



**U.S. SMALL BUSINESS ADMINISTRATION  
OFFICE OF INSPECTOR GENERAL  
WASHINGTON, D.C. 20416**

**Management Advisory  
Report No. 16-20**

**DATE:** August 22, 2016

**TO:** Maria Contreras-Sweet  
Administrator

Matthew Varilek  
Chief Operating Officer  
Office of the Chief Operating Officer

**FROM:** Troy M. Meyer /s/  
Assistant Inspector General for Audit

**SUBJECT:** *Review of SBA's Practices for Senior Executive Service Initial Pay Setting*

During the course of our ongoing review of the Small Business Administration's (SBA or the Agency) pay setting practices, we noted that SBA incorrectly set the pay for four politically-appointed Senior Executive Service (SES) employees.<sup>1</sup> We believe this warranted immediate management attention to correct the deficiencies. We previously furnished copies of the draft advisory and requested written comments on the recommendations. SBA management's comments are appended and were considered in finalizing the advisory.

This advisory contains three recommendations that SBA agreed to implement. Please provide us within 90 days your progress in implementing the recommendations.

### **Background**

The Office of Human Resources Solutions (OHRS) is responsible for providing SBA's human resources services. Executive Resources is a part of OHRS that oversees the Agency-wide executive resources function that includes providing advisory services to SBA leadership on executive and political personnel. Executive Resources also administers most aspects of the SES program, including executive staffing and pay setting.

The Consolidated Appropriations Acts of 2014 through 2016 (the Acts) enacted a pay freeze for the Vice President and senior political appointees from January 26, 2014 through January 7, 2017.<sup>2, 3</sup> Specifically, individuals covered by the pay freeze must maintain pay at the December 31, 2013

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<sup>1</sup> SES is a position classification in the civil service of the Federal Government. SES members typically serve in key positions just below Presidential appointees.

<sup>2</sup> Consolidated Appropriations Act, 2014-2015, Title VII, Division E, Section 741 and Consolidated Appropriations Act, 2016, Title VII, Division E, Section 738.

<sup>3</sup> For the purposes of the pay freeze, senior political appointees are defined as an employee serving in an Executive Schedule position; a chief of mission or ambassador-at-large; a non-career, limited term, or limited emergency political SES paid above an EX-IV rate; or any other type of political employee paid at or above an EX-IV rate. See appendix II for the executive schedule rates, Table 2 and 3.

level without any increases in basic or locality pay. Individuals newly appointed during the pay freeze are also limited to pay rates applicable at December 31, 2013. The Office of Personnel Management (OPM) issued guidance to Federal agency heads to assist with implementing the Acts.

In addition, the maximum pay an SES may earn depends on whether an agency has a performance appraisal system certified by OPM. For agencies with a certified system, the maximum pay is set at level II of the Executive Schedule; for those without a certified system, the maximum pay is set at level III. (See Appendix II Table 4 and 5.)

OPM grants provisional or full certification to agencies with appraisal systems that meet certain criteria. Specifically, OPM grants a 1-year provisional certification when an agency has designed, but not yet fully implemented or applied, an appraisal system for its senior executives, and a 2-year, or full certification, when the appraisal system is designed and applied.<sup>4</sup> On August 26, 2014, OPM granted SBA a 1-year provisional certification rather than a full certification because not all performance plans contained adequate measurable results, and SBA exceeded the 5 percent awards cap in calendar year 2012.

SBA lost its provisional certification on August 25, 2015 because it did not timely submit its recertification request to OPM. The loss of the SES performance appraisal system certification impacted individuals paid on the SES pay schedule. Consequently, SBA must (1) limit initial pay for newly hired SESs to level III of the Executive Schedule, (2) discontinue salary increases for SESs above level III of the Executive Schedule, and (3) limit aggregated compensation for SESs to level I of the Executive Schedule. (See Appendix II for the rates of basic pay for members of the Executive Schedule and SES.)

