



Office of Forensic Auditing, Evaluation  
and Analysis  
Office of Inspector General  
U.S. General Services Administration

# GSA Practices for Executive Performance Recognition and Awards

*Report Number JEF12-017-000*  
*May 16, 2013*



U.S. GENERAL SERVICES ADMINISTRATION  
Office of Inspector General

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MEMORANDUM FOR: DANIEL TANGHERLINI  
ACTING ADMINISTRATOR (A)

FROM: BRIAN D. MILLER   
INSPECTOR GENERAL (J)

DATE: May 16, 2013

SUBJECT: Final Report  
GSA Practices for Executive Performance Recognition and Awards  
Report Number **JEF12-017-000**

Please find attached the Office of Inspector General's final report presenting the results of our review of GSA's practices for executive performance recognition and awards. Our findings are summarized in the Executive Summary.

GSA's written comments to the draft report are included in Appendix B of this report. If you have any questions regarding this report, please contact me at 202-501-0450 or Patricia Sheehan, Director of the Office of Forensic Auditing, Evaluation and Analysis at [Patricia.Sheehan@gsaig.gov](mailto:Patricia.Sheehan@gsaig.gov) or 202-273-4989.

On behalf of the review team, I would like to thank you and your staff for your assistance during this review.

Attachment

## Executive Summary

We reviewed the General Services Administration's (GSA's) practices for performance recognition and awards for members of the Senior Executive Service (SES). Due to the relationship between performance and bonuses, our review necessarily encompassed GSA practices for evaluating SES members' performance. The review covered the period FY2009 through FY2011, representing three performance appraisal cycles.

The Office of the Chief People Officer (OCPO) is responsible for the system for evaluating SES performance and obtaining approval from the Office of Personnel Management (OPM). We identified deficiencies in the GSA SES program that illustrate a willingness by GSA to violate legal requirements that resulted in an opaque evaluation and award system, with a manufactured process that failed to protect the rights of SES members, made review of the validity of individual awards impossible, and impeded review of the overall program.

1. Executive performance evaluation practices, which have a direct effect on performance awards, violated legal requirements by:
  - Failing to provide an initial summary rating to the executive before the rating was given to the Performance Review Board (PRB);
  - Failing to allow for higher-level review;
  - Failing to provide for PRB review of direct reports to the Administrator;<sup>1</sup>
  - Not providing executives with a performance plan for the first seven months of FY2010;
  - Basing the FY2011 evaluation on predicted performance for the final one-and-a half months; and
  - Not publishing PRB membership in the Federal Register.
2. SES award practices violated legal requirements through:
  - An SES Peer-2-Peer award program that supplemented the annual performance awards for executives; and
  - Multiple awards that were based on the same sustained performance that was recognized in the annual performance awards.
3. The SES award policy is inadequate.
4. GSA violated record retention requirements.
5. GSA did not make accurate disclosures to OPM in that:
  - Annual SES award reporting to OPM was inaccurate for the three years reviewed; and
  - Actual evaluation practices were not disclosed in the 2011 request for certification.
6. The SES award program was not accurately reported to Congress.

As explained in further detail in the report, we recommend the Chief People Officer (CPO) take

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<sup>1</sup> Administrator, as used in this report, refers to both then-current and Acting Administrators during the period FY2009-FY2011, unless specified otherwise.

appropriate corrective action.<sup>2</sup>

## Background

The objectives, scope, and methodology are discussed in Appendix A. We reviewed GSA's compliance with the SES performance management requirements of 5 U.S.C. §§ 4311 – 4315, awards requirements of 5 U.S.C. §§ 4501— 4509, 5384, and record-keeping requirements of 5 U.S.C. § 4314(b)(3), (4).<sup>3</sup> OPM is assigned primary responsibility for evaluating an agency's executive performance appraisal system. As explained in the OPM SES Desk Guide,<sup>4</sup> performance management holds executives accountable for their individual and organizational performance. This is achieved through an effective performance management program that incorporates the planning, evaluation, and reward of both individual and organizational performance. Agencies must retain SES annual summary ratings and the performance plans on which they are based for at least five years from the date the annual summary rating is issued.

As established by GSA orders, the GSA OCPO is responsible for compliance with laws, regulations, and policies applicable to SES performance management, award compensation, and record-keeping.<sup>5</sup>

The legislation creating the Senior Executive Service in 1978 established the Performance Review Board as an integral part of an agency's executive performance management system. In considering the underlying bill, the Senate Committee on Governmental Affairs identified a need to “spell out in detail the process by which the Performance Review Board and Appointing Authority would operate.”<sup>6</sup>

The resulting statutes and implementing regulations gave executives a right to see and acknowledge an initial summary rating, a right to submit a written response, and a right to a higher-level review – all before the initial ratings are submitted to the PRB, which is to evaluate the executives' performance and accomplishments and in turn advise the appointing authority. The statutes also defined the PRB's responsibilities and makeup; record retention requirements; and an SES program certification process administered by OPM.

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<sup>2</sup> GSA did not exceed statutory, regulatory, or other mandatory limits with respect to the sums awarded to SES members. This includes both limits on individual payouts and the amount agencies can pay out in the aggregate. Moreover, during the review period GSA decreased its total executive award payout each year, complying with Presidential and OMB/OPM mandates. GSA also made meaningful distinctions between performance awards based on ratings.

<sup>3</sup> This review did not include the GSA OIG SES program, which operated independently.

<sup>4</sup> The OPM SES Desk Guide is updated annually as a working draft for executives and executive resource practitioners. References to that Desk Guide in this report are to the 2011 version; relevant provisions cited in this report also are found in the 2010 and 2009 Desk Guides.

