



Office of the Deputy Attorney General
Washington, D.C. 20530

May 25, 1994

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL *SL* 5/26/94
FROM: SHAY BILCHIK *Shay Bilchik*
Associate Deputy Attorney General
SUBJECT: Salary increases for noncareer employees
PURPOSE: To obtain your approval of a policy instituting salary increases for Schedule C and Noncareer Senior Executive Service (SES) staff.
TIMETABLE: As soon as possible.
SYNOPSIS: I recommend we implement a general policy of promoting or increasing the pay levels of noncareer appointees after they have completed at least one year in grade, upon the recommendation of the component head.

DISCUSSION:

A number of Schedule C and Noncareer SES appointees have reached or are approaching their one-year anniversaries with the Department and several components have sought salary increases for them. I believe this is an appropriate time to set a uniform policy for advancing the pay of our noncareer staff.

After examining this issue and considering the normal salary progression for career employees, I recommend we adopt a one-year in grade or pay level standard for salary progression. The program would be administered as follows:

I. SES Appointees

By law, individuals in the Senior Executive Service may be increased in pay level only once in any 12-month period. An appointee may be increased any number of levels at that point.

I recommend we adopt a policy of granting a one pay level increase after the completion of one year of service to Noncareer SES members at pay levels ES-1 to ES-3. The increase will be based on the component head's written request and assessment that the individual has, over the past year, demonstrated superior

159-40155-37
MAY 27 1994

performance warranting a pay level increase.

I further recommend that Noncareer SES appointees' pay be limited to the ES-4 level, since pay at ES-5 or ES-6 will, with the addition of locality pay, exceed the compensation of an Assistant Attorney General.¹ Exception can be made in unusual circumstances where a pay differential may be warranted -- e.g., the Principal Associate Deputy Attorney General. This authority would be exercised by the Deputy Attorney General as Chair of the Senior Executive Resources Board.

II. Schedule Cs

After one year in grade, upon written recommendation of the component head, an individual in this category will be promoted to the next higher grade (e.g., from GS-14 to GS-15). As with Noncareer SES members, the recommendation must include the component head's assessment that the individual has, over the past year,² demonstrated superior performance warranting a grade increase.

This policy is consistent with that for career appointees, who generally must serve a minimum one year in grade before being eligible for promotion to the next grade.³ As with the career service, we would retain the ability to make exceptions in extraordinary circumstances, both with respect to timing and to the number of grades an individual could be promoted. I suggest that, as with the Senior Executive Service, the Deputy Attorney General personally approve such exceptions.

¹Additionally, pay at or above the ES-5 level subjects an appointee to substantially more stringent post-employment restrictions.

²In some situations, a grade level increase will not be available because the individual's duties and responsibilities do not support a higher grade level. (For example, Confidential Assistants to Assistant Attorneys General are graded at the GS-11 level. Those positions do not offer any "promotion potential" to GS-12.)

³Career attorneys hired at the GS-11 or GS-12 level under the Honor Law Program generally receive their first promotions after six months in grade. This accelerated schedule provides an incentive for attorneys to join and remain with the Department. I do not believe this rationale carries over to non-career attorneys. In addition, the Honor Law Program recruitment process is far more competitive than that used for political appointees.

III. Other Salary Increases for Schedule Cs

By statute, employees in the ten-step General Schedule receive salary increases within their grades on a periodic basis:

- 1) Steps 1 - 3: move up one step after 1 year
- 2) Steps 4 - 6: move up one step after 2 years
- 3) Steps 7 - 9: move up one step after 3 years

These increases take place as a matter of course so long as the employee is performing at "an acceptable level of competence."

This is of particular significance for Schedule C employees at the GS-15 level, since these increases will represent their only raises to base pay, except for general salary increases.

While government-wide law and regulations establish the possibility of granting an additional step increase through a category of incentive award known as a "Quality Within-grade Step Increase" (QSI), there are several reasons why I do not recommend that we adopt QSIs for noncareer appointees:

- . you have already articulated a policy of not granting cash awards to political appointees and QSIs, while not lump-sum payments, are nonetheless monetary awards; and
- . QSIs are relatively infrequently used in recognizing career appointees' performance; adopting them on a regular basis to increase noncareer appointees' pay could be considered an inappropriate manipulation of this compensation flexibility.