## **Objective**

The overall objective of our ongoing review is to determine whether SBA's pay setting practices, including salary increases and bonuses provided for Schedule Cs and SESs, complied with Federal laws and regulations. (See Appendix I for a detailed discussion of scope and methodology.)

## **Results**

Executive Resources set initial pay higher than allowed for 4 out of 10 SESs we reviewed. This occurred because Executive Resources personnel were not familiar with certain Federal laws and regulations that govern SES pay settings. Additionally, OHR's current policies and procedures for SES pay setting practices insufficiently detail the roles and responsibilities of the Executive Resources staff. If these internal controls deficiencies persist, SBA is susceptible to setting more improper salaries for SES appointments and incurring unnecessary salary expenses.

The pay freeze established in the Acts requires the initial pay of political SESs appointed after January 1, 2014 to be based on the rates of pay in effect on December 31, 2013.<sup>5</sup> We found that for one political SES hired in March 2015, Executive Resources set the initial pay based on the 2015 SES pay table instead of 2013, which resulted in an overpayment of \$969. The employee was only in the position for seven pay periods; therefore, the overpayment amount was prorated for that period of time.

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<sup>4</sup> 5 CFR§ 430.404

<sup>5</sup> See Appendix II Table 3 for 2013 SES salary ranges.

In addition, because SBA lost its SES certification on August 25, 2015, the pay levels for newly appointed political SESs hired after that date must be based on 2013 rates of basic pay for agencies without a certified SES performance appraisal system. Nevertheless, Executive Resources set the initial pay for three political SESs above level III of the 2013 executive pay schedule after SBA lost its SES certification, which amounted to overpayments totaling \$6,704.<sup>6</sup> In total, the four SES appointees we identified received overpayments totaling \$7,673 (See Table 1).

**Table 1. Salary Comparison**

SES Appointee	Start Date	Pay set by OHRS	Correct Pay Level	Overpayment (Prorated)
1	3/21/2015	\$183,300	\$179,700	\$969
2	9/8/2015	\$170,000	\$165,300	\$3,435
3	11/29/2015	\$168,700	\$165,300	\$1,700
4	12/14/2015	\$168,700	\$165,300	\$1,569
<b>Total Overpayment</b>				<b>\$7,673</b>

Source: Generated by OIG using pay setting data obtained from OHRS's personnel files and OPM pay tables.

Pursuant to Federal law, the Agency shall try to seek recovery of overpayments.<sup>7</sup> The Agency may waive the overpayment only if collection of the overpayment "would be against equity and good conscience and not in the best interests of the United States."<sup>8</sup> Therefore, we recommend that SBA's Chief Operating Officer remedy \$7,673 in overpayments.

OHRS did not develop a process to ensure updates to Federal pay setting regulations were communicated to Executive Resources employees. We did not find any SBA-published documentation discussing how to process SES pay setting to ensure compliance with the pay freeze authority. According to Executive Resources personnel, they juggle multiple responsibilities and do not always have the time to perform the research necessary to keep themselves abreast of all new laws and regulations.

Without systematic controls in place to assure compliance with pay setting regulations, SBA is susceptible to setting improper salaries for future SES hiring. According to Executive Resources personnel, they are currently drafting a detailed Standard Operating Procedure (SOP), *Senior Executive Service Recruitment and Performance Management System*. If implemented correctly, the new SOP would fulfill OPM's requirements for full certification while also providing employees with sufficient guidance.

After OIG notified the Agency of the incorrect pay settings identified during this review, Executive Resources promptly adjusted the affected SES members' pay to the correct level. While we acknowledge these corrective actions, SBA also must take preventative steps to avoid setting improper salaries in the future. A higher pay level than permitted can have continued effects, as it will also increase retirement, thrift savings, and insurance benefits. Therefore, SBA must ensure it adheres to governing laws and regulations to prevent the increased risk of unnecessarily incurring salary and benefits expenses.

<sup>6</sup> The overpayment amount was prorated based on the number pay periods worked. The cutoff date used was the pay period ending May 28, 2016.

