Order Code RL33128

CRS Report for Congress

Senior Executive Service (SES) Pay for Performance System

Updated February 9, 2007

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Prepared for Members and Committees of Congress

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Senior Executive Service (SES) Pay for Performance System

Summary

A new pay system for the Senior Executive Service (SES) was established in 2004 by Section 1125 of the FY2004 National Defense Authorization Act (P.L. 108-136). This legislative provision capped several years when the Director of the Office of Personnel Management (OPM) had advised federal agencies that they needed to provide more rigorous and realistic ratings of their senior executives. (In FY2002, 69% of career senior executives received the highest rating.) Additionally, certain components of the new system could help resolve the long-standing problem of pay compression within the SES. Key features of the new pay system, which took effect on January 11, 2004, include the elimination of locality pay and annual pay adjustments (which were provided in conjunction with annual adjustments for General Schedule and Executive Schedule employees); the replacement of six pay rates (ES-1 through ES-6) with one broad pay range; an increase in the cap on base pay from Executive Schedule IV (EX-IV) to EX-III; and the addition of a second, higher cap, EX-II, for SES appraisal systems that have been certified by OPM.

The certification process involves, in part, designing and implementing a performance appraisal system that makes meaningful distinctions based on the relative performance of senior executives (or senior-level (SL), or scientific or technical (ST) professionals). With the concurrence of the Office of Management and Budget (OMB), OPM developed a certification regulation, which includes nine criteria agencies must meet in the design and administration of their appraisal systems. Barring any compliance problems that might arise after certification has been awarded, full certification is for two calendar years. Provisional certification for one calendar year is awarded when an appraisal system meets design requirements, but there is insufficient documentation to determine whether implementation meets certification requirements. Certification also determines the cap on aggregate compensation for senior executives and SL and ST employees. For an appraisal system that has not been certified, the cap is EX-I; for an appraisal system that has been certified, the cap is the equivalent of the Vice President's salary. The second, higher cap (Vice President's salary) and the establishment of a certification process were enacted by Section 1322 of the Homeland Security Act of 2002 (P.L. 107-296). (For SL and ST employees, certification does not affect their base pay.)

Some of the issues that might arise with the implementation of the new SES pay system and certification process are how to define "meaningful distinctions," the possibility that some agencies might use forced distributions, the potential for the politicization of senior executives, and the system's implications for the notion of "rank in person," which is a key feature of the SES. This report will be updated as events warrant.

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Senior Executive Service (SES) Pay for Performance System

Introduction

The Senior Executive Service (SES), established by the Civil Service Reform Act of 1978 (P.L. 95-454, 92 Stat. 111), consists of approximately 7,000 top-level federal executives. Creation of the SES was undertaken with the goal of remedying problems related to the recruitment, retention, development, and management of senior executives. Highly competent and skilled as leaders and managers, members of the SES constitute a major link between top presidential appointees and other federal employees. About 90% of senior executives are career appointees, who were selected for the SES on the basis of meeting executive core qualifications.[1] Noncareer appointees do not have to meet the same competitive selection requirements, but they also do not receive the same entitlements as career senior executives do.[2] Approximately 70% of senior executives are in Washington, DC, Virginia, and Maryland.

Two notable features of the SES are pay for performance and rank residing in the person, not the position. For senior executives, SES offers a trade-off. In return for the opportunity to earn greater financial rewards through outstanding job performance, executives give up some of the usual job security associated with the civil service. The concept of rank residing in the individual is based on the notion that it facilitates reassignment of executives to functions, agencies, or positions where they are needed.

In 2004, the SES pay system was changed dramatically, with these changes driven by two factors: pay compression, which has been a long-standing problem for senior executives, and the President's Management Agenda (PMA), which was instituted in 2001 by the Bush Administration. The previous pay system had six pay levels, and pay compression resulted in senior executives at the top three SES pay levels receiving essentially the same amount of base (or basic) pay in a given year. Under the PMA, the Bush Administration has emphasized pay for performance for senior executives, and has criticized agency performance management systems that it believes fail to make meaningful distinctions among senior executives' job performances.

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[1] See U.S. Office of Personnel Management, "Executive Core Qualifications (ECQ's)," available at [http://www.opm.gov/ses/ecq.asp], for detailed information.

[2] For more information on the noncareer SES, see U.S. Office of Personnel Management, *The Senior Executive Service*, Feb. 2004, p. 3, available at [http://www.opm.gov/ses/pdf/SESGUIDE04.pdf].

The next section of this report examines the new SES pay system, and includes a comparison between the new system and the previous system and an explanation of the caps on aggregate compensation. An overview of the certification process and a discussion of policy issues follows. **Appendix B** contains four sets of guidelines developed by different parties that are intended to describe key principles and activities necessary for the establishment and operation of an effective, credible pay-for-performance system.

Pay Compression

A combination of factors created salary compression within the ranks of the SES. As noted previously, under the previous pay system, there were six rates of base pay, ES-1 through ES-6. The lowest rate could not be less than "120 percent of the minimum rate of basic pay for GS-15 of the General Schedule," and the highest rate of basic pay could not exceed Executive Schedule Level IV (EX-IV).[3] Within these parameters, the President was required to adjust the rates of basic pay for senior executives whenever an adjustment was made, under 5 U.S.C. § 5303, in the General Schedule rates of pay. However, the President determined the amount by which to adjust SES base pay.[4] Also, under the former pay system, SES members received locality pay when the Pay Agent decided to extend it to the SES, which had been done every year.[5] The combination of basic pay and locality pay for senior executives was capped at EX- III.[6]

While the statutorily-imposed floor pushed up from the bottom, annual salary adjustments increased SES basic pay and, in the absence of significant increases in Executive Schedule salaries, statutory salary caps squeezed down from the top. Consequently, as shown in **Table 1**, the differences in amounts of pay between some SES pay levels were nonexistent or negligible. In each column, the amount entered in the "ES-6"row is the maximum amount of basic pay, or basic pay and locality pay, payable to senior executives for that year. In columns where the same amount for basic pay and locality pay is entered in two or more rows (for example, ES-5 and ES-6), senior executives in all localities at those pay levels received the same (maximum) amount of basic and locality pay.

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[3] 5 U.S.C. § 5376(b)(1)(A); 5 U.S.C. § 5382(b). These citations refer to sections of the *U.S. Code* that were subsequently amended by Sec. 1125 of P.L 108-136, which effected the changes in the SES pay system.

[4] 5 U.S.C. § 5382(c). This citation refers to a section of the *U.S. Code* that was subsequently amended by Sec. 1125 of P.L 108-136.

[5] The President's Pay Agent consists of the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management. The President delegated authority to the Pay Agent, through Executive Order 12883, to extend locality pay to certain categories of positions, including SES positions.

[6] 5 U.S.C. § 5304(g)(2). This citation refers to a section of the *U.S. Code* that was subsequently amended by Sec. 1125 of P.L 108-136.

Table 1. SES Pay Schedule, 1999-2003

Pay Level	1999		2000		2001		2002		2003	
	Basic Pay	Basic Pay & Locality Pay	Basic Pay	Basic Pay & Locality Pay	Basic Pay	Basic Pay & Locality Pay	Basic Pay	Basic Pay & Locality Pay	Basic Pay	Basic Pay & Locality Pay
ES-1	$102,300	$108,305-$115,660	$106,200	$113,400-$121,141	$109,100	$117,479-$127,625	$113,000	$122,763-$134,515	$116,500	$127,707-$141,417
ES-2	$107,100	$113,387-$121,087	$111,200	$118,739-$127,891	$114,200	$122,971-$133,591	$118,300	$128,521-$138,200[i]	$122,000	$133,736-$142,500[k]
ES-3	$112,000	$118,574-$125,900[b]	$116,300	$124,185-$130,200[f]	$119,400	$128,570-$133,700[h]	$123,700	$134,388-$138,200[j]	$127,500	$139,766-$142,500[l]
ES-4	$118,000	$124,927-$125,900[c]	$122,200	$130,200[g]	$125,500	$133,700[g]	$129,800	$138,200[g]	$133,800	$142,500[g]
ES-5	$118,400[a]	$125,350-$125,900[d]	$122,400[a]	$130,200[g]	$125,700[a]	$133,700[g]	$130,000[a]	$138,200[g]	$134,000[a]	$142,500[g]
ES-6	$118,400[a]	$125,350-$125,900[e]	$122,400[a]	$130,200[g]	$125,700[a]	$133,700[g]	$130,000[a]	$138,200[g]	$134,000[a]	$142,500[g]

Sources: U.S. Office of Personnel Management, "Rates of Basic Pay for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of Boards of Contract Appeals," Jan. 1999; U.S. Office of Personnel Management, "1999 Locality Rates of Pay for Members of the Senior Executive Service," Jan. 1999; U.S. Office of Personnel Management, "2000 Scheduled Rates of Basic Pay for Members of the Senior Executive Service and Employees in Senior-Level and Scientific or Professional Positions," Jan. 2000; U.S. Office of Personnel Management, "2000 Locality Rates of Pay for Members of the Senior Executive Service," Jan. 2000; U.S. Office of Personnel Management, "2001 Scheduled Rates of Basic Pay for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional

Positions, Administrative Law Judges, and Members of Boards of Contract Appeals," Jan. 2001; U.S. Office of Personnel Management, "2001 Locality Rates of Pay for Members of the Senior Executive Service and Employees in Senior-Level and Scientific or Professional Positions," Jan. 2001; U.S. Office of Personnel Management, "2002 Scheduled Rates of Basic Pay for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of Boards of Contract Appeals," Jan. 2002; U.S. Office of Personnel Management, "2002 Locality Rates of Pay for Members of the Senior Executive Service and Employees in Senior-Level and Scientific or Professional Positions," Jan. 2002; U.S. Office of Personnel Management, "Salary Table 2003-ES, Rates of Basic Pay for Members of the Senior Executive Service (SES)," Jan. 2003; U.S. Office of Personnel Management, "Locality Rates of Pay for Members of the Senior Executive Service," Jan. 2003.

Notes:

a. This is the maximum amount of basic pay allowed for senior executives.
b. In 2 of 32 localities, ES-3 basic pay and locality pay was $125,900.
c. In 22 of 32 localities, ES-4 basic pay and locality pay was $125,900.
d. In 27 of 32 localities, ES-5 basic pay and locality pay was $125,900.
e. In 27 of 32 localities, ES-6 basic pay and locality pay was $125,900.
f. In 4 of 32 localities, ES-3 basic pay and locality pay was $130,200.
g. This is the maximum amount of basic pay and locality pay allowed for senior executives, and senior executives at this pay level in all localities received the same amount.
h. In 8 of 32 localities, ES-3 basic pay and locality pay was $133,700.
i. In 2 of 32 localities, ES-2 basic pay and locality pay was $138,200.
j. In 15 of 32 localities, ES-3 basic pay and locality pay was $138,200.
k. In 4 of 32 localities, ES-2 basic pay and locality pay was $142,500.
l. In 20 of 32 localities, ES-3 basic pay and locality pay was $142,500.

The information displayed in **Table 1** shows the extent of pay compression for the period 1999-2003. The amount of base pay was virtually the same at the top three pay levels for each year. Beginning in 2000, there were no differences among the combinations of base pay and locality pay at the top three pay levels for each year. The greatest variation in base pay occurred at the three lowest pay levels, ES-1 through ES-3, and the pay range for these three levels increased slightly over five years. The difference between ES-1 and ES-3 base pay in 1999 was $9,700; the difference in 2003 was $11,000.

Table 2 contains the pay rate distribution for these same years, which shows how many senior executives were assigned to each pay level.

The House of Representatives and Senate Explained

Congressional Procedure

A Practical Guide to the Legislative Process in the U.S. Congress

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Table 2. SES Basic Pay and Pay Rate Distribution, 1999-2003

Pay Level	1999			2000			2001			2002			2003		
	Basic Pay	# Sr. Execs	% Sr. Execs[a]	Basic Pay	# Sr. Execs	% Sr. Execs[a]	Basic Pay	# Sr. Execs	% Sr. Execs[a]	Basic Pay	# Sr. Execs	% Sr. Execs[a]	Basic Pay	# Sr. Execs	% Sr. Execs[a]
ES-1	$102,300	915	14%	$106,200	1,012	15%	$109,100	1,047	16%	$113,000	1,099	16%	$116,500	1,182	18%
ES-2	$107,100	787	12%	$111,200	877	13%	$114,200	845	13%	$118,300	927	14%	$122,000	931	14%
ES-3	$112,000	993	15%	$116,300	937	14%	$119,400	949	14%	$123,700	955	14%	$127,500	1,023	15%
ES-4	$118,000	2,413	36%	$122,200	2,447	36%	$125,500	2,344	35%	$129,800	2,288	34%	$133,800	2,262	34%
ES-5	$118,400	1,100	16%	$122,400	1,074	16%	$125,700	1,003	15%	$130,000	1,011	15%	$134,000	930	14%
ES-6	$118,400	510	7%	$122,400	484	7%	$125,700	439	7%	$130,000	423	6%	$134,000	408	6%

Sources: U.S. Office of Personnel Management, "SES Pay Rate Distribution as of September 30, 1999"; U.S. Office of Personnel Management, "Senior Executive Service Pay Rate Distribution as of September 30, 2002," available at [http://www.opm.gov/ses/index_demograph.asp]; U.S. Office of Personnel Management, "Senior Executive Service Pay Rate Distribution as of September 30, 2001," available at [http://www.opm.gov/ses/index_demograph.asp]; U.S. Office of Personnel Management, "Senior Executive Service Pay Rate Distribution as of September 30, 2002," available at [http://www.opm.gov/ses/index_demograph.asp]; U.S. Office of Personnel Management, "Senior Executive Service Pay Rate Distribution as of September 30, 2003," available at [http://www.opm.gov/ses/index_demograph.asp].

Note:

a. Percentages have been rounded.

Nearly 60% of senior executives in any given year were paid at ES-4, ES-5, or ES-6, which means that all of these executives earned virtually the same amount of basic pay. Negation of the financial distinctions among these three pay levels could undermine the concept of rank in person. It is also possible that pay compression could affect recruiting, retention, and reassignments within the SES. Comparison among the four years shows that a similar pattern occurred each year, with the highest percentage of senior executives (34%-36%) clustered at ES-4. The smallest percentage of executives — 6%-7% — were paid at the ES-6 level. The remaining senior executives were evenly distributed (in terms of percentages) across the remaining four pay levels. It is not clear why the highest percentage of senior executives is found at ES-4. A possible explanation is that, because of pay compression, there was no financial reason for moving senior executives to ES-5 and, ultimately, ES-6.