<sup>5</sup> OCPO underwent transition during the period under review, particularly the Executive Resources Office (CX) which saw changes in leadership and staff. CX performs numerous functions, including supporting the executive appraisal and award process. That office was under SES direction throughout the review period.

<sup>6</sup> S. Rep. No. 95-969, at 2791, 2803 (1978).

GSA identified two internal policies applicable to executive compensation for the FY2009-FY2011 period: (1) GSA Order CPO P 9430.1, GSA Associate Performance Plan and Appraisal System (APPAS) (Dec. 31, 2003); and (2) GSA Order CPO P 9451.1, GSA Associate Performance Recognition System (APRS) (Jan. 31, 2005).

## Findings

GSA violated many of the legal requirements for SES programs. Deficiencies fall into four general categories: Evaluation Practices, Finding 1; Award Practices, Findings 2 and 3; Record Retention Practices, Finding 4; and Reporting Practices, Findings 5 and 6.

Management generally agreed with the review findings and concurred with the recommendations. See Appendix B for GSA management's written response.

## EVALUATION PRACTICES:

### Finding 1 - Executive Performance Evaluation Practices Violated Legal Requirements

The statutory and regulatory scheme for evaluating SES performance creates a three-step process. First, the rating official assigns the *initial* summary rating which is acknowledged by the executive and, along with any response or higher-level review, sent to the PRB. Second, the PRB considers the initial summary ratings, responses and higher-level reviewing officer recommendations, and then makes recommendations to the Appointing Authority (at GSA the Administrator). Third, the Administrator determines the *final* ratings upon consideration of the recommendations from the PRB.<sup>7</sup>

This three-step process was not followed; GSA instead omitted the first step and altered the second step by restricting the role of the PRB. This non-compliance undermined the integrity of the decisions regarding performance bonuses. As a consequence of this and other deficiencies, GSA developed a manufactured process at odds with that provided by law.

Initial Summary Ratings: GSA failed to provide executives with initial summary ratings before their ratings were considered by the PRB.

Under 5 U.S.C. § 4314(c)(2), supervisors must provide the PRB with “an initial appraisal of the senior executive’s performance,” and the PRB must review “any response by the senior executive to the initial appraisal” and conduct such further review as the Board finds necessary. This must be done “[b]efore making any recommendations” to the rating authority (emphasis added). See also 5 C.F.R. § 430.308. Pursuant to 5 U.S.C. § 4314(c) and GSA’s APPAS policy, the PRB then submits recommended ratings to the Administrator.

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<sup>7</sup> OCPO SES Performance Management Guidance (2009) at 3; see also 5 U.S.C. §§ 4311 – 4315; 5 C.F.R. § 430.308; GSA Order CPO 9430.1 Ch. 2 § 7(c); OPM SES Desk Guide Ch. 5 (Sept. 2011).

In fact, GSA employed proposed ratings and deferred the assignment of the actual initial summary ratings, or omitted them altogether, until after PRB deliberations. While OPM's Desk Guide (at 5-8) permits rating officials to share "proposed initial summary ratings" with "the next level supervisor to help ensure that appraisals are being made in a uniform and equitable manner," GSA's "proposed initial summary ratings" were not used for this purpose. The Desk Guide requires agencies using proposed initial ratings to assign the initial summary rating and comply with the notice and acknowledgement procedures before forwarding the initial rating to the PRB. Contrary to 5 U.S.C. § 4314(c)(2), GSA supervisors were instructed to create "proposed initial summary ratings" that should *not* be shared with the executive before being forwarded to the PRB, as follows:

**IT IS IMPORTANT THAT RATING OFFICIALS NOT SHARE THESE *PROPOSED INITIAL SUMMARY RATINGS* WITH EXECUTIVES AT THIS STAGE OF THE PROCESS.**<sup>8</sup>

Further, for the most part GSA did not provide any ratings to the executives until after the Administrator had approved them.<sup>9</sup> Rating officials were instructed each year to document the appraisals "in final" only after receiving the PRB's "feedback," and then conduct annual performance reviews with executives. This feedback was based on the Administrator's final rating decisions.<sup>10</sup>

Higher-Level Review: GSA failed to provide executives with any meaningful opportunity for a higher-level review.

Under 5 C.F.R. § 430.308, the executive may request higher-level review before the initial rating is given to the PRB. The higher-level review official then may recommend the same or a different rating to the PRB and appointing authority, and the PRB must consider the executive's written comments and the findings from any higher-level review before making its written recommendation to the appointing authority. Both OPM's Desk Guide and GSA's policy additionally state that the Board should support its recommendations with a "written

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<sup>8</sup> OCPO SES Performance Management Guidance (2009) at 3 (all emphasis in original). The "stage of the process" referenced in the quote was the PRB's review of the proposed ratings. GSA issued basically the same guidance in FY2010 and FY2011.

<sup>9</sup> In a very few instances, rating officials gave executives proposed initial summary ratings before submitting them to the PRB. By failing to comply with OCPO's instructions, these rating officials actually complied with agency policy and legal requirements.

