  
In the case of an agency that obtains certification of a performance appraisal system for senior executives, an authorized agency official may increase a covered senior executive's rate of basic pay up to the rate for Ex-II. The authorized agency official may provide an increase in pay if warranted under the conditions prescribed in paragraph (b) of this section and if the senior executive is otherwise eligible for such an increase (i.e., he or she did not receive a pay adjustment during the previous 12-month period). An adjustment in pay made under this paragraph is considered a pay adjustment for the purpose of applying the 12-month rule.
- (g) Agency plan for setting and adjusting SES rate of basic pay  
Each agency must establish a plan for setting and adjusting the rates of basic pay for SES members. The agency's plan must require that any decisions to adjust pay must reflect meaningful distinctions among senior executives based on individual performance and/or contribution to agency performance.

5 C.F.R. § 534.403 – *SES rate Range*, states:

(b) Suspension of certification of performance appraisal system.

A senior executive whose rate of basic pay is higher than the rate for Ex-III may not suffer a reduction in pay because his or her agency's applicable performance appraisal system certification is suspended under 5 CFR 430.405(h). 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 until certification of the employing agency's applicable performance appraisal system is reinstated.

*OPM Guide to Processing Personnel Actions, Chapter 3. General Instructions for Processing Personnel Actions*, states:

**1-3. Effective Dates.**

**a. Prior Approval.** Except as explained in Table 3-A, no personnel action can be made effective prior to the date on which the appointing officer approved the action. That approval is documented by the appointing officer's pen and ink signature or by an

approved electronic authentication in block 50 of the Standard Form 50, or in Part C-2 of the Standard Form 52. By approving an action, the appointing officer certifies that the action meets all legal and regulatory requirements and, in the case of appointments and position change actions, that the position to which the employee is being assigned has been established and properly classified.

The lack of monitoring compliance with established procedures can increase the risk of fraud, waste, and abuse occurring in processing SES initial pay and additional SES pay adjustments. Additionally, as previously stated by OPM in discussions with the auditors, further processing of SES pay adjustments in violation of the 12-month rule may result in pay actions, taken by OPM, to reduce affected SES individuals' rates of basic pay by the amount of the adjustments in violation of law and regulation.

**Recommendations:**

We recommend that NLRB management:

1. Consult with OPM prior to granting additional SES pay adjustments to ensure actions are properly coded, justified with the appropriate legal authority and do not violate the 12-month rule.
2. Ensure policies over documented justification and approval for establishing and adjusting the SES rate of basic pay above the Executive Schedule Level III cap are consistently followed.
3. Ensure proper justification and approval from the appointing authority/authorized agency official for establishing and adjusting the SES rate of basic pay above the Executive Schedule Level III cap are properly obtained, documented and maintained.

## **Appendix A – Management’s Examination Response Letter**



United States Government  
**NATIONAL LABOR RELATIONS BOARD**

## Memorandum

**TO:** Robert Brennan  
Lead Auditor

**FROM:** Chonita Young  
Director  
Office of Human Resources

**DATE:** March 7, 2019

**SUBJECT:** Response to Draft Report OIG-AMR-86

---

The National Labor Relations Board (NLRB) has reviewed the Draft Report OIG-AMR-86 and concurs with the recommendations. The Agency's responses to each of the recommendations are provided below. NLRB leadership will work with the Office of Inspector General to close out these items at the earliest possible time.

### **1. Agency's Plan's Compliance with OPM Requirements**

#### **Recommendation(s):**

- 1. Establish, document and revise policies for setting and adjusting SES employees' rate of basic pay.**
- 2. Seek guidance and assistance from OPM, including clarification on regulations and the SES Desk Guide, to ensure the NLRB establishes and implements policies for setting SES pay and SES pay adjustments in accordance with regulations and OPM guidance.**

#### **Management's Response:**

**Action 1** – NLRB concurs with the recommendation. Since 2015, the Office of Human Resources (OHR) has established, documented and revised policies for setting and adjusting SES employees' rate of basic pay, and will continue to do so. OHR Administrative Policies and Procedure Manual: SES Pay Guidance Policy was established in June 2008, revised in February 2016, and October 2018. The Policy includes guidance for setting and adjusting SES employees' rate of basic pay and specifies who has authority for pay adjustments, addresses budget issues, and provides for meaningful pay distinctions (**See Attachment 8; Section 9: Setting and Adjusting Pay**). We will continue to strengthen, review and audit our policies on a biennial basis to ensure accuracy.



Additionally, the SES pay guidance will also be available on the OHR's Executive Resources SharePoint webpage.

**Action 2** – NLRB concurs with the recommendation. OHR has sought guidance and assistance from OPM, including clarification on regulations, the SES performance appraisal system certification, and the SES Desk Guide, to ensure NLRB establishes, implements, and strengthens policies for setting SES pay and SES pay adjustments and bonuses in accordance with regulation and OPM guidance, and will remain vested in doing so. For example, the attached email communication dated March 9, 2018 demonstrates the Agency's efforts in seeking guidance and assistance from OPM regarding SES pay adjustments and bonuses (**See Attachment 3**).

## **2. Appraisal System Certification**

### **Recommendation(s):**

- 1. Communicate with OPM during the certification process and attend OPM workshops and forums related to the SES performance appraisal system and program to ensure any feedback and recommendations from OPM can be addressed and applied to the certification package.**

### **Management's Response:**

NLRB concurs with the recommendation. OHR has maintained a positive working relationship with OPM throughout the entire certification process. We have attended all OPM workshops and forums related to the SES performance appraisal system and program and have used those forums to aid us in completing our certification package (**See Attachments 1, 2, and 6**). Additionally, we communicated with and sought guidance from OPM via emails on several occasions regarding the Agency's certification process (**See Attachment 3**). OHR will continue these communications with OPM in the coming year(s) to ensure any feedback and recommendations from OPM can be addressed and applied to the Agency's certification package. We will also partner with OPM, as needed, to obtain ad hoc training outside of the normal scope.

## **3. SES Initial Pay and Adjustments, including Violations of the 12-month Rule**

### **Recommendation(s):**

- 1. Consult with OPM prior to granting additional SES pay adjustments to ensure actions are properly coded, justified with the appropriate legal authority and do not violate the 12-month rule.**
- 2. Ensure policies over documented justification and approval for establishing and adjusting the SES rate of basic pay above the Executive Schedule Level III cap are consistently followed.**

3. **Ensure proper justification and approval from the appointing authority/authorized agency official for establishing and adjusting the SES rate of basic pay above the Executive Schedule Level III cap are properly obtained, documented and maintained.**

**Management's Response:**

**Action 1** – NLRB concurs with the recommendation. OHR consulted with OPM prior to granting additional SES pay adjustments (**See Attachment 3**). OHR will continue to consult with OPM to ensure actions are properly coded, justified with the appropriate legal authority and compliant with the 12-month rule, when applicable.