President's Management Agenda

Whereas pay compression has been a long-standing problem for members of the SES, the other impetus for altering the SES pay system has its roots in the *President's Management Agenda*. Introduced in 2001, the PMA is focused on fostering a government that is citizen-oriented, market-driven, and results-oriented. The strategic management of human capital is one of five PMA initiatives.[7] An excerpt from the PMA chapter on human capital states:

> The managerial revolution that has transformed the culture of almost every other large institution in American life seems to have bypassed the federal workforce. Federal personnel policies and compensation tend to take the same "one-size-fits-all" approach they took in 1945. Excellence goes unrewarded; mediocre performance carries few consequences; and it takes months to remove even the poorest performers .... These realities contribute to the growing consensus that action is required. The federal government has a unique opportunity to redefine the way it manages human capital .... [The Administration's assessment of personnel flexibilities] and outcomes achieved under demonstration projects ... will help ... permit more performance-oriented compensation .... Accountability for results will be clear and meaningful, with positive rewards for success and real consequences for failure.[8]

The Bush Administration's interest in the performance of senior executives and how it could be connected to results, organizational excellence, and the Administration's priorities was articulated initially in a November 1, 2001, memorandum that focused exclusively on the SES. In the memorandum to agency human resources directors, the Director of the Office of Personnel Management (OPM) wrote:

> Although many of you have only been confirmed recently, you can still use the appraisal process to reinforce our commitment to a results-oriented Government.

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[7] Executive Office of the President, U.S. Office of Management and Budget, *The President's Management Agenda, Fiscal Year 2002*, available at [http://www.whitehouse.gov/omb/budget/fy2002/mgmt.pdf].

[8] Ibid., pp. 11-13, 15.

> You can ensure that measurable results, not anecdotes, form the basis of executive appraisals. It is completely appropriate to use this opportunity to ask as many follow-up questions as possible and to obtain documentation of results. You can direct rating officials and Performance Review Board members to be rigorous in preparing recommendations on ratings and bonuses. And, most importantly, you can personally communicate your intent to use the SES appraisal system to drive organizational excellence .... It is important that agencies ensure that executive performance plans reflect this Administration's priorities, including the *President's Management Agenda*. A critical aspect of this process is establishing executive performance goals and expectations in line with agency strategic goals and objectives, regularly assess[ing] performance against these goals, and [using] performance as a true basis for pay, development, and other personnel decisions.[9]

Noting that agencies had "rated 85% of their executives at the highest level their system permits," the Director added: "... [T]hese statistics suggest that agencies are not making meaningful distinctions between those who merely do what's expected and those with a consistent track record of outstanding performance."[10]

A second memorandum on senior executives from the OPM Director to department and agency heads, dated September 27, 2002, expressed a similar theme, reminding agency officials that performance appraisals should be based on results, and urging them to be more discerning in preparing recommendations on ratings and bonuses. The Director wrote:

> I believe that we have begun to see some shift toward results-based appraisals and greater accountability. However, we have a long way to go. As your FY2002 appraisal cycles come to a close, I once again urge you to ensure that measurable results, not anecdotes, from the basis of your senior executives' performance appraisals. By directing your Performance Review Boards to be rigorous in preparing recommendations on ratings and bonuses, you communicate your intention to use SES performance management systems to drive organizational excellence and hold executives accountable.
>
> To facilitate this effort, OPM implemented new requirements in FY2001 for managing senior executive performance that emphasized results over process and gave agencies considerable flexibility to design systems tailored to their unique and changing missions, cultures, and needs. These requirements call for the establishment of executive performance standards that are in line with agency strategic goals and objectives. They also require agency leadership to expect excellence, communicate performance expectations, and appraise performance against those expectations, take action to reward outstanding performers, and deal appropriately with those who do not measure up.
>
> One of the dimensions of the Human Capital Scorecard [a device used by the Office of Management and Budget (OMB) to measure agencies' success in meeting PMA standards] is the creation of a performance culture that motivates

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[9] U.S. Office of Personnel Management, "Senior Executive Excellence and Accountability," memorandum, transmittal #MSG-091a, Nov. 1, 2001, available at [https://www.opm.gov/ses/memo11-1-01.asp].

[10] Ibid.

> employees for high performance. Since establishing performance management systems that truly distinguish between levels of performance is a key element of success, your agency's progress in managing senior executive performance will be considered in determining success on this measure. By ensuring that your executives' performance plans and appraisal systems are linked to your organizations' strategic plans and reflect the Administration's priorities, the *President's Management Agenda*, we can continue moving in the right direction.[11]

In 2003, the Administration undertook a new effort to link appraisals and financial compensation more closely to senior executive performance by proposing changes to the SES pay system. The President's FY2004 budget request summarized the problem and offered a solution:

> ... [I]t's not easy [to reform the management of human capital]. Consider the Office of Personnel Management (OPM) Director Kay James' effort to make senior government executives more accountable. She learned that in 2000, federal agencies gave 85 percent of their senior executives the highest possible performance rating — an assertion that virtually everyone in Washington is way above average. Despite James' urging agencies to begin distinguishing the best performers from others, almost nothing changed. In 2001, more than 83 percent of senior executives received the highest possible rating. Five agencies gave 100 percent of their senior executives the highest rating and six more gave it to 90 percent of their senior ranks. Such figures let the public know that federal managers are not yet serious about holding themselves or their staffs accountable.[12]

> The Administration ... proposes to eliminate the current pay structure for senior managers [senior executives] and increase their pay ceiling. Under this proposal, each agency will adjust pay for its senior managers on the basis of individual performance, which will help address the current lack of meaningful senior manager appraisal systems.[13]

In the meantime, while the Administration's legislative proposal was considered, enacted, and implemented, OPM continued to express concern about the percentage of senior executives rated at the highest level. The OPM Director issued a memorandum in early 2004 which noted that the distribution of SES appraisal ratings had improved in some agencies, but not in others. She wrote:

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[11] Kay Coles James, Director, U.S. Office of Personnel Management, "Senior Executive Excellence and Accountability," memorandum, transmittal #MSG-067a, Sept. 20, 2002, available at [https://www.opm.gov/ses/memo09-20-02.asp].

[12] U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2004* (Washington: GPO, 2003), p. 38.

[13] U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2004, Analytical Perspectives* (Washington: GPO, 2003), p. 15. See U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2004, Appendix* (Washington: GPO, 2003), p. 13, for the Administration's proposed legislative language to revise the SES pay system.

> The data [from FY2000 and FY2001] indicate a growing number of agencies have taken seriously the need to improve the distribution of SES ratings and awards to support the high performance culture the President is determined to establish. However, these data also suggest that more work [is] still ... required, and we will be extremely interested in the information you report for fiscal year 2003. The necessity for more rigorous and realistic ratings is especially clear in instances where agencies are not fulfilling their missions and reporting demonstrable results.[14]

OPM's Acting Director followed suit in March 2005, writing in a memorandum on SES performance ratings and awards that:

> [An OPM] report shows that in FY2003, over 74% of agency executives received the highest performance rating possible under the applicable performance appraisal system, and more than half of those eligible received substantial performance bonuses. Both of these figures are essentially unchanged from FY2002. These results do not reflect the requirements of the new SES pay-for-performance system .... Among other things, ... regulations [established by OPM and OMB] require that agencies make meaningful distinctions in the performance ratings and pay of their SES members, and that those ratings and pay decisions be consistent with organizational results, overall and with respect to an executive's particular area of responsibility.[15]

In late 2005, OPM reported on FY2004 SES performance ratings, awards, and salaries. In a related news release, the Director of OPM is quoted as saying that the report is "reflective of the transition to the new Senior Executive Service pay-for-performance system," and that it "documents some good early news about SES pay and recognition and should reinforce that managers are taking the evaluation process more seriously."[16] Several months later, in January 2006, the Director, in a memorandum to chief human capital officers, addressed the issue of emphasizing results in SES appraisal systems. The director wrote:

> I want to be clear that agency SES appraisal systems will not be certified for calendar year 2006 if the performance plans do not hold executives accountable for achieving measurable business outcomes. By aligning employee performance plans with organizational goals and holding employees accountable, agencies are well on the way to establishing a results-oriented performance culture. We must now place an even greater emphasis on achieving results. While Senior Executive Service (SES) appraisal and certification regulations require

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[14] Kay Coles James, Director, U.S. Office of Personnel Management, "Reporting SES Performance Ratings and Awards for FY2003," memorandum, Feb. 12, 2004, available at [http://www.usda.gov/da/SESratings_awards_2003_data_call.pdf].

[15] Dan G. Blair, Acting Director, U.S. Office of Personnel Management, "FY2003 SES Performance Ratings and Awards," memorandum, Mar. 16, 2005, available from the author.

[16] U.S. Office of Personnel Management, "OPM Report Shows Agency Progress on Evaluating SES Performance and Rewarding Federal Executives," news release, Oct. 18, 2005, available at [http://www.opm.gov/news/opm-report-shows-agency-progress-on-evaluating-ses-performance-and-rewarding-federal-executives,968.aspx].

executives to be appraised based on their performance, we have found some plans in some agencies that are weak in measuring results or setting targets.[17]

New SES Pay-for-Performance System

A new SES pay system, consistent with the language in the President's FY2004 budget message, was enacted, by Section 1125 of the FY2004 National Defense Authorization Act (P.L. 108-136), on November 24, 2003.[18] In amending portions of 5 U.S.C. §§ 5304, 5382, and 5383, Section 1125 modified the SES pay system by:

- Eliminating locality pay from the SES.
- Replacing six SES pay rates or levels (ES-1 through ES-6) with one broad pay range.
- Increasing the cap on SES base pay from Executive Schedule Level IV (EX-IV) to EX-III.
- Adding a second, higher cap on base pay — EX-II — for agencies that have SES performance appraisal systems (and equivalent systems as determined by the President's Pay Agent) which have been certified by OPM, with the concurrence of OMB.

The foundation for the new SES pay system was laid in 2001, when the Administration proposed the Managerial Flexibility Act of 2001.[19] This legislation introduced the idea of instituting a two-cap system for total, or aggregate, compensation for senior executives (and certain other groups of employees), with the higher cap applicable to agencies whose SES performance appraisal systems had been certified by OPM. (Aggregate compensation may include, for example, basic pay, premium pay, incentive awards, recruitment and relocation bonuses, retention allowances, danger pay allowances, and physicians' comparability allowances.) In 2002, the Director of OPM offered a brief rationale at a congressional hearing for this provision: "We believe the changes we are proposing with respect to senior executives will strengthen the links between their performance and their pay and awards. This portion of our proposal would amend an aggregate pay limitation that

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[17] Linda M. Springer, Director, U.S. Office of Personnel Management, "Building a Results-Oriented Performance Culture," memorandum, Jan. 30, 2006, available at [http://www.chcoc.gov/transmittal_detail.cfm?ID=708].

[18] 117 Stat. 1392, at 1638.

[19] A copy of the bill that was proposed is available at [http://www.whitehouse.gov/omb/legislative/mfa_bill.pdf]. A summary of the Managerial Flexibilty Act is available at [http://www.whitehouse.gov/omb/legislative/mfa_summary. pdf].

prevents senior executives from receiving some award payments in a timely way."[20] Eventually, this provision was enacted as part of the Homeland Security Act.[21]

Section 1322 of the Homeland Security Act of 2002 shifted the cap on total compensation from EX-I to the equivalent of the Vice President's salary ($215,700 in 2007) for agencies that have certified performance appraisal systems. If an agency does not have a certified system, the cap on aggregate compensation remains EX-I ($186,600 in 2007). Shifting the cap on total compensation does not represent an increase in compensation; it will not affect the amount of money an individual may receive. The cap on total compensation is a limit placed on the amount of compensation a senior executive may receive in any one year. If a senior executive's total compensation exceeds the applicable cap, the difference between the two amounts is deferred to, and paid, the next calendar year. Thus, senior executives whose agencies have certified SES appraisal systems are more likely to receive all of their compensation in one year instead of having some of their compensation (for example, performance awards) deferred to the following year.

Senior Level and Senior Technical Positions

Changes involving the cap on total compensation for senior executives also affect two other categories of senior employees in the federal government: senior level (SL) and scientific/professional (ST).[22] SL and ST personnel systems are for nonexecutive positions classified above GS-15. Where leadership and management skills and experience are paramount for senior executives, technical expertise is the hallmark of SL and ST employees. An SL system includes positions "that do not meet the criteria for the SES, nor do they involve the fundamental research and development responsibilities that are characteristic of the Scientific/Professional (ST) system."[23]

Whereas the status of an SES appraisal system — certified or not certified — determines the caps on base pay and total compensation for senior executives, the certification status of an SL or ST appraisal system only affects the cap on total compensation for these employees.[24] (Additionally, the language in P.L. 108-136 that eliminated locality pay for members of the SES did not eliminate locality pay for SL

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[20] U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on International Security, Proliferation and Federal Services, statement of Kay Coles James, Director, U.S. Office of Personnel Management, unpublished hearing, 107th Cong., 2nd sess., Mar. 18, 2002, pp. 5-6, available at [http://hsgac.senate.gov/031802james.htm].

[21] Sec. 1322, P.L. 107-296; 116 Stat. 2135, at 2297.

[22] The term "senior employees" includes members of the SES, senior level employees (SL) and senior technical (ST) employees. SL and ST members may be referred to collectively as "senior professionals." Senior level positions are positions classified above GS-15 pursuant to 5 U.S.C. § 5108. Scientific/professional positions are established under 5 U.S.C. § 3104.

[23] U.S. Office of Personnel Management, *The Senior Executive Service*, Feb. 2004, p. 7, available at [http://www.opm.gov/ses/pdf/SESGUIDE04.pdf].

[24] 5 U.S.C. § 5307(d)(1).

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and ST employees.) As with the SES, the two caps on total compensation for SL and ST personnel systems are the equivalent of the Vice President's salary for appraisal systems that have been certified by OPM, and EX-I for appraisal systems that have not been certified.

Comparison

The SES base pay provisions took effect on January 11, 2004. A comparison of selected features of the former SES pay system and the new system is provided in **Table 3**. It remains to be seen whether the combination of higher caps on basic pay, the shift to one pay band, and the elimination of automatic pay increases will help to alleviate the problem of pay compression. The requirement, for agencies that seek certification, to make meaningful distinctions also could be a factor in facilitating the distribution of senior executives across the entire SES pay range over time.