<sup>10</sup> For example, the Administrator inserted herself in the PRB process for FY2011, and the final "PRB Ratings and Bonus Recommendations" (dated October 31, 2011) in agency records actually reflect the Administrator's own rating decisions, not the PRB's recommendations. The rating official only had the option of creating an "initial" summary rating that aligned with the final summary rating. As another example, the FY2009 performance plans that OCPO produced for this review generally showed initial summary ratings and final summary ratings were recorded, if at all, on the same date. After FY2009, most performance plans did not even provide for an initial summary rating. The FY2010 plan required the rating official and executive to sign only once, under a "Was the plan met" category, and most FY2011 plans followed that format.

justification” whenever the Board, an executive, or reviewing official disagrees with the rating official.<sup>11</sup>

GSA circumvented this process by skipping the initial summary rating, the only event that triggers an opportunity to request a higher-level review. While rating officials conducting annual performance reviews were advised that “[e]xecutives are entitled to provide a written response and/or request a higher-level review within 15 days from the date they are provided with their appraisal,”<sup>12</sup> the entitlement to seek higher-level review already was meaningless. The PRB had made its recommendations. Therefore, a higher-level review as outlined in the regulations could not occur.

This is particularly significant because, pursuant to 5 C.F.R. § 430.308(f), SES members generally cannot appeal performance appraisals and ratings.<sup>13</sup> A low rating can have immediate adverse consequences, including removal from the SES.<sup>14</sup>

For the years under review, we found documentation of three instances where executives requested higher-level review. The Agency’s response in each instance fell short of what was legally required, because the requests could not occur until after the Administrator had completed her review.

- For ratings covering FY2010, two executives sought higher-level review once they were advised of their ratings – *after* the Administrator’s final review of the PRB’s recommendations.

Both executives requested higher-level review within a few days of receiving their final ratings. In one instance, the rating official characterized the request as an “appeal” and gave the executive a single day to submit “your appeal,” rather than the 15 days provided under GSA policy for higher-level review requests. After five months, a higher-level review officer sustained both executives’ ratings and advised a recommendation would “not be sent to the Performance Review Board (PRB) or rating official to change your current rating.” This action – sustaining the ratings – would have exceeded the reviewer’s authority if review had been sought before the PRB received the initial summary rating.

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<sup>11</sup> GSA Order CPO 9430.1 Ch. 2 § 8(b)(2); SES Desk Guide at 5-11. Annotated spreadsheets recording PRB discussions reflect occasions when additional information was sought by the Board as it investigated the basis for a “proposed” rating. However, the PRB’s draft recommendation to the Administrator did not contain written justifications for the PRB’s recommendations in these circumstances.

<sup>12</sup> Internal email dated November 7, 2011 from CX regarding FY2011 SES Ratings and Bonuses.

<sup>13</sup> However, a career appointee may file a complaint with the Office of Special Counsel on any aspect involving a prohibited personnel practice, and a career appointee removed because of a performance rating may request an informal hearing before the Merit Systems Protection Board. SES Desk Guide at 5-9.

<sup>14</sup> 5 U.S.C. § 4314(b)(3); *see also* 5 C.F.R. § 430.309(c); GSA Order CPO 9430.1 Ch. 2 § 11.

Because GSA's practices circumvented that step, however, the executives were afforded a post-final rating process which only had the appearance, but not the benefits, of the process afforded by law.

- For FY2011, one executive sought higher-level review of his rating. The process was delayed several months because the Agency could not locate a record of the executive's appraisal and finally had to ask the executive to sign a page of a performance plan before his review could proceed. A higher-level review officer was selected and, this time, was instructed to prepare a report for the PRB. At the time of our fieldwork, however, the matter remained unresolved, and PRB members had not been notified that a higher-level review was pending. The PRB published in September 2011 has since been replaced; and as with the FY2010 "higher-level reviews," the distinction between a post-final rating higher-level review and a prohibited appeal from a final rating is questionable.

PRB and Direct Reports: The OCPO did not provide proposed ratings for the Administrator's direct reports to the PRB for recommendations for any of the years under review, as required. Rather, after the PRB completed its review of other executives' ratings, the OCPO added ratings for the direct reports to the overall recommendation to the Administrator. Therefore, 19 of GSA's 79 ratable executives were not reviewed for FY2009, 15 of 83 for FY2010, and 13 of 88 for FY2011.

As a result, the PRB could not discharge its responsibility for "assur[ing] consistency, stability, and objectivity in the performance appraisal." 5 U.S.C. § 4314(c)(5).

Performance Plans 2010: 5 C.F.R. § 430.305 requires that executives' performance plans be communicated to them at or before the beginning of the rating period.

GSA executives did not receive a performance agreement when FY2010 commenced. The Administrator decided to revise executive performance plans and significantly change the critical elements on which performance had been rated in FY2009 "to interrupt a lot of the leadership behaviors we are living with."<sup>15</sup> GSA policy recognizes that revised performance plans may be appropriate "as a result of changes in organizational priorities or changes in assignments." APPAS, Ch. 1, § (5)(a), Ch. 2 § 10(a). GSA did not use the old FY2009 template until a new plan was developed, however, and in the Administrator's April 29, 2010, email she determined that the new plan should not be applied retroactively, but rather should be set to the remaining five months of the year to "avoid the silliness of pretending to do a plan for the

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<sup>15</sup> Internal email dated April 29, 2010 from the Administrator regarding SES Performance Plans.

last seven months.” Therefore, executives had no performance plan for the first seven months of that year.<sup>16</sup>

The deficiency is illustrated by one executive who spent the first part of the year in a different position under another supervisor and received a poor rating. In that circumstance, “the [first] supervisor must appraise the executive’s performance in writing before the executive leaves.” 5 C.F.R. § 430.307(b)(2). GSA’s policy similarly provides: “If an executive changes positions within GSA during the appraisal period and if the executive has held his/her current position for the minimum appraisal period of 120 days, an interim performance appraisal must be prepared.” APPAS, Ch. 2, § 10(a)(1). The policy goes on to provide that, if requested by the executive, the interim performance appraisal “is subject to review by a higher level official and by the Performance Review Board.” *Id.* Because the executive was not placed on a performance plan for the first part of the appraisal period, neither the executive’s response nor a higher-level review was made available. The required process, at least, would have provided the executive the assurance that the PRB considered the higher-level review official’s assessment of the executive’s performance.