RECOMMENDATION:

I recommend you approve the salary increase policies for Schedule C and Noncareer SES appointees as outlined above.

APPROVE *[Signature]*

Dated: 6/6/94

Concurring components:

DISAPPROVE _____

JMD/Colgate *[Signature]*

OTHER _____

Nonconcurring components: **MAY 31 1994**

None



Washington, D.C. 20530

JUN 13 1994

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: STEPHEN R. COLGATE
Assistant Attorney General
for Administration

SUBJECT Salary Increases for Noncareer Employees

The Attorney General has asked that I transmit to you the attached policy guidance concerning salary advancement for noncareer appointees. Questions concerning the policy or its specific application should be addressed to Shay Bilchik or Chip Sgro in the Deputy Attorney General's office.

Attachment

SALARY INCREASES FOR NONCAREER EMPLOYEES

On June 6, 1994 the Attorney General approved a one-year in grade or pay level standard for salary progression for Noncareer members of the Senior Executive Service and Schedule C appointees. The program will be administered as follows:

I. SES Appointees

By law, individuals in the Senior Executive Service may be increased in pay level only once in any 12-month period.

In the Department, a Noncareer SES member at pay level ES-1 to ES-3 may be granted a one pay level increase after the completion of one year of service. The increase will be based on the component head's written request to the Deputy Attorney General and an assessment that the individual has, over the past year, demonstrated superior performance warranting a pay level increase.

Noncareer SES appointees' pay will be limited to the ES-4 level.¹ Exception can be made in unusual circumstances where a pay differential may be warranted. This authority will be exercised by the Deputy Attorney General as Chair of the Department's Senior Executive Resources Board.

II. Schedule Cs

After one year in grade, upon written recommendation of the component head to the Deputy Attorney General, an individual in this category may be promoted to the next higher grade (e.g., from GS-14 to GS-15). As with Noncareer SES members, the recommendation must include the component head's assessment that the individual has, over the past year, demonstrated superior performance warranting a grade increase.²

In extraordinary circumstances, the Deputy Attorney General may make exceptions both with respect to timing and to the number of grades an individual may be promoted.

¹Pay at ES-5 or ES-6 will, with the addition of locality pay, exceed the compensation of an Assistant Attorney General. Additionally, pay at or above the ES-5 level subjects an appointee to substantially more stringent post-employment restrictions.

²In some situations, a grade level increase will not be available because the individual's duties and responsibilities do not support a higher grade level. (For example, Confidential Assistants to Assistant Attorneys General are graded at the GS-11 level. Those positions do not offer any "promotion potential" to GS-12.)

III. Other Salary Increases for Schedule Cs

By statute, employees in the ten-step General Schedule receive salary increases within their grades on a periodic basis:

- 1) Steps 1 - 3: move up one step after 1 year
- 2) Steps 4 - 6: move up one step after 2 years
- 3) Steps 7 - 9: move up one step after 3 years

These increases take place as a matter of course so long as the employee is performing at "an acceptable level of competence."

This is of particular significance for Schedule C employees at the GS-15 level, since these increases will represent their only raises to base pay, except for general salary increases.

While government-wide law and regulations establish the possibility of granting an additional step increase through a category of incentive award known as a "Quality Within-grade Step Increase" (QSI), Schedule C appointees in the Department of Justice will not, as a matter of policy, be granted QSIs.



Washington, D.C. 20530

JUN 17 1994

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: STEPHEN R. COLGATE
Assistant Attorney General
for Administration

Stephen R. Colgate

SUBJECT: Salary Increases for Noncareer Employees

In a memorandum dated June 13, 1994, I transmitted to you the Attorney General's guidance for pay and grade level increases for the Department's political appointees -- Noncareer members of the Senior Executive Service and Schedule Cs.

The Department has just been informed that the Office of Management and Budget (OMB) will shortly issue Administration-wide guidance on the same subject. We have been told to expect that guidance in about 2 weeks. We have also been instructed not to effect any grade or pay level changes (except for statutorily-driven within-grade step increases) until we have received that guidance. Therefore, any proposals which you send to the Office of the Deputy Attorney General will be held there until clarification is received from OMB.