Table 3. Comparison of Selected Features of Former and Current SES Pay Systems in 2007

Feature	Former Pay System	Current Pay System
Minimum base pay, 2007	$111,676 (120% of GS-15, step 1)	$111,676 (same)
Maximum base pay, 2007	$145,400 (if EX- IV were still the cap)	1. $154,600 for agencies without certification[c] (EX-III is the cap) 2. $168,000 for agencies with certification (EX-II is the cap)
Cap on aggregate compensation, 2007[a]	$186,600 (EX-I was the cap)	1. $ 186,600 for agencies without certification (EX-I is the cap) 2. $215,700 for agencies with certification (the Vice President's salary is the cap)
Number of pay levels	Six	One
Automatic pay increase (in conjunction with annual adjustment for General Schedule and Executive Schedule employees)	Yes	No[a]
Locality pay	Yes	No
Certification of agencies' performance appraisal systems as making "meaningful distinctions"	No	Necessary if an agency wants to apply EX-II as the cap on SES basic rate of salary, and to apply the Vice President's salary as the cap on aggregate compensation.

Sources: U.S. Office of Personnel Management, "Salary Table No. 2007-ES, Rates of Basic Pay for Members of the Senior Executive Service (SES)," Jan. 2007, available at [http://www.opm.gov/oca/07tables/pdf/es.pdf]; U.S. Office of Personnel Management, "Salary Table No. 2007-EX, Rates of Pay for the Executive Schedule (EX)," Jan. 2007, available at [http://www.opm.gov/oca/07tables/pdf/ex.pdf]]; U.S. Office of Personnel Management, "Senior Executive Service Pay and Performance Awards and Aggregate Limitation on Pay," *Federal Register*, vol. 69, no. 145, July 29, 2004, pp. 45543-45545; Kay Coles James, Director, U.S. Office of Personnel Management, "New Performance-Based Pay System for the Senior Executive Service," memorandum, Dec. 16, 2003, CPM 2003-19, available at [http://www.om.gov /oca/compmemo/2003/2003-19.asp].

Note:

a. Although automatic pay increases no longer occur, an agency may increase a senior executive's pay, as long as his or her performance or contributions warrant an increase, in order to maintain the individual's relative position within the SES pay rate range. (5 CFR 534.404(b)(3).)

Conversion to the New Pay System

For most employees affected by the changes to the SES pay system, conversion to the new system occurred on January 11, 2004. Conversion to the new system, or an equivalent pay system, did not qualify as a pay adjustment.[25] (Except as provided in OPM regulations, a senior executive's rate of base pay may not be adjusted more than once during a 12-month period.[26]) The basic pay of a senior executive could not be reduced by the amendments made by Section 1125(a) of P.L. 108-136 during the first year after the effective date (January 11, 2004) of this provision.[27]

General. As of the conversion date, an individual's rate of basic pay, plus any applicable locality pay in effect prior to that date, became a senior executive's converted, or new, rate of basic pay. The converted rate was the rate of basic pay to be used for all pay computation purposes. The converted rates of basic pay for senior executives employed by the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) also included any applicable locality payment that was in effect immediately before January 11, 2004.[28]

Remedy for the Senior Foreign Service (SFS) and Senior Executives Stationed Overseas. When members of the SFS and SES who were stationed overseas as of the conversion date entered the new pay system, their salaries included only base pay, which became their converted pay.[29] Because local pay was not included, these two groups of federal employees entered the new pay system at a financial disadvantage compared with members of the SFS and SES who were

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[25] Kay Coles James, Director, U.S. Office of Personnel Management, "Conversion to New SES Performance-Based Pay System," memorandum CPM 2004-03, Jan. 9, 2004, available at [http://www.opm.gov/oca/compmemo/2004/2004-03.asp]. Detailed information about pay adjustments under the new system may be found in U.S. Office of Personnel Management, "Senior Executive Service Pay and Performance Awards; and Aggregate Limitation on Pay," *Federal Register*, vol. 69, no. 233, Dec. 6, 2004, pp. 70355-70367; Kay Coles James, Director, U.S. Office of Personnel Management, "Final Regulations on Performance-Based SES Pay System," memorandum CPM 2004-25, Dec. 2, 2004, available at [http://www.opm.gov/oca/compmemo/2004/2004-25.asp].

[26] 5 U.S.C. § 5383(c).

[27] Sec. 1125(c)(2) of P.L. 108-136.

[28] Kay Coles James, Director, U.S. Office of Personnel Management, "Conversion to New SES Performance-Based Pay System," p. 2.

[29] The SFS pay system is separate from, yet related to, the SES pay system. Under 22 U.S.C. § 3962(a)(1), the President prescribes salary classes for the Senior Foreign Service. The basic pay rates for the SFS cannot be less than the minimum rate and cannot exceed the maximum rate for SES and "shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service." (5 U.S.C. § 5382.) As of May 31, 2005, 556 members of SFS were stationed overseas. (Information provided by telephone by the Department of State, Bureau of Human Resources, to the author on June 24, 2005). As of Sept. 30, 2004, 27 members of the SES were stationed outside the United States. (Information provided electronically by the U.S. Office of Personnel Management to the author on July 15, 2004.)

stationed in the United States at the time of the conversion and whose converted pay included locality pay.

Executive Order (E.O.) 13325, dated January 23, 2004, offered a remedy to this problem for members of the SFS. E.O. 13325 stated:

> ... [A]s of the first day of the first applicable pay period beginning on or after January 1, 2004, a member of the Senior Foreign Service shall receive the rate of basic pay to which he or she was entitled immediately before that date, including any locality-based comparability payment authorized under 5 U.S.C. 5304(h)(2)(C) that the member was receiving immediately before that date.[30]

Explaining how officials might use the executive order to adjust the pay of SFS officers serving overseas, the Deputy Assistant Secretary for Human Resources at the State Department said, "Basically, we can do it either as a pay-for-performance consideration or do the one-time adjustment when they return to the United States."[31] If corrective action had not been taken, not only would SFS officers stationed abroad have had lower basic pay rates than SFS officers and senior executives stationed in the United States, but also their retirement benefits, which are calculated using basic pay, would have been adversely affected.[32]

Remedying the financial disparity for senior executives stationed overseas at the time of the conversion was accomplished by 5 CFR § 534.406, which provides that the new, or converted, base pay of this particular group is to include their current base pay (as of January 11, 2004) plus the applicable locality pay amount upon their reassignment to Washington, DC, or the contiguous 48 states. This adjustment is prospective, not retroactive, and will not be considered a pay adjustment "for the purpose of applying" 5 CFR § 534.404(c).[33] (As noted above, only one pay adjustment per 12-month period is allowed for each senior executive.)

Certification of Performance Appraisal Systems

As noted earlier, the changes effected by P.L. 108-136 allow agencies with certified SES performance appraisal systems to apply a higher cap to SES basic pay and total compensation. The crux of the certification process is the design and implementation of performance appraisal systems that make "meaningful distinctions

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[30] The President, "Amendment to Executive Order 12293, the Foreign Service of the United States," E.O. 13325, *Federal Register*, Jan. 28, 2004, vol. 69, no. 18, p. 4217.

[31] Tim Kauffman, "Executive Order Fixes Senior Foreign Service Pay," *Federal Times*, Feb. 2, 2004, p. 6.

[32] While SFS officers did not receive locality pay when stationed abroad, because the State Department "had such a problem retaining senior officers at overseas posts ... [it] received special authority from Congress two years ago to include locality pay in the retirement calculations of overseas officers." (Tim Kauffman, "New Law Shortchanges Foreign Service Officers," *Federal Times*, Dec. 22, 2003, p. 8.)

[33] 5 CFR § 534.406(c).

based on relative performance."[34] An agency may have more than one performance appraisal system for senior employees, and each system must be certified separately.[35]

Certification Process

With OMB's concurrence, OPM developed regulations for certification, and is responsible for certifying, and, if warranted, decertifying performance appraisal systems.[36] Additionally, OPM issues certification guidance each year.[37] As summarized by OPM, an agency's appraisal system(s) must fulfill these criteria:

> Alignment: Individual performance expectations must be derived from/linked to the agency's mission, strategic goals, program/policy objectives, and/or annual performance plan.
>
> Consultation: Individual performance expectations are developed with senior employee involvement and must be communicated at the beginning of the appraisal cycle.
>
> Results: Individual expectations describe performance that is measurable, demonstrable, or observable, focusing on organizational outputs and outcomes, policy/program objectives, milestones, etc.
>
> Balance: Individual performance expectations must include measures of results, employee and customer/stakeholder satisfaction and/or competencies or behaviors that contribute to outstanding performance.
>
> Assessments and Guidelines: Agency head/designee provides assessments comparing performance of agency and each major program and functional areas with agency's GPRA [Government Performance Results Act of 1993] goals and other program performance measures.[38]
>
> Oversight: Agency head/designee must certify (1) appraisal process makes meaningful distinctions based on relative performance, (2) results take into account, as appropriate, the agency's performance, and (3) pay adjustments and awards recognize individual/organizational performance.

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[34] U.S. Office of Personnel Management and U.S. Office of Management and Budget, "Executive Performance and Accountability," *Federal Register*, vol. 69, no. 145, July 29, 2004, p. 45551.

[35] U.S. Office of Personnel Management, "Executive Performance and Accountability," p. 45548.

[36] 5 U.S.C. § 5307; 5 CFR 430.403-430.405.

[37] Certification guidance for calendar year 2007 may be found in this OPM memorandum: Linda M. Springer, Director, U.S. Office of Personnel Management, "Certification of Performance Appraisal Systems for Senior Employees for Calendar Year 2007, memorandum, Oct. 31, 2006.

[38] P.L. 103-62; 31 U.S.C. § 1115.

> Accountability: Senior employee ratings (and subordinates' [ratings], as applicable) appropriately reflect performance expectations, program performance measures, and other factors.
>
> Performance Differentiation: Agency must provide for at least one rating level above Fully Successful (must include an Outstanding level), and in the application of those ratings, make meaningful distinctions among executives based on their relative performance. SES appraisal systems must include four or five summary rating levels: outstanding, fully successful, minimally satisfactory, and unacceptable. An optional fifth level would be between "outstanding" and "fully successful." (Senior professional — SL and ST — appraisal systems must include three to five summary rating levels: outstanding, fully successful, and unacceptable. Two optional levels are allowed: between "outstanding" and "fully successful," and between "fully successful" and "unacceptable.")[39]
>
> Pay Differentiation: Agency should be able to demonstrate that the largest pay adjustments and/or highest pay levels (base and performance awards) are provided to its highest performers, and that overall, the distribution of pay rates in the SES rate range and pay adjustments reflects meaningful distinction among executives, based on their relative performance.[40]

The certification process begins when an agency submits a written request to OPM for full or provisional certification. An agency's written request for certification must include the following:

- A description of the appraisal systems(s) to be certified. The description should identify the employees and organizations covered by the performance appraisal system, contain guidance for the system's administration and implementation, and describe how the system uses rating levels to clearly differentiate among senior employees (SES, SL, and ST).[41]
- A description of the review process used to review initial summary ratings and ratings of record, as applicable.
- Documentation that shows the appraisal system(s) meet the applicable certification criteria for full, or provisional, certification, whichever is applicable.

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[39] U.S. Office of Personnel Management, "Executive Performance and Accountability," *Federal Register*, p. 45549.

[40] U.S. Office of Personnel Management and U.S. Office of Management and Budget, "Senior Executive Service Performance-Based Pay System," briefing slides, July 2004, available from author. For more details, see U.S. Office of Personnel Management and U.S. Office of Management and Budget, "Executive Performance and Accountability," pp. 45552-45553.

[41] U.S. Office of Personnel Management and U.S. Office of Management and Budget, "Executive Performance and Accountability," p. 45548.

- Documentation from the two appraisal periods preceding the request on senior executive annual summary ratings (or ratings of record for senior professionals) and corresponding pay adjustments, cash awards, and levels of pay provided to the senior executives and senior professionals.

- Any additional information that OPM and OMB may require to make a determination of an agency's performance appraisal system(s).[42]

Full and Provisional Certification

Full certification of an agency's SES performance appraisal system is for two calendar years, but OPM, with OMB's concurrence, may terminate certification if it determines that an agency has failed to continue to adhere to applicable requirements. If an agency fulfills OPM's annual reporting requirements, and the information contained in the agency's reports supports continued certification, full certification is to be renewed automatically. Annual reports are to include a synopsis of annual summary ratings and ratings of record, rates of basic pay, pay adjustments, cash awards, and aggregate total compensation.[43]

Provisional certification may be granted by OPM, with OMB's concurrence, for appraisal systems that meet design requirements, but for which insufficient documentation exists to determine whether the implementation of the system meets certification requirements. Provisional certification is for only one calendar year, though OPM may extend provisional certification into the following calendar year, if warranted. An agency may apply for, and receive, provisional certification more than once.[44]

No senior executive can have his or her pay reduced because he or she transferred from an agency that has a certified system to an agency that does not have a certified system.[45] Similarly, if an agency loses its certification, any senior executive whose base pay is higher than EX-III (the cap for appraisal systems that have not been certified) cannot have his or her base pay reduced for this reason. However, a senior executive in this situation "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 ...."[46]

The new system represents a trade-off for senior executives: higher caps on base pay (EX-III for agencies without a certified appraisal system, and EX-II for agencies

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[42] 5 CFR § 430.405(b).

[43] 5 CFR § 430.405(c) and (e)(3).

[44] 5 CFR § 430.405(c)(2) and (f).

[45] 5 CFR § 534.404(h)(2).

[46] 5 CFR § 534.403(b).

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with certified appraisal systems) versus the elimination of locality pay and annual across-the-board pay adjustments. For some senior executives, these changes may mean they receive relatively small increases in their base pay, while others may receive increases comparable to pay increases they received under the old pay system.

The Office of Personnel Management maintains a current list of agencies whose SES performance appraisal systems have been fully or provisionally certified.[47] To date, two agencies have received full certification for an SES appraisal system. The General Services Administration (GSA) received full certification for 2004-2005; the Department of Labor for 2006-2007. Numerous other departments and agencies have received provisional certification. See **Table 5** for agency certification status.

Policy Issues

The new pay system for the SES ushered in some fairly significant changes for senior executives and their supervisors. Implementation of a rigorous performance management system that directs agencies to assign performance ratings based on measurable results and to make distinctions among senior executives based on their job performances it intended to mitigate against, if not eliminate, rating inflation. Performance ratings are intended to accurately reflect the job performances of senior executives, thus helping to ensure that they are being held accountable for their work. In practical terms, the new system is configured to ensure that top performers in the SES receive the greatest rewards in terms of performance ratings and, by extension, pay increases. Average performers are to receive ratings and pay increases, if warranted, commensurate with their performances as well. When coupled with the increase in the cap on base pay, and the addition of a higher cap for performance management systems certified by OPM, these changes represent a substantial effort to identify and reward the best performers in the SES.