**Action 2** – NLRB concurs with the recommendation. OHR will continue to ensure policies over documented justification and approval for establishing and adjusting the SES rate of basic pay above the Executive Schedule Level III cap are consistently followed. We will continue to review our policy and ensure written justification and any other necessary documentation is provided.

**Action 3** – NLRB concurs with the recommendation. OHR will continue to follow the established process of evaluating, approving and processing SES pay adjustments. We will ensure proper justification and approval from the appointing authority/authorized agency official for establishing and adjusting the SES rate of basic pay within the Executive Schedule Level III cap are properly obtained, documented, and maintained (**See Attachments 4 and 5**). All pay adjustments will be approved in accordance to the Delegation of Authority (**See Attachment 7**). Personnel actions will be reviewed for accuracy to ensure proper coding in FPPS, which serves as the official documentation for SES bonuses and pay adjustments. The official SF-50 and written justification will be maintained in each executive's eOPF.

# Certification 2.0 Workshop for Large Agencies

## Large Agency Workshop

OPM, Conference Room 7460-F, 1900 E Street, NW, Washington, D.C 20415

Wednesday, December 5, 2018 from 10:00 AM to 12:00 PM (EST)

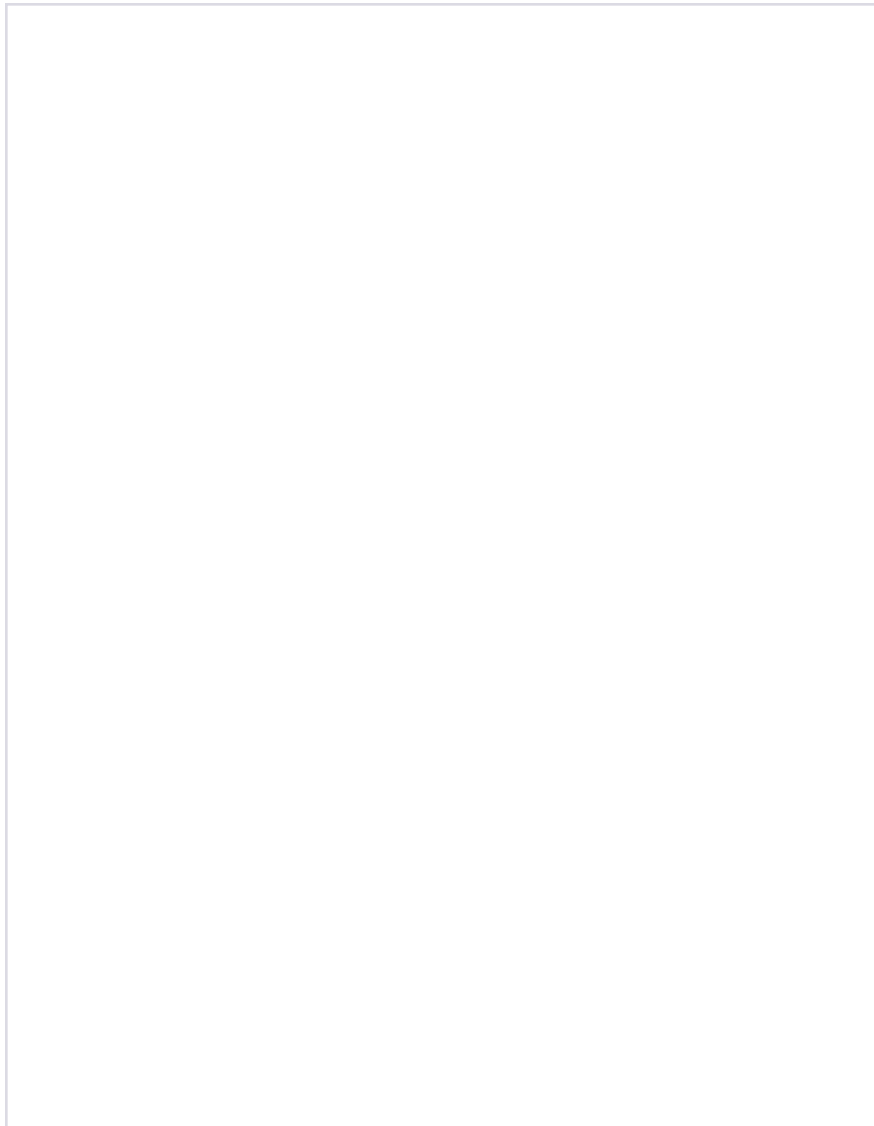
Free Order

Order Information

Order #866261719. Ordered by Michael Scott on  
November 29, 2018 1:40 PM



8662617191079079416001



Redacted Report  
(See Pages 22-27 and 30 for redactions)

**Do you organize events?**  
Start selling in minutes with Eventbrite!  
[www.eventbrite.com](http://www.eventbrite.com)

**From:** [Internet, PERFORM-MGMT](#)  
**Subject:** Workshop on SES and SL/ST Measurable Results - Tuesday, May 22, 2018  
**Date:** Thursday, June 7, 2018 2:57:16 PM  
**Attachments:** [Measurable Results Workshop - Examples Answer Key Final.pdf](#)

---

Good afternoon Performance Management and Executive Resources Colleagues,

Thank you for joining us on May 22, 2018 for the Workshop on SES and SL/ST Measurable Results. For your review and reference only, attached is the answer key to the measurable results exercises we discussed toward the end of the workshop.

Please direct any questions to [performance-management@opm.gov](mailto:performance-management@opm.gov).

Thank you.

**Executive Resources & Performance Management**  
**Senior Executive Services and Performance Management**  
**Employee Services**  
U.S. Office of Personnel Management  
[performance-management@opm.gov](mailto:performance-management@opm.gov)

---

**From:** Internet, PERFORM-MGMT  
**Sent:** Monday, May 21, 2018 4:51 PM  
**To:** 'LIMITEDEXECRESCONTACTS@LISTSERV.OPM.GOV'  
**Subject:** Workshop on SES and SL/ST Measurable Results - Tuesday, May 22, 2018

Good afternoon Performance Management and Executive Resources Colleagues,

Attached is the slide deck that will be used to facilitate Tuesday's SES and SL/ST Measurable Results Workshop. Workshop attendees should print and bring with them this slide deck.

We look forward to seeing you all Tuesday afternoon. Please direct any questions to [performance-management@opm.gov](mailto:performance-management@opm.gov).

Thank you.