We will keep you informed of developments in this area.

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR CABINET AND AGENCY HEADS

FROM: LEON E. PANETTA
CHIEF OF STAFF 

SUBJECT: PROMOTIONS AND CASH AWARDS FOR
POLITICAL APPOINTEES

Questions have been raised about granting annual grade increases (i.e. promotions) to Schedule C appointees and about giving lump-sum cash awards to political appointees at all levels. In this memo, the Clinton Administration is issuing guidance with respect to both of these issues.

Grade Increases for Schedule C Appointees

A Schedule C appointee serves in a specifically approved position with specified duties and responsibilities that form the basis for its classification at a given grade and pay level. Schedule C appointees should be eligible for step increases, just like career employees. Annual grade increases should be limited to situations where significant changes to a position's level of duties and responsibilities justify reclassification at a higher grade. Positions should not be reclassified just to create a promotion opportunity for a deserving employee.

Cash Awards to Political Appointees

Federal agencies have very broad authority to grant employees lump-sum cash awards. The Clinton Administration wishes to maintain a more rigorous standard for granting cash awards than previous Administrations. We therefore ask that agencies refrain from giving cash awards to political appointees (i.e. Executive Schedule, noncareer SES, Schedule C employees) paid a salary level that exceeds that of a GS-12 and to grant monetary awards to others only for performance that is clearly exceptional. Agencies should continue to recognize other political appointees through the prudent use of nonmonetary awards.

ORIGINATOR
OFFICE SYMBOL
HR.7
SURNAME
VAIL
DATE
8/14/94

AUG 14 1994

CONCURRENCES
OFFICE SYMBOL

SURNAME
DATE

MEMORANDUM FOR CHARLES J. SGRO
Special Assistant to the
Deputy Attorney General

OFFICE SYMBOL

FROM: JOHN C. VAIL
Deputy Assistant Attorney General
Human Resources/Administration

SURNAME

DATE

SUBJECT: Promotion Policy for Political Appointees

OFFICE SYMBOL

This responds to your request for my views on the relationship between the policy for promotion of Schedule C appointees articulated in the recent memorandum from the President's Chief of Staff (copy attached) and the one approved by the Attorney General for Department employees on June 6, 1994 (also attached).

SURNAME

DATE

OFFICE SYMBOL

In my view, the two policies are entirely consistent. The implicit underpinning for the Attorney General's memorandum is the General Schedule position classification system. Under that system, by definition, a promotion is the change of an employee, while continuously employed, from a position at one grade level to another position at a higher grade level. That is, an employee must move from a position classified at a lower grade level to a position properly classified at a higher grade level upon promotion. The proposal approved by the Attorney General makes the presumption (as it must under the General Schedule) that before an individual can be recommended for promotion, there are duties available to be performed at the higher grade level.¹

SURNAME

DATE

OFFICE SYMBOL

SURNAME

DATE

OFFICE SYMBOL

As you are aware, the Attorney General's policy was designed to maintain a reasonable degree of parity between the promotion policies for Schedule C employees and those for the Department's career appointees. Headquarters attorney positions in the Department -- and those of the majority of Schedule C appointees -- have "full performance" levels of GS-15. That is, an individual initially appointed below that level has every

SURNAME

DATE

OFFICE SYMBOL

SURNAME

DATE

¹Indeed, footnote 2 on the second page of the memorandum observes that some Schedule C appointees may not be eligible for promotion "because the individual's duties and responsibilities do not support a higher grade level."

OFFICE SYMBOL

SURNAME

DATE

expectation that there is a sufficient quantity of GS-15 level work available to be performed that he or she may be promoted to that level through a series of successively complex and responsible positions. You and I have discussed that career Department attorneys who are rated "outstanding" may be promoted from GS-11 to GS-12 after 6 months and from GS-12 to GS-13, from GS-13 to GS-14, and from GS-14 to GS-15 after one year. The policy in the Attorney General's memorandum replicates, for political appointees, the Department's practice for career attorneys.²

Thus, the admonition in the White House memorandum that "Annual grade increases should be limited to situation where significant changes to a position's level of duties and responsibilities justify reclassification at a higher grade" is clearly observed in the Attorney General's policy.

