

011289

112750

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

First Step Completed In Conversion To Senior Executive Service

GAO examined the conversion of various Federal executive authorities and systems to the Senior Executive Service and found that the Office of Personnel Management did a creditable job as the focal point for conversion. But several issues resulting from the conversion and from other aspects of the system still raise concerns.

Presently, SES salaries are compressed and measures being considered by the Congress could further restrict SES pay and inhibit performance awards and executive ranks envisioned by the Reform Act. Continual turmoil on matters of executive compensation is having negative effects on SES members.

GAO recommends that the Congress allow annual pay adjustments, discontinue linking congressional and Executive Level II salaries, and allow bonus and rank provisions of the Reform Act to take effect. Also, recommendations are made to the Office of Personnel Management on

--the position allocation process, position designations, and appointments and

--guidance and oversight.



112750



011289

FPCD-80-54
JULY 11, 1980

For sale by:

**Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402**

Telephone (202) 783-3238

**Members of Congress; heads of Federal, State,
and local government agencies; members of the press;
and libraries can obtain GAO documents from:**

**U.S. General Accounting Office
Document Handling and Information
Services Facility
P.O. Box 6015
Gaithersburg, Md. 20760**

Telephone (202) 275-6241



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-196181

To the President of the Senate and the
Speaker of the House of Representatives

CW000001

This report discusses the transition and conversion of agency positions and personnel to the Senior Executive Service. We are making a number of recommendations to the Director, Office of Personnel Management, and to the Congress for improving Service operations and helping insure its long-range success. The Service was established by title IV of the Civil Service Reform Act of 1978 (Public Law 95-454).

We made our review because of the importance of the Senior Executive Service to the success of Civil Service Reform and because of congressional interest and concern that provisions of the act be properly and effectively implemented. The act provides for General Accounting Office oversight responsibility to assess the effectiveness and soundness of Federal personnel management.

We are sending copies of this report to the Director, Office of Management and Budget; the Director, Office of Personnel Management; and other interested parties.

James B. Atch

Comptroller General
of the United States

*HSE00300
HSE02900
SEN00800
SEN06600*

D1600925

D I G E S T

The Senior Executive Service (SES) became a reality in the Federal Government on July 13, 1979, when more than 98 percent of Federal executives in SES-designated jobs became members.

The Office of Personnel Management (OPM) did a creditable job as the focal point for converting positions and executives to SES despite rigid time constraints and the need to make major changes in Federal personnel management, but some concerns remain. Also, OPM and the agencies are still designing and implementing major elements--like performance appraisal and executive development systems.

Created by the Civil Service Reform Act of 1978 as one of several ways to improve Federal personnel management, SES covers most executive branch managers in positions classifiable at GS-16 through Executive Level IV. OPM is responsible for executing, administering, and enforcing rules and regulations governing SES. However, SES has a minimum of regulations which is consistent with OPM's goal of decentralizing personnel management. (See p. 1.)

Whether SES will improve the efficiency and effectiveness of the Federal Government will be determined by practical application and the ability of agencies to improve the quality of public service. Its success will require the combined work of the Congress, OPM, executive agencies, and SES executives. (See p. 7.) GAO identified several specific areas which still require attention.

OPM's review of possible SES positions during the first allocation process was affected by

tight time schedules and the many positions to be considered. Greater consistency can be achieved in the next allocation process if OPM prepares guidelines for agencies and internal review procedures which will draw on the knowledge gained in the first allocation process. (See p. 9.)

SES has two types of positions: general and career reserved. The general position is the norm--executives with career, noncareer, or limited status may occupy this position. Only a career appointee can occupy a career-reserved position.

GAO found positions that appeared to meet the career-reserved criteria which were designated "general" and positions with similar responsibilities being treated differently. For example, several agencies designated key internal audit positions as general. OPM needs to consider adding several occupational disciplines to its criteria for positions normally career reserved and increase monitoring to insure that general positions are properly designated and do not involve duties which warrant career reserved. (See p. 11.)

OPM will need to be aware of agency practices in making noncareer and limited appointments. These appointments can be up to 15 percent of SES positions, but merit staffing procedures are not required for these appointments and much of the responsibility for them rests with the agencies. (See p. 18.)

Executives who would have otherwise received an SES noncareer appointment, but who had reinstatement eligibility to a position in the competitive service, were given the opportunity by the Reform Act to request reinstatement to career status. OPM issued a regulation to also allow conversion to

career status of individuals serving in Schedule C, noncareer executive assignment, noncareer Executive Schedule, and limited executive assignment positions based on prior career-type experience in the excepted service. GAO believes OPM needs legislative authority for these latter conversions. GAO also believes OPM should verify whether executives who converted to career status were incumbents of positions when these positions were designated as SES positions. Incumbency was required by the Reform Act and OPM regulations. (See p. 21.)

About 1,000 special agency authorizations are excluded from SES and a 10,777 "pool" of executive positions established by the Reform Act. Most of the authorizations are not being used. The "repealer provision" of the Reform Act should be amended to remove special agency authorizations not being used. (See p. 27.)

The pay-setting process, as envisioned by the Reform Act, and the introduction of performance awards (bonuses) are among the most innovative and appealing features of SES. However, salaries of SES members are presently compressed by the linkage of congressional and Executive Schedule salaries and the limitations on the annual pay adjustments for executives which have been imposed by law. About 90 percent of SES executives receive the same pay.

The Congress was considering placing still further restrictions on the aggregate amount of pay, bonuses, and Meritorious Executive and Distinguished Executive ranks allowed SES members. If annual adjustments are continually denied or limited, and if lump-sum payments for bonuses and ranks are restricted, the morale of SES members will be seriously affected. In addition, some of

the success agencies have had in encouraging Federal executives to join SES will almost certainly be nullified.

Moreover, incentives for greater excellence which the Congress was striving to stimulate with the Reform Act's pay for performance provisions can be stifled. The restriction or withdrawal of performance awards and ranks could be construed by many executives who have elected to join SES as a breach of faith and would remove a major inducement to join SES, thereby greatly weakening the SES system. (See p. 30.)

Potential for inequities exists in awarding bonuses. The Reform Act stipulates that performance awards may be granted to 50 percent of the total SES positions in an agency. Only career executives are eligible for bonuses. Therefore, career executives in agencies with a high percentage of noncareer executives have a significantly greater opportunity to receive bonuses. Some agencies will be able to pay most or all of their career executives bonuses, while others must limit bonuses to about 50 percent of their career executives. The problem could be solved by amending the Reform Act to specify a maximum percentage of career appointees who can receive bonuses in any agency during any one fiscal year. (See p. 34.)

OPM's responsiveness to agencies' needs for guidance and its ability to provide oversight to insure that agencies effectively implement and operate SES will enhance the potential for success. OPM has provided technical assistance, regulations and guidance, evaluation, and compliance assistance. But opportunities exist for strengthened guidance and compliance efforts.

- Most of the eight agencies GAO visited had some concerns with aspects of OPM's written guidance, especially its timeliness. But, most of the concerns agencies expressed at that time have been corrected by subsequent regulations and guidance. OPM now needs to obtain feedback from agencies to insure that agencies have enough information to fully implement and operate SES. (See p. 40.)
- OPM compliance reviews focus on verifying agency actions to implement and operate SES. Although the compliance program has expanded since it began during conversion, GAO believes that more frequent onsite reviews of agencies are needed. OPM personnel who do most of the onsite compliance work also provide day-to-day technical assistance to agencies. Future compliance planning should consider separating these duties. (See p. 42.)
- Two agencies initially appointed officials of their new Offices of Inspector General to SES performance review boards. To help insure the independence of agencies' audit and investigative functions, agencies should not appoint executives of Inspector General and internal audit offices to these boards. (See p. 47.)

RECOMMENDATIONS TO OPM

The Director of OPM should:

- Develop criteria for agencies' use in requesting future allocations of SES positions and establish internal criteria and procedures to aid OPM personnel in achieving consistency in their reviews of these allocation requests. (See p. 11.)

- Consider adding occupational disciplines associated with personnel, statistics, finance, and budget functions to its career-reserved criteria and be alert to adding other disciplines requiring impartiality or the public's confidence in Government. (See p. 18.)
- Review general positions of SES to insure proper designation. (See p. 18.)
- Propose a corrective amendment to the Reform Act to include substantial career-oriented service in career-type positions as a basis for career SES appointment under the career conversion provisions for Federal employees serving in non-career, Schedule C, limited executive assignments, and similar appointments. (See p. 26.)
- Verify the incumbency requirement for executives who (1) converted from noncareer to career status and (2) make similar future conversions. (See p. 26.)
- Propose an amendment to clarify the "repealer provision" of the Reform Act regarding special agency authorizations. (See p. 29.)
- Propose legislative, or, if appropriate, regulatory changes to achieve consistency among agencies as to the maximum percentage of career executives eligible for bonuses in any one year. (See p. 39.)
- Require an increase in number and frequency of OPM onsite compliance reviews of agencies' SES activities. (See p. 46.)
- Evaluate the possibility of separating organizational responsibility for compliance reviews from technical assistance and other similar duties. (See p. 46.)

--Provide guidance to agencies directing that they avoid appointing officials responsible for auditing and investigating agency personnel activities to performance review boards and executive resources boards. (See p. 49.)

RECOMMENDATIONS TO THE CONGRESS

Salary increases for Federal executives have been limited or denied despite statutes which allow annual adjustments. Also, the Congress has been considering measures which would restrict the amount of bonuses and ranks that could be paid SES executives. SES success would be enhanced by the successful functioning of the present system. Any productivity gains that can be accomplished through the SES compensation plan would return many times its cost. GAO recommends that the Congress

--allow the annual adjustments for executives under Public Law 94-82 to take effect (see p. 33),

--discontinue the practice of linking congressional and Executive Level II salaries (see p. 33), and

--allow the bonus and rank provisions of the Reform Act to take effect (see p. 39).

AGENCY COMMENTS AND OUR EVALUATION

In general, OPM agrees with matters discussed in this report. The Director of OPM expressed his concern at the recent congressional initiatives to limit aggregate SES pay to \$52,750. He believes that such limitations, which restrict the ability to reward outstanding executives, will stifle the SES program and adversely affect executive recruitment and retention. (See app. III.)

GAO concurs with the Director's concerns and believes that congressional action limiting SES pay and bonuses could undermine the chances for success of SES which is vital to achieving the goals of civil service reform.

RECENT CONGRESSIONAL ACTION

On July 2, 1980, the Congress included language in the Fiscal Year 1980 Supplemental Appropriations Act which allows aggregate pay for SES executives up to the level authorized by the Reform Act, but limits bonus payments to 25 percent, rather than 50 percent of SES positions. In addition, GAO was directed to do a thorough study, in cooperation with OPM, of bonus system payments and to report the findings to the authorizing and appropriation committees.

This action alleviates to a large degree the situation for fiscal year 1980, but a House proposal still retains language which would prohibit the October 1980 adjustment and limit aggregate SES pay for fiscal year 1981 to \$52,750. Thus, GAO's concerns about pay-setting practices and restrictions on bonus and rank payments remain.

Continuing dialogue which focuses on compressing executive pay and limiting bonus and rank awards serves to create turbulence and declining morale among senior executives. GAO believes that the innovative features of the compensation plan for SES members, as set forth in the Reform Act, should not be abandoned before they have been given a chance to work. As directed, GAO will be especially alert for abuses of bonus payments in reviews of performance appraisal systems required by the Civil Service Reform Act of 1978.