**Executive Resources & Performance Management**  
**Senior Executive Services and Performance Management**  
**Employee Services**  
U.S. Office of Personnel Management  
[performance-management@opm.gov](mailto:performance-management@opm.gov)

---

**From:** Internet, PERFORM-MGMT  
**Sent:** Wednesday, May 09, 2018 1:36 PM  
**To:** 'LIMITEDEXECRESCONTACTS@LISTSERV.OPM.GOV'  
**Subject:** Workshop on SES and SL/ST Measurable Results - May 22, 2018

Dear Performance Management and Executive Resources Colleagues,

OPM's Executive Resources and Performance Management-Implementation team is hosting a refresher SES and SL/ST Measurable Results Workshop to provide interagency participants with guidance on developing and identifying measurable results to meet the Alignment and Results criteria (or the Aligned Results criterion in the streamlined certification processes) required for SES and SL/ST performance appraisal system certification.

**Date, Time, and Location:** The workshop will take place on **Tuesday, May 22, 2018, from 1 – 4 p.m. in OPM's Conference Room 1350.**

**Audience:** This workshop is appropriate for agency Executive Resources and/or Performance Management staff who work with SES/SL/ST performance appraisal system certification. The workshop is intended to provide participants with information and guidance on measurable results that they can then share with SES members and SL/ST employees at their respective agencies.

**Registration:** Please register for the workshop through the following Eventbrite link: <https://www.eventbrite.com/e/measurable-results-in-ses-and-slst-performance-plans-workshop-tickets-45317180908>

The workshop presentation will be sent the day before the workshop. Please direct any questions to [performance-management@opm.gov](mailto:performance-management@opm.gov).

Thank you.

**Executive Resources & Performance Management**  
Senior Executive Services and Performance Management  
Employee Services  
U.S. Office of Personnel Management  
[performance-management@opm.gov](mailto:performance-management@opm.gov)

**From:** [Scott, Michael](#)  
**To:** Exemption 6  
**Cc:** [Mauney, Shanae](#); [Young, Chonita](#); Exemption 6  
**Subject:** RE: Request a Deadline Extension for FY 2017 Annual Data Call CORRECTION  
**Date:** Thursday, March 15, 2018 12:12:00 PM  
**Attachments:** [image001.png](#)

---

Exemption 6

Thank you for this information. Documentation will be submitted to OPM when the agency submits its certification request.



**Michael D. Scott**

**Human Resources Specialist**

Office of Human Resources  
National Labor Relations Board  
Washington, DC 20570  
Desk: 202-273-1097  
[Michael.Scott@nlrb.gov](mailto:Michael.Scott@nlrb.gov)

---

**From:** Exemption 6

**Sent:** Thursday, March 15, 2018 11:53 AM

**To:** Scott, Michael <[Michael.Scott@nlrb.gov](mailto:Michael.Scott@nlrb.gov)>

**Cc:** [Mauney, Shanae <Shanae.Mauney@nlrb.gov>](mailto:Mauney,Shanae@nlrb.gov); [Young, Chonita <Chonita.Young@nlrb.gov>](mailto:Young,Chonita@nlrb.gov); Exemption 6

Exemption 6

**Subject:** RE: Request a Deadline Extension for FY 2017 Annual Data Call CORRECTION

Good morning Michael,

A pay increase and exception to the 12-month rule based on the senior executive's exceptionally meritorious accomplishment that significantly contributes to the agency's performance (5 CFR 534.404(c)(4)(i)), as described below, must be documented in writing, is considered a pay adjustment, and begins a new 12-month period. Therefore, the exception at 5 CFR 534.404(c)(4)(iv) may be used to get those affected SES members back on a normal cycle along with the remainder of the agency's executives.

Additionally, please note that the exception at 5 CFR 534.404(c)(4)(i) must be documented in writing. Thus, we will request the documentation for the June/July 2017 adjustments when the agency submits its certification request.

Please let me know if you have any questions or concerns.

Respectfully,

**Exemption 6**

Executive Resources and Performance Management  
U.S. Office of Personnel Management

**Exemption 6**

This e-mail, including any attachments, may constitute a Federal record or other Government property that is intended only for the addressed individuals. This message may also contain information that is sensitive, confidential, or otherwise protected from disclosure under applicable law. If you are not a named addressee you must not disseminate, distribute or copy this e-mail. If you have received this e-mail in error, please notify the sender immediately and delete this e-mail from your system.

---

**From:** Scott, Michael [<mailto:Michael.Scott@nlrb.gov>]  
**Sent:** Wednesday, March 14, 2018 9:52 AM  
**To:** **Exemption 6**  
**Cc:** Mauney, Shanae; Young, Chonita; **Exemption 6**  
**Subject:** RE: Request a Deadline Extension for FY 2017 Annual Data Call CORRECTION

**Exemption 6**

This message is a follow-up regarding whether a waiver would be permissible to have SESer on-cycle. If a waiver is permissible, no further response is required. See below:

Thank you.



**Michael D. Scott**

**Human Resources Specialist**

Office of Human Resources  
National Labor Relations Board  
Washington, DC 20570  
Desk: 202-273-1097  
[Michael.Scott@nlrb.gov](mailto:Michael.Scott@nlrb.gov)

---

**From:** Scott, Michael  
**Sent:** Monday, March 12, 2018 11:35 AM  
**To:** **Exemption 6**  
**Cc:** Mauney, Shanae <[Shanae.Mauney@nlrb.gov](mailto:Shanae.Mauney@nlrb.gov)>; Young, Chonita <[Chonita.Young@nlrb.gov](mailto:Chonita.Young@nlrb.gov)>; **Exemption 6**  
**Exemption 6**  
**Subject:** RE: Request a Deadline Extension for FY 2017 Annual Data Call CORRECTION

Good morning **Exemption 6**:

Thanks for the prompt reply.

Please see the response below to your questions for #3:

A few SESers received a one-time miscellaneous pay for an exceptional, meritorious, individual accomplishment that significantly contributed to the Agency's performance. Some actions were effective in June 2017 and while the others were effective in July 2017, which caused them to get off-cycle. Does this make them ineligible for the 2018 2.9% or 1.5% increase? If so, are we allowed to exercise the regulation as mentioned below? Also, would a waiver be permissible to get them on-cycle?

Your thoughts ....



**Michael D. Scott**

**Human Resources Specialist**

Office of Human Resources  
National Labor Relations Board  
Washington, DC 20570  
Desk: 202-273-1097  
[Michael.Scott@nlrb.gov](mailto:Michael.Scott@nlrb.gov)

---

**From:** Exemption 6  
**Sent:** Monday, March 12, 2018 10:34 AM  
**To:** Scott, Michael <[Michael.Scott@nlrb.gov](mailto:Michael.Scott@nlrb.gov)>  
**Cc:** Mauney, Shanae <[Shanae.Mauney@nlrb.gov](mailto:Shanae.Mauney@nlrb.gov)>; Young, Chonita <[Chonita.Young@nlrb.gov](mailto:Chonita.Young@nlrb.gov)>; Exemption 6  
**Exemption 6**  
**Subject:** RE: Request a Deadline Extension for FY 2017 Annual Data Call CORRECTION

Good morning Michael,

I am responding on behalf of Exemption 6 as she is out of the office today. Please see responses to your inquiries below and contact Exemption 6 or me with any additional questions. Thank you.