<sup>7</sup> 31 U.S.C. 3711, *Collection and compromise*.

<sup>8</sup> 5 U.S.C. 5584(a), *Claims for overpayment of pay and allowances, and of travel, transportation and relocation expenses and allowance*; OMB Memorandum, *Determination with Respect to Transfer of Functions to Public Law 104-316*, December 17, 1996.

## Recommendations

We recommend that the Chief Operating Officer (COO):

1. Remedy the \$7,673 in overpayments.
2. Ensure that SBA has a process in place to keep Executive Resources employees informed on all updates to Federal pay setting laws and regulations.
3. In the interim, until SBA issues the Senior Executive Service Recruitment and Performance Management System SOP, implement procedures for SES pay setting to ensure compliance with Federal regulations.

## Analysis of Agency Response

SBA management provided formal comments that are included in their entirety in Appendix IV. SBA management agreed to implement our three recommendations by March 31, 2017.

## Summary of Actions Necessary to Close the Report

The following provides the status of each recommendation and the necessary action to either resolve or close the recommendation.

1. **Resolved.** The COO concurred with our recommendation and plans to complete final action on this recommendation by December 31, 2016. The COO stated that OHRS had initiated overpayment recovery from SES Appointees 1, 3 and 4 and that the Agency waived the collection of overpayment for SES Appointee 2. We verified that SBA recovered the overpayments made to SES Appointees 3 and 4 through payroll deductions. We also determined that SBA's justification for waiving the overpayment recovery for SES Appointee 2 was appropriate. This recommendation can be closed upon the COO providing evidence of the overpayment collection from SES Appointee 1 and documentation demonstrating the procedure used to calculate the net overpayment amounts collected for SES Appointees 1, 3, and 4.
2. **Resolved.** The COO concurred with our recommendation and plans to complete final action on this recommendation by January 31, 2017. This recommendation can be closed upon the COO providing: (1) a copy of the Internal Operating Procedures for the Executive Resources Staff; (2) evidence that Federal executive pay setting training was provided to Executive Resources staff; and (3) evidence that SES pay setting was incorporated in the Agency's Human Capital Assessment and Accountability Framework evaluation.
3. **Resolved.** The COO concurred with our recommendation and plans to complete final action on this recommendation by March 31, 2017. This recommendation can be closed upon the COO providing a copy of SOP 30 20 3 reflecting the changes made to SES pay setting that will ensure compliance with Federal regulations.

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Please contact us if you would like to discuss this memorandum or any related issues.

cc: Nicolas Maduros, Chief of Staff  
Melvin F. Williams, Jr., General Counsel  
Martin Conrey, Attorney Advisor, Legislation and Appropriations  
Tami Perriello, Associate Administrator for Performance Management  
and Chief Financial Officer  
LaNae Twite, Director, Office of Internal Controls

## **Appendix I: Scope and Methodology**

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The overall objective of our ongoing review is to determine whether SBA's pay setting practices, including salary increases and bonuses provided for Schedule Cs and SESs, complied with Federal laws and regulations. This memorandum only addresses our review on the initial pay setting for SESs.

In conducting this evaluation, we reviewed Federal laws and regulations and SBA policies and procedures governing SES pay. We also interviewed personnel from OHRs and OPM to gain an understanding of SES pay setting practices. Additionally, to identify the universe of newly hired political SESs and Executive Schedule appointees impacted by the pay freeze, we reviewed all political SESs and Executive Schedule appointees that were hired between January 1, 2014 and March 31, 2016. Further, to identify the universe of career SESs impacted by SBA losing its SES certification, we reviewed all career SESs hired between August 25, 2015 and March 31, 2016. Through this analysis, we identified 10 SESs and 3 Executive Schedule appointees that met the above criteria. We evaluated initial pay setting and reviewed the Standard Form 50, *Notification of Personnel Action*, and personnel file for all 13 individuals to ensure pay setting complied with Federal laws and regulations.