C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	SES structure and process	1
	SES conversion	4
	Scope of review	5
	Agency comments and our evaluation	6
2	CONVERSION TO SES IS COMPLETED BUT ISSUES CONCERNING THE PROCESS REMAIN THAT NEED ATTENTION	7
	Opportunities for greater consistency in future allocations of SES positions	9
	Conclusion	11
	Recommendation	11
	Criteria and monitoring of career-reserved positions need improvement	11
	Conclusion	17
	Recommendation	18
	OPM will need to monitor agency practices in making noncareer and limited appointments	18
	Initial appointment of noncareer executives to SES career status	21
	Conclusions	25
	Recommendations	26
	SES exclusions	26
	Conclusion	28
	Recommendation	29
3	PAY-SETTING PRACTICES AND PROVISIONS FOR PERFORMANCE AWARDS CAN BE IMPROVED	30
	Executive pay-setting practices adversely affect SES salary increases	30
	Conclusion	33
	Recommendations to the Congress	33
	Legislation creates potential inequity in performance awards	34

	<u>Page</u>
CHAPTER	
Conclusions	38
Recommendation to the Congress	39
Recommendation to OPM	39
4	
OPPORTUNITIES FOR OPM TO STRENGTHEN ITS ROLE IN PROVIDING GUIDANCE AND OVERSIGHT	40
Continued efforts are needed to insure timely and complete guidance	40
Conclusion	42
OPM compliance program--a valuable tool for helping insure success of SES	42
Conclusions	46
Recommendations	46
OPM's SES information system	46
Conclusion	47
Composition of ERBs and PRBs	47
Conclusion	49
Recommendation	49
APPENDIX	
I	
SES positions in auditing discipline showing general designation	50
II	
Federal executive salary relationships	52
III	
Letter dated July 1, 1980, from the Director, Office of Personnel Management	53

ABBREVIATIONS

DOD	Department of Defense
ERB	executive resources board
ES	Executive Schedule
GAO	General Accounting Office
GS	General Schedule

NASA National Aeronautics and Space Administration
OPM Office of Personnel Management
PRB performance review board
SES Senior Executive Service



CHAPTER 1

INTRODUCTION

The Senior Executive Service (SES), called by some the cornerstone of efforts to improve the Federal personnel management system, was created by title IV of the Civil Service Reform Act of 1978 (Public Law 95-454). SES is a gradeless system where salary and status are personal and not dependent on the position one occupies. The SES system is to

- provide better management of the number and distribution of Federal executives,
- give agency managers greater flexibility in assigning executives where they are most needed,
- insure that career people entering SES have managerial qualifications,
- make executives individually accountable for their performance,
- permit removal of those whose performance is less than fully successful and does not show improvement,
- link compensation with performance,
- offer increased advancement opportunities to career executives, and
- simplify the numerous pay and other laws previously governing senior executive levels.

SES STRUCTURE AND PROCESS

SES covers managerial/supervisory positions in the executive branch classifiable at General Schedule (GS)-16, 17, and 18 and Executive Levels IV and V (or their equivalents) that do not require Senate confirmation. Certain positions remain outside SES by statutory exclusion or by the President on recommendation from the Office of Personnel Management (OPM).

The Civil Service Reform Act of 1978 also establishes an overall limit of 10,777 on SES positions plus non-SES GS supergrade positions. The law further limits to 517 the scientific and professional executive positions in research and development that are outside SES and GS.

Four types of appointments can occur under SES. They are:

Career: Selection under the merit staffing process--OPM approves candidates' managerial qualifications.

Noncareer: Selection not under the merit staffing process--OPM does not review candidates' managerial qualifications.

Limited term: Nonrenewable appointment to a position the duties of which expire within 3 years.

Limited emergency: Nonrenewable appointment for up to 18 months to meet an urgent need.

At least 85 percent of SES appointments Government-wide must be career. OPM determines the proportion of noncareer appointments in an agency. The number usually does not exceed 25 percent in an agency, with total Government-wide noncareer appointments limited to 10 percent of SES positions. Limited appointments may not exceed 5 percent of SES positions.

The act requires each agency to establish one or more executive resources boards (ERBs) comprised of its top management. ERBs conduct the merit staffing process for career appointees. Also, OPM has recommended that agencies delegate much more responsibility to their ERBs for SES management, including executive personnel planning, staffing and development, position management, pay management, performance appraisals, performance awards, and evaluation of executive personnel management.

OPM must establish one or more qualifications review boards to certify the executive qualifications of candidates for initial appointment as career appointees. The agency head or other agency appointing authority will select non-career and limited appointees. An agency may make a limited appointment only with specific authorization from OPM.

SES has only two types of positions--general and career reserved. General positions are the norm and executives with career, noncareer, or limited appointments may hold them. Career-reserved positions are restricted to career employees to insure impartiality or the public's confidence in Government.

The Reform Act requires five or more SES pay rates. The President established six levels of pay--Executive Schedule (ES)-1 (lowest) through ES-6 (highest). The act requires that the lowest rate be at least equal to the first step

of GS-16 and that the highest not exceed that for Executive Level IV. The salaries of executives converting to SES may never be reduced below their payable salary at the time of entry.

Career executives in SES with fully successful performances can receive lump-sum performance awards (bonuses) of up to 20 percent of their base pay. The number of awards granted in any fiscal year may not exceed 50 percent of all SES positions in an agency. Career executives are also eligible for Meritorious Executive and Distinguished Executive ranks:

--Meritorious Executive can be awarded to up to 5 percent of SES a year as a one-time lump-sum payment of \$10,000.

--Distinguished Executive can be awarded to up to 1 percent of SES a year as a one-time lump-sum payment of \$20,000.

The act requires each agency to develop, according to OPM standards, one or more SES performance appraisal systems designed to

--permit accurate evaluation of performance based on criteria which specify a position's critical elements,

--provide for systematic appraisals of performance,

--encourage excellence in performance, and

--provide a basis for determining eligibility for retention and for performance awards.

OPM must review each agency's performance appraisal system to determine if it meets the requirements of the act. The first performance rating must occur no later than October 1980, but can take place as early as February 1980. Each agency must establish one or more performance review boards (PRBs) responsible for making recommendations on performance ratings and awards to the agency's appointing authority and its ERB.

The act also requires that OPM or agencies establish programs for the systematic development of candidates for SES and for the continuing development of incumbent senior executives. OPM will assist agencies in establishing such programs and in monitoring their implementation. The act allows agencies to grant sabbaticals of up to 11 months in any 10-year period to career executives meeting certain tenure requirements.

SES CONVERSION

Conversion was the process through which positions from the various executive authorities and systems were designated as SES, and executives already in these positions were given the opportunity to join the new SES. The process was accomplished under rigid time schedules because the Reform Act required that SES be effective 9 months after enactment--July 13, 1979.

OPM required agencies to submit by January 1, 1979, requests for SES positions; non-SES GS-16, 17, and 18 positions; and non-SES and non-GS supergrade equivalent scientific and professional positions. These requests were to include sufficient numbers to permit incumbents to convert to SES or to remain in non-SES positions. In addition, agencies requested SES allocations for GS-15 positions they believed should properly be in SES and for SES positions needed for major program innovations or expansions planned during the initial authorization period (Apr. 1979 to Oct. 1981).

In reviewing agency requests, OPM used a variety of techniques including its knowledge of agency organizations. OPM only gave agencies allocations in total numbers, rather than by designated position titles. Thus, agencies could establish and fill any position they believed should be in SES, as long as these agencies remained within their allocations.

OPM, bound by the 10,777 position ceiling, initially allocated 9,296 authorities for SES and non-SES GS supergrade positions to the Federal agencies. Of those authorities, 8,394 were for SES positions.

Shortly after OPM made these allocations in March 1979, incumbents in positions agencies designated as SES had 90 days after notification to join SES or to decline and thereby retain their current appointment and pay. These executives received information on the type of position offered (general or career-reserved), the pay rate, their SES conversion status (career, noncareer, or limited), and their status should they decline conversion. Over 98 percent accepted conversion and formed the nucleus of executives entering SES on July 13, 1979.

The Director of OPM has assigned the administration of the SES program to the SES Division of the Executive Personnel and Management Development Group of OPM. The SES Division operates to provide agencies with maximum flexibility to establish the procedures suited to their own needs. OPM has provided some guidance and regulations on such areas as conversion, ERB, PRB, merit staffing, and data reporting. OPM has also published pamphlets and issued films and has

held many briefings and seminars on SES. Finally, OPM has provided technical assistance to agencies on request. Allowing agencies maximum flexibility during conversion has resulted in an SES personnel system which is predominantly agency designed and operated.

SCOPE OF REVIEW

We examined title IV of the Reform Act and its legislative history, regulations, procedures, guidance, and other documents OPM provided to agencies and senior executives. We also held extensive discussions with OPM officials and reviewed records to ascertain and assess OPM's role and process used in the conversion of agency positions and personnel to SES.

We reviewed the conversion process at eight selected agencies through discussions with agency officials and review of supporting records. The agencies were:

- Department of Defense (DOD), including the Office of the Secretary, Army, Navy, Air Force, and the Defense Logistics Agency;
- Department of Commerce;
- Community Services Administration;
- Federal Trade Commission;
- Merit Systems Protection Board;
- National Aeronautics and Space Administration (NASA);
- Small Business Administration; and
- Veterans Administration.

The agencies were diverse in size and function and kinds of executive appointments. Our work was centered at the headquarters offices of these agencies where most of the conversion process occurred and where most of the senior executives are located. We also interviewed officials at the Office of Management and Budget on their role in SES conversion.

We reviewed literature, research studies, and reports relevant to SES prepared both before and after SES conversion. Finally, we attended several seminars and training sessions on SES.

AGENCY COMMENTS AND OUR EVALUATION

In general, OPM agrees with matters discussed in this report. The Director of OPM expressed his concern at the recent congressional initiatives to limit aggregate SES pay to \$52,750. He believes that such action will stifle the SES program and adversely affect executive recruitment and retention. (See app. III.)

We concur with the Director's concerns and believe that congressional action to limit SES pay and bonuses could undermine the chances for success of SES which is vital to achieving the goals of civil service reform.

CHAPTER 2

CONVERSION TO SES IS COMPLETED

BUT ISSUES CONCERNING THE PROCESS

REMAIN THAT NEED ATTENTION

SES became a reality on July 13, 1979, despite rigid time schedules for converting to the new system and the need for major changes in Federal personnel management. On this date, 6,838 executives became members. More than 98 percent of the incumbents in SES designated positions elected to join.

In light of its time constraints, OPM did a creditable job serving as the focal point for SES conversion. But concerns remain as SES operates in its initial months, and OPM and other agencies are still designing and implementing some major elements--like performance appraisal and executive development.

Whether SES will improve the efficiency and effectiveness of the Federal Government is an issue we believe will be best answered by the test of practical application and the ability of agencies to improve the quality of public service. The innovative and complex tasks of implementation continues and will require the skills, participation, and cooperation of the Congress, OPM, executive agencies, and the SES executives themselves to insure the long-range success of this new system.

We identified several concerns arising around the time of conversion. These include

- the position allocation process, position designations, and appointments (discussed later in this chapter);
- pay and performance awards (ch. 3); and
- OPM's role in providing guidance and oversight to agencies (ch. 4).

Actions by OPM, and in some areas by the Congress, should enhance the potential for SES success. We are making separate reviews on the subjects of performance appraisal and executive development, both crucial to the success of SES.

SES was established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified executives needed to provide more effective management. The Reform Act included a number of safeguards to help protect career executives and help guard against undue politicization. These safeguards include

- a requirement that noncareer appointments not exceed 10 percent of SES positions Government-wide and usually not exceed 25 percent in any agency (no such limitation previously existed),
- a requirement to designate certain positions requiring impartiality or the public's confidence in the impartiality of the Government as "career reserved,"
- the establishing of a 120-day waiting period after the beginning of a new Presidential administration before a performance appraisal and rating may be made of a career appointee, and
- the establishing of a 120-day waiting period before new agency heads or immediate noncareer supervisors can reassign or transfer career executives involuntarily.

Many of the personnel office officials we interviewed made positive comments about the executive personnel management changes occurring as SES was being implemented. Some officials, however, expressed concern about the potential for abuse that could occur with SES's added flexibility. A few examples follow:

- One official said the ideas behind SES are sound, but they could be endangered by overregulation by OPM or politicization by agencies. SES's ultimate success will depend on the quality of people influencing it.
- Another official said the success of the SES pay and bonus systems will depend on SES members being rated on the basis of performance rather than on political objectives.
- A third official said the managerial flexibility will better enable agencies to get their job done but contrasted this flexibility to greater susceptibility to politicization.

The extent to which top agency managers use and not abuse the added flexibility will affect the success of SES.