Respectfully,

**Exemption 6**  
Executive Resources and Performance Management  
U.S. Office of Personnel Management  
**Exemption 6**

This e-mail, including any attachments, may constitute a Federal record or other Government property that is intended only for the addressed individuals. This message may also contain information that is sensitive, confidential, or otherwise protected from disclosure under applicable law. If you are not a named addressee you must not disseminate, distribute or copy this e-mail. If you have received this e-mail in error, please notify the sender immediately and delete this e-mail from your system.



**From:** Scott, Michael [<mailto:Michael.Scott@nrlb.gov>]  
**Sent:** Friday, March 09, 2018 4:25 PM  
**To:** Exemption 6  
**Cc:** Mauney, Shanae; Young, Chonita; Exemption 6  
**Subject:** RE: Request a Deadline Extension for FY 2017 Annual Data Call CORRECTION

Hello Exemption 6,

Please see the questions below regarding bonuses and pay adjustment:

1. Are we required to process the pay adjustments and bonuses with the same effective date or can they be processed at different times?

Pursuant to the SES Desk Guide and OPM guidance, agencies should pay performance awards and performance-based pay adjustments generally within 5 months following the end of the applicable appraisal period (i.e., by March 1 for agencies on a fiscal year appraisal cycle). However, such adjustments and awards do not have to have the same effective dates. It is important for agencies to remember that a pay increase of any amount that is granted under 5 CFR 534.404(b)(3) restarts the clock under the 12-month rule, including a pay increase that could otherwise have been authorized under 5 CFR 534.404(b)(4) without restarting the clock (see Chapter 4 of the attached SES Desk Guide).

2. Can we process a portion of the pay adjustments now and remainder pay adjustments in July? If this is permissible, would we lose our certification which expires on June 12, 2018.

An agency may not adjust the rate of basic pay of a senior executive *more than once during any 12-month period*, except as provided by regulation. Thus, making two adjustments based on the same summary level rating would not be possible (see Chapter 4 of the attached SES Desk Guide).

3. Can we exercise the waiver to the 12-month rule as permitted by 5 CFR 534.404(c)(4)(iv) to adjust several SESers appraisal and pay adjustment cycle to the agency's established appraisal and pay adjustment cycle? We currently have a group that's eligible now and another group that's eligible in June and July. If this is permissible, we would meet the deadline to recertify prior to June 12, 2018.

I would like to find out more information on this scenario. Can you provide more information regarding the group of executives who are on a June/July cycle? What situation caused these executives to have such a pay cycle.



**Michael D. Scott**

**Human Resources Specialist**

Office of Human Resources  
National Labor Relations Board  
Washington, DC 20570  
Desk: 202-273-1097  
[Michael.Scott@nrlb.gov](mailto:Michael.Scott@nrlb.gov)

**From:** Exemption 6

**Sent:** Tuesday, March 06, 2018 8:47 AM

**To:** Scott, Michael <[Michael.Scott@nlrb.gov](mailto:Michael.Scott@nlrb.gov)>

**Cc:** Mauney, Shanae <[Shanae.Mauney@nlrb.gov](mailto:Shanae.Mauney@nlrb.gov)>; Young, Chonita <[Chonita.Young@nlrb.gov](mailto:Chonita.Young@nlrb.gov)>; Exemption 6

**Exemption 6**

**Subject:** RE: Request a Deadline Extension for FY 2017 Annual Data Call CORRECTION

Good morning Michael,

Thank you for your email and the notification. We can grant an extension to comply with the data call requirements, but a submission date of August 2018 will be detrimental to the agency in that the agency's data will not be included in the annual SES Ratings, Pay and Awards Report. More significantly, the agency's SES appraisal system certification will lapse for what is likely to be at least three months (seeing as the agency's provisional certification expires on June 12, 2018 and we will not have data upon which to make a certification recommendation). During such time, the agency will be unable to set pay at a rate above EX-III or make pay adjustments that cause an individual's rate of pay to exceed EX-III.

Please let me know how you would like to proceed. Thank you.

Respectfully,

**Exemption 6**

Executive Resources and Performance Management

U.S. Office of Personnel Management

**Exemption 6**

This e-mail, including any attachments, may constitute a Federal record or other Government property that is intended only for the addressed individuals. This message may also contain information that is sensitive, confidential, or otherwise protected from disclosure under applicable law. If you are not a named addressee you must not disseminate, distribute or copy this e-mail. If you have received this e-mail in error, please notify the sender immediately and delete this e-mail from your system.

---

**From:** Scott, Michael [<mailto:Michael.Scott@nlrb.gov>]

**Sent:** Monday, March 05, 2018 1:01 PM

**To:** Exemption 6

**Cc:** Mauney, Shanae; Young, Chonita; Exemption 6

**Subject:** RE: Request a Deadline Extension for FY 2017 Annual Data Call CORRECTION

**Exemption 6:**

Due to the status of the National Labor Relations Board's budget and several cost reduction measures being implemented Agency-wide, we will not be able to provide the requested information, for the FY 2017 Data Call, until August 2018. Based on this information, we are requesting an extension, until such time.

Thank you for your prompt response.



**Michael D. Scott**

**Human Resources Specialist**

Office of Human Resources  
National Labor Relations Board  
Washington, DC 20570  
Desk: 202-273-1097  
[Michael.Scott@nrlb.gov](mailto:Michael.Scott@nrlb.gov)

---

**From:** Executive Resources Contacts at Federal Agencies  
[\[mailto:LIMITEDEXECRESCONTACTS@LISTSERV.OPM.GOV\]](mailto:LIMITEDEXECRESCONTACTS@LISTSERV.OPM.GOV) **On Behalf Of** Internet, PERFORM-MGMT  
**Sent:** Thursday, January 25, 2018 4:05 PM  
**To:** [LIMITEDEXECRESCONTACTS@LISTSERV.OPM.GOV](mailto:LIMITEDEXECRESCONTACTS@LISTSERV.OPM.GOV)  
**Subject:** FY 2017 Annual Data Call Instructions and Templates

Dear Executive Resources and Performance Management Colleagues,

Per the attached memorandum announcing the FY 2017 OPM Annual Data Call, the separate templates and associated instructions have been uploaded to the SES and SL/ST MAX Portal (link: <https://community.max.gov/x/q4hJO>) and are attached to this email. We apologize for the delay in making these templates and instructions available, and thank you for your understanding.