The Attorney General's awards policy, which prohibits all cash awards for political appointees, is more restrictive than that established in Mr. Panetta's memorandum.

Concerning Noncareer Senior Executive Service (SES) pay level changes, those actions are not strictly "promotions," and it appears that the Administration has chosen not to place any restriction on those actions beyond the "one-year between level change" limitation established by statute. By establishing a policy of a one-level increase each year and a general limit of ES-4 for most Noncareer SES members, the Attorney General has again established a principle of comparability with the Career SES. Indeed, since some Career SES appointees in positions comparable to those occupied by Noncareer appointees are paid at the ES-5 level, the Attorney General's policy is slightly more restrictive than that for the Career SES.

Please call me on 514-5501 if you wish to discuss these issues further.

Attachments

²The Attorney General's policy, however, does not permit "accelerated" 6-month promotion from GS-11 to GS-12 for Schedule C appointees.



Washington, D.C. 20530

JUN 28 1994

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: STEPHEN R. COLGATE
Assistant Attorney General
for Administration

SUBJECT: Salary Increases for Noncareer Employees

In a memorandum dated June 17, 1994, I informed you that actions to effect pay and grade level increases for noncareer employees in accordance with the Attorney General's guidance that was transmitted by my memorandum dated June 13, 1994, would be held in abeyance pending our receipt of Administration-wide guidance on the same subject that was being developed by the Office of Management and Budget (OMB).

We have now received that guidance. Effective immediately, components may propose grade and pay level changes for the Department's political appointees -- Noncareer members of the Senior Executive Service and Schedule Cs -- in accordance with the Attorney General's earlier guidance as clarified by the memorandum for Cabinet and Agency Heads from the White House Chief of Staff. Copies of both documents are attached.

Proposals for pay increases should be submitted to the Office of the Deputy Attorney General. Any previously submitted proposals that were not acted upon pending OMB's clarifying language should be resubmitted. Please note that the Attorney General's awards policy, that prohibits all cash awards for political appointees in the Department, remains in effect.

Questions concerning the Department's policy or its specific application should be addressed to Chip Sgro in the Deputy Attorney General's office.

Attachments

06/24/94 JUN 28 1994



COPY

Washington, D.C. 20530

NOV 15 1994

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: Stephen R. Colgate
Assistant Attorney General
for Administration

SUBJECT: Avoiding Political Influence on Employment
Decisions

This provides the latest guidance on several developments limiting political influence on employment decisions.

Prohibited Recommendations.

On August 11, 1994, I informed you of the prohibition on accepting political recommendations for Federal jobs and furnished suggested language to be used when returning a prohibited recommendation to the sender. Effective immediately, please use the following language prepared by the Office of Legislative Affairs--

The Hatch Act Reform Amendments of 1993 (P.L. 103-94) place new restrictions on recommendations for certain Federal jobs by specified officials including [Members of Congress]. While this may not have come to your attention, the Department is barred by the Amendments from accepting or considering prohibited political recommendations and is required to return such to the sender. Accordingly, we are returning your correspondence to you as required by that law.

We appreciate your understanding in this matter. If you have any questions about this or any other matter, please do not hesitate to contact my office.

Considering Former Congressional Employees for Competitive Career
Appointments -- Ramspeck.

The attached Office of Personnel Management memorandum for Directors of Personnel dated November 7, 1994, cautions agencies on the proper acceptance of applications from Ramspeck eligibles.

It is essential for agencies to avoid the appearance of political favoritism. Generally, Ramspeck eligibles should be considered only if the agency is also accepting applications from candidates eligible for reinstatement, transfer, or other noncompetitive authorities. Applications of Ramspeck eligibles are subject to the normal prohibitions on accepting political recommendations.

Attached is an information sheet on the eligibility requirements for Ramspeck appointments. Please note that the Ramspeck authority does not cover appointments to the Senior Executive Service.

Prohibition on Cash Awards to Certain Federal Officials.

Effective October 31, 1994, Public Law 103-425 prohibits cash awards to Presidential appointees (PAS) in Executive Schedule or equivalent PAS positions at all times (5 U.S.C. 4509).