This chapter focuses on specific issues about the conversion process. Matters which require additional attention include

- the process for allocating SES positions to agencies,

- criteria for establishing and method of monitoring career-reserved designations,
- controls over noncareer and limited appointments,
- process for converting executives from noncareer to SES career status through reinstatement, and
- positions excluded from SES coverage.

OPPORTUNITIES FOR GREATER CONSISTENCY
IN FUTURE ALLOCATIONS OF SES POSITIONS

Several factors affected OPM's review of possible positions for SES during the first allocation process. These included

- tight schedules for determining and allocating SES and non-SES supergrade positions,
- the many positions to be considered, and
- the limited amount of agencies' documentation to support their SES position needs.

Greater consistency can be achieved in the next allocation process with OPM guidelines to agencies and internal review procedures which draw on the knowledge gained in the first allocation process. The process should result in enough allocations to accomplish agency missions and yet avoid excessive allocations that could result in unnecessary spending for salaries and benefits.

The Reform Act requires each agency to examine its needs for SES positions every 2 years and to submit a written request to OPM for a specific number of these positions. The agency request must

- be based on the agency's anticipated program activities and budget requests and other factors as prescribed by OPM and
- identify, by position title, those positions proposed to be career reserved or proposed to be removed from that designation and justify such actions.

OPM, in consultation with the Office of Management and Budget, must then review each agency's request and authorize a specific number of SES positions for each agency.

Guidelines dated November 22, 1978, required agencies to submit requests for their initial allocation of supergrade

positions for April 1979 through October 1981 to OPM by January 1, 1979. Thus, agencies had to quickly identify their supergrade needs, including sufficient numbers to permit incumbents to convert to SES or to remain in non-SES positions. Agencies could request numbers of SES positions to upgrade existing GS-15 positions which they believe should properly be in SES and to satisfy any planned major program innovations or expansions during the authorization period. Also, agencies were to include a proposed number of SES non-career appointments and a proposed number of career-reserved positions.

Some agencies submitted more positions to OPM than they could reasonably expect to be approved for SES, while others analyzed and put priorities on the positions they believed essential to maintain operations. According to OPM officials, agencies submitted varying amounts of support with their submissions: from lengthy descriptions of each position to little more than a list of positions.

OPM was also faced with rigid time limits in reviewing agency submissions. The process for allocating positions to agencies required scrutiny of agency justifications by the agency officer branches (within the SES Division) and discussions and negotiations with agency officials to arrive at final allocation numbers. OPM gave tentative allocations on February 23, 1979, and made most final allocations to agencies by April 2.

According to OPM personnel responsible for reviewing agency requests, no specific internal guidelines or criteria were rigorously applied during the reviews. Reviewing officials determined allocations based on their knowledge of agency organizations and programs. They used certain classification principles, position comparison, and professional judgment. According to OPM agency officers, the time limits did not allow for extensive use of classification standards. Furthermore, agencies did not have to use new authorities for those positions OPM believed were necessary but could substitute other positions. Consequently, even though OPM reviewed positions requested by agencies, the agencies decided which positions should be SES.

During our review of the allocation process, we noted inconsistencies had occurred. For example, DOD was authorized a "pool" of 28 SES positions for unexpected emergencies. DOD was the only agency we found that was given such a pool which was not justified for a specific programed need. Other agencies, which did not request "emergency" positions, were told to first attempt to satisfy any emergency need within their authorization before coming to OPM on a case-by-case basis to request additional positions.

DOD was also authorized 20 SES slots for use in executive development. According to OPM officials, other agencies did not get similar slots because they did not propose a plan. However, OPM had not received or approved a formal plan for the use of these slots at the time DOD's positions were allocated.

Also during the authorization process, OPM determined that the Government-wide level of occupied noncareer authorities was very close to the 10-percent limitation established by the Reform Act. In fact, OPM told agencies they could only receive enough noncareer authorities to convert their current onboard, noncareer executives into SES. However, NASA was initially allocated 100 percent of their request (24 non-career authorities) when less than 50 percent of the request would have satisfied their conversion needs. NASA had no specific need for the additional noncareer authorities. Other agencies received little or no increase. OPM subsequently reduced the number of NASA's noncareer authorities to 18.

CONCLUSION

Agency missions change over a period of time as do the duties and responsibilities of individual positions. Thus, OPM's review of agency position requirements every 2 years is necessary and crucial to insure allocations are fair and equitable among agencies.

RECOMMENDATION

To help achieve greater consistency in the next allocation process, we recommend that the Director of OPM require that criteria be established for agencies' use in requesting future allocations and also that criteria and procedures be developed to aid OPM agency officers and their staffs in achieving consistency in internal reviews of these allocation requests. The procedures should draw on the knowledge gained in the first allocation process.

CRITERIA AND MONITORING OF CAREER-RESERVED POSITIONS NEED IMPROVEMENT

Although OPM issued criteria on the definition and interpretation of SES career-reserved positions, we found

- positions that appeared to meet the criteria but were designated "general" and
- positions with similar responsibilities being treated differently.

OPM needs to consider adding several occupational disciplines to its criteria for positions normally career reserved and increase its monitoring efforts to insure general positions are properly designated and do not involve duties which warrant career-reserved designations.

Two types of positions are in SES: general and career reserved. The general position is the norm, and executives with career, noncareer, or limited status may occupy the general position. Only a career appointee can occupy a career-reserved position.

The President's Reorganization Project on Personnel Management summarized the important role of the career-reserved designation by stating:

"Some executive positions are concerned primarily with managing ongoing programs and have limited policy involvement. Others, by the nature of their responsibilities, are highly sensitive and should be administered in a non-partisan way. For example, the public must be assured that the tax laws are applied fairly, that contracts are let without favor, and that regulations are enforced equitably. For the sake of efficiency in the first instance and of public confidence in the second, these types of managerial positions should be reserved for career employees.

"Designations of positions as 'career reserved' will be made by the agencies, with post-audit by the Office of Personnel Management. * * * will be authorized to add groups of positions to the career reserved category."

These features were incorporated in Civil Service Reform legislation and further explained through OPM guidance and regulations.

The Reform Act requires that a position be designated career reserved if the filling of the position by a career appointee is necessary to insure impartiality or the public's confidence in the impartiality of the Government. Each agency head is responsible for designating career-reserved positions in the agency. The law, however, requires OPM to periodically review general positions, and if it determines that any of these positions should be career reserved, OPM will direct the agency to so designate it.

As required by the Reform Act, OPM prescribed procedures to agencies governing the designation of career-reserved

positions. These procedures initially identified career-reserved positions as those whose principal duties

"involve day-to-day operational responsibilities without responsibility for or substantial involvement in the determination or public advocacy of the major controversial policies of the Administration or agency, in the following occupational disciplines:

- adjudication and appeals,
- audit and inspection,
- civil or criminal law enforcement and compliance,
- contract administration and procurement,
- grants administration,
- investigations and security matters,
- tax liability matters, and
- scientific or other highly technical or professional disciplines."

The procedures also state that career-reserved positions should include other positions requiring impartiality, or the public's confidence in impartiality, as determined by an agency in light of its mission.

Following OPM-prescribed criteria, agencies made initial career-reserved or general designations in their submissions of SES requirements to OPM.

Interim regulations issued in December 1979 include essentially these same OPM criteria as above. The regulations, however, allow positions in a scientific or highly technical or professional discipline to be looked at individually to determine whether they meet the law's criteria of impartiality. The regulations also require OPM approval before an agency may change the designation of an established position from career reserved to general or from general to career reserved.

Additional occupational disciplines
may need to be added to OPM regulations
on career-reserved designations

The OPM guidance and later interim regulations identified several occupational disciplines as career reserved when the principal duties involved day-to-day operational responsibilities without substantial involvement in the major controversial policies of the Administration or the agency. During our visits to agencies, some officials said that jobs in personnel, statistics, and finance and budget should also be career reserved.

Officials from several agencies felt strongly that SES positions in personnel should be career reserved. Some agencies had designated their personnel directors and other personnel management officials as career reserved. Consideration of these positions as normally career reserved was first discussed in the President's Reorganization Project on Personnel Management which predates the Civil Service Reform Act. The project staff report included many of the same occupational disciplines as in the present regulations as appropriate for career reserved but also included "Internal Administrative Management (including personnel)." Also, in commenting on the legislative proposal, at least one agency, the Department of Commerce, said that it would be desirable for all agencies to reserve certain executive positions for career designation for the sake of public confidence including those in personnel management.

Strong concern was also expressed early in the conversion process that senior positions in statistical units be career reserved to insure the public's confidence in the products of statistical programs. In February 1979 the Statistical Policy Coordination Committee, established by the President to advise and assist on the improvement, development, and coordination of statistical activities, forwarded to OPM a resolution that recommended

"* * * the Office of Personnel Management adopt criteria and regulations reflecting a general policy of designating Senior Executive Service positions in statistical bureaus and operating units as career reserved."

The American Statistical Association and the Advisory Council on Education Statistics approved similar resolutions.

Although OPM regulations did not specifically address senior positions in statistical units, major statistical agencies designated most of their SES positions career reserved. However, because some positions were designated

general in the statistical units at the Departments of Health, Education, and Welfare (now the Department of Health and Human Services), Commerce, and Energy, the Department of Commerce's Office of Federal Statistical Policy and Standards sent letters to each Department urging them to reconsider these general designations. An official of the Office of Federal Statistical Policy and Standards also pointed out that there were many smaller statistical units in Government which may include SES positions. These positions may also warrant career-reserved designations.

Some agencies we visited believed positions in finance (controller, for example) and budget should be career reserved. Many agencies have SES positions in these occupational disciplines, and general designations, as well as career reserved, were widely used. Many of these positions may be appropriate for career-reserved designations. As noted previously, the President's Reorganization Project on Personnel Management categorized positions in "Internal Administrative Management" as career reserved.

OPM said it had received suggestions that additional disciplines, including personnel and statistics, be added to those in the career-reserved criteria. However, OPM declined to change the criteria until more experience was gained with their application to see if there were any problems. We believe that consideration should be given to adding these occupational disciplines to the criteria along with others noted by OPM or suggested by agencies and found to merit inclusion as career reserved.

Need for more monitoring of agencies' general position designations

During the conversion process, OPM reviewed agency SES position requests and designations to determine how many positions to allocate to a particular agency. OPM officials said the review of position designations (general or career reserved) had a lower priority than determining the total number of allocations and which positions were justified for SES. Also, since OPM only allocated total positions and total career-reserved designations, agencies had the flexibility to establish those positions it believed should be SES as well as those it wanted as career reserved or general.

At the time our review was completed in December 1979, OPM only planned to review these positions and designations selectively or when, as required by interim OPM regulations, an agency requested a change in designation. Without

a full OPM review, no assurance exists that initially all positions were properly designated, and that agencies consistently interpreted and understood the guidance.

As promised in its guidance on position designations, OPM is reviewing a sample of general positions during its compliance reviews to determine whether any of these positions should be career reserved. In at least 3 of the 23 compliance reviews conducted through March 1, 1980, OPM found general positions which they believed should be career reserved.

--There were five SES general positions at the Immigration and Naturalization Service, Department of Justice, which OPM believed should be career-reserved designations because of the law enforcement component in the positions. The agency had initially designated these positions career reserved, but they were changed to general at the direction of the Department of Justice.

--Five positions at the Department of Interior were designated general which OPM believed should be career reserved. These positions dealt with adjudication, appeals, inspection, and enforcement.

--The International Communication Agency had one SES position dealing with security matters which OPM believed should be career reserved.

The International Communication Agency agreed to change the designation. OPM asked the other two agencies to submit a written justification for the designation of the questioned positions. Although OPM reviews have had some success, its coverage is limited by both the number of agencies reviewed and the number of positions reviewed within an agency.

The Federal Register dated January 18, 1980, listed agency career-reserved and general positions by title. Many of the general position titles were the types which OPM criteria show as usually career reserved. These include titles in disciplines such as audit, contract and grants administration, procurement, appeals, civil/criminal law enforcement, and compliance. Although position titles alone do not insure appropriate designation, titles can indicate positions which, in the absence of specific knowledge by OPM, justify further evaluation to insure a general designation is proper.