Performance Evaluations 2011: GSA effectively shortened the appraisal period by about a month and a half in FY2011, but instructed supervisors to evaluate future, predicted work as well. Under 5 C.F.R. §§ 430.303 – 304, appraisal periods must have an “established period of time,” with a minimum of 90 days, and agencies may end the appraisal period after the minimum “if there is an adequate basis on which to appraise and rate the senior executive’s performance.” For GSA, that established period was one year and the minimum period was 120 days, as reflected both in its APPAS policy and its senior executive performance plans.

Rating officials were required to forward proposed initial summary ratings to OCPO for PRB review by August 18, 2011, nearly a month and a half before the close of the performance appraisal period, because the Administrator set a deadline for completing the executive performance appraisals soon after the close of the fiscal year.

The OCPO advised supervisors to rate executive performance on work already performed, predict the work that executives would perform for the duration of the period, and then rate the executives based on both. GSA thus failed to appraise executives based on their performance for the full appraisal period, and instructed that executives were to be rated in part on conjecture.

Performance Review Board: Under 5 C.F.R. § 430.310(a)(4), agencies must publish notice of PRB membership in the Federal Register “before service begins.” Notice of the agency’s PRB

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<sup>16</sup> Moreover, the new FY2010 plan omitted the notice found in FY2009 plan which stated, “This evaluation has been discussed with me and I have been given a copy. I am aware that if I decide to submit a narrative response and/or request a higher level review, one or both must be submitted in writing within 15 workdays of my receipt of my evaluation,” and replaced it with the statement, “Discuss Due Process with your supervisor or the Office of Executive Resources.” The new plan also omitted any reference to the initial summary rating or final summary rating.

membership was published on October 3, 2006, but notice was not again published until September 8, 2011.<sup>17</sup> Fewer than half of the members of the FY2009<sup>18</sup> and FY2010 Boards were drawn from GSA’s published membership list (at the time, the 2006 version).<sup>19</sup>

## **AWARD PRACTICES:**

### **Finding 2 –SES Award Practices Violated Legal Requirements**

Over the three-year period under review GSA gave out numerous awards to executives that were impermissible. In all, 24 executives received 26 non-performance awards and 71 executives received 702 Peer-2-Peer performance awards, representing \$160,700,<sup>20</sup> with some executives receiving multiple awards in addition to their performance awards. As discussed below, we found systemic violations regarding these additional awards – an improper Peer-2-Peer award program and instances where awards were duplicative, that is, they recognized the same activity that was recognized in performance awards.

Peer-2-Peer Awards: GSA treated Peer-2-Peer awards as performance-based awards, which would have had to be included with the annual performance bonus. That, however, did not happen here, as the Peer-2-Peer awards were given separately and were not authorized by any legal authority for performance-based awards.

For executives, performance awards are governed by 5 U.S.C. § 5384 and 5 C.F.R. § 534.405(a)(4), (f). An annual performance award for each executive must be considered by the PRB, approved by the Administrator, and paid in a single lump sum. The “Peer-2-Peer Recognition” awards violated each of these requirements in that the PRB did not consider them, the Administrator did not approve them, and they were paid separately from the annual performance bonus.

On July 13, 2010, the Administrator (via email) launched the Peer-2-Peer program to reward leadership achievements; ultimately, a total of \$70,200 was paid to 71 SES members. Under this program, the Administrator’s executive leadership team members could cast votes for

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<sup>17</sup> 71 Fed. Reg. 58394 (Oct. 3, 2006); 76 Fed. Reg. 55677 (Sept. 8, 2011).

<sup>18</sup> A career SES member who was serving as Acting Administrator chaired the PRB for the FY2009 performance period. The presence of the appointing authority on the PRB is inconsistent with the separation of functions in the three-step appraisal process mandated by law.

<sup>19</sup> Under 5 U.S.C. § 4314(c)(4), PRB members are to be “appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal,” and the appointments are to be made public in the Federal Register. In recommending these provisions, the Senate Committee saw this requirement as an important protection.

<sup>20</sup> This represents special act and Peer-2-Peer awards paid to SES members during FY2009-FY2011, including members who left the executive service due to retirement, transition, etc. The total does not include Presidential Rank awards (which are not approved by the agency) or annual performance awards for executives. We also found internal communications referencing “spot awards” for executives, but were advised by OCPO that there were no spot awards.

peers who met award criteria. Internal documents reveal that these were performance plan based awards that used performance categories “straight off the performance review but less about the results section and more about the culture and growing leaders.”<sup>21</sup> In announcing the program, the Administrator advised that a portion of the bonus funds was being “fenced to you to reward your peers in recognition of their leadership behaviors.”<sup>22</sup> The award program was initiated in conjunction with the new performance plan and provided a way to “acknowledge each other’s progress through regular peer bonus voting.”<sup>23</sup>

“Each ‘vote’ [would] trigger a monetary award drawn from the overall SES bonus pool reserves.” *Id.* A single vote resulted in a \$100 award. Award criteria consisted of five questions, with one question announced and opened for a round of voting every two weeks on a shared executive website:

Collaboration: Who runs terrific and productive meetings?  
Who is great at grooming talent?  
Who relishes and champions change?  
Who gives me helpful peer executive feedback when I seek her/his counsel?  
Who seeks and uses feedback from others?<sup>24</sup>

Awards were paid out in aggregate lump sums – separate from the performance bonus – to executive leadership team members, with one executive receiving \$3,200 in peer awards, representing 32 votes.

