

provided may not take the form of quantitative limitations on the number of ratings at any given rating level, and must conform to 5 CFR part 430, subpart B or C, as applicable;

(6) Oversight by the agency head or the individual specifically designated under paragraph (a)(5) of this section, who certifies, for a particular senior employee appraisal system, that—

(i) The senior employee appraisal process makes meaningful distinctions based on relative performance;

(ii) The results of the senior employee appraisal process take into account, as appropriate, the agency's assessment of its performance against program performance measures, as well as other relevant considerations; and

(iii) Pay adjustments, cash awards, and levels of pay based on the results of the appraisal process accurately reflect and recognize individual performance and/or contribution to the agency's performance;

(7) Accountability, so that final agency head decisions and any PRB recommendations regarding senior employee ratings consistent with 5 CFR part 430, subparts B and C, individually and overall, appropriately reflect the employee's performance expectations, relevant program performance measures, and such other relevant factors as the PRB may find appropriate; in the case of supervisory senior employees, ratings must reflect the degree to which performance standards, requirements, or expectations for individual subordinate employees clearly link to organizational mission, GPRA strategic goals, or other program or policy objectives and take into account the degree of rigor in the appraisal of their subordinate employees;

(8) Performance differentiation, so that the system(s) includes at least one summary level of performance above fully successful, including a summary level that reflects outstanding performance, as defined in § 1330.402, and so that its annual administration results in meaningful distinctions based on relative performance that take into account the assessment of the agency's performance against relevant program performance measures, as described in paragraph (a)(6) of this section, employee performance expectations, and

such other relevant factors as may be appropriate. Relative performance does not require ranking senior employees against each other; such ranking is prohibited for the purpose of determining performance ratings. For equivalent systems that do not use summary ratings, the appraisal system must provide for clear differentiation of performance at the outstanding level; and

(9) Pay differentiation, so that those senior employees who have demonstrated the highest levels of individual performance and/or contribution to the agency's performance receive the highest annual summary ratings or ratings of record, as applicable, as well as the largest corresponding pay adjustments, cash awards, and levels of pay, particularly above the rate for level III of the Executive Schedule. Agencies must provide for transparency in the processes for making pay decisions, while assuring confidentiality.

(b) Consistent with the requirements in section 3(a) of the Inspector General Act of 1978, an agency's Inspector General or an official he or she designates must perform the functions listed in paragraphs (a)(5) and (6) of this section for senior employees in the Office of the Inspector General.

**§ 1330.405 Procedures for certifying agency appraisal systems.**

(a) *General.* To receive system certification, an agency must provide documentation demonstrating that its appraisal system(s), in design, application, and administration, meets the certification criteria in § 1330.404 as well as the procedural requirements set forth in this section.

(b) *Certification requests.* In order for an agency's appraisal system to be certified, the head of the agency or designee must submit a written request for full or provisional certification of its appraisal system(s) to OPM. Certification requests may cover an agency-wide system or a system that applies to one or more agency organizations or components and must include—

(1) A full description of the appraisal system(s) to be certified, including—

(i) Organizational and employee coverage information;

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(ii) Applicable administrative instructions and implementing guidance; and

(iii) The system's use of rating levels that are capable of clearly differentiating among senior employees based on appraisals of their relative performance against performance expectations in any given appraisal period reflecting performance evaluation results that make meaningful distinctions based on relative performance, and which include—

(A) For the agency's senior executives covered by 5 CFR part 430, subpart C, at least four, but not more than five, summary rating levels—an outstanding level, a fully successful level, an optional level between outstanding and fully successful, a minimally satisfactory level, and an unsatisfactory level;

(B) For the agency's senior professionals covered by 5 CFR part 430, subpart B, at least three, but not more than five, summary levels—an outstanding level, a fully successful level, an optional level between outstanding and fully successful, an unacceptable level, and an optional level between fully successful and unacceptable; and

(C) For agencies not subject to 5 CFR part 430, subparts B and C, a summary rating level that reflects outstanding performance or a methodology that clearly differentiates outstanding performance, as defined in § 1330.402;

(2) A clearly defined process for reviewing—

(i) The initial summary ratings and ratings of record, as applicable, of senior employees to ensure that annual summary ratings or ratings of record are not distributed arbitrarily or on a rotational basis, and

(ii) In the case of senior employees with supervisory responsibilities—

(A) The performance standards, requirements, or expectations for the employees they supervise to ensure that they clearly link to organizational mission, GPRA strategic goals, or other program and policy objectives, as appropriate, and

(B) The performance standards, requirements, or expectations and the performance ratings of the employees they supervise to ensure that they reflect distinctions in individual and or-

ganizational performance, as appropriate;

(3) Documentation showing that the appraisal system(s) meets the applicable certification criteria, as follows:

(i) For provisional certification, the requirements in § 1330.404(a)(1)–(4); and

(ii) For full certification, all of the requirements in § 1330.404.

(4) For full certification, data on senior executive annual summary ratings and senior professional ratings of record, as applicable (or other documentation for agencies that do not use summary ratings), for the two appraisal periods preceding the request, as well as corresponding pay adjustments, cash awards, and levels of pay provided to those senior employees; and

(5) Any additional information that OPM and OMB may require to make a determination regarding certification.