The Federal Register listed as general several SES positions in the audit discipline, some of which were under the recently established Offices of Inspector General. (See

app. I.) Under normal circumstances, general designations (allowing appointment of noncareer executives) would not be appropriate for audit and investigative positions in view of (1) the independence they need to function properly within an agency and (2) the public's perception that they operate independently, impartially, and on a nonpartisan basis. Also, these positions should not have policymaking responsibility within an agency.

OPM appears to share this view. During our review, we noted three positions in the Office of Inspector General, Community Services Administration, which were originally designated general. We told OPM officials about these positions and they instructed the agency to change them to career reserved.

We believe that more monitoring is needed to insure general positions are properly designated and that they do not involve duties which would warrant career-reserved designations. Our position is based on the following:

- Some agencies were encouraged to have the optimum number of general designations to increase flexibility; general positions can be filled by career, noncareer, or limited appointments.
- OPM did not give its highest priority to reviewing position designations.
- Even if OPM did review proposed designations in detail, agencies still could assign positions the designation they believed justified.
- OPM compliance reviews have identified positions which should be career reserved, but the review coverage has been limited to only a very small portion of SES positions.
- Listings of general positions include titles which might warrant career-reserved designations.
- Under the Reform Act, OPM must review general positions and direct agencies to designate positions career reserved if it determines such designations are proper.

CONCLUSION

Considerable effort has taken place in making positions career-reserved and general designations; but, some positions established as general would be more appropriate as career reserved. OPM needs to give (1) more attention to the

clarity of its guidance on designating career-reserved positions and (2) greater vigilance in making sure agencies' general positions do not involve duties which would more appropriately be career reserved.

RECOMMENDATION

We recommend that the Director of OPM consider adding occupational disciplines associated with personnel, statistics, finance, and budget functions to its career-reserved criteria and be alert to add other occupational disciplines found to warrant career-reserved designations. We also recommend that OPM be required to review SES general positions to insure proper designation and that agencies consistently interpret and understand existing criteria for designating positions.

OPM WILL NEED TO MONITOR AGENCY PRACTICES IN MAKING NONCAREER AND LIMITED APPOINTMENTS

Merit staffing procedures are not required in making noncareer and limited appointments, and much of the responsibility for making these appointments rests with the agencies. As part of its oversight responsibility, OPM will need to be aware of agency practices in making these appointments to insure agencies

--consider the managerial qualifications of noncareer appointees and of the positions to which noncareer executives are appointed and

--use limited authorities properly when a blanket authority has been given.

Up to 15 percent of the SES work force can be other than career employees. SES appointment authorities are summarized in the following table.

Government-wide proportion	SES appointment authorities	SES position types	
		General	Career reserved
No less than 85%	Career	X	X
No more than 10%	Noncareer	X	-
No more than 5%	Limited		
	-term	X	-
	-emergency	X	-

Noncareer appointments

The 10-percent limit on noncareer executives out of the total SES positions is an important safeguard to protect career executives and guard against undue politization. Although proportions of these appointments may vary among agencies within the overall 10-percent limit, no agency may have more than 25 percent noncareer SES positions unless an agency had more than 25 percent noncareer political executives at the time the Reform Act was enacted. Before SES, no limits existed on the number of noncareer appointees.

Agencies were required to include a proposed number of SES noncareer appointments in their initial SES allocation requests. In reviewing these requirements, OPM found that the number of noncareer executive assignments authorized under the existing system was about 9.8 percent of the positions projected for SES. Because of the 10-percent limit, most agencies initially received few or no additional non-career authorizations beyond those they had before SES.

The act, however, also gave noncareer appointees with reinstatement eligibility to a competitive service position a chance to convert to career SES status. Through this process, about 270 noncareer authorizations became available for other use. (See p. 21 for a detailed discussion of this process.) OPM required that these authorities be returned. This provided OPM with an opportunity to more equitably distribute noncareer resources and retain a small pool of authorities for unforeseen situations.

Agencies can use noncareer authorizations to fill any general position. Since general positions are considered the norm and constitute most SES positions (rather than career reserved), agencies have considerable flexibility in using their authorizations within their numerical limits. Noncareer authorizations allow agency heads to select appointees who are in sympathy with and who could be deeply involved in advocating Administration programs and who have the confidence of the agency head in introducing major program initiatives. Noncareer appointees are selected outside the competitive process and may be removed by the agency head with no appeal rights.

All SES members, career and noncareer, are required by the Reform Act to meet the qualifications of the positions in which they serve. The act further requires that qualifications panels in OPM approve the managerial qualifications of all career appointees. No similar requirement exists for non-career appointees. OPM explains that career executives should have broader qualifications since they will probably serve in more than one position during their career.

Under the former Federal executive system, concern existed that people could be appointed to executive positions who lacked adequate managerial qualifications. In commenting on the proposed reform legislation, at least two agencies believed that OPM should assume some role in assessing the managerial qualifications of noncareer executives. The Reform Act, however, left responsibility for the qualifications of noncareer appointees with the agencies.

Some agency officials we interviewed believed noncareer executives should be required to meet managerial qualifications. The Small Business Administration, which has a large proportion of noncareer executives, made the following statement about SES qualifications.

"SES is for managers. SBA needs to have capable and broad-based executives. Our senior executives will manage programs * * *. Qualifications for SES in SBA will, therefore, be managerial. This emphasis on management will, in the long term, ensure that the SBA has not only a solid interdisciplinary managerial core, but also managerial 'bench-strength'."

Conclusion

The managerial abilities of its executives will be a key to success for SES. The Reform Act requires that both career and noncareer SES members must meet the qualifications of the positions in which they serve. As agencies develop standards for general positions and appoint noncareer executives, they should be aware of the managerial qualifications needed for these positions and by these executives. OPM should also be alert to managerial qualifications of noncareer appointees and of the positions to which noncareer persons are appointed as it monitors agencies and performs compliance reviews.

Limited appointments

The Reform Act also permits limited term appointments for 3 years or less to positions which will expire at the end of that time and limited emergency appointments for 18 months or less to meet bona fide, unanticipated, urgent needs. These limited appointments are not renewable and may not exceed 5 percent of total SES positions Government-wide.

Agencies may make limited appointments to general positions only. An agency may make such an appointment without using merit staffing procedures, but each limited appointee must meet the appointing agency's written qualifications for the position to which appointed. A limited appointee does

not acquire status within SES on the basis of this appointment, and an agency may terminate a limited appointment any time.

OPM had allotted agencies only 40 limited appointments as of December 31, 1979. However, an OPM official told us that he expects agencies to use more limited term and limited emergency appointments in the future.

No individual may receive a limited appointment without OPM's prior approval. OPM has reserved this authority to "prevent political considerations from influencing non-political SES appointments." OPM officials stated during a congressional briefing on SES that the law was drafted with the intent of requiring agencies to go through OPM when they wished to use limited appointment authorities. These authorities were not to be used to augment noncareer political appointment authorities.

OPM interim regulations on limited appointments allow agencies to make limited appointments under certain circumstances if the agency has a prior agreement with OPM. Without such an agreement, OPM must approve each limited appointment authority individually. Should such agreements occur, OPM will need to closely monitor appointments under these agreements to insure that agencies are using limited authorities properly.

INITIAL APPOINTMENT OF NONCAREER EXECUTIVES TO SES CAREER STATUS

Section 413 of the Reform Act sets forth the general framework for the conversion of positions and executives to SES. It provides that executives who are serving in a position at the time it is designated as an SES position will be given the option of converting their appointment to an SES appointment. Those executives who elect to convert will receive either a career or a noncareer appointment depending on their type of past service and the designation of their prior position. Individuals serving under a career or career-conditional appointment, or a similar appointment in an excepted service position, are entitled to conversion to SES career status. Individuals serving under a (1) Schedule C, (2) noncareer executive assignment, (3) noncareer Executive Schedule, or (4) limited executive assignment, who elect conversion are to be converted to non-career status. However, the section provides that employees who are serving in one of these four types of appointments, but who have reinstatement eligibility to a position in the competitive service, may receive career status if OPM determines that it is warranted.

OPM issued a regulation allowing conversion based on career-type experience in the excepted service although the Reform Act specifically requires that prior competitive service be demonstrated by those excepted service appointees, serving under one of the types of appointments discussed, who wished to be considered for career status.

We also found that despite the fact that the Reform Act and OPM's implementing guidance to agencies require that an executive be an incumbent of a position when it is designated an SES position, OPM for the most part, did not verify this requirement in its review of the requests for conversion to career status.

Executives who would have otherwise received SES non-career appointments but who had reinstatement eligibility to a position in the competitive service were given the opportunity, when electing to convert to SES, to request conversion to career status pursuant to section 413(g) of the Reform Act. This section provided that those executives with reinstatement eligibility to a position in the competitive service may, on request to OPM, be appointed as a career appointee to an SES position.

OPM guidance to agencies implementing the above legislative provision stated that "only incumbents of specified positions which have been designated SES positions are eligible for the * * * conversion." This incumbency provision was according to the legislative requirements and included reinstatement eligibility based only on prior competitive service. A later regulation was issued to include "a substantial career-oriented service in career-type positions in the excepted service as a basis for career SES appointment under the career reinstatement provisions." The latter regulation was issued because of agency comments expressed regarding the "inequitable conversion provisions."

After the agencies identified and designated their SES positions, the personnel offices were to ascertain which excepted and limited time appointees had reinstatement eligibility, inform these appointees of that eligibility, and offer them the opportunity to request conversion to SES career appointment. Executives who wanted such conversion were to request them by memorandum to the Director of OPM.

Upon receipt of a conversion request, agency personnel offices were to put together a package containing the request, evidence of the executive's reinstatement eligibility, and a form describing the evidence of reinstatement eligibility. The personnel office was to forward the package to

OPM for review. After OPM made its determination about the eligibility, OPM was to notify in writing the agency personnel officer who was to then notify the executive.

Information from OPM agency officers showed 293 requests for conversion from SES noncareer to career status appointments. Included in the requests were 225 based on career or career-conditional appointments in the competitive service and 66 on career-type appointments in the excepted service. We were unable to identify the type of service for two requests.

OPM found 268 requests eligible for conversion to SES career status and 24 ineligible. One case was undecided at the time of our review.

The following table analyzes the requests by executives to OPM:

<u>Basis</u>	<u>Requests submitted</u>	<u>Determined eligible</u>	<u>Determined ineligible</u>	<u>Decision pending</u>
Prior competitive service	225	223	2	-
Prior excepted service	66	45	20	1
No basis shown	<u>2</u>	<u>-</u>	<u>2</u>	<u>-</u>
Total	<u>293</u>	<u>268</u>	<u>24</u>	<u>1</u>

After the 268 executives were converted to career status, they were no longer included in the 10-percent limitation on noncareer appointments. This allowed OPM to grant noncareer authorities to agencies to replace the conversions and in effect increase noncareer opportunities.

OPM needs legislative authority to use career-type excepted service experience for noncareer conversions to SES career status

OPM has issued a regulation allowing conversion to SES career status of individuals serving under Schedule C, non-career executive assignment, noncareer Executive Schedule, and limited executive assignment positions based on prior career-type experience in the excepted service, even though the Reform Act specifies only prior competitive service as the basis for such conversions. As a result, these executives are entitled to the bonus, job security, and other benefits of career executives.

Section 413(g) of the Civil Service Reform Act provides in part:

"Each employee who has elected conversion to a Senior Executive Service position * * * who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office, be appointed as a career appointee to a Senior Executive Service position."

The positions described in paragraph (1), (2) or (3) of subsection (e), to which the above excerpt refers, are generally described as (1) Schedule C, (2) noncareer executive assignment, (3) noncareer Executive Schedule, or (4) limited executive assignment.

On the basis of comments and requests from several agencies citing what they considered inequities in this conversion provision, OPM expanded its regulations to allow substantial career-oriented service in career-type positions in the excepted service as a basis for career reinstatement provisions. This was for individuals serving in Schedule C, noncareer executive assignment, noncareer Executive Schedule, or limited executive assignment positions.