Further, senior politically appointed officers (i.e., employees who occupy Senior Executive Service positions and are not career appointees, or employees in Schedule C positions) may not receive cash awards during a Presidential election period. Under this Act, a Presidential election period is defined as beginning on June 1 of the year when the election of the President occurs, and ending on January 20 following the date of the Presidential election (5 U.S.C. 4508). A copy of the Act is attached for your information, along with my August 23, 1994 memorandum to Heads of Components. This memorandum reminded you of the Attorney General's awards policy, prohibiting all cash awards for political appointees in the Department.

If members of your staff have any questions, they may call Val Taliaferro, Pay and Evaluation Group, of my staff, on 514-6778.

Attachments

INTERAGENCY ADVISORY GROUP

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415

Secretariat
1900 E St., NW

NOV 7 1994

MEMORANDUM FOR DIRECTORS OF PERSONNEL

FROM: LEONARD R. KLEIN
ASSOCIATE DIRECTOR
FOR CAREER ENTRY



Subject: Considering Former Congressional Employees
for Competitive Career Appointments

After a congressional election, agencies inevitably receive employment applications under the so-called "Ramspeck" authority [5 U.S.C. 3304(c)], which lets congressional employees who lose their jobs receive career appointments in the competitive service. Agencies must take care that consideration of Ramspeck eligibles conforms fully to the spirit and the letter of the laws that prohibit political consideration.

What are those laws?

- 5 U.S.C. 2301 requires fair and equitable consideration of all applicants, with selection based solely on relative ability.
- 5 U.S.C. 2302 prohibits discrimination for or against any applicant on the basis of nonmerit factors, including race, sex, age, political or religious affiliation, or marital status.
- 5 U.S.C. 3303, as amended by the Hatch Act Reform Amendments of 1993, prohibits agency officials from accepting, considering, soliciting, or requesting political recommendations.

What, exactly, is permitted and prohibited?

Accepting applications.

- You may accept direct applications from Ramspeck eligibles and consider those applicants for any job openings for which they qualify. You need not have issued public notice

of the vacancies. (5 U.S.C. 3327 does not require notice for jobs filled under noncompetitive appointing authorities.) However, to avoid the appearance of political favoritism, you should generally not accept Ramspeck applications unless you are also accepting applications from candidates eligible for reinstatement, transfer, or other noncompetitive authorities.

- You may not accept applications referred by Senators, Representatives, congressional employees, or political party officials. Any agency official who receives such a referral must return it to the sender, with a notation that the referral violated 5 U.S.C. 3303.

Accepting or requesting recommendations

- You may request and consider recommendations from congressional or political sources only if they consist solely of an evaluation of the work performance, ability, aptitude, and general qualifications of an applicant or if the requested information is needed to determine that the applicant meets security or suitability standards.
- You may not accept unsolicited recommendations from any congressional or political source. This would include letters urging you to give full consideration to displaced congressional staffers. The recommendations must be returned to the senders, with a notation that such recommendations violate 5 U.S.C. 3303.

When are Ramspeck appointments appropriate?

Ramspeck appointments are appropriate when they are used as intended--to enable executive agencies to use the skills and abilities of former legislative employees who are well qualified for legitimate vacancies. A Ramspeck appointment must meet a real need--not fill a job created for the appointee. While candidates for Ramspeck and other noncompetitive appointments are not formally ranked, the selecting official should consider current employees and candidates available from other sources to determine the best qualified candidate.

RAMSPECK APPOINTMENTS
5 U.S.C. 3304(c); FPM CHAPTER 315, SUBCHAPTER 6

ELIGIBILITY

A person who has served at least 3 years in a position in the legislative branch¹ and was paid by the Secretary of the Senate or the Clerk of the House of Representatives OR a person who has served at least 4 years as a secretary and/or law clerk to a justice or judge of the United States and who

- was separated from the legislative or judicial branch involuntarily and without prejudice²,
- meets the qualification requirements³ for the position, and
- is appointed within 1 year from the date of separation from the legislative or judicial branch.

TENURE AND STATUS

By appointment to a competitive position (excludes SES positions) under Ramspeck, career tenure is conveyed without regard to the customary service requirement. Competitive status is acquired automatically on appointment.