While the anticipated benefits of the new system are significant, several policy issues related to the system's implementation have been mentioned, including its implementation and implications, the system's emphasis on meaningful distinctions, the concerns of senior executives, and institutional issues.

Meaningful Distinctions and Ratings Distributions

"Meaningful Distinctions" Is Not Defined. According to the Administration, requiring agencies to make meaningful distinctions in the relative performances of senior executives is essential to ensuring that individuals reap rewards commensurate with their performance, and, in particular, that only outstanding performers receive the greatest rewards. While OPM has clearly stated the objective and rationale for this goal, it has not explicitly defined or described what is meant by the term "meaningful distinctions." For example, OPM's Associate Director for Strategic Human Resource Policy reportedly said: "We are interested in agencies making distinctions, which means we don't want everybody to be rated the

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[47] The list of these departments and agencies is available at [http://www.opm.gov/ses/certification.asp].

same."[48] In memoranda it has released on this subject, OPM makes general statements about agency ratings of senior executives, indicating that some progress has occurred, but also noting that more needs to be done. Although the evidence presented by OPM consists of tables that list individual agencies (see **Table 4**), none is identified by name as an example of an organization that is making progress or that has failed to improve. Thus, there is no indication as to what precisely constitutes "progress" or what percentage of senior executives who have received the highest rating in the agency's SES appraisal system would render a system acceptable.

From OPM's perspective, the lack of an explicit definition or description of "meaningful distinctions" may be considered a necessity. Forced distributions of ratings (that is, quotas) are not permitted for senior executives,[49] and thus OPM employees may not want to communicate to agencies that certain distributions of ratings would be preferable to others. A possible advantage of this approach is that OPM officials are able to exercise a significant degree of discretion in determining whether an agency has met the requirement to make meaningful distinctions among the performances of its senior executives. Additionally, in the absence of an explicit definition, OPM's view or criterion of what type(s) of rating distributions qualify as reflecting meaningful distinctions could shift over time.

A Focus on the Highest Level. What is clear about OPM's approach is that it focuses exclusively on only one portion of agencies' rating distributions: the percentage of senior executives who receive the highest summary appraisal rating. Referring to the implementation of the new SES pay system, OPM noted in a report on alternative pay systems that "[s]tronger distinctions are being made, with previous cases of extremely high and implausible percentages of *Outstanding* ratings declining so that the 'outstanding' description can truly carry its intended connotation of 'stands out as an exception.'"[50] **Table 4** displays the data that were included in OPM's 2004, 2005, and 2006 memoranda on SES performance ratings and awards.[51] (The data in the tables refer to FY2000-FY2005.)

Data provided subsequently by OPM show that several agencies changed the number of levels in their SES appraisal systems during this period. Most changes during the period 2003-2005 were necessitated by a requirement that, under the new pay system, agencies' appraisal rating systems have at least four levels.[52] The number of levels in an agency's appraisal system is included in the following table.

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[48] Tim Kauffman and Mollie Ziegler, "Fewer Execs Get Top Ratings," *Federal Times*, Oct. 24, 2005, p. 1.

[49] 5 CFR § 430.304(c)(3).

[50] U.S. Office of Personnel Management, *Alternative Personnel Systems in Practice and a Guide to the Future*, Oct. 2005, available at [http://www.opm.gov/publications/AlternativePersonnelSystemsOct2005.pdf], p. 17. (Italics in original.)

[51] The tables in the 2004, 2005, and 2006 OPM memoranda included rows for "all others" (all other agencies not already listed in the tables) and "government-wide." These rows are not included here because the information was aggregated, which undermines the usefulness of the information.

[52] 5 CFR § 430.405(b)(1)(iii)(A).

This information aids in making comparisons among agencies with the same number of rating levels, and in attempting to discern whether shifting from a three-level system, popularly known as a "pass-fail" system, to a four- or five-level system might have contributed to a decrease in the percentage of senior executives receiving the highest rating.[53] For example, **Table 4** shows that the Department of Education moved from a three-level to a five-level appraisal system in FY2005; that year, its percentage of SES employees rated at the highest level dropped to 53%. In previous years, the percentage was between 98% and 100%.

[53] The three-level system was referred to as a "pass-fail" system because, in practice, it functioned as a two-level system. It has been and continues to be very rare for a senior executive to receive the lowest rating ("1").

Table 4. Career SES Performance Ratings by Agency, FY2000-FY2005

Agency	Percentage of Career Senior Executives Rated at the Highest Level and Number of Levels in the Appraisal System[a]					
	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Dept. of Agriculture (USDA)	35% 5	36% 5	35% 5	40% 5	40% 5	40% 5
Dept. of Commerce	88% 5	80% 5	81% 5	80% 5	49% 5	45% 5
Dept. of Defense (DOD)[b]	99% 5	99% 5	97% 5	96% 5	100% 5	32% 5
Dept. of Education	100% 3	100% 3	100% 3	98% 3	99% 3	53% 5
Dept. of Energy (DOE)	100% 3	99% 3	18% 4	38% 4	42% 5	40% 4
Dept. of Health and Human Services (HHS)	90%[e] 3	91%[e] 3	99%[e] 3	100%[e] 3	52%[f] 4	56% 4

Agency	Percentage of Career Senior Executives Rated at the Highest Level and Number of Levels in the Appraisal System[a]					
	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Dept. of Homeland Security (DHS)	N/A	N/A	N/A	N/A	83% 5	54% 5
Dept. of Housing and Urban Development (HUD)	100% 3	99% 3	100% 3	100% 3	41% 5	55% 5
Dept. of the Interior	100% 3	100% 3	100% 3	100% 3	22% 5	18% 5
Dept. of Justice	91% 5	91% 5	88% 5	85% 5	60% 5	62% 5
Dept. of Labor	69% 5	61% 5	48% 5	33% 5	35% 5	39% 5
Dept. of State	100% 5	100% 5	99% 4	98% 4	94% 4	60% 5
Dept. of Transportation (DOT)	99% 3	100% 3	100% 3	100% 3	32% 5	23% 5

Agency	Percentage of Career Senior Executives Rated at the Highest Level and Number of Levels in the Appraisal System[a]					
	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Dept. of the Treasury[c]	66% 5	63% 5	59% 5	52% 5	41% 5	44% 5
Dept. of Veterans Affairs (VA)	56% 5	56% 5	57% 5	67% 5	65% 5	62% 5
Environmental Protection Agency (EPA)	85% 5	85% 5	69% 5	64% 5	60% 5	31% 5
Federal Emergency Management Agency (FEMA)	90% 4	31% 4	0%[e] 4	46% 4	N/A[f]	N/A
General Services Administration (GSA)	96% 5	92% 5	53% 5	55% 5	25% 5	33% 5
Merit Systems Protection Board (MSPB)	100% 5	89% 5	11% 4	Not listed[g] 4	Not listed[h] N/A	Not listed[i] 5
National Aeronautics and Space Administration (NASA)	73% 5	76% 5	76% 5	76% 5	76% 5	53% 5

Agency	Percentage of Career Senior Executives Rated at the Highest Level and Number of Levels in the Appraisal System[a]					
	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Nuclear Regulatory Commission (NRC)	100% 3	100% 3	99% 3	100% 3	9% 5	9% 5
Office of Management and Budget (OMB)	88% 5	20% 5	25% 4	32% 4	35% 4	23% 4
Office of Personnel Management (OPM)	90% 5	37% 5	46% 5	31% 5	50% 5	42% 5
Office of the Secretary of Defense (OSD)	100% 3	99% 3	100% 3	99% 3	Not listed[j]	Not listed[k]
Small Business Administration (SBA)	79% 5	82% 5	50% 5	45% 5	70% 5	52% 5
Social Security Administration (SSA)	100% 3	100% 3	99% 3	41% 5	55% 5	58% 5
U.S. Agency for International Development (USAID)	95% 5	79% 5	42% 5	38% 5	53% 5	53% 5

Sources: Kay Coles James, Director, U.S. Office of Personnel Management, "Reporting SES Performance Ratings and Awards for FY2003," memorandum, Feb. 12, 2004, available at [http://www.opm.gov/hrmc/2004/msg-011.asp]; Dan G. Blair, Acting Director, U.S. Office of Personnel Management, "FY2003 SES Performance Ratings and Awards," memorandum, Mar. 16, 2005, available at from the author; Linda M. Springer, Director, U.S. Office of Personnel Management, "FY2004 SES Performance Ratings, Awards, and Salaries," memorandum, Oct. 4, 2005, available at [http://www.chcoc.opm.gov/transmittal_detail.cfm?ID=588]; U.S. Office of Personnel Management, *Report on Senior Executive Pay for Performance for Fiscal Year 2005*, available at [http://www.chcoc.gov/transmittal_detail.cfm?ID=752], July 2006, p. 5.

Notes:

a. The percentages have been rounded. Some of the data in this table do not match the information found in the tables in Appendix A. It is unclear why there are discrepancies, since the information for both tables came from OPM. However, the information was obtained from two different sources within OPM. The memoranda issued by the Director of OPM do not indicate the number of levels in each agency's system or systems; hence, the number of levels was discerned using the OPM-provided data found in Appendix A.
b. From FY2000 through FY2003, the Department of Defense (DOD) information did not include the Office of the Secretary of Defense (OSD). Beginning in FY2004, apparently, OSD apparently is included with DOD.
c. Based on the information provided by OPM to the author, HHS had both 3-level and 5-level systems during the period FY2000-FY2003. However, the ratings information provided in OPM memoranda (which are the source for this table) do not provide two separate entries for HHS. It is not known how OPM compiled the data from two different rating systems into one entry. See the HHS tables (3-level and 5-level) in Appendix A.
d. Apparently, HHS converted both its 3-level and 5-level systems into one or more 4-level systems in FY2004. See the HHS tables in Appendix A.
e. Other information provided by OPM (see the FEMA table in Appendix A) shows that 10% of FEMA's senior executives received the highest rating in FY2002.
f. The Federal Emergency Management Agency became part of DHS in 2003, and its SES performance rating data are reported as part of the department's data beginning in FY2004.
g. The MSPB table in Appendix A shows that 100% of the agency's senior executives were rated at the highest level. The number of rating levels was four.
h. Information on MSPB was not included in the applicable memorandum or the FY2004 data provided by OPM to the author.
i. The MSPB table in Appendix A shows that 36% of the agency's senior executives were rated at the highest level. The number of rating levels was five.
j. The OSD table in Appendix A shows that 100% of the organization's senior executives were rated at the highest level. The number of rating levels was three.
k. Apparently, OSD was included with DOD in FY2004.

The data in the preceding table show that only six agencies had to change the number of rating levels in their appraisal systems as a result of the new pay system requirements. In 2004 or 2005, the Department of Health and Human Services moved from a 3-level to a 4-level system while the NRC, HUD, DOT, Department of the Interior, and Department of Education changed from 3-level to 5-level systems. Although not required, the Department of State shifted from a 4-level to a 5-level system, and the Department of Energy returned to a 4-level system in 2005 after using a 5-level system for one year (2004). All other agencies or organizations, excluding those for which OPM no longer reports data, retained the number of rating levels they had prior to the implementation of the new pay system.

Fifteen agencies experienced substantial decreases, from 2003 to 2004, or from 2004 to 2005 in the proportion of senior executives receiving the highest rating. The smallest of these decreases, 23 percentage points, occurred at NASA. The Nuclear Regulatory Commission had the largest decrease, 91 percentage points. Except for DOD, which had a decrease of 68 percentage points, the largest decreases were experienced by agencies that shifted to a 4- or 5-level system in 2004 or 2005: Department of Education, 46 percentage points; HHS, 48 percentage points; HUD, 59 percentage points; Interior, 78 percentage points; State, 34 percentage points; DOT, 68 percentage points; the NRC, 91 percentage point; and SSA, 58 percentage points.[54] Agencies that had decreases between 23 and 31 percentage points were organizations that already had 5-level systems. These were the Department of Commerce, DHS, the Department of Justice, the EPA, GSA, and NASA. The Small Business Administration's percentage actually increased initially, from 45% (FY2003) to 70% (FY2004), and then decreased to 52% for FY2005.

Aside from the Department of Agriculture (USDA), which had the same percentage (40%) of senior executives receive the highest rating for each year from FY2003 through FY2005, and the VA, which had minimal changes during the same period, the remaining agencies showed some variations over the years. The percentages at Labor and Treasury decreased gradually over six years, from 69% to 39% (Labor) and from 66% to 44% (Treasury). The remaining six agencies experienced dramatic drops in percentages from one year to the next, and, in some cases, increases in later years. The agencies that experienced a significant one-year decrease prior to 2004, when the new pay system was implemented, are as follows: the Department of Energy decreased from 99% (2001) to 18% (2002); OMB decreased from 88% (2000) to 20% (2001); OPM dropped from 90% (2000) to 37% (2001); SBA decreased from 82% (2001) to 50% (2002); SSA dropped from 99% (2002) to 41% (2003); and USAID decreased from 79% (2001) to 42% (2002). It is notable that these significant decreases occurred prior to the implementation of the new SES pay system, although, as discussed above, the Bush Administration, through OPM, had encouraged agencies, beginning in 2001, to make meaningful distinctions among their senior executives. Possibly, then, the changes noted here reflect these agencies' efforts to recast how they administered their SES appraisal systems.

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[54] Regarding DOD, the significant decrease may be attributable, at least in part, to two related factors: OSD shifted from a 3-level system to a 4- or 5-level system, and OSD figures are included with DOD figures beginning in FY2005.

Awarding the top-level rating to all, or virtually all, senior executives in a given agency would not appear to meet OPM's broad concept of "meaningful distinctions." However, because OPM at present is emphasizing only the percentage of executives who receive the top-most rating, it is conceivable that an agency could, in a five-level appraisal system, cluster virtually all of its senior executives at the top two rating levels as long as the percentage of individuals who receive the highest rating does not exceed certain levels.

Explanations for the Decrease in Top Ratings. The Office of Personnel Management contends that the lower percentage of employees receiving the top rating in recent years reflects the success of agencies' efforts to make meaningful distinctions among the performances of their senior executives. For example, in her 2006 memorandum that touched on this issue, the Director of OPM wrote:

> The data indicate that Federal agencies are taking seriously the requirement to develop rigorous appraisal systems and to make meaningful distinctions in performance ratings and pay. In this regard, reporting agencies shifted to appraisal systems with at least one level above fully successful systems and away from pass/fail systems.... We expect the 2006 rating cycle to continue improvement in holding senior executives accountable for achieving results, and rating and rewarding them accordingly.[55]

As the OPM Director's comments suggest, one factor that seems to have facilitated a decrease in the number of top ratings in some agencies has been the elimination of 3-level appraisal systems in favor of 4- and 5-level systems. In every instance, adoption of a 4- or 5-level system in 2004 or 2005 resulted in a significant drop in the percentage of senior executives receiving the highest rating. (Prior to the implementation of the new SES pay system, the percentage of top ratings at some agencies had decreased. These changes might have been related to the Administration's encouragement, beginning with a November 1, 2001 OPM memorandum (which is cited above), that agencies make meaningful distinctions among their senior executives).