Although the statute states that only those executives with reinstatement eligibility based on prior competitive service are entitled to a career SES appointment, OPM has chosen to also include those employees with comparable service in career-type appointments in the excepted service. OPM believes that including prior excepted service career-type experience for conversion purposes is warranted by "basic equity considerations," since it was the expressed intention of the Congress to treat career-oriented people equally with competitive service people. According to OPM, most executives in these excepted positions were attorneys.

OPM did not verify incumbency requirements for noncareer conversion to career status

OPM did not verify incumbency requirements in reviewing executives' requests for conversion from SES noncareer to career status. OPM records showed 293 such requests.

Both the Reform Act and OPM's conversion instructions to agencies require that executives be incumbents of positions, for purposes of conversion from SES noncareer status, when these positions are designated as SES.

To test how well OPM reviewed the requests for conversion to career service, we selected a random sample from the 268 requests determined eligible. This sample included 25 of the 223 requests based on previous career or career-conditional experience in the competitive service, and 15 of the 45 requests based on career-type experience in the excepted service.

In our random sample test, we examined the information package agencies made available to OPM for each request. We also discussed with OPM staff the procedures followed and items verified. They said that their review procedures did not include verifying a requester's incumbency in a position at the time it was designated as an SES position. Thus, it is not known whether those executives who attained career status through reinstatement met the incumbency requirement.

We noted, however, that OPM had found several requests ineligible for conversion because appointment to the positions occurred after designation as SES. One OPM staff member told us that instances of someone not meeting the incumbency requirement was disclosed during more detailed case analyses of other questioned items.

OPM officials told us that review of any future conversion requests would include verification of the incumbency requirement. However, they said a review of all previously approved conversion actions, while possible, would require a considerable amount of time and resources. They also expressed the belief that few, if any, incidents would be uncovered in which the requirement was not satisfied.

CONCLUSIONS

We recognize the argument OPM used to broaden its application of section 413(g) to include persons with prior career-type experience in excepted service as eligible for career SES appointments. The statute, however, as written contains the limitation that as a condition precedent to appointment as a career appointee, an employee serving in noncareer, Schedule C, limited executive assignments, and similar appointments, must have reinstatement eligibility to a position in the competitive service. We, therefore, believe that liberalizing the requirement to also include prior excepted service experiences for conversion to career status for employees falling in these categories can be accomplished only by a corrective amendment to section 413(g) of the Reform Act. Such an amendment could clarify the intent of the Congress and potentially permit such actions in the future.

Regarding the incumbency requirement, we believe that OPM should verify whether executives who converted from noncareer to career status were incumbents of positions when these positions were designated as SES. Such verification is necessary to insure compliance with the act and implementing regulations. Only the date of appointment would be needed for executives who were incumbents in the positions before the SES conversion period. Incumbency at the time of designation would be insured. Only executives who became incumbents to SES-designated positions during the SES conversion process would need additional verification. In this latter instance, verification by OPM would require only a minimum of staff time if agencies were requested to submit documentation showing the incumbency requirement has been met.

Also, we believe that OPM reviews of any future requests for conversion from noncareer status should include verifying the incumbency requirement. Future requests may occur if presently excluded agencies or units are later included in SES.

RECOMMENDATIONS

We recommend that the Director of OPM propose a corrective amendment to section 413(g) of the Civil Service Reform Act to include substantial career-oriented service in career-type positions in the excepted service as a basis for career SES appointment under the career conversion provisions for Federal employees serving in noncareer, Schedule C, limited executive assignments, and similar appointments.

We also recommend that the Director require verification of the incumbency requirement for executives who (1) converted from noncareer to career status and (2) make similar future conversions.

SES EXCLUSIONS

Several agencies or units are excluded from SES. By statute, Government corporations, GAO, Federal Bureau of Investigation, Central Intelligence Agency, Defense Intelligence Agency, National Security Agency, the Foreign Service, Administrative Law Judge positions, certain positions in the Drug Enforcement Administration, and positions filled by Presidential appointments with the advice and consent of the Senate are expressly excluded from SES.

In addition to exclusions made by the act, OPM determined that the Smithsonian Institution and the Advisory Committee on Intergovernmental Relations are not covered by the SES statute. Also, the Comptroller General decided that executives of the Federal Reserve Board are excluded from SES.

The act provides that the President may exclude an agency or unit from SES coverage for a period determined by the President to be appropriate. Five such exclusions were granted during the conversion period. These were

- 119 positions in the Agency for International Development,
- 57 positions in the Department of State,
- 53 positions in the Department of Justice,
- 65 positions in the Veterans Administration, and
- 11 positions in the National Security Council.

These agencies must make a sustained effort to bring their personnel systems in conformity with SES.

Legislation may be needed to
resolve the status of certain
special agency authorizations

During congressional briefings held in July 1979 OPM stated that about 1,000 special agency authorizations existed which were excluded from SES and the 10,777 pool of positions established by the Reform Act. These were mainly in NASA, the Department of Energy, the Nuclear Regulatory Commission, the National Science Foundation, and the International Development Cooperation Agency. OPM said that as of July 1979 about 100 positions remained under these authorities. These authorizations may be used only for positions which do not meet SES or the research and development definitions of the Reform Act. According to OPM, these are rare authorizations which, unfortunately, the Reform Act did not repeal.

Section 414 of the Reform Act contains both a limited and general repeal provision for GS supergrade positions. However, the act has no general repeal provision comparable to that for GS authorities for certain supergrade equivalent positions falling in and out of SES. The act does contain a limited repealer which terminates certain authorities to establish non-GS scientific and professional positions.

Although OPM recognizes that the repeal provision is not limited by its language to scientific and professional positions in "research and development," OPM maintains that the applicable provision (section 414(a)(2)(A)) should be construed as limited to non-GS scientific or professional

positions involved in "research and development" only. House Report 95-1403 has a limited reference which could be viewed as supportive of this interpretation.

This interpretation creates the potential for an agency with independent authority for scientific and professional positions, other than research and development, to qualify those positions for inclusion in SES and thereby open up these special authorities for creation of new exempt positions. For example, NASA has legislative authority to appoint 425 scientific, engineering, and administrative personnel without regard to civil service laws. NASA created positions pursuant to this authority and, with the emergence of SES, qualified these positions for inclusions in SES. Using its remaining special appointment authority, NASA has created some new positions independent of civil service laws.

In response to the establishment of these new positions, OPM's General Counsel said that the Congress apparently viewed the SES definition in section 3132(a)(2) of the Reform Act "as being controlling and as impliedly cancelling [sic] out the statutory authorities with which SES may otherwise conflict." OPM's General Counsel concluded that only those statutory authorities for non-GS positions (such as NASA's authority) which were moved into SES were repealed and that the authorities for non-SES positions not addressed in the act continue. This position may be reasonable because the Congress probably did not intend for the Reform Act to be used as a means for agencies to extend the number of positions they might create independent of civil service laws. However, any "implied" theory of repeal, without support in the legislative history or from the statutory language itself, is subject to challenge.

OPM does not view this as a major problem since it is difficult to create sets of duties at the supergrade level, which are neither supervisory, managerial, or research and development. Thus, OPM does not anticipate many of these authorities being used. However, it did acknowledge merit in making the "repealer provision" of the Reform Act more precise.

CONCLUSION

Two possible approaches could change these overlapping authorities. One approach would be for OPM to list all positions by agency created pursuant to independent statutory authority (NASA's excepted authority, for example) which have been transferred into SES. Amendments could then be prepared reducing the number of authorized positions by the number of positions transferred into SES. This action would eliminate the possibility of a position's authority surviving

after the position goes into SES. Agencies could continue using their non-GS supergrade authorities--other than research and development--without gaining an unintended "windfall" of extra positions which an agency might get for each position it qualifies for SES.

Another approach might be to remove special agency authorities and allow the remaining positions to be filled by non-SES GS supergrade authorities. This alternative would help achieve one of the purposes of SES which is to reduce the number of executive personnel authorities that have evolved over the years.

RECOMMENDATION

We recommend that the Director of OPM propose an amendment to clarify the repealer provision of the Reform Act regarding special agency authorizations.

CHAPTER 3

PAY-SETTING PRACTICES AND PROVISIONS

FOR PERFORMANCE AWARDS CAN BE IMPROVED

The pay-setting process as envisioned by the Reform Act and the introduction of performance awards (bonuses) are among the most innovative and appealing features of SES. Two major factors, however, presently compress the salaries of SES members: (1) the linkage of congressional and Executive Schedule salaries and (2) the limitations in the annual pay adjustments of executives which have been imposed by law. Consequently, about 90 percent of SES executives receive the same pay. Also, the Congress was considering placing further restrictions on the aggregate amount of pay, bonuses, and ranks allowed SES members. Inadequate salary levels, irregular adjustments, and distorted pay relationships for top Federal executives has been an area of long-standing concern.

Also, a systemic potential for inequities exists in awarding bonuses. The Reform Act stipulates that performance awards may be granted to 50 percent of the "total" SES positions in an agency. Only career executives are eligible for bonuses. Therefore, career executives in agencies with a high percentage of noncareer executives have a significantly greater opportunity to receive a bonus.

EXECUTIVE PAY-SETTING PRACTICES ADVERSELY AFFECT SES SALARY INCREASES

SES provides an opportunity for improved pay-setting procedures for some executives. But because of the linkage with the Executive and General Schedules, the success of SES in improving its members' future pay depends on the extent to which Executive and GS increases are allowed to take effect. Public Law 96-86 has already affected SES pay rates. It stipulated that fiscal year 1980 appropriations could not be used to pay increases of more than 5.5 percent in rates of basic pay for offices and positions subject to fiscal year 1979 restrictions. As a result, pay compression continues under SES. Most executives get the same rate of pay (\$50,112.50) despite differences in responsibility and authority.

The "Personnel Management Project" report prepared under the President's Reorganization Project cites pay compression as a problem of the former Federal executive system. The report states that:

"Fair compensation for senior executives has been a serious problem in recent years. The pay of most top executives has been frozen for long periods, while

their subordinates' pay, compensation for comparable positions in the private sector, and the cost of living have all risen dramatically."

The pay-setting process for SES is linked to the Executive Schedule and to GS. Appendix II contains a chart showing these relationships. The lowest rate of basic pay for SES positions under the Reform Act cannot be less than the minimum rate paid to GS-16, step 1. The highest rate of basic pay cannot exceed that for Executive Level IV. These "floor" and "ceiling" amounts are determined independently-- the former according to the GS comparability process (subject to the Executive Level V limitations or other congressionally imposed limitations on GS pay) and the latter by the Executive Schedule pay-setting process, also subject to congressionally imposed limitations.

Within these floor and ceiling limits, the Reform Act requires at least five rates of basic pay which are initially established and thereafter adjusted by the President. In March 1979 the President decided on six SES salary rates. He established rates ranging from \$44,756 to \$52,800, but cautioned agencies that rates payable before October 1, 1979, would be limited to the pay cap in Public Law 95-391, the Legislative Branch Appropriation Act of 1979.

This act restricted the salary Federal employees could receive during fiscal year 1979. It limited the rates payable for Executive Level V and GS positions to \$47,500 and to \$50,000 for Executive Level IV, even though their established rates may have been higher. Therefore, for SES executives converting to SES from Executive Level IV positions, salaries actually paid could not exceed \$50,000. For those converting from other positions, salaries paid could not exceed \$47,500. It was anticipated that the pay of SES members would be adjusted after congressional action on the fiscal year 1980 pay raise.

Although the fiscal year 1979 salary restrictions expired, Public Law 96-86 dated October 12, 1979, stipulated that fiscal year 1980 appropriations may not be used to pay increases of more than 5.5 percent in rates of basic pay for offices and positions subject to the fiscal year 1979 restrictions. This law has further restricted SES pay.

Executive Order 12165 of October 9, 1979, established new pay rates for SES reflecting a 7-percent pay increase. However, these new rates could not be put into effect because of the fiscal year 1980 fund restrictions. Therefore, a substantial difference exists between the rates established by the President and rates payable as established by OPM.