Despite being performance-based, the Peer-2-Peer awards were not evaluated by the PRB or approved by the Administrator. We could not evaluate any of the 702 peer votes, as they did not have to be justified or explained.

#### Management Comments:

GSA management asserts that GSA “structured” and “processed” the Peer-2-Peer awards as Special Act awards that were limited to the demonstration of specific leadership qualities, rather than SES performance awards based on SES performance plans. See Appendix B for management’s full response.

#### OIG Response:

We disagree with management’s characterization of this unique award program.

Management comments do not cite authorities used to issue the Peer-2-Peer awards. In any event, “the authorities GSA used” for awards are not dispositive of their legality, as we

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<sup>21</sup> Internal email dated April 29, 2010 email from the Administrator regarding SES Performance Plans.

<sup>22</sup> Internal email dated July 13, 2010 from the Administrator to the Executive Leadership Team subject, Launching Peer-2-Peer Recognition.

<sup>23</sup> Attachment to internal email dated April 29, 2010 email from the Administrator regarding SES Performance Plans.

<sup>24</sup> The program appears to have ended before executives voted on the fifth question.

demonstrate in Finding 2 with respect to GSA's use of Special Act Awards to supplement annual performance awards for those executives. Management's comments do not state disagreement with that Finding, nor do they offer any support for the assertions made.

Moreover, the Administrator's own characterization of the Peer-2-Peer award program is ignored by management when it states that these awards were not performance-plan based. In launching the Peer-2-Peer program on July 13, 2010, the Administrator announced:

*We are dividing up the bonus funds. A large chunk is reserved for bonuses done in the familiar fashion through recommendations to me by your organizational leadership. The remaining portion, however, is being fenced for you to reward your peers in recognition of their leadership behaviors.*

*It works like this. **Every two weeks we will announce the criteria (chosen largely from the arena in the performance plan called "Leaders Grow Leaders" and "Leaders Shape Enterprise Culture.")** (Emphasis supplied.)*

Internal emails show that the Administrator was concerned with changing "the leadership behaviors we are living with," and peer awards would be used to recognize executives "for their behavior or results commensurate with parts of the performance plan." The award criteria such as "grooming talent" and "runn[ing] terrific and productive meetings" related to the focus on succession planning in the Leaders Grow Leaders section of the performance plan and "meeting behaviors" in the Leaders Shape Enterprise Culture section.

In addition, we are in disagreement with management's assertion that the Peer-2-Peer awards were structured and processed in the manner of Special Act awards. Chapter 5, § 2 of APRS policy on Special Act Awards provides that a "separate written justification is required, as well as approval from the next higher level of supervision," and that each award "justification must be documented in the Awards System or on a Form 1291 if the award is over \$5,000" (§2(c)(1)). See also APRS, Chapter 1, § 6(a), cash awards under \$5,000 "are to be approved by appropriate officials, and documented in the awards system." Management has provided no documentation to show that SES peer awards were justified and approved by the next higher level of supervision. In fact, the Administrator's email announcing the Peer-2-Peer awards showed the program was structured differently from Special Act Awards by providing that any executive's "vote on our shared site for your peers/colleagues" gave an award.

We also note that of the 702 individual peer awards given, none were documented as such in GSA's Comprehensive Human Resources Integrated System (CHRIS). Instead, only the cumulative total of peer awards an executive received were documented (*e.g.*, \$2000 for 20 awards valued at \$100 each). When awards were entered into CHRIS, moreover, a distinction was made between Special Act and Peer awards. As a consequence, the SF 50 Notifications of Personnel Actions for Peer-2-Peer awards generated by CHRIS were different from those used for Special Act awards. The review found 26 SES members received Special Act awards. In all but one of these, the action was identified as an Individual Cash Award NRB (non-rating based)

and also included a separate notation that the award was a “Special Act Award” with the purpose of the award given. The SF 50s for Peer-2-Peer awards did not contain a similar notation that they were Special Act awards. Nor was an SF 50 created for each award.

Multiple Awards for Same Performance: Congress has identified performance awards as a primary incentive to “encourage excellence in performance by career [SES] appointees.”<sup>25</sup> Although SES members are also eligible for non-performance incentive awards under 5 U.S.C. § 4503, OPM’s Desk Guide explains that with respect to non-performance awards (pages 6-4 – 6-5, emphasis added):

An award may be used to recognize a contribution (e.g., service on a task force, a detail to other duties, or an extraordinary effort on a project not anticipated in the employee’s annual performance plan) or a scientific achievement that may have culminated after a significant period of time. These other forms of recognition should be considered for SES members *only in those limited circumstances where a bonus would not be appropriate.*

Receiving one of these forms of recognition does not bar an executive from receiving a performance bonus, or vice versa. Each award must be judged on its own merits. However, agencies should give careful consideration before granting both a performance bonus and another award to an SES employee during the same year.

Given the sensitivity associated with executive awards, agencies are encouraged to carefully document the reasons for the award to make clear that *it is not being given in lieu of a performance bonus or in addition to a bonus for the same accomplishment.*

Based on that language, both a performance award and a non-performance award in recognition of the same sustained superior performance should not be given. Our review of available documents compared the non-performance awards and the annual ratings-based awards to determine whether GSA made improper duplicate awards in FY2009, the only year awards could be evaluated.<sup>26</sup>

Of the 12 executives who received special act awards in FY2009, GSA provided rating documentation for only three.<sup>27</sup> In two instances the executives’ service in “acting” capacities

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<sup>25</sup> 5 U.S.C. § 5384(a)(1).