We conducted this evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency's quality standards for inspection and evaluation. Those standards require that we adequately plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our objectives.

## Appendix II: Rates of Basic Pay for the Executive Schedule and Senior Executive Service, 2013 and 2015

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**Table 2. Executive Schedule (EX) Salary Table, January 2013**

Rates frozen at 2010 levels effective January 2013.

Level I	\$199,700
Level II	\$179,700
Level III	\$165,300
Level IV	\$155,500
Level V	\$145,700

Source: OPM, Pay and Leave, Salaries and Wages.

**Table 3. Executive Schedule (EX) Salary Table, January 2015**

Level I	\$203,700
Level II	\$183,300
Level III	\$168,700
Level IV	\$158,700
Level V	\$148,700

Source: OPM, Pay and Leave, Salaries and Wages.

**Table 4. Senior Executive Service (SES) Salary Table, January 2013**

Rates frozen at 2010 levels, effective January 2013

Structure of the SES Pay System	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	\$119,554	\$179,700
Agencies without a Certified SES Performance Appraisal System	\$119,554	\$165,300

Source: OPM, Pay and Leave, Salaries and Wages.

**Table 5. Senior Executive Service (SES) Salary Table, January 2015**

Effective January 2015

Structure of the SES Pay System	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	\$ 121,956	\$ 183,300
Agencies without a Certified SES Performance Appraisal System	\$ 121,956	\$ 168,700

Source: OPM, Pay and Leave, Salaries and Wages.

Note: Certain senior political officials may not receive a pay increase in 2015 or receive the 2015 established pay rates due to Section 738 of Title VII of Division E of the Consolidated and Further Continuing Appropriations Act of 2015. Section 738 continues the freeze on the payable pay rates for the Vice President and certain senior political appointees at applicable 2013 levels. The new pay freeze period commences on the first day of the first pay period that begins in January 2015 through the end of the last pay period that begins in 2015 (January 11, 2015 through January 9, 2016, for those on the standard biweekly pay period cycle). However, the officially established and posted pay rates or ranges for 2015 are in effect and used for determining pay for other employees.

## Appendix III: Schedule of Dollar- Related Findings

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**Table 6. OIG Schedule of Questioned Costs<sup>9</sup>**

<b>Questioned Costs</b>	<b>Amount</b>
Overpayment of initial salaries	\$7,673

Source: Generated by OIG based on analysis of SES personnel files.

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<sup>9</sup> Questioned costs are expenditures that are not supported by adequate documentation at the time of the audit or otherwise do not comply with legal, regulatory, or contractual requirements.

SBA  
CHIEF OPERATING OFFICER'S  
REPOSENSE TO MANAGEMENT ADVISORY



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, DC 20416

Date: August 12, 2016

To: Troy M. Meyer  
Assistant Inspector General for Audit

From: Matthew Varilek  
Chief Operating Officer

Elias Hernandez  
Chief Human Capital Officer

Subject: Review of SBA's Practices for Senior Executive Service Initial Pay Setting  
Draft Management Advisory, Project: 15013

We are in receipt of the draft management advisory from your office regarding the findings and recommendations to improve SBA's practices for Senior Executive Service (SES) initial pay setting. We thank you and welcome the opportunity to meet with the Office of the Inspector General (OIG) to improve SBA's practices and procedures for setting SES initial pay.

We are substantively in agreement with the findings and recommendations in the draft management advisory and are taking corrective actions on all three recommendations:

1. Remedy the \$7,673 in overpayments.
2. Ensure that SBA has a process in place to keep Executive Resources employees informed on all updates to Federal pay setting laws and regulations.
3. In the interim, until SBA issues the Senior Executive Service Recruitment and Performance Management System SOP, implement procedures for SES pay setting to ensure compliance with Federal regulations.

We appreciate the work of your staff in conducting this review and share your commitment to strengthen the Agency's internal controls regarding SES initial pay setting.