Others have suggested, however, that the reduction is a function of forced distributions, with limits on the number of top ratings that can be given to senior executives. For example, the Senior Executives Association (SEA) raised the issue of quotas with OPM in late 2005, noting two instances in which it appeared that agencies had established quotas, or were directing employees to take actions that amounted to applying a forced distribution. In its letter to the OPM Director, SEA stated that the Navy's rating plan included a page titled "Expectations" and set "forth percentages of executives who may be rated as 'Exceptional'." The association went on to say in its letter that "[The Navy's plan] anticipates de facto forced distribution for rating levels rather than an objective analysis of achievements."[56]

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[55] Linda M. Springer, Director, U.S. Office of Personnel Management, "Report on Senior Executive Service Pay for Performance for Fiscal Year 2005," memorandum, July 11, 2006, available at [http://www.chcoc.gov/transmittal_detail.cfm?ID=752].

[56] Carol Bonosaro, President, and William L. Bransford, General Counsel, Senior Executives Association, letter to Linda M. Springer, Director, U.S. Office of Personnel Management, (continued...)

The SEA letter also discussed the USDA's Agricultural Research Service, recounting the experience of one of its members. Apparently, a senior executive in the Agricultural Research Service was told that no more than 25% of the senior executives in the research service could receive the highest rating, and that she and a colleague were going to be downgraded. Both had received "outstanding" ratings in previous years. The senior executive was instructed to lower "whatever critical element she wanted" in rating her colleague (also a senior executive).[57] In the January 2006 issue of *Action*, an SEA publication, it was noted that the OPM Director had responded to SEA and "promised to follow up with the two agencies to share SEA's concerns." The OPM Director reportedly also said "we will continue to work with all agencies to ensure they operate in accordance with regulatory requirements...."[58]

One of the provisions in the 2007 certification guidance issued by OPM apparently is intended to address this problem. In her memorandum accompanying the guidance, the OPM Director stated:

> I want to call your attention to a concern we have about the implementation of the system, specifically with the communications and training that agencies are providing. For this reason, we are asking agencies to submit a narrative statement describing the relevant briefings, [and] other communications and training provided to their senior employees, rating officials, Performance Review Boards (PRBs), and human resources staff both in preparation for and after the annual performance cycle.
>
> We are asking for this information because of an apparent lack of knowledge among senior executives regarding their performance and pay systems. We are also concerned that some executives perceive their agencies are using quotas, or forced distributions, to determine ratings.... To avoid even the appearance of such a practice, it is particularly important that executives understand the effect organizational performance can have on individual ratings and the overall rating distribution.... Even the best-intentioned, best-designed system can fail if not implemented properly, and a major aspect of any successful system implementation is effective communication of the system and its results to participants and appropriate training for those responsible for its operation.... We will factor the adequacy of your communication plan and training into the certification decision.[59]

OPM noted in the same memorandum that it had developed briefing slides for agencies to use in explaining, from a governmentwide perspective, the pay for performance system for senior executives (and SL/ST employees).

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[56] (...continued)
Nov. 9, 2005.

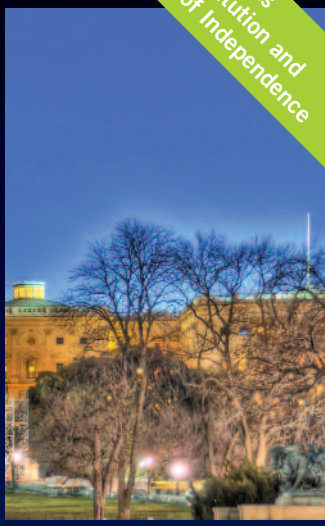
[57] Ibid.

[58] "OPM Responds to Report of Quota Use," *Action*, Jan. 2006, p. 1.

[59] Springer, "Certification of Performance Appraisal Systems for Senior Employees for Calendar Year 2007," pp. 1-2.

By Bradford Fitch

Includes U.S. Constitution and Declaration of Independence



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It is unclear whether OPM's approach will be sufficient in addressing the question of forced distributions. As demonstrated by the text of the memorandum, it appears that OPM characterizes this issue as stemming from poor communications ("a concern we have ... about the implementation of the system, specifically with the communications"), insufficient information ("lack of knowledge"), and erroneous perceptions ("some executives perceive their agencies are using quotas"). No specific mention is made of the SEA allegations involving the Navy or USDA, or any efforts by OPM to verify independently whether ratings accurately reflect the performances of senior executives. However, it has been reported that OPM's Associate Director for Strategic Human Resources Policy indicated that his agency "... would not set quotas on the number of high rankings that agencies could hand out, and would allow agencies to continue to rate most employees highly as long as the agencies were able to justify the rankings."[60]

Aside from the information provided by the SEA about the Navy and the Agricultural Research Service, there does not appear to be any data available that either confirms or disproves the use of quotas. For this and other reasons, forced distributions could remain a sensitive issue for some time, particularly if similar pay-for-performance systems are implemented throughout the federal government (for example, the General Schedule (GS) pay system).

Trends in Ratings, Awards, and Pay. **Table 5** shows that as the percentage of senior executives governmentwide receiving the highest rating has been decreasing since FY2001, the percentage of senior executives receiving awards has been generally increasing, as has the average amount of awards.

Table 5. Governmentwide Trends in Ratings and Awards for Senior Executives, FY2001-FY2005

	FY2001	FY2002	FY2003	FY2004	FY2005
Percentage of Senior Executives Receiving the Highest Rating	84%	75%	75%	59%	43%
Percentage of Senior Executives Receiving Awards	52%	49%	57%	58%	67%
Average Amount of Award	$12,324	$12,444	$12,883	$13,734	$13,814

Sources: Dan G. Blair, Acting Director, U.S. Office of Personnel Management, "FY2003 SES Performance Ratings and Awards," memorandum, Mar. 16, 2005, available from the author; Linda M. Springer, Director, U.S. Office of Personnel Management, "FY2004 SES Performance Ratings, Awards, and Salaries," memorandum, Oct. 4, 2005, available at [http://www.chcoc.opm.

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[60] Shawn Zeller, "Senior Executive Corps to See Base Salary Increases," *Government Executive*, Daily Briefing, July 26, 2004, available at [http://www.govexec.com/dailyfed/0704/072604sz1.htm].

gov/transmittal_detail.cfm?ID=588]; and Linda M. Springer, Director, U.S. Office of Personnel Management, "Report on Senior Executive Service Pay for Performance for Fiscal Year 2005," memorandum, July 11, 2006, available at [http://www.chcoc.gov/ transmittal_detail.cfm?ID=752].

Note:

a. Percentages have been rounded.

The Bush Administration, as noted above, began promoting the idea of meaningful distinctions in fall 2001, which may have contributed to the 9% decrease in the percentage of highest ratings from FY2001 to FY2002. The largest decreases occurred, however, after implementation of the new pay system. From FY2003 to FY2005, the percentage of senior executives receiving the highest rating dropped by 32 percentage points. Overall, from FY2001 through FY2005, this percentage decreased by nearly one-half, from 84% to 43%. During the same period, the percentage of executives who received awards grew from 52% to 67%, and the average amount of awards went from $12,324 to $13,814, an increase of $1,490, or 12%.

The seeming disconnect between the decreasing percentage of executives receiving the highest ratings, and the increasing percentage of individuals receiving awards and the growth in the average size of awards has several possible explanations. Individual agencies may be using the awards system to compensate for lower ratings or the loss of locality pay. In a variation on the latter, the SEA President reportedly has suggested that some agencies could be using larger awards to "counteract any negative reaction from reducing performance ratings."[61] An alternative explanation reportedly offered by OPM's Associate Director of the Strategic Human Resources Policy Division is that "the Bush administration's heightened focus on evaluating, recognizing and rewarding individual performance likely has contributed to the larger payouts. [The Associate Director said:] 'There is a potential here that we've raised the agencies' sensitivity to the value of their executives. They're really looking at what their executives are doing and what they're producing....'"[62]

As reported in the *Federal Times*, whether a senior executive receives a pay raise, and the amount of any raise, varies from agency to agency.[63] For example, in 2006, senior executives who met or exceeded performance expectations (that is, individuals who received a "fully successful" or higher rating) were eligible for a 1.9% pay increase. However, according to this publication, three of the five agencies that provided data to the *Federal Times* did not give the 1.9% increase to all eligible

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[61] Tim Kauffman and Mollie Ziegler, "Fewer Execs Get Top Ratings," *Federal Times*, Oct. 24, 2005, p. 6.

[62] Tim Kauffman, "Fewer Glowing Appraisals, But More Bonuses for Senior Execs," *Federal Times*, July 24, 2006, p. 4.

[63] Tim Kauffman, "What's a Top-Performing Exec Worth? Depends on the Agency," *Federal Times*, Feb. 6, 2006, p. 1

executives. The three agencies were HHS, HUD, and the VA.[64] While some might question the lack of consistency or standardization across the government, the Senior Policy Advisor to the OPM Director reportedly said: "'The fact that there are differences across agencies might make great strategic sense.'"[65] Possible reasons for differences among agencies include the following:

> Agencies adopted performance-based [SES] pay systems at different times, so those who got a late start may offer higher raises in an effort to quickly get their executives up to par on the more lucrative pay scale afforded under a certified performance-based pay system. Some have adopted a tiered pay structure, in which different ranges of raises are available to executives holding different levels of responsibility and importance in their agency. Still other agencies could be making greater use of bonuses than others to augment raises for high performers.[66]

Ultimately, the significance of the differences in how agencies allocate pay increases may be determined by senior executives themselves. Will they view the lack of standardization as inequitable, or desirable, whereby agencies are allowed to exercise discretion? Answers may vary depending upon, perhaps, where a senior executive is employed.

Ratings Distributions by Agency. **Appendix A** displays the SES annual summary rating distributions, FY1999-FY2005, for the same agencies that OPM includes in its memoranda on SES performance ratings and awards.[67] (FY2005 data are the most current data available.) Comparisons of ratings distributions before and after the implementation of the new SES pay system could aid in understanding what constitutes "meaningful distinctions" and could show how senior executives in those agencies have fared under the new system. Several years of post-implementation data (beginning with FY2004 data) will be needed in order to make this comparison more definitively and discern the effects on members of the SES. (All references to tables in this section refer to the tables in **Appendix A**, except as otherwise noted.)

Excluding agencies where at least 90% of the senior executives were awarded the highest ratings over several years, a discernible pattern or distribution is evident at a few agencies. That is, the distribution of ratings was fairly similar from year to year. A summary of seven years of data from **Appendix A** shows these patterns:

- Department of Agriculture: 10% or fewer at level 3; 46%-60% at level 4; 35%-44% at level 5.

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[64] Ibid., p. 6.

[65] Ibid.

[66] Ibid.

[67] Some of the tables may include data from more than one appraisal system. Federal agencies are permitted to establish more than one performance appraisal system for their senior executives, and different agency components may choose to establish different appraisal systems. Additionally, some agencies changed the number of levels in their appraisal systems during the period FY1999-FY2005, and these changes are noted in the appropriate tables.

- Department of Veterans Affairs: 1%-2% at level 2; 8%-16% at level 3; 25%-33% at level 4; and 56%-67% at level 5.

- Department of the Treasury: 11%-30% at level 3; 29%-47% at level 4; and 39%-54% at level 5.

Senior Executives' Concerns

Potential for Politicization. Whereas some believe the new SES pay system promises to be effective and credible, the judgment of other interested parties, including some senior executives and other federal government employees, will apparently hinge on whether they perceive the system as being equitable, including being free from partisan influence, and transparent. The general acceptance of the new pay system may be contingent, at least in part, upon how it is implemented and how it is perceived.

Some have expressed concern about whether implementation of the new pay system will be carried out in an equitable manner. In the following comments, several members of SEA suggest that the new pay system could lead to the politicization of the SES.

> Having worked as a career SES in several agencies for the past 22 years and witnessed the games that some politicals [political appointees] play with the SES, I would insist upon sufficient safeguards. For example, agency head A wants to free up some SES slots for his or her "supporters" by encouraging current career SES staff to retire. An arbitrary salary cut of let's say $20,000 per year in salary for alleged poor performance, impacting the person's high-3 retirement annuity calculation, would drive many retirement-eligible SES out the door.
>
> I've worked directly for a large number (and variety) of political appointees, more than a few of whom responded to career executives on a purely visceral level. If they liked you, your errors were a reflection of desirable risk-taking. If they didn't like you, your less than total successes were a reflection of your lack of initiative. In other words, I find pay compression under the current system to be more desirable than a wild card system, which is what the proposal looks like to me.
>
> Having the agency set the basic pay would always be "political" whether stated or not. Those on the "right side" or politically connected will be the ones to benefit and those on the "other side" (depending on what party is running the Administration) will not benefit regardless of performance.[68]

One of the specific issues raised by the SEA concerns the increase in the amount that a senior executive's pay could be reduced for performance or conduct reasons.

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[68] Carol A. Bonosaro, President, and William Bransford, General Counsel, Senior Executives Association, "Comments of the Senior Executives Association on the Proposed Rule Regarding 'Senior Executive Service Pay and Performance Awards and Aggregate Limitation on Pay," pp. 9-10, Aug. 30, 2004, available at [http://seniorexecs.org/fileadmin/user_upload/Letter/08-30-2004_PayRegsFinalComments.pdf].

Under the old system, an executive's pay could be reduced no more than one pay level per year. In 2003, for example, a senior executive who was moved from pay level ES-4 to ES-3 would have experienced a 4.7% decrease in base pay. (Moving from ES-3 to ES-2 represented a 4.3% decrease; ES-2 to ES-1 would have resulted in a 4.5% decrease in base pay.) The new rules allow for an annual pay reduction of up to 10% in base pay. In comments it provided to OPM, the SEA stated that

> ... with regard to the career SES, it is important to remember the need to avoid the fray of politics and the specter of undue politicization. One of the purposes of the SES is to help maintain consistency during political change. Given human nature, there is a strong probability that, at some point, the allowed 10% reduction will be misused by a political appointee in order to affect or influence a desired politically motivated decision. The mere threat or existence of the 10% reduction has the potential to become a subtle and negative influence that can well contribute to the politicization of the career SES, or at a minimum, result in arguments or perceptions that the career SES has been subject to improper political pressure. This is particularly true considering the impact on a career Senior Executive's retirement annuity that will result when pay is reduced.[69]

In its response to SEA's concerns about possible politicization of the SES under the new pay system, OPM officials wrote: "The new SES pay system provides greater opportunities for higher rates of basic pay and larger pay adjustments, and with these opportunities come greater risks. We believe it is necessary to provide agencies with the authority to reduce basic pay up to 10 percent. Therefore, we made no changes in the regulations."[70] Those parties concerned that the new system possibly could facilitate the politicization of the SES suggest that the withholding of pay adjustments or the offering of pay increases also could be used in attempts to exert undue influence over senior executives.