¹A person who held one or more positions in the legislative branch for 2 years and left that position to enter military or naval service is considered to have held the legislative position during the period of military or naval service. In this situation the discharge under honorable conditions is considered an involuntary separation.

²Involuntary separation and without prejudice means that the employee's record must be good and that final separation must be due to circumstances beyond the employee's control, such as the death, defeat, or resignation of the employer, lack of work, or lack of funds.

³Must meet applicable qualification standards including passing a written test (if a test is required).

Bob
See my E-Mail
Vax

One Hundred Third Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the twenty-fifth day of January, one thousand nine hundred and ninety-four*

An Act

To amend the Defense Department Overseas Teachers Pay and Personnel Practices Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEAVE FOR DODDS TEACHERS.

Section 6 of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 904) is amended—

(1) in subsection (a) by inserting "(or, if such teacher is employed in a supervisory position or higher, not less than ten and not more than thirteen)" after "ten";

(2) in subsection (d) by striking "of the military department concerned" and inserting "of Defense"; and

(3) by adding at the end the following:

"(h) The Director of Dependents' Education, in consultation with the Director of the Office of Personnel Management—

"(1) shall establish for teachers a voluntary leave transfer program similar to the one under subchapter III of chapter 63 of title 5, United States Code; and

"(2) may establish for teachers a voluntary leave bank program similar to the one under subchapter IV of chapter 63 of title 5, United States Code.

Only leave described in the last sentence of subsection (c) of this section (relating to leave that may be used by a teacher for any purpose) may be transferred under any program established under this subsection."

SEC. 2. PROHIBITION ON CASH AWARDS TO CERTAIN FEDERAL OFFICERS.

(a) IN GENERAL.—Chapter 45 of title 5, United States Code, is amended by inserting after section 4507 the following new sections:

"§ 4508. Limitation of awards during a Presidential election year

"(a) For purposes of this section, the term—

"(1) 'Presidential election period' means any period beginning on June 1 in a calendar year in which the popular election of the President occurs, and ending on January 20 following the date of such election; and

"(2) 'senior politically appointed officer' means any officer who during a Presidential election period serves—

H. R. 3499—2

"(A) in a Senior Executive Service position and is not a career appointee as defined under section 3132(a)(4); or

"(B) in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

"(b) No senior politically appointed officer may receive an award under the provisions of this subchapter during a Presidential election period.

"§ 4509. Prohibition of cash award to Executive Schedule officers

"No officer may receive a cash award under the provisions of this subchapter, if such officer—

"(1) serves in—

"(A) an Executive Schedule position under subchapter II of chapter 53; or

"(B) a position for which the compensation is set in statute by reference to a section or level under subchapter II of chapter 53; and

"(2) was appointed to such position by the President, by and with the advice and consent of the Senate."

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 45 of title 5, United States Code, is amended by inserting after the item relating to section 4507 the following:

4508. Limitation of awards during a Presidential election year.

4509. Prohibition of cash award to Executive Schedule officers."

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*



Washington, D.C. 20530

AUG 23 1994

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: STEPHEN R. COLGATE
Assistant Attorney General
for Administration *Stephen R. Colgate*

SUBJECT: Salary Increases for Noncareer Employees

In a memorandum dated June 17, 1994, I informed you that actions to effect pay and grade level increases for noncareer employees in accordance with the Attorney General's guidance that was transmitted by my memorandum dated June 13, 1994, would be held in abeyance pending our receipt of Administration-wide guidance on the same subject that was being developed by the Office of Management and Budget (OMB).

We have now received that guidance. Effective immediately, components may propose grade and pay level changes for the Department's political appointees -- Noncareer members of the Senior Executive Service and Schedule Cs -- in accordance with the Attorney General's earlier guidance as clarified by the memorandum for Cabinet and Agency Heads from the White House Chief of Staff. Copies of both documents are attached.

Proposals for pay increases should be submitted to the Office of the Deputy Attorney General. Any previously submitted proposals that were not acted upon pending OMB's clarifying language should be resubmitted. ~~Please note that the Attorney General's awards policy, that prohibits all cash awards for political appointees in the Department, remains in effect.~~

Questions concerning the Department's policy or its specific application should be addressed to Chip Sgro in the Deputy Attorney General's office.