(c) *Certification actions.* At the request of an agency, the Director of OPM, at his or her discretion and in accordance with the requirements of this subpart and with OMB concurrence, may grant full or provisional certification of the agency's appraisal system(s). OPM, with OMB concurrence, may—

(1) Grant full certification of an agency's senior employee appraisal system(s) for 2 calendar years when an agency has demonstrated that it has designed and fully implemented and applied an appraisal system(s) for its senior executives or senior professionals, as applicable, that meets the certification criteria in § 1330.404 and the documentation requirements of this section.

(2) Grant provisional certification of an agency's senior employee appraisal system(s) for 1 calendar year when an agency has designed, but not yet fully implemented or applied, an appraisal system(s) for its senior executives or senior professionals, as applicable, that meets the certification criteria in § 1330.404. OPM may extend provisional certification into the following calendar year in order to permit an agency to take any actions needed to adjust pay based on annual summary ratings, ratings of record, or other performance appraisal results determined during the

calendar year for which the system was certified; or

(3) Suspend certification under paragraph (h) of this section if, at any time during the certification period, OPM, with OMB concurrence, determines that the agency appraisal system is not in compliance with certification criteria.

(d) *Pay limitations.* Absent full or provisional certification of its appraisal system(s), an agency must—

(1) Set a senior executive's rate of basic pay at a rate that does not exceed the rate for level III of the Executive Schedule, consistent with 5 CFR part 534, subpart D, when effective; and

(2) Limit aggregate compensation paid to senior employees in a calendar year to the rate for level I of the Executive Schedule, consistent with 5 CFR 530.203(b).

(e) *Full certification.* (1) OPM, with OMB concurrence, may grant full certification when a review of the agency's request and accompanying documentation demonstrates that the design, application, and administration of the agency's appraisal system(s) meet the criteria in §1330.404 and the documentation requirements of this section.

(2) An agency with a fully-certified appraisal system(s) may set the rate of basic pay under 5 CFR part 534, subpart D, when effective, for a senior executive covered by a certified system at a rate that does not exceed the rate for level II of the Executive Schedule and pay senior employees covered by certified system(s) aggregate compensation in a certified calendar year in an amount up to the Vice President's salary under 3 U.S.C. 104.

(3) Full certification of an agency's appraisal system will be renewed automatically for an additional 2 calendar years, if—

(i) The agency meets the annual reporting requirements in paragraph (g) of this section; and

(ii) Based on those annual reports, OPM determines, and OMB concurs, that the appraisal system(s) continues to meet the certification criteria and procedural requirements set forth in this subpart.

(f) *Provisional certification.* (1) OPM, with OMB concurrence, may grant pro-

visional certification when the design of an agency's appraisal system(s) for senior executives or senior professionals, as applicable, meets the requirements set forth in this subpart, but insufficient documentation exists to determine whether the actual application and administration of the appraisal system(s) meet the requirements for full certification. OPM, with OMB concurrence, may grant provisional certification to an agency more than once.

(2) During the 1-year period of provisional certification, an agency may set the rate of basic pay for a senior executive covered by the provisionally certified system at a rate that does not exceed the rate for level II of the Executive Schedule (consistent with 5 CFR part 534, subpart D, when effective) and pay senior employees covered by provisionally certified systems aggregate compensation in the certified calendar year in an amount up to the Vice President's salary under 3 U.S.C. 104 (consistent with 5 CFR part 530, subpart B).

(3) An agency must resubmit an application requesting provisional certification for every calendar year for which it intends to maintain provisional certification. An agency with a provisionally certified appraisal system(s) may request that OPM, with OMB concurrence, grant full certification upon a showing that its performance appraisal systems for senior executives and senior professionals, as applicable, meet the certification criteria in §1330.404 and the documentation requirements in this section, particularly with respect to the implementation and administration of the system(s) over at least two consecutive performance appraisal periods.

(g) *Annual reporting requirement.* Agencies with certified appraisal systems must provide OPM with a general summary of the annual summary ratings and ratings of record, as applicable, and rates of basic pay, pay adjustments, cash awards, and aggregate total compensation (including any lump-sum payments in excess of the applicable aggregate limitation on pay that were paid in the current calendar year as required by §530.204) for their senior employees covered by a certified

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appraisal system at the conclusion of each appraisal period that ends during a calendar year for which the certification is in effect, in accordance with OPM instructions.

(h) *Suspension of certification.* (1) When OPM determines that an agency's certified appraisal system is no longer in compliance with certification criteria, OPM, with OMB concurrence, may suspend such certification, as provided in paragraph (c)(3) of this section.

(2) An agency's system certification is automatically suspended when OPM withdraws performance appraisal system approval or mandates corrective action because of misapplication of the system as authorized under §§ 430.210(c), 430.312(c), and 1330.403(e).

(3) OPM will notify the head of the agency at least 30 calendar days in advance of the suspension and the reason(s) for the suspension, as well as any expected corrective action. Upon such notice, and until its system certification is reinstated, the agency

must set a senior executive's rate of basic pay under 5 CFR part 534, subpart D, when effective, at a rate that does not exceed the rate for level III of the Executive Schedule. While certification is suspended, an agency must limit aggregate compensation received in a calendar year by a senior employee to the rate for level I of the Executive Schedule. Pay adjustments, cash awards, and levels of pay in effect prior to that notice will remain in effect unless OPM finds that any such decision and subsequent action was in violation of law, rule, or regulation.

(4) OPM, with OMB concurrence, may reinstate an agency's suspended certification only after the agency has taken appropriate corrective action.

(5) OPM may reinstate the certification of an appraisal system that has been automatically suspended under paragraph (h)(2) of this section upon the agency's compliance with the applicable OPM-mandated corrective action(s).