DOD Experience. A situation that arose at DOD in 2005 involving pay increases for career senior executives and noncareer senior executives demonstrates how differential treatment may be perceived. In a memorandum dated January 12, 2005, the Director of Administration and Management in the Office of the Secretary of Defense outlined an SES pay increase proposal that would have permitted noncareer SES members to receive a higher increase in base pay than certain categories of career SES members. While noncareer senior executives — who are also sometimes referred to as political appointees — would have received a 2.5% increase in base pay, career senior executives in certain categories (as described in the memorandum) would have received a 2.38% or 2% increase in base pay in 2005. By way of explanation for these differences, the Director wrote that noncareer SES "members occupy some of the most senior positions in the Department, are ineligible for performance awards and Presidential Rank Awards and did not receive the CY2004 pay adjustment until late in the year."[71] In a letter to the head of OPM,

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[69] Ibid., p. 2.

[70] U.S. Office of Personnel Management, "Senior Executive Service Pay and Performance Awards; Aggregate Limitation on Pay," p. 70358.

[71] Raymond F. DuBois, Director, Administration and Management, Office of the Secretary (continued...)

SEA's President noted that OPM regulations governing salary adjustments for members of the SES do not mention "allowing an adjustment solely because of the political character of an appointment ...." The SEA letter also noted that DOD's proposed policy would have violated 5 U.S.C. § 2302(b)(1)(E), which prohibits discriminating for, or against, any employee on the basis of political affiliation.

Congress's response to what occurred at DOD was Section 1020 of P.L. 109-13, Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (119 Stat. 231, at 251). Section 1020 states:

> None of the funds appropriated to the Department of Defense by this Act or any other Act for fiscal year 2005 or any other fiscal year may be expended for any pay raise granted on or after January 1, 2005, that is implemented in a manner that provides a greater increase for non-career employees than for career employees on the basis of their status as career or non-career employees, unless specifically authorized by law: *Provided*, That this provision shall be implemented for fiscal year 2005 without regard to the requirements of section 5383 of title 5, United States Code: *Provided further*, That no employee of the Department of Defense shall have his or her pay reduced for the purpose of complying with the requirements of this provision.

The *Washington Post* and *Government Executive* reported that a July 1, 2005, memorandum, issued by the Principal Deputy Under Secretary of Defense for Personnel and Readiness, directed DOD offices to implement retroactive 2.5% pay increases to career senior executives who were initially denied the 2.5% raise.[72] According to the *Government Executive* article, the retroactive raise will apply to 358 career senior executives in DOD.

NASA Experience. Questions also have been raised about pay raises for senior executives employed by NASA. As reported in the news, approximately 50% of NASA's senior executives received a 2.5% pay raise; another 27% received raises ranging from 0.5% to less than 2.5%; and the remaining 23% did not receive pay raises. The report that NASA considered the importance of jobs held by senior executives as part of its calculations troubled some NASA executives. Reportedly, one executive stated: "The system is geared toward going along to get a raise or performance bonus."[73] A NASA official responded: "We did establish a structure based on position worth — positions with the greatest responsibility were eligible for the greatest increases. The actual fact is that we rewarded the people that are responsible for the mission implementation in the agency, and they happen to be the

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[71] (...continued)
of Defense, "Increase in the Senior Executive Service and Defense Intelligence Senior Executive Service Base Pay," memorandum, Jan. 12, 2005.

[72] Stephen Barr, "Retroactive Salary Increases Ordered for Some Pentagon Career Executives," *Washington Post*, July 12, 2005, p. B2; Karen Rutzick, "Pentagon Gives Retroactive Pay Raise to Career Executives," Daily Briefing, *Government Executive*, July 18, 2005, available at [http://www.govexec.com/dailyfed/0705/071805r2.htm].

[73] Stephen Barr, "Complaints about NASA Raises Follow Switch to Performance-Based System," *Washington Post*, Mar. 2, 2005, p. B2.

people in the senior leadership positions." Another NASA official added that "decisions were based on performance primarily."[74]

While the news article is obviously not evidence that anyone acted improperly at NASA, it demonstrates the importance of employees' perceptions. Speculation within the SES ranks as to why certain members of the service fared better than others on performance appraisals might be fueled by, or lead to, charges of favoritism. Perhaps such concerns have existed previously, but the perceived increase in latitude afforded supervisors under the new system has led some to suggest that perceived favoritism may be a problem, or a greater problem, under the new system than it was under the previous system.

Senior Executives Association Survey. In 2006, the Senior Executives Association conducted a non-scientific survey of members of the SES in an effort to determine the impact of the new pay system on senior executives. The resulting report provided this summary of significant findings:[75]

> 1. Members of the Senior Executive Service support effective performance management and believe they should be held accountable for agency performance.
>
> 2. A majority of respondents believe that de facto quotas are affecting final performance ratings.
>
> 3. Respondents reported disconnects between ratings, pay adjustments, and bonuses.
>
> 4. Respondents reported that the new system has not affected their performance or the performance of their peers; however, the new system has negatively affected morale.
>
> 5. Respondents reported the new system has been implemented with a lack of adequate communication and a resultant lack of transparency.
>
> 6. Survey respondents noted that the abolishment of the SES ranks [pay levels] and locality pay have resulted in negative impacts on the SES.[76]

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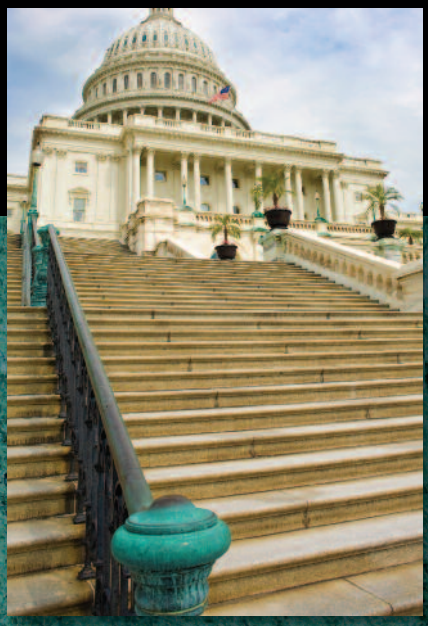
[74] Ibid.

[75] Senior Executives Association and Avue Technologies Corporation, *Survey of the Senior Executive Service Pay and Performance Management System: Lost in Translation*, 2006, available at [http://seniorexecs.org/fileadmin/user_upload/SEA_Mainstays/SEA_Avue_Pay_For_Performance_Survey_Results_Report.pdf]. It bears noting that, although 830 of the respondents are similar to the entire population (6,837) of senior executives in terms of demographic characteristics, the group of respondents was self-selected. The survey was available online, and the decision to participate or not participate was made by each individual. That is, no sampling method was used to select respondents. In survey research, self-selection may yield results that are not representative of the population of subjects.

[76] Ibid., p. 3.



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The survey provides some insight into the implementation of the new pay system, but at the same time it raises several questions. Although the first finding is positive, the remaining findings show that implementation of the new pay system has been, at least according to some survey respondents, problematic. Furthermore, the immediate (negative) effects that the pay system has had on some senior executives may serve as a caution to other government employees and may influence efforts to implement pay-for-performance elsewhere in the federal government. Although the survey's findings may not accurately portray the implementation process, the perceptions and beliefs of some senior executives may persist, prove resistant to change, and have far-reaching implications.

Missing from the SEA survey, however, is any tangible evidence of problems caused by the shift to the new pay system. One of the findings of the SEA survey was that the morale of senior executives has been affected negatively. Next questions may include the following: Has this change in morale had any visible effect on individuals? For example, has attrition, whether through retirement, resignation, or other means, increased significantly since the new pay system was implemented?

For its part, OPM has not conducted its own survey and has not indicated that it plans to do so. In her prepared remarks at a 2006 hearing on the SES pay system, the OPM Director stated that her agency was reviewing the SEA survey and "believe[d] it will help us understand areas where managers may be executing the system improperly."[77] Possibly OPM will use the SEA survey, then, as an opportunity to explore any unintended consequences of the new pay system and the sources and implications thereof.

Institutional Issues

Rank in Person. As noted previously, a fundamental principle of the Senior Executive Service is that rank resides in the individual. The final rule for the new pay system, in discussing how to set pay for an individual upon his or her initial appointment to the SES, supports this concept: "In setting a new senior executive's rate of basic pay, an agency must consider the nature and quality of the individual's experience, qualifications, and accomplishments as they are related to the requirements of the SES position, as well as the individual's current responsibilities."[78] Another excerpt from the final rule, however, might undermine the concept of rank in person. Under the new pay system, a pay adjustment is permitted when an increase in pay

> 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

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[77] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on the Oversight of Government Management, the Federal Workforce, and the District of Columbia, statement of Linda M. Springer, Director, Office of Personnel Management, unpublished hearing, 109th Cong., 2nd sess., Sept. 26, 2006, available at [http://hsgac.senate.gov/_files/testimonyspringer.pdf], p 4.

[78] U.S. Office of Personnel Management, "Senior Executive Service Pay and Performance Awards; Aggregate Limitation on Pay," p. 70363.

> or other competencies from a position in another agency ... [or] [t]he 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.[79]

Another indication that the principle of rank residing in the individual is not necessarily being followed is found in a 2006 OPM memorandum on SES pay regulations. Referring to "situations where a higher [pay] rate may be warranted," the Director of OPM includes, as an example, the reassignment of "current SES members into positions with substantially greater responsibility."[80]

While the principle of rank in person may have been undermined incrementally over the years through pay compression and through individual decisions that linked pay with the level of responsibility of a particular position, the rule issued by OPM in December 2004 and the [language in the 2006 memo} could be construed as validating this linkage. Reassigning a senior executive and providing him or her a pay increase based on the fact that the new position includes greater responsibility than the former position runs counter to the notion that rank resides in the person. It remains to be seen whether, and how, these two somewhat contradictory concepts — rank in person and rank associated with position — will be reconciled.

Transparency. The extent to which the administration of the SES pay system is transparent might aid in alleviating concerns about whether the system has been implemented in an equitable manner. The final rule for the SES pay system requires agencies to "provide for transparency in the processes for making pay decisions, while assuring confidentiality."[81] This is a broad statement, and the lack of detailed guidelines could allow agency personnel broad discretion in determining the extent and type of information they disclose. Uneven disclosure policies and practices across the federal government could be problematic, particularly if some agencies appear less forthcoming than others. Additionally, a lack of standardization among agency disclosure policies might undermine the usefulness of information that is made available to the public. The Senior Executives Association has called for greater transparency, with disclosure of "all information about the operation of the performance management system in an agency, including any guidance or advice provided by the agency official designated to provide oversight to the annual performance appraisal process in the agency ... summary information concerning performance ratings, annual salary adjustments, [and] the percentage of executives who receive bonuses and the range of bonus awards."[82] As noted above, in response to the possible use of forced distributions, OPM requires agencies, beginning in

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[79] Ibid., p. 70364.

[80] Linda M. Springer, Director, U.S. Office of Personnel Management, "Proposed Amendments to SES Pay Regulations," memorandum CPM 2006-01, Mar. 3, 2006, available at [http://www.opm.gov/oca/compmemo/2006/2006-01.asp], p. 1.

[81] U.S. Office of Personnel Management, "Senior Executive Service Pay and Performance Awards; Aggregate Limitation on Pay," p. 70365.

[82] Senior Executives Association, "Comments of the Senior Executives Association on the Proposed Rule Regarding 'Senior Executive Service Pay and Performance Awards and Aggregate Limitation on Pay'," n.d., p. 6, available at [http://www.seniorexecs.org/ fileadmin/ user_upload/Letter/08-30-2004_PayRegsFinalComments.pdf].

2007, to provide to OPM copies of materials they use to explain the pay-for-performance system to senior executives. Aside from this new requirement, it remains to be seen whether OPM systematically monitors agencies, provides any additional guidance related to transparency, and ensures that agencies comply with the regulation.

Provisional Certification. There is no publicly-announced limit on the number of times an agency may receive provisional certification, which is valid for only one year at a time, but has fewer requirements than full certification. That is, provisional certification permits agencies to use the higher cap on base pay for SES members (and the higher cap on total compensation for senior executives and SL/ST employees) without having to comply with all of the certification requirements. The Government Accountability Office has noted that it is:

> ... important for OPM to continue to monitor the certification process, determine whether any obstacles are impeding agencies from receiving full certification, and take appropriate measures to address them. These actions will help ensure that agencies continue to make substantive progress toward modernized performance management, and that provisional certifications do not become the norm."[83]

Although it may be premature to ascertain whether there is a trend toward serial provisional certification on the part of any agencies, **Table 6** shows the history of agencies' certification status as reported by OPM. To date, very few agencies have received full certification. Most agencies have received provisional certification, which is valid for only one year. If there is no entry in a column, that means the agency's system was not certified for that year. In such cases, it is possible that an agency did not submit a certification request, or that an agency did submit a request which, upon review by OPM, was not approved.

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[83] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on the Oversight of Government Management, the Federal Workforce, and the District of Columbia, statement of Brenda S. Farrell, Acting Director, Strategic Issues, U.S. Government Accountability Office, unpublished hearing, 109th Cong., 2nd sess., Sept. 26, 2006, available at [http://hsgac.senate.gov/_files/testimonyspringer.pdf], p. 10.