	<u>Established rates</u>	<u>Payable rates</u>
ES-1	\$47,889	\$47,889
ES-2	\$49,499	\$49,499
ES-3	\$51,164	\$50,112.50
ES-4	\$52,884	\$50,112.50
ES-5	\$54,662	\$50,112.50
ES-6	\$56,500	<u>a/\$50,112.50</u>

a/\$52,750 for persons in offices or positions at level IV of the Executive Schedule before conversion to SES.

The payable rates for the six ES levels pose several negative features.

--Most SES executives get the same rate of pay despite differences in their responsibility and authority. Nearly 90 percent of those entering SES on July 13 were at ES levels 3 through 6 which have the same payable rate.

--Pay adjustments from one ES level to another will have limited meaning in terms of financial reward, and pay adjustments for poor performance will have similar limited meaning because most ES levels have the same payable rate.

--As noted in the table, some executives at the ES-6 level receive \$50,112.50, while others get \$52,750, depending on their pre-SES salaries.

--In October 1980, practically everybody in SES could get the same pay if executives in ES levels 1 and 2 who are not limited by the pay ceiling have their pay increased to \$50,112.50.

If annual adjustments for the Executive Schedule are continually denied or limited, agencies could face increasing problems with recruiting and retaining competent executives. Executives may continue to leave the Government for higher paying private sector jobs, while others may take advantage of early retirement. Also, OPM's role to foster mobility among SES members may be hampered by the absence of meaningful pay differentials between the SES pay levels.

The present system of adjusting Federal executives' salaries, including those of SES members, has not provided salaries commensurate with their responsibilities. Under the Executive Salary Cost-of-Living Adjustment Act of 1975 (Public Law 94-82), top Federal executives paid under the Executive Schedule are supposed to receive the annual comparability salary adjustments given to GS employees. But since this

law was enacted, these executives have been denied all but two such adjustments. Moreover, the Congress is also considering action which would again deny executives the pay adjustment in October 1980. The Federal Salary Act of 1967 (Public Law 90-206) provides for quadrennial assessment and adjustment of executive salaries. While this procedure has helped to alleviate some of the resulting problems, even these recommendations have been reduced or denied in the past. This has been partially due to a linkage between congressional and Executive Level II salaries which has existed since 1965.

The present executive pay-setting system and the effect of the executive pay system on executives, managers, and agency operations has been discussed in our prior reports. The most recent of these was "Annual Adjustments--The Key to Federal Executive Pay" (FPCD-79-31, May 17, 1979). This report concluded that

"The congressional-Executive Schedule linkage has had an adverse effect on top executive branch managers at times when the Congress has, for a variety of reasons, held its own pay down.* * * The congressional-Level II linkage has no legal basis and because it has been systematic only since 1965, it has no deeply rooted historical foundation. Since there seems to be few parallels between the career patterns, career expectations, and responsibilities of Congressmen and Level II executive branch employees, we see no compelling need for a continuation of the linkage between these salaries."

CONCLUSION

The present practices for setting executive pay have already affected the pay of SES members. The concerns in our prior report continue and are relevant to SES.

SES's success depends in part on the granting of annual adjustments to the Executive Schedule. Without these increases, both the SES basic pay ceiling and the SES total compensation ceiling amounts are being stifled. This situation creates inequities and can adversely affect executive recruitment and retention.

RECOMMENDATIONS TO THE CONGRESS

To improve the pay-setting process for Federal executives, including those in SES, we recommend that the Congress (1) allow the annual adjustments for executives under Public Law 94-82 to take effect and (2) discontinue the practice of linking congressional and Executive Level II salaries.

LEGISLATION CREATES POTENTIAL
INEQUITY IN PERFORMANCE AWARDS

Reform Act provisions for performance awards and awards of rank are among the most innovative and appealing aspects of SES. To encourage and reward excellence, career SES members with fully successful performance can receive lump-sum performance awards (bonuses) of up to 20 percent of their basic salaries. The number of senior executives receiving awards can be up to 50 percent of the number of SES positions in an agency.

In addition, career executives can receive the rank of Meritorious Executive and the rank of Distinguished Executive for sustained accomplishment and sustained extraordinary accomplishment. These ranks carry one-time lump-sum payments of \$10,000 and \$20,000, respectively. The number of executives receiving them is limited to 5 percent and 1 percent of SES executives, respectively. Agency nominations for Meritorious and Distinguished ranks were to be sent to OPM by April 15, 1980. Total dollar compensation (basic pay plus rank and performance awards) for SES executives cannot in any one year exceed the rate payable for Executive Level I (presently \$69,630).

OPM told agencies that they are not required to award the maximum number of bonuses and should carefully avoid doing so automatically. Agency heads must insure that the maximum number of bonuses are given out only when executive performance in the agency merits it.

Agencies are responsible for establishing programs for paying bonuses. Generally, the earliest date agencies could have paid bonuses was February 1980. This date was 120 days after October 1979, when agencies were to have had their performance appraisal systems ready for use. First performance ratings must occur for SES members no later than October 1980. OPM expects initial bonus payments, in most cases, will not be payable until late 1980.

Noncareer SES appointees--who can comprise up to 10 percent of SES--are not eligible for performance pay or executive ranks. However, OPM has suggested that excellent performance by these executives could be recognized through the incentive awards program. At least one agency we visited was considering rewarding its noncareer executives in this way.

Much of the development of procedures for awarding bonuses and for nominating for ranks had not occurred when we visited selected Federal agencies. Issues on bonus funding and the "50-percent limitation" are becoming increasingly

important as agency bonus programs are implemented. We expect to consider these issues in later reviews.

By June 1980 some agencies had completed their initial performance appraisal of SES members and had made, or were in the process of making, bonus determinations. However, the Congress was also considering placing further restrictions on the aggregate amount of pay, bonuses, and ranks allowed SES executives. One proposal would have limited SES executives to \$60,660 during fiscal year 1980. This is about \$9,000 less than the amount allowable under the Reform Act (Executive Level I--\$69,630). Under this proposal, SES executives would have received only about half of the \$20,000 established by the Reform Act for achieving the rank of Distinguished Executive. It would also have severely restricted the amounts payable to executives receiving bonuses and Meritorious Executive ranks. Another proposal still under consideration would limit aggregate SES pay in fiscal year 1981 to \$52,750. This would essentially eliminate meaningful bonus and rank payments.

Restricting or prohibiting bonus and rank payments for SES members could nullify to some extent the success agencies have already had in encouraging Federal executives to join SES. Such restrictions would seriously affect the morale of these employees and would serve to stifle the incentive for greater excellence which the Congress was striving to stimulate through the Reform Act's pay for performance provisions. Since most Federal executives receive the same salary because of pay compression, few, if any, incentives exist for them to seek or assume positions of greater authority and responsibility.

Returns we have received from a questionnaire sent to a random sample of senior executives indicate a large number of them have strong concerns about the proposals to limit performance awards. This information is being gathered in our current review of SES performance appraisal processes, the results of which will be reported later this year.

SES was designed to provide an opportunity for the most deserving and productive executives to receive lump-sum performance awards in recognition of their individual and organizational contributions. The restriction or withdrawal of performance awards and ranks could be construed by many executives who have elected to join SES as a breach of faith and would remove a major inducement to join SES, thereby greatly weakening the SES system.

Also, we noted one aspect of the Reform Act provisions for paying bonuses which can create inequities between agencies.

Because only career executives can receive bonuses, more than 50 percent of this group can receive bonuses in any given year since noncareer executives almost always fill a portion of agency positions. The following table compares numbers of career and noncareer executives in three hypothetical examples.

	<u>Positions</u>	Positions filled by career/noncareer <u>executives</u>	Career executives eligible to receive bonuses	
			<u>Number</u>	<u>Percent</u>
Example A	100	95 career 5 noncareer	50	52.6
Example B	100	90 career 10 noncareer	50	55.6
Example C	100	75 career 25 noncareer	50	66.7

Our analysis of SES allocations shows that the percentage of noncareer authorities to total SES position allocations varies considerably among agencies. As a result, agencies with few noncareer executives in relation to SES positions will be able to pay bonuses to slightly more than 50 percent of their career executives. A few small agencies with a high proportion of noncareer executives will be able to give bonuses to all or nearly all of their career executives.

The following table shows examples of agencies that can pay all or most of their career executives bonuses, and agencies which must limit bonuses to 50 percent or slightly more than 50 percent of their career executives.

<u>Agency</u>	<u>Allocation</u>			<u>Career executives that could be paid bonuses (note a)</u>	
	<u>Career</u>	<u>Noncareer</u>	<u>Total</u>	<u>Number</u>	<u>Percent</u>
Farm Credit Administration	6	6	12	6	100
Federal Home Loan Bank Board	8	8	16	8	100
Department of State	44	24	68	34	77
Small Business Administration	35	18	53	26	74
Civil Aeronautics Board	21	9	30	15	71
Department of Housing and Urban Development	106	33	139	69	65
Consumer Product Safety Commission	14	1	15	7	50
Interstate Commerce Commission	37	2	39	19	51
Nuclear Regulatory Commission	207	7	214	107	52
Veterans Administration	269	10	279	139	52
National Aeronautics and Space Administration	496	24	520	260	52
Department of the Treasury	547	29	576	288	53

a/OPM guidelines also take into account that the 50-percent bonus maximum applies to filled and vacant SES positions. An OPM official estimated a vacancy rate for SES of 9-1/2 percent. This will serve to further increase the percentage of onboard career executives eligible for bonuses.

Based on SES position allocations as of July 13, 1979, we noted 11 agencies that can award bonuses to over 70 percent of their career executives if they achieve fully successful performance. Five of these 11 agencies will be able to pay all their career executives bonuses. Eighteen agencies, including several of the large Departments and independent agencies, will be able to pay bonuses to less than 55 percent of their career executives. Although we recognize that changes in agency allocations will occur over a period of time, we believe the sizable percentage differences among agencies will continue.

CONCLUSIONS

We have long been concerned over inadequate salary levels, irregular adjustments, and distorted pay relationships for top Federal executives. These are issues to which the Congress needs to give serious attention. Restricting or prohibiting bonus and rank payments to SES members below those limits established by the Reform Act could be detrimental to executive morale and productivity and could raise questions as to the commitment of the Congress to the success of Civil Service Reform. SES provides the framework to make it easier for the Government to attract and keep top managers, to use their abilities productively, and to pay them according to their contributions. Any productivity gains that can be accomplished through the SES compensation plan would return many times its cost.

The Reform Act sets percentage limits for bonuses based on the number of positions in any one agency. Because the percentage of noncareer executives varies among agencies, the percentage of career executives eligible for bonuses will also vary. We believe that the limits on the percentage of career executives who can receive bonuses should be consistent for each agency. But the present situation under which varying percentages of career executives can receive bonuses does not achieve this consistency.

The problem of consistency among agencies could be solved by amending 5 U.S.C. 5384 to specify a maximum percentage of career appointees who can receive performance awards in any agency during any fiscal year. This percentage would be in lieu of the 50-percent maximum based on agency positions. Agency heads would still retain authority to determine the number and amount of bonuses paid as long as these do not exceed the legal limits. OPM regulation could also possibly achieve consistency. However, this technique would limit the percentage of career executives receiving bonuses to something more restrictive than the legislation now permits. Because of the importance and innovative nature of bonuses, legislative change would probably be the most desirable.

RECOMMENDATION TO THE CONGRESS

To stimulate SES members to achieve greater excellence in Federal service and to fulfill the promise of one of the most innovative and appealing features of Civil Service Reform, we recommend that the Congress allow the bonus and rank provisions of the Reform Act to take effect without further restrictions and prohibitions on payments.

RECOMMENDATION TO OPM

We recommend that the Director of OPM act to achieve consistency among agencies as to the maximum percentage of career executives eligible for bonuses in any one year by proposing legislative or, if feasible, regulatory changes.

- - - -

On July 2, 1980, the Congress included language in the Fiscal Year 1980 Supplemental Appropriations Act which allows aggregate pay for SES executives up to the level authorized by the Reform Act, but limits bonus payments to 25 percent, rather than 50 percent, of SES positions. In addition, we were directed to do a thorough study, in cooperation with OPM, of bonus system payments and to report to the authorizing and appropriation committees.