<sup>26</sup> For executives who received both an annual performance award and a special act award in FY2009, the review evaluated, where available, the award justification and the rating official’s narrative. GSA’s performance plans for FY2010-FY2011 did not require narratives for rating (which are the basis for annual performance awards). Without documentation of the basis for the rating, our review could not determine whether there were duplicative awards in 2010 and 2011.

<sup>27</sup> In only one of the performance years under review (2009) did GSA require rating officials to document their reasons for ratings above or below a level 3. Even for that year, the Agency was unable to locate any fully executed raters’ assessments (and no complete performance appraisals). However, the few documents for FY2009 provided to the OIG revealed issues with duplicative awards.

was used as justification for \$2,000 Special Act awards and also as partial justification for their annual performance awards (an additional \$16,000 and \$18,000, respectively). In the third instance, a career executive's contributions to the Presidential Transition were justification for a \$6,000 Special Act award, and part of the justification for an additional \$15,000 annual performance award.

Executive performance over several months in an "acting" capacity was properly considered in determining annual performance awards. A separate, special act award for the same service not only disregarded OPM guidance, but violated 5 C.F.R. § 451.104(a)(3), which provides that performance awards "may be paid to SES members only under" the SES performance award authority and not under the separate authority for special act or other incentive awards.<sup>28</sup>

### **Finding 3 –SES Award Policy is Inadequate**

GSA does not have a clear policy for non-performance awards for SES members. As noted earlier, GSA identified two orders regarding executive compensation: APPAS and APRS. APPAS, GSA's performance appraisal policy, sets forth the performance plan and appraisal system for SES and non-SES members (as well as the process for granting performance awards to SES members and the PRB's role in that process).

Special act awards are governed by APRS, the performance recognition policy, which also governs GSA's performance awards for non-SES members. Although APRS states that it applies to both non-SES and SES employees, the chapter dedicated to "SES Awards" is marked "Reserved," and the other chapters that address special act awards do not fit SES members.<sup>29</sup> Nor are SES awards included in the table of awards that is a part of the APRS policy.

## **RECORD RETENTION PRACTICES:**

### **Finding 4 – GSA Violated Record Retention Requirements**

The OCPO provided an incomplete response to the OIG's document requests, explaining that GSA's record management and retention program is ineffective. Pursuant to 5 C.F.R. § 293.404(b), performance-related records for SES members shall be maintained for five years

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<sup>28</sup> In addition, on September 11, 2012, in response to a request from a Member of Congress, GSA provided a table with additional criteria for SES awards that included a requirement that special act awards be outside the SES member's annual performance plan. This specific requirement is not contained in the GSA policies identified to the OIG.

<sup>29</sup> For example, while Chapter 5, Performance Recognition for Special Acts, indicates no restriction to non-SES employees, that chapter limits special act awards to acts "that are not already covered under Individual or Organizational performance" – referring to awards under other chapters that are limited to *non*-SES personnel. Chapter 1, § 5, Awards for Non-SES Associates, similarly states that the provisions for special act and peer awards apply only to non-SES employees.

from the date the appraisal is issued. The failure to maintain records keeps the program opaque and impedes quality assurance reviews.

GSA either did not create these records in the first place or did not keep them. Of the documents that did exist, many did not have required signatures. For example, there were four documents necessary to support the FY2009 performance appraisal process for each of the 80 ratable SES members: self-assessment, organizational assessment, rater assessment, and performance agreement. The OCPO provided zero complete sets of fully executed documents for FY2009; seven complete sets for FY2010; and zero again for FY2011. The deficiency in the OCPO's record-keeping practices is illustrated by the Agency's failure to provide any fully executed copies of the OCPO's own SES members' performance agreements, appraisals, and ratings, as well as GSA's inability to locate the executed rating documents for executives who requested higher-level review. The OCPO had advised rating officials to send executed appraisals to the Executive Resources office for the Official Personnel Files, but took no corrective action when this was not done.

The Chief People Officer acknowledged that the OCPO has no viable records system in place for executive resource materials and is noncompliant with statutory and regulatory requirements.

## **REPORTING PRACTICES:**

### **Finding 5 – GSA Did Not Make Accurate Disclosures to OPM**

GSA did not make accurate disclosures to OPM in that: annual SES award reporting to OPM was inaccurate for the three years reviewed, and actual evaluation practices were not disclosed in the 2011 request for certification.

Annual reports: Each year, OPM requires agencies to provide summary performance ratings, pay, and awards data for executives and other senior personnel (the OPM Data Call). GSA reported inaccurate SES data to OPM in each of the three fiscal years under review - 16 awards were reported in the wrong fiscal year, one award was reported twice, and 57 awards went unreported. While the Agency states that the errors were unintentional, they demonstrate the need for internal controls to ensure the Agency's responses to the annual data calls are accurate.

Evaluation Practices: In its 2011 request for certification of its SES system, GSA failed to disclose to OPM that the Agency's actual appraisal practices contravened GSA's cited policy.

In order to certify (or recertify) agency SES systems, OPM's regulations require the systems to meet defined criteria. The Administrator requested full certification for GSA's SES system on February 9, 2011. In support of this request, GSA provided OPM the December 31, 2003,

APPAS policy and OPM's October 29, 2004, approval of its appraisal system.<sup>30</sup> GSA stated: "Since then, the agency has made no substantive changes to this system framework, which contains all the requisite elements of current Pay for Performance requirements."<sup>31</sup> While the policy itself had not changed, GSA should have disclosed to OPM that it did not follow the policy.<sup>32</sup>

Similarly, in response to a question regarding internal verification of compliance with law and regulation, the Agency cited a 2008 GSA Office of Human Capital Management evaluation that found that "the SES performance management system was in compliance with the GSA internal directive referenced above [APPAS], which is fully compliant with 5 USC 43 and Part 430 of the CFR [*sic*]." As detailed above, this statement was not accurate.<sup>33</sup> GSA's failure to disclose its actual practices fell short of the candor OPM should be able to expect when it performs its mandatory oversight of agency executive systems.