Table 6. Agency Certification Status, CY2004-CY2006

Agency	System	Calendar Year and Type of Certification[a, b]		
		2004	2005	2006
Broadcasting Board of Governors	SES		Provisional	
Consumer Product Safety Commission	SES		Provisional	Provisional
Dept. of Agriculture	SES		Provisional	Provisional
Dept. of Commerce	SES		Provisional	Provisional
Dept. of Defense	SES			Provisional
Dept. of Defense	SL/ST			Provisional
Dept. of Education	SES		Provisional	Provisional
Dept. of Energy	SES		Provisional	Provisional
Dept. of Health and Human Services	SES		Provisional	Provisional
Dept. of Homeland Security	SES		Provisional	Provisional
Dept. of Housing and Urban Development	SES		Provisional	Provisional
Dept. of Housing and Urban Development, Office of the Inspector General	SES		Provisional	Provisional
Dept. of the Interior	SES		Provisional	Provisional
Dept. of Justice	SES		Provisional	Provisional
Dept. of Labor	SES		Provisional	Full[c]
Dept. of State	SES		Provisional	
Dept. of Transportation	SES		Provisional	Provisional
Dept. of the Treasury	SES		Provisional	Provisional
Dept. of Veterans Affairs	SES		Provisional	Provisional
Environmental Protection Agency	SES		Provisional	Provisional
Equal Employment Opportunity Commission	SES		Provisional	

Agency	System	Calendar Year and Type of Certification[a, b]		
		2004	2005	2006
Federal Communications Commission	SES		Provisional	Provisional
Federal Energy Regulatory Commission	SES		Provisional	Provisional
Federal Trade Commission	SES		Provisional	Provisional
General Services Administration	SES	Full[c]	Full	Provisional
Merit Systems Protection Board	SES		Provisional	Provisional
National Aeronautics and Space Administration	SES		Provisional	Provisional
National Aeronautics and Space Administration	SL/ST		Provisional	
National Aeronautics and Space Administration, OIG	SES			Provisional
National Endowment of the Arts	SES		Provisional	
National Labor Relations Board	SES		Provisional	
National Transportation Safety Board	SES			Provisional
National Science Foundation	SES		Provisional	Provisional
Nuclear Regulatory Commission (NRC)	SES		Provisional	
Office of Government Ethics	SES		Provisional	Provisional
Office of Management and Budget	SES		Provisional	Provisional
Office of National Drug Control Policy	SES		Provisional	Provisional
Office of Navajo and Hopi Indian Relocation	SES		Provisional	
Office of Personnel Management	SES		Provisional	Provisional

Agency	System	Calendar Year and Type of Certification[a, b]		
		2004	2005	2006
Patent and Trademark Office	SES		Provisional	
Pension Benefit Guaranty Corporation	SL/ST	Full[c]	Full	Provisional
Railroad Retirement Board	SES		Provisional	Provisional
Small Business Administration	SES		Provisional	
Small Business Administration, Office of Inspector General	SES		Provisional	Provisional
Social Security Administration	SES		Provisional	Provisional
Surface Transportation Board	SES			Provisional
U.S. Agency for International Development	SES		Provisional	

Sources: U.S. Office of Personnel Management, "Agency Certification Status Archive (2004/2005)," available at [http://www.opm.gov/ses/certification-archive.asp]; U.S. Office of Personnel Management, "Agency Certification Status [2006]," available at [http://www.opm.gov/ses/certification.asp].

Notes:

a. Provisional certification is for only one year. Full certification is for two years.
b. If there is no entry in a column, the agency did not receive certification for that year. For example, the agency may not have submitted a certification application to OPM, or the agency may have submitted an application and OPM did not approve it.
c. This is the year in which the department or agency received full certification. Full certification is for two years.

Conclusion

The SES pay system (including the certification option) that was established in 2004 is the most significant change to the SES since its inception in 1978. While the new system has higher caps on base pay than the previous system and may help to alleviate pay compression, its implementation signaled the elimination of locality pay and annual pay adjustments for senior executives. The Administration's emphasis on results, performance, and accountability has been interpreted, in part, as the requirement that agencies which seek certification of their appraisal system(s) must, among other things, make meaningful distinctions among their senior executives.

Compensation for senior executives is expected to be commensurate with their relative performance. An agency may receive full certification or provisional certification for each of its appraisal systems. Whether an appraisal system has been certified by OPM, with OMB concurrence, also determines which cap applies to aggregate compensation for senior executives and SL and ST employees. Whereas OPM's regulation and guidance provide one standard for gauging the success of the new pay system, others, including senior executives, might be more concerned with different outcomes, unintended consequences, and issues involving the credibility of the new system.

Appendix A. Senior Executive Annual Summary Ratings Distribution by Agency

The source of information for the tables is OPM, and percentages have been rounded.[84] Some of the data in these tables do not match the information found in **Table 4**. It is unclear why there are discrepancies, since the information for both tables came from OPM. However, the information was obtained from two different sources within OPM.

Department of Agriculture (USDA)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	3 (1%)	1 (<1%)	14 (5%)	162 (58%)	97 (35%)
2000	3 (1%)	0	6 (2%)	166 (60%)	102 (37%)
2001	0	0	15 (5%)	163 (57%)	106 (37%)
2002	0	0	22 (7%)	172 (58%)	102 (34%)
2003	0	1 (<1%)	21 (7%)	161 (55%)	112 (38%)
2004	0	0	30 (9%)	149 (47%)	138 (44%)
2005	0	0	33 (10%)	147 (46%)	141 (44%)

Department of Commerce
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	0	35 (15%)	206 (85%)
2000	0	0	7 (3%)	20 (9%)	196 (88%)
2001	0	0	10 (4%)	42 (16%)	211 (80%)
2002	0	0	6 (3%)	36 (17%)	173 (80%)
2003	0	1 (<1%)	9 (4%)	39 (16%)	201 (80%)
2004	0	1 (<1%)	22 (7%)	132 (44%)	147 (49%)
2005	0	1 (<1%)	26 (9%)	129 (46%)	127 (45%)

[84] Information provided electronically by the U.S. Office of Personnel Management to the author on July 22, 2005 and June 13, 2006.

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Department of Defense
Senior Executive Annual Summary Ratings Distribution[a]

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	2 (<1%)	12 (2%)	668 (98%)
2000	0	0	0	11 (2%)	685 (98%)
2001	0	0	1 (<1%)	9 (1%)	716 (99%)
2002	1	0	3 (<1%)	29 (5%)	571 (95%)
2003	1 (<1%)	2 (<1%)	11 (2%)	24 (4%)	608 (94%)
2004[b]	—	—	—	—	—
2005	0	2 (<1%)	162 (15%)	598 (54%)	351 (32%)

Notes:

a. The Office of the Secretary of Defense (OSD) is not included in this table for the years FY1999-FY2004. There is a separate table for OSD. The Army Corps of Engineers (ACE) SES ratings are included only in the figures for FY1999-FY2001. ACE data for the remaining fiscal years were not provided, or, for FY2005, may have been included in the aggregate figure provided for DOD.

b. For FY2004, OPM provided information for 10 DOD components: Air Force (USAF), Army (USA), Defense Contract Audit Agency (DCAA), Defense Information Systems Agency (DISA), Defense Logistics Agency (DLA), Defense Nuclear Safety Facilities Board, Defense Threat Reduction Agency, Office of Inspector General (OIG), Navy (USN), and Office of the Secretary of Defense (OSD). Three components (USAF, Army, and OIG) had five-level systems. The remaining seven components had three-level systems in FY2004. The data for OSD may be found in the OSD table in this report (see below). Information on the other nine components are provided in two separate tables (five-level systems and three-level systems). It is unclear whether, for previous fiscal years, OPM combined data from different ratings systems (for example, three-level and five-level systems) into one set of data.

Selected Components of the Department of Defense[a]
Senior Executive Annual Summary Ratings Distribution, FY2004
(five-level)

Fiscal Year	Rating Levels				
	1	2	3	4	5
2004	1 (<1%)	0	4 (1%)	4 (1%)	404 (98%)

Note:

a. This table includes the Air Force, Army, Defense Nuclear Safety Facilities Board, and the Office of the Inspector General. Other components are included in the following table. See note b. in the preceding table for an explanation of why two separate tables are provided for FY2004 for DOD.

Selected Components of the Department of Defense[a]
Senior Executive Annual Summary Ratings Distribution, FY2004
(three-level)

Fiscal Year	Rating Levels		
	1	2	3
2004	13 (2%)	26 (4%)	678 (95%)

Note:

a. This table includes the Defense Contract Audit Agency (DCAA), Defense Information Systems Agency (DISA), Defense Logistics Agency (DLA), Defense Threat Reduction Agency, Navy (USN), and Office of the Secretary of Defense (OSD). Other components are included in the preceding table. See note b. in the main DOD table above for an explanation of why two separate tables are provided for FY2004 for DOD.

Department of Education
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	57 (100%)	N/A	N/A
2000	0	0	53 (100%)	N/A	N/A
2001	0	0	66 (100%)	N/A	N/A
2002	0	0	63 (100%)	N/A	N/A
2003	0	1 (2%)	53 (98%)	N/A	N/A
2004	0	1 (1%)	74 (99%)	N/A	N/A
2005	0	0	9 (12%)	30 (39%)	37 (49%)

Note:

a. The Department of Education changed to a five-level system in 2005.

Department of Energy (DOE)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	1 (<1%)	327 (100%)	N/A	N/A
2000	0	0	347 (100%)	N/A	N/A
2001	0	4 (1%)	394 (99%)	N/A	N/A
2002[a]	0	7 (2%)	273 (80%)	63 (18%)	N/A
2003	0	1 (<1%)	206 (61%)	129 (38%)	N/A
2004[b]	0	0	217 (56%)	0	173 (44%)
2005[c]	0	2 (<1%)	223 (61%)	142 (39%)	N/A

Notes:

a. The Department of Energy changed to a four-level system in 2002.
b. The Department of Energy changed to a five-level system in 2004.
c. The Department of Energy changed to a four-level system in 2005.

Department of Health and Human Services (HHS)
Senior Executive Annual Summary Ratings Distribution
(three-level)

Fiscal Year	Rating Levels		
	1	2	3
1999	0	0	253 (100%)
2000	0	0	253 (100%)
2001	0	0	238 (100%)
2002	0	1 (<1%)	327 (100%)
2003	1 (<1%)	0	213 (100%)
2004[a]	N/A	N/A	N/A
2005[a]	N/A	N/A	N/A

Note:

a. Apparently, the Department of Health and Human Services changed both its three-level and five-level systems to a single four-level system in 2004. See the next table for FY2004 and FY2005 data.

Department of Health and Human Services (HHS)
Senior Executive Annual Summary Ratings Distribution
(five-level)

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	32 (26%)	16 (13%)	76 (61%)
2000	0	0	22 (19%)	13 (11%)	83 (70%)
2001	0	0	21 (17%)	12 (10%)	90 (73%)
2002	0	0	0	2 (6%)	32 (94%)
2003	0	0	0	31 (52%)	29 (48%)
2004[a]	0	6 (2%)	167 (47%)	184 (52%)	N/A
2005	0	2 (1%)	152 (42%)	211 (58%)	N/A

Note:

a. Apparently, the Department of Health and Human Services changed both its three-level and five-level systems to a single four-level system in 2004.

Department of Homeland Security (DHS)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
2005	0	4 (1%)	20 (7%)	88 (33%)	155 (58%)

Note:

a. This is the first year for which OPM provided data for the Department of Homeland Security, which was established in 2003.

Department of Housing and Urban Development (HUD)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	1 (2%)	0	12 (18%)	10 (15%)	42 (65%)
2000[a]	0	0	66 (100%)	N/A	N/A
2001	0	1 (1%)	67 (99%)	N/A	N/A
2002	0	0	64 (100%)	N/A	N/A
2003	0	0	69 (100%)	N/A	N/A
2004	0	0	10 (11%)	38 (44%)	39 (45%)
2005	0	0	11 (14%)	20 (25%)	50 (62%)

Note:

a. The Department of Housing and Urban Development changed to a three-level system in 2000.

Department of the Interior
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	180 (100%)	N/A	N/A
2000	0	0	183 (100%)	N/A	N/A
2001	0	0	191 (100%)	N/A	N/A
2002	1 (<1%)	0	191 (100%)	N/A	N/A
2003	0	0	190 (100%)	N/A	N/A
2004[a]	0	0	96 (39%)	99 (40%)	54 (22%)
2005	0	1 (<1%)	98 (40%)	104 (42%)	45 (18%)

Note:

a. The Department of the Interior changed to a five-level system in 2004.

Department of Justice
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	0	28 (10%)	245 (90%)
2000	0	0	0	25 (9%)	262 (91%)
2001	0	0	2 (<1%)	24 (8%)	269 (91%)
2002	0	0	4 (2%)	28 (11%)	226 (88%)
2003	0	0	3 (1%)	37 (14%)	223 (85%)
2004	0	1 (<1%)	33 (6%)	181 (32%)	355 (62%)
2005	0	0	14 (2%)	193 (33%)	375 (64%)

Department of Labor
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	12 (9%)	42 (32%)	76 (58%)
2000	0	0	18 (13%)	26 (19%)	92 (68%)
2001	0	0	21 (16%)	36 (27%)	78 (58%)
2002	0	0	14 (11%)	52 (41%)	61 (48%)
2003	0	1 (<1%)	17 (13%)	69 (53%)	42 (33%)
2004	0	0	20 (12%)	76 (44%)	77 (45%)
2005	0	0	14 (8%)	82 (49%)	72 (43%)

Department of State
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	0	2 (2%)	83 (98%)
2000	0	0	0	0	101 (100%)
2001	0	0	0	2 (2%)	95 (98%)
2002[a]	0	0	1 (<1%)	110 (99%)	N/A
2003	0	0	2 (2%)	107 (98%)	N/A
2004	0	0	22 (14%)	134 (86%)	N/A
2005[b]	0	0	3 (2%)	52 (40%)	75 (58%)

Notes:

a. The Department of State changed to a four-level system in 2002.
b. The Department of State changed to a five-level system in 2005.

Department of Transportation (DOT)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	160 (100%)	N/A	N/A
2000	1 (<1%)	0	165 (99%)	N/A	N/A
2001	1 (1<%)	0	194 (99%)	N/A	N/A
2002	0	0	177 (100%)	N/A	N/A
2003	0	0	155 (100%)	N/A	N/A
2004[a]	0	1 (<1%)	46 (23%)	87 (43%)	67 (33%)
2005	1	1	62 (34%)	76 (41%)	45 (24%)

Note:

a. The Department of Transportation changed to a five-level system in 2004.

Department of the Treasury
Senior Executive Annual Summary Ratings Distribution
(five-level)

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	62 (13%)	169 (35%)	248 (52%)
2000	0	0	75 (14%)	176 (33%)	289 (54%)
2001	0	0	112 (20%)	161 (29%)	274 (50%)
2002	0	0	161 (30%)	165 (31%)	207 (39%)
2003	0	0	34 (11%)	143 (47%)	130 (42%)
2004	0	1 (<1%)	56 (14%)	174 (42%)	182 (44%)
2005	0	0	55 (13%)	164 (40%)	189 (46%)

Department of the Treasury
Senior Executive Annual Summary Ratings Distribution
(three-level)

Fiscal Year	Rating Levels		
	1	2	3
1999	N/A	N/A	N/A
2000	N/A	N/A	N/A
2001	N/A	N/A	N/A
2002	N/A	N/A	N/A
2003[a]	0	0	62 (100%)

Notes:

a. Apparently, one or more Treasury components changed from a five-level system to a three-level system in 2003.

b. Apparently, the Department of the Treasury changed this system from three levels to five levels in 2004. All Treasury figures are provided in the preceding table.