This action alleviates to a large degree the situation for fiscal year 1980, but a House proposal still retains language which would prohibit the October 1980 adjustment and limit aggregate SES pay for fiscal year 1981 to \$52,750. Thus, our concerns about pay-setting practices and restrictions on bonus and rank payments remain.

Continuing dialogue which focuses on compressing executive pay and limiting bonus and rank awards serves to create turbulence and declining morale among senior executives. We believe that the innovative features of the compensation plan for SES executives, as set forth in the Reform Act, should not be abandoned before they have been given a chance to work. As directed, we will be especially alert for abuses of bonus payments in reviews of performance appraisal systems requested by the Civil Service Reform Act of 1978.

CHAPTER 4

OPPORTUNITIES FOR OPM TO STRENGTHEN

ITS ROLE IN PROVIDING GUIDANCE AND OVERSIGHT

The Reform Act requires substantial decentralization of personnel management authority. But, decentralization does not relieve OPM of responsibility to prescribe regulations and to insure compliance with civil service laws, rules, and regulations. In fact, OPM's responsiveness to the guidance needs of agencies and its ability to provide oversight to insure that agencies effectively implement and operate SES will enhance the potential for its success.

OPM has undertaken efforts in providing technical assistance, regulations and guidance, evaluation, and compliance. There are opportunities, however, for OPM to strengthen guidance and compliance efforts.

Policies, procedures, and decisions of agencies' identified before PRBs and ERBs are subject to review by agencies' audit and investigation units. OPM should advise agencies in its guidance to avoid appointing executives from these units to their PRBs and ERBs.

CONTINUED EFFORTS ARE NEEDED TO INSURE TIMELY AND COMPLETE GUIDANCE

Most of the eight agencies we visited had some concerns with aspects of OPM's written guidance, especially about its timeliness. However, several agencies tempered their concerns with an awareness of the tight time schedules OPM faced in implementing SES. The Reform Act required that SES be effective 9 months after enactment.

SES is operated with a minimum of OPM regulations. This policy is consistent with OPM's goal under Civil Service Reform of decentralizing personnel management decisionmaking authority and deregulating the personnel system. Therefore, agencies have freedom to establish procedures to meet their own specific needs.

Nevertheless, guidance is essential to establishing any new and innovative system like SES. The Reform Act, therefore, charged OPM with prescribing regulations and guidelines to enable agencies to establish and operate SES under the act. OPM provided agencies with guidance and regulations in such areas as conversion, ERBs, PRBs, pay, merit staffing, and data reporting. It has published information pamphlets and films and has held many briefings and seminars on SES.

The agencies we visited were the most critical of OPM guidance on salary levels at conversion. They were given considerable leeway at first in converting executives to the six SES salary levels. OPM guidance of March 8, 1979, included a statement that generally SES convertees above the third step of GS-16

"may be offered ES-4, ES-5, or ES-6 as agency management decides based on considerations such as individual contribution to the organization, individual potential, and current or proposed level of responsibilities."

A March 22, 1979, memorandum to agencies from the Director of OPM, expressed concern about agency conversion plans and, along with guidance of March 30, 1979, essentially suggested eliminating the flexibility in converting to the SES salary levels. The memorandum asserted OPM's philosophy that agencies should make the decisions but balanced this against the President's concern to avoid any action which would appear "to fuel inflation." The Director of OPM stated later in a congressional subcommittee briefing, that he had learned several agencies intended to use the conversion process to increase pay and that he believed the conversion process should be neutral in its impact on pay. His memorandum urged agencies to use the conversion process in a neutral way. He acknowledged, however, that it was unfortunate that recognition and action on this issue occurred so late in the conversion process.

With one exception, agencies we visited had negative reactions to the memorandum and guidance. Most were unhappy with the memorandum's poor timing. By then, offer letters to SES candidates were either already in process or had been sent. Some agencies felt it negatively affected their flexibility and responsibility under SES. Some believed it resulted in at least a temporary loss of SES credibility among executives.

Of the eight agencies we visited, four generally followed the OPM guidance and four did not. At least one of the four who did not follow the guidance modified its conversion plan to be more in line with OPM's suggested conversion levels.

OPM verified whether agencies followed the guidance during onsite visits. Summaries of these visits to nine agencies discussed whether the agencies followed the guidance-- five of the nine did not.

The following are other examples of agency concerns about OPM guidance noted during our visits:

- OPM issued guidance on establishing and administering SES bonus payment programs and the awarding of ranks in October 1979. Agencies believed the guidance should have been issued earlier to help them in planning for performance awards. This guidance was issued after SES performance appraisal systems were to have been in operation and after submission of fiscal year 1981 budgets to the Office of Management and Budget.
- Agencies would have liked additional clarification of "career reserved" versus "general" positions.
- Agencies wanted more timely guidance on procedures for recruiting and filling SES positions.
- Agencies did not receive written guidance on criteria for hiring limited term and limited emergency appointments until several months after SES began operations. During that time some confusion occurred as to the circumstances under which these appointments could be made.

Most of these concerns were expressed during or shortly after the conversion process was completed. OPM generally has responded to agencies' guidance needs and has either issued or is considering guidance to help resolve the agency concerns expressed above. Several agency officials were pleased with OPM's responsiveness to their inquiries about SES development and operation.

CONCLUSION

OPM is required and has issued regulations and guidance on many SES activities. However, rigid time schedules affected the timeliness of some OPM guidance. But most of the concerns agencies expressed during our visits have been corrected by subsequent regulations and guidance. However, OPM needs to (1) obtain feedback from agencies on a continuing basis to insure that agencies have enough information to fully implement and operate SES and (2) issue any additional guidance needed for effective operation of SES.

OPM COMPLIANCE PROGRAM--A VALUABLE TOOL FOR HELPING INSURE SUCCESS OF SES

OPM is undertaking two kinds of SES evaluations: (1) agency compliance reviews and (2) agency case studies. The compliance reviews focus on verifying agency actions to implement and operate SES. The agency case studies are to provide for "longitudinal analysis" of SES over the next 5 years. Studies at four selected agencies will focus on executive development, staffing, and accountability. OPM plans at least

four visits per agency. The first is designed to collect pre-SES (base line) information. All later visits will look at SES operations. These case studies are a part of the overall evaluation of Civil Service Reform and will provide the Congress with useful information when it considers the continuance of SES in 1984. OPM believes these reviews and case studies will give the Congress and OPM information on which to base judgments and actions on SES. Our comments here consider the compliance function.

The Reform Act requires OPM to establish and maintain an oversight program to insure that activities delegated to agencies are according to OPM merit system principles and standards. The act requires agencies to take corrective actions required by OPM on matters contrary to laws, rules, regulations, or OPM standards.

The OPM compliance reviews of agency SES activities should help fulfill its SES oversight responsibilities. Although this agency compliance program has expanded in scope and intensity since it began during SES conversion, we believe further increases are needed in the frequency of onsite reviews of agency SES activities. Also, we believe OPM should consider separating its compliance function from day-to-day operations and agency technical assistance activities.

More compliance reviews should be made of agency SES activities

The first compliance reviews occurred from April 15 to July 13, 1979, when agencies were in the conversion process. Early evaluations included (1) interviews with SES candidates and key agency officials connected with SES implementation and (2) review of conversion letters and records of agency actions to insure compliance with the law and regulations and reporting of information to OPM. One OPM official said this phase was to check on the status of agency conversion efforts and to find out if senior executives were fully informed about SES. Ten agency visits were made during this phase.

An OPM official said that OPM plans 40 compliance evaluations during fiscal year 1980--from October 1979 to September 1980. This phase will provide an overview of agency SES activities and will continue to focus on the status of SES implementation. This second phase will look at such matters as staffing actions, performance appraisals, performance awards, pay, PRBs, ERBs, and executive development. As of March 1, 1980, OPM had done 13 agency visits.

According to OPM, the four agency officer branches in its SES Division have the primary responsibility for performing compliance reviews. The reviews, which last no more than 4 days, do not necessarily consider SES activities agencywide. Some of the reviews, especially in the larger agencies, are done at the bureau or subagency level. For example, compliance visits to the Departments of the Treasury and the Navy were directed to specific offices.

Following are concerns revealed through compliance reviews, which if corrected, could improve agency SES implementation:

- In one agency about half of the agency's SES members did not have critical elements and performance standards even though their rating period had begun.
- In three agencies, reviewers found positions designated general which seemed to meet the career-reserved criteria.
- In still another agency review, about half of the pay offers at conversion did not conform to OPM guidelines.
- Finally, one agency was slow in implementing an executive development program for SES candidates and SES incumbents.

SES allocation data supplied by OPM shows over 80 agencies with SES positions--61 with 5 or more SES positions. Also, many of the larger agencies have several bureau or subagency levels which OPM could examine in separate compliance reviews. For example, we noted that 5 Departments have 43 separate SES performance appraisal systems as follows.

	Number of <u>systems</u>
Department of the Treasury	13
Department of Commerce	11
Department of Labor	9
Department of Health and Human Services	7
Department of Justice	<u>3</u>
Total	<u><u>43</u></u>

One of the most important topics to be covered in the current year's compliance work is implementing performance appraisal systems.

The goal of 40 compliance visits for fiscal year 1980 will result in a more than 3-year gap between compliance reviews of agencies and major subagencies. OPM can do some monitoring of agencies based on agency data, telephone discussions with agency personnel officials, and technical assistance activities. However, we believe these activities cannot replace a strong onsite compliance program. OPM should increase the number of compliance reviews to improve on the frequency of such visits. These increases in reviews, however, should be accomplished without any reduction in the scope of this activity.

Future compliance planning should consider organizational placement of this activity

OPM onsite work in assessing SES implementation and operations has been called "technical assistance," evaluation, compliance, and post audit. This work seems to be evolving toward compliance, and we believe this type of function is necessary.

OPM's four agency officer branches and its evaluation branch in the Executive Personnel and Management Development Group have responsibility for compliance activities. An OPM official said the evaluation branch plans, writes guidelines, and coordinates these visits while agency officers and their staffs do most of the onsite work.

OPM told us that agency officers and their staffs have combined the compliance and assistance function for years. OPM officials believe that under the prior Federal executive system, the agency officer's compliance role was not compromised, and this arrangement left the agency officer as the single authoritative contact on all matters connected with executive personnel management. They believe this relationship has been crucial to their operations.

We recognize some advantages can occur by combining these functions. But we believe potential disadvantages also exist. These include:

- Agency officer branches (1) provide technical assistance to help agencies solve executive personnel management problems and (2) recommend within OPM how many executive positions and noncareer authorities each agency will receive under SES. Thus, the agency officers and their staffs have the difficult task of objectively deciding during compliance reviews if their previous decisions on agencies' SES activities were acceptable.

--A potential conflict may occur between OPM's day-to-day contacts with agencies and its compliance role which requires independence. The latter is similar to that of an audit function.

--Agency officers and their staffs have various duties, many of which are performed under rigid time limits. Under such constraints, the officers may fall behind in making compliance reviews because of these other duties and deadlines.

It is also important to note that the agency officers' responsibilities have been substantially changed by the Reform Act and that the traditional role may no longer best serve the needs of OPM.

CONCLUSIONS

OPM needs a strong compliance program to identify problems and violations of law and regulations and to determine the need for program changes. Compliance is especially important in the first years of SES because agencies have been delegated many previous OPM executive personnel management responsibilities. As a result, agencies must now implement new and innovative personnel programs for their senior executives. The success of these efforts, OPM's ability to find and correct problems with them, and its ability to implement needed program changes will affect the Congress' decision in 1984--5 years after SES began operation--on whether to allow SES to continue.

RECOMMENDATIONS

We recommend that the Director of OPM require (1) an increase in the number and frequency of onsite compliance reviews of agencies' SES activities and (2) an evaluation of the possibility of separating the compliance function from the technical assistance and other duties performed by the agency officer branches.

OPM'S SES INFORMATION SYSTEM

OPM is developing an extensive SES computerized information system to carry out its management and reporting responsibilities under the Reform Act. The information system--the Executive Personnel and Management Development Information System--is being developed in three phases and is due for completion in October 1980.