### **Finding 6 – SES Award Program Not Accurately Reported to Congress**

GSA's recent response to a congressional request regarding the Agency's award practices failed to disclose the SES Peer-2-Peer award program.<sup>34</sup> Although GSA implemented the SES Peer-2-Peer award program in July 2010 (discussed above), GSA failed to provide the documents that establish the program to the Ranking Member of the Committee on Homeland Security and Governmental Affairs.<sup>35</sup>

#### **Management Comments:**

GSA management believes that GSA SES award practices information provided to Congress was responsive to the specific questions asked and relied upon data that included the senior executive peer awards. See Appendix B for management's full response.

#### **OIG Response:**

We disagree with management's assertion that information provided on SES awards to Congress was responsive to the questions asked.

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<sup>30</sup> Letter from Martha Johnson to John Berry (Feb. 9, 2011). In the letter, the Administrator notes that GSA's earlier certification expired December 2010 and that OPM had partially granted her request for an extension of the earlier period through February 28, 2011, but denied a six-month extension. OPM's initial review found inadequacies in GSA's SES performance plans; after revisions to those plans, OPM granted GSA a provisional certification. Letter from John Berry to Martha Johnson (April 21, 2011).

<sup>31</sup> GSA 2011 Performance Appraisal Assessment Tool, Response to Question 1(c).

<sup>32</sup> Information provided during the review indicated that GSA's non-compliant practices pre-dated the 2003 policy. However, the origins of GSA's practices were outside the scope of this review.

<sup>33</sup> The scope of this review did not encompass whether the 2008 internal review team knew that PRB practices deviated from Agency policy and law at that time.

<sup>34</sup> Letter from Rodney P. Emery to the Hon. Susan M. Collins (dated Sept. 11, 2012).

<sup>35</sup> In its response, GSA identified a few executives as having received peer awards, but GSA provided the Ranking Member only a table for "SES Awards" that excluded executive peer awards, along with the APRS policy that only authorizes peer awards for non-SES personnel. The OIG previously advised GSA that this response excluded the Peer-2-Peer awards.

Questions 5, 6 and 7 asked for an explanation of the basis of awards for several former PBS officials. Although GSA identified five executives who received Peer awards (separate from Special Act awards), the basis for these awards was not provided. GSA's Peer-2-Peer SES awards were not covered by the APRS policy, and indeed a table of SES awards GSA provided in response to Question 5 does not identify peer awards among those available for SES members.

Questions 8 and 9 asked for GSA's award policies, both prior to April 2012, and any revised policy since April 2012. GSA's response included APPAS and APRS. Because GSA only documented that individual executives received, by example, a Peer Award of \$3,200, rather than 32 awards valued at \$100 each, the parameters of this award program were not apparent. At the time, GSA knew there was another award policy that provided Peer-2-Peer awards to SES members during the time period relevant to the Senator's request. That policy, set forth in the Administrator's July 13, 2010 email, was not included.

## **Conclusion**

GSA circumvented the basic executive appraisal process required by law and, instead, employed practices that lack transparency and accountability. This created a system that denies due process, fails to ensure the agency head receives the benefit of informed PRB recommendations, made reviews of the validity of individual awards impossible, and impeded review of the overall program.

## **Recommendations**

The Chief People Officer should:

1. Notify OPM of the results of this review.
2. Establish compliance standards, training programs (including training programs for PRB members), and delegations of authority to ensure deficiencies identified in this report are not repeated.
3. Develop and implement a clear and consistent policy for SES non-performance awards.
4. Develop and implement controls over record-keeping and data reporting that comply with retention schedule requirements and support OPM data reporting requirements.

## Appendix A – Objectives, Scope, and Methodology

### Objectives

The Office of Inspector General, Office of Forensic Auditing, Evaluation and Analysis, commenced a formal review of the GSA's non-salary executive compensation practices after information developed in the course of our review of the 2010 GSA Western Regions Conference suggested weaknesses in those practices, particularly with respect to cash awards that might duplicate or supplement the annual performance awards granted executives. A preliminary survey was unable to resolve what appeared to be anomalies between award practices and GSA's formal award policy. These anomalies included: (1) SF 50s that recorded nonperformance awards without justifying language, (2) a nonperformance award for performance that also was used to justify the executive's annual performance award, (3) indications of a special "peer" award program for executives who received awards as high as \$3,200 in addition to their annual performance awards, and (4) disparity between these practices and the Agency's actual award policy. The preliminary review also found that these anomalies were not limited to executives responsible for the 2010 conference but appeared to be more widespread.

The objectives of this review were (1) to evaluate whether the agency's SES performance recognition and award program adheres to applicable laws, rules, policies, and guidance and (2) to evaluate the control structure of the GSA SES performance recognition and award program. Due to the relationship between performance evaluations and bonuses, our review necessarily encompassed GSA practices for evaluating SES members' performance.

### Scope

The review encompassed the periods FY2009 through FY2011, representing three complete SES performance cycles. The entrance conference was held on July 25, 2012.

The Agency did not produce a complete set of documentation in response to our requests. Production throughout the course of the review was piecemeal, often after repeated requests. In one instance, we obtained documentation of proceedings before the Agency's annual PRB from an individual PRB member, after the OCPO was unable to provide that documentation.