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Department of Veterans Affairs
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	2 (<1%)	25 (10%)	79 (33%)	137 (56%)
2000	0	3 (1%)	41 (16%)	68 (27%)	142 (56%)
2001	1 (<1%)	1 (<1%)	32 (11%)	89 (32%)	156 (56%)
2002	0	6 (2%)	34 (13%)	76 (28%)	154 (57%)
2003	0	0	20 (8%)	65 (25%)	176 (67%)
2004	0	0	27 (10%)	70 (26%)	175 (64%)
2005	0	1 (<1%)	31 (11%)	70 (26%)	169 (62%)

Environmental Protection Agency (EPA)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	2 (<1%)	34 (15%)	196 (84%)
2000	0	0	1 (<1%)	34 (14%)	212 (86%)
2001	0	0	3 (1%)	39 (16%)	202 (83%)
2002	0	1 (<1%)	4 (2%)	71 (29%)	166 (69%)
2003	0	0	8 (3%)	83 (33%)	164 (64%)
2004	0	2 (1%)	9 (3%)	98 (35%)	172 (61%)
2005	0	0	76 (26%)	113 (39%)	98 (34%)

Federal Emergency Management Agency (FEMA)
Senior Executive Annual Summary Ratings Distribution[a]

Fiscal Year	Rating Levels			
	1	2	3	4
1999	0	0	4 (14%)	25 (86%)
2000	0	0	4 (13%)	28 (88%)
2001	0	0	20 (63%)	12 (38%)
2002	0	0	28 (90%)	3 (10%)
2003	0	0	13 (54%)	11 (46%)

Notes:

a. As of FY2004, Federal Emergency Management Agency (FEMA) figures are included in the DHS table.

General Services Administration (GSA)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	1 (1%)	7 (9%)	73 (90%)
2000	0	0	1 (1%)	2 (3%)	76 (96%)
2001	0	0	0	6 (7%)	76 (93%)
2002	0	0	7 (9%)	31 (39%)	42 (53%)
2003	0	1 (1%)	4 (5%)	29 (39%)	41 (55%)
2004	0	1 (1%)	28 (29%)	40 (42%)	27 (28%)
2005	0	0	29 (30%)	37 (38%)	32 (33%)

Merit Systems Protection Board (MSPB)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	0	0	8 (100%)
2000	0	0	0	0	9 (100%)
2001	0	0	0	1 (11%)	8 (89%)
2002[a]	0	0	0	9 (100%)	N/A
2003	0	0	0	10 (100%)	N/A
2004[b]	—	—	—	—	—
2005[c]	0	0	1 (7%)	8 (57%)	5 (36%)

Notes:

a. The Merit Systems Protection Board switched to four-level system in 2002.
b. The Merit Systems Protection Board was not included with the FY2004 data provided by OPM to the author.
c. The board changed to a five-level system in 2005.

National Aeronautics and Space Administration (NASA)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	13 (4%)	85 (23%)	268 (73%)
2000	1 (<1%)	0	9 (2%)	91 (24%)	276 (73%)
2001	0	1 (<1%)	10 (3%)	80 (21%)	290 (76%)
2002	0	2 (<1%)	11 (3%)	74 (21%)	271 (76%)
2003	0	3 (<1%)	16 (4%)	75 (20%)	290 (76%)
2004	0	0	16 (4%)	82 (20%)	312 (76%)
2005	1 (<1%)	0	18 (4%)	171 (42%)	216 (53%)

Nuclear Regulatory Commission (NRC)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	1 (<1%)	152 (99%)	N/A	N/A
2000	0	0	135 (100%)	N/A	N/A
2001	0	0	139 (100%)	N/A	N/A
2002	0	2 (1%)	138 (99%)	N/A	N/A
2003	0	0	137 (100%)	N/A	N/A
2004[a]	0	0	31 (21%)	105 (70%)	14 (9%)
2005	0	1 (1%)	24 (17%)	107 (74%)	13 (9%)

Note:

a. The Nuclear Regulatory Commission changed to a five-level system in 2004.

Office of Management and Budget (OMB)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	1 (2%)	10 (18%)	46 (81%)
2000	0	0	1 (2%)	5 (10%)	45 (88%)
2001	0	0	0	37 (80%)	9 (20%)
2002[a]	0	0	40 (75%)	13 (25%)	N/A
2003	0	0	39 (68%)	18 (32%)	N/A
2004	0	0	44 (67%)	22 (33%)	N/A
2005	0	0	41 (77%)	12 (23%)	N/A

Note:

a. The Office of Management and Budget changed to a four-level system in 2002.

Office of Personnel Management (OPM)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	0	3 (9%)	29 (91%)
2000	0	0	1 (3%)	2 (6%)	32 (91%)
2001	0	0	2 (6%)	15 (47%)	15 (47%)
2002	0	0	1 (4%)	11 (42%)	14 (54%)
2003	0	0	3 (10%)	17 (59%)	9 (31%)
2004	0	0	10 (18%)	19 (35%)	26 (47%)
2005	0	0	8 (15%)	25 (48%)	19 (37%)

Office of the Secretary of Defense (OSD)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels		
	1	2	3
1999	0	3 (<1%)	394 (99%)
2000	0	0	403 (100%)
2001	0	2 (<1%)	310 (99%)
2002	1	0	397 (100%)
2003	0	3 (<1%)	389 (99%)
2004	0	0	372 (100%)
2005[a]	—	—	—

Note:

a. Apparently, Office of the Secretary of Defense figures were included with DOD figures in FY2005.

Small Business Administration (SBA)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	0	7 (23%)	24 (77%)
2000	0	0	1 (3%)	7 (21%)	26 (76%)
2001	0	0	1 (3%)	6 (16%)	29 (81%)
2002	0	0	7 (18%)	10 (26%)	22 (56%)
2003	0	0	5 (16%)	12 (39%)	14 (45%)
2004	0	0	3 (7%)	10 (23%)	31 (70%)
2005	0	0	8 (19%)	12 (29%)	22 (52%)

Social Security Administration (SSA)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	90 (100%)	N/A	N/A
2000	0	0	122 (100%)	N/A	N/A
2001	0	0	122 (100%)	N/A	N/A
2002	0	0	116 (100%)	N/A	N/A
2003[a]	0	0	13 (12%)	53 (47%)	46 (41%)
2004	0	0	12 (8%)	50 (35%)	80 (56%)
2005	0	0	7 (5%)	47 (34%)	83 (61%)

Note:

a. The Social Security Administration switched to a five-level system in 2003.

U.S. Agency for International Development (USAID)
Senior Executive Annual Summary Ratings Distribution

Fiscal Year	Rating Levels				
	1	2	3	4	5
1999	0	0	4 (18%)	1 (5%)	17 (77%)
2000	0	0	1 (5%)	0	18 (95%)
2001	0	0	2 (8%)	6 (25%)	16 (67%)
2002	0	0	5 (21%)	9 (38%)	10 (42%)
2003	0	0	9 (43%)	4 (19%)	8 (38%)
2004	0	0	2 (12%)	6 (35%)	9 (53%)
2005	0	0	3 (16%)	6 (32%)	10 (53%)

Appendix B

Section 1126, P.L. 108-136

Section 1126 of the FY2004 National Defense Authorization Act (P.L. 108-136; 117 Stat. 1392, at 1640) lists design elements for pay-for-performance systems initiated under Chapter 47 of Title 5 of the *United States Code*. These elements do not apply to the SES pay system, which is found in Chapter 53 of Title 5. However, they might be instructive when reviewing the elements of the new SES pay system. The elements are

- Adherence to merit principles set forth in section 2301 of such [Title 5 of the *United States Code*]
- A fair, credible, and transparent employee performance appraisal system.
- A link between elements of the pay-for-performance system, the employee performance appraisal system, and the agency's strategic plan.
- A means for ensuring employee involvement in the design and implementation of the system.
- Adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system.
- A process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review.
- Effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance.
- A means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system.

Government Accountability Office

Employing a slightly different perspective, GAO identified the following key practices for effective performance management:

- Align individual performance expectations with organizational goals.
- Connect performance expectations to crosscutting goals.

- Provide and routinely use performance information to track organizational priorities. (A subsequent GAO report stated: "Provide and routinely use performance information to make program improvements."[85])
- Require follow-up actions to address organizational priorities.
- Use competencies to provide a fuller assessment of performance.
- Link pay to individual and organizational performance.
- Make meaningful distinctions in performance.
- Involve employees and stakeholders to gain ownership of performance management systems.
- Maintain continuity during transitions.[86]

Coalition for Effective Change

The Coalition for Effective Change, self-described as a "non-partisan alliance of associations representing current and retired federal managers, executives, and professionals," offers the following factors as a foundation for any system that links pay and performance:[87]

- *Gaining Consensus on the Basis for Rewards and Corrective Actions*: Determinations to award higher pay and bonuses, and to take corrective actions because of poor performance, must be based on a credible process for evaluating performance that is tailored to the individual needs and culture of each organization (avoiding the temptation to implement a "one size fits all approach") and which is developed, implemented, evaluated, and adjusted over time with the active involvement of employees and managers. Employees not represented by a union should have representation through their professional or managerial associations.
- *Allowing for the Exercise of Reasonable Judgment*: We [Coalition for Effective Change] recognize that judging overall performance and contributions involves a degree of subjective judgment by the rater[; therefore], the system should strive for as much objectivity as possible while recognizing that an inherent aspect of good management is the ability to exercise and support sound judgment with regard to the quality and quantity of work, the effects outcomes of inputs, and the impact of environment and unforeseen developments.

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[85] U.S. General Accounting Office, *Human Capital: Implementing Pay for Performance at Selected Personnel Demonstration Projects*, GAO Report GAO-04-83 (Washington: 2004), p. 1.

[86] U.S. General Accounting Office, *Results-Oriented Cultures: Creating a Clear Linkage Between Individual Performance and Organizational Success*, GAO Report GAO-03-488 (Washington: 2003), p. 4.

[87] Coalition for Effective Change, available at [http://www.effective-change.org/about.html].

- *Flexible*: Recognizing that the proportion of high performers differs among agencies and work groups within agencies, the amount and distribution of awards should be controlled via budget allocations and not by arbitrary quotas or forced distribution. In addition, the system should specifically allow for the possibility of team awards rather than individual awards where that makes the most sense.

- *Reviewable*: A credible system will provide for third party review (preferably peer review) and a rational and reasonable process for the appeals of actions having a material effect upon the employee. Results or outcomes of the pay for performance system should be openly available to those participating in the system to build the credibility of the system over time.

- *Periodically evaluated and adjusted*: Any new or revised performance management system should be tested and evaluated on an ongoing basis and refined based on the results, all with stakeholder participation. The test should be communicated to all employees before starting, and the results and actions to be taken based on those results should also be communicated. Finally, reviews of the system by an agency or by the Office of Personnel Management should include an assessment of the impact of the system on agency workforce diversity goals and initiatives.

- *Adequately funded*: The performance award system, both in testing and full implementation, must be adequately funded with a specific allocation of funds for both implementation and ongoing operation. If unforeseen and uncontrollable circumstances intervene, the circumstances and effect on performance awards should be immediately communicated to all participants. At a minimum, any employee whose performance is deemed to be satisfactory should expect to receive an annual pay increase that at least keeps pace with cost of living increases in [his or her] area.[88]

Robert D. Behn

Dr. Robert D. Behn, a lecturer in the Kennedy School of Government, Harvard University, suggests these eight principles for improving human and organizational performance:

- Offer enough base pay to attract talented, dedicated people.

- Give people an important mission to achieve.

- Don't create systems that automatically label lots of people as losers.

- Find lots of mechanisms to tell people they are winners. (And don't rely on financial incentives.).

- Reward teamwork.

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[88] Coalition for Effective Change, "Linking the Pay of Federal Employees to Their Performance," August 2004, available at [http://www.effective-change.org/CECPublications.html]. (Italics in original.)

- Make it easy to terminate obnoxiously poor performers.
- Ask line managers if your system helps them to improve performance.
- Don't carve your new system in stone; rather, be prepared to make the inevitably necessary changes.[89]

Symposium on Designing and Managing Market-Based and More Performance-Oriented Pay Systems

Participants in a March 2005 symposium that was convened by the Government Accountability Office, OPM, the U.S. Merit Systems Protect Board, the National Academy of Public Administration, and the Partnership for Public Service developed these key themes:

- Focus on a set of values and objectives to guide the pay system. Values represent an organization's beliefs and boundaries and objectives articulate the strategy to implement the system.
- Examine the value of employees' total compensation to remain competitive in the market. Organizations consider a mix of base pay plus other monetary incentives, benefits, and deferred compensation, such as retirement pay, as part of a competitive compensation system.
- Build in safeguards to enhance the transparency and ensure the fairness of pay decisions. Safeguards are the precondition to linking pay systems with employee knowledge, skills, and contributions to results.
- Devolve decision making on pay to appropriate levels. When devolving such decision making, overall core processes help ensure reasonable consistency in how the system is implemented.
- Provide training on leadership, management, and interpersonal skills to facilitate effective communication. Such skills as setting expectations, linking individual performance to organizational results, and giving and receiving feedback need renewed emphasis to make such systems.
- Build consensus to gain ownership and acceptance for pay reforms. Employee and stakeholder involvement needs to be meaningful and not pro forma.
- Monitor and refine the implementation of the pay system. While changes are usually inevitable, listening to employee views and using metrics helps identify and correct problems over time.[90]

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[89] Robert D. Behn, "Performance, People, and Pay," *Bob Behn's Public Management Report*, 2000, pp. 8-9, available at [http://www.ksg.harvard.edu/TheBehnReport/].

[90] U.S. Government Accountability Office, *Symposium on Designing and Managing Market-Based and More Performance-Oriented Pay Systems*, GAO-05-832SP, July 2005, "Highlights" (n.p.).

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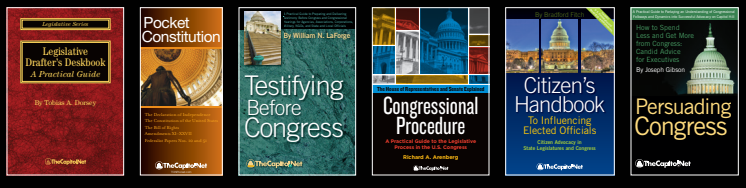
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