Phase I, now operational, contains current data on every position and person in SES. It also contains information on agencies' organizations and their allocations of SES and

related supergrade positions. For example, the system contains SES career-reserved and general positions, non-career appointing authorities, non-SES GS positions, and non-SES non-GS positions.

Phase II of OPM's information system will contain data on the performance appraisal and compensation of agencies' senior executives. This phase will include information on performance awards (bonuses) and rank awards. During the early part of 1980, OPM was developing phase II.

According to OPM, phase III will consist of a redesigned and enlarged Executive Inventory File, which was previously in the former Civil Service Commission's information system. This file will have data on the professional qualifications and career history of each senior executive as well as information on management development and training.

Thus, OPM is developing an extensive information system on individual SES members and on agencies' SES profile. This information should aid OPM in managing and monitoring SES activities and in meeting its needs for information about SES.

This information system may become valuable to other agencies in meeting their own SES management and information needs. If agencies could have access to the SES information they provide OPM, they would not need to maintain this data in their own systems. Such use could avoid unnecessary duplication and reduce costs. As of January 1980, OPM was testing this type of informational exchange with DOD and the Department of Commerce. These agencies have access to their own SES information in OPM's data base.

CONCLUSION

If exchange of information between OPM and the two Departments is found satisfactory, we believe OPM should promptly inform other agencies of its potential benefits. OPM should also encourage and assist these agencies in establishing such an exchange.

COMPOSITION OF ERBS AND PRBS

The Reform Act requires each agency to establish one or more ERBs to conduct the merit staffing process for career appointees. Also, OPM has recommended that agencies delegate to their ERBs more responsibility for SES management, including executive personnel planning, staffing and development, position management, pay management, performance and incentive awards, and evaluation of executive personnel management. Because of the broad responsibilities of ERBs, OPM has suggested

that they be chaired by top management officials and that members be top line management officials with responsibility for a major part of an agency's budget and many of its SES positions.

The act also requires each agency to establish one or more PRBs. PRBs must recommend to agencies' appointing authorities and ERBs about performance ratings and performance awards. Although PRB membership can include all types of Federal executives from within and outside the agency, members generally should have positions equivalent to SES. The law stipulates that PRB membership include a majority of SES career appointees when the board reviews career executive evaluations. OPM guidance states that PRB members should be appointed to insure consistency, stability, and objectivity in performance appraisal.

When we evaluated agencies' conversion activities, we found that the agencies had not yet appointed ERBs or PRBs or these boards had not yet begun their work. Thus, SES was too new to assess the performance of these boards.

During our visits to agencies, we found cases in which agencies had initially appointed officials of their new Office of Inspector General to PRBs. The Small Business Administration and the Community Services Administration made such appointments. At the Small Business Administration, we questioned such an appointment because this official will participate in PRB activities and decisions which are subject to audits or investigations by the Inspector General and his staff. Later, an official at the Small Business Administration told us that this agency removed the official from the PRB because of the potential it presented for possible conflict of interest. At the Community Services Administration, the performance appraisal system specifies that the PRB will include all SES members. The agency would then select five members for a panel to review an SES member's performance. Since three of the agency's SES positions were for the new Office of Inspector General, these people were also members of the agency's PRB.

The inspector general positions were established pursuant to the Inspector General Act of 1978 (Public Law 95-452). The law established these offices in 12 departments and agencies to, among other duties, conduct and supervise audits and investigations of agency programs and operations. An Inspector General appointed by the President and approved by the Senate was to head each of these offices.

Most other Federal agencies have internal audit groups. In a document entitled "Internal Auditing in Federal Agencies," to assist agencies in their audit function, we suggested that

an internal auditor's work should not be restricted and should extend to all agency activities and related management controls. Activities under the Reform Act, including SES, are subject to audit. Audit coverage is especially relevant in view of added agency responsibilities under the Reform Act. Our document further states that:

"An internal auditor should not be given direct operating responsibilities. Rather, he should be expected to concern himself primarily with the performance of others, to retain an independent outlook in all of his work, and to direct particular attention to matters requiring corrective action."

The policies, procedures, and other decisions of ERBs and PRBs are subject to audit or investigation by agencies' internal audit groups (or Inspector Generals). Therefore, we believe agencies should not appoint audit officials to serve on PRBs and ERBs. This will aid audit groups in maintaining their independence and avoiding the conflict of auditing activities in which one of their officials may have had a decisionmaking role.

Since we only reviewed eight agencies, we did not find out the extent that other agencies' PRBs or ERBs may include officials of Inspector General or internal audit offices or may include these officials in the future. OPM has not provided guidance concerning internal audit officials' serving on PRBs and ERBs. We believe such guidance would be useful.

CONCLUSION

PRBs and ERBs perform important policy and procedural functions in the operation of agencies' SES systems. The activities of these boards are subject to audit and investigation. To help insure the independence of agencies' audit and investigative functions, agencies should not appoint executives of Inspector General and internal audit offices to these boards.

RECOMMENDATION

We recommend that the Director of OPM provide guidance to agencies directing that they avoid appointing officials responsible for auditing and investigating agency personnel activities to PRBs and ERBs.

SES POSITIONS IN AUDITING DISCIPLINESHOWING GENERAL DESIGNATION

Deputy Inspector General, Office of the Inspector General,
Department of Agriculture

Director, Bureau of Carrier Accounts and Audits, Civil
Aeronautics Board

Assistant Director, Resources, Defense Contract Audit Agency,
Office of the Secretary of Defense

Counsel, Defense Contract Audit Agency, Office of the Secre-
tary of Defense

Deputy Governor and Chief Examiner, Office of Examination,
Farm Credit Administration

Assistant Inspector General for Health Care and Systems
Review, Office of the Inspector General, Department of
Health, Education, and Welfare

Assistant Inspector General for Investigations, Office of
the Inspector General, Department of Health, Education,
and Welfare

Executive Assistant Inspector General, Office of the Inspec-
tor General, Department of Health, Education, and Welfare

Associate Director, Division of University and Nonprofit
Audits, Office of the Inspector General, Department of
Health, Education, and Welfare

Deputy Inspector General, Office of the Inspector General,
Department of Labor

Deputy Inspector General, Office of the Inspector General,
National Aeronautics and Space Administration

Inspector General, Office of the Secretary, Department of
the Treasury

Inspector General to the Assistant Secretary for International
Affairs, Department of the Treasury

Director, Office of Audit Program Operations, Office of
Special Counsel for Compliance, Department of Energy

Director, Office of Audit Systems, Office of Special Counsel
for Compliance, Department of Energy

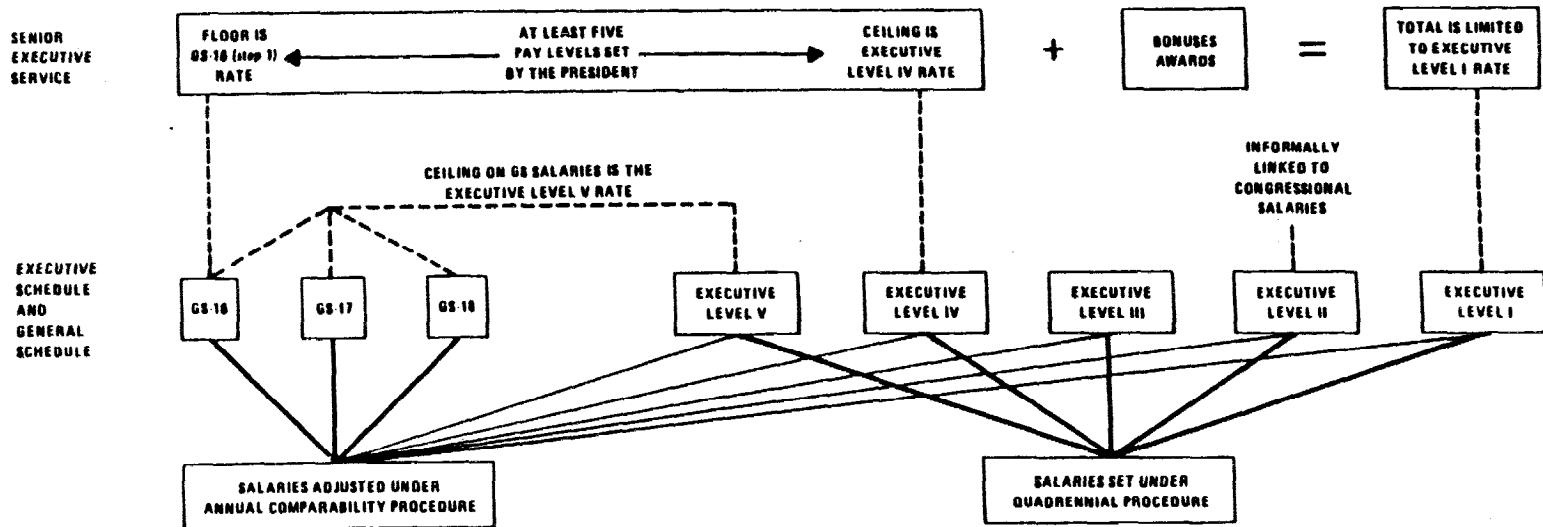
Director, Office of Audit Planning and System Integration,
Office of Special Counsel for Compliance, Department of
Energy

Assistant Director, Inspection and Enforcement, Office of
Surface Mining Reclamation and Enforcement, Department
of the Interior

Source: Federal Register, Volume 45 Number 13, Friday,
January 18, 1980. Notices. pp. 3,822 to 3,850

FEDERAL EXECUTIVE SALARY RELATIONSHIPS
 Nov 8

52



* THESE RELATIONSHIPS CAN BE MODIFIED BY VARIOUS ACTIONS OF THE CONGRESS SUCH AS DENYING THE FUNDS TO PAY INCREASES TO THE EXECUTIVE SCHEDULE AND/OR THE GENERAL SCHEDULE.

Source: GAO report, "Annual Adjustments--the Key to Federal Executive Pay" (FPCD-79-31, May 17, 1979).

JUL
2 1980United States of America
**Office of
Personnel Management**

Washington, D.C. 20415

July 1, 1980

In Reply Refer To

Your Reference

Mr. H. L. Krieger
Director
Federal Personnel and Compensation Div.
Room 4001
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Krieger:

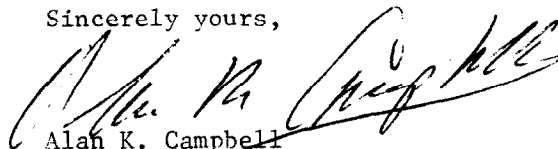
I have reviewed the draft report on the conversion of agency positions and personnel to the Senior Executive Service and am pleased to learn that you have considered our comments in preparing this report. The report is a fair appraisal of the conversion effort and I am in substantial agreement with your findings and recommendations.

There is, however, one fundamental issue which I must bring to your attention. As you know, the Civil Service Reform Act provisions for performance awards and awards of rank are among the most innovative and appealing aspects of the SES. Senior civil servants gave up tenure and other significant benefits to become eligible for the opportunity to earn substantial bonuses and awards. Recently there has been a congressional initiative to cap SES salaries at \$52,750. If this undertaking is successful, it would severely limit the amount of bonuses and awards that senior executives could receive.

The Senior Executive Service, with its key elements of performance appraisal and bonus awards for excellence, is one of the critical elements of civil service reform. Without the ability to grade the performance of top Federal managers and reward those who are outstanding - or remove those below par - the program will be stifled and executive recruitment and retention will be adversely affected. Moreover, we will have lost one of our principal tools in the effort to improve the productivity of the Federal sector.

The success of civil service reform is dependent on the success of the Senior Executive Service. Without productive and efficient management, the reform cannot be effectively implemented. There is a sound rationale behind the theory of incentive pay and extensive successful private sector experience. The new system must be given a chance to prove itself.

Sincerely yours,



Alan K. Campbell
Director

(961077)





AN EQUAL OPPORTUNITY EMPLOYER

**UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548**

**OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300**

**POSTAGE AND FEES PAID
U. S. GENERAL ACCOUNTING OFFICE**



THIRD CLASS