Although we are unable to conclude that all documents responsive to our requests have been provided, we do not believe it is necessary to pursue further assistance from the Acting Administrator or to elevate the issue. As reported, the review identified overarching deficiencies in the Agency's executive performance review and recognition practices and the need for correction before the PRB met to consider appraisals, ratings, and awards for the recently concluded performance cycle. As such, the Acting Administrator was apprised on September 4, 2012, and again on November 13, 2012, and advised a formal report that addressed all findings would follow.

## Methodology

To accomplish our objectives, we:

- Requested and reviewed, to the extent provided:
  - GSA's response to the annual SES data call from the Office of Personnel Management (OPM) for FY2009, FY2010, and FY2011.
  - All GSA policies, procedures and practices in effect at any time from October 1, 2008, through the present that address, authorize, support, or are relevant to compensation or any type of award available to SES members for performance or any other reason, including the SES performance appraisal system and any other GSA recognition program.
  - All documents showing, proposing, justifying, recommending for or against, approving, or rejecting SES performance cash awards, bonuses, and any other awards, however denominated, to individual executives for the 2009, 2010, and 2011 SES performance periods. The documents requested included, but were not limited to, electronically stored information on automated tools and documents related to individual executive compensation under GSA's SES performance appraisal system, as well as under any other GSA recognition program.
- Conducted meetings, interviews, and/or corresponded with:
  - GSA OCPO Personnel;
  - Former PRB members;
  - Former PRB Chair;
  - OPM Personnel; and
  - OIG Office of Administration Personnel.
- Obtained and reviewed:
  - The OPM SES Desk Guide;
  - GSA Orders;
  - Statutes; and
  - Rules and regulations.
- Accessed documentation in GSA systems, including:
  - Google Docs;
  - Lotus Notes;
  - CHRIS;
  - PAR; and
  - Email.

## Appendix B - Management Comments

Received on:

MAY 14 2013



GSA Office of the Chief People Officer

May 9, 2013

MEMORANDUM FOR BRIAN D. MILLER  
INSPECTOR GENERAL (S)

FROM ANTHONY E. COSTA  
CHIEF PEOPLE OFFICER (C)

SUBJECT Response to Draft Report on GSA Practices for Executive  
Performance Recognition and Awards (JEF12-017-000)

Thank you for your useful and insightful report. GSA accepts the recommendations set forth in the report, and will redouble its ongoing efforts to reform its Senior Executive Service and agency-wide performance management systems. Consistent with this goal, the Agency is committed to creating a model senior executive recruitment, development and performance management program. As an important next step toward that goal, the Agency has submitted to the Office of Personnel Management (OPM) a proposal to transition to the new governmentwide Senior Executive Service Performance Appraisal System for the fiscal year (FY) 2013 appraisal period and beyond. We are currently awaiting OPM's review of our new system. This new system will ensure that our performance management model reflects the best thinking from across the government.

The findings in the Report are of great concern and require immediate attention. The findings reinforce the agency's already ongoing efforts to develop new processes and practices to replace those in place long before its current leadership took over.

Concurrent with the development of your report, GSA was developing a new SES performance system with a goal of addressing weaknesses that became apparent through your review. In December 2012, OCPO conducted multiple briefings for senior executives and their supervisors on a proposed new senior executive appraisal process. A separate briefing was held with the members of the Performance Review Board (PRB) to instruct them on the proposed new process and their role moving forward. In the meeting, the PRB received copies of the proposed new process in flow-chart form. In a January 8, 2013 e-mail to all senior executives and the Regional Administrators, OCPO attached written guidance on senior executive performance management closeout for FY2012.

While GSA has discontinued the Peer-2-Peer awards programs and understands the potential weaknesses inherent in an award structure of this sort, there is a disagreement

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## Appendix B - Management Comments

as to which authorities GSA used to issues those awards. Contrary to the findings in the Report, GSA structured the peer awards as Special Act awards (i.e., individual cash awards, not based on ratings) and processed them in that manner. The criteria for the peer awards were limited to the demonstration of specific leadership qualities and were not based on senior executive performance plans or annual appraisals of performance. The information on SES awards provided to Congress was responsive to the specific questions asked and relied upon data that included the senior executive peer awards.

Nonetheless, OCPO recognizes the need to establish a clearer policy for senior executive awards that better distinguishes performance awards based on annual appraisals from other cash awards, including the criteria and documentation required for each. To that end, OCPO is reviewing and will revise the GSA Associate Performance Plan and Appraisal System (APPAS), and the Associate Performance Recognition System (APRS) to improve guidance. As stated before, GSA has discontinued these awards and has no plans to engage in similar award programs.

We are also improving the process to collect and maintain performance management records. Going forward, OCPO will conduct a program and process review of the Agency's executive resources program to ensure that clear management controls and responsibilities are in place across GSA. To ensure compliance with the regulation regarding the retention requirements for senior executive performance-related records, OCPO will provide the Heads of Services and Staff Offices (HSSOs) and the Regional Administrators (RAs) with a written copy of the requirements. The APPAS and APRS orders will also be amended to include the retention requirements for performance-related records. OCPO will also obtain legal review on all written guidance and policies related to the senior executive appraisal process and recognition.

In addition to improving the performance appraisal process for senior executives, we are taking substantial steps to ensure that awards for senior executives recognize exemplary performance that goes above and beyond the basic expected level of performance. In furtherance of this goal, GSA reduced the senior executive bonus pool by 85% for the FY 2012 performance cycle.

Upon submitting this response, the Agency will notify OPM of the findings in the Report and will work with OPM as we continue to make changes to improve our program.

Thank you for working with us throughout the review. I look forward to our continued partnership.