Attachments

SALARY INCREASES FOR NONCAREER EMPLOYEES

On June 6, 1994 the Attorney General approved a one-year in grade or pay level standard for salary progression for Noncareer members of the Senior Executive Service and Schedule C appointees. The program will be administered as follows:

I. SES Appointees

By law, individuals in the Senior Executive Service may be increased in pay level only once in any 12-month period.

In the Department, a Noncareer SES member at pay level ES-1 to ES-3 may be granted a one pay level increase after the completion of one year of service. The increase will be based on the component head's written request to the Deputy Attorney General and an assessment that the individual has, over the past year, demonstrated superior performance warranting a pay level increase.

Noncareer SES appointees' pay will be limited to the ES-4 level.¹ Exception can be made in unusual circumstances where a pay differential may be warranted. This authority will be exercised by the Deputy Attorney General as Chair of the Department's Senior Executive Resources Board.

II. Schedule GS

After one year in grade, upon written recommendation of the component head to the Deputy Attorney General, an individual in this category may be promoted to the next higher grade (e.g., from GS-14 to GS-15). As with Noncareer SES members, the recommendation must include the component head's assessment that the individual has, over the past year, demonstrated superior performance warranting a grade increase.²

In extraordinary circumstances, the Deputy Attorney General may make exceptions both with respect to timing and to the number of grades an individual may be promoted.

¹Pay at ES-5 or ES-6 will, with the addition of locality pay, exceed the compensation of an Assistant Attorney General. Additionally, pay at or above the ES-5 level subjects an appointee to substantially more stringent post-employment restrictions.

²In some situations, a grade level increase will not be available because the individual's duties and responsibilities do not support a higher grade level. (For example, Confidential Assistants to Assistant Attorneys General are graded at the GS-11 level. Those positions do not offer any "promotion potential" to GS-12.)

III. Other Salary Increases for Schedule C3

By statute, employees in the ten-step General Schedule receive salary increases within their grades on a periodic basis:

- 1) Steps 1 - 3: move up one step after 1 year
- 2) Steps 4 - 6: move up one step after 2 years
- 3) Steps 7 - 9: move up one step after 3 years

These increases take place as a matter of course so long as the employee is performing at "an acceptable level of competence."

This is of particular significance for Schedule C employees at the GS-15 level, since these increases will represent their only raises to base pay, except for general salary increases.

While government-wide law and regulations establish the possibility of granting an additional step increase through a category of incentive award known as a "Quality Within-grade Step Increase" (QSI), Schedule C appointees in the Department of Justice will not, as a matter of policy, be granted QSIs.

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR CABINET AND AGENCY HEADS

FROM: LEON E. PANETTA
CHIEF OF STAFF 

SUBJECT: PROMOTIONS AND CASH AWARDS FOR
POLITICAL APPOINTEES

Questions have been raised about granting annual grade increases (i.e. promotions) to Schedule C appointees and about giving lump-sum cash awards to political appointees at all levels. In this memo, the Clinton Administration is issuing guidance with respect to both of these issues.

Grade Increases for Schedule C Appointees

A Schedule C appointee serves in a specifically approved position with specified duties and responsibilities that form the basis for its classification at a given grade and pay level. Schedule C appointees should be eligible for step increases, just like career employees. Annual grade increases should be limited to situations where significant changes to a position's level of duties and responsibilities justify reclassification at a higher grade. Positions should not be reclassified just to create a promotion opportunity for a deserving employee.

Cash Awards to Political Appointees

Federal agencies have very broad authority to grant employees lump-sum cash awards. The Clinton Administration wishes to maintain a more rigorous standard for granting cash awards than previous Administrations. We therefore ask that agencies refrain from giving cash awards to political appointees (i.e., Executive Schedule, noncareer SES, Schedule C employees) paid a salary level that exceeds that of a GS-12 and to grant monetary awards to others only for performance that is clearly exceptional. Agencies should continue to recognize other political appointees through the prudent use of nonmonetary awards.



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

September 6, 1996

MEMORANDUM

TO: Heads of Department Components

FROM: Jamie S. Gorelick 

SUBJECT: Granting Awards to Political Appointees during a Presidential Election Period

Attached is guidance from the Director of the U.S. Office of Personnel Management on awards for political appointees during a Presidential election period. This election period began on June 1, 1996 and ends on January 20, 1997.