All annual data call submissions must be sent to **Exemption 6** at **Exemption 6** no later than close of business on Friday, March 30, 2018.

Please keep the following reminders in mind:

- Agencies that cannot meet the March 30 deadline should request a deadline extension as late submissions will be accepted on a case-by-case basis only.
- The data call templates and instructions have changed since last year, thus the updated documents must be used.
- The organization's Oversight Official must review the data for accuracy and completeness prior to submitting to OPM.
- Inaccurate and incomplete submissions will be sent back to the agency for correction, and may impact timeliness in granting or eligibility for performance appraisal system certification, and/or may prevent the agency's data from being included in OPM's annual report on executive pay for performance.
- Use the Explanatory Column (last column in both the SES and SL/ST templates) to explain any unique circumstances and anomalies affecting the senior employee's rating, pay or awards data.

Please direct questions and concerns regarding the FY 2017 Annual Data Call to **Exemption 6** at **Exemption 6**

Thank you for your participation in this annual reporting requirement.

**Executive Resources & Performance Management**

U.S. Office of Personnel Management  
[performance-management@opm.gov](mailto:performance-management@opm.gov)

TO: Chonita D, Young  
Director of Human Resources

FROM: Richard F. Griffin, Jr.

SUBJECT: Designation of Authority Memorandum

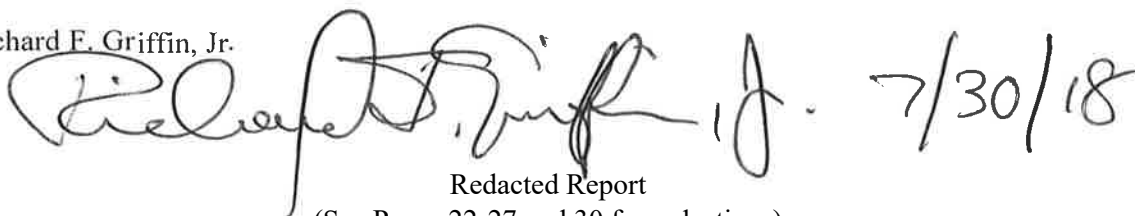
As General Counsel of the National Labor Relations Board (NLRB or Agency), from November 1, 2013 through October 31, 2017, some of my responsibilities included oversight and daily management of the administrative, human capital, and financial aspects of the Agency's operations. I consulted Deputy General Counsel Jennifer Abruzzo regularly on those responsibilities and designated her as my representative to handle many of them, and to communicate Agency approval of related matters, such as those referenced below, which is consistent with 5 CFR 534.404 C 4 (i). As such, Deputy General Counsel Abruzzo reviewed with me and I approved the following SES members listed below to receive meritorious pay:

Aburvasamy, Prem	07/09/17
Binstock, Allen	07/09/17
Bock, Richard	07/09/17
Cowen, William	06/25/17
Dreeben, Linda	06/25/17
Fernbach, Karen	07/09/17
Hamilton, Lasharn	07/09/17
Hatfield, Yvette	06/25/17
Hooks, Ronald	06/25/17
Karsh, Aaron	06/25/17
Kearney, Barry	06/25/17
Kilpatrick, Elizabeth	07/09/17
Leach, David	07/09/17
Lindsay, Garey	07/09/17
Nixon, Kathleen	06/25/17
O'Neill, Barbara	07/09/17
Ohr, Peter	07/09/17
Overstreet, Cornele	06/25/17
Parekh, Mehul	06/25/17
Posner, Charles	07/09/17
Rubin, Mori	07/09/17
Sawyer, Paula	07/09/17
Shinners, Gary	06/25/17
Tursell, Elizabeth	06/25/17
Walsh, Dennis	07/09/17
Walsh, John	07/09/17

Thank you for your commitment to ensuring that the NLRB's Office of Human Resources continues to run effectively and efficiently.

Sincerely,

Richard F. Griffin, Jr.



Redacted Report

(See Pages 22-27 and 30 for redactions)

UNITED STATES GOVERNMENT  
National Labor Relations Board



# Memorandum

TO: **Exemption 6**, Team Lead  
Executive Resources  
and Performance Management Implementation

FROM: John Ring  
Chairman **JOHN RING**  
Digitally signed by JOHN RING  
DN: c=US, o=U.S. Government, ou=National Labor  
Relations Board, cn=JOHN RING,  
0.9.2342.19200300.100.1.1=#3001003583469  
Date: 2018.06.30 11:48:41 -0400

SUBJECT: Designation of Authority Memorandum

DATE: June 29, 2018

This memorandum serves as notation that the following SES members listed below were authorized to receive meritorious pay adjustments consistent with 5 CFR 534.404:

Aburvasamy, Prem	07/09/17
Binstock, Allen	07/09/17
Bock, Richard	07/09/17
Cowen, William	06/25/17
Dreeben, Linda	06/25/17
Fernbach, Karen	07/09/17
Hamilton, Lasharn	07/09/17
Hatfield, Yvette	06/25/17
Hooks, Ronald	06/25/17
Karsh, Aaron	06/25/17
Kearney, Barry	06/25/17
Kilpatrick, Elizabeth	07/09/17
Leach, David	07/09/17
Lindsay, Garey	07/09/17
Nixon, Kathleen	06/25/17
O'Neill, Barbara	07/09/17
Ohr, Peter	07/09/17
Overstreet, Cornele	06/25/17
Parekh, Mehul	06/25/17
Posner, Charles	07/09/17
Rubin, Mori	07/09/17
Sawyer, Paula	07/09/17
Shinners, Gary	06/25/17
Tursell, Elizabeth	06/25/17
Walsh, Dennis	07/09/17
Walsh, John	07/09/17

Should you have any questions or concerns, contact Chonita Young at 202-273-3831 or Michael.Scott@NLRB.gov.

Thank you

# Executive Resources Forum - November 2018

## RSVP

The U.S. Office of Personnel Management (OPM), 1900 E Street NW, TRB Auditorium  
, Washington, District of Columbia 20415

Tuesday, November 27, 2018 from 9:30 AM to 12:00 PM (EST)

