

to a former career senior executive who is reinstated under 5 CFR 317.703.

(i) If the individual elected, under 5 CFR 317.801(b), to remain subject to SES pay provisions while serving under a Presidential appointment, pay may be adjusted upon reinstatement to the SES, whether in the agency where the individual held the Presidential appointment or in another agency, only if 12 months have elapsed since the last SES pay adjustment; and the adjustment must be in accordance with paragraph (c) of this section.

(ii) If the individual did not elect to remain subject to the SES pay provisions while serving under a Presidential appointment, pay may be set at any ES rate upon reinstatement.

(f) *Restrictions on reducing pay of career senior executives.*

(1) The ES rate of a career senior executive may be reduced involuntarily in the appointee's agency or upon a transfer of function to another agency only:

(i) For performance reasons, i.e., the executive has received a less than fully successful performance rating under 5 CFR part 430, subpart C, or has been conditionally recertified or not recertified under 5 CFR 317.504; or

(ii) As a disciplinary action resulting from conduct related activity, e.g., misconduct, neglect of duty, or malfeasance.

(2) If the pay reduction is for performance reasons, the agency shall provide the executive at least 15 days' advance written notice.

(3) If the pay reduction is for disciplinary reasons, the agency shall:

(i) Provide the executive at least 30 days' advance written notice;

(ii) Provide a reasonable time, but not less than 7 days, for the executive to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(iii) Allow the executive to be represented by an attorney or other representative; and

(iv) Provide the executive a written decision and specific reasons therefor at the earliest practicable date.

[54 FR 2987, Jan. 23, 1989, as amended at 58 FR 58261, Nov. 1, 1993; 60 FR 6389, Feb. 2, 1995; 61 FR 3542, Feb. 1, 1996]

§ 534.402 Aggregate compensation.

Senior executives are subject to the aggregate compensation limitations in subpart B of part 530 of this chapter.

[56 FR 18662, Apr. 23, 1991]

§ 534.403 Performance awards.

(a) This section covers the payment of performance awards to career appointees in the Senior Executive Service (SES).

(1) To be eligible for an award, the individual must have been an SES career appointee as of the end of the performance appraisal period; and the individual's most recent performance rating of record under part 430, subpart C, of this chapter for the appraisal period must have been "Fully Successful" or higher.

(2) Individuals eligible for a performance award include:

(i) A former SES career appointee who elected to retain award eligibility under 5 CFR part 317, subpart H. If the salary of the individual is above the ES-6 pay rate, the ES-6 rate is used for crediting the agency award pool under paragraph (b) of this section and the amount the individual may receive under paragraph (c) of this section.

(ii) A reemployed annuitant with an SES career appointment.

(iii) An SES career appointee who is on detail. If the detail is to another agency, eligibility is in the individual's official employing agency, i.e., the agency from which detailed. If the appointee is on a reimbursable detail, the agency to which the appointee is detailed may reimburse the employing agency for some or all of any award, as agreed upon by the two agencies; but the reimbursement does not affect the award pool for either agency as calculated under paragraph (b) or this section.

(3) When making recommendations on performance awards, more than one-half of the membership of a Performance Review Board must be career SES appointees. The only exception is if OPM has determined under § 430.307(d) of this chapter that the Board does not have to have a majority of career members when making recommendations on