The guidance clarifies that political appointees may not receive cash awards or time-off awards during this election period. This is consistent with our own Department policy, which prohibits such awards at any time. Non-monetary awards may be granted as long as the award does not have or appear to have monetary value.

Each of you should ensure that this policy is strictly enforced so as to avoid even the appearance of impropriety.

Attachment

cc: Executive Officers
Bureau Personnel Officers

Copies

For
Mr. Willis
John M. C.

**IAG FAX TRANSMITTAL
U.S. OFFICE OF PERSONNEL MANAGEMENT
1900 E STREET, NW., WASHINGTON, DC 20415-0001**

**Deliver to agency Personnel Director or equivalent (i.e.,
Director of Human Resources, Personnel Officer, etc.)**

August 14, 1996

TO: DIRECTORS OF PERSONNEL

SUBJECT: Granting Awards to Political Appointees During a Presidential Election Period

Attached is guidance on granting awards to political appointees during a Presidential election period. This revised version should answer questions which have arisen from the original guidance issued by OPM's Performance Management and Incentive Awards Division. These revisions clarify that awards in the form of cash are known by various names and further clarifies what should be considered when selecting an honorary award. This information will be included in forthcoming Q&A's that address various appraisal and award issues in the regulations.

Copies to OPM officials are for informational purposes only!

TRANSMITTAL Message

MSG-328.FAX

If you experience problems receiving this fax, please call 202-606-2824.

NON-MONETARY AWARDS FOR POLITICAL APPOINTEES DURING THE PRESIDENTIAL ELECTION PERIOD (5 U.S.C. 4508 AND 5 CFR 451.105(a))

*Can any awards be given to political appointees during a Presidential election period?*¹

The regulations at 5 CFR 451.105(a) are based directly on the legislation at 5 U.S.C. 4508, which was enacted in 1994 and applied for the first time to the period June 1, 1996, to January 20, 1997. Questions have arisen regarding the interpretation of the word "award" as it appears in this regulation. The term "award" as it appears in 451.105(a) should be treated within the constraints of its legislative interpretation since that particular regulation tracks the legislation so closely.

In the legislative history and other documents that led to the legislation at 5 U.S.C. 4508 that bans the granting of awards to political appointees during a Presidential election period, the subject under discussion was clearly limited to "bonuses" or awards with principally a monetary value. There is no evidence that the prohibition was intended to include nonmonetary awards that are primarily honorary in nature. Therefore, OPM interprets both the law and its accompanying regulation to prohibit any cash award and any other bonus delivered under the cover of a nonmonetary award, i.e., any award with an apparent value that is more monetary than honorific. Applying this interpretation, award categories are treated as follows:

Cash Awards

(Q&A included)

The ban on awards (i.e., performance awards, special act or service awards, on-the-spot awards, etc.) that take the form of cash is absolute for political appointees during a Presidential election period. Under no circumstances may a political appointee receive an award in the form of cash, including any honorarium or stipend that may be associated with an agency honor award.

Time-Off Awards

Because a time-off award is ultimately delivered in the form of pay for time not worked, it must be construed in this context as tantamount to a cash award. Consequently, the ban on time-off awards is absolute. For the purposes of 5 CFR 451.105(a), a time-off award is considered "received" when it is granted. Under no circumstances may a political appointee receive a time-off award during a Presidential election period.

Nonmonetary Awards

The broad category of nonmonetary awards may take a wide variety of forms with a wide variance in monetary value, both in terms of direct cost and the appearance of such value. OPM has concluded that an agency may grant a political appointee a nonmonetary award during a Presidential election period, provided that the form of the honorary award avoids the appearance of replacing a bonus. Agencies must exercise good judgment in selecting honorific items. Such items should create the inherent impression of symbolic value (an honor being bestowed) rather than monetary worth (cash value). For example, presenting a commemorative photograph or a certificate in a simple, inexpensive frame would be appropriate, but presenting a Waterford carafe would not be.

¹ This will be included in a forthcoming comprehensive set of Q&A's addressing appraisal and award regulations.