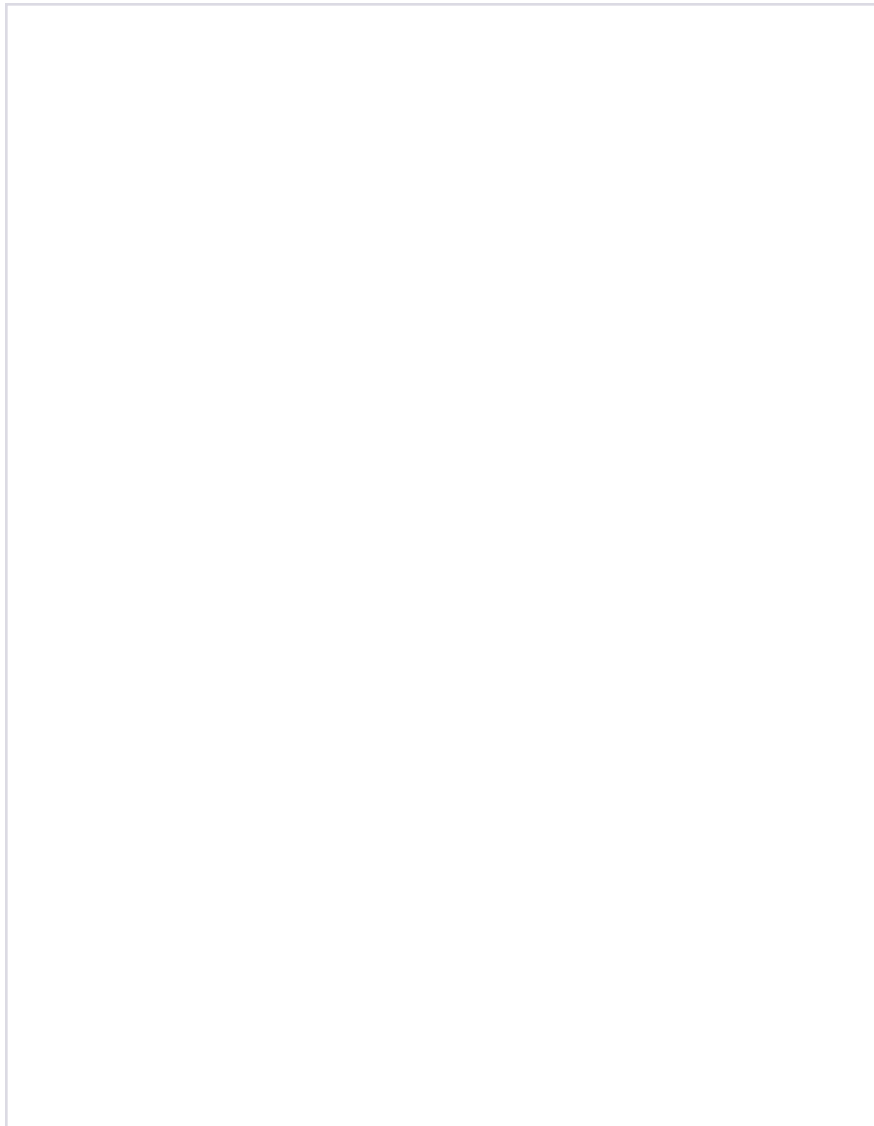
### Free Order

Order Information

Order #861557244. Ordered by Shanae Mauney on  
November 19, 2018 11:24 AM



8615572441073118829001



**Do you organize events?**

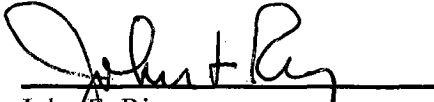
Start selling in minutes with Eventbrite!

[www.eventbrite.com](http://www.eventbrite.com)

## DELEGATION OF AUTHORITY

By virtue of the authority vested in me as the Chairman, including 29 U.S. Code § 153, *National Labor Relations Board*, 5 U.S.C. § 301, *Departmental Regulations*, and 5 U.S.C. § 302, *Delegation of Authority*, I hereby delegate the authority to perform the duties of the Chairman to the Associate Board Counsel to the Chairman.

This delegation is effective upon my signature and will remain in effect unless rescinded by me.



John F. Ring  
Chairman

January 22, 2019





**NATIONAL LABOR RELATIONS BOARD**  
**ADMINISTRATIVE POLICIES AND PROCEDURES**  
**MANUAL**

**CHAPTER:**

**PER-20**  
**EFFECTIVE**  
**DATE**  
**06/27/08**

**10/01/2018**  
**REVISED**  
**DATE**

Subject:

**PERFORMANCE-BASED PAY SYSTEM FOR THE SENIOR EXECUTIVE SERVICE (SES)**

SECTION	PAGE
---------	------

1. Superseded Material.....	1
2. Purpose.....	1
3. Authority .....	1
4. Delegation of Authority .....	2
5. Policy .....	2
6. Coverage.....	2
7. Definitions.....	2
8. SES Performance-Based Pay System.....	3
9. Setting and Adjusting Pay .....	4
10. Making Meaningful Distinctions Among Performance Through the Appraisal System.....	6
11. Increase in the Minimum and Maximum Rates of the SES Rate Range .....	7
12. Oversight and Accountability .....	7
13. Final Pay Determinations .....	8
14. System Evaluation .....	8

1. **SUPERSEDED MATERIAL:** This chapter is the first issuance addressing a performance-based pay system for Senior Executive Service (SES) members of the National Labor Relations Board (hereafter NLRB or Agency). Therefore, this chapter does not supersede any other material published in the Administrative Policy and Procedures Manual.
  
2. **PURPOSE:** This chapter establishes the NLRB’s performance-based pay system for its SES members. Specifically, it prescribes the policy and procedures for establishing and adjusting SES rates of base pay, paying performance awards to SES members, and applying the aggregate limitation on pay.
  
3. **AUTHORITY:** 5 U.S.C. 5382, as amended by section 1125 of Public Law 108-136 (November 24, 2003); 5 U.S.C Chapter 53, Subchapter VIII, Pay for the Senior Executive Service; 5 U.S.C. Chapter 45, Incentive Awards, and 5 CFR Part 451, Awards.

**Office of Origin**  
**Division of Administration**  
**Human Resources Branch**

4. **DELEGATION OF AUTHORITY**: The Chairman, Board Members, and the General Counsel, and/or designee, are responsible for the administration of this pay system with respect to SES members under their supervision.
5. **POLICY**: The Agency is committed to a performance-based compensation system that is clearly aligned with the Agency's mission, Government Performance and Results Act (GPRA) goals, Workforce Plan goals, other strategic program and policy objectives, and/or annual performance plans and budget priorities, in order to:
  - a. Encourage excellence in performance;
  - b. Motivate Executives to reach higher individual and organizational performance levels that achieve Agency goals and objectives (business results);
  - c. Recognize highest performers with the highest salary adjustments and performance awards;
  - d. Recognize other significant contributions and exceptional accomplishments; and
  - e. Attract and retain highly competent Senior Executives.
6. **COVERAGE**: This performance-based pay system covers all NLRB SES employees including those serving as career and non-career employees and in limited emergency or limited-term appointments.
7. **DEFINITIONS**:
  - a. Aggregate compensation: The total of base pay received as an employee of the Executive branch; locality payments; premium pay; incentive awards and performance-based cash awards; recruitment and relocation bonuses; retention allowances; supervisory differentials; post differentials; danger pay allowance; physicians' comparability allowances; and continuation of pay under worker's compensation.
  - b. Aggregate limitation: The limitation on aggregate compensation received in any given calendar year and is capped at the compensation equivalent to the rate of Executive Level I. For Executives covered by an applicable performance appraisal system that has been certified under 5 CFR part 430, subpart D, the limitation on aggregate compensation is equal to the total annual compensation payable to the Vice President.
  - c. Annual summary rating: The overall rating level that the appointing authority assigns to a Senior Executive at the end of the appraisal period after considering the Performance Review Board's recommendations. This is the official rating of record.
  - d. Appointing authority: The Chairman, Board Members, and/or the General Counsel, as appropriate.
  - e. Base pay: The total amount of pay received at a rate fixed by law or administrative action for the position held by an employee, before any deductions. Base pay excludes additional pay of any other kind, including locality payments under 5 U.S.C. 5304.

- f. Outstanding performance: Performance that substantially exceeds the normally high performance expected of any Senior Executive employee, as evidenced by exceptional accomplishments or contributions to the Agency's performance.
  - g. Performance appraisal: The review and evaluation of a Senior Executive's performance against written performance elements and standards for the Senior Executive's position.
  - h. PRB: Performance Review Board, as described in 5 CFR 430.310.
  - i. Relative performance: The performance of a Senior Executive as compared to the performance of other Senior Executives, including their contributions to Agency performance.
  - j. Senior Executive (Executive): A member of the Senior Executive Service (SES) paid under 5 U.S.C. 5383.
8. **SES PERFORMANCE-BASED PAY SYSTEM**: Pursuant to Section 1125 of Public Law 108-136 (November 24, 2003), which amended 5 U.S.C. 5382, the Agency has established a new performance-based pay system for its members of the Senior Executive Service, which consists of an "open-range" pay band. This pay system requires appointing authorities to make decisions regarding setting and adjusting rates of pay based on individual performance, contribution to the Agency's performance, or both, as determined under the Agency's SES performance appraisal system.

SES appraisal systems that have been certified by Office of Personnel Management (OPM), with Office of Management and Budget (OMB) concurrence establish that the minimum rate of base pay for an Executive is equal to 120 percent of the minimum rate of base pay payable to a GS-15, excluding locality payments (\$126,148 for 2018), while the maximum rate of base pay is equal to level II of the Executive Schedule (\$189,600 in 2018) or level III if covered under an SES appraisal system that is not certified. An Executive will be eligible to receive base pay increases and/or bonuses/awards based on performance and contributions to the Agency. This includes Executives who receive a summary performance rating of fully successful or better. However, Executives who receive a summary performance rating of less than fully successful will not be eligible to receive an increase in base pay nor any performance bonus/awards for the current performance appraisal period.

Moreover, pursuant to Section 1322 of the Chief Human Capital Officers Act of 2002 (Public Law 107-296, Title XIII, November 25, 2002), which amended 5 U.S.C. 5307; the Agency under its certified SES appraisal system may apply a higher annual aggregate limitation on pay. This higher annual aggregate limitation on pay may not exceed the total annual compensation payable to the Vice President, under 3 U.S.C. 104, on the last day of the applicable calendar year.

9. **SETTING AND ADJUSTING PAY:** The appointing authority is charged with the sole responsibility of setting and adjusting an Executive's pay. The appointing authority must set and adjust the rate of base pay for an Executive based on individual performance, results achieved, and other contributions to the Agency's performance.

- a. ***Setting pay upon initial appointment to the SES.*** Upon initial appointment to an SES position from within the Agency or from another Federal agency, the appointing authority will set the Executive's salary at the higher of up to a 10 percent increase above his/her current salary (base pay plus locality pay) or at the pay rate (base pay and locality) of a GS 15, Step 10 (\$164,200) based on the *Rest of the United States* (RUS) salary scale plus 5 percent (Currently \$172,410). The appropriate rate of pay should be based on the nature and quality of the Executive's experience, qualifications, and accomplishments as they relate to the requirements of the SES position, as well as the individual's current responsibilities.

Upon initial appointment to an SES position from outside the Federal government, the appointing authority may set a new Executive's salary at a rate that is higher or lower than the minimum salary for the position in circumstances where the new Executive is from outside the Agency and possesses uniquely exceptional experience, qualifications, and accomplishments related to the requirements of the Executive's position and responsibilities which warrant a departure from the above-described salary structure. Appointing authorities must submit a written and comprehensive justification to the Director of Human Resources establishing the Executive's uniquely exceptional experience, qualifications, and accomplishments before setting the salary of the Executive. In addition, a proposed exception to the policy that would result in an initial starting salary higher or lower than the policy's guidelines must have the approval of the Board and the General Counsel.

- b. ***Adjusting Executive base pay.*** The appointing authority may increase the rate of base pay of an Executive only upon reaching a determination that the Executive's individual performance and contributions to the Agency's performance warrant a salary increase. In assessing an Executive's overall performance and contributions to the Agency, the appointing authority, in addition to considering the Executive's annual summary rating, may consider an Executive's broad scope of authority and level of responsibility, personal accountability for the success or failure of Agency programs, and other contributions that are unique to the Executive and not accounted for in the Executive's annual appraisal. Other contributions may consist of sustained superior leadership; measurable success in achieving the President's Management Agenda and/or other Agency strategic goals; significant leadership in the labor relations community involving customers, parties, or the public; unique competencies, such as managing a large program area, experience or training that the Executive has undertaken that meaningfully contributed to the advancement of the Agency's programs and goals; and other unique competencies that the Executive possesses and their overall impact on the Agency's performance.

Executives must receive an annual summary rating of at least fully successful to be considered for an annual base pay increase. The amount of base pay increase is directly proportional to the Executive's annual summary rating and his/her contributions to the Agency's performance. For example, the amount of a base pay adjustment must be authorized in direct proportion to the Executive's relative performance within a single performance rating level (e.g., the higher the Executive's relative performance within a 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). An Executive who demonstrates the highest levels of individual performance and/or make the greatest contributions to the Agency's performance must be considered for the highest annual base salary increase. An Executive who receives a summary rating of less than fully successful may not receive an increase in base pay for the current appraisal period.

- c. ***Adjusting Executive salary based on awards and bonuses.*** The Agency is committed to strengthening the linkage between pay and performance. In order to encourage excellence in individual and Agency performance, and to recognize superior accomplishments and/or other significant contributions to the efficiency, economy, and improvement of the Agency's operations; an appointing authority may supplement an Executive's base pay increase with a lump sum cash award and/or performance bonus payments consistent with the provisions of the Agency's Employee Recognition Program.

In assessing an Executive for a performance award/bonus, the appointing authority may consider unique contributions or significant contributions by the Executive to the Agency that were not necessarily accounted for in his/her annual appraisal. Such contributions may consist of sustained superior leadership; measurable success in achieving the President's Management Agenda and/or other Agency strategic goals; significant leadership in the labor relations community involving customers, parties, or the public; unique competencies such as managing a large program area, experience or training that the Executive has undertaken that meaningfully contributed to the advancement of the Agency's programs and goals; and other unique competencies that the Executive possesses and their overall impact on the Agency's performance.

In approving an Executive for a performance award/bonus pay adjustment, the appointing authority must ensure that the justification for such an award or pay adjustment clearly reflects meaningful distinctions between the Executive's performance and/or contributions as compared to the relative performance and contributions of his/her peers.

Executives must receive an annual summary rating of at least fully successful to be considered for an annual performance award/bonus. The amount of an Executive's award/bonus is directly proportional to his/her annual summary rating and contributions to the Agency's performance, as illustrated in the following chart, subject to the annual aggregate limitation on pay, which is equivalent to the total annual compensation payable to the Vice President. An Executive who receives an annual summary rating of less than fully successful will not be considered for an annual award and/or bonus but may be recognized for some significant accomplishment via a Special Act Award.

Appointing authorities must ensure that the Executives whom demonstrate the highest levels of individual performance and/or make the greatest contributions to the Agency's performance are considered to receive the highest annual pay adjustments.

All Executive bonuses and pay adjustments are subject to agency budgetary considerations.

Performance awards are granted in conjunction with the annual performance cycle and may be granted in lieu of a base salary increase. Payment of awards/bonuses are subject to the Agency's determination to pay out such awards/bonuses, and are at the discretion of the appointing authority, provided the Agency has determined to pay out performance awards/bonuses.

- d. **Reducing Executive pay.** Appointing authorities may reduce a career Senior Executive's rate of base pay by not more than 10 percent for performance or disciplinary reasons.
- e. **Adjusting pay within 12 months.** An appointing authority may adjust (increase or reduce) an Executive's rate of base pay more than once during a 12-month period if the appointing authority determines that such adjustment is warranted and:
  - 1. The Executive's exceptionally meritorious accomplishment significantly contributes to the Agency's performance;
  - 2. The Executive is reassigned to a position with substantially greater scope and responsibility or to recruit an Executive with superior leadership or other competencies from a position in another agency;
  - 3. The retention of an Executive is critical to the mission of the Agency and the Executive has accepted an offer of employment and expressed his/her intent to leave the Agency in the absence of a pay increase. There must be strong evidence documenting the acceptance by an offering company; or
  - 4. Such action conforms to an otherwise applicable Executive appraisal and pay adjustment cycle (*e.g.*, in the case of an Executive who was appointed to an SES position within the past 12 months or an Executive who was transferred to an SES position from an agency with a different Executive appraisal and pay adjustment cycle within the past 12 months).

**10. MAKING MEANINGFUL DISTINCTIONS AMONG PERFORMANCE THROUGH THE APPRAISAL SYSTEM:** The Agency has implemented a performance-based appraisal process that links Executive performance to the Agency's mission, the Government Performance and Results Act goals, Workforce Plan, other strategic planning initiatives, program and policy objectives and/or annual performance plans and budget priorities. As part of the appraisal process, Executives are placed on strategically aligned performance plans consisting of demonstrable, measurable, and results-oriented performance elements and standards so that a clear assessment of an Executive's performance, as compared to his/her peers, may be made. The appraisal process takes into account the Agency Heads' assessment of overall Agency performance, including an assessment of each of its major program and functional areas. The performance of Executives is considered by the appraising official, reviewing official, and

the PRB, resulting in evaluation, rating, and pay adjustment recommendations, which are made to the appointing authority. This rigorous appraisal process results in performance ratings and pay recommendations to the appointing authorities that take into consideration organizational performance and make meaningful distinctions between the relative performance of Executives based on individual performance and their contributions to the Agency.

The appointing authority, in approving performance and pay recommendations, must ensure that any recommendation for an increase in Executive pay reflects meaningful distinctions within a single performance rating level and/or between performance rating levels. Under this pay system, an Executive's compensation is increased in direct proportion to an Executive's performance and his/her contribution to the Agency's performance, with the highest rating and contribution reserved to the highest performers.

**11. INCREASES IN THE MINIMUM AND MAXIMUM RATES OF THE SES RATE**

**RANGE:** The minimum rate of base pay for the SES paybands will increase consistent with any increase in the minimum rate of base pay under 5 U.S.C. 5376. The maximum rate of base pay for the rate range will also increase with any increase in the rates for level II of the Executive Schedule under 5 U.S.C. 5318 or level III.

In the event that there is an 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 in on or after January 1 and after the Agency has already granted an increase following the performance appraisal cycle, an appointing authority may review an initial determination to adjust a rate of base pay and grant an additional increase to an Executive whose rate is at the applicable maximum rate. If the pay adjustment is warranted, the appointing authority must make the pay adjustment effective on the same date as the initial determination (the first day of the first pay period beginning on or after January 1 of that year). Such an adjustment may be made after an adjustment has already been granted following the completion of the appraisal and pay process and is not considered a pay adjustment for the purposes of applying the 12-month rule.

An appointing authority may provide an increase in the rate of base pay for an Executive who is rated at least fully successful at the same time the minimum or maximum rates of the SES rate range is increased by an amount that does not exceed the amount necessary to allow the Executive to maintain his/her relative position in the SES rate range, with some exceptions. A pay increase made to allow an Executive to maintain his/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 Executives with an entitlement to an annual pay adjustment, only consideration for such an adjustment.

**12. OVERSIGHT AND ACCOUNTABILITY:** The Chairman, Board Members, General Counsel, or designee, as appropriate, upon rendering a final decision on appraisals of Executives shall certify via signature on NLRB Form 5517 that:

- a. The Senior Executive appraisal process makes meaningful distinctions based on relative performance;
- b. The appraisal process demonstrates a clear and direct link between the Agency's performance and the Executive's performance;
- c. The results of the Executive appraisal process take into account, as appropriate, the Agency's organizational assessment of its performance as it relates to program performance measures, as well as other relative considerations;
- d. Decisions regarding pay adjustments, cash awards, and levels of pay based on the results of the appraisal process accurately reflect and recognize individual performance and/or contribution to the Agency's performance; and
- e. Final ratings, particularly, outstanding ratings are not being distributed on a rotational basis.

**13. APPEAL OF FINAL PAY DETERMINATIONS:** An Executive may appeal a pay reduction to his/her appointing authority and the appointing authority, as appropriate, will render a final determination regarding the granting of a pay adjustment. Such determinations are final and not subject to further review or appealable under 5 U.S.C. 7543.

**14. SYSTEM EVALUATION:** This performance-based pay system will be evaluated periodically to ensure its effectiveness in managing Executive pay.